COURT OF JUSTICE
OF THE EUROPEAN COMMUNITIES

ANNUAL REPORT
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Synopsis of the work of the Court of Justice and the Court of First Instance of the European Communities

Luxembourg 1998

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FOREWORD

by Mr G.C. Rodríguez Iglesias, President of the Court of Justice

1997 witnessed the conclusion of the Intergovernmental Conference and the signing of the Treaty of Amsterdam, which further paves the way towards the construction of Europe. The Court of Justice followed with interest the preparation of that reform and contributed to it by submitting a report to the working party in charge of that preparation.

Admittedly, not all of the desiderata formulated by the Court, in particular its request for additional flexibility to be introduced into the procedure for amending its Rules of Procedure, were fulfilled. The fact remains, however, that the essential message of the Court, that the functions and prerogatives of the judicature should be maintained within the framework of the community governed by the rule of law which the European Community is, was clearly heard. Moreover, the new Treaty provides for the widening of the jurisdiction of the Court, in particular in the field of police and judicial cooperation in criminal matters and on matters of visas, asylum, immigration and other policies related to free movement of persons.

The aim of this annual report is to offer a brief summary of the work of the Court of Justice and of the Court of First Instance of the European Communities in 1997.

It offers the reader an overview of twelve months of activity, within the time-limit which such a format involves and/but also with a certain amount of distance in relation to the recent events on which it reports.

It is thus my hope that it will provide a useful supplement to the rapid publication of the case-law, to which the Court has dedicated considerable effort in the course of the past year.

In this connection, 1997 was the year of the Internet for the Court, whose Internet address is *www.curia.eu.int*. Indeed, there has been an explosion during the year under review in this report in the use of the Internet, a tool to which the Court began to resort in 1996. The Court has had its own page on the Internet since October 1996 within the Europa website which featured in particular general information on the institution and on the proceedings of the

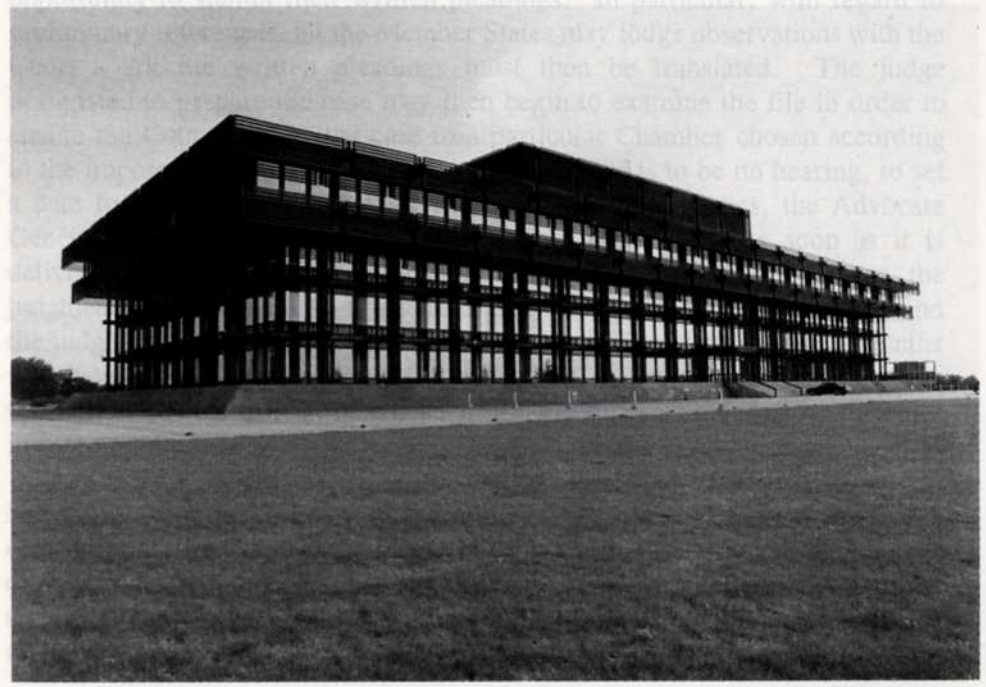
Court of Justice and the Court of First Instance. A crucial step was taken in the summer of 1997 when the full text of judgments was made available as from the date of delivery (with the exception of judgments in staff cases), generally in all the languages.

Access by those in legal circles and for Community citizens in general in real time to the Community case-law has thus been increased manifold. The number of visits to the Court's site — over 10 000 each month — is testimony to the effectiveness of this new medium in the dissemination of the case-law.

The next stage will be to make the Opinions of the Advocates General and judgments of the Court of First Instance in staff cases available to visitors to the Court's site.

Chapter I

The Court of Justice of the European Communities



A - The proceedings of the Court of Justice in 1997

by Mr G.C. Rodríguez Iglesias, President of the Court of Justice

The simultaneous pursuit of quality and speed in dealing with those cases brought before it remain the focus of the Court's concern. It is with this twofold purpose that the Court has pursued its judicial activity throughout 1997.

The quest for greater efficiency in the running of the Court cannot however ignore the legislative and material constraints within which it must work. It is therefore of some relevance to describe in broad outline the essential stages in the way cases are dealt with at the Court before going on to summarize the most important judgments delivered in 1997.

Subject to preliminary issues which may slow down their progress, cases brought before the Court of Justice must complete numerous procedural stages, as laid down by the existing rules, before giving rise to a final judgment or order. A new case coming before the Court first goes through a written procedure, giving the parties and certain other interested parties the opportunity to submit their written pleadings. In particular, with regard to preliminary references, all the Member States may lodge observations with the Court. All the written pleadings must then be translated. The judge designated to prepare the case may then begin to examine the file in order to enable the Court to refer the case to a particular Chamber chosen according to the importance of the case and, save where there is to be no hearing, to set a date for hearing oral argument. After hearing the parties, the Advocate General assigned to the case draws up his Opinion and, as soon as it is delivered, the case enters the deliberation stage. At the end of that stage, the judgment adopted by the Court is translated into all the official languages and the judgment or order is then delivered. A total of approximately 20 months will have elapsed, a large part of which will have been dedicated to the translation into the official languages of the pleadings as required by the rules in force.

Benefiting from the fruits of the sustained efforts made in each of the stages of procedure, the Court was able significantly to increase in 1997 the number of its judgments and orders disposing of cases. It delivered 242 judgments (as against 193 in 1996) and made 135 orders, thus concluding 456 cases in twelve months.

The number of cases brought to a close in 1997 was slightly greater than the number of cases brought during the same period (445 new cases in 1997). There were 683 cases pending at the end of that period.

So far as concerns the contribution of the various Chambers, it is to be noted that more and more cases are at present dealt with by Chambers, although a large number of judgments continue to be delivered by the full court in the more significant cases.

As regards new cases brought in 1997, references for a preliminary ruling still constitute the greater part (239 out of a total of 445).

Most of the new cases brought before the Court fall within the fields of agriculture (64 cases), the free movement of persons (50), the environment and consumer protection (42), taxation (36), approximation of laws (38), free movement of goods (28), social policy (26) and competition (24).

Finally, a number of small amendments were made to the Rules of Procedure of the Court of Justice during the period under review (OJ 1997 L 103, p. 1).

The main lessons which may be drawn from the case-law of the Court in 1997 are summarized in the pages which follow on the basis of a selection which, perforce, cannot be exhaustive.

Several judgments delivered in 1997 contain interesting arguments on certain *forms of procedure* followed before the Court, in particular the preliminary reference procedure, direct actions and applications for interim measures.

The Court clarified the scope of the *preliminary reference* procedure provided for in Article 177 of the EC Treaty whilst bearing in mind the objective of ensuring the uniform interpretation of Community law which is its *raison d'être*. Thus it held that it had jurisdiction to interpret Community law even where the purely internal situation in question before the national court is not governed directly by it, but the national legislature, in transposing the provisions of a directive into domestic law, has chosen to apply the same treatment to purely internal situations and to those governed by the directive, so that it has aligned its domestic legislation with Community law (Case C-28/95 *Leur-Bloem* v *Inspecteur der Belastingdienst/Ondernemingen Amsterdam 2* [1997] ECR I-4161, paragraph 34). The Court held that, where in regulating internal situations domestic legislation adopts the same solutions as those adopted in Community law, it is clearly in the Community interest

that, in order to forestall future differences of interpretation, provisions or concepts taken from Community law should be interpreted uniformly, irrespective of the circumstances in which they are to apply (*Leur-Bloem* case, cited above, and Case C-130/95 *Giloy* v *Hauptzollamt Frankfurt am Main-Ost* [1997] ECR I-4291). In that context, referring to the principle of collaboration which governs its relationship with national courts, the Court confirmed that it is for the latter to assess the precise scope of a reference to Community law made in its national law, unless it is obvious that Community law cannot apply, either directly or indirectly, to the circumstances of the case referred to the Court.

The term *court or tribunal* referred to in Article 177 of the Treaty was also the subject of two important judgments in 1997. There is much to learn from the way in which the Court examined, in Case C-54/96 *Dorsch Consult* v *Bundesbaugesellschaft Berlin* [1997] ECR I-4961, whether the Vergabeüberwachungsausschuß des Bundes (Federal Public Procurement Awards Supervisory Board) is to be regarded as a court or tribunal within the meaning of Article 177 of the Treaty. The Court proceeded to that examination by analysing the nature of the role played by the Federal Supervisory Board in the procedure which led to the reference for a preliminary ruling. Analysis of the nature of the body concerned was thus carried out in the light of the function it exercises. The Court went on to observe that, in order to determine whether a body making a reference is a court or tribunal for the purposes of Article 177 of the Treaty, which is a question governed by Community law alone, it takes account of a number of factors, such as whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is *inter partes*, whether it applies rules of law and whether it is independent. The Court, overall, did not place any stress on any one of those factors in particular. It observed that the requirement that the procedure before the hearing body concerned must be *inter partes* is not an absolute criterion.

The Court also considered the question as to whether the Benelux Court, established by a treaty signed in 1965 between Belgium, Luxembourg and the Netherlands and which has jurisdiction to hear and determine questions submitted to it for a preliminary ruling on the interpretation of the Benelux Convention on Trade Marks by the courts of those States, was a court or tribunal, within the meaning of Article 177. The Hoge Raad der Nederlanden (Supreme Court of the Netherlands) had asked whether it or the Court of Justice of the Benelux was required to raise a question for a preliminary ruling on the interpretation of Community law under the last paragraph of Article 177

(Case C-337/95 *Parfums Christian Dior* v *Evora* [1997] ECR I-6013). In considering the purpose of Article 177, which is to ensure the uniform interpretation of Community law, the Court considered that, in view of its function, the Benelux Court could submit questions for a preliminary ruling to it. Furthermore, in so far as no appeal lies against decisions of courts like the Benelux Court or the Hoge Raad, the Court considered that both of them were covered by the last paragraph of Article 177. Nonetheless, the Court went on to explain that the obligation may be deprived of its purpose and thus emptied of its substance when the question raised is substantially the same as a question which has already been the subject of a preliminary ruling in the same case at national level. In the present case, the Hoge Raad could thus either submit its question to the Court of Justice before considering bringing the matter before the Benelux Court, or bring the matter directly before the latter, which would then be required to submit a question before the Court of Justice before delivering its judgment. In either case, the ruling of the Court of Justice may then remove from the Hoge Raad the obligation to submit a question in substantially the same terms before giving its judgment.

Next to the preliminary ruling procedure, direct actions brought by individuals represent the other main means of access to the Community judicature. In this regard, the conditions under which *direct actions* under Article 173 of the Treaty are admissible were the subject of two appeals: Case C-107/95 P *Bundesverband der Bilanzbuchhalter* v *Commission* [1997] ECR I-947 and Case C-395/95 P *Geotronics* v *Commission* [1997] ECR I-2271.

With regard to Article 90 of the Treaty, which arranges the system of supervision of public undertakings, the *Bundesverband* case concerned the question whether it is possible for an individual to challenge before the courts a refusal by the Commission to initiate an investigation pursuant to Article 90(3). The Court held that an individual may, in some circumstances, be entitled to bring an action for annulment, under the fourth paragraph of Article 173 of the Treaty, against a decision of the Commission taken on the basis of Article 90(3) of the Treaty. In the Court's view, the possibility could not be ruled out that exceptional situations might exist where an individual or, possibly, an association constituted for the defence of the collective interests of a class of individuals has standing to bring such proceedings. However, that is not the case where the contested decision is a refusal by the Commission to address to a Member State a decision declaring that a piece of general legislation is contrary to the Treaty and indicating the measures which that State had to adopt in order to comply with its obligations under Community law.

Geotronics had contested before the Court of First Instance the Commission's rejection by fax of the tender it had submitted following a restricted invitation to tender for the supply of equipment issued by the Romanian authorities. The contract was to be financed by the Community under the PHARE Programme. In order to find the action inadmissible, the Court of First Instance had applied by analogy the case-law relating to the award of public contracts with non-member States financed by the European Development Fund (EDF), according to which measures adopted by the Commission's representatives, whether approvals or refusals to approve, endorsements or refusals to endorse, are intended solely to establish whether or not the conditions for Community financing have been met, and are not intended to interfere with the principle that the contracts in question remain national contracts. According to the Court of First Instance, the purpose of the Commission's decision could only be to indicate its refusal to award Community aid in the event that Geotronic's tender is accepted. In the appeal against that judgment, the Court considered that the circumstances of the present case prevented a simple transposition of the case-law concerning the EDF. The contested decision was formally addressed to Geotronics and even though it formed part of a contractual procedure which was to lead to the conclusion of a national contract, it could be severed from that context inasmuch as, first, it was adopted by the Commission in the exercise of its own powers and, secondly, it was specifically directed at an individual undertaking, which lost any chance of actually being awarded the contract simply because that act was adopted. The Court thus concluded that the Commission's decision to refuse Geotronics the benefit of Community funding in itself had binding legal effects as regards the appellant and could therefore be the subject of an action for annulment; it therefore set aside the judgment of the Court of First Instance in so far as it dismissed the application for annulment of the Commission's letter.

The interim protection of the rights of individuals in Community law is assured in particular by *applications for interim measures* to the Community judicature. In this respect, it follows from an order made in Case C-393/96 P(R) *Antonissen* v *Council and Commission* [1997] ECR I-441 that an interim measure granting part of the compensation claimed in the main proceedings and seeking to protect the applicant's interests until judgment is delivered in those proceedings is not inconsistent with the conditions for or nature of an interim application but must be assessed on the basis of the factual and legal circumstances of the individual case. An absolute prohibition on obtaining a measure of that kind, irrespective of the circumstances of the case, would not be compatible with the right of individuals to complete and effective judicial protection under Community law. It is for the judge dealing with an

application for such an interim measure to balance the applicant's interest in avoiding a deterioration of his financial position, which might lead to an irreversible cessation of his activities, against the risk that it might be impossible to recover the amounts sought if the main application were dismissed. Recourse to such a type of measure, which is more likely than others to give rise in fact to irreversible effects, must be restricted and should be confined to cases where the prima facie case appears particularly strong and the urgency of the measures sought undeniable. The judge dealing with the interim application may still impose any condition or guarantee which he considers necessary when granting that measure, or limit its scope in any other way.

Apart from those procedural aspects, the recent case-law of the Court lays down guidelines with regard to certain *legal matters of general application*, including the question of the reimbursement of duties levied in breach of Community law, the scope of the principle of non-discrimination provided for in Article 6 of the Treaty, as well as the obligations which Member States must fulfil before the expiry of the period for implementing directives.

The questions referred for a preliminary ruling in the *Comateb* and *Fantask* cases concerned the limits which Member States may place on individuals in terms of the *actions for the recovery of duties or charges levied in breach of Community law*. Confirming its earlier case-law, the Court held in Joined Cases C-192/95 to C-218/95 *Comateb and Others* v *Directeur Général des Douanes et Droits Indirects* [1997] ECR I-165 that a Member State may resist repayment to the trader of a charge levied in breach of Community law only where it is established that the charge has been borne in its entirety by someone other than the trader and that reimbursement of the latter would constitute unjust enrichment. It also stated that the fact that there is a legal obligation to incorporate the charge in the cost price does not mean that there is a presumption that the entire charge has been passed on, even where failure to comply with that obligation carries a penalty. In the *Fantask* case the question concerned whether Community law prevents a Member State from relying on a limitation period under national law to resist actions for the recovery of charges levied in breach of the directive as long as that Member State has not properly transposed the directive. The Court replied in the negative, referring to its case-law according to which, in the absence of Community rules governing the matter, it is for the domestic legal system of each Member State to lay down the detailed procedural rules for actions seeking the recovery of sums wrongly paid, provided that those rules are not less favourable than those governing similar domestic actions and do not

render virtually impossible or excessively difficult the exercise of rights conferred by Community law (Case C-188/95 *Fantask* v *Industriministeriet (Erhvervsministeriet)* [1997] ECR I-6783). Moreover, it confirmed the solution laid down in Case C-208/90 *Emmott* v *Minister for Social Welfare and the Attorney General* [1991] ECR I-4269 that a period laid down by national law within which proceedings must be initiated cannot begin to run before a directive has been properly transposed was justified by the particular circumstances of that case and could not be generalised.

Article 6 of the Treaty, which constitutes a specific expression of the general principle of equality, prohibits all discrimination on the ground of nationality. The Court held in Case C-29/95 *Pastoors* v *Belgian State* [1997] ECR I-285 that that provision precluded national legislation which, upon discovery that certain road transport offences had been committed, imposed a treatment of non-residents which was manifestly disproportionate by comparison with that of residents. In arriving at that conclusion, the Court first considered that a national rule which draws a distinction on the basis of residence had the same practical result as discrimination on grounds of nationality. Secondly, it acknowledged that a difference in treatment between resident and non-resident offenders, the obligation imposed on the latter being to pay a sum by way of security, was objectively justified, given the difficulty or even the impossibility of securing the enforcement of court decisions in criminal matters against a non-resident. However, in the present case, the Court found that the amount to be paid by way of a security was excessive and that the national legislation was thus prohibited by Article 6. Following the same line of reasoning, the Court also held that that provision precluded a Member State from requiring security for costs to be furnished by a national of another Member State who has brought an action in one of its civil courts against one of its nationals where that requirement may not be imposed on its own nationals who have neither assets nor a residence in that country, in a situation where the action is connected with the exercise of fundamental freedoms guaranteed by Community law (Case C-323/95 *Hayes and Others* v *Kronenberger* [1997] ECR I-1711 and Case C-122/96 *Saldanha* v *Hiross Holding* [1997] ECR I-5325).

One of the questions raised by the national court in Case C-129/96 *Inter-Environnement Wallonie* v *Région Wallonne* [1997] ECR I-7411 sought to ascertain whether Member States could, in view of Articles 5 and 189 of the Treaty, adopt a provision contrary to a directive on harmonization during the period prescribed for its implementation. The Court replied that, although the Member States are not required to adopt the transposition measures before the

expiry of the period prescribed for that purpose, they must nevertheless refrain from adopting any measures liable seriously to compromise the result prescribed. It is for the national court to assess whether that is the case as regards the national provisions whose legality it is called upon to consider by considering, in particular, whether they purport to constitute full transposition of the directive, as well as the effects in practice of applying those incompatible provisions and of their duration in time. In this regard, the Court pointed out that Member States were entitled to adopt transitional measures or to implement the directive in stages.

As regards the *institutions*, the five judgments delivered by the Court on the prerogatives and on the seat of the European Parliament as well as on the determination of the powers of the Community institutions are worthy of note.

So far as concerns the observance of the *prerogatives of the European Parliament*, the Court first of all annulled a Council regulation based on Article 100c of the Treaty on the ground that the Council had failed to consult the Parliament a second time although the provision which was finally adopted, taken as a whole, differs in essence from the text on which the Parliament had already been consulted (Case C-392/95 *Parliament* v *Council* [1997] ECR I-3213). The Court confirmed in particular that, although the Council was exempt from reconsulting the Parliament where the amendments substantially correspond to the wishes of the Parliament itself, it was not exempt therefrom merely because it was quite aware of the wishes of the Parliament on the essential points in question.

On the other hand, the Court dismissed an action for annulment brought by the Parliament against a Council decision which amended an earlier decision of the Parliament and the Council (Case C-259/95 *Parliament* v *Council* [1997] ECR I-5303). The Parliament claimed that the Council could not amend unilaterally an earlier measure adopted by virtue of Article 189b of the Treaty without being in breach of its prerogatives. The Court however declared that the contested decision had been adopted in accordance with the procedure referred to in Article 169 of the Act concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden. That procedure governed the amendment of acts of the institutions which were to be adjusted upon accession. The Court further held that the contested decision adhered to the framework laid down for adaptations within the meaning of Article 169, that it had been adopted within a reasonable period after the entry into force of the Treaty of Accession and that it was justified for it to enter into force with retroactive effect. Finally,

the Court interpreted Article 169 of the Act of Accession to the effect that it empowers the Council to amend a joint act of the Parliament and the Council unilaterally. In order to arrive at that conclusion it considered that the reference in Article 169 to adaptation of the acts of the Council also embraced those which the Council adopted jointly with the Parliament.

In the judgment in Case C-345/95 *France* v *Parliament* [1997] ECR I-5215, the Court interpreted the decision of the representatives of the Governments of the Member States on the location of the seats of the institutions and of certain bodies and departments of the European Communities ("the Edinburgh Decision"), as defining the *seat of the Parliament* as the place where 12 ordinary plenary part-sessions must take place on a regular basis, including those during which the Parliament is to exercise the budgetary powers conferred upon it by the Treaty. According to the Court, that decision does not encroach upon the power of the Parliament to determine its own internal organization, taking account of the fact that the constraints imposed on the Parliament by the Edinburgh Decision are inherent in the need to determine its seat while maintaining several places of work for the institution. Accordingly, the Court annulled the vote of the Parliament adopting the calendar of part-sessions of the institution for 1996 to the extent that it did not provide for 12 ordinary plenary part-sessions in Strasbourg in 1996.

The validity of a communication adopted by the Commission on an internal market for pension funds and that of a Council directive on deposit-guarantee schemes were submitted to the Court for its interpretation.

In Case C-57/95 *France* v *Commission* [1997] ECR I-1627 the Commission communication at issue was not based on a specific legal basis since according to that institution it was not intended to have legal effects. The Court pointed out, however, that certain provisions were characterized by their imperative wording and, moreover, could not be regarded as being already inherent in the provisions of the Treaty and as being intended simply to clarify their proper application. It concluded that it was an act intended to have legal effects of its own, beyond the Commission's competence, and annulled it on that ground.

On the other hand, in its judgment in Case C-233/94 *Germany* v *Parliament and Council* [1997] ECR I-2405, the Court dismissed an action for annulment brought by Germany against a directive on deposit-guarantee schemes to cover the depositors of all authorized credit institutions. The applicant claimed in particular that the first and third sentences of Article 57(2) of the Treaty on the coordination of the provisions in Member States concerning the taking-up and

pursuit of activities as self-employed persons cannot constitute the sole legal basis for the directive, since it aimed primarily to increase protection for depositors. The Court nevertheless considered that the effect of the machinery established by the directive was to prevent the Member States from invoking depositor protection in order to impede the activities of credit institutions authorized in other Member States and that, accordingly, it was clear that the directive abolished obstacles to the right of establishment and the freedom to provide services. The choice of Article 57(2) of the Treaty was thus justified. In response to the other pleas in law put forward by the applicant, the Court also stated that the system created by the contested directive maintained an acceptable balance between the objectives and interests at stake in the present case. In particular, it confirmed the validity of Article 4(1) which provides that depositors at branches set up by credit institutions in other Member States are covered by the guarantee system of the Member State of origin, whereas it precludes the latter, temporarily, from exceeding the cover offered by the corresponding guarantee scheme of the host Member State. The Court found that, when harmonization takes place, traders established in one Member State may lose the advantage of national legislation which was particularly favourable to them. In the present case, in view of the complexity of the matter and the differences between the legislation of the Member States, the Parliament and the Council were empowered to achieve the necessary harmonization progressively.

Judgments of great significance in terms both of their legal interest and their practical repercussions were delivered in 1997 in the field of *free movement of goods*.

The Court was asked whether Austrian legislation the effect of which is to prohibit the distribution on its territory by an undertaking established in another Member State of a periodical produced in that latter State containing prize puzzles or competitions which are lawfully organized in that State was compatible with Article 30 of the Treaty. The Court held that such legislation was not covered by the prohibition provided for in Article 30 only on condition that that prohibition is proportionate to maintenance of press diversity and that that objective cannot be achieved by less restrictive means (Case C-368/95 *Vereinigte Familiapress Zeitungsverlags- und vertriebs GmbH* v *Verlag* [1997] ECR I-3689).

The Court also had to deal with an action for failure to fulfil obligations brought by the Commission against the French Republic seeking a declaration that, by failing to take all necessary and proportionate measures in order to

prevent the free movement of fruit and vegetables from being obstructed by actions by private individuals, the French Republic had failed to fulfil its obligations. The Commission made reference to the passivity of the French authorities in face of violent acts committed by private individuals and by protest movements of French farmers directed against agricultural products from other Member States. The Court upheld the Commission's claim after declaring in particular that Article 30 did not prohibit solely measures emanating from the State which, in themselves, create restrictions on trade between Member States but also applied, together with Article 5, where a Member State abstains from adopting the measures required in order to deal with obstacles to the free movement of goods which are not caused by the State (Case C-265/95 *Commission* v *France* [1997] ECR I-6959). Unquestionably the Member States enjoy a margin of discretion in determining what measures are most appropriate to eliminate barriers to the importation of products in a given situation. Nevertheless, after pointing out the persistence of the same obstacles over more than ten years, the unjustified absence or passivity of the police and the almost non-existence of criminal prosecutions, the Court considered that, in the present case, the French Government has manifestly and persistently abstained from adopting appropriate and adequate measures. It also rejected the argument of the Member State concerned that action on its part would have consequences for public order with which it could not cope by using the means at its disposal. The Court stated in this respect that although it is not impossible that the threat of serious disruption to public order may, in appropriate cases, justify non-intervention by the police, that argument can, on any view, be put forward only with respect to a specific incident and not in a general way covering all the incidents concerned.

Five judgments delivered on the same date clarify the scope of *Article 37* of the Treaty, which in particular precludes State monopolies of a commercial character from discriminating between nationals of the Member States with regard to the conditions under which goods are procured and marketed.

Four of those judgments concerned actions for failure to fulfil obligations brought by the Commission against Member States which it accused, essentially, of having established and maintained, as against other Member States, in the context of State monopolies of a commercial character, exclusive import or export rights in the gas and electricity sectors. The Court first of all dismissed the action brought against the Kingdom of Spain, declaring that the Commission had not demonstrated the existence of any legislative provisions in that Member State that granted exclusive import and export rights

to an undertaking which holds a monopoly (Case C-160/94 *Commission* v *Spain* [1997] ECR I-5851). So far as concerns the three other cases, the existence of exclusive import or export rights was proven and the Court held that they were by their nature contrary to Article 37 of the Treaty. Exclusive import and export rights give rise to discrimination as prohibited against exporters or importers established in other Member States in so far as they directly affect conditions under which goods are marketed only as regards them. The Court then held that Article 90(2) of the Treaty, which concerns undertakings entrusted with the operation of services of general economic interest or have a fiscal monopoly, applied to State measures contrary to the Treaty rules on the free movement of goods and, accordingly, examined whether the exclusive rights at issue could be justified in relation thereto. In the course of that analysis, it found that the defendant States had set out in detail the reasons for which, in the event of elimination of the contested measures, the performance of the tasks of general economic interest under economically acceptable conditions would, in its view, be jeopardized. The Court concluded that, for the Treaty rules not to be applicable to an undertaking entrusted with a service of general economic interest under Article 90(2) of the Treaty it is not necessary, contrary to the Commission's claim, that the survival of the undertaking itself should be threatened: it is sufficient that the application of those rules obstruct the performance, in law or in fact, of the special obligations incumbent upon that undertaking. In view of the erroneous interpretation which vitiated the arguments put forward by the Commission in reply to the defence of the States concerned, the Court held that the Commission had not placed before it the information needed to enable it to determine whether the obligation had not been fulfilled. The Court accordingly dismissed all the actions (Case C-157/94 *Commission* v *Netherlands* [1997] ECR I-5699; Case C-158/94 *Commission* v *Italy* [1997] ECR I-5789; Case C-159/94 *Commission* v *France* [1997] ECR I-5815).

Article 37 of the Treaty was also at the centre of Case C-189/95 *Franzén* [1997] ECR I-5909. For public health reasons, the aim of the Swedish Law on Alcohol was to limit the consumption of alcoholic beverages in Sweden by making the production, wholesale trade and importation of alcoholic beverages subject to the possession of a licence and by reserving the retail of such beverages to a State company specially constituted for this purpose. The compatibility of that retail monopoly with Article 37 of the Treaty was examined. The purpose of it is to reconcile the possibility for Member States to maintain certain monopolies of a commercial character as instruments for the pursuit of public interest aims with the requirements of the establishment and functioning of the common market. It aims at the elimination of obstacles

to the free movement of goods, save, however, for restrictions on trade which are inherent in the existence of the monopolies in question. On the basis of a detailed examination of the rules governing its existence and operation, the Court arrived at the conclusion that the monopoly at issue pursued a public interest aim and that national provisions on its organization and operation were such that trade in goods from other Member States was not put at a disadvantage, in law or in fact, in relation to that in domestic goods and that competition between the economies of the Member States was not distorted. On the other hand, the Court held that the rule reserving the importation of alcoholic beverages to the holders of production or wholesale licences was an obstacle to importation contrary to Article 30 of the Treaty and could not be justified on the basis of Article 36, since the Swedish Government had not established that it was proportionate to the public health aim pursued or that this aim could not have been attained by measures less restrictive of intra-Community trade.

Two judgments of 11 November 1997 deal with matters related to the *trade marks law*.

In Case C-251/95 *SABEL* v *Puma AG, Rudolf Dassler Sport* [1997] ECR I-6191, the Court was asked to interpret the first directive on trademarks (89/104/EEC). The national court wished to ascertain essentially whether the refusal to register a mark, contemplated in the directive, provided for the existence of the likelihood that the public might confuse a mark with an earlier identical or similar one or whether the mere risk of association sufficed, even where there was no risk of direct or indirect confusion. The Benelux States defended the latter interpretation because that was the view taken by the Benelux Court in the context of the Uniform Benelux Law on Trade Marks. The Court nonetheless departed from that solution and held that there must exist a likelihood of confusion on the part of the public and that mere association of the semantic content of the two marks was not in itself a sufficient ground for concluding that there is a likelihood of confusion. The likelihood of confusion must therefore be appreciated globally, taking into account all factors relevant to the circumstances of the case and, in circumstances where the earlier mark is not especially well known to the public and consists of an image with little imaginative content, the mere fact that the two marks are conceptually similar is not sufficient to give rise to a likelihood of confusion.

The second case, Case C-349/95 *Loendersloot* v *Ballantine and Others* [1997] ECR I-6227, concerned parallel trade between Member States in alcoholic

beverages. The question raised concerned whether, in the light of Article 36 of the Treaty, the owner of trade mark rights may rely on those rights to prevent a third party from removing and then reaffixing or replacing labels bearing the mark which the owner has himself affixed to products he has put on the Community market. Although it constituted a barrier to intra-Community trade, the Court accepted such a possibility inasmuch as they constitute an essential element in the system of undistorted competition which the Treaty is intended to establish. However, applying its case-law on the repackaging of pharmaceutical products, it held that a trade mark owner should not be protected if it is established that that would contribute to artificial partitioning of the markets between Member States; it is shown that the relabelling cannot affect the original condition of the product; the presentation of the relabelled product is not such as to be liable to damage the reputation of the trade mark and its owner; and the person who relabels the products informs the trade mark owner of the relabelling beforehand.

In the field of the *common agricultural policy*, only questions relating to certain particular aspects of the common organization of the markets in bananas were dealt with in 1997 since the broad outlines of that organization had already been examined by the Court in previous years. The Court thus dismissed actions for annulment brought by Belgium and Germany against Commission decisions exceptionally allocating a quantity additional to the tariff quota for imports of bananas in 1994 and 1995 as a result of tropical storms (Joined Cases C-9/95, C-23/95 and C-156/95 *Belgium and Germany* v *Commission* [1997] ECR I-645). The Court held in particular that, in the exercise of that power, the Commission had rightly derogated, in respect of the fraction of the quota which was adjusted, from the allocation formula for the tariff quota as provided for in the basic regulation. In the second judgment of that date, the Court dismissed another application made by Belgium seeking the annulment of three Commission regulations, based on the Act of Accession of Austria, Finland and Sweden and introducing transitional measures for imports of bananas following accession (Joined Cases C-71/95, C-155/95 and C-271/95 *Belgium* v *Commission* [1997] ECR I-687). Other cases challenging the same provisions were still pending at the end of 1997.

In the field of *free movement of persons*, the Court was asked to interpret Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (Joined Cases C-65/95 and C-111/95 *The Queen* v *Secretary of State for the Home Department, ex parte Mann Shingara and Abbas Radiom* [1997] ECR I-

3343). The applicants in the main proceedings, who had been refused entry into the United Kingdom for reasons of public policy and public security, claimed that they had a right of appeal against the decisions adopted with regard to them or to an examination of their situation by an independent authority. The Court clarified a number of points with regard to the scope of the abovementioned directive. In particular it found that a national of a Member State against whom an initial decision refusing entry into another Member State has been made on grounds of public order or public security may, after a reasonable time has elapsed, make a fresh application and have a right of appeal and a right to obtain the opinion of an independent competent authority with respect to a fresh negative decision taken by the administrative authorities.

As in previous years, Community legislation in matters of *social security* has given rise to numerous orders for preliminary rulings on interpretation from national courts. The Court has had the opportunity to point out on numerous occasions the limits which characterize Community coordination of national social security systems effected by Council Regulation No 1408/71.

Thus, the purpose of the provisions of Title II of the regulation is not to confer on the persons to which it refers special rights which, in certain circumstances, the Member States may deny them but are solely intended to determine the national legislation applicable. The Court concluded that the terms "employed" and "self-employed" for the purposes of Title II of the regulation do not have an autonomous Community meaning but should be understood as meaning activities which are regarded as such for the purposes of the social security legislation of the Member State in which those activities are pursued (Case C-340/94 *de Jaeck* v *Staatssecretaris van Financiën* [1997] ECR I-461, and Case C-221/95 *Inasti* v *Hervein and Hervillier* [1997] ECR I-609). The Court also interpreted Article 14c of the regulation, which lays down special rules for persons who are simultaneously employed and self-employed in the territory of different Member States. In the Court's view, that provision does not preclude the legislation of one of the two Member States from insuring the person in question against only some of the risks covered by its social security scheme, provided that there is no discrimination in that regard between nationals of that State and nationals of the other Member States. However, each of the Member States concerned can levy contributions only on the part of the income obtained in its territory but, if the insured person works in that State on only certain days of the week, they may determine the amount of contributions to be paid without taking into account contributions which that

person may pay in the other Member State in respect of work performed there during the rest of the week (*de Jaeck*, cited above).

Likewise, the Member States are at liberty to determine the conditions for entitlement to social security benefits, since Regulation No 1408/71 merely plays a coordinating role. The fact remains that, in so doing, they must observe the provisions of the Treaty and in particular Article 52 which prohibits discriminatory difference of treatment. Thus, national rules may not cause the taking of a self-employed person's children into account when calculating family benefits to be dependent upon their residing in that Member State. Since it is primarily the children of migrant workers who do not reside in the territory of the Member State granting the benefits in question, such a condition treats nationals who have not exercised their right to free movement and migrant workers differently, without objective justification, to the detriment of the latter (Joined Cases C-4/95 and C-5/95 *Stöber and Piosa Pereira* v *Bundesanstalt für Arbeit* [1997] ECR I-511).

Finally, the Court examined the entitlement of pensioners and orphans who have acquired entitlement to family allowances not by virtue of insurance periods completed in a single Member State but by the aggregation of periods completed in various Member States. The question raised sought to ascertain whether the competent institution of a Member State was required to grant them supplementary family benefits where the amount of the family benefits provided by the Member State of residence is lower than that of the benefits provided under the laws of the first Member State. The Court replied in the negative. It is settled case-law that workers could not lose, as a consequence of the exercise of their right to freedom of movement, social security advantages guaranteed to them in any event by the laws of a single Member State, which may justify an exception to the principle of a single State responsible for payment and require the other Member State to grant a supplement. The scope of that exception cannot, however, be widened in such a way that a supplement must also be granted where the entitlement of the pensioner or orphan exists only by virtue of the application of the aggregation rules provided for by Regulation No 1408/71 (Case C-59/95 *Bastos Moriana* v *Bundesanstalt für Arbeit* [1997] ECR I-1071).

Two judgments in the field of *freedom to provide services* and of the *right of establishment* are particularly noteworthy.

The Court first of all examined in the light of Article 52 of the Treaty certain provisions of national tax rules on the carrying forward of losses by non-resident taxpayers being permanently established in the Member State concerned. Those provisions made the carrying forward of losses subject to the twofold condition that such losses should be related to income received within that State and that accounts complying with the relevant national rules applicable during that year, relating to his activities in that State. Although the Court found the first of those conditions to be acceptable, it held that the requirement to keep separate on the spot, actual accounts was excessive. The Member State may at most require the non-resident taxpayer to demonstrate clearly and precisely that the amount of the losses which he claims to have incurred corresponds, under the applicable domestic rules, to the amount of the losses actually incurred in that State (Case C-250/95 *Futura Participations* v *Administration des Contributions* [1997] ECR I-2471).

