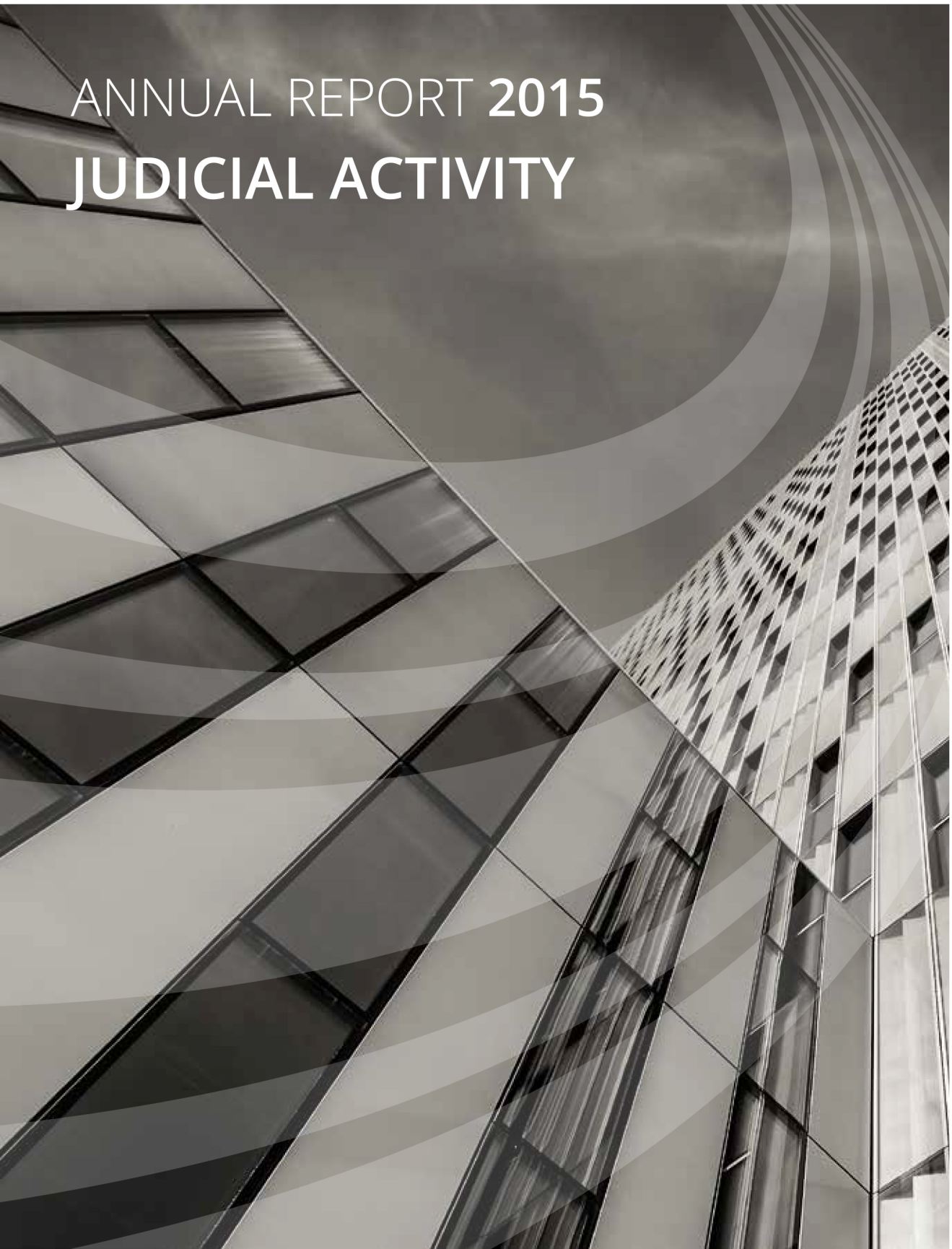
COURT OF JUSTICE OF
THE EUROPEAN UNION

ANNUAL REPORT **2015**

JUDICIAL ACTIVITY



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JUDICIAL ACTIVITY

Synopsis of the judicial activity of the Court of Justice,
the General Court and the Civil Service Tribunal

Luxembourg, 2016

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COURT OF JUSTICE OF
THE EUROPEAN UNION

COURT OF JUSTICE
2925 LUXEMBOURG
LUXEMBOURG
TEL. +352 4303-1

GENERAL COURT
2925 LUXEMBOURG
LUXEMBOURG
TEL. +352 4303-1

CIVIL SERVICE TRIBUNAL
2925 LUXEMBOURG
LUXEMBOURG
TEL. +352 4303-1

The Court of Justice on the Internet: http://www.curia.europa.eu

Completed on: 1 January 2016

A great deal of information on the European Union is available on the internet through the Europa server (http://europa.eu).

Luxembourg: Court of Justice of the European Union / Communication Directorate / Publications and Electronic Media Unit
Publications Office of the European Union

Print ISBN 978-92-829-2218-7 ISSN 2467-0987 doi:10.2862/33097 QD-AP-16-001-EN-C
PDF ISBN 978-92-829-2143-2 ISSN 2467-1215 doi:10.2862/554845 QD-AP-16-001-EN-N

Printed in Luxembourg

Printed on elemental chlorine-free bleached paper (ECF)

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Koen LENAERTS

President of the Court of Justice of the European Union

The year which has just drawn to a close was, for the institution, lent a quite special note by the departure from office of Vassilios Skouris after a term of more than 16 years as a judge at the Court of Justice and an exceptional period of 12 years spent as the institution's president.

The past months have provided many opportunities to pay full tribute to my predecessor, whether during the ceremony for presentation of a Liber amicorum which was held in his honour on 8 June 2015, at the formal sitting which took place on 7 October 2015 or on more informal occasions.

I would nevertheless like to take the opportunity provided by this foreword to express once again, both on my own behalf and on behalf of all the members and staff of the institution, all our gratitude to our former president. We will as a whole remember Mr Skouris as the president who knew how to create the conditions in which the various enlargements that have punctuated the recent history of our institution could succeed, in particular the major enlargement of 2004. I would also like to salute here his unwavering devotion to the fundamental contribution of the Court of Justice of the European Union to legal unity and the rule of law in the European Union and to the promotion of the fundamental rights of EU citizens, a contribution which earned the institution the distinction of being awarded the 50th Theodor Heuss Prize, in May 2015 in Stuttgart.

As regards statistics, 2015 was marked by the exceptional rate of the institution's judicial activity. A total of 1 711 cases were brought before the three courts in the past year, which is the highest number of cases brought over the course of a year in the institution's history. In particular, in 2015 the number of cases brought before the Court of Justice passed for the first time the symbolic threshold of 700 cases (713). In addition, with 1 755 cases completed in 2015, the institution's annual productivity is at an unprecedented level.

In this context, the institution, while welcoming that development, which testifies to the confidence of national courts and of litigants in the EU judicature, is also very pleased that the EU legislative authorities adopted the reform of the judicial structure of the Court of Justice of the European Union. The adoption of the reform marks the completion of a long legislative process, begun in 2011, and will enable the institution, by virtue of the number of judges of the General Court being doubled in a three-stage process extending until 2019, to continue to fulfil its task in the interests of European litigants while meeting the objectives of quality and efficiency of

justice. That is also the aim of the new Rules of Procedure of the General Court, which entered into force on 1 July 2015 and will strengthen the General Court's capacity to deal with cases within a reasonable period and in compliance with the requirements of a fair hearing.

Finally, not only did the president, Mr Skouris, depart in 2015, but also three members of the Court of Justice, in the context of the partial replacement of its members, and one member of the General Court. The arrival of two additional Advocates General will also be greeted, completing the implementation of the Council decision of 25 June 2013 increasing the number of Advocates General of the Court of Justice.

Alongside those institutional developments, it gives me pleasure to recall here that, in the context of celebration of the 800th anniversary of the signing of the Magna Carta by King John of England, the Court of Justice of the European Union had the privilege of hosting, for a week in October 2015, one of the original copies of the charter, a genuine source of universal inspiration for numerous fundamental instruments on democratic values, freedoms and human rights.

This report provides a full record of changes concerning the institution and of its work in 2015. As in previous years, a substantial part 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. Separate statistics for each court supplement and illustrate the analysis.

I would like to take this opportunity to thank warmly my colleagues in the three courts and the entire staff of the institution for the outstanding work carried out by them during the year.

CHAPTER I
THE COURT OF JUSTICE

A | THE COURT OF JUSTICE IN 2015: CHANGES AND ACTIVITY

By Mr K**oen LENAERTS**, President of the Court of Justice

This first chapter summarises the activities of the Court of Justice in 2015. The present part (A) of the chapter, first, describes how the Court of Justice evolved during the past year and second, includes an analysis of the statistics which shows both the evolution of the Court's workload and the average duration of proceedings. The second part (B) presents, as it does each year, the main developments in the case-law, arranged by subject-matter, the third part (C) provides details of the Court's composition during the period in question and the fourth part (D) is devoted to the statistics relating to the past judicial year.

1.1. At the formal sitting which was held on 7 October 2015 on the occasion, in particular, of the partial replacement of the members of the Court, the institution took leave of Mr Vassilios Skouris, after a term of more than 16 years as a judge at the Court and 12 years as President of the Court of Justice of the European Union.

This formal event was preceded, on 8 June 2015, by a colloquium organised on the initiative of a committee chaired by Mr Antonio Tizzano, Vice-President of the Court, covering the topic 'The Court of Justice of the EU under the Presidency of Vassilios Skouris'. The colloquium was addressed by various notable people who had contact with the institution between 2003 and 2015, in particular senior national judges and representatives of the European institutions, while Mr Jean-Marc Sauvé, Vice-President of the French Council of State and President of the '255 Panel', kindly acted as chairman. The colloquium concluded with the presentation to Mr Skouris of a Liber amicorum containing the contributions of members and former members of the Court who held office under his presidency.

1.2. As regards the functioning of the institution, the most significant event of 2015 was indisputably the adoption of Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council of 16 December 2015 amending Protocol No 3 on the Statute of the Court of Justice of the European Union (OJ 2015 L 341, p. 14), a regulation which entered into force on 25 December 2015. In a context in which the number of cases and their complexity are constantly increasing, the amendments made by that regulation to the Statute of the Court of Justice, following a proposal submitted by the institution in March 2011 and altered in October 2013, result in a substantial reform of the European Union's judicial structure. This reform is of crucial importance in order to increase, structurally and lastingly, the overall efficiency of the judicial system of the European Union in the interest of litigants.

The reform will take place in three stages which will lead gradually, between now and 2019, to a doubling of the total number of judges of the General Court: 12 new judges will enter into office at the beginning of 2016, once the selection and appointment procedures have been completed; when the members of the General Court are partially replaced in September 2016, the number of judges will be increased by seven through the integration of the Civil Service Tribunal into the General Court; and finally, when the members of the General Court are next partially replaced in September 2019, the number of judges will be increased by nine, bringing their total number to 56. In the context of this process, the Member States will have to take steps to ensure that there is eventually gender balance in the membership of the General Court. The institution was also requested to report regularly on implementation of the reform, in particular after the three stages of its implementation.

The reform is intended, first and foremost, to enable the General Court to achieve a lasting decrease in the number of cases pending, the consequence of which will be a reduction in the average duration of proceedings before it. The effect will also be to simplify the judicial structure of the European Union, to increase overall efficiency and to promote coherence of the case-law, since a single court, the Court of Justice, will be responsible for ensuring that rules of law are interpreted uniformly when appeals are heard.

Alongside this important institutional reform, the entry into office on 7 October 2015 of two additional Advocates General, Mr Bobek and Mr Øe, should also be noted. Their arrival at the Court of Justice completes the implementation of 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).

2. The statistics concerning the Court's activity in 2015 reveal, overall, sustained productivity and efficiency but, above all, an unremitting upward trend in the number of cases.

The total number of cases brought before the Court in 2015 was 713 (gross figure, before joinder on the ground of similarity), which is the highest number of new cases brought over the course of a year in the Court's history ([1]) This exceptional figure, representing an increase of nearly 15% compared with 2014 (622), can be explained by the combined effect of the significant growth in the number of appeals (215 appeals, that is to say, roughly double the number in 2014 (111) and the highest figure in the Court's history) and the very high number of requests made to the Court for a preliminary ruling (436, that is to say, a figure second only to that in 2013 (450)). On the other hand, the number of direct actions was appreciably lower than in 2014 (48, as against 74 in 2014), confirming a strong downward trend that has been observed for a number of years. Three requests for an Opinion were also lodged in 2015.

The Court completed 616 cases in 2015 (gross figure, that is to say, not taking account of the joinder of cases — the net figure being 570 cases), which amounts to an overall decrease compared with 2014 (gross figure of 719 cases, the net figure being 632), a decrease which is attributable in part to the lower number of cases that were brought in 2014 (622) and, therefore, in a state enabling them to be decided in 2015. Of the completed cases, 399 were dealt with by judgments and 171 gave rise to orders.

There were 884 cases pending on 31 December 2015 (gross figure, before joinder — the net figure being 831 cases), which constitutes an increase compared with the situation at the end of 2014 (gross figure of 787 cases) but corresponds exactly to the situation on 31 December 2013 and, within two cases, to that on 31 December 2012 (gross figure of 886 cases).

So far as concerns the duration of proceedings in 2015, the statistics are very positive. The average time taken to deal with references for a preliminary ruling was 15.3 months, very close to the record figure (15.0 months) in 2014. In the case of direct actions, the average time in 2015 was 17.6 months, which amounts to a significant reduction compared with the preceding years (between 19.7 months and 24.3 months in the period from 2011 to 2014). The average time taken to deal with appeals in 2015 was 14 months, which is the lowest average in recent years.

These data are the fruit of the constant watch kept by the Court over its workload. In addition to the reforms in its working methods that have been undertaken in recent years, the maintenance of the Court's efficiency in dealing with cases can also be explained by the use of the various procedural instruments at its disposal to expedite the handling of certain cases (the urgent preliminary ruling procedure, the expedited procedure, priority treatment, the simplified procedure and the possibility of giving judgment without an Opinion of the Advocate General).

In 2015, use of the urgent preliminary ruling procedure was requested in 11 cases and the designated chamber considered that the conditions under Article 107 et seq. of the Rules of Procedure were met in five of them. Those cases were completed in an average period of 1.9 months.

Use of the expedited procedure was requested 18 times, but the conditions under the Rules of Procedure were met in just one case. In addition, priority treatment was granted in seven cases.

1 | With the exception of the 1 324 cases brought in 1979.That unusually high figure can be explained by the huge flood of actions with the same subject matter that were brought.

Also, the Court utilised regularly 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 37 cases were brought to a close by orders (35 in number) made on the basis of that provision.

Finally, the Court made 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. Thus, approximately 43% of the judgments in 2015 were delivered without an Opinion.

As regards the distribution of cases between the various formations of the Court, it is to be noted that in 2015 the Grand Chamber dealt with roughly 8% of the total number of cases completed, while chambers of five judges dealt with roughly 58%, and chambers of three judges with roughly 34%, of the cases brought to a close by judgments or by orders involving a judicial determination. Compared with the previous year, the proportion of cases dealt with by the Grand Chamber remained relatively stable (8.7% in 2014), while the proportion of cases dealt with by five-judge chambers increased slightly (55% in 2014). Of the cases brought to a close by orders involving a judicial determination, 76% were entrusted to three-judge chambers, 18% were entrusted to five-judge chambers and 6% represent orders of the Vice-President of the Court.

For more detailed information regarding the statistics for the past judicial year, part D of this chapter should be consulted.

B | CASE-LAW OF THE COURT OF JUSTICE IN 2015

I. FUNDAMENTAL RIGHTS

In 2015, the Court ruled on a number of occasions on fundamental rights in the EU legal order. Some of those decisions are covered in this report (2). Among these, three merit special attention.

In the first place, mention should be made of the judgment in ***Delvigne*** (C-650/13, EU:C:2015:648), delivered on 6 October 2015 by the Grand Chamber of the Court. In that judgment, the Court dealt with the question *whether a Member State may make provision for a general, indefinite and automatic ban on exercising civil rights that also applies to the right of citizens of the Union to vote in elections to the European Parliament*. In the main proceedings, a French national had previously been convicted of a serious offence by a judgment that became final and, as an ancillary penalty, had been permanently deprived of his civic rights. The rule providing for the automatic application of that ancillary penalty was amended after the applicant in the main proceedings had been convicted. However, as the new rule did not apply to convictions that had become final before its entry into force, the applicant in the main proceedings alleged that he was the victim of unequal treatment and the national court asked the Court to interpret Articles 39 and 49 of the Charter of Fundamental Rights of the European Union ('the Charter of Fundamental Rights') in the light of that deprivation of the right to vote.

In its judgment, as regards the applicability in the main proceedings of the Charter of Fundamental Rights, the Court held that the situation of a Union citizen who is the subject of a decision to remove him from the electoral roll made by the authorities of a Member State and entailing the loss of his right to vote in elections to the European Parliament falls within the scope of EU law. The 1976 Act concerning the election of Members of the European Parliament by direct universal suffrage (3) does not define expressly and precisely who is to be entitled to that right and therefore, as EU law currently stands, the definition of the persons entitled to exercise that right falls within the competence of the individual Member States, which are required to legislate in compliance with EU law. In particular, the Member States are bound, when exercising that competence, by the obligation to ensure that the election of Members of the European Parliament is by direct universal suffrage and free and secret. Therefore, national legislation which makes provision for citizens of the Union who have been convicted of a criminal offence to be excluded from the right to vote in elections to the European Parliament must be considered to be implementing EU law within the meaning of Article 51(1) of the Charter of Fundamental Rights.

On the substance, the Court considered that it is clear that a deprivation of the right to vote such as that at issue in the main proceedings represents a limitation of the exercise of the right to vote guaranteed in Article 39(2) of the Charter of Fundamental Rights. However, Article 52(1) of the Charter accepts that limitations may be imposed on the exercise of such rights, as long as the limitations are provided for by law and respect the essence of those rights and freedoms and the principle of proportionality. In the case in point, the deprivation of the right to vote was provided for by law. Furthermore, it did not call into question as such the right to vote

2| The following judgments are included: judgment of 29 April 2015 in ***Léger*** (C-528/13, EU:C:2015:288), presented in Section XVII 'Public health'; judgment of 16 July 2015 in ***Lanigan*** (C-237/15 PPU, EU:C:2015:474), presented in Section X 'Judicial cooperation in criminal matters'; judgment of 16 July 2015 in ***Coty Germany*** (C-580/13, EU:C:2015:485), presented in Section XIV.1 'Intellectual property'; judgment of 8 September 2015 in ***Taricco and Others*** (C-105/14, EU:C:2015:555), presented in Section XIII 'Fiscal provisions'; judgment of 6 October 2015 in ***Schrems*** (C-362/14, EU:C:2015:650), presented in Section XIV.2 'Protection of personal data'; and judgment of 17 December 2015 in ***Imtech Marine Belgium*** (C-300/14, EU:C:2015:825), presented in Section IX.3 'European enforcement order'.

3| Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976 (OJ 1976 L 278, p. 1), as amended by Council Decision 2002/772/EC, Euratom of 25 June and 23 September 2002 (OJ 2002 L 283, p. 1).

referred to in Article 39(2) of the Charter of Fundamental Rights, since it has the effect of excluding certain persons, under specific conditions and on account of their conduct, from those entitled to vote in elections to the Parliament. In addition, such a limitation is proportionate in so far as it takes into account the nature and gravity of the criminal offence committed and the duration of the penalty and in so far as national law provides for the possibility of a person who has been deprived of the right to vote applying for, and obtaining, the lifting of that measure.

Last, the Court observed that the rule of retroactive effect of a more lenient criminal law, set out in the last sentence of Article 49(1) of the Charter of Fundamental Rights, did not preclude the national legislation at issue, since that legislation is limited to maintaining the deprivation of the right to vote resulting, by operation of law, from a criminal conviction only in respect of final convictions delivered at last instance under the old, less favourable, legislation.

In the second place, in the judgment in ***CHEZ Razpredelenie Bulgaria*** (C-83/14, EU:C:2015:480), delivered on 16 July 2015, the Court, sitting as the Grand Chamber, interpreted *Directive 2000/43 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin* ([4]), and declared that that directive precludes a practice of installing electricity meters at an inaccessible height in a district densely populated by Roma, when those meters were installed at a normal height in other districts of the same town. The main proceedings concerned a Bulgarian national running a grocer's shop in that district inhabited mainly by persons of Roma origin. Although not herself of Roma origin, the Bulgarian national considered that she was also a victim of discrimination as a result of the contested practice of the electricity distribution undertaking.

In its judgment, the Court observed first of all that, in the light of the objective of Directive 2000/43 and the nature of the rights which it seeks to safeguard, and in view of the fact that that directive is merely an expression of the principle of equality, which is one of the general principles of EU law, recognised in Article 21 of the Charter of Fundamental Rights, the scope of that directive cannot be defined restrictively. Therefore, as the installation of electricity meters is an adjunct linked to the supply of electricity, observance of that principle, within the meaning of Article 3(1) of the directive, is mandatory.

As regards the provisions of Directive 2000/43 forming the subject matter of the questions referred for a preliminary ruling, the Court observed, first, that the practice at issue may constitute 'discrimination on the grounds of ethnic origin' for the purposes of, in particular, Articles 1 and 2(1) of the directive, as that concept is intended to apply to a collective measure irrespective of whether it affects persons who have a certain ethnic origin or affects others who, without possessing that origin, suffer, together with the former, the less favourable treatment or particular disadvantage resulting from that measure. In addition, the mere fact that the district at issue in the main proceedings is also lived in by inhabitants who are not of Roma origin does not rule out that such a practice was imposed in view of the Roma ethnic origin shared by most of that district's inhabitants.

The Court observed, second, that if the national court were not to regard the practice in question as amounting to direct discrimination on the grounds of ethnic origin, it could constitute indirect discrimination. In that regard, the Court recalled that, unlike direct discrimination, indirect discrimination may stem from a measure which, albeit formulated in neutral terms, that is to say, by reference to other criteria not related to the protected characteristic, leads, however, to the result that particularly persons possessing that characteristic are put at a disadvantage. In the case in point, assuming that the practice called into question in the main proceedings was implemented exclusively in response to abuse in the district concerned, it would be based on criteria that are apparently neutral while affecting persons of Roma origin in considerably greater proportions. It would thus put those persons at a particular disadvantage by comparison with other persons not having such ethnic origin.

4| Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ 2000 L 180, p. 22).

In addition, the measure at issue would be capable of being objectively justified by the intention to ensure the security of the electricity transmission network and the due recording of electricity consumption only if it did not go beyond what is appropriate and necessary to achieve those legitimate aims and the disadvantages caused were not disproportionate to the objectives thereby pursued. That is not so if it is found either that other appropriate and less restrictive means enabling those aims to be achieved exist or, in the absence of such other means, that the measure prejudices excessively the legitimate interest of the final consumers of electricity inhabiting the district concerned in having access to the supply of electricity in conditions which are not of an offensive or stigmatising nature and which enable them to monitor their electricity consumption regularly.

In the third place, on 17 December 2015, in the judgment in ***WebMindLicenses*** (C-419/14, EU:C:2015:832) ([5]), the Court declared that EU law does not preclude *a national tax authority from being able*, in order to establish the existence of an abusive practice concerning value added tax ('VAT'), *to use evidence obtained without the taxable person's knowledge in the context of a parallel criminal procedure that has not yet been concluded*, by means, for example, of the interception of telecommunications and seizure of emails, provided that the obtaining of that evidence in the context of the criminal procedure and its use in the context of the administrative procedure do not infringe the rights guaranteed by EU law and, in particular, fundamental rights.

In that case, the Court recalled, first of all, that the question whether action constituting an abusive practice has taken place must be examined in accordance with the rules of evidence of national law, on condition that those rules do not undermine the effectiveness of EU law. It stated that an adjustment of VAT after an abusive practice has been found constitutes implementation of the VAT directive ([6]) and of Article 325 TFEU and, therefore, of EU law for the purposes of Article 51(1) of the Charter of Fundamental Rights.

The Court thus made clear that, by virtue of Articles 7, 47 and 52(1) of the Charter, it is incumbent upon the national court which reviews the legality of the decision founded on such evidence and adjusting VAT to verify, first, whether the means of investigation employed in a parallel procedure were provided for by law and were necessary for that procedure and, second, whether the use by the tax authorities of the evidence obtained by those means was also authorised by law and necessary. It is incumbent upon that court, furthermore, to verify whether, in accordance with the general principle of observance of the rights of the defence, the taxable person had the opportunity, in the context of the administrative procedure, to gain access to that evidence and to be heard concerning it. Where it finds that the taxable person did not have that opportunity or that the evidence was obtained or used in breach of Article 7 of the Charter of Fundamental Rights, on respect for private and family life, the national court must disregard that evidence and annul that decision if, as a result, the latter has no basis. That evidence must also be disregarded if the national court is not empowered to check that it was obtained in the context of the criminal procedure in accordance with EU law or cannot at least satisfy itself, on the basis of a review already carried out by a criminal court in an *inter partes* procedure, that it was obtained in accordance with EU law.

II. CITIZENSHIP OF THE UNION

Among the decisions of the Court on European Union citizenship, mention must be made of two judgments. They concern, respectively, the right of residence of third-country nationals and the right of nationals of other Member States to social benefits.

5| For the presentation of the part of this judgment relating to taxation, see Section XIII 'Fiscal provisions'.

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

The judgment in ***Singh and Others*** (C-218/14, EU:C:2015:476), delivered on 16 July 2015 by the Grand Chamber, concerns *the conditions under which third-country nationals who are family members of a Union citizen may retain a right of residence in the event of divorce*. The main proceedings concerned three third-country nationals who, following marriage to Union citizens residing and working in Ireland, acquired a right of residence in Ireland, under Article 7(2) of Directive 2004/38 ([7]), as spouses accompanying or joining a Union citizen in the host Member State. The marriages lasted at least three years, including at least one year in the host Member State, but in each case the spouse having citizenship of the Union eventually left Ireland before initiating divorce proceedings. In that context, the Court was asked whether the right of residence in Ireland of the three foreign spouses might be retained on the basis of Article 13(2) of Directive 2004/38.

The Court recalled, first of all, that nationals of third countries who are family members of a Union citizen can claim the right of residence only in the host Member State in which the Union citizen resides. The Court then held that, where the Union citizen leaves the Member State in which his spouse who is a third-country national resides, for the purposes of settling in another Member State or a third country, before divorce proceedings, the conditions laid down in Article 7(2) of Directive 2004/38 are no longer met. Thus, when the Union citizen leaves, the derived right of residence of the third-country national ceases before the divorce proceedings and therefore cannot be retained on the basis of Article 13(2)(a) of that directive. In order for a third-country national to retain his right of residence on the basis of that provision, his spouse who is a Union citizen must reside in the host Member State, in accordance with Article 7(1) of Directive 2004/38, until the date of commencement of the divorce proceedings. In this instance, as the spouses who were citizens of the Union had left Ireland before divorce proceedings were initiated, their foreign spouses lost their right of residence.

The Court nonetheless pointed out that in such a case national law may grant more extensive protection to nationals of third countries so as to allow them to continue to reside on the territory of the host Member State.

In the judgment in ***Alimanovic*** (C-67/14, EU:C:2015:597) of 15 September 2015, the Court, sitting as the Grand Chamber, determined that EU law does not preclude *legislation of a Member State under which nationals of other Member States who are job-seekers are excluded from entitlement to certain 'special non-contributory cash benefits', which also constitute 'social assistance'*, after six months from the end of their last employment, although those benefits are granted to nationals of that Member State who are in the same situation. In the main proceedings, the dispute centred on the German authorities' refusal to grant the members of a family of Swedish nationals, some of whom had worked for around 11 months in Germany, subsistence allowances for the long-term unemployed and social allowances for beneficiaries unfit to work.

The Court observed at the outset that the benefits at issue in the main proceedings are special non-contributory cash benefits within the meaning of Article 70(2) of Regulation No 883/2004 ([8]), and 'social assistance' within the meaning of Article 24(2) of Directive 2004/38, since their predominant function is to cover the minimum subsistence costs necessary to lead a life in keeping with human dignity.

As regards the grant of those benefits, the Court, referring to the judgment in *Dano* ([9]), first of all observed that a Union citizen can claim equal treatment with nationals of the host Member State only if his residence in the territory of the host Member State complies with the conditions of Directive 2004/38. Accordingly, the Court stated that, in order to determine whether social assistance may be refused on the basis of the derogation laid down in Article 24(2) of Directive 2004/38, it is necessary to determine whether the principle of equal treatment

7| 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).

8| 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, and corrigendum at OJ 2004 L 200, p. 1).

9| Judgment of the Court of 11 November 2014 in ***Dano*** (C-333/13, EU:C:2014:2358). See also: 2014 Annual Report, p. 19.

of Union citizens who have a right of residence in the territory of the host Member State under that directive and nationals of that Member State, referred to in Article 24(1), is applicable. It is therefore necessary to determine whether the Union citizen concerned is lawfully resident on the territory of the host Member State. In the case in point, two provisions of Directive 2004/38 could confer on the applicants in the main proceedings a right of residence in the host Member State, namely Article 7(3)(c), which provides that the status of worker may be retained for no less than six months by a citizen who is in duly recorded involuntary unemployment after completing a fixed-term contract and has registered as a job-seeker with the relevant employment office, and Article 14(4)(b), which provides that a Union citizen who enters the territory of the host Member State in order to seek employment may not be expelled from that Member State for as long as he can provide evidence that he is continuing to seek employment and that he has a genuine chance of being engaged.

In that regard, the Court observed that the applicants in the main proceedings no longer enjoyed the status provided for in Article 7 of Directive 2004/38 when they were refused entitlement to the benefits at issue and that, even if they could rely on Article 14(4)(b) of that directive to establish a right of residence, the host Member State could rely on the derogation in Article 24(2) of that directive, which provides that the host Member State is not to be obliged to confer entitlement to social assistance during the first three months of residence or, where appropriate, the longer period provided for in Article 14(4)(b).

Furthermore, the Court stated that, although Directive 2004/38 requires a Member State to take account of the individual situation of the person concerned before it adopts an expulsion measure or finds that the residence of that person is placing an unreasonable burden on its social security system, such an individual examination is not required in a situation such as that in the main proceedings, since Directive 2004/38, establishing a gradual system as regards the retention of the status of 'worker' which seeks to safeguard the right of residence and access to social assistance, itself takes into consideration various factors characterising the individual situation of each applicant for social assistance and, in particular, the duration of the exercise of any economic activity.

III. INSTITUTIONAL PROVISIONS

1. LEGAL BASIS OF ACTS OF THE EUROPEAN UNION

Among the cases relating to the choice of the appropriate legal basis for acts of the institutions ([10]), three judgments are of particular interest. The first concerns the former procedure applied for the adoption of JHA decisions, the second deals with measures adopted in the context of the fisheries policy and the third concerns measures adopted on the basis of Article 349 TFEU.

In the joined cases giving rise to the judgment in ***Parliament v Council*** (C-317/13 and C-679/13, EU:C:2015:223), delivered on 16 April 2015, the Court annulled *Council Decisions 2013/129 and 2013/496 on subjecting the new psychoactive substances 4-methylamphetamine and 5-(2-aminopropyl)indole, respectively, to control measures throughout the European Union* ([11]). Those decisions had been adopted without consultation of the Parliament.

10 | Another two judgments covered in this report, relating to the European patent, concern, in particular, the issue of legal basis: the judgments of 5 May 2015 in ***Spain*** v ***Council*** (C-146/13, EU:C:2015:298, and C-147/13, EU:C:2015:299), presented in Section XIV.1 'Intellectual property'.

11 | Council Decision 2013/129/EU of 7 March 2013 on subjecting 4-methylamphetamine to control measures (OJ 2013 L 72, p. 11). Council Implementing Decision 2013/496/EU of 7 October 2013 on subjecting 5-(2-aminopropyl) indole to control measures (OJ 2013 L 272, p. 44).

In those cases, the Parliament raised a plea of illegality in respect of Article 8(3) of Decision 2005/387/JHA ([12]), which constituted the legal basis of the contested decisions, on the ground that that basis derogates from the procedures laid down in the Treaties for the adoption of those decisions by failing to establish an obligation to consult the Parliament. In that regard, the Court observed first of all that, as the rules regarding the manner in which the EU institutions arrive at their decisions are laid down in the Treaties and are not within the discretion of the Member States or of the institutions themselves, the Treaties alone may, in particular cases, empower an institution to amend a decision-making procedure established by the Treaties. Accordingly, to acknowledge that an institution can establish secondary legal bases, whether for the purposes of strengthening or easing the detailed rules for the adoption of an act, is tantamount to according that institution a legislative power which exceeds that provided for in the Treaties. That principle applies not only to the adoption of legislative acts but also to the legal bases provided for in secondary legislation which make it possible to adopt measures for the implementation of that legislation by strengthening or easing the detailed rules for the adoption of such measures laid down in the Treaties.

In this instance, according to the Court the legality of Article 8(3) of Decision 2005/387/JHA must be assessed in the light of the provisions that governed, at the time that decision was adopted, and therefore before the entry into force of the Treaty of Lisbon, the implementation of general acts in the field of police and judicial cooperation in criminal matters, namely Article 34(2)(c) EU and Article 39(1) EU, provisions from which it follows that, in such matters, the Council is to act by a qualified majority and after consulting the Parliament. Thus, since the wording of secondary EU legislation must be interpreted, in so far as possible, in a manner consistent with the provisions of the Treaties, Article 8(3) of that decision must be interpreted, in accordance with Article 39(1) EU, as permitting the Council to adopt an act for the purpose of submitting a new psychoactive substance to control measures only after it has consulted the Parliament. The Parliament's argument was therefore rejected.

Next, in order to reject the Parliament's argument that Article 8(3) of Decision 2005/387 is incompatible with the rules of procedure applicable after the entry into force of the Treaty of Lisbon, the Court, relying on Article 9 of the Protocol on Transitional Provisions, held that a provision of an act duly adopted on the basis of the EU Treaty before the entry into force of the Treaty of Lisbon which lays down detailed rules for the adoption of measures for the implementation of that act continues, in spite of the significant amendments introduced by that treaty in the field of police and judicial cooperation in criminal matters, to produce its legal effects until it is repealed, annulled or amended and permits the adoption of implementing measures in accordance with a procedure established in that provision. Thus, the fact that Article 8(3) of Decision 2005/387 might lay down detailed rules for the adoption of implementing measures that are strengthened or eased by comparison with the procedure laid down for that purpose in the TFEU cannot mean that that provision constitutes an invalid secondary legal basis which should be disapplied following a plea of illegality.

Although the Parliament's arguments relating to the legality of the legal basis were rejected, the actions for annulment were nonetheless upheld on the ground that the due consultation of the Parliament in the cases provided for by the rules of EU law constitutes an essential procedural requirement, disregard of which in this instance rendered the decisions void. However, in order not to undermine the effectiveness of the control of the psychoactive substances concerned by the decisions, the Court maintained the effects of the annulled decisions until the entry into force of new acts intended to replace them.

On 1 December 2015, in the judgment in ***Parliament and Commission v Council*** (C-124/13 and C-125/13, EU:C:2015:790), the Court, sitting as the Grand Chamber, upheld the actions brought by the Parliament and the Commission for annulment of *Regulation (EU) No 1243/2012 amending Regulation (EC) No 1342/2008 establishing*

12| Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk-assessment and control of new psychoactive substances (OJ 2005 L 127, p. 32).

a long-term plan for cod stocks and the fisheries exploiting those stocks ([13]). Regulation No 1243/2012 was adopted by the Council on the basis of Article 43(3) TFEU, which authorises the Council to adopt measures on the fixing and allocation of fishing opportunities. According to the single plea put forward by the Parliament and the Commission, that regulation ought to have been adopted in accordance with the ordinary legislative procedure provided for in Article 43(2) TFEU, since multiannual plans, such as the plan in the present case, are measures that are 'necessary' for the pursuit of the objectives of the fisheries policy.

The Court began by referring to its previous case-law ([14]), according to which the adoption of measures which entail a policy choice, in that it presupposes an assessment of whether the measures in question are necessary for the pursuit of the objectives of the common policies, must be reserved to the EU legislature acting on the basis of Article 43(2) TFEU. In accordance with Article 43(3) TFEU, on the other hand, the adoption of measures on the fixing and allocation of fishing opportunities does not require such an assessment, since such measures are of a primarily technical nature and are intended to be taken in order to implement provisions adopted on the basis of Article 43(2) TFEU. Thus, measures which do more than merely fix and allocate fishing opportunities may fall within the scope of the Article 43(3) TFEU, provided that they do not entail a policy choice that is reserved to the EU legislature.

The Court then proceeded to consider whether the amendments made by Regulation No 1243/2012 could be adopted on the basis of Article 43(3) TFEU. It found that those amendments are not confined to merely providing for the fixing and actual allocation of fishing opportunities but are intended to adapt the general mechanism for setting the total allowable catches and the fishing effort limitations in order to remedy the shortcomings arising from the application of the previous rules, which were jeopardising attainment of the objectives of the multiannual plan. Therefore, according to the Court, those amendments define the legal framework in which fishing opportunities are established and allocated. They thus result from a policy choice having a long-term impact on the multiannual plan and therefore ought to have been adopted on the basis of Article 43(2) TFEU.

However, having regard to important grounds of legal certainty, the Court decided to maintain the effects of Regulation No 1243/2012 until the entry into force, within a reasonable period not to exceed 12 months from 1 January 2016, of a new regulation adopted on the appropriate legal basis.

In the judgment in ***Parliament and Commission v Council*** (C-132/14 to C-136/14, EU:C:2015:813), delivered on 15 December 2015, the Court, sitting as the Grand Chamber, dismissed the actions brought by the Parliament in Cases C-132/14 and C-136/14 and by the Commission in Cases C-133/14 to C-135/14 for *annulment of Regulation (EU) No 1385/2013* ([15]) *and Directives 2013/64* ([16]) *and 2013/6* ([17]) *amending certain provisions of secondary law following the change in the status of Mayotte from that of one of the overseas countries and territories to that of an outermost region within the meaning of Article 349 TFEU*.

In support of their respective actions, the Parliament and the Commission relied on a single plea, alleging that

13| Council Regulation (EU) No 1243/2012 of 19 December 2012 amending Regulation (EC) No 1342/2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks (OJ 2012 L 352, p. 10).

14| Judgment of the Court of 26 November 2014 in ***Parliament and Commission*** v ***Council*** (C-103/12 and C-165/12, EU:C:2014:2400).

15| Council Regulation (EU) No 1385/2013 of 17 December 2013 amending Council Regulations (EC) No 850/98 and (EC) No 1224/2009, and Regulations (EC) No 1069/2009, (EU) No 1379/2013 and (EU) No 1380/2013 of the European Parliament and of the Council, following the amendment of the status of Mayotte with regard to the European Union (OJ 2013 L 354, p. 86).

16| Council Directive 2013/64/EU of 17 December 2013 amending Council Directives 91/271/EEC and 1999/74/EC, and Directives 2000/60/EC, 2006/7/EC, 2006/25/EC and 2011/24/EU of the European Parliament and of the Council, following the amendment of the status of Mayotte with regard to the European Union (OJ 2013 L 353, p. 8).

17| Council Directive 2013/62/EU of 17 December 2013 amending Directive 2010/18/EU implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC, following the amendment of the status of Mayotte with regard to the European Union (OJ 2013 L 353, p. 7).

in adopting the contested acts on the basis of Article 349 TFEU the Council had chosen the wrong legal basis. In that regard, the Court noted that it is clear from the wording of Article 349 TFEU that it enables the Council to adopt, in various areas, specific measures designed to take account of the structural social and economic situation of the outermost regions, which is compounded by a number of factors identified in the first paragraph of that article the permanence and combination of which severely restrain their development. In rejecting the Commission's argument that Article 349 TFEU applies only in the event of a derogation from the application of primary law to the outermost regions and not in the case of the adaptation of acts of secondary legislation to the particular situation of those regions, the Court, after observing that a number of the areas referred to in the second paragraph of Article 349 TFEU are governed for the most part by provisions of secondary law, stated that that article empowers the Council to adopt specific measures aimed at laying down the conditions of application to those regions not only of the provisions of the Treaties but also of provisions of secondary legislation. Furthermore, in rejecting the Parliament's line of argument that Article 349 TFEU does not empower the Council to adopt measures whose sole aim is to defer the application of certain provisions of EU law to the outermost regions, the Court emphasised that it follows from the wording and the objectives of Article 349 TFEU that there is nothing to preclude postponement of the full applicability of a provision of EU law from proving to be the most appropriate measure for taking account of the structural social and economic situation of an outermost region.

Thus, after examining the objectives and the content of each of the contested acts, the Court held that the measures in those acts were adopted taking account of the structural social and economic situation of Mayotte, within the meaning of the first paragraph of Article 349 TFEU, and, in accordance with the third paragraph of Article 349 TFEU, display a connecting factor with the special characteristics and constraints of that region. Consequently, the Commission and the Parliament were not justified in asserting that the contested acts could not have Article 349 TFEU as their legal basis.

2. COMPETENCES AND POWERS OF THE INSTITUTIONS

As regards cases relating to the competences and powers of the institutions ([18]), three judgments, delivered by the Grand Chamber, may be mentioned. They all concern the Commission and deal, respectively, with the withdrawal of a proposal for a regulation during the legislative procedure, the submission of observations on behalf of the European Union to an international court and the Commission's delegated and implementing powers.

On 14 April 2015, by the judgment in ***Council v Commission*** (C-409/13, EU:C:2015:217), the Court dismissed the action for annulment brought by the Council against *the Commission decision by which the Commission had withdrawn its proposal for a regulation of the Parliament and the Council laying down the general provisions for macro-financial assistance to third countries* ([19]). In that action, the Council, supported by 10 Member States, submitted, in particular, that by withdrawing that proposal the Commission had exceeded the powers conferred on it by the Treaties, thus undermining the institutional balance, and, furthermore, that the Commission had infringed the principle of sincere cooperation.

In its judgment, the Court held that it follows from Article 17(2) TEU in conjunction with Articles 289 TFEU and 293 TFEU that the Commission's power under the ordinary legislative procedure does not come down

18| Another judgment covered in this report concerns, inter alia, the competences and powers of the institutions: the judgment of 28 April 2015 in ***Commission*** v ***Council*** (C-28/12, EU:C:2015:282), presented in Section XXI 'International agreements'.

19| As regards the admissibility of the action, the Court held in the judgment that a decision by the Commission to withdraw a legislative proposal may constitute an act against which an action for annulment may be brought since, by bringing the legislative procedure initiated by the submission of the proposal to an end, such a decision prevents the Parliament and the Council from exercising, as they would have intended, their legislative functions under Articles 14(1) TEU and 16(1) TEU.

to submitting a proposal and, subsequently, promoting contact and seeking to reconcile the positions of the Parliament and the Council. Just as it is, as a rule, for the Commission to decide whether or not to submit a legislative proposal and, as the case may be, to determine its subject matter, objective and content, the Commission has the power, as long as the Council has not acted, to alter its proposal or even, if need be, withdraw it. That power to withdraw a proposal cannot, however, confer upon the Commission a right of veto in the conduct of the legislative process, a right which would be contrary to the principles of conferral of powers and institutional balance.

According to the Court, where an amendment planned by the Parliament and the Council distorts the proposal for a legislative act in a manner which prevents achievement of the objectives pursued by the proposal and which, therefore, deprives it of its *raison d'être*, the Commission is entitled to withdraw it. In the case in point, the Court held that the withdrawal of the proposal was justified since, for the adoption of each decision granting macro-financial assistance, the Council and the Parliament wished to replace the Commission's implementing power by use of the ordinary legislative procedure. The application of the procedure laid down in Article 289(1) TFEU runs counter not only to attainment of the main objective of the proposal, which is to bring that decision-making process to an end, with a view to speeding up decision-taking and to improving the effectiveness of the macro-financial assistance policy, but also to the objective consisting, in the interest of coherence, in bringing the procedure for the grant of macro-financial assistance into line with the procedure applicable to the other EU financial instruments relating to external assistance. Since the Commission's power of withdrawal is inseparable from the right of initiative with which that institution is vested and its exercise is circumscribed by Article 17(2) TEU in conjunction with Articles 289 TFEU and 293 TFEU, there is no question of a breach of the principle of democracy enshrined in Article 10(1) and (2) TEU.

The Court made it clear that the Commission can, however, withdraw its proposal only after having due regard, in the spirit of sincere cooperation which, pursuant to Article 13(2) TEU, must govern relations between EU institutions in the context of the ordinary legislative procedure, to the concerns of the Parliament and the Council underlying their intention to amend its proposal. In the case in point, no breach of the principle of sincere cooperation was found, since the Council and the Parliament did not forego retaining the ordinary legislative procedure for the adoption of decisions relating to macro-financial assistance although they were aware of the possibility that the proposal would be withdrawn, owing to repeated and reasoned warnings to that effect given by the Commission.

By the judgment in ***Council v Commission*** (C-73/14, EU:C:2015:663), delivered on 6 October 2015, the Court dismissed the action for annulment brought by the Council against *the Commission's decision to present a written statement on behalf of the European Union to the International Tribunal for the Law of the Sea ('ITLOS') in a case where that tribunal had received a request for an advisory opinion from the Sub-Regional Fisheries Commission* ([20]). In its action, the Council, supported by a number of Member States, claimed, in essence, that it ought to have given prior approval of the content of that statement, in accordance with the second sentence of Article 16(1) TEU, which reserves to the Council the policymaking function within the European Union.

The first plea put forward by the Council in support of its action alleged breach of the principle of conferral of powers laid down in Article 13(2) TEU. In that regard, the Court, first, observed that the request for an advisory opinion at issue in the case concerned, at least in part, the area of the conservation of marine biological resources under the common fisheries policy, which, pursuant to Article 3(1)(d) TFEU, constitutes an area of exclusive EU competence, and that the European Union, as a contracting party to the United Nations

20| The Sub-Regional Fisheries Commission is an intergovernmental organisation for fisheries cooperation established by a convention of 29 March 1985 and consists of the Republic of Cape Verde, the Republic of Guinea, the Republic of Guinea-Bissau, the Islamic Republic of Mauritania, the Republic of Senegal, the Republic of Sierra Leone and the Republic of The Gambia.

Convention on the Law of the Sea ([21]), on the basis of which ITLOS was set up, was competent to take part in the advisory procedure before that court.

Next, in order to reject the argument of certain Member States that Article 335 TFEU on the representation of the European Union by the Commission before national courts does not apply to proceedings before international courts, the Court recalled that that provision, although restricted to Member States on its wording, is the expression of a general principle that the European Union has legal capacity and is to be represented, to that end, by the Commission. Thus, Article 335 TFEU provides a basis for the Commission to represent the European Union before ITLOS. In addition, in order to hold that Article 218(9) TFEU, which provides that the Council has competence in particular as regards the positions to be adopted on the European Union's behalf 'in' a body set up by an international agreement, did not apply, the Court emphasised that the case in point concerned the definition of a position to be expressed on behalf of the European Union 'before' an international court requested to give an advisory opinion the adoption of which fell solely within the remit and responsibility of the members of that body, acting, to that end, wholly independently of the parties. Last, after stating that the purpose of a written statement on behalf of the European Union consisting in suggesting answers to the questions raised in a fisheries case was not to formulate a policy in relation to fishing, for the purpose of the second sentence of Article 16(1) TFEU, but to present to ITLOS a set of legal observations aimed at enabling that court to give, if appropriate, an informed advisory opinion on the questions put to it, the Court held that the Commission had not infringed that provision and the first plea was rejected.

In order to reject the Council's second plea, alleging that the Commission had infringed the principle of sincere cooperation, the Court, after observing that that principle requires the Commission to consult the Council beforehand if it intends to express positions on behalf of the European Union before an international court, stated that, in this instance, before submitting the position of the European Union to ITLOS, the Commission had sent the Council a working document which was revised several times in order to take account of the view expressed by two working groups of the Council.

By the judgment in ***Commission v Parliament and Council*** (C-88/14, EU:C:2015:499), delivered on 16 July 2015, the Court dismissed the action brought by the Commission for *annulment of Article 1(1) and (4) of Regulation (EU) No 1289/2013 amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement* ([22]) in so far as those provision confer on the Commission a delegated power in accordance with Article 290(1) TFEU rather than an implementing power within the meaning of Article 291(2) TFEU.

In that judgment, the Court provided clarification of the distinction between the grant of a delegated power and the grant of an implementing power. It observed that Article 290(1) TFEU states that a legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act, on condition that the objectives, content, scope and duration of the delegation of power are explicitly defined in the legislative act granting the delegation, which implies that the purpose of granting a delegated power is to achieve the adoption of rules coming within the regulatory framework as defined by the basic legislative act. In the context of the exercise of the implementing power conferred on it by Article 291(2) TFEU, on the other hand, the institution concerned must provide further detail in relation to the content of a legislative act, in order to ensure that it is implemented under uniform conditions in all the Member States. In that context, in exercising an implementing power, unlike the powers

21 | The United Nations Convention on the Law of the Sea, signed in Montego Bay on 10 December 1982, and which entered into force on 16 November 1994, was approved on behalf of the European Community by Council Decision 98/392/EC of 23 March 1998 concerning the conclusion by the European Community of the United Nations Convention of 10 December 1982 on the Law of the Sea and the Agreement of 28 July 1994 relating to the implementation of Part XI thereof (OJ 1998 L 179, p. 1).

22 | Regulation (EU) No 1289/2013 of the European Parliament and of the Council of 11 December 2013 amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ 2013 L 347, p. 74).

which it has in the context of the exercise of a delegated power, the Commission may neither amend nor supplement the legislative act, even as to its non-essential elements. Next, the Court stated that neither the existence nor the extent of the discretion conferred on the Commission by the legislative act is relevant for determining whether the act to be adopted comes under Article 290 TFEU or Article 291 TFEU. It follows from the wording of Article 290(1) TFEU that the lawfulness of the EU legislature's choice to confer a delegated power on the Commission depends solely on whether the acts which it is to adopt on the basis of the conferral are of general application and whether they supplement or amend the non-essential elements of the legislative act.

In the case in point, the Court held that the EU legislature conferred on the Commission the power to amend, within the meaning of Article 290(1) TFEU, the normative content of Regulation (EC) No 539/2001 ([23]), in particular Annex II to that regulation, which contains the list of countries whose nationals are exempt from the requirement to be in possession of a visa. In that regard, an act adopted on the basis of Article 1(4)(f) of Regulation (EC) No 539/2001, as amended by Regulation (EU) No 1289/2013, has the effect of reintroducing for a period of 12 or 18 months a visa obligation for all nationals of a third country listed in Annex II to that regulation for stays which, in accordance with Article 1(2) of that regulation, are exempt from that obligation. For all those nationals, the act adopted on the basis of Article 1(4)(f) of Regulation (EC) No 539/2001 thus has the effect of amending, if only temporarily, the normative content of the legislative act in question. Apart from their temporary nature, the effects of the act adopted on the basis of that provision are identical in all respects with those of a formal transfer of the reference to the third country concerned from Annex II to Regulation (EC) No 539/2001, as amended, to Annex I to that regulation, which lists the countries whose nationals are required to be in possession of a visa.

3. ACCESS TO DOCUMENTS

By the judgment in ***ClientEarth v Commission*** (C-612/13 P, EU:C:2015:486), delivered on 16 July 2015, the Court upheld in part the appeal brought by ClientEarth against the judgment of the General Court by which the latter had dismissed *the action for annulment of the Commission's express decision refusing to grant full access to certain studies on the conformity of the legislation of various Member States with EU environmental law* ([24]). The judgment provided the Court with the opportunity to clarify its case-law on the exception to the right of access relating to the protection of the purpose of investigations, within the meaning of the third indent of Article 4(2) of Regulation (EC) No 1049/2001 ([25]).

First, the Court held that studies carried out by an external service provider, at the request of and on behalf of the Commission, with the specific aim of determining what progress has been made in transposing various directives in a certain number of Member States, fall within the scope of the concept of investigations within the meaning of Article 4(2). Such studies are among the instruments available to the Commission for overseeing the application of EU law, in order to uncover any failures by Member States to fulfil their obligation to transpose directives and in order to decide, when necessary, to initiate infringement proceedings against those Member States.

Second, the Court observed that, in order to justify refusing access to a document, it is open to the institution concerned to base its decision on general presumptions which apply to certain categories of documents, such as, inter alia, documents in the administrative file relating to an infringement investigation, and that similar

23| Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ 2001 L 81, p. 1).

24| Judgment of the General Court of 13 September 2013 in ***ClientEarth*** v ***Commission*** (T-111/11, EU:T:2013:482).

25| 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).

considerations are likely to apply to requests for disclosure relating to documents of the same nature. In the case in point, according to the Court, the General Court had been correct to hold that the Commission was entitled to consider, in general terms, that full disclosure of a first category of the studies at issue — namely those which, when the express decision refusing to grant full access was adopted, had already been placed in a file relating to the pre-litigation stage of infringement proceedings opened with the sending of a letter of formal notice to the Member States concerned, under the first paragraph of Article 258 TFEU — would have undermined the protection of the purpose of the investigation. Such disclosure would have been likely to disturb the nature and progress of that stage of proceedings, by making more difficult both the progress of negotiation between the Commission and the Member States concerned and the pursuit of an amicable agreement whereby the alleged infringement could be brought to an end. The fact that the studies had been carried out by an external undertaking and that they did not reflect the Commission's position was not, according to the Court, such as to invalidate that analysis.

On the other hand, the Court held that the General Court had erred in law by accepting that the Commission could lawfully extend the scope of the presumption of confidentiality to a second category of studies, namely those which, when the express decision refusing access was adopted, had not led to the sending of a letter of formal notice. Such reasoning is incompatible with the requirement that such a presumption must be interpreted and applied strictly. Furthermore, as the Commission had not sent a letter of formal notice to a Member State, it remained uncertain, when the express decision refusing access was adopted, that the outcome of those studies would be the opening of the pre-litigation stage of infringement proceedings. Consequently, it is the Commission's duty to examine on a case-by-case basis whether that second category of studies could be fully disclosed.

IV. EU LAW AND NATIONAL LAW

In the judgment in ***Ferreira da Silva and Others*** (C-160/14, EU:C:2015:565), delivered on 9 September 2015, which relates to a case concerning the concept of a 'transfer of a business' within the meaning of Directive 2001/23 on the safeguarding of employees' rights in the event of the transfer of businesses ([26]), the Court ruled that *EU law and, in particular, the principles laid down in the case-law concerning State liability for loss or damage caused to individuals as a result of an infringement of EU law by a court or tribunal against whose decisions there is no judicial remedy under national law* must be interpreted as precluding a provision of national law which requires, as a precondition for an action for damages, the setting aside of the decision given by such a court or tribunal which caused the loss or damage, when such setting aside is, in practice, impossible.

In view of the essential role played by the judiciary in the protection of the rights derived by individuals from the rules of EU law, the full effectiveness of those rules would be called into question and the protection of those rights would be weakened if individuals were precluded from being able, under certain conditions, to obtain reparation when their rights are prejudiced by an infringement of EU law attributable to a decision of a court or tribunal of a Member State adjudicating at last instance, the infringement consisting in the case in point in failure to comply with the duty to bring the matter before the Court by requesting a preliminary ruling ([27]). Thus, where the conditions for a State to incur liability are satisfied, the State must make reparation for the consequences of the loss or damage caused on the basis of the national rules. However, the conditions laid down by national law in respect of reparation of loss or damage must not be less favourable than those relating to similar domestic claims (principle of equivalence) and must not be so framed as to make it, in practice, impossible or excessively difficult to obtain reparation (principle of effectiveness).

26| Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ 2001 L 82, p. 16).

27| For the presentation of the part of the judgment relating to this aspect, see Section V.1 'References for a preliminary ruling'.

Moreover, an obstacle to the effective application of EU law and, in particular, of the fundamental principle of State liability for infringement of EU law, which is inherent in the system of the treaties on which the European Union is based, cannot be justified by the principle of *res judicata*, since proceedings seeking to render the State liable do not have the same purpose and do not necessarily involve the same parties as the proceedings resulting in the decision which has acquired the status of *res judicata*. In addition, the principle of legal certainty cannot frustrate the principle that the State should be liable for loss and damage caused to individuals as a result of infringements of EU law which are attributable to it.

Consequently, inasmuch as the national legislation at issue in the main proceedings may make it excessively difficult to obtain reparation for the loss or damage caused by the infringement of EU law because the situations in which the judicial decision at issue may be subject to review are extremely limited, and in the light of the substantive answer provided by the Court ([28]), the State will be required to make reparation to the applicants in the main proceedings.

V. PROCEEDINGS OF THE EUROPEAN UNION

1. REFERENCES FOR A PRELIMINARY RULING

In the judgment in ***Kernkraftwerke Lippe-Ems*** (C-5/14, EU:C:2015:354), delivered on 4 June 2015, the Court explained the principles relating to *the interaction between the preliminary ruling procedure and the interlocutory procedure for review of constitutionality* ([29]). In the main proceedings, the national court had been asked to determine the validity of the German legislation levying a duty on the use of nuclear fuel for the commercial production of electricity. That legislation was the subject matter of a question of compatibility with the German Basic Law in parallel proceedings before the Bundesverfassungsgericht (Federal Constitutional Court).

In its judgment, the Court stated that Article 267 TFEU must be interpreted as meaning that a national court which has doubts as to whether national legislation is compatible with both EU law and the constitution of the Member State concerned neither loses the right nor, as the case may be, is exempt from the obligation to submit questions to the Court of Justice concerning the interpretation or validity of that law on the ground that an interlocutory procedure for review of the constitutionality of that legislation is pending before the national court responsible for carrying out such review.

First, national courts have the widest discretion in referring matters to the Court if they consider that a case pending before them raises questions involving interpretation of provisions of EU law, or consideration of their validity, necessitating a decision on their part. Second, the effectiveness of EU law would be impaired and the effectiveness of Article 267 TFEU diminished if, as a result of the fact that an interlocutory procedure for review of constitutionality is pending, the national court were precluded from referring questions to the Court for a preliminary ruling and immediately applying EU law in a manner consistent with the Court's decision or case-law. Last, the existence of a national procedural rule cannot call into question the discretion enjoyed by national courts

28 | As regards the substance, the case concerned the interpretation of Directive 2001/23, cited in footnote 25 above, which provides that the transferor's rights and obligations arising from a contract of employment or an employment relationship existing on the date of a transfer are to be transferred to the transferee. In its judgment, the Court interpreted the concept of a 'transfer of a business' as encompassing a situation in which an undertaking active on the charter flights market is wound up by its majority shareholder, which is itself an air transport undertaking, and the latter undertaking then takes the place of the undertaking that has been wound up by taking over aircraft leasing contracts and ongoing charter flight contracts, carries on activities previously carried on by the undertaking that has been wound up, reinstates some employees that have hitherto been seconded to that undertaking, assigning them tasks identical to those previously performed, and takes over small items of equipment from the undertaking that has been wound up.

29 | For the presentation of the part of the judgment dealing with taxation, see Section XIII 'Fiscal provisions'.

to make a reference to the Court of Justice for a preliminary ruling where they have doubts, as in the case before the referring court, as to the interpretation of EU law.

With regard to the effect of the procedure before the Bundesverfassungsgericht on the relevance of an interpretation of EU law for the outcome of the dispute before the referring court, the Court observed that, in so far as, irrespective of the constitutionality of the provisions at issue in the main proceedings, that dispute and the questions referred related to the compatibility with EU law of national legislation which levies a duty on the use of nuclear fuel, it was not manifestly obvious that the interpretation sought bore no relation to the actual facts of the main action or its purpose, that the problem was hypothetical or that the Court did not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it.

In the judgment in ***Ferreira da Silva and Others*** (C-160/14, EU:C:2015:565), to which reference has already been made ([30]), the Court considered *the obligation on national courts and tribunals against whose decisions there is no judicial remedy to make a reference to the Court* for a preliminary ruling where a provision of EU law has been the subject of conflicting assessments by lower courts. In the case in point, the relevant provision concerned the concept of a 'transfer of a business' within the meaning of Directive 2001/23.

The Court stated that in itself the fact that other national courts or tribunals have given contradictory decisions is admittedly not in principle a conclusive factor capable of triggering the obligation set out in the third paragraph of Article 267 TFEU. However, in circumstances which are characterised both by conflicting lines of case-law at national level regarding a concept contained in a provision of EU law and by the fact that that concept frequently gives rise to difficulties of interpretation in the various Member States, a national court or tribunal against whose decisions there is no judicial remedy under national law must comply with its obligation to make a reference to the Court, in order to avert the risk of an incorrect interpretation of EU law.

2. ACTIONS FOR ANNULMENT

By the judgment in ***T & L Sugars and Sidul Açúcares v Commission*** (C-456/13 P, EU:C:2015:284), delivered on 28 April 2015, the Court, sitting as the Grand Chamber, dismissed the appeal brought by appellants which asked the Court to *set aside the judgment of the General Court* ([31]) *by which the latter, in particular, dismissed as inadmissible the action brought by two refiners of imported cane sugar established in the European Union for annulment of regulations adopted by the Commission* in the sugar sector, namely Regulation (EU) No 222/2011 laying down exceptional measures as regards the release of sugar and isoglucose on the Union market for the marketing year 2010/2011 ([32]), Implementing Regulation (EU) No 293/2011 ([33]), Implementing Regulation (EU) No 302/2011 opening an exceptional import tariff quota for the same marketing year ([34]) and Implementing Regulation (EU) No 393/2011 ([35]).

By one of the grounds of appeal, the appellants submitted, in particular, that the General Court made an error of law in holding that their actions were inadmissible on the basis of the finding that the measures taken by the

30 | This judgment is presented in Section IV 'EU law and national law'.

31 | Judgment of the General Court of 6 June 2013 in ***T & L Sugars and Sidul Açúcares*** v ***Commission*** (T-279/11, EU:T:2013:299).

32 | Commission Regulation (EU) No 222/2011 of 3 March 2011 laying down exceptional measures as regards the release of out-of-quota sugar and isoglucose on the Union market at reduced surplus levy during marketing year 2010/2011 (OJ 2011 L 60, p. 6).

33 | Commission Implementing Regulation (EU) No 293/2011 of 23 March 2011 fixing allocation coefficient, rejecting further applications and closing the period for submitting applications for available quantities of out-of-quota sugar to be sold on the Union market at reduced surplus levy (OJ 2011 L 79, p. 8).

34 | Commission Implementing Regulation (EU) No 302/2011 of 28 March 2011 opening an exceptional import tariff quota for certain quantities of sugar in the 2010/11 marketing year (OJ 2011 L 81, p. 8).

35 | Commission Implementing Regulation (EU) No 393/2011 of 19 April 2011 fixing the allocation coefficient for the issuing of import licences applied for from 1 to 7 April 2011 for sugar products under certain tariff quotas and suspending submission of applications for such licences (OJ 2011 L 104, p. 39).

national authorities under the regulations at issue constituted implementing measures within the meaning of the fourth paragraph of Article 263 TFEU.

In ruling on that plea, the Court observed that Regulations (EU) No 222/2011 and No 293/2011 were not of direct concern to the appellants, since they do not have the status of producers of sugar required by the regulations at issue and, moreover, their legal situation is not directly affected by those regulations. The Court concluded that the General Court made an error of law in basing its finding that the action was inadmissible on the fact that those regulations entailed implementing measures within the meaning of the final limb of the fourth paragraph of Article 263 TFEU without examining whether those regulations were of direct concern to the appellants. However, since it was established in the context of the appeal that the regulations at issue were not of direct concern to the appellants, the Court held that that error of law was not such as to entail the setting aside of the judgment of the General Court.

Next, as regards Regulations (EU) No 302/2011 and No 393/2011, the Court held that those regulations produce their legal effects vis-à-vis the appellants only through the intermediary of acts taken by the national authorities following the submission of applications for certificates. The decisions of the national authorities granting such certificates, which apply the coefficients fixed by the EU regulations to the operators concerned, and the decisions refusing such certificates in full or in part therefore constitute implementing measures within the meaning of the final limb of the fourth paragraph of Article 263 TFEU. That conclusion is not called into question by the allegedly mechanical nature of the measures taken at national level, since that criterion is irrelevant in considering admissibility within the meaning of that provision.

