



COURT OF JUSTICE
OF THE EUROPEAN COMMUNITIES

ANNUAL REPORT 1996



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OF THE EUROPEAN COMMUNITIES

ANNUAL REPORT
1996

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

Luxembourg, 1997

Court of Justice of the European Communities
L-2925 Luxembourg
Telephone: (352) 43 03-1
Telex (Registry): (352) 2510 CURIA LU
Telegraphic address: CURIA
Telefax (Court): (352) 43 03-2600
Telefax (Information Service): (352) 43 03-2500

Court of First Instance of the European Communities
L-2925 Luxembourg
Telephone: (352) 43 03-1
Telefax (Court): (352) 43 03-2100

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It can be accessed through the Europa server (<http://europa.eu.int>).

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Foreword

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

The traditional report of the activities of the Court of Justice has as its aim to bring together the many tasks that the Court of Justice and the Court of First Instance have completed successfully during the preceding year.

So far as concerns 1996, I would like to point out in particular the significant improvements carried out with regard to the publication of the case-law of the Court of Justice and the Court of First Instance, an improvement achieved despite the greatest budgetary constraints.

The delays in publication affecting the European Court Reports in 1992 and 1993 were practically made up at the end of 1996. As regards the judgments delivered during that year, it was possible to publish them in all languages within five to eight months, thanks, in particular, to the measures taken in 1995 to ensure that judgments were available in all the languages on the day of their delivery.

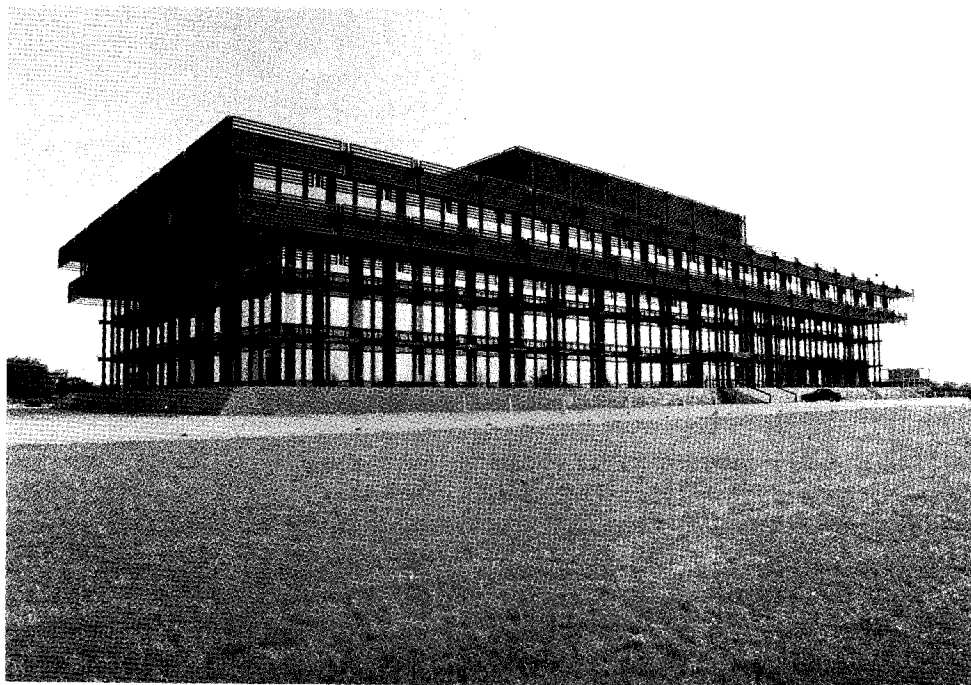
The Court also carried out a significant restructuring of its Research and Documentation Service in particular in order to speed up the processing and analysis of its case-law, a task necessary for the publication of the Court Reports and for the dissemination of the case-law by means of the CELEX database.

The timetable for the publication in all the languages of the weekly bulletin of the activities of the Court of Justice and of the Court of First Instance, which enjoys the continued support of its approximately 18 000 subscribers inasmuch as it provides a rapid synopsis of the case-law, has also improved.

Finally, since October 1996, the Court has its own page on the Internet as part of the Europa website (<http://europa.eu.int>). At present that page offers in particular the bulletin of the activities of the Court of Justice and of the Court of First Instance and will soon offer access to the general public in real time to the full text of the judgments delivered by the Court of Justice and the Court of First Instance.

Those efforts demonstrate on the part of the institution a deep conviction that it is fulfilling the mission entrusted to it by the Treaties completely only if the results of its work are made available to those affected by it within the shortest time possible.

*The Court of Justice of the
European Communities*



A — The proceedings of the Court of Justice in 1996

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

The judicial work of the Court of Justice was maintained at a steady rhythm throughout 1996.

Thus, the number of judgments delivered by the Court, not including approximately 100 orders, reached 193, an increase by comparison to the preceding year, so that some 350 cases were settled. Moreover, it was possible to maintain the length of proceedings on the whole at the 1995 level.

None the less, it must be noted that that increased productivity was not able to compensate for the increase in the number of new cases brought, which reached the record figure of 423 new cases in 1996, thus taking the number of cases pending from 620 at 31 December 1995 to 694 a year later.

As in previous years, references for a preliminary ruling constituted the majority of cases decided by the Court in 1996. The collaborative relationship established between the Court of Justice and the national courts was thus maintained at a steady level.

To be noted in particular are the first references for a preliminary ruling from the courts of the new Member States (6 references from Austria, 4 from Sweden and 3 from Finland), which are token of their rapid integration into the Community legal system.

Aware of the importance of the preliminary reference procedure in respect of the development and coherence of Community law, the Court took the initiative of distributing to those concerned a note for guidance¹ on such references by national courts in order to help them to bring matters before the Court of Justice in the most appropriate way.

A very significant feature of 1996 was the development of the case-law, by way of the judgments delivered in Joined Cases C-46/93 and C-48/93 *Brasserie du Pêcheur and Factortame* [1996] ECR I-1029, Case C-392/93 *The Queen v HM Treasury, ex parte British Telecommunications* [1996] ECR I-1631, Case

¹

Reproduced at page 21.

