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COURT OF JUSTICE OF THE EUROPEAN UNION

Annual report 2013

COURT OF JUSTICE OF THE EUROPEAN UNION

ANNUAL REPORT 2013

Synopsis of the work of the Court of Justice,
the General Court and the Civil Service Tribunal

Luxembourg, 2014

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Court of Justice
L-2925 Luxembourg
Tel. +352 4303-1

General Court
L-2925 Luxembourg
Tel. +352 4303-1

Civil Service Tribunal
L-2925 Luxembourg
Tel. +352 4303-1

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Contents

Chapter III

The Civil Service Tribunal

Foreword

In 2013, the Court of Justice of the European Union experienced a striking increase in the pace of its judicial activity. First, the number of cases brought was the highest since the judicial system of the European Union was created. Second, with 1 587 cases being completed, the institution's productivity was at an unprecedented level. The Court of Justice can only be satisfied with this trend, which indicates the confidence of national courts and of litigants in the judicature of the European Union.

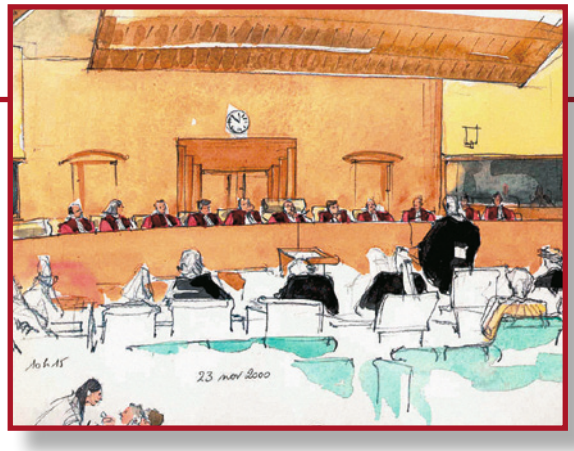
However, this intensification of judicial activity is liable, in the not necessarily distant future, to undermine the efficiency of the European Union's judicial system as a whole. For this reason, there is a constant and continuous need to seek means, in the form of both legislation and working methods, of improving the efficiency of that judicial system.

2013 also witnessed the accession of the Republic of Croatia to the European Union and the arrival of the two Croatian members at the Court of Justice and the General Court respectively, as well as the adoption of the decision increasing the number of Advocates General at the Court of Justice and, in this context, the arrival of the first Polish Advocate General.

Finally, the past year also saw the departure of six members of the General Court in the context of the partial renewal of its membership, two members of the Court of Justice and one member of the Civil Service Tribunal.

This report provides a full record of changes concerning the institution and of its work in 2013. A substantial part of the report is devoted to succinct but exhaustive accounts of the main judicial activity of the Court of Justice, the General Court and the Civil Service Tribunal, accompanied by statistics. I would like to take this opportunity to warmly thank my colleagues in the three courts and the entire staff of the Court of Justice for the outstanding work carried out by them during this exceptionally demanding year.

V. Skouris
President of the Court of Justice



Chapter I

The Court of Justice

A — The Court of Justice in 2013: changes and activity

By Mr Vassilios Skouris, President of the Court of Justice

The first part of the Annual Report gives an overview of the activities of the Court of Justice of the European Union in 2013. First, it describes how the institution evolved during the past year, with the emphasis on the institutional changes affecting the Court of Justice and developments relating to its internal organisation and its working methods (Section 1). Second, it includes an analysis of the statistics which shows both the evolution of the Court of Justice's workload and the average duration of proceedings (Section 2). Third, it presents, as it does each year, the main developments in the case-law, arranged by subject matter (Section 3).

1. As regards the evolution of the Court of Justice of the European Union generally, the event of the past year which stands out is the accession of the Republic of Croatia to the European Union. At a formal sitting on 4 July 2013, the first Croatian Judge of the Court of Justice and the first Croatian Judge of the General Court took the prescribed oath and they entered into office on the same day. Preparation for this seventh enlargement of the European Union was problem-free for the institution, and the two Judges, the members of their Chambers and all the staff of Croatian nationality who joined the institution were integrated smoothly.

At the judicial level, it should be noted that, by Council Decision 2013/336/EU of 25 June 2013 increasing the number of Advocates General of the Court of Justice of the European Union (OJ 2013 L 179, p. 92), the number of Advocates General was increased to nine with effect from 1 July 2013 and will rise to eleven with effect from 7 October 2015. Following the adoption of that decision, the first Polish Advocate General took the oath on 23 October 2013.

As regards procedural rules, following the entry into force of the new Rules of Procedure of the Court of Justice in 2012, the Court submitted to the Council a proposal for the adoption of new Supplementary Rules to replace the Supplementary Rules of 4 December 1974 (OJ 1974 L 350, p. 29), as last amended on 21 February 2006 (OJ 2006 L 72, p. 1). This proposal was approved by the Council at the beginning of 2014 (OJ 2014 L 32, p. 37). In parallel the Court adopted practice directions to parties concerning cases brought before the Court (OJ 2014 L 31, p. 1), which replace, with effect from 1 February 2014, the practice directions relating to direct actions and appeals of 15 October 2004 (OJ 2004 L 361, p. 15), as amended on 27 January 2009 (OJ 2009 L 29, p. 51). These two procedural instruments entered into force on 1 February 2014.

2. The statistics concerning the Court's activity in 2013 reveal unprecedented figures overall. The past year will be remembered for being, first, the most productive year in the Court's history and, second, the year with the highest ever number of new cases.

Thus, the Court completed 635 cases in 2013 (net figure, that is to say, taking account of the joinder of cases), a considerable increase compared with the previous year (527 cases completed in 2012). Of those cases, 434 were dealt with by judgments and 201 gave rise to orders.

The Court had 699 new cases brought before it (without account being taken of the joinder of cases on the ground of similarity), which amounts to an increase of approximately 10% compared with 2012 and constitutes the highest annual number of cases brought in the Court's history. This increase in the total number of cases brought is attributable to the increase, compared with the previous year, in the number of appeals and references for a preliminary ruling. In 2013 the number of references for a preliminary ruling, which rose to 450, was the highest ever.

Concerning the duration of proceedings, the statistics are very positive. In the case of references for a preliminary ruling, the average duration amounted to 16.3 months. The slight increase compared with 2012 (15.6 months) is not regarded as statistically significant. The average time taken to deal with direct actions and appeals was 24.3 months and 16.6 months respectively. It is true that, in the case of direct actions, the duration of proceedings increased significantly in 2013 compared with the previous year (19.7 months). The Court indeed remains vigilant in this regard, but initial statistical analyses show that the increase is, rather, attributable to short-term factors over which the Court has only very limited control.

In addition to the reforms in its working methods that have been undertaken in recent years, the improvement of the Court's efficiency in dealing with cases is also due to the increased use of the various procedural instruments at its disposal to expedite the handling of certain cases (the urgent preliminary ruling procedure, priority treatment, the expedited procedure, the simplified procedure and the possibility of giving judgment without an Opinion of the Advocate General).

Use of the urgent preliminary ruling procedure was requested in five cases and the designated chamber considered that the conditions under Article 107 et seq. of the Rules of Procedure were met in two of them. Those cases were completed in an average period of 2.2 months.

Use of the expedited procedure was requested 14 times, but the conditions under the Rules of Procedure were met in none of those cases. Following a practice established in 2004, requests for the use of the expedited procedure are granted or refused by reasoned order of the President of the Court. In addition, priority treatment was granted in 5 cases.

Also, the Court utilised the simplified procedure laid down in Article 99 of the Rules of Procedure to answer certain questions referred to it for a preliminary ruling. A total of 33 cases were brought to a close by orders made on the basis of that provision.

Finally, the Court made fairly frequent use of the possibility offered by Article 20 of its Statute of determining cases without an Opinion of the Advocate General where they do not raise any new point of law. About 48% of the judgments delivered in 2013 were delivered without an Opinion.

As regards the distribution of cases between the various formations of the Court, it is to be noted that the Grand Chamber dealt with roughly 8%, chambers of five Judges with 59%, and chambers of three Judges with approximately 32%, of the cases brought to a close by judgments or by orders involving a judicial determination in 2013. Compared with the previous year, the proportion of cases dealt with by the Grand Chamber remained stable (9% in 2012), while the proportion of cases dealt with by five-Judge chambers increased (54% in 2012).

For more detailed information regarding the statistics for the past judicial year the section of this report specifically devoted to that topic should be consulted.

B — Case-law of the Court of Justice in 2013

I. Constitutional or institutional issues

1. Proceedings of the European Union

As in previous years, the Court had the opportunity, by means of several decisions, to provide important clarification concerning the conditions in which it exercises its jurisdiction.

a) Actions for failure to fulfil obligations

In Case C-95/12 *Commission* v *Germany* (judgment of 22 October 2013), the Court determined an action brought by the Commission concerning the *failure to comply with a previous judgment of the Court finding a failure to fulfil obligations*. ([1]) In the previous judgment, the Court had found that, by maintaining in force certain provisions of the 'Volkswagen Law', in particular those relating to the appointment by Germany and the Land of Lower Saxony of members of the supervisory board of the vehicle manufacturer Volkswagen and also the limitation of voting rights together with a blocking minority of 20% for the adoption of certain decisions by the shareholders of that vehicle manufacturer, Germany had infringed the principle of free movement of capital. Following the judgment of the Court, Germany had repealed the first two provisions, but it had maintained the provision on the blocking minority. Taking the view that it followed from the judgment finding a failure to fulfil obligations that each of the three provisions concerned constituted an independent infringement of the principle of free movement of capital and that, consequently, the provision on the blocking minority ought to have been repealed as well, the Commission had again brought an action before the Court and claimed that Germany should be ordered to pay a daily penalty payment and a lump sum.

In its judgment in this action, the Court found that it follows both from the operative part and from the grounds of its previous judgment that the Court did not find a failure to fulfil obligations resulting from the provision on the blocking minority considered in isolation, but solely a failure to do so resulting from the combination of that provision with the provision on the limitation of voting rights. In repealing, on the one hand, the provision of the 'Volkswagen Law' relating to the appointment by the State and the *Land* of Lower Saxony of members of the supervisory council and, on the other, the provision relating to the limitation of voting rights, thus putting an end to the combination of that latter provision and the provision concerning the blocking minority, Germany fulfilled, within the period prescribed, its obligations resulting from the judgment delivered against it. Consequently, the Court dismissed the Commission's action.

b) Actions for annulment

As regards actions for annulment, mention should be made of two judgments of the Court relating to the new version of the *fourth paragraph of Article 263 TFEU, as introduced by the Treaty of*

([1]) Case C-112/05 *Commission* v *Germany* [2007] ECR I-8995.

Lisbon, which concern, respectively, the concept of 'regulatory act' and the concept of 'implementing measures'. ([2])

In Case C-583/11 P *Inuit Tapiriit Kanatami and Others* v *Parliament and Council* (judgment of 3 October 2013), the Court upheld the order of the General Court ([3]) holding inadmissible an action for annulment of Regulation No 1007/2009 ([4]) brought by a number of natural and legal persons representing the interests of Canadian Inuits.

The Court observed that, since the entry into force of the Treaty of Lisbon, certain acts of general application may be challenged before the Courts of the European Union by natural and legal persons without their being required to meet the condition of individual concern. However, the Treaty states unequivocally that those less strict rules on admissibility apply to only a restricted category of such acts, namely the category of regulatory acts. In particular, as the General Court correctly observed, *although legislative acts are also of general application, they are not regulatory acts* and continue to be subject to stricter rules on admissibility. It is clear from the *travaux préparatoires* relating to Article III-365(4) of the proposed treaty establishing a Constitution for Europe, the content of which was reproduced in identical terms in the fourth paragraph of Article 263 TFEU, that the amendment which that provision was to introduce to the fourth paragraph of Article 230 EC was not intended to extend the conditions of admissibility of actions for annulment of legislative acts. Thus, for legislative acts, the admissibility of an action brought by a natural or legal person continues to be subject to the condition that the contested act must be of individual concern to the applicant.

In this instance, the Court held that the condition was not satisfied, since the prohibition on the placing of seal products on the market, set out in Regulation No 1007/2009, is worded in general terms and applies indiscriminately to any trader falling within its scope, without being specifically aimed at the applicants, who could not therefore be regarded as being individually concerned by that prohibition.

In addition, the Court stated that the protection conferred by Article 47 of the Charter of Fundamental Rights of the European Union does not require that an individual should have an unconditional entitlement to bring an action for annulment of European Union legislative acts directly before the Courts of the European Union. On the contrary, it is for the Member States to establish a system of legal remedies which ensure respect for the fundamental right to effective judicial protection. Nonetheless, neither that provision nor the second subparagraph of Article 19(1) TEU, which imposes such an obligation on the Member States, requires that an individual should be able to bring actions against such acts, as their primary subject matter, before the national courts or tribunals.

The fourth paragraph of Article 263 TFEU, as amended by the Treaty of Lisbon, was also interpreted in the judgment of 19 December 2013 Case C-274/12 P *Telefónica* v *Commission*, delivered in an

([2]) In relation to actions for annulment, mention should also be made of Joined Cases C-478/11 P to C 482/11 P *Gbagbo and Others* v *Council* (judgment of 23 April 2013) and Case C-239/12 P *Abdulrahim* v *Council and Commission* (judgment of 28 May 2013). These judgments are presented under the heading 'Common Foreign and Security Policy — Freezing of funds'.

([3]) Order of 6 September 2011 in Case T-18/10 *Inuit Tapiriit Kanatami and Others* v *Parliament and Council* [2011] ECR II-5599.

([4]) Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products (OJ 2009 L 286, p. 36).

appeal against an order of the General Court ([5]) holding inadmissible an action against a Commission decision declaring a provision of Spanish corporation tax law incompatible with the common market. Without ruling on the nature of that decision, the Court defined *the tests for determining whether a regulatory act entails 'implementing measures' within the meaning of the final limb of the fourth paragraph of Article 263 TFEU*.

As a preliminary point, the Court observed that, where regulatory acts entail implementing measures, judicial review of compliance with the European Union legal order is ensured either by the Courts of the European Union, if responsibility for the implementation of those acts lies with the institutions, bodies, offices or agencies of the European Union, or by the national courts and tribunals, where that implementation is a matter for the Member States. Before the national courts and tribunals, natural and legal persons may thus plead the invalidity of the basic act and cause those courts and tribunals to make a reference to the Court under Article 267 TFEU.

As to whether a regulatory act entails implementing measures, the Court held that that question should be assessed by reference to the position of the person pleading the right to bring proceedings. It is therefore irrelevant whether the act in question entails implementing measures with regard to other persons. Furthermore, reference should be made exclusively to the subject matter of the action and, where an applicant seeks only the partial annulment of an act, it is solely the implementing measures which that part of the act entails that must, as the case may be, be taken into consideration.

As regards the decision at issue in this case, the Court observed that it is concerned exclusively with declaring an aid scheme consisting of tax rules incompatible with the common market and that it does not define the specific consequences which that declaration has for each tax payer; those consequences are embodied solely in administrative documents, such as a tax notice, which constitute implementing measures within the meaning of the final limb of the fourth paragraph of Article 263 TFEU.

The Court therefore concluded that the General Court was correct to hold, in this instance, that the conditions governing admissibility laid down in the final limb of the fourth paragraph of Article 263 TFEU were not met.

c) References for a preliminary ruling

Case C-416/10 *Križan and Others* (judgment of 15 January 2013) ([6]) provided the Court with the opportunity to clarify both *the extent of the discretion of national courts to make a reference to the Court for a preliminary ruling* and the *concept of court of last instance*. The Court recalled that a national procedural rule pursuant to which legal rulings of a higher court bind the lower courts cannot call into question the discretion of the latter courts to request the Court for a preliminary ruling where they have doubts as to the interpretation of European Union law, and they must disregard the rulings of the higher court if they consider, in the light of the interpretation given by the Court, that they are not consistent with European Union law. The Court held that those principles apply in the same way with regard to the legal position expressed by a constitutional court, since it follows from well-established case-law that rules of national law, even of a constitutional order, cannot be allowed to undermine the unity and effectiveness of European Union law.

([5]) Order of 21 March 2012 in Case T-228/10 *Telefónica* v *Commission*.

([6]) Another aspect of this judgment is presented under the heading 'Environment'.

In addition, the Court held that a national court is a court against whose decisions there is no judicial remedy under national law, within the meaning of the third paragraph of Article 267 TFEU, and which is thus required to request a preliminary ruling from the Court, even where national law provides for the possibility of bringing before the constitutional court of the Member State concerned an action against its decisions limited to an examination of a potential infringement of the rights and freedoms guaranteed by the national constitution or by an international agreement.

d) Actions for damages

In Case C-103/11 P *Commission* v *Systran and Systran Luxembourg* (judgment of 18 April 2013), the Court was required to adjudicate on the *division of jurisdiction between the Courts of the European Union and the national courts as regards actions for damages seeking to establish the European Union's non-contractual liability*. The case originated in an appeal brought by the Commission against the judgment of the General Court ([7]) in which that Court had held that the dispute relating to the allegation of infringements of intellectual property law following the expiry of contracts between the Systran group and the Commission concerning an automatic translation system was of a non-contractual nature and had ordered the Commission to pay the Systran group lump-sum damages for the harm sustained.

The Court held that the General Court had erred in law in its application of the principles governing the determination of jurisdiction in the context of actions for damages against the European Union and in the legal classification of the contractual relations between the Systran group and the Commission. The Court held that the Courts of the European Union must, before ruling on the substance of an action for damages, decide whether the liability invoked is contractual or non-contractual and thus determine the very nature of the dispute. In doing that, they cannot base their reasoning simply on the rules alleged by the parties. They are required, on an analysis of the various matters in the file, to verify whether the action has as its subject matter a claim for damages based objectively and overall on rights and obligations of a contractual nature or a non-contractual nature.

If, following that analysis, it is necessary to interpret the content of one or more contracts concluded between the parties in question, the Courts are required to declare that they have no jurisdiction to rule thereon in the absence of an arbitration clause. Examination of the action for damages would in that case involve the assessment of rights and obligations of a contractual nature which fall within the jurisdiction of the national courts.

e) Length of proceedings

Three judgments delivered on 26 November 2013, in Case C-40/12 P *Gascogne Sack Deutschland* (formerly *Sachsa Verpackung*) v *Commission*, ([8]) Case C-50/12 P *Kendrion* v *Commission* ([9]) and Case C-58/12 P *Groupe Gascogne* v *Commission*, ([10]) enabled the Court to rule on *the consequences of*

([7]) Case T-19/07 *Systran and Systran Luxembourg* v *Commission* [2010] ECR II-6083.

([8]) Judgment delivered on appeal against the judgment of the General Court of 16 November 2011 in Case T-79/06 *Sachsa Verpackung* v *Commission*.

([9]) Judgment delivered on appeal against the judgment of the General Court of 16 November 2011 in Case T-54/06 *Kendrion* v *Commission*.

([10]) Judgment delivered on appeal against the judgment of the General Court of 16 November 2011 in Case T-72/06 *Groupe Gascogne* v *Commission*.

failure to deliver judgment within a reasonable time when examining an action for annulment of a Commission decision imposing a fine for infringement of the competition rules of European Union law.

The Court recalled that, where there are no indications that the excessive length of the proceedings before the General Court has affected their outcome, the fact that a reasonable time has been exceeded in proceedings cannot lead to the judgment under appeal being set aside.

As regards the appropriate remedy to make good the financial consequences arising from the excessive duration of the proceedings before the General Court, the Court departed from the solution adopted in *Baustahlgewebe* v *Commission* ([11]) and rejected the claim seeking, for that purpose, in the context of an appeal a reduction in the amount of the fines imposed. The Court held, confirming the solution which it had adopted in *Der Grüne Punkt — Duales System Deutschland* v *Commission*, ([12]) that the sanction for a breach, by a Court of the European Union, of its obligation under the second paragraph of Article 47 of the Charter of Fundamental Rights to adjudicate on the cases before it within a reasonable time must be an action for damages, since such an action constitutes an effective remedy of general application for asserting and penalising such a breach.

That action may not be brought directly before the Court but must be brought before the General Court, on the basis of Article 268 TFEU and the second paragraph of Article 340 TFEU. In that context, the Court observed that the General Court must sit in a different composition from that which sat in the proceedings forming the subject matter of the action for annulment and the duration of which is contested.

Furthermore, in such an action for damages, the General Court must assess, in the light of the circumstances specific to each case, whether the 'reasonable time' principle was observed. The General Court must also assess whether the parties concerned really did sustain harm as a result of the breach of their right to effective judicial protection. It must take into consideration the general principles applicable in the legal systems of the Member States for actions based on similar breaches. In particular, it must try to identify, in addition to any material loss, any other type of harm sustained by the parties affected by the excessive period, which should, where appropriate, be suitably compensated.

Dealing next with the length of the proceedings before the General Court in the cases at issue, which had amounted to approximately five years and nine months, the Court held that their length could not be justified by any circumstance connected with the cases. Neither the complexity of the disputes, nor the conduct of the parties, nor the particular features of the proceedings explained their excessive duration. In those circumstances, the Court concluded that the procedures before the General Court had failed to comply with the right which the Charter of Fundamental Rights confers on parties to have their case dealt with in a reasonable time and that that failure constituted a sufficiently serious breach of a rule of law that confers rights on individuals.

([11]) Case C-185/95 P [1998] ECR I-8417; this judgment was delivered on appeal against the judgment of the Court of First Instance (now 'the General Court') of 6 April 1995 in Case T-145/89 *Baustahlgewebe* v *Commission* [1995] ECR II-987.

([12]) Case C-385/07 P [2009] ECR I-6155; this judgment was delivered on appeal against the judgment of the General Court of 24 May 2007 in Case T-151/01 *Duales System Deutschland* v *Commission* [2007] ECR II-1607.

2. Charter of Fundamental Rights of the European Union

In the area of protection of fundamental rights, the Court, in two judgments delivered on the same day, provided important clarification relating to Articles 51(1) and 53 of the Charter of Fundamental Rights, which concern, respectively, the field of application of the Charter and the level of protection which it ensures. ([13])

a) Field of application of the Charter

In Case C-617/10 *Åkerberg Fransson* (judgment of 26 February 2013), the Court observed, first of all, referring to its consistent case-law on the scope of fundamental rights in the European Union and to the explanations relating to *Article 51 of the Charter of Fundamental Rights*, that the fundamental rights guaranteed by that charter must be complied with where national legislation falls within the scope of European Union law. Situations which are covered in that way by European Union law cannot therefore exist without those fundamental rights being applicable. The applicability of European Union law entails applicability of the fundamental rights guaranteed by the Charter of Fundamental Rights.

As regards the tax penalties and criminal proceedings for tax evasion — owing to false information concerning value added tax (VAT) being provided — which formed the subject matter of the main proceedings, the Court held that they constituted implementation of a number of provisions of European Union law on VAT and the protection of the financial interests of the European Union ([14]) and, accordingly, implementation of European Union law within the meaning of Article 51(1) of the Charter. The fact that the national legislation upon which those tax penalties and criminal proceedings were based was not adopted in order to transpose Directive 2006/112 ([15]) cannot call that conclusion into question, since the application of that legislation is designed to penalise an infringement of that directive and is therefore intended to implement the obligation imposed on the Member States to impose effective penalties for conduct prejudicial to the financial interests of the European Union.

([13]) This part of the Annual Report mentions only two fundamental judgments relating to the general provisions of the Charter of Fundamental Rights. However, a number of other decisions in which the Court adjudicated on the Charter are mentioned under other headings of the report. In that regard, mention should be made of Case C-40/12 P *Gascogne Sack Deutschland* (formerly *Sachsa Verpackung*) v *Commission* (judgment of 26 November 2013), Case C-50/12 P *Kendrion* v *Commission* (judgment of 26 November 2013) and Case C-58/12 P *Groupe Gascogne* v *Commission* (judgment of 26 November 2013) (see the heading 'Proceedings of the European Union); Case C-93/12 *Agrokonsulting-04* (judgment of 27 June 2013) and Case C-101/12 *Schaible* (judgment of 17 October 2013) (see the heading 'Agriculture'); Case C-291/12 *Schwarz* (judgment of 17 October 2013) (see the heading 'Movement across borders'); Case C-648/11 *MA and Others* (judgment of 6 June 2013) and Case C-349/12 *Abdullahi* (judgment of 10 December 2013) (see the heading 'Asylum policy'); Case C-168/13 PPU *F.* (judgment of 30 May 2013) and Case C-396/11 *Radu* (judgment of 29 January 2013) (see the heading 'European arrest warrant'); Case C-260/11 *Edwards and Pallikaropoulos* (judgment of 11 April 2013) (see the heading 'Environment'); and Case C-579/12 RX II *Commission* v *Strack* (judgment of 19 September 2013) (see the heading 'European civil service').

([14]) See Article 325 TFEU and Articles 2, 250(1) and 273 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), formerly Articles 2 and 22 of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

([15]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

Referring to its judgment in *Melloni*, ([16]) delivered on the same day, the Court also observed that, where a national court is called upon to review whether fundamental rights are complied with by a national provision or measure which, in a situation where action of the Member States is not entirely determined by European Union law, implements the latter, national courts and authorities remain free to apply national standards of protection of fundamental rights. However, the level of protection provided for by the Charter of Fundamental Rights, as interpreted by the Court, and the primacy, unity and effectiveness of European Union law must not be thereby compromised.

Next, as regards the *ne bis in idem* principle laid down in Article 50 of the Charter of Fundamental Rights, the Court observed that that principle does not preclude a Member State from imposing successively, for the same fraudulent acts in connection with declaration obligations in the field of VAT, a tax penalty and a criminal penalty, in so far as the first penalty is not criminal in nature. The question of whether tax penalties are criminal in nature must be assessed on the basis of three criteria: the legal classification of the offence under national law, the very nature of the offence and the nature and degree of severity of the penalty that the person concerned is liable to incur.

Last, the Court held that European Union law precludes a judicial practice which makes the obligation for a national court to disapply any provision contrary to a fundamental right guaranteed by the Charter of Fundamental Rights conditional on that infringement being clear from the text of that charter or from the relevant case-law, since that practice withholds from the national court the power to assess fully, with, as the case may be, the cooperation of the Court of Justice, whether that provision is compatible with the Charter of Fundamental Rights.

b) Level of protection of the fundamental rights guaranteed by the Charter

In Case C-399/11 *Melloni* (judgment of 26 February 2013), ([17]) the Court had the opportunity, for the first time, to rule on *the interpretation of Article 53 of the Charter of Fundamental Rights*. That provision states that the Charter of Fundamental Rights is not to have an adverse effect on fundamental rights recognised by, inter alia, the Member States' constitutions. In *Melloni*, in which the Court had received a request for a preliminary ruling from the Spanish Constitutional Court concerning the execution of a European arrest warrant pursuant to Framework Decision 2002/584, as amended, ([18]) the Court observed that Article 53 of the Charter of Fundamental Rights does not allow a Member State to make the surrender of a person convicted *in absentia* conditional upon the conviction being open to review in the issuing Member State, in order to avoid an adverse effect on the right to a fair trial and the rights of the defence guaranteed by the constitution of the first Member State. It is true that Article 53 of the Charter confirms that, where a European Union legal act calls for national implementing measures, national authorities and courts may apply national standards of protection of fundamental rights, provided that the level of protection provided for by the Charter of Fundamental Rights and the primacy, unity and effectiveness of European Union law are not thereby compromised. However, the framework decision effects a harmonisation of the conditions of execution of a European arrest warrant in the event of a conviction rendered *in absentia*.

([16]) Case C-399/11 *Melloni* (judgment of 26 February 2013), see below.

([17]) Another aspect of this judgment is presented under the heading 'Police and judicial cooperation in criminal matters'.

([18]) Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (OJ 2002 L 190, p. 1, and OJ 2009 L 81, p. 24).

Consequently, allowing a Member State to avail itself of Article 53 of the Charter of Fundamental Rights to make the surrender of a person conditional on a requirement not provided for in the framework decision would, by casting doubt on the uniformity of the standard of protection of fundamental rights as defined in that decision, undermine the principles of mutual trust and recognition which that decision purports to uphold and would therefore compromise its efficacy.

3. Citizenship of the Union

In Case C-300/11 *ZZ* (judgment of 4 June 2013), the Court ruled on *the interpretation of Articles 30 and 31 of Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States*. ([19]) In this case, a judicial body of the United Kingdom, the Special Immigration Appeals Commission (SIAC), had dismissed an appeal by a Franco-Algerian national, ZZ, against a decision refusing him admission to the United Kingdom, on grounds of public security. SIAC delivered a 'closed' judgment, with comprehensive reasons, and an 'open' judgment, with summary reasons. ZZ was informed of only the latter judgment. On appeal against that judgment, the referring court raised the question as to the extent to which the competent national authority is required to inform the person concerned of the public security grounds which constitute the basis of the decision refusing entry.

In its judgment, the Court ruled that the abovementioned provisions of Directive 2004/38, read in the light of Article 47 of the Charter of Fundamental Rights, relating to effective judicial review, require the national court with jurisdiction to ensure that failure by the competent national authority to disclose to the person concerned, precisely and in full, the grounds on which the decision refusing entry is based, and to disclose the related evidence to him, is limited to that which is strictly necessary. The national court must ensure that the person concerned is informed, in any event, of the essence of those grounds in a manner which takes due account of the necessary confidentiality of the evidence. Thus, the Court made clear that there is no presumption that the reasons invoked by a national authority for refusing to disclose those grounds exist and are valid. The national court must thus carry out an independent examination of all the matters of law and fact relied on by the national authority and it must determine whether State security stands in the way of disclosure to the person concerned, precisely and in full, of the grounds on which the decision refusing entry is based.

Where State security does stand in the way of such disclosure, judicial review of the legality of the decision must be carried out in a procedure which strikes a balance between the requirements flowing from State security and the requirements of the right to effective judicial protection, while limiting any interference with the exercise of that right to that which is strictly necessary. However, that balancing exercise is not applicable in the same way to the evidence underlying the grounds that is adduced before the national court with jurisdiction, since disclosure of that evidence is liable to compromise State security in a direct and specific manner. ([20])

([19]) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda at OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34).

([20]) For the application of the principles established in *ZZ* in the area of the common foreign and security policy, see, below, Joined Cases C-584/10 P, C-593/10 P and C-595/10 P *Commission* v *Kadi* (judgment of 18 July 2013), under the heading 'Common Foreign and Security Policy — Freezing of funds'.

4. Enhanced cooperation

In Joined Cases C-274/11 and C-295/11 *Spain and Italy* v *Council* (judgment of 16 April 2013), the Court was called upon, for the first time since the enhanced cooperation mechanism was introduced by the Treaty of Amsterdam, to examine the lawfulness of the authorisation for such cooperation. Two Member States brought an *action for annulment of Council Decision 2011/167 authorising enhanced cooperation in the area of the creation of unitary patent protection between 25 Member States*, ([21]) Spain and Italy having refused to take part owing to the proposed language arrangements.

The Court first examined the applicants' argument that the Council had no competence to authorise such enhanced cooperation, on the ground that Article 20(1) TFEU excludes any enhanced cooperation within the ambit of the European Union's exclusive competences and that the creation of European intellectual property rights to provide uniform protection of intellectual property rights falls not within the ambit of one of the competences shared by the Member States and the European Union, but within that of the exclusive competence of the European Union as provided for in Article 3(1)(b) TFEU, concerning the establishing of the competition rules necessary for the functioning of the internal market. The Court did not follow that reasoning. It held that the competence to create European intellectual property rights and the competence to set up, as regards those rights, Union-wide authorisation, coordination and supervision arrangements fall within the ambit of the functioning of the internal market. They thus fall within an area of shared competences and are, in consequence, non-exclusive.

In addition, according to the Court, provided that it is compatible with the conditions laid down in Article 20 TEU and in Article 326 et seq. TFEU, the contested decision does not amount to misuse of powers, but rather, having regard to its being impossible to reach common arrangements for the whole European Union within a reasonable period, contributes to the process of integration. The Court emphasised, moreover, that it is inherent in the fact that the competence conferred by Article 118 TFEU to create European intellectual property rights is exercised within the ambit of enhanced cooperation that the European intellectual property right so created, the uniform protection given by it and the arrangements attaching to it will be in force, not in the European Union in its entirety, but only in the territory of the participating Member States. Far from amounting to infringement of Article 118 TFEU, that consequence necessarily follows from Article 20(4) TEU, which states that acts adopted in the framework of enhanced cooperation are to bind only participating Member States.

Last, the Court held that the contested decision complies with the condition relating to the adoption of a decision authorising enhanced cooperation as a last resort, since the Council took account of the fact that the legislative process undertaken with a view to establishing the European patent had begun during the year 2000, that a considerable number of different language arrangements for the unitary patent were discussed by all Member States and that none of those arrangements found support capable of leading to the adoption at European Union level of a full 'legislative package' relating to the unitary patent.

([21]) Council Decision 2011/167/EU of 10 March 2011 authorising enhanced cooperation in the area of the creation of unitary patent protection (OJ 2011 L 76, p. 53).

5. Division of competences and legal basis

As regards the division of competences, mention should be made of three judgments. The first two relate to the common commercial policy and the third to social policy.

In Case C-137/12 *Commission* v *Council* (judgment of 22 October 2013), the Commission had sought annulment of *Decision 2011/853 on the signing, on behalf of the Union, of the European Convention on the legal protection of services based on, or consisting of, conditional access*. ([22]) The Commission claimed, in particular, that the decision came under the common commercial policy and should have been adopted on the basis of Article 207(4) TFEU and not of Article 114 TFEU, concerning the approximation of laws. In that regard, the Court observed that Decision 2011/853 primarily pursues an objective that has a specific connection to the common commercial policy, which means that, for the purposes of the adoption of that decision, Article 207(4) TFEU, together with Article 218(5) TFEU, had to be cited as the legal basis and which also means that the signing of the European Convention on the legal protection of services based on, or consisting of, conditional access ([23]) on behalf of the European Union falls, pursuant to Article 3(1)(e) TFEU, within the exclusive competence of the European Union. The improvement of the conditions for the functioning of the internal market, on the other hand, is an ancillary objective of that decision that provides no justification for its adoption on the basis of Article 114 TFEU.

Pointing out that only acts of the European Union with a specific link to international trade are capable of falling within the field of the common commercial policy, the Court observed that, unlike Directive 98/84 ([24]) on the legal protection of the same services based on conditional access within the European Union, the legal basis of which is Article 100a EC, Decision 2011/853, by authorising the signing of the abovementioned convention on behalf of the European Union, is intended to introduce protection similar to that provided by the directive in the territory of European States which are not members of the European Union, in order to promote in those States the supply of such services by European Union service providers. The objective thus pursued, which, in the light of the recitals to that decision, read in conjunction with the convention, can be seen to be the primary objective of the decision, therefore has a specific connection with international trade in those services, by dint of which the decision can legitimately be linked to the common commercial policy. The Court therefore upheld the Commission's action and annulled the contested decision.

The division of competences between the European Union and the Member States was also central to Case C-414/11 *Daiichi Sankyo and Sanofi-Aventis Deutschland* (judgment of 18 July 2013), concerning the *Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS)*. ([25]) The Court, which was requested to rule, in particular, on the question whether Article 27 of that agreement, concerns patentable subject matter, falls within a field for which Member States have primary

([22]) Council Decision 2011/853/EU of 29 November 2011 on the signing, on behalf of the Union, of the European Convention on the legal protection of services based on, or consisting of, conditional access (OJ 2011 L 336, p. 1).

([23]) European Convention on the legal protection of services based on, or consisting of, conditional access (OJ 2011 L 336, p. 2).

([24]) Directive 98/84/EC of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access (OJ 1998 L 320, p. 54).

([25]) Agreement on Trade-Related Aspects of Intellectual Property Rights, constituting Annex 1C to the Agreement establishing the World Trade Organisation (WTO), signed in Marrakesh on 15 April 1994 and approved by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1).

competence, stated that, since the entry into force of the Treaty of Lisbon, the common commercial policy — which falls within the context of the European Union's external action and concerns trade with non-member States — also relates to the commercial aspects of intellectual property. ([26]) If an act of the European Union is intended to promote, facilitate or govern international trade, it comes within the common commercial policy. The Court considered that the rules in the agreement at issue have a specific link to international trade. The agreement itself comes within the context of the liberalisation of international trade and its objective is to strengthen and harmonise the protection of intellectual property on a worldwide scale and to reduce distortions of international trade on the territory of the States that are members of the World Trade Organisation. Consequently, the Court held that the agreement, and more particularly Article 27 thereof, now falls within the field of the common commercial policy and within the exclusive competence of the European Union.

In Case C-431/11 *United Kingdom* v *Council* (judgment of 26 September 2013), an action was brought before the Court for *annulment of Council Decision 2011/407* on the position to be taken by the European Union within the EEA Joint Committee concerning an amendment to Annex VI (Social Security) and Protocol 37 to the EEA Agreement. ([27]) In support of its action, the United Kingdom submitted that the contested decision was incorrectly based on Article 48 TFEU, relating to measures in the field of social security, whereas the appropriate basis was Article 79(2) TFEU on immigration policy.

The Court held that Decision 2011/407 was properly adopted on the basis of Article 48 TFEU. The objective of that decision is to allow the European Union *acquis* on the coordination of social security systems, amended by Regulations No 883/2004 ([28]) and No 987/2009, ([29]) to be applicable also to European Free Trade Association (EFTA) States which are Contracting Parties to the European Economic Area (EEA) Agreement. That decision does not seek only to regulate the social rights of nationals of the three EFTA States concerned, but also, and in the same manner, to regulate the social rights of citizens of the European Union in those EFTA States. Thus, Decision 2011/407 is precisely one of the measures by which the law governing the internal market of the European Union is to be extended as far as possible to the EEA, with the result that nationals of the EEA States benefit from the free movement of persons under the same social conditions as citizens of the Union. It follows that it is necessary to replicate the modernisation and simplification of the rules on the coordination of social security systems which apply within the European Union, by replacing Regulation No 1408/71 ([30]) with Regulation No 883/2004, also at the level of the EEA.

Furthermore, according to the Court, Article 79(2) TFEU cannot serve as the basis for the adoption of a measure such as Decision 2011/407, since, regard being had to the context of the development of the association with EFTA States of which it forms part and, inter alia, to the objectives pursued by that association, such a measure is manifestly irreconcilable with the purposes of Article 79(2)

([26]) See Article 207(1) TFEU.

([27]) Council Decision 2011/407/EU of 6 June 2011 on the position to be taken by the European Union within the EEA Joint Committee concerning an amendment to Annex VI (Social Security) and Protocol 37 to the EEA Agreement (OJ 2011 L 182, p. 12).

([28]) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1), as amended by Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009 (OJ 2009 L 284, p. 43).

([29]) Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (OJ 2009 L 284, p. 1).

([30]) Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ English Special Edition 1971(II), p. 416).

TFEU, which comes under Chapter 2, entitled 'Policies on border checks, asylum and immigration', of Title V of the FEU Treaty. The Court therefore dismissed the United Kingdom's action.

II. Agriculture

In relation to agriculture, two decisions concerning the principles of European Union law and the protection of fundamental rights should be mentioned.

First, in Case C-93/12 *Agrokonsulting-04* (judgment of 27 June 2013), the Court was called upon to rule on the *permissibility of a jurisdiction rule of a Member State* conferring on a single court all disputes relating to decisions of a national authority responsible for the payment of agricultural aid, in the light of the principles of equivalence and effectiveness and Article 47 of the Charter of Fundamental Rights. At issue was a provision of the Bulgarian Code of Administrative Procedure, the effect of which was that the referring court was required to rule on all actions directed against acts of the national authority responsible for payment of agricultural aid under the common agricultural policy.

The Court held that the principles of equivalence and effectiveness and Article 47 of the Charter of Fundamental Rights do not preclude such a rule, provided that actions intended to ensure the safeguarding of the rights which individuals derive from European Union law are not conducted in less advantageous conditions than those provided for in respect of actions intended to protect the rights derived from any aid schemes for farmers established under national law and that the national rule at issue does not cause individuals procedural problems in terms, inter alia, of the duration of the proceedings, such as to render the exercise of the rights derived from European Union law excessively difficult.

Second, in Case C-101/12 *Schaible* (judgment of 17 October 2013), the Court was required to examine the validity of certain provisions of Regulation No 21/2004. ([31]) It was necessary to ascertain, in essence, *whether the obligations imposed on keepers of sheep and goats by those provisions, which concern the individual identification of animals, their individual electronic identification and the keeping of an up-to-date register, can be considered to be consistent with Article 16 of the Charter of Fundamental Rights*, which establishes the freedom to conduct a business, and with the principle of equal treatment.

In its judgment, the Court ruled that there is no factor of such a kind as to affect the validity of the provisions at issue in the light of that freedom and that principle. As regards, first of all, their compatibility with the freedom to conduct a business, the Court found that, while the provisions of Regulation No 21/2004 which impose on keepers of sheep and goats obligations regarding an individual electronic identification of the animals and the keeping of a holding register may limit the exercise of the freedom to conduct a business, that freedom is not absolute. It may be subject to a broad range of interventions on the part of the public authorities which may limit the exercise of economic activity in the public interest, subject to the principle of proportionality. In this instance, the Court considered that, although the obligations at issue in the main proceedings may limit the exercise of the freedom to conduct a business, they are nonetheless justified by legitimate

([31]) Council Regulation (EC) No 21/2004 of 17 December 2003 establishing a system for the identification and registration of ovine and caprine animals and amending Regulation (EC) No 1782/2003 and Directives 92/102/EEC and 64/32/EEC (OJ 2004 L 5, p. 8). The request for a preliminary ruling concerned Articles 3(1), 4(2), 5(1) and the first subparagraph of Article 9(3) of, and point B.2 of the annex to, Regulation No 21/2004.

objectives pursued in the public interest. In facilitating the traceability of each animal and thus, in a case of epizootic disease, enabling the competent authorities to take the necessary measures to prevent the spread of contagious diseases in sheep and goats, the obligations are appropriate and necessary in order to attain those objectives, namely health protection, the control of epizootic diseases and the welfare of animals, as well as the completion of the agricultural internal market in the sector concerned.

III. Freedoms of movement

1. Freedom of movement for workers and social security

As regards freedom of movement for workers and social security, three judgments deserve special attention.

First, in Case C-202/11 *Las* (judgment of 16 April 2013), the Court adjudicated on *the rules of a Member State requiring the use of an official language in contracts of employment*. In this case, a Netherlands national, residing in the Netherlands, had been engaged by a company established in Antwerp (Belgium). The cross-border employment contract, drafted in English, stated that the employee carried out his work in Belgium. Subsequently, by letter also drafted in English, he was dismissed by that company. The employee brought an action before the Arbeidsrechtbank (Labour Court), claiming that the provisions of the contract of employment were null and void because they infringed the provisions of the decree of the Flemish community on the use of languages, which imposes an obligation on any undertaking established in the Dutch-speaking region, when hiring a worker in the context of employment relations with a cross-border character, to draft all the documents relating to the employment relationship in Dutch, failing which the contracts are to be declared null and void by the courts of their own motion. In its decision, the Court held that such legislation, which could have a dissuasive effect on non-Dutch-speaking employees and employers, constitutes a restriction on freedom of movement for workers. The Court also stated that, in the particular context of a cross-border contract, such a linguistic obligation is disproportionate by reference to the objectives invoked by Belgium in this case, namely the protection of an official language, the protection of workers and the facilitation of the related administrative controls.

Second, reference should be made to Case C-20/12 *Giersch and Others* (judgment of 20 June 2013), relating to *equal treatment with respect to social advantages for frontier workers and members of their families*. In this judgment, the Court ruled that Article 7(2) of Regulation No 1612/68 ([32]) must be interpreted as precluding, in principle, legislation of a Member State which *makes the grant of financial aid for higher education studies conditional upon residence by the student in that Member State* and thereby gives rise to a difference in treatment, amounting to indirect discrimination, between persons who reside in the Member State concerned and those who, not being residents of that Member State, are the children of frontier workers carrying out an activity in that Member State.

In addition, the Court considered that, while the objective of increasing the proportion of residents with a higher education degree in order to promote the development of the economy of that Member State is a legitimate objective which can justify such a difference in treatment, and while

([32]) Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (OJ English Special Edition 1968(II), p. 475), as amended by Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 (OJ 2004 L 158, p. 77, and corrigenda at OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34.

a condition of residence is appropriate for ensuring the attainment of that objective, a condition such as that at issue nevertheless goes beyond what is necessary in order to attain the objective pursued. Such a residence condition precludes the taking into account of other elements potentially representative of the actual degree of attachment of the applicant for financial aid with the society or with the labour market of the Member State concerned, such as the fact that one of the parents, who continues to support the student, is a frontier worker who has stable employment in that Member State and has worked there for a significant period of time.

Third, Case C-282/11 *Salgado González* (judgment of 21 February 2013) concerned the *method for calculating the pensions of self-employed workers, in the light of the European Union legislation on social security for migrant workers*. ([33])

The Court recalled, first of all, that in the absence of harmonisation at European Union level, it is for the legislation of each Member State to determine the conditions for entitlement to benefits but that, in exercising those powers, Member States must comply with the law of the European Union and, in particular, with the provisions of the FEU Treaty on freedom of movement. Regulation No 1408/71 provides that, where the legislation of a Member State makes the acquisition of the right to benefits subject to the completion of periods of insurance, as in the case of a retirement pension, the competent institution of that Member State is to take account, where necessary, of the periods of insurance completed under the legislation of any other Member State. ([34]) For that purpose, it must take account of those periods as if they had been completed under its own legislation.

Thus, national legislation under which the theoretical amount of the retirement pension of a self-employed worker, migrant or non-migrant, is invariably calculated on contribution bases paid by that worker over a fixed reference period preceding the payment of his last contribution is contrary to the requirements set out in Regulation No 1408/71 ([35]) where that theoretical amount is calculated as if the person concerned worked exclusively in the Member State concerned. The situation would be different if the national legislation set out adjustment mechanisms for the method of calculation of the theoretical amount of the retirement pension in order to take into account the fact that the worker exercised his right to freedom of movement by working in another Member State.

2. Freedom of establishment and freedom to provide services

In Joined Cases C-197/11 and C-203/11 *Libert and Others* (judgment of 8 May 2013), the Court had the opportunity to rule on the question whether European Union law precludes national legislation which, first, makes *the transfer of immovable property* in certain communities subject to verification, by an assessment committee, that there exists a 'sufficient connection' between the buyer and the communes concerned and, second, requires subdividers and developers to provide social housing, while providing for tax incentives and subsidy mechanisms.

The Court observed that legislation imposing such transfer conditions constitutes a restriction of the fundamental freedoms guaranteed by European Union law. It further observed that

([33]) Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, as amended on a number of occasions (OJ English Special Edition 1971(II), p. 416).

([34]) See Article 45 of Regulation No 1408/71.

([35]) See, in particular, Article 46(a) of Regulation No 1408/71.

requirements relating to social housing policy, such as the requirement to satisfy the housing needs of the less affluent local population, can constitute overriding reasons in the public interest that justify such a restriction. However, those measures go beyond what is necessary to attain the objective pursued where the conditions laid down for the transfer of immovable property do not directly reflect the socio-economic aspects relating to the objective of exclusively protecting the less affluent local population on the property market. In such a case, those conditions are liable to favour not only the less affluent population but also other persons with sufficient resources who, consequently, have no specific need for social protection on the property market.

On the other hand, the Court held that Article 63 TFEU does not preclude a 'social obligation' from being imposed on some economic operators, such as subdividers and developers, when they are granted a building or land subdivision authorisation, in so far as it is intended to guarantee sufficient housing for the low-income or otherwise disadvantaged sections of the local population.

In Case C-85/12 *LBI* (formerly *Landsbanki Islands*) (judgment of 24 October 2013), the Court ruled on the interpretation of *Directive 2001/24 on the reorganisation and winding up of credit institutions*, ([36]) *which has been incorporated into the Agreement on the European Economic Area*. That directive provides that, in the event of the insolvency of a credit institution with branches established in other Member States, the reorganisation measures and winding-up proceedings are to form part of a single insolvency procedure in the Member State in which the institution has its base (the home State) and are to be effective in accordance with the law of the home State throughout the European Union, without any further formalities.

In this case, it was necessary to establish whether reorganisation measures adopted by Iceland following the banking and financial crisis which had affected it were covered by the directive. These measures, adopted in the form of a moratorium, protected the financial institutions from any legal proceedings and ordered the suspension of pending legal proceedings throughout the period of the moratorium. LBI, an Icelandic credit institution, which benefited from a moratorium in Iceland, was the subject of attachment orders in France and challenged them before the French courts, maintaining that the directive rendered the reorganisation measures adopted in Iceland directly enforceable against its French creditor and that the attachment orders were therefore void.

First of all, the Court observed that Directive 2001/24 seeks to establish mutual recognition by the Member States of the measures taken by each of them to restore the viability of the credit institutions which it has authorised. The Court stated, next, that in accordance with Directive 2001/24, ([37]) the administrative and judicial authorities of the home Member State are alone empowered to decide on the implementation of reorganisation measures for a financial institution and on the opening of winding-up proceedings against such an institution. Those measures have, in all the other Member States, the effects which the law of the home Member State confers on them. It follows that the reorganisation and winding-up measures decided by the administrative and judicial authorities of the home Member State are the subject of recognition under Directive 2001/24, with the effects which the law of that Member State confers on them. However, the legislation of that Member State can, in principle, take effect in the other Member States only where measures have been taken by the administrative and judicial authorities of that Member State against a specific credit institution.

([36]) Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (OJ 2001 L 125, p. 15).

([37]) Articles 3(1) and 9(1).

Case C-221/11 *Demirkan* (judgment of 24 September 2013) concerned the question whether the *freedom to provide services which is referred to in Article 41(1) of the Additional Protocol* ([38]) *to the Association Agreement between the European Economic Community and Turkey* ([39]) *includes what is referred to as 'passive' freedom to provide services,* namely the freedom for the recipients of services to travel to a Member State in order to take advantage of a service.

The Court held that, while the principles enshrined in the articles of the FEU Treaty relating to freedom to provide services must be extended, so far as possible, to Turkish nationals in order to eliminate restrictions as between the Contracting Parties on the freedom to provide services, the interpretation given to the provisions of European Union law, including Treaty provisions, concerning the internal market cannot be automatically applied by analogy to an agreement concluded by the European Union with a non-Member State, unless there are express provisions to that effect laid down by the agreement itself. In order to determine whether such application is possible, it is necessary to compare the aim and the context of the agreement, on the one hand, and those of the Treaty, on the other. There are fundamental differences between the Association Agreement and its Additional Protocol, on the one hand, and the Treaty, on the other, connected with the fact that the EEC-Turkey Association pursues a solely economic purpose, intended essentially to promote the economic development of Turkey. Thus, the development of economic freedoms for the purpose of bringing about freedom of movement for persons of a general nature which may be compared to that afforded to European Union citizens is not the object of the Association Agreement. In addition, from a temporal viewpoint, the Court emphasised that there is nothing to indicate that the Contracting Parties to the Association Agreement and the Additional Protocol envisaged, when signing those documents, freedom to provide services as including the 'passive' freedom to provide services. Accordingly, the freedom to provide services within the meaning of Article 41(1) of the Additional Protocol does not encompass freedom for Turkish nationals who are the recipients of services to visit a Member State in order to obtain services.

3. Free movement of capital

In Joined Cases C-105/12 to C-107/12 *Essent and Others* (judgment of 22 October 2013), *the Court was called upon to rule on the question whether Article 345 TFEU and the rules on free movement of capital preclude national rules governing the ownership of electricity or gas distribution system operators which lay down an absolute prohibition of privatisation of such operators.*

The Court observed, first, that Article 345 TFEU is an expression of the principle of the neutrality of the Treaties in relation to the rules in Member States governing the system of property ownership. In particular, the Treaties do not preclude, as a general rule, either the nationalisation of undertakings or their privatisation, so that Member States may legitimately pursue an objective of establishing or maintaining a body of rules relating to the public ownership of certain undertakings. However, according to the Court, Article 345 TFEU does not mean that rules governing the system of property ownership current in the Member States are not subject to the fundamental rules of the FEU Treaty, which include, inter alia, the prohibition of discrimination, freedom of establishment and the free movement of capital.

([38]) Pursuant to Article 62 thereof, this protocol is to form an integral part of the Association Agreement. The protocol was signed on 23 November 1970 at Brussels and was concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972.

([39]) Signed at Ankara on 12 September 1963.

In the case in point, the Court held that, owing to its effects, the prohibition of privatisation constitutes a restriction on the free movement of capital. It added that the objectives of achieving transparency in the electricity and gas markets and preventing distortions of competition, which underlie the choice of the ownership system adopted in the national legislation, may be taken into consideration as overriding reasons in the public interest to justify the restriction on the free movement of capital. Likewise, as regards the group prohibition and the prohibition of activity which may adversely affect the operation of the system, the Court held that the abovementioned objectives may also, as overriding reasons in the public interest, justify the restrictions on fundamental freedoms found to exist. However, the restrictions must be appropriate to the objectives pursued and must not go beyond what is necessary to attain those objectives.

IV. Border controls, asylum and immigration

1. Movement across borders

As regards the common rules on standards and procedure for external border controls, a German court wished to know whether Regulation No 2252/2004, ([40]) *in so far as it requires an applicant for a passport to provide his digital fingerprints and lays down that they are to be stored in the passport, is valid,* notably in the light of the Charter of Fundamental Rights. In Case C-291/12 *Schwarz* (judgment of 17 October 2013), the Court answered that question in the affirmative. Whilst taking such digital fingerprints and storing them in passports constitute a breach of the rights to respect for private life and to the protection of personal data laid down, respectively, in Articles 7 and 8 of the Charter of Fundamental Rights, those measures are nonetheless justified as a means of preventing any fraudulent use of passports.

In Case C-84/12 *Koushkaki* (judgment of 19 December 2013), the Court clarified its case-law on visa policy, more particularly on *the procedure and conditions governing the issue of uniform visas*, and explained the Member States' discretion in that context. First of all, the Court held that Articles 23(4), 32(1) and 35(6) of the Visa Code ([41]) must be interpreted as meaning that the competent authorities of a Member State can refuse, after examining an application for a uniform visa, to issue such a visa to an applicant only if the grounds for refusal of a visa listed in those provisions can be applied to that applicant. Those authorities have a wide discretion when examining that application with respect to the conditions for the application of those provisions and to the assessment of the relevant facts, with a view to ascertaining whether one of those grounds for refusal can be applied to the applicant.

As regards, in particular, the ground for refusal relating to a possible lack of intention to leave the territory of the Member States before the expiry of the visa, the Court held ([42]) that the competent authorities of a Member State are not required to be certain as to the applicant's intention, but may merely establish that there is a reasonable doubt, in the light of the general situation in the

([40]) Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States (OJ 2004 L 385, p. 1), as amended by Regulation (EC) No 444/2009 of the European Parliament and of the Council of 6 May 2009 (OJ L 142, p. 1, and corrigendum at OJ 2009 L 188, p. 127).

([41]) Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ 2009 L 243, p. 1).

([42]) The Court ruled in the light of Article 32(1) of the Visa Code, read in conjunction with Article 21(1) of that code.

applicant's country of residence and the applicant's individual characteristics, determined in the light of information provided by the applicant.

Last, the Court held that the Visa Code does not preclude national legislation which provides that, where the conditions for issue of a visa provided for by that code are satisfied, the competent authorities have the power to issue a uniform visa to the applicant, but does not state that they are obliged to issue that visa, in so far as such a national provision can be interpreted in a way that is in conformity with that code. The competent national authorities cannot therefore refuse to issue a uniform visa to an applicant unless one of the grounds for refusal of a visa provided for in the aforementioned articles can be applied to that applicant.

2. Asylum policy

Two judgments that concern the right to asylum and relate to Regulation No 343/2003 ('Dublin II') ([43]) merit attention.

First, the Court was requested, in Case C-648/11 *MA and Others* (judgment of 6 June 2013), to rule on *the determination of the Member State responsible for examining an asylum application* where the applicant for asylum is an unaccompanied minor with no member of his family present in the territory of the European Union and has lodged applications in more than one Member State. To that end, the Court interpreted the second paragraph of Article 6 of Regulation No 343/2003 as meaning that the Member State responsible for examining the application will be the one in which the minor is present after having lodged an application there. In this connection, the Court held that the words 'the Member State … where the minor has lodged his or her application for asylum' in that provision cannot be construed as meaning the first Member State where the minor has lodged his or her application for asylum. Since unaccompanied minors form a category of particularly vulnerable persons, it is important not to prolong the procedure for determining the Member State responsible more than is strictly necessary, but to ensure that they have prompt access to the procedures for determining refugee status. Therefore, although express mention of the best interest of the minor is made only in the first paragraph of Article 6 of that regulation, the effect of Article 24(2) of the Charter of Fundamental Rights, in conjunction with Article 51(1) thereof, is that the child's best interest must also be a primary consideration in all decisions adopted by the Member States on the designation of the Member State responsible for examining the application for asylum. It follows that unaccompanied minors who have lodged an asylum application in one Member State must not, as a rule, be transferred to another Member State within which the minor lodged a first application for asylum.

Second, in Case C-394/12 *Abdullahi* (judgment of 10 December 2013), the Court ruled that Article 19(2) of Regulation No 343/2003 must be interpreted as meaning that, *in circumstances where a Member State has agreed to take charge of an applicant for asylum* as the Member State of the first entry of the applicant for asylum into the European Union, the only way in which the applicant for asylum can call into question the competence of that Member State based on the criteria set out in Article 10(1) of that regulation to examine the application is by pleading systemic deficiencies in the asylum procedure and in the conditions for the reception of applicants for asylum in that Member State. Reiterating the interpretation set out in *N.S.*, ([44]) the Court observed that those systemic

([43]) Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 50, p. 1).

([44]) Joined Cases C-411/10 and C-493/10 [2011] ECR I-13905.

deficiencies and the conditions for the reception of applicants for asylum must provide substantial grounds for believing that the applicants for asylum would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights.

3. Immigration policy

The Court was called upon in Case C-383/13 PPU *G. and R.* (judgment of 10 September 2013) to interpret Article 15(2) and (6) of Directive 2008/115 ('the return directive'), ([45]) which lays down *the procedural guarantees relating to decisions to remove illegally staying thirdcountry nationals*. In that context, Directive 2008/115 requires Member States to put in place effective remedies against those decisions and, furthermore, provides that the third-country national is to be released immediately if his detention is not lawful.