3. INTERLOCUTORY PROCEEDINGS

By the order made on 23 April 2015 in ***Commission v Vanbreda Risk & Benefits*** (C-35/15 P(R), EU:C:2015:275), the Vice-President of the Court, in an appeal, set aside the order of the President of the General Court made on 4 December 2014 ([36]) granting an *application for suspension of the operation of a Commission decision which had rejected the tender submitted by a tenderer following a call for tenders for a public contract* relating to insurance of goods and persons and had awarded the contract to a different company. In his order, the President of the General Court eased the urgency condition, stating that it is difficult for an unsuccessful tenderer to demonstrate the risk of sustaining irreparable harm ([37]). The President of the General Court thus held that the condition relating to urgency should be eased in public procurement matters, to the effect that serious but not irreparable harm may be sufficient to establish urgency where the prima facie case is particularly strong. The President of the General Court based his conclusion on a general principle of EU law, relating to the right to an effective remedy, enshrined in Article 47 of the Charter of Fundamental Rights.

In his order, the Vice-President of the Court observed that, although Directive 89/665 on public contracts ([38]) is addressed to the Member States and is therefore not binding as such on the EU institutions, the fact nonetheless remains that, since it gives effect to that general principle of the right to an effective remedy in the specific field of public procurement, it must be taken into consideration as regards the contracts awarded by the European Union itself. According to the provisions of that directive, the requirement that the Member States, in their national law, provide for the possibility for a person adversely affected by a decision adopted following a public procurement procedure to seek interim measures in accordance with Article 2(1) of Directive

36 | Order of the President of the General Court of 4 December 2014 in ***Vanbreda Risk & Benefits*** v ***Commission*** (T-199/14 R, EU:T:2014:1024).

37 | The order of the President of the General Court is presented in detail on pages 157 to 159 of the 2014 Annual Report.

38 | Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33), as amended by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 (OJ 2007 L 335, p. 31).

89/665 is limited to the period between adoption of that decision and the conclusion of the contract. The President of the General Court was therefore wrong to hold that an unsuccessful tenderer must be able to obtain interim measures, without limiting that finding to the period preceding the conclusion of the contract by the awarding authority with the successful tenderer. In accordance with the provisions of Directive 89/665, the easing of the condition relating to urgency in public procurement matters applies only if the application for interim measures is made by the unsuccessful tenderer before the conclusion of the contract with the successful tenderer. Furthermore, that limitation in time is subject to the twofold condition, first, that the 10-day standstill period laid down in Article 171(1) of Regulation (EU) No 1268/2012 ([39]) was observed before the contract was concluded and, second, that the unsuccessful tenderer had sufficient information to exercise his right to make an application for interim measures within that period.

In the case in point, the Vice-President determined the dispute and dismissed the application for interim measures on the ground that the 10-day standstill period had been complied with before the conclusion of the contract by the Commission and the other tenderer and that the contract had been concluded well before the tenderer brought its action for annulment and made its application for interim measures ([40]).

VI. AGRICULTURE

The judgment in ***Zuchtvieh-Export*** (C-424/13, EU:C:2015:259), delivered on 23 April 2015, provided the Court with the opportunity to adjudicate on *the extent of the protection provided in EU law for animals during transport to third countries*. The main proceedings concerned the transport of bovine animals between Kempten (Germany) and Andijan (Uzbekistan), for which the authority of the place of departure had required a change to the arrangements for the journey so that the provisions of Regulation (EC) No 1/2005 ([41]) would also be complied with during the part of the journey taking place outside the territory of the European Union. It was in that context that the national court asked the Court whether the provisions of that regulation — Article 14(1) of which determines the conditions relating to the journey log and also the power of the competent authority of the place of departure to require changes, where appropriate — also apply, in the case of transport from a Member State to a third country, to the stages of the journey taking place outside the European Union.

The Court answered that question in the affirmative and observed that Article 14 of Regulation (EC) No 1/2005 does not subject the transport of animals with a point of departure within the territory of the European Union and a destination in a third country to any particular approval scheme, different from that applicable to transport taking place within the European Union. Therefore, in order for transport involving such a journey for animals to be authorised by the competent authority of the place of departure, the organiser of the journey must submit a realistic journey log which indicates that the provisions of that regulation will be complied with, including for the stages of the journey which take place outside the European Union. The journey planning as stated in the journey log must show that the planned transport will observe, inter alia, the technical rules on watering and feeding intervals and journey times and resting periods. Where it does not, the competent authority is empowered to require changes to the arrangements in order to ensure compliance with those provisions throughout the journey.

39 | Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ 2012 L 362, p. 1).

40 | In other cases relating to applications for interim relief in connection with public procurement, the President of the General Court has had the opportunity to apply the conditions relating to the easing of the condition of urgency, as framed by the Vice-President of the Court of Justice. See the orders of 15 June 2015 in ***Close and Cegelec*** v ***Parliament*** (T-259/15 R, EU:T:2015:378), paragraphs 37 to 47, and of 17 July 2015 in ***GSA and SGI*** v ***Parliament*** (T-321/15 R, EU:T:2015:522), paragraphs 27 to 29.

41 | Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432EEC and 93/119/EC and Regulation (EC) No 1255/97 (OJ 2005 L 3, p. 1).

In the judgment in ***Scotch Whisky Association and Others*** (C-333/14, EU:C:2015:845), delivered on 23 December 2015, the Court ruled on the interpretation of *'the Single CMO Regulation'* ([42]) and the *concept of and justification for measures having equivalent effect to quantitative restrictions*, within the meaning of Articles 34 TFEU and 36 TFEU.

Having been requested to give a preliminary ruling on three questions raised in proceedings relating to the validity of national legislation and of a draft order relating to the imposition of a minimum price per unit of alcohol with respect to the retail selling of alcoholic drinks in Scotland, the Court observed first of all that, while Article 167(1)(b) of the Single CMO Regulation provides that Member States may not allow for price fixing for wines, that however applies solely in the context of laying down marketing rules to regulate supply. Thus, even though such national legislation is liable to undermine the Single CMO Regulation in that it is incompatible with the principle that is the foundation of that regulation, namely the free formation of selling prices of agricultural products on the basis of fair competition, the regulation does not preclude the imposition of a minimum price per unit of alcohol for the retail sale of wines if that measure is an appropriate means of securing the objective of the protection of human life and health and if, taking into consideration the objectives of the common agricultural policy and the proper functioning of the common organisation of the markets, it does not go beyond what is necessary to attain that objective.

Next, the Court observed that the national legislation at issue constitutes a measure having an effect equivalent to a quantitative restriction within the meaning of Article 34 TFEU since, in preventing the lower cost price of imported products being reflected in the selling price to consumers, it is capable of hindering the access to the national market of the products concerned. Although that legislation is capable of reducing the consumption of alcohol, in general, and hazardous or harmful consumption, in particular, it cannot benefit from the derogation laid down in Article 36 TFEU if human life and health can be as effectively protected by measures that are less restrictive of trade within the European Union, and in particular by increased taxation on alcoholic drinks. It is for the national court to determine whether that is indeed so.

In the case in point, as regards review by the national court of compliance with the principle of proportionality, the Court observed that, as the national legislation at issue has not entered into force, the national court must rely on the material of which it has knowledge at the time when it gives its ruling. The national court must examine whether it may reasonably be concluded from the evidence submitted by the Member State concerned that the derogation from the principle of the free movement of goods satisfies the principle of proportionality. That review is therefore not limited solely to the information available to the national legislature when it adopted the measure ([43]).

VII. FREEDOMS OF MOVEMENT

1. FREEDOM OF MOVEMENT FOR WORKERS

On 24 February 2015, in the judgment in ***Sopora*** (C-512/13, EU:C:2015:108), the Court, sitting as the Grand Chamber, ruled on *the interpretation of Article 45 TFEU* in the context of proceedings between a German national and the Netherlands tax authorities concerning the rejection of the German national's application for the flat-rate exemption for extraterritorial expenses actually incurred in connection with his employment in the

42| Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ 2013 L 347, p. 671).

43| Another judgment covered in this report concerns agriculture: the judgment of 1 December 2015 in ***Parliament and Commission*** v ***Council*** (C-124/13 and C-125/13, EU:C:2015:790), presented in Section III.1 'Legal basis of acts of the European Union'.

Netherlands. In the main proceedings, the tax authorities had considered that the worker was not entitled to that exemption because he did not satisfy the condition laid down in the national legislation requiring him, for more than two thirds of the 24-month period preceding his recruitment in the Netherlands, to have resided at a distance of more than 150 kilometres from the Netherlands border.

In its judgment, the Court explained first of all that, having regard to the wording of Article 45(2) TFEU, which seeks to abolish all discrimination based on nationality 'between workers of the Member States', read in the light of Article 26 TFEU, freedom of movement for workers also prohibits discrimination between non-resident workers if such discrimination leads to nationals of certain Member States being unduly favoured in comparison with others. As regards the national legislation at issue in the main proceedings, the Court observed that all non-resident workers, whether they live more, or less, than 150 kilometres from the Netherlands border, may benefit from a tax exemption for reimbursement of actual extraterritorial expenses, whereas the administrative simplification of the claim for those extraterritorial expenses which results from the benefit of the flat-rate rule is reserved for workers who live more than 150 kilometres from the border.

The Court held that the mere fact that limits are set, for the purposes of granting the flat-rate exemption, concerning the distance in relation to the workers' place of residence and concerning the ceiling of the exemption granted, taking as the reference point the border of the Member State in which the place of employment is situated and the taxable base, respectively, even though that is necessarily approximate in nature, cannot in itself amount to indirect discrimination or an impediment to the free movement of workers since (i) the objective of that measure is to facilitate the free movement of workers residing in other Member States who are liable to incur additional expenses and (ii) workers living less than 150 kilometres from the border are able to benefit from the same exemption on production of appropriate proof. However, the position would be otherwise if those limits were set in such a way that the flat-rate rule were systematically to give rise to a net overcompensation in respect of the extraterritorial expenses actually incurred.

2. FREEDOM OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

In relation to freedom of establishment and freedom to provide services, mention should be made of three judgments. The first concerns the requirements prohibited by the Services Directive, the second relates to the obligation of transparency in the grant of services concessions and the third provides clarification of certain concepts in the directive relating to the supply of audiovisual media services.

In the judgment in ***Rina Services and Others*** (C-593/13, EU:C:2015:399), delivered on 16 June 2015, the Court, sitting as the Grand Chamber, in particular provided clarification of *the interaction between the Treaty and Directive 2006/123* ([44]) *on services in the internal market ('the Services Directive')*. That judgment was delivered in the context of proceedings in which a group of companies had disputed the conformity with EU law of an Italian regulation which provided that the registered office of a company classified as a certification body must be situated on the national territory.

In its judgment, the Court held that the requirement at issue in the main proceedings, relating to the registered office of certification bodies, is among the requirements which are prohibited by Article 14 of the Services Directive and which cannot be justified.

44| Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36).

According to the Court, if the Member States were allowed to justify a requirement prohibited by Article 14 of the Services Directive by relying on a provision of primary law, that would deprive Article 14 of any practical effect by ultimately undermining the ad hoc harmonisation intended by that directive. As is apparent from recital 6 of the Services Directive, barriers to freedom of establishment may not be removed solely by relying on direct application of Article 49 TFEU, owing, inter alia, to the extreme complexity of addressing barriers to that freedom on a case-by-case basis. To concede that the 'prohibited' requirements under Article 14 of the Services Directive may nevertheless be justified on the basis of primary law would in fact be tantamount to reintroducing such case-by-case examination, under the TFEU, for all restrictions on freedom of establishment. A prohibition with no possibility of justification seeks to ensure the systematic and swift removal of certain restrictions on freedom of establishment that are regarded by the EU legislature and the case-law of the Court as adversely affecting the proper functioning of the internal market.

Accordingly, even though Article 3(3) of the Services Directive preserves the applicability of the TFEU, Article 52(1) of which allows Member States to justify, on any of the grounds listed in that provision, national measures constituting a restriction on the freedom of establishment, that does not prevent the EU legislature, when adopting secondary legislation, such as the Services Directive, giving effect to a fundamental freedom, from restricting certain derogations, especially when the relevant provision of secondary law merely reiterates settled case-law to the effect that a requirement such as that relating to the registered office is incompatible with the fundamental freedoms on which economic operators can rely.

On 17 December 2015, in the judgment in ***UNIS and Beaudout Père et Fils*** (C-25/14 and C-26/14, EU:C:2015:821), the Court ruled on *the obligation of transparency arising under Article 56 TFEU*. The proceedings before the referring court concerned two ministerial orders which, in a specific sector, extended to all employers and employees collective agreements appointing a provident society as the single managing body of one or more supplementary schemes for insurance or for reimbursement of healthcare costs.

In its judgment, the Court pointed out first of all that, in the case of the award of a services concession which involves action on the part of the national authorities, the obligation of transparency does not apply to every operation but only to those that present certain cross-border interest because they are, objectively, of such a kind as to be of interest to economic operators established in Member States other than the State of the authority which awards them.

Next, the Court observed that, where the action of a public authority creates an exclusive right in favour of an economic operator, that authority must, in principle, observe the obligation of transparency arising under Article 56 TFEU. The fact that that action consists in giving general effect to an agreement concluded following collective bargaining between organisations representing respectively employers and employees within a sector does not have the consequence that it is exempt from the requirements of transparency resulting from Article 56 TFEU. In addition, although the obligation of transparency does not necessarily require there to be a call for tenders, it does require there to be a degree of publicity sufficient to enable, on the one hand, competition to be opened up and, on the other, the impartiality of the award procedure to be reviewed. In the case in point, the following factors, even if taken together, do not represent a degree of publicity sufficient to ensure that interested operators may — in keeping with the objectives of the obligation of transparency — express their interest in managing the social insurance scheme at issue in the main proceedings, before an extension decision is adopted with full impartiality: (i) the fact that the collective agreements and the addenda thereto have been filed with an administrative authority and may be consulted on the internet, (ii) the fact that notice is published in an official journal of the intention to start the procedure for extending such an addendum and (iii) the fact that any interested party has an opportunity to submit observations following that publication. Indeed, interested parties have only 15 days within which to submit their observations, an appreciably shorter time than the periods laid down, except in urgent cases, by the rules of secondary law on the coordination of

procedures for the award of public contracts ([45]), which are not applicable in the present case but which may serve as a reference point in that regard.

Accordingly, the Court ruled that that the obligation of transparency, which flows from Article 56 TFEU, precludes the decision by the national authorities to extend the collective agreements at issue in the main proceedings. However, it limited the effects in time of its judgment owing to the situation of employers and employees who, on the basis of the extended collective agreements at issue, entered into a contract for supplementary social insurance in a particularly sensitive social context.

In the judgment of 21 October 2015 in ***New Media Online*** (C-347/14, EU:C:2015:709), the Court ruled on the *interpretation of the concepts of 'audiovisual media service' and 'programme' within the meaning of Article 1 of Directive 2010/13* ([46]). In the main proceedings, a company established in Austria running an online newspaper disputed the decision of the Austrian communications authority to classify part of its services as an 'on-demand audiovisual media service' subject to the obligation laid down in the relevant national legislation to report to the regulatory authorities. Although the company's internet site mainly features articles from the written press, at the material time, however, a subdomain provided access to more than 300 videos on various subjects, most of which were unrelated to the articles featured on the newspaper's website.

First, the Court provided clarification of the concept of 'programme' within the meaning of Article 1(1)(b) of Directive 2010/13. In that regard, it observed, in particular, that the purpose of that directive is to apply, in a particularly competitive media landscape, the same rules to actors competing for the same audience and to prevent on-demand audiovisual media services from engaging in unfair competition with traditional television. In this instance, the Court noted that, in the main proceedings, a part of the videos available in the videos subdomain competed with the news services offered by regional broadcasters and with music channels, sports channels and entertainment programmes, and could thus be classified as a 'programme' within the meaning of that directive.

Second, the Court held that, when assessing the principal purpose of a service making videos available in the electronic version of a newspaper, it is necessary to examine whether that service as such has content and form which is independent of that of the journalistic activity of the operator of the website, and is not an indissociable complement to that activity, in particular as a result of the links between the audiovisual offer and the offer in text form. Thus, although an electronic version of a newspaper must not be regarded as an audiovisual service where the audiovisual elements which it contains are incidental, an audiovisual service must nonetheless not be systematically excluded from the scope of Directive 2010/13 on the sole ground that the operator of the website concerned is a publisher of an online newspaper. An approach systematically excluding from the scope of that directive services managed by publishers of daily online newspapers owing to their multimedia nature, without assessing on a case-by-case basis the 'principal purpose' of the service at issue, would not sufficiently take into account the diversity of the situations which could be envisaged and would run the risk that operators effectively providing audiovisual services might be able to use a multimedia portal in order to evade the legislation which is applicable to them in that area.

45 | (Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114, and corrigendum at OJ 2004 L 351, p. 44), as amended by Commission Regulation (EU) No 1251/2011 of 30 November 2011 (OJ 2004 L 319, p. 43).

46 | 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).

VIII. BORDER CONTROLS, ASYLUM AND IMMIGRATION

1. CROSSING OF BORDERS

In its judgment in ***Spain v Parliament and Council*** (C-44/14, EU:C:2015:554), delivered on 8 September 2015, the Court, sitting as the Grand Chamber, dismissed the action brought by the Kingdom of Spain for annulment of *Article 19 of the Eurosur Regulation* ([47]), *on the exchange of information and cooperation with Ireland and the United Kingdom*. In the applicant State's submission, that provision is contrary to Articles 4 and 5 of the Schengen Protocol ([48]), on the ground that it establishes, bypassing Article 4 of that protocol, an ad hoc procedure for Ireland and the United Kingdom to take part in the Eurosur Regulation by means of cooperation agreements.

First of all, the Court pointed out that while, pursuant to Article 4 of the Schengen Protocol and to Decisions 2000/365 ([49]) and 2002/192 ([50]), Ireland and the United Kingdom take part in certain provisions of the Schengen *acquis*, that participation does not extend to the provisions of the *acquis* relating to the crossing of the external borders. Ireland and the United Kingdom can therefore take part in the provisions of the Schengen *acquis* in force relating to that area, or in the adoption of proposals and initiatives to build upon that *acquis* which relate to that area, only after a request to that effect has been made by the Member State concerned and accepted by the Council deciding in accordance with the procedure laid down in Article 4 of the Schengen Protocol. It follows that the EU legislature cannot validly establish a procedure that differs from that laid down in Article 4 of the Schengen Protocol, whether in the direction of strengthening or easing that procedure, for the purpose of authorising Ireland or the United Kingdom to take part in such provisions or in the adoption of such proposals and initiatives. Likewise, the EU legislature cannot give Member States the possibility of concluding agreements between themselves having such an effect.

Next, as regards Article 19 of the Eurosur Regulation, which makes provision for establishing cooperation for the exchange of information relating to the crossing of the external borders on the basis of bilateral or multilateral agreements between Ireland or the United Kingdom and one or several neighbouring Member States, the Court considered whether that cooperation may be classified as 'taking part' within the meaning of Article 4 of the Schengen Protocol. In that regard, it observed that the agreements mentioned in Article 19 of the Eurosur Regulation allow the implementation of a limited form of cooperation between Ireland and the United Kingdom and one or several neighbouring Member States, but cannot place those two States in a situation equivalent to that of the other Member States. Those agreements cannot validly lay down, for Ireland and the United Kingdom, rights or obligations comparable to those of the other Member States in connection with the Eurosur system or a large part of it.

In order to reject the applicant State's argument that even a limited form of cooperation must be regarded as 'tak[ing] part' within the meaning of Article 4 of the Schengen Protocol, the Court held that the system established in Articles 4 and 5 of the Schengen Protocol cannot be regarded as intended to require Ireland and

47 | Regulation (EU) No 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (Eurosur) (OJ 2013 L 295, p. 11).

48 | Protocol (No 19) on the Schengen ***acquis*** integrated into the framework of the European Union, annexed to the Treaties (OJ 2012 C 326, p. 290).

49 | Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen ***acquis*** (OJ 2000 L 131, p. 43).

50 | Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen ***acquis*** (OJ 2002 L 64, p. 20).

the United Kingdom to participate in the entire Schengen *acquis*, excluding any form of limited cooperation with those Member States. Moreover, according to the Court, to interpret Article 4 of the Schengen Protocol as not applying to limited forms of cooperation does not call into question the effectiveness of that article, inasmuch as that interpretation does not allow Ireland and the United Kingdom to obtain rights comparable to those of the other Member States as regards the provisions of the Schengen *acquis* in force, or to take part in the adoption of proposals and initiatives to build upon the Schengen *acquis*, without first having been authorised to take part in those provisions by a unanimous decision of the Council.

Accordingly, since limited forms of cooperation do not constitute a form of 'tak[ing]' part within the meaning of Article 4 of the Schengen Protocol, the Court held that Article 19 of the Eurosur Regulation cannot be regarded as giving the Member States the option of concluding agreements which allow Ireland or the United Kingdom to take part in the provisions of the Schengen *acquis* in force in the area of the crossing of the external borders.

2. IMMIGRATION POLICY

In the judgment in ***K and A*** (C-153/14, EU:C:2015:453), delivered on 9 July 2015, the Court was called upon to interpret *the first subparagraph of Article 7(2) of Directive 2003/86 on the right to family reunification* ([51]), in a context in which national legislation that made family reunification conditional on the passing of a basic civic integration examination was called into question. The main proceedings concerned two third-country nationals who had invoked health and psychological problems that would prevent them from taking that examination. Although the national legislation made provision for exemptions in the case of applicants permanently unable to take the examination owing to a mental or physical disability or in cases where the rejection of an application could lead to a gravely unjust situation, in the case in point the applications for temporary residence permits submitted by the two nationals in question had been rejected by the national authorities.

The Court stated, first of all, that Member States may require third-country nationals to pass a civic integration examination which consists in an assessment of basic knowledge both of the language of the Member States concerned and of its society and which entails the payment of various costs, before authorising those nationals' entry into and residence in the territory of the Member State concerned for the purposes of family reunification. In the context of family reunification other than that of refugees and their family members, the first subparagraph of Article 7(2) of Directive 2003/86 does not preclude Member States from making the granting of authorisation of entry into the territory conditional on the observance of certain measures prior to entry.

However, the measures implemented by the national legislation transposing the first subparagraph of Article 7(2) of Directive 2003/86 must be suitable for achieving the objectives of that legislation and must not go beyond what is necessary to attain them. Thus, those measures are legitimate only if they are capable of facilitating the integration of the family members. From that perspective, passing a civic integration examination at a basic level is capable, in principle, of ensuring that the nationals of third countries acquire knowledge which is useful for establishing connections with the host Member State.

Nonetheless, the principle of proportionality requires the conditions of application of such a requirement not to exceed what is necessary to attain the objective of family reunification. Those conditions of application must not make the exercise of the right to family reunification impossible or excessively difficult. That is the case where they do not allow regard to be had to special circumstances objectively forming an obstacle to the applicants passing that examination and where they set the fees relating to such an examination at too high a level.

51 | Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).

In the judgment in ***Celaj*** (C-290/14, EU:C:2015:640), delivered on 1 October 2015, the Court interpreted *Directive 2008/115* (*the Return Directive*) ([52]) in a case concerning an Albanian national who was on Italian territory after being the subject of a deportation order and removal order, accompanied by an entry ban of three years' duration. After leaving Italian territory, the person concerned had re-entered it in breach of that ban, and criminal proceedings were brought against him on the basis of Italian legislation under which any third-country national who unlawfully enters Italy in breach of an entry ban is liable to a term of imprisonment.

In its judgment, the Court emphasised that the circumstances of the case in the main proceedings were clearly distinct from those in which illegally-staying third-country nationals were subject to a first return procedure ([53]). Next, after reiterating that Directive 2008/115 is not designed to harmonise in their entirety Member State rules on the stay of foreign nationals, the Court held that that directive does not, in circumstances such as those of the main proceedings, preclude criminal penalties from being imposed, following national rules of criminal procedure, on third-country nationals.

The Court nonetheless added that the imposition of criminal penalties is subject to the condition that the entry ban issued against the third-country national complies with Article 11 of Directive 2008/11 on entry bans and to full observance both of fundamental rights and, as the case may be, the Convention relating to the Status of Refugees ([54]).

IX. JUDICIAL COOPERATION IN CIVIL MATTERS

1. JURISDICTION IN CIVIL AND COMMERCIAL MATTERS

On 13 May 2015, in the judgment in ***Gazprom*** (C-536/13, EU:C:2015:316), the Court, sitting as the Grand Chamber, had the opportunity to rule on *the scope of Regulation (EC) No 44/2001* ([55]), *in particular the scope of the exclusion of arbitration*. In the main proceedings, a court of a Member State had refused to recognise and enforce an arbitral award which ordered one of the parties, inter alia, to withdraw or limit some of the claims which it had brought before that court.

First of all, the Court pointed out that an injunction issued by a court of a Member State restraining a party from having recourse to proceedings other than arbitration and from continuing proceedings brought before a court of another Member State, which has jurisdiction under Regulation (EC) No 44/2001, is not compatible with that regulation ([56]).

In a case such as the case in point concerning an arbitral award, the Court held that, as arbitration does not fall within the scope of Regulation (EC) No 44/2001, the order at issue, having been made by an arbitral tribunal,

52| 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).

53| Judgment of the Court of 28 April 2011 in ***El Dridi*** (C-61/11 PPU, EU:C:2011:268); judgment of the Court of 6 December 2011 in ***Achughbabian*** (C-329/11, EU:C:2011:807). In those judgments, which concerned a first return procedure, the Court held that the common standards and procedures established by Directive 2008/115 would be compromised if, after it had been established that a third-country national was staying illegally, the Member State concerned, before enforcing or even adopting the return decision, initiated criminal proceedings capable of leading to a sentence of imprisonment during the return procedure, since such a step would be liable to delay the removal of the person concerned.

54| Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 (Geneva Convention), ***United Nations Treaty Series***, Vol. 189, p. 150, No 2545 (1954).

55| 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).

56| Judgment of the Court of 10 February 2009 in ***Allianz and Generali Assicurazioni Generali*** (C-185/07, EU:C:2009:69).

does not entail an infringement of the principle of mutual trust by interference of a court of one Member State in the jurisdiction of the court of another Member State, a principle on which Regulation (EC) No 44/2001 is based. Accordingly, that regulation does not preclude a court of a Member State from recognising and enforcing, or from refusing to recognise and enforce, an arbitral award such as that at issue in the main proceedings. Any potential limitation of the power conferred upon a court of a Member State — before which a parallel action has been brought — to determine whether it has jurisdiction would result solely from the procedural law of that Member State and, as the case may be, the New York Convention ([57]), which govern this matter excluded from the scope of Regulation (EC) No 44/2001.

In the judgment in ***El Madjoub*** (C-322/14, EU:C:2015:334), delivered on 21 May 2015, the Court was called upon to interpret *Article 23(2) of Regulation (EC) No 44/2001, on the rules governing the conclusion by electronic means of an agreement conferring jurisdiction*. The main proceedings concerned the sale of a car via a website. The general terms and conditions of sale, accessible on that website, contained an agreement conferring jurisdiction on a court in a Member State. The window containing the general terms and conditions of sale did not open automatically upon registration on the website or during each purchase, as the purchaser had to click a specific box in order to accept those terms and conditions. The Court was called upon to establish whether the validity of a clause conferring jurisdiction may be challenged if the 'click-wrapping' technique is used.

First, as regards the real consent of the parties, which is one of the aims of Article 23(1) of Regulation (EC) No 44/2001, the Court stated that the purchaser had expressly accepted the general terms and conditions at issue, by clicking the relevant box on the seller's website. Second, it held that it follows from a literal interpretation of Article 23(2) of Regulation (EC) No 44/2001that that provision requires there to be the 'possibility' of providing a durable record of the agreement conferring jurisdiction, regardless of whether the text of the general terms and conditions has actually been durably recorded by the purchaser before or after he clicked the box indicating his acceptance of those conditions. In that regard, the Court observed that the purpose of that provision is to treat certain forms of electronic communications in the same way as written communications in order to simplify the conclusion of contracts by electronic means, since the information concerned is also communicated if it is accessible on screen. In order for electronic communication to offer the same guarantees, in particular as regards evidence, it is sufficient that it is 'possible' to save and print the information before the conclusion of the contract. Consequently, since click-wrapping makes it possible to save and print the text of the general terms and conditions before the conclusion of the contract, the fact that the web page containing those conditions does not open automatically upon registration on the website or during each purchase cannot call into question the validity of the agreement conferring jurisdiction. Click-wrapping therefore constitutes a communication by electronic means within the meaning of Article 23(2) of Regulation (EC) No 44/2001.

2. JURISDICTION IN MATRIMONIAL MATTERS AND MATTERS OF PARENTAL RESPONSIBILITY

On 21 October 2015, in the judgment in ***Ivanova Gogova*** (C-215/15, EU:C:2015:710), which was delivered under the expedited procedure, the Court examined *the scope of Regulation (EC) No 2201/2003* ([58]) *and the circumstances in which there is a prorogation of jurisdiction within the meaning of Article 12(3)(b) of that regulation*. The main proceedings involved the parents of a child of Bulgarian nationality, and concerned the renewal of the child's passport. Under Bulgarian law, in order to secure such a renewal it is necessary to obtain the consent of both

57 | Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed in New York on 10 June 1958 (***United Nations Treaty Series***, Vol. 330, p. 3).

58 | Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1).

parents. As the father, who resided in Italy, had not given his consent, the mother, who resided, with the child, in Italy too, asked the Bulgarian courts to resolve that disagreement and authorise the issue of a new passport. The questions for the Court therefore sought to ascertain whether that situation fell within that regulation, in order to establish jurisdiction. Furthermore, as it was impossible to serve the application instituting the proceedings on the defendant, the court seised appointed a legal representative to represent him. As the legal representative did not challenge the jurisdiction of that court, the question arose whether there was in the case in point a prorogation of jurisdiction under Article 12(3)(b) of Regulation (EC) No 2201/2003.

The Court held that the action in the main proceedings fell within the material scope of Regulation (EC) No 2201/2003 since that regulation applies in civil matters relating, in particular, to the attribution, exercise, delegation, restriction or termination of parental responsibility and since the concept of parental responsibility is given a broad definition, which includes all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect.

As regards the existence in the case in point of a prorogation of jurisdiction in accordance with Article 12(3)(b) of Regulation (EC) No 2201/2003, the Court referred to the need, in that regard, for the acceptance of the jurisdiction of the court seised by all the parties to the proceedings. Whilst such acceptance presupposes that the defendant is in any event aware of the proceedings, it cannot be deduced from the conduct of a legal representative in the absence of the defendant.

On 19 November 2015, in the judgment in ***P*** (C-455/15 PPU, EU:C:2015:763), the Court had the opportunity to rule on *the scope of the concept of public policy, within the meaning of Article 23(a) of Regulation (EC) No 2201/2003, as a ground of non-recognition for judgments relating to parental responsibility*, in the context of review of the jurisdiction of the court of the Member State of origin. The main proceedings concerned the possibility for a Swedish court to refuse, on grounds of public policy, to recognise a judgment by which a Lithuanian court had ruled on the custody of a child. The case concerned a child who, before being removed to Lithuania, was habitually resident in Sweden, on which ground the Swedish court considered that it had sole jurisdiction to rule on the child's residence and custody.

The Court emphasised, first of all, that recourse to the public policy rule in Article 23(a) of Regulation (EC) No 2201/2003 must necessarily take into account the best interests of the child and comes into consideration only where, taking those interests into account, recognition of the judgment would infringe a rule of law regarded as essential in the legal order of the State in which recognition is sought or a fundamental right. An infringement of a rule of jurisdiction does not therefore constitute a ground of public policy that would justify refusal of recognition.

The Court then addressed the question whether a ground for refusal of recognition, within the meaning of that provision, may be based on the fact that the national court which delivered the judgment at issue assumed jurisdiction without having considered whether a court of another Member State, with which the child had a particular connection, was better placed to hear the case, in accordance with Article 15 of that regulation. In that regard, given that Article 24 of the regulation prohibits any review of the jurisdiction of the court of the Member State of origin and does not refer to Article 15 of the regulation, the latter article is, according to the Court, a provision laid down by way of exception which does not allow a court of another Member State to review the jurisdiction of that court.

Last, the Court ruled that any difficulty concerning the wrongful retention of a child must be resolved not by a refusal of recognition on the basis of Article 23(a) of Regulation (EC) No 2201/2003 but, if necessary, by recourse to the specific procedure laid down in Article 11 of that regulation and in accordance with the conditions prescribed for that purpose.

3. EUROPEAN ENFORCEMENT ORDER

In the judgment in ***Imtech Marine Belgium*** (C-300/14, EU:C:2015:825), delivered on 17 December 2015, the Court interpreted for the first time *Article 19(1) of Regulation (EC) No 805/2004* ([59]), *on the minimum standards for a review of a judgment delivered in absentia*. In the main proceedings, a company whose registered office was in another Member State was ordered *in absentia* by a Belgian court to pay an amount due to the applicant. However, the court rejected the applicant's request to certify the judgment as a European enforcement order, on the ground that the Belgian legislation did not satisfy certain minimum procedural standards laid down in Regulation (EC) No 805/2004, in particular in that the period for initiating the review procedure may expire before the debtor has been able to apply for such a review.

The Court held that Article 19 of Regulation (EC) No 805/2004 does not require Member States to adapt their national legislation to the minimum procedural standards or, therefore, to introduce a specific review procedure, the only consequence of the absence of a review procedure being that a judgment cannot be certified as a European enforcement order.

In order to certify as a European enforcement order a judgment delivered *in absentia*, the court hearing an application for certification is required to examine whether its domestic law, including the rules that existed before that regulation entered into force, effectively and without exception allows the debtor to seek a review of the judgment in question. When carrying out its review, that court must ascertain whether, in order to respect the debtor's rights of defence and the right to a fair trial guaranteed by the second paragraph of Article 47 of the Charter of Fundamental Rights, the remedies provided for in national law allow a full review of the judgment, in fact and in law. In particular, those remedies must allow the debtor to request a review outside the ordinary periods laid down by national law for bringing an opposition or an appeal against the judgment both in the event of *force majeure* and in that of extraordinary circumstances beyond the control of the debtor without any fault on his part.

Last, in view of the fact that the European enforcement order is a judicial act, the Court provided clarification of the distinction between certification 'as such' and the formal act of issuing the certificate of the European enforcement order. While the certificate need not necessarily be issued by the court, the position is different for the actual certification, which entails complex assessments that require the legal qualifications of a judge.

4. SERVICE OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS IN CIVIL OR COMMERCIAL MATTERS

Three judgments interpreting Regulation (EC) No 1393/2007 ([60]) deserve mention. The first provides clarification of the concept of civil and commercial matters and of the exclusion of actions or omissions in the exercise of State authority; the second concerns refusal to accept a document that is to be served; and the third deals with the concept of an 'extrajudicial document'.

On 11 June 2015, by the judgment in ***Fahnenbrock*** (C-226/13, C-245/13, C-247/13 and C-578/13, EU:C:2015:383), the Court interpreted *the concept of civil and commercial matters and the concept of State liability for actions or*

59| Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (OJ 2004 L 143, p. 15).

60| Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ 2007 L 324, p. 79).

omissions in the exercise of State authority ('acta iure imperii'), within the meaning of Article 1(1) of Regulation (EC) No 1393/2007. In the main proceedings, actions for compensation, contractual performance and damages had been brought before the German courts against the Greek State by holders of Greek State bonds domiciled in Germany. Those bond holders maintained that they had sustained harm because, according to them, Greece had compelled them, in March 2012, to exchange their securities for new State bonds with a considerably lower nominal value, pursuant to a law enacted in order to deal with a severe financial crisis. None of the persons concerned had accepted the Greek State's offer to exchange the bonds. In the course of a procedure to serve the documents relating to the actions on the Greek State, the question arose as to whether those actions related to civil or commercial matters or whether they concerned actions or omissions in the exercise of State authority.

The Court, after confirming that the concept of 'civil and commercial matters' is an independent concept, interpreted that concept in the light of the objectives and scheme of the regulation. As regards the former, the Court stated that the regulation pursues the objective of speedy service of judicial documents. Since the question whether a dispute is a civil or commercial matter must be resolved even before the parties to the proceedings other than the applicants have been served with the relevant document, the court concerned must limit itself to a preliminary review of the available evidence, which is inevitably incomplete. In order to determine that the regulation is applicable, it therefore suffices that the court hearing the case concludes that it is not manifest that the action brought before it falls outside the scope of civil and commercial matters.

As to whether in the case in point the public authority exercised prerogatives connected with State authority, in which case Regulation (EC) No 1393/2007 would not be applicable, the Court first of all noted that the issue of bonds does not necessarily presuppose the exercise of powers falling outside the scope of the rules applicable to relationships between individuals. In addition, as regards the possibility, provided for in the national legislation, of an exchange of securities, the fact that that possibility was introduced by a law is not in itself decisive for concluding that the State acted in the exercise of State authority and, furthermore, it is not obvious that the adoption of that law led directly and immediately to changes to the financial conditions of the securities in question and therefore caused the damage alleged by the applicants. The Court concluded that the actions in the main proceedings fell within the scope of Regulation (EC) No 1393/2007 and therefore had to be served according to the rules laid down in it.

On 16 September 2015, in the judgment in ***Alpha Bank Cyprus*** (C-519/13, EU:C:2015:603), the Court was called upon to examine *the circumstances in which the addressee of a document to be served must be informed of his right to refuse service of that document and also the consequences flowing from the failure to provide such information*. The disputes in the main proceedings were between a Cypriot bank and a number of parties resident in the United Kingdom. Those parties had been sued before a Cypriot court and a number of documents had been served on them in accordance with the provisions of Regulation (EC) No 1393/2007. However, they had sought annulment of the service, claiming, in particular, that the standard form, set out in Annex II to the regulation, containing the information concerning the right to refuse service had not been served on them.

The Court observed, by way of preliminary point, that, in the system established by Regulation (EC) No 1393/2007, the service of documents is, in principle, to be effected between the 'transmitting agencies' and the 'receiving agencies' designated by the Member States. It is for the 'receiving agencies', in accordance with Article 8(1) of Regulation (EC) No 1393/2007, to inform the addressee that he may refuse to accept the document if it is not written in or translated into one of the languages referred to in that provision. On the other hand, those entities are not required to rule on questions of substance, such as those concerning the particular language(s) which the addressee of the document understands and whether the document must be accompanied by a translation into one of the languages stated in Article 8(1) of that regulation.

Next, the Court observed that Regulation (EC) No 1393/2007 does not contain any exceptions to the use of the standard form set out in Annex II to that regulation. In order to be effective, the right to refuse the document to be served must be notified in writing to the addressee of the document. In the system established by Regulation (EC) No 1393/2007, that information must be provided to the addressee using the standard form. Accordingly, the receiving agency is required, in all circumstances and without having any discretion in that regard, to inform the addressee of a document of his right to refuse to accept that document, by systematically using for that purpose the standard form set out in Annex II to Regulation (EC) No 1393/2007.

However, failure to inform the addressee of a document by using that standard form does not have the effect that the procedure for service of the document must be declared invalid. To declare that procedure invalid would be incompatible with the objective pursued by the regulation, which consists in providing a means of direct, rapid and effective transmission. Consequently, it must be possible to remedy the failure to provide information using that standard form. It is therefore for the receiving agency to inform without delay the addressees of the document of their right to refuse to accept that document, by sending them the form in question.

On 11 November 2015, in the judgment in ***Tecom Mican and Arias Domínguez*** (C-223/14, EU:C:2015:744), the Court ruled on *the concept of an 'extrajudicial document' within the meaning of Article 16 of Regulation (EC) No 1393/2007*. The main proceedings before a Spanish court concerned the dismissal of an action against the refusal of a Spanish judicial officer to serve notice of a letter of demand on a German principal on behalf of a Spanish agent claiming, inter alia, a goodwill indemnity following the termination of the agency contract which had been concluded between them. The ground on which the action was dismissed was that the letter of demand could not be considered to be an 'extrajudicial document' of which 'service' could be effected within the meaning of Article 16 of Regulation (EC) No 1393/2007.

The Court observed that the concept of an 'extrajudicial document' must be given a broad definition and cannot be limited to documents that are connected to legal proceedings alone ([61]). To that end, and relying on the convention adopted by the Council in 1997, which served as a source of inspiration in drafting Regulation (EC) No 1348/2000 ([62]), and also on the glossary drawn up by the Commission in accordance with Article 17(b) of that regulation, the Court stated that the Member States, under the supervision of the Commission, had in various ways defined the documents which they considered could be served pursuant to that regulation, including in the category of extrajudicial documents not only documents emanating from a public authority or official, but also private documents of specific importance within a given legal system. Accordingly, the concept of an 'extrajudicial document' in Article 16 of Regulation (EC) No 1393/2007 includes private documents of which the formal transmission to an addressee residing abroad is necessary for the purposes of exercising, proving or safeguarding a right or a claim in civil or commercial law.

The Court then confirmed that an applicant may not only choose any of the means of transmission laid down by Regulation (EC) No 1393/2007, but also resort, simultaneously or successively, to two or more of the methods which he deems the most suitable or appropriate.

61 | Judgment of 25 June 2009 in ***Roda Golf & Beach Resort*** (C-14/08, EU:C:2009:395).

62 | Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (OJ 2000 L 160, p. 37).

X. JUDICIAL COOPERATION IN CRIMINAL MATTERS

In the judgment in ***Lanigan*** (C-237/15 PPU, EU:C:2015:474), delivered on 16 July 2015 under the urgent preliminary ruling procedure, the Court examined the consequences of failure to observe the time limits within which a Member State must adopt a final decision on *the execution of a European arrest warrant issued by another Member State in accordance with the requirements of Articles 15 and 16 of Framework Decision 2002/584/JHA* ([63]). The main proceedings concerned a European arrest warrant issued by the United Kingdom authorities in respect of a person, arrested in Ireland on the basis of that arrest warrant, who had not consented to being surrendered to the United Kingdom authorities and had been placed in custody in Ireland pending a decision concerning him. Owing to a series of adjournments attributable, in particular, to procedural incidents, examination of the situation of the person subject to the arrest warrant had been delayed and continued until he claimed that the fact that the time limits stipulated in the framework decision (60 days from his arrest, plus a possible extension of a further 30 days) had been exceeded precluded the execution procedure from being carried out. In that context, the national court asked the Court whether, notwithstanding that those time limits had not been observed, it was still allowed to adjudicate on the execution of the European arrest warrant and whether the person concerned could continue to be held in custody although the total length of his detention exceeded those time limits.

First of all, as regards the adoption of a decision on the execution of a European arrest warrant, the Court held that the mere expiry of the time limits for such execution laid down in Article 17 of the Framework Decision cannot relieve the executing Member State of its obligation to carry out the execution procedure and adopt the decision on the execution of the warrant. A different interpretation would run counter to the objective of accelerating and simplifying judicial cooperation pursued by the Framework Decision and could compel the issuing Member State to issue a second European arrest warrant in order to enable a new surrender procedure to take place within the time limits laid down in the Framework Decision.

Next, the Court held that Article 12 of the Framework Decision, on the holding of the requested person in custody, read with Article 17 of the Framework Decision and in the light of Article 6 of the Charter of Fundamental Rights, did not preclude the requested person from being held in custody, in accordance with the law of the executing Member State, even if the total duration of his detention exceeded the time limits laid down in Article 17, provided that that duration was not excessive in the light of the characteristics of the procedure followed in the case in the main proceedings. The Court stated that, if the executing authority decides to bring the requested person's custody to an end, it is required to attach to his provisional release any measures it deems necessary so as to prevent him from absconding and to ensure that the material conditions necessary for his effective surrender remain fulfilled for as long as no final decision on the execution of the European arrest warrant has been taken.

On 15 October 2015, in the judgment in ***Covaci*** (C-216/14, EU:C:2015:686), the Court ruled on the scope of certain rights in the context of criminal proceedings, in particular *the right to interpretation and translation of essential documents within the meaning of Directive 2010/64* ([64]) *and the right to information within the meaning of Directive 2012/13* ([65]). The dispute before the national court concerned criminal proceedings brought by the

63| Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), 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 2009 L 81, p. 24).

64| Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ 2010 L 280, p. 1).

65| Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ 2012 L 142, p. 1).

Public Prosecutor's Office against a Romanian national, in respect of whom that authority asked the national court to issue a penalty order. In those proceedings, the national authorities requested, in accordance with the national provisions governing the penalty order procedure, that a penalty order be served on the person concerned through the persons authorised to accept service on his behalf and that any written observations of the person concerned, including an objection lodged against the order, should be in German. Under the German legislation, the person against whom the order is issued can obtain a trial *inter partes* only by lodging an objection against the order before the expiry of a period of two weeks from service of the order on the persons authorised to accept service on his behalf. Furthermore, on expiry of that period, the order acquires the force of *res judicata*.

As regards the right to translation of certain essential documents which is provided for in Article 3 of Directive 2010/64, the Court held that that article relates, in principle, only to the written translation, into the language understood by the person concerned, of certain documents drawn up in the language of the proceedings by the competent authorities and that, accordingly, that article does not include, in principle, the written translation into the language of the proceedings of a document such as an objection lodged against a penalty order.

In the light of those considerations, the Court ruled that Articles 1 and 3 of Directive 2010/64 do not preclude national legislation which, in criminal proceedings, does not permit the individual against whom a penalty order has been made to lodge an objection in writing against that order in a language other than that of the proceedings, even though that individual does not have a command of the language of the proceedings, provided that the competent authorities do not consider, in accordance with Article 3(3) of that directive, that, in the light of the proceedings concerned and the circumstances of the case, such an objection constitutes an essential document.

As regards the right to information in criminal proceedings, according to the Court, it is apparent from a reading of Article 3 in conjunction with Article 6 of Directive 2012/13 that the right of suspects or accused persons to be informed concerns, at least, two distinct rights, namely the right to be informed of certain procedural rights and the right to be informed of the accusation against them. Those rights also apply to the situation of a person subject to a penalty order, which is a provisional decision issued upon application by the Public Prosecutor's Office in the case of a minor offence, made without a hearing or a trial *inter partes*, and which does not acquire the force of *res judicata* before the expiry of the period prescribed for lodging an objection.

Last, the Court held that Articles 2, 3(1)(c) and 6(1) and (3) of Directive 2012/13 do not preclude legislation of a Member State which, in criminal proceedings, makes it mandatory for an accused person not residing in that Member State to appoint a person authorised to accept service of a penalty order concerning him, provided that that accused person does in fact have the benefit of the whole of the prescribed period for lodging an objection against that order.

XI. TRANSPORT

In the area of transport, the judgment in ***Wucher Helicopter and Euro-Aviation Versicherung*** (C-6/14, EU:C:2015:122), delivered on 26 February 2015, provided the Court with the opportunity to interpret *the concept of 'passenger' within the meaning of Regulation (EC) No 785/2004 on insurance requirements for air carriers and aircraft operators* ([66]) *and within the meaning of the Montreal Convention* ([67]). The main proceedings concerned

66| Regulation (EC) No 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators (OJ 2004 L 138, p. 1).

67| Convention for the Unification of Certain Rules for International Carriage by Air, concluded in Montreal on 28 May 1999, signed by the European Community on 9 December 1999 on the basis of Article 300(2) EC and approved on behalf of the European Community by Council Decision 2001/539/EC of 5 April 2001 (OJ 2001 L 194, p. 38).

the compensating of an expert in avalanche blasting by means of explosives for harm sustained, in the course of his work, during a helicopter flight. The carrier considered that the expert was not a passenger and refused to pay the compensation.

First, the Court ruled that the occupant of a helicopter held by an EU air carrier who is carried on the basis of a contract between his employer and that carrier in order to perform a specific task, such as opening the door of a helicopter during the flight and keeping it open so that a blaster can throw out an explosive charge, is a passenger within the meaning of Article 3(g) of Regulation (EC) No 785/2004. Since that occupant does not perform tasks of the flight crew of the aircraft he does not fall into the category of 'member of the flight crew' and the fact that his task is to open the door when instructed to do so by the pilot does not confer on him the status of member of the cabin crew, as the pilot is always authorised to give instructions to any of the people on board the aircraft.

Second, after pointing out that it has jurisdiction to interpret the Montreal Convention, since the latter forms an integral part of the EU legal order, the Court ruled that a person who comes within the definition of 'passenger' within the meaning of Article 3(g) of Regulation (EC) No 785/2004 also comes within the definition of 'passenger' within the meaning of Article 17 of the Montreal Convention, once that person has been carried on the basis of a contract of carriage within the meaning of Article 3 of that convention. Although under Article 3(1) and (2) of the Montreal Convention the status of 'passenger' is linked to the issuance of an individual or collective document of carriage, it follows from Article 3(5) of that convention that non-compliance with the provisions of the paragraphs preceding paragraph 5 does not affect the existence or the validity of the contract of carriage. Accordingly, where a contract of carriage exists and all the other conditions for the application of that convention are fulfilled, the convention applies irrespective of which form that contract of carriage might take.

XII. COMPETITION

1. AGREEMENTS, DECISIONS AND CONCERTED PRACTICES

In the judgment in ***InnoLux v Commission*** (C-231/14 P, EU:C:2015:451), delivered on 9 July 2015, the Court, hearing an appeal against a judgment of the General Court ([68]) by which the latter had upheld in part a Commission decision finding that there had been a cartel on the global market for liquid crystal display panels (LCD), ruled on the *method of calculating the amount of fines for infringement of the competition rules as regards, in particular, the determination of the 'value of sales'* relevant for that calculation, referred to in point 13 of the Guidelines on the method of setting fines ([69]).

In so far as the LCD panels affected by the cartel had been incorporated by subsidiaries of the applicant undertaking situated outside the European Economic Area (EEA) into the finished products sold in the EEA, the General Court held, in particular, that the Commission had been correct to take the value of those sales into account when setting the fine. In support of its appeal, the appellant undertaking claimed that those sales did not relate to the infringement at issue.

The Court upheld the General Court's interpretation, and confirmed that it would be contrary to the goal pursued by Article 23(2) of Regulation (EC) No 1/2003 ([70]) if the vertically integrated participants in a cartel could,

68 | Judgment of the General Court of 27 February 2014 in ***InnoLux*** v ***Commission*** (T-91/11, EU:T:2014:92). See also 2014 Annual Report, p. 130.

69 | Guidelines on the method of setting fines imposed pursuant to Article 22(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p. 2).

70 | 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).

solely because they incorporated the goods which are the subject of the infringement into finished products outside the EEA, expect to have the proportion of the value of the sale of those finished products in the EEA excluded from the calculation of the fine. Vertically integrated undertakings may benefit from a horizontal price-fixing agreement not only when sales are made to independent third parties but also on the downstream market in processed goods made up of, inter alia, the goods which are the subject of the infringement.

The Court then upheld the General Court's finding that, while the sales of the finished products were not made on the market for the goods concerned by the infringement, they nonetheless distorted competition in the EEA. Furthermore, the exclusion of those sales from the determination of the fine would have the effect of artificially minimising the economic significance of the infringement and would lead to the imposition of a fine which bore no actual relation to the scope of the cartel in that territory.

In addition, the Court emphasised that the Commission had jurisdiction to apply Article 101 TFEU to the cartel at issue, involving sales made outside the EEA, since the participants in that worldwide cartel had implemented it in the EEA by making direct sales in the EEA of the LCD panels to third-party undertakings. In those circumstances, it is important that the value of sales taken into account should reflect the economic importance of the infringement and the relative weight of the applicant in the infringement, which in the case in point justified taking sales of the finished products in question into account.

2. ABUSE OF DOMINANT POSITION

In the judgment in ***Huawei Technologies*** (C-170/13, EU:C:2015:477), delivered on 16 July 2015, the Court ruled on whether and in what circumstances *the initiation of an action for infringement by the proprietor of a patent essential to a standard constitutes abuse of a dominant position*. The applicant in the main proceedings is a multinational company operating in the telecommunications sector and is the proprietor of a European patent which it notified to the standardisation body, the European Telecommunications Standards Institute (ETSI), as a patent essential to the standard established by that body. In accordance with the ETSI Rules of Procedure, the company undertook to grant licences to use its patents to third parties on FRAND (fair, reasonable and non-discriminatory) terms. It noted that competing undertakings, to which it had not granted such licences, were marketing products equipped with software linked to that standard, without paying royalties to the proprietor; it therefore brought an infringement action before the national court, after, however, engaging in negotiations with the infringers with a view to reaching an agreement. The national court asked whether such an action must be characterised as an abuse of a dominant position.

The Court held, as regards an action for an injunction prohibiting the infringement or for the recall of the products, that such an action does not constitute an abuse of a dominant position as long as (i), prior to bringing that action, the proprietor has alerted the infringer of the infringement in question and, after the infringer has expressed its willingness to conclude a licensing agreement on FRAND terms, the proprietor has presented to the infringer a specific, written offer for a licence, specifying, in particular, the royalty and the way in which it is to be calculated, and (ii) the infringer, while continuing to use the patent, has not diligently responded to that offer, in accordance with recognised practices and in good faith. The Court emphasised that, where the infringer does not accept the proprietor's offer, it may rely on the abusive nature of such an action only if it has submitted to the proprietor of the patent, promptly and in writing, a counter-offer that corresponds to FRAND terms.

Next, the Court held that, in such circumstances, the prohibition on the abuse of a dominant position does not prevent an undertaking in a dominant position from bringing an action to obtain accounts in relation to past acts of use of that patent or damages in respects of those acts of use. Such an action does not have a direct impact on products manufactured by competitors appearing or remaining on the market.

In the judgment in ***Post Danmark*** (C-23/14, EU:C:2015:651), delivered on 6 October 2015, the Court interpreted *the rules on abuse of a dominant position for loyalty rebates*. The main proceedings concerned a rebate scheme implemented by a Danish postal undertaking in a dominant position on the market for the distribution of mail to Danish addressees. That rebate scheme was characterised by a scale of rates from 6% to 16%, by conditionality, in that at the end of a reference period the undertaking in a dominant position made an adjustment, and by retroactivity, in that, where the threshold of mailings initially set was exceeded, the rebate rate applied at the end of the year applied to all mailings presented during the period concerned.

First of all, in order to ascertain whether those rebates were capable of producing an exclusionary effect on the market, the Court observed that, owing to the retroactive effect of the rebates, the pressure exerted on the co-contractors of the undertaking in a dominant position may be particularly strong. In that way, relatively modest variations in sales have disproportionate effects on the co-contractors of the undertaking in a dominant position, especially where, as in the case in point, the scheme is based on a relatively long period. Such a scheme is therefore capable of making it easier for the undertaking in question to tie its existing customers to itself and to attract the customers of its competitors.

As regards the extent of the dominant position held by the postal undertaking, the Court observed that an undertaking which has a very large market share is by virtue of that share in a position of strength which makes it an unavoidable trading partner and secures for it freedom of action. As competition on the market is already very limited, the rebate scheme at issue tends to make it more difficult for customers to obtain supplies from competing undertakings and produces an anti-competitive exclusionary effect. Likewise, the fact that such a system covers the majority of customers may constitute a useful indication of the extent of that practice and its impact on the market.

As regards the application of the test of a competitor 'as efficient' as the undertaking in a dominant position, the Court stated that it is not possible to establish a legal obligation requiring a finding to the effect that a rebate scheme such as that at issue is abusive to be based always on the as-efficient-competitor test. According to the Court, in a situation characterised by the circumstance that the undertaking in a dominant position has a very large market share and by structural advantages conferred, in particular, by the statutory monopoly enjoyed by that undertaking, which applied to 70% of mail on the relevant market, the application of the as-efficient-competitor test is of no relevance inasmuch as the structure of the market makes the emergence of an as-efficient competitor practically impossible.

Last, the Court held that, in order to fall within the scope of Article 82 EC (Article 102 TFEU), the anti-competitive effect of such a rebate scheme must be probable: there is no need to show that it is of a serious or appreciable nature.

3. PROCEDURE PURSUANT TO THE COMPETITION RULES

On 18 June 2015, in the judgment in ***Deutsche Bahn and Others v Commission*** (C-583/13 P, EU:C:2015:404), the Court ruled on *the safeguards forming the framework for the Commission's power of inspection in a procedure pursuant to the competition rules*. The dispute concerned three decisions by which the Commission had ordered an undertaking operating in the rail transport sector to submit to inspections relating to various abuses of a dominant position. The General Court ([71]) dismissed the action for annulment of those decisions. In its judgment on appeal, the Court set aside the General Court's judgment in part, on the ground that there had been a breach of the undertaking's rights of defence.

71| Judgment of the General Court of 6 September 2013 in ***Deutsche Bahn and Others*** v ***Commission*** (T-289/11, T-290/11 and T-521/11, EU:T:2013:404).

The Court began by upholding the part of the judgment in which the General Court had found that neither the principle of the inviolability of private premises nor the principle of an effective legal remedy had been infringed by reason of the lack on the Commission's part of prior judicial authorisation or by reason of the fact that judicial review by the Courts of the European Union is carried out only a posteriori. It is the intensity of that review, which must extend to all matters of fact of law and provide an appropriate remedy where an unlawful act has taken place, that is decisive in the assessment of compliance with those principles, and not the point in time when that review is carried out. Where the Courts of the European Union hear an action for annulment of an inspection decision, they conduct both a legal and a factual review and have the power to evaluate the evidence and to annul the contested decision. In addition, the undertakings to which an inspection decision is addressed are able to challenge the lawfulness of that decision immediately after being notified thereof and an undertaking is therefore not required to wait until the Commission has adopted the final decision on the suspected infringement of the competition rules before it is able to bring an action for annulment before the Courts of the European Union.

The Court nonetheless observed that, although the efficacy of an inspection requires the Commission to have provided the agents responsible for the inspection with all the information that could be useful to them for understanding the nature and scope of the possible infringement of the competition rules, all that information and the scope of the inspection must nevertheless relate solely to the subject matter of the inspection ordered by decision. In the case in point, inasmuch as the Commission's agents had received prior information concerning the existence of a separate complaint and had proceeded to seize documents falling outside the subject matter of the inspection decision, the Commission infringed the obligation to state reasons and the rights of defence of the undertaking concerned.

4. STATE AID

On 16 July 2015, the judgment in ***BVVG*** (C-39/14, EU:C:2015:470) was delivered in the context of a reference for a preliminary ruling from a German court which had asked the Court whether *the rule of national law which, for the purposes of safeguarding the interests of agricultural holdings, prohibits an emanation of the State from selling agricultural land to the highest bidder in a public call for tenders* where the competent local authority considers his bid to be grossly disproportionate to the estimated value of that land can be classified as State aid within the meaning of Article 107(1) TFEU.

In that context, after observing that the sale by public authorities of land or buildings to an undertaking may include elements of State aid, in particular where it is not made at market value, the Court stated that, where national law establishes calculation rules used to estimate the market value of land for sale by public authorities, the application of those rules must, in order to comply with Article 107 TFEU, result in all cases in a price as close as possible to the market value. A number of methods are capable of leading to prices corresponding to market value.

As regards the method of a sale to the highest bidder in an open, transparent and unconditional bidding procedure, that procedure has already given rise, in certain cases, to the presumption that the market price corresponded to the highest offer. However, it is conceivable that, in specific circumstances, the method of a sale to the highest bidder does not result in a price which corresponds to the market value of the property in question and that, as a result, factors other than the price may properly be taken into consideration. That may be the case where the highest bid is distinctly higher than both any other price offered in the public call for tenders and the estimated market value of the land because of its manifestly speculative nature. In such circumstances, the method of a sale to the highest bidder would not be appropriate for reflecting the market value of the land in question.

Consequently, according to the Court, a rule of national law enabling the competent national authority, in those circumstances, to reject a bid which in its opinion is disproportionate and to refuse, on that ground, to consent to the sale of the agricultural land to which that bid relates cannot be classified as 'State aid', provided that the application of that rule results in a price which is as close as possible to the market value of the land at issue.

XIII. FISCAL PROVISIONS

In relation to fiscal provisions, four judgments deserve to be mentioned. The first concerns the taxation of the use of nuclear fuel and the other three relate to VAT.

In the judgment in ***Kernkraftwerke Lippe-Ems*** (C-5/14, EU:C:2015:354) ([72]), delivered on 4 June 2015, the Court examined whether *Directive 2003/96 on the taxation of energy products and electricity* ([73]), *Directive 2008/118 concerning the general arrangements for excise duty* ([74]), *Article 107 TFEU or the provisions of the Euratom Treaty* preclude a Member State from introducing a duty on the use of nuclear fuel for the commercial production of electricity.

By its judgment, the Court replied that EU law does not preclude that duty.

First, the Court held that, since that fuel does not appear on the exhaustive list of energy products set out in Directive 2003/96, it cannot be covered by the exemption laid down for some of those products, nor can that exemption be applied by analogy. In that regard, the Court accepted, in essence, that duty may be levied on the consumption of electricity and at the same time on the sources from which that energy is produced which are not energy products within the meaning of Directive 2003/96.

Second, the Court held that Directive 2008/118 does not preclude the duty at issue either, since that duty is not levied directly or indirectly on the consumption of electricity or that of any other product subject to excise duty, and therefore does not constitute either an excise duty on electricity or another indirect tax on that product within the meaning of the directive. In that connection, the Court observed, in particular, that it is not apparent that a direct and inseverable link exists between the use of nuclear fuel and the consumption of electricity produced by the reactor of a nuclear power plant.

Nor, third, can that duty on nuclear fuel be classified as State aid prohibited by Article 107(1) TFEU, as it is not a selective measure. Fourth, as regards the Euratom Treaty, the Court held that the attainment of the objectives of that treaty does not require Member States to maintain or increase their level of use of nuclear fuel and does not prevent them from taxing such use, which would have the effect of making such use more costly and, therefore, less attractive.

On 16 July 2015, in the judgment in ***Larentia + Minerva and Marenave Schiffahrts*** (C-108/14 and C-109/14, EU:C:2015:496), the Court interpreted *Articles 4 and 17 of the Sixth Directive* ([75]) *concerning, respectively, the concept of 'taxable person' for the purposes of value added tax (VAT) and the right to deduct*. In the main proceedings, two holding companies had brought proceedings against the German tax authorities concerning the conditions for

72| For the presentation of the part of this judgment relating to the preliminary ruling procedure, see Section V.1 'References for a preliminary ruling'.

73| Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ 2003 L 283, p. 51).

74| Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ 2009 L 9, p. 12).

75| 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), as amended by Council Directive 2006/69/EC of 24 July 2006 (OJ 2006 L 221, p. 9).

deduction of input VAT which those holding companies had paid in connection with the procurement of capital for the acquisition of a holding in subsidiaries which were constituted in the form of partnerships and to which they had subsequently made supplies subject to VAT.

In its judgment, the Court pointed out first of all that, in order for VAT to be deductible under Article 17 of the Sixth Directive, the input transactions must have a direct and immediate link with the output transactions giving rise to a right of deduction. In that connection, it explained that a taxable person also has a right to deduct even where there is no direct and immediate link between a particular input transaction and an output transaction or transactions giving rise to the right to deduct, where the costs of the services in question are part of his general costs and are, as such, components of the price of the goods or services which he supplies. Such costs do have a direct and immediate link with the taxable person's economic activity as a whole. Thus, the Court held that the expenditure connected with the acquisition of shareholdings in subsidiaries incurred by a holding company which involves itself in their management and which, on that basis, carries out an economic activity must be regarded as attributed to that company's economic activity and the VAT paid on that expenditure gives rise to the right to full deduction. On the other hand, the mere holding of shares in subsidiaries is not an economic activity. Accordingly, where the holding company involves itself in the management of only some of its subsidiaries, the VAT paid on the expenditure associated with the acquisition of shareholdings in its subsidiaries can be deducted only in proportion to the expenditure which is inherent in its economic activity, according to the criteria for apportioning between economic activities and non-economic activities defined by the Member States in accordance with the aims and broad logic of the Sixth Directive.

As regards the concept of taxable person, the Court ruled that the second subparagraph of Article 4(4) of the Sixth Directive precludes national legislation which reserves the right to form a value added tax group solely to entities with legal personality and linked to the controlling company of that group in a relationship of subordination, except where those two requirements constitute measures which are appropriate and necessary in order to achieve the objectives of preventing abusive practices or behaviour or combating tax evasion or tax avoidance. The Court made clear that, as it is not unconditional, that provision cannot be considered to have direct effect.