C-5/94 *The Queen v MAFF, ex parte Hedley Lomas* [1996] ECR I-2553 and Joined Cases C-178/94, C-179/94, C-188/94, C-189/94 and C-190/94 *Dillenkofer and Others v Federal Republic of Germany* [1996] ECR I-4845, in respect of the principle of the *liability of the Member States for the harm caused to individuals*.

The Court had previously held in Joined Cases C-6/90 and C-9/90 *Francovich and Others* [1991] ECR I-5357 that the principle of State liability for loss and damage caused to individuals as a result of breaches of Community law for which the State can be held responsible is inherent in the system of the Treaty. The judgments delivered in 1996 made it possible to specify the conditions under which State liability gives rise to a right to reparation depend on the nature of the breach of Community law giving rise to the loss or damage.

In *Brasserie du Pêcheur and Factortame, British Telecommunications and Hedley Lomas*, the Court, having regard to the facts of the cases before it, ruled that the injured parties have a right to reparation where three conditions are met, namely: the rule of law infringed must be intended to confer rights; the breach must be sufficiently serious; and there is a direct causal link between the breach and the harm suffered by the individual. In the judgment in *Hedley Lomas* it also ruled that where, at the time when it committed the infringement, the Member State in question was not called upon to make any legislative choices and had only considerably reduced, or even no, discretion, the mere infringement of Community law may be sufficient to establish the existence of a sufficiently serious breach.

Moreover, in the event that a directive has not been transposed within the prescribed period, it is clear from *Francovich* and *Dillenkofer* that the right to reparation exists where the result prescribed by the directive entails the grant of rights to individuals and a causal link exists between the breach and the loss and damage suffered. In particular, in *Dillenkofer*, the Court indicated that, where a Member State fails, in breach of the third paragraph of Article 189 of the Treaty, to take any of the measures necessary to achieve the result prescribed by a directive within the period it lays down, that Member State manifestly and gravely disregards the limits on its discretion.

The Court was thus able to find that the conditions laid down in those two groups of judgments were the same, since the condition that there should be a sufficiently serious breach, although not expressly mentioned in *Francovich*, was nevertheless evident from the circumstances of such a case.

The Court also stated in those judgments that reparation of that loss and damage cannot depend on a finding beforehand by the Court of an infringement of Community law attributable to the State, nor on the existence of intentional fault or negligence on the part of the organ of the State to which the infringement is attributable.

In Case C-68/95 *T. Port v Bundesanstalt für Landwirtschaft und Ernährung* [1996] ECR I-6065, the Court also dealt with the issue of the *right to interim judicial protection*. It was called upon to give a ruling on the power of national courts to grant traders interim judicial protection in a situation where, by virtue of a Community regulation, the existence and scope of traders' rights must be established by a Commission measure which the Commission has not yet adopted. Having found that judicial review of alleged failure to act can be exercised only by the Court, it declared that judicial protection for the persons concerned fell within its purview, which could lead to the adoption of interim measures. The Court therefore ruled that the EC Treaty did not authorise national courts to order provisional measures in proceedings for the grant of interim relief until such time as the Commission has adopted an act with legal effect to deal with cases of hardship affecting traders.

In that case the Court also stated that, since Articles 173 and 175 of the Treaty merely prescribe one and the same method of recourse, the third paragraph of Article 175 must be interpreted as also entitling individuals to bring an action for failure to act against an institution which they claim has failed to adopt a measure which concerns them directly and individually.

On 28 March of the year under review the Court issued, pursuant to Article 228(6) of the EC Treaty, an important *opinion* according to which, as Community law now stands, the Community has no competence to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Opinion 2/94 [1996] ECR I-1759). In arriving at that conclusion, the Court pointed out that the Community has only those powers which have been conferred upon it, whether they are the express consequence of specific provisions of the Treaty or whether they are implied from them. None the less, no Treaty provision confers on the Community institutions any general power to enact rules on human rights or to conclude international conventions in this field. Article 235 of the Treaty cannot serve as a basis for widening the scope of Community powers beyond the general framework created by the provisions of the Treaty as a whole and cannot be used as a basis for the adoption of provisions whose effect would, in substance, be to amend the Treaty without following the procedure which it provides for that purpose.

That would be the case with regard to accession to the Convention, for it would entail the entry of the Community into a distinct international institutional system as well as integration of all the provisions of the Convention into the Community legal order. The Court thus concluded that accession to the Convention could be brought about only by way of Treaty amendment.

The Court also exercised to the full its powers in *institutional matters* throughout the period under review, both as regards inter-institutional disputes and disputes between institutions and Member States.

So far as concerns *inter-institutional disputes*, of particular note are the judgments in Case C-271/94 *Parliament v Council* [1996] ECR I-1689 and Case C-303/94 *Parliament v Council* [1996] ECR I-2943, in which the Court ascertained whether the prerogatives of the European Parliament had been infringed by acts of the Council. In Case C-271/94 the Court examined, furthermore, for the first time the scope of the provisions of Title XII on trans-European networks introduced by the Treaty on European Union.

The Court also dealt with several *disputes between Member States and the Community institutions*. Particularly noteworthy were the two judgments whereby the Court rejected, partially in one case and in whole in the other, the actions for annulment brought by the United Kingdom against the Council's directive on working hours and by the Netherlands against the Council's decisions governing public access to the Council documents.

In Case C-84/94 *United Kingdom v Council* [1996] ECR I-5755, the Court essentially confirmed the validity of Council Directive 93/104/EC concerning certain aspects of the organisation of working time. That case was, above all, an opportunity for the Court to rule out a restrictive interpretation of the social provisions contained in Article 118a of the Treaty.

Case C-58/94 *Netherlands v Council* [1996] ECR I-2169 provided the Court with the opportunity to examine the scope of the principle of transparency in Community law. The Court thus noted the progressive affirmation, within both national and Community law, of individuals' right of access to documents held by public authorities but conceded that, so long as the Community legislature has not adopted general rules in the field, the community institutions would have to take the measures necessary to that end by virtue of their power of internal organisation and in the interests of good administration.

Of the *applications for interim relief* which were successful in 1996, those by which the United Kingdom sought, on two occasions, the suspension of Community acts are worth noting.