In its judgment, delivered under the urgent preliminary ruling procedure, the Court ruled that failure to observe the rights of the defence when adopting a decision extending the detention of an illegally-staying national with a view to his removal does not automatically entail the lifting of his detention. However, the national court must, according to the Court, ascertain whether such a breach actually deprived the party relying thereon of the possibility of arguing his defence better, to the extent that the outcome of the administrative procedure leading to the maintenance of his detention could have been different.

Case C-297/12 *Filev and Osmani* (judgment of 19 September 2013) also concerns the interpretation of Directive 2008/115 ('the return directive'). The Court held, in particular, that that directive *precludes a provision of national law which makes the limitation of the length of an entry ban subject to the making by the third-country national concerned of an application seeking the benefit of such a limit*. It follows from the wording of Article 11(2) of that directive that Member States must limit the duration of any entry ban, independently of an application made for that purpose.

The Court also held that that provision precludes breach of an entry and residence ban in the territory of a Member State, which was handed down more than five years before the date either of the re-entry into that territory of the third-country national concerned or of the entry into force of the national legislation implementing that directive, from giving rise to a criminal sanction, unless that national constitutes a serious threat to public order, public security or national security.

Last, the Court emphasised that a Member State which has chosen, on the basis of Article 2(2)(b) of the 'return directive', not to apply that directive to third-country nationals who have been subject to a criminal law sanction cannot apply those national rules to a national who was the subject of a criminal law sanction before the directive was transposed into national law and who could already have relied directly on it.

([45]) Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98).

V. Police and judicial cooperation in criminal matters

1. European arrest warrant

As regards the area of judicial cooperation in criminal matters, mention should be made of three judgments concerning Framework Decision 2002/584 on the European arrest warrant and the surrender procedures between Member States. ([46]) Two of them, moreover, originate in questions referred by the Spanish Constitutional Court and the French Constitutional Council.

In the first case, namely *Melloni*, cited above, the Spanish Constitutional Court asked the Court whether the framework decision allows the national courts — as is required by the case-law of the Spanish Constitutional Court — to *make the surrender of a person convicted in absentia subject to the possibility that his conviction is open to review in the issuing Member State*. The Court, after observing that the executing judicial authority can make execution of an arrest warrant subject only to the conditions defined in the framework decision, held that Article 4a(1) of the framework decision, which does not provide for that condition, precludes the judicial authorities from refusing to execute an arrest warrant issued for the purpose of executing a sentence in a situation where the person concerned did not appear in person at the trial and, being aware of the scheduled trial, he instructed a legal counsellor to defend him and he was in fact defended by that counsel. In addition, the Court held that that provision of the framework decision, which, in certain circumstances, allows the execution of a European arrest warrant where the person concerned did not appear at the trial, is compatible with the right to an effective remedy and to a fair trial and also with the rights of the defence as recognised in Articles 47 and 48 of the Charter of Fundamental Rights. Although the right of the accused to appear in person at his trial is an essential component of the right to a fair trial, that right is not absolute, as the accused may waive that right where certain safeguards are ensured.

Nor, the Court observed last, does Article 53 of the Charter of Fundamental Rights allow a Member State to make the surrender of a person convicted *in absentia* subject to the condition, not provided for in the framework decision, that the conviction is open to review in the issuing Member State, in order to avoid a breach of the rights guaranteed by its constitution. The Court also observed that a different interpretation of Article 53 of the Charter of Fundamental Rights would undermine the principle of the primacy of European Union law and would compromise the efficacy of Framework Decision 2002/584. ([47])

In Case C-168/13 PPU *F.* (judgment of 30 May 2013), concerning a priority question of constitutionality submitted to the French Constitutional Council, the Court examined the *possibility of lodging an appeal with suspensive effect against a decision extending the effects of a European arrest warrant*. After observing that Framework Decision 2002/584 provides in itself for a procedure that complies with the requirements of the Charter of Fundamental Rights, the Court observed that the fact that it makes no express provision for a right of appeal with suspensive effect against decisions relating to European arrest warrants does not prevent the Member States from providing for such a right

([46]) Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (OJ 2002 L 190, p. 1, and OJ 2009 L 81, p. 24).

([47]) See, in that regard, the presentation of the judgment under the heading 'Charter of Fundamental Rights of the European Union'.

or require them to do so. In that regard, the Court held that, provided that the application of the framework decision is not frustrated, a Member State is not prevented from applying its constitutional rules relating inter alia to respect for the right to a fair trial.

However, the Court made clear that certain limits must be set as regards the margin of discretion enjoyed by Member States in this respect. It follows that, in light of the importance of the time limits, a final decision on the execution of the warrant must be taken, in principle, either within 10 days from consent being given to the surrender of the requested person or, in other cases, within 60 days from his arrest. The Court also observed that, in accordance with the framework decision, ([48]) the decision to extend the warrant or to authorise onward surrender must be taken, in principle, within 30 days of receipt of the request. Consequently, where national legislation provides for an appeal with suspensive effect against that decision, that appeal must comply with the abovementioned time-limits for making a final decision on the execution of the warrant.

In a third case relating to the European arrest warrant, the Court held, in Case C-396/11 *Radu* (judgment of 29 January 2013), that the executing judicial authorities cannot *refuse to execute a European arrest warrant issued for the purposes of conducting a criminal prosecution on the ground that the requested person was not heard in the issuing Member State before that arrest warrant was issued*. In the first place, that ground does not feature among the grounds for non-execution of such a warrant, as provided for in Framework Decision 2002/584. In the second place, the Court held that the right to be heard, laid down in Articles 47 and 48 of the Charter of Fundamental Rights, does not require that a judicial authority of a Member State should be able to refuse to execute a European arrest warrant issued for the purposes of a criminal prosecution on that ground, since such an obligation would inevitably lead to the failure of the very system of surrender provided for in the framework decision. Such an arrest warrant must have an element of surprise in order to stop the person concerned from taking flight. In any event, the Court observed, relying on a number of provisions of the framework decision, that the European legislature has ensured that the right to be heard will be observed in the executing Member State in such a way as not to compromise the effectiveness of the European arrest warrant mechanism. ([49])

2. Mutual recognition of financial penalties

In Case C-60/12 *Baláž* (judgment of 14 November 2013), the Court interpreted the concept of 'court having jurisdiction in particular in criminal matters' *within the meaning of Framework Decision 2005/214* on the application of the principle of mutual recognition to financial penalties. ([50]) The Court made it clear, first of all, that that concept is an autonomous concept of European Union law. In view of the fact that the scope of the framework decision includes offences involving 'conduct which infringes road traffic regulations' and that those offences are not subject to homogeneous treatment in the various Member States, and in order to ensure that the framework decision is effective, the Court held that that concept covers any court or tribunal which applies a procedure that satisfies the essential characteristics of criminal procedure, without it being necessary for that court or tribunal to have jurisdiction in criminal matters alone. Next, the Court stated that, since the framework decision also applies to financial penalties imposed by administrative authorities, a prior administrative phase may be required, depending on the particular features of the judicial

([48]) Articles 27(4) and 28(3)(c) of Framework Decision 2002/584.

([49]) See, in particular, Articles 8, 13 to 15 and 19 of Framework Decision 2002/584.

([50]) Article 1(a)(iii) of Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ 2005 L 76, p. 16), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24).

systems of the Member States. Consequently, a person must be regarded as having had the opportunity to have a case tried before a court having jurisdiction in particular in criminal matters, within the meaning of the framework decision, where, prior to bringing his appeal, that person was required to comply with a pre-litigation administrative procedure. However, access to a court having jurisdiction in particular in criminal matters must not be made subject to conditions which make such access impossible or excessively difficult. Thus, such a court must have full jurisdiction to examine the case as regards both the legal assessment and the factual circumstances.

VI. Judicial cooperation in civil matters

1. Jurisdiction, recognition and enforcement of judgments

In the field of judicial cooperation in civil matters, most of the decisions delivered in the past year concerned the interpretation of Regulation No 44/2001 (Brussels I). ([51])

Among these, Case C-49/12 *Sunico and Others* (judgment of 12 September 2013) merits special attention. The question concerned the concept of 'civil and commercial matters' within the meaning of Article 1(1) of that regulation and whether that concept must be interpreted as including an action whereby a public authority of one Member State claims, from natural and legal persons resident in another Member State, damages in respect of loss caused by a conspiracy to commit VAT fraud in the first Member State.

According to the Court, although certain actions between a public authority and a person governed by private law may come within the scope of Regulation No 44/2001, the situation is otherwise where the public authority is acting in the exercise of its public powers. Since, in the present case, the action brought by the public authority is based not on national VAT legislation but on the alleged participation by the person governed by private law in a conspiracy to defraud, which comes under the national law of tort, the legal relationship between the two parties is not a legal relationship based on public law involving the exercise of powers of a public authority. Accordingly, such an action is included within the concept of 'civil and commercial matters' within the meaning of Article 1(1) of Regulation No 44/2001. The Court held, however, that it is for the national court to ascertain whether the public authority has made use of evidence obtained in the exercise of its powers as a public authority and, if appropriate, whether it was in the same situation as a person governed by private law in its action.

2. Law applicable to contractual obligations

Although litigation relating to the conflict of laws was rare in 2013, the Court nonetheless addressed an important issue in Case C-184/12 *Unamar* (judgment of 17 October 2013). Asked to interpret Articles 3 and 7(2) of the Rome Convention, ([52]) the Court had the opportunity, in this case, to determine *whether the court before which the dispute has been brought may disregard the law chosen by the parties to a commercial agency contract in favour of the law of the forum, owing to the mandatory nature*, in the legal order of the latter Member State, of the rules governing the situation of self-employed commercial agents.

([51]) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

([52]) Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980 (OJ 1980 L 266, p. 1).

The Court held that the choice of applicable law made by the parties, in accordance with Article 3(1) of the Rome Convention, must be respected, so that the exception relating to the existence of a 'mandatory rule' within the meaning of the legislation of the Member State concerned, as referred to in Article 7(2) of that convention, must be interpreted strictly. Provisions compliance with which has been deemed to be so crucial for the protection of the political, social or economic order in the Member State concerned as to require compliance therewith by all persons present on the national territory are to be regarded as public order legislation of that kind. Consequently, the law of a Member State which has been chosen by the parties to a commercial agency contract and which meets the minimum protection requirements laid down by Directive 86/653 ([53]) may be rejected by the court before which the case has been brought only if that court finds, on the basis of a detailed assessment, that the legislature of the State of the forum held it to be crucial to grant the commercial agent protection going beyond that provided for by the directive, taking account in that regard of the nature and the objective of such mandatory provisions.

VII. Transport

Two important judgments were delivered in this field in 2013. First, in Case C-11/11 *Folkerts* (judgment of 26 February 2013), the *rules on compensation to air passengers in the event of cancellation of a flight* were explained further. The Court held that in the case of directly connecting flights the fixed compensation must be assessed by reference to the delay beyond the scheduled time of arrival at the final destination, understood as being the destination of the last flight taken by the passenger concerned. Thus, a passenger on a connecting flight must receive compensation where he has been delayed at the departure of his first flight for a period below the limits specified in Regulation No 261/2004 ([54]) but, owing to that delay, arrived at his final destination at least three hours later than the scheduled arrival time.

Second, in Case C-547/10 P *Switzerland* v *Commission* (judgment of 7 March 2013), the Court heard an appeal against the judgment of the General Court ([55]) dismissing the action for annulment of Decision 2004/12, ([56]) whereby the Commission had approved the *restrictions adopted by the German authorities on overflight during the night of certain areas of German territory near Zurich airport*.

The Court upheld in its entirety the General Court's analysis of the action. It observed that, under Article 8(2) of Regulation No 2408/92, ([57]) a Member State may make the exercise of air traffic rights subject to national, regional or local operational rules relating, in particular, to the protection of the environment. The adoption of such rules is not equivalent to the imposition of a condition, within the meaning of Article 9(1) of Regulation No 2408/92, consisting in the limitation or refusal of the exercise of traffic rights. An interpretation to the contrary would render Article 8(2) of that

([53]) Council Directive 86/653/EC of 18 September 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents (OJ 1986 L 382, p. 17).

([54]) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights (OJ 2004 L 46, p. 1).

([55]) Case T-319/05 *Switzerland* v *Commission* [2010] ECR II-4265.

([56]) Commission Decision 2004/12/EC of 5 December 2003 relating to the application of Article 18(2), first sentence, of the Agreement between the European Community and the Swiss Confederation on air transport and Council Regulation (EEC) No 2408/92 (OJ 2004 L 4, p. 13).

([57]) Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intraCommunity air routes (OJ 1992 L 240, p. 8).

regulation meaningless. In the case in point, since the measures at issue do not involve, during their period of application, any prohibition, whether conditional or partial, of passage through German airspace for flights leaving or arriving at Zurich airport, but a mere change in the flight path of the flights concerned after take-off from or prior to landing at that airport, the General Court was correct to consider that they do not fall within the scope of Article 9(1) of the regulation.

Furthermore, since the Swiss Confederation did not join the internal market of the European Union and the EC-Switzerland Air Transport Agreement ([58]) contains no specific provisions such as to enable the air carriers concerned to benefit from the provisions of European Union law on the freedom to provide services, the interpretation given to the latter provisions in the context of the internal market cannot be transposed to that agreement.

VIII. Competition

1. Agreements, decisions and concerted practices

a) Infringements of the competition rules

So far as concerns interpretation of the provisions on agreements, decisions and concerted practices, mention should be made of two judgments. ([59]) First, in Case C-681/11 *Schenker & Co and Others* (judgment of 18 June 2013), the Court ruled that *an undertaking which has infringed Article 101 TFEU cannot rely on a breach of the principle of legitimate expectations and thus escape imposition of a fine* by claiming that it erred as to the lawfulness of its conduct on account of the terms of legal advice given by a lawyer or of the terms of a decision of a national competition authority. The Court held that the fact that an undertaking has characterised its conduct wrongly in law cannot have the effect of exempting it from imposition of a fine other than in exceptional cases, for example where a general principle of European Union law, such as the principle of protection of legitimate expectations, precludes imposition of such a fine. However, a person may not plead breach of that principle unless he has been given precise assurances by the competent authority. Thus, legal advice given by a lawyer cannot form the basis of a legitimate expectation for an undertaking; nor, likewise, can the national competition authorities cause undertakings to entertain such a legitimate expectation, since they do not have the power to adopt a decision concluding that there is no infringement of European Union law, but are empowered to examine the conduct of undertakings on the basis of national competition law.

The Court also adjudicated on the power of the national authorities not to impose a fine notwithstanding the finding of an infringement of Article 101 TFEU. The Court held that, while Article 5 of Regulation No 1/2003 ([60]) does not expressly confer such power on them, it does not exclude that

([58]) Agreement between the European Community and the Swiss Confederation on Air Transport, signed on 21 June 1999 in Luxembourg, approved on behalf of the Community by Decision 2002/309/EC, Euratom of the Council and of the Commission as regards the Agreement on Scientific and Technological Cooperation of 4 April 2002 on the conclusion of seven Agreements with the Swiss Confederation (OJ 2002 L 114, p. 1).

([59]) As regards judicial proceedings relating to infringements of the competition rules, mention should also be made of Case C-40/12 P *Gascogne Sack Deutschland* (formerly *Sachsa Verpackung*) v *Commission*, Case C-50/12 P *Kendrion* v *Commission* and C-58/12 P *Groupe Gascogne* v *Commission* (judgments of 26 November 2013). These judgments are presented under the heading 'Proceedings of the European Union'.

([60]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

power either. However, in order to ensure that Article 101 TFEU is applied effectively in the general interest, the national competition authority may decide not to impose a fine only exceptionally where an undertaking has infringed that provision intentionally or negligently and such a decision not to impose a fine can be made under a national leniency programme only in so far as the programme is implemented in such a way as not to undermine the requirement of effective and uniform application of Article 101 TFEU.

Second, in Case C-287/11 P *Commission* v *Aalberts Industries and Others* (judgment of 4 July 2013), the Court determined an appeal against a judgment of the General Court ([61]) annulling a decision in which the Commission had imputed to a parent company *liability for the infringement of the competition rules by its subsidiaries*.

In that regard, the Court restated the principle that the conduct of a subsidiary may be imputed to the parent company where, although having a separate legal personality, that subsidiary does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company, having regard in particular to the economic, organisational and legal links between those two legal entities. The Court held that the General Court had erred in law in examining only whether the subsidiaries could, on the basis of evidence specific to each of the subsidiaries, be regarded as having participated separately in the infringement and not examining the plea disputing the classification of the parent company and its subsidiaries as a single undertaking within the meaning of Article 81 EC. However, the Court held that, in this instance, that error of law could not lead to the judgment under appeal being set aside, given that the action for annulment was in any event well founded, as the Commission's findings as to the participation of the subsidiaries in the cartel had not been proved to the requisite legal standard.

In addition, the Court held the General Court had been correct, even though it found that one of the undertakings concerned had participated in meetings organised within the cartel, not to annul the Commission's decision in part, since the Commission regarded the cartel in question as a single, complex and continuous infringement. According to the Court, partial annulment is possible only if the conduct that is a constituent element of the infringement can be severed from the remainder of the infringement.

b) Access to the file in cartel cases

In Case C-536/11 *Donau Chemie and Others* (judgment of 6 June 2013), the Court was required to adjudicate on the principles applicable to *access by a person injured by a cartel, and seeking damages, to the documents in the file* relating to national court proceedings concerning the application of Article 101 TFEU. In its decision, the Court held that European Union law, in particular the principle of effectiveness, precludes a provision of national law under which such access is made subject to the consent of all the parties to the proceedings and which leaves no possibility for the national courts to weigh up the interests involved. That also applies to documents disclosed in the context of a leniency programme. The national courts must be able to weigh up, on a case-by-case basis, the interest of the applicant in obtaining access to those documents in order to prepare his action for damages, in particular in the light of other possibilities he may have, and the actual harmful consequences which may result from such access having regard to the public interests or the legitimate interests of other parties, including the public interest in the effectiveness of leniency programmes.

([61]) Case T-385/06 *Aalberts Industries and Others* v *Commission* [2011] ECR II-1223.

2. State aid

a) Concept of State aid

In Joined Cases C-399/10 P and C-401/10 P *Bouygues and Bouygues Télécom* v *Commission and Others* (judgment of 19 March 2013), the Court held, on appeal, that the General Court ([62]) had been wrong to annul the decision whereby *the Commission had classified as State aid the shareholder loan granted by France to France Télécom SA (FT) in the form of a credit line* and announced, in particular, in a press release from the French Minister for Economic Affairs, Finance and Industry. In its judgment, the General Court had considered that the financial advantage conferred on FT had not entailed a corresponding reduction of the State budget, so that the condition that the measure be financed through State resources, necessary for it to be classified as aid, was not satisfied.

The Court set aside the judgment of the General Court, observing that while it is the case that, for the purposes of establishing the existence of State aid, the Commission must establish a sufficiently direct link between, on the one hand, the advantage given to the beneficiary and, on the other, a reduction of the State budget or even a sufficiently concrete economic risk of burdens on that budget, it is not necessary that such a reduction, or even such a risk, should correspond or be equivalent to that advantage, or that the advantage should have as its counterpart such a reduction or such a risk, or that the advantage should be of the same nature as the commitment of State resources from which it derives.

In adjudicating on the substance of the action before the General Court, the Court held, moreover, that the Commission had been correct to consider that the announcement of that measure in the press release must be regarded as forming part of the aid measure which subsequently took concrete form in the offer of the shareholder loan. Several consecutive measures of State intervention must be regarded as a single intervention, especially where they are so closely linked to each other that they are inseparable from one another.

In Case C-677/11 *Doux Élevage and Coopérative agricole UKL-ARREE* (judgment of 30 May 2013), the Court held that *a decision by a national authority extending to all traders in the agricultural industry, on a compulsory basis, an inter-trade agreement* introducing the levying of a contribution, in order to make it possible to implement publicity activities, promotional activities, external relations activities, quality assurance activities, research activities and activities in the defence of the sector's interests, does not constitute State aid within the meaning of Article 107(1) TFEU.

The Court held, in this instance, that, first, that contribution mechanism does not involve any direct or indirect transfer of State resources. The funds provided by the payment of those contributions do not go through the State budget or through another public body and the State does not relinquish any resources, in whatever form (such as taxes, duties, charges and so on). Second, the inter-trade organisations are private-law associations and form no part of the State administration. Third, the public authorities cannot use the resources resulting from such contributions to support certain undertakings, since it is the inter-trade organisation that decides how to use those resources, which are entirely dedicated to pursuing objectives determined by that organisation. Last, the Court added that such private funds used by inter-trade organisations do not become State resources simply because they are used alongside sums which may originate from the State budget.

([62]) Joined Cases T-425/04, T-444/04, T-450/04 and T-456/04 *France* v *Commission* [2010] ECR II-2099.

b) Powers of the Council and of the Commission in regard to State aid

During 2013, the Court delivered a number of important judgments which defined the respective powers of the Council and the Commission in State aid matters.

A first series of judgments concerned aid in the agricultural sector. In the Community guidelines for State aid in the agriculture and forestry sector 2007 to 2013, ([63]) the Commission proposed that Member States should amend the existing aid schemes for the purchase of agricultural land so as to conform to those guidelines by 31 December 2009. In 2007, Lithuania, Poland, Latvia and Hungary accepted the measures proposed by the Commission. In 2009 those four States requested the Council to declare their aid schemes, permitting the purchase of agricultural land, compatible with the internal market from 1 January 2010. The Council agreed to those requests. The Commission brought actions challenging the Council's decisions. The Court dismissed those actions by four judgments of 4 December 2013, in Case C-111/10 *Commission* v *Council*, concerning Lithuania, Case C-117/10 *Commission* v *Council*, concerning Poland, Case C-118/10 *Commission* v *Council*, concerning Latvia, and Case C-121/10 *Commission* v *Council*, concerning Hungary. In those judgments, the Court defined *the extent of the power conferred on the Council by the third subparagraph of Article 108(2) TFEU* to declare State aid compatible with the common market in exceptional circumstances.

The Court pointed out that the Commission plays a central role in monitoring State aid and that the power of the Council under that provision is clearly exceptional in character. The Court further emphasised that, in order to maintain the coherence and effectiveness of European Union action and the principle of legal certainty, when one of those institutions has adopted a final ruling on the compatibility of the aid in question, the other one may no longer adopt a contrary decision. As regards the contested decisions, the Court observed that the national measures adopted by the States in order to make their aid schemes conform to the Commission's guidelines related to the period before 1 January 2010 and that, accordingly, the Council's decisions related to new aid schemes.

However, the Court emphasised that the Council does not have power to authorise a new aid scheme indissolubly linked to an existing aid scheme that a Member State has undertaken to modify or abolish by accepting appropriate measures proposed by the Commission. Nevertheless, in this instance, the Court stated that, owing to the substantial change in circumstances, to which the Council refers in the reasons stated for the contested decisions, the Commission's assessment in the guidelines cannot be regarded as prejudicing the assessment which was made by the Council and which related to economic circumstances radically different from those which the Commission had taken into account in its assessment. Examining the relevant economic circumstances, the Court concluded that, in the light of the unusual and unforeseeable character of the economic and financial crisis and the extent of its effects on agriculture in the Member States concerned, the Council could not be considered to have made a manifest error of assessment.

Another judgment concerning the allocation of powers between the Council and the Commission was delivered on 10 December 2013 in Case C-272/12 P *Commission* v *Ireland and Others*, which concerned *national rules on excise duties*. The Court set aside the judgment of the General Court, ([64]) which had upheld the action for annulment of a Commission decision classifying ex-

([63]) Community guidelines for State aid in the agricultural and forestry sector 2007 to 2013 (OJ 2006 C 319, p. 1).

([64]) Joined Cases T-50/06 RENV, T-56/06 RENV, T-60/06 RENV, T-62/06 RENV and T-69/06 RENV *Ireland and Others* v *Commission*, judgment of 21 March 2012, not yet published in the ECR.

emptions from excise duties on heavy mineral oil used in the production of alumina as State aid. Those exemptions had been introduced by certain Member States on the basis of authorisation decisions adopted by the Council pursuant to Article 8(4) of Directive 92/81 on the harmonisation of the structures of excise duties on mineral oils. ([65]) The General Court had held, inter alia, that the authorisations granted by the Council precluded the Commission from being able to classify the exemptions at issue as State aid.

The Court held, conversely, that the purpose and the scope of the procedure laid down in Article 8(4) of Directive 92/81 differ from those of the rules established in Article 108 TFEU. Accordingly, a Council decision authorising a Member State, in accordance with Directive 92/81, to introduce an exemption from excise duties cannot have the effect of preventing the Commission from implementing the procedure provided for in Article 108 TFEU in order to examine whether such an exemption constitutes State aid and, on completion of that procedure, if appropriate, to adopt a negative final decision against those exemptions.

Last, the Court stated that, although the authorisation decisions had been adopted on a proposal by the Commission, which had considered that those exemptions did not give rise to distortions of competition, that fact could not preclude those exemptions from being classified as State aid, since the concept of State aid corresponds to an objective situation and cannot depend on the conduct or statements of the institutions. However, that fact must be taken into consideration in relation to the obligation to recover the incompatible aid, in the light of the principles of protection of legitimate expectations and legal certainty.

IX. Fiscal provisions

In Joined Cases C-249/12 and C-250/12 *Tulică* (judgment of 7 November 2013), the Court was requested to rule on the *method of calculating the taxable amount of VAT* where, following the non-payment of that tax, the national tax authorities must recover the tax payable in respect of transactions in which the price set by the parties makes no reference to VAT. The Court held that Directive 2006/112 on the common system of valued added tax, ([66]) in particular Articles 73 and 78 thereof, must be interpreted as meaning that, when the price of goods has been established by the parties without any reference to VAT and the supplier of those goods is the taxable person for the VAT owing on the taxed transaction, the price agreed must be regarded as already including the VAT if the supplier is not able to recover from the purchaser the VAT claimed by the tax authorities.

Taking the full price into account as the taxable amount would have the consequence, in a situation where the supplier has no means of recovering from the purchaser the VAT claimed subsequently by the tax authorities, that the supplier would bear the VAT burden. Such a method of calculating the taxable amount would conflict with the principle that VAT is a tax on consumption to be borne by the end consumer and also with the rule that the tax authorities may not charge an amount of VAT exceeding the tax charged by the taxable person.

([65]) Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils (OJ 1992 L 316, p. 12).

([66]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

X. Approximation of laws

1. Intellectual property

In regard to the approximation of laws in the field of intellectual property, two judgments in particular are noteworthy in 2013. The first, presented under the heading 'Enhanced cooperation', deals with the proposed unitary patent; the second, presented under this heading, provides explanation in the field of copyright and related rights.

In Case C-521/11 *Amazon.com International Sales and Others* (judgment of 11 July 2013), the Court expanded on its case-law concerning *the financing of fair compensation for a private copy, within the meaning of Article 5(2)(a) of Directive 2001/29*. ([67]) That case concerned national legislation under which fair compensation takes the form of a private copying levy chargeable to those who make available, for commercial purposes and for consideration, recording media suitable for reproduction.

Referring to *Padawan*, ([68]) the Court observed, first of all, that European Union law does not preclude a system of a general levy, indiscriminately applying a private copying levy on the first placing on the market of those media, where it is accompanied by the possibility of obtaining reimbursement of the levies paid if the media are not used to make private copies. However, it is for the national court to verify, having regard to the particular circumstances of each national system and to the limits imposed by Directive 2001/29, that practical difficulties justify such a system of financing fair compensation and that the right to reimbursement is effective and does not make repayment of the levies paid excessively difficult. According to the Court, the practical difficulties of determining whether the purpose of the use of the media is private may justify the establishment of a rebuttable presumption of private use of such media when they are made available to natural persons, provided that the presumption established does not result in the private copying levy being imposed where the media are clearly used for non-private purposes.

The Court made it clear, next, that a private copying levy cannot be ruled out by reason of the fact that half of the funds received under that arrangement is paid, not directly to those entitled to such compensation, but to social and cultural institutions set up for the benefit of those entitled, provided that those social and cultural establishments actually benefit those entitled and the detailed arrangements for the operation of such establishments are not discriminatory. Nor can the obligation to pay that levy be excluded by reason of the fact that a comparable levy has already been paid in another Member State. However, a person who has previously paid that levy in a Member State which does not have territorial competence may request its repayment.

2. Money laundering

The prevention of the *use of the financial system for the purpose of money laundering and terrorist financing* was at the centre of Case C-212/11 *Jyske Bank Gibraltar* (judgment of 25 April 2013). In that case, the Court was required to rule on the compatibility with Article 22(2) of Directive 2005/60 ([69])

([67]) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).

([68]) Case C-467/08 [2010] ECR I-10055.

([69]) Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ 2005 L 309, p. 15).

of the legislation of a Member State requiring credit institutions active on national territory under the rules on the freedom to provide services to provide the information requested in the interest of combating money laundering directly to the financial intelligence unit of that State.

According to the Court, that provision must be interpreted as meaning that the entities referred to by the directive must forward the requested information to the financial intelligence unit of the Member State in whose territory they are situated, that is to say, in the case of operations performed under the rules on the freedom to provide services, to the financial intelligence unit of the Member State of origin. However, that provision does not preclude the host Member State from requiring a credit institution carrying out activities on its territory under the rules on the freedom to provide services to forward the information directly to its own financial intelligence unit, on condition that such legislation seeks to strengthen, in compliance with European Union law, the effectiveness of the fight against money laundering and terrorist financing.

While such national legislation constitutes a restriction on the freedom to provide services, in so far as it gives rise to difficulties and additional costs for activities carried out under the rules governing the freedom to provide services and is liable to be additional to the controls already conducted in the Member State of origin, that does not mean that it must be incompatible with Article 56 TFEU. That is not the case if it may be considered to be justified by an overriding reason in the public interest. In that regard, first, such legislation may be considered to be appropriate for ensuring attainment of the objective of preventing money laundering and terrorist financing and, second, it may constitute a proportionate measure in pursuit of that aim in the absence of any effective mechanism guaranteeing full and complete cooperation between financial intelligence units.

3. Insurance against civil liability in respect of the use of motor vehicles

Among the decisions delivered during the year concerning insurance against civil liability in respect of the use of motor vehicles, mention should be made of Case C-306/12 *Spedition Welter* (judgment of 10 October 2013). In that case, a reference was made to the Court for a preliminary ruling on the interpretation of Article 21(5) of Directive 2009/103 ([70]) concerning the *powers that the claims representative must have*.

The Court observed, first of all, that Directive 2009/103 is intended to guarantee motor vehicle accident victims comparable treatment irrespective of where in the European Union accidents occur. To that end, such victims must be entitled to claim in their Member State of residence against a claims representative appointed there by the insurance undertaking of the responsible party. Furthermore, according to recital 37 in the preamble to that directive, Member States must require those claims representatives to have sufficient powers to represent the insurance undertaking in relation to victims, and also to represent it before national authorities including, where necessary, before the courts, in so far as that is compatible with the rules on the conferring of jurisdiction. Consequently, the claim representative's powers must include the authority to accept service of judicial documents. Excluding that authority would deprive Directive 2009/13 of its purpose, which is to guarantee victims comparable treatment throughout the territory of the European Union.

([70]) Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ 2009 L 263, p. 11).

4. Misleading advertising and comparative advertising

In relation to misleading advertising and comparative advertising, mention should be made of Case C-657/11 *Belgian Electronic Sorting Technology* (judgment of 11 July 2013). Called upon to clarify the *scope of the concept of advertising*, within the meaning of Article 2(1) of Directive 84/450, ([71]) as amended by Directive 2005/29, and of Article 2(a) of Directive 2006/114, ([72]) the Court stated that it cannot be interpreted and applied in such a way that steps taken by a trader to promote the sales of its products or services that are capable of influencing the economic behaviour of consumers and, therefore, of affecting the trader's competitors, are not subject to the rules of fair competition imposed by those directives. It follows that the concept covers the use of a domain name and also the use of metatags in a website's metadata where the domain name or the metatags consisting of keywords (keyword metatags) make reference to certain goods or services or to the trade name of a company and constitute a form of representation that is made to potential consumers and suggests to them that they will find a website relating to those goods or services or relating to that company. By contrast, the registration of a domain name, as such, is not encompassed by that term, since such registration constitutes a purely formal act which, in itself, does not necessarily imply that potential consumers can become aware of the domain name and which is therefore not capable of influencing the choice of those potential consumers.

XI. Social policy

1. Equal treatment in employment and occupation

Case C-81/12 *Asociația ACCEPT* (judgment of 25 April 2013) concerned *homophobic statements relating to the recruitment policy of a professional football club*. The particular feature of the case was that the public statement ruling out the recruitment of a footballer presented as being homosexual had been made by a person who presented himself and was publicly perceived as playing a leading role in that club but did not have legal capacity to bind the club in recruitment matters. The Court ruled that such statements are capable of amounting, for the purpose of Directive 2000/78 ([73]) establishing a general framework for equal treatment in employment and occupation, to facts from which it may be presumed that there has been discrimination based on sexual orientation on the part of the club.

The Court observed that an employer cannot deny the existence of facts from which it may be inferred that the employer has a discriminatory recruitment policy merely by asserting that the homophobic statements suggestive of the existence of such a policy come from a person who, while claiming and appearing to play an important role in the management of that employer, is not legally capable of binding it in recruitment matters. Such an inference may, on the other hand, be rebutted by a body of consistent evidence, such as the fact that the club has clearly distanced itself from the homophobic statements. However, the burden of proof, as adapted by Directive 2000/78,

([71]) Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (OJ 1984 L 250, p. 17), as amended by Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 (OJ 2005 L 149, p. 22).

([72]) Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (codified version) (OJ 2006 L 376, p. 21).

([73]) Articles 2(2) and 10(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

would not require evidence that would be impossible to adduce without interfering with the right to privacy. It is therefore unnecessary for the defendant employer to prove that persons of a particular sexual orientation have been recruited in the past.

In Joined Cases C-335/11 and C-337/11 *Ring* (judgment of 11 April 2013), the Court ruled, again in respect of Directive 2000/78, on the question whether *the dismissal of a worker with a shortened period of notice on grounds of illness can entail discrimination against workers with disabilities*.

In that regard, the Court pointed out, in particular, that Directive 2000/78 ([74]) requires employers to take appropriate and reasonable accommodation measures in order, in particular, to enable a person with a disability to have access to, participate in, or advance in employment. 'Reasonable accommodation' within the meaning of that directive refers to measures aimed at eliminating the various barriers that hinder the full and effective participation of persons with disabilities in professional life on an equal basis with other workers. Thus, the Court held that a reduction in working hours, even if it does not come within the concept of the 'patterns of working time', to which Directive 200/78 makes explicit reference, may be considered to be an appropriate accommodation where reduced hours make it possible for the worker to continue employment, provided that it does not constitute a disproportionate burden on the employer. Indeed, the list of such measures set out in the preamble to Directive 2000/78 is not exhaustive.

As regards a national provision permitting dismissal with a shortened period of notice on grounds of illness, the Court considered that such a provision is liable to produce a difference of treatment indirectly based on disability, in so far as a worker with a disability is more exposed to the risk of application of the shortened notice period than a worker without a disability. Referring to the broad discretion which the Member States enjoy in relation to social policy, the Court held that it was for the referring court to examine whether the national legislature, in pursuing the legitimate aims of, first, promoting the recruitment of persons with illnesses and, second, striking a reasonable balance between the opposing interests of employees and employers with respect to absences because of illness, omitted to take account of relevant factors relating in particular to workers with disabilities and to the specific needs connected with the protection that their condition requires.

2. Protection of workers in the event of the insolvency of the employer

In Case C-398/11 *Hogan and Others* (judgment of 25 April 2013), the Court held that Directive 2008/94 on the protection of employees in the event of the insolvency of their employer ([75]) applies to the entitlement of former employees to *old-age benefits under a supplementary pension scheme set up by their employer.*

Article 8 of that directive provides that Member States are to ensure that the necessary measures are taken to protect the interests of employees as regards their entitlement to those benefits. According to the Court, in order for that article to apply, it is sufficient that the supplementary pension scheme is underfunded as of the date of the employer's insolvency and that, on account of his insolvency, the employer does not have the necessary resources to contribute sufficient money to the pension scheme to enable the pension benefits owed to be satisfied in full. State pension benefits, which are not covered by Article 8 of Directive 2008/94, may not be taken into account in assessing whether a Member State has discharged the obligation laid down in that article.

([74]) Article 5 of Directive 2000/78.

([75]) Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (Codified version) (OJ 2008 L 283, p. 36).

The Irish legislation at issue in *Hogan* had been enacted by Ireland following an earlier judgment of the Court in *Robins and Others*. ([76]) As soon as the latter judgment was delivered, the Member States were informed that the correct transposition of Article 8 of Directive 2008/94 requires an employee to receive, in the event of the insolvency of his employer, at least half of the old-age benefits concerned. However, the Irish legislation limited the extent of the protection of the plaintiffs in the main proceedings to less than half the value of their old-age benefits. The Court held that such legislation not only does not fulfil the obligations imposed on Member States by that directive but also constitutes a serious breach of that Member State's obligations, such as to render it liable. In that regard, the Court added that the economic situation of the Member State concerned does not constitute an exceptional situation capable of justifying a lower level of protection of workers' entitlement to old-age benefits.

3. Right to maternity leave

In Case C-5/12 *Betriu Montull* (judgment of 19 September 2013), the Court ruled that Directives 92/85 ([77]) and 76/207 ([78]) concerning, respectively, the protection of pregnant workers and workers who have recently given birth and *equal treatment for men and women at work* do not preclude national legislation which limits the benefit of maternity leave provided for in the former directive, in respect of the period after the compulsory leave of six weeks which the mother must take after childbirth, solely to parents who are both employed persons and therefore excludes from the benefit of that right the father of a child whose mother is not an employed person and is not covered by a State social security scheme.

First, according to the Court, the situation of such a self-employed person does not fall within the scope of Directive 92/85, which covers only pregnant workers and workers who have recently given birth or are breastfeeding. Second, although such legislation establishes a difference in treatment on the grounds of sex, that difference in treatment is justified under Directive 76/207, ([79]) which recognises the legitimacy of protecting a woman's biological condition during and after pregnancy. ([80])

XII. Consumer protection

Mention should be made, in the field of consumer protection, of Case C-415/11 *Aziz* (judgment of 14 March 2013), concerning the interpretation of Directive 93/13 ([81]) on unfair terms in consumer contracts. The case originated in a reference for a preliminary ruling from a Spanish court in an action by a consumer for a declaration that a *loan agreement secured by a mortgage was unfair* and for annulment of the enforcement proceedings against the consumer.

([76]) Case C-278/05 *Robins and Others* [2007] ECR I-1053.

([77]) Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (OJ 1992 L 348, p. 1).

([78]) Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ 1976 L 39, p. 40).

([79]) Article 2(1) of Directive 76/207.

([80]) Article 2(3) of Directive 76/207.

([81]) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

The Court held that, if the national procedural rules render it impossible for the court hearing the declaratory proceedings — before which consumer has brought proceedings claiming that the contractual term on which the right to seek enforcement is based is unfair — to grant interim relief capable of staying or terminating the mortgage enforcement proceedings where such relief is necessary to ensure the full effectiveness of its final decision, those rules impair the effectiveness of the protection sought by the directive. Without that possibility, where enforcement in respect of the mortgaged immovable property took place before the judgment of the court in the declaratory proceedings declaring the contractual term on which the mortgage is based to be unfair and annulling the enforcement proceedings, that judgment would enable the consumer to obtain only protection of a purely compensatory nature, which would be incomplete and insufficient and would not constitute either an adequate or an effective means of preventing the continued use of that term, contrary to Article 7(1) of Directive 93/13.

Next, the Court stated that the concept of 'significant imbalance' to the detriment of the consumer, within the meaning of Article 3(1) of the directive, must be assessed in the light of an analysis of the rules of national law applicable in the absence of any agreement between the parties, in order to determine whether, and if so to what extent, the contract places the consumer in a less favourable legal situation than that provided for by the national law in force. To that end, an assessment of the legal situation of that consumer having regard to the means at his disposal, under national law, to prevent continued use of unfair terms should also be carried out.

XIII. Environment

1. Right to information and access to decisions in environmental matters

In *Križan and Others*, ([82]) the Court ruled on the *right of public access to an urban planning decision* relating to the location of a landfill site. The Court held that the decision at issue in the main proceedings, first, constituted one of the measures on the basis of which the final decision whether or not to authorise that installation would be taken and, second, included information relevant to the authorisation procedure. The Court therefore observed that, under the provisions of the Aarhus Convention, ([83]) and Directive 96/61 on the prevention and control of pollution ([84]) reproducing those provisions, the public concerned were entitled to have access to that decision. In that context, the Court explained that the refusal to make the urban planning decision available to the public could not be justified by a reference to the protection of the confidentiality of commercial or industrial information. Nonetheless, it accepted the possibility of rectifying an unjustified refusal to make an urban planning decision available to the public concerned, provided that all options and solutions remain possible and that such rectification enables the public to have an effective influence on the outcome of the decision-making process.

Furthermore, the Court held that the purpose of the directive, which is to prevent and control pollution, could not be achieved if it were impossible to prevent an installation which may have

([82]) Another aspect of this judgment is presented under the heading 'Proceedings of the European Union'.

([83]) Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed at Aarhus on 25 June 1998. This convention was approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1).

([84]) Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26), as amended by Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 (OJ 2006 L 33, p. 1).

benefited from a permit awarded in breach of the directive from continuing to function pending a definitive decision on the lawfulness of that permit. Consequently, the directive requires that the members of the public concerned should have the right to apply for interim measures capable of preventing that pollution, such as the temporary suspension of the disputed permit.

Under Directive 2003/4, ([85]) Member States are to ensure that public authorities are required to make the environmental information held by or for them available to any applicant. In Case C-279/12 *Fish Legal and Shirley* (judgment of 19 December 2013), the Court was required to clarify the *concept of public authority* within the meaning of that directive.

The Court held that entities such as water supply and sewage treatment undertakings can be classified as legal persons which perform 'public administration functions', and for that reason constitute 'public authorities' within the meaning of the directive, ([86]) if, under national law, they are responsible for performing services of public interest and, for that purpose, are vested under national law with special powers going beyond those which result from the normal rules applicable in relations between persons governed by private law. Furthermore, these undertakings which provide public services relating to the environment must also be classified as 'public authorities' within the meaning of the directive ([87]) if they provide those services under the control of a body or person falling within Article 2(2)(a) or (b) of Directive 2003/4 and do not determine in a genuinely autonomous manner the way in which they provide those services since such a body or such a person is in a position to exert decisive influence on those undertakings' action in the environmental field.

The Court further observed that such a person performing 'public administrative functions' within the meaning of Article 2(2)(b) of Directive 2003 which constitutes a public authority is required to give access to all the environmental information which it holds. Conversely, commercial companies which are capable of constituting a public authority by virtue of Article 2(2)(c) of that directive only in so far as, when they provide public services in the environmental field, they are under the control of a public authority, are required to supply environmental information only if it relates to the provision of such services.

2. Right to an effective remedy in environmental matters

In Case C-260/11 *Edwards* (judgment of 11 April 2013), the Court was called upon to rule on the question of the *cost of judicial proceedings* that could undermine the right to an effective remedy in environmental matters. The Court held that the requirement, laid down in European Union law, ([88]) that the judicial proceedings should not be prohibitively expensive means that the persons concerned should not be prevented from seeking, or pursuing a claim for, a review by the courts that falls within the scope of the relevant provisions of European Union law by reason of the financial burden that might arise as a result, taking into account all the costs that must be borne. The Court

([85]) Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ 2003 L 41, p. 26).

([86]) Article 2(2)(b) of Directive 2003/4.

([87]) Article 2(2)(c) of Directive 2003/4.

([88]) The fifth paragraph of Article 10a of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40) and the fifth paragraph of Article 15a of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26), both as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ 2003 L 156, p 17).

stated that the requirement pertains, in environmental matters, to the observance of the right to an effective remedy enshrined in Article 47 of the Charter of Fundamental Rights and also to the principle of effectiveness.

Thus, where a national court is called upon to make an order for costs against a member of the public who is an unsuccessful claimant in an environmental dispute, it must satisfy itself that the proceedings are not prohibitively expensive, taking into account both the interest of the person wising to defend his rights and the public interest in the protection of the environment.

In carrying out that assessment, the national court cannot base its decision solely on the economic situation of the person concerned, but must also undertake an objective analysis of the amount of the costs. Thus, the cost of proceedings must neither exceed the financial resources of the person concerned nor appear, in any event, to be objectively unreasonable.

XIV. Telecommunications

In the case-law of the past year the Court concerned itself with the regulatory framework applicable to electronic communication services.

In Case C-375/11 *Belgacom and Others* (judgment of 21 March 2013), the Court was requested to give a preliminary ruling on the *compatibility of the fees applied to mobile telephone operators* in Belgium with Directive 2002/20 on the authorisation of electronic communications networks and services. ([89])

First, the Court stated that the procedure for the renewal of rights of use for radio frequencies must be regarded as a granting of new rights and therefore the award procedure must be subject to the directive. Second, the Court held that Articles 12 and 13 of the directive do not preclude a Member State from charging mobile telephone operators a one-off fee payable both for a new acquisition of rights of use for radio frequencies and for renewal of those rights, in addition to an annual fee for making those frequencies available, intended to encourage optimal use of the resources, and to a fee to cover the cost of managing the authorisation, provided that those fees are genuinely intended to ensure optimal use of the radio frequencies, are objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and take into account the objectives set out in Article 8 of the directive.

Last, the Court observed that the charging of a one-off fee is an amendment to the conditions applicable to operators holding rights of use for radio frequencies. Accordingly, Article 14(1) of the directive does not preclude a Member State from charging such a fee, provided that that amendment is consistent with the conditions set out in that provision, namely that the amendment is objectively justified and effected in a proportionate manner and notice has been given to all interested parties in order to enable them to express their views.

([89]) Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) (OJ 2002 L 108, p. 21).

In Case C-518/11 *UPC Nederland* (judgment of 7 November 2013), the Court was called upon to clarify the *scope ratione materiae of the directives forming the new regulatory framework governing electronic communication networks and systems in European Union law.* ([90])

The Court held that a service consisting in the supply of a basic package of radio and television programmes via cable, the charge for which includes transmission costs as well as payments to broadcasters and royalties paid to copyright collecting societies in connection with the transmission of programme content, falls within the definition of an electronic communications service and, consequently, within the substantive scope of the legislation governing electronic communications in European Union law.

As regards, next, the powers of the national authorities in the context of the application of that legislation, the Court ruled that the directives concerned must be interpreted as meaning that they preclude an entity such as a local entity not being a national regulatory authority within the meaning of Directive 2002/20 from intervening directly in retail tariffs in respect of the supply of a basic package of radio and television programmes via cable. Nor, having regard to the principle of sincere cooperation, can such an entity rely, as against a supplier of basic packages of radio and television programmes via cable, on a clause stipulated in an agreement concluded prior to the adoption of the new regulatory framework which restricts that supplier's freedom to set tariffs.

In addition, Directive 2010/13, on audiovisual media, ([91]) formed the subject matter of two important judgments of the Court.

In the first place, in Case C-283/11 *Sky Österreich* (judgment of 22 January 2013), the Court was required to determine *the validity of Article 15(6) of Directive 2010/13 in the light of the right to private property and the freedom to conduct a business*. Under that provision of the directive, the right-holder is required to authorise any other broadcaster established in the European Union to make short news reports, without being able to seek compensation exceeding the additional costs directly incurred in providing access to the signal.

As regards the allegation of an infringement of Article 17 of the Charter of Fundamental Rights, which enshrines the right to private property, the Court observed that a holder of exclusive broadcasting rights relating to events of high interest to the public cannot rely on the protection afforded by that provision, since it cannot properly rely on an acquired legal position in order to demand compensation exceeding the additional costs incurred in providing access to the signal.

Next, as regards the compatibility of Article 15(6) of Directive 2010/13 with the freedom to conduct a business provided for in Article 16 of the Charter of Fundamental Rights, the Court emphasised

([90]) The measures concerned were Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector (OJ 1998 L 24, p. 1), Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communication networks and associated facilities (Access Directive) (OJ 2002 L 108, p. 7), Directive 2002/20, Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ 2002 L 108, p. 33) and, last, Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Services Directive) (OJ 2002 L 108, p. 51).

([91]) Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (OJ 2010 L 95, p. 1).

that, for holders of exclusive broadcasting rights, that freedom is not absolute, but must be viewed in relation to its social function. Thus, in the light, first, of the importance of safeguarding the fundamental freedom to receive information and the importance of freedom and pluralism of the media and, second, of the protection of the freedom to conduct a business, the Court held that the European Union legislature was entitled to adopt rules such as those laid down in Article 15 of Directive 2010/13, which limit the freedom to conduct a business, and to give priority, in the necessary balancing of the rights and interests at issue, to public access over contractual freedom.

In the second place, Case C-234/12 *Sky Italia* (judgment of 18 July 2013) provided the Court with the opportunity to adjudicate on *national legislation laying down, for pay television broadcasters, a maximum percentage of broadcasting time that can be devoted to advertising* that is lower than that laid down for free-to-air broadcasters.

In its judgment, the Court held that a Member State may, without infringing the principle of equal treatment, set different hourly broadcasting limits on television advertising for pay-television broadcasters and free-to-air broadcasters. In that regard, the Court stated that the principles and objectives of the rules relating to television advertising broadcasting, laid down, in particular, in Directive 2010/13, are intended to establish a balanced protection, on the one hand, of the financial interests of television broadcasters and advertisers and, on the other, of the interests of rights holders, namely writers and producers, in addition to consumers as television viewers. The balanced protection of those interests differs according to whether or not the broadcasters transmit their programmes for payment, since the situation both of those broadcasters and of their viewers is objectively different.

Furthermore, the Court observed that while it is true that the national legislation at issue is capable of constituting a restriction of freedom to provide services, laid down in Article 56 TFEU, the protection of consumers against abuses of advertising constitutes an overriding reason in the public interest which may justify that restriction provided that application of the restriction is an appropriate means of ensuring achievement of the aim pursued and does not go beyond what is necessary for that purpose.

XV. Common foreign and security policy — Freezing of funds

In common foreign and security policy (CFSP) matters, the Court delivered a number of judgments relating to fund-freezing measures which deserve mention on account of their contribution to the caselaw concerning the substantive conditions that must be satisfied by such measures, the extent of judicial review of such measures or the procedural rules applicable to judicial actions brought against them.

1. Review of legality by the Courts of the European Union

In Joined Cases C-584/10 P, C-593/10 P and C-595/10 P *Commission and Others* v *Kadi* (*'Kadi II'*) (judgment of 18 July 2013), the Court adjudicated, in particular, on *the extent of the review of legality of fundfreezing measures by the Courts of the European Union*.

In the proceedings giving rise to the judgment of the General Court under appeal, Mr Kadi had sought annulment of the decision adopted by the Commission following the judgment of the

Court of 3 September 2008 in *Kadi and Al Barakaat International Foundation* v *Council and Commission*. ([92]) He had relied, in particular, on breach of the obligation to state reasons and of his rights of defence. The General Court held the action well founded and annulled the contested decision. Although the Court found a number of errors of law in the judgment of the General Court, ([93]) it nonetheless upheld that judgment, stating, after carrying out an evaluation, that in spite of those errors the operative part of the judgment of the General Court was well founded.

The Court recalled that the Courts of the European Union must ensure that a decision imposing restrictive measures is taken on a sufficiently solid factual basis. That examination entails a verification of the factual allegations underpinning the decision, with the consequence that judicial review cannot be restricted to an assessment of the cogency in the abstract of the reasons relied on, but must concern whether those reasons are substantiated.

In order to permit such an assessment, there is no requirement that the competent European Union authority produce before the Courts of the European Union all the information and evidence underlying the reasons alleged in the summary provided by the United Nations Sanctions Committee. It is however necessary that the information or evidence produced should support the reasons relied on against the person concerned. Nevertheless, if the competent European Union authority finds itself unable to provide information to the Courts of the European Union, it is the duty of those Courts to base their decision solely on the material which has been disclosed to them. If that material is insufficient to allow a finding that a reason is well founded, the Courts of the European Union must disregard that reason as a possible basis for the contested decision to list or maintain a listing.

In that regard, the Court pointed out, referring to the judgment in *ZZ*, ([94]) that overriding considerations relating to the security of the European Union or of its Member States or to the conduct of their international relations may preclude the disclosure of some information or some evidence to the person concerned. In such circumstances, it is the task of the Courts of the European Union to accommodate, on the one hand, legitimate security considerations about the nature and sources of information taken into account in the adoption of the act and, on the other, the need to guarantee to an individual respect for his procedural rights, such as the right to be heard and the requirement for an adversarial process. If the Courts of the European Union conclude that those overriding reasons relating to security do not preclude disclosure of the information concerned, they must give the competent European Union authority the opportunity to disclose it to the person concerned. If that authority does not disclose that information or that evidence, the Courts of the European Union will then undertake an examination of the lawfulness of the contested measure solely on the basis of the material which has been disclosed to that person.

If it turns out that the reasons relied on by the competent European Union authority do indeed preclude the disclosure to the person concerned of information or evidence produced before the Courts of the European Union, it is necessary to strike an appropriate balance between the requirements attached to the right to effective judicial protection, in particular respect for the principle of an adversarial process, and those flowing from the security of the European Union or its Member States or the conduct of their international relations. To that end, it is necessary to assess whether the failure to disclose confidential evidence to the person concerned is such as to affect the probative value of the confidential evidence.

([92]) Joined Cases C-402/05 P and C-415/04 P [2008] ECR I-6351.

([93]) Case T-85/09 *Kadi* v *Commission* [2010] ECR II-5177.

([94]) This judgment is presented under the heading 'Citizenship of the Union'.

In the case in point, the Court observed that, contrary to the decision of the General Court, most of the reasons relied on against Mr Kadi are sufficiently detailed and specific to enable the proper exercise of the rights of the defence and judicial review of the lawfulness of the contested measure. However, as no information or evidence was adduced to substantiate the allegations of Mr Kadi's involvement in activities connected to international terrorism, those allegations are not such as to justify the adoption, at European Union level, of restrictive measures against him.

Similarly, and relying on that interpretation of the provisions of European Union law in the area of the CFSP, in Case C-280/12 P *Council* v *Fulmen and Mahmoudian* (judgment of 28 November 2013) the Court dismissed the Council's appeal against the judgment of the General Court ([95]) in which that Court had annulled at first instance the restrictive measures imposed on the applicants, which were intended to implement the measures adopted against Iran with the aim of preventing nuclear proliferation. ([96]) The Court held that as the Council had not produced any evidence or a summary of the confidential evidence before the Courts of the European Union, it was for those Courts to rely on the only evidence available before them, namely the claim made in the statement of reasons for the acts concerned. The Court therefore held that the General Court had not erred in finding that the Council had not shown that Mr Fulmen and Mr Mahmoudian were involved in nuclear proliferation.

Next, in Joined Cases C-478/11 P to C-482/11 P *Gbagbo and Others* v *Council* (judgment of 23 April 2013), the Court adjudicated on the *starting point of the period prescribed for initiating an action for annulment in the field of the CFSP*. Appeals had been lodged before the Court against the orders of the General Court ([97]) dismissing as out of time the applicants' actions for annulment of Council decisions and regulations imposing restrictive measure on them, which were among the restrictive measures adopted against certain persons and entities in view of the situation in Côte d'Ivoire. Before the General Court, the applicants had maintained that the period of two months prescribed for bringing their actions could not operate against them since they had not been notified of the measures at issue. The General Court took the view however, that that period had begun to run 14 days after publication of the contested measures in the *Official Journal of the European Union* and had already expired when the documents initiating the proceedings were lodged.

The Court held that that assessment contains an error of law, although that error does not affect the admissibility of the action, since the action was out of time in any event. The Court observed that the measures at issue not only had to be published in the Official Journal, but also had to be communicated to the persons concerned, either directly, if their addresses were known, or, if not, through the publication in the Official Journal of the notice provided for in Article 7(3) of Decision 2010/656 ([98]) and Article 11a(3) of Regulation No 560/2005. ([99]) That notice is capable of enabling the persons concerned to identify the legal remedies available to them in order to challenge their des-

([95]) Joined Cases T-439/10 and T-440/10 *Fulmen* v *Council* (judgment of 21 March 2012).

([96]) The General Court had held that the review of lawfulness … is not limited to an appraisal of the abstract 'probability' of the grounds relied on, but must consider whether those grounds are supported, to the requisite legal standard, by concrete evidence and information. It had stated that the Council cannot rely on evidence coming from confidential sources and concluded that the Council had not adduced evidence of the applicants' involvement in activities connected with nuclear proliferation.

([97]) Orders of 13 July 2011 in Case T-348/11 *Gbagbo* v *Council*, Case T-349/11 *Koné* v *Council*, Case T-350/11 *Boni-Claveriel* v *Council*, Case T-351/11 *Djédjé* v *Council* and Case T-352/11 *N'Guessan* v *Council*.

([98]) Council Decision 2010/656/CFSP of 29 October 2010 renewing the restrictive measures against Côte d'Ivoire (OJ 2010 L 285, p. 28).

([99]) Council Regulation (EC) No 560/2005 of 12 April 2005 imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire (OJ 2005 L 95, p. 1).

ignation in the lists concerned and the date when the period for bringing proceedings expires. In this instance, communication of the contested acts was made not directly to the addresses of those concerned, but by publication of the notice. Accordingly, the time-limit for initiating the action for annulment ran, for each of those persons and entities, from the date of communication made to them by publication of the notice.

In Case C-239/12 P *Abdulrahim* v *Council and Commission* (judgment of 28 May 2013), the Court was required to adjudicate on the circumstances in which *the interest of an applicant in bringing proceedings for annulment of a fund-freezing measure is retained even where the measure has ceased to have effect after he brought his action*.

Mr Abdulrahim had first of all brought an action before the General Court for annulment of the regulation adopting restrictive measures against him, following his inclusion on the list drawn up by the Sanctions Committee established in 1999 by a resolution of the United Nations Security Council on the situation in Afghanistan. While the case was proceeding before the General Court, Mr Abdulrahim's name was removed from the Sanctions Committee list, and then from the list established by the Commission regulation. Taking the view that the application for annulment of his inclusion on the list had become devoid of purpose, the General Court held ([100]) that there was no longer any need to adjudicate.

The Court set aside the order of the General Court, observing that the person concerned by the contested measure may retain an interest in its annulment, in order to be restored to his original position, in order to induce the author of the contested act to make suitable amendments in the future and thereby avoid the risk that the unlawfulness will be repeated, or, last, in order to bring an action to establish liability for reparation of the non-material harm which he has sustained by reason of that illegality.