On 8 September 2015, in the judgment in ***Taricco and Others*** (C-105/14, EU:C:2015:555), the Court, sitting as the Grand Chamber, adjudicated on a request for a preliminary ruling seeking to ascertain whether EU law precludes *national legislation on limitation periods for criminal proceedings from providing that the limitation period applicable to tax offences in relation to VAT is extended, where the proceedings are interrupted, by only one quarter of its initial duration*. The national court, noting that that rule gave rise to *de facto* impunity for persons who have committed VAT offences, asked the Court whether such a rule amounts to impeding the effective fight against VAT evasion in a manner incompatible with Directive 2006/112 and, more generally, with EU law.

The Court replied that such a national rule is liable to have an adverse effect on the fulfilment of the Member States' obligations under Article 325(1) and (2) TFEU if it prevents the imposition of effective and dissuasive penalties in a significant number of cases of serous fraud affecting the financial interests of the European Union or provides for longer limitation periods in respect of cases of fraud affecting the financial interests of the Member State concerned than in respect of those affecting the financial interests of the European Union, which it is for the national court to verify.

By way of grounds for that conclusion, the Court recalled that, in relation to VAT, Member States are not only under a general obligation to take all measures appropriate for ensuring collection of all VAT, but must also fight against tax evasion. Furthermore, Article 325 TFEU obliges the Member States to counter illegal activities affecting the financial interests of the European Union through effective deterrent measures and, in particular, to take the same measures to counter fraud affecting the financial interests of the European Union as they take to counter fraud affecting their own financial interests. The Court added that, although the Member States have

freedom to choose the applicable penalties in the event of VAT evasion, criminal penalties may nevertheless be essential to combat certain serious cases of VAT evasion.

As regards the consequences of a finding by the national court that there has been an infringement of Article 325 TFEU, the Court stated that the national court must give full effect to that provision, if need be by disapplying the provisions of national law on limitation, without requesting or awaiting the prior repeal of those provisions by way of legislation or any other constitutional procedure. The Court nonetheless made clear that, in that case, the national court must also ensure that the fundamental rights of the persons concerned are respected. Such disapplication of national law would not, however, infringe the rights of the accused, as guaranteed by Article 49 of the Charter of Fundamental Rights, which enshrines the principles of legality and proportionality of criminal offences and penalties.

On 17 December 2015, in the judgment in ***WebMindLicenses*** (C-419/14, EU:C:2015:832) ([76]), the Court provided clarification on *the interpretation of Regulation (EU) No 904/2010 on administrative cooperation and combating VAT evasion* ([77]), in a case in which a transfer of know-how from an undertaking established in Hungary to an undertaking established in Portugal had been considered not to be a genuine economic transaction, with the consequence that the exploitation of that know-how was to be regarded as having taken place on Hungarian territory.

The Court ruled that EU law must be interpreted as meaning that, if an abusive practice is found which has resulted in the place of the supply of services being fixed in a Member State other than the Member State where it would have been fixed in the absence of that abusive practice, the fact that VAT has been paid in that other Member State in accordance with its legislation does not preclude an adjustment of VAT in the Member State in which the place where those services have actually been supplied is located.

The Court also made clear that Regulation (EU) No 904/2010 must be interpreted as meaning that the tax authorities of a Member State which are examining whether VAT is chargeable in respect of supplies of services that have already been subject to VAT in other Member States are required to send a request for information to the tax authorities of those other Member States when such a request is useful, or even essential, for determining whether VAT is chargeable in the first Member State.

XIV. APPROXIMATION OF LAWS

1. INTELLECTUAL PROPERTY

In the area of intellectual property, four judgments deserve mention. The first two concern the validity of regulations adopted in the context of the system established by the Convention on the Grant of European Patents, the third relates to Directive 2001/29 on copyright and the fourth concerns the refusal to supply information relating to the holder of a bank account trading in counterfeit goods.

On 5 May 2015, in the judgments in ***Spain v Council*** (C-146/13, EU:C:2015:298) and ***Spain v Council*** (C-147/13, EU:C:2015:299), the Court, sitting as the Grand Chamber, ruled on two regulations forming part of the 'unitary patent package' that relates to the grant to the patent established by the Convention on the Grant of European

76 | For the presentation of the part of this judgment that relates to fundamental rights, see Section I 'Fundamental rights'.

77 | Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (OJ 2010 L 268, p. 1).

Patents ('the EPC') ([78]) of unitary protection throughout the territory of the Member States which are parties to the EPC and thus participate in the enhanced cooperation in the European patent granted in accordance with the EPC by the European Patent Office ('the EPO').

The Kingdom of Spain had brought two actions, against Regulation (EU) No 1257/2012 on the creation of unitary protection ([79]) and Regulation (EU) No 1260/2012 on the applicable translation arrangements ([80]).

In Case C-146/13, the Kingdom of Spain submitted that the administrative procedure preceding the grant of a European patent is not subject to judicial review to ensure the correct and uniform application of EU law and the protection of fundamental rights. The Court rejected that argument, observing that Regulation (EU) No 1257/2012 is in no way intended to delimit, even partially, the conditions for granting European patents, which are exclusively governed by the EPC, and that it does not incorporate the procedure for granting European patents laid down by the EPC into EU law. That regulation merely (i) establishes the conditions under which a European patent previously granted by the EPO pursuant to the provisions of the EPC may, at the request of the patent proprietor, benefit from unitary effect and (ii) provides a definition of that unitary effect.

The Kingdom of Spain also maintained that the first paragraph of Article 118 TFEU is not an adequate legal basis for adopting Regulation (EU) No 1257/2012 on the ground that that regulation does not provide uniform protection of intellectual property rights throughout the European Union and does not bring about an approximation of the laws of the Member States for that purpose. In that regard, the Court stated that Article 118 TFEU does not necessarily require the EU legislature to harmonise completely and exhaustively all aspects of intellectual property law. Here, the unitary patent protection is apt to prevent divergences in terms of patent protection in the participating Member States and, accordingly, provides uniform protection within the meaning of the first paragraph of Article 118 TFEU. That uniformity results from the designation of the national law of a single Member State which is applicable in the territory of all the participating Member States and the substantive provisions of which define the acts against which a patent provides protection and the characteristics of that patent as an object of property.

In Case C-147/13, the Kingdom of Spain submitted that Regulation (EU) No 1260/2012 has established a language arrangement which is prejudicial to individuals whose language is not one of the official languages of the EPO, namely German, English and French. In that regard, the Court observed that references in the Treaties to the use of languages within the European Union cannot be regarded as evidencing a general principle of EU law to the effect that anything that might affect the interests of a European Union citizen should be drawn up in his language in all circumstances. As regards the establishment of the translation arrangements for European patents, differentiation between the official languages of the European Union is appropriate and proportionate to the legitimate objective pursued by Regulation No 1260/2012, which is to create a uniform and simple translation regime, and does indeed make it possible to achieve the legitimate objective of facilitating access to patent protection, in particular for small and medium enterprises, by reducing the costs associated with translation requirements.

Furthermore, the Court stated that, contrary to the Kingdom of Spain's contention, the second paragraph of Article 118 TFEU is the correct legal basis for Regulation No 1260/2012, and in particular for Article 4 on translation in the event of a dispute, since the purpose of the regulation is the creation of a uniform and simple translation regime for the European patent and the language arrangements for that patent are defined by all the provisions of that regulation. In particular, Article 4 of the regulation is directly part of those language

78 | Convention on the Grant of European Patents, which was signed in Munich on 5 October 1973 and entered into force on 7 October 1977.

79 | Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection (OJ 2012 L 361, p. 1).

80 | Council Regulation (EU) No 1260/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements (OJ 2012 L 361, p. 89).

arrangements and cannot therefore be detached, with respect to the legal basis, from the remainder of the provisions of the regulation.

On 5 March 2015, in the judgment in ***Copydan Båndkopi*** (C-463/12, EU:C:2015:144), the Court ruled on *the obligation to pay a private copying levy intended to finance the fair compensation payable under Article 5(2)(b) of Directive 2001/29*. ([81]) The main proceedings concerned a company marketing mobile telephones which disputed having to pay a body responsible for the administration of copyright such a levy in respect of imported mobile telephone memory cards.

According to the Court, Article 5(2)(b) of Directive 2001/29 does not preclude national legislation which provides that fair compensation under the exception to the reproduction right for copies for private use is to apply to multifunctional media, such as mobile telephone memory cards, irrespective of whether the main function of such media is to make such copies, provided that one of the functions of the media, be it merely an ancillary function, enables the operator to use them for that purpose. The Court made it clear, however, that the question whether the function is a main or an ancillary one and the relative importance of the medium's capacity to make copies are liable to affect the amount of fair compensation payable and that, in so far as the prejudice to the rightholder may be regarded as minimal, the making available of such a function need not give rise to an obligation to pay fair compensation.

In addition, the Court held that Article 5(2)(b) of Directive 2001/29 does not, under certain conditions, preclude national legislation from requiring payment of such a levy by producers and importers who sell mobile telephone memory cards to business customers and are aware that those cards will be sold on by those customers but do not know whether the final purchasers will be individuals or business customers. ([82]) The Court also considered that in certain cases that article allows Member States to provide for an exemption from payment of fair compensation where the prejudice caused to rightholders is minimal.

Last, the Court ruled that, although Directive 2001/29 does not preclude national legislation which provides for fair compensation, in accordance with the exception to the reproduction right, in respect of reproductions of protected works made by a natural person by or with the aid of a device which belongs to a third party, it does preclude legislation which provides for such compensation in respect of reproductions made using unlawful sources.

In the judgment in ***Coty Germany*** (C-580/13, EU:C:2015:485), delivered on 16 July 2015, the Court ruled on *the question whether Article 8(3)(e) of Directive 2004/48 ([83]) precludes legislation which authorises a banking institution to refuse, by invoking banking secrecy*, to provide information about the name and address of the holder of a bank account who trades in counterfeit goods. The main proceedings concerned a German company which held intellectual property rights and a German bank which refused to provide the company with information relating to the holder of the bank account of an internet auction platform through which counterfeit goods had been sold.

As the Court observed, the case concerned the need to reconcile the requirements of the protection of various

81| 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).

82| The conditions laid down by the Court are as follows: the introduction of such a system must be justified by practical difficulties; the persons responsible for payment must be exempt from the levy if they can establish that they have supplied the mobile telephone memory cards to persons other than natural persons for purposes clearly unrelated to copying for private use, it being understood that the exemption cannot be restricted to the supply of business customers registered with the organisation responsible for administering the levy; and the system must provide for a right to reimbursement of that levy which is effective and does not make it excessively difficult to repay the levy, and only the final purchaser of such a memory card may obtain reimbursement by submitting an appropriate application to that organisation.

83| Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45, and corrigendum at OJ 2004 L 195, p. 16).

fundamental rights, namely the right to an effective remedy and the right to intellectual property, on the one hand, and the right to protection of personal data, on the other. In that regard, the Court held that Article 8(3)(e) of Directive 2004/48 precludes a national provision which allows, in an unlimited and unconditional manner, a banking institution to invoke banking secrecy in order to refuse to provide, pursuant to Article 8(1)(c) of that directive, information concerning the name and address of an account holder.

Such unlimited and unconditional authorisation is such as to prevent the procedures laid down by Directive 2004/48 and the measures taken by the competent national authorities, in particular when they seek to order the disclosure of necessary information under Article 8(1) of that directive, from taking due account of the specific characteristics of each intellectual property right and, where appropriate, the intentional or unintentional character of the infringement. Accordingly, in the context of Article 8 of Directive 2004/48, although such an obligation to respect banking secrecy guarantees the right of persons to the protection of personal data, it is capable, on the other hand, of seriously impairing the fundamental right to an effective remedy and, ultimately, the fundamental right to intellectual property enjoyed by the holders of those rights. Thus, the Court held that such legislation does not comply with the requirement to ensure a fair balance between the various fundamental rights weighed up in Article 8 of Directive 2004/48.

The Court observed, however, that it is for the national courts to determine whether there are, in the national law concerned, any other means or other remedies which would allow the competent judicial authorities to order that the necessary information concerning the identity of persons who are covered by Article 8 of Directive 2004/48 be provided, in the light of the specific circumstances of each case.

2. PROTECTION OF PERSONAL DATA

In the judgment in ***Schrems*** (C-362/14, EU:C:2015:650), delivered on 6 October 2015 by the Grand Chamber, the Court examined *the powers of the Commission and the national supervisory authorities in relation to the transfer of personal data by the controller of that data to third countries.* The Court was requested to interpret Article 25(6) of Directive 95/46 ([84]), under which the Commission may find that a third country provides an adequate level of protection of the data transferred, and also, in essence, to rule on the validity of Decision 2000/520 ([85]), adopted by the Commission on the basis of Article 25(6) of Directive 95/46. In the main proceedings, Mr Schrems, a user of a social network, challenged the Irish supervisory authority's refusal to investigate his complaint concerning the transfer by the Irish subsidiary of that network of the personal data of users of the network to the United States of America. Mr Schrems maintained that the practices in that country did not offer sufficient protection against surveillance by the public authorities of the data transferred to that country. The Irish supervisory authority rejected the complaint, in particular on the ground that, in Decision 2000/520, the Commission had taken the view that, in the context of the 'safe harbour' scheme ([86]), the United States ensured an adequate level of protection for the personal data transferred.

The Court held that the operation consisting in having personal data transferred from a Member State to a third country constitutes processing of personal data within the meaning of Article 2(b) of Directive 95/46 carried out in a Member State. Each national supervisory authority therefore has the power to check, with complete independence, whether a transfer of data from its own Member State to a third country complies with the

84| Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).

85| Commission Decision 2000/520/EC of 26 July 2000 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequacy of the protection provided by the safe harbour privacy principles and related frequently asked questions issued by the US Department of Commerce (OJ 2000 L 215, p. 7).

86| The safe harbour scheme consists of a set of principles on personal data protection to which United States undertakings can subscribe voluntarily.

requirements laid down by that directive. According to the Court, where there is a Commission decision, such as Decision 2000/520, finding that a third country ensures an adequate level of protection, such a decision cannot deprive persons whose personal data has been or could be transferred to a third country of the right, guaranteed by Article 8(1) and (3) of the Charter of Fundamental Rights, to lodge with the national supervisory authorities a claim concerning the protection of their rights and freedoms in regard to the processing of that data. Such a claim must therefore be considered to entail an examination of the compatibility of the Commission decision with the protection of the privacy and the fundamental rights and freedoms of individuals and it is incumbent upon the national supervisory authority concerned to examine the claim with all due diligence. In that regard, the Court stated that if that authority considers that the claim is unfounded, the person who lodged the claim must be able to challenge that decision before the national courts. In the converse situation, where the national supervisory authority considers that the objections advanced are well founded, that authority must be able to engage in legal proceedings. It follows that it is incumbent upon the national legislature to provide for legal remedies enabling the national authority to put forward the objections which it considers well founded before the national courts in order for them, if they share its doubts as to the validity of the Commission decision, to make a reference to the Court for a preliminary ruling for the purpose of an examination of the decision's validity.

After observing that it alone has jurisdiction to declare that an EU act is invalid, the Court examined the validity of Decision 2000/520. In that connection, it stated that, in order for the level of protection offered by a third country to be adequate, within the meaning of Article 25 of Directive 95/46, that third country must actually ensure, by reason of its domestic law or its international commitments, a level of protection of fundamental rights and freedoms that is essentially equivalent to that guaranteed within the European Union by virtue of Directive 95/46 read in the light of the Charter of Fundamental Rights. Accordingly, the Commission is obliged to assess the content of the applicable legislation in that country and, in so far as that legislation is liable to change, it is incumbent upon the Commission, after it has adopted a decision pursuant to Article 25(6) of Directive 95/46, to check periodically the level of protection in the third country in order to ensure that it remains adequate. In that regard, the Court made clear that the Commission's discretion is reduced, with the result that review of the requirements stemming from Article 25 of Directive 95/46 should be strict. However, the Court observed that the Commission did not state, in Decision 2000/520, that the United States in fact ensures an adequate level of protection by reason of its domestic law or its international commitments. The Commission did not find that the requirements laid down in Article 25 of the directive were complied with by the United States public authorities, and the decision thus permitted interference with the fundamental rights of the persons whose data is or will be transferred to the United States. The decision was therefore declared invalid.

Furthermore, in so far as Decision 2000/520 denies the national authorities the powers which they derive from Directive 95/46 where a person puts forward matters that may call into question the validity of a Commission decision, the Court declared that the Commission had exceeded the power conferred upon it by the legislature, and declared the decision invalid on that basis.

In the judgment in ***Weltimmo*** (C-230/14, EU:C:2015:639), delivered on 1 October 2015, the Court ruled, in particular, *on determination of the law applicable to personal data processing, in accordance with Article 4(1)(a) of Directive 95/46, and determination of the competent supervisory authority and the extent of its powers*. In this case, the controller, a company registered in Slovakia running property-dealing websites concerning properties in Hungary, did not delete the personal data of advertisers on those websites, in spite of being asked to do so, and forwarded that data to debt collection agencies in order to secure payment of unpaid invoices. The advertisers lodged complaints with the Hungarian data protection authority, which declared that it was competent and imposed a fine on the Slovakian company for infringement of the Hungarian law transposing Directive 95/46.

In its judgment, the Court ruled that Article 4(1)(a) of Directive 95/46 permits the application of the law on the

protection of personal data of a Member State other than the Member State in which the controller with respect to the processing of that data is registered, in so far as the controller exercises, through stable arrangements in the territory of that Member State, a real and effective activity — even a minimal one — in the context of which that processing is carried out. According to the Court, both the degree of stability of the arrangements and the effective exercise of activities in that other Member State must be assessed in the light of the specific nature of the economic activities and the provision of services concerned, particularly in the case of undertakings offering services exclusively over the internet. The presence of only one representative can, in some circumstances, suffice to constitute a stable arrangement if that representative acts with a sufficient degree of stability through the presence of the necessary equipment for provision of the specific services concerned in the Member State in question. In the case in point, subject to the checks to be carried out by the national court, it was held that, since the activity exercised by the real estate company consisted of the running of one or several property-dealing websites concerning properties situated in Hungary, which were written in Hungarian, and since that company had a representative in Hungary, the real estate company pursued a real and effective activity in Hungary.

As regards the competence and powers of the supervisory authority which receives a complaint in accordance with Article 28(4) of Directive 95/46, the Court held that that authority may exercise its investigative powers irrespective of the applicable law and before even knowing which national law is applicable to the processing in question. However, if it reaches the conclusion that the law of another Member State is applicable, it cannot impose penalties outside the territory of its own Member State. In such a situation, it must, in fulfilment of the duty of cooperation laid down in Article 28(6) of the directive, request the supervisory authority of that other Member State to establish an infringement of that law and to impose penalties if that law permits, relying, where necessary, on the information which the authority of the first Member State has transmitted to the authority of that other Member State.

3. CHEMICALS

In the judgment in ***FDC and FMB*** (C-106/14, EU:C:2015:576), delivered on 10 September 2015, the Court ruled on *the interpretation of the REACH Regulation* ([87]) *as regards the obligation to notify the presence of substances classified as being of very high concern in 'articles' of complex products*, where such presence exceeds 0.1% of the article in question, to the European Chemicals Agency and to communicate sufficient information in that regard to recipients and consumers. In the main proceedings, two French trade federations had brought actions against the French State concerning the scope of that obligation in connection with imports of complex products made up of more than one article.

The Court first of all pointed out that the regulation, which defines, in Article 3(3), the concept of 'article' as an object which during production is given a special shape, surface or design which determines its function to a greater degree than does its chemical composition, does not contain any provisions governing specifically the situation of a complex product containing more than one article. Consequently, the classification as an article remains applicable to any object meeting those criteria which forms part of the composition of a complex product, unless, following a production process, that object becomes waste or ceases to have the shape, surface or design which is more decisive in determining its function than its chemical composition.

87| 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), as amended by Commission Regulation (EU) No 366/2011 of 14 April 2011 (OJ 2011 L 101, p. 12).

Next, the Court stated that the obligation to notify is borne by producers in respect of the articles which they themselves make or assemble. Conversely, that obligation does not apply to an article which, although used by a producer as an input, was made by a third party. Thus, where, following its production, that article is subsequently used downstream by a second producer as input in the production of a complex product, the second producer is not then required also to notify the presence of the substance in question in that article. Such notification would duplicate the notification effected by the producer of the article.

The obligation to notify is also borne by the importer of a product made up of several articles. Last, the obligation to notify recipients and consumers of the product is borne by any person in the supply chain where he makes an article available to a third party.

XV. ECONOMIC AND MONETARY POLICY

In the judgment in ***Gauweiler and Others*** (C-62/14, EU:C:2015:400), delivered on 16 June 2015, the Court, sitting as the Grand Chamber, ruled on the *validity of the decisions of the Governing Council of the European Central Bank ('the ECB') regarding the 'OMT programme'* ([88]) authorising the European System of Central Banks ('the ESCB'), on certain conditions, to purchase on secondary markets government bonds issued by euro area Member States.

This purchasing programme, which, on the date on which the action was brought, had been announced in a press release and had not been implemented, is intended to rectify the disruption to the monetary policy transmission mechanism caused by the specific situation of government bonds issued by certain Member States and to safeguard the singleness of monetary policy.

In that context, in order to examine whether that programme constitutes an *ultra vires* act and whether it impairs German constitutional identity, the Bundesverfassungsgericht (Federal Constitutional Court) asked the Court, in particular, about the limits of the ECB's monetary policy mandate, as defined in Articles 119 TFEU and 127(1) and (2) TFEU, and in Articles 17 to 24 of the Protocol on the ESCB and the ECB. In addition, the Federal Constitutional Court asked the Court to ascertain whether that programme is compatible with the prohibition of outright monetary financing enshrined in Article 123 TFEU.

The Court began by stating that, under Articles 3(1)(c) TFEU and 119(2) TFEU, the European Union is to have exclusive competence in the definition and conduct of a single monetary policy and that that policy is to be implemented by the ESCB, independently but under the supervision of the Courts of the European Union.

As regards the powers of the ESCB, the Court held that, having regard to the objectives of the OMT programme and the instruments provided for achieving them, that programme forms part of monetary policy. The programme is intended to safeguard both an appropriate transmission of monetary policy and the singleness of that policy, an objective that may be regarded as pertaining to the maintenance of price stability as the primary objective of EU monetary policy. If the monetary policy transmission mechanism is disrupted, that is likely to render the ESCB's decisions ineffective in a part of the euro area and, accordingly, to undermine the singleness of monetary policy. Moreover, as regards the means to be used for achieving those objectives, outright monetary transactions on secondary sovereign debt markets are among the monetary policy instruments referred to in Article 18(1) of the Protocol on the ESCB and the ECB. Neither the fact that the stability of the euro area forms part of monetary policy, nor the selective nature of the OMT programme, nor the fact that the implementation of such a programme is made conditional upon full compliance with macroeconomic adjustment programmes of the European Financial Stability Facility ('EFSF') or European Stability Mechanism ('ESM') can in itself call that finding into question. In the light of the latter circumstance, the Court emphasised that the purchase of

88 | Decisions of the Governing Council of the European Central Bank of 6 September 2012 on a number of technical features regarding the Eurosystem's outright monetary transactions in secondary sovereign bond markets.

government bonds on the secondary market differs according to whether the purchase is undertaken by the ESM or the ESCB, owing to the difference between the objectives which they pursue.

The Court concluded, next, that the programme at issue does not infringe the principle of proportionality. In that regard, the Court first of all acknowledged that the ESCB has a broad discretion when implementing such a programme, owing to the technical nature of the choices and the complexity of the forecasts and assessments it is required to make. Thus, as regards the appropriateness of the OMT programme for achieving the ESCB's objectives, the Court observed that the purchase on secondary markets of government bonds of the Member States of the euro area affected by what the ECB considers to be excessive interest rates is likely to contribute to reducing those rates by dispelling unjustified fears about the break-up of the euro area. The ESCB was therefore entitled to take the view that such a development in interest rates may facilitate the ESCB's monetary policy transmission and safeguard the singleness of that policy. As for the need for the programme in question, since the commitments which the ECB is liable to enter into when such a programme is implemented are, in fact, circumscribed and limited, and since the programme can be put into effect only when the situation of certain of those States has already justified EMS intervention which is still under way, that programme could legitimately be adopted by the ESCB without a quantitative limit being set prior to its implementation, such a limit being likely, moreover, to reduce the programme's effectiveness. Last, the ESCB weighed up the various interests in play, in order to prevent disadvantages manifestly disproportionate to the programme's objectives from arising.

As regards the prohibition, under Article 123 TFEU, of the monetary financing of the Member States, the Court made clear that the ESCB does not have authority to purchase government bonds on secondary markets under conditions which would, in practice, mean that its action has an effect equivalent to that of a direct purchase of government bonds from the public authorities and bodies of the Member States, thereby undermining the effectiveness of the prohibition in Article 123(1) TFEU. Since the purpose of that provision is to encourage the Member States to follow a sound budgetary policy, not allowing monetary financing of public deficits to lead to excessively high levels of debt or excessive Member State deficits, the ECB must build into the purchase of government bonds on the secondary markets sufficient safeguards to ensure that such purchase does not fall foul of those requirements. Thus, as regards a programme such as that announced in the press release, the ESCB's intervention could, in practice, have such an equivalent effect if the potential purchasers of government bonds on the primary market knew for certain that the ESCB was going to purchase those bonds within a certain period and under conditions allowing those market operators to act, *de facto*, as intermediaries for the ESCB for the direct purchase of those bonds from the public authorities and bodies of the Member State concerned. Inasmuch as the ESCB intends, first, to ensure that a minimum period is observed between the issue of a security on the primary market and its purchase on the secondary market and, second, to refrain from making any prior announcement concerning either its decision to carry out such purchases or the volume of purchases envisaged, those safeguards prevent the conditions of issue of government bonds from being distorted by the certainty that those bonds will be purchased by the ESCB after their issue.

XVI. SOCIAL POLICY

1. TEMPORARY AGENCY WORKERS

On 17 March 2015, in the judgment in ***AKT*** (C-533/13, EU:C:2015:173), the Court, sitting as the Grand Chamber, ruled on *the obligation to review restrictions or prohibitions on the use of temporary agency work, laid down in Article 4(1) of Directive 2008/104* ([89]). The main proceedings concerned a national collective agreement containing a restriction on the use of temporary workers. The Court was asked whether that provision of EU law places an obligation on the national authorities of the Member States, including the national courts, not to apply any rule of national law containing prohibitions or restrictions on the use of temporary agency work which are not justified on grounds of general interest within the meaning of Article 4(1).

According to the Court, when considered in its context, Article 4(1) of Directive 2008/14 ([90]) must be understood as restricting the scope of the legislative framework open to the Member States in relation to prohibitions or restrictions on the use of temporary agency workers and not as requiring any specific legislation to be adopted in that regard, the States remaining free to remove those prohibitions or restrictions or to adapt them in order to render them compliant with that provision. Accordingly, Article 4(1) is addressed only to the competent authorities of the Member States, imposing on them an obligation to review in order to ensure that any potential prohibitions or restrictions on the use of temporary agency work are justified, and does not impose an obligation on national courts not to apply any rule of national law containing such prohibitions or restrictions on the use of temporary agency work which are not justified on grounds of general interest within the meaning of that provision.

2. ORGANISATION OF WORKING TIME

On 10 September 2015, in the judgment in ***Federación de Servicios Privados del sindicato Comisiones obreras*** (C-266/14, EU:C:2015:578), the Court provided clarification of *the concept of 'working time' within the meaning of Article 2(1) of Directive 2003/88 concerning certain aspects of the organisation of working time* ([91]), *in the context of workers who do not have a fixed or habitual place of work*. The main proceedings concerned workers employed by a company whose business involves installing and maintaining security systems, who had no fixed place of work following the closure of that company's regional offices. Those workers each had the use of a company vehicle in which they travelled every day from their homes to the premises of the undertaking's customers, but the daily travelling time between the workers' homes and the premises of the first and last customer was not counted as working time. The referring court therefore asked the Court whether the time which those workers spent travelling between home and their customers constituted 'working time'.

In its judgment, the Court held that when workers such as those in the situation at issue in the main proceedings have no fixed or habitual place of work, the time which they spend travelling between their home and the premises of the first and last customer designated by their employer constitutes working time within the meaning

89 | Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ 2008 L 327, p. 9).

90 | According to that provision, 'prohibitions or restrictions on the use of temporary agency work shall be justified only on grounds of general interest relating in particular to the protection of temporary agency workers, the requirements of health and safety at work or the need to ensure that the labour market functions properly and abuses are prevented'.

91 | Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9).

of Directive 2003/88. That conclusion arises from the application, by the Court, of the three components of the concept of 'working time' set out in Article 2(1) of that directive.

First, in view of the fact that the workers' journeys to the customers designated by their employer are a necessary means of providing their technical services at the customers' premises, the Court held that workers with no fixed or habitual place of work carry out their activities or their duties throughout the entire duration of those journeys. If that were not so, the employer would be able to claim that only the time spent carrying out the activity of installing and maintaining the security systems falls within the concept of 'working time', which would distort that concept and jeopardise the objective of protecting the safety and health of workers.

Second, since while travelling between home and customers the workers act on the instructions of their employer, who may change the order of the customers or cancel or add an appointment, the workers are not able to use their time freely and pursue their own interests. Consequently, they are at their employer's disposal during the time spent on those journeys.

Third, the Court held that if a worker who no longer has a fixed place of work is carrying out his duties during his journey to or from a customer, that worker must also be regarded as working during that journey. Given that travelling is an integral part of being a worker without a fixed or habitual place of work, the place of work of such workers cannot be reduced to the sites belonging to their employer's customers at which they physically carry out their duties.

3. COLLECTIVE REDUNDANCIES

In the judgments in ***USDAW and Wilson*** (C-80/14, EU:C:2015:291), ***Lyttle and Others*** (C-182/13, EU:C:2015:317) and ***Rabal Cañas*** (C-392/13, EU:C:2015:318), delivered on 30 April and 13 May 2015, the Court provided clarification of *the concept of an 'establishment' and of the method of calculating the number of workers made redundant in accordance with Article 1(1)(a) of Directive 98/59* ([92]). Here, in the context of redundancy programmes, employees dismissed in a number of establishments belonging to the same undertaking who considered that they had been subject to collective redundancies had brought actions against their respective employers on the ground that the redundancy procedure had not been preceded by the consultation procedure provided for in Article 2 of that directive.

In the three judgments, the Court stated that the concept of an 'establishment', which is a factor enabling it to be determined where there is a collective redundancy and, accordingly, whether Directive 98/59 is applicable, is a term of EU law which cannot be defined by reference to the laws of the Member States. The Court observed that, where an 'undertaking' comprises several entities, it is the entity to which the workers made redundant are assigned to carry out their duties that constitutes the 'establishment' for the purposes of Article 1(1)(a) of Directive 98/59. Thus, that provision requires that account be taken of the dismissals effected in each establishment considered separately in order to determine where there have been collective redundancies. Interpreting that provision so as to require account to be taken of the total number of redundancies made in all the establishments of an undertaking, on the ground that this would significantly increase the number of workers eligible for protection under Directive 98/59, would nonetheless be contrary to the other objectives of the directive, namely the objective of ensuring comparable protection for workers' rights in the various Member States and the objective of harmonising the costs which such protective rules entail for EU undertakings.

Accordingly, in the judgments in *USDAW and Wilson* and *Lyttle and Others*, the Court ruled that Article 1(1)(a)(ii) of Directive 98/59 must be interpreted as not precluding national legislation that lays down an obligation to

92| Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (OJ 1998 L 225, p. 16).

inform and consult workers in the event of the dismissal, within a period of 90 days, of at least 20 workers from a particular establishment of an undertaking, and not where the aggregate number of dismissals across all of the establishments or across some of the establishments of an undertaking over the same period reaches or exceeds the threshold of 20 workers. In the judgment in *Rabal Cañas*, on the other hand, the Court ruled that Article 1(1)(a) of Directive 98/59 precludes national legislation that introduces the undertaking and not the establishment as the sole reference unit where the effect of the application of that criterion is to preclude the information and consultation procedure provided for in Articles 2 to 4 of that directive, when the dismissals in question would have been considered 'collective redundancies', under the definition in Article 1(1)(a) of that directive, had the establishment been used as the reference unit.

In the judgment in *Rabal Cañas*, as regards the question relating to *the taking into consideration of contracts concluded for limited periods of time or for specific tasks*, the Court observed that it is clear from the wording and scheme of Directive 98/59 that such contracts are excluded from its scope. Such contracts terminate not on the initiative of the employer but pursuant to the clauses which they contain or to the applicable law, on the date on which they expire or on which the task in respect of which they were concluded has been completed, so that, for the purpose of establishing whether 'collective redundancies', within the meaning of that directive, have been effected, there is no need to take into account individual terminations of such contracts.

In addition, as regards the question relating to the cause of collective redundancies, the Court observed that the directive applies only one qualitative criterion, that the cause of the dismissal 'not be related to the individual workers concerned'. Thus, the introduction of other requirements would restrict the scope of the directive and would be liable to undermine its objective, which is to protect workers in the event of collective redundancies. Accordingly, the Court declared that, for the purposes of establishing the existence of collective redundancies effected under contracts of employment concluded for limited periods of time or for specific tasks, it is not necessary for the cause of such collective redundancies to derive from the same collective contractual framework for the same duration or the same task ([93]).

XVII. PUBLIC HEALTH

In relation to public health, on 29 April 2015 the Court delivered a judgment which merits particular attention. By the judgment in ***Léger*** (C-528/13, EU:C:2015:288), the Court provided clarification of *the permanent deferral criterion for blood donations by those whose sexual behaviour puts them at high risk of acquiring severe infectious diseases that can be transmitted by blood*. In the main proceedings, a French national's blood donation was refused on the ground that he had had sexual relations with a man and that under French law there was a permanent contraindication to blood donation for men who had had such relations.

First, the Court stated that it is for the national court to ascertain whether, in the case of men who have had sexual relations with other men, there is a high risk of acquiring severe infectious diseases that can be transmitted by blood, within the meaning of point 2.1 of Annex III to Directive 2004/33 ([94]). For the purposes of that analysis, the national court must take into account the epidemiological situation in the Member State concerned and ascertain, in the light of current medical, scientific and epidemiological knowledge, whether such data is still reliable and relevant.

Second, the Court pointed out that, even if the national court were to consider that men who have had sexual relations with other men are exposed to a high risk of acquiring diseases such as HIV (human immunodeficiency

93| Another judgment covered in this report relates to social policy: the judgment of 9 September 2015 in ***Ferreira da Silva e Brito and Others*** (C-160/14, EU:C:2015:565), presented in Sections IV 'EU law and national law' and V.1 'References for a preliminary ruling'.

94| Commission Directive 2004/33/EC of 22 March 2004 implementing Directive 2002/98/EC of the European Parliament and of the Council as regards certain technical requirements for blood and blood components (OJ 2004 L 91, p. 25).

virus), the question is whether the permanent contraindication to blood donation is compatible with the fundamental rights of the European Union and, in particular, with the principle of non-discrimination on the ground of sexual orientation guaranteed by Article 21(1) of the Charter of Fundamental Rights.

In order to be justified, such a permanent contraindication to donation of blood, which is liable to entail, with respect to homosexuals, discrimination on the ground of sexual orientation, must satisfy the conditions laid down in Article 52(1) of the Charter of Fundamental Rights. In that connection, as regards the objective of general interest, within the meaning of Article 52(1), the Court observed that the permanent deferral of donation of blood is intended to minimise the risk of transmission of an infectious disease to the recipients. That deferral contributes to the general objective of ensuring a high level of human health protection, which is an objective recognised by the European Union in Article 152 EC, in particular Article 152(4)(a) and (5) EC, and in the second sentence of Article 35 of the Charter of Fundamental Rights, which requires a high level of human health protection to be ensured in the definition and implementation of all EU policies and activities. As regards compliance with the principle of proportionality, the Court stated that, in a case such as that in the main proceedings, that principle is respected only where a high level of health protection for the recipients cannot be ensured by effective techniques for detecting HIV which are less onerous than the permanent deferral from blood donation for the entire group of men who have had sexual relations with other men. In that regard, it is for the national court to ascertain whether there are effective techniques for detecting HIV in order to avoid transmission of such a virus to recipients. Where such techniques do not exist, the national court is required to ascertain whether there are less onerous methods than the permanent deferral of blood donation, in particular whether the questionnaire and individual interview with a medical professional are able to identify more precisely the type of behaviour presenting a risk for the health of recipients.

XVIII. CONSUMER PROTECTION

In the judgment in ***Unicaja Banco and Caixabank*** (C-482/13, C-484/13, C-485/13 and C-487/13, EU:C:2015:21), delivered on 21 January 2015, the Court interpreted *Article 6(1) of Directive 93/13 on unfair terms* [95] *in the context of mortgage enforcement procedures to secure the enforcement of a number of mortgages*. The cases concerned Spanish legislation under which a national court hearing mortgage enforcement proceedings is required to adjust the amounts due under a term in a mortgage-loan contract where the contract provides for default interest at a rate more than three times greater than the statutory rate, by applying a default interest rate which does not exceed that threshold.

The Court held that Article 6(1) of Directive 93/13 does not preclude such legislation provided that its application is without prejudice to the assessment by the national court of the unfairness of such a term and does not prevent it from removing that term if it were to find the term to be 'unfair'. Where the national court is faced with a contractual term relating to default interest at a rate less than that envisaged by national law, the fact that such a legislative ceiling has been set does not prevent that court from assessing whether that term may be unfair. Conversely, when the default interest rate laid down in a term in a mortgage-loan contract is higher than that envisaged by national law and must, in accordance with that law, be subject to a limitation, such a fact must not preclude the national court from, above and beyond that measure of moderation, drawing all the inferences of possible unfairness — in the light of Directive 93/13 — of the term which contains that rate, if necessary by annulling it.

By the judgment in ***ERSTE Bank Hungary*** (C-32/14, EU:C:2015:637), delivered on 1 October 2015, the Court interpreted *Articles 6(1) and 7(1) of Directive 93/13* in a case concerning national legislation which allows a notary to affix the enforcement clause to a contract concluded between a seller or supplier and a consumer

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

or to refuse to cancel it although there has been no review by the judicial authorities. The main proceedings concerned an application for the setting aside of a notary's refusal to cancel such an enforcement clause affixed by a notarial act to the acknowledgement of the debt signed by a Hungarian consumer on the basis of a loan agreement and a mortgage guarantee contract concluded with a bank.

The Court observed that Directive 93/13 does not regulate the issue of whether, in circumstances in which national legislation confers on notaries the power to affix the enforcement clause to a notarised document relating to a contract, and subsequently to cancel it, the authority to exercise powers which fall directly within the scope of the judicial function should be extended to notaries. Since EU law makes no provision for the harmonisation of national enforcement mechanisms and the role assigned to notaries in those mechanisms, it is for the legal order of each Member State to establish such rules, under the principle of procedural autonomy, provided, however, that the principles of equivalence and effectiveness are observed. As regards the principle of effectiveness, the Court held that Directive 93/13 requires that the national court hearing a dispute between a seller or supplier and a consumer take positive action unconnected to the parties to the contract. Nonetheless, observance of the principle of effectiveness cannot be stretched so far as to make up fully for total inertia on the part of the consumer concerned. Therefore, the fact that the consumer may rely on the protection of legislative provisions on unfair terms only if he brings court proceedings against, in particular, the notarial act cannot be regarded in itself as contrary to the principle of effectiveness. The effective legal protection guaranteed by Directive 93/13 is based on the premiss that one of the parties to the contract will bring an action before the national courts.

XIX. ECONOMIC AND SOCIAL COHESION

In the area of economic and social cohesion, by the judgment in ***Spain v Commission*** (C-263/13 P, EU:C:2015:415), delivered on 24 June 2015, the Court upheld the Kingdom of Spain's appeal against a judgment of the General Court ([96]) by which the latter had dismissed the Kingdom of Spain's actions for *annulment of Commission Decisions C(2009) 9270, C(2009) 10678 and C(2010) 337 reducing the assistance from the European Regional Development Fund (ERDF) granted to a number of operational programmes* ([97]).

In its judgment, the Court recalled that, in accordance with the reasoning in the judgments in *Spain* v *Commission* (C-192/13 P, EU:C:2014:2156) and *Spain* v *Commission* (C-197/13 P, EU:C:2014:2157), the adoption of a financial correction decision by the Commission has since 2000 been subject to compliance with a time limit and that the time limit varies according to the applicable legislation.

In the case in point, it observed, first, that in accordance with Article 100(5) of Regulation (EC) No 1083/2006 ([98]), the Commission is to take a decision on the financial correction within six months of the date of the hearing, and if no hearing takes place the six-month period begins to run two months from the date on which the Commission sent the letter of invitation, and second, that that article was applicable from 1 January 2007, including for programmes earlier than the period from 2007 to 2013. The Court found that the Commission had adopted the decisions at issue without complying with the prescribed time limit. Accordingly, after recalling, first, that failure to adopt an act adversely affecting an individual within the time limit defined by the

96| Judgment of the General Court of 26 February 2013 in ***Spain*** v ***Commission*** (T-65/10, T-113/10 and T-138/10, EU:T:2013:93).

97| Commission Decisions C(2009) 9270 of 30 November 2009, C(2009) 10678 of 23 December 2009 and C(2010) 337 of 28 January 2010 reducing the assistance from the European Regional Development Fund (ERDF) granted under the operational programme 'Andalusia' falling within Objective 1 (1994-1999) pursuant to Commission Decision C(94) 3456 of 9 December 1994, the operational programme 'Basque Country' falling within Objective 2 (1997-1999) pursuant to Commission Decision C(1998) 121 of 5 February 1998 and operational programme 'Comunidad Valenciana' falling within Objective 1 (1994-1999) pursuant to Commission Decision C(1994) 3043/6 of 25 November 1994.

98| Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ 2006 L 210, p. 25).

EU legislature constitutes an infringement of an essential procedural requirement and, second, that in such a case it is for the Court to draw the necessary conclusions from such an infringement and, accordingly, to annul the act vitiated by that defect, the Court held that, by dismissing the actions brought by the Kingdom of Spain instead of penalising the infringement of essential procedural requirements vitiating the decisions at issue, the General Court had erred in law. Furthermore, giving judgment on the basis of the first paragraph of Article 61 of the Statute of the Court of Justice, the Court annulled the decisions at issue.

Those decisions were annulled in the context of a plea raised by the Court of its own motion, on which it had not invited the parties to submit their observations. In that regard, the Court pointed out that, other than in special cases such as, in particular, those provided for by the Rules of Procedure of the Courts of the European Union, such a court may not base a decision on a plea raised by it of its own motion, even if it involves a matter of public policy, without having first invited the parties to submit their observations on that plea. In this instance, the Court considered that the case in point constituted such a special case and that there was therefore no need to invite the parties to submit their observations on the plea, based on the infringement of essential procedural requirements, which the Court raised of its own motion. The Court observed that, in the cases giving rise to the previous judgments in *Spain* v *Commission* cited above, which concerned substantially identical questions of fact and of law, the Kingdom of Spain and the Commission had already had an opportunity, as part of an adversarial procedure, to present argument on the issue of the time limit within which a financial correction decision must be adopted.

XX. ENVIRONMENT

In its judgment of 1 July 2015 in ***Bund für Umwelt und Naturschutz Deutschland*** (C-461/13, EU:C:2015:433), the Court, sitting as the Grand Chamber, ruled on *the obligations regarding the enhancement of surface water and prevention of its deterioration that are laid down in Article 4(1)(a) of Directive 2000/60 establishing a framework for Community action in the field of water policy* ([99]).

In the main proceedings, the German federation for the environment and the conservation of nature brought an action against Germany in respect of the authorisation given by it for three projects to deepen various parts of the River Weser in order to render it navigable by larger container vessels. The competent national authority had considered that those projects had hydrological and morphological consequences that would tend to change the status of certain bodies of water, without that resulting in a change in the status class in accordance with Annex V to Directive 2000/60. In those circumstances, that authority had concluded that there would be no deterioration of the ecological potential of the body of water concerned.

The Court observed at the outset that the wording of Article 4(1)(a)(iii) of Directive 2000/60 supports the argument that that provision is binding in nature for the Member States. That provision entails obligations to enhance and prevent deterioration of the status of bodies of water, which are designed to attain qualitative objectives in respect of the status of surface waters through a complex process involving a number of extensively regulated stages. It therefore does not simply set out mere management-planning objectives, but has binding effects. The Court therefore concluded that the Member States are required — unless a derogation is granted — to refuse authorisation for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good chemical status of those waters.

As to whether the concept of 'deterioration of the status' of a body of surface water, in Article 4(1)(a)(i) of Directive 2000/60, refers only to a fall in classification within the meaning of Annex V to that directive, the Court

99| Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ 2000 L 327, p. 1).

answered that question in the negative, taking the view that the classes are merely an instrument which limits the discretion of the Member States when determining the quality elements which reflect the status of a body of water. Since a deterioration of the status of a body of water, even if transitory, is authorised only subject to strict conditions, the threshold beyond which breach of the obligation to prevent such deterioration is found must be low. Thus, there is deterioration as soon as the status of at least one of the quality elements falls by one class, even if that does not result in a fall in classification of the body of surface water as a whole. However, if the quality element concerned, within the meaning of that annex, is already in the lowest class, any deterioration of that element constitutes a 'deterioration of the status' of a body of surface water.

In the judgment of 6 October 2015 in ***East Sussex County Council*** (C-71/14, EU:C:2015:656), the Court ruled on the interpretation of Article 5(2) and 6 of *Directive 2003/4 on public access to environmental information* ([100]). The main proceedings, between East Sussex County Council and the Information Commissioner, concerned the latter's decision notice declaring that a charge imposed by the council for supplying environmental information was unlawful. The national tribunal asked the Court, first, to provide clarification of the conditions to which Article 5(2) of Directive 2003/4 makes the imposition of such a charge subject, namely (i) that all the factors on the basis of which the amount of the charge is calculated must relate to supplying the environmental information requested and (ii) that the total amount of the charge must not exceed a 'reasonable amount'. Second, the national tribunal asked the Court about the necessary extent of the administrative and judicial review to which the reasonableness of such a charge must be subject.

As regards the first question, the Court, after noting that Directive 2003/4 distinguishes between 'supplying' environmental information, for which the public authorities may make a charge, and 'access' to public registers or lists and to the facilities for examination of the information required, which is to be free of charge, stated that, in principle, it is only the costs that do not arise from the establishment and maintenance of those registers, lists and facilities that are attributable to the 'supplying' of environmental information. Thus, the costs of maintaining a database may not be taken into consideration when calculating a charge for 'supplying' environmental information. Conversely, the costs that may be charged under Article 5(2) of the directive include, in particular, postal and photocopying costs and also the costs attributable to the time spent by the staff of the public authority concerned on answering an individual request for information. As regards, moreover, the condition that the amount of the charge must be reasonable, the Court stated that the charge must not have a deterrent effect and that, for the purpose of assessing that criterion, account must be taken both of the economic situation of the person requesting access and of the public interest in the protection of the environment.

As regards the second question, the Court stated that, since the Directive 2003/4 does not determine the extent of the administrative and judicial review which it requires, it is for the laws of the Member States to determine that extent, subject to observance of the principles of equivalence and effectiveness. Here, the existence of an effective administrative and judicial review is intrinsically linked to the objective of ensuring the compatibility of EU law with the Aarhus Convention ([101]). Furthermore, in so far as the national law at issue has limited that review to the question whether the decision taken by the public authority concerned was 'irrational, illegal or unfair', the Court observed that, in any event, the conditions laid down in Article 5(2) of Directive 2003/4 must be amenable to administrative and judicial review carried out on the basis of objective elements and capable of ensuring that those conditions are fully complied with. The Court left it to the national tribunal to ascertain whether those requirements are met.

100 | 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).

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

XXI. INTERNATIONAL AGREEMENTS

In the judgment in ***Commission v Council*** (C-28/12, EU:C:2015:282) ([102]), delivered on 28 April 2015, the Court annulled *the decision of the Council and of the Representatives of the Governments of the Member States of the European Union, meeting within the Council, on the signing, on behalf of the Union, of mixed agreements in the air transport sector concluded with third countries and on the provisional application of those agreements by the European Union and by the Member States* ([103]). In its action, the Commission maintained that that decision was not compatible with Article 13(2) TEU, on the conferral of powers, read in conjunction with Article 218(2), (5) and (8) TFEU, on the procedure for the conclusion of international agreements, on the ground that it was not adopted either by the Council alone or in accordance with the procedure and voting arrangements laid down in Article 218 TFEU.

The Court held that that argument was well founded. First, it observed that that decision in fact merges two different acts, namely, on the one hand, an act relating to the signing of the agreements at issue on behalf of the European Union and their provisional application by it and, on the other, an act relating to the provisional application of those agreements by the Member States, without it being possible to discern which act reflects the will of the Council and which the will of the Member States. Thus, by that decision, the Member States participated in the adoption of the first act, although, under Article 218(5) TFEU, such an act must be adopted by the Council alone and no competence is granted to the Member States in that regard. Conversely, the Council was involved, as an EU institution, in the adoption of the second act, although such an act falls within the scope of, first of all, the internal law of each of the Member States and, then, international law.

Second, according to the Court, those two different acts, brought together in the contested decision, could not be validly adopted under a single procedure involving, without distinction, elements falling within the decision-making process specific to the Council and elements of an intergovernmental nature. The act concerning the provisional application of the agreements at issue by the Member States entails consensus of the representatives of those States, and therefore their unanimous agreement, whereas Article 218(8) TFEU provides that the Council must act, on behalf of the European Union, by a qualified majority.

Accordingly, the Court held that, as the decision was not compatible with Article 218(2), (5) and (8) TFEU and, therefore, with Article 13(2) TFEU, it had to be annulled. However, since there were important grounds of legal certainty, the Court decided to maintain the effects of the decision until the entry into force, within a reasonable period from the delivery of the judgment, of a new decision to be adopted by the Council pursuant to Article 218(5) and (8) TFEU.

102 | As regards the admissibility of the action, in that judgment the Court held that a decision of the Council and of the Representatives of the Governments of the Member States relating to the signing, on behalf of the European Union, of an agreement on the accession of third States to an international agreement concluded by the European Union and of an ancillary agreement, and to the provisional application of those agreements by the European Union, on the one hand, and by the Member States, on the other hand, must be regarded as an act of the Council against which an action for annulment may be brought, since the Council participated in the decisions made in respect of all of those matters.

103 | Decision of the Council and of the Representatives of the Governments of the Member States of the European Union, meeting within the Council, of 16 June 2011, on the signing, on behalf of the Union, and provisional application of the Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part; and on the signing, on behalf of the Union, and provisional application of the Ancillary Agreement between the European Union and its Member States, of the first part, Iceland, of the second part, and the Kingdom of Norway, of the third part, on the application of the Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part (OJ 2011 L 283, p. 1).

XXII. COMMON FOREIGN AND SECURITY POLICY

In the context of restrictive measures in the area of the common foreign and security policy, mention should be made of two judgments of 21 April 2015, in ***Anbouba v Council*** (C-605/13 P, EU:C:2015:248) and ***Anbouba v Council*** (C-630/13 P, EU:C:2015:247), by which the Court, sitting as the Grand Chamber, upheld on appeal two judgments of the General Court ([104]) dismissing the actions for annulment brought by a Syrian businessman against *a number of decisions freezing funds* that concerned him. Those restrictive measures were applied against the appellant on account of his status as president of a major company in the agri-food industry in Syria and his economic support for the Syrian regime. In his appeals, the appellant submitted that the General Court failed to comply with the rules relating to the burden of proof as regards restrictive measures by accepting the existence of a presumption of support for the Syrian regime in his regard and not requiring the Council to provide additional evidence in support of his inclusion of the lists of persons subject to such measures.

The Court held that neither the decision at issue ([105]) nor the measure on the basis of which it was adopted ([106]) establishes a presumption that the heads of leading Syrian businesses provide support for the Syrian regime. It observed that, in view of the situation in Syria, the Council discharges the burden of proof borne by it, as regards the merits of the appellant's inclusion on the lists of persons subject to restrictive measures, if it presents to the Courts of the European Union a set of indicia sufficiently specific, precise and consistent to establish that there is a sufficient link between the person subject to a measure freezing his funds and the regime concerned. In the case in point, the appellant's position in Syrian economic life, his position as the president of a major company in the agri-food industry in Syria, his important functions within both another company and the Chamber of Commerce and Industry of Homs and his relations with a member of the family of President Bashar Al-Assad constituted a set of indicia sufficiently specific, precise and consistent to establish that he provided economic support for the Syrian regime. Thus, since the General Court reviewed whether the appellant's inclusion on the lists was well founded on the basis of a set of indicia relating to his situation, functions and relations in the context of the Syrian regime that were not rebutted by him, the Court concluded that the reference in the judgments under appeal to a presumption of support for that regime was not such as to affect the lawfulness of those judgments.

XXIII. EUROPEAN CIVIL SERVICE

In the judgment in ***Missir Mamachi di Lusignano*** (C-417/14 RX II, EU:C:2015:588), delivered on 10 September 2015, the Court had the opportunity to clarify the *jurisdiction of the Civil Service Tribunal in actions for damages brought by the members of the family of a deceased official*. Reviewing a judgment of the General Court ([107]), the Court adjudicated in particular on the General Court's finding that the Civil Service Tribunal, in principle, lacks jurisdiction *ratione personae* to hear and determine an action brought by a third party in order to obtain reparation for damage which is personal to him, even if it is accepted that the dispute originates in the relationship of employment between an official and the institution. The General Court had set aside the judgment of the Civil Service Tribunal ([108]) by which the latter declared that it had jurisdiction to hear and determine an action

104 | Judgments of the General Court of 13 September 2013 in ***Anbouba*** v ***Council*** (T-563/11, EU:T:2013:429) and ***Anbouba*** v ***Council*** (T-592/11, EU:T:2013:427).

105 | Council Decision 2011/273/CFSP of 9 May 2011 concerning restrictive measures against Syria (OJ 2011 L 121, p. 11), as amended by Council Decision 2011/522/CFSP of 2 September 2011 (OJ 2011 L 228, p. 16).

106 | Council Regulation (EU) No 442/2011 of 9 May 2011 concerning restrictive measures in view of the situation in Syria (OJ 2011 L 121, p. 1), as amended by Council Regulation (EU) No 878/2011 of 2 September 2011 (OJ 2011 L 228, p. 1).

107 | Judgment of the General Court of 10 July 2014 in ***Missir Mamachi di Lusignano*** v ***Commission***, (T-401/11 P, EU:T:2014:625).

108 | Judgment of the Civil Service Tribunal of 12 May 2011 in ***Missir Mamachi di Lusignano*** v ***Commission***, (F-50/09, EU:F:2012:55).

seeking, in particular, an order that the Commission pay the applicant and his son's dependants various sums by way of reparation for the material and non-material damage arising from the murder of his son, an EU official.

In that context, the Court held that the judgment of the General Court undermines the unity and coherence of EU law. According to the Court, in referring the action to itself to hear and determine it as a court of first instance, the General Court deprived the Civil Service Tribunal of its original jurisdiction and put in place a jurisdiction rule to its advantage. The structure of the levels of jurisdiction within the Court of Justice was thus affected. In that regard, the Court recalled that the judicial system of the European Union contains a precise delimitation of the respective jurisdictions of the three courts of the Court of Justice, so that the jurisdiction of one of those three courts to rule on an action necessarily excludes the jurisdiction of the others. The rules on the jurisdiction of the Courts of the European Union thus form part of primary law and are central to the EU legal order.

In this instance, the Court held that the Civil Service Tribunal has jurisdiction *ratione personae* to hear and determine not only applications brought by officials but also applications brought by any other person referred to in the Staff Regulations. In that regard, it held that, contrary to the findings of the General Court, the question whether the appellant and those entitled to claim under him had, in the case in point, a right to the payments guaranteed, in particular, by Article 73(2)(a) of the Staff Regulations constituted a substantive rule, having no relevance to the determination of the jurisdiction of the Civil Service Tribunal.

As regards the jurisdiction *ratione personae* of the Civil Service Tribunal, the Court observed that, since both Article 270 TFEU and Article 91 of the Staff Regulations refrain from defining the type of action available in the event of rejection of an administrative complaint, where proceedings concern the legality of an act adversely affecting an applicant the Civil Service Tribunal has jurisdiction to hear and determine those proceedings, whatever the type of action. Thus, the Civil Service Tribunal has jurisdiction to hear and determine an action for damages brought by an official against the institution by which he is employed where the dispute originates in the relationship of employment between him and the institution. The same is true, according to the Court, of an action for damages brought by any person referred to in the Staff Regulations as a result of family ties which he has with an official, when the dispute has its origin in the employment relationship between that official and the institution concerned.

C | COMPOSITION OF THE COURT OF JUSTICE

(order of precedence as at 31 December 2015)

First row, from left to right:

M. Wathelet, First Advocate General; T. von Danwitz, President of Chamber; M. Ilešič, President of Chamber; A. Tizzano, Vice-President of the Court; K. Lenaerts, President of the Court; R. Silva de Lapuerta, President of Chamber; L. Bay Larsen, President of Chamber; J.L. da Cruz Vilaça, President of Chamber

Second row, from left to right:

E. Juhász, Judge; A. Rosas, Judge; F. Biltgen, President of Chamber; C. Toader, President of Chamber; A. Arabadjiev, President of Chamber; D. Šváby, President of Chamber; C. Lycourgos, President of Chamber; J. Kokott, Advocate General

Third row, from left to right:

M. Safjan, Judge; Y. Bot, Advocate General; E. Sharpston, Advocate General; J. Malenovský, Judge; A. Borg Barthet, Judge; E. Levits, Judge; P. Mengozzi, Advocate General; J.-C. Bonichot, Judge

Fourth row, from left to right:

N. Wahl, Advocate General; C.G. Fernlund, Judge; A. Prechal, Judge; M. Berger, Judge; E. Jarašiūnas, Judge; C. Vajda, Judge; S. Rodin, Judge

Fifth row, from left to right:

H. Saugmandsgaard Øe, Advocate General; M. Vilaras, Judge; M. Szpunar, Advocate General; K. Jürimäe, Judge; M. Campos Sánchez-Bordona, Advocate General; E. Regan, Judge; M. Bobek, Advocate General; A. Calot Escobar, Registrar

1. CHANGE IN THE COMPOSITION OF THE COURT OF JUSTICE IN 2015

Formal sitting on 7 October 2015

A formal sitting took place at the Court of Justice on 7 October 2015 on the occasion of, first, the renewal of terms of office and, secondly, the taking of the oath and entry into office of the new members of the institution.

By decisions of 24 September 2014, 1 April 2015 and 16 September 2015, the representatives of the governments of the Member States renewed the term of office of 12 judges of the Court of Justice, namely Mr Lars Bay Larsen, Mr François Biltgen, Mr Marko Ilešič, Mr Endre Juhász, Ms Küllike Jürimäe, Mr Koen Lenaerts, Mr Siniša Rodin, Mr Allan Rosas, Mr Marek Safjan, Ms Rosario Silva de Lapuerta, Mr Daniel Šváby and Ms Camelia Toader, for the period from 7 October 2015 to 6 October 2021.

As the term of office of Mr Aindrias Ó Caoimh and Mr Vassilios Skouris was coming to an end, Mr Eugene Regan and Mr Michail Vilaras were appointed as judges at the Court of Justice for the period from 7 October 2015 to 6 October 2021.

The number of Advocates General at the Court of Justice was increased from nine to eleven by Council Decision 2013/336/EU of 25 June 2013 ([1]), with effect from 7 October 2015. By decisions of 1 April and 15 June 2015, Mr Michal Bobek and Mr Henrik Saugmandsgaard Øe were appointed as Advocates General for the period from 7 October 2015 to 6 October 2021.

In addition, by decision of 16 September 2015 Mr Manuel Campos Sánchez-Bordona was appointed to replace Mr Pedro Cruz Villalón as Advocate General ([2]).

1| 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).

2| The advocate general succeeding Mr N. Jääskinen will take up office at a later date. In accordance with the principle of rotation, he will be a Bulgarian national.