The social security legislation in a Member State provided that only non-profit-making establishments and, in particular, old people's homes could conclude contracts with public bodies and thus be entitled to social security financing. One of the questions submitted to the Court in the *Sodemare* case concerned the compatibility of such a requirement with Articles 52 and 58 of the Treaty. The Court observed that Community law does not detract from the powers of the Member States to organize their social security systems and that the States can in particular decide on a system of social welfare based on the principle of solidarity and whose implementation is in principle entrusted to the public authorities. In that regard, the admission of private operators to such a system as providers of social welfare services may be made subject to the condition that they are non-profit-making (Case C-70/95 *Sodemare* v *Regione Lombardia* [1997] ECR I-3395).

"Television without frontiers" was at the centre of Joined Cases C-34/95 to C-36/95 *Konsumentombudsmannen (KO) v De Agostini* [1997] ECR I-3843, which gave rise to a preliminary ruling in the field of *harmonization of national laws*. The questions raised by the national court concerned in principle the scope of the powers of the Member State of reception, in the context of the sharing of responsibility put in place by the directive, with regard to television broadcasts to its territory coming from another Member State. The Court observed that the directive was based on the principle that the State of origin is to have control, but that the coordination relating to television advertising and sponsorship is only partial. It concluded that the directive does not preclude a Member State from taking, pursuant to general legislation on protection of consumers against misleading advertising, measures

against an advertiser in relation to television advertising broadcast from another Member State, provided that those measures do not prevent the retransmissions, as such, in its territory of television broadcasts coming from that other Member State. On the other hand, the Court held that the receiving Member State could no longer, under any circumstances, apply provisions specifically designed to control the content of television advertising with regard to minors since the directive contains a set of provisions specifically devoted to that purpose and which the broadcasting State must ensure are complied with.

Several appeals against judgments of the Court of First Instance in matters of *competition between undertakings* were brought before the Court of Justice. Although it dismissed the Commission's appeal against the judgment of the Court of First Instance in Case T-14/93 *Union Internationale des Chemins de Fer* v *Commission* [1995] ECR II-1503 and those against Case T-186/94 *Guérin Automobiles* v *Commission* [1995] ECR II-1753, the Court did set aside the judgment in Case T-548/93 *Ladbroke Racing* v *Commission* [1995] ECR II-2565.

The *Commission* v *Union Internationale des Chemins de Fer* (UIC) case arose out of an agreement among railway companies in the form of Leaflet No 130 drawn up by the UIC. The Commission, considering that the matter constituted an infringement of Article 85(1) of the Treaty, adopted a decision finding the UIC in breach. The UIC brought an action before the Court of First Instance, which finally annulled the contested decision after finding that it should have been based on Regulation No 1017/68 (which concerns transport by rail, road and inland waterway) rather than on Regulation No 17 (which is the general regulation implementing Articles 85 and 86 of the Treaty). In dismissing the appeal, the Court broadly confirmed the reasoning followed by the Court of First Instance, in particular in so far as it had considered that the scope of Regulation No 1017/68 could not be restricted solely to undertakings which "directly" concern the provision of transport (Case C-264/95 P *Commission* v *Union Internationale des Chemins de Fer* [1997] ECR I-1287).

The main question raised in the *Guérin Automobiles* case concerned the nature of the notification sent by the Commission to an applicant under Article 6 of Regulation No 99/63 where it does not intend to grant the application. It involved in particular determining whether that notification constituted a definition of the institution's position terminating the failure to act. The Court of First Instance concluded that, although such notification could not form the subject-matter of an application for annulment, it nevertheless constituted a

definition of its position within the meaning of Article 175 of the Treaty. The Court declared that, when it came to that conclusion, the Court of First Instance did not breach the principle of the right to a judicial remedy. Where the complainant makes use of its right to submit written observations on the Commission's notification, the latter is bound, at the end of that stage of the procedure, either to initiate a procedure against the subject of the complaint or to adopt a definitive decision rejecting the complaint, which may be the subject-matter of an action for annulment. Furthermore, the Commission's definitive decision must, in accordance with the principles of good administration, be adopted within a reasonable time after it has received the complainant's observations, otherwise the complainant may rely on Article 175 of the Treaty in order to bring an action for failure to act (Case C-282/95 P *Guérin Automobiles* v *Commission* [1997] ECR I-1503).

Finally, the Court examined the relationship between Articles 85 and 86 of the Treaty with the conduct of undertakings on the one hand and the compatibility with the rules on competition of the Treaty of national legislation applicable to the latter, on the other. It found that the compatibility of national legislation with the Treaty rules on competition cannot be regarded as decisive in the context of an examination of the applicability of Articles 85 and 86 of the Treaty to the conduct of undertakings which are complying with that legislation and that it was therefore possible for the Commission to decide that the abovementioned provisions are inapplicable to the conduct of the undertakings without first completing its examination of the compatibility of the national legislation. In the Court's view, although an assessment of the conduct of certain companies in the light of Articles 85 and 86 of the Treaty requires a prior evaluation of the legislation concerned, the sole purpose of that evaluation is to determine what effect that legislation may have on such conduct. Articles 85 and 86 of the Treaty apply only to anti-competitive conduct engaged in by undertakings on their own initiative. If anti-competitive conduct is required of undertakings by national legislation or if the latter creates a legal framework which itself eliminates any possibility of competitive activity on their part, Articles 85 and 86 do not apply (Joined Cases C-359/95 P and C-379/95 P *Commission and France* v *Ladbroke Racing* [1997] ECR I-6265).

In the field of *control of State aid* the Court summarised and extended its previous case-law on the scope of the obligation of national authorities to recover unlawful State aid where national rules protecting the recipient of aid give rise to difficulties (Case C-24/95 *Land Rheinland-Pfalz* v *Alcan Deutschland* [1997] ECR I-1591). The recovery of aid paid unlawfully and

held to be incompatible must take place, as a general rule, in accordance with the relevant procedural provisions of national law, subject however to the proviso that those provisions are to be applied in such a way that the recovery required by Community law is not rendered practically impossible. In particular, the interests of the Community must be taken fully into consideration in the application of a provision which requires the various interests involved to be weighed up before a defective administrative measure is withdrawn. Moreover, undertakings to which aid has been granted may not, in principle, entertain a legitimate expectation that the aid is lawful unless it has been granted in compliance with the procedure laid down in Article 93 of the Treaty. The Court applied those principles when examining whether the repayment of aid could be prevented in the interests of legal certainty, the observance of good faith or the restitution of unjust enrichment. It held that the principle of legal certainty could not preclude repayment of the aid on the ground that the national authorities were late in complying with the decision requiring such repayment since, in view of the fact that the national authorities have no discretion in the matter, the recipient of unlawfully granted aid ceases to be in a state of uncertainty as to his obligation to repay once the Commission has adopted a decision requiring recovery. Community law also requires the competent authority to revoke a decision granting unlawful aid, in accordance with a final decision of the Commission declaring the aid incompatible with the common market and ordering recovery, even if that authority is responsible for the illegality of the aid decision to such a degree that revocation appears to be a breach of good faith towards the recipient and even if that would be excluded by national law because the gain no longer exists. The fact that under national law account is taken of those principles is intended to protect the legitimate expectations of the addressee of an unlawful administrative act. However, in the present case, the recipient of aid could not have had a legitimate expectation that the aid was lawful because the procedure laid down in Article 93 of the Treaty had not been followed.

Confirming an earlier judgment of the Court of First Instance, the Court of Justice also found that the Commission had acted within the limits of its powers when it adopted a decision suspending payment of certain State aid until repayment of previous, unlawful, aid by the beneficiary itself. According to the interpretation of the Court, the Commission intended to come to a conclusion which dealt with the twofold distortion of competition produced, on the one hand, by the previous unlawful aid which had not yet been repaid and, on the other, by the new aid as notified (Case C-355/95 *Textilewerke Deggendorf* v *Commission* [1997] ECR I-2549).

In the field of *social policy*, the rights of workers are safeguarded in Community law by a number of provisions, in particular by two directives relating respectively to the safeguarding of employees' rights in the event of transfers of undertakings (77/187/EEC) and to the protection of employees in the event of the insolvency of their employer (80/987/EEC).

The Court delivered an important judgment on the scope of the directive on *the safeguarding of employees' rights in the event of transfers of undertakings* in Case C-13/95 *Süzen* v *Zehnacker Gebäudereinigung* [1997] ECR I-1259. The national court sought to ascertain whether the directive applied to a situation in which a person who had entrusted the cleaning of his premises to a first undertaking terminates his contract with it and, for the performance of similar work, enters into a new contract with a second undertaking without any concomitant transfer of tangible or intangible business assets from one undertaking to the other. The Court pointed out that the decisive criterion for establishing the existence of a transfer is whether the entity in question retains its identity and, in order to determine whether the conditions for the transfer of an entity are met, it is necessary to consider all the facts characterizing the transaction in question. Those circumstances cannot be considered in isolation and the degree of importance to be attached to them will necessarily vary according to the activity carried on. Thus, the mere fact that the service provided by the old and the new awardees of a contract is similar does not support the conclusion that an economic entity has been transferred. Moreover, although the transfer of assets is one of the criteria to be taken into account in deciding whether an undertaking has in fact been transferred, the absence of such assets does not necessarily preclude the existence of such a transfer. The criterion of whether the majority of the employees were taken over by the new employer can be very important for establishing the existence of a transfer in certain labour-intensive sectors.

The interpretation of the *directive relating to the protection of employees in the event of the insolvency of their employer* was also the subject of a reference to the Court for a preliminary ruling. The question was, essentially, which guarantee institution is responsible for guaranteeing payment of an employee's claims on the employer's insolvency, where that employer is established in a Member State other than that in which the employee resides and was employed. Whilst the directive contained no provisions expressly envisaging those circumstances, the Court did find that, in order to be effective, Community law required that the directive should apply to such cross-border situations, which Community law is suited to encourage. From the scheme of the directive the Court held that the competent guarantee institution was that

of the State in which either it is decided to open the proceedings for the collective satisfaction of creditors' claims, or it has been established that the employer's undertaking or business has been definitively closed down (Case C-117/96 *Mosbaek* v *Lønmodtagernes Garantifond* [1997] ECR I-5017).

The principle of *equal treatment for men and women* has been applied in various areas of Community law. Of particular note, other than Article 119 of the Treaty which lays down the principle that men and women should receive equal pay for equal work, are Directive 76/207/EEC, which concerns access to employment, vocational training and promotion, and working conditions, and Directive 79/7/EEC, which concerns social security.

In a dispute before the national court, an applicant, whose application for a position had been rejected, claimed to have suffered discrimination on grounds of sex in the making of an appointment and sought reparation of damage by payment of compensation. In the face of difficulties regarding the interpretation of Directive 76/207, the national court referred to the Court several questions for a preliminary ruling. In those circumstances, the Court first of all stated that, when a Member State chooses to penalize, under rules governing civil liability, breach of the prohibition of discrimination on grounds of sex when making an appointment it cannot make reparation of damage suffered subject to the requirement of fault. The Court was also asked about the compatibility with the directive of national provisions which place a maximum ceiling on the amount of compensation which may be claimed by applicants discriminated against. It held that Directive 76/207 does not preclude provisions of domestic law which prescribe an upper limit of three months' salary for the amount of compensation which may be claimed by an applicant where the employer can prove that, because the applicant engaged had superior qualification, the unsuccessful applicant would not have obtained the vacant position, even if there had been no discrimination in the selection process. On the other hand, provisions of domestic law which, unlike other provisions of domestic civil and labour law, impose a ceiling of six months' salary on the aggregate amount of compensation which, where several applicants claim compensation, may be claimed by applicants who have been discriminated against on grounds of their sex in the making of an appointment are incompatible with Community law (Case C-180/95 *Draehmpaehl* v *Urania Immobilienservice* [1997] ECR I-2195).

Remaining on the subject of Directive 76/207, the Court clearly delimited the scope of the rule in *Kalanke* which declared a measure which discriminated positively in favour of women to be unlawful. The *Kalanke* case concerned

a national rule which provided that, where equally qualified men and women are candidates for the same promotion in fields where there are fewer women than men at the level of the relevant post, women were automatically to be given priority, involves discrimination on grounds of sex. The Court held that a similar provision could be permitted provided it contained a "saving clause" to the effect that women are not to be given priority in promotion if reasons specific to an individual male candidate tilt the balance in his favour. However, the Court required, on the one hand, that the national rule should provide, in each individual case, for male candidates who are as qualified as the female candidates a guarantee that the candidatures will be the subject of an objective assessment which will take account of all criteria specific to the individual candidates and will override the priority accorded to female candidates where one or more of those criteria tilts the balance in favour of the male candidate and, on the other hand, that those criteria must not be such as to discriminate against female candidates (Case C-409/95 *Marschall* v *Land Nordrhein-Westfalen* [1997] ECR I-6363).

In *Sutton*, the main question bore essentially on whether it was possible to apply the rule in *Marschall II* to Directive 79/7 and to the payment of social security benefit arrears which, with regard to Directive 76/207 and in respect of reparation of loss and damage sustained by a person injured as a result of discriminatory dismissal, requires an award of interest to compensate for the loss sustained by the recipient of the compensation for the effluxion of time, until payment is actually made. The Court replied in the negative since the amounts payable by way of social security benefits in no way constitute reparation for loss or damage sustained (Case C-66/95 *The Queen* v *Secretary of State for Social Security, ex parte Eunice Sutton* [1997] ECR I-2163).

In the field of *environment law* the Court considered the scope of the concept of "waste" as used in particular in the directive on waste, Directive 75/442/EEC, as amended, in particular, by Directive 91/156/EEC. The Court confirmed that the concept of waste is not to be understood as excluding substances and objects which are capable of economic reutilization, even if the materials in question may be the subject of a transaction or quoted on public or private commercial lists. The system of supervision and control established by Directive 75/442, as amended, is intended to cover all objects and substances discarded by their owners, even if they have a commercial value and are collected on a commercial basis for recycling, reclamation or re-use (Joined Cases C-304/94, C-330/94, C-342/94 and C-224/95 *Tombesi* [1997] ECR I-3561). Moreover, the mere fact that a substance directly or indirectly

forms an integral part of an industrial production process does not exclude it from the definition of waste (*Inter-Environnement Wallonie*, cited above).

So far as concerns *external relations*, the Court was asked to make a ruling on the sanctions adopted against elements of the former Yugoslavia.

The first case concerned the validity of restrictions adopted by the United Kingdom in respect of the unfreezing of funds deposited there but belonging to a person resident in Serbia or Montenegro. In that context, the Court first of all held that, even where measures emanating from a Member State have been adopted in the exercise of national competence in matters of foreign and security policy, they must respect the Community rules adopted under the common commercial policy. The Court then declared that the restrictions adopted by the United Kingdom were equivalent to a quantitative restriction since their application precluded the making of payments in consideration of the supply of goods dispatched from other Member States and thus prevented such exports. In the present case, in view of the existence of a Community regulation which was designed to implement, uniformly throughout the Community, certain aspects of the sanctions imposed by the United Nations Security Council, the Court found that the United Kingdom should have agreed to base itself on the authorization procedure of the Member State of exportation instead of wanting to check for itself the nature of the goods exported (Case C-124/95 *The Queen, ex parte Centro-Com* v *HM Treasury and Bank of England* [1997] ECR I-81). In a further case, the Court interpreted the provisions of Council Regulation No 990/93 concerning trade between the European Economic Community and the Federal Republic of Yugoslavia (Case C-177/95 *Ebony Maritime* v *Prefetto della Provincia di Brindisi and Others* [1997] ECR I-1111).

Finally, in order to complete this *tour d'horizon* of the main judgments delivered by the Court in 1997, it is worth remarking on the abundant case-law generated by the *Association Agreement between the European Economic Community and Turkey*. Six out of the long line of earlier cases were disposed of by way of a preliminary ruling on the interpretation of Decision No 1/80 on the development of the Association, adopted by the Association Council established by the aforementioned Agreement, and in particular of Article 6 thereof.

Article 6 is worded as follows:

"1. Subject to Article 7 on free access to employment for members of his family, a Turkish worker duly registered as belonging to the labour force of a Member State:

— shall be entitled, in that Member State, after one year's legal employment, to the renewal of his permit to work for the same employer, if a job is available;

— shall be entitled in that Member State, after three years of legal employment and subject to the priority to be given to workers of Member States of the Community, to respond to another offer of employment, with an employer of his choice, made under normal conditions and registered with the employment services of that State, for the same occupation;

— shall enjoy free access in that Member State to any paid employment of his choice, after four years of legal employment.

2. ...

3. The procedures for applying paragraphs 1 and 2 shall be those established under national rules."

It is settled case-law that Decision No 1/80 does not encroach upon the competence retained by the Member States to regulate both the entry into their territories of Turkish nationals and the conditions under which they may take up their first employment, but merely regulates, in Article 6, the situation of Turkish workers already integrated into the labour force of the host Member State. Those rights vary and are subject to conditions which differ according to the duration of the legal employment in the relevant Member State. Finally, those rights conferred on Turkish workers in regard to employment necessarily imply the existence of a right of residence for the person concerned, since otherwise the right of access to the labour market and the right to work as an employed person would be deprived of all effect.

The scope of Article 6 largely depends on the construction placed on the terms "duly registered as belonging to the labour force of a Member State" and "legal employment".

To *belong to the labour force of a Member State* means that the worker is bound by an employment relationship covering a genuine and effective

economic activity pursued for the benefit and under the direction of another person for remuneration. The Court held that a Turkish worker who, at the end of his vocational training, is in paid employment with the sole purpose of becoming acquainted with and preparing for work in a managerial capacity in one of the Turkish subsidiaries of the undertaking which employs him must be considered to be bound by a normal employment relationship where, in genuinely and effectively pursuing an economic activity for the benefit and under the direction of his employer, he is entitled to the same conditions of work and pay as those which may be claimed by workers who pursue within the undertaking in question identical or similar activities, so that his situation is not objectively different from that of those other workers. In the view of the Court, that interpretation is not affected by the fact that the worker obtained in the host Member State only residence or work permits restricted to temporary paid employment by a specific employer and prohibiting that person from changing his employer within the Member State concerned (Case C-36/96 *Günaydin* v *Freistaat Bayern* [1997] ECR I-5143).

As regards the meaning of *legally employed* for the purposes of Article 6(1), it is settled case-law that legal employment presupposes a stable and secure situation as a member of the labour force of a Member State and, by virtue of this, implies the existence of an undisputed right of residence. In that connection, the Court has held that periods in which the Turkish national was employed under a residence permit obtained only by means of fraudulent conduct which has led to a conviction were not based on a stable situation and cannot be regarded as having been secure in view of the fact that, during the periods in question, the person concerned was not legally entitled to a residence permit (Case C-285/95 *Kol* v *Land Berlin* [1997] ECR I-3069). Likewise, an application based on Article 6(1) must be considered improper where it is established that a Turkish worker made the statement that he wished to leave the host Member State after a specified period with the sole intention of inducing the competent authorities to issue the requisite permits on false premisses (see *Günaydin*, cited above).

On the other hand, Article 6(1) does not make the recognition of the rights it confers on Turkish workers subject to any condition connected with the reason the right to enter, work or reside was initially granted. It therefore follows that a Turkish national who has been lawfully employed in a Member State for an uninterrupted period of more than one year as a specialist chef by the same employer is duly registered as belonging to the labour force of that Member State and is legally employed. A Turkish national in that situation may accordingly seek the renewal of his permit to reside in the host Member State

notwithstanding the fact that he was advised when the work and residence permits were granted that they were for a maximum of three years and restricted to specific work, such as a specialist chef, for a specific employer (Case C-98/96 *Ertanir* v *Land Hessen* [1997] ECR I-5179). A Turkish worker who has been authorized to pursue genuine and effective paid employment without interruption even if the work and residence permits were issued to the worker for a specific purpose, in order to allow him to carry out further vocational training in an undertaking in a Member State with a view to taking up a post subsequently in one of its subsidiaries in Turkey is also legally employed (*Günaydin*, cited above).

Again with regard to Article 6(1), which has direct effect in the Member States, the Court held that account is to be taken, for the purpose of *calculating the periods of legal employment*, of short periods during which the Turkish worker did not hold a valid residence or work permit in the host Member State, where the competent authorities of the host Member State have not called in question on that ground the legality of the residence of the worker in the country but have, on the contrary, issued him with a new residence or work permit (*Ertanir*, cited above).

The Court found that the *first indent* of Article 6(1) makes the extension of a Turkish worker's residence permit in the host Member State subject to his having been legally employed continuously for one year with the same employer. That provision is based on the premiss that only a contractual relationship which lasts for one year is expressive of employment relations stable enough to guarantee the Turkish worker continuity of his employment with the same employer (Case C-386/95 *Eker* v *Land Baden-Württemberg* [1997] ECR I-2697).

The Court was also called upon to make a preliminary ruling on the *third indent* of Article 6(1) with regard to a Turkish worker who has been legally employed for more than four years in a Member State, who decides voluntarily to leave his employment in order to seek new work in the same Member State and is unable immediately to enter into a new employment relationship. In order to reply to that question, the Court drew inspiration from its case-law on Article 48 of the Treaty, which entails the right for workers who are nationals of Member States to reside in another Member State for the purpose of seeking employment there for a reasonable time in which to apprise himself, in the territory of the Member State which he has entered, of offers of employment corresponding to his occupational qualifications and to take, where appropriate, the necessary steps in order to be engaged. The Court thus held that a Turkish

worker in the situation referred to above enjoys in that State, for a reasonable period, a right of residence for the purpose of seeking new paid employment there, provided that he continues to be duly registered as belonging to the labour force of the Member State concerned, complying where appropriate with the requirements of the legislation in force in that State, for instance by registering as a person seeking employment and making himself available to the employment authorities. It is for the Member State concerned and, in the absence of legislation to that end, for the national court before which the matter has been brought, to fix such a reasonable period, which must, however, be sufficient not to jeopardize in fact the prospects of his finding new employment (Case C-171/95 *Tetik* v *Land Berlin* [1997] ECR I-329).

Finally, Article 6*(3)* confers on national legislatures the right to adopt certain implementing procedures. The Court stated that that provision could not be construed as reserving to the Member States the power to adapt as they please the rules governing Turkish workers already integrated in their labour force, permitting them to adopt unilaterally measures preventing certain categories of workers who already satisfy the conditions of Article 6(1) from benefiting from the progressively more extensive rights enshrined in the three indents of that paragraph. It therefore follows that Article 6(3) does not permit Member States to adopt national legislation which excludes at the outset whole categories of Turkish migrant workers, such as specialist chefs, from the rights conferred by the three indents of Article 6(1) (*Ertanir*, cited above).

Finally, the Court interpreted Article 7 of Decision No 1/80 on the rights of the members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State, who have been authorized to join him. Article 7, like Article 6, confers on them ever greater rights after three and five years of legal residence. The question submitted to the Court sought essentially to ascertain whether the competent authorities of a Member State could require the members of the family of a Turkish worker referred to in Article 7 to live with him for the period of three years prescribed by that article in order to be entitled to a residence permit in that Member State. After acknowledging that, like Article 6, Article 7 had direct effect, the Court found that Member States could impose a requirement of actual cohabitation in view of the meaning and purpose of that provision, which is to ensure that the family links of Turkish workers duly registered as belonging to the labour force of a Member State are maintained there. The position would be different only if objective circumstances justified the failure of the migrant worker and the member of his family to live under the same roof in the host Member State (Case C-351/95 *Kadiman* v *Freistaat Bayern* [1997] ECR I-2133).

B - Composition of the Court of Justice

First row, from left to right:
Judge R. Schintgen, Judge H. Ragnemalm, Judge C. Gulmann; Mr G.C. Rodríguez Iglesias, President; First Advocate General G. Cosmas; Judge M. Wathelet; Judge G.F. Mancini.

Second row, from left to right:
Judge J.-P. Puissochet, Judge D.A.O. Edward, Judge P.J.G. Kapteyn; Advocate General F.G. Jacobs; Judge J.C. Moitinho de Almeida; Advocate General G. Tesauro; Judge J.L. Murray; Advocate General A.M. La Pergola.

Third row, from left to right:
Advocate General S. Alber, Advocate General D. Ruiz-Jarabo Colomer; Judge L. Sevón, Judge G. Hirsch; Advocate General P. Léger; Judge P. Jann; Advocate General N. Fennelly; Judge K. Ioannou; Advocate General J. Mischo; R. Grass, Registrar.

1. Members of the Court of Justice
(in order of entry into office)

Giuseppe Federico Mancini

Born 1927; Titular Professor of Labour Law (Urbino, Bologna, Rome) and Comparative Private Law (Bologna); Member of the Supreme Council of Magistrates (1976-1981); Advocate General at the Court of Justice from 7 October 1982 to 6 October 1988; Judge at the Court of Justice since 7 October 1988.

Constantinos Kakouris

Born 1919; Lawyer (Athens); Junior Member and subsequently Member of the State Council; Senior Member of the State Council; President of the Special Court for actions against judges; Member of the Superior Special Court; General Inspector of Administrative Tribunals; Member of the Supreme Council of Magistrates; President of the Supreme Council of Magistrates of the Ministry of Foreign Affairs; Judge at the Court of Justice from 14 March 1983 to 6 October 1997.

Carl Otto Lenz

Born 1930; Rechtsanwalt (lawyer); Notary; Secretary-General of the Christian Democratic Group of the European Parliament; Member of the German Bundestag; Chairman of the Legal Committee and of the Committee on European Affairs at the Bundestag; Honorary Professor of European Law at the University of Saarland (1990); Advocate General at the Court of Justice from 11 January 1984 to 6 October 1997.

José Carlos de Carvalho Moitinho de Almeida

Born 1936; Public Prosecutor's Office, Court of Appeal, Lisbon; Chief Executive Assistant to the Minister for Justice; Deputy Public Prosecutor; Head of the European Law Office; Professor of Community Law (Lisbon); Judge at the Court of Justice since 31 January 1986.

Gil Carlos Rodríguez Iglesias

Born 1946; Assistant lecturer and subsequently Professor (Universities of Oviedo, Freiburg im Breisgau, Universidad Autónoma, Madrid, Universidad Complutense, Madrid and the University of Granada); Professor of Public International Law (Granada); Member of the Supervisory Board of the Max-Planck Institute of International Public Law and Comparative Law, Heidelberg; Doctor *honoris causa* of the University of Turin, the University of Cluj-Napoca and the University of the Sarre; Honorary Bencher, Gray's Inn (London) and King's Inn (Dublin); Judge at the Court of Justice since 31 January 1986; President of the Court of Justice since 7 October 1994.

Francis Jacobs QC

Born 1939; Barrister; Official in the Secretariat of the European Commission of Human Rights; Legal Secretary to Advocate General J.P. Warner; Professor of European Law (King's College, London); Author of several works on European law; Advocate General at the Court of Justice since 7 October 1988.

Giuseppe Tesauro

Born 1942; Titular Professor of International Law and Community Law at the University of Naples; Advocate before the Corte di Cassazione; Member of the Council for Contentious Diplomatic Affairs at the Ministry of Foreign Affairs; Advocate General at the Court of Justice since 7 October 1988.

Paul Joan George Kapteyn

Born 1928; Official at the Ministry of Foreign Affairs; Professor, Law of International Organisations (Utrecht and Leiden); Member of the Raad van State; President of the Chamber for the Administration of Justice at the Raad van State; Member of the Royal Academy of Science; Member of the Administrative Council of the Academy of International Law, The Hague; Judge at the Court of Justice since 29 March 1990.

Claus Christian Gulmann

Born 1942; Official at the Ministry of Justice; Legal Secretary to Judge Max Sørensen; Professor of Public International Law and Dean of the Law School of the University of Copenhagen; in private practice; Chairman and Member of arbitral tribunals; Member of Administrative Appeal Tribunal; Advocate General at the Court of Justice from 7 October 1991 to 6 October 1994; Judge at the Court of Justice since 7 October 1994.

John Loyola Murray

Born 1943; Barrister (1967) and Senior Counsel (1981); Private practice at the Bar of Ireland; Attorney General (1987); former Member of the Council of State; former Member of the Bar Council of Ireland; Bencher of the Honourable Society of King's Inns; Judge at the Court of Justice since 7 October 1991.

David Alexander Ogilvy Edward

Born 1934; Advocate (Scotland); Queen's Counsel (Scotland); Clerk, and subsequently Treasurer, of the Faculty of Advocates; President of the Consultative Committee of the Bars and Law Societies of the European Community; Salvesen Professor of European Institutions and Director of the Europa Institute, University of Edinburgh; Special Adviser to the House of Lords Select Committee on the European Communities; Honorary Bencher, Gray's Inn, London; Judge at the Court of First Instance from 25 September 1989 to 9 March 1992; Judge at the Court of Justice since 10 March 1992.

Antonio Mario La Pergola

Born 1931; Professor of Constitutional Law and General and Comparative Public Law at the Universities of Padua, Bologna and Rome; Member of the High Council of the Judiciary (1976-1978); Member of the Constitutional Court and President of the Constitutional Court (1986-1987); Minister for Community Policy (1987-1989); elected to the European Parliament (1989-1994); Judge at the Court of Justice from 7 October to 31 December 1994; Advocate General at the Court of Justice since 1 January 1995.

Georges Cosmas

Born 1932; appointed to the Athens Bar; Junior Member of the Greek State Council in 1963; Member of the Greek State Council in 1973 and State Counsellor (1982-1994); Member of the Special Court which hears actions against judges; Member of the Special Supreme Court which, in accordance with the Greek Constitution, is competent to harmonise the case-law of the three supreme courts of the country and ensures judicial review of the validity of both legislative and European elections; Member of the High Council of the Judiciary; Member of the High Council of the Ministry of Foreign Affairs; President of the Trademark Court of Second Instance; Chairman of the Special Legislative Drafting Committee of the Ministry of Justice; Advocate General at the Court of Justice since 7 October 1994.

Jean-Pierre Puissochet

Born 1936; State Counsellor (France); Director, subsequently Director-General of the Legal Service of the Council of the European Communities (1968-1973); Director-General of the Agence Nationale pour l'Emploi (1973-1975); Director of General Administration, Ministry of Industry (1977-1979); Director of Legal Affairs in the OECD (1979-1985); Director of the Institut International d'Administration Publique (1985-1987); Jurisconsult, Director of Legal Affairs in the Ministry of Foreign Affairs (1987-1994); Judge at the Court of Justice since 7 October 1994.

Philippe Léger

Born 1938; a member of the judiciary serving at the Ministry of Justice (1966-1970); Head of, and subsequently Technical Adviser at, the Private Office of the Minister for Living Standards in 1976; Technical Adviser at the Private Office of the Garde des Sceaux (1976-1978); Deputy Director of Criminal Affairs and Reprieves at the Ministry of Justice (1978-1983); Senior Member of the Court of Appeal, Paris (1983-1986); Deputy Director of the Private Office of the Garde des Sceaux, Minister for Justice (1986); President of the Regional Court at Bobigny (1986-1993); Head of the Private Office of the Ministre d'État, the Garde des Sceaux, Minister for Justice, and Advocate General at the Court of Appeal, Paris (1993-1994); Associate Professor at René Descartes University (Paris V) (1988-1993); Advocate General at the Court of Justice since 7 October 1994.

Günter Hirsch

Born 1943; Director at the Ministry of Justice of Bavaria; President of the Constitutional Court of Saxony and the Court of Appeal of Dresden (1992-1994); Honorary Professor of European Law and Medical Law at the University of Sarrebruck; Judge at the Court of Justice since 7 October 1994.

Michael Bendik Elmer

Born 1949; Official at the Ministry of Justice in Copenhagen since 1973; Head of Department at the Ministry of Justice (1982-1987 and 1988-1991); Judge at the Østre Landsret (Eastern Regional Court) (1987-1988); Vice-President of the Sø-og Handelsretten (Maritime and Commercial Court) (1988); Minister in the Ministry of Justice responsible for Community Law and Human Rights (1991-1994); Advocate General at the Court of Justice from 7 October 1994 to 18 December 1997.

Peter Jann

Born 1935; Doctor of Law of the University of Vienna; Judge; Magistrate; Referent at the Ministry of Justice and the Parliament; Member of the Constitutional Court; Judge at the Court of Justice since 19 January 1995.

Hans Ragnemalm

Born 1940; Doctor of Law and Professor of Public Law at Lund University; Professor of Public Law and Dean of the Faculty of Law of the University of Stockholm; Parliamentary Ombudsman; Judge at the Supreme Administrative Court of Sweden; Judge at the Court of Justice since 19 January 1995.

Leif Sevón

Born 1941; Doctor of Law (OTL) of the University of Helsinki; Director at the Ministry of Justice; Adviser at the Trade Directorate of the Ministry of Foreign Affairs; Judge at the Supreme Court; Judge at the EFTA Court; President of the EFTA Court; Judge at the Court of Justice since 19 January 1995.

Nial Fennelly

Born 1942; M.A. (Econ) from University College, Dublin; Barrister-at-Law; Senior Counsel; Chairman of the Legal Aid Board and of the Bar Council; Advocate General at the Court of Justice since 19 January 1995.

Dámaso Ruiz-Jarabo Colomer

Born 1949; Judge at the Consejo General del Poder Judicial (General Council of the Judiciary); Professor; Head of the Private Office of the President of the Consejo General del Poder Judicial; *ad hoc* Judge to the European Court of Human Rights; Advocate General at the Court of Justice since 19 January 1995.

Melchior Wathelet

Born 1949; Deputy Prime Minister, Minister for National Defence (1995); Mayor of Verviers; Deputy Prime Minister, Minister for Justice and Economic Affairs (1992-1995); Deputy Prime Minister, Minister for Justice and Small Firms and Traders (1988-1991); Member of the Chamber of Representatives (1977-1995); Degrees in Law and in Economics (University of Liège); Master of Laws (Harvard University, USA); Professor at the Catholic University of Louvain-la-Neuve; Judge at the Court of Justice since 19 September 1995.

Romain Schintgen

Born 1939; avocat-avoué; General Administrator at the Ministry of Labour and Social Security; President of the Economic and Social Council; Director of the Société Nationale de Crédit et d'Investissement and of the *Société Européenne des Satellites*; Government Representative on the European Social Fund Committee, the Consultative Committee on the freedom of movement for workers and the Board of Directors of the European Foundation for the improvement of living and working conditions; Judge at the Court of First Instance from 25 September 1989 to 11 July 1996; Judge at the Court of Justice since 12 July 1996.

Krateros M. Ioannou

Born 1935; called to the Thessaloniki Bar in 1963; received Doctorate in International Law from the University of Thessaloniki in 1971; Professor of Public International Law and Community Law in the Law Faculty of the University of Thrace; Honorary Legal Adviser to the Ministry of Foreign Affairs; Member of the Hellenic Delegation to the General Assembly of the UN since 1983; Chairman of the Committee of Experts on the Improvement of the Procedure under the Convention on Human Rights of the Council of Europe from 1989 to 1992; Judge at the Court of Justice since 7 October 1997.

Siegbert Alber

Born 1936; studied law at the Universities of Tübingen, Berlin, Paris, Hamburg and Vienna; further studies at Turin and Cambridge; Member of the Bundestag from 1969 to 1980; Member of the European Parliament in 1977; Member, then Chairman (1993-1994), of the Committee on Legal Affairs and Citizens' Rights; Chairman of the Delegation responsible for relations with the Baltic States and of the Subcommittees on Data Protection and on Poisonous or Dangerous Substances; Vice-President of the European Parliament from 1984 to 1992; Advocate General at the Court of Justice since 7 October 1997.

Jean Mischo

Born in 1938; degree in law and political science (Universities of Montpellier, Paris and Cambridge); member of the Legal Service of the Commission and subsequently principal administrator in the private offices of two Members of the Commission; Secretary of Embassy in the Contentious Affairs and Treaties Department of the Ministry of Foreign Affairs of the Grand Duchy of Luxembourg; Deputy Permanent Representative of Luxembourg to the European Communities; Director of Political Affairs in the Ministry of Foreign Affairs; Advocate General at the Court of Justice from 13 January 1986 to 6 October 1991; Secretary-General of the Ministry of Foreign Affairs; Advocate General at the Court of Justice since 19 December 1997.

Roger Grass

Born 1948; Graduate of the Institut d'Études Politiques, Paris, and of Études Supérieures de Droit Public; Deputy Procureur de la République attached to the Tribunal de Grande Instance, Versailles; Principal Administrator at the Court of Justice; Secretary-General in the office of the Procureur Général attached to the Court of Appeal, Paris; Private Office of the Garde des Sceaux, Minister for Justice; Legal Secretary to the President of the Court of Justice; Registrar of the Court of Justice since 10 February 1994.

2. Changes in the composition of the Court of Justice in 1997

In 1997, the composition of the Court of Justice changed as follows:

On 6 October 1997, at the end of their terms of office, Judge Constantinos Kakouris and Advocate General Carl Otto Lenz left the Court. They were replaced by Mr Krateros Ioannou as Judge and by Mr Siegbert Alber as Advocate General.

On 18 December 1997, Advocate General Michael Bendik Elmer left the Court at the end of his term of office. He was replaced by Mr Jean Mischo as Advocate General.