Next, the Court approved the distinction which the General Court had drawn between the repeal of an act, which does not amount to retroactive recognition of its illegality, and a judgment annulling an act, by which the act is removed retroactively from the legal order and is therefore deemed never to have existed. However, the Court found that the General Court had been wrong to conclude that that distinction would not be able to substantiate an interest on the part of Mr Abdulrahim in securing the annulment of the regulation concerning him. The Court emphasised, in particular, the fact that restrictive measures have substantial negative consequences and a considerable impact on the rights and freedoms of the persons concerned. Apart from the freezing of funds as such, which, through its broad scope, seriously disrupts both the working and the family life of the persons covered, and impedes the conclusion of numerous legal acts, account must be taken of the opprobrium and suspicion that accompany the public designation of the persons covered as being associated with a terrorist organisation. ([101])

2. Degree of involvement of an entity and imposition of restrictive measures

In Case C-348/12 P *Council* v *Manufacturing Support & Procurement Kala Naft* (judgment of 28 November 2013), the Court set aside the judgment of the General Court, ([102]) which was delivered in connection with *restrictive measures against Iran with a view to preventing nuclear proliferation* and

([100]) Order of 28 February 2012 in Case T-127/09 *Abdulrahim* v *Council and Commission*.

([101]) The Court considered that the dispute was not ready for a decision on the merits and referred the case back to the General Court. The case is still pending.

([102]) Case T-509/10 *Manufacturing Support & Procurement Kala Naft* v *Council* (judgment of 25 April 2012).

concerned a measure relating to an undertaking supplying products for the Iranian gas and oil industry. The Court found that the General Court had failed to take into account the changes in European Union legislation on restrictive measures and in particular the changes after Resolution 1929 (2010) ([103]) of the United Nations Security Council. According to the Court, it follows explicitly from the European Union legislation ([104]) that the Iranian oil and gas industry may be subject to restrictive measures, particularly where it is involved in the procurement of prohibited goods and technology, the link between the goods and technology and nuclear proliferation being established by the European Union legislature in the general rules.

Thus, in the light of that legislation and of the Security Council resolution, the Court held that the mere fact of trading in key equipment and technology for the gas and oil industry was capable of being regarded as support for Iran's nuclear activities. The General Court therefore erred in law in holding that the adoption of restrictive measures against an entity presupposes that that entity has actually previously acted reprehensibly, the mere risk that the entity concerned may do so in the future being sufficient. The Court decided to give judgment in the matter and held that the decision to place Kala Naft on the lists of entities whose funds were frozen was lawful.

XVI. European civil service

In relation to the European civil service, the Court adjudicated on two issues of major importance.

In Case C-579/12 RX II *Commission* v *Strack* (judgment of 19 September 2013), which is the third judgment delivered in the context of review proceedings, provided for in the second subparagraph of Article 256(2) TFEU, the Court was called upon to examine the judgment of the General Court setting aside a judgment of the Civil Service Tribunal annulling the Commission's decision refusing *an official's request to carry over annual paid leave that could not be taken during a reference period owing to long-term sick leave*. The Court held that the judgment of the General Court adversely affected the unity and consistency of European Union law. In upholding the decision refusing the request to carry forward the leave, the General Court had misinterpreted, first, Article 1e(2) of the Staff Regulations of Officials of the European Union ('the Staff Regulations') ([105]) as not covering the requirements relating to the organisation of working time referred to in Directive 2003/88 concerning certain aspects of the organisation of working time and, in particular, the requirements relating to annual paid leave and, second, Article 4 of Annex V to the Staff Regulations as implying that the right to carry over annual leave exceeding the limit laid down in that provision may be granted only where the official has been unable to take leave for reasons connected with his activity as an official and the duties he has thus been required to perform.

([103]) Resolution 1929 (2010) of the Security Council of 9 June 2010.

([104]) See Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39, and corrigendum at OJ 2010 L 197, p. 19) and Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 (OJ 2010 L 281, p. 1).

([105]) Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ English Special Edition 1968(I), p. 30), as amended by Regulation (EU, Euratom) No 1080/2010 of the European Parliament and of the Council of 24 November 2010 (OJ 2010 L 311, p. 1).

On the contrary, under the general principle of interpretation according to which a European Union measure must be interpreted, as far as possible, in such a way as not to affect its validity and in conformity with primary law as a whole and, in particular, with the provisions of the Charter of Fundamental Rights, Article 1e(2) of the Staff Regulations must be interpreted in a way which ensures the consistency of that provision with the right to paid annual leave as a principle of the social law of the European Union now affirmed by Article 31(2) of the Charter of Fundamental Rights. That, according to the Court, requires an interpretation of Article 1e(2) to the effect that it allows the inclusion in the Staff Regulations of the substance of Article 7 of Directive 2003/88, as a minimum protection which could, as necessary, supplement the other provisions of the Staff Regulations dealing with the right to paid annual leave and, in particular, Article 4 of Annex V to those regulations.

Since Article 4 of Annex V to the Staff Regulations must be interpreted as meaning that it does not deal with the question of the carry-over of paid annual leave which could not be taken by the official during the reference period because of long-term sick leave, the requirements arising in that respect from Article 1e(2) of the Staff Regulations and, more specifically, from Article 7 of 2003/88, must be taken into account as the minimum requirements applicable, without prejudice to the more favourable provisions in the Staff Regulations.

In Case C-63/12 *Commission* v *Council*, Case C-66/12 *Council* v *Commission* and Case C-196/12 *Commission* v *Council* (judgments of 19 November 2013), the Court adjudicated on the rules of the Staff Regulations of Officials of the European Union on the procedures for establishing the *annual adjustment of the remuneration and pensions of officials*. The disputes between the Commission and the Council concerned the question whether, for 2011, it was appropriate to apply the 'normal' and automatic adjustment method laid down in Article 3 of Annex XI to the Staff Regulations, or the exception clause provided for in Article 10 of that annex, applicable '[i]f there is a serious and sudden deterioration in the economic and social situation within the Union'.

In the light of the specific provisions governing the procedures laid down in Annex XI to the Staff Regulations and the context of Article 10 of Annex XI, and in particular of the role allocated to the Council by Article 65 of the Staff Regulations, the Court held that it was the task of the Council to assess the objective data supplied by the Commission, in order to determine whether there was or was not such a serious and sudden deterioration, triggering the exception clause. The Court emphasised that, where the Council determines that there is a serious and sudden deterioration within the meaning of Article 10, the Commission is obliged to submit to the Parliament and to the Council appropriate proposals on the basis of that article.

The Court held, last, that, since for 2011 the Council had determined, on the basis of the data supplied by the Commission, that there was a serious and sudden deterioration, it was not obliged to adopt the proposal submitted by the Commission on the basis of the 'normal' method of adjustment for that year.

C — Composition of the Court of Justice

(order of precedence as at 23 October 2013)

First row, from left to right:

L. Bay Larsen, President of Chamber; R. Silva de Lapuerta, President of Chamber; K. Lenaerts, Vice-President of the Court; V. Skouris, President of the Court; A. Tizzano, President of Chamber; M. Ilešič, President of Chamber.

Second row, from left to right:

C.G. Fernlund, President of Chamber; A. Borg Barthet, President of Chamber; P. Cruz Villalón, First Advocate General; T. von Danwitz, President of Chamber; E. Juhász, President of Chamber; M. Safjan, President of Chamber; J.L. da Cruz Vilaça, President of Chamber.

Third row, from left to right:

P. Mengozzi, Advocate General; J.-C. Bonichot, Judge; J. Malenovský, Judge; J. Kokott, Advocate General; A. Rosas, Judge; G. Arestis, Judge; E. Levits, Judge; E. Sharpston, Advocate General.

Fourth row, from left to right:

A. Prechal, Judge; M. Berger, Judge; C. Toader, Judge; A. Ó Caoimh, Judge; Y. Bot, Advocate General; A. Arabadjiev, Judge; D. Šváby, Judge; N. Jääskinen, Advocate General.

Fifth row, from left to right:

M. Szpunar, Advocate General; F. Biltgen, Judge; N. Wahl, Advocate General; M. Wathelet, Advocate General; E. Jarašiūnas, Judge; C. Vajda, Judge; S. Rodin, Judge; K. Jürimäe, Judge; A. Calot Escobar, Registrar.

1. Members of the Court of Justice

(in order of their entry into office)

Vassilios Skouris

Born 1948; graduated in law from the Free University, Berlin (1970); awarded Doctorate in Constitutional and Administrative Law at Hamburg University (1973); Assistant Professor at Hamburg University (1972–77); Professor of Public Law at Bielefeld University (1978); Professor of Public Law at the University of Thessaloniki (1982); Minister for Internal Affairs (in 1989 and 1996); member of the Administrative Board of the University of Crete (1983–87); Director of the Centre for International and European Economic Law, Thessaloniki (1997–2005); President of the Greek Association for European Law (1992–94); member of the Greek National Research Committee (1993–95); member of the Higher Selection Board for Greek Civil Servants (1994–96); member of the Academic Council of the Academy of European Law, Trier (from 1995); member of the Administrative Board of the Greek National Judges' College (1995–96); member of the Scientific Committee of the Ministry of Foreign Affairs (1997–99); President of the Greek Economic and Social Council in 1998; Judge at the Court of Justice since 8 June 1999; President of the Court of Justice since 7 October 2003.

Koen Lenaerts

Born 1954; lic. iuris, Ph.D. in Law (Katholieke Universiteit Leuven); Master of Laws, Master in Public Administration (Harvard University); Lecturer (1979–83), subsequently Professor of European Law, Katholieke Universiteit Leuven (since 1983); Legal Secretary at the Court of Justice (1984–85); Professor at the College of Europe, Bruges (1984–89); member of the Brussels Bar (1986–89); Visiting Professor at the Harvard Law School (1989); Judge at the Court of First Instance of the European Communities from 25 September 1989 to 6 October 2003; Judge at the Court of Justice since 7 October 2003; VicePresident of the Court of Justice since 9 October 2012.

Antonio Tizzano

Born 1940; Professor of European Union Law at La Sapienza University, Rome; Professor at the Istituto Universitario Orientale, Naples (1969–79), Federico II University, Naples (1979–92), the University of Catania (1969–77) and the University of Mogadishu (1967–72); member of the Bar at the Italian Court of Cassation; Legal Adviser to the Permanent Representation of the Italian Republic to the European Communities (1984–92); member of the Italian delegation at the negotiations for the accession of the Kingdom of Spain and the Portuguese Republic to the European Communities, for the Single European Act and for the Treaty on European Union; author of numerous publications, including commentaries on the European Treaties and collections of European Union legal texts; Founder and Director since 1996 of the journal *Il Diritto dell'Unione Europea*; member of the managing or editorial board of a number of legal journals; rapporteur at numerous international congresses; conferences and courses at various international institutions, including The Hague Academy of International Law (1987); member of the independent group of experts appointed to examine the finances of the Commission of the European Communities (1999); Advocate General at the Court of Justice from 7 October 2000 to 3 May 2006; Judge at the Court of Justice since 4 May 2006.

Allan Rosas

Born 1948; Doctor of Laws (1977) of the University of Turku (Finland); Professor of Law at the University of Turku (1978–81) and at the Åbo Akademi University (Turku/Åbo) (1981–96); Director of the latter's Institute for Human Rights (1985–95); various international and national academic positions of responsibility and memberships of learned societies; coordinated several international and national research projects and programmes, including in the fields of EU law, international law, humanitarian and human rights law, constitutional law and comparative public administration; represented the Finnish Government as member of, or adviser to, Finnish delegations at various international conferences and meetings; expert functions in relation to Finnish legal life, including in governmental law commissions and committees of the Finnish Parliament, as well as the UN, Unesco, OSCE (CSCE) and the Council of Europe; from 1995 Principal Legal Adviser at the Legal Service of the European Commission, in charge of external relations; from March 2001, Deputy Director-General of the European Commission Legal Service; Judge at the Court of Justice since 17 January 2002.

Rosario Silva de Lapuerta

Born 1954; Bachelor of Laws (Universidad Complutense, Madrid); Abogado del Estado in Malaga; Abogado del Estado at the Legal Service of the Ministry of Transport, Tourism and Communication and, subsequently, at the Legal Service of the Ministry of Foreign Affairs; Head Abogado del Estado of the State Legal Service for Cases before the Court of Justice of the European Communities and Deputy Director-General of the Community and International Legal Assistance Department (Ministry of Justice); member of the Commission think tank on the future of the Community judicial system; Head of the Spanish delegation in the 'Friends of the Presidency' Group with regard to the reform of the Community judicial system in the Treaty of Nice and of the Council ad hoc working party on the Court of Justice; Professor of Community Law at the Diplomatic School, Madrid; Co-director of the journal *Noticias de la Unión Europea*; Judge at the Court of Justice since 7 October 2003.

Juliane Kokott

Born 1957; law studies (Universities of Bonn and Geneva); LL.M. (American University/Washington DC); Doctor of Laws (Heidelberg University, 1985; Harvard University, 1990); Visiting Professor at the University of California, Berkeley (1991); Professor of German and Foreign Public Law, International Law and European Law at the Universities of Augsburg (1992), Heidelberg (1993) and Düsseldorf (1994); Deputy Judge for the Federal Government at the Court of Conciliation and Arbitration of the Organisation for Security and Cooperation in Europe (OSCE); Deputy Chairperson of the Federal Government's Advisory Council on Global Change (WBGU, 1996); Professor of International Law, International Business Law and European Law at the University of St Gallen (1999); Director of the Institute for European and International Business Law at the University of St Gallen (2000); Deputy Director of the Master of Business Law programme at the University of St Gallen (2001); Advocate General at the Court of Justice since 7 October 2003.

Endre Juhász

Born 1944; graduated in law from the University of Szeged, Hungary (1967); Hungarian Bar Entrance Examinations (1970); postgraduate studies in comparative law, University of Strasbourg, France (1969, 1970, 1971, 1972); official in the Legal Department of the Ministry of Foreign Trade (1966–74); Director for Legislative Matters (1973–74); First Commercial Secretary at the Hungarian Embassy, Brussels, responsible for European Community issues (1974–79); Director at the Ministry of Foreign Trade (1979–83); First Commercial Secretary, then Commercial Counsellor, to the Hungarian Embassy in Washington DC, USA (1983–89); Director-General at the Ministry of Trade and Ministry of International Economic Relations (1989–91); chief negotiator for the Association Agreement between the Republic of Hungary and the European Communities and their Member States (1990–91); SecretaryGeneral of the Ministry of International Economic Relations, head of the Office of European Affairs (1992); State Secretary at the Ministry of International Economic Relations (1993–94); State Secretary, President of the Office of European Affairs, Ministry of Industry and Trade (1994); Ambassador Extraordinary and Plenipotentiary, Chief of Mission of the Republic of Hungary to the European Union (January 1995 to May 2003); chief negotiator for the accession of the Republic of Hungary to the European Union (July 1998 to April 2003); Minister without portfolio for the coordination of matters of European integration (from May 2003); Judge at the Court of Justice since 11 May 2004.

George Arestis

Born 1945; graduated in law from the University of Athens (1968); MA in Comparative Politics and Government, University of Kent at Canterbury (1970); practice as a lawyer in Cyprus (1972–82); appointed District Court Judge (1982); promoted to President of a District Court (1995); Administrative President of the District Court of Nicosia (1997–2003); Judge at the Supreme Court of Cyprus (2003); Judge at the Court of Justice since 11 May 2004.

Anthony Borg Barthet U.O.M.

Born 1947; Doctorate in Law at the Royal University of Malta in 1973; entered the Maltese Civil Service as Notary to the Government in 1975; Counsel for the Republic in 1978, Senior Counsel for the Republic in 1979, Assistant Attorney General in 1988 and appointed Attorney General by the President of Malta in 1989; part-time Lecturer in Civil Law at the University of Malta (1985–89); member of the Council of the University of Malta (1998–2004); member of the Commission for the Administration of Justice (1994–2004); member of the Board of Governors of the Malta Arbitration Centre (1998–2004); Judge at the Court of Justice since 11 May 2004.

Marko Ilešič

Born 1947; Doctor of Law (University of Ljubljana); specialism in comparative law (Universities of Strasbourg and Coimbra); judicial service examination; Professor of Civil, Commercial and Private International Law; Vice-Dean (1995–2001) and Dean (2001–04) of the Faculty of Law at the University of Ljubljana; author of numerous legal publications; Honorary Judge and President of Chamber at the Labour Court, Ljubljana (1975–86); President of the Sports Tribunal of Slovenia (1978–86); President of the Arbitration Chamber of the Ljubljana Stock Exchange; Arbitrator at the Chamber of Commerce of Yugoslavia (until 1991) and Slovenia (from 1991); Arbitrator at the International Chamber of Commerce in Paris; Judge on the Board of Appeals of UEFA and FIFA; President of the Union of Slovene Lawyers' Associations (1993–2005); member of the International Law Association, of the International Maritime Committee and of several other international legal societies; Judge at the Court of Justice since 11 May 2004.

Jiří Malenovský

Born 1950; Doctor of Law from the Charles University in Prague (1975); senior faculty member (1974–90), Vice-Dean (1989–91) and Head of the Department of International and European Law (1990–92) at Masaryk University, Brno; Judge at the Constitutional Court of Czechoslovakia (1992); Envoy to the Council of Europe (1993–98); President of the Committee of Ministers' Deputies of the Council of Europe (1995); Senior Director at the Ministry of Foreign Affairs (1998–2000); President of the Czech and Slovak branch of the International Law Association (1999–2001); Judge at the Constitutional Court (2000–04); member of the Legislative Council (1998–2000); member of the Permanent Court of Arbitration at The Hague (from 2000); Professor of Public International Law at Masaryk University, Brno (2001); Judge at the Court of Justice since 11 May 2004.

Uno Lõhmus

Born 1952; Doctor of Law in 1986; member of the Bar (1977–98); Visiting Professor of Criminal Law at Tartu University; Judge at the European Court of Human Rights (1994–98); Chief Justice of the Supreme Court of Estonia (1998–2004); member of the Legal Expertise Committee on the Constitution; consultant to the working group drafting the Criminal Code; member of the working group for the drafting of the Code of Criminal Procedure; author of several works on human rights and constitutional law; Judge at the Court of Justice from 11 May 2004 to 23 October 2013.

Egils Levits

Born 1955; graduated in law and in political science from the University of Hamburg; Research Assistant at the Faculty of Law, University of Kiel; Adviser to the Latvian Parliament on questions of international law, constitutional law and legislative reform; Ambassador of the Republic of Latvia to Germany and Switzerland (1992–93), Austria, Switzerland and Hungary (1994–95); Vice Prime Minister and Minister for Justice, acting Minister for Foreign Affairs (1993–94); Conciliator at the Court of Conciliation and Arbitration within the OSCE (from 1997); member of the Permanent Court of Arbitration (from 2001); elected as Judge at the European Court of Human Rights in 1995, re-elected in 1998 and 2001; numerous publications in the spheres of constitutional and administrative law, law reform and European Community law; Judge at the Court of Justice since 11 May 2004.

Aindrias Ó Caoimh

Born 1950; Bachelor in Civil Law (National University of Ireland, University College Dublin, 1971); Barrister (King's Inns, 1972); Diploma in European Law (University College Dublin, 1977); Barrister (Bar of Ireland, 1972–99); Lecturer in European Law (King's Inns, Dublin); Senior Counsel (1994–99); Representative of the Government of Ireland on many occasions before the Court of Justice of the European Communities; Judge at the High Court (from 1999); Bencher of the Honourable Society of King's Inns (since 1999); Vice-President of the Irish Society of European Law; member of the International Law Association (Irish Branch); son of Judge Andreas O'Keeffe (Aindrias Ó Caoimh), member of the Court of Justice 1974–85; Judge at the Court of Justice since 13 October 2004.

Lars Bay Larsen

Born 1953; awarded degrees in political science (1976) and law (1983) at the University of Copenhagen; official at the Ministry of Justice (1983–85); Lecturer (1984–91), then Associate Professor (1991–96), in Family Law at the University of Copenhagen; Head of Section at the Advokatsamfund (Danish Bar Association) (1985–86); Head of Section (1986–91) at the Ministry of Justice; called to the Bar (1991); Head of Division (1991–95), Head of the Police Department (1995–99) and Head of the Law Department (2000–03) at the Ministry of Justice; Representative of the Kingdom of Denmark on the K-4 Committee (1995–2000), the Schengen Central Group (1996–98) and the Europol Management Board (1998–2000); Judge at the Højesteret (Supreme Court) (2003–06); Judge at the Court of Justice since 11 January 2006.

Eleanor Sharpston

Born 1955; studied economics, languages and law at King's College, Cambridge (1973–77); university teaching and research at Corpus Christi College, Oxford (1977–80); called to the Bar (Middle Temple, 1980); Barrister (1980–87 and 1990–2005); Legal Secretary in the Chambers of Advocate General, subsequently Judge, Sir Gordon Slynn (1987–90); Lecturer in EC and comparative law (Director of European Legal Studies) at University College London (1990–92); Lecturer in the Faculty of Law (1992–98), and subsequently Affiliated Lecturer (1998–2005), at the University of Cambridge; Fellow of King's College, Cambridge (1992–2010); Emeritus Fellow (since 2011); Senior Research Fellow at the Centre for European Legal Studies of the University of Cambridge (1998–2005); Queen's Counsel (1999); Bencher of Middle Temple (2005); Honorary Fellow of Corpus Christi College, Oxford (2010); LL.D (h.c.) Glasgow (2010) and Nottingham Trent (2011); Advocate General at the Court of Justice since 11 January 2006.

Paolo Mengozzi

Born 1938; Professor of International Law and holder of the Jean Monnet Chair of European Community law at the University of Bologna; Doctor *honoris causa* of the Carlos III University, Madrid; Visiting Professor at the Johns Hopkins University (Bologna Centre), the Universities of St. Johns (New York), Georgetown, Paris II and Georgia (Athens) and the Institut universitaire international (Luxembourg); coordinator of the European Business Law Pallas Programme of the University of Nijmegen; member of the Consultative Committee of the Commission of the European Communities on Public Procurement; Under-Secretary of State for Trade and Industry during the Italian tenure of the Presidency of the Council; member of the Working Group of the European Community on the World Trade Organisation (WTO) and Director of the 1997 session of the research centre of The Hague Academy of International Law, devoted to the WTO; Judge at the Court of First Instance from 4 March 1998 to 3 May 2006; Advocate General at the Court of Justice since 4 May 2006.

Yves Bot

Born 1947; graduate of the Faculty of Law, Rouen; Doctor of Laws (University of Paris II, Panthéon-Assas); Lecturer at the Faculty of Law, Le Mans; Deputy Public Prosecutor, then Senior Deputy Public Prosecutor, at the Public Prosecutor's Office, Le Mans (1974–82); Public Prosecutor at the Regional Court, Dieppe (1982–84); Deputy Public Prosecutor at the Regional Court, Strasbourg (1984–86); Public Prosecutor at the Regional Court, Bastia (1986–88); Advocate General at the Court of Appeal, Caen (1988–91); Public Prosecutor at the Regional Court, Le Mans (1991–93); Special Adviser to the Minister for Justice (1993–95); Public Prosecutor at the Regional Court, Nanterre (1995–2002); Public Prosecutor at the Regional Court, Paris (2002–04); Principal State Prosecutor at the Court of Appeal, Paris (2004–06); Advocate General at the Court of Justice since 7 October 2006.

Jean-Claude Bonichot

Born 1955; graduated in law at the University of Metz, degree from the Institut d'études politiques, Paris, former student at the École nationale d'administration; rapporteur (1982–85), commissaire du gouvernement (1985–87 and 1992–99), Judge (1999–2000), President of the Sixth Sub-Division of the Judicial Division (2000–06), at the Council of State; Legal Secretary at the Court of Justice (1987–91); Director of the Private Office of the Minister for Labour, Employment and Vocational Training, then Director of the Private Office of the Minister of State for the Civil Service and Modernisation of Administration (1991–92); Head of the Legal Mission of the Council of State at the National Health Insurance Fund for Employed Persons (2001–06); Lecturer at the University of Metz (1988–2000), then at the University of Paris I, Panthéon-Sorbonne (from 2000); author of numerous publications on administrative law, Community law and European human rights law; founder and chairman of the editorial committee of the *Bulletin de jurisprudence de droit de l'urbanisme*, co-founder and member of the editorial committee of the *Bulletin juridique des collectivités locales*; President of the Scientific Council of the Research Group on Institutions and Law governing Regional and Urban Planning and Habitats; Judge at the Court of Justice since 7 October 2006.

Thomas von Danwitz

Born 1962; studied at Bonn, Geneva and Paris; State examination in law (1986 and 1992); Doctor of Laws (University of Bonn, 1988); International diploma in public administration (École nationale d'administration, 1990); teaching authorisation (University of Bonn, 1996); Professor of German public law and European law (1996–2003), Dean of the Faculty of Law of the Ruhr University, Bochum (2000–01); Professor of German public law and European law (University of Cologne, 2003–06); Director of the Institute of Public Law and Administrative Science (2006); Visiting professor at the Fletcher School of Law and Diplomacy (2000), François Rabelais University, Tours (2001–06), and the University of Paris I, Panthéon-Sorbonne (2005–06); Doctor *honoris causa* of François Rabelais University, Tours (2010); Judge at the Court of Justice since 7 October 2006.

Alexander Arabadjiev

Born 1949; legal studies (St Kliment Ohridski University, Sofia); Judge at the District Court, Blagoevgrad (1975–83); Judge at the Regional Court, Blagoevgrad (1983–86); Judge at the Supreme Court (1986–91); Judge at the Constitutional Court (1991–2000); member of the European Commission of Human Rights (1997–99); member of the European Convention on the Future of Europe (2002–03); member of the National Assembly (2001–06); Observer at the European Parliament; Judge at the Court of Justice since 12 January 2007.

Camelia Toader

Born 1963; Degree in law (1986), doctorate in law (1997), University of Bucharest; Trainee judge at the Court of First Instance, Buftea (1986–88); Judge at the Court of First Instance, Sector 5, Bucharest (1988–92); called to the Bucharest Bar (1992); Lecturer (1992–2005), then, from 2005, professor in civil law and European contract law at the University of Bucharest; Doctoral studies and research at the Max Planck Institute for Private International Law, Hamburg (between 1992 and 2004); Head of the European Integration Unit at the Ministry of Justice (1997–99); Judge at the High Court of Cassation and Justice (1999–2007); Visiting professor at the University of Vienna (2000 and 2011); taught Community law at the National Institute for Magistrates (2003 and 2005–06); Member of the editorial board of several legal journals; from 2010 associate member of the International Academy of Comparative Law and honorary researcher at the Centre for European Legal Studies of the Legal Research Institute of the Romanian Academy; Judge at the Court of Justice since 12 January 2007.

Jean-Jacques Kasel

Born 1946; Doctor of Laws; special degree in Administrative Law (Université libre de Bruxelles, 1970); graduated from the Institut d'études politiques, Paris (Ecofin, 1972); trainee lawyer; Legal Adviser of the Banque de Paris et des Pays-Bas (1972–73); Attaché, then Legation Secretary at the Ministry of Foreign Affairs (1973–76); Chairman of working groups of the Council of Ministers (1976); First Embassy Secretary (Paris), Deputy Permanent Representative to the OECD (liaison officer to UNESCO, 1976–79); Head of the Office of the Vice-President of the Government (1979–80); Chairman of the EPC working groups (Asia, Africa, Latin America); Adviser, then Deputy Head of Cabinet, of the President of the Commission of the European Communities (1981); Director, Budget and Staff Matters, at the General Secretariat of the Council of Ministers (1981–84); Special Adviser at the Permanent Representation to the European Communities (1984–85); Chairman of the Budgetary Committee; Minister Plenipotentiary, Director of Political and Cultural Affairs (1986–91); Diplomatic Adviser of the Prime Minister (1986–91); Ambassador to Greece (1989–91, nonresident); Chairman of the Policy Committee (1991); Ambassador, Permanent Representative to the European Communities (1991–98); Chairman of Coreper (1997); Ambassador (Brussels, 1998–2002); Permanent Representative to NATO (1998–2002); Marshal of the Court and Head of the Office of HRH the Grand Duke (2002–07); Judge at the Court of Justice from 15 January 2008 to 7 October 2013.

Marek Safjan

Born 1949; Doctor of Law (University of Warsaw, 1980); habilitated Doctor in Legal Science (University of Warsaw, 1990); Professor of Law (1998); Director of the Civil Law Institute of the University of Warsaw (1992–96); Vice-Rector of the University of Warsaw (1994–97); Secretary-General of the Polish Section of the Henri Capitant Association of Friends of French Legal Culture (1994–98); representative of Poland on the Bioethics Committee of the Council of Europe (1991–97); Judge (1997–98), then President (1998–2006), of the Constitutional Court; member (since 1994) and Vice-President (since 2010) of the International Academy of Comparative Law, member of the International Association of Law, Ethics and Science (since 1995), member of the Helsinki Committee in Poland; member of the Polish Academy of Arts and Sciences; Pro Merito Medal conferred by the Secretary-General of the Council of Europe (2007); author of a very large number of publications in the fields of civil law, medical law and European law; Doctor *honoris causa* of the European University Institute (2012); Judge at the Court of Justice since 7 October 2009.

Daniel Šváby

Born 1951; Doctor of Laws (University of Bratislava); Judge at the District Court, Bratislava; Judge, Appeal Court, responsible for civil law cases, and Vice-President, Appeal Court, Bratislava; member of the Civil and Family Law Section at the Ministry of Justice Law Institute; acting Judge responsible for commercial law cases at the Supreme Court; member of the European Commission of Human Rights (Strasbourg); Judge at the Constitutional Court (2000–04); Judge at the Court of First Instance from 12 May 2004 to 6 October 2009; Judge at the Court of Justice since 7 October 2009.

Maria Berger

Born 1956; studied law and economics (1975–79), Doctor of Law; Assistant Lecturer and Lecturer at the Institute of Public Law and Political Sciences of the University of Innsbruck (1979–84); Administrator at the Federal Ministry of Science and Research, ultimately Deputy Head of Unit (1984–88); official responsible for questions relating to the European Union at the Federal Chancellery (1988–89); Head of the European Integration Section of the Federal Chancellery (preparation for the Republic of Austria's accession to the European Union) (1989–92); Director at the EFTA Surveillance Authority, in Geneva and Brussels (1993–94); Vice-President of Danube University, Krems (1995–96); member of the European Parliament (November 1996 to January 2007 and December 2008 to July 2009) and member of the Committee on Legal Affairs; substitute member of the European Convention on the Future of Europe (February 2002 to July 2003); Councillor of the Municipality of Perg (September 1997 to September 2009); Federal Minister for Justice (January 2007 to December 2008); Judge at the Court of Justice since 7 October 2009.

Niilo Jääskinen

Born 1958; law degree (1980), postgraduate law degree (1982), doctorate (2008) at the University of Helsinki; Lecturer at the University of Helsinki (1980–86); Legal Secretary and acting Judge at the District Court, Rovaniemi (1983–84); Legal Adviser (1987–89), and subsequently Head of the European Law Section (1990–95), at the Ministry of Justice; Legal Adviser at the Ministry of Foreign Affairs (1989–90); Adviser, and Clerk for European Affairs, of the Grand Committee of the Finnish Parliament (1995–2000); acting Judge (July 2000 to December 2002), then Judge (January 2003 to September 2009), at the Supreme Administrative Court; responsible for legal and institutional questions during the negotiations for the accession of the Republic of Finland to the European Union; Advocate General at the Court of Justice since 7 October 2009.

Pedro Cruz Villalón

Born 1946; law degree (1963–68) and awarded doctorate (1975) at the University of Seville; postgraduate studies at the University of Freiburg im Breisgau (1969–71); Assistant Professor of Political Law at the University of Seville (1978–86); Professor of Constitutional Law at the University of Seville (1986–92); Legal Secretary at the Constitutional Court (1986–87); Judge at the Constitutional Court (1992–98); President of the Constitutional Court (1998–2001); Fellow of the Wissenschaftskolleg zu Berlin (2001–02); Professor of Constitutional Law at the Autonomous University of Madrid (2002–09); elected member of the Council of State (2004–09); author of numerous publications; Advocate General at the Court of Justice since 14 December 2009.

Alexandra (Sacha) Prechal

Born 1959; studied law (University of Groningen, 1977–83); Doctor of Laws (University of Amsterdam, 1995); Law Lecturer in the Law Faculty of the University of Maastricht (1983–87); Legal Secretary at the Court of Justice of the European Communities (1987–91); Lecturer at the Europa Institute of the Law Faculty of the University of Amsterdam (1991–95); Professor of European Law in the Law Faculty of the University of Tilburg (1995–2003); Professor of European Law in the Law Faculty of the University of Utrecht and board member of the Europa Institute of the University of Utrecht (from 2003); member of the editorial board of several national and international legal journals; author of numerous publications; member of the Royal Netherlands Academy of Arts and Sciences; Judge at the Court of Justice since 10 June 2010.

Egidijus Jarašiūnas

Born 1952; law degree at the University of Vilnius (1974–79); Doctor of Legal Science of the Law University of Lithuania (1999); member of the Lithuanian Bar (1979–90); member of the Supreme Council (Parliament) of the Republic of Lithuania (1990–92), then member of the Seimas (Parliament) of the Republic of Lithuania and member of the Seimas' State and Law Committee (1992–96); Judge at the Constitutional Court of the Republic of Lithuania (1996–2005), then Adviser to the President of the Constitutional Court (from 2006); Lecturer in the Constitutional Law Department of the Law Faculty of Mykolas Romeris University (1997–2000), then Associate Professor (2000–04) and Professor (from 2004) in that department, and finally Head of Department (2005–07); Dean of the Law Faculty of Mykolas Romeris University (2007–10); member of the Venice Commission (2006–10); signatory of the act of 11 March 1990 re-establishing Lithuania's independence; author of numerous legal publications; Judge at the Court of Justice since 6 October 2010.

Carl Gustav Fernlund

Born 1950; graduated in law from the University of Lund (1975); Clerk at the Landskrona District Court (1976–78); Assistant Judge at an administrative court of appeal (1978–82); Deputy Judge at an administrative court of appeal (1982); Legal Adviser to the Swedish Parliament's Standing Committee on the Constitution (1983–85); Legal Adviser at the Ministry of Finance (1985–90); Director of the Division for Personal Income Taxes at the Ministry of Finance (1990–96); Director of the Excise Duty Division at the Ministry of Finance (1996–98); Fiscal Counsellor at the Permanent Representation of Sweden to the European Union (1998–2000); Director-General for Legal Affairs in the Tax and Customs Department of the Ministry of Finance (2000–05); Judge at the Supreme Administrative Court (2005–09); President of the Administrative Court of Appeal, Gothenburg (2009–11); Judge at the Court of Justice since 6 October 2011.

José Luís da Cruz Vilaça

Born 1944; degree in law and master's degree in political economy at the University of Coimbra; Doctor in International Economics (University of Paris I – Panthéon Sorbonne); compulsory military service performed in the Ministry for the Navy (Justice Department, 1969–72); Professor at the Catholic University and the New University of Lisbon; formerly Professor at the University of Coimbra and at Lusíada University, Lisbon (Director of the Institute for European Studies); Member of the Portuguese Government (1980–83): State Secretary for Home Affairs, State Secretary in the Prime Minister's Office and State Secretary for European Affairs; Deputy in the Portuguese Parliament, Vice-President of the Christian-Democrat Group; Advocate General at the Court of Justice (1986–88); President of the Court of First Instance of the European Communities (1989–95); lawyer at the Lisbon Bar, specialising in European and competition law (1996–2012); member of the Working Party on the Future of the European Communities' Court System — 'Due Group' (2000); Chairman of the Disciplinary Board of the European Commission (2003–07); President of the Portuguese Association of European Law (since 1999); Judge at the Court of Justice since 8 October 2012.

Melchior Wathelet

Born 1949; degrees in law and in economics (University of Liège); Master of Laws (Harvard University, United States); Doctor *honoris causa* (Université Paris-Dauphine); Professor of European Law at the Catholic University of Louvain and the University of Liège; Deputy (1977–95); State Secretary, Minister and Minister-President of the Walloon Region (1980–88); Deputy Prime Minister, Minister for Justice and for Small and Medium-Sized Businesses, the Liberal Professions and the Self-Employed (1988–92); Deputy Prime Minister, Minister for Justice and Economic Affairs (1992–95); Deputy Prime Minister, Minister for National Defence (1995); Mayor of Verviers (1995); Judge at the Court of Justice of the European Communities (1995–2003); legal adviser, then counsel (2004–12); Minister of State (2009–12); Advocate General at the Court of Justice since 8 October 2012.

Christopher Vajda

Born 1955; law degree from Cambridge University; *licence spéciale en droit européen* at the Université libre de Bruxelles (*grande distinction*); called to the Bar of England and Wales by Gray's Inn (1979); Barrister (1979–2012); called to the Bar of Northern Ireland (1996); Queen's Counsel (1997); Bencher of Gray's Inn (2003); Recorder of the Crown Court (2003–12); Treasurer of the United Kingdom Association for European Law (2001–12); contributor to 3rd to 6th eds of *European Community Law of Competition* (Bellamy and Child); Judge at the Court of Justice since 8 October 2012.

Nils Wahl

Born 1961; Doctor of Laws, University of Stockholm (1995); Associate Professor (docent) and holder of the Jean Monnet Chair of European Law (1995); Professor of European Law, University of Stockholm (2001); Managing Director of an educational foundation (1993–2004); Chairman of the Nätverket för europarättslig forskning (Swedish Network for European Legal Research) (2001–06); member of the Rådet för konkurrensfrågor (Council for Competition Law Matters) (2001–06); Judge at the General Court from 7 October 2006 to 28 November 2012; Advocate General at the Court of Justice since 28 November 2012.

Siniša Rodin

Born 1963; University of Zagreb, Faculty of Law, Ph.D. (1995); University of Michigan Law School, LL.M. (1992); Harvard Law School, Fulbright Fellow and Visiting Scholar (2001–02); tenure track and tenured professor at the University of Zagreb, Faculty of Law, since 1987, Jean Monnet Chair since 2006 and Jean Monnet Chair *ad personam* since 2011; Cornell Law School Visiting Professor (2012); Member of the Croatian Constitutional Amendment Committee, President of the working group on EU membership (2009–10); Member of the Croatian EU membership negotiating team (2006–11); author of numerous publications; Judge at the Court of Justice since 4 July 2013.

François Biltgen

Born 1958; Master's degree in law (1981) and diploma of advanced studies (DEA) in Community law at the University of Law, Economics and Social Sciences, Paris II (1982); graduated from the Institut d'études politiques, Paris (1982); lawyer at the Luxembourg bar (1987–99); Deputy in the Chamber of Deputies (1994–99); Municipal Councillor of the town of Esch-sur-Alzette (1987–99); Deputy Mayor of Esch-sur-Alzette (1997–99); Alternate Member of the Luxembourg delegation to the Committee of the Regions of the European Union (1994–99); Minister for Labour and Employment, Minister for Religious Affairs, Minister for Relations with Parliament, Minister with responsibility for Communications (1999–2004); Minister for Labour and Employment, Minister for Religious Affairs, Minister for Culture, Higher Education and Research (2004–09); Minister for Justice, Minister for the Civil Service and Administrative Reform, Minister for Higher Education and Research, Minister for Communications and the Media, Minister for Religious Affairs (2009–13); Joint President of the Ministerial Conference of the Bologna Process in 2005 and 2009; Joint President of the Ministerial Conference of the European Space Agency (2012–13); Judge at the Court of Justice since 7 October 2013.

Küllike Jürimäe

Born 1962; law degree, University of Tartu (1981–86); Assistant to the Public Prosecutor, Tallinn (1986–91); Diploma, Estonian School of Diplomacy (1991–92); Legal Adviser (1991–93) and General Counsel at the Chamber of Commerce and Industry (1992–93); Judge, Tallinn Court of Appeal (1993–2004); European Masters in Human Rights and Democratisation, Universities of Padua and Nottingham (2002–03); Judge at the General Court from 12 May 2004 to 23 October 2013; Judge at the Court of Justice since 23 October 2013.

Maciej Szpunar

Born 1971; degrees in law from the University of Silesia and the College of Europe, Bruges; Doctor of Law (2000); habilitated Doctor in Legal Science (2009); Professor of Law (2013); Visiting Scholar at Jesus College, Cambridge (1998), the University of Liège (1999) and the European University Institute, Florence (2003); lawyer (2001–08), member of the Committee for Private International Law of the Civil Law Codification Commission under the Ministry of Justice (2001–08); member of the Board of Trustees of the Academy of European Law, Trier (from 2008); member of the Research Group on Existing EC Private Law ('Acquis Group') (from 2006); Undersecretary of State in the Office of the Committee for European Integration (2008–09), then in the Ministry of Foreign Affairs (2010–13); Vice-Chairman of the Scientific Board of the Institute of Justice; Agent of the Polish Government in a large number of cases before the European Union judicature; Head of the Polish delegation at the negotiations on the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union; member of the editorial board of a number of legal journals; author of numerous publications in the fields of European law and private international law; Advocate General at the Court of Justice since 23 October 2013.

Alfredo Calot Escobar

Born 1961; law degree at the University of Valencia (1979–84); Business Analyst at the Council of the Chambers of Commerce of the Autonomous Community of Valencia (1986); Lawyer-linguist at the Court of Justice (1986–90); Lawyer-reviser at the Court of Justice (1990–93); Administrator in the Press and Information Service of the Court of Justice (1993–95); Administrator in the Secretariat of the Institutional Affairs Committee of the European Parliament (1995–96); Aide to the Registrar of the Court of Justice (1996–99); Legal Secretary at the Court of Justice (1999–2000); Head of the Spanish Translation Division at the Court of Justice (2000–01); Director, then Director-General, of Translation at the Court of Justice (2001–10); Registrar of the Court of Justice since 7 October 2010.

2. Change in the composition of the Court of Justice in 2013

Formal sitting on 4 July 2013

Following the accession of the Republic of Croatia to the European Union on 1 July 2013, the representatives of the Governments of the Member States of the European Union, by decision of 1 July 2013, appointed Mr Siniša Rodin as Judge at the Court of Justice for the period from 1 July 2013 to 6 October 2015.

Formal sitting on 7 October 2013

Following the resignation of Mr Jean-Jacques Kasel, by decision of 26 June 2013 the representatives of the Governments of the Member States of the European Union appointed Mr François Biltgen as Judge at the Court of Justice for the remainder of Mr Jean-Jacques Kasel's term of office, that is to say, until 6 October 2015.

Formal sitting on 23 October 2013

By decision of 16 October 2013, the representatives of the Governments of the Member States appointed Mr Maciej Szpunar as Advocate General for the period from 16 October 2013 to 6 October 2018.

In addition, on account of the resignation of Mr Uno Lõhmus, by decision of 26 June 2013 the representatives of the Governments of the Member States appointed Ms Küllike Jürimäe, a Judge at the General Court, as Judge at the Court of Justice for the period from 6 October 2013 to 6 October 2015.

3. Order of precedence

From 1 January 2013 to 3 July 2013

V. SKOURIS, President of the Court
K. LENAERTS, Vice-President of the Court
A. TIZZANO, President of the First Chamber
R. SILVA de LAPUERTA, President of the Second Chamber
M. ILEŠIČ, President of the Third Chamber
L. BAY LARSEN, President of the Fourth Chamber
T. von DANWITZ, President of the Fifth Chamber
N. JÄÄSKINEN, First Advocate General
A. ROSAS, President of the Tenth Chamber
G. ARESTIS, President of the Seventh Chamber
J. MALENOVSKÝ, President of the Ninth Chamber
M. BERGER, President of the Sixth Chamber
E. JARAŠIŪNAS, President of the Eighth Chamber
J. KOKOTT, Advocate General
E. JUHÁSZ, Judge
A. BORG BARTHET, Judge
U. LÕHMUS, Judge
E. LEVITS, Judge
A. Ó CAOIMH, Judge
E. SHARPSTON, Advocate General
P. MENGOZZI, Advocate General
Y. BOT, Advocate General
J.-C. BONICHOT, Judge
A. ARABADJIEV, Judge
C. TOADER, Judge
J.-J. KASEL, Judge
M. SAFJAN, Judge
D. ŠVÁBY, Judge
P. CRUZ VILLALÓN, Advocate General
A. PRECHAL, Judge
C.G. FERNLUND, Judge
J.L. da CRUZ VILAÇA, Judge
M. WATHELET, Advocate General
C. VAJDA, Judge
N. WAHL, Advocate General

A. CALOT ESCOBAR, Registrar

From 4 July 2013 to 7 October 2013

V. SKOURIS, President
K. LENAERTS, Vice-President
A. TIZZANO, President of the First Chamber
R. SILVA de LAPUERTA, President of the Second Chamber
M. ILEŠIČ, President of the Third Chamber
L. BAY LARSEN, President of the Fourth Chamber
T. von DANWITZ, President of the Fifth Chamber
N. JÄÄSKINEN, First Advocate General
A. ROSAS, President of the Tenth Chamber
G. ARESTIS, President of the Seventh Chamber
J. MALENOVSKÝ, President of the Ninth Chamber
M. BERGER, President of the Sixth Chamber
E. JARAŠIŪNAS, President of the Eighth Chamber
J. KOKOTT, Advocate General
E. JUHÁSZ, Judge
A. BORG BARTHET, Judge
U. LÕHMUS, Judge
E. LEVITS, Judge
A. Ó CAOIMH, Judge
E. SHARPSTON, Advocate General
P. MENGOZZI, Advocate General
Y. BOT, Advocate General
J.-C. BONICHOT, Judge
A. ARABADJIEV, Judge
C. TOADER, Judge
J.-J. KASEL, Judge
M. SAFJAN, Judge
D. ŠVÁBY, Judge
P. CRUZ VILLALÓN, Advocate General
A. PRECHAL, Judge
C.G. FERNLUND, Judge
J.L. da CRUZ VILAÇA, Judge
M. WATHELET, Advocate General
C. VAJDA, Judge
N. WAHL, Advocate General
S. RODIN, Judge

A. CALOT ESCOBAR, Registrar

From 8 October 2013 to 22 October 2013

V. SKOURIS, President
K. LENAERTS, Vice-President
A. TIZZANO, President of the First Chamber
R. SILVA de LAPUERTA, President of the Second Chamber
M. ILEŠIČ, President of the Third Chamber
L. BAY LARSEN, President of the Fourth Chamber
T. von DANWITZ, President of the Fifth Chamber
P. CRUZ VILLALÓN, First Advocate General
E. JUHÁSZ, President of the Tenth Chamber
A. BORG BARTHET, President of the Sixth Chamber
M. SAFJAN, President of the Ninth Chamber
C.G. FERNLUND, President of the Eighth Chamber
J.L. da CRUZ VILAÇA, President of the Seventh Chamber
A. ROSAS, Judge
J. KOKOTT, Advocate General
G. ARESTIS, Judge
J. MALENOVSKÝ, Judge
U. LÕHMUS, Judge
E. LEVITS, Judge
A. Ó CAOIMH, Judge
E. SHARPSTON, Advocate General
P. MENGOZZI, Advocate General
Y. BOT, Advocate General
J.-C. BONICHOT, Judge
A. ARABADJIEV, Judge
C. TOADER, Judge
D. ŠVÁBY, Judge
M. BERGER, Judge
N. JÄÄSKINEN, Advocate General
A. PRECHAL, Judge
E. JARAŠIŪNAS, Judge
M. WATHELET, Advocate General
C. VAJDA, Judge
N. WAHL, Advocate General
S. RODIN, Judge
F. BILTGEN, Judge

A. CALOT ESCOBAR, Registrar

From 23 October 2013 to 31 December 2013

V. SKOURIS, President
K. LENAERTS, Vice-President
A. TIZZANO, President of the First Chamber
R. SILVA DE LAPUERTA, President of the Second Chamber
M. ILEŠIČ, President of the Third Chamber
L. BAY LARSEN, President of the Fourth Chamber
T. von DANWITZ, President of the Fifth Chamber
P. CRUZ VILLALÓN, First Advocate General
E. JUHÁSZ, President of the Tenth Chamber
A. BORG BARTHET, President of the Sixth Chamber
M. SAFJAN, President of the Ninth Chamber
C.G. FERNLUND, President of the Eighth Chamber
J.L. da CRUZ VILAÇA, President of the Seventh Chamber
A. ROSAS, Judge
J. KOKOTT, Advocate General
G. ARESTIS, Judge
J. MALENOVSKÝ, Judge
E. LEVITS, Judge
A. Ó CAOIMH, Judge
E. SHARPSTON, Advocate General
P. MENGOZZI, Advocate General
Y. BOT, Advocate General
J.-C. BONICHOT, Judge
A. ARABADJIEV, Judge
C. TOADER, Judge
D. ŠVÁBY, Judge
M. BERGER, Judge
N. JÄÄSKINEN, Advocate General
A. PRECHAL, Judge
E. JARAŠIŪNAS, Judge
M. WATHELET, Advocate General
C. VAJDA, Judge
N. WAHL, Advocate General
S. RODIN, Judge
F. BILTGEN, Judge
K. JÜRIMÄE, Judge
M. SZPUNAR, Advocate General

A. CALOT ESCOBAR, Registrar

4. Former members of the Court of Justice

Massimo Pilotti, Judge (1952–58), President from 1952 to 1958
Petrus Serrarens, Judge (1952–58)
Adrianus Van Kleffens, Judge (1952–58)
Jacques Rueff, Judge (1952–59 and 1960–62)
Otto Riese, Judge (1952–63)
Maurice Lagrange, Advocate General (1952–64)
Louis Delvaux, Judge (1952–67)
Charles Léon Hammes, Judge (1952–67), President from 1964 to 1967
Karl Roemer, Advocate General (1953–73)
Nicola Catalano, Judge (1958–62)
Rino Rossi, Judge (1958–64)
Andreas Matthias Donner, Judge (1958–79), President from 1958 to 1964
Alberto Trabucchi, Judge (1962–72), then Advocate General (1973–76)
Robert Lecourt, Judge (1962–76), President from 1967 to 1976
Walter Strauss, Judge (1963–70)
Joseph Gand, Advocate General (1964–70)
Riccardo Monaco, Judge (1964–76)
Josse J. Mertens de Wilmars, Judge (1967–84), President from 1980 to 1984
Pierre Pescatore, Judge (1967–85)
Alain Louis Dutheillet de Lamothe, Advocate General (1970–72)
Hans Kutscher, Judge (1970–80), President from 1976 to 1980
Henri Mayras, Advocate General (1972–81)
Cearbhall O'Dalaigh, Judge (1973–74)
Max Sørensen, Judge (1973–79)
Gerhard Reischl, Advocate General (1973–81)
Jean-Pierre Warner, Advocate General (1973–81)
Alexander J. Mackenzie Stuart, Judge (1973–88), President from 1984 to 1988
Aindrias O'Keeffe, Judge (1974–85)
Adolphe Touffait, Judge (1976–82)
Francesco Capotorti, Judge (1976), then Advocate General (1976–82)
Giacinto Bosco, Judge (1976–88)
Thymen Koopmans, Judge (1979–90)
Ole Due, Judge (1979–94), President from 1988 to 1994
Ulrich Everling, Judge (1980–88)
Alexandros Chloros, Judge (1981–82)
Simone Rozès, Advocate General (1981–84)
Pieter VerLoren van Themaat, Advocate General (1981–86)
Sir Gordon Slynn, Advocate General (1981–88), then Judge (1988–92)
Fernand Grévisse, Judge (1981–82 and 1988–94)
Kai Bahlmann, Judge (1982–88)
Yves Galmot, Judge (1982–88)
G. Federico Mancini, Advocate General (1982–88), then Judge (1988–99)
Constantinos Kakouris, Judge (1983–97)

Marco Darmon, Advocate General (1984–94)
René Joliet, Judge (1984–95)
Carl Otto Lenz, Advocate General (1984–97)
Thomas Francis O'Higgins, Judge (1985–91)
Fernand Schockweiler, Judge (1985–96)
José Luís da Cruz Vilaça, Advocate General (1986–88)
José Carlos de Carvalho Moitinho de Almeida, Judge (1986–2000)
Jean Mischo, Advocate General (1986–91 and 1997–2003)
Gil Carlos Rodríguez Iglesias, Judge (1986–2003), President from 1994 to 2003
Manuel Diez de Velasco, Judge (1988–94)
Manfred Zuleeg, Judge (1988–94)
Walter van Gerven, Advocate General (1988–94)
Giuseppe Tesauro, Advocate General (1988–98)
Francis Geoffrey Jacobs, Advocate General (1988–2006)
Paul Joan George Kapteyn, Judge (1990–2000)
John L. Murray, Judge (1991–99)
Claus Christian Gulmann, Advocate General (1991–94), then Judge (1994–2006)
David Alexander Ogilvy Edward, Judge (1992–2004)
Michael Bendik Elmer, Advocate General (1994–97)
Günter Hirsch, Judge (1994–2000)
Georges Cosmas, Advocate General (1994–2000)
Antonio Mario La Pergola, Judge (1994 and 1999–2006), Advocate General (1995–99)
Jean-Pierre Puissochet, Judge (1994–2006)
Philippe Léger, Advocate General (1994–2006)
Hans Ragnemalm, Judge (1995–2000)
Nial Fennelly, Advocate General (1995–2000)
Leif Sevón, Judge (1995–2002)
Melchior Wathelet, Judge (1995–2003)
Peter Jann, Judge (1995–2009)
Dámaso Ruiz-Jarabo Colomer, Advocate General (1995–2009)
Romain Schintgen, Judge (1996–2008)
Krateros Ioannou, Judge (1997–99)
Siegbert Alber, Advocate General (1997–2003)
Antonio Saggio, Advocate General (1998–2000)
Fidelma O'Kelly Macken, Judge (1999–2004)
Stig von Bahr, Judge (2000–06)
Ninon Colneric, Judge (2000–06)
Leendert A. Geelhoed, Advocate General (2000–06)
Christine Stix-Hackl, Advocate General (2000–06)
Christiaan Willem Anton Timmermans, Judge (2000–10)
José Narciso da Cunha Rodrigues, Judge (2000–12)
Luís Miguel Poiares Pessoa Maduro, Advocate General (2003–09)
Jerzy Makarczyk, Judge (2004–09)
Ján Klučka, Judge (2004–09)
Pranas Kūris, Judge (2004–10)

Konrad Hermann Theodor Schiemann, Judge (2004–12)
Uno Lõhmus, Judge (2004–13)
Pernilla Lindh, Judge (2006–11)
Ján Mazák, Advocate General (2006–12)
Verica Trstenjak, Advocate General (2006–12)
Jean-Jacques Kasel, Judge (2008–13)

Presidents

Massimo Pilotti (1952–58)
Andreas Matthias Donner (1958–64)
Charles Léon Hammes (1964–67)
Robert Lecourt (1967–76)
Hans Kutscher (1976–80)
Josse J. Mertens de Wilmars (1980–84)
Alexander John Mackenzie Stuart (1984–88)
Ole Due (1988–94)
Gil Carlos Rodríguez Iglésias (1994–2003)

Registrars

Albert Van Houtte (1953–82)
Paul Heim (1982–88)
Jean-Guy Giraud (1988–94)
Roger Grass (1994–2010)

D — Statistics concerning the judicial activity of the Court of Justice

General activity of the Court of Justice

1. New cases, completed cases, cases pending (2009–13)

New cases

2. Nature of proceedings (2009–13)
3. Subject matter of the action (2013)
4. Actions for failure of a Member State to fulfil its obligations (2009–13)

Completed cases

5. Nature of proceedings (2009–13)
6. Judgments, orders, opinions (2013)
7. Bench hearing action (2009–13)
8. Cases completed by judgments, by opinions or by orders involving a judicial determination (2009–13)
9. Subject matter of the action (2009–13)
10. Subject matter of the action (2013)
11. Judgments concerning failure of a Member State to fulfil its obligations: outcome (2009–13)
12. Duration of proceedings (judgments and orders involving a judicial determination) (2009–13)

Cases pending as at 31 December

13. Nature of proceedings (2009–13)
14. Bench hearing action (2009–13)

Miscellaneous

15. Expedited procedures (2009–13)
16. Urgent preliminary ruling procedure (2009–13)
17. Proceedings for interim measures (2013)

General trend in the work of the Court (1952–2013)

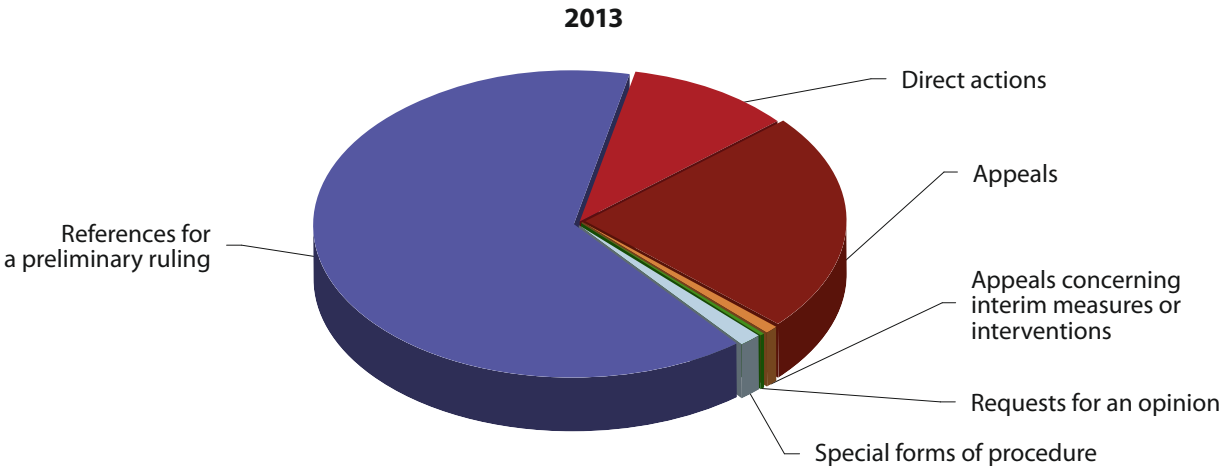
18. New cases and judgments
19. New references for a preliminary ruling (by Member State per year)
20. New references for a preliminary ruling (by Member State and by court or tribunal)
21. New actions for failure of a Member State to fulfil its obligations

1. *General activity of the Court of Justice*
New cases, completed cases, cases pending (2009–13) (1)

	2009	2010	2011	2012	2013
New cases	562	631	688	632	699
Completed cases	588	574	638	595	701
Cases pending	742	799	849	886	884

(1) The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

2. *New cases* — Nature of proceedings (2009–13) ([1])



	2009	2010	2011	2012	2013
References for a preliminary ruling	302	385	423	404	450
Direct actions	143	136	81	73	72
Appeals	105	97	162	136	161
Appeals concerning interim measures or interventions	2	6	13	3	5
Requests for an opinion	1			1	2
Special forms of procedure ([2])	9	7	9	15	9
Total	**562**	**631**	**688**	**632**	**699**
Applications for interim measures	1	3	3		1

([1]) The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

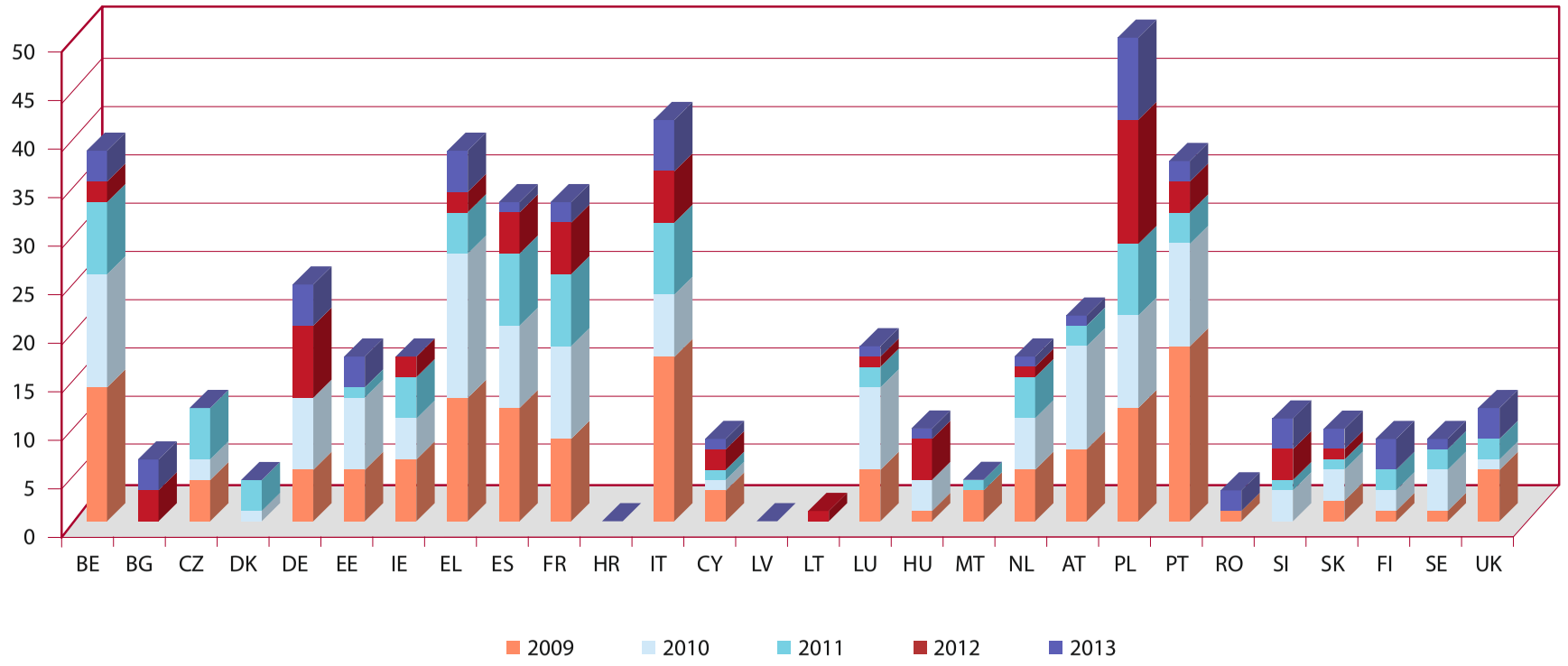
([2]) The following are considered to be 'special forms of procedure': legal aid; taxation of costs; rectification; application to set aside a judgment delivered by default; third-party proceedings; interpretation; revision; examination of a proposal by the first advocate general to review a decision of the General Court; attachment procedure; cases concerning immunity.