In the first case, the United Kingdom had sought suspension of the operation of a Commission decision imposing a ban on the export of cattle and beef products from that State. Although the Court found that the arguments put forward by the parties before it raised, at first view, complex questions of law which warranted detailed analysis after hearing argument from all parties, it nevertheless dismissed by way of an order in Case C-180/96 R *United Kingdom v Commission* [1996] ECR I-3903 the United Kingdom's application after declaring that the social and commercial damage relied upon by the United Kingdom could not outweigh the serious and irreparable harm to public health which was liable to be caused by suspension of the contested decision.

On the other hand, the United Kingdom did obtain a partial suspension of the operation of certain expenditure relating to Community measures to assist the elderly and to combat poverty and social exclusion, by way of the order in Joined Cases C-239/96 R and C-240/96 R *United Kingdom v Commission* [1996] ECR I-4475. In assessing whether the measures sought were urgent it was held that, by virtue of its position within the Community, which involves both participation in the exercise of legislative and budgetary powers and contribution to the Community budget, a Member State cannot be denied the right to rely on the damage which would arise from expenditure being incurred contrary to the rules governing the powers of the Community and its institutions.

In matters of the *free movement of goods*, it is worth underscoring the judgments relating to the free movement of medicinal products. In Case C-201/94 *Smith & Nephew and Primecrown* [1996] ECR 5819, it was held that a national marketing authorisation granted to a proprietary medicinal product should also cover, subject to certain conditions, a broadly similar proprietary medicinal product manufactured pursuant to agreements concluded with the same licensor. Joined Cases C-267/95 and C-268/95 *Merck and Others v Primecrown and Others* and *Beecham v Europharm* [1996] ECR I-6285 ("*Merck II*") gave the Court the opportunity to reaffirm its case-law according to which the proprietor of a patent for a medicinal product, where he has voluntarily marketed the product in a Member State which does not recognise the patentability of the product, cannot invoke his patent rights in other Member States to prohibit parallel imports of that product from the first Member State, by virtue of the exhaustion doctrine.

The Court also sought to reconcile free movement of medicinal products and the *protection of trademarks* in several judgments delivered on 11 July 1996 relating to the repackaging of branded products, namely in Joined Cases C-427/93, C-429/93 and C-436/93 *Bristol-Myers Squibb and Others v Paranova* [1996] ECR I-3457, Joined Cases C-71/94 to C-73/94 *Eurim-Pharm v Beiersdorf* [1996] ECR I-3603 and Case C-232/94 *MPA Pharma v Rhône-Poulenc Pharma* [1996] ECR I-3671.

It moreover acknowledged, in Case C-313/94 *Graffione* [1996] ECR I-6039, that the possibility of allowing a prohibition of marketing on account of the misleading nature of a trade mark is not, in principle, precluded by the fact that the same trade mark is not considered to be misleading in other Member States. It is possible that because of linguistic, cultural and social differences between the Member States a trade mark which is not liable to mislead a consumer in one Member State may be liable to do so in another.

Remaining within the field of the free movement of goods, it emerges from Case C-194/94 *CIA Security v Signalson and Securitel* [1996] ECR I-2201 that the obligation to give prior notification to the Commission of all draft technical regulations, as imposed on them by Directive 83/189/EEC, is unconditional and sufficiently precise in order to be relied on by individuals before national courts and, where that obligation is not complied with, the regulations concerned are unenforceable against individuals.

In the field of *freedom of movement for persons*, the Court confirmed its functional interpretation of the exception under Article 48(4) of the EC Treaty, so far as concerns the access of Community nationals to employment in the public service, in three cases: Case C-473/93 *Commission v Luxembourg* [1996] ECR I-3207, Case C-173/94 *Commission v Belgium* [1996] ECR I-3265 and Case C-290/94 *Commission v Greece* [1996] ECR I-3285. It held in particular that the fact that certain posts in specific areas could, in some circumstances, fall within the scope of Article 48(4) of the Treaty could not justify all the posts in those areas being subject to a nationality condition. So far as concerns in particular posts in education, it pointed out that, whilst the preservation of the Member States' national identities is a legitimate aim respected by the Community legal order (as is indeed acknowledged in Article F(1) of the Treaty on European Union), it can still be safeguarded otherwise than by a general exclusion of nationals from other Member States.

In two judgments, in Case C-222/94 *Commission v United Kingdom* [1996] ECR I-4025 and Case C-11/95 *Commission v Belgium* [1996] ECR I-4115, the

Court considered the scope of *Directive 89/552/EEC on the coordination of certain provisions in Member States concerning the pursuit of television broadcasting activities*. In the former judgment it stated that the criterion by virtue of which a broadcaster falls under the jurisdiction of a Member State is based not on the transmission or reception of programmes but on the connection of that body to that State's legal system, which in substance overlaps with the concept of establishment as used in the first paragraph of Article 59 of the EC Treaty. In the second judgment, the Court pointed out in particular, first, that Directive 89/552 covers the cable retransmissions of television programmes and, secondly, that it is solely for the Member State from which television broadcasts emanate to monitor the application of the law of the originating Member State applying to such broadcasts and to ensure compliance with Directive 89/552, and that the receiving Member State is not authorised to exercise its own control in that regard.

With regard to the *review of State aid*, the Court, in the judgment in Case C-39/94 *SFEI and Others* [1996] ECR I-3547, made clear the function of the national court in the context of the implementation of Article 93 of the EC Treaty, which requires the prior notification of State aid to the Commission. It pointed out in particular that a national court, seised of a request that it should draw the appropriate conclusions from the unlawfulness of the granting of aid, where the matter has also been referred to the Commission, which has not yet given a final decision on the question whether the State measures constitute State aid, is not required to declare that it lacks jurisdiction or to stay proceedings until such time as the Commission has adopted a position on how the measures in question are to be categorised. The Court also held that a national court requested to order the repayment of aid must grant that application if it finds that the aid was not notified to the Commission, unless by reason of exceptional circumstances repayment is inappropriate.