3. Order of precedence

from 1 January to 6 October 1997

G. C. RODRÍGUEZ IGLESIAS, President of the Court of Justice
G. F. MANCINI, President of the Second and Sixth Chambers
J. C. MOITINHO DE ALMEIDA, President of the Third and Fifth Chambers
J. L. MURRAY, President of the Fourth Chamber
A. M. LA PERGOLA, First Advocate General
L. SEVÓN, President of the First Chamber
C. N. KAKOURIS, Judge
C. O. LENZ, Advocate General
F. G. JACOBS, Advocate General
G. TESAURO, Advocate General
P. J. G. KAPTEYN, Judge
C. GULMANN, Judge
D. A. O. EDWARD, Judge
G. COSMAS, Advocate General
J.-P. PUISSOCHET, Judge
P. LEGER, Advocate General
G. HIRSCH, Judge
M. B. ELMER, Advocate General
P. JANN, Judge
H. RAGNEMALM, Judge
N. FENNELLY, Advocate General
D. RUIZ-JARABO COLOMER, Advocate General
M. WATHELET, Judge
R. SCHINTGEN, Judge

R. GRASS, Registrar

from 7 October to 18 December 1997

G. C. RODRÍGUEZ IGLESIAS, President of the Court of Justice
C. GULMANN, President of the Third and Fifth Chambers
G. COSMAS, First Advocate General
H. RAGNEMALM, President of the Fourth and Sixth Chambers
M. WATHELET, President of the First Chamber
R. SCHINTGEN, President of the Second Chamber
G.F. MANCINI, Judge
J.C. MOITINHO DE ALMEIDA, Judge
F. G. JACOBS, Advocate General
G. TESAURO, Advocate General
P. J. G. KAPTEYN, Judge
J.L. MURRAY, Judge
D. A. O. EDWARD , Judge
A. M. LA PERGOLA, Advocate General
J.-P. PUISSOCHET, Judge
P. LEGER, Advocate General
G. HIRSCH, Judge
M. B. ELMER, Advocate General
P. JANN, Judge
L. SEVÓN, Judge
N. FENNELLY, Advocate General
D. RUIZ-JARABO COLOMER, Advocate General
K. M. IOANNOU, Judge
S. ALBER, Advocate General

R. GRASS, Registrar

from 19 December to 31 December 1997

G. C. RODRÍGUEZ IGLESIAS, President of the Court of Justice
C. GULMANN, President of the Third and Fifth Chambers
G. COSMAS, First Advocate General
H. RAGNEMALM, President of the Fourth and Sixth Chambers
M. WATHELET, President of the First Chamber
R. SCHINTGEN, President of the Second Chamber
G.F. MANCINI, Judge
J.C. MOITINHO DE ALMEIDA, Judge
F. G. JACOBS, Advocate General
G. TESAURO, Advocate General
P. J. G. KAPTEYN, Judge
J.L. MURRAY, Judge
D. A. O. EDWARD, Judge
A. M. LA PERGOLA, Advocate General
J.-P. PUISSOCHET, Judge
P. LEGER, Advocate General
G. HIRSCH, Judge
P. JANN, Judge
L. SEVÓN, Judge
N. FENNELLY, Advocate General
D. RUIZ-JARABO COLOMER, Advocate General
K. M. IOANNOU, Judge
S. ALBER, Advocate General
J. MISCHO, Advocate General

R. GRASS, Registrar

Chapter II

The Court of First Instance of the European Communities

A - The proceedings of the Court of First Instance in 1997

by Mr Antonio Saggio, President of the Court of First Instance

Proceedings of the Court of First Instance

1. In 1997, 624 [1] new cases were brought before the Court of First Instance, a figure which is far greater than that for the two preceding years (in which 244 and 220 new cases respectively were brought). That increase is due, essentially, to the similarity of certain cases (without which the number of new cases would have been 227). Thus, in 295 of those 624 cases, customs agents sought, essentially, compensation for the harm allegedly suffered as a result of the completion of the internal market provided for by the Single European Act. 74 of those new cases follow on from a case before the Court of First Instance, Case T-17/95 *Alexopoulou* v *Commission* [1995] ECR-SC II-683, concerning classification in grade of officials upon recruitment (only 7 cases of that type were brought in 1996). Finally, a further 28 new cases were added to the series of milk quota cases.

The output of the Court of First Instance in terms of cases decided is substantially similar to that of the preceding year both so far as concerns the total number of such cases (173 or, in net terms, that is to say, after joinder, 166 cases) and, in particular, the number of cases decided by way of judgment (98 gross, 94 net).

The particularly high number of cases pending at the end of the year (1106 cases gross, 630 net) largely reflects the increase in new cases, as mentioned above. That figure includes, in particular, the 295 actions for damages, referred to above, brought by customs agents (actions which nevertheless were the subject of several orders for joinder, resulting by 31 December 1997 in a net figure of 20 cases [2]) and 78 cases (gross and net) arising as a result of the

1 The figures indicated hereinafter do not include special procedures relating in particular to legal aid, correction of judgments and taxation of costs.

2 It should be pointed out, moreover, that there was a judgment on a similar case delivered on 29 January 1998: Case T-113/96 *Dubois* v *Council* [1998] ECR II-0000.

judgment in *Alexopoulou*. [3] Finally, despite the judgments bringing to a close certain milk quota cases (see below), 252 of those cases remained pending before the Court of First Instance (in gross figures; 84 in net figures).

In 1997 the number of interlocutory orders (11) and appeals (35 of the 139 actionable decisions for which the time-limit for bringing an appeal was to expire during the year) was normal by comparison with similar figures for previous years.

2. A number of amendments to the Rules of Procedure of the Court of First Instance (in particular to take account of the accession of Austria, Finland and Sweden, to enable the Court of First Instance to dismiss, by way of reasoned order, an action manifestly lacking any legal basis and to confer certain powers on presidents of Chambers in matters concerning the use of languages other than the language of the case) entered into force on 1 June 1997 (see *Official Journal of the European Communities* L 103 of 19 April 1997, p. 6; corrigendum published in OJ 1997 L 351 of 23 December 1997, p. 72).

Trend in the case-law

First and foremost, a certain number of decisions in the field of *competition* should be pointed out.

The judgment in Joined Cases T-213/95 and T-18/96 *SCK and FNK* v *Commission* [1997] ECR II-1739 ("mobile cranes case") follows, first, an action for damages in respect of unlawful conduct of the Commission in the context of an administrative procedure and, secondly, an action for a declaration that a decision adopted following the same procedure was non-existent or for annulment thereof. It concerns in particular the time-limits to be observed by the Commission when dealing with a matters brought before it. In the present case, a complaint had been lodged with the Commission by a third party and, shortly afterwards, it was given notification of the intention of the undertakings concerned to bring proceedings (together with an application for negative clearance (Article 2 of Regulation No 17)). The period of 46 months which elapsed between, on the one hand, lodgement of the complaint and the notifications and, on the other, the adoption of the

3 Three of those cases were decided in the course of the year: order in Case T-16/97 *Chauvin* v *Commission* [1997] ECR-SC II-0000, concerning a decision which became definitive before the judgment in *Alexopoulou* was delivered; order for removal of Case T-87/97; judgment in Case T-12/97 *Barnett* v *Commission* [1997] ECR-SC II-0000.

contested decision contained several stages: statement of objections (approximately 11 months after lodgement of the notification) with a view to the adoption of a decision pursuant to Article 15(6) of Regulation No 17; that decision itself (adopted approximately 16 months later); a further statement of objections (sent six months after the latter decision), followed, 11 months after the reply to that communication, by the contested decision. In those circumstances, the applicants criticised the Commission for not having complied with the requirement of a "reasonable time", within the meaning of Article 6(1) of the European Convention on Human Rights and Fundamental Freedoms of 4 November 1950 (ECHR). [4] Referring to the case-law of the Court of Justice with regard to fundamental rights and to Article F.2 of the Treaty on European Union and without adopting a position on the applicability as such of Article 6(1), cited above, to administrative proceedings in the matter of competition, the Court of First Instance ruled that observance by the Commission of a reasonable period when adopting decisions at the end of such procedures constitutes a general principle of Community law. Thus, where a party applies to the Commission for a negative clearance or gives it notification for the purpose of obtaining an exemption, the Commission, in the interests of legal certainty and of ensuring adequate judicial protection, is required to adopt a decision or, if such a letter has been requested, to send a formal letter within a reasonable time. A similar period applies with regard to adopting a definitive position on a complaint alleging infringement of Article 85 and/or Article 86 of the Treaty (see Article 3(1) of Regulation No 17). The question whether the duration of an administrative proceeding is reasonable must be determined, according to the Court of First Instance, in relation to the particular circumstances of each case and, in particular, its context, the various procedural stages followed by the Commission, the conduct of the parties in the course of the procedure, the complexity of the case and its importance for the various parties involved. With regard to the context of the case, the Court of First Instance observed that, before the date of lodgment of the third party's complaint, the applicants apparently saw no need to seek the Commission's opinion on the arrangements at issue, which were, in any event, established more than a year before that date. The Court of First Instance in any event concluded that the duration of each of the aforementioned procedural stages was reasonable, in view of all the circumstances of the case. So far as concerns the first two stages, it pointed out that (apart from the fact that the applicants should have realised that asking

4 That provision provides: "... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ...".

DG III to approach DG IV in order obtain approval for its request for exemption was going to slow down proceedings), in the absence of indications to the contrary by the applicants, and until a certain date, the Commission was able legitimately to consider that the case did not have high priority. In general the Court of First Instance did not agree with the applicants' complaint that the Commission did not give it sufficient priority and considered that it was sufficient for it to influence the national court and to adopt a decision under Article 15(6) of Regulation No 17. The Court was of the view that the Commission is entitled to apply different degrees of priority to the cases submitted to it. In this connection, it may, if it takes the view that the practices notified to it cannot be exempted under Article 85(2), take into account the fact that a national court has already caused the infringements in question to cease. The Court also rejected the applicants' argument to the effect that the sending of the second statement of objections served no purpose and was intended by the Commission to prolong the procedure. According to the Court, that statement, which was preparatory to a decision establishing infringements and imposing fines, pursued a different objective from the first (which related to withdrawal of immunity from fines, as provided for in Article 15(6) of Regulation No 17) and was necessary in order to allow the applicants to defend themselves against an additional complaint in the contested decision. With regard to the fines imposed by the latter decision, the Court observed that the Commission should not have taken into consideration, in respect of an applicant which was an undertaking (rather than an association of undertakings), the turnover of other undertakings (associated to it by one of the clauses which the Commission had described as anti-competitive). In view of that error, the fine appeared to be disproportionate, so that the Court, in the exercise of its unlimited jurisdiction, reduced its amount.

In Case T-77/95 *SFEI and Others* v *Commission* [1997] ECR II-1, the Court dismissed the action brought by an association of express mail undertakings and three of its members seeking the annulment of a decision whereby the Commission had rejected the association's complaint, lodged under Article 86 of the EC Treaty, concerning the practices of a postal undertaking of a Member State. It was alleged in the complaint that that undertaking had allowed its subsidiary, which was active in the international express mail sector, to make use of its infrastructure on unusually favourable terms in order to extend its dominant position on the basic mail market to the associated market in which that subsidiary was active. According to the Court's interpretation, the contested decision did not assess the practices complained of from the point of view of Article 86 of the Treaty but was based on the sole ground that, since those practices were halted on account of an earlier decision

of the defendant's under Regulation (EEC) No 4064/89 (on the control of concentration between undertakings), in the present case there was insufficient Community interest involved. The Court held that, in view of the general objective which underlies Article 86 of the EC Treaty (the institution, under Article 3(g) of the Treaty, of a system ensuring that competition in the common market is not distorted) and subject to giving reasons for its choice, the Commission may legitimately decide that it is not appropriate to take action on a complaint denouncing practices which subsequently ceased. That is more so where, as in the present case, such practices are halted as a result of a Commission decision, irrespective of the legal basis for it. To continue with an investigation which may lead to a finding that there have been infringements would no longer meet the abovementioned objectives but would instead make it easier for the complainants to prove fault in an action for damages in the national courts. By virtue of those principles, the Commission was entitled, in this case, to consider that it would not constitute an appropriate use of its limited resources to continue the procedure solely in order to assess past acts from the point of view of Article 86 of the Treaty. In any event, the Commission was otherwise making efforts to establish a legislative framework in the sector concerned. Moreover, given a definitive decision such as that at issue, the national courts, in which the applicants might bring proceedings, had jurisdiction to rule on the alleged infringement. According to the Court, that conclusion could not be altered by the case-law of the Court of Justice which does indeed recognise that the Commission has an interest in pursuing infringement proceedings, even after a Member State's breach of obligations is remedied after the expiry of the prescribed time-limit, in order to establish the basis for liability of the Member State concerned, but which does not oblige the Commission to pursue such an action. Next, the Court confirmed the Commission's finding that the practices complained of had ceased as a result of its action under Regulation (EEC) No 4064/89. It further rejected the arguments based on, first, breach of Article 190 of the EC Treaty (concerning statement of reasons for measures adopted by the institutions) and of the general principles of Community law and, secondly, on misuse of powers. An appeal has been brought against that judgment before the Court. (With regard to the question as to whether a decision not to pursue a complaint under Article 169 of the Treaty, rather than under the rules on competition, constituted a misuse of powers, cf. the order in Case T-83/97 *Sateba* v *Commission* [1997] ECR II-1523; an appeal has been brought against that order before the Court of Justice).

In its judgment in Case T-504/93 *Tiercé Ladbroke* v *Commission* [1997] ECR II-293, the Court was called upon to hear and determine an action

directed against the rejection of a complaint lodged, pursuant to Articles 85 and 86 of the EC Treaty, by a company which took in Member State A bets on horse races run abroad which had been denied the possibility of retransmitting television pictures and commentaries of the races run in Member State B (sound and pictures). That refusal was notified, *inter alia*, in the name and in behalf of *sociétés de courses*, by an economic interest grouping of which they were members and to which they had conferred the right to market the sounds and pictures. The Commission stated its reasons for the decision to refuse permission by referring to the arguments contained in its letter sent pursuant to Article 6 of Regulation No 99/63 without repeating them expressly and by dealing only with such of the applicant's arguments as called for an additional response on its part. In this regard, the Court referred to case-law in which it held that, in a situation such as that of the present case (procedures leading to the adoption of decisions under Regulation No 17 in which the involvement of the persons concerned is of decisive importance), the Community judicature must consider itself to be seised of all such matters of fact and law contained in the application or in the complainant's observations as were taken into account by the Commission in reaching the decision to close the file on a complaint. It concluded that the Commission could lawfully give a statement of reasons in the abovementioned manner, for such a statement enabled the applicant to defend its rights before the Community judicature and the latter to review the legality of the decision. So far as concerns the substance, the Court annulled the decision in so far as the Commission had considered that the refusal to grant the applicant a licence for the retransmissions could not be the subject of an anti-competitive agreement since it was the normal consequence of the fact that neither the *sociétés de courses* nor the economic interest grouping to which they belonged took bets on the betting market in Member State A. It is true that, in the absence of present competition on the relevant market, such a refusal cannot be regarded as discriminatory and therefore as liable to be caught by Article 85(1)(d) of the Treaty. Nevertheless, an agreement such as that complained of by the applicant can, in the view of the Court, restrict potential competition on that market, to the detriment of the interests of bookmakers and ultimate consumers contrary to Article 85(1)(b) and (c) (which prohibits any "limit or control ... (of) markets" and/or attempts to "share markets"). Such an agreement deprives each of the tied contracting parties of being able to contract directly with a third party by granting him a licence to exploit his intellectual property rights and thus to enter into competition with the other contracting parties. The Commission had not examined with the required diligence that aspect of the application of the rules on competition or the evidence adduced by the

applicant in that respect. An appeal has been brought before the Court of Justice against that judgment.

By two judgments (Joined Cases T-70/92 and T-71/92 *Florimex and VGB* v *Commission* [1997] ECR II-693 and Case T-77/94 *VGB and Others* v *Commission* [1997] ECR II-759), the Court annulled two Commission decisions (adopted in July 1992 and December 1993), rejecting the complaints of the applicants, undertakings involved in trade in flowers and their trade association, against certain rules of an auction sales cooperative (hereinafter "the cooperative"), whose members are growers of flowers and ornamental plants.

The 1992 decision restricted itself to only one of the aspects which had been raised before the Commission with regard to the rules concerning a "user fee" payable by providers in the event of direct supplies, without recourse to the services of the cooperative, to dealers and wholesalers established on the latter's premises. The Court observed that the way in which the procedure had been conducted by the Commission, which dealt separately with this aspect (although the Commission considered itself ready to adopt an initial position on all the abovementioned matters) meant that the applicants had had to bring two different actions, giving rise to delay and inconvenience. Nonetheless, in the Court's view, those circumstances do not justify annulment of the 1992 decision, since the Commission had taken into account the aspects of the other disputed rules set by the cooperative which were capable of affecting the legality of the fee. With regard to the substance, the Court upheld the plea that the statement of reasons for the application (as legal basis of the decision) of the first sentence of Article 2(1) of Regulation No 26 was inadequate. According to that provision, Article 85(1) of the Treaty does not apply to such of the agreements, decisions and practices as are necessary for attainment of the (common agricultural policy) objectives set out in Article 39 of that Treaty. The Court found, first, that the fee went beyond the scope of internal relations between members of the cooperative and, by its nature, constituted a barrier to trade (in goods produced within the Community or which are in free circulation there) between independent wholesalers established within the cooperative and flower growers who are not members of the cooperative concerned. It observed, secondly, that the Commission never found that an agreement between the members of a cooperative was necessary for attainment of the objectives set out in Article 39 of the Treaty. It was the Commission's practice not to view as necessary to that end agreements, such as that of the present case, not included amongst the means indicated by the regulation providing for a common organization. The Commission had no knowledge of

any fee similar to the fee at issue in other Community agricultural sectors. The Court concluded that it was incumbent on the Commission to set out its reasoning in a particularly explicit manner, particularly because, constituting as it does a derogation from the general rule in Article 85(1) of the Treaty, Article 2 of Regulation No 26 must be interpreted strictly. Since that provision applies only where the agreement in question is conducive to attainment of all the objectives of Article 39, the Commission's statement of reasons must, as in the present case, show how the agreement at issue satisfies each of those sometimes divergent objectives. In the event of a conflict between them, it must, at the very least, show how it was able to reconcile them. In the present case, the statement of reasons given by the Commission did not fulfil those requirements. Even if (despite lack of evidence) the allegation that, without the fee, the survival of the cooperative (itself necessary for the distribution of the efficient distribution of perishable products) was jeopardized proved to be true, the Commission had failed to balance the benefits of the fee against the adverse effects on certain categories of producers concerned, whose interests were also covered by Article 39, and on freedom of competition. The complex situation with which the Commission was confronted involved, in particular, the conflicting interests of smaller members of the cooperative participating in the economic process on a wider-than-regional scale, those of the larger members in selling directly to buyers established on the premises of the cooperative, those of independent producers, whose prices would increase, as a matter of course, as a result of the fee, and those of the intermediary. Moreover, the statement of reasons for the contested decision was not adequate so far as concerns the calculation of the amount of the fee, in particular with regard to the costs linked, respectively, to the use by different suppliers of the various services and facilities of the cooperative. The Court was thus not able to verify whether the user fee exceeded, as the Commission claimed, proper remuneration for that advantage (within the premises of the cooperative where, by bringing supply and demand together, economies of scale could be made) and, consequently, whether the fee was necessary in order to achieve the objectives of Article 39, as set out above. That necessity had not been adequately substantiated by the Commission's argument that the fee had an effect analogous to that of a minimum auction price. The Commission had neither explained why the protection of the cooperative's minimum prices takes precedence over the interests of producers who were not members thereof to sell their products freely to independent dealers, nor shown that all the objectives under Article 39 were fulfilled. Furthermore, in the absence of specific provisions applicable to the common organization of the market, it could be presumed, in the view of the Court, that prices should arise from free competition and that it should not be affected

by private arrangements imposing a fee such as that of the present case. Finally, the Court concluded that there was unequal treatment as between holders of "trade agreements" (relating to products which, by and large, were not sufficiently cultivated within the Member State concerned) and outside suppliers as regards the rate of the user fee. The Commission was not able to establish, in order to justify that difference of treatment, the existence of certain specific and precise obligations incumbent upon the holders of such contracts. An appeal has been lodged against that judgment before the Court of Justice.

In *VGB and Others* v *Commission*, cited above, the Court criticised the 1993 decision in so far as it concerned the unequal treatment (referred to above) between the various categories of suppliers and the Commission's argument that the file contained no conclusive evidence that trade between Member States might be appreciably affected by "trade agreements". In order to assess the effects of the arrangements relating to those contracts, account should have been taken, in the Court's view, of the user-fee system because the former constituted, in so far as it concerned the direct supply of dealers established on the premises of the cooperative, an exception to the latter. In the absence of a fee system, the system relating to trade agreements was hardly conceivable since both were applications of the general principle that any supply by third parties to buyers established on the premises was subject to the payment of a fee. However, in its 1992 decision the Commission found that the user fee was an integral part of the cooperative's rules. Likewise, it had implicitly acknowledged that the trade agreements could be appraised only in the context of those rules and emphasised that they were liable to affect trade between Member States. In those circumstances, the Court took the view that it was of no importance whether or not, in isolation, they affected trade between Member States to a sufficient extent. Nonetheless, the Court dismissed the action inasmuch as it concerned the appraisal, in the 1993 decision, of agreements requiring certain wholesalers, called upon to supply small dealers (excluded, in practice, from auction sales) and having set up their "cash and carry" stores within the premises of the cooperative, to obtain their goods through that cooperative. Those agreements, according to the Court, had no direct link with the other aspects of the cooperative's rules liable as a whole to affect trade between Member States. In isolation, they were unable to have such an effect because they did not make it appreciably more difficult for competitors from other Member States to penetrate the national market. An appeal has been brought against that judgment before the Court of Justice.

Case T-227/95 *AssiDomän Kraft Products and Others* v *Commission* [1997] ECR II-1185 concerned the Commission's rejection of a request from a number of addressees of a decision pursuant to Article 85 of the EC Treaty ("the wood pulp decision"), against which they had not brought an action, to reimburse part of the fine paid. The applicants had requested, in particular, a reexamination of that decision in the light of a judgment (Joined Cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85 *Ahlström Osakeyhtiö and Others* v *Commission* [1993] ECR I-1307, "the judgment of the Court of Justice") annulling it partially as a result of an action brought by other addressees ("applicants in the *Wood pulp* case"). By refunding the fines paid by the applicants in the *Wood pulp* case, the Commission believed itself to have complied in full with the judgment of the Court of Justice. According to the Commission, that judgment did not affect the wood pulp decision in so far as it concerned the applicants. The Commission therefore did not feel itself under an obligation to or even authorized to refund to them the fines paid. The Court annulled that rejection. Although it rejected the applicants' argument that the *Wood pulp* judgment took effect *erga omnes* so that it involved the annulment of findings of infringements against them, it nevertheless considered whether the contested refusal to review the decision was contrary to Article 176 of the Treaty. The wording of that provision does not support the conclusion that the obligation referred to in that provision to "take the necessary measures to comply with the judgment of the Court of Justice" is restricted solely to the legal positions of the parties to the dispute. In order to define its scope in the present case, the Court first of all observed that the Court of Justice had annulled part of a measure consisting of several individual decisions adopted at the end of the same administrative procedure; the applicants were not only the addressees of that same measure but had also had fines imposed upon them in respect of alleged infringements which had been set aside by the Court of Justice in relation to the addressees in the *Wood pulp* judgment; the individual decisions adopted in relation to the applicants in this case are, in their view, based on the same findings of fact and the same economic and legal analyses as those declared invalid by the judgment. Where the effect of a judgment of the Court of Justice is to set aside a finding that Article 85(1) of the Treaty was infringed, on the ground that the concerted practice complained of was not proved, it would be inconsistent with the principle of legality for the Commission not to have a duty to examine its initial decision in relation to another party to the same concerted practice based on identical facts. The Court of First Instance found that, in view of the operative part and the grounds of the judgment of the Court of Justice, the annulment of the relevant provision of the wood pulp decision was based on considerations which apply

generally to the Commission's analysis of the wood pulp market and are not founded on any examination of conduct or practices on the part of individual addressees of that decision. Those findings thus had the potential to raise serious doubts as to the legality of the wood pulp decision in so far as it recorded alleged infringements committed by the applicants. Thus, the Commission was required — in accordance with Article 176 of the Treaty and the principle of good administration — to review, in the light of the grounds of the *Wood pulp* judgment, the legality of those findings and to determine on the basis of such an examination whether it was appropriate to repay the fines. In so far as the Commission should thus conclude that certain findings were unlawful, the Court of First Instance also criticised the Commission's determination that it was neither obliged nor entitled to refund the fines paid by the applicants. Thus, the provisions of Regulation No 17 do not prevent the Commission from re-examining such a decision in relation to an individual when an element of it is unlawful. Secondly, the case-law entitles Community institutions, subject to the principles of the protection of legitimate expectations and of legal certainty, to withdraw, on the ground that it is unlawful, a decision granting rights or similar benefits conferred on its addressees. In the Court's view, that case-law applies *a fortiori* in situations where the decision in question imposes burdens or penalties. Thus, were the abovementioned re-examination to reveal that certain findings in respect of the applicants were unlawful, the Commission would be authorized to refund the fines paid in accordance with those findings. Since the fines in that same measure had no legal basis, it was also required to do so, in accordance with the principles of legality and of good administration and if Article 176 was not to be deprived of all its practical effect. An appeal has been lodged against that judgment before the Court of Justice.

In the field of *control of concentration operations*, of particular note is Case T-290/94 *Kayserberg* v *Commission* [1997] ECR II-2137, in which the Court held that, in the absence of exceptional circumstances relating to the risk of serious and irreparable harm, failure to observe the period of notice (of 14 days) laid down in Article 19(5) of Regulation No 4064/89, referred to above, for convening the Advisory Committee is not in itself such as to render the Commission's final decision unlawful. Such failure is unlawful only if it is sufficiently substantial and it had a harmful effect on the legal and factual situation of the party alleging a procedural irregularity. That is not the case, according to the Court of First Instance, where the Advisory Committee in fact had a sufficient period of time to enable it to gain knowledge of the important factors in the case and was able to give its opinion in full knowledge of the facts, that is to say, without having being misled on an essential point by

inaccuracies or omissions. The Court considered that those conditions were met in the present case. In particular, even though the purchaser communicated its wish to retain (contrary to its initial statements) certain business of the other undertaking concerned only after the Advisory Committee was convened, the latter was informed thereof as soon as the meeting started and, moreover, it had all the necessary evidence in order to assess the importance of that business. So far as concerns the procedural rights of third parties, the Court observed that they are not identical with rights granted to the interested persons, in particular by Article 18(1) and (3) of Regulation (EEC) No 4064/89. It concluded from Article 18(4) of that regulation and Article 15(1) of Regulation No 2367/90 that third-party undertakings which are in competition with the parties to the concentration have a right to be heard by the Commission, if they so request, in order to make known their views on the harmful effects on them of the notified concentration plan, but such a right must nevertheless be reconciled with the observance of the rights of the defence and with the primary aim of the regulation, which is to ensure effectiveness of control as well as legal certainty for the undertakings to which the regulation applies. Thus, if it appears that a third party undertaking which is in competition with the latter was able to submit timeously its comments on the significance of the amendments made to the concentration plan, the mere fact that the applicant had only a period of two working days within which to make them (account being taken also of the fact that Article 15(2) of Regulation (EEC) No 2367/90 does not state clearly the period to be determined by the Commission) is not contrary to the right of that undertaking to be heard. The requirement that a sufficient period be allowed, which is a legitimate right of such an undertaking, must, nevertheless, be adapted to the need for speed, which characterizes the general scheme of Regulation No 4064/89 and which requires the Commission to comply with strict time-limits for the adoption of the final decision, failing which the operation is deemed compatible with the common market. Likewise, where the third party undertaking has thus been able to submit its observations, the Commission is not required (under Article 18(4) of Regulation No 4064/89) to send to qualifying third parties, for their prior comment, the final terms of the commitments given by the undertakings concerned on the basis of the objections raised by the Commission as a result, *inter alia*, of those observations. Only the undertakings concerned and the other persons involved (as potential addressees of conditions imposed by the Commission) must be placed in a position in which they may effectively make known their views on the objections raised to the proposed commitments in order to enable them, if they so wish, to make the necessary amendments to them. In so far as the applicant complained that the Commission had not informed it of the outcome

of negotiations entered into by the Commission with the undertakings concerned, by analogy with such complainants within the meaning of Regulation No 17 (see Article 6 of Regulation No 99/63/EEC), the Court held that the applicant had been treated as the Court of Justice requires in the case of such complainants. In any event, the Court pointed out that Regulation (EEC) No 4064/89 did not provide for any complaints procedure for the purpose of having an infringement of the rules of the Treaty established, so that no analogy could be drawn in this case between the rights of third parties and the rights of such complainants nor, *a fortiori*, between the provisions of Article 15 of Regulation (EEC) No 2367/90 and Article 6 of Regulation No 99/63/EEC. Finally, Article 6 of Regulation (EEC) No 4064/89 (on the examination of notifications) cannot, in the Court's view, be understood as requiring the Commission to refuse any modifications to the notified concentration plan and to require a new notification. Article 8(2) of that regulation expressly provides the opportunity for the undertakings concerned to modify the original concentration plan in order to dispel the Commission's serious doubts, within the meaning of Article 6, which the Commission might harbour as to the compatibility of the concentration with the common market. The applicant's argument that it was a "material modification" does not affect that interpretation. In this connection, the Court referred to Article 3(2) of Regulation (EEC) No 2367/90 which expressly provides for that possibility. It moreover emphasised that: the commitment affected by the modification at issue to transfer certain business did not constitute an arrangement that was inherent to the notified concentration plan; on the basis of that plan, the Commission was able to assess the importance of that business; and the objective data of that assessment were not altered by the modification in question. In so far as the applicant claimed that the modification was material at the industrial level, the Court observed that the purpose of any modification pursuant to Article 8(2), cited above, was to enable changes to be made in regard to the economic impact of the concentration in order to render it compatible with the common market. The Court also rejected the other pleas in law put forward by the applicant (failure to provide for sufficient and reasonable time-limits, lack of reasoning and manifest errors of assessment) and dismissed the application.

In matters of *State aid* falling within the EC Treaty, the Court, in Case T-178/94 *ATM* v *Commission* [1997] ECR II-2529, was able to clarify certain aspects concerning the admissibility of actions brought by individuals who are not beneficiaries of State aid against Commission decisions. In its complaint, the applicant had alleged that a company part-owned by the State had benefited, in the context of the running of a mutual social welfare association

established by it and before the integration of the members of that association into the general social security scheme of the Member State concerned, from a double advantage. It consisted in, first, the difference between the amount which had actually been paid to the association by way of contributions and the amount of the contributions which it was not required to pay into the general scheme and, secondly, permission to cancel the guarantee necessary in order for the association to be able to count on adequate cover for the benefits. According to the applicant, an association set up in order to protect the rights of the members of the association, it had been wound up as a result of the deficit brought about by the contested national measures. The applicant brought an action for annulment against the letter whereby the Commission closed the file on that complaint. The Court dismissed that action as inadmissible. In its view, it concerned a decision which, although reproduced in the form of a letter, was addressed to the Member State concerned, like all decisions terminating an investigation of the compatibility with the EC Treaty of an aid measure. In order to ascertain in the light of the fourth paragraph of Article 173 of the EC Treaty whether the applicant had capacity to bring proceedings for the annulment of that measure, the Court considered whether it affected the applicant's interests by significantly altering its legal situation. According to the Court, that was not the case with respect to the difference between the amount which the undertaking had actually paid to the association and that payable into the general social security scheme. The Court referred in this connection to national law which does not provide for payment by that undertaking of amounts exceeding those which it had made and to the lack of any factor indicating that any measures implementing a possible judgment annulling the decision could consist in either payment of the difference in question to the association itself or in reconstituting that association. The contested decision did not moreover affect the legal situation of the applicant in so far as it concerned annulment of the guarantee intended to cover the benefits of the association since the applicant had not proven that such annulment involved specific losses for its members, that any reinstatement would have given rise to benefits which those members could claim or that the association would not have been integrated into the general scheme if the guarantee had been maintained in force. The Court added that the competitive effects of the aid could not establish an interest in bringing proceedings by the applicant, bearing in mind the abovementioned tenor of its task. (See also Case T-149/95 *Ducros* v *Commission* [1997] ECR II-2031 with regard to whether a decision on State aid may be of individual concern, within the meaning of the fourth paragraph of Article 173 of the EC Treaty, to an undertaking where its competitive relationship with the beneficiary of that aid is to be assessed in

a sector characterised by the organization of Community-wide calls for tenders and where it is difficult to quantify the undertaking's share of the market).

In Case T-106/95 *FFSA and Others* v *Commission* [1997] ECR II-229 the Court considered an action brought by several associations representing insurance undertakings or other operators in the sector, which had been brought against a Commission decision on a tax concession granted to an undertaking, a public-law corporation under the authority of the relevant minister in the Member State concerned which was able to offer, besides postal services, services relating to all types of "insurance products". The disputed advantage, a reduction in the basis of assessment to local taxation, owed its existence to the constraints imposed on the operator by the applicable legislation of serving the entire national territory and of participating in regional development. According to the Commission, that advantage did not constitute, with regard to Article 90(2) of the EC Treaty, State aid within the meaning of Article 92(1) thereof. In its view, it did not go beyond what was necessary for the postal administration to perform its public-interest tasks and it did not therefore constitute a transfer of State resources towards the competitive activities of that undertaking. In this connection, the Commission relied on studies which compared, by the appropriate methods and samples, the accounting systems of rural post offices with reference values in order to calculate, by extrapolation to the territory, the additional cost of rural post office provision. The figures thus obtained were reduced, in the contested decision, in proportion to the turnover represented by the competitive activities of the postal undertaking in a given year. According to the contested decision, that reduction made it possible, in the absence of an analytical accounts system which distinguished between costs and expenditure relating to those activities, on the one hand, and public service activities, on the other, to take account of the advantages which stemmed from the existence of the postal network in rural areas in respect of the latter activities. According to the Commission, the amount thus obtained for additional costs was less than the tax concession granted so that the latter did not, therefore, constitute State aid. The applicants complain that the Commission overestimated that amount, by using the wrong methods of calculation, by ignoring in particular the fact that, if certain reference values (expressed as "opportunity costs", "minimum costs" or "reference margin") are departed from, it appears preferable to close the post office concerned. The Court rejected that line of argument. In the absence of Community rules governing the matter, the Commission is not entitled to rule on the basis of public service tasks assigned to the public operator, such as the level of costs linked to that service, or the expediency of the political choices made in this regard by the national authorities, or that

operator's economic efficiency in the sector reserved to it. The Court also rejected the other claims relating to the methods for calculation used. In the final analysis, the applicants had not proved that, when assessing the additional costs of the public service, the Commission had based itself on inaccurate factors or had exceeded its discretion in the matter. A different argument put forward by the applicants was that Article 90(2) of the EC Treaty did not permit the tax concession to escape the prohibition laid down by Article 92 of the Treaty. The Commission failed to assess its effect on competition and thus failed to observe that prohibition. In the Court's view, that concession constituted in principle a State aid within the meaning of that article since it placed the postal undertaking in a financial situation more favourable than that of the other taxpayers, including the companies represented by the applicants. It was, except for exceptions permitted by the treaties, incompatible with the common market in so far as it was likely to affect trade between Member States and distort competition. Article 90(2) of the EC Treaty provides for such a derogation where the aid involved is granted to an undertaking entrusted with the operation of a service of general economic interest (a description of the undertaking concerned which was not challenged). Such aid may be considered compatible with the common market under the conditions which may be deduced by analogy with the case-law of the Court of Justice concerning the application of Articles 85 and 86 in conjunction with Article 90(2) of the Treaty. Accordingly, payment of State aid under the latter article (which must be interpreted restrictively) may not be covered by the prohibition laid down by Article 92 if the purpose of that aid is only to offset the additional costs to which the performance of the particular tasks assigned to the undertaking (entrusted with the operation of a service of general economic interest) give rise and if it is necessary in order for the aforementioned undertaking to be able to fulfil its public service obligations in conditions of economic equilibrium. There was such equilibrium (the existence of which must be ascertained by assessment of the economic conditions in which the undertaking in question performs the activities in the reserved sector, without taking account of any benefits it may draw from the sectors open to competition) on average over the first three years following the adoption of the law which contained, in the present case, the tax concession, only after the concession in question was taken into account. Thus, even if those results took in (in the absence of an analytical accounting system) all the activities of the undertaking, the Commission could consider, without breaching the limits of its power of assessment, that the tax concession in question was not greater than was necessary to ensure that the tasks of public interest in question were performed. The Court did not accept the applicants' argument that the absence of an analytical accounting system made it

impossible for the Commission to state that the tax concession at issue did not benefit the undertaking's competitive activities, contrary to Community law. Although such an accounting system would have provided the Commission with a surer basis to find such a (cross-subsidy) effect, the Court held that the method of comparison used was appropriate for making sure to the requisite legal standard. The Court pointed out the absence of Community rules providing for accounting of that type and held that, for the purposes of the complex economic and legal assessments required in the present case, it must be acknowledged that the Commission enjoyed a certain discretion as to the choice of the most appropriate method for testing for cross-subsidy. According to the Court, that possibility was ruled out in that the amount of the aid in question was lower than the additional costs generated by the particular task referred to in Article 90(2) of the Treaty. Moreover, the applicants had not put forward a more suitable alternative method for ascertaining the matter in the light of the facts of the case. Since the other objections raised in that context were not well founded, the Court held that the Commission's error in not qualifying the national measure as aid had no effect on the outcome of the examination of the latter and should therefore not result in the annulment of the contested decision. It therefore dismissed the action. An appeal has been lodged against that judgment before the Court of Justice.

Still on the subject of State aid, a number of decisions concerning the steel industry and, consequently, the relevant rules of the European Coal and Steel Community (ECSC) are worth noting.

In Cases T-4/97 *D'Orazio and Hublau* v *Commission* [1997] ECR II-1505 and T-70/97 *Région Wallone* v *Commission* [1997] ECR II-1513, the Court observed that actions for annulment of a measure may be brought under the second paragraph of Article 33 of the ECSC Treaty only by undertakings or by associations, but not by union representatives or regional authorities.