3. *New cases* — Subject matter of the action (2013) (1)

	Direct actions	References for a preliminary ruling	Appeals	Appeals concerning interim measures or interventions	Requests for an opinion	Total	Special forms of procedure
Access to documents			8	2		10	
Accession of new states	1					1	
Agriculture	2	20	9			31	
Approximation of laws	2	24				26	
Area of freedom, security and justice	1	57			1	59	
Citizenship of the Union		6				6	
Commercial policy		4	4			8	
Common fisheries policy	2		2			4	
Common foreign and security policy		1	6			7	
Company law	1	2				3	
Competition		6	32	1		39	1
Consumer protection		34				34	
Customs union and Common Customs Tariff		17				17	
Economic and monetary policy	1	1				2	
Economic, social and territorial cohesion		2	8			10	
Education, vocational training, youth and sport		1				1	
Energy	9	1	1			11	
Environment	12	16	1			29	
External action by the European Union		5				5	
Financial provisions (budget, financial framework, own resources, combating fraud and so forth)	1	2				3	
Free movement of capital	1	4				5	
Free movement of goods	1	5				6	
Freedom of establishment	2	7				9	
Freedom of movement for persons	2	22				24	
Freedom to provide services		12				12	
Industrial policy	2	9				11	
Intellectual and industrial property	2	22	38			62	
Law governing the institutions	12	2	8		1	23	1
Principles of European Union law		16				16	
Public health		3	2	1		6	
Public procurement	1	13	3			17	
Registration, evaluation, authorisation and restriction of chemicals (REACH regulation)			5			5	
Research and technological development and space			1			1	
Social policy	3	37	3			43	
Social security for migrant workers		18				18	
State aid	1	9	29	1		40	
Taxation	8	44				52	
Transport	3	26				29	
TFEU	**70**	**448**	**160**	**5**	**2**	**685**	**2**
Procedure							7
Staff Regulations	2	2	1			5	
Others	**2**	**2**	**1**			**5**	**7**
OVERALL TOTAL	**72**	**450**	**161**	**5**	**2**	**690**	**9**

(1) The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

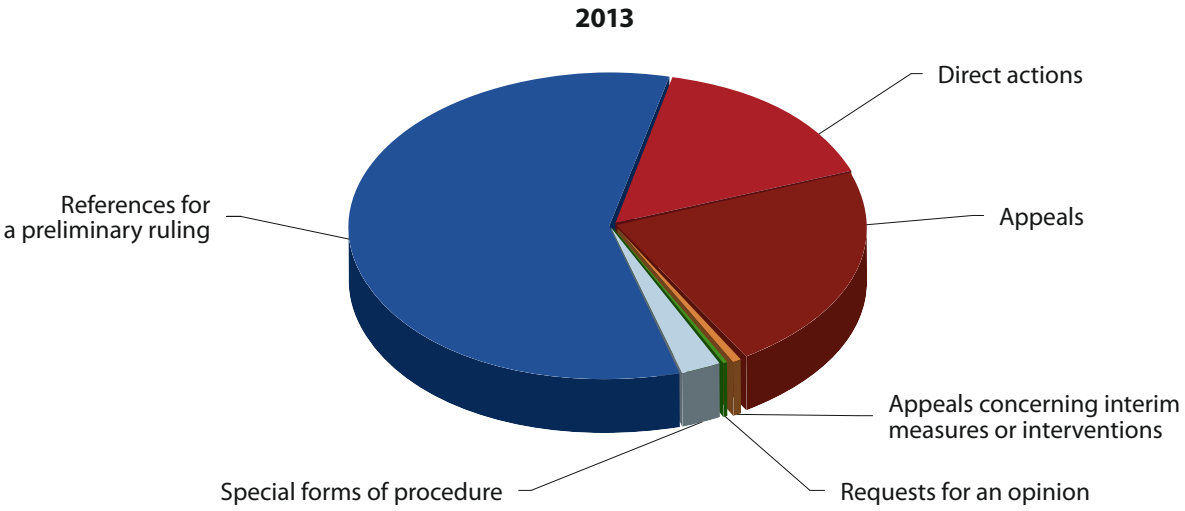
4. *New cases* — Actions for failure of a Member State to fulfil its obligations (2009–13) ([1])



	2009	2010	2011	2012	2013
Belgium	13	11	7	2	3
Bulgaria				3	3
Czech Republic	4	2	5		
Denmark		1	3		
Germany	5	7		7	4
Estonia	5	7	1		3
Ireland	6	4	4	2	
Greece	12	14	4	2	4
Spain	11	8	7	4	1
France	8	9	7	5	2
Croatia					
Italy	16	6	7	5	5
Cyprus	3	1	1	2	1
Latvia					
Lithuania				1	
Luxembourg	5	8	2	1	1
Hungary	1	3		4	1
Malta	3		1		
Netherlands	5	5	4	1	1
Austria	7	10	2		1
Poland	11	9	7	12	8
Portugal	17	10	3	3	2
Romania	1				2
Slovenia		3	1	3	3
Slovakia	2	3	1	1	2
Finland	1	2	2		3
Sweden	1	4	2		1
United Kingdom	5	1	2		3
Total	**142**	**128**	**73**	**58**	**54**

(1) The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

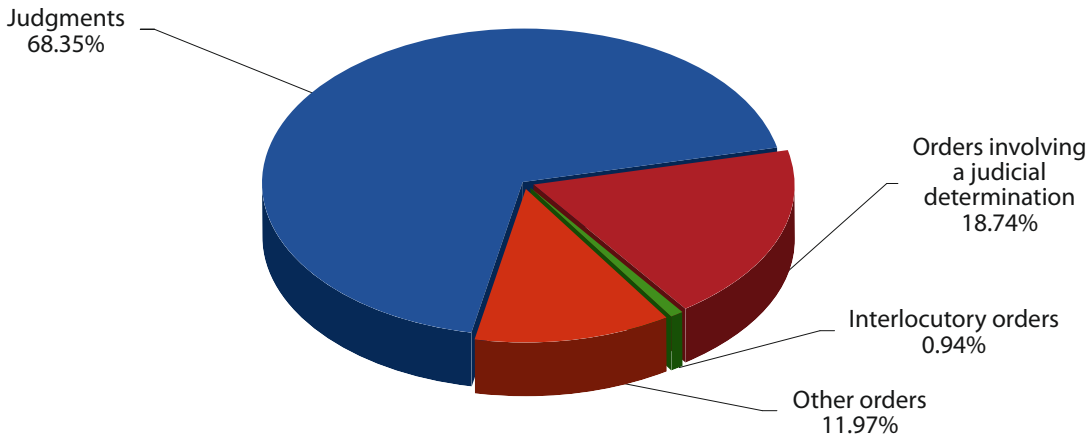
5. *Completed cases* — Nature of proceedings (2009–13) ([1])



	2009	2010	2011	2012	2013
References for a preliminary ruling	259	339	388	386	413
Direct actions	215	139	117	70	110
Appeals	97	84	117	117	155
Appeals concerning interim measures or interventions	7	4	7	12	5
Requests for an opinion	1		1		1
Special forms of procedure	9	8	8	10	17
Total	**588**	**574**	**638**	**595**	**701**

([1]) The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

6. *Completed cases* — Judgments, orders, opinions (2013) (1)



	Judgments	Orders involving a judicial determination (2)	Interlocutory orders (3)	Other orders (4)	Requests for an opinion	Total
References for a preliminary ruling	276	51		35		362
Direct actions	74	1		34		109
Appeals	82	52	1	6		141
Appeals concerning interim measures or interventions			5			5
Requests for an opinion				1		1
Special forms of procedure	2	15				17
Total	**434**	**119**	**6**	**76**		**635**

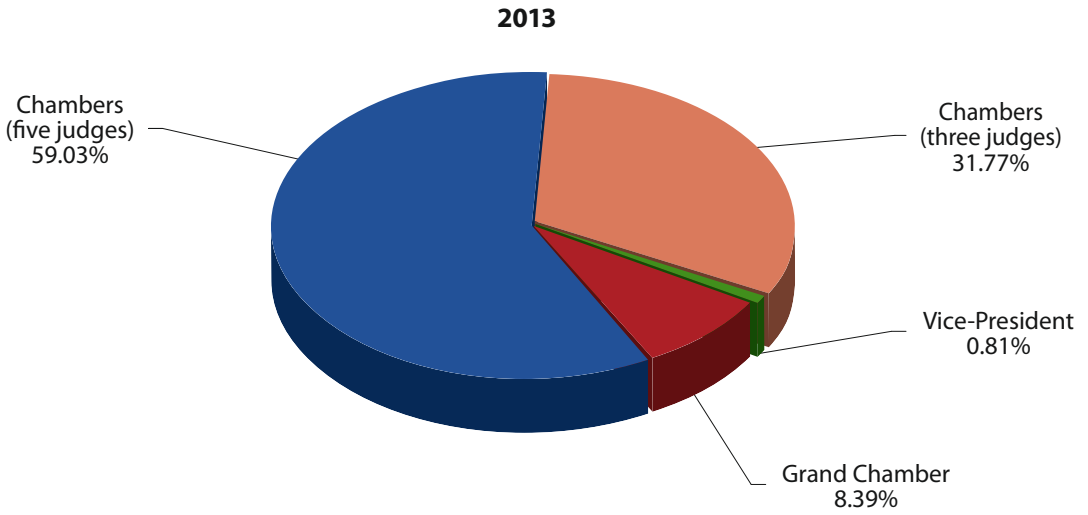
(1) The figures given (net figures) represent the number of cases after joinder on the ground of similarity (a set of joined cases = one case).

(2) Orders terminating proceedings other than those removing a case from the register, declaring that there is no need to give a decision or referring a case to the General Court.

(3) Orders made following an application on the basis of Articles 278 TFEU and 279 TFEU (former Articles 242 EC and 243 EC), Article 280 TFEU (former Article 244 EC) or the corresponding provisions of the EAEC Treaty, or following an appeal against an order concerning interim measures or intervention.

(4) Orders terminating the case by removal from the register, declaration that there is no need to give a decision or referral to the General Court.

7. *Completed cases* — Bench hearing action (2009–13) (1)

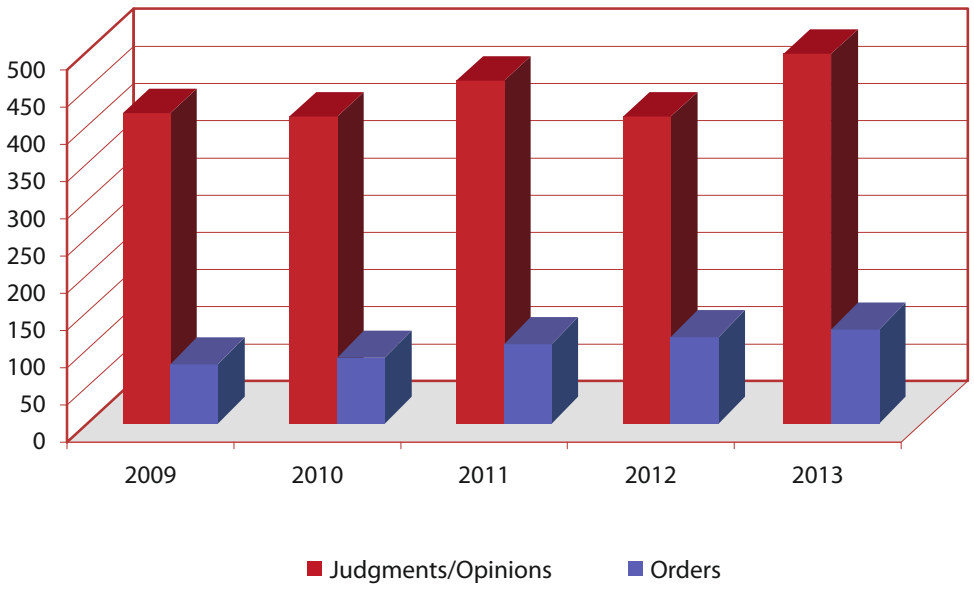


	2009			2010			2011			2012			2013		
	Judgments/Opinions	Orders (2)	Total	Judgments/Opinions	Orders (2)	Total	Judgments/Opinions	Orders (2)	Total	Judgments/Opinions	Orders (2)	Total	Judgments/Opinions	Orders (2)	Total
Full Court							1		1	1		1			
Grand Chamber	41		41	70	1	71	62		62	47		47	52		52
Chambers (five judges)	275	8	283	280	8	288	290	10	300	275	8	283	348	18	366
Chambers (three judges)	96	70	166	56	76	132	91	86	177	83	97	180	91	106	197
President		5	5		5	5		4	4		12	12			
Vice-President														5	5
Total	**412**	**83**	**495**	**406**	**90**	**496**	**444**	**100**	**544**	**406**	**117**	**523**	**491**	**129**	**620**

(1) The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

(2) Orders terminating proceedings other than those removing a case from the register, declaring that there is no need to give a decision or referring a case to the General Court.

8. *Cases completed by judgments, by opinions or by orders involving a judicial determination* (2009–13) (1) (2)



	2009	2010	2011	2012	2013
Judgments/Opinions	412	406	444	406	491
Orders	83	90	100	117	129
Total	**495**	**496**	**544**	**523**	**620**

(1) The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

(2) Orders terminating proceedings other than those removing a case from the register, declaring that there is no need to give a decision or referring a case to the General Court.

9. *Cases completed by judgments, by opinions or by orders involving a judicial determination* — Subject–matter of the action (2009–13) (1)

	2009	2010	2011	2012	2013
Access to documents			2	5	6
Accession of new states	1		1	2	
Agriculture	18	15	23	22	33
Approximation of laws	32	15	15	12	24
Area of freedom, security and justice	26	24	24	37	46
Brussels Convention	2				
Budget of the Communities (2)		1			
Citizenship of the Union	3	6	7	8	12
Commercial policy	5	2	2	8	6
Common Customs Tariff (4)	13	7	2		
Common fisheries policy	4	2	1		
Common foreign and security policy	2	2	3	9	12
Community own resources (2)	10	5	2		
Company law	17	17	8	1	4
Competition	28	13	19	30	43
Consumer protection (3)		3	4	9	19
Customs union and Common Customs Tariff (4)	5	15	19	19	11
Economic and monetary policy	1	1		3	
Economic, social and territorial cohesion				3	6
Education, vocational training, youth and sport				1	
Energy	4	2	2		1
Environment (3)		9	35	27	35
Environment and consumers (3)	60	48	25	1	
External action by the European Union	8	10	8	5	4
Financial provisions (budget, financial framework, own resources, combating fraud and so forth) (2)		1	4	3	2
Free movement of capital	7	6	14	21	8
Free movement of goods	13	6	8	7	1
Freedom of establishment	13	17	21	6	13
Freedom of movement for persons	19	17	9	18	15
Freedom to provide services	17	30	27	29	16
Industrial policy	6	9	9	8	15
Intellectual and industrial property	31	38	47	46	43
Law governing the institutions	29	26	20	27	31
Principles of European Union law	4	4	15	7	17
Public health			3	1	2
Public procurement			7	12	12
Regional policy	3	2			
Registration, evaluation, authorisation and restriction of chemicals (REACH regulation)			1		
Research and technological development and space				1	1
Research, information, education and statistics		1			
Rome Convention	1				

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	2009	2010	2011	2012	2013
Social policy	33	36	36	28	27
Social security for migrant workers	3	6	8	8	12
State aid	10	16	48	10	34
Taxation	44	66	49	64	74
Tourism				1	
Transport	9	4	7	14	17
EC Treaty/TFEU	**481**	**482**	**535**	**513**	**602**
EU Treaty	1	4	1		
CS Treaty			1		
Privileges and immunities			2	3	
Procedure	5	6	5	7	13
Staff Regulations	8	4			5
Others	13	10	7	10	18
OVERALL TOTAL	**495**	**496**	**544**	**523**	**620**

(1) The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

(2) The headings 'Budget of the Communities' and 'Community own resources' have been combined under the heading 'Financial provisions' for cases brought after 1 December 2009.

(3) The heading 'Environment and consumers' has been divided into two separate headings for cases brought after 1 December 2009.

(4) The headings 'Common Customs Tariff' and 'Customs union' have been combined under a single heading for cases brought after 1 December 2009.

10. *Cases completed by judgments, by opinions or by orders involving a judicial determination* — Subject matter of the action (2013) ([1])

	Judgments/ Opinions	Orders ([2])	Total
Access to documents	4	2	6
Agriculture	30	3	33
Approximation of laws	18	6	24
Area of freedom, security and justice	41	5	46
Citizenship of the Union	11	1	12
Commercial policy	6		6
Common foreign and security policy	12		12
Company law	4		4
Competition	38	5	43
Consumer protection ([4])	15	4	19
Customs union and Common Customs Tariff ([5])	9	2	11
Economic, social and territorial cohesion	3	3	6
Energy	1		1
Environment ([4])	33	2	35
External action by the European Union	4		4
Financial provisions (budget, financial framework, own resources, combating fraud and so forth) ([3])	2		2
Free movement of capital	8		8
Free movement of goods	1		1
Freedom of establishment	13		13
Freedom of movement for persons	14	1	15
Freedom to provide services	14	2	16
Industrial policy	14	1	15
Intellectual and industrial property	24	19	43
Law governing the institutions	9	22	31
Principles of European Union law	4	13	17
Public health	1	1	2
Public procurement	8	4	12
Research and technological development and space	1		1
Social policy	21	6	27
Social security for migrant workers	12		12
State aid	30	4	34
Taxation	67	7	74
Transport	16	1	17
EC Treaty/TFEU	488	114	602

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	Judgments/ Opinions	Orders ([2])	Total
Procedure		13	13
Staff Regulations	3	2	5
Others	3	15	18
OVERALL TOTAL	**491**	**129**	**620**

([1]) The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

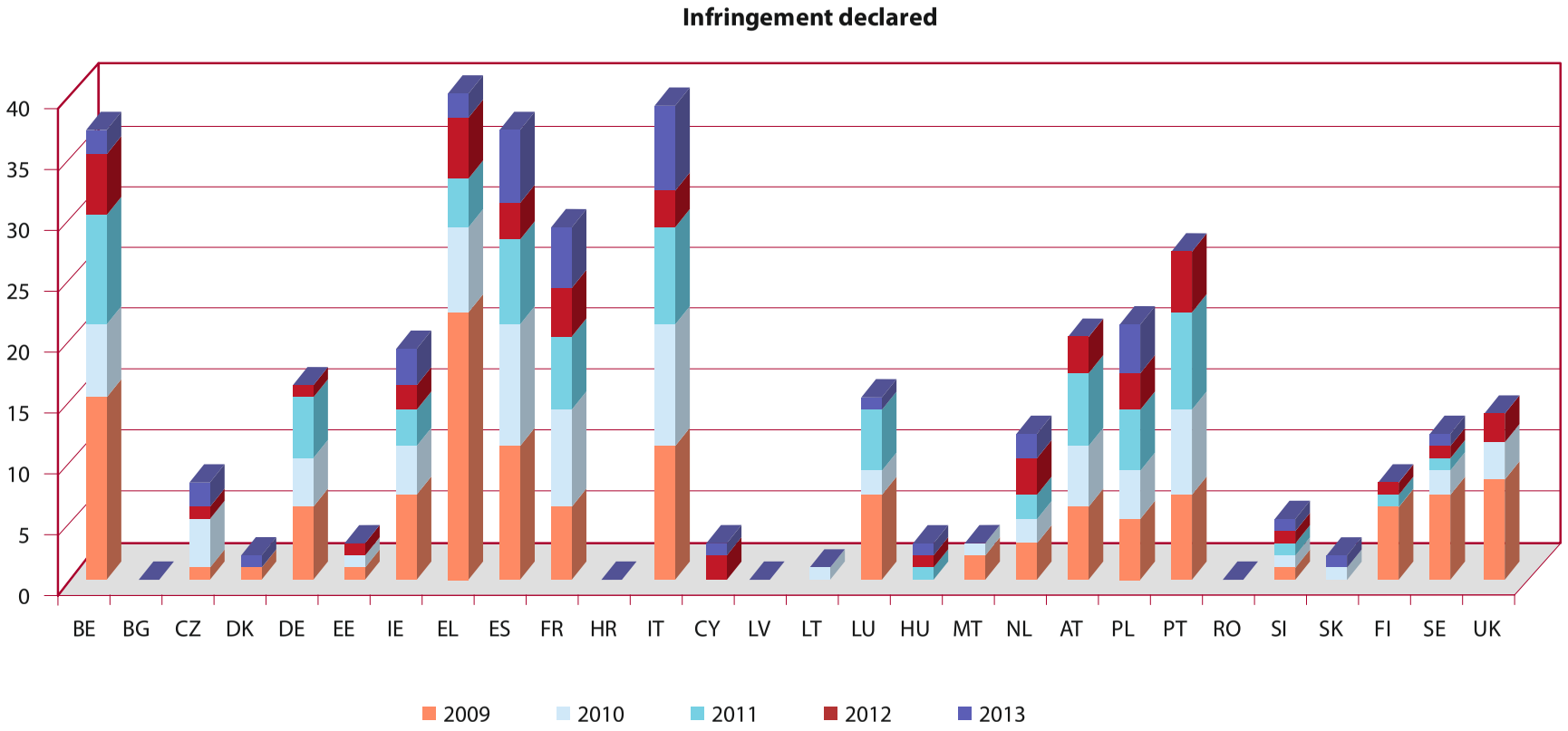
([2]) Orders terminating proceedings other than those removing a case from the register, declaring that there is no need to give a decision or referring a case to the General Court.

([3]) The headings 'Budget of the Communities' and 'Community own resources' have been combined under the heading 'Financial provisions' for cases brought after 1 December 2009.

([4]) The heading 'Environment and consumers' has been divided into two separate headings for cases brought after 1 December 2009.

([5]) The headings 'Common Customs Tariff' and 'Customs union' have been combined under a single heading for cases brought after 1 December 2009.

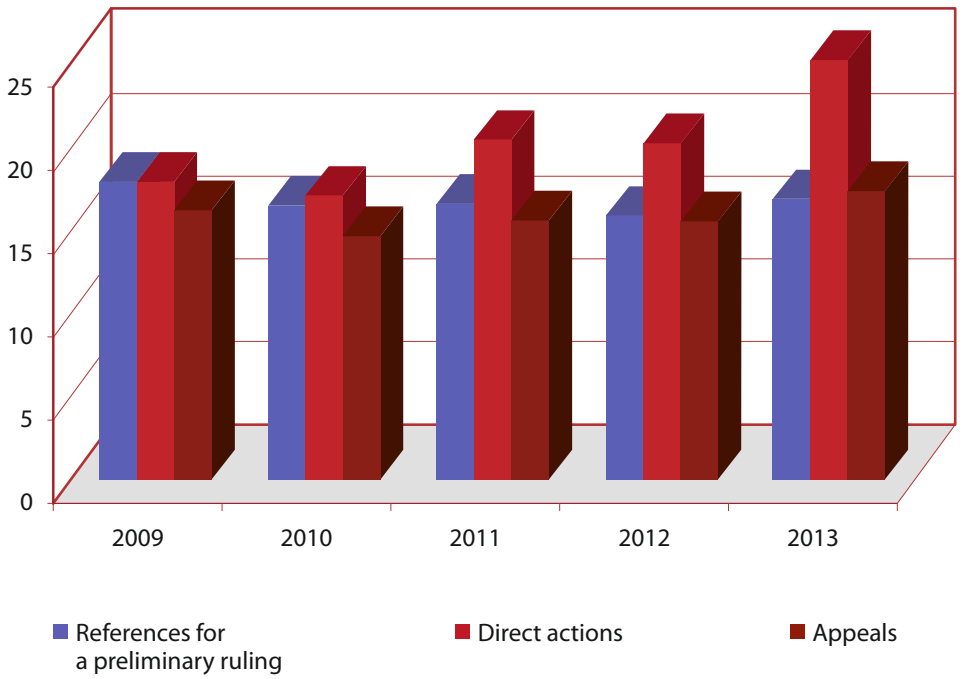
11. *Completed cases* — Judgments concerning failure of a Member State to fulfil its obligations: outcome (2009–13) (1)



	2009		2010		2011		2012		2013	
	Infringement declared	Dismissed	Infringement declared	Dismissed	Infringement declared	Dismissed	Infringement declared	Dismissed	Infringement declared	Dismissed
Belgium	15	1	6	1	9	1	5	1	2	1
Bulgaria										
Czech Republic	1		4				1		2	2
Denmark	1								1	1
Germany	6	2	4	2	5		1	2		2
Estonia	1		1				1			
Ireland	7		4		3		2		3	1
Greece	22		7		4		5		2	1
Spain	11		10	2	7	1	3		6	
France	6		8	2	6		4		5	3
Croatia										
Italy	11	4	10		8	1	3		7	1
Cyprus						1	2		1	
Latvia										
Lithuania			1							
Luxembourg	7		2		5				1	1
Hungary					1	1	1		1	
Malta	2		1	1		1				
Netherlands	3		2	1	2		3	1	2	2
Austria	6		5		6		3			1
Poland	5		4	1	5		3		4	2
Portugal	7	1	7	1	8	1	5			1
Romania						1				
Slovenia	1		1		1		1		1	
Slovakia			1			1		1	1	
Finland	6	1			1		1			2
Sweden	7		2		1		1		1	1
United Kingdom	8	1	3	1			2			1
Total	**133**	**10**	**83**	**12**	**72**	**9**	**47**	**5**	**40**	**23**

([1]) The figures given (net figures) represent the number of cases after joinder on the ground of similarity (a set of joined cases = one case).

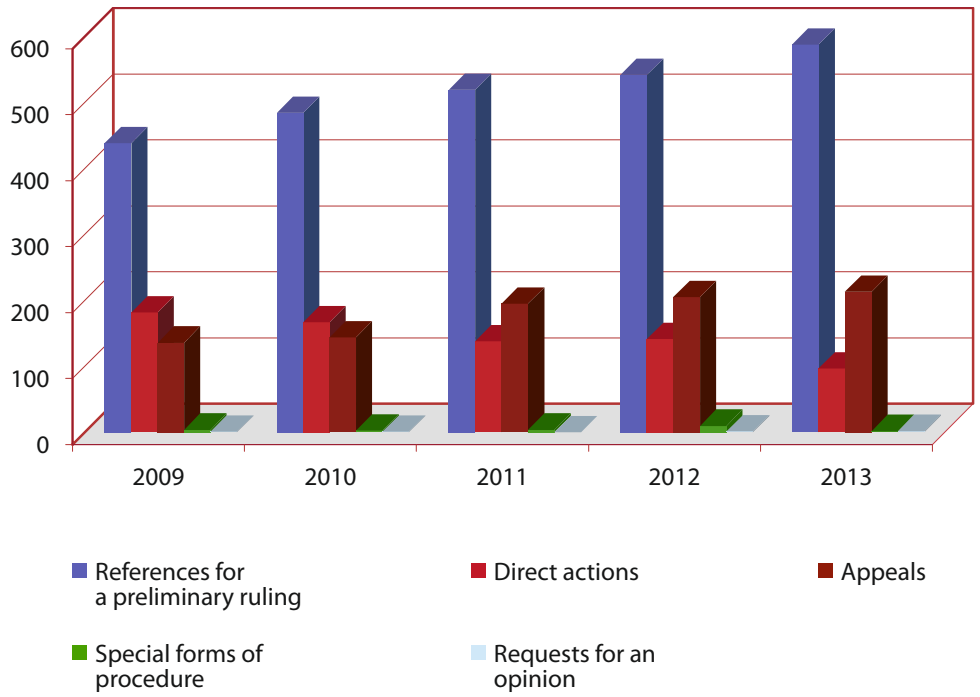
12. *Completed cases* — Duration of proceedings (2009–13) ([1])
(judgments and orders involving a judicial determination)



	2009	2010	2011	2012	2013
References for a preliminary ruling	17.0	16.1	16.3	15.6	16.3
Urgent preliminary ruling procedure	2.6	2.2	2.5	1.9	2.2
Direct actions	17.1	16.7	20.3	19.7	24.3
Appeals	15.5	14.0	15.1	15.2	16.6

([1]) The following types of cases are excluded from the calculation of the duration of proceedings: cases involving an interlocutory judgment or a measure of inquiry; opinions; special forms of procedure (namely legal aid, taxation of costs, rectification, application to set aside a judgment delivered by default, third-party proceedings, interpretation, revision, examination of a proposal by the first advocate general to review a decision of the General Court, attachment procedure and cases concerning immunity); cases terminated by an order removing the case from the register, declaring that there is no need to give a decision or referring the case to the General Court; proceedings for interim measures and appeals concerning interim measures and interventions.

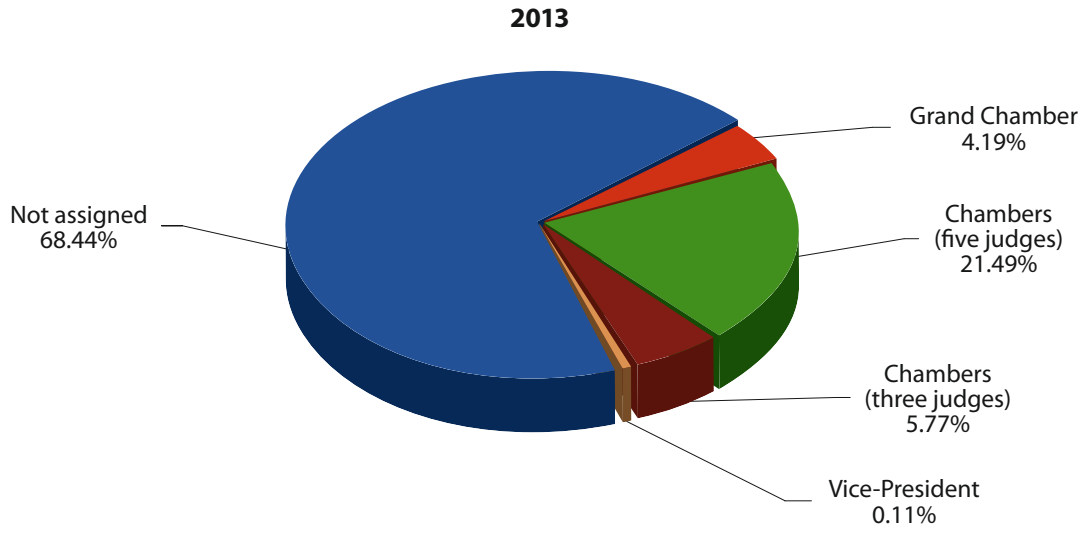
13. *Cases pending as at 31 December* — Nature of proceedings (2009–13) (1)



	2009	2010	2011	2012	2013
References for a preliminary ruling	438	484	519	537	574
Direct actions	170	167	131	134	96
Appeals	129	144	195	205	211
Special forms of procedure	4	3	4	9	1
Requests for an opinion	1	1		1	2
Total	**742**	**799**	**849**	**886**	**884**

(1) The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

14. *Cases pending as at 31 December* — Bench hearing action (2009–13) ([1])



	2009	2010	2011	2012	2013
Full Court		1			
Grand Chamber	65	49	42	44	37
Chambers (five judges)	169	193	157	239	190
Chambers (three judges)	15	33	23	42	51
President	3	4	10		
Vice-President				1	1
Not assigned	490	519	617	560	605
Total	**742**	**799**	**849**	**886**	**884**

([1]) The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

15. *Miscellaneous* — Expedited procedures (2009–13)

	2009		2010		2011		2012		2013	
	Granted	Not granted	Granted	Not granted	Granted	Not granted	Granted	Not granted	Granted	Not granted
Direct actions				1			1			
References for a preliminary ruling	1	3	4	8	2	7	1	4		14
Appeals		1				5		1		
Special forms of procedure		1								
Total	**1**	**5**	**4**	**9**	**2**	**12**	**2**	**5**		**14**

16. *Miscellaneous* — Urgent preliminary ruling procedure (2009–13)

	2009		2010		2011		2012		2013	
	Granted	Not granted	Granted	Not granted	Granted	Not granted	Granted	Not granted	Granted	Not granted
Police and judicial cooperation in criminal matters		1								
Area of freedom, security and justice	2		5	4	2	5	4	1	2	3
Total	**2**	**1**	**5**	**4**	**2**	**5**	**4**	**1**	**2**	**3**

17. *Miscellaneous* — Proceedings for interim measures (2013) ([1])

	New applications for interim measures	Appeals concerning interim measures or interventions	Outcome	
			Not granted	Granted
Access to documents		2	2	
State aid		1		
Competition		1	2	
Research and technological development and space	1		1	
Public health		1	1	
OVERALL TOTAL	**1**	**5**	**6**	

([1]) The figures given (net figures) represent the number of cases after joinder on the ground of similarity (a set of joined cases = one case).

18. *General trend in the work of the Court (1952–2013) — New cases and judgments*

Year	New cases [1]							Judgments/ Opinions [2]
	References for a preliminary ruling	Direct actions	Appeals	Appeals concerning interim measures or interventions	Requests for an opinion	Total	Applications for interim measures	
1953		4				4		
1954		10				10		2
1955		9				9	2	4
1956		11				11	2	6
1957		19				19	2	4
1958		43				43		10
1959		46			1	47	5	13
1960		22			1	23	2	18
1961	1	24			1	26	1	11
1962	5	30				35	2	20
1963	6	99				105	7	17
1964	6	49				55	4	31
1965	7	55				62	4	52
1966	1	30				31	2	24
1967	23	14				37		24
1968	9	24				33	1	27
1969	17	60				77	2	30
1970	32	47				79		64
1971	37	59				96	1	60
1972	40	42				82	2	61
1973	61	131				192	6	80
1974	39	63				102	8	63
1975	69	61			1	131	5	78
1976	75	51			1	127	6	88
1977	84	74				158	6	100
1978	123	146			1	270	7	97
1979	106	1 218				1 324	6	138
1980	99	180				279	14	132
1981	108	214				322	17	128
1982	129	217				346	16	185
1983	98	199				297	11	151
1984	129	183				312	17	165
1985	139	294				433	23	211
1986	91	238				329	23	174
1987	144	251				395	21	208
1988	179	193				372	17	238
1989	139	244				383	19	188

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Year	New cases (1)							Judgments/ Opinions (2)
	References for a preliminary ruling	Direct actions	Appeals	Appeals concerning interim measures or interventions	Requests for an opinion	Total	Applications for interim measures	
1990	141	221	15	1		378	12	193
1991	186	140	13	1	2	342	9	204
1992	162	251	24	1	2	440	5	210
1993	204	265	17			486	13	203
1994	203	125	12	1	3	344	4	188
1995	251	109	46	2		408	3	172
1996	256	132	25	3		416	4	193
1997	239	169	30	5		443	1	242
1998	264	147	66	4		481	2	254
1999	255	214	68	4		541	4	235
2000	224	197	66	13	2	502	4	273
2001	237	187	72	7		503	6	244
2002	216	204	46	4		470	1	269
2003	210	277	63	5	1	556	7	308
2004	249	219	52	6	1	527	3	375
2005	221	179	66	1		467	2	362
2006	251	201	80	3		535	1	351
2007	265	221	79	8		573	3	379
2008	288	210	77	8	1	584	3	333
2009	302	143	105	2	1	553	1	376
2010	385	136	97	6		624	3	370
2011	423	81	162	13		679	3	370
2012	404	73	136	3	1	617		357
2013	450	72	161	5	2	690	1	434
Total	**8 282**	**8 827**	**1 578**	**106**	**22**	**18 815**	**356**	**9 797**

(1) Gross figures; special forms of procedure are not included.

(2) Net figures.

19. *General trend in the work of the Court (1952–2013)* — New references for a preliminary ruling (by Member State per year)

	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	HR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	Others (1)	Total
1961																			1											1
1962																			5											5
1963																1			5											6
1964												2							4											6
1965					4					2									1											7
1966																			1											1
1967	5				11					3						1			3											23
1968	1				4					1		1							2											9
1969	4				11					1						1														17
1970	4				21					2		2							3											32
1971	1				18					6		5				1			6											37
1972	5				20					1		4							10											40
1973	8				37					4		5				1			6											61
1974	5				15					6		5							7									1		39
1975	7			1	26					15		14				1			4									1		69
1976	11				28		1			8		12							14									1		75
1977	16			1	30		2			14		7							9									5		84
1978	7			3	46		1			12		11							38									5		123
1979	13			1	33		2			18		19				1			11									8		106
1980	14			2	24		3			14		19							17									6		99
1981	12			1	41					17		11				4			17									5		108
1982	10			1	36					39		18							21									4		129
1983	9			4	36		2			15		7							19									6		98
1984	13			2	38		1			34		10							22									9		129
1985	13				40		2			45		11				6			14									8		139
1986	13			4	18		4	2	1	19		5				1			16									8		91
1987	15			5	32		2	17	1	36		5				3			19									9		144

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	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	HR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	Others (1)	Total
1988	30			4	34				1	38		28				2			26									16		179
1989	13			2	47		1	2	2	28		10				1			18			1						14		139
1990	17			5	34		4	2	6	21		25				4			9			2						12		141
1991	19			2	54		2	3	5	29		36				2			17			3						14		186
1992	16			3	62			1	5	15		22				1			18			1						18		162
1993	22			7	57		1	5	7	22		24				1			43			3						12		204
1994	19			4	44		2		13	36		46				1			13			1						24		203
1995	14			8	51		3	10	10	43		58				2			19	2		5					6	20		251
1996	30			4	66			4	6	24		70				2			10	6		6				3	4	21		256
1997	19			7	46		1	2	9	10		50				3			24	35		2				6	7	18		239
1998	12			7	49		3	5	55	16		39				2			21	16		7				2	6	24		264
1999	13			3	49		2	3	4	17		43				4			23	56		7				4	5	22		255
2000	15			3	47		2	3	5	12		50							12	31		8				5	4	26	1	224
2001	10			5	53		1	4	4	15		40				2			14	57		4				3	4	21		237
2002	18			8	59			7	3	8		37				4			12	31		3				7	5	14		216
2003	18			3	43		2	4	8	9		45				4			28	15		1				4	4	22		210
2004	24			4	50		1	18	8	21		48				1	2		28	12		1				4	5	22		249
2005	21		1	4	51		2	11	10	17		18				2	3		36	15	1	2				4	11	12		221
2006	17		3	3	77		1	14	17	24		34			1	1	4		20	12	2	3			1	5	2	10		251
2007	22	1	2	5	59	2	2	8	14	26		43			1		2		19	20	7	3	1		1	5	6	16		265
2008	24		1	6	71	2	1	9	17	12		39	1	3	3	4	6		34	25	4	1				4	7	14		288
2009	35	8	5	3	59	2		11	11	28		29	1	4	3		10	1	24	15	10	3	1	2	1	2	5	28	1	302
2010	37	9	3	10	71		4	6	22	33		49		3	2	9	6		24	15	8	10	17	1	5	6	6	29		385
2011	34	22	5	6	83	1	7	9	27	31		44		10	1	2	13		22	24	11	11	14	1	3	12	4	26		423
2012	28	15	7	8	68	5	6	1	16	15		65		5	2	8	18	1	44	23	6	14	13		9	3	8	16		404
2013	26	10	7	6	97	3	4	5	26	24		62	3	5	10		20		46	19	11	14	17	1	4	4	12	14		450
Total	**739**	**65**	**34**	**155**	**2 050**	**15**	**72**	**166**	**313**	**886**		**1 227**	**5**	**30**	**23**	**83**	**84**	**2**	**879**	**429**	**60**	**116**	**63**	**5**	**24**	**83**	**111**	**561**	**2**	**8 282**

(1) Case C-265/00 Campina Melkunie (Cour de justice Benelux/Benelux Gerechtshof).
Case C-196/09 Miles and Others (Complaints Board of the European Schools).

20. *General trend in the work of the Court (1952–2013) —* **New references for a preliminary ruling** (by Member State and by court or tribunal)

			Total
Belgium	Cour constitutionnelle	28	
	Cour de cassation	90	
	Conseil d'État	68	
	Other courts or tribunals	553	739
Bulgaria	Върховен касационен съд	1	
	Върховен административен съд	10	
	Other courts or tribunals	54	65
Czech Republic	Ústavní soud		
	Nejvyšší soud	2	
	Nejvyšší správní soud	16	
	Other courts or tribunals	16	34
Denmark	Højesteret	33	
	Other courts or tribunals	122	155
Germany	Bundesverfassungsgericht		
	Bundesgerichtshof	184	
	Bundesverwaltungsgericht	109	
	Bundesfinanzhof	295	
	Bundesarbeitsgericht	26	
	Bundessozialgericht	75	
	Other courts or tribunals	1 361	2 050
Estonia	Riigikohus	5	
	Other courts or tribunals	10	15
Ireland	Supreme Court	23	
	High Court	23	
	Other courts or tribunals	26	72
Greece	Άρειος Πάγος	10	
	Συμβούλιο της Επικρατείας	51	
	Other courts or tribunals	105	166
Spain	Tribunal Constitucional	1	
	Tribunal Supremo	49	
	Other courts or tribunals	263	313
France	Conseil constitutionnel	1	
	Cour de cassation	107	
	Conseil d'État	83	
	Other courts or tribunals	695	886
Croatia	Ustavni sud		
	Vrhovni sud		
	Visoki upravni sud		
	Visoki prekršajni sud		

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			Total
Italy	Corte Costituzionale	2	
	Corte suprema di Cassazione	119	
	Consiglio di Stato	101	
	Other courts or tribunals	1 005	1 227
Cyprus	Ανώτατο Δικαστήριο	4	
	Other courts or tribunals	1	5
Latvia	Augstākā tiesa	21	
	Satversmes tiesa		
	Other courts or tribunals	9	30
Lithuania	Konstitucinis Teismas	1	
	Aukščiausiasis Teismas	9	
	Vyriausiasis administracinis teismas	7	
	Other courts or tribunals	6	23
Luxembourg	Cour supérieure de justice	10	
	Cour de cassation	12	
	Cour administrative	10	
	Other courts or tribunals	51	83
Hungary	Kúria	15	
	Fővárosi Ítélőtábla	4	
	Szegedi Ítélötáblá	2	
	Other courts or tribunals	63	84
Malta	Constitutional Court		
	Qorti ta' l- Appel		
	Other courts or tribunals	2	2
Netherlands	Hoge Raad	239	
	Raad van State	95	
	Centrale Raad van Beroep	58	
	College van Beroep voor het Bedrijfsleven	148	
	Tariefcommissie	35	
	Other courts or tribunals	304	879
Austria	Verfassungsgerichtshof	5	
	Oberster Gerichtshof	98	
	Verwaltungsgerichtshof	76	
	Other courts or tribunals	250	429
Poland	Trybunał Konstytucyjny		
	Sąd Najwyższy	6	
	Naczelny Sąd Administracyjny	24	
	Other courts or tribunals	30	60
Portugal	Supremo Tribunal de Justiça	3	
	Supremo Tribunal Administrativo	51	
	Other courts or tribunals	62	116

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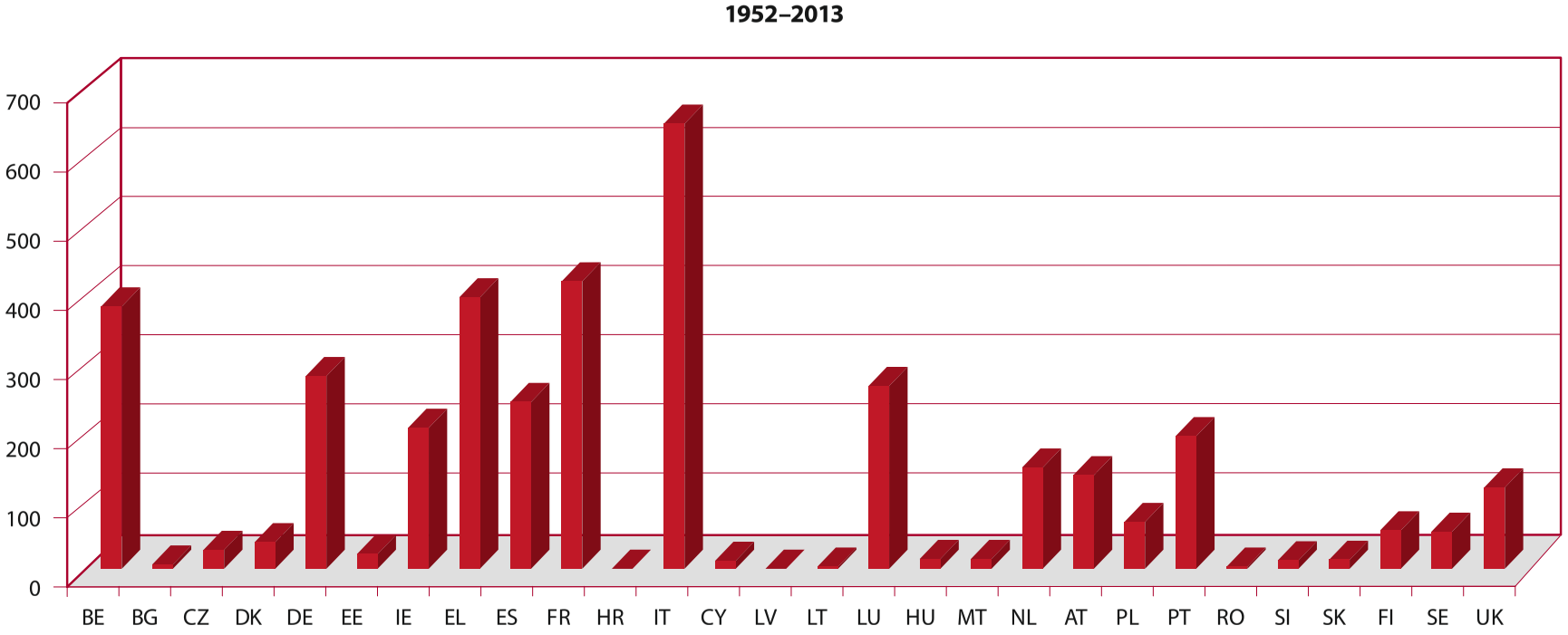
			Total
Romania	Înalta Curte de Casație și Justiție	6	
	Curtea de Apel	31	
	Other courts or tribunals	26	63
Slovenia	Ustavno sodišče		
	Vrhovno sodišče	2	
	Other courts or tribunals	3	5
Slovakia	Ústavný Súd		
	Najvyšší súd	9	
	Other courts or tribunals	15	24
Finland	Korkein oikeus	13	
	Korkein hallinto-oikeus	42	
	Työtuomioistuin	3	
	Other courts or tribunals	25	83
Sweden	Högsta Domstolen	17	
	Högsta förvaltningsdomstolen	5	
	Marknadsdomstolen	5	
	Arbetsdomstolen	3	
	Other courts or tribunals	81	111
United Kingdom	House of Lords	40	
	Supreme Court	5	
	Court of Appeal	73	
	Other courts or tribunals	443	561
Others	Cour de justice Benelux/Benelux Gerechtshof ([1])	1	
	Complaints Board of the European Schools ([2])	1	2
Total			**8 282**

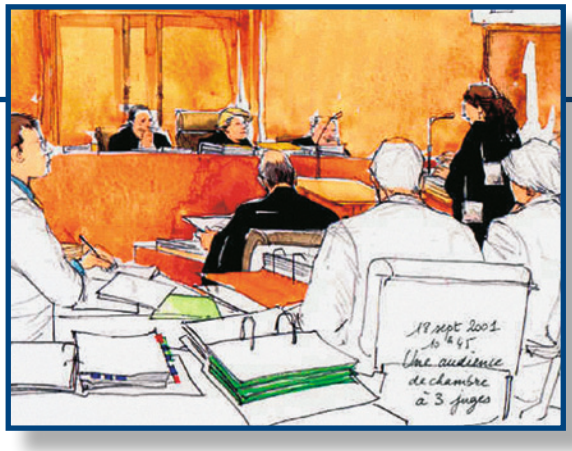
([1]) Case C-265/00 Campina Melkunie.

([2]) Case C-196/09 Miles and Others.

21. *General trend in the work of the Court (1952–2013) —* New actions for failure of a Member State to fulfil its obligations



	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	HR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	Total
1952-2013	376	6	27	38	276	21	202	389	239	412		638	11		3	262	14	14	145	134	67	190	3	12	13	55	53	134	**3 734**



Chapter II

The General Court

A — Proceedings of the General Court in 2013

By Mr Marc Jaeger, President of the General Court

In 2013 the Republic of Croatia acceded to the European Union and the General Court welcomed Ms V. Tomljenović as its first Croatian member on 4 July 2013. This appointment was preceded by that of Mr C. Wetter, who entered into office on 18 March 2013, replacing Mr N. Wahl who had been appointed as an Advocate General at the Court of Justice on 28 November 2012. In addition, on 16 September 2013, following the departure of Mr J. Azizi (Judge at the General Court from 1995), of Mr V. Vadapalas (Judge at the General Court from 2004), of Mr S. Soldevila Fragoso and Mr L. Truchot (both Judge at the General Court from 2007) and of Mr K. O'Higgins (Judge at the General Court from 2008), Mr V. Kreuschitz, Mr E. Bieliūnas, Mr I. Ulloa Rubio, Mr S. Gervasoni and Mr A.M. Collins were appointed as their respective successors. Finally, following the resignation of Ms K. Jürimäe (Judge at the General Court from 2004) and her appointment as a Judge at the Court of Justice, Mr L. Madise entered into office at the General Court on 23 October 2013.

This vast renewal (accounting for a quarter of the membership) illustrates, once again, the acute instability in the composition of the General Court, which has had to face the challenge of integrating eight new members into a 28-member Court. Regenerative though this may be, it cannot but have an effect on the Court's activity in 2014.

As a year in which the triennial renewal took place, 2013 also saw the election of the President, but also, for the first time, of a Vice-President, Mr H. Kanninen, as well as the election of the Presidents of Chamber Ms M.E. Martins Ribeiro, Mr S. Papasavvas, Mr M. Prek, Mr A. Dittrich, Mr S. Frimodt Nielsen, Mr M. van der Woude, Mr D. Gratsias and Mr G. Berardis. The opportunity was taken to create a ninth chamber, with the aim of further improving the Court's performance.

From a statistical point of view, 2013 was very revealing. On the one hand, the Court demonstrated, for the third year in succession, its enhanced capacity to deal with cases, resulting from the internal reforms implemented and the permanent optimisation of its working methods. In 2013, 702 cases could therefore be completed (notwithstanding the severe organisational constraints linked to the triennial renewal), bringing the average annual number of cases completed over the past three years to approximately 700. By way of comparison, that average was roughly 480 cases in 2008. In the space of five years, efficiency gains have thus enabled the Court's productivity to increase by more than 45%. On the other hand, cases brought reached an all-time high, with 790 new cases, that is to say, a jump of nearly 30% compared with 2012. The overall upward trend in the number of cases brought before the Court, in particular in the field of intellectual property, is thereby confirmed with striking clarity. This has resulted in a significant increase in the number of cases pending, which has passed the level of 1 300 cases (1 325). Finally, while the duration of proceedings overall (that is to say, including cases decided by order) saw a short-term increase of roughly 10% (taking the duration to 26.9 months), it should be noted that, so far as concerns cases decided by judgment, a reduction of roughly one month compared with 2012 may be observed, with an average duration of 30.6 months.

It is apparent upon examination of those various factors that, whilst the action taken by the Court to improve its efficiency has borne fruit, the Court has control neither over the stability of its composition nor over its workload. More than ever, it is incumbent upon the competent European Union authorities to realise that it is absolutely essential to provide the Court with the means to enable it to perform its fundamental task, namely ensuring the right to effective judicial protection,

a right which entails for the European Union judicature requirements both as to quality and intensity of judicial review and of speed.

The recast of the Rules of Procedure of the General Court, which will be submitted to the Council of the European Union at the beginning of 2014, will enable modernisation of its procedural arrangements and fresh efficiency gains. It is nevertheless clear that this cannot be a response capable of reversing the marked divergence between the Court's capacity to give judgment and the large number of cases brought before it.

The following pages are intended to provide a, necessarily selective, overview of the developments in case-law in 2013, and illustrate the importance of the function as European Court with jurisdiction over ordinary direct actions, both in the economic field and in areas such as public health, the common foreign and security policy and the environment.

I. Proceedings concerning the legality of measures

Admissibility of actions brought under Article 263 TFEU

1. Concept of a measure against which an action may be brought

In Case T-556/11 *European Dynamics Luxembourg and Others* v *OHIM* (order of 12 September 2013), the Court had occasion to rule on whether a decision of the President of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) awarding the contract at issue to other tenderers, adopted in an open tendering procedure, constituted a measure against which an action for annulment could be brought, which OHIM disputed.

The Court observed, first of all, that the second sentence of the first paragraph of Article 263 TFEU is a new provision of primary law under which the Courts of the European Union also review the legality of acts of bodies, offices or agencies of the European Union intended to produce legal effects vis-à-vis third parties. That provision is intended to make up for a serious shortcoming in the first paragraph of the former Article 230 EC by providing expressly that, in addition to acts of the institutions of the European Union as defined in Article 13 TFEU, the legally binding acts of bodies, offices or agencies of the European Union are also to be subject to judicial review by the Courts of the European Union. It is clear that, by virtue of Article 115(1) of Regulation (EC) No 297/2009, ([1]) OHIM is a body of the European Union for the purposes of the second sentence of the first paragraph of Article 263 TFEU. Consequently, the General Court has jurisdiction to rule on actions brought against acts of OHIM, including acts of its President in the field of public procurement, which are intended to produce legal effects vis-à-vis third parties.

The Court then pointed out that Article 122(1) of Regulation No 207/2009 provides that '[t]he Commission shall check the legality of those acts of the President of [OHIM] in respect of which Community law does not provide for any check of legality by another body'. The scope of that provision is thus expressly contingent on there being no check on the legality of acts of the President of OHIM by another body. The Court held, however, that it must itself be regarded as 'another body', as it reviews the legality of acts. When Article 263 TFEU entered into force, the objective which consisted in having a decision of the European Commission in order to make acts adopted by the bodies or agencies of the European Union at least indirectly reviewable before the Courts of the

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

European Union lost its purpose and cannot serve as a basis for alleging that the procedure under Article 122 of Regulation No 207/2009 is a mandatory step before proceedings may be brought before the Courts of the European Union.

2. Concept of a regulatory act not entailing implementing measures

In 2013 the Court provided important clarification concerning the concept of a regulatory act not entailing implementing measures, within the meaning of the fourth paragraph of Article 263 TFEU.