2. ORDER OF PRECEDENCE

FROM 1 JANUARY 2015 TO 7 OCTOBER 2015

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
M. WATHELET, First Advocate General
A. Ó CAOIMH, President of the Eighth Chamber
J.-C. BONICHOT, President of the Seventh Chamber
C. VAJDA, President of the Tenth Chamber
S. RODIN, President of the Sixth Chamber
K. JÜRIMÄE, President of the Ninth Chamber
A. ROSAS, Judge
J. KOKOTT, Advocate General
E. JUHÁSZ, Judge
A. BORG BARTHET, Judge
J. MALENOVSKÝ, Judge
E. LEVITS, Judge
E. SHARPSTON, Advocate General
P. MENGOZZI, Advocate General
Y. BOT, Advocate General
A. ARABADJIEV, Judge
C. TOADER, Judge
M. SAFJAN, Judge
D. ŠVÁBY, Judge
M. BERGER, Judge
N. JÄÄSKINEN, Advocate General
P. CRUZ VILLALÓN, Advocate General
A. PRECHAL, Judge
E. JARAŠIŪNAS, Judge
C.G. FERNLUND, Judge
J.L. da CRUZ VILAÇA, Judge
N. WAHL, Advocate General
F. BILTGEN, Judge
M. SZPUNAR, Advocate General
C. LYCOURGOS, Judge

A. CALOT ESCOBAR, Registrar

FROM 8 OCTOBER 2015 TO 11 OCTOBER 2015

K. LENAERTS, President
A. TIZZANO, Vice-President
R. SILVA DE LAPUERTA, President of the First Chamber
M. ILEŠIČ, President of the Second Chamber
L. BAY LARSEN, President of the Third Chamber
T. von DANWITZ, President of the Fourth Chamber
J.L. da CRUZ VILAÇA, President of the Fifth Chamber
A. ROSAS, Judge
J. KOKOTT, Advocate General
E. JUHÁSZ, Judge
A. BORG BARTHET, Judge
J. MALENOVSKÝ, Judge
E. LEVITS, Judge
E. SHARPSTON, Advocate General
P. MENGOZZI, Advocate General
Y. BOT, Advocate General
J.-C. BONICHOT, Judge
A. ARABADJIEV, Judge
C. TOADER, Judge
M. SAFJAN, Judge
D. ŠVÁBY, Judge
M. BERGER, Judge
A. PRECHAL, Judge
E. JARAŠIŪNAS, Judge
C.G. FERNLUND, 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
C. LYCOURGOS, Judge
M. CAMPOS SÁNCHEZ-BORDONA, Advocate General
M. VILARAS, Judge
E. REGAN, Judge
H. SAUGMANDSGAARD ØE, Advocate General
M. BOBEK, Advocate General

A. CALOT ESCOBAR, Registrar

FROM 12 OCTOBER 2015 TO 31 DECEMBER 2015

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

A. CALOT ESCOBAR, Registrar

3. FORMER MEMBERS OF THE COURT OF JUSTICE

(in order of their entry into office)

Massimo Pilotti, Judge (1952–1958), President from 1952 to 1958
Petrus Serrarens, Judge (1952–1958)
Adrianus van Kleffens, Judge (1952–1958)
Jacques Rueff, Judge (1952–1959 and 1960–1962)
Otto Riese, Judge (1952–1963)
Maurice Lagrange, Advocate General (1952–1964)
Louis Delvaux, Judge (1952–1967)
Charles Léon Hammes, Judge (1952–1967), President from 1964 to 1967
Karl Roemer, Advocate General (1953–1973)
Nicola Catalano, Judge (1958–1962)
Rino Rossi, Judge (1958–1964)
Andreas Matthias Donner, Judge (1958–1979), President from 1958 to 1964
Alberto Trabucchi, Judge (1962–1972), then Advocate General (1973–1976)
Robert Lecourt, Judge (1962–1976), President from 1967 to 1976
Walter Strauss, Judge (1963–1970)
Joseph Gand, Advocate General (1964–1970)
Riccardo Monaco, Judge (1964–1976)
Josse J. Mertens de Wilmars, Judge (1967–1984), President from 1980 to 1984
Pierre Pescatore, Judge (1967–1985)
Alain Louis Dutheillet de Lamothe, Advocate General (1970–1972)
Hans Kutscher, Judge (1970–1980), President from 1976 to 1980
Henri Mayras, Advocate General (1972–1981)
Cearbhall O'Dalaigh, Judge (1973–1974)
Max Sørensen, Judge (1973–1979)
Gerhard Reischl, Advocate General (1973–1981)
Jean-Pierre Warner, Advocate General (1973–1981)
Alexander J. Mackenzie Stuart, Judge (1973–1988), President from 1984 to 1988
Aindrias O'Keeffe, Judge (1974–1985)
Adolphe Touffait, Judge (1976–1982)
Francesco Capotorti, Judge (1976), then Advocate General (1976–1982)
Giacinto Bosco, Judge (1976–1988)
Thymen Koopmans, Judge (1979–1990)
Ole Due, Judge (1979–1994), President from 1988 to 1994
Ulrich Everling, Judge (1980–1988)
Alexandros Chloros, Judge (1981–1982)
Simone Rozès, Advocate General (1981–1984)
Pieter Verloren van Themaat, Advocate General (1981–1986)
Sir Gordon Slynn, Advocate General (1981–1988), then Judge (1988–1992)
Fernand Grévisse, Judge (1981–1982 and 1988–1994)
Kai Bahlmann, Judge (1982–1988)
Yves Galmot, Judge (1982–1988)
G. Federico Mancini, Advocate General (1982–1988), then Judge (1988–1999)
Constantinos Kakouris, Judge (1983–1997)
Marco Darmon, Advocate General (1984–1994)

René Joliet, Judge (1984–1995)
Carl Otto Lenz, Advocate General (1984–1997)
Thomas Francis O'Higgins, Judge (1985–1991)
Fernand Schockweiler, Judge (1985–1996)
José Luís da Cruz Vilaça, Advocate General (1986–1988)
José Carlos de Carvalho Moitinho de Almeida, Judge (1986–2000)
Jean Mischo, Advocate General (1986–1991 and 1997–2003)
Gil Carlos Rodríguez Iglesias, Judge (1986–2003), President from 1994 to 2003
Manuel Diez de Velasco, Judge (1988–1994)
Manfred Zuleeg, Judge (1988–1994)
Walter Van Gerven, Advocate General (1988–1994)
Giuseppe Tesauro, Advocate General (1988–1998)
Francis Geoffrey Jacobs, Advocate General (1988–2006)
Paul Joan George Kapteyn, Judge (1990–2000)
John L. Murray, Judge (1991–1999)
Claus Christian Gulmann, Advocate General (1991–1994), then Judge (1994–2006)
David Alexander Ogilvy Edward, Judge (1992–2004)
Michael Bendik Elmer, Advocate General (1994–1997)
Günter Hirsch, Judge (1994–2000)
Georges Cosmas, Advocate General (1994–2000)
Antonio Mario La Pergola, Judge (1994 and 1999–2006), Advocate General (1995–1999)
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 (1997–1999)
Siegbert Alber, Advocate General (1997–2003)
Antonio Saggio, Advocate General (1998–2000)
Vassilios Skouris, Judge (1999–2015), President from 2003 to 2015
Fidelma O'Kelly Macken, Judge (1999–2004)
Stig von Bahr, Judge (2000–2006)
Ninon Colneric, Judge (2000–2006)
Leendert A. Geelhoed, Advocate General (2000–2006)
Christine Stix-Hackl, Advocate General (2000–2006)
Christiaan Willem Anton Timmermans, Judge (2000–2010)
José Narciso da Cunha Rodrigues, Judge (2000–2012)
Luís Miguel Poiares Pessoa Maduro, Advocate General (2003–2009)
Jerzy Makarczyk, Judge (2004–2009)
Georges Arestis, Judge (2004–2014)
Ján Klučka, Judge (2004–2009)
Pranas Kūris, Judge (2004–2010)
Konrad Hermann Theodor Schiemann, Judge (2004–2012)
Uno Lõhmus, Judge (2004–2013)
Pernilla Lindh, Judge (2006–2011)

Ján Mazák, Advocate General (2006–2012)
Verica Trstenjak, Advocate General (2006–2012)
Jean-Jacques Kasel, Judge (2008–2013)
Niilo Jääskinen, Advocate General (2009–2015)
Pedro Cruz Villalón, Advocate General (2009–2015)

PRESIDENTS

Massimo Pilotti (1952–1958)
Andreas Matthias Donner (1958–1964)
Charles Léon Hammes (1964–1967)
Robert Lecourt (1967–1976)
Hans Kutscher (1976–1980)
Josse J. Mertens de Wilmars (1980–1984)
Alexander John Mackenzie Stuart (1984–1988)
Ole Due (1988–1994)
Gil Carlos Rodríguez Iglésias (1994–2003)
Vassilios Skouris (2003–2015)

REGISTRARS

Albert Van Houtte (1953–1982)
Paul Heim (1982–1988)
Jean-Guy Giraud (1988–1994)
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 (2011-15)

NEW CASES

2. Nature of proceedings (2011-15)

3. Subject matter of the action (2015)

4. Actions for failure of a Member State to fulfil its obligations (2011-15)

COMPLETED CASES

5. Nature of proceedings (2011-15)

6. Judgments, orders, opinions (2015)

7. Bench hearing action (2011-15)

8. Cases completed by judgments, by opinions or by orders involving a judicial determination (2011-15)

9. Subject matter of the action (2011-15)

10. Subject matter of the action (2015)

11. Judgments concerning failure of a Member State to fulfil its obligations: outcome (2011-15)

12. Duration of proceedings (judgments and orders involving a judicial determination) (2011-15)

CASES PENDING AS AT 31 DECEMBER

13. Nature of proceedings (2011-15)

14. Bench hearing action (2011-15)

MISCELLANEOUS

15. Expedited procedures (2011-15)

16. Urgent preliminary ruling procedure (2011-15)

17. Proceedings for interim measures (2015)

GENERAL TREND IN THE WORK OF THE COURT (1952-2015)

18. New cases and judgments

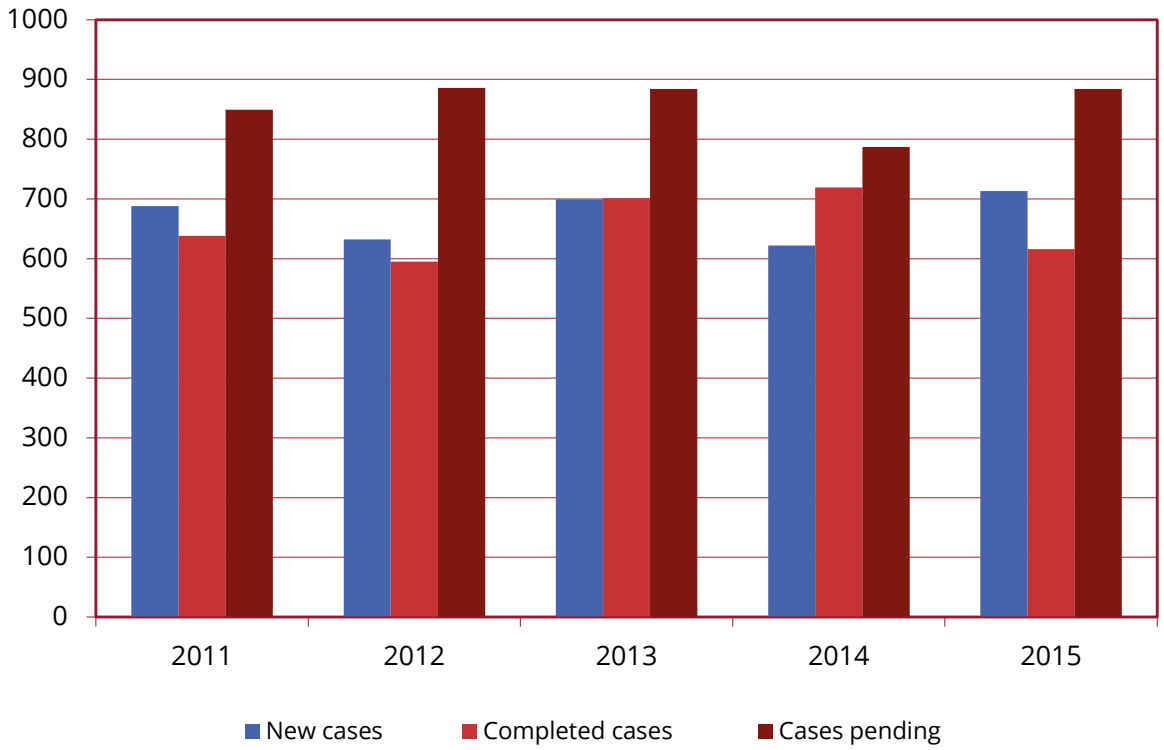
19. New references for a preliminary ruling (by Member State per year)

20. New references for a preliminary ruling (by Member State and by court or tribunal)

21. Actions for failure to fulfil obligations brought against the Member States

GENERAL ACTIVITY OF THE COURT OF JUSTICE

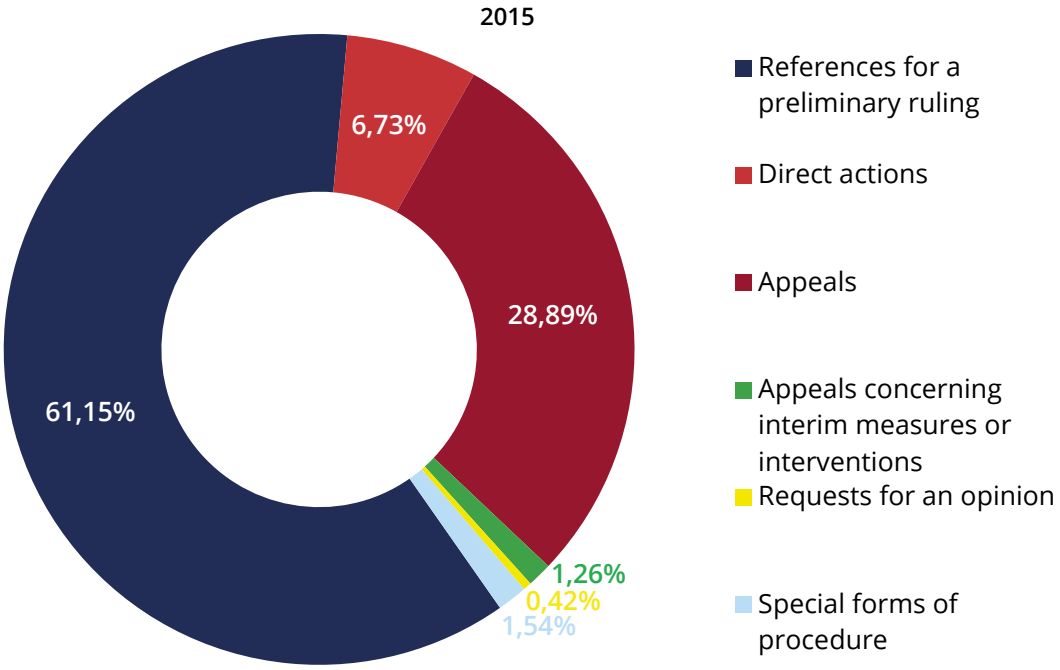
1. NEW CASES, COMPLETED CASES, CASES PENDING (2011–15)[1]



	2011	2012	2013	2014	2015
New cases	688	632	699	622	713
Completed cases	638	595	701	719	616
Cases pending	849	886	884	787	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 (2011–15) [1]



	2011	2012	2013	2014	2015
References for a preliminary ruling	423	404	450	428	436
Direct actions	81	73	72	74	48
Appeals	162	136	161	111	206
Appeals concerning interim measures or interventions	13	3	5		9
Requests for an opinion		1	2	1	3
Special forms of procedure [2]	9	15	9	8	11
Total	**688**	**632**	**699**	**622**	**713**
Applications for interim measures	3		1	3	2

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).

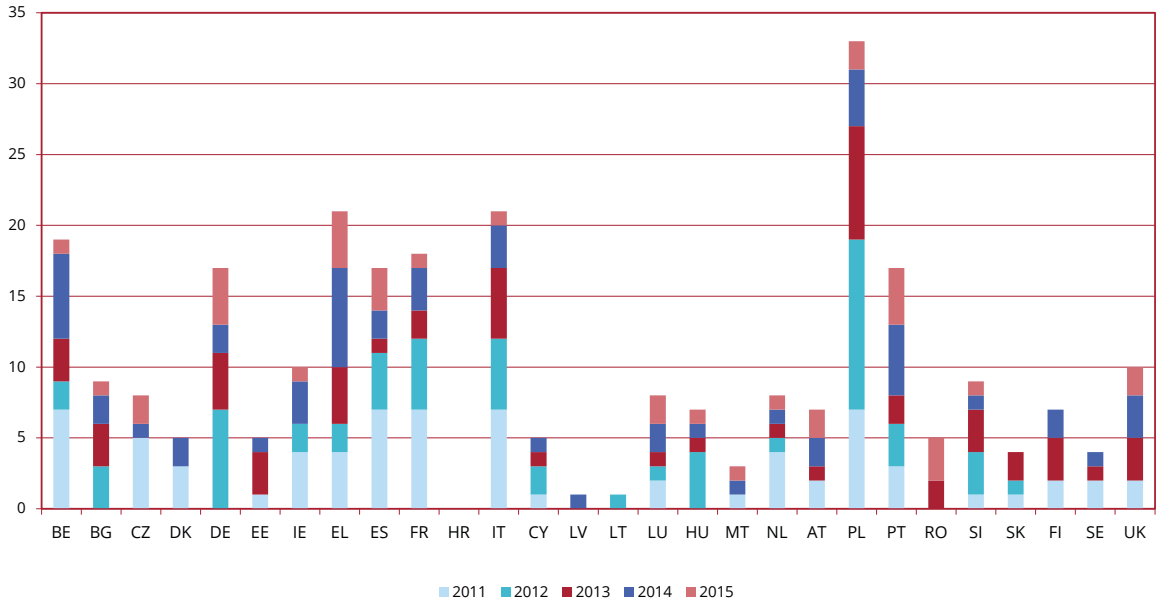
2| The following are considered to be 'special forms of procedure': legal aid; taxation of costs; rectification; application to set aside a judgment delivered by default; third-party proceedings; interpretation; revision; examination of a proposal by the First Advocate General to review a decision of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

3. NEW CASES — SUBJECT MATTER OF THE ACTION (2015) [1]

	References for a preliminary ruling	Direct actions	Appeals	Appeals concerning interim measures or interventions	Requests for an opinion	Total	Special forms of procedure
Access to documents			6	1		7	
Agriculture	11	1	5			17	
Approximation of laws	20	2				22	
Area of freedom, security and justice	50	2				52	
Association of the Overseas Countries and Territories		1				1	
Citizenship of the Union	6					6	
Commercial policy	1		14			15	
Common fisheries policy		1				1	
Common foreign and security policy	2		10			12	
Company law	1					1	
Competition	6		32	2		40	
Consumer protection	39					39	
Customs union and Common Customs Tariff	27		2			29	
Economic and monetary policy	1	1	9			11	
Economic, social and territorial cohesion			3			3	
Energy		1				1	
Environment	29	14	4			47	
External action by the European Union	3					3	
Financial provisions (budget, financial framework, own resources, combating fraud and so forth)	3		3			6	
Free movement of capital	5	1				6	
Free movement of goods	7	1				8	
Freedom of establishment	12					12	
Freedom of movement for persons	14	1				15	
Freedom to provide services	21	3				24	
Industrial policy	12					12	
Intellectual and industrial property	22		66			88	
Judicial cooperation in civil matters	1					1	
Law governing the institutions	2	6	13		3	24	
Principles of EU law	12		1			13	
Public health	2		8			10	
Public procurement	22		2	2		26	
Registration, evaluation, authorisation and restriction of chemicals (REACH regulation)	1		4			5	
Research and technological development and space			1			1	
Social policy	32					32	
Social security for migrant workers	6	1				7	
State aid	4		21	4		29	
Taxation	43	6				49	
Transport	19	6	2			27	
TFEU	**436**	**48**	**206**	**9**	**3**	**702**	
Privileges and immunities							2
Procedure							9
Others							**11**
OVERALL TOTAL	**436**	**48**	**206**	**9**	**3**	**702**	**11**

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).

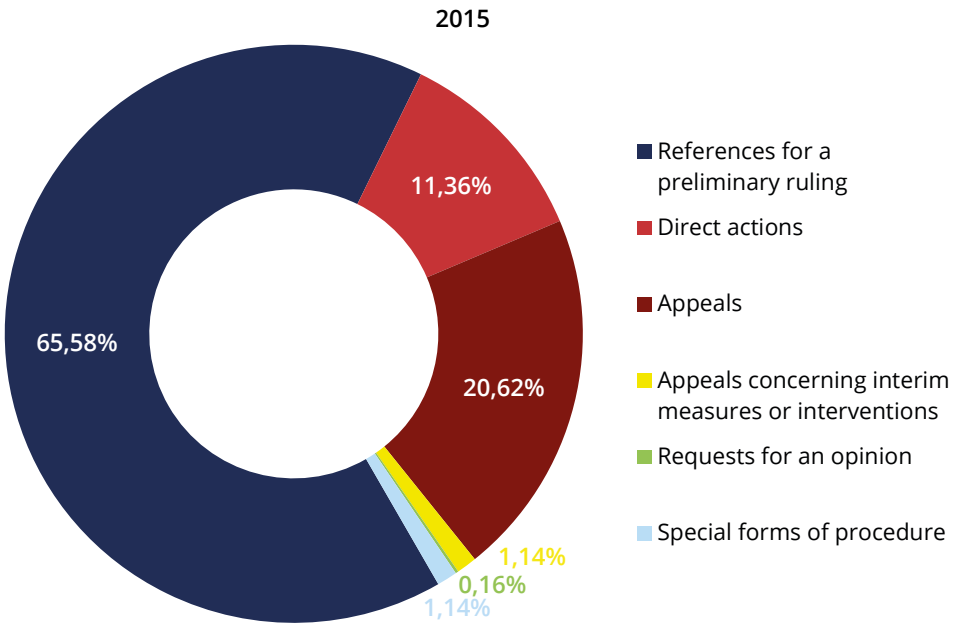
4. NEW CASES — ACTIONS FOR FAILURE OF A MEMBER STATE TO FULFIL ITS OBLIGATIONS (2011–15) [1]



	2011	2012	2013	2014	2015
Belgium	7	2	3	6	1
Bulgaria		3	3	2	1
Czech Republic	5			1	2
Denmark	3			2	
Germany		7	4	2	4
Estonia	1		3	1	
Ireland	4	2		3	1
Greece	4	2	4	7	4
Spain	7	4	1	2	3
France	7	5	2	3	1
Croatia					
Italy	7	5	5	3	1
Cyprus	1	2	1	1	
Latvia				1	
Lithuania		1			
Luxembourg	2	1	1	2	2
Hungary		4	1	1	1
Malta	1			1	1
Netherlands	4	1	1	1	1
Austria	2		1	2	2
Poland	7	12	8	4	2
Portugal	3	3	2	5	4
Romania			2		3
Slovenia	1	3	3	1	1
Slovakia	1	1	2		
Finland	2		3	2	
Sweden	2		1	1	
United Kingdom	2		3	3	2
Total	**73**	**58**	**54**	**57**	**37**

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).

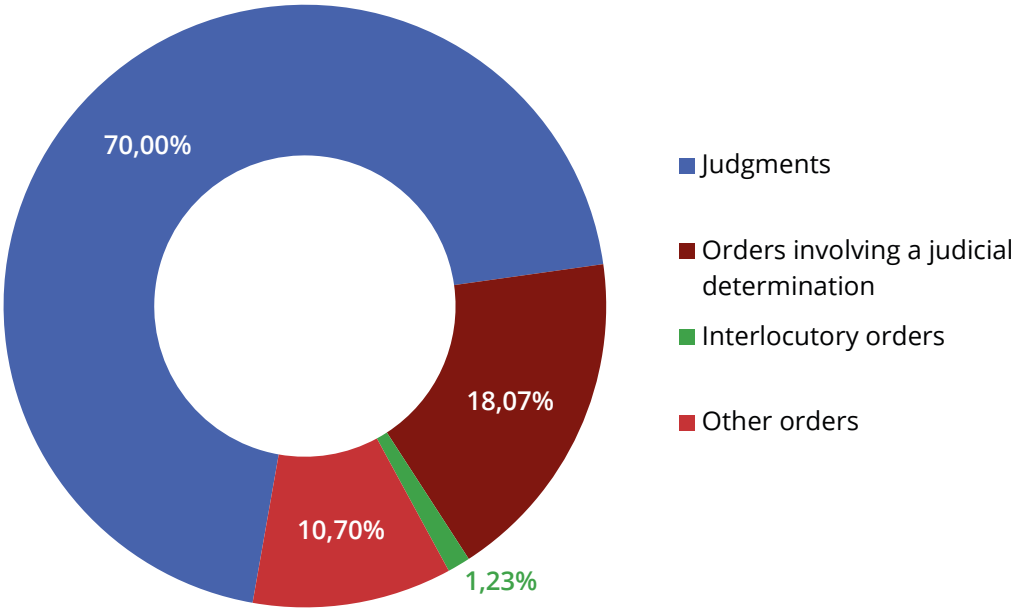
5. COMPLETED CASES — NATURE OF PROCEEDINGS (2011–15) [1]



	2011	2012	2013	2014	2015
References for a preliminary ruling	388	386	413	476	404
Direct actions	117	70	110	76	70
Appeals	117	117	155	157	127
Appeals concerning interim measures or interventions	7	12	5	1	7
Requests for an opinion	1		1	2	1
Special forms of procedure	8	10	17	7	7
Total	**638**	**595**	**701**	**719**	**616**

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 (2015) [1]



	Judgments	Orders involving a judicial determination [2]	Interlocutory orders [3]	Other orders [4]	Requests for an opinion	Total
References for a preliminary ruling	296	47		34		377
Direct actions	48			16		64
Appeals	54	51		9		114
Appeals concerning interim measures or interventions			7			7
Requests for an opinion				1		1
Special forms of procedure	1	5		1		7
Total	**399**	**103**	**7**	**61**		**570**

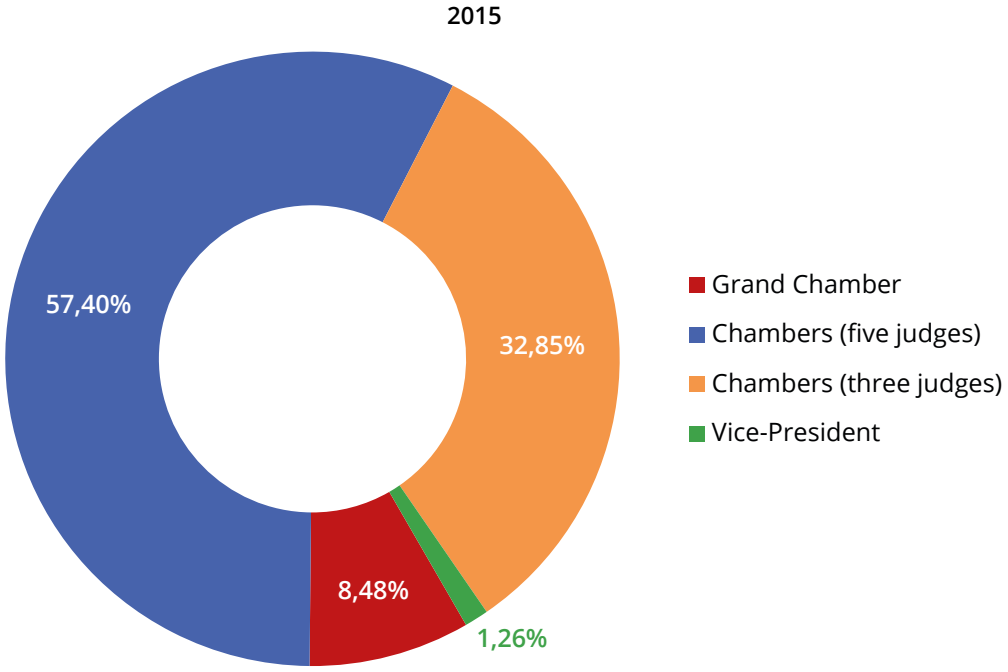
1| The figures given (net figures) represent the number of cases after joinder on the ground of similarity (a set of joined cases = one case).

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 (2011–15) [1]

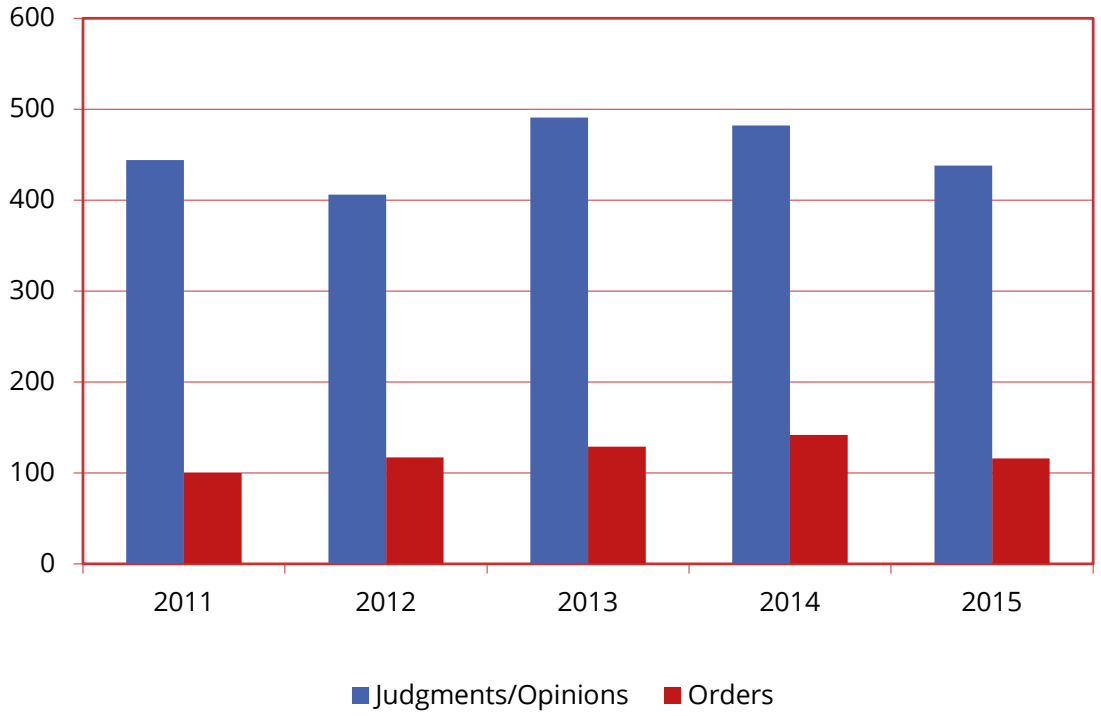


	2011			2012			2013			2014			2015		
	Judgments/opinions	Orders [2]	Total	Judgments/opinions	Orders [2]	Total	Judgments/opinions	Orders [2]	Total	Judgments/opinions	Orders [2]	Total	Judgments/opinions	Orders [2]	Total
Full Court	1		1	1		1				1		1			
Grand Chamber	62		62	47		47	52		52	51	3	54	47		47
Chambers (five judges)	290	10	300	275	8	283	348	18	366	320	20	340	298	20	318
Chambers (three judges)	91	86	177	83	97	180	91	106	197	110	118	228	93	89	182
President		4	4		12	12									
Vice-President								5	5		1	1		7	7
Total	**444**	**100**	**544**	**406**	**117**	**523**	**491**	**129**	**620**	**482**	**142**	**624**	**438**	**116**	**554**

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 (2011–15) [1] [2]



	2011	2012	2013	2014	2015
Judgments/opinions	444	406	491	482	438
Orders	100	117	129	142	116
Total	**544**	**523**	**620**	**624**	**554**

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 (2011–15) [1]

	2011	2012	2013	2014	2015
Access to documents	2	5	6	4	3
Accession of new states	1	2			
Agriculture	23	22	33	29	20
Approximation of laws	15	12	24	25	24
Area of freedom, security and justice	24	37	46	51	49
Citizenship of the Union	7	8	12	9	4
Commercial policy	2	8	6	7	4
Common Customs Tariff [4]	2				
Common fisheries policy	1			5	3
Common foreign and security policy	3	9	12	3	6
Community own resources [2]	2				
Company law	8	1	4	3	1
Competition	19	30	42	28	23
Consumer protection [3]	4	9	19	20	29
Customs union and Common Customs Tariff [4]	19	19	11	21	20
Economic and monetary policy		3		1	3
Economic, social and territorial cohesion		3	6	8	4
Education, vocational training, youth and sport		1		1	1
Employment					1
Energy	2		1	3	2
Environment [3]	35	27	35	30	27
Environment and consumers [3]	25	1			
External action by the European Union	8	5	4	6	1
Financial provisions (budget, financial framework, own resources, combating fraud and so forth) [2]	4	3	2	5	1
Free movement of capital	14	21	8	6	8
Free movement of goods	8	7	1	10	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).

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.

Freedom of establishment	21	6	13	9	17
Freedom of movement for persons	9	18	15	20	13
Freedom to provide services	27	29	16	11	17
Industrial policy	9	8	15	3	9
Intellectual and industrial property	47	46	43	69	51
Law governing the institutions	20	27	31	18	27
Principles of EU law	15	7	17	23	12
Public health	3	1	2	3	5
Public procurement	7	12	12	13	14
Registration, evaluation, authorisation and restriction of chemicals (REACH regulation)	1			5	1
Research and technological development and space		1	1		1
Social policy	36	28	27	51	30
Social security for migrant workers	8	8	12	6	14
State aid	48	10	34	41	26
Taxation	49	64	74	52	55
Tourism		1			
Transport	7	14	17	18	9
EC Treaty/TFEU	**535**	**513**	**601**	**617**	**544**
EU Treaty	1				
CS Treaty	1				
Euratom Treaty					1
Privileges and immunities	2	3			2
Procedure	5	7	14	6	4
Staff Regulations			5	1	3
Others	7	10	19	7	9
OVERALL TOTAL	**544**	**523**	**620**	**624**	**554**

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 (2015) [1]

	Judgments/ opinions	Orders [2]	Total
Access to documents	3		3
Agriculture	16	4	20
Approximation of laws	23	1	24
Area of freedom, security and justice	46	3	49
Citizenship of the Union	3	1	4
Commercial policy	4		4
Common fisheries policy	2	1	3
Common foreign and security policy	5	1	6
Company law	1		1
Competition	15	8	23
Consumer protection [4]	24	5	29
Customs union and Common Customs Tariff [5]	18	2	20
Economic and monetary policy	2	1	3
Economic, social and territorial cohesion	4		4
Education, vocational training, youth and sport	1		1
Employment		1	1
Energy	2		2
Environment [4]	24	3	27
External action by the European Union	1		1
Financial provisions (budget, financial framework, own resources, combating fraud and so forth) [3]	1		1
Free movement of capital	8		8
Free movement of goods	6	3	9
Freedom of establishment	12	5	17
Freedom of movement for persons	13		13

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.

Freedom to provide services	14	3	17
Industrial policy	9		9
Intellectual and industrial property	21	30	51
Law governing the institutions	21	6	27
Principles of EU law	4	8	12
Public health	5		5
Public procurement	12	2	14
Registration, evaluation, authorisation and restriction of chemicals (REACH regulation)	1		1
Research and technological development and space	1		1
Social policy	27	3	30
Social security for migrant workers	11	3	14
State aid	16	10	26
Taxation	48	7	55
Transport	9		9
EC Treaty/TFEU	**433**	**111**	**544**
Euratom Treaty	**1**		**1**
Privileges and immunities	1	1	2
Procedure		4	4
Staff Regulations	3		3
Others	**4**	**5**	**9**
OVERALL TOTAL	**438**	**116**	**554**

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).

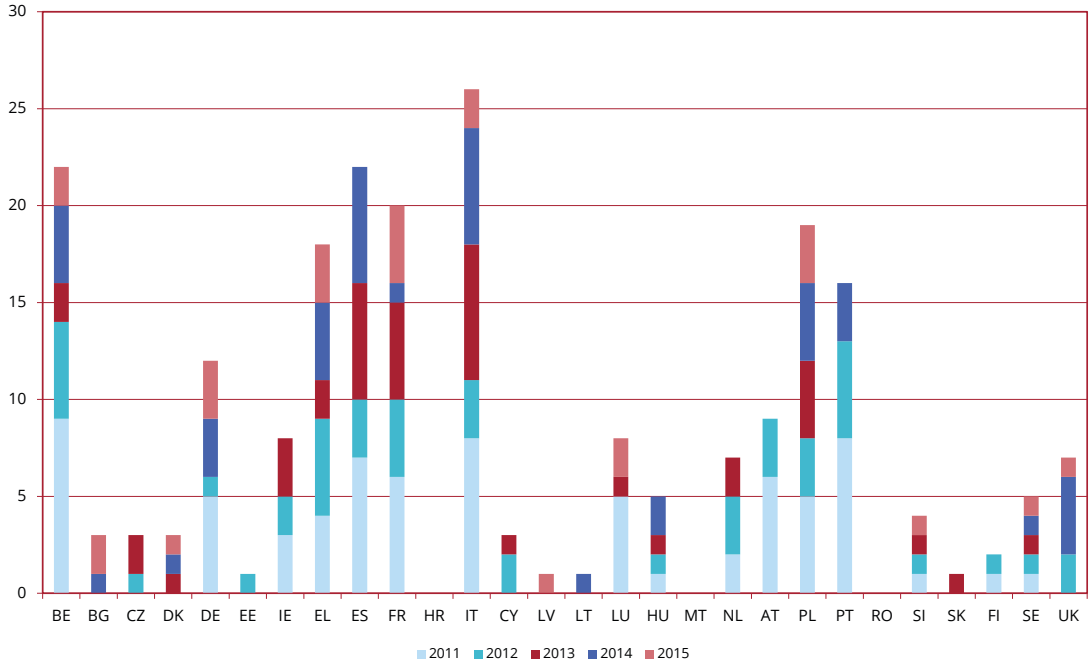
2| Orders terminating proceedings other than those removing a case from the register, declaring that there is no need to give a decision or referring a case to the General Court.

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 (2011–15) [1]

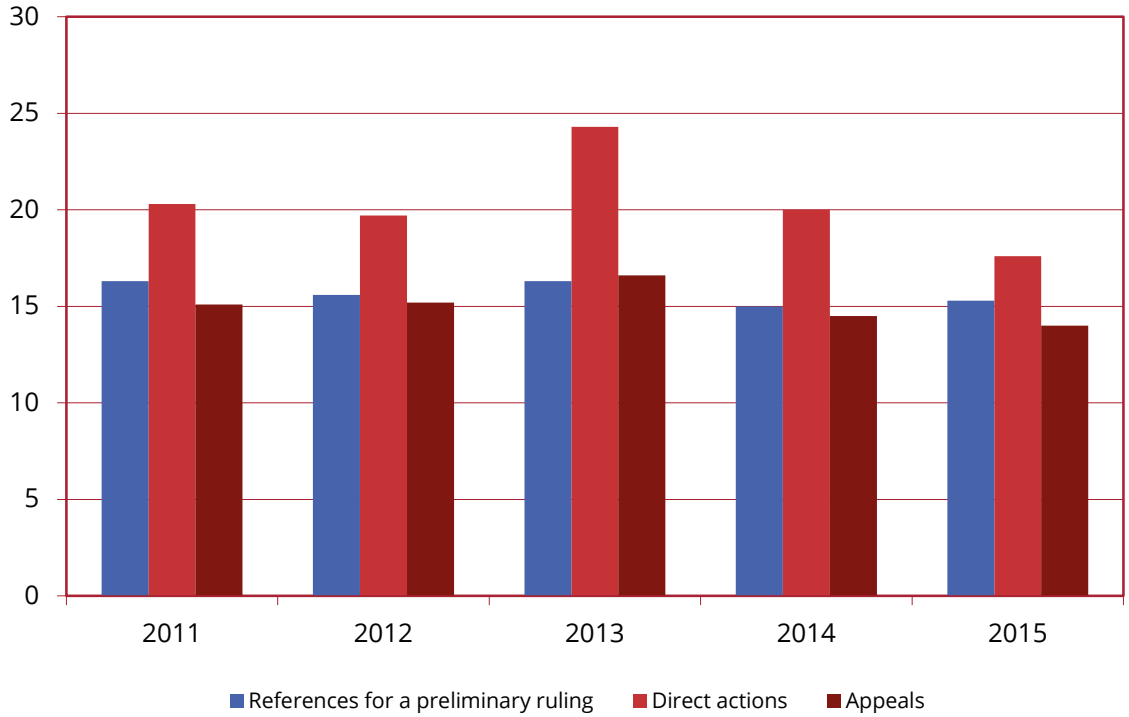


	2011		2012		2013		2014		2015	
	Infringement declared	Dismissed	Infringement declared	Dismissed	Infringement declared	Dismissed	Infringement declared	Dismissed	Infringement declared	Dismissed
Belgium	9	**1**	5	**1**	2	**1**	4		2	
Bulgaria							1	**1**	2	
Czech Republic			1		2	**2**				
Denmark					1	**1**	1		1	
Germany	5		1	**2**		**2**	3	**1**	3	
Estonia			1							
Ireland	3		2		3	**1**				**1**
Greece	4		5		2	**1**	4		3	
Spain	7	**1**	3		6		6			
France	6		4		5	**3**	1		4	
Croatia										
Italy	8	**1**	3		7	**1**	6		2	
Cyprus		**1**	2		1					
Latvia									1	
Lithuania							1			
Luxembourg	5				1	**1**			2	
Hungary	1	**1**	1		1		2			
Malta		**1**								
Netherlands	2		3	**1**	2	**2**		**1**		
Austria	6		3			**1**				
Poland	5		3		4	**2**	4		3	**1**
Portugal	8	**1**	5			**1**	3			
Romania		**1**								
Slovenia	1		1		1				1	
Slovakia		**1**		**1**	1					**2**
Finland	1		1			**2**				
Sweden	1		1		1	**1**	1		1	
United Kingdom			2			**1**	4		1	**1**
Total	**72**	**9**	**47**	**5**	**40**	**23**	**41**	**3**	**26**	**5**

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 (2011–15) IN MONTHS AND TENTHS OF MONTHS [1]

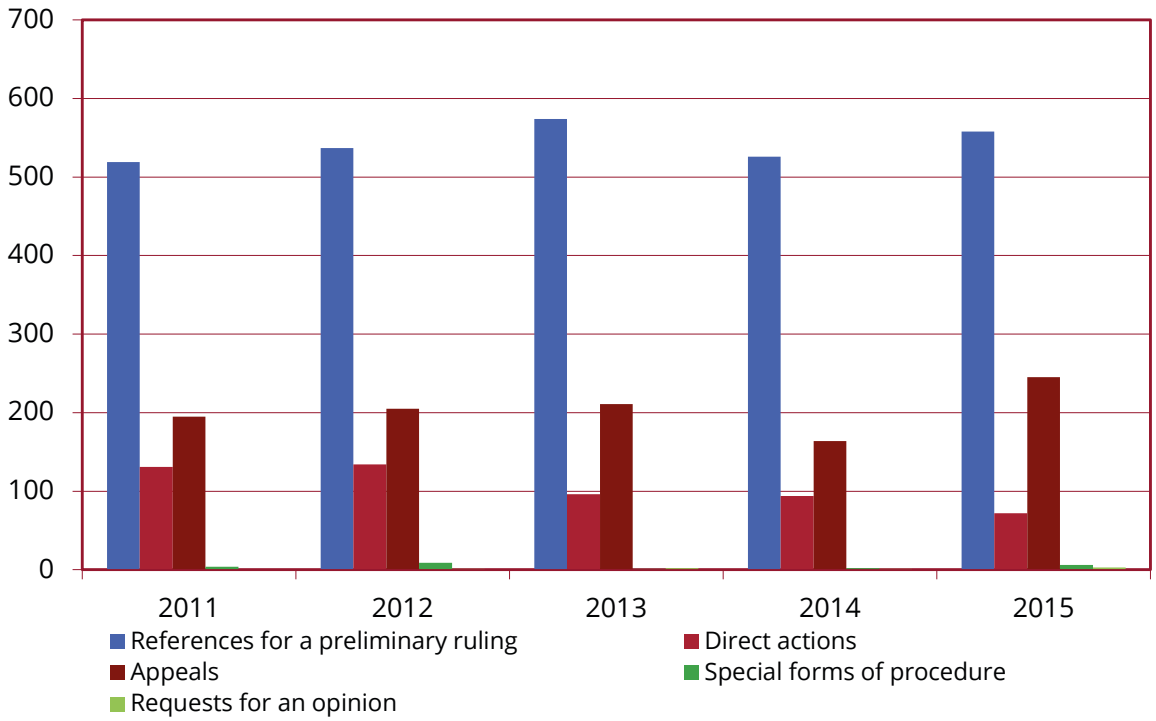
(JUDGMENTS AND ORDERS INVOLVING A JUDICIAL DETERMINATION)



	2011	2012	2013	2014	2015
References for a preliminary ruling	16.3	15.6	16.3	15.0	15.3
Urgent preliminary ruling procedure	2.5	1.9	2.2	2.2	2.1
Direct actions	20.3	19.7	24.3	20.0	17.6
Appeals	15.1	15.2	16.6	14.5	14.0

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.

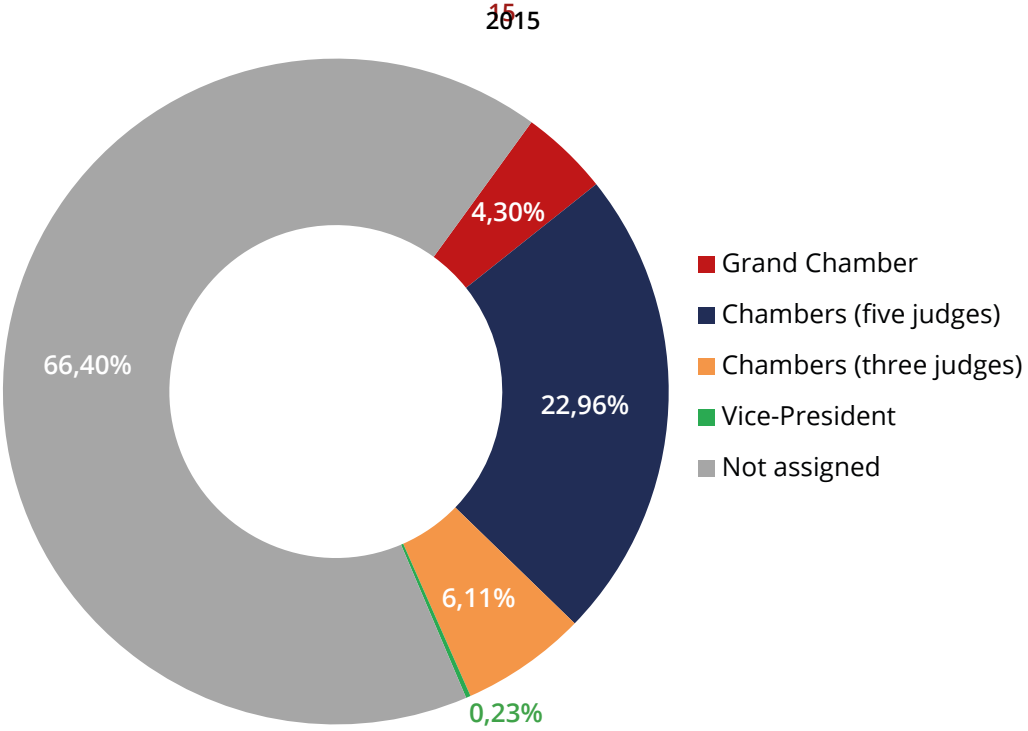
13. CASES PENDING AS AT 31 DECEMBER — NATURE OF PROCEEDINGS (2011–15) [1]



	2011	2012	2013	2014	2015
References for a preliminary ruling	519	537	574	526	558
Direct actions	131	134	96	94	72
Appeals	195	205	211	164	245
Special forms of procedure	4	9	1	2	6
Requests for an opinion		1	2	1	3
Total	**849**	**886**	**884**	**787**	**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 (2011–15) [1]



	2011	2012	2013	2014	2015
Grand Chamber	42	44	37	33	38
Chambers (five judges)	157	239	190	176	203
Chambers (three judges)	23	42	51	44	54
President	10				
Vice-President		1	1		2
Not assigned	617	560	605	534	587
Total	**849**	**886**	**884**	**787**	**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 (2011–15) [1]

	2011		2012		2013		2014		2015	
	Granted	Not granted	Granted	Not granted	Granted	Not granted	Granted	Not granted	Granted	Not granted
Direct actions			1			1				
References for a preliminary ruling	2	7	1	5		16	2	10	1	14
Appeals		5		1						
Total	**2**	**12**	**2**	**6**	**0**	**17**	**2**	**10**	**1**	**14**

1| Cases in which a decision or order granting or refusing a request for the expedited procedure to be applied was made during the year concerned.

16. MISCELLANEOUS — URGENT PRELIMINARY RULING PROCEDURE (2011–15) [1]

	2011		2012		2013		2014		2015	
	Granted	Not granted	Granted	Not granted	Granted	Not granted	Granted	Not granted	Granted	Not granted
Area of freedom, security and justice	2	5	4	1	2	3	4	1	5	5
Approximation of laws								1		
Total	**2**	**5**	**4**	**1**	**2**	**3**	**4**	**2**	**5**	**5**

1| Cases in which a decision was taken, during the year, to grant or refuse a request for the urgent procedure to be applied.

17. MISCELLANEOUS — PROCEEDINGS FOR INTERIM MEASURES (2015) [1]

	New applications for interim measures	Appeals concerning interim measures or interventions	Outcome	
			Not granted	Granted
Piekļuve dokumentiem		1		
State aid		4	4	
Competition	2	2	1	
Public procurement		2	2	
OVERALL TOTAL	**2**	**9**	**7**	

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 (1952–2015) — 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

>>>

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

2| Net figures.

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	
1987	144	251				395	21	208
1988	179	193				372	17	238
1989	139	244				383	19	188
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
2014	428	74	111		1	614	3	416
2015	436	48	206	9	3	702	2	399
Total	**9 146**	**8 949**	**1 895**	**115**	**26**	**20 131**	**361**	**10 612**

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

2| Net figures.

19. GENERAL TREND IN THE WORK OF THE COURT (1952–2015) — 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

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).
Case C-169/15 Montis Design (Cour de justice Benelux/Benelux Gerechtshof).

	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
1987	15			5	32		2	17	1	36		5				3			19									9		144
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
2014	23	13	6	10	87		5	4	41	20	1	52	2	7	6		23		30	18	14	8	28	4	3	8	3	12		428
2015	32	5	8	7	79	2	8	2	36	25	5	47		9	8	7	14		40	23	15	8	18	5	5	4	7	16	1	436
Total	**794**	**83**	**48**	**172**	**216**	**17**	**85**	**172**	**390**	**931**	**6**	**1 326**	**7**	**46**	**37**	**90**	**121**	**2**	**949**	**470**	**89**	**132**	**109**	**14**	**32**	**95**	**121**	**589**	**3**	**9 146**

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).
Case C-169/15 Montis Design (Cour de justice Benelux/Benelux Gerechtshof).

20. GENERAL TREND IN THE WORK OF THE COURT (1952–2015) — NEW REFERENCES FOR A PRELIMINARY RULING (BY MEMBER STATE AND BY COURT OR TRIBUNAL)

			Total
Belgium	Cour constitutionnelle	32	
	Cour de cassation	93	
	Conseil d'État	76	
	Other courts or tribunals	593	794
Bulgaria	Върховен касационен съд	2	
	Върховен административен съд	14	
	Other courts or tribunals	67	83
Czech Republic	Ústavní soud		
	Nejvyšší soud	5	
	Nejvyšší správní soud	24	
	Other courts or tribunals	19	48
Denmark	Højesteret	35	
	Other courts or tribunals	137	172
Germany	Bundesverfassungsgericht	1	
	Bundesgerichtshof	202	
	Bundesverwaltungsgericht	117	
	Bundesfinanzhof	307	
	Bundesarbeitsgericht	32	
	Bundessozialgericht	76	
	Other courts or tribunals	1 481	2 216
Estonia	Riigikohus	6	
	Other courts or tribunals	11	17
Ireland	Supreme Court	28	
	High Court	27	
	Other courts or tribunals	30	85
Greece	Άρειος Πάγος	10	
	Συμβούλιο της Επικρατείας	56	
	Other courts or tribunals	106	172
Spain	Tribunal Constitucional	1	
	Tribunal Supremo	61	
	Other courts or tribunals	328	390
France	Conseil constitutionnel	1	
	Cour de cassation	118	
	Conseil d'État	99	
	Other courts or tribunals	713	931

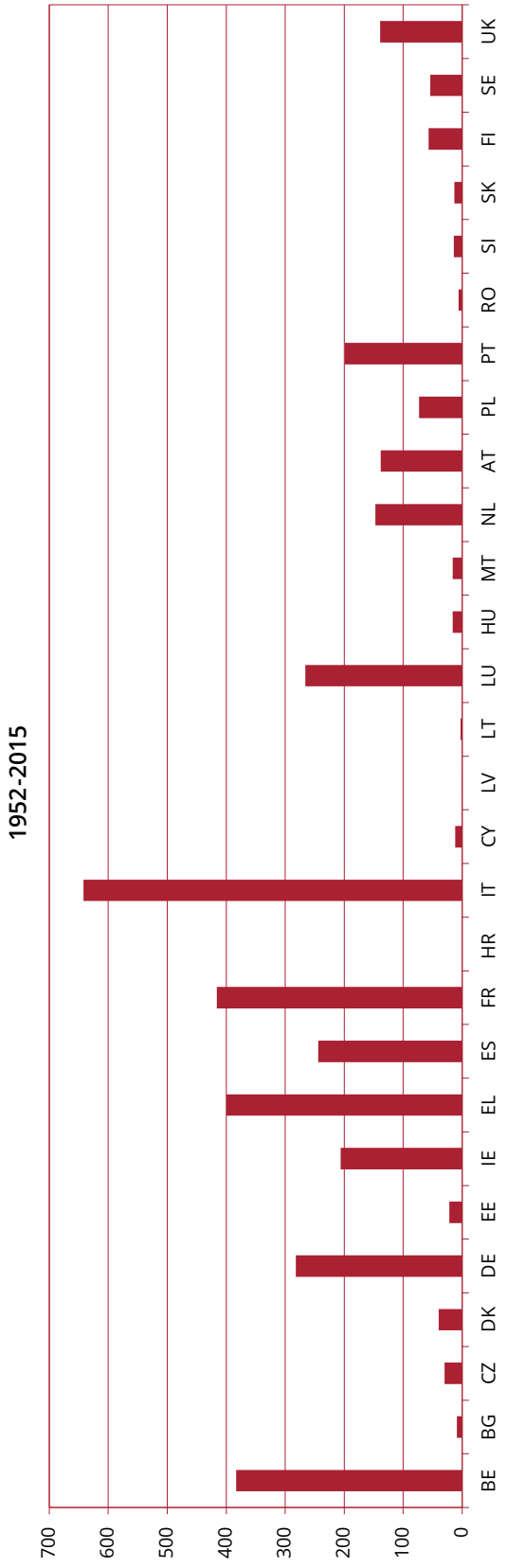
Croatia	Ustavni sud		
	Vrhovni sud		
	Visoki upravni sud		
	Visoki prekršajni sud		
	Other courts or tribunals	6	6
Italy	Corte Costituzionale	2	
	Corte suprema di Cassazione	132	
	Consiglio di Stato	126	
	Other courts or tribunals	1 066	1 326
Cyprus	Ανώτατο Δικαστήριο	4	
	Other courts or tribunals	3	7
Latvia	Augstākā tiesa	21	
	Satversmes tiesa		
	Other courts or tribunals	25	46
Lithuania	Konstitucinis Teismas	1	
	Aukščiausiasis Teismas	14	
	Vyriausiasis administracinis teismas	11	
	Other courts or tribunals	11	37
Luxembourg	Cour constitutionnelle	1	
	Cour de cassation	27	
	Cour administrative	27	
	Other courts or tribunals	35	90
Hungary	Kúria	20	
	Fővárosi Ítélőtábla	6	
	Szegedi Ítélötáblá	2	
	Other courts or tribunals	93	121
Malta	Constitutional Court		
	Qorti ta' l- Appel		
	Other courts or tribunals	2	2
Netherlands	Hoge Raad	271	
	Raad van State	107	
	Centrale Raad van Beroep	62	
	College van Beroep voor het Bedrijfsleven	154	
	Tariefcommissie	35	
	Other courts or tribunals	320	949

Austria	Verfassungsgerichtshof	5	
	Oberster Gerichtshof	109	
	Verwaltungsgerichtshof	90	
	Other courts or tribunals	266	470
Poland	Trybunał Konstytucyjny	1	
	Sąd Najwyższy	13	
	Naczelny Sąd Administracyjny	32	
	Other courts or tribunals	43	89
Portugal	Supremo Tribunal de Justiça	4	
	Supremo Tribunal Administrativo	55	
	Other courts or tribunals	73	132
Romania	Înalta Curte de Casație și Justiție	9	
	Curtea de Apel	55	
	Other courts or tribunals	45	109
Slovenia	Ustavno sodišče	1	
	Vrhovno sodišče	8	
	Other courts or tribunals	5	14
Slovakia	Ústavný Súd		
	Najvyšší súd	10	
	Other courts or tribunals	22	32
Finland	Korkein oikeus	17	
	Korkein hallinto-oikeus	47	
	Työtuomioistuin	3	
	Other courts or tribunals	28	95
Sweden	Högsta Domstolen	19	
	Högsta förvaltningsdomstolen	7	
	Marknadsdomstolen	5	
	Arbetsdomstolen	4	
	Other courts or tribunals	86	121
United Kingdom	House of Lords	40	
	Supreme Court	7	
	Court of Appeal	81	
	Other courts or tribunals	461	589
Others	Cour de justice Benelux/Benelux Gerechtshof [1]	2	
	Complaints Board of the European Schools [2]	1	3
Total			**9146**

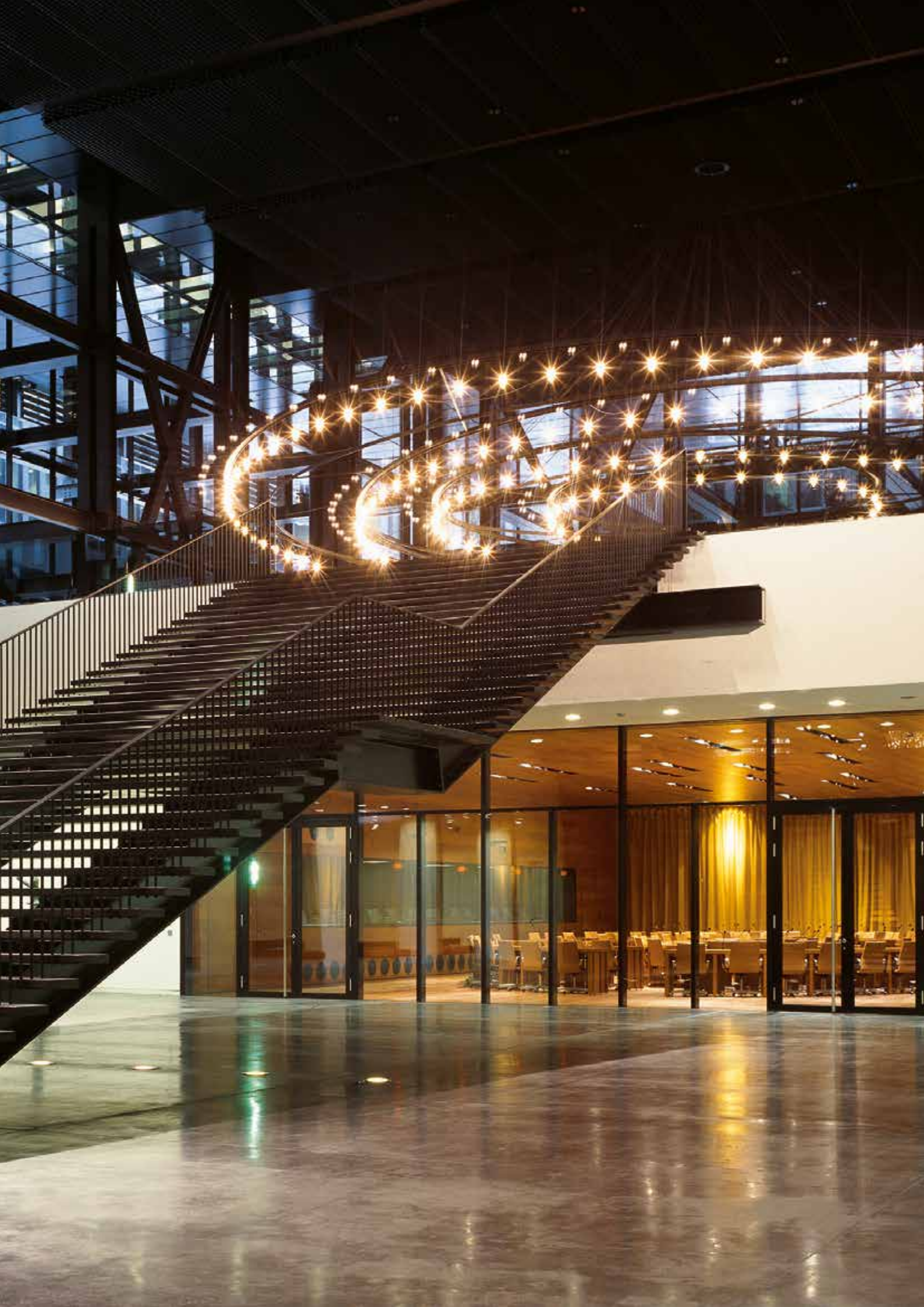
1| Case C-265/00 Campina Melkunie.
Case C-169/15 Montis Design.

2| Case C-196/09 Miles and Others.

21. GENERAL TREND IN THE WORK OF THE COURT (1952–2015) — ACTIONS FOR FAILURE TO FULFIL OBLIGATIONS BROUGHT AGAINST THE MEMBER STATES



BE	BG	CZ	DK	DE	EE	IRL	EL	ES	FR	HR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	Total
383	9	30	40	282	22	206	400	244	416	0	642	12	1	3	266	16	16	147	138	73	199	6	14	13	57	54	139	**3 828**



CHAPTER II
THE GENERAL COURT

A | PROCEEDINGS OF THE GENERAL COURT IN 2015

By Mr **Marc JAEGER**, President of the General Court

Even though forecasting the future is an inherently uncertain matter, it can be stated without too much risk that 2015 will probably remain a key year in the history of the General Court. Three major events have played a part in this.

First, reaping all the benefits of the reforms undertaken for the last few years and of the unstinting efforts of its personnel, the Court attained an exceptional level of productivity with unchanged resources. Few would have been able to predict five years ago that the Court would complete 987 cases in 2015, that is to say, an increase in the number of cases completed of nearly 90% since 2010 (527 cases completed) and an improvement of more than 20% over the previous record in 2014 (814 cases completed).

The number of new cases confirms the general upward trend that has been observed since the Court's creation. In 2015, 831 cases were brought, that is to say, an inrush of cases close to the record number in 2014 (912 cases). The average number of new cases per year between 2013 and 2015 is thus 40% above the average number between 2008 and 2010.

The jump in productivity was nevertheless such that the Court succeeded in reducing the number of cases pending before it to a significant extent (from 1 423 in 2014 to 1 267 in 2015, that is to say, a decrease of more than 10%). Last, among the fundamental indicators of the Court's activity, it should also be noted that the appreciable reduction, beginning in 2013, of the average duration of proceedings continued (a fall from 23.4 months in 2014 to 20.6 months in 2015, that is to say, of more than 10%).

Secondly, the new Rules of Procedure of the General Court entered into force on 1 July 2015, replacing the Court's original Rules of Procedure which had been adopted on 2 May 1991 and amended numerous times. This new instrument clarifies and simplifies certain procedures and restructures comprehensively the manner in which they are set out. It also introduces new provisions designed to render the conduct of proceedings more efficient, in the interests of a swift and modern judicial system that observes the procedural rights of parties to proceedings.

Finally, 2015 was the year in which the structural reform of the General Court was adopted. Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council of 16 December 2015 amending Protocol No 3 on the Statute of the Court of Justice of the European Union ([1]) provides for the increase of the number of judges of the General Court in three stages, so as to be doubled in September 2019. Furthermore, jurisdiction to rule at first instance on disputes between the European Union and members of its staff will be transferred to the Court, as will the seven posts of the judges currently sitting in the European Union Civil Service Tribunal. This transfer will take place on the basis of a subsequent legislative request from the Court of Justice ([2]).

Implementation of this reform of an unprecedented scale will require detailed consideration in 2016 of the Court's structure, organisation and operation, in order to establish the new bases for EU administrative justice at first instance. Its implementation will thus enable the Court to intensify — in a context in which cases are increasing in number, diversity and complexity — its permanent pursuit of speed, consistency and quality in the performance of the fundamental task which is assigned to it: ensuring review of the legality of acts of the European Union, which is a precondition for the right of litigants to effective judicial protection and a corollary of the principle of a European Union based on the rule of law.

1 | OJ 2015 L 341, p. 14.

2 | In accordance with recital 9 of the regulation.

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 the judgment of 29 April 2015 in ***Total and Elf Aquitaine* v *Commission*** (T-470/11, ECR, under appeal, EU:T:2015:241), the General Court recalled that only measures producing binding legal effects such as to affect the interests of the applicant, by bringing about a distinct change in his legal position, may be the subject of an action for annulment under Article 263 TFEU. In that regard, it stated that letters from the European Commission demanding that the parent companies pay fines which had been imposed on them jointly and severally with their subsidiary for infringement of the rules of competition law, following the reduction and partial repayment of those fines with respect to the subsidiary which had initially paid them, produced binding legal effects in that they definitively determined the position of the Commission and were enforceable.

Turning its attention to whether the contested letters had been such as to affect the applicants' interests by bringing about a distinct in their legal situation within the meaning of Article 263 TFEU, the Court held that that was not the case so far as the principal amount demanded from the applicants in those letters was concerned, as the letters had not altered that amount. Accordingly, the action was dismissed as inadmissible in so far as it sought the annulment of the contested letter with regard to that amount. However, in so far as such letters also demanded payment of default interest, the Court considered that they did modify the legal position of the parent companies, which had not previously been required to pay such interest, as their subsidiary had promptly paid the initial fine for which they were jointly and severally liable. The action therefore had to be held admissible in so far as it was directed against the default interest demanded from the applicants in the contested letters.

In the judgment of 4 March 2015 in ***United Kingdom v ECB*** (T-496/11, ECR, EU:T:2015:133) ([3]), the Court was required to rule on the admissibility of an action for annulment in the context of the Eurosystem Oversight Policy Framework published by the European Central Bank (ECB).

The Court observed, first of all, that, in order to determine whether an act is capable of having legal effects and, therefore, whether an action for annulment under Article 263 TFEU can be brought against it, it is necessary to examine its wording and context, its substance and the intention of its author. So far as concerns the wording and the context of the contested act, the Court emphasised that that examination enables the way in which the parties concerned could reasonably have perceived that act to be assessed. If the act is perceived as only proposing a course of conduct, it should be concluded that the act does not have legal effects that are such as to render an action for annulment brought against it admissible. On the other hand, that examination may reveal that the parties concerned will perceive the contested act as an act which they must comply with, in spite of the form or designation favoured by its author. In order to assess the way in which the parties concerned perceive the wording and context of the contested act, first, it should, according to the General Court, be examined whether the act was publicised outside the author itself. Second, from the point of view of the parties concerned, the wording of the act is also relevant. Third, the perception of the contested act's wording and context is likely to vary according to the nature of the parties concerned by that act.

3 | On this judgment, see also the comments under 'Eurosystem surveillance system — Competence of the ECB'.