In Case T-150/95 *BISPA* v *Commission* [1997] ECR II-1433, the Court annulled a decision whereby the Commission had closed a procedure, without raising any objections, concerning a Member State's environmental protection project to invest in a steel undertaking. The Court found that that investment could not be regarded as an upgrading of existing plant (to new standards) but as its replacement. However, the provision pursuant to which the contested decision had been adopted, namely a Commission decision introducing, under the first paragraph of Article 95 of the ECSC Treaty, Community rules on Steel aid (commonly referred to as "the Fifth Code"), did not make it possible to authorise such projects but only projects to adapt plant which is still in

service. According to the Court, provisions authorizing the granting of aid to replace plant, contained in Community guidelines (State aid for environmental protection) relating to the EC Treaty and subsequent to the Fifth Code, could not, in the light of the wording of the latter, be extended to the present case. In this connection, the Court referred to the exhaustive nature of the list of cases for which the abovementioned code provides, to the need, as stated in the preamble thereto, to present a proposal for an amendment if the EC guidelines (in force when the code was adopted and identical therewith) were changed substantially and to the fact that, following the adoption of the new EC guidelines, the Commission had in fact intended to cover the replacement of plant in service in the Fifth Code. Moreover, the provision which in the meantime replaced that code ("the Sixth Code") laid down criteria for the application of the new EC guidelines in the ECSC sector, so that they were no longer applied automatically. The interpretation adopted by the Court tallied, in its view, also with the abovementioned former EC guidelines, to which the Fifth Code referred, as well as with the need to interpret that code strictly, since it constituted a derogation from the prohibition laid down by Article 4(c) of the ECSC Treaty to grant any State aid.

The three judgments in Case T-239/94 *EISA* v *Commission* [1997] ECR II-1839, Case T-243/94 *British Steel* v *Commission* [1997] ECR II-1887 and Case T-244/94 *Wirtschaftsvereinigung Stahl and Others* v *Commission* [1997] ECR II-1963, concern decisions of the Commission authorizing, directly on the basis of the first and second paragraphs of Article 95 of the ECSC Treaty, the granting of aid which did not fulfil the criteria laid down in the abovementioned Fifth Code. The Court confirmed the validity of those decisions. In particular, it rejected the applicants' argument that, in view of the prohibition on State aid, as provided for by the Treaty (Article 4(c), cited above), and by the said code, as well as by the conditions for the application of the latter, the Commission could not base itself on Article 95. In the Court's view, Article 4(c) does not provide that any State aid under the Treaty should be considered incompatible with its objectives: rather, it confers exclusive competence in that domain to the Community institutions. It therefore does not preclude that, by way of derogation and by virtue of Article 95, the Commission should authorize aid compatible with those objectives in order to deal with unforeseen situations. Those same provisions enable it to take all the measures necessary to attain the objectives of the Treaty and, therefore, to authorize, in accordance with any procedure it may establish, any aid it may deem necessary in this respect. They contain no clear statement as to the scope of the measures which they allow to be adopted, so that it falls to the Commission to assess in each case whether a general

decision or an individual decision is more appropriate in order to achieve those objectives. In the present case, the code referred in a general manner to certain categories of aid which it considered compatible with the Treaty, whereas the contested decisions authorized, in order to deal with an exceptional situation (due to largely unforeseeable economic factors) and for a single occasion, aid which, in principle, could not be considered compatible. The Court found that the said code did not define exhaustively and definitively the categories of State aid which could be authorised. It was a binding legal framework only in respect of aid falling within the categories which it regarded as compatible with the Treaty. Other aid, such as that of the present case, to which Article 4(c) of the Treaty continued, logically, to apply could benefit from an individual derogation if the Commission considered, in the exercise of the discretion which it enjoys under Article 95 of the Treaty, that such aid was necessary for attainment of the objectives of the Treaty. Thus, the contested aid was not subject to the conditions laid down by that code: it was based, rather, on the abovementioned provisions of Article 95. The Commission could not, by adopting the Aid Code, relinquish the power conferred on it by Article 95. For the same reasons, the code could not give rise to such legitimate expectations on the part of third parties with regard to the possibility of granting such individual derogations in an unforeseen situation of the kind referred to above. In view of such a situation, the contested decisions sought to reorganize the steel industry in the Member State concerned and thus protect the common interest, in accordance with the objectives of the Treaty, that is by reconciling several of those objectives. There was nothing to suggest, in any event, bearing in mind the conditions under which the aid was granted in the contested decisions, that the Commission had committed a manifest error of assessment as to the need for it in relation to those objectives. In order to examine this aspect, the Court referred to the first paragraph of Article 33 of the ECSC Treaty and to the case-law of the Court of Justice on the discretion which the Commission enjoys in matters of State aid. In answer to the argument (which the Court did not find proven) put forward by one of the applicants that there existed means other than the aid at issue which would involve less distortion, the Court considered that it was not for it to examine the appropriateness of the choice made by the Commission and thus to substitute its own assessment of the facts for that made by that institution. Finally, the Court rejected the argument to the effect that several general principles had been breached. With regard to the principle of proportionality, the Court considered that the Commission had imposed on the beneficiary undertakings appropriate conditions in consideration of the aid at issue in order to contribute to the restructuring of the entire sector concerned and to reduction of capacity, whilst at the same

time taking into account the economic and social objectives pursued by the authorization of that aid. An appeal has been lodged against the judgments in Cases T-243/94 and T-244/94.

In the field of *anti-dumping* the judgment delivered in Joined Cases T-159/94 and T-160/94 *Ajinmoto and Nutrasweet* v *Council* [1997] ECR II-2461, which concerned an action against a regulation imposing duties on imports of aspartame (a sugar substitute) originating in Japan and the Untied States of America, enabled the Court to deal with a number of problems concerning exporters' rights of defence. It held that, in proceedings for annulment of an anti-dumping regulation of the Council, the Court's powers of review may extend to the matters contained in the Commission regulation introducing provisional duties, and the procedure relating to it, in so far as the Council regulation refers thereto. Nonetheless, failure to observe the rights of the defence during that procedure does not affect as such the Council regulation. That is the case only in so far as steps are taken to remedy a defect vitiating the adoption of the regulation and where it refers to the Commission regulation. The Court held that, even if the wording of non-confidential summaries accompanying a request for confidential treatment of the information provided by a party is inadequate, the Community institutions are not obliged but are nevertheless within their rights to disregard it (see the second paragraph of Article 8(4) of the applicable basic regulation (Regulation (EEC) No 2423/88), concerning cases where the information may be contained in a confidential summary but is nonetheless missing). However, those institutions must place the applicants, during the administrative procedure, in a position to make known effectively their views on the correctness and relevance of the facts and circumstances alleged and on the evidence relied on by them in support of their allegation concerning the existence of dumping and the resultant injury. The Court also took a view on the right to information enshrined in Article 7(4) of the basic regulation and made clear what were the rights of defence of the parties. Thus, the sufficiency of the information provided by the Community institutions in reply to the questions referred to in Article 7(4)(b) must be assessed in relation to how specific the request for information was. The Court also observed the need to reconcile those rights to information with the obligation incumbent on the Community institutions to maintain business secrets (while enabling the parties effectively to make known their point of view, as stated above). However, since the applicants, which were aspartame manufacturers established in Japan and the United States of America respectively, could not but have, because of the special characteristics of the market in question, a thorough knowledge of that market, the Community institutions had to take particular care to avoid disclosing

information which would have enabled the applicants to infer information of a commercially sensitive nature which could have jeopardized the Community producer. Those principles apply, in particular, to a request made during the administrative procedure whereby the applicants complained of a lack of meaningful figures or facts concerning the margin of injury and sufficient information on the reference price, that is to say on the minimum price required for the Community industry to cover its costs and to make a reasonable profit. That price had, in this case, been used to determine the amount of the duty and was calculated largely on the basis of the Community producer's production costs. In view of the abovementioned special characteristics of the market, of the knowledge of the applicants in respect of that market and of their European competitor, as well as of the extremely sensitive component of the reference price in terms of its confidentiality, the Community institutions had to take care not to disclose information which would have enabled the applicants to work out with relative accuracy the elements, the structure and, ultimately, the amount of the Community producer's costs, since those data were confidential. However, the request did not identify the precise matters on which the applicants wished to receive more detailed information or even the purpose for which they wished to obtain and use such additional information. The Community institutions were thus not in a position to assess whether they could disclose further information concerning the reference price whilst at the same time complying with the applicable confidentiality requirements. The applicants could therefore not complain that they had not been given more detailed information. So far as concerns "normal value" (which serves as a comparative to check whether the export price is a dumping price), the applicants criticized the Council for referring to the United States market, despite the monopolistic nature, in their view, of that market as a result of the patent which protected aspartame there. According to the applicants, that method penalized the inventor exercising his rights in the patent, whereas neither Community law nor the GATT requires a patent holder to give up those rights in order to export. Calculation of dumping should have been on the basis of a constructed value. The Court rejected that argument, pointing out that the wording of the basic regulation did not make the introduction of an anti-dumping duty subject to any factor other than an injurious price differentiation as between the prices charged in the domestic market and those charged in the export market. It concurred with the Commission's argument that a difference in price elasticity between the US and Community markets is a prerequisite for price differentiation and, if it had to be taken into account, dumping could never be sanctioned. In the view of the Court, the contested regulation has not in any way deprived the applicant of its United States patent, since it did not prejudice its right to prevent any

third party from producing and marketing aspartame in the United States nor its right to maximize its prices in that market. The solution advocated by the Council was, in the Court's opinion, also supported by the fact that the production and marketing monopoly conferred by the patent enables its holder to recover research and development costs incurred not only for successful projects but also for unsuccessful ones. Finally, for the same reasons, the Court rejected the Japanese applicant's argument that because of the abovementioned patent, the Community institutions should not have been able to determine, in its case, the normal value on the basis of the domestic market in the United States, the country exporting aspartame (see Article 2(6) of the basic regulation), but on the basis of the price in the country of origin (Japan).

The Court was able, by its judgment in Case T-115/94 *Opel Austria* v *Council* [1997] ECR II-39, to expound a number of *general principles* to which the institutions are subject in the case of *participation of the Community in an international agreement*. It annulled a regulation on the ground of breach of the obligations on its author, the Council, on the eve of the entry into force of the Agreement on the European Economic Area (EEA Agreement), in favour of an operator who was likely to benefit from the provisions of that agreement on the free circulation of goods. Some days after the ratification of the EEA Agreement on behalf of the Community and lodgment of the last ratification instrument, the Council adopted, in the context of the Free-trade Agreement between the European Community and Austria, a regulation withdrawing tariff concessions, introducing an import duty on products manufactured in that country by the applicant alone. The Court held that, in a situation where the Communities have deposited their instruments of approval of an international agreement and the date of entry into force of that agreement is known, traders may rely on the principle of protection of legitimate expectations, a corollary of the principle of good faith recognized by international public law (and codified by Article 18 of the First Vienna Convention), in order to challenge the adoption by the institutions, during the period preceding the entry into force of that agreement, of any measure contrary to the provisions of that agreement which will have direct effect on them after it has entered into force. The applicant was thus entitled to require a review of the legality of the contested regulation in the light of Article 10 (prohibiting customs duty) of the EEA Agreement which, being unconditional and sufficiently precise, produced direct effects. On the basis of Article 6 of the EEA Agreement, the Court held that since Article 10 was in substance identical to Articles 12, 13, 16 and 17 of the EC Treaty (in the light of the case-law on the free-trade agreements with the EFTA countries and contrary to the many arguments put forward by the

defendant on the basis of the wording of the EEA Agreement), it should be interpreted in accordance with the relevant case-law of the Court of Justice and the Court of First Instance prior to the date of signature of the EEA Agreement. In those circumstances, the measure at issue was contrary to Article 10 because it constituted, at the very least, a charge having an effect equivalent to a customs duty. By adopting it in the abovementioned circumstances, the Council had undermined the legitimate expectations of the applicant. Likewise, it had breached the principle of legal certainty on two counts. First, it had thus knowingly created a situation in which two conflicting rules of law had to co-exist with effect from January 1994. Secondly, by deliberately backdating the issue of the Official Journal in which the contested regulation was published (moreover in the face of specific instructions which it had itself given to the Publications Office), it had failed in its duty to bring all acts with legal effects to the notice of the person concerned in such a way that he can ascertain exactly the time at which the measure comes into being and starts to have legal effects.

Particularly worthy of note are Joined Cases T-40/96 and T-55/96 *De Kerros and Kohn Bergé* v *Commission* [1997] ECR-SC II-135 in so far as they concern the principles governing access to employment in the *European civil service*. The applicants challenged the rejection of their candidature for internal competitions organized with a view to the constitution of a reserve list for the recruitment of officials in categories B and C. In both cases, that rejection was based on the fact that the persons concerned did not meet the condition contained in the competition notice to have at least three years' continuous uninterrupted service with the European Communities as a member of staff subject to the Rules Applicable to Other Agents of the European Communities (RAA). Each of the two applicants had, during a period of two weeks during those three years, performed those duties as temporary staff. The Court declared unlawful the abovementioned condition for admission and the selection board's decision based thereon was therefore also unlawful. In this connection it referred to the first paragraph of Article 27 of the Staff Regulations of Officials of the European Communities (according to which the aim of recruitment is to secure for the institution the services of officials of the highest standard of ability, efficiency and integrity) and Article 29(1) thereof (which concerns the filling of vacant posts and in particular the organization of internal competitions). However, an institution may lay down in respect of each competition conditions for admission which it considers best suit the posts to be filled, and temporary agents do not have an absolute right to participate in every internal competition organized by their institution. The Court also acknowledged, in principle, the legitimate interest in regularising temporary

contracts by establishing those members of the temporary staff by means of such a competition. The contested condition was a suitable means of pursuing that objective in so far as it made reference to a minimum period of service. That kind of criterion offers a chance of establishment to agents who have shown that they deserve it by their work as members of the temporary staff and the choice of a minimum period of three years is reasonable exercise of the institution's discretion. However, the additional requirement that the minimum period of service in the institution should have been completed without interruption and in the capacity of agent as referred to in the RAA was tantamount to excluding those agents whose length of service was the same or greater than that period but part of which (in relation to a relatively short period, in this case upon the suggestion of the Commission) was under a contract not referred to in that provision. Those requirements were not justified by the need to follow a chronological order. Admittedly, treating the situations of members of the temporary staff by chronological order enables the institution to manage more easily competition procedures and the appointment of successful candidates to vacant posts, which fulfils the aim of sound administration. Nonetheless, the first paragraph of Article 27, cited above, allows only of conditions for recruitment which may be justified by requirements linked to the posts to be filled or by the interests of the service. According to the wording itself of that provision, limiting the number of persons who are eligible to participate in each competition cannot constitute in itself a legitimate interest of the institution. Moreover, since the additional requirements at issue could exclude certain agents whose length of service exceeded that of other agents admitted to the competition (see above), the Commission could not rely on its interest in allowing agents who had shown themselves suitable for establishment to be offered permanent status in view of the length of their service as members of the temporary staff. Finally, the fact that some of the agents who were excluded could apply for future competitions did not render compatible with the Staff Regulations a condition which was not dictated by the interests of the service and restricted their right to participate in internal competitions.

By its judgment in Case T-220/95 *Giménez* v *Committee of the Regions* [1997] ECR-SC II-0000, the Court annulled a decision not to admit the applicant to a competition which, although described as "internal" in the relevant notice, had been open, having regard to a preceding decision of the President of the Committee of the Regions, not only to its own officials and agents but also to that part of the staff of the Economic and Social Committee (ESC) which came within the organizational structure common to both committees (see Protocol

No 16 to the Treaty on European Union [5]). According to the contested decision, the applicant (a temporary agent whose employment documents were signed by the ESC appointing authority) did not form part of that structure. However, the Court was of the view that that structure should be considered as covering all the staff of the two committees, both with regard to Protocol No 16 itself and, in any event, in order to ensure observance of the principle of legal certainty in the context of the competition at issue. In connection with this, the Court pointed out, first, that where the forms of cooperation between Community institutions have not been specified by the treaties, it is for the institutions concerned to organize such cooperation. Secondly, there was no such cooperation between the two committees with regard to the precise common structure, its organization and its management. It was therefore hardly possible to determine with certainty the administrative position of all the members of the staff of the two committees and of the said structure, and thus in particular the position of the applicant. In those circumstances, the Court held that the competition notice was unlawful and that Protocol No 16 had been infringed. Moreover, the exclusion criteria applied by the defendant was contrary to the first paragraph of Article 27 of the Staff Regulations and to the principle of equal treatment. First, it related to a mere fact, devoid of any legal significance under the Staff Regulations and the Treaty and unconnected with the possession of any qualification or experience, and it did not correspond with the purpose of the competition. Secondly, it gave rise within a single category of staff to a differentiation in treatment that was not objectively justified. The Court furthermore held that the notice in question infringed Article 1(1)(a) of Annex III to the Staff Regulations, since the competition to which it referred, which was open to the staff of the defendant and only to part of the staff of the other committee, did not follow any of the legal procedures which are laid down limitatively therein. Finally, by considering that the applicant did not form part of the common structure, the defendant had committed a manifest error of assessment and breached the principle of equal treatment with regard to the applicant's situation.

So far as concerns the obligations of a selection board faced with an application form using a term which, in an official language of the Communities other than that of the competition notice and the official application form, is the title of the professional duties of the applicant, see the

[5] That protocol is abolished by the Treaty of Amsterdam signed on 2 October 1997 and amending, in particular, the Treaty on European Union and the Treaty establishing the European Community.

judgment in Case T-80/96 *Leite Mateus* v *Council* [1997] ECR-SC II-259; an appeal has been lodged against that judgment before the Court of Justice.

As regards the recruitment stages following a competition, it is worthwhile noting, first, Case T-110/96 *Bareth* v *Committee of the Regions* [1997] ECR-SC II-0000, concerning the requirement to provide a statement of reasons which must be fulfilled by an appointment decision which departs from the classification order of the list of suitable candidates where a consistent body of evidence points to a misuse of powers and unequal treatment of successful candidates. Also worthy of note are the judgments in *Barnett* v *Commission*, cited above, and Case T-92/96 *Monaco* v *Parliament* [1997] ECR-SC II-573, concerning classification in grade of appointed officials.

In Case T-297/94 *Vanderhaeghen* v *Commission* [1997] ECR-SC II-13, the Court delivered a judgment in an action for annulment of a decision contained in the applicant's pay slip withholding from her remuneration a parental contribution to a crèche facility determined by an inter-institutional joint body in which participated the representatives of the institutions located in the place of employment concerned. That contribution was greater than that which the applicant would have paid if she had been assigned to another place of employment. Since the Commission disputed that the deduction, in its view a mere salary transfer, was an act adversely affecting an official, the Court was called upon to interpret the meaning of "pay" within the meaning of Article 62 of the Staff Regulations of Officials of the European Communities (the Staff Regulations). In this connection it referred to the analogous concept of "employee" in Article 119 of the EC Treaty and to the definition which the Court of Justice had given it which, so far as the Court of First Instance was concerned, is the expression of a general principle. It concluded that, although the establishment of the social service in question had not been imposed on the institutions by the Staff Regulations, it was similar to a benefit in kind covered by the statutory definition of pay, since it is directly connected to the exercise of the duties of staff of the European Communities and its existence corresponds to a requirement of the principle of equal opportunities for men and women. The contested pay slip should therefore be considered an act adversely affecting her inasmuch as it indicates that the administration first applied to her the parental contribution scales which were on the one hand fixed by the inter-institutional organization in question (which could not itself be brought before the Community judicature) and, on the other hand, confirmed by the Commission. So far as concerns the substance of the case, the Court held that the general act consisting in confirming the abovementioned scales (implemented by way of the deduction shown on the abovementioned

pay slip) was contrary to the principle of equality of treatment. The Commission had not succeeded in justifying the inequality found (as regards the total amount and the proportion of the costs of running the crèches, which was charged to the parents) on objective grounds (such as the difference between the costs of running the different crèches, the difference in market price for the respective crèche services or the requirement laid down by the budgetary authority that a certain proportion of the costs should be charged to the parents). The Court pointed out, moreover, that, irrespective of the accuracy or otherwise of the economic arguments put forward by the Commission, it had not made any room for the application of the principle of equality of treatment. In view of the nature of the social service in issue and of its importance to a policy intended to ensure equal opportunities for male and female workers, that principle must perforce be respected when implementing parental contribution scales, even though those scales in every place of employment do not need to be automatically aligned with each other.

Case T-187/95 *R* v *Commission* [1997] ECR-SC II-0000, which concerns the sickness insurance scheme for officials and other servants, concerns the need for a Medical Committee, in order validly to issue a medical opinion, to be in a position to have notice of all documents which may be useful for its assessments. In its judgment in Case T-66/95 *Kuchlenz-Winter* v *Commission* [1997] ECR-SC II-0000, the Court was called upon to hear and determine a dispute concerning a decision refusing to continue to insure under the joint sickness insurance scheme the ex-spouse of a former official against sickness beyond the maximum of one year as provided for by Article 72 of the Staff Regulations. The applicant claimed, in particular, that her right to move freely within the Community was seriously restricted because if she were to resettle in her country of origin she would lose the only cover against sickness open to her, namely that of her State of residence. The Court held that, for those persons who are not in active employment, the existence of sickness insurance is a condition, laid down by Community secondary legislation, to which the exercise of the right of free movement is subject. In the absence of harmonization of social security schemes in the Community, the question of cover for the applicant by a sickness insurance scheme (for the purposes of settling in the country of her choice) falls exclusively within the scope of the relevant provisions of the Staff Regulations, on the one hand, and, on the other, of the applicable national laws. An appeal has been lodged against that judgment at the Court of Justice.

Certain principles concerning disciplinary measures were expounded in Case T-273/94 *N* v *Commission* [1997] ECR-SC II-289. The applicant had complained, in particular, about the conditions under which the information giving rise to the disciplinary proceedings was obtained. After finding that the information came from a source who had volunteered it, the Court held that the fact that the only way in which it could have been forwarded by a bank was in breach of national provisions on the protection of banking secrets was not such as to preclude the defendant from initiating disciplinary proceedings. The initiation of such proceedings did not constitute a breach of the right to respect for private life (which is also laid down in Article 8 of the ECHR and is an integral part of the general rights of Community law). It did not constitute a disproportionate and intolerable interference which encroaches upon the very substance of the rights guarantee since the information at issue was likely to relate to serious breaches of the applicant's obligations under the Staff Regulations. The Court moreover rejected the applicant's argument to the effect that, by not informing him, from the beginning of interview stage, of the allegations against him, the defendant had breached the rights of the defence. According to the Court of First Instance, there is no obligation under the Staff Regulations on the institution to proceed in that manner since it is not in a position at the interview stage to formulate charges against the official. Neither did the defendant breach the general principle of *inter partes* proceedings and equality of arms by not disclosing in the course of the proceedings the identity of its source of information. First, since the person provided the information (which the Commission accepted) on a purely voluntary basis and had asked for his anonymity to be protected, the Commission was obliged to ensure such protection. On the other hand, the applicant was able to make his point of view effectively known on that information. Moreover, by asking the applicant to clarify certain aspects which indicated that his activity could have related to conduct contrary to the Staff Regulations, the Commission had not obliged him to reply in such a way as to admit to the existence of such conduct and had therefore not breached his right not to incriminate himself. The Court also rejected the applicant's argument that the rejection of the complaint by the same person which had taken the initial decision breached his right to a "fair trial", as enshrined in Article 6 of the ECHR. The defendant cannot be characterized in that context as a "tribunal" within the meaning of that article and, in any event, the complaint had been examined by the full Commission and not by the appointing authority which took the original decision. As to the substance, the Court rejected the plea in law alleging that there had been a manifest error of assessment of the facts since the Commission had rightly claimed that the applicant had had contacts, without advising his immediate superiors thereof, in a field in which, in his capacity as an official, he

possessed sensitive information. Finally, the Court found that the measure imposed (removal from post) was not manifestly disproportionate to those infringements. An appeal has been brought against that judgment before the Court of Justice.

For the consequences of non-observance of the internal rules of an institution providing for the Staff Committee to be informed beforehand, in particular in the case of the dismissal of a member of the temporary staff, please refer to the judgment in Case T-123/95 *B* v *Parliament* [1997] ECR-SC II-697.

The order in Case T-60/96 *Merck and Others* v *Commission* [1997] ECR II-849 should be singled out from among the judgments and orders delivered in *actions brought by individuals against acts of general application*. The applicants, manufacturers of pharmaceutical products, challenged a Commission decision refusing the authorization sought by certain Member States to take, pursuant to Article 379 of the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic (Act of Accession), protective measures with regard to pharmaceutical products coming from Spain. Those applications were brought following the expiry of the transitional period provided for in Article 47 of that Act and during which there had been a derogation from the principle of the exhaustion of patent rights, in compliance with the judgment of the Court of Justice in Case 187/80 *Merck* v *Stephar and Exler* [1981] ECR 2063. [6] According to the Court, the contested decisions were not of individual concern to the applicants, which resulted in the dismissal of their application as inadmissible. In particular, the Court did not agree with the applicants in so far as they claimed to fulfil the condition laid down in the fourth paragraph of Article 173 of the EC Treaty on the ground that the abovementioned decision reduced the effective validity of their patents. It made it clear that those decisions did not alter any pre-existing right of the patent holder but maintained an existing situation. This related to the judgment in *Merck*, after the expiry, which could have been foreseen by the operators, of the rules providing a derogation from Article 47 of the Act of Accession. In the absence of any right to the prolongation of an

6 According to that principle, the rules of the (E)EC Treaty on the free movement of goods "prevent the proprietor of a patent for a medicinal preparation who sells the preparation in one Member State where patent protection exists, and then markets it himself in another Member State where there is no such protection, from availing himself of the right conferred by the legislation of the first Member State to prevent the marketing in that State of the said preparation imported from the other Member State". That principle was recently confirmed by the Court of Justice in Joined Cases C-267/95 and C-268/95 *Merck and Others* v *Primecrown and Others* and *Beecham* v *Europharm* [1996] ECR I-6285; see Annual Report 1996, p. 16.

earlier situation which is limited in time and based on a transitional derogation from a fundamental principle of the internal market the applicants could not seek a solution analogous to that laid down in Case C-309/89 *Codorniú* v *Council* [1994] ECR I-1853, paragraph 19. The Court also stated that there was no analogy to be drawn between the present case and the facts in Case C-358/89 *Extramet Industrie* v *Council* [1991] ECR I-2501. One of the applicants had been a party, as it claimed before the Court of First Instance, to proceedings before a national court in which was raised the question of the exhaustion of patent rights. [7] The Court pointed out that, apart from the fact that the subject-matter and purpose of the contested measures and the present proceedings are different, the status of being such a party is not sufficient in itself to distinguish the applicant individually in relation to that measure. In the Court's view, all traders in the same category as the applicant are entitled to bring a similar action before the national courts. In referring to the case-law of the Court of Justice, the Court of First Instance held that the applicants did not form part of a limited class of traders individually concerned by the contested decisions. The fact that they participated in the process leading to the adoption of those decisions was not such as to distinguish them in relation to those traders, unless the relevant Community legislation has laid down procedural guarantees for such a person.

On 16 April 1997 the Court of First Instance delivered the first three judgments in "*Milk quotas*" Cases (Case T-541/93 *Connaughton and Others* v *Council* [1997] ECR II-549; Case T-554/93 *Saint and Murray* v *Council and Commission* [1997] ECR II-563; Case T-20/94 *Hartmann* v *Council and Commission* [1997] ECR II-595), which, as is known, concern *compensation* for producers of milk and milk products who had been temporarily prevented from carrying on their trade. Those judgments follow on from Joined Cases C-104/89 and C-37/90 *Mulder and Others* v *Council and Commission* [1992] ECR I-3061 (*Mulder II*) in which the Court of Justice held that for certain categories or producers the Community was liable for the damage in question. The Court of First Instance first of all declared inadmissible the actions directed against Council Regulation (EEC) No 2187/93 of 22 July 1993 providing for an offer of compensation to certain such producers. That regulation was not a measure amenable to challenge by those producers to whom the offer had been made. Acceptance of that offer was optional and was intended to enable them to obtain the compensation to which they were entitled without bringing an action for annulment. It thus opened up an

7 Those dealt with in *Merck and Beecham*, cited above.

additional avenue for obtaining compensation additional to bringing an action under Articles 178 and 215 of the EC Treaty which was already available, did not adversely affect their legal situation and, in particular, did not restrict their rights (*Connaughton and Others* and *Saint and Murray*). Secondly, the Court of First Instance ruled on various problems connected with the actions for damages (based on the regulation and on Articles 178 and 215) which were not affected by the question of admissibility (see the judgments in *Saint and Murray* and *Hartmann*). With regard, first of all, to the requirements of the Rules of Procedure regarding the subject-matter and the (brief) summary of the pleas in law relied upon (Article 44(1)(c)), the Court of First Instance ruled that the allegation, contained in an application made specifically in a milk quota case, that damage was attributable to an act of the institutions is sufficient in so far as it follows on from an offer of compensation whereby the institutions have recognized that the applicant fulfils the conditions laid down by Regulation (EEC) No 2187/93. Thus, the express reference to the second paragraph of Article 215 of the Treaty made at the reply stage and the production, at the same stage, of proof of the damage suffered did not constitute a new plea within the meaning of Article 48(2) of the Rules of Procedure. Secondly, so far as concerns the question whether the claims based on that regulation were well founded, the Court rejected the applicant's argument that he accepted the offer contained in that provision by the lodgement of the present application. According to the Court, an acceptance expressed in a form not provided for by the regulation (which required the return to the competent national authority, within two months of receipt of the offer, of the receipt accompanying the offer) and, contrary to the regulation, with conditions attached, is not valid. Thirdly, after acknowledging, in the light of *Mulder II*, the existence of the applicants' right to compensation for the damage, pursuant to the second paragraph of Article 215 of the Treaty, the Court explained the limitations on that right. The limitation period, in the present case, had begun to run on the day when, after the expiry of the non-marketing undertaking, the applicants had been prevented from recommencing their deliveries of milk because they had been refused a reference quantity. For the purposes of determining the period to which the time bar applies, the Court noted that the damage in issue was continuous and renewed on a daily basis. Consequently, entitlement to compensation relates to successive periods starting each day when it was impossible to market the product. As a result the time bar under Article 43 of the Statute of the Court of Justice applied to the period preceding that date by more than five years with respect to the date of the event which interrupted the limitation period (the lodging of the action (Case T-554/93) or the application for compensation (Case T-20/94)), and did not affect rights which arose during subsequent periods. In the two cases

concerned (T-554/93 and T-20/94) and bearing in mind, also, an undertaking given by the Council and the Commission not to plead, for a certain period, limitation under Article 43, the Court concluded that the rights of the persons concerned were time barred for part of the period in respect of which compensation was to be granted to the exclusion of the remainder of that period (which ended as soon as the Community legislation allowed them to be granted reference quantities). Finally, so far as concerns the quantum of damages, the Court held that the parties had not yet had the opportunity to give their views specifically on the amount of any compensation appertaining to the period decided on by the Court and that the possibility of settling the dispute out of court is not ruled out. It therefore called upon the parties to attempt to reach an agreement in the light of this judgment within twelve months or, failing agreement, to submit to it within that period their quantified claims.

The situation of another category of milk producers ("SLOM III"), not covered by the judgment in *Mulder II*, was considered in the judgment in Joined Cases T-195/94 and T-202/94 *Quiller and Heusmann* v *Council and Commission* [1997] ECR II-2247. The applicants, transferees of non-marketing premium on having taken over a holding encumbered by an undertaking, were prevented from marketing milk because a reference quantity had been granted to them in respect of another property (which was not encumbered by any such undertaking). That situation lasted from 1984 or 1985 until 1993, when, as a result of the judgment in Case C-264/90 *Wehrs* [1992] ECR I-6285, in which that anti-accumulation rule was held to be invalid, the Council resolved their particular situation. The Court held the Community to incur non-contractual liability. It found, first, that, by failing to take into account the ratio existing between the reference quantities for the original holding and those for the SLOM holding, the institutions had arbitrarily apportioned to each of the producers concerned the charges deriving from the objective pursued "of not jeopardizing the fragile stability" of the market. It pointed out, secondly, that that sacrifice was entirely unforeseeable and was not within the bounds of the normal risks inherent in the economic activity in question.

So far as concerns the *rules applicable to proceedings before the Court of First Instance*, it is worth mentioning a number of orders on: the significance of the time allowed on account of distance when calculating the time-limit for bringing an action (Case T-85/97 *Horeca-Wallonie* v *Commission* [1997] ECR II-2113); the admissibility of applications to intervene in an action for compensation for the damage allegedly suffered as a result of the adoption of Community legislation (Case T-184/95 *Dorsch Consult* v *Council and*

Commission [1997] ECR II-351) or an action for the annulment of the Commission's implied decision refusing to reject a complaint, where that refusal concerns practices different to those with which the party applying for leave to intervene, which is also covered by the complaint (Case T-367/94 *British Coal* v *Commission* [1997] ECR II-469; an appeal has been lodged against that order at the Court of Justice); certain particularities with regard to the confidential nature of documents *vis-à-vis* the interveners (Case T-89/96 *British Steel* v *Commission* [1997] ECR II-835 and Case T-102/96 *Gencor* v *Commission* [1997] ECR II-879).

In addition, in Case T-71/96 *Berlingieri Vinzek* v *Commission* [1997] ECR-SC II-0000, the Court pointed out that, although there is no provision in the Rules of Procedure which expressly sets out the conditions in which fresh documents may be put forward at the hearing, the consistent practice of the Court of First Instance, on the basis of the principle that both parties should be heard and of respect for the rights of the defence, is to accept the lodging of such documents only in exceptional circumstances where, for valid reasons, it was not possible to produce them in the course of the written procedure.

Finally, with regard to legal aid, the Court gave, in the order in Case T-157/96 AJ [1997] ECR II-155, guidance on the interpretation of the second paragraph of Article 94(2) of the Rules of Procedure under which applications for legal aid do not need to be presented by a lawyer. In the Court's view, that exemption does not apply only in the case mentioned in the first subparagraph of that provision, namely where the application is made before the action which the applicant intends to bring, but also when that request is made after the action has been brought by a lawyer.

B - Composition of the Court of First Instance

First row, from left to right:
Judge C.P. Briët; Judge P. Lindh; Judge A. Kalogeropoulos; Mr A. Saggio, President; Judge V. Tiili; Judge J. Azizi; Judge B. Vesterdorf.

Second row, from left to right:
Judge K.J. Pirrung, Judge J.D. Cooke, Judge A. Potocki, Judge K. Lenaerts, Judge R. García-Valdecasas y Fernández, Judge C.W. Bellamy, Judge R. Moura Ramos, Judge M. Jaeger; H. Jung, Registrar.

1. The Members of the Court of First Instance
(in order of entry into office)

Antonio Saggio

Born 1934; Judge, Naples District Court; Adviser to the Court of Appeal, Rome, and subsequently the Court of Cassation; attached to the *Ufficio Legislativo del Ministero di Grazia e Giustizia*; Chairman of the General Committee in the Diplomatic Conference which adopted the Lugano Convention; Legal Secretary to the Italian Advocate General at the Court of Justice; Professor at the Scuola Superiore della Pubblica Amministrazione, Rome; Judge at the Court of First Instance since 25 September 1989; President of the Court of First Instance since 18 September 1995.

Heinrich Kirschner

Born 1938; Magistrate, Land Nordrhein-Westfalen, Official at the Ministry of Justice (Department of Community Law and Human Rights); Assistant in the office of the Danish member of the Commission and subsequently in DG III (internal market); Head of department dealing with supplementary penalties in the Federal Ministry of Justice; Principal of the Minister's Office, final post; Director (Ministerialdirigent) of an under-department dealing with criminal law; Course director, Saarbrucken University; Judge at the Court of First Instance from 25 September 1989 to 6 February 1997.

Cornelis Paulus Briët

Born 1944; Executive Secretary, D. Hudig & Co., Insurance Broker, and subsequently Executive Secretary with Granaria BV; Judge, Arrondissementsrechtbank (District Court), Rotterdam; Member of the Court of Justice of the Dutch Antilles; Cantonal Judge, Rotterdam; Vice-President, Arrondissementsrechtbank Rotterdam; Judge at the Court of First Instance since 25 September 1989.

Bo Vesterdorf

Born 1945; Lawyer-linguist at the Court of Justice; Administrator in the Ministry of Justice; Examining Magistrate; Legal Attaché in the Permanent Representation of Denmark to the European Communities; Temporary Judge at the Østre Landsret; Head of the Constitutional and Administrative Law Division in the Ministry of Justice; Head of Division in the Ministry of Justice; University Lecturer; Member of the Steering Committee on Human Rights at the Council of Europe (CDDH), and subsequently Member of the Bureau of the CDDH; Judge at the Court of First Instance since 25 September 1989.

Rafael García-Valdecasas y Fernández

Born 1946; Abogado del Estado (at Jaén and Granada); Registrar to the Economic and Administrative Court of Jaén, and subsequently of Cordova; Member of the Bar (Jaén and Granada); Head of the Spanish State Legal Service for cases before the Court of Justice of the European Communities; Head of the Spanish Delegation in the working group created at the Council of the European Communities with a view to establishing the Court of First Instance of the European Communities; Judge at the Court of First Instance since 25 September 1989.

Koenraad Lenaerts

Born 1954; Professor at the Katholieke Universiteit Leuven; Visiting Professor at the universities of Burundi, Strasbourg and Harvard; Professor at the College of Europe, Bruges; Legal Secretary at the Court of Justice; Member of the Brussels Bar; Member of the International Relations Council of the Katholieke Universiteit Leuven; Judge at the Court of First Instance since 25 September 1989.