The Court delivered numerous judgments in the field of *environment law*. Thus it interpreted Directive 79/409/EEC on the conservation of wild birds in Case C-44/95 *Royal Society for the Protection of Birds* [1996] ECR I-3805. In that case, the Court declared that a Member State may not, when designating a Special Protection Area (SPA) for wild birds and defining its boundaries, take account of economic requirements but only of ornithological criteria. On the other hand, under Directive 92/43/EEC on the conservation of the natural habitats of wild fauna and flora, Member States may subsequently, for imperative reasons of overriding public interest, go back on a decision classifying an SPA by reducing its extent.

The Court also examined the obligations of Member States flowing from Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment in Case C-72/95 *Kraaijeveld and Others v Gedeputeerde Staten van Zuid-Holland* [1996] ECR I-5403. It observed that a Member State has a measure of discretion to specify certain types of projects which will be subject to an assessment or to establish the criteria or thresholds applicable, but that, although it follows, in practice, that all the projects concerned would be exempted in advance from the requirement of an impact assessment the State would exceed the limits of its discretion, unless all projects excluded could, when viewed as a whole, be regarded as not being likely to have significant effects on the environment. The Court also stated that where, pursuant to national law, a court must or may raise of its own motion pleas in law based on a binding national rule which were not put forward by the parties, it must, for matters within its jurisdiction, examine of its own motion whether the authorities of the Member State remained within the limits of their discretion and take account thereof when examining the action for annulment.

In the field of *equal treatment for men and women*, the Court, in analysing the way in which staff councils were run in Case C-457/93 *Kuratorium für Dialyse und Nierentransplantation v Lewark* [1996] ECR I-243, confirmed the approach it had adopted in Case C-360/90 *Arbeiterwohlfahrt der Stadt Berlin v Bötzel* [1992] ECR I-3589. It therefore concluded that, where the category of part-time workers includes a much higher number of women than men, national legislation which, not being suitable and necessary for achieving a legitimate social policy aim, has the effect of limiting to their individual working hours the compensation which staff council members employed on a part-time basis are to receive from their employer for attending training courses which impart the knowledge necessary for serving on staff councils and are held during the full-time working hours applicable in the undertaking but which exceed their individual part-time working hours, when staff council members employed on a full-time basis receive compensation for attendance at the same courses on the basis of their full-time working hours, contravenes the prohibition of indirect discrimination in the matter of pay laid down by Article 119 of the Treaty and Directive 75/117.

The Court interpreted the same provisions when determining the entitlement to remuneration of female workers during maternity leave in Case C-342/93 *Gillespie and Others v Northern Health and Social Services Board and Others* [1996] ECR I-475.

Finally, the Court was called upon to ascertain whether the prohibition on all forms of discrimination based on sex in respect of working conditions, including conditions for dismissal, provided for in Council Directive 76/207/EEC, precluded dismissal of a transsexual for a reason related to his or her gender reassignment. The Court replied in the affirmative in Case C-13/94 *P v S and Cornwall County Council* [1996] ECR I-2143 after finding that, where a person is dismissed on the ground that he or she intends to undergo, or has undergone, gender reassignment, he or she is treated unfavourably by comparison with persons of the sex to which he or she was deemed to belong before undergoing gender reassignment and to tolerate such discrimination would be tantamount, as regards such a person, to a failure to respect the dignity and freedom to which he or she is entitled, and which the Court has a duty to safeguard.

In the field of *external relations*, the Court annulled, by way of a judgment in Case C-25/94 *Commission v Council* [1996] ECR I-1469, a decision of the "Fisheries" Council of 22 November 1993 giving the Member States the right to vote in the United Nations Food and Agriculture Organisation (FAO) for the adoption of the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas. The Court held, first, that such a decision had legal effects: by recognising the Member States' power of final decision, the Council's vote affects the Community's rights; furthermore, it prevented the Community from having any effective say in the deliberations; finally, it gives other States and the FAO the impression that the subject matter of the Agreement did not fall within the exclusive competence of the Community. The Court then concluded that the agreement submitted for adoption at the FAO Conference concerned an issue which did not lie within the exclusive competence of the Community and that, by giving the Member States the right to vote, the Council acted in breach of the Arrangement which it had previously entered into with the Commission with a view to establishing a coordination procedure between the Commission and the Member States.

The Court was also asked about the scope of Council Regulation (EEC) No 990/93 of 26 April 1993 concerning trade between the European Economic Community and the Federal Republic of Yugoslavia (Serbia and Montenegro). Interpreting the regulation in the light of the United Nations Security Council's resolutions, the Court held in substance in Case C-84/95 *Bosphorus v Minister for Transport, Energy and Communications, Ireland and the Attorney General* [1996] ECR I-3953 that the sanction consisting of the impounding of means of transport, provided for in Article 8, applies to an aircraft which is owned by

a Serbian legal person, even though the owner has leased it for four years to a person with no connection with the Federal Republic of Yugoslavia. It considered that any other interpretation would jeopardise the effectiveness of the strengthening of the sanctions and that the solution adopted did not unjustifiably infringe the fundamental rights of the persons concerned and could not be regarded as inappropriate or disproportionate by comparison with the objective of general interest pursued.

This review of the proceedings of the Court in 1996 could not be brought to a close without pointing out the progress which has been made during that period with regard to the speedy publication of the judgments of the Court of Justice.

First of all, the Court achieved its objective of making its judgments available to interested parties on the day of delivery in all the official languages of the Community.

Since the beginning of 1996 the full text of judgments has also been uploaded to CELEX, the Community's database, a mere three to four weeks after delivery.

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

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 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

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.

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

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

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.

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

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

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

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.

C – Composition of the Court of Justice



First row, from left to right:

Judge L. Sevón, Judge J.L. Murray, Judge G.F. Mancini; G.C. Rodríguez Iglesias, President; Judge J.C. Moitinho de Almeida; First Advocate General A.M. La Pergola, Judge C.N. Kakouris.

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; Advocate General C.O. Lenz; Advocate General G. Tesauero; Judge C. Gulmann; Advocate General G. Cosmas.

Third row, from left to right:

Judge M. Wathelet; Advocate General N. Fennelly; Judge P. Jann, Judge G. Hirsch, Advocate General P. Léger; Advocate General M.B. Elmer; Judge H. Ragnemalm; Advocate General D. Ruiz-Jarabo Colomer; Judge R. Schintgen; R. Grass, Registrar.