In the order of 5 February 2013 in Case T-551/11 *BSI* v *Council*, concerning an application for annulment of Implementing Regulation (EU) No 723/11 ([2]) extending the antidumping duty imposed by Regulation (EC) No 91/2009, ([3]) the Court, after first establishing that the contested regulation is a regulatory act within the meaning of the fourth paragraph of Article 263 TFEU, observed that, when analysing the concept of an act not entailing implementing measures, it is necessary to take into account the objective pursued by the fourth paragraph of Article 263 TFEU, which is to enable a natural or legal person to bring an action against a regulatory act which is of direct concern to that person and does not entail implementing measures, thus avoiding a situation in which such a person would have to break the law in order to have access to justice.

In this case, the Court held that, since in any event the decisions received by the applicant from the competent national customs authorities had been adopted in application of the contested regulation, the regulation entailed implementing measures within the meaning of the fourth paragraph of Article 263 TFEU. That conclusion was not called into question by the objective pursued by that provision, since the applicant could, in principle, challenge the national measures implementing the contested regulation and, in that context, plead the illegality of the regulation before the national courts — which, before determining the action, could have recourse to Article 267 TFEU — without first having to infringe the contested regulation. The same applied to the applicant's argument that the protection of his individual rights was undermined since a reference for a preliminary ruling, as provided for in Article 267 TFEU, would not provide him with full and effective judicial protection. According to consistent case-law, the Courts of the European Union would exceed their jurisdiction if they were to interpret the conditions under which an individual can bring an action against a regulation in a way that resulted in those conditions, expressly laid down in the Treaty, being disregarded, even in the light of the right to effective judicial protection.

The Court was also led to interpret that concept in Case T-93/10 *Bilbaína de Alquitranes and Others* v *ECHA* (judgment of 7 March 2013, under appeal), an action for annulment of a decision of the European Chemicals Agency (ECHA) identifying 'pitch, coal tar, high temperature' as a substance of very high concern meeting the criteria set out in Article 57(a), (d) and (e) of Regulation (EC) No 1907/2006. ([4])

([2]) Council Implementing Regulation (EU) No 723/2011 of 18 July 2011 extending the definitive anti-dumping duty imposed by Regulation (EC) No 91/2009 on imports of certain iron or steel fasteners originating in the People's Republic of China to imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not (OJ 2011 L 194, p. 6).

([3]) Council Regulation (EC) No 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China (OJ 2009 L 29, p. 1).

([4]) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1).

The Court observed that the concept of a regulatory act within the meaning of the fourth paragraph of Article 263 TFEU must be understood as covering all acts of general application apart from legislative acts. That is the position of a decision such as that in the case in point. Such a decision is of general application in that it applies to situations which have been determined and has legal effects as regards a category of persons viewed in a general and abstract manner, that is to say, with regard to every natural or legal person falling within the scope of Article 31(9)(a) and Article 34(a) of Regulation No 1907/2006. Moreover, such a decision does not constitute a legislative act since it is not adopted in accordance with either the ordinary legislative procedure or the special legislative procedure within the meaning of Article 289(1) to (3) TFEU. Last, the contested act, adopted on the basis of Article 59 of Regulation No 1907/2006, entails no implementing measure, since the identification of a substance as of very high concern gives rise to information obligations without any other measures being necessary.

In addition, the Court observed that the first paragraph of Article 263 TFEU expressly mentions review of the legality of acts of bodies, offices or agencies of the European Union intended to produce legal effects vis-à-vis third parties. The authors of the Treaty thus revealed their intention generally to make the acts of the ECHA too, as an office or agency of the European Union, subject to review by the Courts of the European Union. Furthermore, the task of the ECHA under Article 75(1) of Regulation No 1907/2006, which is to manage and in some cases to implement the technical, scientific and administrative aspects of that regulation and to ensure consistency in the European Union, does not preclude the power to adopt a regulatory act.

Last, in Case T-400/11 *Altadis* v *Commission* (order of 9 September 2013) the Court heard an application for annulment in part of a Commission decision declaring an aid scheme allowing the tax amortisation of financial goodwill for foreign shareholding acquisitions to be incompatible with the internal market. The Commission claimed that a number of national implementing measures had to be adopted on the basis of the contested decision, namely, in particular, the abolition of the scheme at issue by the national legislature, the recovery by the tax authorities of the aid unlawfully granted under the scheme at issue from the beneficiaries thereof and the agreement or refusal by those authorities to grant the tax advantage at issue.

The Court observed that, under the fourth paragraph of Article 288 TFEU, a decision, such as that in the present case, is binding in its entirety only on those to whom it is addressed. Consequently, the obligation to refuse to grant the advantage of the scheme at issue, to annul the tax advantages conferred and to recover any aid paid under that scheme were legal consequences of the contested decision that were binding on the Member State to which the decision was addressed. The contested decision did not, however, produce such legal effects vis-à-vis the beneficiaries of the scheme at issue. Article 1(1) of the contested decision did not define the consequences of the incompatibility of the scheme at issue with the internal market with regard to each of the beneficiaries of the scheme, because that declaration of incompatibility did not in itself entail any prohibition or obligation for those beneficiaries. Furthermore, the effect of the incompatibility was not necessarily the same for each of the beneficiaries of the scheme at issue. The consequences of the incompatibility therefore had to be individually itemised by a legal act emanating from the competent national authorities, such as a tax notice, which constituted a measure implementing Article 1(1) of the contested decision within the meaning of the fourth paragraph of Article 263 TFEU. In that context, it was immaterial whether the Member State concerned had no discretion in implementing the contested decision, since, while the lack of discretion was a criterion requiring to be examined before it could be determined whether the condition that the act be of direct concern to the applicant was satisfied, the existence of an act not entailing implementing measures constituted a different condition from the requirement that the act be of direct concern to the applicant.

Competition rules applicable to undertakings

1. General issues

a) Complaint — Re-examination

In Joined Cases T-104/07 and T-339/08 *BVGD* v *Commission* (judgment of 11 July 2013) the Court ruled on the possibility for the Commission of initiating a supplementary procedure following a decision rejecting a complaint, in order to re-examine the situation forming the subject matter of that decision. These cases originated in a complaint lodged with the Commission by the Belgische Vereniging van handelaars in- en uitvoerders geslepen diamant (BVGD), the Belgian Association of Dealers, Importers and Exporters of Polished Diamonds, against a company operating in that sector. The BVGD complained that the agreements concluded by that company with its customers concerning the establishment of a system for the supply of rough diamonds were contrary to Articles 101 TFEU and 102 TFEU. After rejecting that complaint on the ground that there was no Community interest in investigating it further, the Commission, in the light of the judgment of 11 July 2007 in *Alrosa* v *Commission*, ([5]) delivered in the meantime by the General Court, decided to re-examine it and to that end initiated a supplementary procedure.

Called upon to examine the applicant's argument that the Commission is entitled to re-examine decisions only where they impose a burden or a charge, which was not the case in this instance, the Court observed that the general principle of law, based on the laws of the Member States, according to which authorities are able to re-examine and if need be withdraw an administrative measure of an individual nature has been recognised since the first judgments of the Court of Justice. The withdrawal of an unlawful administrative act which is favourable or which has created individual rights is thus permissible, provided that the institution which adopted the act complies with the conditions relating to reasonable time limits and the legitimate expectations of beneficiaries of the act, who have been entitled to rely on its lawfulness.

Nor could the Commission be criticised for not having withdrawn the initial decision rejecting the complaint in order then to adopt a fresh rejection decision, since such a withdrawal would have been contrary to the case-law on the general principle relating to the withdrawal of administrative measures. Even when the measure in question does not confer individual rights, as in the case of a rejection decision, the Courts of the European Union, relying in particular on the principles of sound administration and legal certainty, limit the possibilities of withdrawal to unlawful measures. As only one of the bases for the rejection decision had been declared unlawful and then annulled by the judgment in *Alrosa* v *Commission*, the supplementary procedure could relate only to that basis and the rejection decision could have been withdrawn only if the Commission had inferred from the absence of commitments on the part of the companies which had concluded the agreement at issue that it needed to pursue the investigation in relation to that agreement, the illegality at issue thus affecting the decision to reject the complaint. In proceeding in the manner in which it did, the Commission did not confuse elements relating to the withdrawal procedure with the substance of the case characterised by the lack of sufficient Community interest, but simply examined whether the condition necessary for withdrawing a measure, namely its unlawfulness, was satisfied in the present case.

([5]) Case T-170/06 [2007] ECR II-2601.

b) Inspections — Lawfulness of the system of inspections (Article 20(4) of Regulation (EC) No 1/2003)

Joined Cases T-289/11, T-290/11 and T-521/11 *Deutsche Bahn and Others* v *Commission* (judgment of 6 September 2013, under appeal) gave the Court the opportunity to appraise the legality of the system of inspections put in place by Article 20(4) of Regulation (EC) No 1/2003, ([6]) in the context of actions brought against a number of Commission decisions concerning the rail transport sector ordering the applicants to submit to inspections. The applicants claimed that the decisions at issue, in that they had been adopted in the absence of a prior authorisation by a court, did not observe the safeguards prescribed by the principle of the inviolability of their private premises. In that context, they also raised a plea of illegality concerning, in particular, Article 20(4) of Regulation No 1/2003.

In that regard, the Court observed, first of all, that the exercise of the powers of inspection conferred on the Commission by that provision vis-à-vis an undertaking constitutes a clear interference with that undertaking's right to respect for its privacy, its private premises and its correspondence. However, the system put in place by Regulation No 1/2003, in particular Article 20(4) thereof, offers appropriate and sufficient safeguards in such a way as to restrict those powers sufficiently, by means of five categories of safeguards capable of making up for the absence of a prior court warrant. The Court considered that the way in which the system put in place by Regulation No 1/2003 was implemented in the present case allowed all the five safeguards referred to above to be ensured. In particular, the inspection decisions included the elements provided for in Article 20(4) of Regulation No 1/2003.

First, the inspection decision must identify the subject matter and the purpose of the inspection, state the date on which it is to begin, indicate the penalties set out in Articles 23 and 24 of Regulation No 1/2003 and refer to the possibility of bringing an action against that decision before the Courts of the European Union. The statement of reasons must also state the suppositions and presumptions that the Commission wishes to verify. Second, documents of a non-business nature, that is to say, those not relating to the activities of the undertaking on the market, are excluded from the scope of the Commission's investigatory powers and undertakings subject to an inspection ordered pursuant to an inspection decision may receive legal assistance or even preserve the confidentiality of lawyer-client correspondence. Furthermore, the Commission cannot compel the undertaking concerned to provide answers which might involve an admission on its part of the existence of an infringement which it is incumbent upon the Commission to prove. That principle also applies to questions that the inspectors might ask in the course of an inspection carried out under Article 20(4) of Regulation No 1/2003. Third, the Commission does not have excessive coercive measures at its disposal which would invalidate the possibility, in practice, of opposing the inspection under Article 20(6) of Regulation No 1/2003. Thus, Commission officials cannot obtain access to premises or furniture by force or oblige the staff of the undertaking to give them such access, or carry out searches without the permission of the management of the undertaking. Fourth, the Commission is under an obligation to seek assistance from the national authorities of the Member State on whose territory the inspection is to be carried out. That procedure triggers the application of the review mechanisms specific to the Member State concerned, which may be of a judicial nature. Fifth, the limits on the interference constituted by an inspection are also founded on the *ex post facto* review, by the Courts of the European Union, of the legality of the decision ordering the inspection, the existence of such review being particularly important as it may counterbalance the absence of a prior court warrant.

([6]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 TFEU] and [102 TFEU] (OJ 2003 L 1, p. 1).

c) Judicial review — Unlimited jurisdiction

In Case T-462/07 *Galp Energía España and Others* v *Commission* (judgment of 16 September 2013, under appeal), the Court explained that the impossibility of taking into consideration in the context of the review of legality an element not established in the contested decision, such as, in this instance, the statement of the sales manager of Petrogal Española, SA (which became Galp Energía España, SA), annexed to the application, did not apply in the context of the exercise of unlimited jurisdiction.

That power authorises the Court to vary the contested decision by taking into account all the factual circumstances relied upon by the parties. It follows that the fact that it is not possible for the Commission to obtain a substitution of grounds in the framework of the review of legality did not prevent the Court from taking account, in the context of the exercise of its unlimited jurisdiction, of the statement at issue, which made it possible to establish the awareness that the applicants had of one of the aspects of the alleged infringement, since all the material in the case-file had been the subject of an exchange of arguments between the parties.

That is particularly so because the assessment of the appropriateness of the amount of fines may justify the production and taking into account of additional information which is not as such required, by virtue of the duty to state reasons provided for in Article 296 TFEU, to be set out in the decision. That is true, in particular, of information relating to the attribution of liability to an undertaking for certain unlawful conduct in respect of a given period. Moreover, it cannot be ruled out that additional information might concern the finding of the infringement. Unlimited jurisdiction, which enables the Court to take account of such information, may be exercised even if the complaint put forward relates to the finding of the infringement, since such a complaint is liable, if well founded, to change the amount of the fine. Moreover, the exercise by the Court of its unlimited jurisdiction, including where the finding of the infringement is at issue, may enable it to reduce the amount of a fine even though annulment, even partial, of the contested decision would not be possible. That is the case, for example, where, although some of the material on which the Commission relied to find that the applicant participated in the infringement is not established, that finding is not of such a nature as to justify the annulment of the contested decision, but only the reduction of the amount of the fine, in order to take account of the less active or less regular nature of the applicant's participation.

d) Reasonable time — Judicial procedure

In Case T-497/07 *CEPSA* v *Commission* (judgment of 16 September 2013, under appeal), the Court held that a complaint alleging that duration of the judicial procedure is unreasonable is inadmissible when submitted in the same action as that whose procedure is claimed to breach the reasonable time principle. If that were not the case, the bench hearing the action would, when examining that complaint, be required to determine whether its own conduct was wrongful or unlawful, which could cause the applicant to have legitimate doubts as to its objective impartiality. The Court observed, moreover, that in the case in point the inadmissibility of the complaint in question did not adversely affect the applicant's right to a court, since it would have been able to rely on such a complaint in an appeal against the judgment, or indeed in an action for non-contractual liability on the basis of Articles 268 TFEU and 340 TFEU.

2. Developments in the area of Article 101 TFEU

a) Proof of the existence of a concerted practice

Case T-401/08 *Säveltäjäin Tekijänoikeustoimisto Teosto* v *Commission* (judgment of 12 April 2013) ([7]) enabled the Court to define further the scope of the evidential requirements which the Commission must comply with in order to establish the existence of a concerted practice.

In that regard, the Court recalled that, where the Commission's reasoning leading to the finding of the existence of a concerted practice is based on the supposition that the facts established in its decision cannot be explained other than by concertation between the undertakings, it is sufficient for the undertakings concerned to prove circumstances which cast the facts established by the Commission in a different light and thus allow another explanation of the facts to be substituted for the one adopted by the Commission. That principle does not apply, however, where proof of the concertation between the undertakings does not result from the mere finding of parallel conduct on the market, but from documents showing that the practices were the result of concertation. In those circumstances, the burden is on the undertakings concerned not merely to submit an alleged alternative explanation for the facts found by the Commission but to challenge the existence of those facts established on the basis of the documents produced by the Commission.

In the light of those considerations, the Court considered that, in this case, before assessing the existence of explanations for the parallel conduct other than the explanation relating to the existence of concertation, it was necessary to examine whether the Commission had established the existence of the infringement in which the applicant was alleged to have participated, relating to the national territorial limitations in the agreements at issue, by evidence other than the mere finding of parallel conduct. The Court stated that it was necessary to examine that issue before examining whether or not the explanations other than the one relating to the existence of concertation were well founded, since, if it should conclude that such evidence had been provided in the contested decision, those explanations, even if they were plausible, would not invalidate the finding of the infringement.

As regards the evidential value of the elements put forward by the Commission to prove the existence of the concerted practice without relying on the parallel conduct of the collecting societies that was put in issue, the Court observed, in particular, that, so far as concerns the discussions held between those societies in the context of the activities managed by the International Confederation of Societies of Authors and Composers (CISAC), the Commission had itself stated that the contested decision did not prohibit the system of reciprocal representation between the collecting societies or any form of territorial delineation of the mandates which they granted to each other. Nor did the Commission criticise the collecting societies for a degree of cooperation in the context of the activities managed by CISAC. Rather, the Commission criticised the coordinated nature of the approach adopted by all of the collecting societies with regard to territorial limitations. Therefore, the mere fact that collecting societies met in the context of the activities managed by CISAC and that there was a certain amount of cooperation between them did not constitute, as such, evidence of prohibited concertation. Where the context in which meetings between undertakings accused of infringing competition law take place shows that those meetings were necessary to deal collectively with issues wholly unrelated to such infringements of competition law, the Commission

([7]) This case was one of a group of 22 cases relating to the conditions of the management of public performing rights of musical works and to the grant of licences by collecting societies. The contested decision was annulled with respect to the applicants in 21 of the cases.

cannot presume that the object of those meetings was to collude on anti-competitive practices. In that respect, the Court considered that the Commission had not provided any evidence that the meetings organised by CISAC in which the applicant had participated had concerned the restriction of competition relating to the national territorial limitations.

As regards the plausibility of the explanations for the parallel conduct of the collecting societies other than the explanation relating to the existence of concertation, the Court held, in particular, that the Commission could not refute the explanation of the parallel conduct of those societies put forward by the applicant, namely that such conduct was justified by the need to combat the unlawful use of musical works, by merely stating that there were technical solutions which allowed remote monitoring as regards the forms of exploitation which the contested decision concerned. In that regard, where the Commission uses certain examples to render the applicant's argument implausible, it has the burden of showing why those examples are relevant. Moreover, the Commission cannot criticise that undertaking for failing to provide further specifics, insamuch as it is the Commission which must prove an infringement. Therefore, if the Commission, at the administrative stage, considers that the applicant has not sufficiently substantiated its explanation, it must continue the examination of the case or find that the undertaking concerned has not been capable of providing the necessary information. The Court thus held that it was not apparent from the contested decision that the Commission's insufficient analysis was the result of the fact that it had been unable to obtain from the collecting societies or from CISAC, of which those societies are members, the evidence which it needed in order to examine whether there were plausible explanations for the parallel conduct of the collecting societies.

b) Participation in a single infringement

i) Distortion of competition

In Case T-380/10 *Wabco Europe and Others* v *Commission* (judgment of 16 September 2013, not yet published), which concerned cartels on the Belgian, German, French, Italian, Netherlands and Austrian markets for bathroom fittings and fixtures, the Court rejected the arguments raised by the Commission at the hearing that it was not obliged to establish that a distortion of competition resulted from every meeting of the association since ceramics were among the product sub-groups covered by the single infringement. Such a characterisation did not relieve the Commission of its obligation to establish a distortion of competition in relation to each of the three product sub-groups covered by the infringement. Although there is a single infringement in the case of agreements or contracts which, while they relate to distinct goods, services or territories, form part of an overall plan knowingly implemented by undertakings with a view to achieving a single anti-competitive objective, a finding that there is such an infringement does not remove the precondition that there be a distortion of competition affecting each of the product markets covered by that single infringement.

ii) Concept of a repeated infringement

In Joined Cases T-147/09 and T-148/09 *Trelleborg Industrie and Trelleborg* v *Commission* (judgment of 17 May 2013), the Court had the opportunity, after rejecting the classification of the infringement at issue as a single and continuous infringement, to adjudicate on the merits of classification of the infringement as a single and repeated infringement.

In that regard, the Court pointed out that the concept of a repeated infringement is different from that of a continuing infringement and that that distinction is, moreover, borne out by the use of the conjunction 'or' in Article 25(2) of Regulation No 1/2003. Thus, if an undertaking's participation

in the infringement may be regarded as having been interrupted and the undertaking may be regarded as having participated in the infringement before and after the interruption, that infringement may be categorised as repeated if, as in the case of a continuing infringement, there is a single objective which it pursued both before and after the interruption, a circumstance which may be deduced from the identical nature of the objectives of the practices at issue, of the goods concerned, of the undertakings which participated in the infringement, of the detailed rules for its implementation, of the natural persons involved on behalf of the undertakings and, last, of the geographic scope of those practices. The infringement is then single and repeated and, although the Commission may impose a fine in respect of the whole of the period of the infringement, it may not do so for the period during which the infringement was interrupted. Consequently, separate periods of infringement in which the same undertaking takes part, but in respect of which a common objective cannot be established, cannot be categorised as a single infringement, whether continuing or repeated, and constitute separate infringements. In the light of those considerations, the Court concluded that, in this case, the Commission's incorrect categorisation of the infringement as a continuous infringement did not prevent the Court from re-categorising it as a repeated infringement in the light of the facts in the administrative file which formed the basis of the contested decision.

c) Calculation of the fine

i) Duration of the infringement

In Case T-566/08 *Total Raffinage Marketing* v *Commission* (judgment of 13 September 2013, under appeal), which concerned cartels on the candle waxes market, the Court observed that, in application of point 24 of the 2006 Guidelines on the method of setting fines, ([8]) the Commission, when determining the duration of the applicant's participation in the infringement, had counted its participation of 7 months and 28 days as participation for a full year and that it had done likewise in respect of two other companies which had participated in the cartel whose periods of participation in the infringement were 11 months and 20 days in one case and 11 months and 27 days in the other case. This amounted to treating different situations in the same way. Since the sole origin of that identical treatment was the calculation method provided for in point 24 of the 2006 Guidelines on the method of setting fines, such treatment could not be regarded as objectively justified. As the aim of that provision is to ensure that the amount of the fine is proportionate to the duration of an undertaking's participation in the infringement, it cannot constitute objective justification for unequal treatment, in so far as the result of its strict application in the case in point was the establishment of a manifestly disproportionate duration both by comparison with the actual duration of the applicant's participation in the infringement and in the light of the treatment of other participants.

ii) Cooperation

— Right not to incriminate oneself

In *Galp Energia España and Others v Commission* the Court had the opportunity to state that, while the Commission cannot compel an undertaking to provide answers which might involve an admission on its part of the existence of an infringement, evidence of which it is incumbent upon the Commission to prove, the risk that the undertaking concerned might not benefit fully from the

([8]) Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p. 2).

2002 Leniency Notice ([9]) — a risk which encourages it to cooperate sincerely with the Commission, including by the submission of evidence or statements running counter to its interests — cannot be placed on the same footing as a coercive measure requiring the undertaking to admit to the existence of an infringement. The application of the 2002 Leniency Notice stems originally from an initiative by the undertaking in question which seeks to benefit from the provisions of that notice and not from unilateral action taken by the Commission which is imposed on that undertaking. Accordingly, in the absence of any coercive measure requiring the undertaking to incriminate itself, statements by that undertaking admitting the existence of an infringement are not devoid of probative value.

— Conduct of the cooperating undertaking

In Case T-412/10 *Roca* v *Commission* (judgment of 16 September 2013, under appeal), the Commission claimed that, by its conduct subsequent to its application for a reduction of the amount of the fine, the applicant called into question the significant added value of the information which it had supplied, on the ground, in particular, that it did not demonstrate a genuine spirit of cooperation during the administrative procedure and itself diminished the usefulness of that information by casting doubt on its credibility.

In that regard, first, the Court observed that the contested decision did not show that any challenge was made to the information provided by the applicant in the context of its application for a reduction of the amount of the fine in respect of the relevant market, in this instance the French market. Second, it pointed out that, in so far as the statements on which the Commission relied to assert that the applicant had challenged the significant value of the information which it had provided related to unlawful practices in respect of taps and fittings on that market, those statements did not call into question the added value of that information, which related solely to the infringement in respect of ceramics in France. As none of the matters put forward by the Commission in the contested decision or developed in the judicial proceedings supported the conclusion that the applicant discredited the information that it had supplied, the Court held that the Commission had been wrong to take the view that the applicant had, by its conduct subsequent to its application for a reduction of its fine, diminished the value of the evidence that it originally submitted.

d) Imputation of the unlawful conduct — Joint and several liability

Case T-408/10 *Roca Sanitario* v *Commission* (judgment of 16 September 2013, under appeal) enabled the Court to observe that, when a parent company's liability is based solely on its subsidiary's participation in a cartel, the parent company's liability is regarded as purely derivative, secondary and dependent on its subsidiary and cannot therefore exceed the liability of its subsidiary. In those circumstances, the Court may apply to the parent company, in the action brought by the latter and to the extent that it has sought a form of order to that effect, any reduction of the fine which might be granted to its subsidiary in an action brought by the subsidiary. In doing so, the Court does not rule *ultra petita*, even if the parent company has failed to plead an error that the Commission allegedly made when calculating the amount of the fine.

([9]) Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).

State aid

1. Admissibility

In 2013 the Court provided clarification relating to the concepts of a measure open to challenge, of *locus standi* and of individual concern in State aid matters.

The Court had the opportunity to address the first two concepts inter alia in Case T-182/10 *Aiscat* v *Commission* (judgment of 15 January 2013).

The Court held that a decision by the Commission to take no action on a complaint, adopted in the form of a letter from a Directorate-General, constitutes an act against which a challenge may be brought, for the purposes of Article 263 TFEU. Examination of a complaint in State aid matters necessarily entails the opening of the preliminary examination stage, which the Commission is required to close by adopting a decision under Article 4 of Regulation (EC) No 659/1999, ([10]) and the implied refusal to open the formal investigation procedure cannot be classified as a mere provisional measure. In addition, in order to determine whether a measure taken by the Commission constitutes such a decision, it is necessary to take into account only the substance of the measure and not whether or not it satisfies certain procedural requirements. Nor is the Commission's obligation to adopt a decision at the close of the preliminary examination procedure subject to a condition relating to the quality of the information submitted by the complainant. The low quality of such information cannot therefore relieve the Commission of its obligation to initiate the preliminary examination procedure and to close it by a decision. That obligation does not require the Commission to carry out a disproportionate examination where the information provided is vague or covers a very wide area. As the Commission clearly stated in the case in point that the measures complained of did not seem to constitute aid, the Court concluded that the contested decision must be characterised as a decision adopted pursuant to Article 4(2) of Regulation No 659/1999.

As regards the *locus standi* of the applicant, a trade association responsible for protecting the collective interests of its members, the Court pointed out that such an association is entitled to bring an action for annulment of a final Commission decision on State aid matters where, in particular, the undertakings which it represents or some of them have individual *locus standi*. The Court stated that it is not necessary in that context that an association whose tasks as defined in its statutes include protecting the interests of its members should also have a specific mandate, drawn up by those members, in order to have *locus standi* to act before the Courts of the European Union. Likewise, since bringing an action before those Courts was among the tasks defined in the statutes of the association, the fact that certain of its members might subsequently distance themselves from bringing a specific action did not remove its interest in bringing an action.

In the order of 9 September 2013 in Case T-400/11 *Altadis* v *Commission*, the Court addressed the concept of individual concern. ([11]) The issue in this case was whether a Commission decision declaring an aid scheme incompatible with the internal market was of individual concern to the applicant, as the beneficiary of aid granted under that aid scheme. In an action for annulment of the decision, the Court stated that, although the applicant had been able to establish that it was an actual beneficiary of the scheme at issue, that was not sufficient for it to be able to be regarded

([10]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [108 TFEU] (OJ 1999 L 83, p. 1).

([11]) On the interpretation of this concept, see also the orders made on the same day in Case T-429/11 *Banco Bilbao Vizcaya Argentaria* v *Commission* and Case T-430/11 *Telefónica* v *Commission* (both under appeal).

as individually concerned by the Commission's decision. In order to be individually concerned, the actual beneficiary of individual aid granted under a scheme of aid of which the Commission has ordered recovery must have benefited from aid covered by the recovery obligation laid down. Thus, the recovery must relate specifically to the aid which benefited the applicant in question and not in a general way to aid paid under the aid scheme concerned. Consequently, the status of actual beneficiary of an aid scheme is not sufficient to identify that beneficiary individually where, as in the case in question, the latter is not covered by the obligation laid down in the contested decision to recover the aid paid under the scheme.

2. Substantive issues

a) Concept of State aid

Case T-499/10 *MOL* v *Commission* (judgment of 12 November 2013) provided the Court with the opportunity to return to the condition of selectivity that forms part of the concept of State aid. The case concerned an agreement signed in 2005 between the Hungarian State and an oil company, fixing a mining fee with respect to that company, and also the amendments of the Hungarian mining law in 2007 in that they had increased the fee applicable to that company's competitors.

In an action brought by that company against the Commission decision classifying both of those measures as State aid incompatible with the common market, the Court observed, first of all, that the application of Article 107(1) TFEU requires it to be determined whether under a particular statutory scheme a State measure is such as to favour certain undertakings over others which are in a legal and factual situation that is comparable in the light of the object pursued by the scheme in question. Where a State concludes with an economic operator an agreement which does not involve any State aid element, the fact that, subsequently, conditions external to such an agreement change in such a way that the operator in question is in an advantageous position vis-à-vis other operators that have not concluded a similar agreement is not a sufficient basis on which to conclude that, together, the agreement and the subsequent modification of the conditions external to that agreement can be regarded as constituting State aid. However, a combination of elements, such as that at issue in the case in point, may be categorised as State aid where the State acts in such a way as to protect one or more operators already present on the market, by concluding with them an agreement granting them fee rates guaranteed for the entire duration of the agreement, while having the intention of subsequently exercising its regulatory power and increasing the fee rate in such a way as to place the other operators on the market at a disadvantage.

In the light of those considerations, the Court stated that the regulations at issue allowed any mining undertaking to apply for the extension of its mining rights on one or more fields on which it had not started extraction within five years of issuance of the authorisation. The fact that the applicant was the only undertaking in practice to have concluded an extension agreement in the hydrocarbons sector did not alter that conclusion, since that fact might be explained by an absence of interest on the part of other operators and thus by an absence of any extension application, or by an absence of any agreement between the parties on the rates of the extension fee. It followed that the criteria laid down by the legislation at issue for the conclusion of an extension operation had to be regarded as objective and applicable to any potentially interested operator.

Thus, in the absence of selectivity of the legal regime governing the conclusion of extension agreements and in the absence of any evidence that the Hungarian authorities had treated the applicant more favourably than any other undertaking in a comparable situation, the Court held that selectivity of the 2005 agreement could not be regarded as established. Since, moreover, the Commission had not argued that the 2005 agreement was concluded in anticipation of an increase in

mining fees, the combination of that agreement with the legislation at issue could not validly be categorised as State aid for the purposes of Article 107 TFEU.

In Case T-347/09 *Germany* v *Commission* (judgment of 12 September 2013), the Court upheld the Commission's decision classifying the transfer, free of charge, of certain areas of natural heritage to environmental protection organisations as State aid. The case originated in an action brought against that decision by the Federal Republic of Germany, which claimed that the Commission had been wrong to regard those organisations as undertakings which had been granted an advantage.

The nature of the activities at issue had to be examined, in particular, in the light of the principle that, in so far as a public entity carries out an economic activity that can be separated from the exercise of its public powers, that entity acts as an undertaking, whereas if that economic activity cannot be separated from the exercise of its public powers, all the activities carried out by that entity continue to be activities associated with the exercise of those powers. Although activity intended to protect the environment is of an exclusively social nature, the Court held that the Commission had been correct to take the view that the organisations concerned were involved in other activities of an economic nature and in respect of which those organisations had to be regarded as undertakings. By the activities authorised within the framework of the measures at issue, such as the sale of wood, the grant of hunting and fishing leases and also tourism, those organisations directly provided goods and services on competitive markets and thus pursued an interest which could be separated from the exclusively social objective of environmental protection. Since those organisations, when they engaged in the activities, were in competition with operators seeking to make a profit, the fact that they offered their goods and services without having such an aim was irrelevant.

The Court then considered whether those organisations derived an advantage from the measures at issue. It also answered that question in the affirmative, taking the view that the transfer free of charge of land which the organisations could use for commercial purposes favoured them by comparison with other undertakings active in the sectors concerned, which had to invest in land in order to be able to carry out the same activities. The Commission had therefore been correct to find the existence of an advantage granted to the environmental protection organisations.

b) Services of general economic interest

Case T-258/10 *Orange* v *Commission* (judgment of 16 September 2013, under appeal), Case T-325/10 *Iliad and Others* v *Commission* (judgment of 16 September 2013, under appeal) and Case T-79/10 *Colt Télécommunications France* v *Commission* (judgment of 16 September 2013) gave the Court the opportunity to rule on the relevance of the market failure test in the context of finding the existence of a service of general economic interest (SGEI) in relation to the establishment and use of a very high-speed broadband electronic communications network.

The Court pointed out that, while the market failure test is taken into account in assessing the compatibility of aid with the internal market, it also plays a part in the determination of the actual existence of aid and, in particular, in that of an SGEI. Thus, according to the applicable rules, if the public authorities consider that certain services are in the general interest and that market forces may not result in a satisfactory provision, they can lay down a number of specific service provisions to meet those needs in the form of service of general interest obligations. Conversely, in areas where private investors have already invested in a specific infrastructure and already provide competitive services, the establishment of a parallel infrastructure which is competitive and financed by public funds should not be categorised as an SGEI.

Taking the view that it follows from all of those rules that assessment of the existence of market failure constitutes a precondition for classification of an activity as an SGEI and thus for finding that there is no State aid, the Court observed that that assessment must be carried out at the time when the service intended to compensate for the failure found is put in place. The assessment must also include a prospective analysis of the market situation for the entire duration of the SGEI, during which the market failure must also be established.

Iliad and Others v *Commission* also provided the Court with the opportunity to clarify the concept of market failure, which it defined as an objective concept, the appraisal of which is based on an analysis of the actual situation of the market. ([12])

As regards, more particularly, the use of high-speed and very high-speed broadband communications networks, there is market failure capable of giving rise to the establishment of an SGEI where it can be shown that private investors might not be capable of ensuring in the near future, that is to say, at the end of a period of three years, appropriate cover for all citizens or users and that they might thus deprive a significant part of the population of connection. It follows from the objective nature of the assessment of the existence of market failure that the reasons for the absence of a private initiative have no relevance for the purposes of that assessment. The Court concluded that it cannot be inferred from a particular cause of the failure found that the creation of a service of general economic interest was precluded.

In *Iliad and Others* v *Commission* the Court also reviewed the case-law requirement laid down in *Altmark Trans and Regierungspräsidium Magdeburg*, ([13]) according to which, in order for compensation granted by the State to be able to escape being classified as State aid, the recipient undertaking must be made responsible for discharging SGEI obligations by an act of a public authority, which must clearly define the SGEI obligations in question. It pointed out that, although the Commission had considered that the public service obligations in question were clearly defined both in the agreement delegating a public service relating to the project at issue and in the consultation programme sent to candidates in the selection procedure leading to the choice of the undertaking responsible for implementing that project, that programme had, however, to be regarded as merely a preparatory act in the procedure leading to the conclusion of the agreement. Thus, since it was that agreement and not the consultation programme that entrusted the SGEI to the undertaking responsible, it was the agreement that had to include a clear definition of the public service obligations of the undertaking. As the consultation programme did not constitute the relevant document, the Court rejected as ineffective the applicants' argument alleging a contradiction between the definition of those obligations in the agreement delegating the public service and the definition in the consultation programme.

Last, in *Orange* v *Commission, Iliad* v *Commission* and *Colt Télécommunications France* v *Commission*, the Court was led to examine the problem of compensating for the costs incurred in discharging the public service obligations. Recalling that such compensation cannot exceed what is necessary to cover all or part of those costs, taking into account the associated revenues and a reasonable profit for discharging the obligations in question, the Court held that, while the compensation must cover only the costs of using infrastructure in unprofitable areas, the revenues generated by the commercial use of the infrastructure in profitable areas may be assigned to the financing of the SGEI in the unprofitable areas. Accordingly, the coverage of the profitable areas does not necessarily mean that the subsidy granted is excessive, since it is the source of revenues that may serve to

([12]) See also, to that effect, *Colt Télécommunications France* v *Commission*.

([13]) Case C-280/00 [2003] ECR I-7747.

finance the coverage of unprofitable areas and thus enable the amount of the subsidy granted to be reduced.

c) Notion of serious difficulties

In *Orange* v *Commission* the Court was also able to set out considerations relating to the concept of serious difficulties, which, in the context of the application of the rules on State aid, require the initiation of the formal examination stage.

The Court recalled that the concept of serious difficulties is objective in nature. The existence of such difficulties must be assessed in the light both of the circumstances in which the contested measure was adopted and of its content, in an objective manner, comparing the grounds of the decision with the material available to the Commission when it ruled on the categorisation of the measure at issue as aid. It follows that the number and the extent of the observations submitted in opposition to a project by competing operators cannot be taken into account for the purpose of establishing the existence of serious difficulties. That consideration is even more pertinent when, as in the case in point, at least one of the operators submitting those objections had participated in the procedure for the selection of the operator to be entrusted with implementing the project at issue and was not chosen. To take into account the number and extent of the observations expressed opposing such a project would amount to making the initiation of the formal examination procedure depend on the opposition provoked by a national project and not on the serious difficulties actually encountered by the Commission in the context of its examination. In addition, it would mean that objectors to a project could easily delay its examination by the Commission by requiring it, by their intervention, to initiate the formal examination procedure. ([14])

Last, concerning the same issue, in *Orange* v *Commission* and *Iliad and Others* v *Commission* the Court stated that, in an action against a Commission decision finding that there is no aid, it is for the applicant to show the existence of serious difficulties encountered by the Commission justifying the initiation of the formal examination procedure. The Court accepted that an applicant which claims breach of its procedural rights as a result of the Commission's failure to initiate the formal examination procedure may rely on any plea to show that the assessment of the information and evidence which the Commission had at its disposal during the preliminary examination phase ought to have raised doubts as to the classification of the notified measure as State aid and its compatibility with the Treaty. It nonetheless observed that, while it is for the Courts of the European Union to assess the pleas aimed at challenging the compatibility of the measure with the Treaty in the light of the existence of serious difficulties, it is for the applicant to identify the factors that would show the existence of such difficulties. Where it makes reference to the arguments raised in support of another plea, going to the substance, it must identify precisely the arguments thus raised that are capable of showing the existence of serious difficulties. In this instance, as the applicant had merely claimed that the matters put forward in one of its substantive pleas revealed many inconsistencies and inaccuracies in the Commission's analysis, the Court considered that that vague and unsubstantiated reference did not allow it to identify the precise evidence that would establish the existence of serious difficulties.

d) Private investor in a market economy test

In Case T-525/08 *Poste Italiane* v *Commission* (judgment of 13 September 2013), the Court heard an action for annulment of the Commission decision finding that the remuneration of funds

([14]) See also *Colt Télécommunications France* v *Commission* and *Iliad and Others* v *Commission*.

originating in postal current accounts and placed with the Italian public treasury was State aid incompatible with the common market. In order to establish the existence of an advantage in favour of the recipient of the aid, the Commission, applying the private investor in a market economy test, had relied on a comparison between the rate of interest granted by the treasury to the applicant under the agreement concluded between the two parties and the rate which, the Commission maintained, would have been fixed for a private borrower in normal market conditions.

The Court held that the State intervention which, according to the Commission, had conferred an advantage on the applicant, namely the setting of a rate of interest under the agreement, could not be separated from the obligation, imposed on the applicant by the State, to pay the funds collected into an interest-bearing current account. There was, in reality, a single State intervention consisting in remunerating the deposit with the treasury of funds coming from postal current accounts and in requiring the applicant to make that deposit. In economic terms, that State intervention had had two different consequences for the applicant. On the one hand, it had deprived the applicant of the possibility, open to any other bank, of using the funds coming from postal current accounts which it managed to make any investment which it considered appropriate; and, on the other hand, it had procured remuneration for the applicant. The Court concluded that the applicant could not benefit from an advantage unless it had received, in application of the rate of interest defined in the agreement, remuneration in respect of the deposit of those funds greater than the result which it could reasonably have obtained from the free and prudent management of those funds. The Commission had therefore made a manifest error of assessment in basing the existence of State aid on the mere finding of a positive differential between the rate of interest defined by the agreement and the private borrower rate.

Case T-489/11 *Rousse Industry* v *Commission* (judgment of 20 March 2013, under appeal) enabled the Court to reassert the principle that, in State aid matters, where a public creditor grants payment facilities, its conduct must be compared to that of a private creditor who seeks to recover sums payable to him by a debtor in financial difficulties. At the centre of this case were the loan agreements concluded between the applicant and a Bulgarian public fund, the claims of which were subsequently taken over by the Bulgarian State which granted the applicant a rescheduling of its debt. Finding itself unable to pay all the debts payable under that rescheduling on expiry of the prescribed period, the applicant asked the Bulgarian authorities for a new rescheduling plan, which the Bulgarian authorities notified to the Commission as restructuring aid. That notification led the Commission to decide that the fact that the Bulgarian State had, for several years, failed to require in an efficacious manner payment of the sums owed to it constituted unlawful Sate aid that was incompatible with the internal market. That decision was challenged by the applicant, on the ground that the Bulgarian authorities had acted as a private creditor would have done, so that their conduct could not be classified as State aid.

In hearing that action, the Court found that throughout the relevant period the applicant was systematically in arrears in respect of the payment of considerable sums, that it recorded a consistent fall in its turnover and increasing losses without any prospect of its viability being reinstated. It than drew the conclusion that the Commission had been correct to consider that a private creditor would have taken measures against the applicant in order to recover at least part of his debt. Mere reminders to pay which, in spite of persistent failure to pay, are not followed by more coercive measures cannot be classified as measures for the effective recovery of a debt. In so far as the applicant claimed that such measures would have definitively jeopardised any recovery of the debt, the Court held that the applicant had submitted no evidence to the Court capable of demonstrating that during the relevant period there were concrete and credible factors pointing to its imminent return to profitability such as might have persuaded a private creditor to refrain from taking measures to enforce payment.

e) State aid compatible with the internal market

Case T-92/11 *Andersen* v *Commission* (judgment of 20 March 2013, under appeal) concerned a Commission decision declaring that the public railway service contracts concluded between the Danish Ministry of Transport and a public undertaking were compatible with the internal market. An action for annulment of that decision was brought before the Court by a competitor of that undertaking, which took issue with the Commission for having examined the contracts at issue under Regulation (EC) No 1370/2007, ([15]) which was in force at the time of adoption of the contested decision. As the contested decision related to non-notified aid, the applicant maintained that the Commission ought to have applied the substantive rules in force at the time when the aid was paid, namely Regulation (EEC) No 1191/69. ([16])

The Court held that, for the purpose of determining the substantive rules applicable for the assessment of the compatibility of aid with the internal market, a fundamental distinction must be drawn between, on the one hand, aid which has been notified and not paid and, on the other, aid which has been paid without notification. As regards the former, the date on which the effects of the proposed aid are considered to occur coincides with the time when the Commission adopts the decision on the compatibility of the aid with the common market. The aid in question would not create real advantages or disadvantages in the internal market until, at the earliest, the date on which the Commission decides whether or not to authorise it. As regards the latter, the rules of substantive law applicable are those in force at the time when the aid was paid, since the advantages and disadvantages created by such aid arose during the period when the aid in question was paid. Since the measures at issue had not been notified to the Commission before being implemented, the Court held that the compatibility of the measures with the internal market ought to have been assessed on the basis of the substantive rules in force at the time of payment, unless the exceptional conditions for retroactive application were satisfied. The Court found that in this instance the new rules laid down in Regulation No 1370/2007 could not be applied retroactively, since it did not clearly follow from their terms, objectives or general scheme that such effect had to be given to them. Consequently, the Court annulled the Commission's decision.

In Case T-275/11 *TF1* v *Commission* (judgment of 16 October 2013), the Court was called upon to examine the compatibility with the internal market of long-term finance provided to six French public television channels owned by France Télévisions, a company subject to economic and financial control by the French State. That finance, which took the form of an annual budgetary subsidy in favour of France Télévisions, was approved by the Commission, which had also examined, in that context, any effect that taxes newly introduced by the national legislation on advertising messages and electronic communications might have on the subsidy.

In that regard, the Court pointed out that, for a tax to be regarded as forming an integral part of an aid measure, it must be hypothecated to the aid, in the sense that the revenue from the charge is necessarily allocated to the financing of the aid and has a direct impact on the amount of the aid. It follows that there must necessarily be a binding provision of national law under which the charge must be allocated to the financing of the aid. However, the mere existence of such a provision

([15]) Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger services by rail and by road and repealing Council Regulation (EEC) Nos 1191/69 and 1107/70 (OJ 2007 L 315, p. 1).

([16]) Council Regulation (EEC) No 1191/69 of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway (OJ, English Special Edition 1969 (I), p. 276).

cannot constitute on its own a sufficient condition to establish that a tax forms an integral part of an aid measure. It is also necessary to examine whether the revenue from the charge has a direct impact on the amount of the aid. In the light of those principles, the Court held that the Commission had been correct to consider that, under the French legislation, the new charges were not, in the absence of a provision to that effect, necessarily allocated to the financing of the subsidy at issue. That conclusion was not called into question by the existence of a certain relationship between the new charges and the financing of the aid measure in question. The fact that the charges, introduced in order to cover the financing of public broadcasting in general, were used, inter alia, to finance the aid did not mean that the revenue from the charges was necessarily allocated to the aid, since it might be shared between different purposes at the discretion of the competent authorities and used to finance various types of expenditure other than the aid measure at issue.

TF1 v *Commission* also gave the Court the opportunity to make it clear that the economic efficiency of an undertaking in discharging its public service task cannot be validly relied on to challenge the Commission's assessment as to the compatibility with the internal market of State aid intended for that undertaking. The test carried out on the basis of *Altmark Trans and Regierungspräsidium Magdeburg* to establish whether compensation for a public service may be classified as State aid, within the meaning of Article 107(1) TFEU, is not to be confused with the test carried out on the basis of Article 106(2) TFEU, which enables it to be established whether a measure to compensate for an SGEI, which constitutes State aid, may be regarded as compatible with the internal market. The economic efficiency of an undertaking entrusted with a public service in performing that service is irrelevant for assessing the compatibility of such compensation with the internal market in the light of Article 106(2) TFEU. By allowing derogations from the general rules of the Treaty, that provision seeks to reconcile the Member States' interest in using certain undertakings, in particular in the public sector, as an instrument of economic or social policy with the European Union's interest in ensuring compliance with the rules on competition and preservation of the unity of the internal market. It is not necessary, in order for the conditions for the application of Article 106(2) TFEU to be fulfilled, that the financial balance of the undertaking entrusted with a public service should be threatened. It is sufficient that, in the absence of the rights at issue, it would not be possible for the undertaking to perform its public service tasks or that maintenance of those rights is necessary in order to enable it to discharge those tasks under economically acceptable conditions. Furthermore, in the absence of harmonised rules governing the matter, as in the case in point, the Commission is not entitled to rule either on the extent of the public service tasks assigned to the public operator, namely the level of the costs associated with that service, on the expediency of the political choices made in this regard by the national authorities, or on the economic efficiency of the public operator. It follows that the question whether an undertaking responsible for the public broadcasting service might fulfil its public service obligations at lower cost is irrelevant for assessing the compatibility of the State funding of that service in the light of the Treaty rules on State aid.

Intellectual property

1. Community trade mark

a) Absolute grounds for refusal

In 2013 the Court had the opportunity to adjudicate on a number of absolute grounds for refusal set out in Article 7(1) of Regulation (EC) No 207/2009. ([17])

([17]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

In Case T-625/11 *BSH* v *OHIM (ecoDoor)* (judgment of 15 January 2013, under appeal), the Court observed that, as, first, the element 'eco' would be perceived to mean 'ecological' and, second, the element 'door' would have its normal meaning, the Board of Appeal had been correct to hold that the term 'ecodoor' would be understood immediately by the relevant public to mean 'a door the construction and mode of operation of which are ecological'. The Court also stated that a sign that is descriptive of a characteristic of a component incorporated in a product can also be descriptive of the product itself. That is the case where, from the perception of the relevant public, the characteristic of the component described by the sign could have a significant impact on the essential characteristics of the product itself.

In Case T-396/11 *ultra air* v *OHIM — Donaldson Filtration Deutschland (ultrafilter international)* (judgment of 30 May 2013, under appeal), the Court was called upon to examine the legality of the decision of the Fourth Board of Appeal of OHIM whereby, after annulling the decision of the Cancellation Division of OHIM which had upheld the application for a declaration of invalidity of the trade mark at issue, the Board of Appeal rejected that application as inadmissible on the ground that it was vitiated by an abuse of rights.

The Court recalled that the purpose of the administrative procedure laid down in Article 56(1)(a) of Regulation No 207/2009, read in conjunction with Article 52(1)(a) of that regulation, is, inter alia, to enable OHIM to review the validity of the registration of a mark and to adopt, where necessary, a position which it should have adopted of its own motion under Article 37(1) of that regulation. In that context, OHIM is required to assess whether the mark under examination is descriptive or devoid of distinctive character, without the motives and earlier conduct of the applicant for a declaration of invalidity being able to affect the scope of the task entrusted to OHIM in relation to the public interests underlying Article 7(1)(b) and (c) and Article 56(1)(a) of that regulation. Given that, in applying the provisions at issue in the context of invalidity proceedings, OHIM does not rule on the question whether the rights of the proprietor of the mark take precedence over any rights which the applicant for a declaration of invalidity might have, but ascertains whether the rights of the proprietor of the mark were validly obtained in the light of the rules governing the registrability of marks, there can be no question of an 'abuse of rights' on the part of the applicant for a declaration of invalidity. Thus, the fact that the applicant for a declaration of invalidity may file an application with a view to subsequently affixing the sign in question to its own products is perfectly in line with the public interest safeguarded by Article 7(1)(c) of Regulation No 207/2009 of keeping signs freely available. Consequently, the Court held that such a circumstance cannot amount to an abuse of rights in any circumstances, that assessment being confirmed by Article 52(1) of Regulation No 207/2009, pursuant to which a Community trade mark may also be declared invalid on the basis of a counterclaim in infringement proceedings, which presupposes that the defendant in that action may obtain a declaration of invalidity even if he has used the mark in question and intends to continue to do so.

In Case T-3/12 *Kreyenberg* v *OHIM* — Commission *(MEMBER OF €e euro experts)* (judgment of 10 July 2013), the Court ruled on the merits of an action challenging the decision of the Second Board of Appeal in proceedings for a declaration of invalidity relating to the figurative mark MEMBER OF €e euro experts, where the Board of Appeal adjudicated on the relationship between Article 7(1)(i) and Article 7(1)(h) of Regulation No 207/2009. The Court held that Article 7(1)(i) of the regulation must be regarded as prohibiting, on certain conditions, the registration, as trade marks or as elements of trade marks, emblems other than those referred to in Article 7(1)(h) of the regulation, whether those emblems are reproduced identically or are merely an imitation. The Court reached that conclusion on the basis of the wording of Article 7(1)(i) and two further considerations. First, it stated that the provision does not expressly restrict the scope of the prohibition to trade marks which reproduce an emblem identically. The wording of that provision allows it to be

interpreted as meaning that it prohibits not only identical reproduction but also the imitation of an emblem by a trade mark. The Court further stated that if such an interpretation were not accepted, the practical effect of that provision would be substantially reduced, since it would be sufficient for an emblem to have been slightly modified, even imperceptibly for a person not a specialist in heraldry, in order for it to be capable of registration as a trade mark or an element of a trade mark. Second, the Court observed that the European Union legislature did not specify that only the registration of a trade mark consisting exclusively of an emblem can be prohibited under Article 7(1)(i) of Regulation No 207/2009. By using the word 'include' in the provision concerned, the legislature indicated that, in the circumstances laid down in that provision, the use of emblems other than those referred to in Article 7(1)(h) of Regulation No 207/2009 is prohibited, not only as a trade mark but also as an element of a trade mark. That, moreover, is consistent with the effectiveness of Article 7(1)(i) of Regulation No 207/2009, which is intended to provide the most complete protection for the emblems to which it refers. By analogy with the case-law on Article 7(1)(h) of Regulation No 207/2009 concerning the emblems of international intergovernmental organisations that have been duly communicated to the States Parties to the Paris Convention, ([18]) the Court concluded that the protection afforded to the emblems referred to in Article 7(1)(i) of that regulation is to apply only where, taken as a whole, the trade mark consisting of such an emblem is liable to mislead the public as to the connection between, on the one hand, its proprietor or user and, on the other, the authority to which the emblem at issue relates.

b) Relative grounds for refusal

In Case T-249/11 *Sanco* v *OHIM — Marsalman (Representation of a chicken)* (judgment of 14 May 2013, under appeal), the Court examined the question of the assessment of the complementarity of goods and services covered by an application for registration.

First, the Court noted that it is only in so far as it is established that there is no similarity between the goods and services covered by two marks that a likelihood of confusion between those marks may be excluded without there being any need to carry out a global assessment, taking into account all relevant factors, of the perception the relevant public has of the signs and of the goods and services at issue. In assessing the similarity between the goods and services, all the relevant factors relating to those goods and services should, in principle, be taken into account. Thus, for the purposes of the assessment of whether the goods and services are complementary, the perception of the relevant public of the importance of a product or service for the use of another product or service should be taken into account.

Accordingly, the complementarity between the goods and services in the context of a likelihood of confusion relies not on the existence of a connection between the goods and services at issue in the mind of that public from the point of view of their nature, their method of use and their distribution channels but on the close connection between those goods and services, in the sense that one is indispensable or important for the use of the other in such a way that the public might think that responsibility for the production of those goods or provision of those services lies with the same undertaking. The fact that the method of use of a product or service is unrelated to the method of use of another product or service does not mean in each case that the use of one is not important or indispensable for the use of the other. In the light of those considerations, the Court held that, in the case in point, the Board of Appeal had erred in the assessment of the complementarity between the goods covered by the earlier mark and the services of advertising, commercial agencies, franchising, export and import covered by the mark applied for and that that error

([18]) Paris Convention for the Protection of Industrial Property of 20 March 1883, as revised and amended.

resulted in the Board of Appeal not taking into account all factors relevant to the assessment of the similarity of the goods and services in question.

In Case T-321/10 *SA. PAR.* v *OHIM — Salini Costruttori (GRUPPO SALINI)* (judgment of 11 July 2013), the Court explained the concept of bad faith, referred to in Article 52(1)(b) of Regulation No 207/2009. The Court observed that, under that provision, a Community trade mark is to be declared invalid, on application to OHIM or on the basis of a counterclaim in infringement proceedings, where the applicant for the trade mark was acting in bad faith, which it is for the applicant for a declaration of invalidity to prove. The Court pointed out that the concept of bad faith referred to in that article is not defined, delimited or even described in any way in the legislation of the European Union. It must therefore be considered that, in the context of the overall analysis undertaken pursuant to that provision, account may also be taken of the commercial logic underlying the filing of the application for registration of the sign as a Community trade mark and of the chronology of events relating to the filing. Thus, by way of illustration, it is necessary to take into consideration, first, the fact that the applicant knows or must know that a third party is using, in at least one Member State, an identical or similar sign for an identical or similar product or service capable of being confused with the sign for which registration is sought; second, the applicant's intention to prevent that third party from continuing to use such a sign; and, third, the degree of legal protection enjoyed by the third party's sign and by the sign for which registration is sought. Therefore, awareness on the part of the applicant for the trade mark of the commercial and corporate situation of the proprietor of the earlier sign, including the fact that the proprietor's company was experiencing a phase of expansion, is not in itself sufficient to establish that the applicant for the trade mark acted in bad faith. It is also necessary to take into consideration the applicant's intention at the time when he files the application for registration. That intention, which is a subjective factor, must be determined by reference to the objective circumstances of the particular case. Thus, for the purpose of assessing whether or not a trade mark applicant acted in bad faith, it is necessary to examine his intentions, as capable of being inferred from objective circumstances and his specific actions, from his role or position, from his awareness of the use of the earlier sign, from the contractual, pre-contractual or post-contractual relationship which he had with the applicant for a declaration of invalidity, from the existence of reciprocal duties or obligations and, more generally, from all the objective situations of conflicting interests in which the trade mark applicant has operated. Thus, the body of objective circumstances capable of shedding light on the intentions of the trade mark applicant include, in particular, the chronology of events leading to the registration of the contested trade mark, the potential conflict of interests of the applicant with regard to the proprietor of the earlier sign, the nature of the trade mark registration of which is sought and the extent of the reputation enjoyed by the sign at the time when the application for its registration was filed. In the light of those considerations, the Court held that the Board of Appeal had been correct to find that the contested trade mark was invalid on the basis of Article 52(1)(b) of Regulation No 207/2009.

c) Burden of proof — Examination by OHIM of its own motion

In Case T-571/11 *El Corte Inglés* v *OHIM — Chez Gerard (CLUB GOURMET)* (judgment of 20 March 2013, under appeal), the Court stated, in the context of the application of Regulation No 207/2009, that determining and interpreting rules of national law, in so far as doing so was essential to the activity of the European Union institutions, was a matter of establishing the facts, not applying the law.

The Court held that, while it is true that Article 65(2) of Regulation No 207/2009 must be construed as meaning that rules of law infringement of which may give rise to an action before the General Court may be the province of national law or Community law, it is, however, only Community law which falls within the area of law, in which the maxim *iura novit curia* applies, whereas national law is an issue of fact, where facts must be adduced and the requirements of the burden of proof

apply, and the content of national law must be demonstrated where necessary by the production of evidence. It follows that, as a rule, in the context of a procedure before the European Union institutions, it is for the party relying on national law to show that it supports his claims. While, admittedly, OHIM must, of its own motion and by whatever means considered appropriate, obtain information about the national law of the Member State concerned where such information is necessary to assess the applicability of the ground for refusal of registration in question and, in particular, the correctness of the facts pleaded or the probative value of the documents lodged, it is required to do so only where it already has information relating to national law, either in the form of claims as to its meaning, or in the form of evidence submitted whose probative force has been alleged.

In Case T-579/10 *macros consult* v *OHIM — MIP Metro (makro)* (judgment of 7 May 2013), the Court stated that, in the case of a claim submitted under Article 53(2) of Regulation No 207/2009, on the basis of an earlier right protected under national law, it is clear from Rule 37 of Regulation (EC) No 2868/95 ([19]) that the applicant must provide particulars showing that he is entitled under the applicable national law to lay claim to that right.