Christopher William Bellamy

Born 1946; Barrister, Middle Temple; Queen's Counsel, specialising in Commercial law, European law and public law; co-author of the three first editions of *Bellamy & Child, Common Market Law of Competition*; Judge at the Court of First Instance since 10 March 1992.

Andreas Kalogeropoulos

Born 1944; Lawyer (Athens); legal secretary to Judges Chloros and Kakouris at the Court of Justice; professor of public and Community law (Athens); legal adviser; senior attaché at the Court of Auditors; Judge at the Court of First Instance since 18 September 1992.

Virpi Tiili

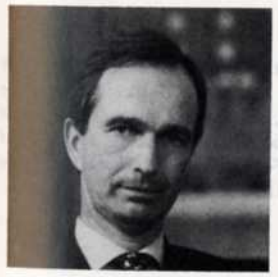
Born 1942; Doctor of Laws of the University of Helsinki; assistant lecturer in civil and commercial law at the University of Helsinki; Director of Legal Affairs at the Central Chamber of Commerce of Finland; Director-General of the Office for Consumer Protection, Finland; Judge at the Court of First Instance since 18 January 1995.

Pernilla Lindh

Born 1945; Law graduate of the University of Lund; Judge (assessor), Court of Appeal, Stockholm; Legal adviser and Director-General at the Legal Service of the Department of Trade at the Ministry of Foreign Affairs; Judge at the Court of First Instance since 18 January 1995.

Josef Azizi

Born 1948; Doctor of Laws and degree in Social Sciences and Economics from the University of Vienna; Lecturer and senior lecturer at the Vienna School of Economics and at the faculty of law at the University of Vienna; Ministerialrat and Head of Department at the Federal Chancellery; Judge at the Court of First Instance since 18 January 1995.



André Potocki

Born 1950; Judge, Court of Appeal, Paris, and Associate Professor at Paris X Nanterre University (1994); Head of European and International Affairs of the Ministry of Justice (1991); Vice-President of the Tribunal de Grande Instance, Paris (1990); Secretary-General to the First President of the Cour de Cassation (1988); Judge at the Court of First Instance since 18 September 1995.

Rui Manuel Gens de Moura Ramos

Born 1950; Professor, Law Faculty, Coimbra, and at the Law Faculty of the Catholic University, Oporto; Jean Monnet Chair; Course Director at the Academy of International Law, The Hague (1984) and visiting professor at Paris I Law University (1995); Portuguese Government delegate to United Nations Commission on International Trade Law (Uncitral); Judge at the Court of First Instance since 18 September 1995.

John D. Cooke SC

Born 1944; Member of the Bar of Ireland; appeared on many occasions as advocate in cases before the Court of Justice of the European Communities and before the Commission and Court of Human Rights of the Council of Europe; specialised in European Community and international law and in commercial and intellectual property law; President of the Council of the Bars and Law Societies of the European Community (CCBE) 1985-1986; Judge at the Court of First Instance since 10 January 1996.

Marc Jaeger

Born 1954; Avocat; Attaché de Justice, posted to the Procureur Général; Judge, Vice-President of the Tribunal d'Arrondissement, Luxembourg; lecturer at the Centre Universitaire de Luxembourg; judge on secondment, legal secretary at the Court of Justice since 1986; Judge at the Court of First Instance since 11 July 1996.

Jörg Pirrung

Born 1940; Academic assistant at the University of Marburg; civil servant in the German Federal Ministry of Justice (division for International Civil Procedure Law, division for Children's Law); head of the division for Private International Law and subsequently head of a subsection for Civil Law in the Federal Ministry of Justice; Judge at the Court of First Instance since 11 June 1997.

Hans Jung

Born 1944; Assistant, and subsequently Assistant Lecturer at the Faculty of Law (Berlin); Rechtsanwalt (Frankfurt); Lawyer-linguist at the Court of Justice; Legal Secretary at the Court of Justice in the Chambers of President Kutscher and subsequently in the Chambers of the German judge at the Court of Justice; Deputy Registrar at the Court of Justice; Registrar of the Court of First Instance since 10 October 1989.

2. Changes in the composition of the Court of First Instance in 1997

In 1997, the composition of the Court of First Instance changed as follows:

Following the death of Judge Heinrich Kirschner on 6 February 1997, Mr Jörg Pirrung entered into office as Judge at the Court of First Instance on 11 June 1997.

3. Order of precedence

from 1 January to 10 June 1997

A. SAGGIO, President of the Court of First Instance
B. VESTERDORF, President of Chamber
R. GARCÍA-VALDECASAS Y FERNÁNDEZ, President of Chamber
K. LENAERTS, President of Chamber
C. W. BELLAMY, President of Chamber
H. KIRSCHNER, Judge
C. P. BRIËT, Judge
A. KALOGEROPOULOS, Judge
V. TIILI, Judge
P. LINDH, Judge
J. AZIZI, Judge
A. POTOCKI, Judge
R. MOURA RAMOS, Judge
J. D. COOKE, Judge
M. JAEGER, Judge

H. JUNG, Registrar

from 11 June to 30 September 1997

A. SAGGIO, President of the Court of First Instance
B. VESTERDORF, President of Chamber
R. GARCÍA-VALDECASAS Y FERNÁNDEZ, President of Chamber
K. LENAERTS, President of Chamber
C.W. BELLAMY, President of Chamber
C.P. BRIËT, Judge
A. KALOGEROPOULOS, Judge
V. TIILI, Judge
P. LINDH, Judge
J. AZIZI, Judge
A. POTOCKI, Judge
R. MOURA RAMOS, Judge
J. D. COOKE, Judge
M. JAEGER, Judge
J. PIRRUNG, Judge

H. JUNG, Registrar

from 1 October 1997 to 31 December 1997

A. SAGGIO, President of the Court of First Instance
A. KALOGEROPOULOS, President of Chamber
V. TIILI, President of Chamber
P. LINDH, President of Chamber
J. AZIZI, President of Chamber
C.P. BRIËT, Judge
B. VESTERDORF, Judge
R. GARCÍA-VALDECASAS Y FERNÁNDEZ, Judge
K. LENAERTS, Judge
C.W. BELLAMY, Judge
A. POTOCKI, Judge
R. MOURA RAMOS, Judge
J. D. COOKE, Judge
M. JAEGER, Judge
J. PIRRUNG, Judge

H. JUNG, Registrar

Chapter III

Meetings and visits

A - Official visits and functions at the Court of Justice and the Court of First Instance in 1997

21 January	Mr Álvaro José Laborinho Lucio, Procurador-Geral Adjunto, Portugal
6 February	Mr Alexander Markides, Procureur général of the Republic of Cyprus
20 February	HE Mr Giovanni Castellani Pastoris, Italian Ambassador to Luxembourg
25 February	HE Mr Jan Truszczynski, Ambassador of the Republic of Poland to the the European Union in Belgium
26 February	Mr Seydou Ba, President of the Cour Commune de Justice et d'Arbitrage de l'Organisation en Afrique du Droit des Affaires (OHADA)
26-27 February	Mr Boris Topornin, Head of the Insititute of State and Law of the Russian Academy of Sciences
28 February	Mr Bjørn Haug, President, Mr Thor Vilhjámsson and Mr Carl Baudenbacher, Judges, and Mr Per Christiansen, Registrar, Members of the EFTA Court
3 March	Delegation from the German Bundesverfassungsgericht
13 March	HE Mr Demosthène Constantinou, Greek Ambassador to Luxembourg
13-14 March	Finals of the European Law Moot Court
19 March	Mr José Maria Gil-Robles y Gil-Delgado, President of the European Parliament

19 March	Ms Herta Däubler-Gmelin, Vice-President of the Social Democrat Party of Germany
20 March	Delegation of Latvian and Lithuanian Judges
20 March	HE Mr Lennart Watz, Swedish Ambassador to Luxembourg
14 April	Mr Kari Häkämies, Minister for Justice of the Republic of Finland
16 April	Mr Romildo Bueno de Souza, President of the Superior Tribunal de Justiça du Brésil
23 April	Ms Benita Ferrero-Waldner, Statssekretärin at the Ministry of Foreign Affairs and Mr Josef Magerl, Austrian Ambassador to Luxembourg
24 April	Delegation from the Constitutional Court of the Czech Republic
28 April	Mr Michiel Patijn, Staatssecretaris at the Ministry of Foreign Affairs, Netherlands
29 April	Ms Winnifred Sorgdrager, Minister for Justice of the Kingdom of the Netherlands
30 April	Mr Wolfgang Schüssel, Vice-Chancellor and Minister for Foreign Affairs of the Republic of Austria
13 May	Mr Kostas Simitis, Πρωθυπουργός (Prime Minister) of the Hellenic Republic
14 May	Mr Hiroshi Fukuda, Judge at the Supreme Court of Japan
16 May	Mr Jacob Söderman, European Ombudsman
27 May	Association Henri Capitant des Amis de la Culture Juridique Française

28 May	Dr Pál Vastagh, Minister for Justice of the Republic of Hungary
28 May	Delegation from the Corte Suprema de Justicia of Paraguay
29 May	Ms Laila Freivalds, Minister for Justice of the Kingdom of Sweden
3 June	Mercosur judiciary
3 June	Delegation from the Landtag of Lower Saxony
5 June	Mr Don Kursch, Deputy Chief of the United States' Mission to the European Union, Brussels
9 June	Mr Franz Blankart, Secretary of State and Director of Federal Office for Foreign Economic Affairs of the Swiss Confederation
12 June	HRH Princess Benedikte of Denmark
16-17 June	Judges' Forum
24 June	Delegation from the Junta Federal de Cortes y Superiores Tribunales de Justicia de las Provincias Argentinas
26 June	Mr Javier Delgado Barrio, President of the Tribunal Supremo and of the Consejo General del Poder Judicial, Spain
7-9 July	Mr Juan José Calle y Calle, Presidente del Tribunal de Justicia del Acuerdo de Cartagena (Andean Pact)
8 July	Delegation from the European Socialist Party Group of the European Parliament
9 July	Sir Anthony Mason, Chancellor of New South Wales University, Australia

10 September	Mr Luis Javier Grisanti, Venezuelan Ambassador to the European Union in Belgium and Luxembourg
17 September	Folketingets Europaudvalg of the Danish Parliament
17-18 September	Delegation from the Verfassungsgerichtshof of the Republic of Austria
30 September	Committee on Civil Liberties and Internal Affairs of the European Parliament
2 October	Mr Marc Fischbach, Minister for Justice of the Grand Duchy of Luxembourg
14 October	Delegation from the Supreme Court of Hungary
15-16 October	Delegation from COMESA (Common Market for Eastern and Southern Africa)
16 October	Mr Hermann Leeb, Bayern's Staatsminister der Justiz (Minister for Justice of Bavaria)
17 October	Mr Ruprecht Vondran, Chairman of the ECSC Consultative Committee, with Vice-Presidents Mr Pierre Diederich and Mr Marcel Detaille and the Secretary of the Committee Mr Adolphe Faber
24 October	Mr Arnold Koller, President of the Swiss Confederation, accompanied by HE Mr Thomas Wernly, Swiss Ambassador to the Grand Duchy of Luxembourg, and Mr Martin von Walterskirchen
12 November	Delegation from the Giunta per gli Affari Europei del Senato, Italy
12 November	Delegation from Riksdagens EU-Nämnd, Sweden
21 November	HE Mr Clay Constantinou, United States Ambassador to Luxembourg
24-25 November	Judicial Study Visit

26 November	Delegation from the Select Committee on European Legislation, House of Commons, United Kingdom
2 December	Delegation from the Committee on Legal Affairs and Citizens' Rights of the European Parliament
12 December	Delegation from the Comité Europeo de Postulantes de Justicia, Spain

B - Study visits to the Court of Justice and the Court of First Instance in 1997

(Number of visitors)

	National judiciary[1]	Lawyers, legal advisers, trainees	Community law lecturers, teachers[2]	Diplomats, parliamentarians, political groups, national civil servants	Students, trainees, EC/EP	Members of professional associations	Others	TOTAL
B	16	8	–	–	267	34	22	347
DK	17	12	5	–	61	15	38	148
D	331	336	9	141	749	41	269	1 876
EL	66	66	3	–	45	–	–	180
E	24	104	–	–	297	–	–	425
F	52	145	30	224	370	118	136	1 075
IRL	8	40	2	–	48	–	–	98
I	59	11	2	55	229	17	33	406
L	19	–	–	1	–	–	–	20
NL	37	9	–	–	199	–	–	245
A	12	64	128	98	177	–	20	499
P	14	–	1	6	32	–	–	53
FIN	19	88	40	36	47	63	–	293
S	49	48	16	86	31	123	–	353
UK	50	15	1	8	719	15	123	931
Third countries	194	174	40	220	755	103	1	1 487
Mixed groups	–	52	–	83	555	30	–	720
TOTAL	967	1 172	277	958	4 581	559	642	9 156

[1] The number of magistrates of the Member States who participated at the meetings and judicial study visits organised by the Court of Justice is included under this heading. In 1997, the figures were as follows: Belgium: 10; Denmark: 8; Germany: 24; Greece: 8; Spain: 24; France: 24; Ireland: 8; Italy: 24; Luxembourg: 4; Netherlands: 8; Austria: 8; Portugal: 8; Finland: 8; Sweden: 8; United Kingdom: 24.

[2] Other than teachers accompanying groups of students.

(continued)

Study visits to the Court of Justice and the Court of First Instance in 1997

(Number of groups)

	National judiciary [1]	Lawyers, legal advisers, trainees	Community law lecturers, teachers [2]	Diplomats, parliamentarians, political groups, national civil servants	Students, trainees, EC/EP	Members of professional associations	Others	TOTAL
B	2	1	–	–	9	1	2	15
DK	3	1	1	–	2	1	2	10
D	12	11	1	7	22	2	7	62
EL	4	6	2	–	4	–	–	16
E	2	7	–	–	12	–	–	21
F	5	9	1	6	13	2	4	40
IRL	2	1	1	–	2	–	–	6
I	3	2	2	3	9	1	1	21
L	2	–	–	1	–	–	–	3
NL	3	1	–	–	7	–	–	11
A	6	3	6	6	5	–	1	27
P	6	–	1	1	4	–	–	12
FIN	4	5	5	2	3	4	–	23
S	5	4	1	6	1	8	–	25
UK	4	2	1	1	24	1	4	37
Third countries	12	7	2	10	27	5	1	64
Mixed groups	–	3	–	4	13	1	–	21
TOTAL	75	63	24	47	157	26	22	414

[1] The last line under this heading includes, among others, the judicial meetings and study visits.

[2] Other than teachers accompanying student groups.

C - Formal sittings in 1997

In 1997 the Court held four formal sittings:

15 April	Formal sitting in memory of Mr Heinrich Kirschner, Judge at the Court of First Instance
11 June	Formal sitting on the occasion of the entry into office of Mr Jörg Pirrung as Judge at the Court of First Instance
6 October	Formal sitting on the occasion of the departure of Judge Constantinos N. Kakouris and of Advocate General Carl Otto Lenz and of the entry into office of Mr Krateros M. Ioannou as Judge and of Mr Siegbert Alber as Advocate General
18 December	Formal sitting on the occasion of the departure of Advocate General Michael Bendik Elmer and of the entry into office of Mr Jean Mischo as Advocate General

Chapter IV

Tables and statistics

A - Proceedings of the Court of Justice

1. Synopsis of the judgments delivered by the Court of Justice in 1997

Case	Date	Parties	Subject-matter

AGRICULTURE

C-255/95	9 January 1997	S. Agri SNC and Others v Regione Veneto	Aid to promote the extensification of agricultural production — Calculation of reduction in output — Reference period
C-273/95	16 January 1997	Impresa Agricola Buratti Leonardo, Pierluigi e Livio v Tabacchicoltori Associati Veneti Soc. Coop. arl (TAV)	Common organization of the market — Raw tobacco — Commission Regulation (EEC) No 3478/92 — Premium system for raw tobacco — Calculation of the premium to be paid by a group of producers to the individual producer
C-153/95	23 January 1997	ANDRE en Co. NV v Belgian State	Monetary compensatory amounts — Exemption
C-463/93	23 January 1997	Katholische Kirchengemeinde St. Martinus Elten v Landwirtschaftskammer Rheinland	Additional levy on milk — Calculation of the reference quantity — Taking into account of a quantity produced in another Member State
C-314/95	23 January 1997	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil its obligations — Failure to transpose directives concerning public health and animal health into national law
Cases C-9/95, C-23/95 and C-156/95	4 February 1997	Kingdom of Belgium and Federal Republic of Germany v Commission of the European Communities	Bananas — Common organization of the markets — Natural disaster — Import quota — Adjustment and allocation

Case	Date	Parties	Subject-matter
Cases C-71/95, C-155/95 and C-271/95	4 February 1997	Kingdom of Belgium v Commission of the European Communities	Bananas — Common organization of the markets — Import quota — Accession of new Member States — Transitional measures
C-109/95	13 March 1997	Astir AE v Elliniko Dimosio	Export refunds for agricultural products — Loss of goods in transit by reason of *force majeure* — Variable refund
C-272/95	15 April 1997	Bundesanstalt für Landwirtschaft und Ernährung v Deutsches Milch-Kontor GmbH	Aid for skimmed-milk powder — Systematic inspections — Costs of inspections
C-22/94	15 April 1997	The Irish Farmers Association and Others v Minister for Agriculture, Food and Forestry, Ireland and Attorney General	Additional milk levy — Reference quantity — Temporary withdrawal — Conversion — Definitive reduction — Loss of compensation
C-27/95	15 April 1997	Woodspring District Council v Bakers of Nailsea Ltd	Ante-mortem health inspections in slaughterhouses — Validity — Role of official veterinarians — Charges passed on to slaughterhouse operators
C-138/95 P	17 April 1997	Campo Ebro Industrial SA, Levantina Agrícola Industrial SA (LAISA) and Cerestar Ibérica SA v Council of the European Union	Appeal — Sugar — Accession of the Kingdom of Spain — Alignment of sugar prices — Isoglucose production
C-15/95	17 April 1997	EARL de Kerlast v Union Régionale de Coopératives Agricoles (Unicopa) and Coopérative du Trieux	Additional levy on milk — Reference quantity — Conditions governing transfer — Temporary transfer — Joint venture company between producers

Case	Date	Parties	Subject-matter
C-223/95	7 May 1997	Firma A. Moksel AG v Hauptzollamt Hamburg-Jonas	Agriculture — Export refunds — Cattle imported from the former German Democratic Republic into the Federal Republic of Germany under the transit procedure — Impact of German reunification on the origin and status of goods in free circulation
C-69/94	29 May 1997	French Republic v Commission of the European Communities	Milk — Additional levy scheme — Detailed rules — Decision 93/673/EC — Powers of the Commission
C-105/94	5 June 1997	Ditta Angelo Celestini v Saar-Sekskellerei Faber GmbH & Co. KG	Common organization of the market in wine — Control of wines from another Member State — Method of testing oxygen isotopes in water using abundance ratio mass spectrometry
C-138/96	12 June 1997	Commission of the European Communities v Federal Republic of Germany	Failure by a Member State to fulfil its obligations — Directive 92/116/EEC — Failure to transpose within the prescribed period
C-285/94	25 June 1997	Italian Republic v Commission of the European Communities	Commission Regulation (EC) No 1840/94 of 27 July 1994 fixing the olive yields and oil yields for the marketing year 1993/94 — Action for annulment
C-183/95	17 July 1997	Affish BV v Rijksdienst voor de Keuring van Vee en Vlees	Veterinary inspection — Protective measure — Principle of proportionality — Principle of the protection of legitimate expectations — Validity of Commission Decision 95/119/EC

Case	Date	Parties	Subject-matter
C-334/95	17 July 1997	Krüger GmbH & Co. KG v Hauptzollamt Hamburg-Jonas	Export refunds — Milk products — Discrimination — Assessment of validity — National court — Interim relief — Community Customs Code
C-354/95	17 July 1997	The Queen v Minister for Agriculture, Fisheries and Food, *ex parte*: National Farmers' Union and Others	Common agricultural policy — Regulation (EEC) No 3887/92 — Integrated administration and control system for certain Community aid schemes — Implementing rules — Interpretation and validity of penalties
C-139/96	16 September 1997	Commission of the European Communities v Federal Republic of Germany	Failure by a State to fulfil its obligations — Directives 93/48/EEC, 93/49/EEC and 93/61/EEC — Failure to transpose within the period prescribed
C-208/96	2 October 1997	Commission of the European Communities v Kingdom of Belgium	Failure of Member State to fulfil its obligations — Directive 92/119/EEC — Failure to transpose
C-152/95	9 October 1997	Michel Macon and Others v Préfet de l'Aisne	Additional levy on milk — Reference quantity — Application for a grant of compensation for definitive discontinuation of milk production — Refusal
C-165/95	16 October 1997	The Queen v Ministry of Agriculture, Fisheries and Food, *ex parte*: Benjamin Lay, Donald Gage and David Gage	Additional levy on milk — Special reference quantity — Transfer of part of a mixed holding — Apportionment of the quota between transferor and transferee

Case	Date	Parties	Subject-matter
C-150/95	23 October 1997	Portuguese Republic v Commission of the European Communities	Common agricultural policy — Regulation (EC) No 307/95 — Oil seeds — Final regional reference amounts — Exclusion of Portuguese producers from the benefit of compensatory adjustments for overshoots and non-utilization in the Community as a whole — Action for annulment
C-164/96	6 November 1997	Regione Piemonte v Saiagricola SpA	Regulation (EEC) No 797/85 — Different treatment of individual farmers and legal persons
C-244/95	20 November 1997	P. Moskof AE v Ethnikos Organismos Kapnou	Agriculture — Raw tobacco — Monetary measures — Agricultural conversion rates
C-356/95	27 November 1997	Matthias Witt v Amt für Land- und Wasserwirtschaft	Common agricultural policy — Regulation (EEC) No 1765/92 — Support system for producers of certain arable crops — Establishment of production regions — Obligation to indicate the criteria used — Relevance of soil fertility
C-369/95	27 November 1997	Somalfruit SpA and Camar Spa v Ministero delle Finanze and Ministero del Commercio con l'Estero	Bananas — Common organization of the markets — Import arrangements — ACP States — Somalia — Validity of Council Regulation (EEC) No 404/93 and Commission Regulations (EEC) Nos 1442/93 and 1443/93

Case	Date	Parties	Subject-matter
C-316/96	16 December 1997	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil its obligations — Directives 93/53/EEC, 93/54/EEC, 93/113/EC and 93/114/EC — Failure to transpose within the prescribed periods

APPROXIMATION OF LAWS

C-181/95	23 January 1997	Biogen Inc. v Smithkline Beecham Biologicals SA	Council Regulation (EEC) No 1768/92 — Supplementary protection certificate for medicinal products — Refusal by the holder of the marketing authorization to provide a copy to the applicant for the certificate
C-205/96	6 February 1997	Commission of the European Communities v Kingdom of Belgium	Directive 92/42/EEC on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels — Non-transposition
C-135/96	20 February 1997	Commission of the European Communities v Kingdom of Belgium	Failure by a Member State to fulfil its obligations — Directive 91/659/EEC — Failure to implement
C-13/96	20 March 1997	Bic Benelux SA v Belgian State	Obligation to give prior notification under Directive 83/189/EEC — Technical regulations and specifications — Marking of products subject to environmental tax

Case	Date	Parties	Subject-matter
C-294/96	20 March 1997	Commission of the European Communities v Kingdom of Belgium	Failure by a Member State to fulfil its obligations — Failure to transpose Directive 93/42/EEC — Medical devices
Cases C-282/96 and C-283/96	29 May 1997	Commission of the European Communities v French Republic	Failure to fulfil obligations — Failure to transpose Directives 91/157/EEC and 93/86/EEC
Cases C-313/96, C-356/96 and C-358/96	29 May 1997	Commission of the European Communities v Kingdom of Belgium	Failure by a Member State to fulfil its obligations — Failure to transpose Directives 91/410/EEC, 93/21/EEC and 93/90/EEC
C-392/95	10 June 1997	European Parliament v Council of the European Union	Nationals of third countries — Visas — Legislative procedure — Consultation of the European Parliament
C-110/95	12 June 1997	Yamanouchi Pharmaceutical Co. Ltd v Comptroller-General of Patents, Designs and Trade Marks	Council Regulation (EEC) No 1768/92 — Supplementary protection certificate for medicinal products — Scope of Article 19
C-17/96	17 July 1997	Badische Erfrischungs-Getränke GmbH & Co. KG v Land Baden-Württemberg	Natural mineral water — Definition — Water favourable to health
C-279/94	16 September 1997	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil its obligations — Obligation to give prior notification under Directive 83/189/EEC

Case	Date	Parties	Subject-matter
C-251/95	11 November 1997	SABEL BV v Puma AG, Rudolf Dassler Sport	Directive 89/104/EEC — Approximation of laws relating to trade marks — Likelihood of confusion which includes the likelihood of association
C-236/96	13 November 1997	Commission of the European Communities v Federal Republic of Germany	Failure to fulfil obligations — Failure to transpose Directives 91/157/EEC and 93/86/EEC
C-137/96	27 November 1997	Commission of the European Communities v Federal Republic of Germany	Failure by a Member State to fulfil its obligations — Non-transposition of Directive 91/414/EEC
C-190/97	11 December 1997	Commission of the European Communities v Kingdom of Belgium	Failure to fulfil obligations — Failure to transpose Directives 93/72/EEC and 93/101/EC
C-263/96	18 December 1997	Commission of the European Communities v Kingdom of Belgium	Failure by a Member State to fulfil its obligations — Directive 89/106/EEC — Construction products

COMMERCIAL POLICY

C-124/95	14 January 1997	The Queen *ex parte*: Centro-Com Srl v HM Treasury and Bank of England	Foreign and security policy — Common commercial policy — Blocking of funds — Sanctions against the Republics of Serbia and Montenegro
C-93/96	29 May 1997	Indústria e Comércio Têxtil SA (ICT) v Fazenda Pública	Anti-dumping duty — Council Regulation (EEC) No 738/92 — Free-at-frontier price — Increase in the event of deferred payment

Case	Date	Parties	Subject-matter
C-26/96	29 May 1997	Rotexchemie International Handels GmbH & Co. v Hauptzollamt Hamburg-Waltershof	Dumping — Potassium permanganate — Reference country
C-362/95 P	16 September 1997	Blackspur DIY Ltd and Others v Council of the European Union and Commission of the European Communities	Appeal — Non-contractual liability of the Community — Causal link — Anti-dumping duties — Commission Regulation No 3052/88 and Council Regulation No 725/89

COMPANY LAW

C-311/96	29 May 1997	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Directive 93/38/EEC — Failure to transpose within the prescribed period
C-312/96	29 May 1997	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Directive 93/36/EEC — Failure to transpose within the prescribed period
C-43/97	17 July 1997	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil its obligations — Directive 93/36/EEC — Failure to transpose within the prescribed period
C-54/96	17 September 1997	Dorsch Consult Ingenieurgesellschaft mbH v Bundesbaugesellschaft Berlin mbH	Meaning of "national court or tribunal" for the purposes of Article 177 of the Treaty — Procedures for the award of public service contracts — Directive 92/50/EEC — National review body

Case	Date	Parties	Subject-matter
C-304/96	16 October 1997	Hera SpA v Unità Sanitaria Locale N° 3 - Genovese (USL) and Others	Directive 93/37/EEC — Public procurement — Abnormally low tenders
C-97/96	4 December 1997	Verband Deutscher Daihatsu-Händler eV v Daihatsu Deutschland GmbH	Company law — Annual accounts — Penalties for non-publication — Article 6 of the First Directive 68/151/EEC
C-104/96	16 December 1997	Coöperatieve Rabobank "Vecht en Plassengebied" BA v Erik Aarnoud Minderhoud (receiver in bankruptcy of Mediasafe BV)	Company law — First Directive 68/151/EEC — Scope — Representation of a company — Conflict of interests — Lack of authority of a director to enter into a binding transaction on behalf of the company
C-341/96	16 December 1997	Commission of the European Communities v Federal Republic of Germany	Failure by a Member State to fulfil its obligations — Directive 93/36/EEC — Failure to transpose within the prescribed period
C-402/96	18 December 1997	European Information Technology Observatory v Europäische Wirtschaftliche Interessenvereinigung	European Economic Interest Grouping — Business name
C-5/97	18 December 1997	Ballast Nedam Groep NV v Belgian State	Freedom to provide services — Public-works contracts — Registration of contractors — Entity to be taken into account

COMPETITION

C-128/95	20 February 1997	Fontaine SA and Others v Aqueducs Automobiles SARL	Competition — Vehicle distribution — Parallel imports — Regulation (EEC) No 123/85 — Applicability as against third parties — Independent reseller — Definition of "new vehicle" and "second-hand vehicle"
C-264/95 P	11 March 1997	Commission of the European Communities v Union Internationale des Chemins de Fer (UIC)	Appeal — Competition — Transport by rail — Legal basis for a decision — Regulation No 1017/68 — Scope
C-282/95 P	18 March 1997	Guérin Automobiles v Commission of the European Communities	Appeal — Competition — Complaint — Action for failure to act — Notification under Article 6 of Regulation No 99/63/EEC — Definition of a position terminating the failure to act — Cross-appeal limited to costs
C-343/95	18 March 1997	Diego Calì & Figli Srl v Servizi Ecologici Porto di Genova SpA (SEPG)	Harbour company — Prevention of pollution — Legal monopoly — Abuse of a dominant position
C-39/96	24 April 1997	Koninklijke Vereeniging ter Bevordering van de Belangen des Boekhandels v Free Record Shop BV and Free Record Shop Holding NV	Article 85 of the EC Treaty — Article 5 of Council Regulation No 17 — Provisional validity of agreements pre-dating Regulation No 17 and notified to the Commission — Provisional validity of agreements amended after notification

Case	Date	Parties	Subject-matter
C-41/96	5 June 1997	VAG-Händlerbeirat eV v SYD-Consult	Article 85(3) of the EC Treaty — Regulation (EEC) No 123/85 — Selective distribution system — "Imperviousness" of the system as a precondition for its enforceability against third parties
C-219/95 P	17 July 1997	Ferriere Nord SpA v Commission of the European Communities	Competition — Infringement of Article 85 of the EEC Treaty
Cases C-359/95 P and C-379/95 P	11 November 1997	Commission of the European Communities and French Republic v Ladbroke Racing Ltd	Competition — Articles 85, 86 and 90 of the EC Treaty — Rejection of a complaint concerning both State measures and private conduct — Applicability of Articles 85 and 86 to undertakings complying with national legislation

CONVENTION ON JURISDICTION/ENFORCEMENT OF JUDGMENTS

C-383/95	9 January 1997	Petrus Wilhelmus Rutten v Cross Medical Ltd	Brussels Convention — Article 5(1) — Courts for the place of performance of the contractual obligation — Contract of employment — Place where the employee habitually carries out his work — Work performed in more than one country
C-106/95	20 February 1997	Mainschiffahrts-Genossenschaft Eg (MSG) v Les Gravières Rhénanes SARL	Brussels Convention — Agreement on the place of performance of the obligation in question — Agreement conferring jurisdiction

Case	Date	Parties	Subject-matter
C-220/95	27 February 1997	Antonius van den Boogaard v Paula Laumen	Brussels Convention — Interpretation of Article 1, second paragraph — Definition of rights in property arising out of a matrimonial relationship — Definition of matters relating to maintenance
C-295/95	20 March 1997	Jackie Farrell v James Long	Brussels Convention — Article 5(2) — Definition of "maintenance creditor"
C-269/95	3 July 1997	Francesco Benincasa v Dentalkit Srl	Brussels Convention — Concept of consumer — Agreement conferring jurisdiction
C-163/95	9 October 1997	Elsbeth Freifrau von Horn v Kevin Cinnamond	Brussels Convention — Article 21 — *Lis pendens* — San Sebastian Accession Convention — Article 29 — Transitional provisions

EAEC

C-357/95 P	11 March 1997	Empresa Nacional de Urânio SA (ENU) v Commission of the European Communities	Appeal — EAEC — Supply — Right of option and exclusive right of the Euratom Supply Agency to conclude contracts for the supply of ores, source materials and special fissile materials — Infringement of the rules of the Treaty — Community preference — Principles of good faith and legitimate expectations — Non-contractual liability

Case	Date	Parties	Subject-matter
C-21/96	9 October 1997	Commission of the European Communities v Kingdom of Spain	Failure by a Member State to fulfil its obligations — Council Directive 84/466/Euratom

ECSC

C-177/96	16 October 1997	Belgian State v Banque Indosuez and Others	Dumping — Sheets or plates, of iron or steel, originating in Yugoslavia — Declaration of independence of the Former Yugoslav Republic of Macedonia — Legal certainty

ENVIRONMENT AND CONSUMERS

C-300/95	29 May 1997	Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland	Failure by a Member State to fulfil its obligations — Article 7(e) of Directive 85/374/EEC — Incorrect implementation — Defence precluding liability for defective products — State of scientific and technical knowledge
C-357/96	29 May 1997	Commission of the European Communities v Kingdom of Belgium	Failure by a Member State to fulfil its obligations — Directive 94/15/EC — Failure to transpose within the prescribed period
C-107/96	5 June 1997	Commission of the European Communities v Kingdom of Spain	Failure to fulfil obligations — Directive 91/156/EEC
C-223/96	5 June 1997	Commission of the European Communities v French Republic	Failure to fulfil obligations — Directive 91/156/EEC

Case	Date	Parties	Subject-matter
Cases C-304/94, C-330/94, C-342/94 and C-224/95	25 June 1997	Euro Tombesi, Adino Tombesi and Others	Waste — Definition — Council Directives 91/156/EEC and 91/689/EEC — Council Regulation (EEC) No 259/93
C-329/96	26 June 1997	Commission of the European Communities v Hellenic Republic	Failure to fulfil obligations — Failure to transpose Directive 92/43/EEC
C-83/96	17 September 1997	Provincia Autonoma di Trento and Ufficio del Medico Provinciale di Trento v Dega di Depretto Gino Snc	Consumer protection — Labelling of foodstuffs — Council Directive 79/112/EEC
Case C-259/95	2 October 1997	European Parliament v Council of the European Union	Annulment of Council Decision No 95/184/EC — Prerogatives of the Parliament
C-225/96	4 December 1997	Commission of the European Communities v Italian Republic	Failure to fulfil obligations — Failure to transpose Directive 79/923/EEC — Quality required of shellfish waters
C-83/97	11 December 1997	Commission of the European Communities v Federal Republic of Germany	Failure to fulfil obligations — Failure to transpose Directive 92/43/EEC
C-129/96	18 December 1997	Inter-Environnement Wallonie ASBL v Région Wallonne	Directive 91/156/EEC — Period for transposition — Effects — Definition of waste

Case	Date	Parties	Subject-matter
EXTERNAL RELATIONS			
C-171/95	23 January 1997	Recep Tetik v Land Berlin	EEC-Turkey Association Agreement — Decision of the Association Council — Freedom of movement for workers — Extension of a residence permit — Voluntary termination of a contract of employment
C-177/95	27 February 1997	Ebony Maritime SA and Loten Navigation Co. Ltd v Prefetto della Provincia di Brindisi and Others	Sanctions against the Federal Republic of Yugoslavia — Conduct in international waters — Confiscation of a vessel and its cargo
C-351/95	17 April 1997	Selma Kadiman v Freistaat Bayern	EEC-Turkey Association Agreement — Decision of the Association Council — Free movement of workers — Member of a worker's family — Extension of residence permit — Conditions — Family unity — Legal residence for three years — Calculation in the event of interruptions

Case	Date	Parties	Subject-matter
C-310/95	22 April 1997	Road Air BV v Inspecteur der Invoerrechten en Accijnzen	Association of overseas countries and territories — Import into the Community of goods originating in a non-member country but in free circulation in an overseas country or territory — Article 227(3) of the EC Treaty — Part Four of the EC Treaty (Articles 131 to 136a) — Council Decisions 86/283/EEC, 91/110/EEC and 91/482/EEC
C-395/95 P	22 April 1997	Geotronics SA v Commission of the European Communities	PHARE Programme — Restricted invitation to tender — Action for annulment — Admissibility — EEA Agreement — Product origin — Discrimination — Action for damages
C-386/95	29 May 1997	Süleyman Eker v Land Baden-Württemberg	EEC-Turkey Association Agreement — Decision of the Association Council — Freedom of movement for workers — Renewal of residence permit after one year's legal employment — Employment with two employers in succession
C-285/95	5 June 1997	Suat Kol v Land Berlin	EEC-Turkey Association Agreement — Decision of the Association Council — Freedom of movement for workers — Legal employment — Periods of employment under a residence permit fraudulently obtained

Case	Date	Parties	Subject-matter
C-97/95	17 July 1997	Pascoal & Filhos Ld.ª v Fazenda Pública	Customs duties — Methods of administrative cooperation — Procedures for verifying EUR.1 certificates — Post-clearance recovery of customs duties — Person responsible for the customs debt
C-36/96	30 September 1997	Faik Günaydin and Others v Freistaat Bayern	EEC-Turkey Association Agreement — Decision of the Association Council — Freedom of movement for workers — Meaning of "duly registered as belonging to the labour force of a Member State" and "legal employment" — Temporary and conditional work and residence permits — Application for extension of residence permit — Abuse of rights
C-98/96	30 September 1997	Kasim Ertanir v Land Hessen	EEC-Turkey Association Agreement — Decision of the Association Council — Freedom of movement for workers — Meaning of "duly registered as belonging to the labour force of a Member State" and "legal employment" — Residence permit restricted to temporary employment as a specialist chef for a specific employer — Periods not covered by a residence and/or work permit — Calculation of periods of employment