The Court observed that in the case in point the Eurosystem Oversight Policy Framework had been publicised outside the ECB itself, by being published on the ECB's website. Far from being seen as a mere, expressly indicative, proposal, the Eurosystem Oversight Policy Framework is presented as describing the Eurosystem's role, which could have led the parties to conclude that it restates the powers actually conferred by the Treaties on the ECB and the national central banks of the euro area Member States. Furthermore, the passage of the Eurosystem Oversight Policy Framework at issue, relating to the location of central counterparties intended to clear transactions in respect of securities, is particularly specific, facilitating its application. As regards, last, the perception of the Eurosystem Oversight Policy Framework by the regulatory authorities of the euro area Member States, the Court observed that the ECB relied on a number of legal bases to support its assertion relating to the existence of Eurosystem competence to oversee and, as the case may be, regulate securities clearing systems, within which central counterparties fall. The Court considered that such arguments were not so clearly unfounded that it could be ruled out from the outset that the regulatory authorities of the euro area Member States concluded that the Eurosystem had competence to regulate the activity of security clearing and settlement systems and that they were therefore required to ensure that the location requirement set out in the Eurosystem Oversight Policy Framework was complied with.

In the light of all of the foregoing factors, the Court concluded that the Eurosystem Oversight Policy Framework had legal effects and therefore constituted an act against which an action for annulment could be brought under Article 263 TFEU.

2. CONCEPT OF DIRECT CONCERN

In the judgment of 7 July 2015 in ***Federcoopesca and Others* v *Commission*** (T-312/14, ECR, EU:T:2015:472), the General Court stated that the third limb of the fourth paragraph of Article 263 TFEU should apply, in the light of both the objective of that provision and the fact that the framers of the TFEU appended an additional condition relating to the absence of implementing measures to the condition of direct concern, only to challenges to acts that, in themselves, in other words irrespective of any implementing measures, alter the legal situation of the person concerned. Therefore, a finding that the contested act does not, in itself, alter the applicant's legal situation is sufficient to conclude that the third limb of the fourth paragraph of Article 263 TFEU is inapplicable, without it being necessary, in those circumstances, to determine whether the act entails implementing measures in respect of the applicant.

In connection with the same issue, in the judgment of 15 July 2015 in ***CSF* v *Commission*** (T-337/13, ECR, EU:T:2015:502) the Court held that a decision by which the Commission finds, on the basis of Article 11(3) of Directive 2006/42/EC ([4]), that a measure adopted by a Member State prohibiting machinery from being placed on the market or withdrawing it from the market was justified was of direct concern to the manufacturer of the goods concerned by the decision, which, to that extent, was entitled to seek annulment of that decision before the Courts of the European Union.

According to the Court, such a decision produces direct effects on the manufacturer's legal situation that differ from the effects of the national measures at issue. The decision means, in the light of the wording of Article 11 of Directive 2006/42, the purpose of that directive and its general scheme, that each of the Member States other than that which adopted the measure declared by the Commission to be justified must, where necessary, take the necessary measures to ensure the proper and uniform application of that directive. To that extent, the direct consequence of the Commission's decision is to trigger national procedures that have an impact on the right that the manufacturer, until then, enjoyed to market throughout the European Union goods that benefited from the presumption of conformity under Article 7 of Directive 2006/42.

4| Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC (recast) (OJ 2006 L 157, p. 24).

3. STANDING TO BRING AN ACTION AGAINST A DECISION CONCLUDING AN AGREEMENT

In the judgment of 10 December 2015 in ***Front Polisario v Council*** (T-512/12, ECR, EU:T:2015:953), the Court ruled on the ***locus standi*** of the Popular Front for the Liberation of Saguia-el-Hamra and Rio de Oro (the Polisario Front), in an action for annulment of the Decision of the Council of the European Union approving the conclusion of an agreement between the European Union and the Kingdom of Morocco ([5]). That agreement applies, inter alia, to the territory of Western Sahara, part of which is claimed by the applicant.

The Court found that the provisions of the agreement approved by the contested decision produce effects on the legal situation of the entire territory on which the agreement applies and, accordingly, on the territory of Western Sahara controlled by the Kingdom of Morocco. Those effects are of direct concern not only to that State but also to the applicant, since the definitive international status of that territory has not yet been determined and must be determined in a negotiation procedure, under the aegis of the United Nations (UN), between the Kingdom of Morocco and specifically the Polisario Front. For the same reason, the contested decision must be considered to be of individual concern to the Polisario Front. According to the Court, those circumstances do indeed constitute a factual situation in which the applicant is differentiated from all other persons and given a special status. The Polisario Front is the only other participant in the discussions held under the aegis of the UN between it and the Kingdom of Morocco with a view to determining the definitive international status of Western Sahara.

The Court therefore concluded that the contested decision was of direct and individual concern to the Polisario Front.

4. CAPACITY TO BRING AN ACTION

In the judgment in ***Front Polisario*** v ***Council*** ([6]), cited above (EU:T:2015:953)***,*** the Court held that, in certain particular cases, an entity not having legal personality under the law of a Member State or of a third State can nonetheless be regarded as a 'legal person' within the meaning of the fourth paragraph of Article 263 TFEU and be entitled to bring an action for annulment on the basis of that provision. That is in particular so where, in their measures or actions, the European Union and its institutions treat the entity in question as a distinct subject which may possess rights of its own or be subject to obligations or restrictions.

In the case in point, first of all, the Court found that the Polisario Front is one of the parties to the dispute over the fate of the territory of Western Sahara and that, as a party to that dispute, it is referred to by name in the relevant texts, including in a number of resolutions of the European Parliament. Next, it observed that at present it is impossible for the Polisario Front to establish itself as a legal person under the law of Western Sahara, as that law does not yet exist. While it is the case that the Kingdom of Morocco ***de facto*** administers virtually the whole of the territory of Western Sahara, that is a ***de facto*** situation to which the Polisario Front is opposed and which is precisely at the origin of the dispute between it and that State. It would certainly be possible for the Polisario Front to establish itself as a legal person under the law of a third State, but it cannot be required to do so. Last, the Court recalled that the Council and the Commission themselves acknowledge

5| Council Decision 2012/497/EU of 8 March 2012 on the conclusion of an Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco concerning reciprocal liberalisation measures on agricultural products, processed agricultural products, fish and fishery products, the replacement of Protocols 1, 2 and 3 and their Annexes and amendments to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part (OJ 2012 L 241, p. 2).

6| See also the comments on this judgment under 'External relations'.

that the international status and the legal situation of Western Sahara have particular characteristics and consider that the definitive status of that territory and, accordingly, the law that will be applicable there must be determined in the context of a peace process under the aegis of the UN. The UN specifically regards the Polisario Front as an essential participant in such a process.

In the light of those circumstances, the Court held that the Polisario Front must be regarded as a 'legal person' within the meaning of the fourth paragraph of Article 263 TFEU.

5. CONCEPT OF ADDRESSEE OF A MEASURE

In the order of 13 March 2015 in ***European Coalition to End Animal Experiments v ECHA*** (T-673/13, ECR, EU:T:2015:167), the Court was required to determine whether the applicant, as intervener in the proceedings before the Board of Appeal of the European Chemicals Agency (ECHA), could be considered an addressee of the decision adopted in those proceedings.

The Court stated that, in an action for annulment under Article 263 TFEU, the applicant may be regarded as an addressee of the contested decision only (i) on the formal condition that it is expressly indicated as an addressee or (ii) on the substantive condition that the provisions of the decision-make clear that the applicant is identified in it as an addressee on the basis that the decision, expressing the will of its author, is intended to produce binding legal effects capable of affecting the interests of the applicant by bringing about a distinct change in his legal position.

COMPETITION RULES APPLICABLE TO UNDERTAKINGS

1. GENERAL ISSUES

The case-law in 2015 concerned, in particular, the mechanism for termination of proceedings laid down in Article 13(2) of Regulation (EC) No 1/2003 ([7]), observance of the rights of the defence, and disclosure of information obtained in the context of application of the rules on competition and the possibility of it being used in actions for damages.

(a) COMPLAINTS — MECHANISM IN ARTICLE 13(2) OF REGULATION (EC) NO 1/2003

In the case giving rise to the judgment of 21 January 2015 in ***easyJet Airline v Commission*** (T-355/13, ECR, EU:T:2015:36), an action was brought before the General Court against the decision by which the Commission had rejected the complaint lodged by the applicant against an airport operator in relation to alleged anti-competitive conduct in the airport services market. That decision was adopted on the basis of Article 13(2) of Regulation (EC) No 1/2003, on the ground that a competition authority of a Member State had already dealt with the matter. In support of its action, the applicant submitted, in particular, that the Commission erred in law in finding that the national competition authority had dealt with its complaint within the meaning of Article 13(2) of Regulation (EC) No 1/2003, when the complaint had in reality been rejected on priority grounds.

7| 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).

As regards judicial review of a Commission decision based on Article 13(2) of Regulation (EC) No 1/2003, the Court observed that the purpose of that review is to verify that the contested decision is not based on materially incorrect facts and that the Commission has not erred in law, made a manifest error of assessment or misused its powers in finding that a competition authority of a Member State has already dealt with a complaint. On the other hand, the Court continued, review of decisions of the competition authorities of Member States is a matter for national courts alone, which perform an essential function in the application of the EU competition rules.

Furthermore, according to the Court, the expression 'complaint … which has already been dealt with by another competition authority' contained in Article 13(2) of Regulation (EC) No 1/2003 is broad in scope in that it is capable of including all cases of complaints which have been examined by another competition authority, irrespective of the outcome. That literal interpretation is consistent with the general scheme of the regulation, from which it is apparent that what matters is not the outcome of the review of the complaint by that competition authority, but the fact that it has been reviewed by that authority. It follows that the Commission may, in order to reject a complaint, properly rely on the ground that a competition authority of a Member State has previously rejected it on priority grounds.

Accordingly, the fact — even assuming it to be proved — that the national competition authority concerned did not close the procedure for the examination of a complaint which had been brought before it by taking a decision within the meaning of Article 5 of Regulation (EC) No 1/2003 and that it relied on priority grounds did not preclude the Commission from finding, pursuant to Article 13(2) of that regulation, that that complaint had been dealt with by a competition authority of a Member State and from rejecting it on that ground.

(b) RIGHTS OF THE DEFENCE

— RIGHT TO BE HEARD

In the judgment of 15 July 2015 in ***Akzo Nobel and Akcros Chemicals v Commission*** (T-485/11, ECR (Extracts), EU:T:2015:517), the Court had occasion to state that observance of the rights of the defence requires that the undertaking under investigation has been afforded the opportunity during the administrative procedure to make known its views on the truth and relevance of the facts alleged and on the documents used by the Commission to support its claim that there has been an infringement of the TFEU. A period of four working days afforded to the undertaking under investigation to submit its observations cannot in the Court's view be considered to be compatible with observance of the rights of the defence.

Consequently, the contested decision had to be annulled, since the applicants had sufficiently demonstrated not that without that procedural irregularity, that is to say, if they had had a reasonable amount of time to make their views known, the contested decision would have been different in substance, but that they would have been better able to defend themselves. According to the Court, that was to be determined by reference to the time at which the administrative procedure leading to the adoption of the contested decision was conducted, that is to say, before the date on which that decision was adopted.

— OBLIGATION TO STATE REASONS

Among the 13 judgments delivered on the same day in a series of actions brought against a decision by which the Commission had imposed fines on a number of airlines for their participation in a cartel on the air freight market ([8]), the judgment of 16 December 2015 in ***Martinair Holland v Commission*** (T-67/11, ECR, EU:T:2015:984) gave the Court the opportunity to provide important clarification of the scope of the obligation to state reasons.

The Court recalled that, in stating the reasons for a decision which it takes to enforce the EU competition rules, the Commission is required under Article 296 TFEU to set out at least the facts and considerations having decisive importance in the context of the decision in order to make clear to the competent court and the persons concerned the circumstances in which it has applied EU law. In addition, the statement of reasons must be logical and, in particular, contain no internal inconsistency that would prevent a proper understanding of the reasons underlying the measure. In that context, the Court emphasised that the principle of effective judicial protection requires that the operative part of a decision adopted by the Commission, finding infringements of the competition rules, must be particularly clear and precise and that the undertakings held liable and penalised must be in a position to understand and to contest the imputation of liability and the imposition of those penalties, as set out in the wording of the operative part.

The Court stated, moreover, that where the grounds of a Commission decision finding an infringement describe a single and continuous infringement in which all the undertakings in question participated, whereas the operative part, consisting of a number of articles, finds either a number of separate single and continuous infringements or one single and continuous infringement, liability for which is attributed only to the undertakings which participated directly in the conduct referred to in each of those articles, there is a contradiction between the grounds of the decision and its operative part. The Court observed that the mere existence of such a contradiction is not sufficient to establish that the decision is vitiated by a breach of the obligation to state reasons, in so far as, first, the decision, taken as a whole, allows those concerned to identify and plead that lack of consistency; second, the wording of the operative part is sufficiently clear and precise to allow them to ascertain the exact scope of the decision; and, third, the evidence relied upon to demonstrate that the undertakings concerned participated in the infringements imputed to them in the operative part is clearly identified and examined in the grounds. On the other hand, if the internal inconsistencies in the Commission's decision are liable to infringe the rights of the defence of the undertakings concerned and prevent the Courts of the European Union from exercising their power of review, the decision is vitiated by a breach of the obligation to state reasons which justifies its annulment. That is so, in particular, where the decision does not allow the addressees to assess the sufficiency of the evidence set out in the grounds or to understand the line of reasoning that led the Commission to find them liable for the infringement.

In addition, according to the Court, when national courts rule on agreements, decisions or concerted practices under Article 101 TFEU which are already the subject of a Commission decision, they cannot take decisions running counter to that decision. It follows that the national courts are bound by the decision adopted by the Commission, in so far as it has not been annulled or invalidated, and consequently the meaning of the operative part of that decision must be unambiguous. In particular, clear wording of the operative part of a decision finding an infringement of the EU competition rules must allow the national courts to understand the scope

8 | Judgments of 16 December 2015 in ***Air Canada v Commission*** (T-9/11, EU:T:2015:994); ***Koninklijke Luchtvaart Maatschappij v Commission*** (T-28/11, EU:T:2015:995); ***Japan Airlines v Commission*** (T-36/11, EU:T:2015:992); ***Cathay Pacific Airways v Commission*** (T-38/11, EU:T:2015:985); ***Cargolux Airlines v Commission*** (T-39/11, EU:T:2015:991); ***Latam Airlines Group and Lan Cargo v Commission*** (T-40/11, EU:T:2015:986); ***Singapore Airlines and Singapore Airlines Cargo PTE v Commission*** (T-43/11, EU:T:2015:989); ***Deutsche Lufthansa and Others v Commission*** (T-46/11, EU:T:2015:987); ***British Airways v Commission*** (T-48/11, EU:T:2015:988); ***SAS Cargo Group and Others v Commission*** (T-56/11, EU:T:2015:990); ***Air France-KLM v Commission*** (T-62/11, EU:T:2015:996); ***Air France v Commission*** (T-63/11, EU:T:2015:993); and ***Martinair Holland v Commission*** (T-67/11, ECR, EU:T:2015:984).

of that infringement and to identify the persons liable, in order to be able to draw the necessary inferences as regards claims for damages brought by persons harmed by that infringement. The wording of the operative part of such a decision is evidently decisive, since it is such as to establish mutual rights and obligations of the persons concerned.

(c) DISCLOSURE OF INFORMATION AND ACTIONS FOR DAMAGES

— INFORMATION COMMUNICATED IN THE CONTEXT OF THE LENIENCY PROGRAMME

In the case giving rise to the judgment of 15 July 2015 in ***AGC Glass Europe and Others v Commission*** (T-465/12, ECR, (Extracts), under appeal, EU:T:2015:505), the Court was called upon to examine the legality of the Commission decision rejecting a request for confidential treatment submitted by a number of carglass manufacturers. The request related to certain information in the Commission decision by which the Commission had previously found that those undertakings had infringed Article 101 TFEU and Article 53 of the Agreement on the European Economic Area (EEA) ([9]). In support of their action, the applicants maintained, in particular, that the 2002 leniency notice ([10]) and the 2006 leniency notice ([11]) contain provisions which create a legitimate expectation, for all undertakings falling within their scope, that information voluntarily provided will remain confidential, as far as possible, even at the stage of publication of the Commission's decision.

The Court observed that it is clear from points 3 to 7 of the 2002 leniency notice and from points 3 to 5 of the 2006 leniency notice that the sole aim of those notices is to establish the conditions under which an undertaking may obtain either immunity from a fine or a reduction in the amount of the fine. Those notices do not provide for any other advantage which an undertaking can claim in exchange for its cooperation. That interpretation is expressly confirmed in point 31 of the 2002 leniency notice and in point 39 of the 2006 leniency notice. Couched in identical terms, each of those points states that the fact that immunity or reduction in respect of fines is granted cannot protect an undertaking from the civil law consequences of its participation in an infringement of Article 101 TFEU.

In addition, point 6 of the 2006 leniency notice, according to which 'potential leniency applicants might be dissuaded from cooperating with the Commission … if this could impair their position in civil proceedings, as compared to companies who do not cooperate', means that an undertaking should not be placed at a disadvantage with regard to civil litigation which may be brought against it solely because it voluntarily submitted in writing to the Commission a leniency statement, which could be the subject of a court decision ordering discovery. In the context of that desire to provide quite specific protection for leniency statements, the Commission imposed on itself, in points 31 to 35 of the 2006 leniency notice, specific rules governing the form of those statements, access to them and their use. Yet those rules concern exclusively the documents and statements, written or recorded, received in accordance with the 2002 or 2006 leniency notices, the disclosure of which is in general considered by the Commission to undermine the protection of the purpose of inspections and investigations within the meaning of Article 4 of Regulation (EC) No 1049/2001 ([12]). It is therefore neither the intention nor the effect of those rules that the Commission should be prevented from publishing, in its decision bringing the administrative procedure to an end, the information relating to the description of the infringement which was submitted to it as part of the leniency programme, and those rules give rise to no legitimate expectation in that regard.

9| Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3).

10| Commission Notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).

11| Commission Notice on Immunity from fines and reduction of fines in cartel cases (OJ 2006 C 298, p. 17).

12| 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).

The Court thus concluded that such publication, made pursuant to Article 30 of Regulation (EC) No 1/2003 and with due regard to the obligation of professional secrecy, did not frustrate the legitimate expectation which the applicants could claim under the 2002 and 2006 leniency notices, which concerns the calculation of the amount of the fine and the treatment of the documents and statements specifically referred to.

— SCOPE OF THE OBLIGATION TO PUBLISH

Another Commission decision rejecting a request for confidential treatment is central to the case giving rise to the judgment of 15 July 2015 in ***Pilkington Group v Commission*** (T-462/12, ECR, EU:T:2015:508). As in the case of ***AGC Glass Europe***, a carglass manufacturer affected by the Commission decision finding an infringement in that sector objected to the publication of certain information contained in that decision. The manufacturer in question challenged the rejection of its request for confidentiality, submitting that it represented a change in the Commission's policy concerning the publication of confidential information by comparison with the practice followed in the past in specific and similar cases. The applicant maintained that in acting thus the Commission infringed the principles of equal treatment and protection of legitimate expectations.

The Court observed that the Commission is entitled, within the framework of its powers in relation to the implementation of competition law within the European Union, to publish, with due regard to the rules governing the protection of professional secrecy, versions of its decisions that are fuller than the minimum required by Article 30 of Regulation (EC) No 1/2003. Accordingly, as is also true with regard to the general level of fines, the Commission is entitled to adjust its approach as to the publication of its decisions to the needs of its competition policy. The supervisory task conferred on the Commission by Article 101(1) TFEU and Article 102 TFEU not only includes the duty to investigate and punish individual infringements but also encompasses the duty to pursue a general policy designed to apply, in competition matters, the principles laid down by the TFEU and to guide the conduct of undertakings in the light of those principles.

Accordingly, even on the assumption that the contested decision might reveal a change in the Commission's approach as regards the degree of detail in the published version of the decision finding an infringement in the carglass sector by comparison with previous cases, that alone, in the Court's view, is not capable of affecting its legality.

2. DEVELOPMENTS IN THE AREA OF ARTICLE 101 TFEU

(a) IMPUTABILITY — AGENCY AGREEMENT

In the judgment of 15 July 2015 in ***voestalpine and voestalpine Wire Rod Austria v Commission*** (T-418/10, ECR, EU:T:2015:516), the Court, hearing an action brought by an undertaking that denied having participated, through its agent in Italy, in a regional aspect of a cartel involving 18 undertakings making supplies of prestressing steel ([13]), explained the criteria for determining whether two companies that have separate legal identities may be regarded, for the purposes of imputing the anti-competitive conduct of one of them to the other, as forming one and the same economic undertaking adopting the same course of conduct on the market.

After recalling that, for the purposes of the application of the competition rules, the term 'undertaking' must be understood as designating an economic unit that may consist of several companies having distinct legal

13| On the other matters concerning this cartel, which relate to the method of calculating the amount of the fine, see the comments below under 'c) Calculation of the amount of the fine'.

identities, the Court observed that, in the case of companies having a vertical relationship, such as that between a principal and its agent or intermediary, two factors have been taken to be the main parameters for determining whether there is a single economic unit: first, whether the intermediary takes on any economic risk and, second, whether the services provided by the intermediary are exclusive.

In that context, as regards the assumption of economic risk, the Court explained that it is necessary to ascertain the extent to which the agent bears the financial risks associated with sales or with the performance of the contracts concluded with third parties so far as the activities in respect of which he was appointed by the principal are concerned. The Court further observed that, so far as concerns the exclusive nature of the services provided by the intermediary, where the agent represents not one but two principals, in order to determine the existence of an economic unit it is necessary to ascertain whether that agent is in a position, as regards the activities entrusted to him by the principal, to act as an independent trader free to determine his own business strategy. If the agent is not in a position to act in that way, the functions which he carries out on behalf of the principal form an integral part of the latter's activities.

(b) LIMITATION

— ACT INTERRUPTING THE LIMITATION PERIOD — DECISION GRANTING CONDITIONAL IMMUNITY

The judgment of 6 October 2015 in ***Corporación Empresarial de Materiales de Construcción v Commission*** (T-250/12, ECR, EU:T:2015:749) provided the Court with the opportunity also to clarify whether a decision under point 15 of the 2002 leniency notice to grant conditional immunity must be classified as an act interrupting the limitation period, within the meaning of Article 25(3) of Regulation (EC) No 1/2003.

The Court held that a decision to grant conditional immunity to a leniency applicant, in that it confers a special procedural status on that applicant, is fundamental in order to enable the Commission to investigate a suspected infringement of the competition rules and initiate proceedings in respect of it. First of all, the leniency programme contributes directly to the full effectiveness of the policy of pursuing infringements of the competition rules; next, the decision to grant conditional immunity to a leniency applicant shows that the latter's application satisfies the prerequisites so that it can, after the administrative procedure, benefit from definitive immunity; and, last, that procedural status requires the person concerned, in order to claim the benefit of definitive immunity, to follow, until the adoption by the Commission of the final decision, conduct which satisfies the requirements of point 11(a) to (c) of the 2002 leniency notice.

The Court concluded that a decision to grant conditional immunity is a procedural measure adopted for the purpose of the investigation or proceedings in respect of an infringement, within the meaning of the first sentence of Article 25(3) of Regulation (EC) No 1/2003, and must therefore be described as an action interrupting the limitation period which produces effects ***erga omnes*** with regard to all the undertakings that have participated in the infringement at issue.

— LIABILITY — RELATIONSHIP BETWEEN SUBSIDIARIES AND THE PARENT COMPANY

In the case giving rise to the judgment of 15 July 2015 in ***Akzo Nobel and Others v Commission*** (T-47/10, ECR (Extracts), under appeal, EU:T:2015:506), the Court heard an action against the decision by which the Commission found that the applicants had participated in a cartel on the European market for heat stabilisers. In support of their action, the applicants, a parent company and its subsidiaries active on that market, alleged, in particular, that there had been an infringement of Article 25(1)(b) of Regulation (EC) No 1/2003, claiming that the Commission was time-barred from taking action against those subsidiaries and, therefore, from imposing on those subsidiaries a fine jointly and severally with their parent company.

The Court held that the subsidiaries of a company which have themselves directly participated in infringements of Article 101(1) TFEU may legitimately claim that the limitation period provided for in Article 25(1)(b) of Regulation (EC) No 1/2003 has expired in their regard, provided that the Commission's first actions for the purpose of the investigation or proceedings in respect of those infringements, within the meaning of Article 25(3) of that regulation, were taken after the expiry of that period in respect of those subsidiaries. However, the Court recalled, the expiry of the limitation period provided for in Article 25 of Regulation (EC) No 1/2003 is neither to cause an infringement to cease to exist nor to prevent the Commission from establishing, in a decision, liability for such an infringement, but only to enable those that benefit from the limitation period's expiry to avoid proceedings aimed at imposing penalties.

Furthermore, it is clear from a textual, contextual and purposive interpretation of Article 25 of Regulation (EC) No 1/2003 that the expiry of the limitation period under Article 25(1) of that regulation benefits, and may be invoked by, each of the legal persons separately when they are the subject of proceedings brought by the Commission. Thus, the Court observed, the mere fact that the subsidiaries of a parent company benefit from the expiry of the limitation period does not result in the parent company's liability being called into question and prevent proceedings being brought against that parent company. According to the Court, that assessment is not contradicted by the use, in Article 25(3) and (4) of Regulation (EC) No 1/2003, of the concept of an undertaking within the meaning of Article 101(1) TFEU, which is intended only to define the actions which interrupt the limitation period and the scope of their effects in respect of all undertakings and associations of undertakings which participated in the infringement, that is to say, including the legal persons constituting them.

(c) CALCULATION OF THE AMOUNT OF THE FINE

— DETERMINATION OF THE VALUE OF SALES

In the judgment of 9 September 2015 in ***Panasonic and MT Picture Display v Commission*** (T-82/13, ECR (Extracts), under appeal, EU:T:2015:612), the Court was required to rule on the criteria that must be applied in order to determine the value of sales of an undertaking for the purposes of setting the amount of the applicable fine. The Court observed that, in this instance, in response to a request for information from the Commission, the applicants had proposed an alternative methodology of calculating the value of direct sales in the EEA through transformed products, which consisted in taking into account the weighted average of the colour picture tubes associated with those sales, in terms of their actual size and the period concerned. The Court noted that, according to point 15 of the 2006 guidelines on setting fines ([14]), in determining the value of

14 | 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).

sales by an undertaking, the Commission is required to take that undertaking's best available figures. Since the Commission had data more accurately reflecting the value of direct EEA sales through transformed products, the Court held that it departed from those guidelines so far as concerned the calculation of the basic amount of the fines imposed on the applicants, without providing any justification.

The Court held that, for the purposes of setting the amount of the fines imposed on the applicants, it should therefore take account, in the exercise of its unlimited jurisdiction, of the figures provided by the applicants themselves during the administrative procedure. It considered that, on a fair assessment of the circumstances of the case, the amount of the fines to be imposed on the applicants should be set on the basis of the figures relating to the value of sales which they had provided in response to the Commission's request for information.

— PRINCIPLE THAT THE PENALTY MUST BE SPECIFIC TO THE OFFENDER AND THE OFFENCE

In 2015, a series of actions brought against the decisions by which the Commission had penalised 18 undertakings that supplied prestressing steel for their participation in a cartel in that sector enabled the Court, inter alia, to provide helpful clarification regarding the method of calculating fines.

Thus, in the judgments of 15 July 2015 in ***SLM and Ori Martin v Commission*** (T-389/10 and T-419/10, ECR (Extracts), under appeal, EU:T:2015:513), ***Fapricela v Commission*** (T-398/10, ECR (Extracts), under appeal, EU:T:2015:498), ***voestalpine and voestalpine Wire Rod Austria*** v ***Commission***, cited above (EU:T:2015:516), and ***Trafilerie Meridionali v Commission*** (T-422/10, ECR (Extracts), under appeal, EU:T:2015:512), the Court recalled that, in a situation such as that in this instance, where the cartel in question consisted of several parts and had been characterised by the Commission as a single, complex and continuous infringement, it follows from the principle that the penalty must be specific to the offender that the penalty must take account of the situation of each offending undertaking in relation to the infringement.

In the judgments in ***voestalpine and voestalpine Wire Rod Austria*** v ***Commission***, cited above (EU:T:2015:512), and ***SLM and Ori Martin*** v ***Commission***, cited above (EU:T:2015:513), the Court observed that, where there has been a single infringement, in the sense of a complex infringement combining a number of agreements and concerted practices on separate markets where the offending undertakings are not all present or may have only partial knowledge of the overall plan, the penalties must be made to fit the individual conduct and specific characteristics of the undertakings concerned. Thus, an offender who is not held liable in respect of certain parts of a single infringement cannot have had a role in the implementation of those parts. In this connection, in the judgment in ***Trafilerie Meridionali*** v ***Commission***, cited above (EU:T:2015:512), the Court observed that an undertaking whose liability is established in relation to several branches of a cartel contributes more to the effectiveness and the seriousness of the cartel than an offender involved in only one branch of that cartel. Thus, the first undertaking commits a more serious infringement than the second. In any event, according to the Court, an undertaking can never be fined an amount which is calculated to reflect its participation in a collusion for which it is not held liable.

Furthermore, in the judgments in ***voestalpine and voestalpine Wire Rod Austria*** v ***Commission***, cited above (EU:T:2015:512), and ***SLM and Ori Martin*** v ***Commission***, cited above (EU:T:2015:513), the Court observed that, in practice, the penalty may be made to fit the particular infringement at various stages of the determination of the amount of the fine: first, at the stage of assessing the objective gravity of the infringement as such; second, at the stage of assessing the mitigating circumstances; and, third, at a later stage than that of the assessment of the objective gravity of the infringement or the mitigating circumstances. In that regard, point 36 of the 2006 guidelines on setting fines states that the Commission may, in certain cases, impose a symbolic fine and, as indicated in point 37 of those guidelines, it may also depart from the general methodology laid down for the setting of fines, in the light, inter alia, of the particularities of a given case.

— ABILITY TO PAY — REVIEW BY THE COURT

Still in the context of the series of actions in the prestressing steel sector, the judgments in ***Fapricela*** v ***Commission***, cited above (EU:T:2015:498), ***Trafilerie Meridionali*** v ***Commission,*** cited above (EU:T:2015:512), and of 15 July 2015 in ***Westfälische Drahtindustrie and Others v Commission*** (T-393/10, ECR (Extracts), under appeal, EU:T:2015:515) provided the Court, in particular, with the opportunity to state that a reduction of the amount of the fine can be granted under point 35 of the 2006 guidelines on setting fines, which relates to the ability of undertakings to pay, only in exceptional circumstances and on conditions defined in those guidelines. Thus, first, it must be shown that the fine imposed 'would irretrievably jeopardise the economic viability of the undertaking concerned and cause its assets to lose all their value'. Second, the existence of a 'specific social and economic context' must also be established. Those two sets of conditions were identified by the Courts of the European Union before point 35 of the 2006 guidelines on setting fines was adopted and the application of that point to the undertakings concerned thus constitutes a specific interpretation of the principle of proportionality in relation to penalties for infringements of competition law. According to the Court, since the application of point 35 of the 2006 guidelines on setting fines is the last factor taken into account in determining the amount of the fines imposed for a breach of the competition rules applicable to undertakings, the appraisal of the ability to pay of the undertakings on which penalties have imposed falls within the unlimited jurisdiction provided for in Article 261 TFEU and Article 31 of Regulation (EC) No 1/2003.

Also, in the Court's view, failure to review the whole of the contested decision of the Court's own motion does not contravene the principle of effective judicial protection. Compliance with that principle does not require that the Court — which is indeed obliged to respond to the pleas in law raised and to carry out a review of both the law and the facts — should be obliged to undertake of its own motion a new and comprehensive investigation of the file. Thus, the Court continued, subject to the pleas relating to matters of public interest which they must examine and, where appropriate, raise of their own motion, the Courts of the European Union must carry out their review on the basis of the evidence adduced by the applicant in support of the pleas in law put forward, and they cannot use the Commission's discretion as regards the evaluation of that evidence as a basis for dispensing with the conduct of an in-depth review of the law and of the facts.

Last, the Court emphasised that the relevant Court of the European Union must, in principle and subject to examination of the evidence adduced by the parties, take account in the exercise of its unlimited jurisdiction of the legal and factual situation prevailing on the date on which it makes its determination where it considers that it should exercise such jurisdiction.

— REDUCTION OF THE AMOUNT OF THE FINE OWING TO THE EXCESSIVE DURATION OF THE ADMINISTRATIVE PROCEDURE — REVIEW BY THE COURT

In the judgment in ***Akzo Nobel and Others*** v ***Commission,*** cited above (EU:T:2015:506)***,*** the Court examined, from the point in view, in particular, of the principle of equal treatment, a decision by which the Commission granted a reduction in the amount of the fines imposed on the undertakings involved in an infringement apart from those which, like the applicants, had brought judicial proceedings against the decisions adopted in their regard during the administrative procedure.

According to the Court, the argument that that difference in treatment might be justified by the difference between the situations in question, in that, unlike the other undertakings, the applicants had brought judicial proceedings, must be considered incompatible with the principle of effective judicial protection. Therefore,

by granting to all the undertakings which had participated in the infringements in question, apart from the applicants, a reduction in the amount of the fines imposed because of the excessive length of the administrative procedure, the Commission vitiated by unjustified unequal treatment its decision finding infringements of the competition rules and imposing fines.

(d) SETTLEMENT — 'HYBRID' PROCEDURE

— FINES — EQUAL TREATMENT

The judgment of 20 May 2015 in ***Timab Industries and CFPR v Commission*** (T-456/10, ECR, under appeal, EU:T:2015:296), concerning a cartel on the European market for animal feed phosphates, enabled the Court to explain the scope of the principle of equal treatment in the context of the settlement procedure in cartel cases established by Regulation (EC) No 622/2008 ([15]). That judgment provided the Court with the opportunity to adjudicate on that procedure for the first time.

The Court observed that, where a settlement procedure does not involve all the participants in an infringement, for example, as in the case in question, where an undertaking withdraws from the settlement procedure, the Commission must adopt two separate decisions. On the one hand, following a simplified procedure (the settlement procedure), it adopts a decision which is addressed to the participants in the infringement who have decided to enter into a settlement and reflects the commitment of each of them. On the other hand, following a standard procedure, it adopts a decision addressed to the participants in the infringement who have decided not to enter into a settlement. However, even in such a hybrid case, involving the adoption of two decisions with different addressees and after two separate procedures, the undertakings concerned were participants in one and the same cartel and the principle of equal treatment must therefore be observed. That principle requires that comparable situations must not be treated differently and that different situations must not be treated in the same way, unless such treatment is objectively justified.

It follows that, although the settlement procedure is an alternative to the standard administrative procedure, distinct from it, and presenting certain special features, such as an advance statement of objections and the notification of a likely range of fines, the 2006 guidelines on setting fines are still fully applicable in that context. That means that, in determining the amount of the fine, there cannot be any discrimination between the participants in the same cartel with respect to the information and calculation methods which are not affected by the special features of the settlement procedure, such as a 10% reduction in the event that a settlement is entered into.

— RANGE OF FINES — BINDING EFFECT

In the judgment in ***Timab Industries and CFPR*** v ***Commission***, cited above (EU:T:2015:296), the Court also ruled on the effects of the notification of a range of fines in the context of the settlement procedure with respect to an undertaking that withdrew from that procedure.

15| Commission Regulation (EC) No 622/2008 of 30 June 2008 amending Regulation (EC) No 773/2004, as regards the conduct of settlement procedures in cartel cases (OJ 2008 L 171, p. 3).

The Court pointed out, first of all, that a range of fines is an instrument solely and specifically related to the settlement procedure. In that context, Article 10a(2) of Regulation (EC) No 773/2004 ([16]) expressly permits the Commission to inform the participants in settlement discussions of an estimate of the fine to be imposed on them, in the light of the method contained in the 2006 guidelines on setting fines, and of the provisions of the settlements notice ([17]) and of the 2002 leniency notice, where applicable.

According to the Court, if an undertaking does not put forward a proposal for a settlement, thus withdrawing from the settlement procedure, the procedure leading to the final decision is governed by the general provisions of Regulation (EC) No 773/2004, instead of those governing the settlement procedure. It follows that the range of fines notified during the settlement procedure ceases to be relevant, since it is an instrument specific to that procedure. In those circumstances, it would therefore be illogical, and even inappropriate, that the Commission should be required, in the statement of objections, to apply, or to refer to, a range of fines falling within the scope of another procedure that has now been abandoned. Indeed, according to the Court, an indication, at the stage of the statement of objections, of a range of fines would be contrary to the purely preparatory nature of such an act and would deprive the Commission of the possibility of imposing a fine adapted to new circumstances existing at the time of the adoption of its decision, in spite of its obligation to take account of new arguments or evidence brought to its attention during the standard administrative procedure, which may have an impact on the determination of the amount of the fine to be imposed.

3. DEVELOPMENTS IN THE AREA OF CONCENTRATIONS

In the case giving rise to the judgment of 13 May 2015 in ***Niki Luftfahrt* v *Commission*** (T-162/10, ECR, EU:T:2015:283), an action was brought before the Court against the decision by which the Commission had authorised, subject to compliance with the proposed commitments, a concentration in the air transport sector involving the acquisition by Deutsche Lufthansa AG of sole control of Austrian Airlines.

The Court observed first of all that the determination of the relevant market in respect of concentrations does not necessarily correspond to the definition of the relevant market in State aid matters, as the two procedures differ in both their subject matter and their legal basis, Article 8(2) of Regulation (EC) No 139/2004 ([18]) in one case and the first subparagraph of Article 108 TFEU in the other. In the context of the control of concentrations, the Commission must ensure, in accordance with Article 2(2) and (3) of Regulation (EC) No 139/2004, that the concentration will not significantly impede effective competition in the internal market or in a substantial part of it. The focus of the assessment is then the effect of the concentration on the competitive constraint. It is for that reason that the commitments proposed by the notifying parties are intended to remedy the competition concerns created by the concentration on the markets on which the parties competed before the concentration. The Court observed, moreover, that, when examining the compatibility of a concentration with the internal market, the Commission is required to assess the competitive effects of the concentration on the markets on which there is an overlap between the activities of the parties to a concentration. It follows that if one of the parties already enjoyed a monopoly on the relevant market before the concentration, that situation by definition escapes the analysis of the competitive effects of the concentration. On the other hand, that does not apply when the monopoly or dominant position results from or is strengthened by the concentration. In such a case, in the absence of commitments by the parties of such a kind as to remedy the effects of the dominant position on competition, the Commission cannot declare the concentration compatible with the internal market.

16| Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles [101 TFEU] and [102 TFEU] (OJ 2004 L 123, p. 18).

17| Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases (OJ 2008 C 167, p. 1).

18| Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ 2004 L 24, p. 1).

Called upon, in addition, to adjudicate on the applicant's plea alleging a manifest error of assessment in the definition of the relevant geographic market, the Court pointed out, first, that, if the Commission defined that market according to the 'O & D' approach, where the combination of a point of origin and a point of destination forms a distinct market, such an approach is consistent with the guidance to be found in the case-law. Second, as regards what the applicant alleged to be the failure to analyse the competitive effects of the concentration on the relevant geographic market defined according to a 'global approach', the Court observed that, where it is alleged that the Commission failed to have regard to a possible competition concern on markets other than those covered by the competitive analysis, it is for the applicant to adduce serious indicia of the genuine existence of a competition concern which, by reason of its effect, should have been examined by the Commission. As the applicant had been unable to define with sufficient precision the relevant geographic market which it claimed to exist, the Court held that it was therefore impossible for it to assess whether the Commission should have examined the potential competitive effects of the concentration at issue on that market.

In the case giving rise to the judgment of 9 March 2015 in ***Deutsche Börse v Commission*** (T-175/12, EU:T:2015:148), an action had been brought before the Court against the Commission decision declaring incompatible with the internal market the proposed concentration between Deutsche Börse AG and NYSE Euronext Inc. That decision was based on the finding that the transaction in question was likely to lead to a significant impediment to effective competition by creating a dominant or near-monopoly position. According to the Commission, the concentration would have led to a single vertical structure, carrying out trading and clearing of more than 90% of global transactions in European exchange-traded derivatives.

The Court rejected the arguments put forward by Deutsche Börse in relation to the efficiency gains that could have resulted from the concentration and to the commitments given by the companies proposing to participate in the concentration in order to counteract the significant restrictions of effective competition. The Court observed, in that regard, that, as is apparent from point 87 of the 2004 guidelines on the assessment of horizontal mergers ([19]), it is incumbent upon the parties to the concentration to provide in due time all the relevant information necessary to demonstrate that the claimed efficiencies are merger specific and likely to be realised. Similarly, it is for those parties to show that the efficiencies are likely to counteract any adverse effects on competition that might otherwise result from the merger, and therefore benefit consumers. The issue of the demonstration of anti-competitive effects, which is a matter for the Commission, differs from the issue of the demonstration of the fact that the efficiencies benefit consumers, are merger specific and are verifiable, which is a matter for the parties to the concentration. It follows that the burden of proving that the claimed efficiencies are verifiable falls on the parties to the concentration. That allocation of the burden of proof can be considered to be objectively justified since, first, it is those parties that hold the relevant information in that regard and, second, the argument regarding efficiencies seeks to counteract the Commission's conclusions that the proposed merger would probably significantly impede effective competition by creating a dominant position.

The Court further observed that, as is rightly stated in point 86 of the 2004 guidelines on the assessment of horizontal mergers, efficiencies have to be 'verifiable' so that the Commission can be reasonably certain that the efficiencies are 'likely' to materialise, and be substantial enough to counteract the merger's potential harm to consumers. The condition relating to the verifiability of efficiencies does not, however, require the notifying party to provide data capable of being independently verified by a third party or documents, dating from before the merger, which serve to assess objectively and independently the scope for efficiency gains generated by the acquisition. In that context, the fact that one customer expects to have net cost savings after 1½ or 2 years does not call into question the Commission's rejection of a possible positive effect for customers, since the 2004 guidelines on the assessment of horizontal mergers correctly state that, in general, the longer the start of the efficiencies is projected into the future, the less probability the Commission may be able to assign to them.

19 | Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ 2004 C 31, p. 5).

STATE AID

1. SELECTIVITY

In the judgment of 17 December 2015 in ***Spain and Others v Commission*** (T-515/13 and T-719/13, ECR, EU:T:2015:1004), the Court was led to provide clarification of the concept of selectivity, a decisive criterion in the classification of a measure as State aid.

The case concerned the Commission decision declaring certain fiscal measures making up the 'Spanish Tax Lease System' ('STL system') incompatible in part with the internal market. The STL system was used in transactions involving the building of ships and their acquisition by shipping companies. It was based on a fiscal structure in which, for the sale of the ship, a leasing company and an economic interest group (EIG), formed by the bank organising the structure, were interposed. The bank sold shares in the EIG to investors and organised a complex network of contracts between the various parties.

The purpose of the structure was to create tax advantages for the investors and to transfer a part of those advantages to the shipping company in the form of a reduction in the price of the ship, while the investors retained the other advantages as remuneration for their investment.

The Court held that the Commission had been wrong to conclude that there was a selective advantage and therefore State aid in favour of the EIGs and the investors.

As regards, in particular, the investors, the Court considered that the economic advantage from which they had benefited was not selective. In spite of a system of authorisation, the advantages at issue remained open, on the same conditions, to any investor who decided to participate in the transactions under the STL system by purchasing shares in the EIGs formed by the banks. Those advantages were therefore general in nature vis-à-vis the investors, who operated in all sectors of the economy.

The judgment of 25 March 2015 in ***Belgium v Commission*** (T-538/11, ECR, under appeal, EU:T:2015:188) enabled the Court to examine a Commission decision concerning the financing by the Kingdom of Belgium of compulsory tests for the screening of bovine spongiform encephalopathy (BSE).

The Court held that the Commission was correct in taking the view that the measure at issue was selective. The Commission found that, through the measure at issue, the Kingdom of Belgium had conferred an advantage on the operators of the bovine production process, consisting in the fact that certain tests which they were required to perform before placing their products on the market or trading in them were provided free of charge, whereas undertakings in other sectors, which were also required to perform compulsory tests before placing their products on the market or trading in them, did not enjoy a comparable advantage. The Court rejected, in particular, the Kingdom of Belgium's argument that the selectivity of the measure at issue can be assessed only by reference to the undertakings that produce, market or process the products subject to the compulsory BSE tests, as other undertakings are not in a comparable factual and legal situation. The selective nature of a measure must be assessed by reference to all undertakings and not by reference to the undertakings which benefit from the same advantage within the same group.

2. INTERVENTION ALLEVIATING BURDENS NORMALLY BORNE BY UNDERTAKINGS

In the cases giving rise to the judgments of 26 February 2015 in ***France v Commission*** (T-135/12, EU:T:2015:116) and ***Orange v Commission*** (T-385/12, under appeal, EU:T:2015:117), the Court was called upon to examine the legality of the decision by which the Commission had declared compatible with the internal market, on certain conditions, the aid granted by the French Republic to France Télécom through the reform of the scheme for financing the retirement of officials working for that company. The applicants disputed, in particular, the classification of the reform at issue as State aid.

The Court observed that a measure cannot be classified as State aid where it merely prevents the recipient's budget from being burdened with a charge which, in a normal situation, would not have existed, within the meaning of the judgment of 23 March 2006 in ***Enirisorse*** [20]. The Court stated, however, that in the circumstances of that case, the measure at issue formed part of a quite specific and exceptional arrangement. In addition, the Court observed that the case-law subsequently made clear that a measure cannot avoid being classified as State aid where the beneficiary of the measure is subject to a specific charge that is separate from and unrelated to the measure in question.

In the case in point, the Court emphasised that the retirement scheme for officials stemmed from a regime that was legally distinct from and clearly separate from the regime applicable to employees covered by private law, such as the employees of France Télécom's competitors. Consequently, it was not possible to conclude that the measure at issue was intended to prevent France Télécom from being subject to a charge which, in a normal situation, would not be a burden on its budget, within the meaning of the judgment in ***Enirisorse,*** cited above (EU:C:2006:197)***.***

Turning to the argument that the measure at issue released France Télécom from a structural disadvantage imposed by law, the Court observed that, even on the assumption that such a disadvantage had been established, the alleged compensatory nature of the advantages conferred did not preclude their being classified as State aid within the meaning of Article 107 TFEU. It is only where State intervention must be regarded as compensation for the services provided, in their discharge of public service obligations, by undertakings required to perform services of general economic interest, in accordance with the criteria established in the judgment of 24 July 2003 in ***Altmark Trans and Regierungspräsidium Magdeburg*** [21], that such intervention does not fall under Article 107(1) TFEU. However, that was not so in the case in point.

The question of State intervention to alleviate the charge normally borne by the budget of an undertaking was also central to the case giving rise to the judgment in ***Belgium*** v ***Commission***, cited above (EU:T:2015:188). In that judgment, the Court upheld the Commission's finding that, by financing the compulsory bovine spongiform encephalopathy (BSE) screening tests, the Kingdom of Belgium had conferred an advantage on operators of the bovine production process in that it had released them from a charge normally borne by their budget.

The Court observed that the concept of a charge which is normally borne by the budget of an undertaking covers, in particular, the additional costs which undertakings must bear by virtue of obligations imposed by law, regulation or agreement which apply to an economic activity. Thus, the Commission did not err in taking the view that the cost of the controls relating to the production or marketing of the products, made obligatory by a provision originating in law or regulation, such as the compulsory BSE screening tests, constituted a charge normally borne by the budget of an undertaking. The fact that the bearing of the costs of the BSE screening tests is not justified by the 'polluter pays' principle, even on the assumption that it is made out, cannot invalidate that finding.

20| C-237/04, ECR, EU:C:2006:197, in particular paragraphs 43 to 49.

21| C-280/00, ECR, 'the judgment in ***Altmark***', EU:C:2003:415.

3. 'PRIVATE INVESTOR IN A MARKET ECONOMY' TEST

In 2015 the Court provided helpful clarification concerning the application of the private investor test in three judgments.

First, in the case giving rise to the judgment of 15 January 2015 in ***France v Commission*** (T-1/12, ECR, EU:T:2015:17), the Court was called upon to rule on the legality of the decision by which the Commission had declared incompatible with the internal market the rescue aid and the restructuring aid (consisting of recapitalisation and two loans) for SeaFrance, implemented and planned by the French Republic.

The Court recalled that, when the Commission examines the application of the private investor test, it must always examine all the relevant features of the transaction at issue and its context. Where the private investor test is to be applied to several consecutive measures of State intervention, the Commission must examine whether those interventions are so closely linked that they are inseparable from one another. Examination as to whether several consecutive measures of State intervention are inseparable must be carried out in the light of, in particular, the chronology of those interventions, their purposes and the circumstances of the beneficiary undertaking at the time of the interventions. In the light of those principles, the Court concluded that the Commission had been correct in considering that the various measures at issue were so closely linked that they were inseparable for the purposes of the private investor test.

Indeed, the loans could not reasonably be dissociated from the recapitalisation of SeaFrance and from the opening of a credit line for that undertaking by way of rescue aid and, consequently, be regarded as an autonomous investment for the purposes of the private investor test.

Second, the application of the private investor test to consecutive State interventions was also central to the submissions in the cases giving rise to the judgment of 2 July 2015 in ***France and Orange v Commission*** (T-425/04 RENV and T-444/04 RENV, ECR, under appeal, EU:T:2015:450). Following the referral back of those cases by the Court of Justice ([22]), the General Court was required to examine afresh the Commission decision classifying as State aid (i) an announcement, published by the French Republic in December 2002, of a shareholder loan proposal for an undertaking in which the French Republic was the majority shareholder and (ii) a shareholder loan offer, which followed shortly afterwards, consisting in the opening of a credit line in favour of that undertaking.

In its judgment, the Court held that the Commission had been wrong to classify the loan offer made to France Télécom as State aid and therefore annulled the Commission decision.

In the first place, the Court held that the Commission had erred in law in applying the prudent private investor test, in priority and essentially, to earlier declarations, dating from July 2002. It was the announcement of December 2002 and the shareholder loan offer, taken together, that were classified as State aid by the Commission, which means that the prudent private investor test must be applied to those two measures and to them alone. The Commission's application of that test is all the more erroneous given that it did not have sufficient evidence to determine whether the declarations made from July 2002 were in themselves liable to commit State resources and thus to constitute State aid.

In the second place, the Court pointed out that, when analysing the prudent private investor test, the Commission was required to place itself in the context of the period in which the measures at issue had been taken by the French Republic, namely December 2002, and not in the context of the situation prior to July 2002, as it had

22 | Judgment of 19 March 2013 in ***Bouygues and Bouygues Télécom*** v ***Commission and Others*** and ***Commission*** v ***France and Others*** (C-399/10 P and C-401/10 P, ECR, EU:C:2013:175), delivered on the appeals against the judgment of 21 May 2010 in ***France and Others*** v ***Commission*** (T-425/04, T-444/04, T-450/04 and T-456/04, ECR, EU:T:2010:216).

done. It is, admittedly, possible to refer to events and objective factors from the past, but those earlier events and factors cannot be regarded as decisively constituting, in themselves, the relevant reference framework for the application of the prudent private investor test.

In the third place, in response to the Commission's argument that the shareholder loan offer was merely the concretisation of the French Republic's earlier declarations, with the consequence that the French Republic had not satisfied the prudent private investor test, the Court emphasised that the declarations made from July 2002 did not in themselves contain the anticipation of specific financial support on the lines of that which eventually took concrete form in December 2002. Those declarations had an open-ended, imprecise and conditional character as regards the nature, scope and conditions of any future intervention by the French Republic.

Third, in the judgment of 25 June 2015 in ***SACE and Sace BT v Commission*** (T-305/13, ECR, under appeal, EU:T:2015:435), the Court ruled on the legality of the decision by which the Commission had classified as unlawful State aid the reinsurance cover granted by an Italian public undertaking to its subsidiary and the capital contributions made by that undertaking to cover the losses incurred by the subsidiary.

After concluding that the measures at issue were attributable to the Italian Republic, the Court examined the existence of an advantage in the light of the private investor test and the mutual obligations of the Commission and the Member States when applying that test.

The Court recalled that, where it appears that the private investor test could be applicable, the Commission is under a duty to ask the Member State concerned to provide it with all the relevant information enabling it to determine whether the conditions governing the applicability and the application of that test are met. In that context, it is for the Member State to communicate to the Commission objective and verifiable evidence showing that its decision is based on prior economic evaluations comparable to those which, in the circumstances, a rational private operator in a situation as close as possible to that of the State would have carried out, before adopting the measure in question, in order to determine its future profitability. The Court observed, however, that the evidence relating to prior economic assessment required from the Member State must be assessed *in concreto* and must be varied depending on the nature and the complexity of the operation in question, the value of the assets, goods or services concerned and the circumstances of the case.

In the case in point, as regards the reinsurance cover, which was a commercial transaction, the Court held that the evaluation of its profitability could be conducted on the basis of a relatively limited analysis of the risks assumed and the appropriateness of the amount of the reinsurance fee in the light of the extent of the risk. In those circumstances, given that the amount of the transaction, while certainly not negligible, was relatively small, the Court concluded that the mere fact that the parent company did not provide proof that it had conducted a prior economic evaluation of the amount of the premium reflecting the level of risk assumed in order to determine the profitability of the reinsurance cover for its subsidiary was not a sufficient ground on which to consider that it had not acted like a private reinsurer in a comparable situation. The Court nonetheless concluded that, having regard to the information available to it when the contested decision was adopted, the Commission had been entitled to conclude that the reinsurance cover had been adopted on preferential price conditions by comparison with those which a private reinsurer would have required.

As regards, moreover, the capital contributions intended to cover the losses incurred by the subsidiary, the Court considered that, in a context of economic crisis, the assessment of the required evidence of a prior evaluation must be made in the light of, as the case may be, the inability to make reliable, detailed forecasts of developments in the economic situation and the performance of different operators. The fact remains, according to the Court, that the inability to make detailed, full projections cannot relieve a public investor of its task of carrying out an appropriate prior evaluation of the profitability of its investment, comparable to that which a private investor would have carried out in a similar situation. The Court concluded that the Commission had been correct to find that, in the absence of an adequate prior economic evaluation of their economic profitability, the two capital contributions at issue were not consistent with the private investor test.

4. SERVICES OF GENERAL ECONOMIC INTEREST

Two decisions, closely linked in that they both relate to the same measures taken by the Kingdom of Denmark in favour of the broadcaster TV2, are particularly noteworthy this year as regards the theme of services of general economic interest.

In the first place, in the judgment of 24 September 2015 in ***TV2/Danmark v Commission*** (T-674/11, ECR, under appeal, EU:T:2015:684), the Court was led, in particular, to adjudicate on the detailed rules for the application of the conditions, laid down in the judgment in ***Altmark*** (EU:C:2003:415) ([23]), that compensation paid for the performance of public services must satisfy in order to avoid being classified as State aid.

First of all, the Court shed light on the second condition laid down in the judgment in ***Altmark*** (EU:C:2003:415), which requires that the parameters on the basis of which the compensation paid for the supply of public services is calculated must be established in advance in an objective and transparent manner. The Court made clear that that condition lays down three requirements which the compensation calculation parameters must satisfy in order to ensure that the calculation is reliable and open to verification by the Commission: those parameters must be established in advance, in accordance with a transparent procedure, and must be objective by their nature.

On the other hand, the second condition laid down in the judgment in ***Altmark*** (EU:C:2003:415) does not require that the compensation calculation parameters be so formulated as to influence or control the level of expenditure incurred by the recipient and thus ensure the efficiency of the management of the public service, contrary to the Commission's contention. By its interpretation of the second condition laid down in the judgment in ***Altmark*** (EU:C:2003:415), the Commission seemed to consider that the compensation calculation parameters must ensure the effectiveness of the management of the public service. However, such an interpretation, which is incompatible with the wording of the second condition laid down in the judgment in ***Altmark*** (EU:C:2003:415), results in confusion between that condition and the fourth condition laid down in that judgment.

Next, the Court provided clarification of the conditions for the implementation of the fourth condition laid down in the judgment in ***Altmark*** (EU:C:2003:415), which requires that the Member State initially designate a reference undertaking operating under normal conditions other than the recipient before demonstrating, on the basis of an analysis of the costs of that reference undertaking, that the recipient is a 'well run and adequately provided' undertaking, within the meaning of that condition. Notwithstanding the difficulties involved in applying that condition, the Member State is therefore required to refer to an undertaking other than the recipient. It is therefore not sufficient, in order to satisfy that condition, for the Member State to say that, given the specific nature of the public-service remit, it is not possible to identify on the market an undertaking similar to the recipient of the compensation in order then to seek to show that the recipient itself is a 'well run and adequately provided' undertaking within the meaning of that condition.

In addition, the Court stated that, as regards the burden of proof, it is for the Member State to demonstrate that the fourth condition laid down in the judgment in ***Altmark*** (EU:C:2003:415) is satisfied.

Last, the judgment in ***TV2/Danmark*** v ***Commission***, cited above (EU:T:2015:684), also provided the Court with the opportunity to clarify its case-law relating to the condition that there must be a transfer of State resources. In that regard, the Court observed that, according to the case-law, an advantage conferred through State resources is an advantage which, once granted, has a negative effect on State resources. State resources may also consist of resources originating with third parties but which either have been placed at the disposal of the State by their owners voluntarily or have been abandoned by their owners, the State having assumed management of them by virtue of its sovereign powers.

23| See footnote 21 above.

On the other hand, the mere fact that, by legislative action, the State concerned requires a third party to use its own resources in a particular way does not necessarily mean that those resources are under public control and therefore constitute State resources. In the case in point, the Court observed that the Kingdom of Denmark's intervention consisted, in particular, in setting the maximum proportion of the advertising revenue of which the recipient could make free use, following payment of the revenue to a fund responsible for subsequently transferring it to the recipient. The Court considered that that power of the State in question did not suffice to support the conclusion that that proportion of that revenue constituted a State resource.

In the second place, in the judgment of 24 September 2015 in ***Viasat Broadcasting UK v Commission*** (T-125/12, ECR, under appeal, EU:T:2015:687), the Court ruled, in particular, on the relationship between, on the one hand, the four conditions, referred to above, laid down in the judgment in ***Altmark*** (EU:C:2003:415) and, on the other, the conditions under which State aid granted to an undertaking entrusted with managing services of general economic interest may be considered to be compatible with the internal market, in the light of Article 106(2) TFEU.

The Court pointed out, first of all, that even if the conditions for classifying a measure as aid compatible with the internal market are somewhat similar to the conditions set out in the judgment in ***Altmark*** (EU:C:2003:415), in the case of the application of Article 106(2) TFEU what is involved is providing a response to a fundamentally different question, relating to the compatibility of the aid measure at issue with the internal market, which already presupposes an affirmative answer to the question concerned by the judgment in ***Altmark*** (EU:C:2003:415). The Court observed that, although that judgment identifies four distinct conditions, they are not wholly independent of each other. As regards the last three, there is an internal consistency and, in that sense, a certain degree of interdependence between the conditions in question. The second condition, relating to the establishment of objective and transparent parameters for calculating compensation, is a necessary prerequisite for the purpose of answering the question as to whether or not that compensation exceeds what is necessary to cover all or part of the costs incurred in discharging the public-service obligations, as required by the third condition. Thus, in order to monitor compliance with the third condition laid down in the judgment in ***Altmark*** (EU:C:2003:415), objective and transparent parameters must be used, as required by the second condition. As for the fourth condition laid down in the judgment in ***Altmark*** (EU:C:2003:415), it supplements the second condition, in that it requires that the objective and transparent parameters referred to in the second condition should be based on the example of a typical undertaking, well run and adequately equipped so as to be able to meet the necessary public-service requirements.

Furthermore, the Court stated that regard must also be had to the purpose of the test which forms the context for the analysis of compliance with the four conditions laid down in the judgment in ***Altmark*** (EU:C:2003:415), which is to prevent compensation from conferring an economic advantage which may favour the recipient undertaking over competing undertakings. The Court observed, in that connection, that, so far as concerns the application of Article 106(2) TFEU, the third condition laid down in the judgment in ***Altmark*** (EU:C:2003:415) broadly coincides with the criterion of proportionality as established in the case-law in the context of the application of that provision. However, although, in both cases, it is essentially the same criterion that is being applied, the context and the purpose of its application are in each case different. The costs of a service of general economic interest to be taken into account when applying Article 106(2) TFEU are the actual costs of that service as they are, and not as they could have been or ought to have been. The criterion of proportionality is taken into account to estimate the actual costs of the service of general economic interest if, in the absence of evidence available to the Commission that would allow a precise calculation of those costs, the Commission is obliged to make an estimate. That is why any failure to comply with the second and fourth conditions laid down in the judgment in ***Altmark*** (EU:C:2003:415) is not relevant to the assessment of the proportionality of the aid in the context of the application of Article 106(2) TFEU. To accept the contrary would lead, ultimately, to requiring that services of general economic interest must always be provided under normal market conditions. If such a requirement were accepted, however, the application of the EU competition rules might obstruct the

performance, in law or in fact, of the particular tasks assigned to undertakings entrusted with the operation of services of general economic interest, which Article 106(2) TFEU seeks precisely to prevent.

5. RECOVERY OF AID

In the case giving rise to the judgment of 5 February 2015 in ***Aer Lingus v Commission*** (T-473/12, ECR (Extracts), under appeal, EU:T:2015:78), an application was made to the Court for annulment of the decision by which the Commission had considered that Ireland's application of air travel tax at a lower rate for short-distance flights constituted State aid incompatible with the internal market and had ordered recovery of that aid from the beneficiaries, stating that the amount of the aid corresponded to the difference between the lower rate of that tax (EUR 2) and the standard amount applicable in principle (EUR 10), that is to say, EUR 8. The applicant submitted, in particular, that, by failing to take into account when classifying the measure as aid and quantifying the advantage the fact that the tax was passed on to passengers, the Commission had erred in law and made a manifest error of assessment.

The Court recalled that the objective of the obligation placed on a State to abolish aid found by the Commission to be incompatible with the internal market is to restore the previous situation and that that objective is achieved when the beneficiaries have repaid the sum paid by way of unlawful aid. Although no provision of EU law requires the Commission to fix the exact amount of the aid to be recovered, when it decides to order recovery of a fixed amount it must identify precisely the beneficiaries of the aid and assess, as accurately as the circumstances of the case will allow, the value of the benefit received from the aid by the beneficiary.

Therefore, in a situation such as that in the present case, where the tax at issue was intended to be passed on to the passengers, the Commission could not presume that the advantage actually obtained and retained by the airlines amounted in all cases to EUR 8 per passenger. Accordingly, for airlines such as the applicant, which had paid the tax at issue at the lower rate of EUR 2, the Commission should have determined the extent to which they had actually passed on to their passengers the economic benefit resulting from the application of the tax at the lower rate, in order to be able to quantify precisely the advantage which they had actually enjoyed, unless it decided to confer that task to the national authorities and provided the necessary information in that respect.

In any event, according to the Court, the recovery of an amount of EUR 8 per passenger would have been liable to create additional distortions of competition, since it could have led to the recovery of more from the airlines than the advantage which they had actually enjoyed. Furthermore, the fact that in the case in point the customers of the airlines subject to the tax at issue were not undertakings, within the meaning of EU law, with the result that no aid could be recovered from them, could not call into question the Commission's obligation to identify precisely who were the beneficiaries of aid, that is to say, the undertakings which actually benefited from it, and to limit the recovery of the aid to the financial advantages actually arising from the placing of the aid at the disposal of those undertakings.

INTELLECTUAL PROPERTY

1. COMMUNITY TRADE MARK

(a) ABSOLUTE GROUNDS FOR REFUSAL

In 2015, the case-law of the General Court provided clarification of a number of absolute grounds for refusal to register a trade mark set out in Article 7(1) of Regulation (EC) No 207/2009 ([24]).

In the case giving rise to the judgment of 15 January 2015 in ***MEM v OHIM (MONACO)*** (T-197/13, ECR, EU:T:2015:16), the Court was called upon to adjudicate on the decision by which the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) had refused protection of the word mark MONACO in the European Union for certain goods and services ([25]), owing to the descriptive nature and the lack of distinctive character of the mark.