I – Order of precedence

from 1 January to 11 July 1996

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

R. GRASS, Registrar

from 12 July to 6 October 1996

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

R. GRASS, Registrar

from 7 October to 31 December 1996

G.C. RODRÍGUEZ IGLESIAS, President of the Court
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. LÉGER, 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

II – 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.



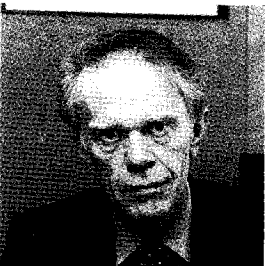
Constantinos Kakouris

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 since 14 March 1983.



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 since 11 January 1984.



Fernand Schockweiler

Born 1935; Ministry of Justice; Senior Government Attaché; Government Adviser; Senior Government Adviser at the Comité du Contentieux of the Conseil d'État; Judge at the Court of Justice from 7 October 1985 to 1 June 1996.



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.



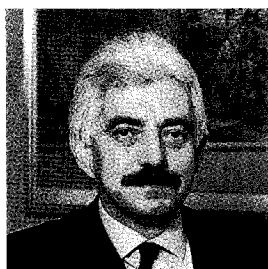
Gil Carlos Rodríguez Iglesias

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); 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.



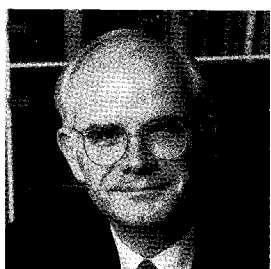
Giuseppe Tesaro

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; Benchers 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; 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 (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 since 7 October 1994.



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); Lecturer at the University of Liège; Professor at the Catholic University of Louvain-la-Neuve; Judge at the Court of Justice since 18 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, *inter alia*, 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.



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 at the Court of Justice since 10 February 1994.

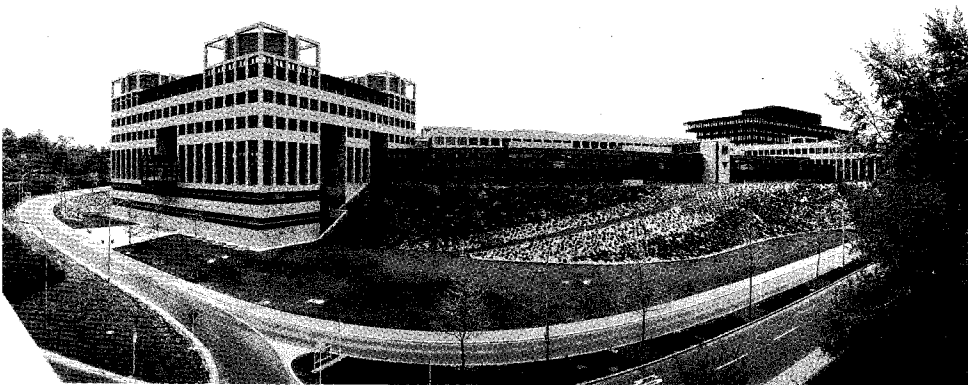
III – Changes in the composition of the Court in 1996

In 1996, the composition of the Court of Justice changed as follows:

Following the death on 1 June 1996 of Judge Fernand Schockweiler, Judge Romain Schintgen of the Court of First Instance entered into office as judge at the Court of Justice on 12 July 1996.

For further details, please see the section under "Formal sittings", p. 91.

*The Court of First Instance of the
European Communities*



A – The proceedings of the Court of First Instance in 1996 by Antonio Saggio, President

Proceedings of the Court

1. In 1996, 215 new cases were brought before the Court of First Instance, a figure which is substantially similar to that of 1995 (212 cases), not including, in either reference year, milk quota actions, whose number continues to decrease (5 cases in 1996 as against 32 in 1995).

The distribution by subject-matter of those 215 cases is, none the less, quite different from that observed in respect of 1995.

So far as competition cases are concerned, it should be pointed out that there was a marked decrease (25 cases as against 65 in 1995) which, nevertheless, must be attributed to the absence of a phenomenon observed in 1995 (as in 1994), namely the series of actions brought against Commission decisions affecting a high number of undertakings in a particular industry. Outwith such series, the number of competition cases is slightly higher by comparison with 1995 (23).

The fact that the reduction in the field of competition has been, with regard to the number of new cases, entirely made up for is essentially due to the continued growth in the number of staff cases (98 cases as against 79 in 1995), agriculture cases (other than milk quotas: 25 actions as against 16 in 1995) and State aid cases (18 actions as against 12 in 1995).

No case has so far been brought in the field of the protection of intellectual property (trade marks and designs or plant variety rights). In that regard, it should be pointed out that, during that period, the Boards of Appeal of the Office for Harmonisation in the Internal Market, whose Rules of Procedure entered into force in February 1996 (Commission Regulation (EC) No 216/96 of 5 February 1996) have not delivered any decisions.

Together with the Members who took office but recently (a little before the year in question as part of the regular partial renewal or, in the case of one of

the new Members, during that same year), the Court of First Instance continued its efforts in terms of output.

The number of judgments delivered by the Court of First Instance in 1996 (107 in net figures, that is to say after joinder; 118 in gross terms) therefore compares well with that of 1995 (here the figures were 98 and 128, respectively). It should be borne in mind that, by comparison with the previous year, there had been in 1995 a steep increase in the number of judgments (see the *Annual Report 1995*).

Although the number of cases decided has, none the less, been lower compared with the preceding year (186 cases as against 265 cases; 174 cases as against 198 cases in net figures), this is largely due to a significant reduction in the number of cases disposed of by way of orders (137 cases in 1995 to 68 in 1996; in net terms, the figures are 100 and 67 respectively). In particular, the number of cases struck off the register has, once again, dropped, from 94 cases in 1995 to 42 cases in 1996 (in net figures: 63 and 41 cases).

In those circumstances, the number of cases pending at the end of the year (659 cases in gross figures, 476 net) is higher than the number of the preceding year (616 and 427 cases respectively), and the same obtains even in respect of staff cases (140 cases at the end of 1996 as against 121 at the end of 1995 or 133 as against 118 cases in net figures) in which the Court has greatly increased its rhythm (66 judgments in 1996 as against 34 in 1995, which equates respectively to 68 and 36 cases decided in net terms).