Case	Date	Parties	Subject-matter

FREE MOVEMENT OF GOODS

C-358/95	13 March 1997	Tommaso Morellato v Unità Sanitaria Locale (USL) No 11 di Pordenone	Articles 30 and 36 of the Treaty — Composition of bread — Maximum moisture content, minimum ash content and prohibition of certain ingredients
C-103/96	13 March 1997	Directeur Général des Douanes et Droits Indirects v Eridania Beghin-Say SA	Customs duties — Inward processing arrangements — Equivalent compensation system — Cane sugar and beet sugar
C-352/95	20 March 1997	Phytheron International SA v Jean Bourdon SA	Articles 30 and 36 of the EC Treaty — Trade Mark Directive — Plant health product — Parallel import — Exhaustion
C-105/95	15 April 1997	Paul Daut GmbH & Co. KG v Oberkreisdirektor des Kreises Gütersloh	Mechanically recovered meat — Heat treatment — Health conditions for production and marketing — Intra-Community trade
Cases C-274/95 to C-276/95	17 April 1997	Ludwig Wünsche & Co. v Hauptzollamt Hamburg-Jonas	Common Customs Tariff — Combined Nomenclature — Potato starch
Cases C-321/94 to C-324/94	7 May 1997	Jacques Pistre and Others	Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs — Articles 30 and 36 of the EC Treaty — Domestic legislation on the use of the description "mountain" for agricultural products and foodstuffs

Case	Date	Parties	Subject-matter
C-405/95	15 May 1997	Bioforce GmbH v Oberfinanzdirektion München	Common Customs Tariff — Heading 3004 — Echinacea — Medicament
C-329/95	29 May 1997	VAG Sverige AB	Vehicle registration — National exhaust emission certificate — Compatibility with Directive 70/156/EEC
C-105/96	17 June 1997	Codiesel - Sociedade de Apoio Técnico à Indústria Ld.ª v Conselho Técnico Aduaneiro	Common Customs Tariff — Tariff headings — Electrical apparatus constituting an "uninterruptible power supply" — Classification in the Nomenclature of the Common Customs Tariff
C-164/95	17 June 1997	Fábrica de Queijo Eru Portuguesa Ld.ª v Alfândega de Lisboa (Tribunal Técnico Aduaneiro de 2ª Instância)	Common Customs Tariff — Tariff classification — Grated cheese
C-114/96	25 June 1997	René Kieffer and Romain Thill	Free movement of goods — Quantitative restrictions — Measures having equivalent effect — Regulation (EEC) No 3330/91 — Statistics on the trading of goods — Detailed declaration of all intra-Community trading — Compatibility with Articles 30 and 34 of the EC Treaty
C-368/95	26 June 1997	Vereinigte Familiapress Zeitungsverlags- und vertriebs GmbH v Heinrich Bauer Verlag	Measures having equivalent effect — Distribution of periodicals — Competition games — National prohibition

Case	Date	Parties	Subject-matter
C-316/95	9 July 1997	Generics BV v Smith Kline & French Laboratories Ltd	Articles 30 and 36 of the EC Treaty — Patent — Registration of medicinal products — Infringement
C-130/95	17 July 1997	Bernd Giloy v Hauptzollamt Frankfurt am Main-Ost	Article 177 — Jurisdiction of the Court — National legislation adopting Community provisions — Community Customs Code — Appeal — Suspension of a customs decision — Provision of security
C-142/96	17 July 1997	Hauptzollamt München v Wacker Werke GmbH & Co. KG	Outward processing relief — Total or partial relief from import duties — Determination of value of compensating products and temporary export goods — Reasonable means of determining value
C-90/94	17 July 1997	Haahr Petroleum Ltd v Åbenrå Havn and Others	Maritime transport — Goods duty — Import surcharge
Cases C-114/95 and C-115/95	17 July 1997	Texaco A/S v Middelfart Havn and Others Olieselskabet Danmark amba v Trafikministeriet and Others	Transport by sea — Goods duty — Import surcharge
C-242/95	17 July 1997	GT-Link A/S v De Danske Statsbaner (DSB)	Transport by sea — Harbour duties on shipping and goods — Import surcharge — Abuse of a dominant position
C-347/95	17 September 1997	Fazenda Pública v União das Cooperativas Abastecedoras de Leite de Lisboa, URCL (UCAL)	National charge on the marketing of dairy products — Charge having equivalent effect — Internal taxation — Turnover tax

Case	Date	Parties	Subject-matter
C-28/96	17 September 1997	Fazenda Pública v Fricarnes SA	National charges on the marketing of meat — Charge having equivalent effect — Internal taxation — Turnover tax
C-237/96	25 September 1997	Eddy Amelynck and Others v Transport Amelynck SPRL	Free movement of goods — Community transit — Proof of the Community status of goods
C-67/95	9 October 1997	Rank Xerox Manufacturing (Nederland) BV v Inspecteur der Invoerrechten en Accijnzen	Common Customs Tariff — Tariff headings — Copiers and fax machines — Classification in the combined nomenclature
C-157/94	23 October 1997	Commission of the European Communities v Kingdom of the Netherlands	Failure by a Member State to fulfil its obligations — Exclusive rights to import electricity for public distribution
C-158/94	23 October 1997	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil its obligations — Exclusive rights to import and export electricity
C-159/94	23 October 1997	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Exclusive rights to import and export gas and electricity
C-160/94	23 October 1997	Commission of the European Communities v Kingdom of Spain	Failure of a Member State to fulfil its obligations — Exclusive rights to import and export electricity
C-189/95	23 October 1997	Harry Franzén	Articles 30 and 37 of the EC Treaty — Monopoly on the retail of alcoholic beverages

Case	Date	Parties	Subject-matter
C-337/95	4 November 1997	Parfums Christian Dior SA and Parfums Christian Dior BV v Evora BV	Trade mark rights and copyright — Action brought by the owner of those rights to stop a reseller advertising the further commercialization of goods — Perfume
C-261/96	6 November 1997	Conserchimica Srl v Amministrazione delle Finanze dello Stato	Customs duty — Post-clearance recovery of import duties — Limitation period
C-201/96	6 November 1997	Laboratoires de Thérapeutique Moderne (LTM) v Fonds d'Intervention et de Régularisation du Marché du Sucre (FIRS)	Refund for use of sugar in the manufacture of certain chemical products — Multivitamin products and products containing amino acids — Tariff classification
C-349/95	11 November 1997	Frits Loendersloot, trading as F. Loendersloot Internationale Expeditie v George Ballantine & Son Ltd and Others	Article 36 of the EC Treaty — Trade mark rights — Relabelling of whisky bottles
C-338/95	20 November 1997	Wiener SI GmbH v Hauptzollamt Emmerich	Common Customs Tariff — Tariff heading — Nightdress
C-265/95	9 December 1997	Commission of the European Communities v French Republic	Free movement of goods — Agricultural products — Trade barriers resulting from actions by private individuals — Obligations of the Member States
C-143/96	9 December 1997	Leonhard Knubben Speditions GmbH v Hauptzollamt Mannheim	Common Customs Tariff — "Crushed" peppers within the meaning of subheading 0904 20 90 of the Combined Nomenclature

Case	Date	Parties	Subject-matter
C-325/96	16 December 1997	Fábrica de Queijo Eru Portuguesa Ld.ª v Subdirector-Geral das Alfândegas	Inward processing relief arrangements — Special arrangements for milk sector products — Extension of the time-limit for export
C-382/95	18 December 1997	Techex Computer + Grafik Vertriebs GmbH v Hauptzollamt München	Common Customs Tariff — Tariff headings — Tariff classification of a "Vista" board electronic component intended for image processing and capable of being used as a graphics card in a computer — Classification in the Combined Nomenclature

FREEDOM OF MOVEMENT FOR PERSONS

C-134/95	16 January 1997	Unità Socio-Sanitaria Locale No 47 di Biella (USSL) v Istituto Nazionale per l'Assicurazione contro gli Infortuni sul Lavoro (INAIL)	Workers — Labour procurement service — Statutory monopoly
C-340/94	30 January 1997	E.J.M. de Jaeck v Staatssecretaris van Financiën	Social security for migrant workers — Determination of the legislation applicable — Definition of employed and self-employed
Cases C-4/95 and C-5/95	30 January 1997	Fritz Stöber (C-4/95) and José Manuel Piosa Pereira (C-5/95) v Bundesanstalt für Arbeit	Social security — Council Regulation (EEC) No 1408/71 — Persons covered
C-221/95	30 January 1997	Institut National d'Assurances Sociales pour Travailleurs Indépendants (Inasti) v Claude Hervein and Hervillier SA	Social security for migrant workers — Determination of the legislation applicable — Definition of employed and self-employed

Case	Date	Parties	Subject-matter
Cases C-88/95, C-102/95 and C-103/95	20 February 1997	Bernardina Martínez Losada and Others v Instituto Nacional de Empleo (Inem) and Others	Articles 48 and 51 of the EC Treaty — Articles 4, 48 and 67 of Regulation (EEC) No 1408/71 — Unemployment benefit for persons over 52 years of age
C-344/95	20 February 1997	Commission of the European Communities v Kingdom of Belgium	Failure by a Member State to fulfil its obligations — Article 48 of the EC Treaty — Directive 68/360/EEC
C-59/95	27 February 1997	Francisco Bastos Moriana and Others v Bundesanstalt für Arbeit	Social security for migrant workers — Benefits for dependent children of pensioners and for orphans
C-131/95	13 March 1997	P.J. Huijbrechts v Commissie voor de Behandeling van Administratieve Geschillen ingevolge artikel 41 der Algemene Bijstandswet in de Provincie Noord-Brabant	Social security — Wholly unemployed frontier worker — Unemployment benefits in the competent Member State — Regulation (EEC) No 1408/71
C-96/95	20 March 1997	Commission of the European Communities v Federal Republic of Germany	Failure by a Member State to fulfil its obligations — Right of residence — Council Directives 90/364/EEC and 90/365/EEC
C-233/94	13 May 1997	Federal Republic of Germany v European Parliament and Council of the European Union	Directive on deposit-guarantee schemes — Legal basis — Obligation to state reasons — Principle of subsidiarity — Proportionality — Consumer protection — Supervision by the Member State of origin

Case	Date	Parties	Subject-matter
C-250/95	15 May 1997	Futura Participations SA and Others v Administration des Contributions	Article 52 of the EEC Treaty — Freedom of establishment for companies — Taxation of a branch's income — Apportionment of income
C-14/96	29 May 1997	Paul Denuit	Directive 89/552/EEC — Telecommunications — Television broadcasting — Jurisdiction over broadcasters
Cases C-64/96 and C-65/96	5 June 1997	Land Nordrhein-Westfalen v Kari Uecker Vera Jacquet v Land Nordrhein-Westfalen	Freedom of movement for workers — Right of a spouse of a Community national who has the nationality of a non-member country to be employed — Situation purely internal to a Member State
C-398/95	5 June 1997	Sindesmos ton en Elladi Touristikon kai Taxidiotikon Grafion v Ypourgos Ergasias	Freedom to provide services
C-56/96	5 June 1997	VT4 Ltd v Vlaamse Gemeenschap	Free movement of services — Television broadcasting — Establishment — Evasion of domestic legislation
C-151/96	12 June 1997	Commission of the European Communities v Ireland	Failure by a Member State to fulfil its obligations — Registration of vessels other than fishing vessels — Nationality requirement for the owner
C-266/95	12 June 1997	Pascual Merino García v Bundesanstalt für Arbeit	Social security for migrant workers — Regulation (EEC) No 1408/71 — Persons covered — "Employed persons" — Family benefits

Case	Date	Parties	Subject-matter
Cases C-65/95 and C-111/95	17 June 1997	The Queen v Secretary of State for the Home Department, *ex parte* Mann Singh Shingara The Queen v Secretary of State for the Home Department, *ex parte* Abbas Radiom	Free movement of persons — Derogations — Right of entry — Legal remedies — Articles 8 and 9 of Directive 64/221/EEC
C-70/95	17 June 1997	Sodemare SA and Others v Regione Lombardia	Freedom of establishment — Freedom to provide services — Old people's homes — Non-profit-making
C-131/96	25 June 1997	Carlos Mora Romero v Landesversicherungsanstalt Rheinprovinz	Workers — Equal treatment — Orphan's benefits — Military service
Cases C-34/95, C-35/95 and C-36/95	9 July 1997	Konsumentombudsmannen (KO) v De Agostini (Svenska) Förlag AB and TV-Shop i Sverige AB	"Television without frontiers" Directive — Television advertising broadcast from a Member State — Prohibition of misleading advertising — Prohibition of advertising directed at children
C-222/95	9 July 1997	Société Civile Immobilière Parodi v Banque H. Albert de Bary et Cie	Free movement of capital — Freedom to provide services — Credit institutions — Grant of a mortgage loan — Authorization requirement in the Member State in which the service is provided
C-322/95	17 September 1997	Emanuele Iurlaro v Istituto Nazionale della Previdenza Sociale (INPS)	Regulations (EEC) Nos 1408/71 and 574/72 — Invalidity benefits — Acquisition of entitlement to benefit — Reference period — Taking into account of periods of unemployment in another Member State

Case	Date	Parties	Subject-matter
C-307/96	25 September 1997	Salvatore Baldone v Institut National d'Assurance Maladie-Invalidité (INAMI)	Article 95a of Regulation (EEC) No 1408/71 — Regulation (EEC) No 1248/92 — Transitional provisions — Recalculation of a benefit on the competent institution's own initiative — Rights of persons concerned
C-144/96	2 October 1997	Office National des Pensions (ONP) v Maria Cirotti	Social security — Articles 46 and 51 of Regulation (EEC) No 1408/71
C-291/96	9 October 1997	Martino Grado and Shahid Bashir	Preliminary reference — Criminal proceedings — Use of a courtesy title — Discrimination — Relevance of the question — Lack of jurisdiction
Cases C-31/96 to C-33/96	9 October 1997	Antonio Naranjo Arjona and Others v Instituto Nacional de la Seguridad Social (INSS) and Others	Social security — Invalidity — Old-age pensions — Article 47(1) of Regulation No 1408/71 — Calculation of benefits
Cases C-69/96 to C-79/96	16 October 1997	Maria Antonella Garofalo and Others v Ministero Della Sanità and Others	Article 177 of the EC Treaty — Jurisdiction — Court of one of the Member States — Extraordinary petition to the President of the Italian Republic — Compulsory opinion of the Consiglio di Stato — Directives 86/457/EEC and 93/16/EEC — Specific training in general medical practice — Rights acquired before 1 January 1995

Case	Date	Parties	Subject-matter
C-20/96	4 November 1997	Kelvin Albert Snares v Adjudication Officer	Social security — Special non-contributory benefits — Articles 4(2a) and 10a of Regulation (EEC) No 1408/71 — Disability living allowance — Non-exportability
C-248/96	13 November 1997	R.O.J. Grahame and L.M. Hollanders v Bestuur van de Nieuwe Algemene Bedrijfsvereniging	Social security — Incapacity for work — Periods of paid employment and periods treated as such — Military service — Part J, point 4, of Annex VI to Regulation (EEC) No 1408/71
C-90/96	20 November 1997	David Petrie and Others v Università degli Studi di Verona and Camilla Bettoni	Freedom of movement for workers — Foreign-language assistants — Eligibility for appointment to teach supplementary courses and to fill temporary teaching vacancies in universities
C-57/96	27 November 1997	H. Meints v Minister van Landbouw, Natuurbeheer en Visserij	Regulation (EEC) No 1408/71 — Unemployment benefit — Regulation (EEC) No 1612/68 — Social advantage — Discrimination based on nationality — Residence condition
C-62/96	27 November 1997	Commission of the European Communities v Hellenic Republic	Failure by a Member State to fulfil its obligations — Registration of vessels — Nationality requirement for the owner

Case	Date	Parties	Subject-matter
C-336/94	2 December 1997	Eftalia Dafeki v Landesversicherung-sanstalt Württemberg	Freedom of movement for workers — Equal treatment — Social security — Rule of national law according different probative value to certificates of civil status depending on whether they are of national or foreign origin
C-55/96	11 December 1997	Job Centre Coop. arl	Freedom to provide services — Placement of employees — Exclusion of private undertakings — Exercise of official authority
C-360/95	18 December 1997	Commission of the European Communities v Kingdom of Spain	Failure by a Member State to fulfil its obligations — Failure to transpose Directive 91/371/EEC — Implementation of the Agreement between the European Economic Community and the Swiss Confederation on direct insurance other than life assurance
C-361/95	18 December 1997	Commission of the European Communities v Kingdom of Spain	Failure by a Member State to fulfil its obligations — Failure to transpose Directive 92/49/EEC — Direct insurance other than life assurance

LAW GOVERNING THE INSTITUTIONS

C-246/95	23 January 1997	Myrianne Coen v Belgian State	Temporary staff — Recruitment procedure — Member States invited to propose candidates — Actions before the national courts

Case	Date	Parties	Subject-matter
C-114/94	20 February 1997	Intelligente systemen, Database toepassingen, Elektronische diensten BV (IDE) v Commission of the European Communities	Arbitration clause — Software development contract — Claim for payment of balance outstanding and for damages — Counterclaim for repayment of amounts paid on account
C-107/95 P	20 February 1997	Bundesverband der Bilanzbuchhalter eV v Commission of the European Communities	Appeal — Action for annulment — Admissibility — Refusal by the Commission to commence proceedings against a Member State for failure to fulfil obligations — Refusal by the Commission to take measures under Article 90(3) of the EC Treaty
C-57/95	20 March 1997	French Republic v Commission of the European Communities	Commission communication — Internal market — Pension funds
C-299/95	29 May 1997	Friedrich Kremzow v Republic of Austria	Article 164 of the EC Treaty — European Convention on Human Rights — Deprivation of liberty — Right to a fair trial — Effects of a judgment of the European Court of Human Rights
C-345/95	1 October 1997	French Republic v European Parliament	Seat of the institutions — European Parliament — Sessions

NEW ACCESSIONS

C-27/96	27 November 1997	Danisco Sugar AB v Ämänna Ombudet	Accession of the Kingdom of Sweden — Agriculture — Sugar — National levy on sugar stocks

Case	Date	Parties	Subject-matter

PRINCIPLES OF COMMUNITY LAW

Cases C-192/95 to C-218/95	14 January 1997	Société Comateb and Others v Directeur Général des Douanes et Droits Indirects	Dock dues — Recovery of sums not due — Obligation to pass on the charge — Overseas departments
C-29/95	23 January 1997	Eckehard Pastoors and Others v Belgian State	Road transport — Council Regulations (EEC) Nos 3820/85 and 3821/85 — National implementing provisions
C-323/95	20 March 1997	David Charles Hayes and Jeanette Karen Hayes v Kronenberger GmbH	Equal treatment — Discrimination on grounds of nationality — Security for costs
C-122/96	2 October 1997	Stephen Austin Saldanha and MTS Securities Corporation v Hiross Holding AG	Equal treatment — Discrimination on grounds of nationality — Dual nationality — Scope of application of the Treaty — Security for costs
C-309/96	18 December 1997	Daniele Annibaldi v Sindaco del Comune di Guidonia and Presidente Regione Lazio	Agriculture — Nature and archaeological park — Economic activity — Protection of fundamental rights — Lack of jurisdiction of the Court

Case	Date	Parties	Subject-matter

PRIVILEGES AND IMMUNITIES

C-261/95	10 July 1997	Rosalba Palmisani v Istituto Nazionale della Previdenza Sociale (INPS)	Social policy — Protection of employees in the event of the insolvency of their employer — Directive 80/987/EEC — Liability of a Member State arising from belated transposition of a directive — Adequate reparation — Limitation period

SOCIAL POLICY

C-143/95 P	9 January 1997	Commission of the European Communities v Sociedade de Curtumes a Sul do Tejo Ld.ª (Socurte) and Others	Appeal — European Social Fund — Time-limit for bringing proceedings — Infringement of essential procedural requirements
C-139/95	30 January 1997	Livia Balestra v Istituto Nazionale della Previdenza Sociale (INPS)	Directives 76/207/EEC and 79/7/EEC — Equal treatment for men and women — Calculation of credit for supplemental retirement contributions
C-13/95	11 March 1997	Ayse Süzen V Zehnacker Gebäudereinigung GmbH Krankenhausservice	Safeguarding of employees' rights in the event of transfers of undertakings
C-197/96	13 March 1997	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Equal treatment for men and women — Prohibition of nightwork

Case	Date	Parties	Subject-matter
C-336/95	17 April 1997	Pedro Burdalo Trevejo and Others v Fondo de Garantía Salarial	Directive 77/187/EEC — Transfers of undertakings — Experience taken into account by a guarantee institution for calculating redundancy payments
C-147/95	17 April 1997	Dimossia Epicheirissi Ilektrismou (DEI) v Efthimios Evrenopoulos	Social policy — Men and women — Equal treatment — Applicability of Article 119 of the EC Treaty or Directive 79/7/EEC — Insurance scheme of a State electricity company — Survivors' pensions — Protocol No 2 to the Treaty on European Union — Meaning of "legal proceedings"
C-66/95	22 April 1997	The Queen v Secretary of State for Social Security, *ex parte* Eunice Sutton	Directive 79/7/EEC — Equal treatment for men and women in matters of social security — Responsibility of a Member State for an infringement of Community law — Right to receive interest on arrears of social security benefits
C-180/95	22 April 1997	Nils Draehmpaehl v Urania Immobilienservice OHG	Social policy — Equal treatment for men and women — Directive 76/207/EEC — Right to reparation in the event of discrimination as regards access to employment — Choice of sanctions by the Member States — Setting of a ceiling for compensation — Setting of a ceiling for aggregate of compensation awards

Case	Date	Parties	Subject-matter
C-400/95	29 May 1997	Handels- og Kontorfunktionærernes Forbund i Danmark, acting for Helle Elisabeth Larsson v Dansk Handel & Service, acting for Føtex Supermarked A/S	Equal treatment for men and women — Directive 76/207/EEC — Conditions governing dismissal — Absence due to an illness attributable to pregnancy or confinement — Absence during pregnancy and after confinement
Cases C-94/95 and C-95/95	10 July 1997	Danila Bonifaci and Others v Istituto Nazionale della Previdenza Sociale (INPS)	Social policy — Protection of employees in the event of the insolvency of their employer — Directive 80/987/EEC — Liability of the guarantee institutions limited — Liability of a Member State arising from belated transposition of a directive — Adequate reparation
C-373/95	10 July 1997	Federica Maso and Others v Istituto Nazionale della Previdenza Sociale (INPS) and Italian Republic	Social policy — Protection of employees in the event of the insolvency of their employer — Directive 80/987/EEC — Liability of the guarantee institutions limited — Liability of a Member State arising from belated transposition of a directive — Adequate reparation
C-117/96	17 September 1997	Danmarks Aktive Handelsrejsende, acting for Carina Mosbæk v Lønmodtagernes Garantifond	Social policy — Protection of employees in the event of the employer's insolvency — Directive 80/987/EEC — Employee residing and employed in a State other than that in which the employer is established — Guarantee institution

Case	Date	Parties	Subject-matter
C-1/95	2 October 1997	Hellen Gerster v Freistaat Bayern	Equal treatment for men and women — Public servant — Part-time employment — Calculation of length of service
C-100/95	2 October 1997	Brigitte Kording v Senator für Finanzen	Equal treatment for men and women — Public servant — Part-time employment — Right of exemption from a qualifying examination for entry to a profession — Indirect discrimination
C-409/95	11 November 1997	Hellmut Marschall v Land Nordrhein-Westfalen	Equal treatment for men and women — Equally qualified male and female candidates — Priority for female candidates — Saving clause
C-207/96	4 December 1997	Commission of the European Communities v Italian Republic	Failure of a Member State to fulfil its obligations — Equal treatment for men and women — Prohibition of nightwork
Cases C-253/96 to C-258/96	4 December 1997	Helmut Kampelmann and Others v Landschaftsverband Westfalen-Lippe and Others	Obligation to inform employees — Directive 91/533/EEC — Article 2(2)(c))

Case	Date	Parties	Subject-matter
C-246/96	11 December 1997	Mary Teresa Magorrian and Irene Patricia Cunningham v Eastern Health and Social Services Board and Department of Health and Social Services	Equal pay for male and female workers — Article 119 of the EC Treaty — Protocol No 2 annexed to the Treaty on European Union — Occupational social security schemes — Exclusion of part-time workers from status conferring entitlement to certain additional old-age pension benefits — Date from which such benefits must be calculated — National procedural time-limits

STAFF CASES

C-166/95 P	20 February 1997	Commission of the European Communities v Frédéric Daffix	Officials — Removal from post — Statement of reasons
C-90/95 P	17 April 1997	Henri de Compte v European Parliament	Officials — Decision recognizing the existence of an occupational disease — Revocation of an administrative act — Legitimate expectations — Reasonable period — Appeal
C-153/96 P	29 May 1997	Jan Robert de Rijk v Commission of the European Communities	Appeal — Officials — Supplementary sickness insurance scheme for officials posted outside the Community — Conditions for reimbursement of medical expenses

Case	Date	Parties	Subject-matter
C-52/96	17 July 1997	Commission of the European Communities v Kingdom of Spain	Failure by a Member State to fulfil its obligations — Article 5 of the EC Treaty and Article 11(2) of Annex VIII to the Staff Regulations of Officials of the European Communities — Failure to take the measures necessary to enable pension entitlements of officials to be transferred to the Community scheme

STAFF REGULATIONS OF OFFICIALS

C-188/96 P	20 November 1997	Commission of the European Communities v V	Officials — Removal from post — Statement of reasons

STATE AID

C-169/95	14 January 1997	Kingdom of Spain v Commission of the European Communities	State aids — Aid for the construction of a steel foundry in the Province of Teruel, Spain
C-24/95	20 March 1997	Land Rheinland-Pfalz v Alcan Deutschland GmbH	State aid — Recovery — Application of national law — Limits
C-292/95	15 April 1997	Kingdom of Spain v Commission of the European Communities	Action for annulment — Framework on State aid to the motor vehicle industry — Retroactive prolongation — Article 93(1) of the EC Treaty
C-355/95 P	15 May 1997	Textilwerke Deggendorf GmbH (TWD) v Commission of the European Communities	State aid — Commission decisions suspending payment of certain aids until previous unlawful aid has been repaid

Case	Date	Parties	Subject-matter
C-278/95 P	15 May 1997	Siemens SA v Commission of the European Communities	Appeal — State aid — General aid — Definition of aid
C-353/95 P	9 December 1997	Tiercé Ladbroke SA v Commission of the European Communities	Competition — State aid — Levy on bets taken on horse-races — Transfer of resources to an undertaking established in another Member State

TAXATION

C-80/95	6 February 1997	Harnas & Helm CV v Staatssecretaris van Financiën	VAT — Interpretation of Articles 4, 13 and 17 of Sixth Directive 77/388/EEC — Taxable person — Acquisition and holding of bonds
C-247/95	6 February 1997	Finanzamt Augsburg-Stadt v Marktgemeinde Welden	Sixth VAT Directive — Letting of immovable property — Public authority
C-260/95	20 February 1997	Commissioners of Customs & Excise v DFDS A/S	Sixth VAT Directive — Special scheme for travel agents — Place of taxation of supply of services
C-167/95	6 March 1997	Maatschap M.J.M. Linthorst, K.G.P.Pouwels en J. Scheres c.s. v Inspecteur der Belastingdienst/ Onderneming en Roermond	Sixth VAT Directive — Article 9 — Supply of veterinary services
C-389/95	29 May 1997	Siegfried Klattner v Elliniko Dimosio (Greek State)	Tax exemptions applicable to temporary and permanent importation of means of transport — Directive 83/182/EEC

Case	Date	Parties	Subject-matter
C-63/96	29 May 1997	Finanzamt Bergisch Gladbach v Werner Skripalle	Tax provisions — Sixth VAT Directive — Taxable amount — Personal relationship between the supplier and the recipient of the supply
C-2/95	5 June 1997	Sparekassernes Datacenter (SDC) v Skatteministeriet	Sixth VAT Directive — Article 13B(d), points 3 to 5 — Exempt transactions
C-45/95	25 June 1997	Commission of the European Communities v Italian Republic	VAT — Exemption within the country — Supplies of goods which were used wholly for an exempted activity or which were excluded from the right of deduction
Cases C-370/95, C-371/95 and C-372/95	26 June 1997	Careda SA, Federación Nacional de Operadores de Máquinas Recreativas y de Azar (Femara) and Asociación Española de Empresarios de Máquinas Recreativas (Facomare) v Administración General del Estado	Tax on the use of gaming machines — Turnover tax — Passing on to consumers
C-330/95	3 July 1997	Goldsmiths (Jewellers) Ltd v Commissioners of Customs & Excise	VAT — Sixth Directive — Right to derogate provided for in Article 11C(1) — No refund for barter transactions in the case of non-payment
C-60/96	3 July 1997	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — VAT — Sixth Directive — Exemptions — Letting of tents, caravans or mobile homes

Case	Date	Parties	Subject-matter
C-28/95	17 July 1997	A. Leur-Bloem v Inspecteur der Belastingdienst/ Onderneming en Amsterdam 2	Article 177 — Jurisdiction of the Court — National legislation adopting Community provisions — Transposition — Directive 90/434/EEC — Merger by exchange of shares — Tax evasion or avoidance
C-190/95	17 July 1997	ARO Lease BV v Inspecteur van de Belastingdienst Grote Ondernemingen, Amsterdam	Sixth VAT Directive — Leasing company supplying passenger cars — Place where the supplier has established its business — Fixed establishment
C-145/96	16 September 1997	Bernd von Hoffmann v Finanzamt Trier	Sixth VAT Directive — Interpretation of Article 9(2)(e), third indent — Services of an arbitrator — Place where services are supplied
C-141/96	17 September 1997	Finanzamt Osnabrück-Land v Bernhard Langhorst	Value added tax — Interpretation of Articles 21(1)(c) and 22(3)(c) of the Sixth Directive 77/388/EEC — Document serving as an invoice — Credit note issued by the buyer and not contested by the seller as regards the amount of tax shown
C-130/96	17 September 1997	Fazenda Pública v Solisnor-Estaleiros Navais SA	VAT — Article 33 of the Sixth VAT Directive — Maintenance of stamp duties — Stamp duty on the value of contracts relating to the construction of an oil tanker

Case	Date	Parties	Subject-matter
C-258/95	16 October 1997	Julius Fillibeck Söhne GmbH & Co. KG v Finanzamt Neustadt	Sixth VAT Directive — Supply of services for consideration — Definition — Transport of workers by the employer
C-375/95	23 October 1997	Commission of the European Communities v Hellenic Republic	Failure to fulfil obligations — Taxation of motor vehicles — Discrimination
C-116/96	6 November 1997	Reisebüro Binder GmbH v Finanzamt Stuttgart-Körperschaften	Sixth VAT Directive — Cross-frontier passenger transport — The place of supply and the taxable amount in relation to transport services
C-408/95	11 November 1997	Eurotunnel SA and Others v SeaFrance	Transitional arrangements for tax-free shops — Council Directives 91/680/EEC and 92/12/EEC — Assessment of validity
C-188/95	2 December 1997	Fantask A/S and Others v Industriministeriet (Erhvervsministeriet)	Directive 69/335/EEC — Registration charges on companies — Procedural time-limits under national law
C-8/96	11 December 1997	Locamion SA v Directeur des Services Fiscaux d'Indre-et-Loire	Directive 69/335/EEC — Regional charge on vehicle registration certificates
C-42/96	11 December 1997	Società Immobiliare SIF SpA v Amministrazione delle Finanze dello Stato	Directive 69/335/EEC — Contribution of immovable property
Cases C-286/94, C-340/95, C-401/95 and C-47/96	18 December 1997	Garage Molenheide BVBA and Others v Belgian State	Sixth Directive (77/388/EEC) — Scope — Right to deduction of VAT — Retention of balance of VAT due — Principle of proportionality

Case	Date	Parties	Subject-matter
C-384/95	18 December 1997	Landboden-Agrardienste GmbH & Co. KG v Finanzamt Calau	VAT — Definition of supply of services — National compensation for the extensification of potato production
C-284/96	18 December 1997	Didier Tabouillot v Directeur des Services Fiscaux de Meurthe-et-Moselle	Article 95 of the Treaty — Differential tax on motor vehicles

TRANSPORT

C-178/95	30 January 1997	Wiljo NV v Belgian State	Structural improvements in inland waterway transport — Special contribution — Exclusion of "specialized vessels" — Commission decision rejecting an application for exemption — Decision not contested under Article 173 of the Treaty — Validity of the decision then contested before the national court
Cases C-248/95 and C-249/95	17 July 1997	SAM Schiffahrt GmbH and Others v Federal Republic of Germany	Inland waterway transport — Structural improvements — Contributions to Scrapping Fund — Validity of Community legislation

2. Judicial Statistics*

General proceedings of the Court

Cases decided

Length of proceedings

New cases

* A new computer-based system for the management of cases before the Court in 1996 has resulted in a change (since last year) in the presentation of the statistics appearing in this Annual Report. This means that for certain tables and graphics comparison with statistics before 1995 is not possible.

Cases pending as at 31 December 1997

General trend in the work of the Court up to 31 December 1997

General proceedings of the Court

Table 1: **General proceedings in 1997** [1]

Completed cases	377	(456)
New cases	445	
Cases pending	623	(683)

Cases decided

Table 2: **Nature of proceedings**

References for a preliminary ruling	235	(301)
Direct actions	105	(116)
Appeals	32	(34)
Opinions	–	–
Special forms of procedure[2]	5	(5)
Total	377	(456)

[1] In this table and those which follow, the figures in brackets represent the total number of cases, *without* account being taken of cases joined on grounds of similarity. For the figure outside brackets, one series of joined cases is taken as one case.

[2] The following are considered to be "special forms of procedure": taxation of costs (Article 74 of the Rules of Procedure); legal aid (Article 76 of the Rules of Procedure); objection lodged against judgment (Article 94 of the Rules of Procedure); third party proceedings (Article 97 of the Rules of Procedure); interpretation of a judgment (Article 102 of the Rules of Procedure); revision of a judgment (Article 98 of the Rules of Procedure); rectification of a judgment (Article 66 of the Rules of Procedure); attachment procedure (Protocol on Privileges and Immunities); cases concerning immunity (Protocol on Privileges and Immunities).

Table 3: **Judgments, opinions, orders**[1]

Nature of proceedings	Judgments	Non-interlocutory orders[2]	Interlocutory orders[3]	Other orders[4]	Opinions	Total
References for a preliminary ruling	168	1	–	66	–	235
Direct actions	57	1	1	47	–	106
Appeals	17	15	–	–	–	32
Subtotal	242	17	1	113	–	373
Opinions	–	–	–	–	–	–
Special forms of procedure	–	3	–	2	–	5
Subtotal	–	3	–	2	–	5
TOTAL	242	20	1	115	–	378

1 Net figures.

2 Orders terminating proceedings by judicial determination (inadmissibility, manifest inadmissibility ...).

3 Orders made following an application on the basis of Article 185 or 186 of the EEC Treaty or of the corresponding provisions of the EAEC and ECSC Treaties (orders made in respect of an appeal *against* an interim order or an order on an application for leave to intervene are included under the "Appeals" in the "Non-interlocutory orders" column).

4 Orders terminating the case by removal from the Register, declaration that the case will not proceed to judgment, or referral to the Court of First Instance.

Table 4: **Means by which terminated**

Form of decision	Direct actions	References for a preliminary ruling	Appeals	Special forms of procedure	Total
Judgments					
Action founded	42 (45)				42 (45)
Action partially founded	1 (1)				1 (1)
Action unfounded	14 (18)		12 (12)		26 (30)
Annulment and referred back			3 (4)		3 (4)
Partial annulment and not referred back			2 (2)		2 (2)
Preliminary ruling		168 (234)			168 (234)
Total judgments	57 (64)	168 (234)	17 (18)		242 (316)
Orders					
Action founded				1 (1)	1 (1)
Action partially founded				1 (1)	1 (1)
Action unfounded			3 (4)		3 (4)
Inadmissibility				1 (1)	1 (1)
Manifest inadmissibility		1 (1)			1 (1)
Appeal manifestly inadmissible			2 (2)		2 (2)
Action manifestly inadmissible	1 (1)				1 (1)
Appeal manifestly inadmissible and unfounded			6 (6)		6 (6)
Appeal manifestly unfounded			3 (3)		3 (3)
Annulment and referred back			1 (1)		1 (1)
Subtotal	1 (1)	1 (1)	15 (16)	3 (3)	20 (21)
Removal from the Register	43 (47)	66 (66)		2 (2)	111 (115)
No need to give a decision	1 (1)				1 (1)
Referred back to the Court of First Instance	3 (3)				3 (3)
Subtotal	47 (51)	66 (66)		2 (2)	115 (119)
Total orders	48 (52)	67 (67)	15 (16)	5 (5)	135 (140)
Opinions					
TOTAL	105 (116)	235 (301)	32 (34)	5 (5)	377 (456)

Table 5: **Bench hearing case**

Bench hearing case	Judgments		Orders[1]		Total	
Full Court	22	(24)	1	(1)	23	(25)
Small plenum	30	(62)	–	–	30	(62)
Chambers (3 judges)	42	(45)	13	(13)	55	(58)
Chambers (5 judges)	148	(185)	–	–	148	(185)
President	–	–	6	(7)	6	(7)
Total	242	(316)	20	(21)	262	(337)

1 Orders terminating proceedings by judicial determination (other than those removing cases from the Register, not to proceed to judgment or referring cases back to the Court of First Instance).