That rule requires the applicant, in order to be able to have the use of a Community trade mark prohibited by virtue of an earlier right, to provide OHIM with not only particulars showing that he satisfies the necessary conditions under the national law whose application he is seeking, but also particulars establishing the content of that law. Furthermore, since Article 53(1)(c) of Regulation No 207/2009 expressly refers to Article 8(4) of that regulation, and since the latter provision concerns earlier rights protected under European Union legislation or under the law of the Member State governing the sign at issue, those principles also apply when a provision of national law is invoked on the basis of Article 53(1)(c) of Regulation No 207/2009. Rule 37(b)(ii) of Regulation No 2868/95 lays down similar provisions in relation to the proof of an earlier right in the event of an application made under Article 53(1) of Regulation No 207/2009. Thus, the issue of the existence of a national right is a question of fact and it is for the party which alleges the existence of a right fulfilling the conditions set out in Article 8(4) of Regulation No 207/2009 to establish, before OHIM, not only that this right arises under the national law, but also the scope of that law.

Last, in Case T-320/10 *Fürstlich Castell'sches Domänenamt* v *OHIM — Castel Frères (CASTEL)* (judgment of 13 September 2013, under appeal), the Court ruled on the question whether the absolute ground for refusal of registration laid down in Article 7(1)(d) of Regulation No 207/2009 must be examined by the Board of Appeal of its own motion if the applicant had not raised it in the procedure before the Board of Appeal.

First of all, the Court noted that, under Article 76(1) of Regulation No 207/2009, when considering absolute grounds for refusal, OHIM Examiners and, on appeal, the Boards of Appeal are required to examine the facts of their own motion in order to determine whether the mark registration of which is sought comes within one of the grounds for refusal of registration laid down in Article 7 of that regulation. It follows that the competent bodies of OHIM may be led to base their decisions on facts which have not been put forward by the applicant for the mark. Nonetheless, the Court explained that, in invalidity proceedings, OHIM cannot be required to carry out afresh the examination which the Examiner conducted, of his own motion, of the relevant facts that could have led him to apply the absolute grounds for refusal. It follows from the provisions of Articles 52 and 55 of Regulation No 207/2009 that the Community trade mark is regarded as valid until it has been declared invalid by OHIM following invalidity proceedings. It therefore enjoys a presumption of

([19]) Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1).

validity, which is the logical consequence of the check carried out by OHIM in the examination of an application for registration.

The Court held that, by virtue of that presumption of validity, OHIM's obligation, under Article 76(1) of Regulation No 207/2009, to examine of its own motion the relevant facts which might lead it to apply absolute grounds for refusal is restricted to the examination of the application for a Community trade mark carried out by the Examiners of OHIM and by the Boards of Appeal during the procedure for registration of that mark. In invalidity proceedings, as the registered Community trade mark is presumed to be valid, it is for the applicant for a declaration of invalidity to invoke before OHIM the specific facts which call the validity of that trade mark into question. Thus, in invalidity proceedings, the Board of Appeal of OHIM is not required to examine of its own motion the relevant facts which might lead it to apply the absolute ground for refusal set out in Article 7(1)(d) of Regulation No 207/2009.

d) Power to alter decisions

In Case T-514/11 *i-content* v *OHIM — Decathlon (BETWIN)* (judgment of 4 June 2013), the Court examined the conditions governing the exercise of its power to alter decisions pursuant to Article 65(3) of Regulation 207/2009.

The Court emphasised that the power which it enjoys pursuant to Article 65(3) of Regulation No 207/2009 does not have the effect of conferring on it the power to carry out an assessment on which the Board of Appeal of OHIM has not yet adopted a position. Exercise of the power to alter decisions must therefore, in principle, be limited to situations in which the Court, after reviewing the assessment made by the Board of Appeal, is in a position to determine, on the basis of the matters of fact and of law as established, what decision the Board of Appeal was required to take. In this instance, the Court considered that the conditions for the exercise of that power were satisfied. According to the Court, the Board of Appeal was required to find that, contrary to the view of the Opposition Division, there was no likelihood of confusion in respect of the goods covered by the application for registration. Consequently, the Court altered the contested decision.

In Case T-236/12 *Airbus* v *OHIM (NEO)* (judgment of 3 July 2013), the Court ruled on the extent of the examination to be carried out by the Board of Appeal.

In that regard, the Court observed that, under Article 64(1) of Regulation No 207/2009, following the examination as to the merits of the appeal, the Board of Appeal is to decide on the appeal and may, in doing so, exercise any power within the competence of the department which was responsible for the decision appealed against. However, that power to carry out a new substantive examination of the application for registration, both in law and in fact, is subject to the admissibility of the appeal before the Board of Appeal. Where, as in the case in point, the Examiner has rejected an application for registration of a Community trade mark only in respect of the goods covered by that application, while allowing registration in respect of the services covered by it, the appeal brought by the applicant for the trade mark before the Board of Appeal can lawfully relate only to the Examiner's refusal to allow registration in respect of the goods covered by the application. The applicant may not, by contrast, legitimately appeal before the Board of Appeal against the Examiner's consent to register such an application in respect of the services. Consequently, the Court stated that, although it was true that, in the case in point, the applicant had appealed before the Board of Appeal seeking the annulment of the Examiner's decision in its entirety, the fact remained that, pursuant to the first sentence of Article 59 of Regulation No 207/2009, the Board of Appeal was legitimately seised of the appeal only in so far as the Examiner had rejected the applicant's claims. Accordingly, the Court held that the Board of Appeal had exceeded the limits of

its powers, inasmuch as it had of its own motion reopened the examination of the application for registration of the Community trade mark in respect of the services referred to in that application in the light of the absolute grounds for refusal set out in Article 7 of Regulation No 207/2009 and found that the mark applied for was devoid of any distinctive character to distinguish those services within the meaning of Article 7(1)(b) and (c) and (2) of that regulation.

e) Proof of genuine use of the trade mark

In Case T-34/12 *Herbacin cosmetic* v *OHIM — Laboratoire Garnier (HERBA SHINE)* (judgment of 28 November 2013), the Court defined the scope of the obligation of Boards of Appeal to state reasons with respect to the application of Article 15(1)(b) of Regulation No 207/2009, which provides that the affixing of the Community trade mark to goods or to the packaging thereof in the Community solely for export purposes is to be regarded as use within the meaning of the first subparagraph of Article 15(1). In the case in point, the Court held that it was unable to review the legality of the contested decision, since the reasons which had led the Board of Appeal to disregard invoices sent to addressees established outside the European Union did not emerge, even implicitly, from the contested decision. In addition, the Court stated that examination of the question whether the evidence adduced by the applicant was sufficient for the purpose of establishing that the conditions laid down in Article 15(1)(b) of Regulation No 207/2009 were satisfied required an analysis of all the evidence adduced by the applicant, which had not been carried out by the Board of Appeal and which it was not the Court's task to carry out for the first time. The Court therefore annulled the contested decision on the ground that the statement of reasons was inadequate.

2. Designs

One case relating to Community designs is particularly deserving of attention, namely Case T-68/11 *Kastenholtz* v *OHIM — Qwatchme (Watch dials)* (judgment of 6 June 2013, not yet published, under appeal), concerning, in particular, the requirements of novelty and individual character on which the protection of Community designs depends. The Court observed that it follows from Article 5(2) of Regulation (EC) No 6/2002 ([20]) that two designs are to be deemed to be identical if their features differ only in immaterial details, that is to say, details that are not immediately perceptible and that would not therefore produce differences, even slight, between those designs. A contrario, for the purposes of assessing the novelty of a design, it is necessary to assess whether there are any, even slight, non-immaterial differences between the designs at issue. In that regard, the Court held that the wording of Article 6 of Regulation No 6/2002 goes beyond that of Article 5 of the regulation. Consequently, the differences observed between the designs at issue in the context of Article 5 may, especially if they are slight, not be sufficient to produce on an informed user a different overall impression within the meaning of Article 6 of that regulation. In that case, the contested design may be regarded as being new within the meaning of Article 5 of Regulation No 6/2002, but will not be regarded as having individual character within the meaning of Article 6 of the regulation. On the other hand, to the extent that the requirement laid down in the latter article goes beyond that laid down in Article 5, a different overall impression on the informed user within the meaning of Article 6 can be based only on the existence of objective differences between the designs at issue. Those differences must therefore be sufficient to satisfy the requirement of novelty in Article 5 of Regulation No 6/2002.

([20]) Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ 2002 L 3, p. 1).

Common foreign and security policy — Restrictive measures

In 2013 the Court decided 40 cases relating to fund-freezing measures, most of which concerned the measures adopted by the Council against persons and entities involved in the nuclear programme of the Islamic Republic of Iran. The judgments delivered on actions brought before the Court by two of those entities deserve special mention.

First, in Case T-494/10 *Bank Saderat Iran* v *Council* (judgment of 5 February 2013, not yet published, under appeal), the Court observed that a legal person constituting an emanation of a non-member State can rely on fundamental rights protection. At issue in this case was the legality of restrictive measures imposed by the Council on an Iranian commercial bank on the ground that it was partly owned by the Iranian Government. The Council, supported by the Commission, claimed that, as an emanation of the Iranian State, the bank could not rely on fundamental rights protection and guarantees.

The Court rejected that argument, observing that neither in the Charter of Fundamental Rights of the European Union nor in the Treaties are there any provisions which state that legal persons that are emanations of States are not entitled to the protection of fundamental rights. On the contrary, the provisions of the Charter of Fundamental Rights, and in particular Articles 17, 41 and 47, guarantee the rights of 'everyone', a word which includes legal persons such as the applicant. Nor can such exclusion from the benefit of fundamental rights be based on Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, a provision which precludes the admissibility of applications submitted to the European Court of Human Rights by governmental organisations, but which does not apply to proceedings before the Courts of the European Union. Fundamental rights may therefore be relied upon by persons which are emanations of States in so far as those rights are compatible with their status as legal persons.

Second, in Case T-493/10 *Persia International Bank* v *Council* (judgment of 6 September 2013), the Court explained the scope of the principle of respect for the rights of the defence in the context of the adoption of restrictive measures. The applicant, a company owned by two Iranian banks, had been placed on the list providing for the freezing of the funds of persons or entities regarded as having been involved in the Iranian nuclear proliferation programme, since the Council had considered that the applicant should be regarded as being owned by or belonging to one of the above-mentioned banks, Bank Mellat. The applicant claimed that there had been a breach of its rights of defence and of its right to effective judicial protection in that it had not been given sufficient information concerning the alleged involvement of Bank Mellat in nuclear proliferation.

The Court stated that, where the Council intends to rely on information provided by a Member State in order to adopt restrictive measures affecting an entity, it is obliged to ensure, before adopting those measures, that the entity concerned can be notified of the information in question in good time so that it is able effectively to make known its point of view. However, the belated disclosure of a document on which the Council relied in order to adopt or maintain the restrictive measures concerning an entity does not necessarily constitute a breach of the rights of the defence that would justify the annulment of acts adopted previously. That is the outcome only where it is established that the restrictive measures concerned could not have been lawfully adopted or maintained if the document belatedly disclosed had to be excluded as inculpatory evidence. The Court considered that that was not the position in the case in point, since the information belatedly disclosed by the Council contained no additional evidence compared with the earlier measures and, consequently, its exclusion as inculpatory evidence was not capable of affecting the validity of the adoption and maintenance of those measures. As regards, more specifically, the failure to

disclose evidence, the Court observed that, by virtue of the principle of respect for the rights of the defence, the Council is not required to disclose information other than that contained in its file. In the case in point, it was not disputed that the Council's file contained no additional evidence concerning Bank Mellat's involvement in nuclear proliferation or concerning the applicant itself, so that it could not be accused of having breached the applicant's rights of defence and its right to effective judicial protection by its failure to disclose such evidence.

Privileges and immunities

In Joined Cases T-346/11 and T-347/11 *Gollnisch* v *Parliament* (judgment of 17 January 2013), the Court dealt with an action for annulment of a decision of the European Parliament to waive the immunity of one of its members and of a decision of the Parliament not to defend that immunity. Those decisions had been adopted following a request to waive the applicant's parliamentary immunity made by the French Minister for Justice and Freedoms, pursuant to a request from the French public prosecutor, in order to pursue the investigation of the applicant for incitement to racial hatred and, if appropriate, to commit him for trial before the courts with jurisdiction.

The Court drew a distinction between, on the one hand, the waiving of the immunity of a Member of the European Parliament and, on the other, the defence of the immunity of that member. While the former is expressly provided for in Article 9 of Protocol No 7 on the Privileges and Immunities of the European Union, ([21]) the same cannot be said of the latter, for which provision is made only in Rule 6(3) of the Rules of Procedure of the Parliament, ([22]) which does not define that concept and which constitutes an opinion that does not have binding effect with regard to national judicial authorities. Since the immunity provided for in Article 9 of Protocol No 7 is a matter of law and since the Member of the European Parliament can be deprived of his immunity only if the Parliament has waived it, the defence of immunity, in the context of Article 9 of the Protocol, is conceivable only where, in the absence of a request to waive a member's immunity, immunity, as resulting from the provisions of national law of the member's Member State of origin, is endangered, in particular by the action of the police or judicial authorities of that member's Member State of origin. In such circumstances, the Member of the European Parliament may request the Parliament to defend his immunity, as provided for in Rule 6(3) of the Rules of Procedure of the Parliament. Defence of immunity is thus a means whereby the Parliament, at the request of a Member of the Parliament, may intervene where the national authorities violate or are about to violate the immunity of one of its members. Conversely, where a request for waiver of immunity is made by the national authorities, the Parliament must take a decision to waive or not to waive immunity. In such a case, defence of immunity no longer has any *raison d'être*, since either the Parliament waives immunity and the defence of immunity is no longer conceivable, or it refuses to waive immunity and defence of immunity is unnecessary, since the national authorities are advised that their request for waiver of immunity has been rejected by the Parliament and immunity therefore precludes the measures which those authorities could or would take. Defence of immunity is therefore devoid of purpose where a request for waiver of immunity is submitted by the national authorities. The Parliament is no longer required to take action on its own initiative because no formal request has been submitted by the competent authorities of a Member State, but must take a decision and thus respond to such a request.

In addition, whilst in order for an opinion of a Member of the European Parliament to be covered by immunity it must have been expressed in the performance of his duties, which requires a link

([21]) OJ 2010 C 83, p. 266.

([22]) OJ 2011 L 116, p. 1.

between the opinion expressed and the parliamentary duties, that is not the position with respect to opinions, such as that at issue in the case in point, expressed by a Member of the Parliament outside the Parliament in the context of duties performed by him in his capacity as a member of a regional body of a Member State and as President of a political group within that body. There is no link between the statements at issue and the duties performed as a Member of the European Parliament or, *a fortiori*, any direct and obvious link between those statements and those duties that might have justified the application of Article 8 of Protocol No 7 on Privileges and Immunities. The Court therefore held that the Parliament could not be criticised for having decided, in the light of the circumstances of the case and of the request submitted by the French authorities, to waive the applicant's immunity in order to enable the investigation by those authorities to continue.

Public health

In Case T-301/12 *Laboratoires CTRS* v *Commission* (judgment of 4 July 2013), the Court ruled on situations which permit a derogation from the fundamental conditions necessary to obtain a marketing authorisation for medicinal products for human use. The action had as its subject matter an application for annulment of a Commission implementing decision refusing a marketing authorisation under Regulation (EC) No 726/2004 ([23]) for an orphan medicinal product for human use, the active substance of which was cholic acid, used to treat two rare but very serious liver disorders which, if not properly treated within the first weeks or months of life, can lead to death. The applicant challenged that decision before the Court, claiming, in particular, that the Commission had been wrong to consider that the well-established use of cholic acid, within the meaning of Article 10a of Directive 2001/83/EC, ([24]) had not been proved and that the bibliographical data submitted in the application for authorisation were incomplete.

The Court observed, first of all, that cholic acid had been used to treat patients in France between 1993 and October 2007, in hospital preparations issued on medical prescriptions, prepared individually in accordance with the prescriptions of the pharmacopoeia and in compliance with the rules of good practice laid down in the national legislation. Those hospital preparations of cholic acid were intended to fulfil special needs (in particular, they were necessary to meet patients' needs since there was no medicinal product on the market capable of treating the liver disorders in question) and, furthermore, were prescribed by a doctor following an actual examination of his patients and on the basis of solely therapeutic considerations. The Court concluded that the Commission had been wrong to consider that the use of cholic acid as a hospital preparation in France between 1993 and October 2007 did not constitute well-established medicinal use for the purposes of Article 10a of Directive 2001/83.

In addition, the Court considered that the applicant had shown that it was unable to provide comprehensive information on the efficacy and safety of the medicinal product at issue under normal conditions of use owing to exceptional circumstances. The Court found that the applicant had shown, in summaries, the reasons why it was not possible to provide complete information about the efficacy and safety of the medicinal product (the rareness of the disorder and ethical considerations) and had justified the benefit/risk balance for the medicinal product concerned. It therefore held that the Commission had been wrong to consider in its decision that the data submitted by

([23]) Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1).

([24]) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 331, p. 67).

the applicant should have been comprehensive and that the applicant could not invoke the existence of exceptional circumstances in its application made on the basis of well-established medicinal use.

The Court further observed that the Commission had no valid ground on which to consider in the contested decision that granting a marketing authorisation would undermine the objectives of Regulation (EC) No 1901/2006 ([25]) and the protection of innovation and concluded that the refusal to grant such authorisation was unfounded. It therefore annulled the contested decision.

Environment

In Case T-370/11 *Poland* v *Commission* (judgment of 7 March 2013, not yet published), the Court adjudicated on the scheme for greenhouse gas emission allowance trading introduced by Directive 2003/87/EC. ([26]) The action, brought by the Republic of Poland, was directed against the Commission's decision establishing the transitional European Union-wide rules for the free allocation of such quotas. ([27]) The Republic of Poland challenged the benchmarks used by the Commission in calculating the allocation of those quotas.

The Court observed, first of all, that the contested decision constitutes a measure implementing Directive 2003/87, which was adopted on the basis of the provisions of the FEU Treaty relating to environmental policy. It therefore rejected the applicant's argument that the Commission's decision had been adopted in breach of Article 194(2) TFEU, which provides that the Member States are to have competence in relation to energy policy.

Next, the Court considered that the equal treatment of industrial installations that are in different situations owing to the use of different fuels when determining the product benchmarks for the purpose of allocating quotas in the contested decision could be regarded as objectively justified. It observed that the differentiation of those benchmarks by reference to the fuel used would not encourage industrial installations using fuels with high CO_2 emissions to seek solutions to reduce their emissions, but would rather encourage maintenance of the status quo, which would be contrary to the third subparagraph of Article 10a(1) of Directive 2003/87. In addition, such a differentiation would involve the risk of increased emissions because industrial installations using low CO_2 emission fuel might have to replace it with a higher CO_2 emission fuel in order to be able to obtain more free emission allowances. Likewise, the Court considered that the choice of natural gas, a low CO_2 emission fuel, to determine the heat and fuel benchmarks was aimed at reducing greenhouse gas emissions.

The Court observed, moreover, that the contested decision took appropriate account of the economic and social consequences of the measures designed to reduce CO_2 emissions. First, the rules of operation would be introduced gradually from 2013. In that context, high CO_2 emitting installations, such as those using coal in Poland, which need a large number of allowances for their

([25]) Regulation (EC) No 1901/2006 of the European Parliament and of the Council of 12 December 2006 on medicinal products for paediatric use and amending Regulation (EEC) No 1768/92, Directive 2001/20/EC, Directive 2001/83/EC and Regulation (EC) No 726/2004 (OJ 2006 L 378, p. 1).

([26]) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32).

([27]) Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87 (OJ 2011 L 130, p. 1).

production, would initially receive a greater amount of free allowances to cover their needs. Second, the European Union legislature had established mechanisms to support the efforts of those Member States with relatively lower income per capita and higher growth prospects to reduce carbon use in their economies by 2020.

Last, the Court pointed out that from 2013 the CO_2 emissions allowances scheme would be based on the principle of auctioning. Thus, Member States would be able to auction all allowances not allocated free of charge so that installations could buy the missing allowances. That system, moreover, would be consistent with the 'polluter pays' principle, since installations with the highest CO_2 emissions would be required to pay for allowances or reduce their emissions.

Access to documents of the institutions

In 2013 the case-law on access to documents dealt, in particular, with the scope of the exception relating to the protection of international relations laid down in Regulation (EC) No 1049/2001, ([28]) and with the interpretation of Regulation (EC) No 1367/2006 ([29]) in the more specific context of access to information in environmental matters.

1. Protection of international relations

In Case T-301/10 *In't Veld* v *Commission* (judgment of 19 March 2013), the Court adjudicated on the merits of a decision applying, in particular, the exception relating to international relations, set out in the third indent of Article 4(1)(a) of Regulation No 1049/2001, in order to reject the applicant's request seeking access, from the Commission, to a number of documents relating to a draft international anti-counterfeiting trade agreement.

In that regard, the Court observed, in essence, that an institution of the European Union can legally refuse access by the public to documents on the basis of the third indent of Article 4(1)(a) of Regulation No 1049/2001 in order to maintain the confidentiality of the negotiating positions on international agreements, since such negotiation can justify, in order to ensure its effectiveness, a certain level of discretion to allow mutual trust between negotiators and the development of a free and effective discussion. Initiating and conducting negotiations in order to conclude an international agreement are, in principle, matters that fall within the domain of the executive, and public participation in the procedure relating to the negotiation and the conclusion of an international agreement is necessarily restricted in view of the legitimate interest in not revealing strategic elements of the negotiations.

In that context, disclosure of the positions of the European Union or the other parties to the negotiation of an international anti-counterfeiting trade agreement may damage the public interest protected by the third indent of Article 4(1)(a) of Regulation No 1049/2001. First, it is possible that such disclosure could reveal, indirectly, the positions of other parties to the negotiations. Second, in the context of international negotiations, the positions taken by the European Union are, by definition, subject to change depending on the course of those negotiations, and on concessions and

([28]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

([29]) Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters to Community institutions and bodies (OJ 2006 L 264, p. 13).

compromises made in that context by the various stakeholders. The formulation of negotiating positions may involve a number of tactical considerations on the part of the negotiators, including the European Union itself. It is possible, moreover, that disclosure by the European Union, to the public, of its own negotiating positions, even though the negotiating positions of the other parties remained secret, could, in practice, have a negative effect on the negotiating capacity of the European Union.

Furthermore, in the context of international negotiations, unilateral disclosure by one negotiating party of the negotiating position of one or more other parties, even if this appears anonymous at first sight, may be likely to seriously undermine, for the negotiating party whose position is made public and for the other negotiating parties who are witnesses to that disclosure, the mutual trust essential to the effectiveness of those negotiations. Such disclosure is, moreover, likely to affect both the credibility of the Commission as a negotiating partner vis-à-vis the other negotiating partners and the relationship of all the negotiating parties, and thus of the European Union, with any third countries wishing to join the negotiations.

2. Access to information in environmental matters

In Case T-545/11 *Stichting Greenpeace Nederland and PAN Europe* v *Commission* (judgment of 8 October 2013, under appeal), the Court examined the conditions governing access of the public to environmental information and also the connection between Regulation No 1367/2006 governing access to such information and the system established by Regulation No 1049/2001.

The Court held that, in the case of a request for access to environmental information or information relating to emissions into the environment, it follows from recitals 8 and 15 in the preamble to Regulation No 1367/2006, read in conjunction with Articles 3 and 6 thereof, that that regulation contains provisions which replace, amend or clarify certain provisions of Regulation No 1049/2001. In this case, the obligation to interpret the exceptions laid down in the latter regulation strictly is borne out, on the one hand, by the need for the institution concerned to take account of the public interest in disclosure of such information and by the reference to whether that information relates to emissions into the environment and, on the other, by the fact that Regulation No 1049/2001 does not contain any similar details regarding the application of those exceptions in that field.

The first sentence of Article 6(1) of Regulation No 1367/2006 lays down a legal presumption that an overriding public interest in disclosure exists where the information requested relates to emissions into the environment, except where that information concerns an investigation, in particular one concerning possible infringements of European Union law. Thus, the institution concerned is required to disclose the document where the information requested relates to emissions into the environment, even if such disclosure is liable to undermine the protection of the commercial interests of a particular natural or legal person, including that person's intellectual property. With specific regard to a request for documents relating to the first authorisation of the placing on the market of an active substance referred to in Annex I to Directive 91/414/EEC, ([30]) such as the substance at issue in the case in point, although that directive contains provisions intended to protect the confidentiality of information consisting of commercial and industrial secrets, the existence of such rules cannot rebut the irrebuttable presumption arising from Regulation No 1367/2006. Furthermore, although Articles 16 and 17 of the Charter of Fundamental Rights of the European Union enshrine, respectively, the freedom to conduct a business and the right to property, it cannot be

([30]) Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1).

accepted that, for the purpose of ensuring a consistent interpretation of European Union law, the validity of a clear and unconditional provision of secondary legislation may be called into question. Nor can there be any question of the first sentence of Article 6(1) of Regulation No 1367/2006 being disapplied in order to ensure consistency with Article 39(2) and (3) of the Agreement on the Trade Related Aspects of Intellectual Property Rights (the TRIPS Agreement) of 15 April 1994, ([31]) which protect commercially valuable information from public disclosure. Such an approach would in fact call into question the legality of the first sentence of Article 6(1) of Regulation No 1367/2006 in the light of those provisions of the TRIPS Agreement.

Furthermore, in Case T-111/11 *ClientEarth* v *Commission* (judgment of 13 September 2013, under appeal) the issue raised was the compatibility of the Commission's application of the exception provided for in the third indent of Article 4(2) of Regulation No 1049/2001, relating to the protection of the purpose of inspections, with the Convention on access to information, public participation in decision-making and access to justice in environmental matters (the Aarhus Convention). The applicant claimed that that Convention does not allow any exception to the right of access to documents designed to protect the purpose of investigations other than those of a criminal or disciplinary nature. The documents access to which had been refused by the Commission concerned the compatibility of the legislation of the Member States with European Union environmental law and had been prepared by the Commission in order to enable it to monitor the transposition of several directives by the Member States and, if necessary, to bring proceedings for failure to fulfil obligations.

In that regard, the Court observed that the European Union is bound by the Aarhus Convention. However, as regards the grounds for refusal of a request for access to environmental information, that convention cannot be seen, as regards its content, to be unconditional and sufficiently precise, since it provides that each party is to take the necessary measures to establish and maintain a clear, transparent and consistent framework to implement its provisions, each party having a wide discretion in respect of how to organise the ways in which environmental information requested from public authorities is made available to the public.

In particular, Article 4(4)(c) of the Aarhus Convention is not sufficiently precise to be directly applicable, at least in relation to the institutions of regional economic integration referred to in Article 2(d) of that convention. The Aarhus Convention, and in particular Article 4(4)(c) thereof, was manifestly designed to be applicable principally to the authorities of the States which are contracting parties thereto and uses concepts appropriate to them, as is apparent from the reference to the framework of national legislation in Article 4(1). On the other hand, the convention does not take into account the specific features that are characteristic of institutions of regional economic integration, which may nonetheless accede to the convention. In particular, there is nothing in Article 4(4)(c), or in the other provisions of the Aarhus Convention, which makes it possible to interpret the concepts used in that provision and to determine whether an investigation relating to infringement proceedings can be covered by such concepts.

In the absence of any indication to that end, it cannot be held that the Aarhus Convention prevents the European Union legislature from providing for an exception to the principle of access to the documents of the institutions relating to the environment where those documents pertain to infringement proceedings, which form part of the constitutional mechanisms of European Union law, as established by the Treaties.

([31]) OJ 1994 L 336, p. 214.

Authorisation to place genetically modified organisms on the market

Case T-240/10 *Hungary* v *Commission* (judgment of 13 December 2013) provided clarification concerning the procedure applicable to authorisation of the marketing of genetically modified organisms. The case originated from two Commission decisions, the first authorising the placing on the market of a genetically modified potato and the second authorising the placing on the market of animal feed based on that potato and the adventitious or technically unavoidable presence of the potato in food and other feed products for animals. Taking the view that that potato presented a risk for human and animal health and also for the environment, Hungary brought an action for annulment of those two decisions.

The Court observed, first of all, that the measures put forward by the Commission concerning the placing of the genetically modified products on the market had to be adopted in accordance with the regulatory procedure, as established in Article 5 of Decision 1999/468/EC. ([32]) That procedure lays down an obligation on the Commission to submit a draft of the measures to the competent regulatory committee. In the case in point, in having decided to seek a consolidated opinion from the European Food Safety Authority (EFSA) and in using that opinion in particular as a basis for the contested decisions without allowing the competent committees to take a position either on the opinion or on the amended draft decisions, the Commission had not complied with that obligation.

In that context, the Court considered that, if the Commission had complied with the applicable rules, the outcome of the procedure or the content of the contested decisions might have been substantially different. As the committee votes on the earlier drafts had been very divided and the findings of the abovementioned opinion had expressed more uncertainties than the EFSA's earlier opinions and been coupled with dissenting minority opinions, it was not inconceivable that the members of the competent committees might have reviewed their position. In addition, if those committees had issued an unfavourable opinion, or no opinion, the Commission would have been required to submit the proposed authorisations to the Council, which could have decided to adopt a position for or against the authorisations in question. Only at the end of that procedure, and if the Council had failed to adopt a decision, would the Commission have been able to adopt its decisions.

The Court thus upheld the application and annulled the contested decisions.

II. Appeals

Among the decisions of the Appeal Chamber of the General Court in 2013, three judgments merit special attention.

First, in Case T-317/10 P *L* v *Parliament* (judgment of 11 September 2013), the Court stated that, in the case of the ground of dismissal relating to the loss or breach of mutual confidence between a member of the temporary staff and the political group of the European Parliament to which he was assigned, while a member of the temporary staff assigned to non-attached members has an interest in being satisfied that the relationship of confidence that has been severed is indeed the relation between him and his direct administrative superior, the same does not apply in the case of a staff member assigned to a traditional political group other than that of the non-attached, which

([32]) Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ 1999 L 184, p. 23).

is characterised by what is presumed to be a common political belief. In the latter case, if the relationship of confidence is severed, that relationship no longer exists with the group as a whole and the question of which persons have lost confidence in the person concerned is no longer relevant. After observing that the existence of a relationship of confidence is not based on objective factors and by nature is not amenable to judicial review, as the Courts of the European Union cannot substitute their own appraisal for that of the contracting authority, in particular in the political field where loss of confidence is a broad concept, the Court stated however that, if an institution which decides to terminate a temporary staff contract refers, in particular, to specific material facts giving rise to the decision to dismiss the person concerned on the basis of loss of confidence, the Court is required to ascertain the veracity of those material facts. In doing so, the Court does not substitute its own appraisal for that of the competent authority, which has found that the loss of confidence is made out, but merely ascertains whether the facts underlying the decision as stated by the institution are materially correct.

Second, in Case T-476/11 P *Commission* v *Moschonaki* (judgment of 23 October 2013), the Court provided clarification of the rule that the complaint within the meaning of the first indent of Article 91(2) of the Staff Regulations of Officials of the European Union and the subsequent application must correspond. It observed that the fact that the pleas in law contained in the application and the complaint seek to challenge the substantive legality or, in the alternative, the procedural legality of a measure does not in itself mean that those pleas may be regarded as being closely linked with each other. If that were so, an applicant might be able to rely for the first time before the Civil Service Tribunal on a plea bearing no relation to those relied on in the complaint, provided that those pleas, taken together, relate to either the substantive legality or the procedural legality of the measure at issue. In those circumstances, the appointing authority would be aware, in the context of the complaint, of only part of the objections raised against the administration. Not being in a position to ascertain with sufficient precision the objections or wishes of the official concerned, the appointing authority would therefore be unable to attempt to reach an amicable settlement. The concepts of substantive legality and procedural legality are too wide and abstract, in the light of the specific object of the head of claim at issue, to ensure that such a link might exist between pleas covered by exclusively by one or other of those concepts.

Nonetheless, while the immutability of subject matter and legal basis between the complaint and the application is necessary in order to allow an amicable settlement of disputes, since the appointing authority is made aware, at the stage of the complaint, of the criticisms of the official concerned, those concepts cannot be interpreted in such a way that the possibilities for the official concerned of effectively challenging a decision adversely affecting him are restricted. Thus, where the complainant becomes aware of the reasons on which the decision adversely affecting him is based through the response to his complaint, or where the reasons stated in that response substantially alter, or supplement, the reasons stated in the measure, any plea put forward for the first time at the stage of the application and with the aim of challenging the merits of the reasons set out in the response to the complaint must be considered admissible.

Third, in Case T-107/11 P *ETF* v *Schuerings* (judgment of 4 December 2013), the Court explained the nature of the obligation imposed on an institution where it terminates the contract of indefinite duration period of a member of the temporary staff. In this instance, the Court held that, since there was a valid reason for dismissal, here the reduction of the sphere of activities of an agency, the European Training Foundation (ETF) was under no obligation to consider whether the temporary staff member could have been re-assigned to another existing post or one due to be created in the near future following the attribution of new powers to the ETF. While it is true that a contract of indefinite duration is to be distinguished, from the aspect of security of employment, from a contract of employment for a fixed period, servants of the European Union civil service employed

under a contract of indefinite duration cannot fail to be aware of the temporary nature of their employment and of the fact that it does not confer a guarantee of employment, since the concept of 'established post on the staff of one of the institutions', within the meaning of Article 1a(1) of the Staff Regulations, covers only posts expressly stated to be 'established' or referred to in similar terms in the budget.

III. Applications for interim measures

In the past year the Court received 31 applications for interim relief, a significant increase compared with the number of applications made in 2012 (21). In 2013 the President of the Court determined 27 cases, as opposed to 23 in 2012. He allowed four applications in whole or in part, namely those giving rise to the orders of 11 March 2013 in Case T-462/13 R *Pilkington Group* v *Commission* (under appeal), of 25 April 2013 in Case T-44/13 R *AbbVie* v *EMA* (under appeal) and Case T-73/13 R *InterMune UK and Others* v *EMA* (under appeal) and of 15 May 2013 in Case T-198/12 R *Germany* v *Commission* (under appeal). The first three orders, relating to issues associated with disclosure, by the Commission and by the European Medical Agency (EMA), of allegedly confidential information, follow the approach taken in three orders made in 2012. ([33])

In *Germany* v *Commission* the German Government, taking the view that the limit values applicable in Germany for certain heavy metals in toys offered better protection than the values introduced by Directive 2009/48/EC, ([34]) had requested the Commission to approve the maintenance of its national values. The Commission essentially rejected that request. After bringing an action for annulment of that rejection, the German Government sought the adoption of interim measures authorising it to continue to use its own limit values pending delivery of the judgment on the substance. In his order of 15 May 2013, the President of the Court held that the claim seeking that the Commission be enjoined to grant such approval was admissible. Admittedly, an application for interim measures which seeks only to obtain suspension of operation of a purely negative decision is in principle inadmissible, since such suspension is not in itself capable of altering the applicant's position. However, the German Government had not sought suspension of application of the rejection decision, but the adoption of interim measures within the meaning of Article 279 TFEU. That possibility also exists in an action for annulment of a negative decision, since neither Article 279 TFEU, nor Article 104 of the Rules of Procedure of the General Court nor, *a fortiori*, Article 47 of the Charter of Fundamental Rights permits such an application to be declared inadmissible. The President of the Court added that, in relation to interim measures, the judge hearing an application for interim relief has powers whose impact vis-à-vis the institutions of the European Union goes beyond the effects attaching to a judgment annulling a measure, provided that those interim measures apply only for the duration of the main proceedings, have a sufficiently close link with the main action, do not prejudge the decision on the main application and do not undermine the practical effect

([33]) The essential content of those orders of 16 November 2012 in Case T-341/12 R *Evonik Degussa* v *Commission* and Case T-345/12 R *Akzo Nobel and Others* v *Commission* and of 29 November 2012 in Case T-164/12 R *Alstom* v *Commission* (none of which were the subject of an appeal), was fully described in the 2012 Annual Report (pp. 155 and 156). The appeal lodged by the Commission against the order in *Pilkington Group* v *Commission* was dismissed by order of the Vice-President of the Court of Justice of 10 September 2013 in Case C-278/13 P(R). Following the appeals lodged by the EMA, the Vice-President of the Court of Justice, by orders of 28 November 2013 in Case C-389/13 P(R) *EMA* v *AbbVie* and Case C-390/13 P(R) *EMA* v *InterMune UK and Others*, set aside the orders in *AbbVie* v *EMA* and *InterMune UK and Others* v *EMA* and referred those cases back to the General Court.

([34]) Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys (OJ 2009 L 170, p. 1).

of that decision. The President of the Court held that those conditions were fulfilled in the present case.

As to the substance, the President of the Court found that the German Government had shown both the need in fact and law for the adoption of interim measures to protect the health of children and the urgency of those measures. He emphasised, in particular, that the controversy between the German Government and the Commission concerning the 'correct' limit values for lead, barium, antimony, arsenic and mercury raised complex and highly technical questions which prima facie could not be considered irrelevant, but required a thorough examination, to be carried out in the context of the main proceedings. Consequently, the President of the Court ordered the Commission to authorise that the German limit values be maintained. ([35])

With the exception of a few cases in which it was held that there was no need to adjudicate, the other applications for interim measures were all dismissed, most frequently on the ground of lack of urgency.

Case T-366/13 R *France* v *Commission* (order of 29 August 2013, under appeal), concerned a Commission decision ordering the recovery from Société nationale Corse Méditerranée (SNCM) of State aid of more that EUR 220 million implemented by the French Republic. The French Republic maintained that the repayment of such a sum by SNCM would have the inevitable consequence that it would become insolvent and be wound up, which would cause serious and irreparable harm to the French Republic, such as a breach of territorial continuity, public disorder and negative economic consequences in Corsica. The President of the Court observed that the contested decision was binding only on the French authorities and stated that that decision could not in itself oblige SNCM to repay the State aid. As the French authorities had taken no legally binding measure for the implementation of the contested decision, the risk that SNCM would be wound up could not be regarded as sufficiently imminent to justify granting the stay of implementation sought. In any event, as regards the internal remedies available to SNCM to defend itself against a national recovery measure, the French authorities had not established that those remedies would not enable SNCM to avoid being wound up, by raising before the national court its individual financial situation and its obligation to provide maritime connections between Marseilles and Corsica. The President of the Court could therefore only find that the imperfection of the relevant French remedies had not been established. In the case in point, an action brought by SNCM before the French courts had to be characterised as a necessary preliminary step, as the French Republic could not establish urgency before the Court so long as the national authorities had not adopted any binding enforcement measures and no application had been made to the national courts for a stay of enforcement.

Case T-397/13 R *Tilly-Sabco* v *Commission* (order of 26 September 2013), concerned an undertaking which specialised in the export to Middle East countries of deep-frozen chickens with a unitary weight below that of chickens sold on the European market. Its profitability depended mainly on the grant of a public subsidy in the form of export refunds, the aim of which is, if need be, to facilitate exports in the context of the attainment of the objectives of the common agricultural policy. After the amount of the export refunds for deep-frozen chickens was fixed at zero by a Commission regulation, the applicant claimed to have lost 80% of its overall turnover and that its financial viability was in jeopardy. In his order of 26 September 2013, the President of the General Court dismissed the application for interim relief, on the ground that the applicant, as a prudent and well-informed trader, could not be unaware that the common organisation of the agricultural markets was heavily

([35]) The appeal against this order was dismissed by order of the Vice President of the Court of Justice of 19 December 2013 in Case C-426/13 P(R) *Commission* v *Germany*.

regulated, with the Commission intervening every three months to fix the amount of export refunds and adjusting that amount to variations in the economic situation. Consequently, the applicant could not rely on a vested right that a refund fixed at a specific amount, from which it had benefited at a given time, would be maintained, particularly since, under the relevant legislation, export refunds are optional in nature; there is thus no legal obligation to maintain the system of those refunds on a permanent basis, with the consequence that, depending on market fluctuations, they can be reduced or even wholly suspended. In those circumstances, the applicant ought to have shown reasonable diligence by taking precautionary measures with a view to diversifying its production and its outlets. Having failed to show such diligence, the applicant itself had to bear the loss occasioned by the export refunds being fixed at zero as one of the risks of business.

B — Composition of the General Court

(order of precedence as at 23 October 2013)

First row, from left to right:

G. Berardis, President of Chamber; M. Van der Woude, President of Chamber; A. Dittrich, President of Chamber; S. Papasavvas, President of Chamber; H. Kanninen, Vice-President of the Court; M. Jaeger, President of the Court; M.E. Martins Ribeiro, President of Chamber; M. Prek, President of Chamber; S. Frimodt Nielsen, President of Chamber; D. Gratsias, President of Chamber.

Second row, from left to right:

E. Buttigieg, Judge; A. Popescu, Judge; I. Labucka, Judge; I. Wiszniewska-Białecka, Judge; F. Dehousse, Judge; N.J. Forwood, Judge; O. Czúcz, Judge; I. Pelikánová, Judge; J. Schwarcz, Judge; M. Kancheva, Judge.

Third row, from left to right:

L. Madise, Judge; I. Ulloa Rubio, Judge; V. Kreuschitz, Judge; V. Tomljenović, Judge; C. Wetter, Judge; E. Bieliūnas, Judge; A.M. Collins, Judge; S. Gervasoni, Judge; E. Coulon, Registrar.

1. Members of the General Court

(in order of their entry into office)

Marc Jaeger

Born 1954; law degree from the Robert Schuman University of Strasbourg; studied at the College of Europe; admitted to the Luxembourg Bar (1981); attaché de justice delegated to the office of the Public Attorney of Luxembourg (1983); Judge at the Luxembourg District Court (1984); Legal Secretary at the Court of Justice of the European Communities (1986–96); President of the Institut Universitaire International Luxembourg (IUIL); Judge at the General Court since 11 July 1996; President of the General Court since 17 September 2007.

Heikki Kanninen

Born 1952; graduate of the Helsinki School of Economics and of the Faculty of Law of the University of Helsinki; Legal Secretary at the Supreme Administrative Court of Finland; General Secretary to the Committee for Reform of Legal Protection in Public Administration; Principal Administrator at the Supreme Administrative Court; General Secretary to the Committee for Reform of Administrative Litigation, Counsellor in the Legislative Drafting Department of the Ministry of Justice; Assistant Registrar at the EFTA Court; Legal Secretary at the Court of Justice of the European Communities; Judge at the Supreme Administrative Court (1998–2005); member of the Asylum Appeal Board; Vice-Chairman of the Committee on the Development of the Finnish Courts; Judge at the Civil Service Tribunal from 6 October 2005 to 6 October 2009; Judge at the General Court since 7 October 2009; Vice-President of the General Court since 17 September 2013.

Josef Azizi

Born 1948; Doctor of Laws and Master of Sociology and Economics of the University of Vienna; Lecturer and Senior Lecturer at the Vienna School of Economics, the Faculty of Law of the University of Vienna and various other universities; Honorary Professor at the Faculty of Law of the University of Vienna; Ministerialrat and Head of Department at the Federal Chancellery; member of the Steering Committee on Legal Cooperation of the Council of Europe (CDCJ); representative *ad litem* before the Verfassungsgerichtshof (Constitutional Court) in proceedings for review of the constitutionality of federal laws; Coordinator responsible for the adaptation of Austrian federal law to Community law; Judge at the General Court from 18 January 1995 to 16 September 2013.

Nicholas James Forwood

Born 1948; Cambridge University BA 1969, MA 1973 (Mechanical Sciences and Law); called to the English Bar in 1970, thereafter practising in London (1971–99) and also in Brussels (1979–99); called to the Irish Bar in 1981; appointed Queen's Counsel 1987; Bencher of the Middle Temple 1998; representative of the Bar of England and Wales at the Council of the Bars and Law Societies of the EU (CCBE) and Chairman of the CCBE's Permanent Delegation to the European Court of Justice (1995–99); governing board member of the World Trade Law Association and European Maritime Law Organisation (1993–2002); Judge at the General Court since 15 December 1999.

Maria Eugénia Martins de Nazaré Ribeiro

Born 1956; studied in Lisbon, Brussels and Strasbourg; member of the Bar in Portugal and Brussels; independent researcher at the Institut d'études européennes de l'Université libre de Bruxelles (Institute for European Studies, Free University of Brussels); Legal Secretary to the Portuguese Judge at the Court of Justice, Mr Moitinho de Almeida (1986–2000), then to the President of the Court of First Instance, Mr Vesterdorf (2000–03); Judge at the General Court since 31 March 2003.

Franklin Dehousse

Born 1959; law degree (University of Liege, 1981); Research Fellow (Fonds national de la recherche scientifique, 1985–89); Legal Adviser to the Chamber of Representatives (1981–90); Doctor of Laws (University of Strasbourg, 1990); Professor (Universities of Liege and Strasbourg; College of Europe; Institut royal supérieur de Défense; Université Montesquieu, Bordeaux; Collège Michel Servet of the Universities of Paris; Faculties of Notre-Dame de la Paix, Namur); Special Representative of the Minister for Foreign Affairs (1995–99); Director of European Studies of the Royal Institute of International Relations (1998–2003); *assesseur* at the Council of State (2001–03); consultant to the European Commission (1990–2003); member of the Internet Observatory (2001–03); Judge at the General Court since 7 October 2003.

Ottó Czúcz

Born 1946; Doctor of Laws of the University of Szeged (1971); Administrator at the Ministry of Labour (1971–74); Lecturer (1974–89), Dean of the Faculty of Law (1989–90), Vice-Rector (1992–97) at the University of Szeged; lawyer; member of the Presidium of the National Retirement Insurance Scheme; Vice-President of the European Institute of Social Security (1998–2002); member of the Scientific Council of the International Social Security Association; Judge at the Constitutional Court (1998–2004); Judge at the General Court since 12 May 2004.

Irena Wiszniewska-Białecka

Born 1947; Magister Juris, University of Warsaw (1965–69); Researcher (Assistant Lecturer, Associate Professor, Professor) at the Institute of Legal Sciences of the Polish Academy of Sciences (1969–2004); Assistant Researcher at the Max Planck Institute for Foreign and International Patent, Copyright and Competition Law, Munich (award from the Alexander von Humboldt Foundation, 1985–86); lawyer (1992–2000); Judge at the Supreme Administrative Court (2001–04); Judge at the General Court since 12 May 2004.

Irena Pelikánová

Born 1949; Doctor of Laws, assistant in economic law (before 1989), Dr Sc., Professor of Business Law (since 1993) at the Faculty of Law, Charles University, Prague; member of the Executive of the Securities Commission (1999–2002); lawyer; member of the Legislative Council of the Government of the Czech Republic (1998–2004); Judge at the General Court since 12 May 2004.

Vilenas Vadapalas

Born 1954; Doctor of Laws (University of Moscow); Doctor habil. in Law (University of Warsaw); taught, at the University of Vilnius, international law (from 1981), human rights law (from 1991) and Community law (from 2000); Adviser to the Lithuanian Government on foreign relations (1991–93); member of the coordinating group of the delegation negotiating accession to the European Union; Director-General of the Government's European Law Department (1997–2004); Professor of European Law at the University of Vilnius, holder of the Jean Monnet Chair; President of the Lithuanian European Union Studies Association; Rapporteur of the parliamentary working group on constitutional reform relating to Lithuanian accession; member of the International Commission of Jurists (April 2003); Judge at the General Court from 12 May 2004 to 16 September 2013.

Küllike Jürimäe

Born 1962; law degree, University of Tartu (1981–86); Assistant to the Public Prosecutor, Tallinn (1986–91); Diploma, Estonian School of Diplomacy (1991–92); Legal Adviser (1991–93) and General Counsel at the Chamber of Commerce and Industry (1992–93); Judge, Tallinn Court of Appeal (1993–2004); European Masters in Human Rights and Democratisation, Universities of Padua and Nottingham (2002–03); Judge at the General Court from 12 May 2004 to 23 October 2013; Judge at the Court of Justice since 23 October 2013.

Ingrida Labucka

Born 1963; Diploma in Law, University of Latvia (1986); Investigator at the Interior Ministry for the Kirov Region and the City of Riga (1986–89); Judge, Riga District Court (1990–94); lawyer (1994–98 and July 1999 to May 2000); Minister for Justice (November 1998 to July 1999 and May 2000 to October 2002); member of the International Court of Arbitration in The Hague (2001–04); Member of Parliament (2002–04); Judge at the General Court since 12 May 2004.

Savvas S. Papasavvas

Born 1969; studies at the University of Athens (graduated in 1991); DEA (diploma of advanced studies) in public law, University of Paris II (1992), and PhD in law, University of Aix-Marseille III (1995); admitted to the Cyprus Bar, member of the Nicosia Bar since 1993; Lecturer, University of Cyprus (1997–2002), Lecturer in Constitutional Law since September 2002; Researcher, European Public Law Centre (2001–02); Judge at the General Court since 12 May 2004.

Miro Prek

Born 1965; law degree (1989); called to the Bar (1994); performed various tasks and functions in public authorities, principally in the Government Office for Legislation (Under-Secretary of State and Deputy Director, Head of Department for European and Comparative Law) and in the Office for European Affairs (Under-Secretary of State); member of the negotiating team for the association agreement (1994–96) and for accession to the European Union (1998–2003), responsible for legal affairs; lawyer; responsible for projects regarding adaptation to European legislation, and to achieve European integration, principally in the western Balkans; Head of Division at the Court of Justice of the European Communities (2004–06); Judge at the General Court since 7 October 2006.

Alfred Dittrich

Born 1950; studied law at the University of Erlangen-Nuremberg (1970–75); articled law clerk in the Nuremberg Higher Regional Court district (1975–78); Adviser at the Federal Ministry of Economic Affairs (1978–82); Counsellor at the Permanent Representation of the Federal Republic of Germany to the European Communities (1982); Adviser at the Federal Ministry of Economic Affairs, responsible for Community law and competition issues (1983–92); Head of the EU Law Section at the Federal Ministry of Justice (1992–2007); Head of the German delegation on the Council Working Party on the Court of Justice; Agent of the Federal Government in a large number of cases before the Court of Justice of the European Communities; Judge at the General Court since 17 September 2007.

Santiago Soldevila Fragoso

Born 1960; graduated in law from the Autonomous University of Barcelona (1983); Judge (1985); from 1992 Judge specialising in contentious administrative proceedings, assigned to the High Court of Justice of the Canary Islands at Santa Cruz de Tenerife (1992 and 1993), and to the National High Court (Madrid, from May 1998 to August 2007), where he decided judicial proceedings in the field of tax (VAT), actions brought against general legislative provisions of the Ministry of the Economy and against its decisions on State aid or the government's financial liability, and actions brought against all agreements of the central economic regulators in the spheres of banking, the stock market, energy, insurance and competition; Legal Adviser at the Constitutional Court (1993–98); Judge at the General Court from 17 September 2007 to 16 September 2013.

Laurent Truchot

Born 1962; graduate of the Institut d'études politiques, Paris (1984); former student of the École nationale de la magistrature (National School for the Judiciary) (1986–88); Judge at the Regional Court, Marseilles (January 1988 to January 1990); Law Officer in the Directorate for Civil Affairs and the Legal Professions at the Ministry of Justice (January 1990 to June 1992); Deputy Section Head, then Section Head, in the Directorate-General for Competition, Consumption and the Combating of Fraud at the Ministry of Economic Affairs, Finance and Industry (June 1992 to September 1994); Technical Adviser to the Minister for Justice (September 1994 to May 1995); Judge at the Regional Court, Nîmes (May 1995 to May 1996); Legal Secretary at the Court of Justice in the Chambers of Advocate General Léger (May 1996 to December 2001); Auxiliary Judge at the Court of Cassation (December 2001 to August 2007); Judge at the General Court from 17 September 2007 to 16 September 2013.

Sten Frimodt Nielsen

Born 1963; graduated in law from Copenhagen University (1988); civil servant in the Ministry of Foreign Affairs (1988–91); tutor in international and European law at Copenhagen University (1988–91); Embassy Secretary at the Permanent Mission of Denmark to the United Nations in New York (1991–94); civil servant in the Legal Service of the Ministry of Foreign Affairs (1994–95); external lecturer at Copenhagen University (1995); Adviser, then Senior Adviser, in the Prime Minister's Office (1995–98); Minister Counsellor at the Permanent Representation of Denmark to the European Union (1998–2001); Special Adviser for legal issues in the Prime Minister's Office (2001–02); Head of Department and Legal Counsel in the Prime Minister's Office (March 2002 to July 2004); Assistant Secretary of State and Legal Counsel in the Prime Minister's Office (August 2004 to August 2007); Judge at the General Court since 17 September 2007.

Kevin O'Higgins

Born 1946; educated at Crescent College Limerick, Clongowes Wood College, University College Dublin (BA degree and Diploma in European Law) and the King's Inns; called to the Bar of Ireland in 1968; Barrister (1968–82); Senior Counsel (Inner Bar of Ireland, 1982–86); Judge of the Circuit Court (1986–97); Judge of the High Court of Ireland (1997–2008); Bencher of King's Inns; Irish Representative on the Consultative Council of European Judges (2000–08); Judge at the General Court from 15 September 2008 to 16 September 2013.

Juraj Schwarcz

Born 1952; Doctor of Law (Comenius University, Bratislava, 1979); company lawyer (1975–90); Registrar responsible for the commercial register at the City Court, Košice (1991); Judge at the City Court, Košice (January to October 1992); Judge and President of Chamber at the Regional Court, Košice (November 1992 to 2009); temporary Judge at the Supreme Court of the Slovak Republic, Commercial Law Division (October 2004 to September 2005); Head of the Commercial Law Division at the Regional Court, Košice (October 2005 to September 2009); external member of the Commercial and Business Law Department at Pavol Josef Šafárik University, Košice (1997–2009); external member of the teaching staff of the Judicial Academy (2005–09); Judge at the General Court since 7 October 2009.

Marc van der Woude

Born 1960; law degree (University of Groningen, 1983); studies at the College of Europe (1983–84); Assistant Lecturer at the College of Europe (1984–86); Lecturer at Leiden University (1986–87); Rapporteur in the Directorate-General for Competition of the Commission of the European Communities (1987–89); Legal Secretary at the Court of Justice of the European Communities (1989–92); Policy Coordinator in the Directorate-General for Competition of the Commission of the European Communities (1992–93); Member of the Legal Service of the Commission of the European Communities (1993–95); Member of the Brussels Bar from 1995; Professor at Erasmus University Rotterdam from 2000; author of numerous publications; Judge at the General Court since 13 September 2010.

Dimitrios Gratsias

Born 1957; graduated in law from the University of Athens (1980); awarded DEA (diploma of advanced studies) in public law by the University of Paris I, Panthéon-Sorbonne (1981); awarded diploma by the University Centre for Community and European Studies (University of Paris I) (1982); Junior Officer of the Council of State (1985–92); Junior Member of the Council of State (1992–2005); Legal Secretary at the Court of Justice of the European Communities (1994–96); Supplementary Member of the Superior Special Court of Greece (1998 and 1999); Member of the Council of State (2005); Member of the Special Court for Actions against Judges (2006); Member of the Supreme Council for Administrative Justice (2008); Inspector of Administrative Courts (2009–10); Judge at the General Court since 25 October 2010.

Andrei Popescu

Born 1948; graduated in law from the University of Bucharest (1971); postgraduate studies in international labour law and European social law, University of Geneva (1973–74); Doctor of Laws of the University of Bucharest (1980); trainee Assistant Lecturer (1971–73), Assistant Lecturer with tenure (1974–85) and then Lecturer in Labour Law at the University of Bucharest (1985–90); Principal Researcher at the National Research Institute for Labour and Social Protection (1990–91); Deputy Director-General (1991–92), then Director (1992–96) at the Ministry of Labour and Social Protection; Senior Lecturer (1997), then Professor at the National School of Political Science and Public Administration, Bucharest (2000); State Secretary at the Ministry for European Integration (2001–05); Head of Department at the Legislative Council of Romania (1996–2001 and 2005–09); founding editor of the *Romanian Review of European Law*; President of the Romanian Society for European Law (2009–10); Agent of the Romanian Government before the Courts of the European Union (2009–10); Judge at the General Court since 26 November 2010.

Mariyana Kancheva

Born 1958; degree in law at the University of Sofia (1979–84); post-master's degree in European law at the Institute for European Studies, Free University of Brussels (2008–09); specialisation in economic law and intellectual property law; Trainee judge at the Regional Court, Sofia (1985–86); Legal adviser (1986–88); Lawyer at the Sofia Bar (1988–92); Director-General of the Services Office for the Diplomatic Corps at the Ministry of Foreign Affairs (1992–94); pursuit of the profession of lawyer in Sofia (1994–2011) and Brussels (2007–11); Arbitrator in Sofia for the resolution of commercial disputes; participation in the drafting of various legislative texts as legal adviser to the Bulgarian Parliament; Judge at the General Court since 19 September 2011.

Guido Berardis

Born 1950; degree in law (Sapienza University of Rome, 1973), Diploma of Advanced European Studies at the College of Europe (Bruges, 1974–75); official of the Commission of the European Communities ('International Affairs' Directorate of the Directorate-General for Agriculture, 1975–76); member of the Legal Service of the Commission of the European Communities (1976–91 and 1994–95); Representative of the Legal Service of the Commission of the European Communities in Luxembourg (1990–91); Legal Secretary at the Court of Justice of the European Communities in the chambers of the judge Mr G.F. Mancini (1991–94); Legal Adviser to members of the Commission of the European Communities, Mr M. Monti (1995–97) and Mr F. Bolkestein (2000–02); Director of the 'Procurement Policy' Directorate (2002–03), the 'Services, Intellectual and Industrial Property, Media and Data Protection' Directorate (2003–05) and the 'Services' Directorate (2005–11) at the Directorate-General for the Internal Market of the Commission of the European Communities; Principal Legal Adviser and Director of the 'Justice, Freedom and Security, Private Law and Criminal Law' Team at the Legal Service of the European Commission (2011–12); Judge at the General Court since 17 September 2012.

Eugène Buttigieg

Born 1961; Doctor of Laws, University of Malta; Master of Laws in European Legal Studies, University of Exeter; Ph.D. in Competition Law, University of London; Legal Officer at the Ministry of Justice (1987–90); Senior Legal Officer at the Ministry of Foreign Affairs (1990–94); Member of the Copyright Board (1994–2005); Legal Reviser at the Ministry of Justice and Local Government (2001–02); Board Member of the Malta Resources Authority (2001–09); Legal Consultant in the field of EU law from 1994, Legal Adviser to the Ministry of Finance, the Economy and Investment on consumer and competition law (2000–10), Legal Adviser to the Office of the Prime Minister on consumer affairs and competition (2010–11), Legal Consultant with the Malta Competition and Consumer Affairs Authority (2012); Lecturer (1994–2001), Senior Lecturer (2001–06), subsequently Associate Professor (from 2007) and holder of the Jean Monnet Chair in EU Law (from 2009) at the University of Malta; Co-founder and Vice-President of the Maltese Association for European Law; Judge at the General Court since 8 October 2012.