The number of interlocutory orders increased from 19 in 1995 to 23 in 1996, an increase which confirms the trend observed since the creation of the Court of First Instance.

The number of appeals brought in 1996 is considerably inferior to that of the preceding year (27 as against 47). Approximately 22% of the decisions in respect of which the time-limit for lodging an appeal was to expire during the year under review were appealed against. In 1995 that figure was of 30% (see *Annual Report 1995*).

2. So far as concerns organisation, the Court of First Instance, in a meeting of 12 September 1996, decided to limit, in principle, the competence of the five-judge chambers to actions which concern the implementation of the rules concerning State aid and the rules on trade protection measures. Actions relating to the control of concentrations and mergers and in the field of

competition are henceforth to be assigned, normally, to three-judge chambers. That readjustment should make it possible, in particular as regards the latter field, to work more effectively still in terms of the assessment of the facts, while ensuring that particular attention will be paid to cases containing complex legal problems.

Trend of the case-law

In the field of *competition*, two cases should first be noted (in their chronological order) in which two Chambers of the Court of First Instance gave their views as to the admissibility of actions brought by natural and legal persons against decisions of the Commission not addressed to them.

In its judgment in Joined Cases T-528/93, T-542/93, T-543/93 and T-546/93 *Métropole Télévision and Others v Commission* [1996] ECR II-649, the Court of First Instance (First Chamber, Extended Composition) was called upon to hear and determine a dispute concerning a decision adopted under Article 85(3) of the EC Treaty which declared the provisions of Article 85(1) of that Treaty inapplicable to certain rules of the European Broadcasting Union (EBU), a trade association of radio and television organisations. In particular, those rules provided, for the benefit of the active members of the EBU, for the exclusivity of the rights to broadcast sporting events acquired under the "Eurovision" system (which enabled those organisations to exchange programmes) while limiting the contractual access of other operators to those rights, in principle, to deferred retransmissions. Of the four applicants, television service operators and non-members of the EBU, only two submitted observations during the administrative procedure before the Commission, while another (RTI) simply attended the hearing. In those circumstances, the Commission claimed that the action brought by the last two applicants was inadmissible on the ground that they were not individually concerned by the contested decision. The Court rejected those arguments. It pointed out that those applicants were in competition with EBU and its members and that, in particular, the latter included as direct competitors of the applicants the only active members of the EBU who operated within their respective domestic markets. According to the Court of First Instance, the contested decision made it possible, through the exempted rules of the EBU's Statutes, to exclude the applicants from the benefit of the competitive advantages arising out of membership of that organisation. Thus affected in respect of their competitive position, they had the status of interested third parties within the meaning of Regulation No 17 and were entitled to be associated with the administrative

procedure. Accordingly, the decision adopted as a result of that procedure concerned them individually. To make the capacity to bring proceedings subject, in such circumstances, to their actually taking part in the administrative procedure would be tantamount, according to the Court of First Instance, to introducing an additional condition of admissibility in the form of a compulsory pre-litigation procedure, which is not provided for in Article 173 of the Treaty. Antena 3 thus had capacity to bring proceedings, which was confirmed, according to the Court, by the fact that its application was rejected before the contested decision was adopted on the basis of the membership rules subsequently exempted by the decision. The Court added that RTI's capacity to bring proceedings was not called into question by the fact that the applicant had simply attended the hearing without adopting a specific position. In the Court's view, the procedural right provided for by Regulation No 17 is not subject to any condition relating to the manner of its exercise. As regards substance, the Court annulled the contested decision. It criticised, first, the assessment by the Commission of the conditions laid down in the EBU Statute for membership of that organisation relating to coverage of the population, to programming and to the production of the programmes broadcast. According to the Court, the Commission failed to ascertain properly beforehand, as it was under a duty to do in order to assess correctly the indispensable nature of the restrictions of competition resulting from those rules, whether they were objective and sufficiently determinate so as to enable them to be applied uniformly and in a non-discriminatory manner *vis-à-vis* all potential active members. Moreover, the Court found that since the disputed membership conditions referred essentially to unquantified quantitative criteria they did not meet those requirements. Secondly, the Court found that the Commission could not, without further explanation, consider that a special Statute for the EBU with regard to the competition rules was justified by the constraints arising out of the particular public mission of its active members. In order to be able to justify the granting of an exemption in view of the burdens arising as a result of the pursuit of the public interest, the Commission should have proved, on the basis of specific economic data and, generally, of all the relevant aspects of the case, such as the possible existence of a system of financial compensation for the burdens and obligations on those concerned, that such considerations required broadcasting rights for sporting events to be exclusive and that such exclusivity was essential in order to enable those concerned to obtain an equitable return. An appeal has been lodged against that judgment before the Court of Justice.

In its judgment in Case T-87/92 *Kruidvat v Commission* [1996] ECR II-1931, the Court of First Instance (Second Chamber, Extended Composition)

dismissed as inadmissible the action brought by an undertaking which distributes cosmetic products (including perfumery products) against a decision of the Commission declaring the provisions of Article 85(1) of the EC Treaty inapplicable to standard-form authorised retailer contracts binding the manufacturer of luxury cosmetic products or its exclusive agents, to its specialised retailers. The Court found that the applicant was not individually concerned by the contested decision. Neither the applicant as such, it pointed out, nor the parent companies or even the group of which it formed part had lodged a complaint with the Commission pursuant to Regulation No 17. None of them had participated in the administrative procedure provided for in that regulation or applied to the manufacturer concerned to be admitted to its selective distribution network. In the view of the Court, there was not a sufficient link between, on the one hand, participation in that procedure by an organisation to which one of the parent companies of the applicant belonged (without that company having sought such participation, which led, moreover, to the presentation of a position different to that defended by the applicant before the Court) and, on the other, the individual situation of the applicant. The fact that the applicant was in competition with the authorised distributors of the manufacturer concerned or that it might not be able to be supplied from the distribution network in question (in the event that it did not fulfil the selection criteria set out in the standard contract) was not sufficient, in the view of the Court of First Instance, for it to be individually distinguished for the purpose of the Treaty. The Court found that the scope of the contested decision did not prevent the applicant from legally obtaining supplies, as until now, outwith that network. The Court also referred to the dispute pending before the national court in which, first, an exclusive agent for the manufacturer concerned sought an order, pursuant to a national law in the field of unfair competition, requiring the applicant to discontinue the sale of its products within a given territory and which, secondly, involved a dispute between the parties as to the lawfulness of the distribution network in issue. According to the Court, the applicant was not distinguished individually to a degree sufficient merely because the contested decision could be relevant to the outcome of those proceedings, since any distributor of perfumes may in appropriate circumstances have an interest in questioning the lawfulness of that network. In any event, so far as concerns the interest of the applicant in benefitting from adequate judicial protection, the Court pointed out that the national court may, if it considered it necessary to do so, refer a question on the validity or interpretation of the contested decision to the Court of Justice. An appeal against that judgment has been lodged with the Court of Justice.