The Court observed that the word 'monaco' is the name of a principality which is known across the world, not least because of the fame of its royal family and the fact that a Formula 1 grand prix and a circus festival are held there. There is an even greater degree of familiarity with the Principality of Monaco among citizens of the Union, owing in particular to its frontier with one Member State, the French Republic, its proximity to another Member State, the Italian Republic, and the fact that it uses the same currency as 19 of the 28 Member States, the euro. Regardless of the language spoken by the relevant public, the word 'monaco' therefore evoked the geographical territory of the same name. In that context, the Court further observed that the Board of Appeal had correctly defined the relevant public, namely the citizens of the Union, and attributed to that public a degree of attention which was sometimes average, sometimes high, according to the particular goods or services concerned.

According to the Court, OHIM had also been correct in holding that the word 'monaco' was capable of serving, in trade, to designate the geographical origin or destination of the goods, or the place of performance of the services, so that the mark at issue had a descriptive character in relation to the goods and services concerned. Therefore, since a mark that is descriptive of the characteristics of goods or services is, on that account, necessarily devoid of any distinctive character in relation to those goods or services, the Court concluded that the mark MONACO lacks distinctive character.

In the judgment of 14 July 2015 in ***Genossenschaftskellerei Rosswag-Mühlhausen v OHIM (Lembergerland)*** (T-55/14, ECR, EU:T:2015:486), the Court was required to examine the merits of an action brought against the decision of the First Board of Appeal of OHIM upholding the refusal to register the word mark Lembergerland as a Community trade mark on the ground that it was covered by the absolute ground for refusal laid down in Article 7(1)(j) of Regulation (EC) No 207/2009.

The Court pointed out that, according to that provision, trade marks for wines which contain or consist of a geographical indication identifying wines with respect to such wines not having that origin are not to be registered and that the protection of geographical indications for wines is found in regulations of the European Union, particularly in those concerning the common organisation of the market in wine, and also in bilateral agreements on trade in wine concluded between the European Union and third States. The Court observed, moreover, that, under Article 8(b)(ii) of the Agreement between the Community and the Republic of South

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

25 | The following goods and services were in issue: magnetic data carriers, goods made from paper and cardboard not included in other classes, printed matter, photographs, transport, travel arrangement, entertainment, sporting activities and temporary accommodation.

Africa ([26]), protection is afforded within the European Union, for wines originating in South Africa, to the geographical indications mentioned in Annex II to that agreement, which specifically refers to the denomination Lemberg. In the Court's view, the fact that that name refers to a wine-growing estate and not to a region, a municipality or a district does not call into question the fact that it is expressly protected as a geographical indication under that agreement. The Agreement between the Community and the Republic of South Africa refers, as regards the concept of geographical indication, to Article 22(1) of the TRIPS Agreement ([27]), which defines geographical indications as 'indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin'. There is no reason to conclude that a 'locality' within the meaning of that provision could not be constituted by a wine-growing estate or that such a 'locality' must be limited to a territory on the basis of its size or its formal administrative division.

The Court explained, moreover, that the ground for refusal referred to in Article 7(1)(j) of Regulation (EC) No 207/2009 applies if the mark applied for contains or consists of a geographical indication or elements which enable the geographical indication in question to be identified with certainty. In the case in point, the sign applied for, 'Lembergerland', was a word consisting inter alia of the protected geographical indication Lemberg, which is clearly identifiable within that sign. The Court thus concluded that the argument that that sign does not correspond to the geographical indication Lemberg, but constitutes a new fanciful word, only seven letters of which are to be found in the geographical indication Lemberg, had to be rejected. It also rejected the argument that the mark applied for, Lembergerland, is not likely to give rise to confusion with the geographical indication Lemberg, since it has a different meaning from the latter indication. The Court observed that the registration of a mark must be refused if it contains or consists of a geographical indication regardless of the question whether the mark applied for is likely to deceive the consumer as regards the provenance of the wines it denotes.

In the cases giving rise to the judgment of 7 October 2015 in ***Cyprus v OHIM (ΧΑΛΛΟΥΜΙ and HALLOUMI)*** (T-292/14 and T-293/14, ECR, EU:T:2015:752), actions were brought before the Court for annulment of the decisions by which the Fourth Board of Appeal of OHIM had upheld the rejection of the applications to register the word signs ΧΑΛΛΟΥΜΙ and HALLOUMI as Community trade marks for cheese, milk and milk products.

The Court pointed out that, for a sign to be caught by the prohibition set out in Article 7(1)(c) of Regulation (EC) No 207/2009, there must be a sufficiently direct and specific relationship between the sign and the goods and services in question to enable the public concerned immediately to perceive, without further thought, a description of the goods and services in question or one of their characteristics. The Court thus held that the Board of Appeal had been correct in the present case to take the view that, for the Cypriot public, the words 'HALLOUMI' and 'ΧΑΛΛΟΥΜΙ' in capital letters referred to a speciality cheese from Cyprus and therefore directly described the kind and geographical origin of the cheese, milk and milk products referred to. Indeed, those words indicate a particular type of cheese exported from Cyprus, made in a certain way and with particular taste, texture and cooking properties. Accordingly, the Board of Appeal did not make an error of assessment in finding that the marks applied could not be accepted for registration because of their descriptive meaning for the goods in respect of which registration was sought, at least for the Cypriot public.

Also called upon to examine the objection that Regulation (EC) No 207/2009 does not exclude certification marks, the Court stated that that regulation does not provide for the protection of such marks, but only for the protection of individual or collective Community trade marks. In that regard, the Court observed that the Board of Appeal had explained that, in order for certification marks to be capable of registration, they must be filed as individual marks and must not be subject to one of the absolute grounds for refusal provided for in that regulation.

26 | Agreement between the European Community and the Republic of South Africa on trade in wine (OJ 2002 L 28, p. 4).

27 | Agreement on Trade-Related Aspects of Intellectual Property Rights of 15 April 1994 (OJ 1994 L 336, p. 214), constituting Annex 1C to the Agreement Establishing the World Trade Organisation (WTO) (OJ 1994 L 336, p. 3).

Last, the Court noted that the concept of general interest underlying Article 7(1)(c) of Regulation (EC) No 207/2009 requires that signs or indications which may serve, in trade, to designate characteristics of the goods or services in respect of which registration is sought may be freely used by all. That provision prevents such signs or indications from being reserved to one undertaking alone because they have been registered as trade marks and prevents an undertaking from monopolising the use of a descriptive term to the detriment of other undertakings, including its competitors, for whom the extent of the vocabulary to describe their own products would thus be reduced. The general interest or public interest in keeping descriptive marks free for third parties to use is pre-established and presumed. It follows that, where the mark applied for is descriptive, it is sufficient for the Board of Appeal to make the finding of that descriptive character without, however, having to examine the question whether, notwithstanding its descriptive character, there is in fact a public interest in keeping the mark applied for free for third parties to use. Furthermore, the application of Article 7(1)(c) of Regulation (EC) No 207/2009 does not depend on the existence of a real, current or serious need to leave a sign free.

(b) RELATIVE GROUNDS FOR REFUSAL

Five judgments in 2015 are particularly deserving of mention in 2015 in connection with the relative grounds for refusal of registration laid down in Article 8 of Regulation (EC) No 207/2009.

In the first place, In the case giving rise to the judgment of 12 February 2015 in ***Compagnie des montres Longines, Francillon v OHIM — Cheng (B)*** (T-505/12, ECR, EU:T:2015:95), the Court was called upon to examine the legality of the decision by which the Fifth Board of Appeal of OHIM had refused to uphold the opposition filed against the application to register as a Community trade mark a figurative sign consisting of the capital letter 'B' in the middle of a pair of wings, for optical sunglasses, clothing and footwear. The opposition was based on an earlier international figurative mark, consisting of a 'winged hourglass', having effect, in particular, in certain Member States of the European Union and covering watches, various horological goods, chronometers and jewels and jewellery. The application had been rejected on the ground, in particular, of the absence of any similarity between the two types of goods concerned.

In that regard, the Court found that, notwithstanding the fact that the goods at issue belonged to adjacent market segments, they differed in their nature, their intended purpose and their method of use and were therefore neither in competition with each other nor interchangeable. As for a possible aesthetic complementarity of the goods, the Court recalled that the search for a certain aesthetic harmony is too general a factor to justify, by itself, the complementarity of goods. In that context, the Court examined first whether the goods covered by the earlier trade mark were indispensable or important for the use of the products covered by the mark applied for and vice versa, and then whether consumers considered it usual that the goods were sold under the same trade mark. As neither of those factors had been demonstrated, the Court considered the goods at issue not to be similar. The Court therefore held that the Board of Appeal had not erred in excluding any likelihood of confusion on the sole basis of a comparison between the goods.

The Court likewise held that the Board of Appeal had also been correct in finding that the earlier mark, consisting solely of a graphic element, a 'winged hourglass', was not a mark with a reputation, notwithstanding the fact that a composite mark, consisting of the same element and the word 'longines', was regularly used on the relevant market. The Court relied, in particular, on the fact that, in the composite mark as used, it was the word element 'longines' that was dominant in the overall impression and therefore recollected by consumers. As regards the graphic element, the 'winged hourglass', the Court held that it had not been proved that that mark was memorised as such, whether because of its use in the composite mark or as registered.

In the second place, the judgment of 5 May 2015 in ***Spa Monopole v OHIM — Orly International (SPARITUAL)*** (T-131/12, ECR, EU:T:2015:257) concerned the application for registration as a Community trade mark of the word sign SPARITUAL for goods in Class 3 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended. That application had been opposed on the basis, in particular, of the existence of the word mark SPA and the figurative mark SPA with a Pierrot for goods in Class 32 of that agreement. The First Board of Appeal of OHIM had refused to uphold the opposition, on the basis, inter alia, of the lack of evidence of the reputation of the work mark SPA covering goods in Class 32, stating, in particular, that the reputation of the figurative mark did not make out proof of the reputation of the word mark SPA covering those goods.

The Court, before which an action challenging the Board of Appeal's decision was brought, recalled, first of all, that a mark's acquisition of distinctive character may occur as a result of its use as part of another registered trade mark, provided that the relevant public continues to perceive the goods at issue as originating from a particular undertaking. The Court stated, in that regard, that the proprietor of a registered trade mark may, in order to make out proof of the particular distinctive character and reputation of that mark, rely on evidence of its use in a different form, as part of another registered mark and reputation, provided that the relevant public continues to perceive the goods at issue as originating from the same undertaking.

In addition, the Court held that, in taking the view that the reputation of the figurative mark SPA with the Pierrot device could not be extended to encompass the word mark SPA covering goods in Class 32, the Board of Appeal had erred in law. It is clear from the case-law that the statement of the Court of Justice, in paragraph 86 of the judgment of 13 September 2007 in ***Il Ponte Finanziaria*** v ***OHIM*** ([28]), to the effect that under Article 10(2)(a) of Directive 89/104/EEC ([29]) and, by analogy, Article 15(2)(a) of Regulation (EC) No 207/2009 it is not possible to extend, by means of proof of use, the protection enjoyed by a registered trade mark to another registered mark, the use of which has not been established, on the ground that the latter is merely a slight variation on the former, must be construed in the specific context of an alleged 'family' or 'series' of marks. However, in the case in point the applicant had not sought to make out proof of use of marks of a same SPA family, but rather to demonstrate, in essence, that the word mark SPA covering goods in Class 32 enjoyed a certain reputation, since its use in the figurative mark SPA with the Pierrot device, covering the same class of goods, had not altered its distinctive character and that, on the contrary, the earlier word mark remained highly visible and was readily recognisable within the figurative mark in question.

The Court therefore concluded that the use of evidence concerning the figurative mark SPA with the Pierrot device, of which the word mark SPA formed part, to make out proof of the reputation of that word mark was permissible provided that there was proof that the components which differentiate the word mark from the figurative mark used in trade did not prevent the relevant public from continuing to perceive the goods at issue as originating from a particular undertaking.

In the third place, in the case giving rise to the judgment of 10 June 2015 in ***AgriCapital v OHIM — agri. capital (AGRI.CAPITAL)*** (T-514/13, ECR, under appeal, EU:T:2015:372), the Court was led to assess the similarity between financial services covered by earlier trade marks and real estate services and building promoter services covered by the mark applied for.

The Court observed that financial services do not have the same nature, the same intended purpose or the same method of use as real estate services. Whereas financial services are provided by financial institutions for the purposes of the management of their clients' funds and consist of, inter alia, the holding of deposited funds, the remittance of funds, the granting of loans or various financial operations, real estate services are services

28 | C-234/06 P, ECR, EU:C:2007:514.

29 | First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1).

connected with a property, namely, in particular, the lease, the purchase, the sale or the management of a property. Furthermore, as regards the fact that the services covered might be found in the same distribution channels, which was said to demonstrate their complementarity, the Court stated that real estate services are not, in principle, provided on the same premises as financial services.

As regards the comparison of financial services with building promoter services, the Court observed that the seeking of finance by the building promoter is intended only to enable the latter, in the first instance, to support the cost of the purchase of buildings to be renovated or land to improve, before it can, at a later stage, pass on that cost to the customers to whom it will sell the real estate improved under a programme of construction or renovation. Although it is common for building promoters to offer their customers advice regarding the financing of their purchase in the context of the marketing of building programmes, such advice cannot be assessed as being financial advice, such as that covered by the earlier marks. Such advice is akin to that which any seller of property of a certain value, such as, for example, a boat, a business or a work of art, might set out for its customers regarding the financial interest that they may have in acquiring the property in question. The seller who furnishes such advice does not, however, offer a financial service.

The Court held, moreover, that it is also impossible to establish the existence of a sufficiently close link of complementarity between financial services and building promoter services. Although, having regard to the considerable sums generally involved in property transactions, financial services are important for the average consumer from the point of view of the use of building promoter services, the fact nonetheless remains that, in a market economy, a substantial portion of activities require financing or investment, with the result that financial services might, by their nature, be associated with the majority of those activities and not only with the activities of a building promoter.

In the light of those factors, the Court concluded that the services covered by the earlier marks and those covered by the mark applied for were not similar. The lack of similarity between the services could not be offset for the purposes of the assessment of the likelihood of confusion by the similarity, even if that were of a high degree, between the marks at issue.

In the fourth place, in the judgment of 30 September 2015 in ***Tilda Riceland Private v OHIM — Siam Grains (BASmALI)*** (T-136/14, ECR, EU:T:2015:734), the Court ruled on the legality of the decision by which the Fourth Board of Appeal of OHIM refused to uphold the opposition filed against the application for registration of the Community figurative trade mark BASmALI for rice. The opposition was based on the earlier non-registered trade mark or earlier sign BASMATI, used in the course of trade in relation to rice. The Board of Appeal found that the opponent had not provided any evidence that the name 'basmati' had been used as a distinctive sign in the course of trade. It observed that the distinctiveness of the sign at issue had to result from its function of identifying the commercial origin of the goods. The opponent disputed that assessment before the Court, submitting that there had been an infringement of Article 8(4) of Regulation (EC) No 207/2009.

Adjudicating in the case, the Court observed that, while it is indeed true, as the Board of Appeal had pointed out, that, under Article 8(4) of Regulation (EC) No 207/2009, the sign at issue must be used as a distinctive element in that it must serve to identify an economic activity engaged in by its proprietor, that cannot mean, however, that the function of the use of a sign, under that provision, should be exclusively that of identifying the commercial origin of the goods or services at issue. In reaching that conclusion, the Board of Appeal laid down a condition which is not provided for in Article 8(4) of Regulation (EC) No 207/2009.

The Court pointed out that that provision covers non-registered trade marks and any '[other] sign' used in the course of trade. In that context, and in the absence of any indication to the contrary, the function of the use of the sign at issue may, in the light of the nature of that sign, lie not only in the identification by the relevant public of the commercial origin of the goods concerned, but also, inter alia, in the identification of their geographical origin and the special qualities inherent in them or of the characteristics on which their reputation is based.

The sign at issue, in the light of its nature, may thus be classified as a distinctive element if it serves to identify the goods or services of one undertaking in relation to those of another undertaking, but also, inter alia, if it serves to identify certain goods or services in relation to other similar goods or services. As the approach applied by the Board of Appeal therefore effectively excluded signs which are used by a number of traders or which are used in association with trade marks from the benefit of Article 8(4) of Regulation (EC) No 207/2009, even though that provision does not provide for such an exclusion, the Court annulled the contested decision.

In the fifth place, in the judgment of 2 October 2015 in ***The Tea Board v OHIM — Delta Lingerie (Darjeeling)*** (T-624/13, ECR, under appeal, EU:T:2015:743), the Court pointed out that a Community collective mark, like any Community trade mark, enjoys protection against any infringement resulting from the registration of a Community trade mark that involves a likelihood of confusion.

The Court stated that, although Article 66(2) of Regulation (EC) No 207/2009 introduces an exception to Article 7(1)(c) of that regulation by relaxing the conditions for registration and allowing marks describing the origin of the goods covered to be registered, that regulation is applicable, pursuant to Article 66(3) thereof, unless otherwise expressly provided, to all Community collective marks, including those registered under Article 66(2). According to the Court, the function of Community collective marks falling under Article 66(2) of Regulation (EC) No 207/2009 consists of distinguishing the goods or services covered by those marks according to the body which is the proprietor of the marks and not according to the geographical origin of those goods or services. Thus, where, in the context of opposition proceedings, the signs at issue are collective marks on the one hand and individual marks on the other, the comparison of the goods and services covered must be carried out using the same criteria as those which apply to an assessment of the similarity or identity of goods or services covered by two individual marks. In that context, even assuming that the origin of the goods and services covered by the signs at issue may constitute one of the factors to be taken into account in the global assessment of the likelihood of confusion within the meaning of Article 8(1)(b) of Regulation (EC) No 207/2009, that provision is not applicable where one of the cumulative conditions listed therein has not been met.

The Court also revisited the concept of the reputation of a trade mark. Noting that Article 8(5) of Regulation (EC) No 207/2009 does not define 'reputation', it observed that, in the context of the assessment of whether an earlier trade mark has a reputation, account must be taken of all the relevant facts, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the amount spent in promoting it. It also stated that any assessment concerning a Community collective trade mark falling under Article 66(2) of Regulation (EC) No 207/2009, including the assessment of whether it has a reputation within the meaning of Article 8(5) of that regulation, must be carried out using the same criteria as those applicable to individual marks.

(c) PROCEDURAL ISSUES

In the judgment of 13 February 2015 in ***Husky CZ v OHIM — Husky of Tostock (HUSKY)*** (T-287/13, ECR, EU:T:2015:99), the Court ruled on the interpretation of Rule 71(2) of Regulation (EC) No 2868/95 ([30]).

The Court pointed out that the English version of that rule is different from its German, Spanish, French and Italian versions. In that regard, the need for uniform application and, accordingly, for uniform interpretation of an EU measure makes it impossible to consider one version of the text in isolation, but requires, on the contrary, that it be interpreted on the basis of both the real intention of its author and the aim which the latter seeks to achieve, in the light, in particular, of the versions existing in all the other official languages. Furthermore, it does

30 | 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).

not follow from the wording of the provisions of Regulation (EC) No 2868/95 that Rule 71(2) ought to be applied and interpreted other than in conjunction with Rule 71(1). Rule 71(2) must be regarded as allowing OHIM, where there are two or more parties to the proceedings, to make the extension of a period subject to the agreement of the other parties and not as making the extension conditional on the consent of the parties. According to the Court, making the grant of an extension of time conditional only on the consent of the parties might have the effect of depriving the party seeking the extension of the opportunity to defend itself. It may also run counter to the sound administration of the proceedings and be contrary to the aim pursued by Rule 71, which is precisely to allow the extension of periods when such an extension is appropriate in the circumstances. Thus, the Court concluded that, in the case in point, the Board of Appeal had not erred in holding that Rule 71(2) of Regulation (EC) No 2868/95 is to be interpreted as meaning that when a party, in *inter partes* proceedings, requests an extension of time, OHIM may seek the consent of the other party, but is under no obligation to do so, and that that provision must be read in conjunction with Rule 71(1), from which it follows that OHIM, in particular when it decides not to seek the other party's consent, must take account of the circumstances surrounding the request for an extension of time.

In addition, the Court stated that Rule 22(6) of Regulation (EC) No 2868/95 supplements and further elaborates on the provisions of Rule 22(2) to (4) of that regulation, which are applicable *mutatis mutandis* to revocation proceedings pursuant to Rule 40(5) of the regulation. Accordingly, Rule 22(6) is applicable to revocation proceedings based on Article 51(1)(a) of Regulation (EC) No 207/2009. It follows that in such proceedings OHIM is able to ask of the party submitting documents that they be translated where the documents submitted are not in the language of the proceedings.

In the case giving rise to the judgment of 25 March 2015 in ***Apple and Pear Australia and Star Fruits Diffusion v OHIM — Carolus C. (English pink)*** (T-378/13, ECR, under appeal, EU:T:2015:186), the Court was called upon to adjudicate on the question whether a judgment delivered by a national court constitutes, in the context of infringement proceedings, a relevant factual aspect the potential impact of which on the outcome of the dispute the Board of Appeal ought to assess. The Court observed, first of all, that Article 95 of Regulation (EC) No 207/2009 provides that Member States are to designate in their territories those national courts and tribunals which are to assume the role of 'Community trade mark courts'. In that context, Article 96 of the regulation states that the Community trade mark courts are to have jurisdiction inter alia for infringement actions and for counterclaims for revocation or for a declaration of invalidity of the Community trade mark. The Belgian legislature has designated the Tribunal de commerce de Bruxelles (Commercial Court, Brussels, Belgium) as a Community trade mark court of first instance. The judgment of that court was, prima facie, a relevant factual element for resolving the case at hand. The Board of Appeal could not fail to recognise that there were essential common points between the factual aspects at issue in the infringement proceedings initiated and the opposition proceedings brought to contest the registration of the mark sought. The Court pointed out, moreover, that that judgment was delivered by a Community trade mark court which was established pursuant to Regulation (EC) No 207/2009 and which is as such part of the autonomous system that is the EU trade mark regime, as its role is to protect, throughout the territory of the European Union, those Community trade marks which are targeted by infringement or threatened infringement and it thus pursues objectives which are specific to that system. Given all the above circumstances, the Court concluded that in this instance the judgment at issue was, prima facie, a relevant factual aspect the potential impact of which on the outcome of the dispute before the Board of Appeal ought to have been assessed by the latter. In failing to do so, the Board of Appeal had not assessed all the relevant factual aspects of the case before it with the required diligence.

The judgment of 25 June 2015 in ***Copernicus Trademarks v OHIM — Maquet (LUCEA LED)*** (T-186/12, ECR, EU:T:2015:436) enabled the Court to state that Article 76(1) of Regulation (EC) No 207/2009, which provides that, in proceedings relating to relative grounds for refusal of registration, OHIM's examination is to be restricted to the facts, evidence and arguments provided by the parties, does not prevent OHIM from examining of its own motion the precedence of the mark on which the opposition is based.

In addition, according to the Court, the entry by the examiner of a priority date in the register does not preclude OHIM from considering, in opposition proceedings, whether the conditions for the priority claim are satisfied. The Court observed, in that regard, that the case-law to the effect that a trade mark applicant who wishes to challenge the validity of the Community mark on which an opposition is based is required to do so in the context of invalidity proceedings cannot be transposed to a claim for priority in respect of such a trade mark. First of all, the entry in the register of a priority date for a Community trade mark cannot, or at least cannot effectively, be challenged in the context of invalidity proceedings. Furthermore, there is no other specific procedure that would allow a third party to challenge the priority date entered in the register for a Community trade mark that might be compared to invalidity proceedings, one of the features of which is that they cannot be opened by OHIM of its own motion.

In the judgment of 30 June 2015 in ***La Rioja Alta v OHIM — Aldi Einkauf (VIÑA ALBERDI)*** (T-489/13, ECR (Extracts), EU:T:2015:446), the Court observed that, among the relevant factors for assessing the existence of a likelihood of confusion, the coexistence of two marks on a market might be taken into account, since it is accepted in the case-law that, together with other elements, it may contribute to diminishing the likelihood of confusion between those marks on the part of the relevant public.

In that context, the Court stated that, although it is for the proprietor of the contested trade mark to demonstrate during the proceedings before OHIM concerning relative grounds of refusal that such coexistence was based upon the absence of any likelihood of confusion on the part of the relevant public between the mark on which the proprietor relies and the earlier mark on which the application for a declaration of invalidity is based, it is open to such a proprietor to advance a body of evidence to that effect. In that regard, evidence demonstrating that the relevant public recognised each of the trade marks at issue before the time when the application for registration of the contested mark was filed is particularly relevant. In addition, inasmuch as according to the case-law the coexistence of trade marks must be sufficiently long to be capable of influencing the perception of the relevant consumers, the duration of the coexistence also constitutes an essential factor.

The judgment of 15 July 2015 in ***Australian Gold v OHIM — Effect Management & Holding (HOT)*** (T-611/13, ECR, EU:T:2015:492) provided the Court with the opportunity to recall that the registrability of a sign as a Community trade mark is to be assessed on the basis of the relevant legislation alone.

Thus, according to the Court, neither OHIM nor, as the case may be, the Courts of the European Union are bound — even if they may take them into consideration — by decisions adopted in a Member State, even where those decisions were adopted under national legislation harmonised pursuant to Directive 2008/95/EC ([31]). The provisions of Regulation (EC) No 44/2001 ([32]), and of Article 109 of Regulation (EC) No 207/2009, do not invalidate that finding. As is clear, in particular, from recital 15 of Regulation (EC) No 44/2001, that regulation seeks merely to ensure that irreconcilable judgments will not be given in two Member States and does not apply to OHIM. Furthermore, Article 109 of Regulation (EC) No 207/2009 seeks to prevent infringement actions brought before national courts, one based on a Community trade mark and the other on a national trade mark, giving rise to contradictory decisions. It thus relates solely to the effects and not to the conditions governing protection of those marks. Nor is the abovementioned finding called into question by Article 7(2) of Regulation (EC) No 207/2009, which provides that the absolute grounds for refusal set out in Article 7(1) are to apply notwithstanding that they obtain in only part of the European Union. Refusal of a national registration is based on national provisions implemented on the basis of a national procedure in a national context and is therefore not equivalent to recognition of the existence in a State of an absolute ground for refusal within the meaning of Regulation (EC) No 207/2009.

31 | Directive 2008/95/EC of the European Parliament and of the Council, of 22 October 2008 to approximate the laws of the Member States relating to trade marks (OJ 2008 L 299, p. 25).

32 | 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).

Consequently, even though it is desirable for OHIM to take into account decisions of national authorities concerning marks identical to those on which it has to rule, and vice versa, OHIM is not required to take those decisions into account, including decisions concerning identical marks, and, assuming that it does take them into account, it is not bound by those decisions.

Last, the judgment of 18 November 2015 in ***Instituto dos Vinhos do Douro e do Porto v OHIM — Bruichladdich Distillery (PORT CHARLOTTE)*** (T-659/14, ECR, EU:T:2015:863) enabled the Court to clarify the scope of the protection conferred by Regulation (EC) No 491/2009 ([33]).

The Court observed that wine names protected in accordance with, inter alia, Articles 51 and 54 of Regulation (EC) No 1493/1999 ([34]) are to be automatically protected under that regulation and that the Commission is to enter them in the register provided for in Article 118n of Regulation (EC) No 491/2009, that is to say, in the E-Bacchus database. According to the Court, it follows from the automatic nature of the protection of wine names already protected under Regulation (EC) No 1493/1999 that those wines do not need to be entered in the E-Bacchus database in order to benefit from protection in the European Union. However, that automatic protection, although based directly on the relevant national legislation, does not necessarily mean that OHIM is obliged, under Regulation (EC) No 491/2009, to comply with the provisions of that legislation or the conditions for protection laid down by it. The Court concluded that, as regards the scope of Regulation (EC) No 491/2009, its provisions govern, in a uniform and exclusive manner, both the authorisation of and limits to, and even the prohibition of, commercial use of the protected designations and of the protected geographical indications under EU law, so that, in that context, there was no need for the Board of Appeal to apply the conditions for protection specifically established in the relevant rules of national law which were the basis for the entry of the appellations of origin 'porto' or 'port' in the E-Bacchus database.

However, as regards the allegedly exhaustive nature of the protection conferred by Article 118m(1) and (2) of Regulation (EC) No 491/2009, the Court observed that neither the provisions of that regulation nor the provisions of Regulation (EC) No 207/2009 state that the protection under Regulation (EC) No 491/2009 must be construed as being exhaustive. On the contrary, the grounds for invalidity may be based, individually or cumulatively, on earlier rights under the EU legislation or national law governing their protection. It follows that the protection conferred on designations of origin, provided that they are 'earlier rights', may be supplemented by the relevant national law granting additional protection.

The Court explained in addition that, although the applicant for a declaration of invalidity bears the burden of proving that he is entitled, under the national law applicable, to lay claim to an earlier right, the fact remains that the competent OHIM bodies must first assess the weight and scope of the particulars in question. Furthermore, under Article 53(1)(c) of Regulation (EC) No 207/2009, read in conjunction with Article 8(4) thereof, where a sign other than a mark exists it is possible to obtain a declaration that a Community trade mark is invalid if that sign satisfies each of four conditions. Although the first two conditions follow from the very wording of Article 8(4) of Regulation (EC) No 207/2009 and must therefore be interpreted in the light of EU law, the other two conditions, set out subsequently in Article 8(4)(a) and (b) of that regulation, constitute conditions laid down by the regulation which must be assessed in the light of the criteria set by the law governing the right relied on. In the light of those factors, the Court concluded that, in the case in point, the Board of Appeal was not entitled to dismiss the evidence adduced by the applicant and fail to apply the national legislation in question on the ground that the protection of the designations of origin or geographical indications concerned fell within Regulation (EC) No 491/2009 exclusively, and indeed the exclusive competence of the European Union.

33| Council Regulation (EC) No 491/2009 of 25 May 2009 amending Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ 2009 L 154, p. 1).

34| Council Regulation (EC) No 1493/1999 of May 1999 on the common organisation of the market in wine (OJ 1999 L 179, p. 1).

(d) POWER TO ALTER DECISIONS

In the judgment in ***English pink***, cited above (EU:T:2015:186), the Court was prompted to clarify the conditions governing exercise of the power to alter decisions, as recognised in Article 65(3) of Regulation (EC) No 207/2009. In support of their claim seeking alteration of the contested decision, the applicants relied on the principle that *res judicata* attaches to a decision delivered by a national court of a Member State designated by that State as a Community trade mark court, within the meaning of Article 95 of that regulation.

The Court recalled, first of all, that the power to alter decisions does not have the effect of conferring the power to carry out an assessment on which the Board of Appeal has not yet adopted a position. The exercise of the power to alter decisions must therefore, in principle, be limited to situations in which the General 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 law as established, what decision the Board of Appeal was required to take.

In that context, the decision of a national court sitting as a Community trade mark court in an action for infringement of a Community trade mark carries no weight of *res judicata* for the departments of OHIM in opposition proceedings concerning the registration of a Community trade mark, even if that trade mark is identical to the national mark which is the subject of the action for infringement. It follows that the existence of such a decision is not in itself sufficient to enable the Court to ascertain which decision the Board of Appeal was required to take. The Court stated that, since the decisions which the Boards of Appeal are led to take under Regulation (EC) No 207/2009 are adopted in the exercise of circumscribed powers, and since that regulation does not contain any provision whereby OHIM is bound, under the principle of *res judicata*, by a decision of a Community trade mark court, in the case in point that principle was not binding on the Board of Appeal or on the Courts of the European Union in the exercise of their review of lawfulness and their power to alter decisions.

The Court concluded, in the light of the fact that it was not in a position to determine, on the basis of the matters of fact and law as established, which decision the Board of Appeal was required to take, that it could not exercise its power to alter decisions in the case in point.

(e) PROOF OF GENUINE USE OF THE TRADE MARK

In the case giving rise to the judgment of 16 June 2015 in ***Polytetra v OHIM — EI du Pont de Nemours (POLYTETRAFLON)*** (T-660/11, ECR, EU:T:2015:387), the Court was led, in particular, to examine whether proof by the opponent of use of the earlier trade mark in relation to third parties' final products incorporating a component corresponding to the product designated by that mark could constitute proof of genuine use of that mark, within the meaning of Article 42(2) and (3) of Regulation (EC) No 207/2009.

In the case in point, the Court held that the non-stick materials designated by the earlier mark which the opponent supplied to its customers underwent a process of transformation resulting in products for sale to the end consumer in order to be used as such. In those circumstances, the third parties' final products were, both by their nature and by their intended purpose, essentially different from the non-stick materials and did not belong to the same group as those materials. Accordingly, proof of use of the earlier mark in respect of third parties' final products incorporating the opponent's component did not permit the conclusion that it had been used for the final products for which that mark had been registered.

The Court observed, moreover, that the mark at issue was used by third parties to indicate the presence of the raw material or of a coating originating from the opponent and not to denote a link either between the opponent and a third party's product or between that third party and its product. It followed that, in the case in point, use of the mark in relation to third parties' final products did not ensure the essential function of that

mark, namely to guarantee the origin of the goods, in respect of those final products and could not therefore be regarded as use for those goods for the purposes of Article 42(2) and (3) Regulation (EC) No 207/2009.

2. DESIGNS

Two decisions relating to the registration of a Community design, pursuant to Regulation (EC) No 6/2002 ([35]), deserve special mention.

In the first place, the case giving rise to the judgment of 21 May 2015 in ***Senz Technologies v OHIM — Impliva (Umbrellas)*** (T-22/13 and T-23/13, ECR (Extracts), EU:T:2015:310) provided the Court with the opportunity to point out that a design is deemed to have been made available once the party claiming that it has been made available has proved the events constituting disclosure, and that presumption applies irrespective of where the events constituting disclosure took place.

According to the Court, the question whether events taking place outside the European Union could reasonably have become known to the persons forming part of the circles specialised in the sector concerned is a question of fact, the answer to that question being dependent on the assessment of the particular circumstances of each individual case. In order to carry out that assessment, it is necessary to examine whether, on the basis of the facts, which must be adduced by the party challenging disclosure, it is appropriate to consider that it was not actually possible for those circles to be aware of the events constituting disclosure, whilst bearing in mind what can reasonably be required of those circles in terms of being aware of prior art. Those facts may concern, for example, the composition of the specialised circles, their qualifications, customs and behaviour, the scope of their activities, their presence at events where designs are presented, the characteristics of the design at issue, such as their interdependency with other products or sectors, and the characteristics of the products into which the design at issue has been integrated, including the degree of technicality of the product concerned. In any event, a design cannot be deemed to be known in the normal course of business if the circles specialised in the sector concerned can become aware of it only by chance.

In addition, the Court observed that Article 7(1) of Regulation (EC) No 6/2002 does not impose any requirement that the earlier design must have been used for the manufacture or marketing of a product. However, the fact that a design has never been incorporated into a product is significant only where it is established that the circles specialised in the sector concerned do not generally consult patent registers or that the circles specialised in the sector concerned do not generally attach any weight to patents.

In the second place, in the judgment of 10 September 2015 in ***H&M Hennes & Mauritz v OHIM — Yves Saint Laurent (Handbags)*** (T-525/13, ECR, EU:T:2015:617), the Court ruled on the test for the assessment of individual character relating to the degree of freedom of the designer, as referred to in Article 6 of Regulation (EC) No 6/2002.

First, the Court recalled that the degree of freedom of the designer of a design is determined, inter alia, by the constraints of the features imposed by the technical function of the product or of an element thereof, or by statutory requirements applicable to the product. Those constraints result in a standardisation of certain features, which will thus be common to the designs applied to the product concerned. Therefore, the greater the designer's freedom in developing a design, the less likely it is that minor differences between the designs at issue will be sufficient to produce different overall impressions on an informed user. Conversely, the more the designer's freedom in developing a design is restricted, the more likely it is that minor differences between the designs at issue will be sufficient to produce different overall impressions on an informed user. The Court

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

therefore considered that if the designer enjoys a high degree of freedom in developing a design, that reinforces the conclusion that designs that do not have significant differences produce the same overall impression on an informed user.

Second, the Court stated that Article 6 of Regulation (EC) No 6/2002, concerning the assessment of individual character, lays down, in paragraph 1, the criterion of the overall impression produced by the designs at issue and provides, in paragraph 2, that the degree of freedom of the designer must be taken into consideration for those purposes. It is apparent from those provisions that the assessment of the individual character of a Community design is the result, in essence, of a four-stage examination. That examination consists in deciding upon, first, the sector to which the products in which the design is intended to be incorporated or to which it is intended to be applied belong; second, the informed user of those products in accordance with their purpose and, with reference to that informed user, the degree of awareness of the prior art and the level of attention in the comparison, direct if possible, of the designs; third, the designer's degree of freedom in developing his design; and, fourth, the outcome of the comparison of the designs at issue, taking into account the sector in question, the designer's degree of freedom and the overall impressions produced on the informed user by the contested design and by any earlier design which has been made available to the public. Thus, the Court observed, although the factor relating to the designer's degree of freedom may 'reinforce' or, *a contrario*, moderate the conclusion as regards the overall impression produced by each design at issue, on the other hand the assessment of the degree of freedom does not constitute a preliminary and abstract step in the comparison of the overall impressions produced by the designs at issue.

In the case in point, the Court concluded that the Board of Appeal had therefore not erred in stating that the factor relating to the freedom of the designer could not on its own determine the assessment of the individual character of a design, but that it was, however, a factor which had to be taken into consideration in that assessment. According to the Court, the Board of Appeal had therefore been correct to find that that factor was a factor which made it possible to moderate the assessment of the individual character of the contested design, rather than an independent factor.

COMMON FOREIGN AND SECURITY POLICY — RESTRICTIVE MEASURES

In 2015 the case-law of the General Court relating to restrictive measures in the area of the common foreign and security policy was particularly varied. A number of judgments deserve special mention.

1. TERRORISM

In the judgment of 14 January 2015 in ***Abdulrahim v Council and Commission*** (T-127/09 RENV, ECR, EU:T:2015:4), the Court had the opportunity for the first time to apply, in proceedings relating to restrictive measures against certain persons and entities in the context of the fight against terrorism, the principles established by the Court of Justice in its judgment of 18 July 2013 in ***Commission and Others*** v ***Kadi*** ([36]) concerning the type of judicial review to be carried out by the Courts of the European Union. The case concerned restrictive measures against the applicant adopted on the basis of Regulation (EC) No 881/2002 ([37]).

36 | C-584/10 P, C-593/10 P and C-595/10 P, ECR, EU:C:2013:518.

37 | Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ 2002 L 139, p. 9).

After the case had been referred back to the General Court, following the judgment of the Court of Justice ([38]) setting aside the order ([39]) by which it had held that, as the applicant had no interest in bringing an action, there was no longer any need to adjudicate, the General Court stated that, in accordance with the approach defined in the judgment in ***Commission and Others*** v ***Kadi***, cited above (EU:C:2013:518), where the person concerned challenges the legality of the decision to list him or maintain his listing on the list in Annex I to Regulation (EC) No 881/2002, the Courts of the European Union must, as part of the review of the lawfulness of the grounds forming the basis of that decision, ensure that that decision is taken on a sufficiently solid factual basis.

In that context, for the rights of the defence and the right to effective judicial protection to be respected, first, the competent EU authority must disclose to the person concerned the summary of reasons forming the basis for its decision, enable him effectively to make known his observations and examine, in the light of the observations submitted, whether the reasons alleged and any exculpatory evidence that may be produced by the person concerned are well founded. Second, respect for those rights implies that, in the event of a legal challenge, the Courts of the European Union are to review, in particular, whether the reasons relied on in the summary of reasons provided by the Sanctions Committee are sufficiently detailed and specific and, where appropriate, whether the accuracy of the facts relating to the reason concerned has been established.

On the other hand, the fact that the competent EU authority does not make accessible to the person concerned and, subsequently, to the Courts of the European Union information or evidence which relates to the summary of reasons underpinning the decision at issue cannot, as such, justify a finding that those rights have been infringed. However, in such a situation, the Courts of the European Union will not have supplementary information or evidence before them. Consequently, if it is impossible for those courts to find that those reasons are well founded, they cannot be relied on as the basis of the contested listing decision.

In the light of those considerations, since the Court found that none of the allegations made against the applicant in the summary of reasons provided by the Sanctions Committee was such as to justify the adoption, at EU level, of restrictive measures against him, either because the reasons stated were insufficient, or because information or evidence that might substantiate the reasons concerned, in the face of detailed rebuttals submitted by the party concerned, was lacking, the regulation imposing such restrictive measures on him had to be annulled.

2. ISLAMIC REPUBLIC OF IRAN

In the context of proceedings relating to restrictive measures adopted against the Islamic Republic of Iran with a view to preventing nuclear proliferation, the Court had the opportunity, in three judgments, to provide important clarification of the concept of 'support to the Government of Iran' within the meaning of the relevant EU legislation ([40]).

In the first place, in the case giving rise to the judgment of 25 June 2015 in ***Iranian Offshore Engineering & Construction v Council*** (T-95/14, ECR (Extracts), under appeal, EU:T:2015:433), an action was brought before the Court for annulment of the measures by which the Council had included the name of the applicant, a company established in Iran, on the list of persons and entities subject to restrictive measures on the ground that, as an important entity in the energy sector providing substantial revenues to the Government of Iran, it provided financial and logistical support to that government.

38| Judgment of 28 May 2013 in ***Abdulrahim*** v ***Council and Commission*** (C-239/12 P, ECR, EU:C:2013:331).

39| Order of 28 February 2012 in ***Abdulrahim*** v ***Council and Commission*** (T-127/09, EU:T:2012:93).

40| Article 23(2)(d) of Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ 2012 L 88, p. 1) and Article 20(1)(c) of 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).

Examining the ground for inclusion based on financial support to the Government of Iran, the Court recalled the principle that the legality of measures may be assessed only on the basis of the elements of fact and law on which they were adopted and not on the basis of information which was brought to the Council's knowledge after the adoption of those measures, even if the Council takes the view that that information could legitimately be the basis for the adoption of those measures. In the case in point, the Court observed that it followed from the Council's fluctuating line of argument that the Council had no clear idea as to the identity of the applicant's shareholders at the time of adopting the contested acts. The Court therefore held that the ground according to which the applicant provided substantial revenues to the Government of Iran was not substantiated to the requisite legal standard.

The Court held, on the other hand, that the Council had not made an error of assessment in taking the view that the applicant provided logistical support to the Government of Iran. In that regard, it pointed out that the term 'logistics' includes any activity that relates to the organisation and implementation of a complex operation or process. Therefore, after finding that the applicant's activities, by their quantitative and qualitative significance, were required in order to meet the needs of the oil and gas sector in Iran, and pointing out that the Iranian Government derived substantial revenues from that sector, which allowed it to fund is proliferation-sensitive nuclear activities, the Court concluded that the logistical support criterion could be regarded as satisfied.

In the second place, in the judgment of 25 March 2015 in ***Central Bank of Iran v Council*** (T-563/12, ECR, under appeal, EU:T:2015:187), the Court had to examine the action brought by the Central Bank of the Islamic Republic of Iran challenging the restrictive measures adopted against it.

The Court observed, first of all, that the criterion of 'support to the Government of Iran', which extends the scope of the restrictive measures in order to reinforce the pressure being brought to bear on the Islamic Republic of Iran, covers any activity of the person or entity concerned which, regardless of any direct or indirect link established with nuclear proliferation, is capable, by its quantitative or qualitative significance, of encouraging that proliferation, by providing the Government of Iran with support in the form of resources or facilities of a material, financial or logistical nature which allow it to pursue nuclear proliferation. The existence of a link between the provision of such support to the Government of Iran and the pursuit of nuclear proliferation activities is thus presumed by the applicable legislation, which is aimed at depriving the Government of Iran of its sources of revenue, in order to oblige it to end the development of its nuclear proliferation programme as a result of insufficient financial resources.

As regards the assessment of the merits of the reasons stated by the Council, the Court stated that, by virtue of its functions and powers as the central bank of the Islamic Republic of Iran, as defined by law, it can be regarded as evident that the applicant provides the Government of Iran with financial services which are capable, by their quantitative and qualitative significance, of encouraging nuclear proliferation. Although the applicant maintained that during the relevant period it had not exercised its powers to grant loans and credits or to provide guarantees to the government, or provided the Government of Iran, in practice, with any financial facility or resources, the Court considered that the applicant had not produced evidence to that effect. It therefore confirmed that the criterion of support to the Government of Iran was satisfied in the case in point.

In the third place, the judgment of 8 September 2015 in ***Ministry of Energy of Iran v Council*** (T-564/12, ECR, EU:T:2015:599) enabled the Court to rule on the restrictive measures imposed on the Iranian Ministry of Energy. Those measures had been adopted against that ministry on the ground that it was responsible for policy in the energy sector, which provided a substantial source of revenue for the Iranian Government. The ministry brought an action before the Court for annulment of the measures resulting in the freezing of its funds, after the Council, in response to the observations which the ministry had submitted in the context of its request for review of the inclusion of its name, had considered that the restrictive measures were still justified for the reasons given in the statement of reasons for the measures in question.

Called upon to examine the existence of an alleged breach of the rights of the defence and of the principle of effective judicial protection, the Court observed that, under the applicable legislation, the Council is required to review the inclusion of an entity's name in the light of the observations submitted by that entity. In the absence of a specific time limit, it is appropriate to take the view that that review must take place within a reasonable time. According to the Court, in that context, a response time of more than 15 months, as in the case in point, is manifestly unreasonable. It held, however, that the breach of the obligation to respond to the observations within a reasonable time did not necessarily justify the annulment of the contested measures. The Court observed, in that regard, that the objective of the obligation in question is to ensure that the restrictive measures relating to a person or entity are warranted at the time they are adopted, in the light of the observations that that person or entity has submitted. If the Council had actually sent the applicant a response to its observations, that obligation had been met, albeit belatedly, and the Council's breach therefore no longer adversely affected the entity concerned. Accordingly, the applicant could not rely on the delay in question to secure the annulment of the restrictive measures affecting it.

As to whether the measure was well founded, the Court held that the applicant's involvement, as a ministry of the Government of Iran, in the export of electricity, in particular by collecting the amounts paid by buyers of exported electricity, constituted support for the Government of Iran, in the form of financial support, irrespective of whether, as a whole, the activities of the ministry in question were loss-making. In addition, the Court observed that the freezing of the funds of that ministry, on the ground of its electricity export activities, was consistent with the objective of depriving the Government of Iran of its sources of revenue. Emphasising that the key question in assessing whether the applicant provided financial support to the Government of Iran was thus not its overall profitability, but whether its electricity export activities were profitable, and that the applicant had not disputed that those activities were profitable, the Court therefore held that the Council had not erred in imposing the restrictive measures at issue on it.

3. SYRIAN ARAB REPUBLIC

In the judgment of 21 January 2015 in ***Makhlouf v Council*** (T-509/11, EU:T:2015:33), the Court had the opportunity to confirm the restrictive measures adopted by the Council against a close relative of the Syrian President, Bashar al-Assad. That judgment had its origin in the action brought by the applicant against the Council's decision to include his name on the list of persons subject to the restrictive measures against the Syrian Arab Republic. The applicant claimed that his listing should be annulled and, in support of that claim, relied, in particular, on a breach of his fundamental rights and of the obligation to state reasons.

After observing that the Council had not breached the applicant's rights of defence or his right to a fair trial, and that the grounds set out in the contested measure provided the applicant with sufficient information for him to be able to challenge their validity before the Courts of the European Union, the Court considered that the Council had been correct in finding that, solely by being the uncle of Bashar al-Assad and the senior member of the family, the applicant was connected with the Syrian leaders, as the exercise of power by a family in Syria was a well-known fact that the Council was entitled to take into account. According to the Court, it could reasonably be concluded from the evidence supplied by the Council that the applicant had links with the leaders of the regime or provided economic support for it.

The Court also held that the Council had not committed any breach of the principle of proportionality, the right to property or the right to private life. Given the fundamental importance of the protection of the civilian population in Syria and the derogations envisaged by the contested measures, the restrictions of the applicant's right to property and of respect for his private life caused by those measures were not disproportionate in the light of the aim pursued.

4. REPUBLIC OF BELARUS

By two judgments of 6 October 2015, in ***FC Dynamo-Minsk v Council*** (T-275/12, EU:T:2015:747) and ***Chyzh and Others v Council*** (T-276/12, EU:T:2015:748), the Court adjudicated on two actions brought against decisions by which the Council had adopted restrictive measures against the applicants, a Belarusian football club, the chairman of the board of that club, a holding company established in Minsk (Belarus) owned by that chairman, and the subsidiaries of that holding company, on the ground that they supplied financial support to or benefited from the regime of the Belarusian President.

First of all, as regards the chairman of the board of the football club in question, the Court observed that the Council had supplied no evidence proving that he provided financial support to the Belarusian regime, with the consequence that the inclusion of his name on the lists of persons and entities subject to restrictive measures was not justified. In that regard, the Court rejected, in particular, the Council's argument that the applicant had obtained public contracts and concessions in Belarus because of his close links to the President's regime. As the award of those contracts and concessions in Belarus was governed by legal rules, the Council ought to have shown that the applicant had been able to obtain the contracts in question other that on his own merits.

Next, as regards the holding company, the Court held that the Council was not entitled to include that company's name on the lists at issue at the beginning of 2012 on the ground that it was owned by a person already on the list. So far as Belarus is concerned, it was only from the end of 2012 that EU law allowed the Council to apply the fund-freezing measures imposed on a person to the entities owned or controlled by that person. In that context, the Court also observed that the Council had not succeeded in proving that that company provided financial support to the regime of the Belarusian President.

Last, as regards the Belarusian football club and the other companies whose names were added to the lists at issue on the ground that they were subsidiaries of the holding company, the Court held that the unlawful inclusion of the latter's name meant that the inclusion of the names of its subsidiaries, including the football club, was also unlawful.

The Court therefore annulled most of the contested measures in so far as they related to the applicants.

5. UKRAINE

In the judgment of 26 October 2015 in ***Portnov v Council*** (T-290/14, ECR, EU:T:2015:806) the Court adjudicated for the first time on restrictive measures adopted in view of the situation in Ukraine and aimed at persons identified as being responsible for the misappropriation of Ukrainian State funds. The measures at issue were adopted against the adviser of the former President of Ukraine, on the ground that he was subject to criminal proceedings in Ukraine involving the investigation of offences in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.

The Court recalled that, although the Council has a broad discretion as regards the general criteria to be taken into consideration for the purpose of adopting restrictive measures, the Courts of the European Union are to ensure that that decision, which affects the person concerned individually, is taken on a sufficiently solid factual basis. That entails a verification of the factual allegations in the summary of reasons underpinning that 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, or, at the very least, one of those reasons, deemed sufficient in itself to support that decision, are substantiated by sufficiently specific and concrete evidence.

Examining, next, the letter from the Ukrainian Public Prosecutor's Office to the High Representative of the European Union for Foreign Affairs and Security Policy on which the Council relied to support the applicant's inclusion on the list at issue, the Court observed that, although it was sent by a high court in a non-member country, it contained only a general statement to the effect that the applicant, among other former senior officials, was being investigated in connection with acts, not further specified, involving the misappropriation of funds and their illegal transfer abroad. The Court therefore considered that that letter gave no details of that conduct or of the applicant's responsibility for it.

It followed, according to the Court, that the letter in question could not constitute a sufficiently solid factual basis for including the applicant's name on the list at issue on the ground that he was identified as responsible for the misappropriation of State funds. As the inclusion of the applicant's name on the list did not comply with the criteria set for the designation of persons covered by the restrictive measures at issue, the Court annulled the restrictive measures adopted in respect of the applicant.

EUROSYSTEM OVERSIGHT POLICY FRAMEWORK — COMPETENCE OF THE ECB

In the judgment in ***United Kingdom*** v ***ECB*** ([41]), cited above (EU:T:2015:133), the Court was led to adjudicate on the competence of the ECB to regulate the activity of securities clearing systems, in accordance with the requirements laid down by the Eurosystem Oversight Policy Framework.

First of all, the Court stated that the creation of a requirement that central counterparties involved in the clearing of securities be located within the euro area is not limited to mere oversight of those systems, but partakes of regulation of their activity.

Next, the Court observed that Article 127(1) and (2) TFEU and Article 22 of the Statute of the ECB have a complementary relationship. The power to adopt regulations pursuant to Article 22 of the Statute is one of the means available to the ECB for performing the task, entrusted to the Eurosystem by Article 127(2) TFEU, of promoting the smooth operation of payment systems. That task itself serves the primary objective set out in Article 127(1) TFEU. It necessarily follows that the term 'clearing systems' in Article 22 of the Statute of the ECB must be read in conjunction with the 'payment systems' to which reference is made in the same article.

Consequently, the Court held that, in the absence of an explicit reference to the clearing of securities in Article 22 of the Statute of the ECB, the term 'clearing and payment system' is intended to make it clear that the ECB has competence to adopt regulations to ensure efficiency and safety of payment systems, including those with a clearing stage, rather than granting it an autonomous regulatory competence in respect of all clearing systems.

Last, the Court observed that it follows from the provisions of the TFEU that recognition to the ECB of powers to regulate securities clearing systems must be explicit. Accordingly, it would be for the ECB, should it consider it necessary for the proper performance of the task referred to in the fourth indent of Article 127(2) TFEU that it should be granted a power to regulate infrastructures clearing transactions in securities, to request the EU legislature to amend Article 22 of its Statute, by adding an explicit reference to securities clearing systems.

41 | See also above, under 'Admissibility of actions brought under Article 263 TFEU', the comments concerning the concept of a measure against which proceedings may be brought.

PUBLIC HEALTH

Proceedings before the General Court reflect the variety of the legislative and administrative activity of the EU institutions in relation to public health. The Court was thus led to examine the legality of acts or omissions in the areas of food safety and biocidal products.

In the first place, in the judgment of 11 February 2015 in ***Spain v Commission*** (T-204/11, ECR (Extracts), EU:T:2015:91), the Court ruled on the legality of a Commission measure on the methods of detecting marine biotoxins in live bivalve molluscs.

In this case, the Court had to examine an application for annulment of Regulation (EU) No 15/2011 ([42]), by which the Commission had altered the methods for detecting marine biotoxins and replaced the biological method hitherto applicable by a chemical method. In order to do so, it had relied on an opinion of the European Food Safety Authority (EFSA), which highlighted the shortcomings in the biological method. In support of its application for annulment of the contested regulation, the Kingdom of Spain submitted that there had been an infringement of Article 168 TFEU, maintaining that the replacement of the biological method by the new method seriously jeopardised the protection of public health. It also submitted that there had been a breach of the principles of proportionality and protection of legitimate expectations.

The Court observed that, given EFSA's scientific assessments, retaining the biological method would have created a risk to public health. The Commission was therefore required to take immediate measures to protect public health. The Court considered that the Commission did not act precipitously, since the chemical method had been validated following a study carried out by the Member States and coordinated by the EU Reference Laboratory for Marine Biotoxins. In addition, according to the Court, the Kingdom of Spain had not shown that the decision to replace the biological method by the chemical method as a reference method for known biotoxins entailed a risk to public health, contrary to the TFEU. The Kingdom of Spain had not shown that the chemical method was less reliable than the biological method. In particular, it had not shown that there was a difference in terms of analysis time between the chemical method and the biological method that gave rise to a risk to public health, that the higher costs of the chemical method entailed a lower level of protection of public health and that the reference materials available did not permit adequate control.

The Court also rejected the argument alleging breach of the principle of proportionality, being of the view that the additional costs alleged by the Kingdom of Spain owing to the use of the chemical method could not be regarded as disproportionate in relation to the objective of protecting the health of consumers. The biological method did not allow certain types of toxins to be detected with sufficient reliability, and the Kingdom of Spain had not demonstrated that it had taken into consideration the cost reduction that the chemical method could bring for business operators in the sector as a result of its increased reliability for known toxins.

Last, the Court found that the principle of protection of legitimate expectations had not been breached either. Although, at the time of adoption of the contested regulation, reference materials necessary for the use of the chemical method were not available for certain toxins, it was nonetheless possible to carry out, in a satisfactory matter, an indirect assessment on the basis of existing reference materials intended for substances belonging to the same group.

In the second place, in the case giving rise to the judgment of 16 December 2015 in ***Sweden v Commission*** (T-521/14, EU:T:2015:976), an application for failure to act had been made by which the Court was asked to

42| Commission Regulation (EU) No 15/2011 of 10 January 2011 amending Regulation (EC) No 2074/2005 as regards recognised testing methods for detecting marine biotoxins in live bivalve molluscs (OJ 2011 L 6, p. 3).

declare that, in failing to adopt the delegated measures provided for in Regulation (EU) No 528/2012 ([43]) as regards the specification of scientific criteria to determine endocrine-disrupting properties, the Commission had infringed that regulation.

The Court found that it followed explicitly from that regulation that the Commission was under a clear, precise and unconditional obligation to adopt such measures, and to do so by no later than 13 December 2013. The fact that the scientific criteria which it had proposed in that connection had been the subject of criticism, during the summer of 2013, on the ground that they would have been scientifically unfounded and that their implementation would have had an impact on the internal market, did not alter the fact that the Commission was under an obligation to act and had therefore failed to fulfil its obligations under Regulation (EU) No 528/2012.

REGISTRATION OF CHEMICALS

In the case giving rise to the judgment of 25 September 2015 in ***VECCO and Others v Commission*** (T-360/13, ECR, under appeal, EU:T:2015:695), an action was brought before the Court for partial annulment of Regulation (EU) No 348/2013 ([44]), by which chromium trioxide had been included on the list of substances subject to authorisation set out in Annex XIV to Regulation (EC) No 1907/2006 ([45]) without any exemption for certain uses of chromium trioxide being granted.

The applicants relied, in particular, on the possibility provided for in Regulation (EC) No 1907/2006 for certain uses to be exempted from the authorisation requirement where the risk is properly controlled given the existence of specific EU legislation imposing minimum requirements relating to the protection of human health or the environment for the use of the substance.

In the case in point, the Court examined for the first time the criteria that must be satisfied in order for an EU measure to be able to be regarded as existing specific EU legislation, within the meaning of Article 58(2) of Regulation (EC) No 1907/2006.

In that regard, the Court observed that only a 'rule of law adopted by a European Union entity intended to produce binding effects' can constitute such legislation.

The Court held, moreover, that Directives 98/24/EC ([46]) and 2004/37/EC ([47]), which come within the framework of the protection of the health of workers, cannot constitute such legislation. In so far as those directives do not refer to a particular substance, they cannot be considered either to be specific, since they apply generally to all chemical substances, or to impose minimum requirements, because they lay down only a general framework for the duties imposed on employers who expose their employees to risks from uses of chemical substances.

43| Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (OJ 2012 L 167, p. 1).

44| Commission Regulation (EU) No 348/2013 of 17 April 2013 amending Annex XIV to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (OJ 2013 L 108, p. 1).

45| 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).

46| Council Directive 98/24/EC of 7 April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work (fourteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1998 L 131, p. 11).

47| Directive 2004/37/EC of the European Parliament and of the Council, of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (Sixth individual Directive within the meaning of Article 16(1) of Council Directive 89/391/EEC) (OJ 2004 L 158, p. 50).

The same applies to Directives 2012/18/EU ([48]) and 2010/75/EU ([49]), which concern environmental protection. As regards the first of those directives, the Court stated that it is directed at neither specific uses of dangerous substances nor the protection of humans against too high an exposure to dangerous substances at their workplace. As for the second, it refers to a specific industrial process that exceeds a certain, high-volume threshold, not to a specific substance in that process, and it does not apply to every type of that process, in particular to processes which do not exceed the threshold indicated.

The Court concluded that, in the absence of existing specific EU legislation imposing minimum requirements relating to the protection of human health or the environment for the use of the substance, the Commission did not have any discretion to grant the exemption sought, and therefore dismissed the action.

ACCESS TO DOCUMENTS OF THE INSTITUTIONS

In 2015, the case-law on access to documents concerned, in particular, the scope of Regulation (EC) No 1049/2001 ([50]), especially the concept of a 'document', and the scope of the exceptions to the right of access that relate to the protection of commercial interests and to inspections, investigations and audits.

In the case giving rise to the judgment of 27 February 2015 in ***Breyer v Commission*** (T-188/12, ECR, under appeal, EU:T:2015:124), application was made to the Court for annulment of the decision by which the Commission had refused to give the applicant access to the written submissions lodged by a Member State in infringement proceedings before the Court of Justice which were already closed on the date on which the request for access was made.

This judgment provided the Court with the opportunity, first of all, to recall that the concept of a 'document', within the meaning of Regulation (EC) No 1049/2001, is essentially based on the existence of content that is saved and that may be copied or consulted after it has been generated, it being understood that the nature of the storage medium on which content is saved, the type and nature of the content stored, and the size, length, volume or presentation of the content are irrelevant and that the content must relate to the policies, activities or decisions of the institution in question.

The Court observed that written submissions drawn up by a Member State in infringement proceedings brought by the Commission in the exercise of its powers, copies of which the Court of Justice, in that context, has sent to the Commission, and which are in the latter's possession, are documents held by an institution within the meaning of Regulation (EC) No 1049/2001 and therefore fall within the scope of that regulation.

Examining, last, the impact of the fourth subparagraph of Article 15(3) TFEU on the application of Regulation (EC) No 1049/2001 to the written submissions at issue, the Court recalled that it follows, in particular, from that provision of the TFEU and from the objectives of the relevant EU rules that judicial activities are as such excluded from the scope, established by those rules, of the right of access to documents. However, as the Court of Justice has already held, even though they are part of the judicial activities of the Courts of the European Union, written submissions lodged before those courts by an institution are not excluded, by virtue of the fourth subparagraph of Article 15(3) TFEU, from the right of access to documents. Accordingly, by analogy, written submissions which are produced by a Member State in infringement proceedings must be regarded as not being excluded, any more than those of the Commission, from the right of access to documents established in respect of the judicial activities of the Court of Justice by the fourth subparagraph of Article 15(3) TFEU.

48 | Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC (OJ 2012 L 197, p. 1).

49 | Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ 2010 L 334, p. 17).

50 | See footnote 12 above.

In the light of all of those considerations, the Court concluded that the fourth subparagraph of Article 15(3) TFEU did not preclude the written submissions at issue from being included within the scope of Regulation (EC) No 1049/2001, without prejudice, however, to the application, if appropriate, of one of the exceptions set out in Article 4 of that regulation and the possibility under Article 4(5) for the Member States concerned to request the institution concerned not to disclose its written submissions.

The Court revisited the concept of a 'document' in the judgment of 2 July 2015 in ***Typke v Commission*** (T-214/13, ECR, under appeal, EU:T:2015:448), when examining an action concerning a request for access that would entail the Commission carrying out a search of databases. After pointing out that, under Article 3(a) of Regulation (EC) No 1049/2001, a document, for the purposes of that regulation, means 'any content whatever its medium', the Court stated that, notwithstanding that broad definition, it is necessary to maintain a distinction between the concept of a document and that of information, for the purposes of applying Regulation (EC) No 1049/2001.

As regards an application for access designed to have the Commission carry out a search of one or more of its databases using search criteria specified by the applicant, the Court stated that the Commission is obliged, subject to the possible application of Article 4 of Regulation (EC) No 1049/2001, to accede to that request if the requisite search can be carried out using the search tools which it has available for the database in question. However, the Commission cannot be compelled to communicate to the applicant part or all of the data contained in one of its databases — or in several of them — organised according to a classification scheme not supported by that database. It follows that, as regards databases, anything that can be extracted from them by means of a normal or routine search may be the subject of an application for access made pursuant to Regulation (EC) No 1049/2001.

In the case in point, the Court observed that access to the combination of data specified in the request for access to documents presupposed a certain amount of computer programming work, which is not comparable to a normal or routine search. The Court inferred that the applicant's request did not relate to, even partial, access to one or more existing documents but, on the contrary, related to the production of new documents which could not be extracted from a database by means of a normal or routine search using an existing search tool.

In the case giving rise to the judgment of 12 May 2015 in ***Unión de Almacenistas de Hierros de España v Commission*** (T-623/13, ECR, EU:T:2015:268), the Court adjudicated on the legality of the decision by which the Commission had refused to grant the applicant access to a number of documents submitted to the Commission by the Spanish competition authority in the context of two investigation procedures relating to the application of Article 101 TFEU. In taking that decision, the Commission had relied on the existence of a general presumption that the disclosure of documents such as those at issue would undermine the protection of the commercial interests of the undertakings concerned and the protection of the purpose of investigations.