Carl Wetter

Born 1949; Uppsala University, B.A. in economics (1974), LL.M. (1977); Administrative Officer at the Ministry of Foreign Affairs (1977); member of the Swedish Bar Association (from 1983); member of the competition law working group of ICC (International Chamber of Commerce) Sweden; Lecturer in competition law at Lund University and Stockholm University; author of numerous publications; Judge at the General Court since 18 March 2013.

Vesna Tomljenović

Born 1956; University of Rijeka, B.A. (1979); University of Zagreb, LL.M. (1984), S.J.D. (1996); University of Rijeka, Faculty of Law, Assistant Professor (1980–98), Associate Professor (2003–09), Professor (2009–13); University of Rijeka, Faculty of Economics, Assistant Professor (1990–2013); President of the Croatian Comparative Law Association (2006–13); Judge at the General Court since 4 July 2013.

Egidijus Bieliūnas

Born 1950; degree in law from the University of Vilnius (1973); doctorate in law (1978); Assistant Lecturer, Junior Lecturer and then Senior Lecturer at the Law Faculty of the University of Vilnius (1977–92); Consultant in the Legal Department of the Supreme Council — Reconstituent Seimas of the Republic of Lithuania (1990–92); Adviser at the Lithuanian Embassy in Belgium (1992–94); Adviser at the Lithuanian Embassy in France (1994–96); Member of the European Commission of Human Rights (1996–99); Judge at the Supreme Court of Lithuania (1999–2011); Senior Lecturer in the Criminal Law Department of the University of Vilnius (2003–13); Representative of the Republic of Lithuania on the Joint Supervisory Body of Eurojust (2004–11); Judge at the Constitutional Court of the Republic of Lithuania (2011–13); Judge at the General Court since 16 September 2013.

Viktor Kreuschitz

Born 1952; Doctor of Laws of the University of Vienna (1981); Civil servant in the Federal Chancellery, Constitutional Affairs Department (1981–97); Adviser in the Legal Service of the European Commission (1997–2013); Judge at the General Court since 16 September 2013.

Anthony Michael Collins

Born 1960; Graduate of Trinity College, Dublin (Legal Science) (1984) and of the Honourable Society of the King's Inns, Dublin (Barrister-at-Law) (1986); practised as Barrister-at-Law (1986–90 and 1997–2003) and Senior Counsel (2003–13) at the Bar of Ireland; Legal Secretary at the Court of Justice of the European Communities (1990–97); Director of the Irish Centre for European Law (1997–2000) and continues to be a Member of its Board of Directors; Vice-President of the Council of European National Youth Committees (1979–81); General Secretary, Organising Bureau of European School Student Unions (1977–84); General Secretary, Irish Union of School Students (1977–79); International Vice-President, Union of Students in Ireland (1982–83); Member of the Administrative Committee of the Amicale des référendaires, Luxembourg (1992–2000); Member of the Permanent Delegation of the Council of Bars and Law Societies of Europe (CCBE) to the EU and EFTA Courts (2006–13); Judge at the General Court since 16 September 2013.

Ignacio Ulloa Rubio

Born 1967; law degree with honours (1985–90) and PhD studies (1990–93) at Universidad Complutense, Madrid; Public Prosecutor of Gerona (2000–03); Judicial and Human Rights Adviser for the Coalition Provisional Authority, Baghdad, Iraq (2003–04); Civil First Instance Judge and Investigative Judge (2003–07), then Senior Judge (2008), Gerona; Deputy Head of EUJUST LEX Integrated Rule of Law Mission for Iraq at the Council of the European Union (2005–06); Legal Counsellor of the Constitutional Court of Spain (2006–11 and 2013); Secretary of State for Security (2012–13); Civil Expert on Rule of Law and Security Sector Reform at the Council of the European Union (2005–11); External Expert on Fundamental Rights and Criminal Justice for the European Commission (2011–13); lecturer and author of numerous publications; Judge at the General Court since 16 September 2013.

Stéphane Gervasoni

Born 1967; graduate of the Institut d'études politiques, Grenoble (1988) and the École nationale d'administration (1993); Junior Officer at the Council of State (Judge-Rapporteur in the Litigation Division (1993–97) and Member of the Social Affairs Division (1996–97)); Legal Adviser at the Council of State (1996–2008); Senior Lecturer at the Institut d'études politiques, Paris (1993–95); Commissaire du gouvernement attached to the Special Pensions Appeal Commission (1994–96); Legal Adviser to the Ministry of the Civil Service and to the City of Paris (1995–97); Secretary-General of the Prefecture of the Département of the Yonne, Sub-Prefect of the District of Auxerre (1997–99); Secretary-General of the Prefecture of the Département of Savoie, Sub-Prefect of the District of Chambéry (1999–2001); Legal Secretary at the Court of Justice of the European Communities (2001–05); full member of the Appeals Board of the North Atlantic Treaty Organisation (NATO) (2001–05); Judge at the European Union Civil Service Tribunal (2005–11, President of Chamber from 2008 to 2011); Councillor of State, Deputy President of the Eighth Chamber of the Litigation Division (2011–13); Member of the Appeals Board of the European Space Agency (2011–13); Judge at the General Court since 16 September 2013.

Lauri Madise

Born 1974; degrees in law (Universities of Tartu and Poitiers); Adviser in the Ministry of Justice (1995–99); Head of the Secretariat of the Constitutional Committee of the Estonian Parliament (1999–2000); Judge at the Court of Appeal, Tallinn (from 2002); Member of the Judges' Examination Commission (from 2005); participation in legislative work concerning constitutional law and administrative law; Judge at the General Court since 23 October 2013.

Emmanuel Coulon

Born 1968; law studies (Université Panthéon-Assas, Paris); management studies (Université Paris Dauphine); College of Europe (1992); entrance examination for the Centre régional de formation à la profession d'avocat (regional training centre for the bar), Paris; certificate of admission to the Brussels Bar; practice as a lawyer in Brussels; successful candidate in an open competition for the Commission of the European Communities; Legal Secretary at the Court of First Instance (Chambers of the Presidents Mr Saggio (1996–98) and Mr Vesterdorf (1998–2002)); Head of Chambers of the President of the Court of First Instance (2003–05); Registrar of the General Court since 6 October 2005.

2. Change in the composition of the General Court in 2013

Formal sitting on 18 March 2013

Following the resignation of Mr Nils Wahl, now an Advocate General at the Court of Justice, the representatives of the Governments of the Member States, by decision of 6 March 2013, appointed Mr Carl Wetter as Judge at the General Court for the remainder of Mr Nils Wahl's term of office, that is to say, until 31 August 2013.

Formal sitting on 4 July 2013

Following the accession of the Republic of Croatia to the European Union on 1 July 2013, the representatives of the Governments of the Member States of the European Union, by decision of 1 July 2013, appointed Ms Vesna Tomljenović as Judge at the General Court for the period from 1 July 2013 to 31 August 2015.

Formal sitting on 16 September 2013

In the context of the partial renewal of the membership of the General Court, and replacing Mr Laurent Truchot, Mr Vilenas Vadapalas, Mr Santiago Soldevila Fragoso and Mr Kevin O'Higgins, the representatives of the Governments of the Member States, by decisions of 26 June and 24 July 2013, appointed Mr Egidijus Bieliūnas, Mr Anthony Collins, Mr Ignacio Ulloa Rubio and Mr Stéphane Gervasoni as Judges at the General Court for the period from 1 September 2013 to 31 August 2019.

By decisions of 6 March, 26 June and 24 July 2013, the representatives of the Governments of the Member States renewed, for the same period, the terms of office of Mr Nicholas James Forwood, Mr Alfred Dittrich, Ms Ingrida Labucka, Mr Miro Prek, Ms Mariyana Kancheva, Mr Guido Berardis, Mr Eugène Buttigieg, Mr Carl Wetter and Ms Vesna Tomljenović.

Finally, following the resignation of Mr Josef Azizi, the representatives of the Governments of the Member States, by decision of 26 June 2013, appointed Mr Viktor Kreuschitz as Judge at the General Court for the period from 1 September 2013 to 31 August 2016.

Formal sitting on 23 October 2013

By decision of 16 October 2013, Mr Lauri Madise was appointed as Judge at the General Court for the period from 6 October 2013 to 31 August 2016.

In the context of the partial renewal of the membership of the General Court, by decision of 16 October 2013 the representatives of the Governments of the Member States renewed the term of office of Ms Irena Pelikánová for the period from 1 September 2013 to 31 August 2019.

3. Order of precedence

From 1 January 2013 to 17 March 2013

M. JAEGER, President of the Court
J. AZIZI, President of Chamber
N.J. FORWOOD, President of Chamber
O. CZÚCZ, President of Chamber
I. PELIKÁNOVÁ, President of Chamber
S. PAPASAVVAS, President of Chamber
A. DITTRICH, President of Chamber
L. TRUCHOT, President of Chamber
H. KANNINEN, President of Chamber
M.E. MARTINS RIBEIRO, Judge
F. DEHOUSSE, Judge
I. WISZNIEWSKA-BIAŁECKA, Judge
V. VADAPALAS, Judge
K. JÜRIMÄE, Judge
I. LABUCKA, Judge
M. PREK, Judge
S. SOLDEVILA FRAGOSO, Judge
S. FRIMODT NIELSEN, Judge
K. O'HIGGINS, Judge
J. SCHWARCZ, Judge
M. van der WOUDE, Judge
D. GRATSIAS, Judge
A. POPESCU, Judge
M. KANCHEVA, Judge
G. BERARDIS, Judge
E. BUTTIGIEG, Judge

E. COULON, Registrar

From 18 March 2013 to 3 July 2013

M. JAEGER, President of the Court
J. AZIZI, President of Chamber
N.J. FORWOOD, President of Chamber
O. CZÚCZ, President of Chamber
I. PELIKÁNOVÁ, President of Chamber
S. PAPASAVVAS, President of Chamber
A. DITTRICH, President of Chamber
L. TRUCHOT, President of Chamber
H. KANNINEN, President of Chamber
M.E. MARTINS RIBEIRO, Judge
F. DEHOUSSE, Judge
I. WISZNIEWSKA-BIAŁECKA, Judge
V. VADAPALAS, Judge
K. JÜRIMÄE, Judge
I. LABUCKA, Judge
M. PREK, Judge
S. SOLDEVILA FRAGOSO, Judge
S. FRIMODT NIELSEN, Judge
K. O'HIGGINS, Judge
J. SCHWARCZ, Judge
M. van der WOUDE, Judge
D. GRATSIAS, Judge
A. POPESCU, Judge
M. KANCHEVA, Judge
G. BERARDIS, Judge
E. BUTTIGIEG, Judge
C. WETTER, Judge

E. COULON, Registrar

From 4 July 2013 to 17 September 2013

M. JAEGER, President of the Court
J. AZIZI, President of Chamber
N.J. FORWOOD, President of Chamber
O. CZÚCZ, President of Chamber
I. PELIKÁNOVÁ, President of Chamber
S. PAPASAVVAS, President of Chamber
A. DITTRICH, President of Chamber
L. TRUCHOT, President of Chamber
H. KANNINEN, President of Chamber
M.E. MARTINS RIBEIRO, Judge
F. DEHOUSSE, Judge
I. WISZNIEWSKA-BIAŁECKA, Judge
V. VADAPALAS, Judge
K. JÜRIMÄE, Judge
I. LABUCKA, Judge
M. PREK, Judge
S. SOLDEVILA FRAGOSO, Judge
S. FRIMODT NIELSEN, Judge
K. O'HIGGINS, Judge
J. SCHWARCZ, Judge
M. van der WOUDE, Judge
D. GRATSIAS, Judge
A. POPESCU, Judge
M. KANCHEVA, Judge
G. BERARDIS, Judge
E. BUTTIGIEG, Judge
C. WETTER, Judge
V. TOMLJENOVIĆ, Judge

E. COULON, Registrar

From 18 September 2013 to 22 October 2013

M. JAEGER, President of the Court
H. KANNINEN, Vice-President
M.E. MARTINS RIBEIRO, President of Chamber
S. PAPASAVVAS, President of Chamber
M. PREK, President of Chamber
A. DITTRICH, President of Chamber
S. FRIMODT NIELSEN, President of Chamber
M. van der WOUDE, President of Chamber
D. GRATSIAS, President of Chamber
G. BERARDIS, President of Chamber
N.J. FORWOOD, Judge
F. DEHOUSSE, Judge
O. CZÚCZ, Judge
I. WISZNIEWSKA-BIAŁECKA, Judge
I. PELIKÁNOVÁ, Judge
K. JÜRIMÄE, Judge
I. LABUCKA, Judge
J. SCHWARCZ, Judge
A. POPESCU, Judge
M. KANCHEVA, Judge
E. BUTTIGIEG, Judge
C. WETTER, Judge
V. TOMLJENOVIĆ, Judge
E. BIELIŪNAS, Judge
V. KREUSCHITZ, Judge
A. COLLINS, Judge
I. ULLOA RUBIO, Judge
S. GERVASONI, Judge

E. COULON, Registrar

From 23 October 2013 to 31 December 2013

M. JAEGER, President of the Court
H. KANNINEN, Vice-President
E. MARTINS RIBEIRO, President of Chamber
S. PAPASAVVAS, President of Chamber
M. PREK, President of Chamber
A. DITTRICH, President of Chamber
S. FRIMODT NIELSEN, President of Chamber
M. van der WOUDE, President of Chamber
D. GRATSIAS, President of Chamber
G. BERARDIS, President of Chamber
N.J. FORWOOD, Judge
F. DEHOUSSE, Judge
O. CZÚCZ, Judge
I. WISZNIEWSKA-BIAŁECKA, Judge
I. PELIKÁNOVÁ, Judge
I. LABUCKA, Judge
J. SCHWARCZ, Judge
A. POPESCU, Judge
M. KANCHEVA, Judge
E. BUTTIGIEG, Judge
C. WETTER, Judge
V. TOMLJENOVIĆ, Judge
E. BIELIŪNAS, Judge
V. KREUSCHITZ, Judge
A. COLLINS, Judge
I. ULLOA RUBIO, Judge
S. GERVASONI, Judge
L. MADISE, Judge

E. COULON, Registrar

4. Former members of the General Court

David Alexander Ogilvy Edward (1989–92)
Christos Yeraris (1989–92)
José Luís da Cruz Vilaça (1989–95), President (1989–95)
Jacques Biancarelli (1989–95)
Donal Patrick Michael Barrington (1989–96)
Romain Alphonse Schintgen (1989–96)
Heinrich Kirschner (1989–97)
Antonio Saggio (1989–98), President (1995–98)
Cornelis Paulus Briët (1989–98)
Koen Lenaerts (1989–2003)
Bo Vesterdorf (1989–2007), President (1998–2007)
Rafael García-Valdecasas y Fernández (1989–2007)
Andreas Kalogeropoulos (1992–98)
Christopher William Bellamy (1992–99)
André Potocki (1995–2001)
Rui Manuel Gens de Moura Ramos (1995–2003)
Pernilla Lindh (1995–2006)
Virpi Tiili (1995–2009)
Josef Azizi (1995–2013)
John D. Cooke (1996–2008)
Jörg Pirrung (1997–2007)
Paolo Mengozzi (1998–2006)
Arjen W.H. Meij (1998–2010)
Mihalis Vilaras (1998–2010)
Hubert Legal (2001–07)
Verica Trstenjak (2004–06)
Daniel Šváby (2004–09)
Ena Cremona (2004–12)
Vilenas Vadapalas (2004–13)
Küllike Jürimäe (2004–13)
Enzo Moavero Milanesi (2006–11)
Nils Wahl (2006–12)
Teodor Tchipev (2007–10)
Valeriu M. Ciucă (2007–10)
Santiago Soldevila Fragoso (2007–13)
Laurent Truchot (2007–13)
Kevin O'Higgins (2008–13)

Presidents

José Luís da Cruz Vilaça (1989–95)
Antonio Saggio (1995–98)
Bo Vesterdorf (1998–2007)

Registrar

Hans Jung (1989–2005)

C — Statistics concerning the judicial activity of the General Court

General activity of the General Court

1. New cases, completed cases, cases pending (2009–13)

New cases

2. Nature of proceedings (2009–13)
3. Type of action (2009–13)
4. Subject matter of the action (2009–13)

Completed cases

5. Nature of proceedings (2009–13)
6. Subject matter of the action (2013)
7. Subject matter of the action (2009–13) (judgments and orders)
8. Bench hearing action (2009–13)
9. Duration of proceedings in months (2009–13) (judgments and orders)

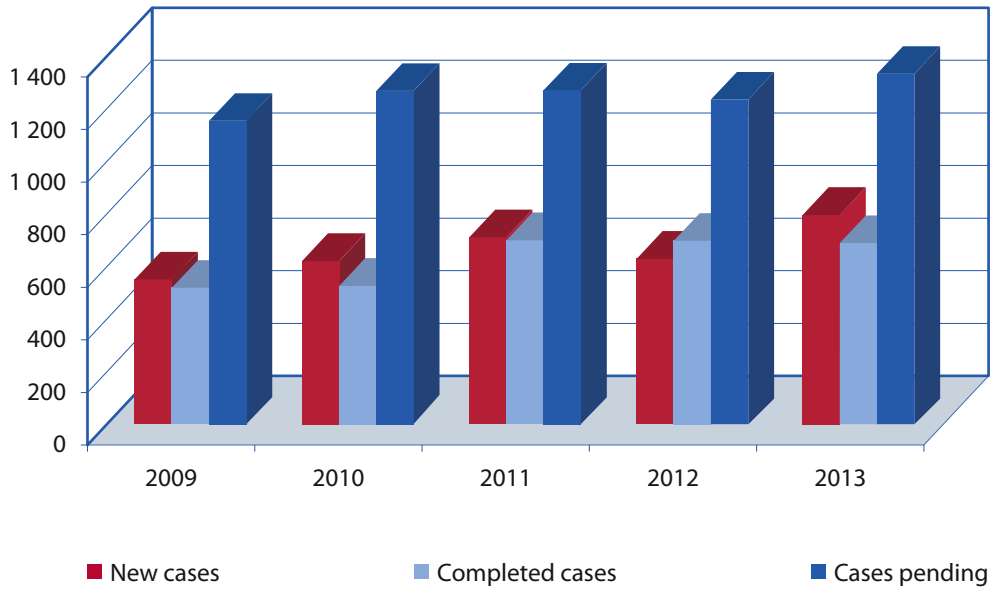
Cases pending as at 31 December

10. Nature of proceedings (2009–13)
11. Subject matter of the action (2009–13)
12. Bench hearing action (2009–13)

Miscellaneous

13. Proceedings for interim measures (2009–13)
14. Expedited procedures (2009–13)
15. Appeals against decisions of the General Court to the Court of Justice (1990–2013)
16. Distribution of appeals before the Court of Justice according to the nature of the proceedings (2009–13)
17. Results of appeals before the Court of Justice (2013) (judgments and orders)
18. Results of appeals before the Court of Justice (2009–13) (judgments and orders)
19. General trend (1989–2013) (new cases, completed cases, cases pending)

1. *General activity of the General Court —* New cases, completed cases, cases pending (2009–13) (1) (2)

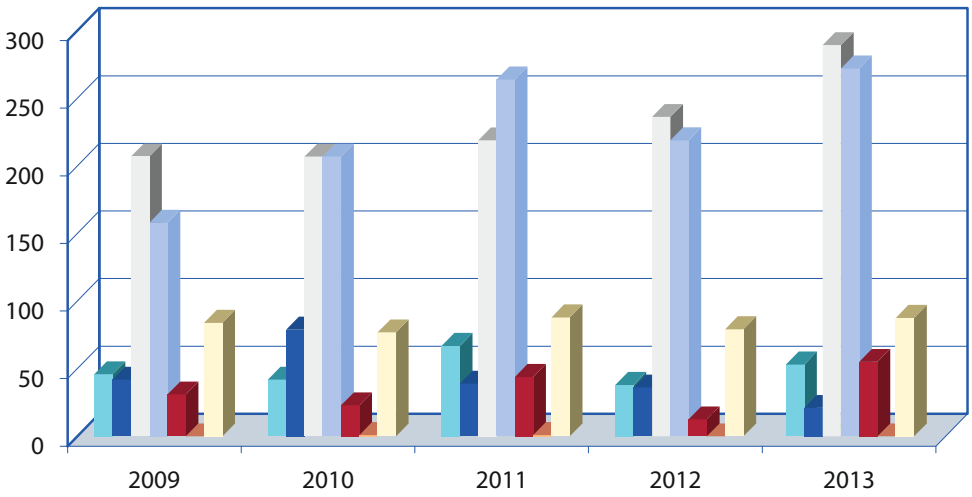


	2009	2010	2011	2012	2013
New cases	568	636	722	617	790
Completed cases	555	527	714	688	702
Cases pending	1 191	1 300	1 308	1 237	1 325

(1) Unless otherwise indicated, this table and the following tables take account of special forms of procedure. The following are considered to be 'special forms of procedure': application to set a judgment aside (Article 41 of the Statute of the Court of Justice; Article 122 of the Rules of Procedure of the General Court); third-party proceedings (Article 42 of the Statute of the Court of Justice; Article 123 of the Rules of Procedure); revision of a judgment (Article 44 of the Statute of the Court of Justice; Article 125 of the Rules of Procedure); interpretation of a judgment (Article 43 of the Statute of the Court of Justice; Article 129 of the Rules of Procedure); taxation of costs (Article 92 of the Rules of Procedure); legal aid (Article 96 of the Rules of Procedure); and rectification of a judgment (Article 84 of the Rules of Procedure).

(2) Unless otherwise indicated, this table and the following tables do not take account of proceedings concerning interim measures.

2. *New cases* — Nature of proceedings (2009–13)

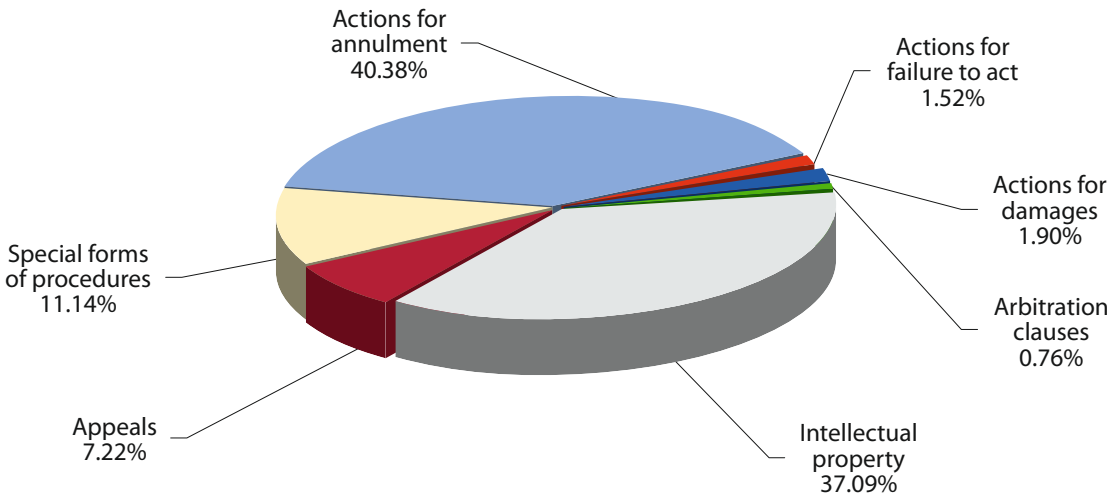


State aid
Competition
Intellectual property
Other direct actions
Appeals
Appeals concerning interim measures or interventions
Special forms of procedure

	2009	2010	2011	2012	2013
State aid	46	42	67	36	54
Competition	42	79	39	34	23
Intellectual property	207	207	219	238	293
Other direct actions	158	207	264	220	275
Appeals	31	23	44	10	57
Appeals concerning interim measures or interventions		1	1	1	
Special forms of procedure	84	77	88	78	88
Total	**568**	**636**	**722**	**617**	**790**

3. *New cases* — Type of action (2009–13)

Distribution in 2013



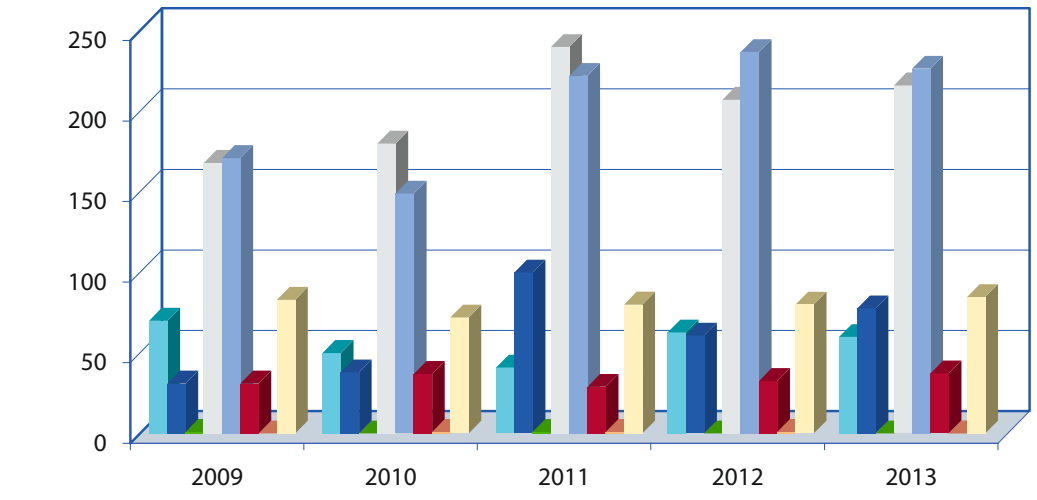
	2009	2010	2011	2012	2013
Actions for annulment	214	304	341	257	319
Actions for failure to act	7	7	8	8	12
Actions for damages	13	8	16	17	15
Arbitration clauses	12	9	5	8	6
Intellectual property	207	207	219	238	293
Appeals	31	23	44	10	57
Appeals concerning interim measures or interventions		1	1	1	
Special forms of procedure	84	77	88	78	88
Total	**568**	**636**	**722**	**617**	**790**

4. *New cases* — Subject matter of the action (2009–13) ([1])

	2009	2010	2011	2012	2013
Access to documents	15	19	21	18	20
Accession of new states	1				1
Agriculture	19	24	22	11	27
Approximation of laws					13
Arbitration clause	12	9	5	8	6
Area of freedom, security and justice	2		1		6
Association of the Overseas Countries and Territories					1
Commercial policy	8	9	11	20	23
Common fisheries policy	1	19	3		3
Common foreign and security policy		1			2
Company law	1				
Competition	42	79	39	34	23
Consumer protection					2
Culture	1				1
Customs union and Common Customs Tariff	5	4	10	6	1
Economic and monetary policy		4	4	3	15
Economic, social and territorial cohesion	6	24	3	4	3
Education, vocational training, youth and sport			2	1	2
Employment					2
Energy	2		1		1
Environment	4	15	6	3	10
External action by the European Union	5	1	2	1	
Financial provisions (budget, financial framework, own resources, combating fraud)	1			1	
Free movement of goods	1				1
Freedom of movement for persons	1	1			
Freedom to provide services	4	1		1	
Intellectual and industrial property	207	207	219	238	294
Law governing the institutions	32	17	44	41	44
Public health	2	4	2	12	5
Public procurement	19	15	18	23	15
Registration, evaluation, authorisation and restriction of chemicals (REACH regulation)		8	3	2	12
Research and technological development and space	6	3	4	3	5
Restrictive measures (external action)	7	21	93	59	41
Social policy	2	4	5	1	
Social security for migrant workers					1
State aid	46	42	67	36	54
Taxation		1	1	1	1
Tourism					2
Trans-European networks					3
Transport		1	1		5
Total EC Treaty/TFEU	**452**	**533**	**587**	**527**	**645**
Total Euratom Treaty		**1**			
Staff Regulations	32	25	47	12	57
Special forms of procedure	84	77	88	78	88
OVERALL TOTAL	**568**	**636**	**722**	**617**	**790**

([1]) As a result of the entry into force of the Treaty on the Functioning of the European Union (TFEU) on 1 December 2009, it was necessary to change the presentation of the subject matter of actions. The data for the year 2009 have been revised accordingly.

5. *Completed cases* — Nature of proceedings (2009–13)



	2009	2010	2011	2012	2013
State aid	70	50	41	63	60
Competition	31	38	100	61	75
Staff cases	1		1		
Intellectual property	168	180	240	210	217
Other direct actions	171	149	222	240	226
Appeals	31	37	29	32	39
Appeals concerning interim measures or interventions		1	1	1	
Special forms of procedure	83	72	80	81	85
Total	**555**	**527**	**714**	**688**	**702**

6. *Completed cases* — Subject matter of the action (2013)

	Judgments	Orders	Total
Access to documents	10	9	19
Agriculture	12	4	16
Arbitration clause	4	4	8
Area of freedom, security and justice	1	6	7
Commercial policy	11	8	19
Common fisheries policy	2		2
Competition	66	9	75
Customs union and Common Customs Tariff	6	3	9
Economic and monetary policy		1	1
Economic, social and territorial cohesion	14		14
Education, vocational training, youth and sport		1	1
Employment		2	2
Energy	1		1
Environment	4	2	6
External action by the European Union		2	2
Free movement of goods		1	1
Intellectual and industrial property	164	54	218
Law governing the institutions	14	21	35
Public health	2	2	4
Public procurement	12	9	21
Registration, evaluation, authorisation and restriction of chemicals (REACH regulation)	6		6
Research and technological development and space	1	3	4
Restrictive measures (external action)	33	7	40
Social policy	4		4
Social security for migrant workers		1	1
State aid	16	43	59
Tourism		1	1
Total EC Treaty/TFEU	**383**	**193**	**576**
Total CS Treaty	**1**		**1**
Staff Regulations	14	26	40
Special forms of procedure		85	85
OVERALL TOTAL	**398**	**304**	**702**

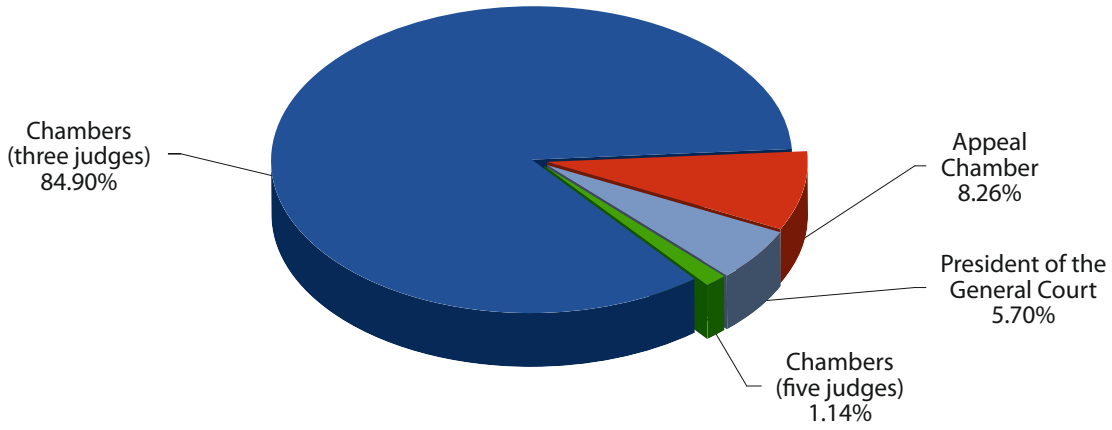
7. *Completed cases* — Subject matter of the action (2009–13) ([1]) (judgments and orders)

	2009	2010	2011	2012	2013
Access to documents	6	21	23	21	19
Accession of new states	1				
Agriculture	46	16	26	32	16
Arbitration clause	10	12	6	11	8
Area of freedom, security and justice	3			2	7
Commercial policy	6	8	10	14	19
Common fisheries policy	17		5	9	2
Company law		1			
Competition	31	38	100	61	75
Consumer protection		2	1		
Culture	2				
Customs union and Common Customs Tariff	10	4	1	6	9
Economic and monetary policy		2	3	2	1
Economic, social and territorial cohesion	3	2	9	12	14
Education, vocational training, youth and sport		1	1	1	1
Employment					2
Energy		2			1
Environment	9	6	22	8	6
External action by the European Union		4	5		2
Financial provisions (budget, financial framework, own resources, combating fraud)	2			2	
Free movement of goods	3				1
Freedom of movement for persons	1		2	1	
Freedom to provide services	2	2	3	2	
Intellectual and industrial property	169	180	240	210	218
Law governing the institutions	20	26	36	41	35
Public health	1	2	3	2	4
Public procurement	12	16	15	24	21
Registration, evaluation, authorisation and restriction of chemicals (REACH regulation)			4	1	6
Research and technological development and space	1	3	5	3	4
Restrictive measures (external action)	8	10	32	42	40
Social policy	6	6	5	1	4
Social security for migrant workers					1
State aid	70	50	41	63	59
Taxation		1		2	
Tourism					1
Transport		2	1	1	
Total EC Treaty/TFEU	**439**	**417**	**599**	**574**	**576**
Total CS Treaty					**1**
Total Euratom Treaty	**1**		**1**		
Staff Regulations	32	38	34	33	40
Special forms of procedure	83	72	80	81	85
OVERALL TOTAL	**555**	**527**	**714**	**688**	**702**

([1]) As a result of the entry into force of the Treaty on the Functioning of the European Union (TFEU) on 1 December 2009, it was necessary to change the presentation of the subject matter of actions. The data for the year 2009 have been revised accordingly.

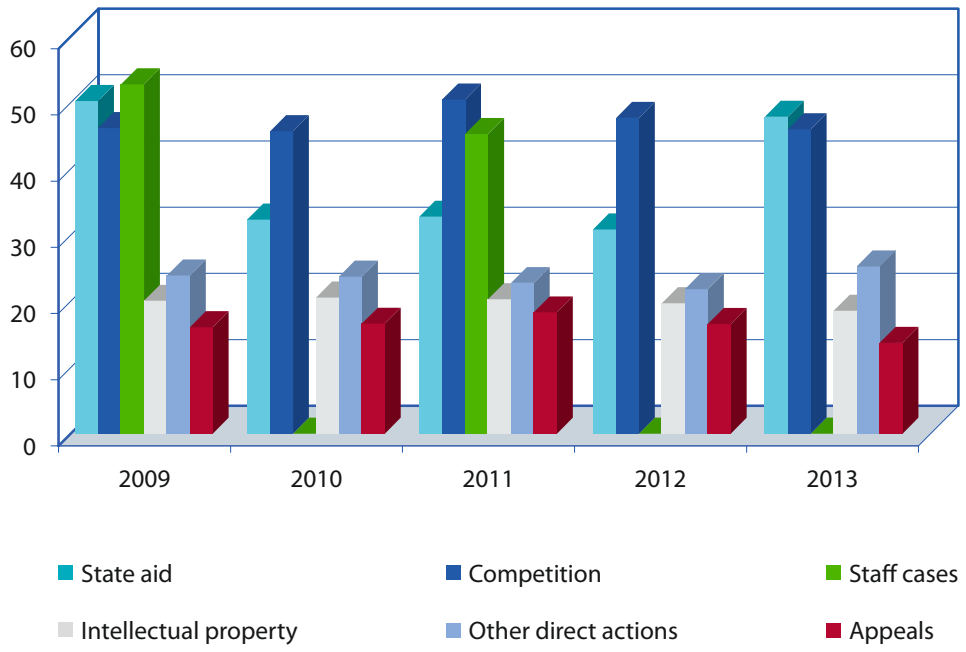
8. *Completed cases* — Bench hearing action (2009–13)

Distribution in 2013



	2009			2010			2011			2012			2013		
	Judgments	Orders	Total	Judgments	Orders	Total	Judgments	Orders	Total	Judgments	Orders	Total	Judgments	Orders	Total
Grand Chamber					2	2									
Appeal Chamber	20	11	31	22	15	37	15	14	29	17	20	37	13	45	58
President of the General Court		50	50		54	54		56	56		50	50		40	40
Chambers (five judges)	27	2	29	8		8	19	6	25	9		9	7	1	8
Chambers (three judges)	245	200	445	255	168	423	359	245	604	328	264	592	378	218	596
Single judge				3		3									
Total	**292**	**263**	**555**	**288**	**239**	**527**	**393**	**321**	**714**	**354**	**334**	**688**	**398**	**304**	**702**

9. *Completed cases* — Duration of proceedings in months (2009–13) ([1]) (judgments and orders)

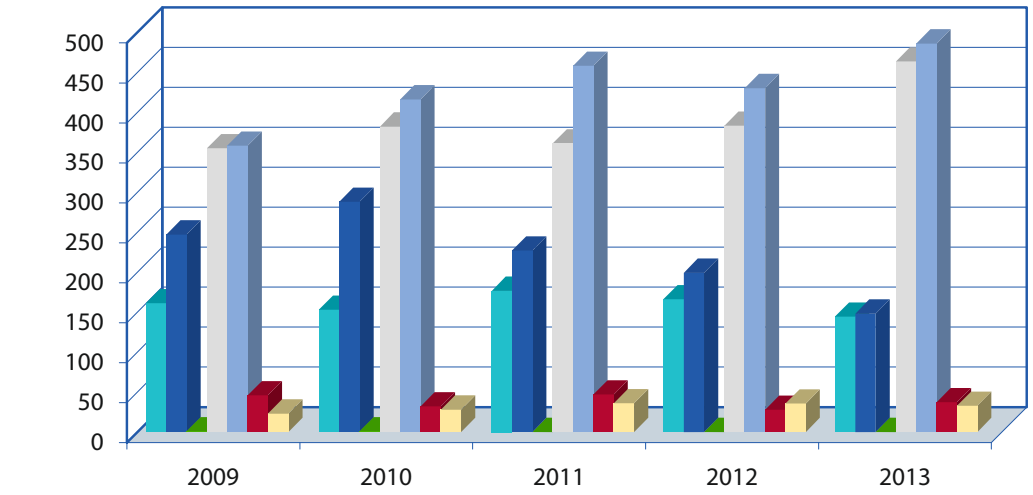


	2009	2010	2011	2012	2013
State aid	50.3	32.4	32.8	31.5	48.1
Competition	46.2	45.7	50.5	48.4	46.4
Staff cases	52.8		45.3		
Intellectual property	20.1	20.6	20.3	20.3	18.7
Other direct actions	23.9	23.7	22.8	22.2	24.9
Appeals	16.1	16.6	18.3	16.8	13.9

([1]) The calculation of the average duration of proceedings does not take account of: cases ruled upon by interlocutory judgment; special forms of procedure; appeals concerning interim measures or interventions; cases referred by the Court of Justice following the amendment of the division of jurisdiction between it and the Court of First Instance (now the General Court); cases referred by the Court of First Instance after the Civil Service Tribunal began operating.

The duration of proceedings is expressed in months and tenths of months.

10. *Cases pending as at 31 December* — Nature of proceedings (2009–13)



State aid
Competition
Staff cases
Intellectual property
Other direct actions
Appeals
Special forms of procedure

	2009	2010	2011	2012	2013
State aid	161	153	179	152	146
Competition	247	288	227	200	148
Staff cases	1	1			
Intellectual property	355	382	361	389	465
Other direct actions	358	416	458	438	487
Appeals	46	32	47	25	43
Special forms of procedure	23	28	36	33	36
Total	**1 191**	**1 300**	**1 308**	**1 237**	**1 325**

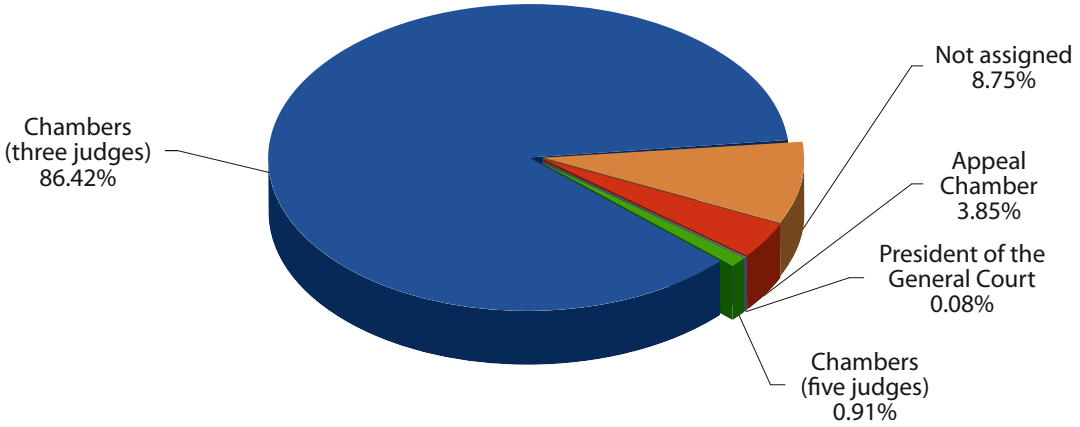
11. *Cases pending as at 31 December* — Subject matter of the action (2009–13) ([1])

	2009	2010	2011	2012	2013
Access to documents	44	42	40	37	38
Accession of new states					1
Agriculture	57	65	61	40	51
Approximation of laws					13
Arbitration clause	22	19	18	15	13
Area of freedom, security and justice	2	2	3	1	
Association of the Overseas Countries and Territories					1
Commercial policy	33	34	35	41	45
Common fisheries policy	8	27	25	16	17
Common foreign and security policy		1	1	1	3
Company law	1				
Competition	247	288	227	200	148
Consumer protection	3	1			2
Culture					1
Customs union and Common Customs Tariff	6	6	15	15	7
Economic and monetary policy		2	3	4	18
Economic, social and territorial cohesion	16	38	32	24	13
Education, vocational training, youth and sport	1		1	1	2
Energy	2		1	1	1
Environment	25	34	18	13	17
External action by the European Union	8	5	2	3	1
Financial provisions (budget, financial framework, own resources, combating fraud)	2	2	2	1	1
Freedom of movement for persons	2	3	1		
Freedom to provide services	5	4	1		
Intellectual and industrial property	355	382	361	389	465
Law governing the institutions	42	33	41	41	50
Public health	4	6	5	15	16
Public procurement	41	40	43	42	36
Registration, evaluation, authorisation and restriction of chemicals (REACH regulation)		8	7	8	14
Research and technological development and space	8	8	7	7	8
Restrictive measures (external action)	17	28	89	106	107
Social policy	6	4	4	4	
State aid	160	152	178	151	146
Taxation			1		1
Tourism					1
Trans-European networks					3
Transport	2	1	1		5
Total EC Treaty/TFEU	**1 119**	**1 235**	**1 223**	**1 176**	**1 245**
Total CS Treaty	**1**	**1**	**1**	**1**	
Total Euratom Treaty		**1**			
Staff Regulations	48	35	48	27	44
Special forms of procedure	23	28	36	33	36
OVERALL TOTAL	**1 191**	**1 300**	**1 308**	**1 237**	**1 325**

([1]) As a result of the entry into force of the Treaty on the Functioning of the European Union (TFEU) on 1 December 2009, it was necessary to change the presentation of the subject matter of actions. The data for the year 2009 have been revised accordingly.

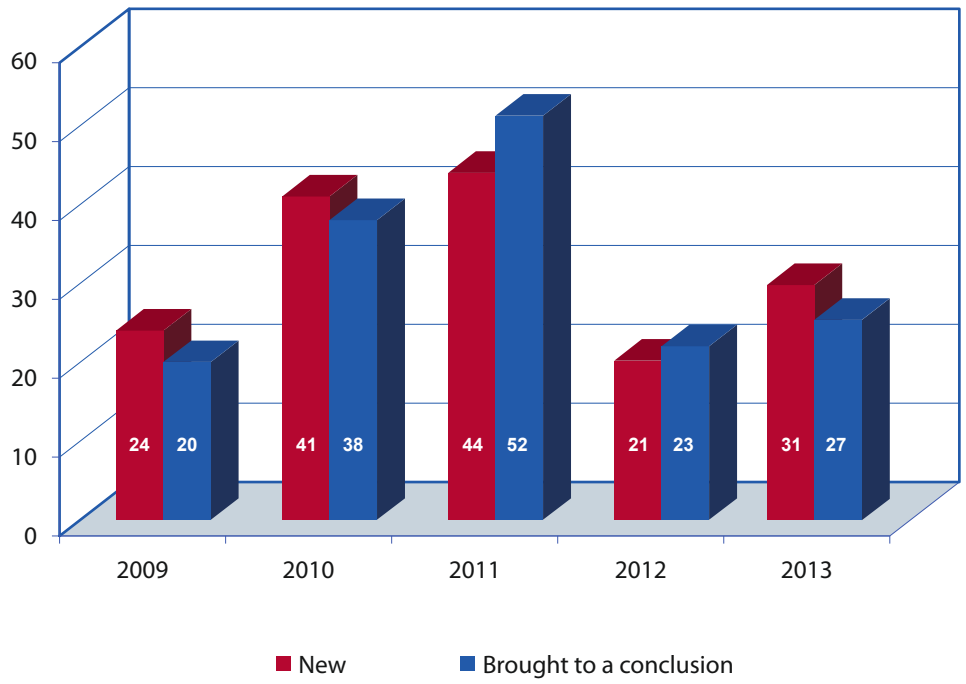
12. *Cases pending as at 31 December* — Bench hearing action (2009–13)

Distribution in 2013



	2009	2010	2011	2012	2013
Appeal Chamber	46	32	51	38	51
President of the General Court		3	3	3	1
Chambers (five judges)	49	58	16	10	12
Chambers (three judges)	1 019	1 132	1 134	1 123	1 145
Single judge	2				
Not assigned	75	75	104	63	116
Total	**1 191**	**1 300**	**1 308**	**1 237**	**1 325**

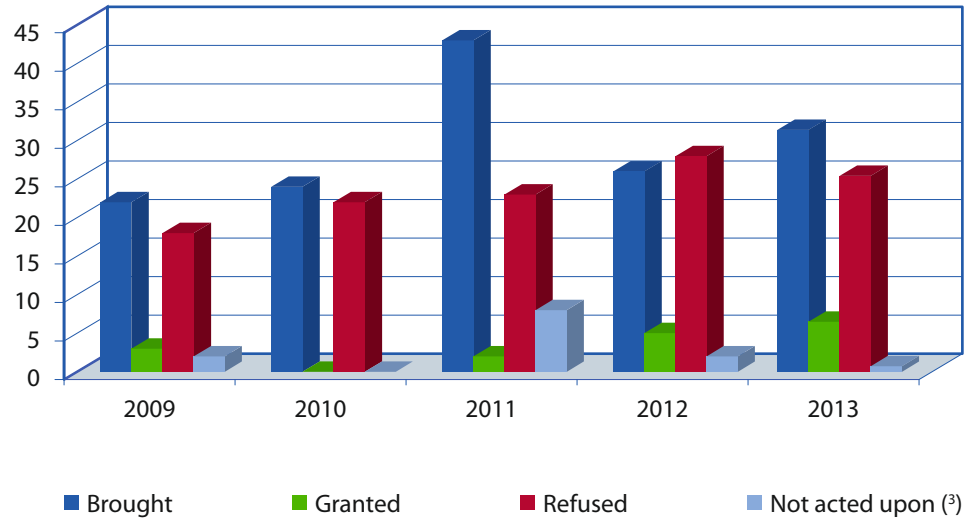
13. *Miscellaneous* — Proceedings for interim measures (2009–13)



Distribution in 2013

	New applications for interim measures	Applications for interim measures brought to a conclusion	Outcome		
			Granted	Removal from the register/no need to adjudicate	Dismissed
Access to documents	4	2	2		
Agriculture	2	1			1
Arbitration clause	1	1			1
Association of the Overseas Countries and Territories	1				
Competition		1	1		
Consumer protection	1	1			1
Environment	1				
Law governing the institutions	4	3		1	2
Public health	2	2	1		1
Public procurement	3	2			2
Registration, evaluation, authorisation and restriction of chemicals (REACH regulation)	1	2		1	1
Restrictive measures (external action)	3	3			3
State aid	8	9		3	6
Total	**31**	**27**	**4**	**5**	**18**

14. *Miscellaneous* — Expedited procedures (2009–13) (1) (2)



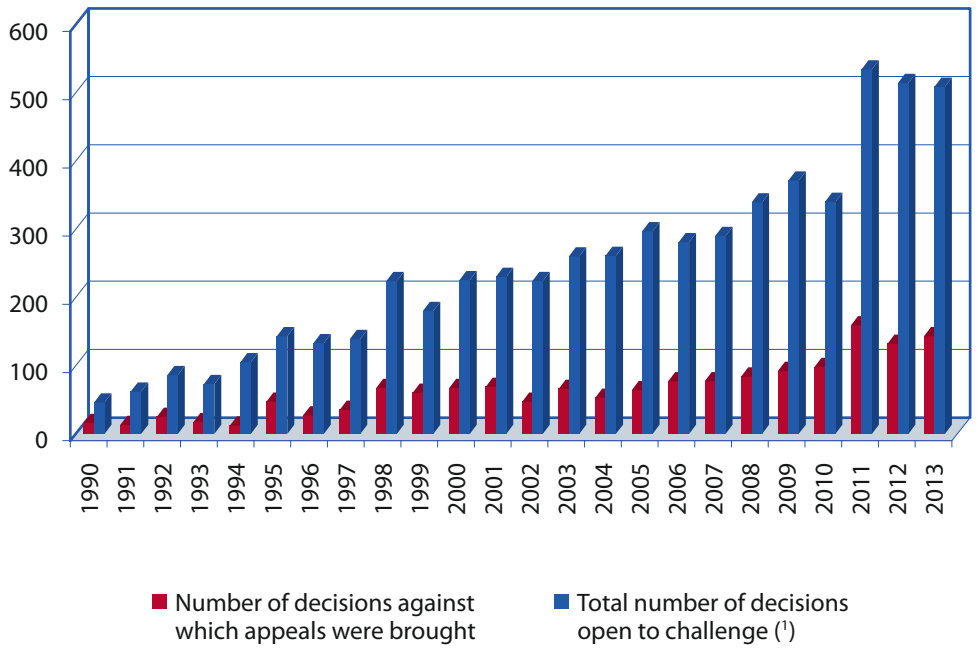
	2009				2010				2011				2012				2013			
		Outcome				Outcome				Outcome				Outcome				Outcome		
	Brought	Granted	Refused	Not acted upon (3)	**Brought**	Granted	Refused	Not acted upon (3)	**Brought**	Granted	Refused	Not acted upon (3)	**Brought**	Granted	Refused	Not acted upon (3)	**Brought**	Granted	Refused	Not acted upon (3)
Access to documents	4		4						2		1		1		2		1		1	
Agriculture	2		3														1		1	
Commercial policy	2		2						3		2		3		2		15	2	14	1
Competition	2		2		3		3		4		4		2		2		2		2	
Customs union and Common Customs Tariff													1		1					
Economic, social and territorial cohesion					1		1						1		1					
Energy																	1		1	
Environment	1			1					2		2						5	5		
External action by the European Union					1		1													
Freedom to provide services	1	1																		
Law governing the institutions	1		1						1			1	1		1					
Procedure	1		1																	
Public health	1		1										5	1	3		1		2	
Public procurement	2		2		2		2										2		1	
Restrictive measures (external action)	5	1	2	1	10		10		30	2	12	7	10	4	16		4		4	
Social policy									1			1								
Staff Regulations		1																		
State aid					7		5				2		2			2				
Total	**22**	**3**	**18**	**2**	**24**		**22**		**43**	**2**	**23**	**9**	**26**	**5**	**28**	**2**	**32**	**7**	**26**	**1**

(1) The General Court may decide pursuant to Article 76a of the Rules of Procedure to deal with a case before it under an expedited procedure. That provision has been applicable since 1 February 2001.

(2) As a result of the entry into force of the Treaty on the Functioning of the European Union (TFEU) on 1 December 2009, it was necessary to change the presentation of the subject matter of actions. The data for the year 2009 have been revised accordingly.

(3) The category 'Not acted upon' covers the following instances: withdrawal of the application for expedition, discontinuance of the action and cases in which the action is disposed of by way of order before the application for expedition has been ruled upon.

15. *Miscellaneous* — Appeals against decisions of the General Court to the Court of Justice (1990–2013)



	Number of decisions against which appeals were brought	Total number of decisions open to challenge (1)	Percentage of decisions against which appeals were brought
1990	16	46	35%
1991	13	62	21%
1992	25	86	29%
1993	17	73	23%
1994	12	105	11%
1995	47	143	33%
1996	27	133	20%
1997	35	139	25%
1998	67	224	30%
1999	60	180	33%
2000	67	225	30%
2001	69	230	30%
2002	47	225	21%
2003	66	260	25%
2004	53	261	20%
2005	64	297	22%
2006	77	281	27%
2007	78	290	27%
2008	84	339	25%
2009	92	371	25%
2010	98	338	29%
2011	158	533	30%
2012	132	514	26%
2013	144	510	28%

(1) Total number of decisions open to challenge — judgments, orders concerning interim measures or refusing leave to intervene, and all orders terminating proceedings other than those removing a case from the register or transferring a case — in respect of which the period for bringing an appeal expired or against which an appeal was brought.

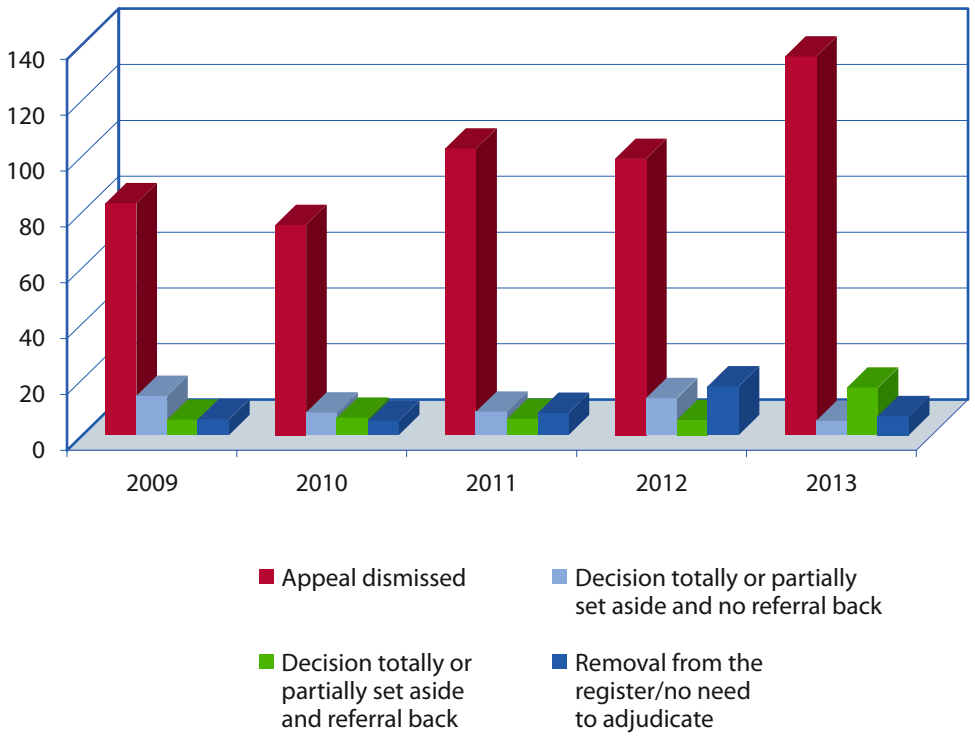
16. *Miscellaneous* — Distribution of appeals before the Court of Justice according to the nature of the proceedings (2009–2013)

	2009			2010			2011			2012			2013		
	Decisions against which appeals were brought	Decisions open to challenge	**Appeals as a percentage**	Decisions against which appeals were brought	Decisions open to challenge	**Appeals as a percentage**	Decisions against which appeals were brought	Decisions open to challenge	**Appeals as a percentage**	Decisions against which appeals were brought	Decisions open to challenge	**Appeals as a percentage**	Decisions against which appeals were brought	Decisions open to challenge	**Appeals as a percentage**
State aid	23	51	**45%**	17	34	**50%**	10	37	**27%**	18	52	**35%**	16	52	**31%**
Competition	11	45	**24%**	15	33	**45%**	49	90	**54%**	24	60	**40%**	28	73	**38%**
Staff cases	1	3	**33%**				1	1	**100%**						
Intellectual property	25	153	**16%**	32	140	**23%**	39	201	**19%**	41	190	**22%**	38	183	**21%**
Other direct actions	32	119	**27%**	34	131	**26%**	59	204	**29%**	47	208	**23%**	62	202	**31%**
Appeals											2	**0%**			
Special forms of procedure										2	2	**100%**			
Total	92	371	**25%**	98	338	**29%**	158	533	**30%**	132	514	**26%**	144	510	**28%**

17. *Miscellaneous* — Results of appeals before the Court of Justice (2013) (judgments and order)

	Appeal dismissed	Decision totally or partially set aside and no referral back	Decision totally or partially set aside and referral back	Removal from the register/no need to adjudicate	Total
Access to documents	4		2		6
Agriculture	5				5
Commercial policy	3		1		4
Common foreign and security policy	9	1	2		12
Competition	33	1	1	1	36
Consumer protection	1				1
Customs union and Common Customs Tariff	2				2
Economic, social and territorial cohesion	3	1			4
Environment	1				1
Freedom of movement for persons	2				2
Freedom to provide services	1				1
Intellectual and industrial property	25	1	2	5	33
Law governing the institutions	19	1	2		22
Public health	1				1
Public procurement	2				2
Social policy	1				1
Staff Regulations	2				2
State aid	18		5		23
Taxation	1				1
Transport	1				1
Total	**134**	**5**	**15**	**6**	**160**

18. *Miscellaneous* — Results of appeals before the Court of Justice (2009–13) (judgments and orders)



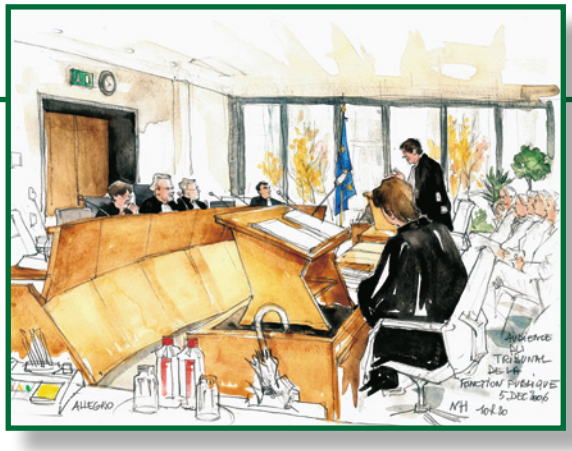
	2009	2010	2011	2012	2013
Appeal dismissed	83	73	101	98	134
Decision totally or partially set aside and no referral back	12	6	9	12	5
Decision totally or partially set aside and referral back	4	5	6	4	15
Removal from the register/no need to adjudicate	5	4	8	15	6
Total	**104**	**88**	**124**	**129**	**160**

19. *Miscellaneous* — General trend (1989–13)
New cases, completed cases, cases pending

	New cases [1]	Completed cases [2]	Cases pending on 31 December
1989	169	1	168
1990	59	82	145
1991	95	67	173
1992	123	125	171
1993	596	106	661
1994	409	442	628
1995	253	265	616
1996	229	186	659
1997	644	186	1 117
1998	238	348	1 007
1999	384	659	732
2000	398	343	787
2001	345	340	792
2002	411	331	872
2003	466	339	999
2004	536	361	1 174
2005	469	610	1 033
2006	432	436	1 029
2007	522	397	1 154
2008	629	605	1 178
2009	568	555	1 191
2010	636	527	1 300
2011	722	714	1 308
2012	617	688	1 237
2013	790	702	1 325
Total	**10 740**	**9 415**	

(1) 1989: the Court of Justice referred 153 cases to the newly created Court of First Instance (now the General Court)
1993: the Court of Justice referred 451 cases as a result of the first extension of the jurisdiction of the Court of First Instance.
1994: the Court of Justice referred 14 cases as a result of the second extension of the jurisdiction of the Court of First Instance.
2004–05: the Court of Justice referred 25 cases as a result of the third extension of the jurisdiction of the Court of First Instance.