Two judgments delivered on the same day by the same Chamber also involve the selective distribution of luxury cosmetic products (Case T-19/92 *Leclerc v Commission* [1996] ECR II-1851 and Case T-88/92 *Leclerc v Commission* [1996] ECR II-1961; the latter case concerns the same manufacturer and the same decision as Case T-87/92, summarised above). The applicant in both cases was a purchasing association supplying a network of retail outlets, most of which were hypermarkets or supermarkets in one of the Member States of the Community. It had argued before the Commission that the use of the standard-form contracts in question led to the exclusion of certain of the outlets from the distribution of the luxury cosmetic products, although they were appropriately specialised. The actions against the Commission decisions declaring Article 85(1) of the EC Treaty inapplicable to those contracts (on the ground that the selection criteria laid down therein are not covered by that provision, whereas the other obligations and conditions could fall under Article 85(3)) were held to be admissible by the Court of First Instance which, in particular, considered that they were of individual concern to the applicant. First, the applicant ought to be assimilated to an operator who has been refused admission to the network as an authorised distributor and which had submitted observations pursuant to Article 19(3) of Regulation No 17. As a cooperative society of retailers with the duty to provide its services to its members relating to their trade, the applicant had asked the manufacturers in question, unsuccessfully, that at least a number of its members should be admitted to the network as authorised retailers. Several of its members had themselves expressed an interest in distributing that manufacturer's products. Finally, the applicant had participated in the administrative procedure before the Commission, submitting detailed observations to it (see above). The Court took account of the interests of the applicant in its capacity as negotiator of supply contracts and because its statutes authorised it to put forward during the administrative procedure not only its own point of view but also that of its members wishing to belong to the network at issue. So far as concerns substance, the selection criteria which, in the view of the Commission, were not covered by Article 85(1) of the Treaty, relating to professional qualifications of the staff, the location and fittings of the outlet and the shop-name were considered by the Court of First Instance in the light of the following principles. Where, as here, the case is concerned with products which, on the one hand, are of a high intrinsic quality and, on the other, have a luxury character arising from their very nature, the need for a selective distribution system, in view of the "characteristics" of those products, must be assessed not only according to their material characteristics but also according to the specific perception that consumers have of them, which includes their aura of luxury. This distinguishes them from other similar products lacking

such an image. In such circumstances, selective distribution, the lawfulness of which must be assessed, according to the Court, taking account of the interests of consumers cannot, in fact, be justified by the mere fact that the producer has made significant efforts to promote his products, without examining the selection criteria used. The Court nevertheless pointed out that qualitative criteria for the selection of retailers which do not go beyond what is necessary to ensure that those products are suitably presented for sale are in principle not covered by Article 85(1) of the Treaty, in so far as they are objective, laid down uniformly for all potential retailers and not applied in a discriminatory fashion. Review by the Court with regard to those principles is only made of the findings of the Commission (and thus relate to issues of defective statement of reasons, a manifest error of fact or of law, a manifest error of assessment or a misuse of powers). The application of selection criteria in specific cases, for example to refusal of admission to the network, may, in the context of the direct effect of Article 85(1), be reviewed by the relevant national courts which must ascertain, in particular, whether those criteria have been applied in a discriminatory or disproportionate fashion. The Court none the less stated that it was also possible to lodge a complaint with the Commission, in particular where the conditions for admission are systematically used in a manner incompatible with Community law. On the basis of those arguments the Court confirmed the lawfulness of the abovementioned selection criteria, with the exception, in both cases, of that relating to the scale of other activities carried on in the retail outlet. That criterion was structured in such a way as to contribute none the less to the elimination of applicants, such as "multiple-product" shops, whose perfumery activity accounts for less than 60% (or less than 50% in Case T-88/92) of their activities, even if they have a specialised area for the sale of the products at issue. The Court found that criterion to be disproportionate and discriminatory by its very nature, for it bore no inherent connection with the legitimate requirement of preserving the luxury image of the products in question and was applied even to the detriment of shops with a specialised area laid out in such a way as to meet the qualitative criteria appropriate to the sale of luxury cosmetics. Since the contested decisions contained no justification to that effect, the Court annulled them, so far as concerned the disputed criterion, on the ground that their statement of reasons was inadequate. By contrast, since the applicant had not established that there were barriers preventing large retailers from engaging in the distribution of luxury cosmetics if their outlets were appropriately fitted out for the sale of such products, the Court rejected the argument that, by the combination of the selection criteria, its members were excluded *a priori* from their respective networks. The other argument put forward by the applicant that because networks similar to those of the two manufacturers at issue exist, there is no

workable competition in the relevant market, was also rejected on the same ground (see above), account having been taken of the Commission's requirement that amendments be made to standard-form contracts before it adopted the contested decision (amendments which included: the removal of all purely quantitative selection criteria and of clauses restricting onward sale of the products to other members of the selective network or limiting the freedom of retailers to offer other brands for sale in their outlets; express acknowledgment that they were free to set their prices independently). Finally, the Court rejected the applicant's arguments which sought to establish that the conditions of Article 85(3) had not been met as regards those aspects of the standard-form contracts which the Commission had considered were caught by Article 85(1) (concerning, in particular, the procedure for admission to the network, stocks, the minimum amount of annual purchases, the launch of new products and cooperation on advertising and promotion and, in Case T-88/92, the presence in outlets of competing brands).