The Court observed that there is indeed a general presumption that the disclosure of documents sent by a national competition authority pursuant to Article 11(4) of Regulation (EC) No 1/2003 ([51]) in the context of a procedure relating to an infringement of the competition rules in principle undermines both the protection of the commercial interests of the undertakings concerned and the closely linked protection of the purposes of the investigations of the national competition authority. The Court stated that, as has been held in connection with the control of concentrations and the control of cartels ([52]), that presumption applies irrespective of whether the application for access concerns a control procedure which is already closed or a pending procedure.

51 | See footnote 7 above.

52 | Judgments of 28 June 2012 in ***Commission*** v ***Éditions Odile Jacob*** (C-404/10 P, ECR, EU:C:2012:393); of 13 September 2013 in ***Netherlands*** v ***Commission*** (T-380/08, ECR, EU:T:2013:480); and of 7 October 2014 in ***Schenker*** v ***Commission*** (T-534/11, ECR, EU:T:2014:854).

The Court pointed out, moreover, that the proper working of the information exchange arrangement, established within the network of public authorities ensuring compliance with the EU competition rules, requires that the information thus exchanged remain confidential. If it were possible for everyone to access, on the basis of Regulation (EC) No 1049/2001, documents sent by the competition authorities of the Member States to the Commission, the guarantee of increased protection applying to the information sent, on which that arrangement is founded, would be undermined.

Last, the Court stated that limitation of the period during which a general presumption applies could not be justified in the case in point by the right to compensation to which those harmed by an infringement of Article 101 TFEU are entitled. The documents at issue did not concern an investigation by the Commission, but an investigation carried out by a national competition authority. It was therefore that national authority's investigation file that could, where appropriate, provide the necessary evidence on which to base a claim for compensation.

The judgment of 7 July 2015 in ***Axa Versicherung v Commission*** (T-677/13, ECR, EU:T:2015:473) provided the Court with the opportunity to shed further light on the issue of the general presumptions that apply to certain categories of documents.

That case originated in two requests for access to documents relating to a proceeding pursuant to the competition rules, one of which concerned the table of contents of the file concerned. As regards the latter request, the applicant had met with a complete refusal by the Commission to grant access to the references contained in the table of contents to the leniency documents in the file, the Commission relying on the existence of a general presumption that disclosure would undermine the protection of the purpose of inspections and investigations.

The Court observed, first of all, that it is open to the Commission to take the view that the communication of 'leniency documents' in the file relating to a proceeding pursuant to the competition rules may jeopardise the effectiveness of its leniency programme, in so far as such disclosure may result in third parties becoming aware of commercially sensitive information or confidential information relating to the cooperation of the parties contained in those documents. However, such considerations do not justify access to such documents being systematically refused, since any request for access to the documents at issue must be assessed on a case-by-case basis. In particular, given the importance of actions for damages brought before national courts in ensuring the maintenance of effective competition in the European Union, the mere argument that there is a risk that access to evidence contained in the file in competition proceedings may undermine the effectiveness of the leniency programme in the context of which those documents were disclosed to the competition authority cannot justify a refusal to grant access. On the contrary, the fact that such a refusal is liable to prevent those actions from being brought requires that such refusal be based on overriding reasons relating to the protection of the interest relied on and applicable to each document to which access has been refused. It is thus for the Commission or the national courts, called upon to adjudicate on the question of access to documents obtained in the context of the implementation of a leniency programme and contained in the file relating to a proceeding pursuant to the competition rules, to weigh up, on a case-by-case basis, the respective interests in favour of disclosure or the protection of the documents at issue, taking into account all the relevant factors in the case.

Such considerations are even more relevant where a person who considers himself to be a victim of an infringement of the competition rules and who has brought an action for damages before a national court asks for access not to the 'leniency documents' included in the file of the proceedings which resulted in the decision finding that such an infringement had been committed, but only to the references to those documents contained in the table of contents of the file. A complete refusal of access to such references, including their most neutral or insignificant aspects, moreover makes it impossible or at the very least excessively difficult for the applicant to identify the 'leniency documents' in the strict sense and prevents him from forming an opinion

on the possible need to have those documents in order to support his action for damages, and also, *a fortiori*, from explaining the reasons for such a need, when it is specifically compliance with those requirements that the case-law makes a precondition for disclosure of such documents and their production in the context of actions for damages brought before the national courts and for the recognition by the Commission of an overriding public interest where it receives a request under Regulation (EC) No 1049/2001.

EXTERNAL RELATIONS

In the judgment in ***Front Polisario*** v ***Council*** ([53]), cited above (EU:T:2015:953), the Court held that the EU institutions have a broad discretion when determining whether or not to conclude with a third State an agreement that will apply on a territory and, *a fortiori*, where the relevant rules and principles of international law are complex and imprecise. It follows that judicial review must necessarily be limited to ascertaining whether the competent EU institution, in this instance the Council, in approving the conclusion of an agreement such as that approved by the contested decision, made manifest errors of assessment.

That said, the Courts of the European Union must review whether the institution examined, carefully and impartially, all the relevant facts of the case, facts which support the conclusions reached. While it is indeed the case that the Charter of Fundamental Rights of the European Union does not contain an absolute prohibition on the European Union concluding an agreement liable to be applied in a disputed territory, the fact nonetheless remains that the protection of the fundamental rights of the population of such a territory is of particular importance and thus constitutes a question that the Council must examine before approving such an agreement. In particular, as regards an agreement designed to facilitate, in particular, the export to the European Union of various products originating in the territory in question, the Council must examine, carefully and impartially, all the relevant factors in order to ensure that the activities involved in the production of the products intended for export are not carried out to the detriment of the population of the territory in question and do not infringe the latter's fundamental rights. In that respect, in view, in particular, of the fact that the sovereignty of the Kingdom of Morocco over Western Sahara is not recognised either by the European Union and its Member States or, more generally, by the UN, and in the absence of any international mandate capable of justifying Moroccan presence on that territory, the Council was required to satisfy itself that there was no indication that the natural resources of the territory of Western Sahara under Moroccan control were being exploited in a manner liable to be detrimental to its inhabitants and to undermine their fundamental rights. Since neither the Council's arguments nor the material which it had placed on the file showed that it had undertaken such a verification, the Court held that the Council had failed to fulfil its duty to examine, before adopting the contested decision, all the factors in the case. The Court therefore upheld the action and annulled the contested decision in so far as it approved the application of the agreement referred to therein to Western Sahara.

II. ACTIONS FOR DAMAGES

In the judgment of 3 December 2015 in ***CN v Parliament*** (T-343/13, ECR, EU:T:2015:926), the Court adjudicated on a claim for damages brought by a former official of the Council seeking compensation for the harm allegedly sustained following the publication on the Parliament's website of certain personal data concerning him. In this instance, the Parliament had published on its website a notice briefly describing the content of the petition which the applicant had submitted to it, including his name and the fact that he was suffering from a serious disease and that his son had a serious mental or physical disability.

53 | On this judgment, see also, above, the comments on the 'admissibility of actions brought under Article 263 TFEU', sections 3 ('Standing to bring an action against a decision concluding an agreement') and 4 ('Capacity to bring an action').

The Court observed that the processing of the applicant's sensitive personal data had to be examined in the light of Article 10 of Regulation (EC) No 45/2001 ([54]), which prohibits the processing of personal data relating to health except where, inter alia, the data subject has given his express consent. The Court pointed out, in that context, that Article 2(h) of that regulation defines the data subject's consent as meaning 'any freely given specific and informed indication of his or her wishes by which the data subject signifies his or her agreement to personal data relating to him or her being processed'. Having regard to all the circumstances of the case, the Court held that the applicant had 'freely given [an] informed indication' of his wishes. Indeed, a careful perusal of the information supplied by the Parliament ought to have enabled a reasonably attentive petitioner to evaluate the scope and consequences of his action. Furthermore, that indication of his wishes was specific, as the Parliament had informed the applicant that his complaint, the subject matter of which related to the fact that an EU institution had allegedly failed to have due regard to the applicant's disease and his son's disability at the end of his career, would be accessible on the internet. Last, the Court held that the applicant had given his explicit consent by ticking the boxes on the form relating to public processing and inclusion on a register accessible on the internet, and that his consent therefore did not need to be inferred implicitly from any action. According to the Court, those considerations apply *mutatis mutandis* to the processing of personal information other than the applicant's sensitive personal information.

The fact nonetheless remained, according to the Court, that in so far as the notice stated that the applicant's son was suffering from a serious mental or physical disability, it also contained sensitive personal data relating to the son, although he was not mentioned by name. In the absence of any indication that the applicant was his son's legal representative, the express consent which he had given could not justify the processing of those data by the Parliament. However, the Court held that the applicant could not rely, in his action, on illegality resulting from the alleged breach of the rights of a third party, including his son.

Proceeding, moreover, to examine the Parliament's conduct following the request to remove the notice, the Court observed that Regulation (EC) No 45/2001 does not explicitly make provision for the withdrawal of consent initially given. Nor had the applicant claimed any breach of a rule or principle of law in the event that the initial publication by the Parliament had been lawful, as was the case. Where, as in the case in point, the request for removal is unfounded, but is granted as a matter of courtesy, there is no reason to impose an obligation to comply 'forthwith'. In that case, the Parliament was required only to comply with its undertaking within a reasonable time.

III. APPEALS

Among the decisions of the Appeal Chamber of the General Court in 2015, three judgments deserve special mention.

In the first place, in the judgment of 19 June 2015 in ***Z v Court of Justice*** (T-88/13 P, ECR (Extracts), EU:T:2015:393), the Court held that, in the case of the complaint procedure laid down in Article 90 of the Staff Regulations of Officials of the European Union, the complainant must be able to request a review by the Courts of the European Union of the legality of the decision rejecting the complaint and not only of the legality of the initial act which is the subject of the complaint. Indeed, the complainant's interest in the proper conduct of the complaints procedure and, therefore, in the annulment of the decision relating to the rejection of his complaint in the event of irregularity must be assessed independently and not in relation to any action brought against the initial act which is the subject of the complaint. Otherwise, the person concerned could never rely on irregularities in the complaints procedure, even though they deprived him of the benefit of a proper pre-litigation review of the

54 | Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1).

administration's decision, whenever an appeal is brought against the initial act against which the complaint was made. The complainant would thus lose the benefit of a procedure which seeks to permit and encourage an amicable settlement of the dispute which has arisen between the official and the administration and to require the authority to which the official reports to reconsider its decision, in compliance with the rules, in the light of any objections which that official may make.

In the second place, in the judgment of 16 September 2015 in ***EMA v Drakeford*** (T-231/14 P, ECR (Extracts), EU:T:2015:639) the Court approved the approach taken by the Civil Service Tribunal, according to which the purpose of the first paragraph of Article 8 of the Conditions of Employment of Other Servants of the European Union is to prevent the situation arising where a temporary member of staff on a fixed-term contract has progressed in his career or where the duties he performs have changed and the administration makes wrongful use of contracts that are technically different in order to avoid reclassification under that article. However, the premiss of that reclassification is that the temporary member of staff, who is progressing in his career or whose duties are changing, maintains an employment relationship characterised by continuity with his employer. If a member of staff should enter into a contract containing a material, and not a technical, amendment to the nature of his duties, the premiss of the application of the first paragraph of Article 8 of those conditions of employment would no longer be valid. To allow every renewal to be taken into consideration for the purposes of the application of the rule contained in the first paragraph of Article 8 would be contrary to the spirit of that provision. The Court stated that a comparison of the tasks to be carried out showed that the role of head of sector represented a material change from the role of deputy head of sector, giving rise to an interruption for the purposes of the concept as determined by the Civil Service Tribunal. Even though remaining within the same field of activity does not automatically lead to continuity in the duties carried out, that continuity must, in principle, be excluded in the situation where access to the role of head of sector is subject to an external selection procedure. However, since, before being appointed as head of sector, the person concerned carried out the duties of interim head of sector, it cannot truly be said that, even though his appointment as head of sector was the result of an external procedure, it actually constituted an interruption in relation to the duties that he was carrying out beforehand.

In the third place, in the judgment of 13 October 2015 in ***Commission v Verile and Gjergji*** (T-104/14 P, ECR, EU:T:2015:776), first of all, the Court held that Article 11(2) of Annex VIII to the Staff Regulations of Officials of the European Union does not require that the person concerned must be able, before deciding whether or not to exercise his right to transfer to the EU pension scheme his pension rights acquired under another scheme, to ascertain definitively the number of pensionable years with which he will be credited after that transfer. Nor does that provision require that any dispute between the person concerned and his institution concerning the interpretation and application of the relevant provisions must be resolved by the Courts of the European Union even before he has decided whether or not he wishes to transfer his pension rights acquired under another scheme to the EU pension scheme.

IV. APPLICATIONS FOR INTERIM MEASURES

The Court received 32 applications for interim measures in 2015 and adjudicated on 31 cases ([55]).

The President of the Court granted three applications for suspension of operation, by orders of 1 September 2015 in ***France v Commission*** (T-344/15 R, ECR, EU:T:2015:583) and ***Pari Pharma v EMA*** (T-235/15 R, ECR (Extracts), under appeal, EU:T:2015:587), and of 15 December 2015 in ***CCPL and Others v Commission*** (T-522/15 R, ECR (Extracts), EU:T:2015:1012).

55| There were three decisions by the judge hearing applications for interim measures, replacing the President of the General Court in accordance with Article 157(4), in conjunction with Article 12, of the Rules of Procedure of the General Court, namely the orders of 17 April 2015 in ***CGI Luxembourg and Intrasoft International*** v ***Parliament*** (T-769/14 R, EU:T:2015:227), of 12 June 2015 in ***Cofely Solelec and Others*** v ***Parliament*** (T-224/15 R, EU:T:2015:377) and of 15 October 2015 in ***Ahrend Furniture*** v ***Commission*** (T-482/15 R, EU:T:2015:782).

In the order in ***Pari Pharma*** v ***EMA***, cited above (EU:T:2015:587), concerning the issue relating to the disclosure, proposed by the European Medicines Agency (EMA) pursuant to Regulation (EC) No 1049/2001, of what was alleged to be confidential information, the President of the Court adopted the same approach as he had taken in the corresponding orders signed in 2014 ([56]).

The President of the Court accepted that there was a prima facie case, stating that it was necessary to examine the confidentiality of reports containing the assessment of the similarity between two medicinal products and of the clinical superiority of one over the other. As that assessment related to a specific pharmaceutical sector, that of orphan medicinal products, and dealt with pharmacokinetic and bioequivalence studies, it raised issues involving highly technical scientific evaluations. In examining the reports at issue and the question whether the EMA had erred in rejecting the applicant's request for confidentiality, the President of the Court was therefore confronted with complex issues which could not be immediately resolved but called for a detailed examination in the main proceedings.

According to the President of the Court, when the interests were weighed up, the applicant's interest prevailed. The General Court would have to adjudicate, in the main proceedings, on whether the decision by which the EMA stated its intention to disclose the reports at issue to a third party had to be annulled on the ground that it disregarded the confidential nature of those reports. In order to preserve the effectiveness of a judgment annulling that decision, the applicant had to be able to ensure that the EMA did not disclose those reports. Such a judgment would have been deprived of practical effect if the application for interim measures had been dismissed, since the EMA would then have been free to disclose the reports at issue and thereby effectively to prejudge the future decision in the main action.

As regards urgency, the President of the Court recognised the serious nature of the alleged harm, emphasising that it had to be presumed, for the purposes of the interlocutory proceedings, that the information in the reports at issue was confidential. As the reports concerned the applicant's manufacturing and commercial activity, they were an intangible asset that might be used for competitive purposes, whose value would have been seriously reduced if they had not remained secret. As for the irreparable nature of the damage that might be caused by disclosure of the reports at issue to a third party who had requested access pursuant to Regulation (EC) No 1049/2001, the President of the Court considered that the applicant would have been placed in a vulnerable situation as threatening as that caused by publication on the internet. That third party would have immediately taken cognisance of the sensitive information and would have been able to use it straight away for competitive purposes and thus to weaken the applicant's competitive position. Since disclosure of a document under Regulation (EC) No 1049/2001 has an *erga omnes* effect, the alleged damage did not appear to be quantifiable, as an undetermined and unlimited number of current and potential competitors all over the world would have been able to obtain that information in order to exploit it in numerous ways in the short, medium or long term.

Furthermore, even if the alleged damage could not have been classified as irreparable, the President of the Court would have been unable to examine the confidentiality of each individual piece of data in the reports at issue with a view to allowing the application for interim measures only in part. In view of the specific features of proceedings seeking the protection of allegedly confidential documents, it is not appropriate for President of the Court to consider a partial solution consisting in protecting only certain pieces of information, while allowing access to others. If the Court adjudicating on the main action accepted that the reports at issue were covered by a general principle of confidentiality, those reports would not be subject even to partial disclosure. Given his purely ancillary powers, a judge hearing an application for interim measures cannot therefore authorise partial access without depriving the judgment in the main proceedings of practical effect.

56 | Namely the orders of 13 February 2014 in ***Luxembourg Pamol (Cyprus) and Luxembourg Industries*** v ***Commission*** (T-578/13 R, EU:T:2014:103) and of 25 July 2014 in ***Deza*** v ***ECHA*** (T-189/14 R, EU:T:2014:686), against which appeals were not brought (see 2014 Annual Report, pp. 155 and 156).

Last, the President of the Court pointed out that the condition relating to the irreparable nature of damage, which arises solely from the case-law and is not set out in either the Treaties or the Rules of Procedure, must not be applied if it is irreconcilable with the need to provide effective provisional protection. Articles 278 TFEU and 279 TFEU, which are primary law provisions, authorise the judge hearing an application for interim measures to order the suspension of operation of a measure if he considers 'that circumstances so require' and to prescribe any 'necessary' interim measures. According to the President of the Court, those conditions were met in this instance, especially since neither the bringing of the main action nor the making of the application for interim measures could be qualified as a delaying tactic on the part of the applicant aimed at postponing, without good reason, disclosure of the reports at issue.

By the order in ***France*** v ***Commission***, cited above (EU:T:2015:583), the President of the Court granted the application for interim measures made by the French Republic for suspension of operation of the disclosure of documents which it had sent to the Commission and which the Commission had decided to disclose to a third party pursuant to Regulation (EC) No 1049/2001.

Although the Commission disputed, in the main proceedings, the confidential nature of the documents at issue, it nonetheless recognised that the judge hearing the application for interim measures should prevent their disclosure, since such disclosure would deprive the judgment to be delivered in the main proceedings of its practical effect.

The President of the Court accepted that there was a prima facie case, since the parties' arguments revealed a major legal disagreement as to the scope of Article 4(5) of Regulation (EC) No 1049/2001 — on which the French Republic relied — which confers a privileged status on Member States by comparison with other holders of documents, by providing that, unlike the latter, a Member State may request an institution not to disclose a document originating from that State without its 'prior agreement'. In its judgment of 21 June 2012 in ***IFAW Internationaler Tierschutz-Fonds*** v ***Commission*** ([57]), the Court of Justice held that the requested institution did not have to conduct a review going beyond the verification of the mere existence of reasons referring to the exceptions in Article 4(1) to (3) of Regulation (EC) No 1049/2001, whereas the General Court, in its judgment of 14 February 2012 in ***Germany*** v ***Commission*** ([58]), considered that the Commission could examine, on a prima facie basis, the merits of the grounds put forward by the Member State concerned in support of its objection to disclosure of the disputed documents.

The weighing up of the interests favoured the French Republic. The President of the Court stated that the General Court would be required to rule in the main action on whether the Commission's decision declaring its intention to disclose the disputed documents should be annulled for failure to respect the confidentiality of those documents. In order to maintain the effectiveness of a judgment annulling that decision, the French Republic had to be able to ensure that the Commission did not prematurely disclose the documents in question, which would *de facto* have prejudged the future decision in the main action.

As regards urgency, the French Republic submitted that the documents in question were significant factors in a procedure between it and the Commission which bore a strong similarity to the pre-litigation stage of infringement proceedings, in that it consisted in a dialogue with the Commission having the objective of achieving a convergence of differing opinions. According to the French Republic, that objective could be attained only in a climate of strict mutual trust, which would have been compromised by premature disclosure of the documents exchanged during that procedure, as such disclosure would compromise its defence strategy in subsequent proceedings. The President of the Court considered that such a defence formed part of the State tasks vested in the French Republic and that the disclosure at issue would have seriously compromised that task. The

57| C-135/11 P, ECR, EU:C:2012:376, paragraphs 63 and 64.

58| T-59/09, ECR, EU:T:2012:75, paragraphs 51 to 53 and 57.

damage sustained as a result of that disclosure would also have been irreparable, since a later annulment of the contested decision would not have eliminated the damage and since, as the damage would not have been pecuniary, it could not have been recouped through a compensation action brought against the Commission.

In the case giving rise to the order in ***CCPL and Others*** v ***Commission***, cited above (EU:T:2015:1012), five companies, which were members of a cooperative and had been fined for their participation in a cartel on the food packaging market, made an application for interim measures, seeking exemption from an obligation to provide a bank guarantee covering their fines. In his order, the President of the Court pointed out that an exemption from that obligation can be granted only where the applicant adduces proof that it is objectively impossible for it to provide a bank guarantee or, in the alternative, that the provision of such a guarantee would jeopardise its economic survival. While recognising that the applicants had made serious and timely efforts to obtain such a guarantee, the President of the Court noted that those efforts had been in vain, since the 12 banks contacted for that purpose had refused on the basis of the applicants' precarious financial situation. In that context, the President of the Court refused to apply the concept of 'group' to the cooperative environment to which the applicants belonged, on the ground that there was no sufficiently close convergence of interests.

The existence of a prima facie case was accepted in respect of the claim in the alternative — based on the plea alleging failure to take the applicants' inability to pay into account — for a reduction of the fines, as the President of the Court considered that it could not be precluded that the General Court would exercise its unlimited jurisdiction in relation to fines and reduce the amount of the fines imposed.

The President of the Court therefore ordered the suspension sought, on condition, however, that the applicants kept the Commission regularly informed of the implementation of the restructuring plan envisaged for the CCPL group and that they, as soon as possible, make payment in instalments of the fines imposed, paying to the Commission the sum corresponding to the provision which they had made in the restructuring plan and also monthly payments from the proceeds of the sale of certain shareholdings.

In relation to public procurement, a number of orders were made following the change to the case-law in the order of 4 December 2014 in ***Vanbreda Risk & Benefits*** v ***Commission*** ([59]), the principle of which was upheld on appeal by the order of 23 April 2015 in ***Commission*** v ***Vanbreda Risk & Benefits*** ([60]). It will be recalled that, according to that new case-law, the requirement relating to urgency is eased in this specific context, in that serious but not irreparable damage may suffice to satisfy that requirement, provided that the prima facie case made out is particularly strong. Nevertheless, the easing of the requirement applies only if the application for interim measures is made by the unsuccessful tenderer before the contract between the contracting authority and the successful tenderer is concluded and within the 10-day standstill period ([61]), on condition, however, that that standstill period was complied with by the contracting authority and that the unsuccessful tenderer had sufficient information to exercise his rights of defence within that period.

Thus, in the orders in ***CGI Luxembourg and Intrasoft International*** v ***Parliament***, cited above (EU:T:2015:227), in ***Cofely Solelec and Others*** v ***Parliament***, cited above (EU:T:2015:377), and of 25 June 2015 in ***Banimmo v Commission*** (T-293/15 R, EU:T:2015:438), the President of the Court, who had made *ex parte* orders granting the interim measures sought by the unsuccessful tenderers, declared that there was no need to adjudicate, after taking note of the fact that the contracting authority had withdrawn the decisions rejecting those tenderers' bids.

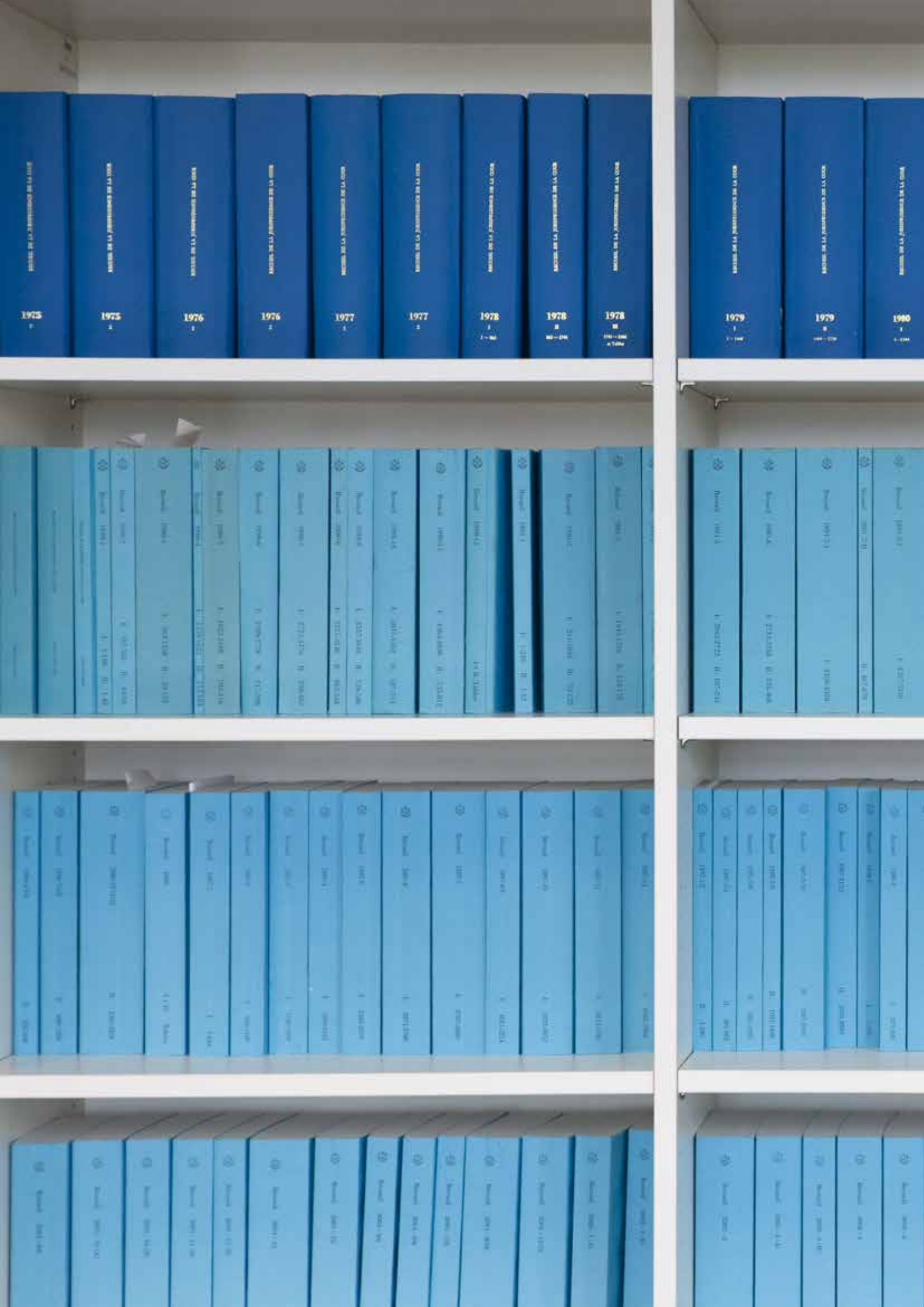
59| T-199/14 R, ECR (Extracts), EU:T:2014:1024.

60| C-35/15 P(R), ECR, EU:C:2015:275.

61| Prescribed in Article 171(1) of Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ 2012 L 362, p. 1).

Conversely, in the order of 15 June 2015 in ***Close and Cegelec v Parliament*** (T-259/15 R, ECR (Extracts), EU:T:2015:378), the President of the Court, after noting that the standstill period had been fully complied with by the contracting authority before the contract with the successful tenderer was signed and that the unsuccessful tenderers, which had been informed in good time that their tenders had been rejected, had been in a position to lodge their action for annulment and their application for interim measures, held that the easing of the requirement relating to urgency could not be applied in the case in point, since the action and application concerned had not been brought during the 10-day standstill period between notification of the decision rejecting the tender and conclusion of the contract. As those tenderers had not proved that they might suffer serious and irreparable damage, their application for interim measures was dismissed ([62]).

62| The other applications for interim measures lodged in the field of public procurement were also dismissed owing to the lack of a particularly strong prima facie case and a lack of urgency (orders of 24 March 2015 in ***Europower*** v ***Commission***, T-383/14 R, ECR (Extracts), EU:T:2015:190; of 17 July 2015 in ***GSA and SGI*** v ***Parliament***, T-321/15 R, EU:T:2015:522; and in ***Ahrend Furniture*** v ***Commission***, cited above, EU:T:2015:782).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B | COMPOSITION OF THE GENERAL COURT

(order of precedence as at 31 December 2015)

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:

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

Third row, from left to right:

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

2. CHANGE IN THE COMPOSITION OF THE GENERAL COURT IN 2015

A formal sitting took place at the Court of Justice on 7 October 2015 on the occasion of, first, the renewal of terms of office and, second, the taking of the oath and entry into office of the new members of the institution.

On account of the departure from office of Mr Nicholas James Forwood, by decision of 16 September 2015 the representatives of the governments of the Member States appointed Mr Ian Stewart Forrester as a judge at the General Court replacing Mr Forwood for the remainder of the latter's term of office, that is to say, from 1 October 2015 to 31 August 2019. Mr Forrester took his oath before the Court at that ceremony.

2. ORDER OF PRECEDENCE

FROM 1 JANUARY 2015 TO 6 OCTOBER 2015

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
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

FROM 7 OCTOBER 2015 TO 31 DECEMBER 2015

M. JAEGER, President
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
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
I.S. FORRESTER, Judge

E. COULON, Registrar

3. FORMER MEMBERS OF THE GENERAL COURT

(in order of their entry into office)

David Alexander Ogilvy Edward (1989–1992)
Christos Yeraris (1989–1992)
José Luis da Cruz Vilaça (1989–1995), President (1989–1995)
Jacques Biancarelli (1989–1995)
Donal Patrick Michael Barrington (1989–1996)
Romain Alphonse Schintgen (1989–1996)
Heinrich Kirschner (1989–1997)
Antonio Saggio (1989–1998), President (1995–1998)
Cornelis Paulus Briët (1989–1998)
Koen Lenaerts (1989–2003)
Bo Vesterdorf (1989–2007), President (1998–2007)
Rafael García-Valdecasas y Fernández (1989–2007)
Andreas Kalogeropoulos (1992–1998)
Christopher William Bellamy (1992–1999)
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)
Nicholas James Forwood (1999–2015)
Hubert Legal (2001–2007)
Verica Trstenjak (2004–2006)
Daniel Šváby (2004–2009)
Ena Cremona (2004–2012)
Vilenas Vadapalas (2004–2013)
Küllike Jürimäe (2004–2013)
Enzo Moavero Milanesi (2006–2011)
Nils Wahl (2006–2012)
Teodor Tchipev (2007–2010)
Valeriu M. Ciucă (2007–2010)
Santiago Soldevila Fragoso (2007–2013)
Laurent Truchot (2007–2013)
Kevin O'Higgins (2008–2013)

PRESIDENTS

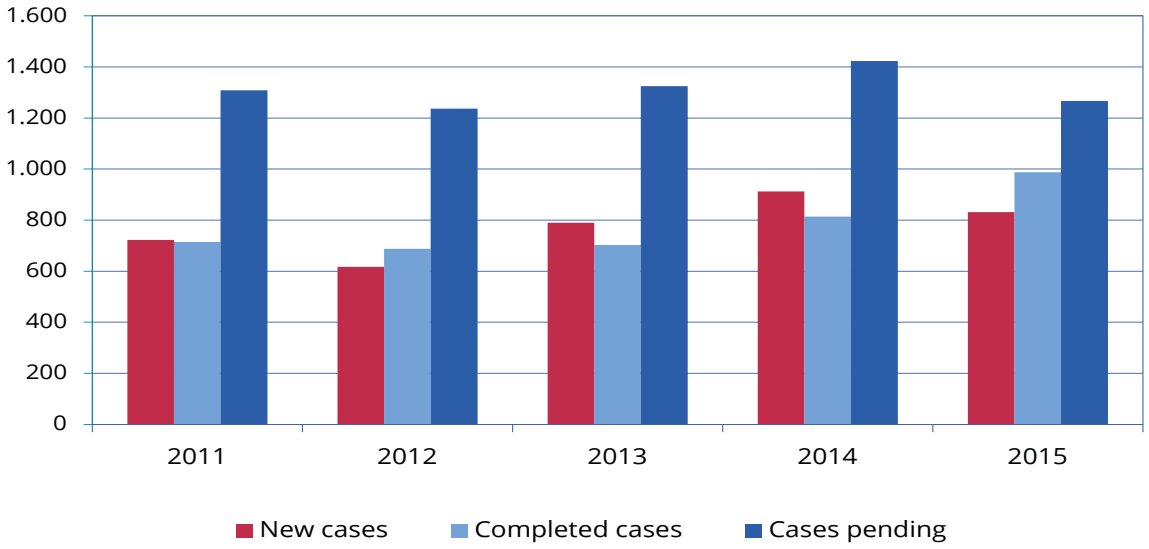
José Luis da Cruz Vilaça (1989–1995)
Antonio Saggio (1995–1998)
Bo Vesterdorf (1998–2007)

REGISTRAR

Hans Jung (1989–2005)

C | STATISTICS CONCERNING THE JUDICIAL ACTIVITY OF THE GENERAL COURT

1. GENERAL ACTIVITY OF THE GENERAL COURT — NEW CASES, COMPLETED CASES, CASES PENDING (2011–15) (1) (2)



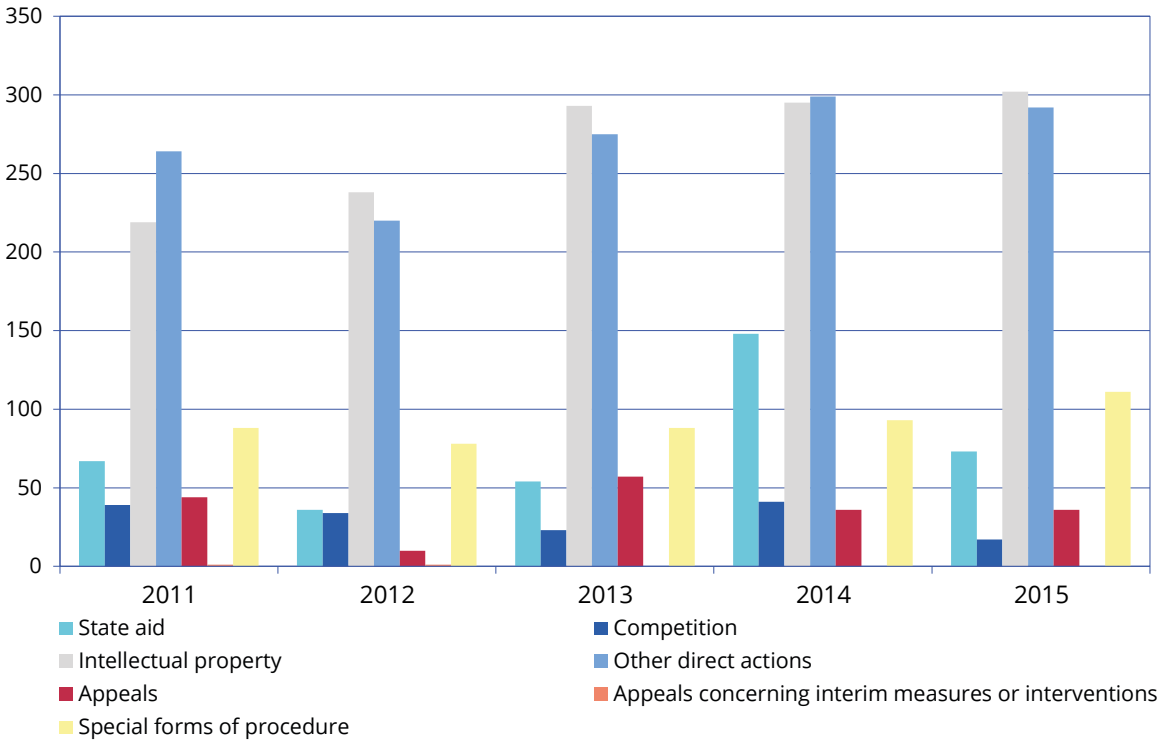
	2011	2012	2013	2014	2015
New cases	722	617	790	912	831
Completed cases	714	688	702	814	987
Cases pending	1 308	1 237	1 325	1 423	1 267

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 aside a judgment by default (Article 41 of the Statute of the Court of Justice; Article 166 of the Rules of Procedure of the General Court); third-party proceedings (Article 42 of the Statute of the Court of Justice; Article 167 of the Rules of Procedure); interpretation (Article 43 of the Statute of the Court of Justice; Article 168 of the Rules of Procedure); revision (Article 44 of the Statute of the Court of Justice; Article 169 of the Rules of Procedure); legal aid (Article 148 of the Rules of Procedure); rectification (Article 164 of the Rules of Procedure); and dispute concerning the costs to be recovered (Article 170 of the Rules of Procedure).

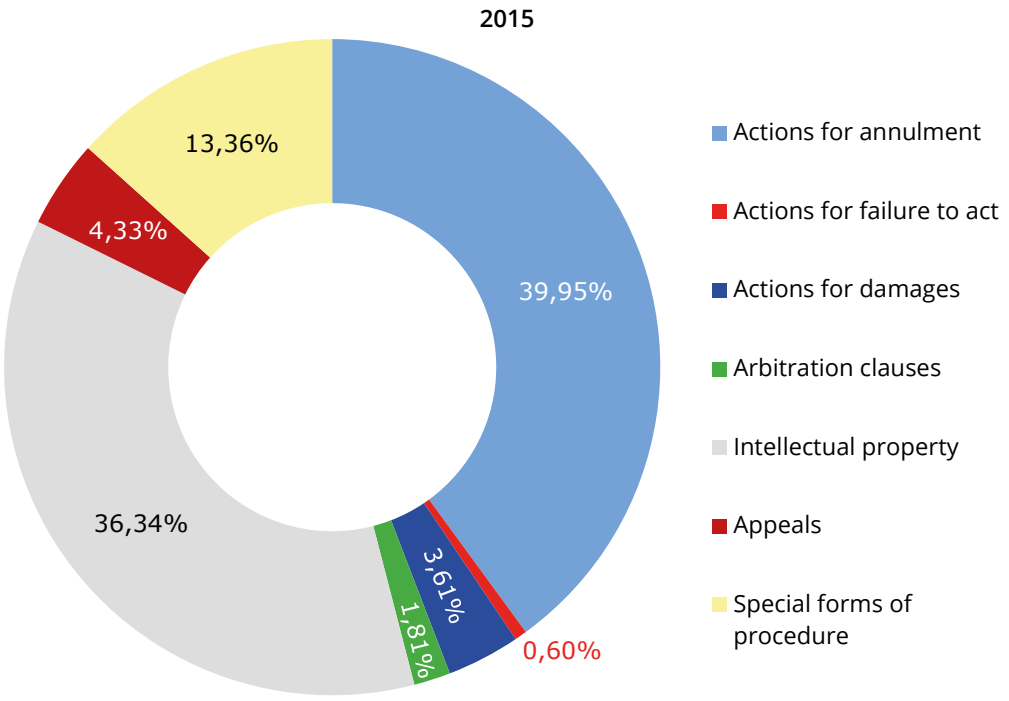
2 | Unless otherwise indicated, this table and the following tables do not take account of proceedings concerning interim measures.

2. NEW CASES — NATURE OF PROCEEDINGS (2011–15)



	2011	2012	2013	2014	2015
State aid	67	36	54	148	73
Competition	39	34	23	41	17
Intellectual property	219	238	293	295	302
Other direct actions	264	220	275	299	292
Appeals	44	10	57	36	36
Appeals concerning interim measures or interventions	1	1			
Special forms of procedure	88	78	88	93	111
Total	**722**	**617**	**790**	**912**	**831**

3. NEW CASES — TYPE OF ACTION (2011–15)

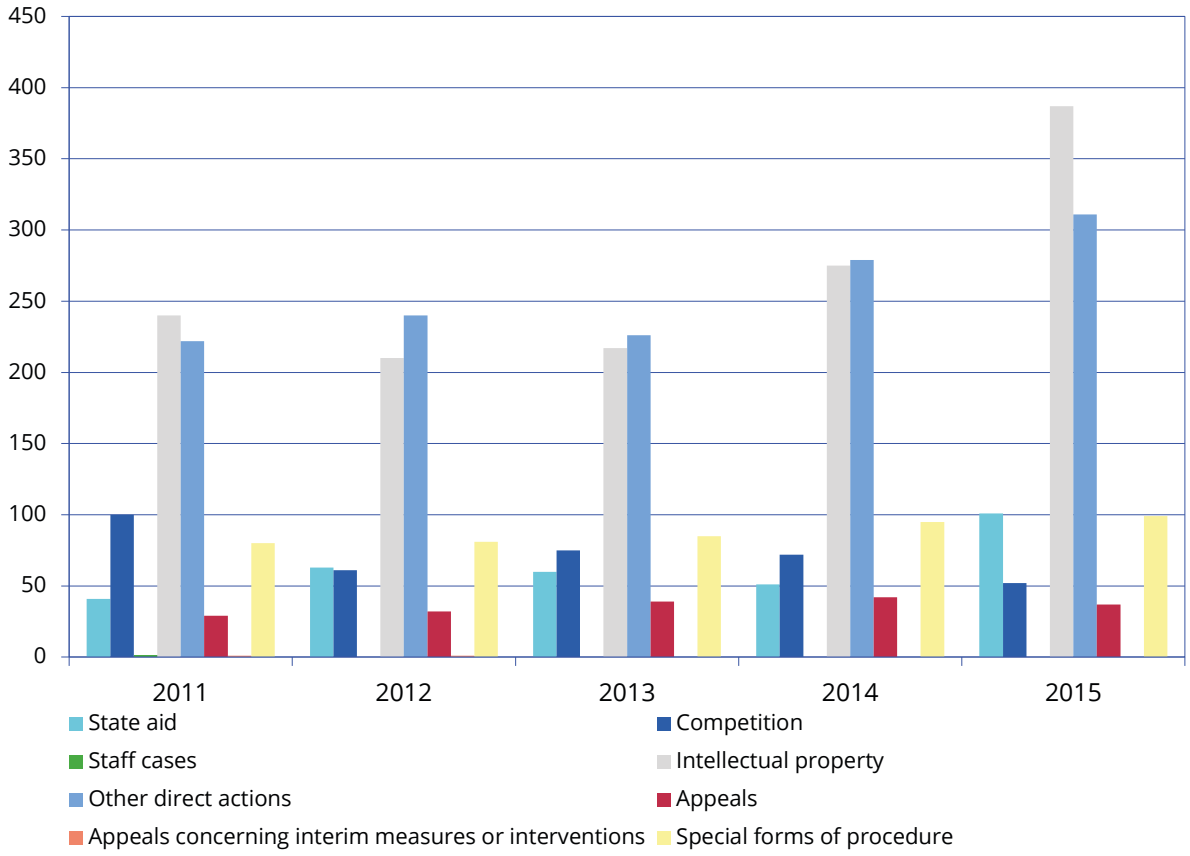


	2011	2012	2013	2014	2015
Actions for annulment	341	257	319	423	332
Actions for failure to act	8	8	12	12	5
Actions for damages	16	17	15	39	30
Arbitration clauses	5	8	6	14	15
Intellectual property	219	238	293	295	302
Appeals	44	10	57	36	36
Appeals concerning interim measures or interventions	1	1			
Special forms of procedure	88	78	88	93	111
Total	**722**	**617**	**790**	**912**	**831**

4. NEW CASES — SUBJECT MATTER OF THE ACTION (2011–15)

	2011	2012	2013	2014	2015
Access to documents	21	18	20	17	48
Accession of new states			1		
Agriculture	22	11	27	15	37
Approximation of laws			13		1
Arbitration clause	5	8	6	14	15
Area of freedom, security and justice	1		6	1	
Association of the Overseas Countries and Territories			1		
Citizenship of the Union				1	
Commercial policy	11	20	23	31	6
Common fisheries policy	3		3	3	
Common foreign and security policy			2		
Company law				1	1
Competition	39	34	23	41	17
Consumer protection			1	1	2
Culture			1		
Customs union and Common Customs Tariff	10	6	1	8	
Economic and monetary policy	4	3	15	4	3
Economic, social and territorial cohesion	3	4	3	3	5
Education, vocational training, youth and sport	2	1	2		3
Employment			2		
Energy	1		1	3	3
Environment	6	3	11	10	5
External action by the European Union	2	1		2	1
Financial provisions (budget, financial framework, own resources, combating fraud)		1		4	7
Free movement of capital					2
Free movement of goods			1		2
Freedom of establishment				1	
Freedom of movement for persons					1
Freedom to provide services		1		1	
Industrial policy				2	
Intellectual and industrial property	219	238	294	295	303
Law governing the institutions	44	41	44	67	53
Public health	2	12	5	11	2
Public procurement	18	23	15	16	23
Registration, evaluation, authorisation and restriction of chemicals (REACH regulation)	3	2	12	3	5
Research and technological development and space	4	3	5	2	10
Restrictive measures (external action)	93	59	41	69	55
Social policy	5	1		1	
Social security for migrant workers			1		
State aid	67	36	54	148	73
Taxation	1	1	1	1	1
Tourism			2		
Trans-European networks			3		
Transport	1		5	1	
Total EC Treaty/TFEU	**587**	**527**	**645**	**777**	**684**
Staff Regulations	47	12	57	42	36
Special forms of procedure	88	78	88	93	111
OVERALL TOTAL	**722**	**617**	**790**	**912**	**831**

5. COMPLETED CASES — NATURE OF PROCEEDINGS (2011–15)



	2011	2012	2013	2014	2015
State aid	41	63	60	51	101
Competition	100	61	75	72	52
Staff cases	1				
Intellectual property	240	210	217	275	387
Other direct actions	222	240	226	279	311
Appeals	29	32	39	42	37
Appeals concerning interim measures or interventions	1	1			
Special forms of procedure	80	81	85	95	99
Total	**714**	**688**	**702**	**814**	**987**

6. COMPLETED CASES — SUBJECT MATTER OF THE ACTION (2015)

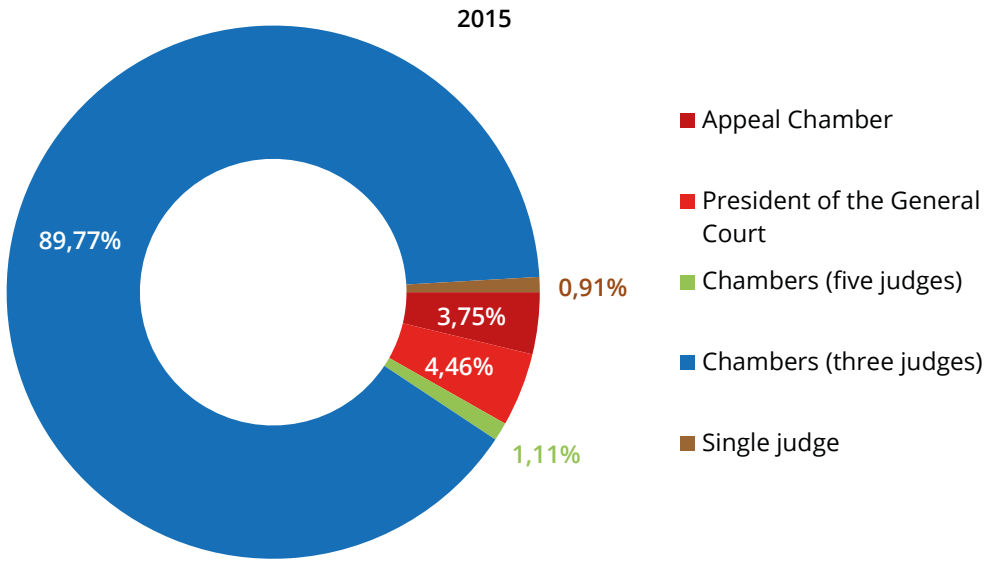
	Judgments	ORDERS	Total
Access to documents	15	6	21
Accession of new states	1		1
Agriculture	28	4	32
Arbitration clause	2		2
Commercial policy	15	9	24
Common fisheries policy	1	2	3
Common foreign and security policy		1	1
Company law		1	1
Competition	47	5	52
Consumer protection	1	1	2
Customs union and Common Customs Tariff	3	1	4
Economic and monetary policy	5	4	9
Economic, social and territorial cohesion	3	3	6
Energy	1		1
Environment	2	16	18
External action by the European Union	1	1	2
Financial provisions (budget, financial framework, own resources, combating fraud)	1	4	5
Free movement of capital		2	2
Free movement of goods		2	2
Freedom of establishment		1	1
Freedom of movement for persons		1	1
Industrial policy		2	2
Intellectual and industrial property	299	89	388
Law governing the institutions	19	39	58
Public health	10	5	15
Public procurement	12	10	22
Registration, evaluation, authorisation and restriction of chemicals (REACH regulation)	4	5	9
Research and technological development and space	2		2
Restrictive measures (external action)	38	22	60
State aid	34	67	101
Taxation		1	1
Transport	2	1	3
Total EC Treaty/TFEU	**546**	**305**	**851**
Staff Regulations	23	14	37
Special forms of procedure	1	98	99
OVERALL TOTAL	**570**	**417**	**987**

7. COMPLETED CASES — SUBJECT MATTER OF THE ACTION (2011–15)

(JUDGMENTS AND ORDERS)

	2011	2012	2013	2014	2015
Access to documents	23	21	19	23	21
Accession of new states					1
Agriculture	26	32	16	15	32
Approximation of laws				13	
Arbitration clause	6	11	8	10	2
Area of freedom, security and justice		2	7	1	
Association of the Overseas Countries and Territories				1	
Citizenship of the Union				1	
Commercial policy	10	14	19	18	24
Common fisheries policy	5	9	2	15	3
Common foreign and security policy				2	1
Company law					1
Competition	100	61	75	72	52
Consumer protection	1				2
Customs union and Common Customs Tariff	1	6	9	6	4
Economic and monetary policy	3	2	1	13	9
Economic, social and territorial cohesion	9	12	14	1	6
Education, vocational training, youth and sport	1	1	1	2	
Employment			2		
Energy			1	3	1
Environment	22	8	6	10	18
External action by the European Union	5		2		2
Financial provisions (budget, financial framework, own resources, combating fraud)		2			5
Free movement of capital					2
Free movement of goods			1		2
Freedom of establishment					1
Freedom of movement for persons	2	1			1
Freedom to provide services	3	2		1	
Industrial policy					2
Intellectual and industrial property	240	210	218	275	388
Law governing the institutions	36	41	35	33	58
Public health	3	2	4	10	15
Public procurement	15	24	21	18	22
Registration, evaluation, authorisation and restriction of chemicals (REACH regulation)	4	1	6	3	9
Research and technological development and space	5	3	4	1	2
Restrictive measures (external action)	32	42	40	68	60
Social policy	5	1	4		
Social security for migrant workers			1		
State aid	41	63	59	51	101
Taxation		2		2	1
Tourism			1	1	
Trans-European networks				1	
Transport	1	1		3	3
Total EC Treaty/TFEU	**599**	**574**	**576**	**673**	**851**
Total CS Treaty			**1**		
Total Euratom Treaty	**1**				
Staff Regulations	34	33	40	46	37
Special forms of procedure	80	81	85	95	99
OVERALL TOTAL	**714**	**688**	**702**	**814**	**987**

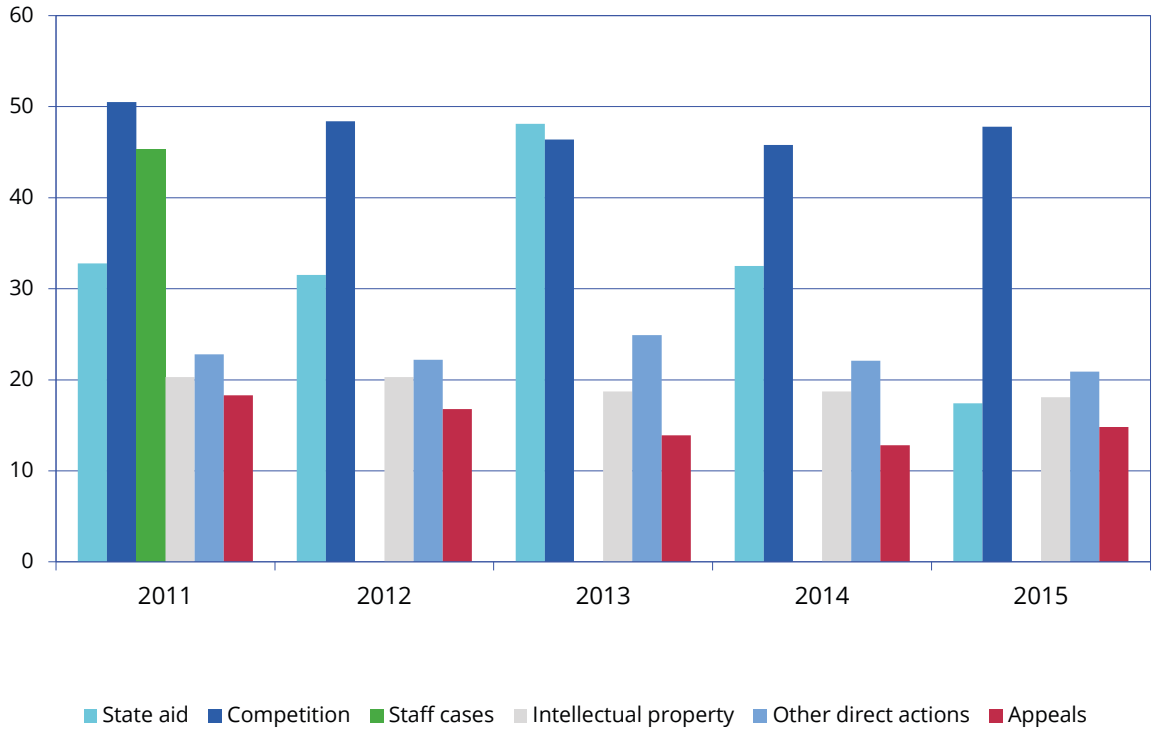
8. COMPLETED CASES — BENCH HEARING ACTION (2011–15)



	2011			2012			2013			2014			2015		
	Judgments	Orders	Total	Judgments	Orders	Total	Judgments	Orders	Total	Judgments	Orders	Total	Judgments	Orders	Total
Appeal Chamber	15	16	31	17	23	40	13	47	60	21	32	53	23	14	37
President of the General Court		54	54		47	47		38	38		46	46		44	44
Chambers (five judges)	19	6	25	9		9	7	1	8	9	7	16	8	3	11
Chambers (three judges)	359	245	604	328	264	592	378	218	596	398	301	699	538	348	886
Single judge													1	8	9
Total	**393**	**321**	**714**	**354**	**334**	**688**	**398**	**304**	**702**	**428**	**386**	**814**	**570**	**417**	**987**

9. COMPLETED CASES — DURATION OF PROCEEDINGS IN MONTHS (2011–15) [1]

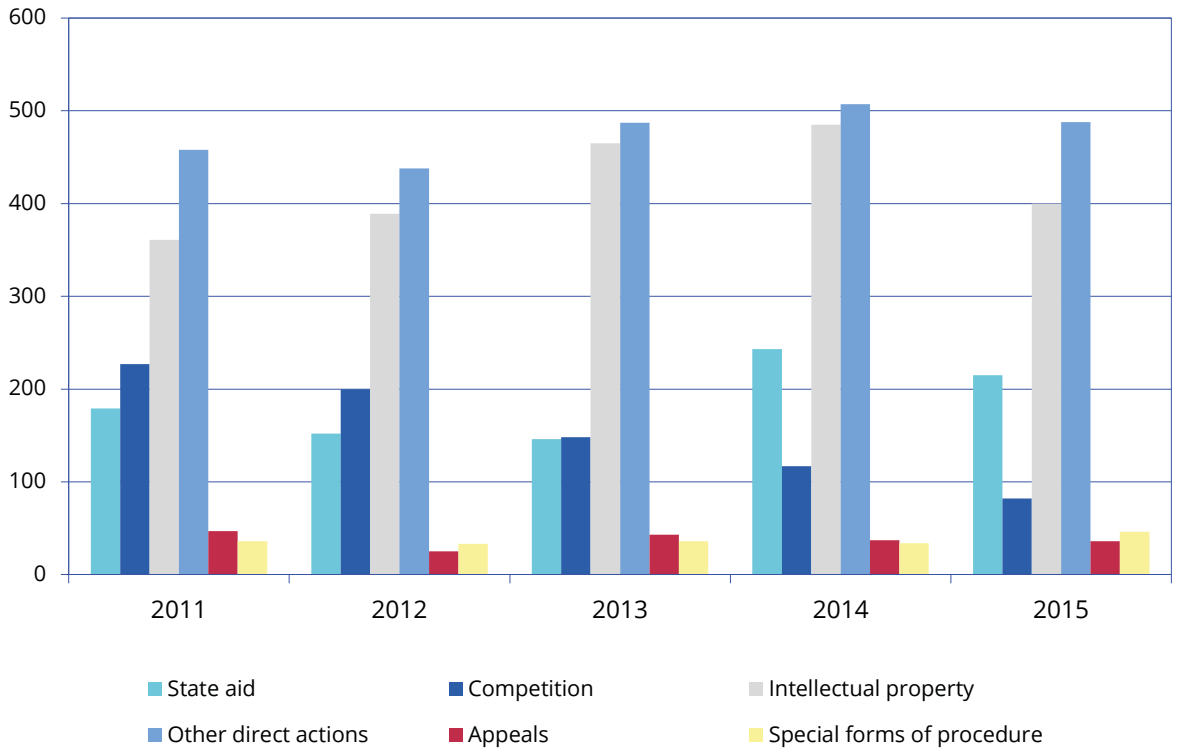
(JUDGMENTS AND ORDERS)



	2011	2012	2013	2014	2015
State aid	32.8	31.5	48.1	32.5	17.4
Competition	50.5	48.4	46.4	45.8	47.8
Staff cases	45.3				
Intellectual property	20.4	20.3	18.7	18.7	18.1
Other direct actions	22.8	22.2	24.9	22.1	20.9
Appeals	18.4	16.8	13.9	12.8	14.8
All cases	**26.7**	**24.8**	**26.9**	**23.4**	**20.6**

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

10. CASES PENDING AS AT 31 DECEMBER — NATURE OF PROCEEDINGS (2011–15)

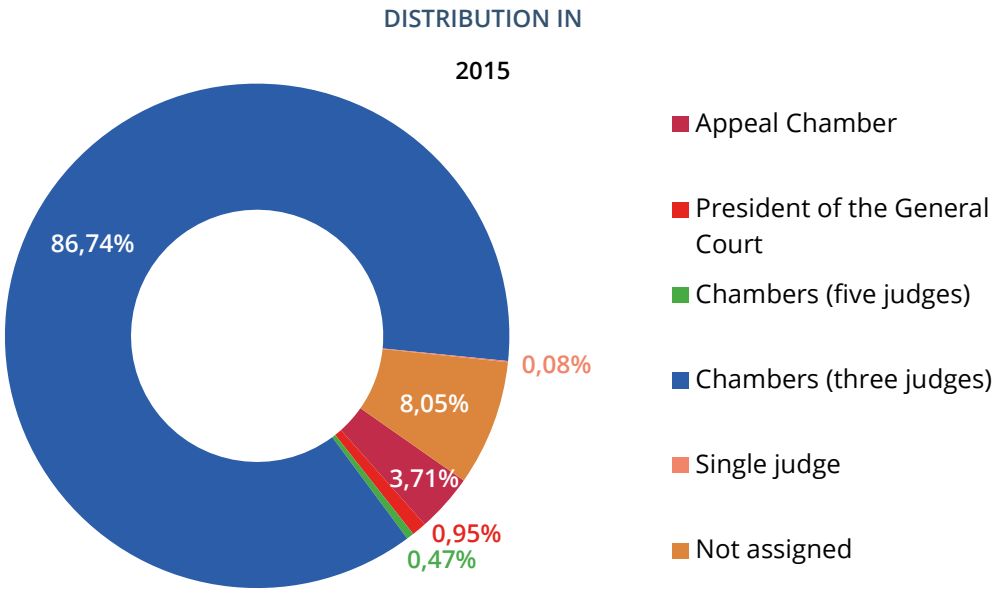


	2011	2012	2013	2014	2015
State aid	179	152	146	243	215
Competition	227	200	148	117	82
Intellectual property	361	389	465	485	400
Other direct actions	458	438	487	507	488
Appeals	47	25	43	37	36
Special forms of procedure	36	33	36	34	46
Total	**1 308**	**1 237**	**1 325**	**1 423**	**1 267**

11. CASES PENDING AS AT 31 DECEMBER — SUBJECT MATTER OF THE ACTION (2011–15)

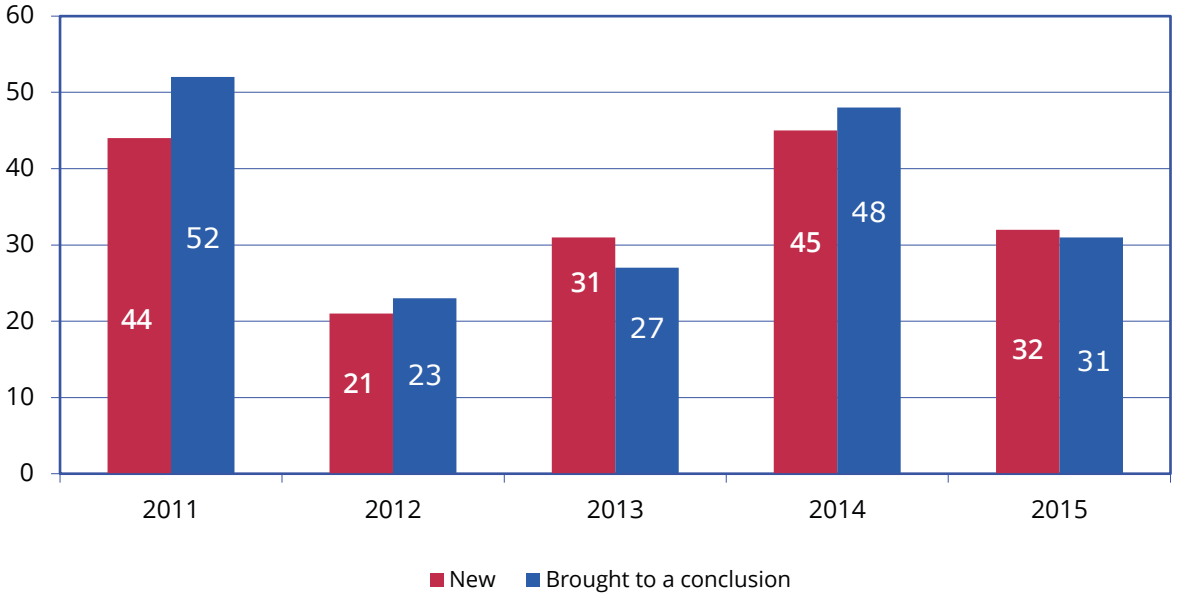
	2011	2012	2013	2014	2015
Access to documents	40	37	38	32	59
Accession of new states			1	1	
Agriculture	61	40	51	51	56
Approximation of laws			13		1
Arbitration clause	18	15	13	17	30
Area of freedom, security and justice	3	1			
Association of the Overseas Countries and Territories			1		
Commercial policy	35	41	45	58	40
Common fisheries policy	25	16	17	5	2
Common foreign and security policy	1	1	3	1	
Company law				1	1
Competition	227	200	148	117	82
Consumer protection			1	2	2
Culture			1	1	1
Customs union and Common Customs Tariff	15	15	7	9	5
Economic and monetary policy	3	4	18	9	3
Economic, social and territorial cohesion	32	24	13	15	14
Education, vocational training, youth and sport	1	1	2		3
Energy	1	1	1	1	3
Environment	18	13	18	18	5
External action by the European Union	2	3	1	3	2
Financial provisions (budget, financial framework, own resources, combating fraud)	2	1	1	5	7
Freedom of establishment				1	
Freedom of movement for persons	1				
Freedom to provide services	1				
Industrial policy				2	
Intellectual and industrial property	361	389	465	485	400
Law governing the institutions	41	41	50	84	79
Public health	5	15	16	17	4
Public procurement	43	42	36	34	35
Registration, evaluation, authorisation and restriction of chemicals (REACH regulation)	7	8	14	14	10
Research and technological development and space	7	7	8	9	17
Restrictive measures (external action)	89	106	107	108	103
Social policy	4	4		1	1
State aid	178	151	146	243	215
Taxation	1		1		
Tourism			1		
Trans-European networks			3	2	2
Transport	1		5	3	
Total EC Treaty/TFEU	**1 223**	**1 176**	**1 245**	**1 349**	**1 182**
Total CS Treaty	**1**	**1**			
Staff Regulations	48	27	44	40	39
Special forms of procedure	36	33	36	34	46
OVERALL TOTAL	**1 308**	**1 237**	**1 325**	**1 423**	**1 267**

12. CASES PENDING AS AT 31 DECEMBER — BENCH HEARING ACTION (2011–15)



	2011	2012	2013	2014	2015
Appeal Chamber	52	40	51	37	47
President of the General Court	2	1	1	1	12
Chambers (five judges)	16	10	12	15	6
Chambers (three judges)	1 134	1 123	1 146	1 272	1 099
Single judge					1
Not assigned	104	63	115	98	102
Total	**1 308**	**1 237**	**1 325**	**1 423**	**1 267**

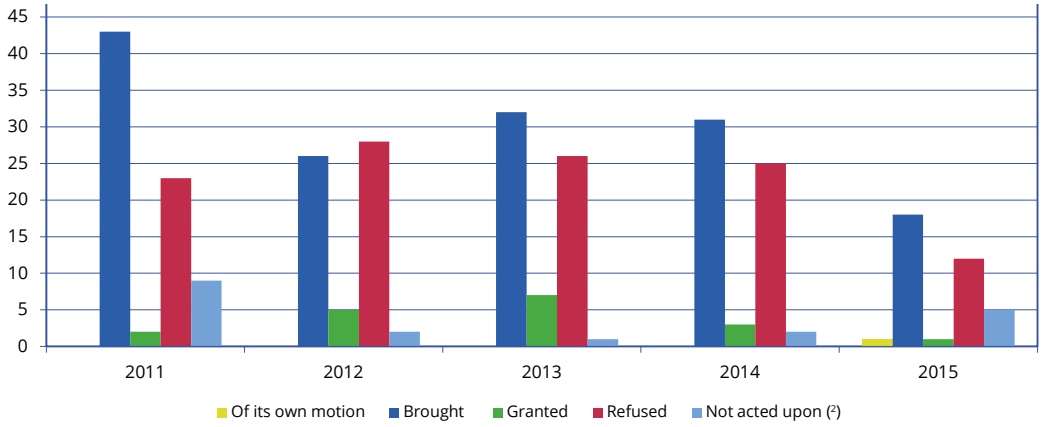
13. MISCELLANEOUS — PROCEEDINGS FOR INTERIM MEASURES (2011–15)



Distribution in 2015

	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	6	4			4
Competition	2	2	1		1
Consumer protection	1	1			1
Economic and monetary policy	1	1			1
Energy	1	1			1
Environment	2	1			1
Free movement of capital	1	1			1
Law governing the institutions	2	2		1	1
Public procurement	5	7		3	4
Registration, evaluation, authorisation and restriction of chemicals (REACH regulation)	3	3			3
Restrictive measures (external action)	4	4			4
State aid		2			2
Total	**32**	**31**	**3**	**4**	**24**

14. MISCELLANEOUS — EXPEDITED PROCEDURES (2011–15) [1]

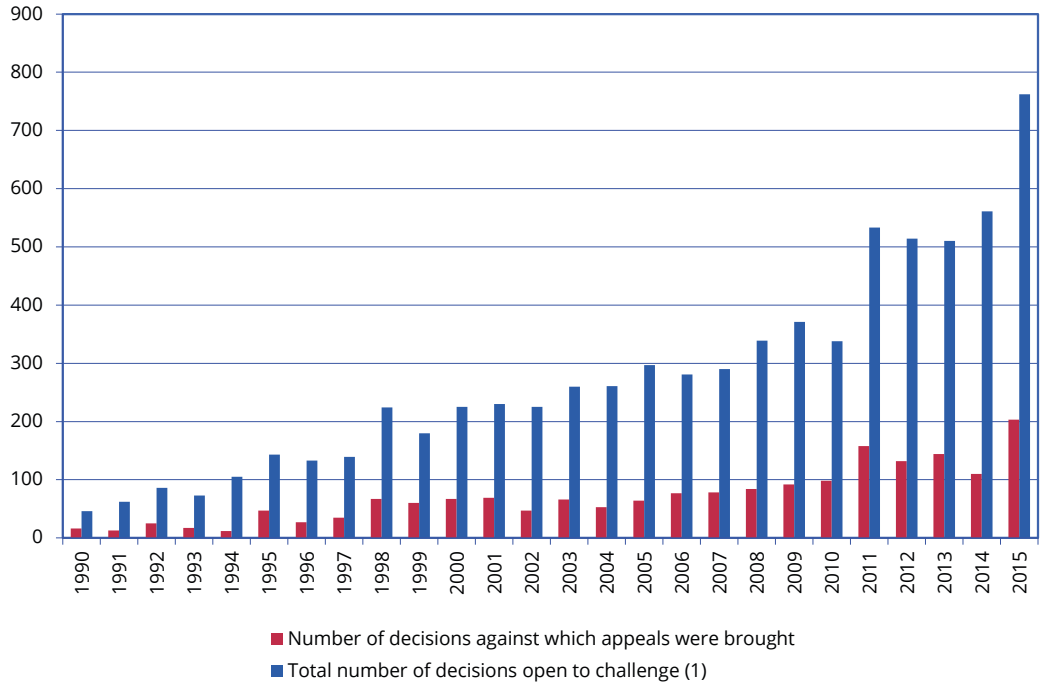


	2011					2012					2013					2014					2015				
	Of its own motion	Brought	Outcome			Of its own motion	Brought	Outcome			Of its own motion	Brought	Outcome			Of its own motion	Brought	Outcome			Of its own motion	Brought	Outcome		
			Granted	Refused	Not acted upon (2)			Granted	Refused	Not acted upon (2)			Granted	Refused	Not acted upon (2)			Granted	Refused	Not acted upon (2)			Granted	Refused	Not acted upon (2)
Access to documents		2		1			1		2			1		1			2		2			2		2	
External action by the European Union																						1		1	
Agriculture												1		1								1		1	
State aid				2			2			2							13	2	10			3		2	
Economic, social and territorial cohesion							1		1																
Competition		4		4			2		2			2		2			1		1						
Law governing the institutions		1			1		1		1								1			1		2			2
Energy												1		1											
Environment		2		2								5	5				1						1		
Free movement of capital																						2			2
Public procurement												2		1			1		2		1	1			1
Restrictive measures (external action)		30	2	12	7		10	4	16			4		4			9		9			4		4	
Commercial policy		3		2			3		2			15	2	14	1										
Economic and monetary policy																						1		1	
Social policy		1			1																				
Public health							5	1	3			1		2			3	1	1	1					
Staff Regulations																						1		1	
Customs union and Common Customs Tariff							1		1																
Total		**43**	**2**	**23**	**9**		**26**	**5**	**28**	**2**		**32**	**7**	**26**	**1**		**31**	**3**	**25**	**2**	**1**	**18**	**1**	**12**	**5**

1 | The General Court may decide to deal with a case before it under an expedited procedure at the request of a main party or, since 1 July 2015, of its own motion.