Table 6: **Basis of the action**

Basis of the action	Judgments/Opinions		Orders[1]		Total	
Article 169 of the EC Treaty	43	(46)	–	–	43	(46)
Article 173 of the EC Treaty	11	(15)	–	–	11	(15)
Article 177 of the EC Treaty	161	(227)	1	(1)	162	(228)
Article 181 of the EC Treaty	1	(1)	1	(1)	2	(2)
Article 228 of the EC Treaty	–	–	–	–	–	–
Article 1 of the 1971 Protocol	6	(6)	–	–	6	(6)
Article 49 of the EC Statute	16	(17)	10	(10)	26	(27)
Article 50 of the EC Statute	–	–	3	(3)	3	(3)
Total EC Treaty	238	(312)	15	(15)	253	(327)
Article 38 of the ECSC Treaty	1	(1)	–	–	1	(1)
Article 41 of the ECSC Statute	1	(1)	–	–	1	(1)
Article 50 of the ECSC Statute	–	–	2	(3)	2	(3)
Total ECSC Treaty	2	(2)	2	(3)	4	(5)
Article 141 of the EAEC Treaty	1	(1)	–	–	1	(1)
Article 50 of the EAEC Treaty	1	(1)	–	–	1	(1)
Total EAEC Treaty	2	(2)	–	–	2	(2)
TOTAL	242	(316)	17	(18)	259	(334)
Article 74 of the Rules of Procedure	–	–	3	(3)	3	(3)
Article 98 of the Rules of Procedure	–	–	–	–	–	–
OVERALL TOTAL	242	(316)	20	(21)	262	(337)

1 Orders terminating the case (other than by removal from the Register, declaration that the case will not proceed to judgment or referral to the Court of First Instance).

Table 7: **Subject-matter of the action**

Subject-matter of the action	Judgments/Opinions		Orders[1]		Total	
Agriculture	34	(38)	2	(2)	36	(40)
State aid	6	(6)	2	(2)	8	(8)
Competition	8	(9)	3	(3)	11	(12)
Brussels Convention	6	(6)	–	–	6	(6)
Institutional measures	1	(1)	3	(3)	4	(4)
Social measures	17	(23)	–	–	17	(23)
Right of establishment	–	–	–	–	–	–
Energy	–	–	1	(1)	1	(1)
Environment	8	(11)	–	–	8	(11)
Taxation	28	(34)	–	–	28	(34)
European Social Fund	1	(1)	–	–	1	(1)
Freedom of establishment and to provide services	21	(33)	–	–	21	(33)
Free movement of capital	–	–	–	–	–	–
Free movement of goods	19	(48)	–	–	19	(48)
Free movement of services	–	–	–	–	–	–
Freedom of movement for workers	12	(14)	–	–	12	(14)
EC public procurement contracts	2	(2)	–	–	2	(2)
Commercial policy	8	(8)	1	(1)	9	(9)
Fisheries policy	–	–	–	–	–	–
Economic and monetary policy	–	–	–	–	–	–
Principles of Community law	3	(3)	–	–	3	(3)
Privileges and immunities	–	–	–	–	–	–
Approximation of laws	26	(29)	–	–	26	(29)
External relations	1	(1)	1	(1)	2	(2)
Trans-European Networks	–	–	–	–	–	–
Own resources	–	–	–	–	–	–
Social security for migrant workers	16	(21)	–	–	16	(21)
Staff Regulations	6	(6)	5	(5)	11	(11)
Common Customs Tariff	10	(12)	–	–	10	(12)
Value added tax	–	–	–	–	–	–
Transport	3	(4)	–	–	3	(4)
Customs union	4	(4)	–	–	4	(4)
Total	240	(314)	18	(18)	258	(332)
ECSC Treaty	–	–	2	(3)	2	(3)
EAEC Treaty	2	(2)	–	–	2	(2)
OVERALL TOTAL	242	(316)	20	(21)	262	(337)

1 Orders terminating the case (other than by removal from the Register, declaration that the case will not proceed to judgment or referral to the Court of First Instance).

Length of proceedings[1]

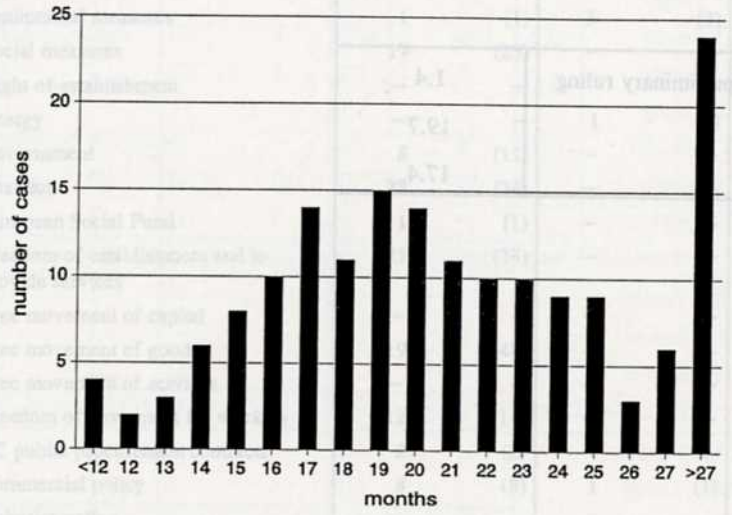
Table 8: **Nature of proceedings**
(Decisions by way of judgments and orders[2])

References for a preliminary ruling	1.4
Direct actions	19.7
Appeals	17.4

1 In this table and the graphics which follow, the length of proceedings is expressed in months and decimal months.

2 Other than orders terminating a case by removal from the Register, declaration that the case will not proceed to judgment or referral to the Court of First Instance.

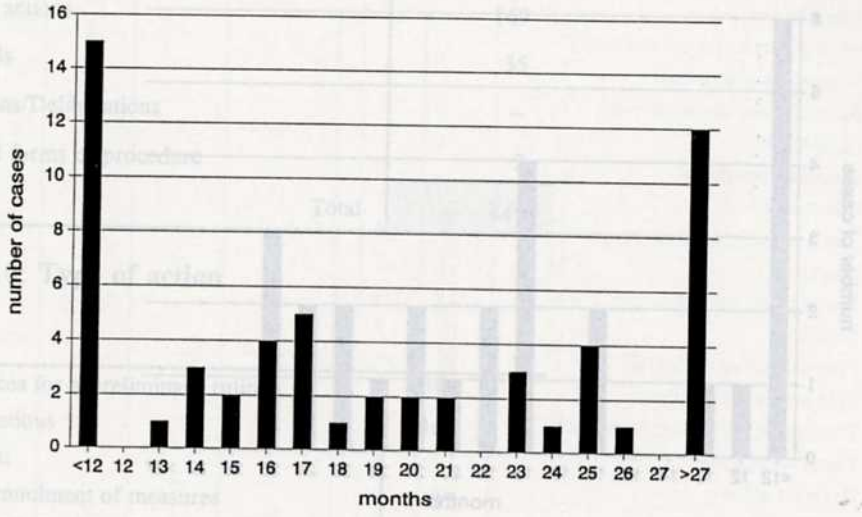
Figure I: **Duration of proceedings in references for a preliminary ruling (judgments and orders[1])**



Cases/ Months	< 12	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	> 27
References for a preliminary ruling	4	2	3	6	8	10	14	11	15	14	11	10	10	9	9	3	6	24

[1] Other than orders disposing of a case by removal from the Register or not to proceed to judgment.

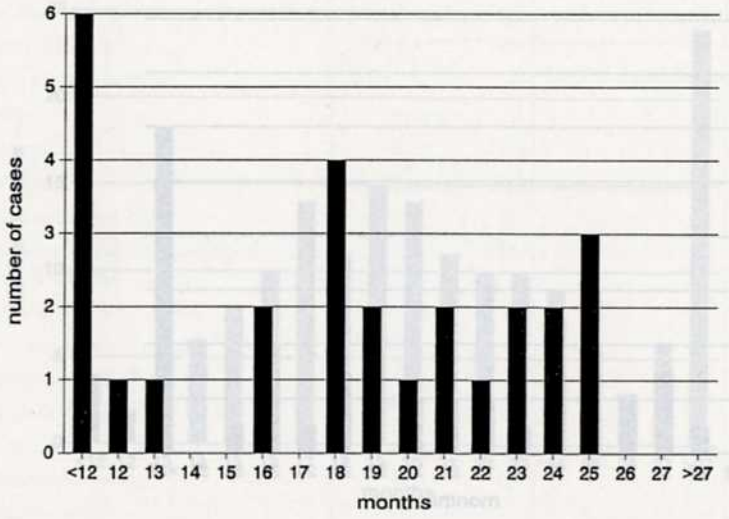
Figure II: **Duration of proceedings in direct actions (judgments and orders[1])**



Cases/ Months	< 12	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	>27
Direct actions	15	0	1	3	2	4	5	1	2	2	2	0	3	1	4	1	0	12

[1] Other than orders disposing of a case by removal from the Register, not to proceed to judgment or referring a case back to the Court of First Instance.

Figure III: **Duration of proceedings in appeals (judgments and orders[1])**



Cases/ Months	< 12	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	> 27
Appeals	6	1	1	0	0	2	0	4	2	1	2	1	2	2	3	0	0	0

[1] Other than orders disposing of a case by removal from the Register, not to proceed to judgment or referring a case back to the Court of First Instance.

New cases [1]

Table 9: **Nature of proceedings**

References for a preliminary ruling	239
Direct actions	169
Appeals	35
Opinions/Deliberations	–
Special forms of procedure	2
Total	445

Table 10: **Type of action**

References for a preliminary ruling	239
Direct actions	169
of which:	
– for annulment of measures	37
– for failure to act	–
– for damages	1
– for failure to fulfil obligations	124
– on arbitration clauses	7
Appeals	35
Opinions/Deliberations	–
Total	443
Special forms of procedure	2
of which:	
– Legal aid	–
– Taxation of costs	2
– Revision of a judgment/order	–
– Application for a garnishee order	–
– Third-party proceedings	–
Total	2
Applications for interim measures	1

[1] Gross figures.

Table 11: **Subject-matter of the action**[1]

Subject-matter of the action	Direct actions	References for a preliminary ruling	Appeals	Total	Special forms of procedure
Accession of new Member States	1	5	–	6	–
Agriculture	38	23	3	64	–
State aid	8	8	2	18	–
Overseas countries and territories	–	1	–	1	–
Community citizenship	1	–	–	1	–
Economic and social cohesion	1	–	–	1	–
Competition	1	14	9	24	–
Brussels Convention	–	6	–	6	–
Company law	4	12	1	17	–
Law governing the institutions	10	–	–	10	–
Energy	2	–	–	2	–
Environment and consumers	34	8	–	42	–
Taxation	9	27	–	36	–
Free movement of capital	–	2	–	2	–
Free movement of goods	4	24	–	28	–
Freedom of movement for persons	8	42	–	50	–
Commercial policy	2	–	–	2	–
Regional policy	2	–	–	2	–
Social policy	9	16	1	26	–
Principles of Community law	–	25	–	25	–
Approximation of laws	21	17	–	38	–
External relations	1	7	–	8	–
Staff Regulations	–	1	–	1	–
Transport	8	1	–	9	–
Total EC Treaty	164	239	16	419	–
Supply	–	–	1	1	–
Protection of the general public	2	–	–	2	–
Law governing the institutions	1	–	–	1	–
Total EAEC Treaty	3	–	1	4	–
State aid	–	–	1	1	–
Competition	–	–	2	2	–
Investments and aid	1	–	–	1	–
Iron and steel	1	–	1	2	–
Total ECSC Treaty	2	–	4	6	–
Law governing the institutions	–	–	1	1	2
Staff Regulations	–	–	13	13	–
Total	–	–	14	14	2
OVERALL TOTAL	169	239	35	443	2

1 Taking no account of applications for interim measures (1).

Table 12: **Actions for failure to fulfil obligations**[1]

Brought against	1997	From 1953 to 1997
Belgium	19	203
Denmark	–	20
Germany	20	117
Greece	10	143
Spain	7	54[2]
France	15	163[3]
Ireland	6	74
Italy	20	343
Luxembourg	8	78
Netherlands	3	56
Austria	–	1
Portugal	15	36
Finland	–	–
Sweden	–	–
United Kingdom	1	40[4]
Total	124	1 328

1 Articles 169, 170, 171, 225 of the EC Treaty, Articles 141, 142, 143 of the EAEC Treaty and Article 88 of the ECSC Treaty.

2 Including one action under Article 170 of the EC Treaty, brought by the Kingdom of Belgium.

3 Including one action under Article 170 of the EC Treaty, brought by Ireland.

4 Including two actions under Article 170 of the EC Treaty, brought by the French Republic and the Kingdom of Spain respectively.

Table 13: **Basis of the action**

Basis of the action	1997
Article 169 of the EC Treaty	119
Article 170 of the EC Treaty	–
Article 171 of the EC Treaty	3
Article 173 of the EC Treaty	36
Article 175 of the EC Treaty	–
Article 177 of the EC Treaty	233
Article 178 of the EC Treaty	–
Article 181 of the EC Treaty	6
Article 225 of the EC Treaty	–
Article 228 of the EC Treaty	–
Article 1 of the 1971 Protocol	6
Article 49 of the EC Statute	28
Article 50 of the EC Statute	2
Total EC Treaty	433
Article 33 of the ECSC Treaty	1
Article 42 of the ECSC Treaty	1
Article 49 of the ECSC Treaty	1
Article 50 of the ECSC Treaty	3
Total ECSC Treaty	6
Article 141 of the EAEC Treaty	2
Article 151 of the EAEC Treaty	1
Article 50 of the EAEC Statute	1
Total EAEC Treaty	4
Total	443
Article 74 of the Rules of Procedure	2
Article 97 of the Rules of Procedure	–
Article 98 of the Rules of Procedure	–
Protocol on Privileges and Immunities	–
Total special forms of procedure	2
OVERALL TOTAL	445

Table 14: **Nature of proceedings**

References for a preliminary ruling	344	(395)
Direct actions	218	(225)
Appeals	59	(61)
Special forms of procedure	2	(2)
Opinions/Deliberations	–	–
Total	623	(683)

Table 15: **Bench hearing case**

Bench hearing case	Direct actions		References for a preliminary ruling		Appeals		Other procedures[1]		Total	
Grand plenum	174	(178)	237	(269)	36	(37)			447	(484)
Small plenum	6	(6)	26	(30)	2	(2)			34	(38)
Subtotal	180	(184)	263	(299)	38	(39)			481	(522)
President of the Court										
Subtotal										
First chamber			6	(6)	1	(1)			7	(7)
Second chamber			7	(9)			1	(1)	8	(10)
Third chamber			3	(3)	1	(1)			4	(4)
Fourth chamber			3	(5)	3	(3)			6	(8)
Fifth chamber	16	(17)	34	(37)	6	(7)			56	(61)
Sixth chamber	22	(24)	28	(36)	10	(10)	1	(1)	61	(71)
Subtotal	38	(41)	81	(96)	21	(22)	2	(2)	142	(161)
TOTAL	218	(225)	344	(395)	59	(61)	2	(2)	623	(683)

1 Including special forms of procedure and opinions of the Court.

Table 16: **New cases and judgments**

Year	New cases[1]					Judgments[2]
	Direct actions[3]	References for a preliminary ruling	Appeals	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	47	–		47	5	13
1960	23	–		23	2	18
1961	25	1		26	1	11
1962	30	5		35	2	20
1963	99	6		105	7	17
1964	49	6		55	4	31
1965	55	7		62	4	52
1966	30	1		31	2	24
1967	14	23		37	–	24
1968	24	9		33	1	27
1969	60	17		77	2	30
1970	47	32		79	–	64
1971	59	37		96	1	60
1972	42	40		82	2	61
1973	131	61		192	6	80
1974	63	39		102	8	63
1975	61	69		130	5	78
1976	51	75		126	6	88
1977	74	84		158	6	100
1978	145	123		268	7	97
1979	1 216	106		1 322	6	138
1980	180	99		279	14	132
1981	214	109		323	17	128
1982	216	129		345	16	185
1983	199	98		297	11	151
1984	183	129		312	17	165
1985	294	139		433	22	211
1986	238	91		329	23	174
1987	251	144		395	21	208
1988	194	179		373	17	238
1989	246	139		385	20	188
1990 [4]	222	141	16	379	12	193
1991	142	186	14	342	9	204
1992	253	162	25	440	4	210
1993	265	204	17	486	13	203
1994	128	203	13	344	4	188
1995	109	251	48	408	3	172
1996	132	256	28	416	4	193
1997	169	239	35	443	1	242
Total	6 076 [5]	3 639	196	9 911	311	4 507

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

2 Net figures.

3 Including Opinions of the Court.

4 Since 1990 staff cases have been brought before the Court of First Instance.

5 Up to 31 December 1989, 2 388 are staff cases.

Table 17: **New references for a preliminary ruling**[1]
(by Member State per year)

Year	B	DK	D	EL	E	F	IRL	I	L	NL	A	P	FIN	S	UK	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			8	1	12	–	14					1	75
1977	16	1	30			14	2	7	–	9					5	84
1978	7	3	46			12	1	11	–	38					5	123
1979	13	1	33			18	2	19	1	11					8	106
1980	14	2	24			14	3	19	–	17					6	99
1981	12	1	41	–		17	–	12	4	17					5	109
1982	10	1	36	–		39	–	18	–	21					4	129
1983	9	4	36	–		15	2	7	–	19					6	98
1984	13	2	38	–		34	1	10	–	22					9	129
1985	13	–	40	–		45	2	11	6	14					8	139
1986	13	4	18	2	1	19	4	5	1	16		–			8	91
1987	15	5	32	17	1	36	2	5	3	19		–			9	144
1988	30	4	34	–	1	38	–	28	2	26		–			16	179
1989	13	2	47	2	2	28	1	10	1	18		1			14	139
1990	17	5	34	2	6	21	4	25	4	9		2			12	141
1991	19	2	54	3	5	29	2	36	2	17		3			14	186
1992	16	3	62	1	5	15	–	22	1	18		1			18	162
1993	22	7	57	5	7	22	1	24	1	43		3			12	204
1994	19	4	44	–	13	36	2	46	1	13		1			24	203
1995	14	8	51	10	10	43	3	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	2	9	10	1	50	3	24	35	2	6	7	18	239
Total	385	71	1 064	48	66	578	34	543	40	472	43	24	9	17	245	3 639

1 Articles 177 of the EC Treaty, 41 of the ECSC Treaty, 150 of the EAEC Treaty, 1971 Protocol.

Table 18: **New references for a preliminary ruling**
(by Member State and by court or tribunal)

Belgium	
Cour de cassation	50
Cour d'arbitrage	1
Conseil d'État	19
Other courts or tribunals	315
Total	**385**
Denmark	
Højesteret	13
Other courts or tribunals	58
Total	**71**
Germany	
Bundesgerichtshof	62
Bundesarbeitsgericht	4
Bundesverwaltungsgericht	45
Bundesfinanzhof	158
Bundessozialgericht	49
Staatsgerichtshof	1
Other courts or tribunals	745
Total	**1 064**
Greece	
Simvoulio tis Epikratias	6
Other courts or tribunals	42
Total	**48**
Spain	
Tribunal Supremo	1
Tribunales Superiores de justicia	27
Audiencia Nacional	1
Juzgado Central de lo Penal	7
Other courts or tribunals	30
Total	**66**
France	
Cour de cassation	57
Conseil d'État	15
Other courts or tribunals	506
Total	**578**
Ireland	
Supreme Court	8
High Court	15
Other courts or tribunals	11
Total	**34**
Italy	
Corte suprema di Cassazione	62
Consiglio di Stato	19
Other courts or tribunals	462
Total	**543**
Luxembourg	
Cour supérieure de justice	10
Conseil d'État	13
Other courts or tribunals	17
Total	**40**
Netherlands	
Raad van State	30
Hoge Raad der Nederlanden	80
Centrale Raad van Beroep	38
College van Beroep voor het Bedrijfsleven	94
Tariefcommissie	33
Other courts or tribunals	197
Total	**472**
Austria	
Oberster Gerichtshof	9
Bundesvergabeamt	4
Verwaltungsgerichtshof	9
Other courts or tribunals	21
Total	**43**
Portugal	
Supremo Tribunal Administrativo	13
Other courts or tribunals	11
Total	**24**
Finland	
Korkein hallinto-oikeus	2
Other courts or tribunals	7
Total	**9**
Sweden	
Högsta Domstolen	1
Marknadsdomstolen	3
Regeringsrätten	2
Other courts or tribunals	11
Total	**17**
United Kingdom	
House of Lords	21
Court of Appeal	6
Other courts or tribunals	218
Total	**245**
OVERALL TOTAL	**3 639**

B - Proceedings of the Court of First Instance

1. Synopsis of the judgments delivered by the Court of First Instance in 1997

Case	Date	Parties	Subject-matter
AGRICULTURE			
T-117/95	30 January 1997	N. Corman SA v Commission of the European Communities	Action for annulment — Regulations (EEC) No 570/88 and (EC) No 455/95 — Aid for butter for use in the manufacture of certain categories of products — Definition of butter — Definition of intermediate product — Legal interest in bringing proceedings — Inadmissibility
T-47/95	9 April 1997	Terres Rouges Consultant SA and Others v Commission of the European Communities	Common organization of the markets — Bananas — Import arrangements — Framework Agreement on Bananas concluded as part of the Uruguay Round of multilateral trade negotiations — Regulation (EC) No 3224/94 — Community transitional measures for the implementation of the Framework Agreement — Action for annulment — Inadmissibility
T-390/94	15 April 1997	Aloys Schröder, Jan and Karl-Julius Thamann v Commission of the European Communities	Non-contractual liability of the Community — Control of classical swine fever in the Federal Republic of Germany
T-541/93	16 April 1997	James Connaughton, Thomas Fitzsimons and Patrick Griffin v Council of the European Union	Action for annulment — Milk — Additional levy — Reference quantity — Producers who entered into non-marketing or conversion undertakings — Compensation — Regulation (EEC) No 2187/93 — Legal effects — Admissibility

Case	Date	Parties	Subject-matter
T-554/93	16 April 1997	Alfred Thomas Edward Saint and Christopher Murray v Council of the European Union	Action for annulment — Action for damages — Non-contractual liability — Milk — Additional levy — Reference quantity — Producers having entered into non-marketing or conversion undertakings — Compensation — Regulation (EEC) No 2187/93 — Legal effects — Admissibility — Limitation period
T-20/94	16 April 1997	Johannes Hartmann v Council of the European Union	Action for damages — Non-contractual liability — Milk — Additional levy — Reference quantity — Producers having entered into non-marketing or conversion undertakings — Compensation — Regulation (EEC) No 2187/93 — Limitation period
T-455/93	9 July 1997	Hedley Lomas (Ireland) Ltd and Others v Commission of the European Communities	Agriculture — Common organization of the market in the sheepmeat and goatmeat sector — Variable slaughter premium for sheep — Conditions for reimbursement of clawback — Principle of legal certainty — Principle of protection of legitimate expectations — Principle of proportionality
T-267/94	11 July 1997	Oleifici Italiani SpA v Commission of the European Communities	Modification of the olive-oil regime — No transitional period — Action for damages
Cases T-121/96 and T-151/96	18 September 1997	Mutual Aid Administration Services NV (MAAS) v Commission of the European Communities	Actions for the free supply of agricultural products to the peoples of Georgia, Armenia, Azerbaijan, Kyrgyzstan and Tajikistan — Successful tenderer's duty to pay dispatch money

Case	Date	Parties	Subject-matter
T-218/95	7 November 1997	Azienda Agricola "Le Canne" Srl v Commission of the European Communities	Agriculture — Fisheries — Aquaculture and establishment of protected marine areas — Community financial aid — Declaration of ineligibility of certain expenditure — Action for annulment — Action for damages
Cases T-195/94 and T-202/94	9 December 1997	Friedhelm Quiller and Johann Heusmann v Council of the European Union and Commission of the European Communities	Action for damages — Non-contractual liability — Milk — Additional levy — Reference quantity — Regulation (EEC) No 2055/93 — Compensation for producers — Limitation period
T-152/95	17 December 1997	Odette Nicos Petrides Co. Inc. v Commission of the European Communities	Common organization of the market in raw tobacco — Management by the Commission — Action for compensation — Time-bar — Principle of proportionality — Principle of equal treatment

COMMERCIAL POLICY

T-212/95	10 July 1997	Asociación de Fabricantes de Cemento de España (Oficemen) v Commission of the European Communities	Anti-dumping — Commission proposal to close an anti-dumping proceeding without imposing protective measures — Rejection by the Council — Action for annulment — Action for failure to act
T-170/94	25 September 1997	Shanghai Bicycle Corporation (Group) v Council of the European Union	Dumping — State-trading country — Like product — Individual treatment — Calculation of the dumping margin

Case	Date	Parties	Subject-matter
T-121/95	17 December 1997	European Fertilizer Manufacturers Association (EFMA) v Council of the European Union	Anti-dumping duties — Injury — Right to a fair hearing
Cases T-159/94 and T-160/94	18 December 1997	Ajinomoto Co., Inc., and The NutraSweet Company v Council of the European Union	Action for annulment — Dumping — Aspartame — Right to a fair hearing — Normal value — Reference country — Patent — Injury

COMPETITION

T-77/95	15 January 1997	Syndicat Français de l'Express International and Others v Commission of the European Communities	Competition — Action for annulment — Dismissal of complaint — Community interest
T-195/95	6 May 1997	Guérin Automobiles v Commission of the European Communities	Competition — Action for damages — Inadmissibility
Cases T-70/92 and T-71/92	14 May 1997	Florimex BV and Vereniging van Groothandelaren in Bloemkwekerijprodukten v Commission of the European Communities	Competition — Decision rejecting a complaint sent to the complainants' lawyer's post office box — Calculation of time-limit for bringing an action — Compatibility with Article 2 of Regulation No 26 of a fee charged to external suppliers on floricultural products supplied to wholesalers established on the premises of a cooperative society of auctioneers — Statement of reasons

Case	Date	Parties	Subject-matter
T-77/94	14 May 1997	VGB and Others v Commission of the European Communities	Competition — Shelving of a complaint in the absence of a response by the complainants within the period set — Compatibility with Article 85(1) of the EC Treaty of a fee levied on suppliers who have concluded agreements for the delivery of floricultural products to undertakings established on the premises of a cooperative society of auctioneers —Compatibility with Article 85(1) of the EC Treaty of an exclusive purchase obligation accepted by certain wholesalers reselling such products to retailers in a specific trading area of the same premises — Discrimination — Effect on trade between Member States — Assessment by reference to the applicable rules as a whole — Lack of appreciable effect
T-504/93	12 June 1997	Tiercé Ladbroke SA v Commission of the European Communities	Action for annulment — Rejection of a complaint — Article 86 — Relevant market — Joint dominant position — Refusal to grant a transmission licence — Article 85(1) — Clause prohibiting retransmission
T-227/95	10 July 1997	AssiDomän Kraft Products AB and Others v Commission of the European Communities	Competition — Consequences of partial annulment by the Court of Justice of a decision relating to a proceeding under Article 85 of the Treaty — Effects of the judgment on persons to whom the decision was addressed who did not bring an action for annulment — Article 176 of the Treaty — Request for partial refund of fines paid

Case	Date	Parties	Subject-matter
T-38/96	10 July 1997	Guérin Automobiles v Commission of the European Communities	Competition — Action for failure to act — No need for a ruling — Action for damages — Inadmissibility
T-229/94	21 October 1997	Deutsche Bahn AG v Commission of the European Communities	Competition — Carriage by rail of maritime containers — Regulation (EEC) No 1017/68 — Agreements, decisions and concerted practices — Dominant position — Abuse — Fine — Criteria of assessment — Principle of proportionality — Rights of the defence — Access to the file — Principle of legal certainty
Cases T-213/95 and T-18/96	22 October 1997	Stichting Certificatie Kraanverhuurbedrijf (SCK) and Federatie van Nederlandse Kraanverhuurbedrijven (FNK) v Commission of the European Communities	Competition — Mobile cranes — Article 6 of the European Convention on Human Rights — Acting within a reasonable time — Certification system — Prohibition on hiring — Recommended rates — Internal rates — Fines
T-224/95	27 November 1997	Roger Tremblay and Harry Kestenberg v Syndicat des Exploitants de Lieux de Loisirs (SELL)	Competition — Copyright — Rejection of a complaint — Enforcement of a judgment setting aside a decision — Partitioning of market — Statement of reasons — Misuse of powers
T-290/94	27 November 1997	Kaysersberg SA v Commission of the European Communities	Competition — Regulation No 4064/89 — Decision declaring a concentration to be compatible with the common market — Commitments — Feminine hygiene products — Action for annulment — Admissibility — Infringement of essential procedural requirements — Consultation of third parties — Dominant position

Case	Date	Parties	Subject-matter
EAEC			
Cases T-149/94 and T-181/94	25 February 1997	Kernkraftwerke Lippe-Ems GmbH v Commission of the European Communities	Euratom Treaty — Action for annulment and action for damages — Conclusion of a contract for the supply of uranium — Simplified procedure — Powers of the Agency — Time-limit for conclusion of the contract — Legal obstacle to conclusion — Diversification policy — Origin of the uranium — Market-related prices
ECSC			
T-150/95	25 September 1997	UK Steel Association, formerly British Iron and Steel Producers Association (BISPA) v Commission of the European Communities	Action for annulment — State aid — ECSC Treaty — Fifth Steel Aid Code — New plant — Community guidelines on aid for environmental protection
T-239/94	24 October 1997	Association des Aciéries Européennes Indépendantes (EISA) v Commission of the European Communities	ECSC — Action for annulment — State aid — Individual decisions authorizing the grant of State aid to steel undertakings — Incompatibility with Treaty provisions — Retroactivity — Article 4(b) and (c) and the first and second paragraphs of Article 95 of the Treaty

Case	Date	Parties	Subject-matter
T-243/94	24 October 1997	British Steel plc v Commission of the European Communities	ECSC — Action for annulment — State aid — Individual decisions authorizing the grant of State aid to steel undertakings — Lack of competence — Protection of legitimate expectations — Incompatibility with Treaty provisions — Discrimination — Inadequate statement of reasons — Breach of the rights of the defence — Articles 4(b) and (c) and 15 and the first and second paragraphs of Article 95 of the Treaty
T-244/94	24 October 1997	Wirtschaftsvereinigung Stahl and Others v Commission of the European Communities	ECSC — Action for annulment — State aid — Individual decisions authorizing the grant of State aid to steel undertakings — Misuse of powers — Protection of legitimate expectations — Incompatibility with Treaty provisions — Discrimination — Inadequate statement of reasons — Breach of the rights of the defence — Articles 4(b) and (c) and 15 and the first and second paragraphs of Article 95 of the Treaty

Case	Date	Parties	Subject-matter

EXTERNAL RELATIONS

T-115/94	22 January 1997	Opel Austria GmbH v Republic of Austria	Withdrawal of tariff concessions — Agreement on the European Economic Area — Obligation under public international law not to deprive a treaty of its object and purpose before its entry into force — Principle of protection of legitimate expectations — Principle of legal certainty — Publication in the Official Journal
T-7/96	25 June 1997	Francesco Perillo v Commission of the European Communities	Lomé Convention — European Development Fund — Non-payment of contract price — Commission's non-contractual liability

LAW GOVERNING THE INSTITUTIONS

T-105/95	5 March 1997	WWF UK (World Wide Fund for Nature) v Commission of the European Communities	Transparency — Access to information — Commission Decision 94/90 on public access to Commission documents — Decision refusing access to documents on the grounds that they related to the examination by the Commission of a possible infringement of Community law by a Member State — Exceptions relating to the public interest and to the institution's interest in the confidentiality of its proceedings — Extent of the obligation to give reasons

Case	Date	Parties	Subject-matter
SOCIAL POLICY			
T-73/95	19 March 1997	Estabelecimentos Isidoro M. Oliveira SA v Commission of the European Communities	Social policy — European Social Fund — Assistance in the financing of vocational training measures — New decision following a judgment of the Court of Justice — Legal certainty — Legitimate expectations — Prohibition of *reformatio in pejus* — Reasonable time
T-81/95	14 July 1997	Interhotel v Commission of the European Communities	Social policy — European Social Fund — Assistance for the financing of vocational training measures — Action for annulment — Notification of decision of approval — Decision on the final payment claim — Legal certainty — Legitimate expectations — Statement of reasons
T-331/94	15 October 1997	IPK-München GmbH v Commission of the European Communities	Financial assistance for an ecological tourism project — Reduction — Application for annulment — Admissibility — Confirmatory act — Legal certainty — Legitimate expectations — Statement of reasons
T-84/96	7 November 1997	Cipeke — Comércio e Indústria de Papel, Ld.ª v Commission of the European Communities	European Social Fund — Decision to reduce financial assistance — Duty to provide a statement of reasons

Case	Date	Parties	Subject-matter
STAFF CASES			
T-7/94	29 January 1997	Hilde Adriaenssens and Others v Commission of the European Communities	Officials — Action for annulment — Pay slips applying the scales for certain parental contributions fixed by an inter-institutional joint committee — Admissibility — Time-limits — Time-barred
T-297/94	29 January 1997	Joëlle Vanderhaeghen v Commission of the European Communities	Officials — Action for annulment — Admissibility — Pay slips applying the scales for certain parental contributions fixed by an inter-institutional joint committee — Principle of equality of treatment
T-207/95	5 February 1997	Maria de los Angeles Ibarra Gil v Commission of the European Communities	Officials — Internal competition — Notice of competition — Condition of being a member of the temporary staff at the closing date for applications — Principle of the protection of legitimate expectation — Principle of equality of treatment — Duty to have regard for the interests of officials — Action for compensation
T-211/95	5 February 1997	Claudine Petit-Laurent v Commission of the European Communities	Officials — Internal competition — Notice of competition — Condition of being a member of the temporary staff at the closing date for applications — Principle of the protection of legitimate expectation — Principle of equality of treatment — Duty to have regard for the interests of officials — Action for compensation

Case	Date	Parties	Subject-matter
T-96/95	5 March 1997	Sébastien Rozand-Lambiotte v Commission of the European Communities	Probationary officials — Non-establishment at the end of the probationary period — Articles 26, 34 and 43 of the Staff Regulations — Rights of the defence — Insufficient statement of reasons — Duty to have regard for the welfare of officials — Manifest error of assessment
Cases T-40/96 and T-55/96	6 March 1997	Armel de Kerros and Véronique Kohn-Bergé v Commission of the European Communities	Officials — Recruitment — Access to internal competitions — Notice of competition — Conditions for admission — Condition relating to seniority in the service
Cases T-178/95 and T-179/95	18 March 1997	Santo Picciolo and Others v Committee of the Regions of the European Union	Officials — New post with the Committee of the Regions — Vacancy notice — Rejection of candidatures — Delay in notifying decisions rejecting applications — Lack of statement of reasons — Equal treatment — Manifest error of assessment
T-35/96	18 March 1997	Lars Bo Rasmussen v Commission of the European Communities	Officials — Vacancy notice — Annulment of pending procedure — Notice of competition — Post reserved for nationals of new Member States — Action for annulment — Admissibility — Articles 4 and 29 of the Staff Regulations — Principle of protection of legitimate expectations — Principle of legal certainty — Misuse of powers — Action for damages
T-21/96	19 March 1997	Antonio Giannini v Commission of the European Communities	Officials — Appointment — Vacancy notice — Interests of the service

Case	Date	Parties	Subject-matter
T-66/95	16 April 1997	Hedwig Kuchlenz-Winter v Commission of the European Communities	Officials — Cover by the Common Sickness Insurance Scheme — Ex-spouse of a former official — Action for annulment — Admissibility — Duty to have regard for the welfare of the person concerned — Free movement of persons — Equal treatment — Decision of a national court splitting pension rights by way of compensation — Effects
T-80/96	16 April 1997	Ana Maria Fernandes Leite Mateus v Council of the European Union	Officials — Open competition — Non-admission to tests — Professional experience required
T-169/95	6 May 1997	Agustin Quijano v Commission of the European Communities	Officials — Sick leave — Medical certificate — Medical examination to verify — Conclusions contradicting the medical certificate
T-273/94	15 May 1997	Dimitrios Coussios v Commission of the European Communities	Officials — Duty of loyalty — Suspicion of acts contrary to the dignity of the public service — Loyal co-operation of the official at the inquiry — None — Disciplinary procedure — Removal from post
T-59/96	28 May 1997	Jean-Louis Burban v European Parliament	Officials — Delay in drawing up staff report — Action for compensation — Admissibility — Maladministration — Damage

Case	Date	Parties	Subject-matter
T-6/96	29 May 1997	Thémistocle Contargyris v Council of the European Union	Officials — Rejection of candidature — Article 19(1) of the Rules of Procedure of the Council — Article 45 of the Staff Regulations — Jurisdiction of the Secretary-General of the Council to adopt decisions rejecting a candidature and a complaint — Vacancy notice — Manifest error of assessment — Articles 7 and 27 of the Staff Regulations — Duty to state reasons — Misuse of powers
T-196/95	3 June 1997	H v Commission of the European Communities	Officials — Automatic retirement — Constitution of work carried out by the Invalidity Committee — Articles 53 and 59(2) of the Staff Regulations — Notification of the Decision
T-237/95	12 June 1997	Fernando Carbajo Ferrero v European Parliament	Officials — Internal competition — Appointment to a post as Head of Division
T-104/96	12 June 1997	Ludwig Krämer v Commission of the European Communities	Officials — Determination of the level of a post — Manifest error of assessment — Error of law — Misuse of powers — Article 7 of the Staff Regulations
T-73/96	19 June 1997	Miguel Forcat Icardo v Commission of the European Communities	Officials — Assignment to a new post — Interests of the service — Misuse of powers
T-28/96	2 July 1997	Doreen Chew v Commission of the European Communities	Officials — Representation — Staff committee — Elections — Voters list
T-156/95	9 July 1997	Diego Echauz Brigaldi and Others v Commission of the European Communities	Officials — Commission decisions refusing special leave for elections and travelling time — Admissibility