(2) 2005–06: the Court of First Instance referred 118 cases to the newly created Civil Service Tribunal.



Chapter III

The Civil Service Tribunal

A — Proceedings of the Civil Service Tribunal in 2013

By Mr Sean Van Raepenbusch, President of the Civil Service Tribunal

1. The statistics concerning the Tribunal's activity in 2013 show a drop in the number of cases brought (160) compared with the previous year (178). However, 2012 was notable as the year in which the Tribunal had registered the largest number of cases since its creation. The number of cases brought in 2013 is, in contrast, comparable to that of 2011 (159). That figure is nonetheless markedly higher than that of earlier years (139 in 2010, 113 in 2009 and 111 in 2008).

Most importantly, it must be pointed out that the number of cases brought to a close (184) represents a clear increase on that of the preceding year (121), although the latter figure is explained by the fact that three of the seven Judges making up the Tribunal were replaced at the end of 2011. The fact nonetheless remains that the Tribunal has thus achieved the best result in terms of quantity since its creation.

It follows that the number of pending cases fell compared with the previous year (211 compared with 235 as at 31 December 2012). However, that number remains at a higher level than at 31 December 2011 (178). The average duration of proceedings, [1] for its part, has not changed greatly (14.7 months in 2013 compared with 14.8 months in 2012).

During the period under consideration, the President of the Tribunal adopted three orders for interim measures compared with 11 in 2012 and 7 in 2011.

The statistics for 2013 also show that 56 appeals were brought before the General Court against decisions of the Tribunal, which represents an increase on 2011 (44) and 2012 (11). However, it must be pointed out in that connection that 22 of the appeals brought in 2013 were lodged by a single defendant. Moreover, of 39 appeals decided in 2013, 30 were dismissed and nine upheld in full or in part; in addition, four of the cases in which the judgment was set aside were referred back to the Tribunal.

Furthermore, nine cases were brought to a close by amicable settlement under Article 69 of the Rules of Procedure, compared with four the year before. The Tribunal has thus returned to the level of 2011 (8).

2. Another point of interest is that there was a further change in the composition of the Tribunal in 2013 as a new member took office owing to the early departure of a Judge.

3. The account given below will describe the most significant decisions of the Tribunal.

[1] Not including the duration of any stay of proceedings.

I. Procedural aspects

Conditions for admissibility

1. Act adversely affecting an official

In its judgment of 11 December 2013 in Case F-130/11 *Verile and Gjergji* v *Commission*, the Tribunal took the view, on the question of the transfer of pension rights, that the proposal of additional years of pensionable service which the relevant departments of an institution submit to an official for approval is a unilateral act, separable from the procedural framework in which it arises, which is derived directly from the individual right expressly conferred by Article 11(2) of Annex VIII to the Staff Regulations of Officials of the European Union (the Staff Regulations) on officials and other staff when they take up their duties with the European Union. Consequently, the Tribunal held that such a proposal is an act adversely affecting an official who has requested a transfer of his pension rights.

2. Time limits for bringing proceedings

It is not uncommon for officials and other staff to lodge a succession of complaints against the same act. Such complaints are admissible if they are lodged within the time limit laid down by Article 90(2) of the Staff Regulations. However, the question then arises as to when the time limit for bringing proceedings starts to run. In its judgment of 23 October 2013 in Case F-93/12 *D'Agostino* v *Commission*, the Tribunal held that it began to run on the date of receipt of the decision by which the administration adopted its position on the whole of the argument put forward by the applicant within the time limit for lodging a complaint. More specifically, if the applicant has lodged, within the prescribed time limit, a second complaint with the same scope as the first, in that it does not contain any new request, new claim or new evidence, the decision rejecting that second complaint must be regarded as a purely confirmatory measure confirming the rejection of the first complaint, so that it is from the rejection of the first complaint that the time limit for bringing proceedings starts to run. However, where the second complaint contains new elements compared with the first complaint, the decision rejecting the second complaint must be regarded as a new decision adopted, following reconsideration of the decision rejecting the first complaint, in the light of the second complaint, and it is that second decision which causes the time limit for bringing proceedings to begin to run.

3. Jurisdiction

In its judgment of 16 September 2013 in Joined Cases F-20/12 and F-43/12 *Wurster* v *EIGE*, the Tribunal held that the sound administration of justice requires it to consider of its own motion a plea raising a matter of public policy which relates to the scope of the law's application in that, in the case at hand, the contested decision was adopted on the basis of provisions which did not apply to the applicant. Citing the judgment of the Court of First Instance (now the General Court) of 15 July 1994 in Joined Cases T-576/93 to T-582/93 *Browet and Others* v *Commission*, the Tribunal held that it would be failing in its role as arbiter of legality if it did not point out, even in the absence of any dispute between the parties on that point, that the contested decision was taken on the basis of a legal provision which was not applicable to the case at hand.

4. Procedure

When dealing with an application which was problematic because of its structure, the Tribunal took the view, in its judgment of 30 September 2013 in Case F-38/12 *BP* v *FRA*, that it was not for it

to join together as it saw fit the arguments, complaints and pleas of an application under one or other head of claim. It therefore held that an argument raised under one head of claim seeking the annulment of a first decision may not be taken into account in support of another head of claim seeking the annulment of a second decision, even where that argument was in fact more powerful against that second decision.

II. Merits

General conditions for validity of measures

1. Obligation to rule on the basis of an individual and detailed examination

The Tribunal has repeatedly recalled the institutions' obligation to undertake a detailed examination of each case before reaching a decision. In particular, in its judgment of 19 March 2013 in Case F-13/12 *BR* v *Commission*, it emphasised that the obligation to examine each file diligently, fully and impartially, derives from the right to sound administration, and from the duty to have regard for the welfare of officials and the principle of equal treatment. In that light, the Tribunal held, in its judgment of 17 October 2013 in Case F-69/11 *BF* v *Court of Auditors*, that a committee tasked with making an initial selection from amongst candidates for a post must inform the appointing authority of the respective merits of the candidates selected at that stage, because the appointing authority must itself be placed in a position to be aware of and appraise the elements of the assessment of those candidates in order to be able to reach the final decision which it is incumbent on it to make. On the other hand, the fact that such a committee does not supply a comparison which includes the merits of the candidates who were not selected is not in itself such as to adversely affect candidates.

2. Obligation to state reasons

It is not uncommon for internal rules to require a pre-selection committee to submit a reasoned report on the candidates for a post to the appointing authority. In that regard, the Tribunal held, in its judgment in *BF* v *Court of Auditors*, that, if such rules are not to be rendered useless, the statement of reasons required must contain all the elements of assessment necessary to allow the appointing authority to exercise its wide prerogatives as regards appointment correctly. A report containing such a statement of reasons must ultimately allow the appointing authority to understand the assessment made by the pre-selection committee of the candidates selected and, following consideration of the comparative merits, to choose itself the candidate most suited to the performance of the duties which were the subject of the recruitment notice.

Further, in its judgment of 6 March 2013 in Case F-41/12 *Scheefer* v *Parliament*, the Tribunal emphasised that a statement of reasons cannot be deemed deficient on the ground that it does not go into detail. A statement of reasons is sufficient provided that it sets out the facts and legal considerations having decisive importance in the context of the decision, with the result that the administration is not required to give the grounds for the grounds of its decision.

On the other hand, the case-law sometimes imposes a higher obligation to state reasons on the administration.

According to the judgment of 11 July 2013 in Case F-46/11 *Tzirani* v *Commission*, that is the case as regards decisions to close without further action an inquiry originating in a request for assistance in a case of psychological harassment. In that judgment the Tribunal held that, unlike most

administrative measures which may adversely affect an official, such decisions are adopted in a specific factual context. A case of harassment, where it is established, is often characterised by its duration and by its extremely destructive effect on the victim's state of health. Moreover, such a situation does not in the main affect the financial interests or the career of the official, but damages him as a person, and damages his dignity and his physical and mental well-being.

In the same judgment, the Tribunal also observed that, as the applicant was convinced that she had been harassed, the duty to have regard for the welfare of staff required a strict interpretation of the obligation to state the reasons provided for by the second paragraph of Article 25 of the Staff Regulations. Consequently, the institution is required to provide as full as possible a statement of reasons for its rejection of a request for assistance, and the applicant must not have to wait for the reply to a complaint in order to know those reasons.

3. Implementation of a judgment annulling a measure

In three judgments of 5 November 2013 in Cases F-103/12 *Doyle* v *Europol*, F-104/12 *Hanschmann* v *Europol* and F-105/12 *Knöll* v *Europol*, the Tribunal pointed out that, where a judgment of the Courts of the European Union annuls a decision of the administration on the ground of a breach of the rights of the defence, it is for the administration concerned to demonstrate that it has adopted all possible measures to negate the effects of that illegality. Consequently, the administration may not confine itself to stating that it is no longer possible to reinstate the victim of that breach in a situation where he can exercise his rights of defence. Accepting such an approach would amount to depriving of all meaning the obligation to ensure that those rights are respected and to implement the judgment finding that they have been breached. It is only where, for reasons not attributable to the administration concerned, it is objectively difficult, not to say impossible, to cancel the effects of the breach of the rights of the defence that the judgment annulling a measures may give rise to the payment of a sum of money in compensation.

Careers of officials and other staff

The Courts of the European Union consider that the selection board in a competition has a wide discretion when it verifies whether a candidate's diploma is appropriate for the field of the competition or demonstrates the nature and length of the professional experience required. The Tribunal must therefore confine itself to ascertaining whether the exercise of that power was free from manifest errors of assessment. In its judgment of 7 October 2013 in Case F-97/12 *Thomé* v *Commission*, the Tribunal supplemented that case-law in holding that, where the question is whether the candidate's diploma is recognised by the legislation of the State where it was issued or whether it meets, for the purposes of that legislation, the level required by the notice of competition, the interpretation which the selection board or the appointing authority gives, in response to a complaint, of the national legislation does not fall within its wide discretion, so that it must be subject to full review by the Courts of the European Union.

In addition, it is accepted in the case-law that, if the appointing authority finds, following publication of a notice of competition, that the conditions required are more exacting than the needs of the service demand, it may either continue the procedure and, if necessary, recruit a lower number of successful candidates than originally intended, or reopen the procedure by withdrawing the original competition notice and putting an amended one in its place. In its judgments of 13 March 2013 in Case F-125/11 *Mendes* v *Commission* and of 21 March 2013 in Case F-93/11 *Taghani* v *Commission*, the Tribunal made clear that the appointing authority may not amend, during the course of the procedure, the rules on the marking of certain tests in order to increase the number of candidates who received the pass mark in those tests. Such an approach reduces the prospects

of being among the best candidates of those who passed the tests according to the original rules. In that connection, the Tribunal explained that the application of the amendment in question to the candidates breached the principle of the protection of legitimate expectations and the principle of legal certainty, in that they were entitled to expect that the candidates admitted to the assessment exercises would be chosen only from among those who had obtained the pass mark in the admission tests according to the marking scheme set out in the competition notice.

Rights and obligations of officials and other staff

1. Non-discrimination on the grounds of age

The question arose as to whether the appointment at a career entry grade of a successful candidate in a competition who had acquired considerable professional experience outside the institutions constituted discrimination on the ground of age in so far as the person concerned could not expect to have career prospects equivalent to those of a younger successful candidate. In its judgment of 12 December 2013 in Case F-133/11 *BV* v *Commission*, the Tribunal held, in that regard, that where a competition notice, published in order to recruit officials at a certain grade, requires candidates to meet a minimum professional experience requirement, the successful candidates in that competition must all be regarded, whatever their age and professional experience, as being in the same situation as regards their classification in grade. It is true that the Tribunal has conceded that successful candidates in such a competition who joined the European civil service after having obtained considerable professional experience outside the institutions cannot expect career prospects equivalent to those of successful candidates who joined the European civil service at a younger age, because, as a rule, the career of the former will be shorter than that of the latter. However, as the Tribunal has pointed out, that state of affairs does not constitute discrimination on the ground of age, but depends on the individual circumstances of each of the successful candidates.

2. Discrimination on the grounds of sex

Maternity leave is intended to protect, first, the biological condition of a woman during and after her pregnancy and, second, the special relationship between a woman and her child during the period following pregnancy and birth. However, in its judgment of 11 July 2013 in Case F-86/12 *Haupt–Lizer* v *Commission*, the Tribunal held that in limiting the period during which a women was obliged not to work to the two weeks immediately before and after the birth, the European Union legislature had not intended to create a presumption that it was impossible for the person concerned to take any work-related action whatsoever during the other weeks of her maternity leave. Consequently, and given that the applicant had been informed after that two-week period of her inclusion on the reserve list of the competition which she sat and that she did not report any particular medical circumstances, the Tribunal refused, in this case, to regard maternity leave as an obstacle to taking the action required for the purposes of recruitment. Although the applicant was entitled to devote herself exclusively to her child during her maternity leave, the fact remains that she could not use that personal choice as a pretext for claiming that she was the victim of discrimination on the ground of her sex.

Furthermore, in the same judgment, the Tribunal held that the exercise by the applicant of her right to parental leave could not prevent her from taking part in a recruitment procedure and that the refusal to take that leave into account did not constitute discrimination on the grounds of sex. The Tribunal observed, in that regard, that the option of taking parental leave was available to both women and men and that the protection afforded to such leave was less extensive than that given to maternity leave.

3. Psychological harassment

Following on from its judgment of 9 December 2008 in Case F-52/05 *Q* v *Commission* (set aside on another issue by the judgment of the General Court of 12 July 2011 in Case T-80/09 P *Commission* v *Q*), the Tribunal held, in *Tzirani* v *Commission*, that a decision to close the file on a request for assistance based on an allegation of psychological harassment breaches Article 12a(3) of the Staff Regulations if the ground for that decision is the absence of any malicious intention on the part of the alleged harasser. In the same judgment, the Tribunal held that the second paragraph of Article 25 of the Staff Regulations does not require the disclosure to a person who made a request for assistance of either the final report of the administrative inquiry or the transcript of the hearings held in that connection. However, and provided that the interests of the persons accused and of those who gave witness statements to the inquiry are protected, no provision of the Staff Regulations prohibits such disclosure either.

Further, Article 12a of the Staff Regulations, which is applicable to contract staff, provides that such staff are not to suffer any prejudicial effects on the part of the institution which employs them when they are the victims of psychological harassment. However, in *D'Agostino* v *Commission*, the Tribunal observed that the provision is intended only to protect officials and other staff from any harassment, so that it cannot prevent the institution from ending a contractual relationship on a legitimate ground which has nothing to do with harassment.

4. Access to classified information

In a judgment of 21 November 2013 in Case F-122/12 *Arguelles Arias* v *Council*, the Tribunal ruled for the first time on the interpretation of Council Decision 2011/292. [2] It held that the appointing authority or the authority empowered to conclude contracts of employment (the AECC) has exclusive authority to decide, following completion of a security investigation by the competent national authorities, to grant or refuse security clearance to members of the Council's staff. As they are not bound by the findings of the security investigation conducted by the national authorities, even where the outcome of that investigation is favourable, the Council's appointing authority or AECC is not obliged to grant the person concerned security clearance if he presents a security risk, and thus retains the option of refusing to grant it by virtue of the duty of precaution incumbent on the institutions.

5. Duty of cooperation and loyalty

Also in its judgment in *Arguelles Arias* v *Council*, the Tribunal held that the applicant had breached his duty of loyalty and cooperation vis-à-vis the institution employing him in refusing to disclose to that institution the information which he had lodged with the national authority and which was such as to demonstrate that the institution's favourable decision was well-founded, when he was the only person in a position to supply that information to the institution.

6. Access to medical file

In its judgment of 16 September 2013 in Case F-84/12 *CN* v *Council*, the Tribunal held that Article 26a of the Staff Regulations could not be regarded as breaching Article 41(2)(b) of the Charter of Fundamental Rights of the European Union, since Article 26a recognises that officials have the

[2] Council Decision 2011/292/EU of 31 March 2011 on the security rules for protecting EU classified information (OJ 2011 L 141, p. 17).

right to acquaint themselves with their medical files and makes clear that such access is to be in accordance with arrangements laid down by each institution. Article 41(2)(b) of the Charter does not require that officials have, in all circumstances, direct access to their medical file, but makes indirect access possible where warranted by legitimate interests of confidentiality and professional secrecy.

Emoluments and social security benefits of officials

1. Daily subsistence allowance

In its judgment of 19 March 2013 in Case F-10/12 *Infante García-Consuegra* v *Commission*, the Tribunal held that the daily subsistence allowance under Article 10(1) of Annex VII to the Staff Regulations is subject to two conditions: first, the condition that the official must have changed his place of residence in order to comply with the obligation in Article 20 of the Staff Regulations and, second, the condition that he must have incurred costs or inconvenience as a result of having to move to or set up home provisionally in his place of employment. However, the grant of the daily subsistence allowance is not subject to the condition that the official concerned proves that he was obliged to maintain a home which gives rise to expenses provisionally in his place of origin or former employment. Moreover, if officials are not to be excluded automatically, in breach of the Staff Regulations, from receiving the daily subsistence allowance, it cannot be considered that only those persons who have a less stable employment relationship with the institutions may be regarded as having set up home provisionally in their place of employment until their relocation has taken place. In the same judgment, the Tribunal also made clear that, as the above conditions are cumulative, it is for the official concerned to furnish evidence that he has incurred expense or inconvenience as a result of having to move to or set up home provisionally in his place of employment. Nonetheless it is for the administration to respect the choice of the person concerned with regard to his accommodation during the time needed to look for a permanent home in his new place of employment. Accordingly, except in the case of serious suspicion and clear signs that there is no real correspondence between the expenses claimed and the actual situation of the person concerned, it is not for the administration to question the official's choice.

2. Sickness insurance

In its judgment of 16 May 2013 in Case F-104/10 *de Pretis Cagnodo et Trampuz de Pretis Cagnodo* v *Commission*, the Tribunal held that there is no provision in either the Joint Rules on Sickness Insurance (JSIS) for Officials, referred to in Article 72 of the Staff Regulations, or in the general implementing provisions adopted by the Commission requiring members to obtain an official estimate and to send it to the settlements office with the request for direct billing for a forthcoming hospital stay. Similarly, it noted that no reimbursement ceiling has been fixed for accommodation costs during hospitalisation, the applicable rules providing only that the proportion of the costs deemed excessive by comparison with normal costs in the country where the costs have been incurred is not to be reimbursed.

In the same judgment, the Tribunal held that the Commission is required to manage the JSIS in accordance with the principle of sound administration. When faced with excessive accommodation costs, the duty to have regard for the welfare of its staff obliges the Commission and, by extension, the JSIS settlements offices, before paying the invoice, even where direct billing has been requested, to obtain information in writing from the hospital that issued the invoice and also to inform the member of the problem. If they do not proceed in that manner, settlement offices may not leave members to bear the cost of the amount considered excessive.

The Tribunal was also called upon to clarify the role of the Medical Committee provided for by Article 23 of the JSIS and the extent of the supervision it exercises over that committee. In its judgment of 2 October 2013 in Case F-111/12 *Nardone* v *Commission*, it recalled that it is the duty of the Medical Committee to assess medical questions entirely objectively and independently and that that duty requires, first, that the Committee have available to it all the information it might need and, second, that it have full discretionary power. The Court only has the power to ascertain, first, whether the Committee was constituted and functioned properly and, second, whether its opinion is lawful, in particular whether it contains a sufficient statement of reasons. In the same judgment, the Tribunal made clear that where the Medical Committee is required to answer complex medical questions relating to a difficult diagnosis, it must indicate in its opinion the factors in the file on which it has relied and, in the event of significant discrepancy, its reasons for departing from certain relevant medical reports drawn up at an earlier stage which were more favourable to the official. Finally, also in that judgment, the Tribunal made clear that the Medical Committee meets the requirement to state reasons and the requirements of consistency and clarity where, first, it takes a view on the medically proven existence of each of the diseases and disorders from which the person concerned claims to suffer, in sufficiently clear and explicit terms to allow an assessment of the considerations on which the authors of the report based their findings. Second, where it takes a view, also in sufficiently clear and explicit terms, on the possible accidental or occupational cause of the diseases and disorders it considers to be proven and, finally, where it is possible, on reading the opinion of the Medical Committee, to establish a comprehensible link between the medical findings it contains and each of its conclusions.

3. Pensions

The Tribunal clarified various issues relating to the transfer of pension rights in its judgment in *Verile et Gjergji* v *Commission*. In the case of a transfer of rights acquired in the service of the European Union to a national pension scheme ('transfer out'), Article 11(1) of Annex VIII to the Staff Regulations provides that the official concerned has the right to have 'the actuarial equivalent of his retirement pension rights, updated to the actual date of transfer, in the [European Union]' transferred. On the other hand, in the case of a transfer of pension rights acquired in a Member State to the European Union pension scheme ('transfer in'), Article 11(2) provides that the official concerned is to be entitled to have paid to the European Union the capital value, updated to the date of the actual transfer, of pension rights acquired [with the national or international scheme of which he was a member until then]'. In the event of a transfer out, the sum of money transferred is the 'actuarial equivalent' of the rights acquired with the European Union. In the event of a transfer in, the sum of money transferred is the updated capital value, that is to say, a sum of money which represents in physical form the pension rights acquired with the national or international pension scheme, as updated on the date of the actual transfer.

In that connection, the Tribunal explained that the 'actuarial equivalent' referred to in Article 11(1) of Annex VIII to the Staff Regulations, and the 'updated capital value' referred to in Article 11(2) thereof are two distinct legal concepts, each covered by separate rules. The 'actuarial equivalent' appears in the Staff Regulations as an autonomous concept, which is part of the system of the European Union pension scheme. It is defined, in Article 8 of Annex VIII to the Staff Regulations, as 'the capital value of the benefits [of the old-age pension] accruing to the official by reference to the mortality table referred to in Article 9 of Annex XII and subject to 3.1% interest per annum, which rate may be revised in accordance with the rules laid down in Article 10 of Annex XII [to the Staff Regulations]'. 'Updated capital value', on the other hand, is not defined by the Staff Regulations, nor do those Regulations indicate its method of calculation, for the reason that its calculation and the detailed rules for checking such calculation are exclusively a matter for the national or international authorities concerned. As regards the calculation, by the competent national or

international authorities, for the purposes of a transfer in of the 'updated capital value', that capital value is determined on the basis of the applicable national law and in accordance with the detailed rules laid down by that law or, in the case of an international organisation, by its own rules, and not on the basis of Article 8 of Annex VIII to the Staff Regulations in accordance with the rate of interest fixed by that provision. In the light of the foregoing considerations, the Tribunal held that Article 2 of Regulation No 1324/2008, ([3]) which amended the rate of interest laid down by Article 8 of Annex VIII to the Staff Regulations for transfers out, must not be taken into account for the calculation of the capital corresponding to the pension rights acquired by officials and other staff before they enter the service of the European Union and must not be taken into account mandatorily by the national or international authorities concerned when they update the capital value of the sum they are required to transfer.

In a judgment of 11 December 2013 in Case F-15/10 *Andres and Others* v *ECB*, the Tribunal applied the case-law according to which an official cannot claim an acquired right unless the facts giving rise to that right occurred under the rules in force prior to the amendment of those rules. Accordingly, when the fact that a member of staff has reached the age of 60 allows him to claim the immediate calculation of his pension rights and the payment of benefits, the fact giving rise to the right to a pension is the fact of having reached that age and the staff member cannot claim the right acquired under the previous pension scheme when he had not reached that age at the time the pension scheme was amended.

Finally, there is a clear distinction between the fixing of a right to a pension and the payment of benefits which follows from that right. In the light of that distinction, it is accepted that an acquired right has not been breached where changes in the amounts actually paid are the result of the application of the weighting applicable to pensions according to the country of residence of the person entitled to the pension, as such changes do not prejudice the right to a pension as such. In its judgment in *Andres and Others* v *ECB*, the Tribunal took the view that that case-law also applied to the pension conversion factors used to calculate the benefits which actually had to be paid; as such factors are not constituent elements of pension rights as such.

Disputes concerning contracts

In its judgment in *BR* v *Commission*, the Tribunal recalled that an institution frequently enjoys a wide discretion not just in individual cases, but also within the framework of a general policy established, if appropriate, by an internal decision of general application, such as general implementing provisions, by which it imposes limits on the exercise of its discretion. The Tribunal, however, also recalled that such an internal decision may not result in the institution's waiving entirely the power conferred on it by the first paragraph of Article 8 of the Conditions of Employment of other Servants of the European Union (CEOS) to conclude or renew, as the case may be, the contract of a member of the temporary staff within the meaning of Article 2(b) or (d) of the CEOS up to the maximum period of six years. The Tribunal also stated in the judgment that the AECC may not disregard the discretion conferred on it by the second paragraph of Article 8 of the CEOS by mechanically applying the so called 'six-year rule' in Article 3(1) of the Commission decision of 28 April 2004, under which the accumulated total duration of the services of a non-permanent member of staff, whatever the type of contract or posting, is limited to six years calculated over a period of 12 years. A mechanical application of that rule cannot, in particular, justify the limitation of the employment

([3]) Council Regulation (EC, Euratom) No 1324/2008 of 18 December 2008 adjusting, from 1 July 2008, the rate of contribution to the pension scheme of officials and other servants of the European Communities (OJ 2008 L 345, p. 17).

of a member of staff to a shorter period than is authorised by the second paragraph of Article 8 of the CEOS. In disregarding its discretion in this way, the AECC breaches the principle of sound administration, the duty to have regard for the welfare of staff and the principle of equal treatment.

Moreover, in *D'Agostino* v *Commission*, the Commission sought to rely on the fact that the AECC should have produced evidence of a particularly significant interest in renewing the applicant's contract on the ground that the applicable rules would then have required that it renew that contract for an indefinite duration. In its judgment, the Tribunal held that an institution may not, however, without making an error of law, make the question whether the interest of the service requires the renewal of the contract of a member of staff depend, not on the needs of that service, but on obligations under the CEOS which it has to apply in the event of the renewal of that contract.

However, the Tribunal held, in its judgment in *Scheefer* v *Parliament*, that the reclassification of a contract of fixed duration into a contract for an indefinite period, in accordance with the first paragraph of Article 8 of the CEOS, in recognition of the fact that an institution had concluded successive fixed-term contracts with the applicant, does not, nonetheless, deprive that institution of the possibility of terminating that contract under the terms of Article 47(c)(i) of the CEOS. The use of contracts for an indefinite period does not provide their signatories with the stability of an appointment as an official.

B — Composition of the Civil Service Tribunal

(Order of precedence as at 8 October 2013)

From left to right:

K. Bradley, Judge; E. Perillo, Judge; H. Kreppel, President of Chamber; S. Van Raepenbusch, President of the Tribunal; M.I. Rofes i Pujol, President of Chamber; R. Barents, Judge; J. Svenningsen, Judge; W. Hakenberg, Registrar.

1. Members of the Civil Service Tribunal

(in order of their entry into office)

Sean Van Raepenbusch

Born in 1956; graduate in law (Free University of Brussels, 1979); special diploma in international law (Brussels, 1980); Doctor of Laws (1989); head of the legal service of the Société anonyme du canal et des installations maritimes (Canals and Maritime Installations company), Brussels (1979–84); official of the Commission of the European Communities (Directorate General for Social Affairs, 1984–88); member of the Legal Service of the Commission of the European Communities (1988–94); Legal Secretary at the Court of Justice of the European Communities (1994–2005); lecturer at the University of Charleroi (international and European social law, 1989–91), at the University of Mons Hainault (European law, 1991–97), at the University of Liège (European civil service law, 1989–91; institutional law of the European Union, 1995–2005; European social law, 2004–05); numerous publications on the subject of European social law and constitutional law of the European Union; Judge at the Civil Service Tribunal since 6 October 2005; President of the Civil Service Tribunal since 7 October 2011.

Horstpeter Kreppel

Born in 1945; university studies in Berlin, Munich, Frankfurt-am-Main (1966–72); First State examination in law (1972); Court trainee in Frankfurt-am-Main (1972–73 and 1974–75); College of Europe, Bruges (1973–74); Second State examination in law (Frankfurt-am-Main, 1976); specialist adviser in the Federal Labour Office and lawyer (1976); presiding judge at the Labour Court (Land Hesse, 1977–93); lecturer at the Technical College for Social Work, Frankfurt-am-Main, and at the Technical College for Administration, Wiesbaden (1979–1990); national expert to the Legal Service of the Commission of the European Communities (1993–96 and 2001–05); Social Affairs Attaché at the Embassy of the Federal Republic of Germany in Madrid (1996–2001); presiding judge at the Labour Court of Frankfurt-am-Main (February to September 2005); Judge at the Civil Service Tribunal since 6 October 2005.

Irena Boruta

Born in 1950; law graduate of the University of Wrocław (1972), doctorate in law (Łodz, 1982); lawyer at the Bar of the Republic of Poland (since 1977); visiting researcher (University of Paris X, 1987 to 1988; University of Nantes, 1993–94); expert of 'Solidarność' (1995–2000); professor of labour law and European social law at the University of Łodz (1997–98 and 2001–05), associate professor at Warsaw School of Economics (2002), professor of labour law and social security law at Cardinal Stefan Wyszyński University, Warsaw (2000–05); Deputy Minister of Labour and Social Affairs (1998–2001); member of the negotiation team for the accession of the Republic of Poland to the European Union (1998–2001); representative of the Polish Government to the International Labour Organisation (1998–2001); author of a number of works on labour law and European social law; Judge at the Civil Service Tribunal from 6 October 2005 to 7 October 2013.

Maria Isabel Rofes i Pujol

Born in 1956; study of law (law degree, University of Barcelona, 1981); specialisation in international trade (Mexico, 1983); study of European integration (Barcelona Chamber of Commerce, 1985) and of Community law (School of Public Administration, Catalonia, 1986); official of the Government of Catalonia (member of the Legal Service of the Ministry for Industry and Energy, April 1984 to August 1986); member of the Barcelona Bar (1985–87); Administrator, then Principal Administrator, in the Research and Documentation Division of the Court of Justice of the European Communities (1986–94); Legal Secretary at the Court of Justice (Chamber of Advocate General Ruiz-Jarabo Colomer, January 1995 to April 2004; Chamber of Judge Lõhmus, May 2004 to August 2009); Lecturer on Community cases, Faculty of Law, Autonomous University of Barcelona (1993–2000); numerous publications and courses on European social law; Member of the Board of Appeal of the Community Plant Variety Office (2006–09); Judge at the Civil Service Tribunal since 7 October 2009.

Ezio Perillo

Born in 1950; Doctor of Laws and lawyer at the Padua Bar; Assistant lecturer and senior researcher in civil and comparative law in the law faculty of the University of Padua (1977–82); Lecturer in Community law at the European College of Parma (1990–98), in the law faculties of the University of Padua (1985–87), the University of Macerata (1991–94) and the University of Naples (1995), and at the University of Milan (2000–01); Member of the Scientific Committee for the Master's in European Integration at the University of Padua; Official at the Court of Justice, in the Library, Research and Documentation Directorate (1982–84); Legal Secretary to Advocate General Mancini (1984–88); Legal Adviser to the Secretary-General of the European Parliament, Mr Enrico Vinci (1988–93); also, at the same institution: Head of Division in the Legal Service (1995–99); Director for Legislative Affairs and Conciliations, Inter-Institutional Relations and Relations with National Parliaments (1999–2004); Director for External Relations (2004–06); Director for Legislative Affairs in the Legal Service (2006–11); author of a number of publications on Italian civil law and European Union law; Judge at the Civil Service Tribunal since 6 October 2011.

René Barents

Born in 1951; graduated in law, specialisation in economics (Erasmus University Rotterdam, 1973); Doctor of Laws (University of Utrecht, 1981); Researcher in European law and international economic law (1973–74) and lecturer in European law and economic law at the Europa Institute of the University of Utrecht (1974–79) and at the University of Leiden (1979–81); Legal Secretary at the Court of Justice of the European Communities (1981–86), then Head of the Employee Rights Unit at the Court of Justice (1986–87); Member of the Legal Service of the Commission of the European Communities (1987–91); Legal Secretary at the Court of Justice (1991–2000); Head of Division (2000–09) in and then Director of the Research and Documentation Directorate of the Court of Justice of the European Union (2009–11); Professor (1988–2003) and Honorary Professor (since 2003) in European law at the University of Maastricht; Adviser to the Regional Court of Appeal, 's-Hertogenbosch (1993–2011); Member of the Royal Netherlands Academy of Arts and Sciences (since 1993); numerous publications on European law; Judge at the Civil Service Tribunal since 6 October 2011.

Kieran Bradley

Born in 1957; law degree (Trinity College, Dublin, 1975–79); Research assistant to Senator Mary Robinson (1978–79 and 1980); Pádraig Pearse Scholarship to study at the College of Europe (1979); postgraduate studies in European law at the College of Europe, Bruges (1979–80); Master's degree in law at the University of Cambridge (1980–81); Trainee at the European Parliament (Luxembourg, 1981); Administrator in the Secretariat of the Committee on Legal Affairs of the European Parliament (Luxembourg, 1981–88); Member of the Legal Service of the European Parliament (Brussels, 1988–95); Legal Secretary at the Court of Justice (1995–2000); Lecturer in European law at Harvard Law School (2000); Member of the Legal Service of the European Parliament (2000–03), then Head of Unit (2003–11) and Director (2011); author of numerous publications; Judge at the Civil Service Tribunal since 6 October 2011.

Jesper Svenningsen

Born in 1966; study of law (Candidatus juris) at the University of Aarhus (1989); trainee lawyer with the Legal Adviser to the Danish Government (1989–91); Legal Secretary at the Court of Justice (1991–93); admitted to the Bar in Denmark (1993); lawyer with the Legal Adviser to the Danish Government (1993–95); Lecturer in European law at the University of Copenhagen; Senior Lecturer at the European Institute of Public Administration, Luxembourg branch, then Acting Director (1995–99); administrator with the Legal Service of the EFTA Surveillance Authority (1999–2000); official at the Court of Justice (2000–13); Legal Secretary (2003–13); Judge at the Civil Service Tribunal since 7 October 2013.

Waltraud Hakenberg

Born in 1955; studied law in Regensburg and Geneva (1974–79); first State examination (1979); postgraduate studies in Community law at the College of Europe, Bruges (1979–80); trainee lawyer in Regensburg (1980–83); Doctor of Laws (1982); second State examination (1983); lawyer in Munich and Paris (1983–89); official at the Court of Justice of the European Communities (1990–2005); Legal Secretary at the Court of Justice of the European Communities (in the Chambers of Judge Jann, 1995–2005); teaching for a number of universities in Germany, Austria, Switzerland and Russia; Honorary Professor at Saarland University (since 1999); Member of various legal committees, associations and boards; numerous publications on Community law and Community procedural law; Registrar of the Civil Service Tribunal since 30 November 2005.

2. Change in the composition of the Civil Service Tribunal in 2013

Following the resignation of Ms Irena Boruta, by decision of 16 September 2013 the Council of the European Union appointed Mr Jesper Svenningsen as Judge at the Civil Service Tribunal for the period from 1 October 2013 to 30 September 2019.

3. Order of precedence

From 1 January 2013 to 7 October 2013

S. VAN RAEPENBUSCH, President of the Tribunal
H. KREPPEL, President of Chamber
M. I. ROFES i PUJOL, President of Chamber
I. BORUTA, Judge
E. PERILLO, Judge
R. BARENTS, Judge
K. BRADLEY, Judge

W. HAKENBERG, Registrar

From 8 October 2013 to 31 December 2013

S. VAN RAEPENBUSCH, President of the Tribunal
H. KREPPEL, President of Chamber
M. I. ROFES i PUJOL, President of Chamber
E. PERILLO, Judge
R. BARENTS, Judge
K. BRADLEY, Judge
J. SVENNINGSEN, Judge

W. HAKENBERG, Registrar

4. Former Members of the Civil Service Tribunal

Heikki Kanninen (2005–09)
Haris Tagaras (2005–11)
Stéphane Gervasoni (2005–11)
Irena Boruta (2005–13)

President

Paul J. Mahoney (2005–11)

C — Statistics concerning the judicial activity of the Civil Service Tribunal

General activity of the Civil Service Tribunal

1. New cases, completed cases, cases pending (2009–13)

New cases

2. Percentage of the number of cases per principal defendant institution (2009–13)
3. Language of the case (2009–13)

Completed cases

4. Judgments and orders — Bench hearing action (2013)
5. Outcome (2013)
6. Applications for interim measures (2009–13)
7. Duration of proceedings in months (2013)

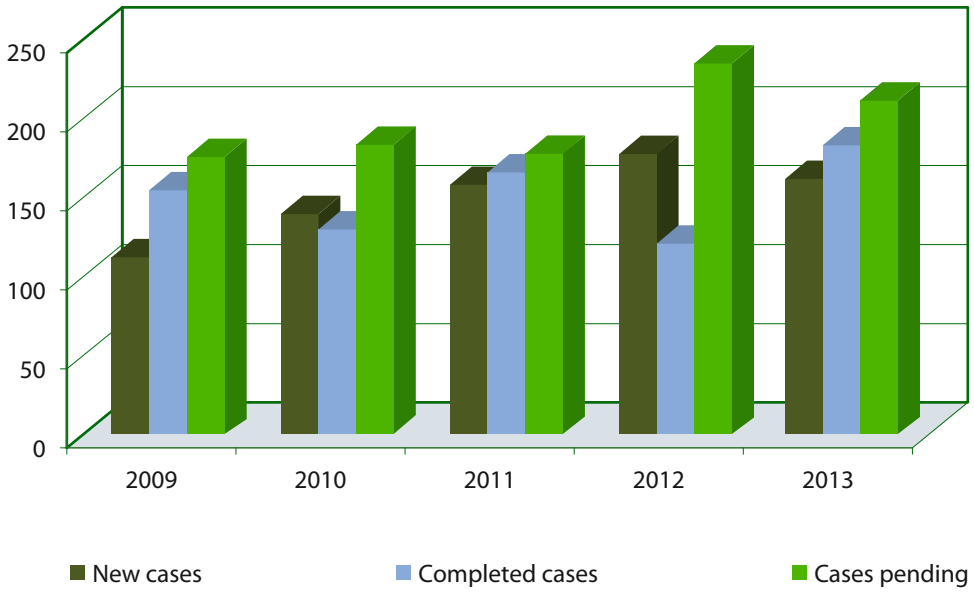
Cases pending as at 31 December

8. Bench hearing action (2009–13)
9. Number of applicants

Miscellaneous

10. Appeals against decisions of the Civil Service Tribunal to the General Court (2009–13)
11. Results of appeals before the General Court (2009–13)

1. *General activity of the Civil Service Tribunal* — New cases, completed cases, cases pending (2009–13)

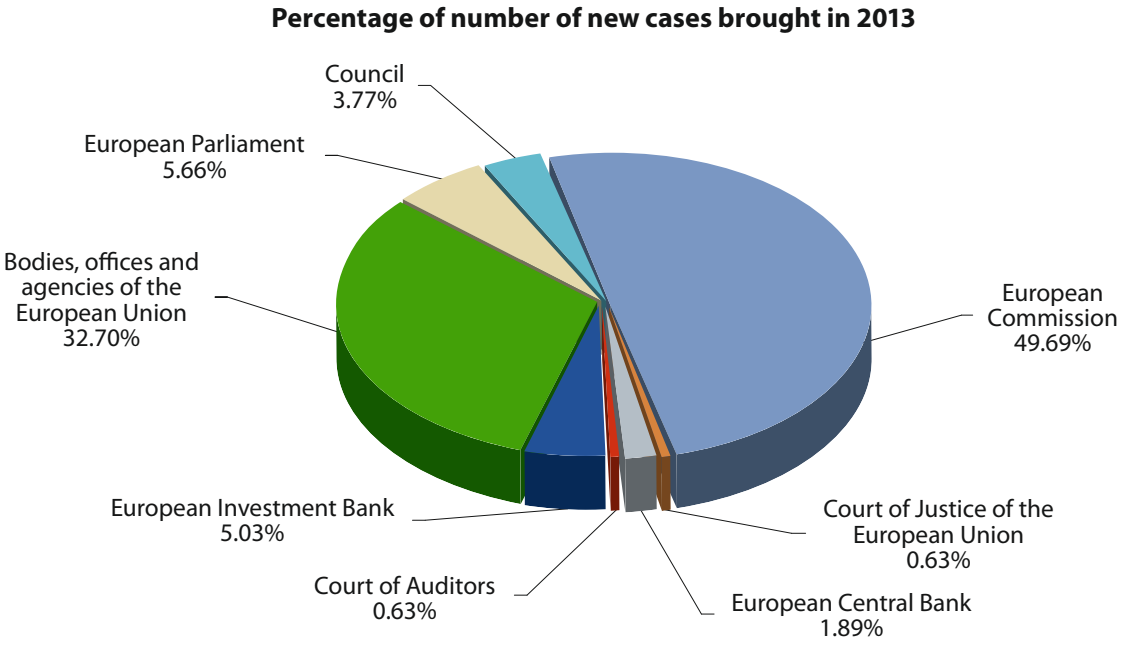


	2009	2010	2011	2012	2013
New cases	113	139	159	178	160
Completed cases	155	129	166	121	184
Cases pending	175	185	178	235	211 (1)

The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the grounds of similarity (one case number = one case).

(1) Including 26 cases in which proceedings were stayed.

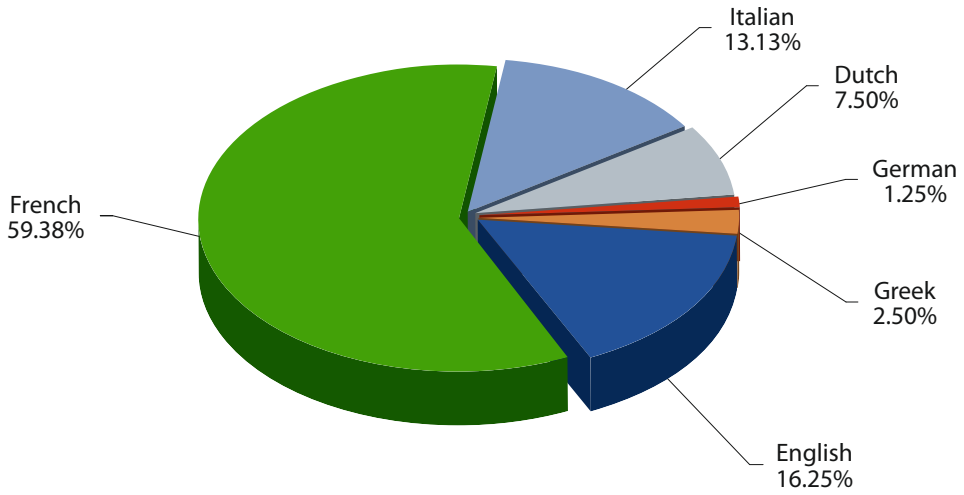
2. *New cases* — Percentage of the number of cases per principal defendant institution (2009–13)



	2009	2010	2011	2012	2013
European Parliament	8.85%	9.35%	6.29%	6.11%	5.66%
Council	11.50%	6.47%	6.92%	3.89%	3.77%
European Commission	47.79%	58.99%	66.67%	58.33%	49.69%
Court of Justice of the European Union	2.65%	5.04%	1.26%		0.63%
European Central Bank	4.42%	2.88%	2.52%	1.11%	1.89%
Court of Auditors	0.88%		0.63%	2.22%	0.63%
European Investment Bank	0.88%	5.76%	4.32%	4.44%	5.03%
Bodies, offices and agencies of the European Union	23.01%	11.51%	11.40%	23.89%	32.70%
Total	**100%**	**100%**	**100%**	**100%**	**100%**

3. *New cases* — Language of the case (2009–13)

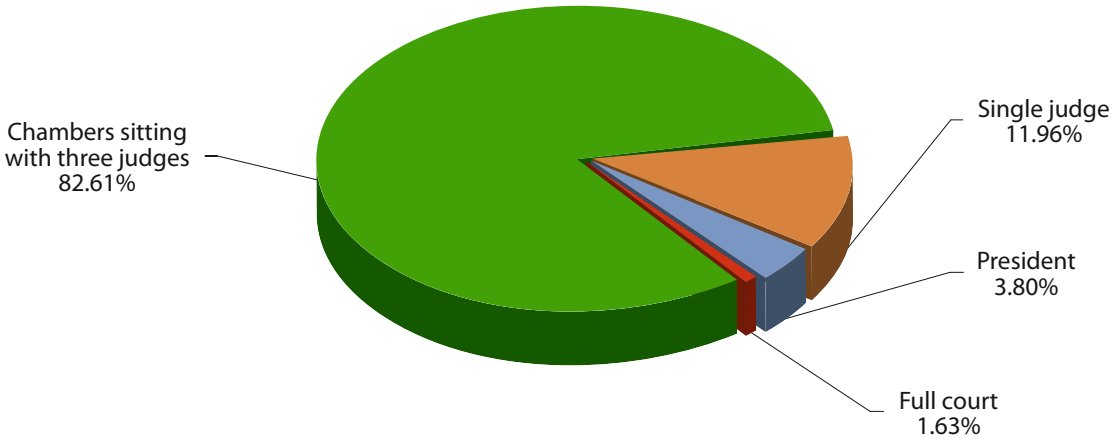
Distribution in 2013



Language of the case	2009	2010	2011	2012	2013
Bulgarian				2	
Spanish	1	2	2	3	
Czech	1				
German	9	6	10	5	2
Greek	3	2	4	1	4
English	8	9	23	14	26
French	63	105	87	108	95
Italian	13	13	29	35	21
Hungarian			1		
Dutch	15	2	1	6	12
Polish			1	2	
Romanian				2	
Slovak			1		
Total	**113**	**139**	**159**	**178**	**160**

The language of the case corresponds to the language in which the proceedings were brought and not to the applicant's mother tongue or nationality.

4. *Completed cases* — Judgments and orders — Bench hearing action (2013)



	Judgments	Orders for removal from the register, following amicable settlement (1)	Other orders terminating proceedings	Total
Full court	2	1		3
Chambers sitting with three judges	89	8	55	152
Single judge	1		21	22
President			7	7
Total	**92**	**9**	**83**	**184**

(1) In the course of 2013, there were also 18 unsuccessful attempts to bring cases to a close by amicable settlement on the initiative of the Civil Service Tribunal.

5. *Completed cases* — Outcome (2013)

	Judgments		Orders				Total
	Actions upheld in full or in part	Actions dismissed in full, no need to adjudicate	Actions/applications [manifestly] inadmissible or unfounded	Amicable settlements following intervention by the bench hearing the action	Removal from the register on other grounds, no need to adjudicate or referral	Applications upheld in full or in part (special forms of procedure)	
Appraisal/Promotion	2	7	5	5	2		**21**
Assignment/Reassignment	1				1		**2**
Competitions	6	11	2	1	2		**22**
Disciplinary proceedings		4	1				**5**
Pensions and invalidity allowances	2	4	6	1			**13**
Recruitment/Appointment/ Classification in grade	6	5	4		1		**16**
Remuneration and allowances	3	6	10		2		**21**
Social security/Occupational disease/ Accidents	4			1	1		**6**
Termination or non-renewal of a contract as a member of staff	9	8	1				**18**
Working conditions/Leave			1				**1**
Other	8	6	25	1	2	17	**59**
Total	**41**	**51**	**55**	**9**	**11**	**17**	**184**

6. Applications for interim measures (2009–13)

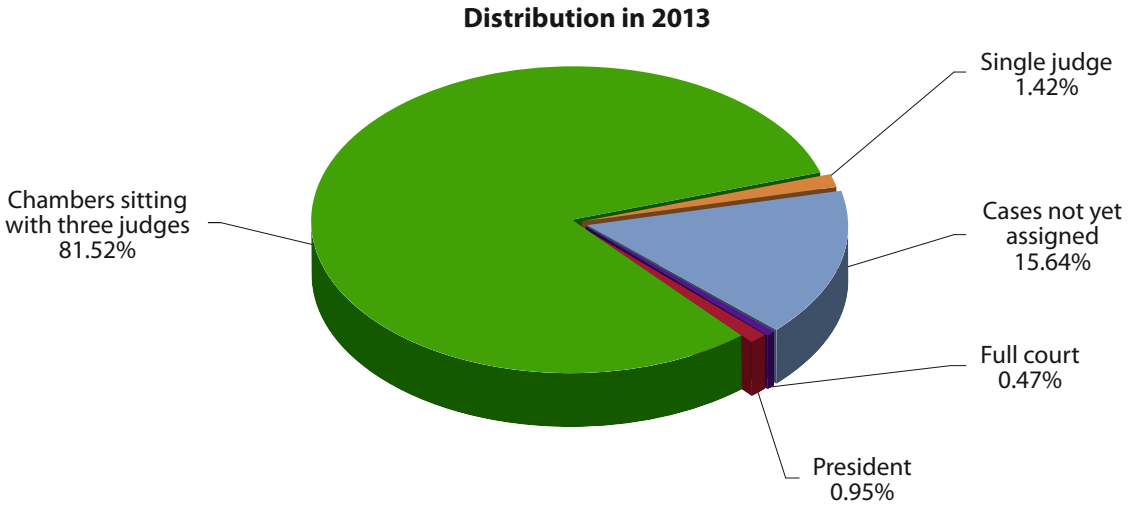
Applications for interim measures brought to a conclusion		Outcome		
		Granted in full or in part	Dismissal	Removal from the register
2009	**1**	1		
2010	**6**		4	2
2011	**7**		4	3
2012	**11**		10	1
2013	**3**		3	
Total	**28**	**1**	**21**	**6**

7. *Completed cases* — Duration of proceedings in months (2013)

Completed cases		Average duration	
		Duration of full procedure	Duration of procedure, not including duration of any stay of proceedings
Judgments	92	18.6	18.1
Orders	92	13.3	11.3
Total	**184**	**16.0**	**14.7**

The durations are expressed in months and tenths of months.

8. *Cases pending as at 31 December* — Bench hearing action (2009–13)



	2009	2010	2011	2012	2013
Full court	6	1		1	1
President	1	1	1		2
Chambers sitting with three judges	160	179	156	205	172
Single judge			2	8	3
Cases not yet assigned	8	4	19	21	33
Total	**175**	**185**	**178**	**235**	**211**

9. *Cases pending as at 31 December* — Number of applicants

The pending cases with the greatest number of applicants in 2013

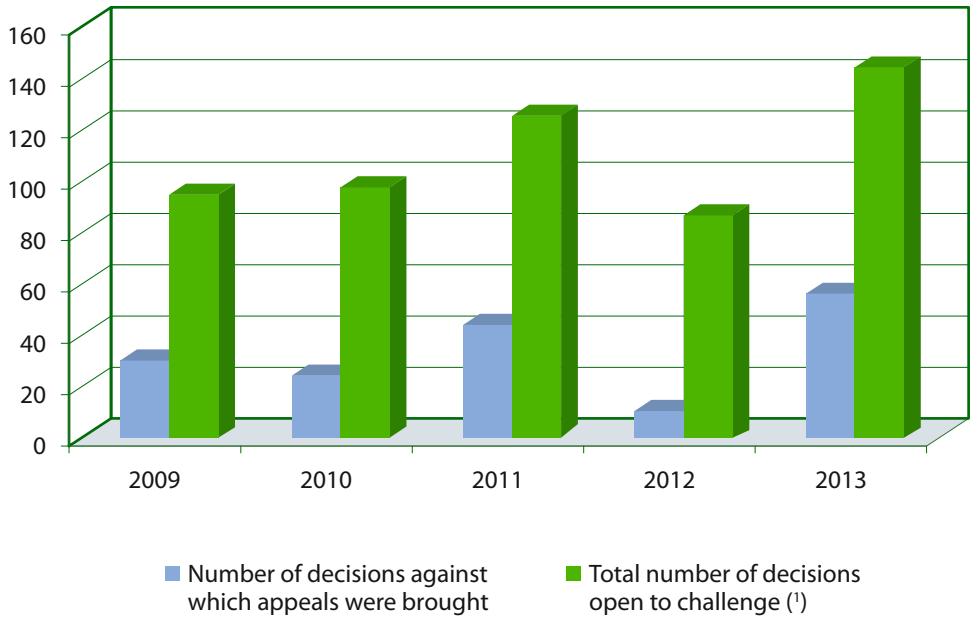
Number of applicants	Fields
492 (two cases)	Staff Regulations – Remuneration – Reform of the system of remuneration and salary increments at the EIB
486	Staff Regulations – EIB – Remuneration – Annual adjustment of salaries
451	Staff Regulations – EIB – Remuneration – New performance system – Allocation of bonuses
35	Staff Regulations – Referral back following review of the judgment of the General Court – EIB – Pensions – Reform of 2008
33	Staff Regulations – EIB – Pensions – Reform of the pension scheme
30	Staff Regulations – European Investment Fund – Remuneration – Annual adjustment of salaries
29	Staff Regulations – European Investment Fund – Remuneration – Reform of the system of remuneration and salary increments at the EIF
26 (two cases)	Staff Regulations – Remuneration – Officials posted to a third country – Living conditions allowance – Revision and adjustment of the living conditions allowance – Living conditions equivalent to those usual in the European Union – Cessation of the grant of the living conditions allowance
25	Staff Regulations – Promotion – 2010 and 2011 promotion years – Establishment of promotion thresholds
18 (18 cases)	Staff Regulations – Procedure – Taxation of costs

The term 'Staff Regulations' means the Staff Regulations of Officials of the European Union and the Conditions of Employment of other servants of the Union.

Total number of applicants for all pending cases (2009–13)

	Total applicants	Total pending cases
2009	461	175
2010	812	185
2011	1 006	178
2012	1 086	235
2013	1 867	211

10. *Miscellaneous* — Appeals against decisions of the Civil Service Tribunal to the General Court (2009–13)

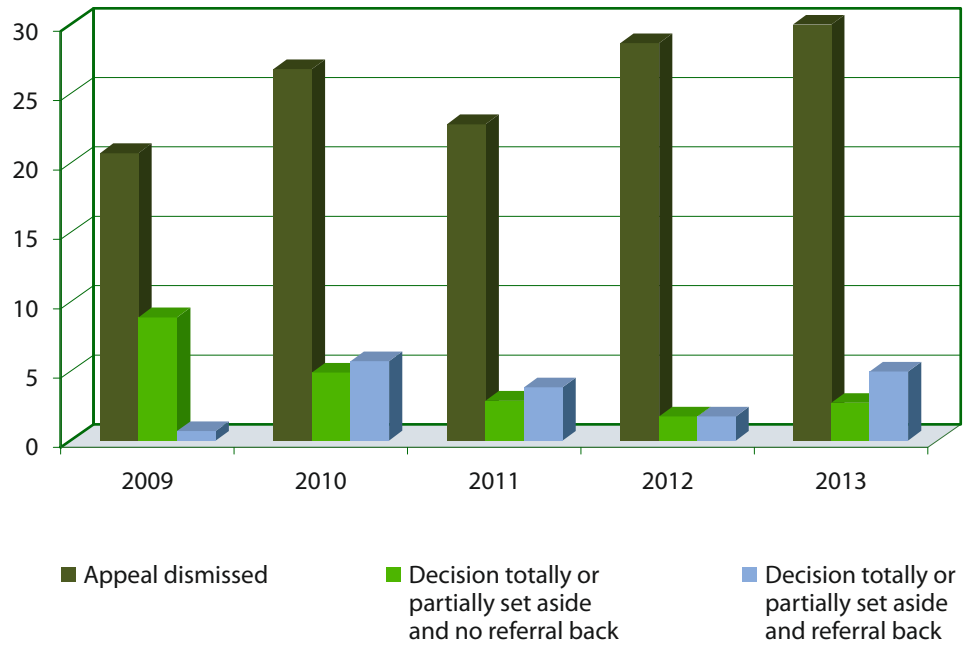


	Number of decisions against which appeals were brought	Total number of decisions open to challenge (1)	Percentage of decisions appealed (2)
2009	30	95	31.58%
2010	24	99	24.24%
2011	44	126	34.92%
2012	11	87	12.64%
2013	56	144	38.89%

(1) Judgments, orders — declaring the action inadmissible, manifestly inadmissible or manifestly unfounded, orders for interim measures, orders that there is no need to adjudicate and orders refusing leave to intervene — made or adopted during the reference year.

(2) For a given year this percentage may not correspond to the decisions subject to appeal given in the reference year, since the period allowed for appeal may span 2 years.

11. *Miscellaneous* — Results of appeals before the General Court (2009–13)



	2009	2010	2011	2012	2013
Appeal dismissed	21	27	23	29	30
Decision totally or partially set aside and no referral back	9	4	3	2	3
Decision totally or partially set aside and referral back	1	6	4	2	5
Total	**31**	**37**	**30**	**33**	**38**

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