2 | 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 (1990–2015)



	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%
2014	110	561	20%
2015	203	762	27%

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 (2011–15)

	2011			2012			2013			2014			2015		
	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	10	37	**27%**	18	52	**35%**	16	52	**31%**	15	77	**19%**	22	75	**29%**
Competition	49	90	**54%**	24	60	**40%**	28	73	**38%**	15	44	**34%**	32	61	**52%**
Staff cases	1	1	**100%**												
Intellectual property	39	201	**19%**	41	190	**22%**	38	183	**21%**	33	209	**16%**	64	334	**19%**
Other direct actions	59	204	**29%**	47	208	**23%**	62	202	**31%**	47	231	**20%**	85	290	**29%**
Appeals					2									2	
Special forms of procedure				2	2	**100%**									
Total	158	533	**30%**	132	514	**26%**	144	510	**28%**	110	561	**20%**	203	762	**27%**

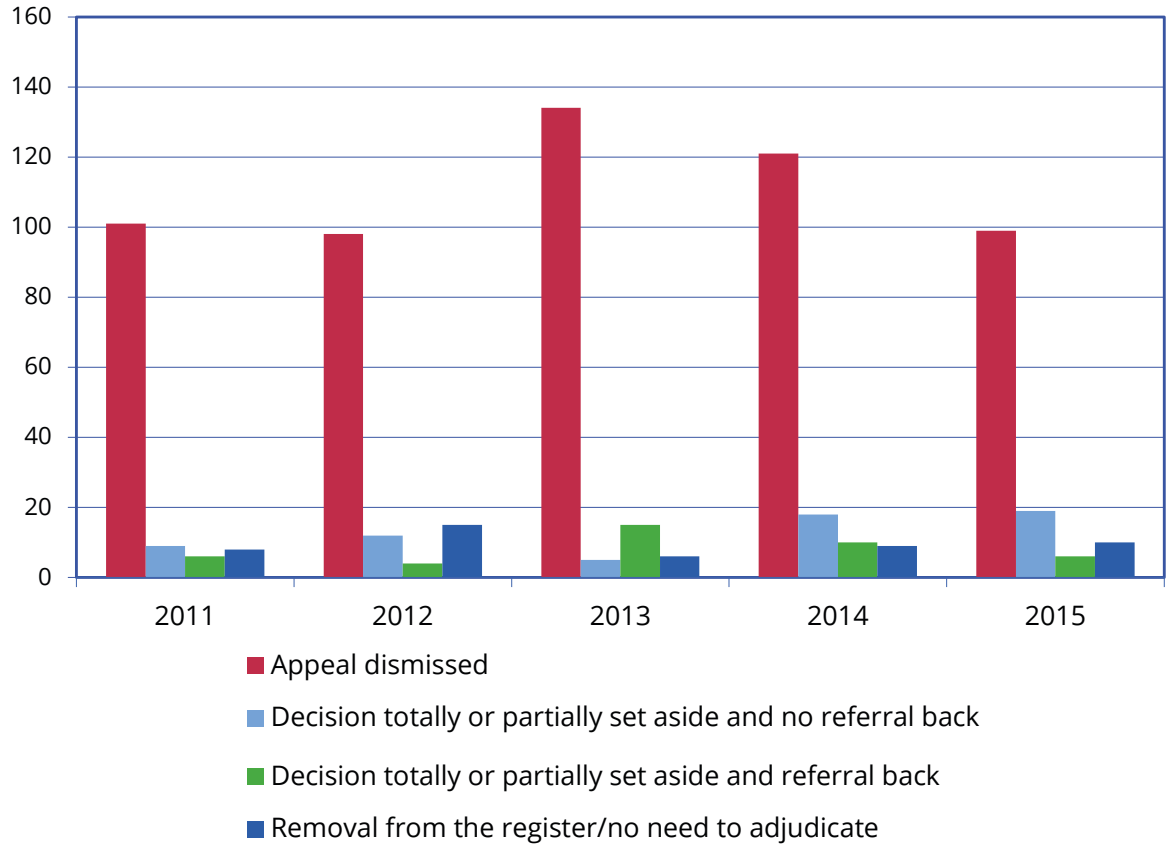
17. MISCELLANEOUS — RESULTS OF APPEALS BEFORE THE COURT OF JUSTICE (2015)

(JUDGMENTS AND ORDERS)

	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	1	2			3
Agriculture	4	3			7
Citizenship of the Union	1				1
Commercial policy	1		1		2
Common fisheries policy	1				1
Common foreign and security policy	6				6
Competition	14	3		2	19
Customs union and Common Customs Tariff	5				5
Economic and monetary policy	1				1
Economic, social and territorial cohesion	1	3			4
Employment	1				1
Energy			1		1
Environment	1	5			6
Freedom to provide services	1				1
Intellectual and industrial property	31		2	3	36
Law governing the institutions	10	1	1	4	16
Principles of EU law	1				1
Public health	3				3
Public procurement	3	1			4
Research and technological development and space	1				1
State aid	12	1	1	1	15
Total	**99**	**19**	**6**	**10**	**134**

18. MISCELLANEOUS — RESULTS OF APPEALS BEFORE THE COURT OF JUSTICE (2011–15)

(JUDGMENTS AND ORDERS)



	2011	2012	2013	2014	2015
Appeal dismissed	101	98	134	121	99
Decision totally or partially set aside and no referral back	9	12	5	18	19
Decision totally or partially set aside and referral back	6	4	15	10	6
Removal from the register/ no need to adjudicate	8	15	6	9	10
Total	**124**	**129**	**160**	**158**	**134**

19. MISCELLANEOUS — GENERAL TREND (1989–2015)

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
2014	912	814	1 423
2015	831	987	1 267
Total	**12 483**	**11 216**	

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.
2004–2005: 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 2015

By Mr **Sean VAN RAEPENBUSCH**, President of the Civil Service Tribunal

The statistics concerning the Tribunal's activity in 2015 show an increase in the number of cases brought (167) compared with the previous year (157). The number of cases brought to a close in 2015 (152) is the same as that in the previous year.

The number of pending cases was 231 on 31 December 2015 compared with 216 in 2014. However, it should be noted that over the last two years the Tribunal has had to stay proceedings in a large number of cases concerning, first, transfers to the pension scheme of the European Union of pension rights acquired previously and, second, the implementation of the reform of the Staff Regulations of Officials of the European Union ('the Staff Regulations') and the Conditions of Employment of Other Servants of the European Union ('the CEOS') [1], pending decisions of the General Court of the European Union. Accordingly, while the stay of proceedings in 54 actions concerning the transfer of pension rights was lifted following judgments delivered by the General Court on 13 October 2015, proceedings in 23 cases on that subject were still stayed as at 31 December 2015, as they were in 28 cases concerning the reform of the Staff Regulations and the CEOS. With the inclusion of other cases in which proceedings were stayed for various reasons, proceedings in a total of 69 cases were still stayed at the end of the year, that is to say, in nearly 30% of pending cases.

The average duration of proceedings, not including the duration of any stay of proceedings, fell from 12.7 months in 2014 to 12.1 months in 2015. It should be noted that the average was 14.7 months in 2013.

During the period under consideration the President of the Tribunal also made two orders for interim measures. That figure attests to the long-term trend of falling numbers of applications for interim measures in staff cases, given that the number of such applications was 11 in 2012, three in 2013 and five in 2014.

The statistics for 2015 also show that, without counting a case which was referred back after review, 35 appeals were brought before the General Court against 33 decisions of the Tribunal, which is almost the same number as in 2014 (36). The 33 decisions thus challenged represent only 28.21% of the number of decisions open to challenge given by the Tribunal, compared with 36.36% in 2014 and 38.89% in 2013. Moreover, of 37 appeals decided in 2015, 22 were dismissed and 14 upheld in full or in part; seven of the cases in which the judgment was set aside were referred back to the Tribunal. Only one appeal was removed from the register. However, it must be observed that seven of the decisions to set aside judgments, which represent half of the appeals upheld, were the result of a different interpretation by the Tribunal and the General Court in two areas alone: that of contracts subject to the CEOS and that of the transfer of pension rights.

Furthermore, 14 cases were brought to a close by amicable settlement under Article 69 of the Rules of Procedure, compared with 12 the year before. That represents the best result ever obtained by the Tribunal in that regard.

The account given below will describe the most significant decisions of the Tribunal.

1 | Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union (OJ 2013 L 287, p. 15).

I. PROCEDURAL QUESTION

Under Article 91(1) of the Staff Regulations, even where a complaint has been lodged, the action must as a rule be brought against the initial act with adverse effect. In that context, it is settled case-law that the action, even if formally directed against the rejection of the complaint, has the effect of bringing before the judicature the act adversely affecting the applicant against which the complaint was submitted, except where the scope of the rejection of the complaint differs from that of the measure against which that complaint was made. In its order of 15 July 2015 in ***De Esteban Alonso v Commission*** (F-35/15, EU:F:2015:87, under appeal), the Tribunal nonetheless emphasised that, even where the action must be seen as being directed against the initial act, given that the purpose of a complaint is to enable the administration to review its decision, the pre-litigation procedure is of an evolving nature, so that the appointing authority or the authority empowered to conclude contracts of employment ('the AECE') may decide, when it rejects a complaint, to vary the grounds on which it had adopted the contested act. It may do so even if no new or substantive matter is raised in the complaint. Consequently, the Tribunal held that, although it must be regarded as being directed against the initial act, the action must be interpreted in the light of the decision rejecting the complaint.

II. QUESTIONS OF SUBSTANCE

GENERAL CONDITIONS FOR VALIDITY OF MEASURES

1. CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

In its judgment of 30 June 2015 in ***Petsch v Commission*** (F-124/14, EU:F:2015:69), the Tribunal held that, while the right to the information and consultation of workers and the right to collective bargaining, enshrined in Articles 27 and 28 respectively of the Charter of Fundamental Rights of the European Union, are capable of being applied in relations between the EU institutions and their staff, it is the role of EU law to implement those rights, in accordance with the wording of those articles themselves. The Tribunal held in that regard that general implementing provisions ('GIP') may constitute such implementation measures stipulating the cases and conditions in which the above rights may apply in EU law.

2. HIERARCHY OF NORMS

According to the judgments of the Tribunal of 30 June 2015 in ***Petsch v Commission*** (F-124/14, EU:F:2015:69) and of 8 July 2015 in ***DP v ACER*** (F-34/14, EU:F:2015:82), where an institution or agency has the power under the first paragraph of Article 110 of the Staff Regulations to issue GIP for the purpose of supplementing or implementing binding, higher-ranking provisions of the Staff Regulations or the CEOS, the competent authority may neither act *contra legem*, inter alia by adopting provisions whose application would be contrary to the provisions of the Staff Regulations or deprive them of their proper effect, nor disregard general principles of law. According to the case-law, the GIP may lay down criteria capable of guiding the administration in the exercise of its discretionary power or of explaining more fully the scope of provisions of the Staff Regulations which are not wholly clear. On the other hand, they may not narrow the scope of application of the Staff Regulations or the CEOS, nor lay down rules derogating from provisions ranking higher than those texts or from general principles of law.

3. RIGHT TO BE HEARD

In an examination of the conditions under which failure to observe the right to be heard constitutes a failure to comply with an essential procedural requirement, the Tribunal, in its judgments of 9 September 2015 in ***De Loecker v EEAS*** (F-28/14, EU:F:2015:101) and of 8 October 2015 in ***DD v FRA*** (F-106/13 and F-25/14, EU:F:2015:118, under appeal), applied the case-law according to which it is necessary to examine whether, had it not been for that irregularity, the outcome of the procedure might have been different. In ***De Loecker v EEAS***, the Tribunal concluded that such was not the case, having found that the applicant had been recruited as head of a delegation, that he had displayed serious failings in his management of that delegation giving rise to a loss of trust on the part of the AECE in his ability to manage a delegation and, finally, that he had been heard by the European External Action Service ('EEAS') in relation to his failings in the context of the adoption of a prior decision to transfer him back to the headquarters of the EEAS. In ***DD v FRA***, however, the Tribunal made clear that, having regard to the fundamental nature of the right to be heard, as enshrined in Article 41(2)(a) of the Charter of Fundamental Rights of the European Union, it is for the defendant, which adopted the contested decision and which is therefore best informed as to the factors underlying the adoption of that decision, to prove that, even if the applicant had been properly heard, it could not have adopted a different decision. That judgment is in line with the judgment of 16 December 2015 in ***DE v EMA*** (F-135/14, EU:F:2015:152) by which the Tribunal annulled, on the ground of failure to observe the right to be heard, a decision placing the applicant on 'non-active status', having found that it could not rule out the possibility that, had the applicant been heard, the AECE might have adopted a different decision and kept the applicant in service, given that the European Medicines Agency ('EMA') did not adduce any evidence allowing the Tribunal to conclude that it would have adopted the contested decision in any event, and that the applicant argued that he would have been able to inform the AECE that its reasoning was based on a misinterpretation of the data.

Moreover, in its judgment of 8 October 2015 in ***DD v FRA*** (F-106/13 and F-25/14, (EU:F:2015:118, under appeal), the Tribunal held that where it is established that the applicant's rights of the defence have been breached, the administration cannot argue that those rights were nevertheless observed on an *ex post* basis on the ground that the applicant was able to submit his arguments against the decision adversely affecting him in the framework of the complaints procedure under Article 90(2) of the Staff Regulations. A complaint brought under that provision does not have the effect of suspending the execution of the contested decision, so that, despite the complaint, that decision had an immediate negative impact on the situation of the applicant, who was not in a position to influence it.

4. FORMAL STATEMENT OF GROUNDS

In a judgment of 18 November 2015 in ***Diamantopulos v EEAS*** (F-30/15, EU:F:2015:138), the Tribunal emphasised that the primary function of the statement of reasons is to reduce the risk of arbitrariness by obliging the administration to organise its reasoning as a coherent whole, thus leading it to formulate its opinion and the scope of its decision rationally on the basis of relevant, unambiguous and sufficient arguments, which are free of contradiction.

5. MANIFEST ERROR OF ASSESSMENT

In its judgment of 18 May 2015 in ***Bischoff v Commission*** (F-36/14, EU:F:2015:48) , the Tribunal was able to reiterate its earlier case-law according to which an error may be said to be manifest only where it may easily be detected in the light of the criteria to which the legislature intended the exercise by the administration of its broad discretion to be subject. Consequently, in order to establish that a manifest error was made in the assessment of the facts such as to justify the annulment of a decision, the evidence, which it is for the applicant to adduce, must be sufficient to make the findings upheld by the administration in its decision implausible. In other words, a plea alleging a manifest error must be rejected if, despite the evidence adduced by the applicant, the contested assessment may still be accepted as true or valid.

6. IMPLEMENTATION OF A JUDGMENT ANNULLING A MEASURE

It is settled case-law that, in order to comply with an annulling judgment and to implement it fully, the institution that is the author of the annulled measure is required to have regard not only to the operative part of the judgment but also to the grounds constituting its essential basis. In its judgment of 18 November 2015 in ***Diamantopulos v EEAS*** (F-30/15, EU:F:2015:138), the Tribunal, in addition, emphasised, first, that the measures necessary to comply with an annulling judgment must also respect all the provisions of EU law, in particular the Staff Regulations as interpreted by the case-law, and, second, that annulling judgments must be complied with in accordance with the principle of good faith to which the administration's actions are always subject.

In the same judgment, the Tribunal held, moreover, that the rationale for the above obligation to state reasons and the obligations incumbent on the administration under Article 266 TFEU where one of its acts has been annulled for failure to state reasons imposes two successive obligations on the administration. First, the administration must undertake, in the light of the grounds constituting the essential basis of the operative part of the annulling judgment, a proper re-examination of the grounds which, although they were not expressly stated in the annulled decision, could underlie that decision. Then the administration must make those re-examined grounds explicit in the statement of reasons for the decision intended to replace that annulled decision.

RIGHTS AND OBLIGATIONS OF OFFICIALS AND OTHER STAFF

1. DUTY TO PROVIDE ASSISTANCE

An order of 15 July 2015 in ***De Esteban Alonso v Commission*** (F-35/15, EU:F:2015:87, under appeal) gave the Tribunal an opportunity to reiterate the purpose of the duty to provide assistance laid down by Article 24 of the Staff Regulations. Its purpose is to provide officials and other servants with protection both at the present time and in the future in order to enable them to carry out their duties better in the general interest of the service. An institution's duty to provide assistance is therefore intended both to protect its staff and to safeguard its own interests, and is thus based on the premise of shared interests. Accordingly, the Tribunal recalled that the duty to provide assistance is concerned with the defence of officials, by their institution, against acts of third parties and not against acts of the institution itself, the review of which falls under other provisions of the Staff Regulations. The Tribunal concluded that the applicant could not rely on Article 24 of the Staff Regulations in order to seek reimbursement by the Commission of the expenses incurred for his defence in pending criminal proceedings in which the institution is a civil party pursuing an interest which conflicts with that of the applicant.

2. HARASSMENT

By a judgment of 26 March 2015 in ***CW v Parliament*** (F-124/13, EU:F:2015:23), the Tribunal held that referral to the Advisory Committee on Harassment is not a prerequisite for submitting a request for assistance on the basis of Article 24 of the Staff Regulations in the circumstances provided for in Articles 90 and 91 of the Staff Regulations, although it may be desirable in certain cases, particularly with a view to mediation.

Furthermore, the Tribunal held in its judgment of 6 October 2015 in ***CH v Parliament*** (F-132/14, EU:F:2015:115), implicating a Member of the European Parliament ('MEP'), that, where the administration has been properly approached with a request for assistance at a point in time when both the staff member and the MEP concerned were performing their respective duties in the institution and it has information capable of giving rise to a serious suspicion of psychological harassment, that administration is obliged to open an administrative inquiry in order to establish the facts and to pursue that inquiry until its conclusion, even after the MEP or staff member concerned has left the institution. If the facts are proven, the conclusions of the inquiry must permit a decision to be made on appropriate measures to remedy the particular situation and to prevent a similar situation recurring in the future. The Tribunal also pointed out that the inquiry may prove useful to the victim in seeking compensation for any damage and, conversely, where the conclusions of the inquiry disprove the claims of the alleged victim, it may allow the person implicated to obtain compensation for the damage which those accusations caused to him.

In the same judgment of 6 October 2015 in ***CH v Parliament*** (F-132/14, EU:F:2015:115), the Tribunal also held that an institution may impose penalties on a person against whom a complaint of harassment is made only if the inquiries establish with certainty that the accused person did behave in such a way as to undermine the smooth functioning of the service or the dignity and reputation of the victim. Furthermore, the Tribunal made clear that that was particularly true where the person implicated is a person elected to office in accordance with the Treaties.

3. DUTIES OF LOYALTY AND RESPECT FOR THE DIGNITY OF THE SERVICE

Finally, in the judgment of 26 March 2015 in ***CW v Parliament*** (F-124/13, EU:F:2015:23), the Tribunal held that, just as the sending by hierarchical superiors of messages which contain defamatory or malicious wording can be regarded as conduct constituting harassment within the meaning of Article 12a of the Staff Regulations, the duty of loyalty referred to in Article 11 of the Staff Regulations and the duty of every official, pursuant to Article 12 of those regulations, to refrain from any action or behaviour which might reflect adversely upon his position mean that every subordinate has a duty to refrain from groundlessly challenging the authority of his superiors. In any event, those two provisions entail the obligation to demonstrate moderation and prudence when sending emails challenging that authority and when choosing the persons to whom such emails are to be sent.

4. DUTY TO HAVE REGARD FOR THE WELFARE OF STAFF

In its judgment of 18 May 2015 in ***Bischoff v Commission*** (F-36/14, EU:F:2015:48), the Tribunal reiterated the case-law regarding the duty to have regard for the welfare of staff. According to that case-law, the administration's duty to have regard to the welfare of its employees reflects the balance of reciprocal rights and obligations established by the Staff Regulations in the relationship between the official authority and the civil servants. That

duty implies in particular that when the authority takes a decision concerning the situation of an official or other staff member, it must take into consideration all the factors which may affect its decision, and when doing so it should take into account not only the interests of the service but also those of the official concerned. However, the Tribunal also recalled that the protection of the rights and interests of officials is always subject to the rules in force.

CAREERS OF OFFICIALS AND OTHER STAFF

1. RECRUITMENT

In its judgment of 6 October in ***FE v Commission*** (F-119/14, EU:F:2015:116, under appeal), the Tribunal held that a notice of competition would be deprived of its purpose if the appointing authority were able to exclude a successful candidate from the reserve list in reliance on a condition or rule for admission not stated in that notice or in the Staff Regulations, or that has not in any event, prior to the adoption of the competition notice, been published in a form which is accessible or bound to come to the attention of both the selection board and the candidates. The notice of competition is the legal framework for any selection procedure for the purpose of filling a post in the institutions of the European Union in that, subject to higher-ranking provisions of the Staff Regulations, it both governs the distribution of powers between the appointing authority and the selection board in the organisation and conduct of the tests of the competition and lays down the conditions for the participation of candidates, in particular their profile and their specific rights and obligations.

Moreover, in its judgment of 22 January 2015 in ***Kakol v Commission*** (F-1/14 and F-48/14, EU:F:2015:5, under appeal), the Tribunal applied the case-law according to which, where the conditions for admission to a competition have similar or identical wording in successive competition notices, it is possible for a candidate's qualifications or professional experience to be assessed less favourably than in earlier competitions only if the statement of reasons for the decision clearly justifies that difference in assessment, although the obligation to provide such a statement of reasons applies only in so far as the person concerned has drawn the selection board's attention to the fact that he was admitted to a similar competition previously. In this case, the Tribunal held that the competition at issue was similar to another competition to which the applicant was admitted as a candidate, despite the fact that one was an 'enlargement' competition and thus 'subject to a special scheme allowing for derogations' and the other was a 'normal' open competition, which, according to the Commission, meant that the relevance of the candidates' qualifications is not assessed in the same way. The Tribunal held, in that regard, that the aims of a competition are evident from the description of the duties which successful candidates will have to perform, and not from the nationality requirement which they must satisfy.

As regards the probationary periods which may be imposed on officials or other staff, the Tribunal held, in essence, in its judgment in ***Murariu v EIOPA*** (F-116/14, EU:F:2015:89), that the administration has the option, by virtue of its power to organise its departments, to impose a new probation period on an already established official who has passed a competition for a higher grade or a staff member who is already established following a probationary period, where the person concerned comes to occupy a new post involving a significant change in the nature of his duties.

2. PROMOTION

In its judgments of 18 March 2015 in ***Ribeiro Sinde Monteiro v EEAS*** (F-51/14, EU:F:2015:11, under appeal), of 22 September 2015 in ***Silvan v Commission*** (F-83/14, EU:F:2015:106, under appeal) and of 15 December 2015 in ***Bonazzi v Commission*** (F-88/15, EU:F:2015:150), the Tribunal observed that, for the purposes of the promotion of officials, the appointing authority has the power to undertake the consideration of comparative merits according to the procedure or method which it deems most appropriate in so far as there is no obligation on the institutions to adopt a particular system for assessment and promotion, given the wide discretion they have in the implementation of the objectives of Article 45 of the Staff Regulations, according to their own organisational and staff management needs. However, in those judgments the Tribunal also recalled that the power which the appointing authority is thus acknowledged to have is circumscribed by the need to undertake a consideration of comparative merits with care and impartiality, in the interests of the service and in accordance with the principle of equal treatment and that, accordingly, that consideration must be conducted on the basis of comparable sources of information. In that regard, the Tribunal made clear that, while it cannot, of course, be argued that Article 43 of the Staff Regulations requires the use of an analytical and numerical assessment system, the obligation to conduct a comparison of merits on a basis of equality and using comparable sources of information, which is inherent in Article 45 of the Staff Regulations, requires a procedure or method capable of neutralising the subjectivity resulting from the assessments made by the different assessors. Having regard to those considerations, the Tribunal held, in its judgment in ***Silvan*** v ***Commission*** and ***Bonazzi*** v ***Commission***, that, unlike the promotion system set up by the EEAS described in ***Ribeiro Sinde Monteiro*** v ***EEAS***, the system set up by the Commission observed the requirements of the Staff Regulations, in so far as the model appraisal reports placed on the file showed a careful appraisal, made and structured around identical criteria and parameters in the light of which all the officials in question were assessed uniformly and in so far as the Commission had supplied cogent evidence regarding the advice and training provided to the assessors to enable them to carry out the assessment and promotion exercises in a uniform manner.

Moreover, in the judgment of 22 September 2015 in ***Silvan v Commission*** (F-83/14, EU:F:2015:106, under appeal), the Tribunal made clear that, in the context of its consideration of the comparative merits of all officials eligible for promotion, the appointing authority may be assisted by the administrative services at the various hierarchical levels, in accordance with the principles inherent in the operation of any hierarchical administrative structure, embodied in the first paragraph of Article 21 of the Staff Regulations, under which 'an official, whatever his rank, shall assist and tender advice to his superiors'. However, the Tribunal added that prior consideration, within each directorate-general, of the personal files of officials eligible for promotion must not take the place of the comparative consideration which must be undertaken subsequently by the Promotion Board, where provision is made for such consideration, and then by the appointing authority. In particular, if consideration of the comparative merits of all the officials eligible for promotion is not to be rendered redundant, that authority cannot be allowed simply to consider the merits of those officials who are placed at the top of the lists prepared by the various departments or directorates-general.

In addition, while recalling that, in decisions on promotion, seniority in grade or in the service does not constitute a matter which must be directly taken into account in the consideration of comparative merits, as required by Article 45 of the Staff Regulations, the Tribunal held, in its judgment of 15 December 2015 in ***Bonazzi v Commission*** (F-88/15, EU:F:2015:150), that the fact of having been classified in a grade for a number of years in no way demonstrates that the person concerned has demonstrated particular merits. Setting up seniority in grade as a decisive parameter would result in an automation of promotion which is contrary to the principle of a civil service required to promote the highest standard of ability, efficiency and conduct, within the meaning of the first paragraph of Article 27 and the first paragraph of Article 43 of the Staff Regulations.

Finally, in that judgment, the Tribunal held that, where a joint committee tasked with assisting the appointing authority in the consideration of the comparative merits of officials eligible for promotion fails in its task by not adopting the recommendations it is supposed to make, the appointing authority cannot suspend the promotion exercise. In such a case, it is required to conduct that comparative consideration alone by adopting decisions on promotion, bearing in mind that the Staff Regulations do not provide for any obligation on the appointing authority to obtain the input of such a joint committee, the setting-up of which is a matter for each institution.

3. TERMINATION OF SERVICE

In its judgment of 18 May 2015 in ***Bischoff v Commission*** (F-36/14, EU:F:2015:48), the Tribunal recalled that, where the appointing authority takes into consideration the interests of the service when deciding on a request by an official to remain in active service beyond the compulsory retirement age laid down in subparagraph (a) of the first paragraph of Article 52 of the Staff Regulations, it has broad discretion and that, consequently, the Tribunal may declare unlawful the appointing authority's assessment only if there has been a manifest error of assessment or misuse of powers.

In the same judgment the Tribunal made clear that, in the specific case of the second paragraph of Article 52 of the Staff Regulations, the interests of the official concerned are already taken into account, in accordance with the duty to have regard to the welfare of the official concerned, by the fact that he must make a request to remain in active service beyond the compulsory retirement age laid down in the Staff Regulations. As the interests of the official are thus safeguarded from the outset, the decision that the appointing authority responsible must take on such a request depends entirely on the interests of the service, as is apparent from the very terms of the second paragraph of Article 52 of the Staff Regulations. The Tribunal held that the official does not therefore need to demonstrate to the appointing authority that he has a personal interest in remaining in active service, since that interest is irrelevant in the context of his request.

WORKING CONDITIONS OF OFFICIALS AND OTHER STAFF

Before the entry into force of the revised Staff Regulations and CEOS the length of the working week was specifically set at 37 hours and 30 minutes. Whilst it left the provisions setting the basic salary of officials and other staff unchanged, Regulation (EU) No 1023/2013 amended Article 55(2) of the Staff Regulations in such a way that the duration of the working week may now vary only between a minimum of 40 and a maximum of 42 hours per week, depending on the decision taken by the institution, office or agency employing those staff. In that connection, the Tribunal observed, in its order of 23 April 2015 in ***Bensai v Commission*** (F-131/14, EU:F:2015:34) and in its judgment of 30 June 2015 in ***Petsch v Commission*** (F-124/14, EU:F:2015:69), that staff employed on the basis of a contract are paid according to their classification in grade and step within their function group and that they receive a monthly salary which does not depend on their normal working hours. Pointing out that the EU legislature may at any time amend the rights and obligations of EU officials and other staff, the Tribunal therefore held that the legislature could increase the length of the working week without any increase in salary.

EMOLUMENTS AND SOCIAL SECURITY BENEFITS OF OFFICIALS

1. INSTALLATION ALLOWANCE

In a judgment of 18 November 2015 in ***FH v Parliament*** (F-26/15, EU:F:2015:137), the Tribunal recalled that the purpose of the installation allowance is to enable an official to bear, in addition to removal expenses, which are specifically reimbursed, the inevitable expenses incurred in integrating into a new place of employment for a substantial period of time. It concluded that exclusion from the installation allowance in a case where an official entitled to the installation allowance is posted to the place where his family resides, within the meaning of the last sentence of Article 5(4) of Annex VII to the Staff Regulations, is only applicable in the event that that official genuinely settles with his family in his place of employment, since in that case he will not have to bear the additional costs of settling. On the other hand, that provision does not apply where an official who is in receipt of the household allowance does not settle or does not resettle with his family when his place of employment changes, although his family lives in his new place of employment. In such a situation the person concerned is liable to bear the additional expenses connected with his actual settlement at an address other than that of his family's home and may, in those circumstances, claim payment of the installation allowance, amounting, in such a case, to one month's salary.

2. PENSIONS

Under the first paragraph of Article 27 of Annex VIII to the Staff Regulations, the divorced spouse of an official or a former official is to be entitled to a survivor's pension if he/she provides evidence of entitlement to maintenance from his/her ex-spouse by virtue of, inter alia, a registered settlement between the former spouses. In its judgment of 23 March 2015 in ***Borghans v Commission*** (F-6/14, EU:F:2015:19), the Tribunal stated that maintenance agreed between former spouses is one of the financial consequences arising from the decree of divorce. Consequently the Tribunal held that, in order to determine whether the divorced spouse of an official or former official may claim a survivor's pension by reason of an agreement between spouses, it was necessary not to adopt an autonomous interpretation, but to make reference to the law governing the effects of their divorce.

DISCIPLINARY MEASURES

On the subject of respect for the rights of the defence in disciplinary proceedings under the Staff Regulations, the Tribunal held, in its judgment of 8 October 2015 in ***DD v FRA*** (F-106/13 and F-25/14, EU:F:2015:118), that Article 2(2) and Article 3 of Annex IX to the Staff Regulations require the appointing authority, where it plans to commence disciplinary proceedings on the basis of a report drawn up following an administrative inquiry, to communicate to the official concerned the conclusions of the inquiry report and all evidence in the files, so that, having been given a reasonable time to prepare his defence, he may make any appropriate observations. Informing the official concerned orally of the conclusions of the inquiry report during the hearing referred to in Article 3 of Annex IX to the Staff Regulations is not sufficient to ensure respect for those provisions.

In its judgment of 3 June 2015 in ***Bedin v Commission*** (F-128/14, EU:F:2015:51), the Tribunal, in addition, concluded from Article 25 of Annex IX to the Staff Regulations that the legislature intended to limit the powers of the appointing authority to assess whether the facts at issue in disciplinary proceedings are established, where criminal proceedings are brought in parallel on the same facts. On the other hand, it cannot be inferred

from that provision that the appointing authority cannot diverge from the opinion of the Disciplinary Board. However, although the appointing authority is not bound by that opinion, the Disciplinary Board is not thereby deprived of its essential function as an advisory body and the official concerned still enjoys the guarantee offered by its involvement, because the appointing authority is required to state reasons for any decision to diverge from the opinion of the Disciplinary Board, including in relation to the assessment of the facts.

In its judgment of 17 March 2015 in ***AX v ECB*** (F-73/13, EU:F:2015:9), the Tribunal, moreover, held that the right of access to the disciplinary file, provided for by the body of rules applicable to European Central Bank (ECB) staff, concerns only the documents used in the disciplinary proceedings and/or in the final decision and not any other documents. In particular, the staff member concerned has no right to acquire any information or document available, or which may be made available, on the sole ground that he is counting, in his own investigation of the disputed facts, on the evidentiary value of such documents or information. In addition, the communication to the person concerned of the activity report may be refused without there being any breach of the rights of the defence, where that report is in the nature of a preparatory note drafted before the disciplinary proceedings were initiated and not relied on by the decision-making authority in order to adopt a disciplinary sanction.

Finally, in the same judgment, the Tribunal held that it was open to the ECB, in the context of its institutional autonomy, to submit evidence on the applicant's conduct to the national judicial authorities to enable them to examine whether that conduct was liable to be characterised as an offence under national law and might warrant prosecution.

DISPUTES CONCERNING CONTRACTS

Pointing out that the basis for the employment relationship of a member of the temporary staff with the institution or agency concerned is the contract of employment, the Tribunal held, in its judgment in ***Murariu v EIOPA*** (F-116/14, EU:F:2015:89), on the question of the possibility of terminating a contractual relationship, that once that relationship has been established by mutual agreement of the parties, the AECE may not act unilaterally like an appointing authority but is bound by the relevant contractual provisions in relation to its staff member and, in any event, by Articles 14 and 47 of the CEOS. Thus, the AECE may not, in situations other than those defined in those articles, unilaterally sever its contractual relationship with the staff member concerned. More specifically, an offer of employment sent to a candidate with a view to his engagement as a member of the temporary staff is a mere statement of intention and, as such, a preparatory act which does not give rise to any rights and may be withdrawn, for example, where the AECE discovers, after making the offer of employment, that the person concerned does not fulfil one of the conditions of employment laid down by the CEOS, the notice of vacancy or the internal rules. On the other hand, where such an offer has been accepted, the mutual agreement of the parties gives rise to new obligations of a contractual nature which limit the power of that authority to act unilaterally in situations other than those expressly defined by the CEOS, such as those referred to in Article 47 thereof and, in any event, to act retroactively.

B | COMPOSITION OF THE SERVICE TRIBUNAL

(Order of precedence as at 31 December 2015)

From left to right:

E. Perillo, Judge; H. Kreppel, Judge; R. Barents, President of Chamber; S. Van Raepenbusch, President of the Tribunal; K. Bradley, President of Chamber; M. I. Rofes i Pujol, Judge; J. Svenningsen, Judge; W. Hakenberg, Registrar.

1. CHANGE IN THE COMPOSITION OF THE CIVIL SERVICE TRIBUNAL IN 2015

There was no change in the composition of the Civil Service Tribunal in 2015.

2. ORDER OF PRECEDENCE

FROM 1 JANUARY 2015 TO 31 DECEMBER 2015

S. VAN RAEPENBUSCH, President of the Tribunal
R. BARENTS, President of Chamber
K. BRADLEY, President of Chamber
H. KREPPEL, Judge
M.I. ROFES i PUJOL, Judge
E. PERILLO, Judge
J. SVENNINGSEN, Judge

W. HAKENBERG, Registrar

3. FORMER MEMBERS OF THE CIVIL SERVICE TRIBUNAL

(in order of their entry into office)

Heikki Kanninen (2005–2009)
Haris Tagaras (2005–2011)
Stéphane Gervasoni (2005–2011)
Irena Boruta (2005–2013)

PRESIDENT

Paul J. Mahoney (2005–2011)

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 (2011-15)

NEW CASES

2. Percentage of the number of cases per principal defendant institution (2011-15)

3. Language of the case (2011-15)

COMPLETED CASES

4. Judgments and orders — Bench hearing action (2015)

5. Outcome (2015)

6. Applications for interim measures (2011-15)

7. Duration of proceedings in months (2015)

CASES PENDING AS AT 31 DECEMBER

8. Bench hearing action (2011-15)

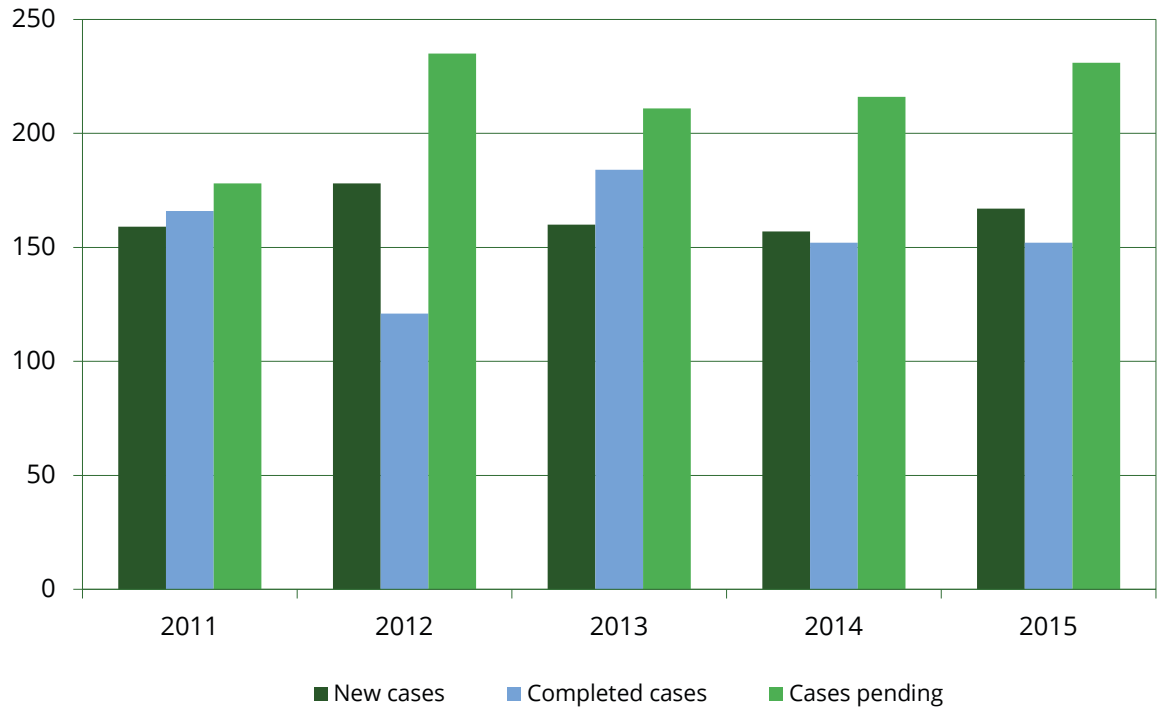
9. Number of applicants

MISCELLANEOUS

10. Appeals against decisions of the Civil Service Tribunal to the General Court (2011-15)

11. Result of appeals before the General Court (2011-15)

1. GENERAL ACTIVITY OF THE CIVIL SERVICE TRIBUNAL NEW CASES, COMPLETED CASES, CASES PENDING (2011–15)

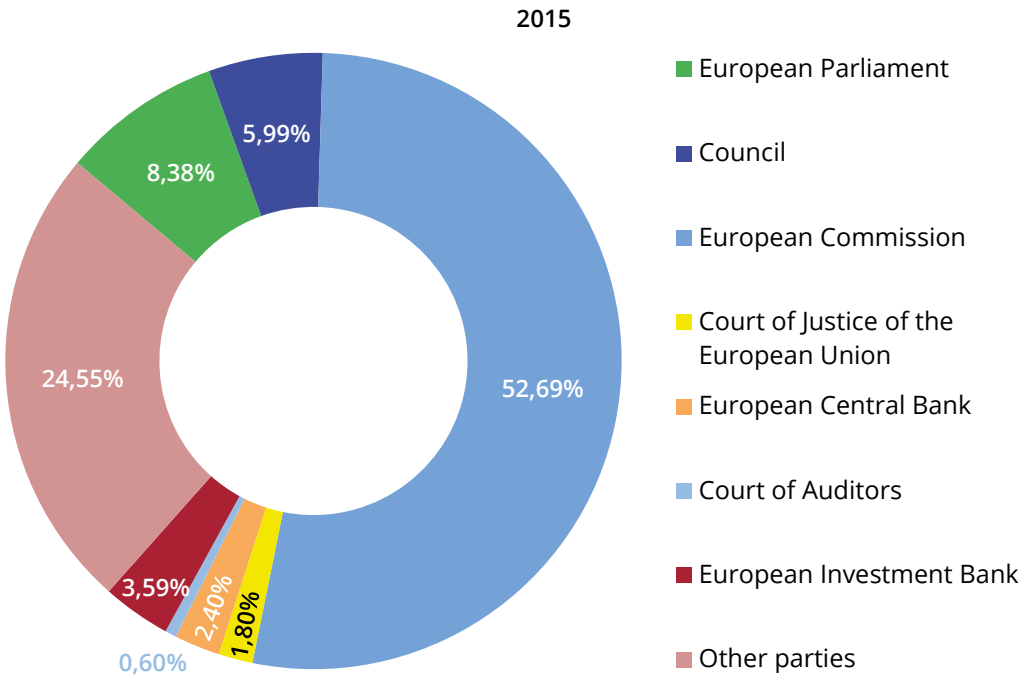


	2011	2012	2013	2014	2015
New cases	159	178	160	157	167
Completed cases	166	121	184	152	152
Cases pending	178	235	211	216	231[1]

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 69 cases in which proceedings were stayed.

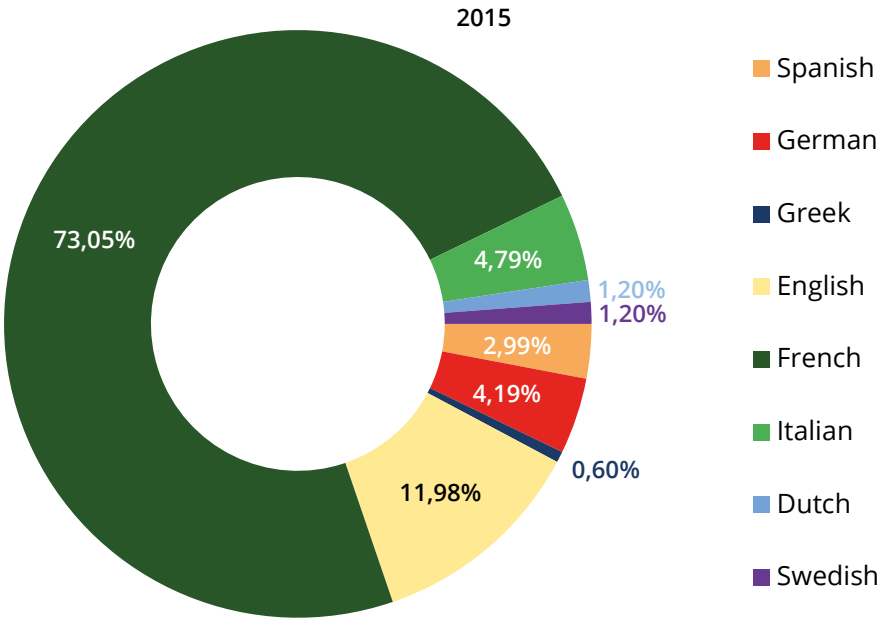
2. NEW CASES — PERCENTAGE OF THE NUMBER OF CASES PER PRINCIPAL DEFENDANT INSTITUTION (2011–15)



	2011	2012	2013	2014	2015
European Parliament	6.29%	6.11%	5.66%	11.80%	8.38%
Council	6.92%	3.89%	3.77%	8.70%	5.99%
European Commission	66.67%	58.33%	49.69%	45.96%	52.69%
Court of Justice of the European Union	1.26%		0.63%		1.80%
European Central Bank	2.52%	1.11%	1.89%	1.24%	2.40%
Court of Auditors	0.63%	2.22%	0.63%	1.24%	0.60%
European Investment Bank	4.32%	4.44%	5.03%	1.24%	3.59%
Other parties	11.40%	23.89%	32.70%	29.81%	24.55%
Total	**100%**	**100%**	**100%**	**100%**	**100%**

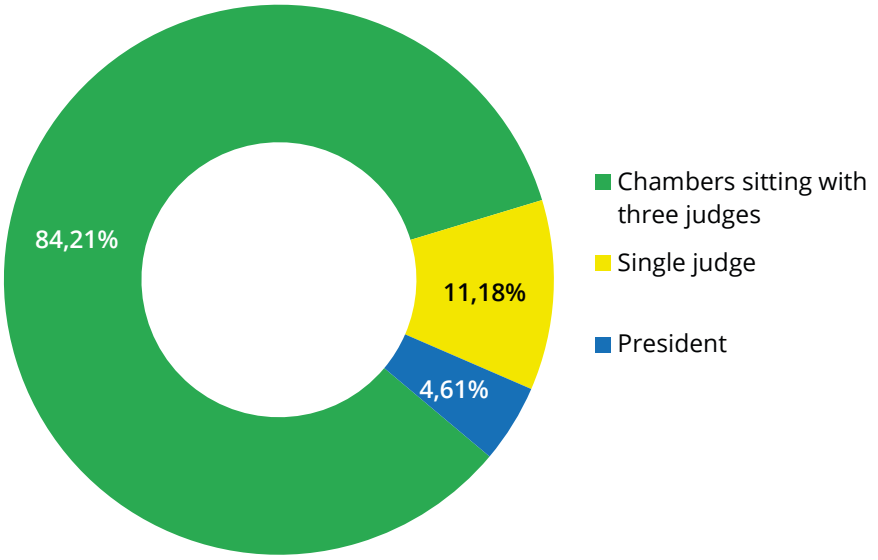
3. NEW CASES — LANGUAGE OF THE CASE (2011–15)

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.



Language of the case	2011	2012	2013	2014	2015
Bulgarian		2			
Spanish	2	3		2	5
German	10	5	2	9	7
Greek	4	1	4	2	1
English	23	14	26	23	20
French	87	108	95	113	122
Italian	29	35	21	8	8
Hungarian	1				
Dutch	1	6	12		2
Polish	1	2			
Romanian		2			
Slovak	1				
Swedish					2
Total	**159**	**178**	**160**	**157**	**167**

4. COMPLETED CASES — JUDGMENTS AND ORDERS — BENCH HEARING ACTION (2015)



	Judgments	Orders for removal from the register, following amicable settlement (1)	Other orders terminating proceedings	Total
Full court				
Chambers sitting with three judges	60	14	54	128
Single judge	15		2	17
Cases not yet assigned				
President			7	7
Total	**75**	**14**	**63**	**152**

1 | In the course of 2015, there were also seven unsuccessful attempts to bring cases to a close by amicable settlement on the initiative of the Civil Service Tribunal.

5. COMPLETED CASES — OUTCOME (2015)

	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)	
Assignment/reassignment	2			2			**4**
Competitions	2	2	4	2			**10**
Working conditions/leave			1				**1**
Appraisal/promotion	7	11	3	3	3		**27**
Pensions and invalidity allowances	2		2		1		**5**
Disciplinary proceedings	3	5		1	1		**10**
Recruitment/appointment/ classification in grade	2	3	6				**11**
Remuneration and allowances	4	4	8	2			**18**
Social security/occupational disease/ accidents	1		1	2	1		**5**
Termination or non-renewal of a contract as a member of staff	7	8	5	1	5		**26**
Other	4	8	9	1	9	4	**35**
Total	**34**	**41**	**39**	**14**	**20**	**4**	**152**

6. COMPLETED CASES – APPLICATIONS FOR INTERIM MEASURES (2011–15)

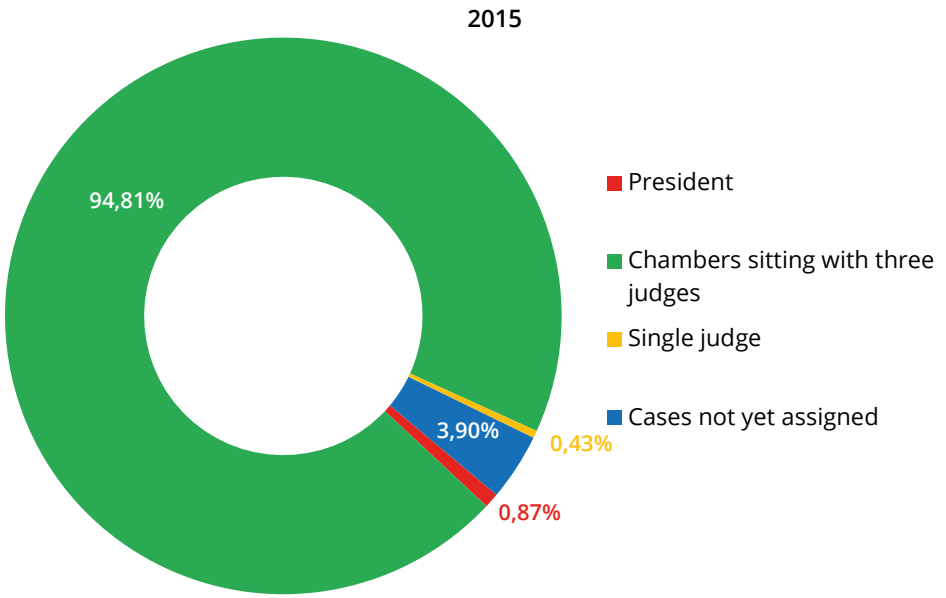
Applications for interim measures brought to a conclusion		Outcome		
		Granted in full or in part	Dismissal	Removal from the register
2011	**7**		4	3
2012	**11**		10	1
2013	**3**		3	
2014	**5**	1	4	
2015	**2**		2	
Total	**28**	**1**	**23**	**4**

7. COMPLETED CASES — DURATION OF PROCEEDINGS IN MONTHS (2015)

Completed cases		Average duration	
		Duration of full procedure	Duration of procedure, not including duration of any stay of proceedings
Judgments	75	16.1	15.9
Orders	77	9.9	8.3
Total	**152**	**13.0**	**12.1**

The durations are expressed in months and tenths of months.

8. CASES PENDING AS AT 31 DECEMBER — BENCH HEARING ACTION (2011–15)



	2011	2012	2013	2014	2015
Full court		1	1		
President	1		2	1	2
Chambers sitting with three judges	156	205	172	201	219
Single judge	2	8	3	2	1
Cases not yet assigned	19	21	33	12	9
Total	**178**	**235**	**211**	**216**	**231**

9. CASES PENDING AS AT 31 DECEMBER — NUMBER OF APPLICANTS

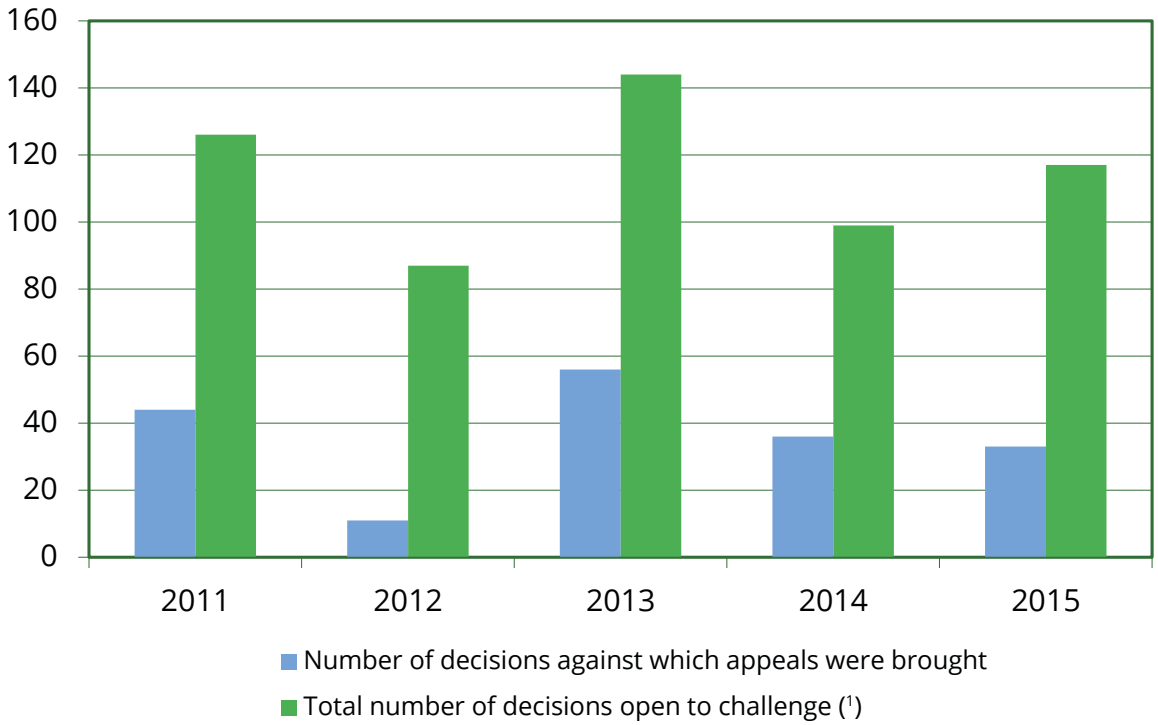
Number of applicants	Fields
486	Staff Regulations — EIB — Remuneration — Annual adjustment of salaries
484	Staff Regulations — EIB — Remuneration — Reform of the system of remuneration and salary increments at the EIB
451	Staff Regulations — EIB — Remuneration — New performance system — Allocation of bonuses
386 (two cases)	Staff Regulations — EIB — Remuneration — Annual adjustment of salaries
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
32 (eight cases)	Staff Regulations — Staff Regulations of officials — Reform of the Staff Regulations of 1 January 2014 — New rules for the calculation of travel expenses from place of employment to place of origin — Link between the grant of this benefit and expatriate status
30 (four cases)	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 (four cases)	Staff Regulations — Staff Regulations of officials — Reform of the Staff Regulations of 1 January 2014 — New rules for the calculation of travel expenses from place of employment to place of origin — Link between the grant of this benefit and expatriate status — Abolition of travelling time

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 (2011–15)

	Total applicants	Total pending cases
2011	1 006	178
2012	1 086	235
2013	1 867	211
2014	1 902	216
2015	2 333	231

10. MISCELLANEOUS — APPEALS AGAINST DECISIONS OF THE CIVIL SERVICE TRIBUNAL TO THE GENERAL COURT (2011–15)

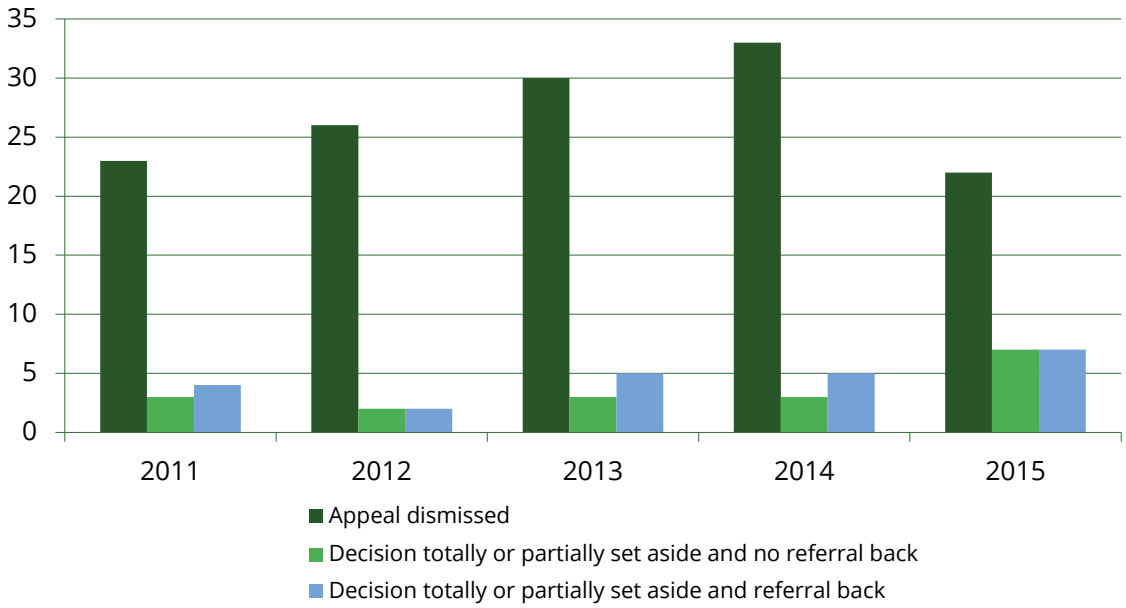


	Number of decisions against which appeals were brought	Total number of decisions open to challenge (1)	Percentage of decisions appealed (2)
2011	44	126	34.92%
2012	11	87	12.64%
2013	56	144	38.89%
2014	36	99	36.36%
2015	33	117	28.21%

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 (2011–15)



	2011	2012	2013	2014	2015
Appeal dismissed	23	26	30	33	22
Decision totally or partially set aside and no referral back	3	2	3	3	7
Decision totally or partially set aside and referral back	4	2	5	5	7
Removal from the register/no need to adjudicate		3		1	1
Total	**30**	**33**	**38**	**42**	**37**

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