Case	Date	Parties	Subject-matter
T-4/96	9 July 1997	S v Court of Justice of the European Communities	Officials — Occupational disease — Medical Committee — Basis for calculating the benefits provided for by Article 73(2) of the Staff Regulations
T-92/96	9 July 1997	Roberto Monaco v European Parliament	Officials — Appointment — Classification in grade — Infringement of the competition notice and vacancy notice — Principle of the protection of legitimate expectations — Article 31(2) of the Staff Regulations — Principle of equal treatment and non-discrimination
T-81/96	10 July 1997	Christos Apostolidis and Others v Commission of the European Communities	Officials — Remuneration — Weighting — Measures for enforcing an annulment judgment — Article 176 of the EC Treaty — Fair compensation — Interest in bringing an action — Article 44(1)(c) of the Rules of Procedure
T-36/96	10 July 1997	Giuliana Gaspari v European Parliament	Officials — Sick leave — Medical certificate — Medical examination to verify — Conclusions contradicting the medical certificate
T-29/96	11 July 1997	Bernd Schoch v European Parliament	Officials — Compensation for leave not taken — Sick leave — Notice
T-108/96	11 July 1997	Mireille Cesaratto v European Parliament	Officials — Article 41 of the Staff Regulations — Action for the annulment of a decision rejecting an application for non-active status

Case	Date	Parties	Subject-matter
T-123/95	14 July 1997	B v European Parliament	Temporary staff — Engagement on the basis of Article 2(c) of the Conditions of Employment of other Servants of the European Communities — Termination of employment pursuant to Article 47(2)(a) of the Conditions of Employment of other Servants — Breach of essential procedural requirements — Compliance with a properly introduced internal procedure — Statement of reasons for the decision terminating the employment
T-187/95	15 July 1997	R v Commission of the European Communities	Officials — Sickness insurance scheme — Occupational disease — Concept of risk — Irregularity of the Medical Committee's opinion

STAFF REGULATIONS OF OFFICIALS

T-220/95	16 September 1997	Christophe Gimenez v Committee of the Regions	Officials — Economic and Social Committee — Committee of the Regions — Common structural organization — Internal competition — Decision by the selection board not to admit the applicant to an internal competition — Action for annulment
T-172/96	23 September 1997	Yannick Chevalier-Delanoue v Council of the European Union	Officials — Annual leave — Travelling time — Place of origin outside Europe — Equal treatment

Case	Date	Parties	Subject-matter
T-168/96	21 October 1997	Catherine Patronis v Council of the European Union	Officials — Refusal of promotion — Comparative examination of merits — Leave for sickness and accident — Account to be taken of the activity actually accomplished during the reference period
T-26/89	5 November 1997	Henri de Compte v European Parliament	Officials — Application for revision of a judgment — Admissibility
T-12/97	5 November 1997	Anna Barnett v Commission of the European Communities	Officials — Article 31(2) of the Staff Regulations
T-223/95	6 November 1997	Luigi Ronchi v Commission of the European Communities	Officials — Article 90(1) of the Staff Regulations — Implied decision rejecting a request — Article 24 of the Staff Regulations — Duty to provide assistance
T-15/96	6 November 1997	Lino Liao v Council of the European Union	Officials — Action for annulment — Late staff report — Action for compensation — Admissibility — Damage
T-71/96	6 November 1997	Sonja Edith Berlingieri Vinzek v Commission of the European Communities	Officials — Competitions on the basis of qualifications and tests — Not admitted to the oral tests
T-101/96	6 November 1997	Maria Elisabeth Wolf v Commission of the European Communities	Officials — Open competition — Not admitted to tests — Required professional experience
T-20/96	27 November 1997	Stephen Pascall v Commission of the European Communities	Officials — Temporary agent in the scientific or technical service — Appointment to a post under the operating budget — Withdrawal of a decision granting a further advancement in step for exceptional merit

Case	Date	Parties	Subject-matter
T-19/97	16 December 1997	Claude Richter v Commission of the European Communities	Officials — Leave on personal grounds — Reinstatement — Place of employment — Duty to have regard to the welfare of officials — Principle of sound administration — Action for compensation
T-159/95	17 December 1997	Luigia Dricot and 29 Other Applicants v Commission of the European Communities	Officials — Internal competition for advancement from Category C to Category B — Decision of the Selection Board failing candidates at the oral test — Consistency between complaint and application — Principle of equal treatment for men and women —Principle of non-discrimination — Scope of the obligation to state reasons — Assessment of the Selection Board
T-166/95	17 December 1997	Mary Karagiozopoulou v Commission of the European Communities	Officials — Internal competition for advancement from Category C to Category B — Decision of the Selection Board failing candidates at the oral test —Principle of equal treatment — Assessment of the Selection Board
T-216/95	17 December 1997	Ana María Moles García Ortúzar v Commission of the European Communities	Officials — Internal competition for advancement from Category C to Category B — Decision of the Selection Board failing candidates at the oral test — Scope of the obligation to state reasons — Assessment of the Selection Board

Case	Date	Parties	Subject-matter
T-217/95	17 December 1997	Lucia Passera v Commission of the European Communities	Officials — Internal competition for advancement from Category C to Category B — Decision of the Selection Board failing candidates at the oral test — Scope of the obligation to state reasons — Assessment of the Selection Board
T-225/95	17 December 1997	Fotini Chiou v Commission of the European Communities	Officials — Internal competition for advancement from Category C to Category B — Decision of the Selection Board failing candidates at the oral test — Consistency between complaint and application — Principle of equal treatment for men and women — Principle of non-discrimination — Assessment of the Selection Board
T-110/96	17 December 1997	Dominique-François Bareth v Committee of the Regions	Officials — Internal competition — Refusal to appoint a successful candidate — Misuse of power — Principle of equal treatment — Obligation to state reasons
T-208/96	17 December 1997	Eberhard Eiselt v Commission of the European Communities	Officials — Vocational training course — Refusal of permission to participate — Infringement of Article 24 of the Staff Regulations and of the principle of equal treatment — Claim for compensation for damage suffered
T-90/95	18 December 1997	Walter Gill v Commission of the European Communities	Officials — Medical examinations — Failure to communicate information on state of health — Right to keep his state of health secret

Case	Date	Parties	Subject-matter
T-222/95	18 December 1997	Antonio Angelini v Commission of the European Communities	Officials — Change of place of employment — Return to the place of original employment — Installation allowance
T-57/96	18 December 1997	Livio Costantini v Commission of the European Communities	Officials — Change of place of employment — Return to the place of original employment — Installation allowance — Daily subsistence allowance
T-12/94	18 December 1997	Frédéric Daffix v Commission of the European Communities	Officials — Removal from post — Appeal — Case referred back to the Court of First Instance — Reality of the facts — Burden of proof — Abuse of discretion — Manifest error of assessment — Right to a fair hearing — Article 7 of Annex IX to the Staff Regulations
T-142/95	18 December 1997	Jean-Louis Delvaux v Commission of the European Communities	Officials — Promotion — Comparative examination of the merits — Staff report — Statement of reasons — Identical career conditions — Discrimination on grounds of nationality

STATE AID

T-106/95	27 February 1997	Fédération Française des Sociétés d'Assurances (FFSA) and Others v Commission of the European Communities	State aid — Public undertaking — Combined application of Article 92 and Article 90(2) of the EC Treaty — Additional costs arising from performance of particular tasks assigned to the public undertaking — Competitive activities
T-149/95	5 November 1997	Établissements J. Richard Ducros v Commission of the European Communities	State aid — Restructuring aid — Commission decision — Annulment — Admissibility

Case	Date	Parties	Subject-matter
T-178/94	18 December 1997	Asociación Telefónica de Mutualistas (ATM) v Commission of the European Communities	State aid — Reduction in social charges — Closure of the file on the complaint — Interest in bringing proceedings — Inadmissibility

TRANSPORT

T-260/94	19 June 1997	Air Inter SA v Commission of the European Communities	Air transport — Continuation of an exclusive concession on domestic routes — Regulation (EEC) No 2408/92 — Articles 5 and 8 — Rights of the defence — *Audi alteram partem* — Principle of good faith — Principle of proportionality — Article 90(2) of the EC Treaty

2. Judicial Statistics

Summary of the proceedings of the Court of First Instance

New cases

Cases decided

Cases pending

Miscellaneous

Synopsis of the proceedings of the Court of First Instance

Table 1: **General proceedings of the Court of First Instance in 1995, 1996 and 1997**[1]

	1995		1996		1997	
New cases	253		229		644	
Cases dealt with	197	(265)	172	(186)	179	(186)
Cases pending	427	(616)	476	(659)	640	(1117)

1 In this table and those which follow, the figures in brackets represent the total number of cases, *without* account being taken of joined cases; for figures outside brackets, each series of joined cases is taken to be one case.

New cases

Table 2: **Nature of proceedings (1995, 1996 and 1997)**[1] [2]

Nature of proceedings	1995	1996	1997
Other actions	165	122	469
Staff cases	79	98	155
Special forms of procedure	9	9	20
Total	253 [3]	229 [4]	644 [5]

1 The entry "other actions" in this table and those on the following pages refers to all actions brought by natural or legal persons, other than those actions brought by officials of the European Communities.

2 The following are considered to be "special forms of procedure" (in this and the following tables): objections lodged against, and applications to set aside, a judgment (Art. 38 EC Statute; Art. 122 CFI Rules of Procedure); third party proceedings (Art. 39 EC Statute; Art 123 CFI Rules of Procedure); revision of a judgment (Art. 41 EC Statute; Art. 125 CFI Rules of Procedure); interpretation of a judgment (Art. 40 EC Statute; Art. 129 CFI Rules of Procedure); legal aid (Art. 94 CFI Rules of Procedure); taxation of costs (Art. 92 CFI Rules of Procedure); rectification of a judgment (Art. 84 of the CFI Rules of Procedure).

3 Of which 32 cases concerned milk quotas.

4 Of which 5 cases concerned milk quotas.

5 Of which 28 cases concerned milk quotas and 295 cases concerned actions brought by customs agents.

Table 3: **Type of action (1995, 1996 and 1997)**

Type of action	1995	1996	1997
Action for annulment of measures	120	89	133
Action for failure to act	9	15	9
Action for damages	36	14	327
Arbitration clause	–	4	1
Staff cases	79	98	154
Total	244 [1]	220 [2]	624 [3]
Special forms of procedure			
Legal aid	1	2	6
Taxation of costs	7	5	13
Interpretation or review of a judgment	–	2	–
Objection to a judgment	1	–	–
Revision of a judgment	–	–	1
Total	9	9	20
OVERALL TOTAL	253	229	644

1 Of which 32 cases concerned milk quotas.

2 Of which 5 cases concerned milk quotas.

3 Of which 28 cases concerned milk quotas and 295 cases concerned actions brought by customs agents.

Table 4: **Basis of action (1995, 1996 and 1997)**

Basis of the action	1995	1996	1997
Article 173 of the EC Treaty	116	79	127
Article 175 of the EC Treaty	9	15	9
Article 178 of the EC Treaty	36	14	327
Article 181 of the EC Treaty	–	4	1
Total EC Treaty	161	112	464
Article 33 of the ECSC Treaty	3	10	6
Article 35 of the ECSC Treaty	–	–	–
Total ECSC Treaty	3	10	6
Article 146 of the EAEC Treaty	1	–	–
Article 148 of the EAEC Treaty	–	–	–
Article 151 of the EAEC Treaty	–	–	–
Total EAEC Treaty	1	–	–
Staff Regulations	79	98	154
Total	244	220	624
Article 84 of the Rules of Procedure	–	–	1
Article 92 of the Rules of Procedure	7	5	13
Article 94 of the Rules of Procedure	1	2	6
Article 122 of the Rules of Procedure	1	–	–
Article 125 of the Rules of Procedure	–	1	–
Article 129 of the Rules of Procedure	–	1	–
Total special forms of procedure	9	9	20
OVERALL TOTAL	253	229	644

Table 5: **Subject-matter of the action (1995, 1996 et 1997)**[1]

Subject-matter of the action	1995	1996	1997
Accession of new Member States	–	1	–
Agriculture	48	30	55
State aid	13	18	28
Economic and social cohesion	1	–	–
Competition	65	25	24
Company law	5	–	3
Law governing the institutions	8	13	306
Environment and consumers	1	3	3
Free movement of goods	2	3	17
Freedom of movements for persons	1	1	–
Commercial policy	10	5	18
Regional policy	–	1	1
Social policy	5	8	4
Economic and monetary policy	1	–	–
Research, information, education and statistics	–	–	1
External relations	1	3	3
Transport	–	1	1
Total EC Treaty	161	112	464
State aid	1	2	1
Iron and Steel	2	8	5
Total ECSC Treaty	3	10	6
Protection of the general public	1	–	–
Total EAEC Treaty	1	–	–
Staff Regulations	79	98	154
Total	244	220	624

1 Special forms of procedure excluded.

Cases dealt with

Table 6: **Cases dealt with in 1995, 1996 and 1997**

Nature of proceedings	1995		1996		1997	
Other actions	125	(186)[1]	87	(98)[2]	87	(92)[3]
Staff cases	61	(64)	76	(79)	79	(81)
Special forms of procedure	11	(15)	9	(9)	13	(13)
Total	197	(265)	172	(186)	179	(186)

Table 7: **Results of cases (1997)**

Form of decision	Other actions		Staff cases		Special forms of procedure		Total	
Judgments								
Actions inadmissible	8	(8)	5	(5)	1	(1)	14	(14)
Actions unfounded	24	(27)	31	(32)	–	–	55	(59)
Actions partially founded	4	(5)	5	(5)	–	–	9	(10)
Actions founded	4	(5)	10	(11)	–	–	14	(16)
Total judgments	40	(45)	51	(53)	1	(1)	92	(99)
Orders								
Removal from the Register	22	(22)	20	(20)	1	(1)	43	(43)
Actions inadmissible	17	(17)	4	(4)	1	(1)	22	(22)
No need to give a decision	5	(5)	3	(3)	–	–	8	(8)
Actions founded	–	–	–	–	5	(5)	5	(5)
Actions partially founded	–	–	–	–	2	(2)	2	(2)
Action unfounded	–	–	–	–	3	(3)	3	(3)
Actions manifestly unfounded			1	(1)			1	(1)
Discontinuance	3	(3)	–	–	–	–	3	(3)
								–
Total orders	47	(47)	28	(28)	12	(12)	87	(87)
Total	87	(92)	79	(81)	13	(13)	179	(186)

1 Of which 55 cases concerned milk quotas.

2 8 of which are milk quota cases.

3 4 of which are milk quota cases.

Table 8: **Basis of action (1997)**

Basis of action	Judgments		Orders		Total	
Article 173 of the EC Treaty	29	(32)	29	(29)	58	(61)
Article 175 of the EC Treaty	3	(3)	9	(9)	12	(12)
Article 178 of the EC Treaty	3	(4)	6	(6)	9	(10)
Total EC Treaty	35	(39)	44	(44)	79	(83)
Article 33 of ECSC Treaty	4	(4)	3	(3)	7	(7)
Article 146 of the EAEC Treaty	1	(2)	-	-	1	(2)
Staff Regulations	51	(53)	28	(28)	79	(81)
Article 84 of the Rules of Procedure	–	–	1	(1)	1	(1)
Article 92 of the Rules of Procedure			6	(6)	6	(6)
Article 94 of the Rules of Procedure			4	(4)	4	(4)
Article 125 of the Rules of Procedure	1	(1)			1	(1)
Article 129 of the Rules of Procedure	–	–	1	(1)	1	(1)
Total Special forms of procedure	1	(1)	12	(12)	13	(13)
OVERALL TOTAL	92	(99)	87	(87)	179	(186)

Table 9: **Subject-matter of the action (1997)**[1]

Subject-matter of the action	Judgments		Orders		Total	
Accession of new Member States	–	–	1	(1)	1	(1)
Agriculture	9	(10)	13	(13)	22	(23)
State aid	3	(3)	10	(10)	13	(13)
Competition	10	(12)	9	(9)	19	(21)
Company law	–	–	1	(1)	1	(1)
Law governing the institutions	2	(2)	4	(4)	6	(6)
Environment and consumers	–	–	1	(1)	1	(1)
Commercial policy	4	(5)	1	(1)	5	(6)
Social policy	4	(4)	3	(3)	7	(7)
External relations	2	(2)	1	(1)	3	(3)
Transport	1	(1)	–	–	1	(1)
Total EC Treaty	35	(39)	44	(44)	79	(83)
State aid	3	(3)	–	–	3	(3)
Iron and steel	1	(1)	3	(3)	4	(4)
Total ECSC Treaty	4	(4)	3	(3)	7	(7)
Supply	1	(2)	–	–	1	(2)
Total EAEC Treaty	1	(2)	–	–	1	(2)
Staff Regulations	51	(53)	28	(28)	79	(81)
OVERALL TOTAL	91	(98)	75	(75)	166	(173)

1 Special forms of procedure are not taken into account in this table.

Table 10: **Bench hearing case (1997)**

Bench hearing case	Total
Chambers (3 judges)	133
Chambers (5 judges)	48
Not assigned	5
Total	186

Table 11: **Length of proceedings (1997)**[1]
(judgments and orders[2])

	Judgments	Orders
Other actions	29.3	11.2
Staff cases	18.7	10.7

1 In this table and the graphics which follow, the length of proceedings is expressed in months and decimal months.

2 Other than orders terminating a case by removal from the Register, declaration that the case will not proceed to judgment.

Cases pending

Table 12: **Cases pending as at 31 December each year**

Nature of proceedings	1995		1996		1997	
Other actions	305	(491)[1]	339	(515)[2]	425	(892)[3]
Staff cases	118	(121)	133	(140)	205	(214)
Special forms of procedure	4	(4)	4	(4)	10	(11)
Total	427	(616)	476	(659)	640	(1 117)

1 231 of which are milk quota cases.

2 227 of which are milk quota cases.

3 252 of which are milk quota cases and 295 are cases brought by customs agents.

Table 13: **General trend**

Year	New cases[1]	Cases pending as at 31 December		Cases decided		Judgments delivered		Number of decisions of the Court of First Instance which have been the subject of an appeal[2]	
1989	169	164	(168)	1	(1)	–	–	–	–
1990	59	123	(145)	79	(82)	59	(61)	16	*(46)*
1991	95	152	(173)	64	(67)	41	(43)	13	*(62)*
1992	123	152	(171)	104	(125)	60	(77)	24	*(86)*
1993	596	638	(661)	95	(106)	47	(54)	16	*(66)*
1994	409	432	(628)	412	(442)	60	(70)	12	*(101)*
1995	253	427	(616)	197	(265)	98	(128)	47	*(152)*
1996	229	476	(659)	172	(186)	107	(118)	27	*(122)*
1997	644	640	(1 117)	179	(186)	95	(99)	35	*(139)*
Total	2 577	–	–	1 303	(1 460)	567	(650)	190	*(774)*

1 Special forms of procedure included.

2 The figures in italics in brackets indicate the total number of decisions which may be the subject of a challenge - judgments, orders on admissibility, interim measures and not to proceed to judgment - in respect of which the deadline for bringing an appeal has expired or against which an appeal has been brought.

Table 14: Results of appeals[1] from 1 January to 31 December 1997 (judgments and orders)

	Un-founded	Appel manifestly un-founded	Appeal manifestly inadmis-sible	Appeal manifestly inadmis-sible and unfounded	Annulment and referred back	Partial annulment - not referred back	Total
Agriculture	1	1	–	1	–	–	3
State aid	3	–	–	1	–	–	4
Supply	1	–	–	–	–	–	1
Competition	4	–	1	1	1	–	7
Law governing the institutions	1	–	–	1	1	–	3
Commercial policy	1	–	–	–	–	–	1
Social policy	1	–	–	–	–	–	1
External relations	–	–	–	–	–	1	1
Iron and steel	1	–	–	–	–	–	1
Staff Regulations	2	2	1	2	2	1	10
Total	15	3	2	6	4	2	32

1 Termination by decision of the Court of Justice.

Chapter V

National courts and Community law

A - Proceedings in national courts on Community law

Statistical information

The Court of Justice endeavours to obtain the fullest possible information on decisions of national courts on Community law.

The table below shows the number of national decisions, with a breakdown by Member State, delivered between 1 January and 31 December 1997 entered in the card-indexes maintained by the Research and Documentation Division of the Court. The decisions are included whether or not they were taken on the basis of a preliminary ruling by the Court.

A separate column headed "Decisions concerning the Brussels Convention" contains the decisions on the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, which was signed in Brussels on 27 September 1968.

It should be emphasised that the table is only a guide as the card-indexes on which it is based are necessarily incomplete.

Table showing by Member State judgments delivered on questions of Community law between 1 January and 31 December 1997

Member State	Decisions on questions of Community law other than those concerning the Brussels Convention	Decisions concerning the Brussels Convention	Total
Belgium	34	–	34
Denmark	12	–	12
Germany	110	2	112
Greece	15	1	16
Spain	67	–	67
France	194	65	259
Ireland	14	2	16
Italy	132	4	136
Luxembourg	2	1	3
Netherlands	202	17	219
Austria	32	–	32
Portugal	2	1	3
Finland	12	–	12
Sweden	10	–	10
United Kingdom	103	17	120
Total	941	110	1 051

B - Note for guidance on references by national courts for preliminary rulings

In view of the significance of references for preliminary rulings, which represent more than half of the cases dealt with by the Court, and of the interest to which this document gave rise among the legal profession in the Member States, it has been decided to publish once again this "Note for guidance", which appeared in the previous Report.

The development of the Community legal order is largely the result of cooperation between the Court of Justice of the European Communities and national courts and tribunals through the preliminary ruling procedure under Article 177 of the EC Treaty and the corresponding provisions of the ECSC and Euratom Treaties. [1]

In order to make this cooperation more effective, and so enable the Court of Justice better to meet the requirements of national courts by providing helpful answers to preliminary questions, this Note for Guidance is addressed to all interested parties, in particular to all national courts and tribunals.

It must be emphasised that the Note is for guidance only and has no binding or interpretative effect in relation to the provisions governing the preliminary ruling procedure. It merely contains practical information which, in the light of experience in applying the preliminary ruling procedure, may help to prevent the kind of difficulties which the Court has sometimes encountered.

1. Any court or tribunal of a Member State may ask the Court of Justice to interpret a rule of Community law, whether contained in the Treaties or in acts of secondary law, if it considers that this is necessary for it to give judgment in a case pending before it.

Courts or tribunals against whose decisions there is no judicial remedy under national law must refer questions of interpretation arising before them to the Court

1 A preliminary ruling procedure is also provided for by protocols to several conventions concluded by the Member States, in particular the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

of Justice, unless the Court has already ruled on the point or unless the correct application of the rule of Community law is obvious. [2]

2. The Court of Justice has jurisdiction to rule on the validity of acts of the Community institutions. National courts or tribunals may reject a plea challenging the validity of such an act. But where a national court (even one whose decision is still subject to appeal) intends to question the validity of a Community act, it must refer that question to the Court of Justice. [3]

Where, however, a national court or tribunal has serious doubts about the validity of a Community act on which a national measure is based, it may, in exceptional cases, temporarily suspend application of the latter measure or grant other interim relief with respect to it. It must then refer the question of validity to the Court of Justice, stating the reasons for which it considers that the Community act is not valid. [4]

3. Questions referred for a preliminary ruling must be limited to the interpretation or validity of a provision of Community law, since the Court of Justice does not have jurisdiction to interpret national law or assess its validity. It is for the referring court or tribunal to apply the relevant rule of Community law in the specific case pending before it.

4. The order of the national court or tribunal referring a question to the Court of Justice for a preliminary ruling may be in any form allowed by national procedural law. Reference of a question or questions to the Court of Justice generally involves stay of the national proceedings until the Court has given its ruling, but the decision to stay proceedings is one which it is for the national court alone to take in accordance with its own national law.

5. The order for reference containing the question or questions referred to the Court will have to be translated by the Court's translators into the other official languages of the Community. Questions concerning the interpretation or validity of Community law are frequently of general interest and the Member States and Community institutions are entitled to submit observations. It is

2 Judgment in Case 283/81 *CILFIT* v *Ministry of Health* [1982] ECR 3415.

3 Judgment in Case 314/85 *Foto-Frost* v *Hauptzollamt Lübeck-Ost* [1987] ECR 4199.

4 Judgments in Joined Cases C-143/88 and C-92/89 *Zuckerfabrik Süderdithmarschen and Zuckerfabrik Soest* [1991] ECR I-415 and in Case C-465/93 *Atlanta Fruchthandelsgesellschaft* [1995] ECR I-3761.

therefore desirable that the reference should be drafted as clearly and precisely as possible.

6. The order for reference should contain a statement of reasons which is succinct but sufficiently complete to give the Court, and those to whom it must be notified (the Member States, the Commission and in certain cases the Council and the European Parliament), a clear understanding of the factual and legal context of the main proceedings. [5]

In particular, it should include:

— a statement of the facts which are essential to a full understanding of the legal significance of the main proceedings;
— an exposition of the national law which may be applicable;
— a statement of the reasons which have prompted the national court to refer the question or questions to the Court of Justice; and
— where appropriate, a summary of the arguments of the parties.

The aim should be to put the Court of Justice in a position to give the national court an answer which will be of assistance to it.

The order for reference should also be accompanied by copies of any documents needed for a proper understanding of the case, especially the text of the applicable national provisions. However, as the case-file or documents annexed to the order for reference are not always translated in full into the other official languages of the Community, the national court should ensure that the order for reference itself includes all the relevant information.

7. A national court or tribunal may refer a question to the Court of Justice as soon as it finds that a ruling on the point or points of interpretation or validity is necessary to enable it to give judgment. It must be stressed, however, that it is not for the Court of Justice to decide issues of fact or to resolve disputes as to the interpretation or application of rules of national law. It is therefore desirable that a decision to refer should not be taken until the national proceedings have reached a stage where the national court is able to define, if only as a working hypothesis, the factual and legal context of the question; on any view, the administration of

5 Judgment in Joined Cases C-320/90, C-321/90 and C-322/90 *Telemarsicabruzzo* [1993] ECR I-393.

justice is likely to be best served if the reference is not made until both sides have been heard. [6]

8. The order for reference and the relevant documents should be sent by the national court directly to the Court of Justice, by registered post, addressed to:

The Registry
Court of Justice of the European Communities
L-2925 Luxembourg

Telephone (352) 43031

The Court Registry will remain in contact with the national court until judgment is given, and will send copies of the various documents (written observations, Report for the Hearing, Opinion of the Advocate General). The Court will also send its judgment to the national court. The Court would appreciate being informed about the application of its judgment in the national proceedings and being sent a copy of the national court's final decision.

9. Proceedings for a preliminary ruling before the Court of Justice are free of charge. The Court does not rule on costs.

6 Judgment in Case 70/77 *Simmenthal* v *Amministrazione delle Finanze dello Stato* [1978] ECR 1453.

Chapter VI

General information

A - Publications and databases

Text of judgments and opinions

1. Reports of Cases before the Court of Justice and the Court of First Instance

The Reports of Cases before the Court are published in the official Community languages, and are the only authentic source for citations of decisions of the Court of Justice or of the Court of First Instance.

The final volume of the year's Reports contains a chronological table of the cases published, a table of cases classified in numerical order, an alphabetical index of parties, a table of the Community legislation cited, an alphabetical index of subject-matter and, from 1991, a new systematic table containing all of the summaries with their corresponding chains of head-words for the cases reported.

In the Member States and in certain non-member countries, the Reports are on sale at the addresses shown on the last page of this section (price of the 1995, 1996 and 1997 Reports: ECU 170, excluding VAT). In other countries, orders should also be addressed to those sales outlets. For further information, please contact the Internal Services Division of the Court of Justice, Publications Section, L-2925 Luxembourg.

2. Reports of European Community Staff Cases

Since 1994 the Reports of European Community Staff Cases (ECR-SC) contains all the judgments of the Court of First Instance in staff cases in the language of the case together with an abstract in one of the official languages, at the subscriber's choice. It also contains summaries of the judgments delivered by the Court of Justice on appeals in this area, the full text of which will, however, continue to be published in the general Reports. Access to the Reports of European Community Staff Cases is facilitated by an index which is also available in all the languages.

In the Member States and in certain non-member countries, the Reports are on sale at the addresses shown on the last page of this section (price: ECU 70, excluding VAT). In other countries, orders should be addressed to the Office for Official Publications of the European Communities, L-2985 Luxembourg. For further information please contact the Internal Services Division of the Court of Justice, Publications Section, L-2925 Luxembourg.

The cost of subscription to the two abovementioned publications is ECU 205, excluding VAT. For further information please contact the Internal Services Division of the Court of Justice, Publications Section, L-2925 Luxembourg.

3. Judgments of the Court of Justice and the Court of First Instance and Opinions of the Advocates General

Orders for offset copies, subject to availability, may be made in writing, stating the language desired, to the Internal Services Division of the Court of Justice of the European Communities, Publications Section, L-2925 Luxembourg, on payment of a fixed charge for each document, at present BFR 600 excluding VAT but subject to alteration. Orders will no longer be accepted once the issue of the Reports of Cases before the Court containing the required Judgment or Opinion has been published.

Subscribers to the Reports may pay a subscription to receive offset copies in one or more of the official Community languages of the texts contained in the Reports of Cases before the Court of Justice and the Court of First Instance, with the exception of the texts appearing only in the Reports of European Community Staff Cases. The annual subscription fee is at present BFR 13 200, excluding VAT.

Other publications

1. Documents from the Registry of the Court of Justice

(a) Selection Instruments relating to the Organization, Jurisdiction and Procedure of the Court

This work contains a selection of the provisions concerning the Court of Justice and the Court of First Instance to be found in the Treaties, in secondary law and

in a number of conventions. The 1993 edition has been updated to 30 September 1992. Consultation is facilitated by an index.

The Selected Instruments are available in the official languages (with the exception of Finnish and Swedish) at the price of ECU 13.50, excluding VAT, from the addresses given on the last page of this section.

A new edition is planned for 1998.

(b) List of the sittings of the Court

The list of public sittings is drawn up each week. It may be altered and is therefore for information only.

This list may be obtained on request from the Internal Services Division of the Court of Justice, Publications Section, L-2925 Luxembourg

2. Publications from the Information Service of the Court of Justice

(a) Proceedings of the Court of Justice and of the Court of First Instance of the European Communities

Weekly information, sent to subscribers, on the judicial proceedings of the Court of Justice and the Court of First Instance containing a short summary of judgments and brief notes on Opinions delivered by the Advocates General and new cases brought during the previous week. It also records the more important events happening during the daily life of the institution.

The last edition of the year contains statistical information showing a table analysing the judgments and other decisions delivered by the Court of Justice and the Court of First Instance during the course of the year.

The Proceedings are also published on the internet.

(b) Annual Report

Publication giving a synopsis of the work of the Court of Justice and the Court of First Instance, both in their judicial capacity and in the field of their other activities (meetings and study courses for members of the judiciary, visits, seminars, etc.). This publication contains much statistical information as well as the texts of addresses delivered in formal sittings of the Court.

(c) Weekly calendar

A multilingual weekly list of the judicial activity of the Court of Justice and the Court of First Instance, announcing the hearings, readings of Opinions and delivery of judgments taking place in the week in question; it also gives an overview of the subsequent week. There is a brief description of each case and the subject-matter is indicated. The Fnnish and Swedish versions are currently being made ready. The weekly calendar is published every Thursday.

The weekly calendar is also published on the internet.

Orders for documents referred to above, available in all the official languages of the Communities (and in particular, from 1995, also in Finnish and Swedish), must be sent, in writing, to the Information Service of the Court of Justice, L-2925 Luxembourg, stating the language required. That service is free of charge.

3. Publications of the Library Division of the Court

3.1 Library

(a) "Bibliographie courante"

Bi-monthly bibliography comprising a complete list of all the works — both monographs and articles — received or catalogued during the reference period. The bibliography consists of two separate parts:

— Part A: Legal publications concerning European integration;

— Part B: Jurisprudence — International law — Comparative law — National legal systems.

Enquiries concerning these publications should be sent to the Library Division of the Court of Justice, L-2925 Luxembourg.

(b) Legal Bibliography of European Integration

Annual publication based on books acquired and periodicals analysed during the year in question in the area of Community law. Since the 1990 edition this Bibliography has become an official European Communities publication. It contains more than 4 000 bibliographical references with a systematic index of subject-matter and an index of authors.

The annual Bibliography is on sale at the addresses indicated on the last page of this publication at ECU 42, excluding VAT.

3.2. Research and Documentation

(a) Digest of Case-law relating to Community law

The Court of Justice publishes the Digest of Case-law relating to Community law which systematically presents not only its case-law but also selected judgments of courts in the Member States.

The Digest comprises two series, which may be obtained separately, covering the following fields:

A Series: case-law of the Court of Justice and the Court of First Instance of the European Communities, excluding cases brought by officials and other servants of the European Communities and

cases relating to the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters;

D Series: case-law of the Court of Justice of the European Communities and of the courts of the Member States relating to the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

The A Series covers the case-law of the Court of Justice of the European Communities from 1977. A consolidated version covering the period 1977 to 1990 will replace the various loose-leaf issues which were published since 1983. The French version is already available and will be followed by German, English, Danish, Italian and Dutch versions. Price: ECU 100, excluding VAT.

In future, the A series will be published every five years in all the official Community languages, the first of which is to cover 1991 to 1995. Annual updates will be available, although initially only in French.

The first issue of the D Series was published in 1981. With the publication of Issue 5 (February 1993) in German, French, Italian, English, Danish and Dutch, it covers at present the case-law of the Court of Justice of the European Communities from 1976 to 1991 and the case-law of the courts of the Member States from 1973 to 1990. Price: ECU 40, excluding VAT.

(b) Index A-Z

Computer-produced publication containing a numerical list of all the cases brought before the Court of Justice and the Court of First Instance since 1954, an alphabetical list of names of parties, and a list of national courts or tribunals which have referred cases to the Court for a preliminary ruling. The Index A-Z gives details of the publication of the Court's judgments in the Reports of Cases before the Court. This publication is available in French and English and is updated annually. Price: ECU 25, excluding VAT.

(c) Notes — Références des notes de doctrine aux arrêts de la Cour

This publication gives the references to legal literature relating to the judgments of the Court of Justice and of the Court of First Instance since their inception. It is updated annually. Price: ECU 15, excluding VAT.

Orders for any of these publications should be sent to one of the sales offices listed on the last page of this publication.

In addition to its commercially-marketed publications, the Research and Documentation Division compiles a number of working documents for internal use.

(d) Brussels and Lugano Conventions - Multilingual edition

A collection of the texts of the Brussels Convention of 27 September 1968 and Lugano Convention of 16 September 1988 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, together with the acts of accession, protocols and declarations relating thereto, in all the authentic languages. The work, which contains an introduction in English and French, was published in 1997 and will be updated periodically. Price: ECU 30, excluding VAT.

(e) Bulletin périodique de jurisprudence

This document assembles, for each quarterly, half-yearly and yearly period, all the summaries of the judgments of the Court of Justice and of the Court of First Instance which will appear in due course in the Reports of Cases before the Court. It is set out in a systematic form identical to that of the Digest, so that it forms a precursor, for any given period, to the Digest and can provide a similar service to the user. It is available in French.

(f) Jurisprudence en matière de fonction publique communautaire

A publication in French containing the decisions of the Court of Justice and of the Court of First Instance in cases brought by officials and other servants of the European Communities, set out in systematic form.

(g) Jurisprudence nationale en matière de droit communautaire

The Court has established a computer data-bank covering the case-law of the courts of the Member States concerning Community law. Using that data-bank, as the work of analysis and coding progresses, it is possible to print out, in French, lists of the judgments it contains (with keywords indicating their tenor), either by Member State or by subject-matter.

Enquiries concerning these publications should be sent to the Research and Documentation Division of the Court of Justice, L-2925 Luxembourg.

Databases

CELEX

The computerised Community law documentation system CELEX (*Comunitatis Europeae Lex*), which is managed by the Office for Official Publications of the European Communities, the input being provided by the Community institutions, covers legislation, case-law, preparatory acts and Parliamentary questions, together with national measures implementing directives (internet address: http:/europa.eu.int/celex).

As regards case-law, CELEX contains all the judgments and orders of the Court of Justice and the Court of First Instance, with the summaries drawn up for each case. The Opinion of the Advocate General is cited and, from 1987, the entire text of the Opinion is given. Case-law is updated weekly.

The CELEX system is available in the official languages of the Union.

RAPID — OVIDE/EPISTEL

The database RAPID, which is managed by the Spokesman's Service of the Commission of the European Communities, and the database OVIDE/EPISTEL, managed by the European Parliament, will contain the French version of the Proceedings of the Court of Justice and the Court of First Instance (see above).

Online versions of CELEX and RAPID are provided by Eurobases, as well as by certain national servers.

Finally, a range of online and CD-ROM products have been produced under licence. For further information, write to: Office for Official Publications of the European Communities, 2 Rue Mercier, L-2985 Luxembourg.

AGRIDGED ORGANIZATIONAL CHART OF THE COURT OF JUSTICE AND OF THE COURT OF FIRST INSTANCE

December 1997

(1) Pursuant to the new Article 45 of the Protocol on the Statute of the court of Justice, "Officials and other servants attached to the Court of Justice shall render their services to the Court of First Instance to enable it to function".

How to contact the Court of Justice:

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OF THE EUROPEAN COMMUNITIES
L-2925 Luxembourg
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The Court on Internet: *www.curia.eu.int*

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