Joined Cases T-24/93, T-25/93, T-26/93 and T-28/93 *Compagnie Maritime Belge Transports and Others v Commission* [1996] ECR II-1201 concern in particular several practices which the Commission had penalised as an abuse of a dominant position by undertakings which were members of a maritime conference. One of those practices was linked to an agreement entered into between the maritime conference and the maritime freight handling organisation of a third country. That agreement gave the undertakings which belonged to the conference exclusive rights within the context of the field of action of the conference. Once approval was granted to an independent shipping operation, the undertakings repeatedly asked that that agreement be strictly complied with, a practice which the Commission characterised as abuse of a dominant position. The Court confirmed that the members of the conference collectively held a dominant position in the relevant market and observed that the approach of the organisation in question was in breach of Article 86 of the EC Treaty since it was part of a plan designed to remove the only independent shipping operation. An undertaking in such a position which enjoys an exclusive right with an entitlement to agree to waive that right is under a duty to make reasonable use of the right of veto conferred on it by the agreement in respect of third parties' access to the market. The Court also upheld the Commission's other contentions, in particular those concerning the incompatibility with Article 86 of practices known as "fighting ships" (altering the conference's freight rates with respect to the rates in force so as to obtain rates identical to or lower than those charged by the main independent competitor for ships sailing on the same or similar dates). The Court none the less found that certain aspects of the Commission's criticism concerning the failure to cease such practices after the

lodging of the complaint and the duration of one of the infringements of Article 86 were not justified. It reduced the fines imposed accordingly. An appeal has been lodged at the Court of Justice against that judgment.

In Case T-353/94 *Postbank v Commission* [1996] ECR II-921 the Court annulled a decision of the Commission concerning the use by third parties of information contained in statements of objections. In the instant case, the statement concerned an agreement relating to the processing of certain operations in the banking sector to which the applicant belonged. A copy of that document had been sent to the undertakings in question in order to prepare for the hearing. The Commission had pointed out to them, in particular, that the information therein should not be used in legal proceedings. When asked subsequently by the third parties concerned, the Commission had informed them by means of the contested decision that that restriction appeared unfounded and was therefore inoperative. It was not until some days later that the applicant learned of the existence of that decision. According to the Court, it related to the use of such information in any legal proceedings (and not only in the proceedings between the applicant and the undertakings in question, which had meantime been concluded). So far as principles were concerned, the Court found that the Community provisions concerning professional secrecy (Article 214 of the EC Treaty and Article 20(2) of Regulation No 17) require the Commission, faced with a request such as that submitted by the undertakings in the present case, to take all necessary precautions to ensure that the entitlement of the undertakings concerned to protection of confidential information and business secrets is not prejudiced. It is for the national court to ensure that those rights are protected. In the present case, the Commission failed in its obligation of professional secrecy by not giving the applicant an opportunity to state its view on the production in legal proceedings of the documents in question and by failing to take any measure designed to protect the confidentiality of the information or business secrets of which, before and during the hearing, it requested protection. The Commission was, *a fortiori*, required to take the precautions since it had failed in its duty to give the applicant an opportunity, prior to forwarding the statement of objections to the third parties concerned, to state its views in that respect, to take a properly reasoned decision and to make it known to the applicant. The Court nevertheless rejected the applicant's argument that in authorising the production to the national courts of the information contained in a statement of objections infringed Article 20(1) of Regulation No 17 (which prohibits the Commission authorities lawfully in possession of such information to use it for a purpose other than that for which it was sought). Disclosure of that kind of information by parties in proceedings before a national court, for the purposes of such

proceedings, constitutes cooperation, as prescribed by Article 5 of the Treaty, between the Commission and the national courts and falls outside the scope of Regulation No 17. To refuse to do so would undermine the rights of litigants deriving from the direct effect of Articles 85(1) and 86 of the Treaty. This conclusion does not conflict with the need to protect the business secrets of the undertaking concerned or its rights of defence in proceedings before national courts, since it is for the national court to ensure such protection (see above). The rights of defence in an administrative procedure are not undermined by the production of documents to the national court.

In Case T-575/93 *Koelman v Commission* [1996] ECR II-1, the Court was called upon to hear and determine an action brought by an individual who, in his capacity as an author, had lodged complaints with the Commission concerning several copyright agreements. The complaint was rejected by the Commission on the ground that those agreements satisfied the conditions for exemption referred to in Article 85(3) of the EC Treaty. The argument put forward by the applicant in support of his action for annulment that the Commission could rely on those conditions only after it had adopted a decision to exempt the agreement was not accepted by the Court. According to settled case-law, a complainant is not entitled to obtain from the Commission a decision within the meaning of Article 189 of the Treaty regarding the existence or otherwise of an infringement of Article 85 thereof. The Commission's obligations are limited to a careful examination of the facts and points of law brought to its notice. However, by indicating the reasons for which careful examination of the facts and points of law brought to its notice by the complainant do not prompt it to initiate a procedure to establish whether there had been an infringement, it may contemplate all the provisions of that Article, including paragraph 3, without being required to adopt a decision to that effect or even to rule definitively on the compatibility of those agreements with Article 85(1). The Court stated that, although such a decision rejecting a complaint constitutes a challengeable measure, the assessments it contains, having the same legal status as a "comfort letter", does not prevent a national court from declaring the agreements and practices complained of to be automatically void under Article 85(2) of the Treaty, having regard to the evidence before it. It may, however, take into account, as a fact, the assessments made by the Commission. The Court, after examining the other pleas in law put forward by the applicant alleging, in particular, infringement of Article 85(3) of the Treaty, dismissed his claim for annulment together with his claim for compensation. An appeal has been brought against that judgment before the Court of Justice.

In an interlocutory order in Case T-41/96 R *Bayer v Commission* [1996] ECR II-381 the President of the Court of First Instance heard and determined an application for suspension of operation of a Commission decision, taken against the background of parallel imports arising from the fact that the price of medicinal preparations fixed by the official authority of two Member States was significantly lower than the price of the same medicinal preparations charged in a third Member State. Having found that there was an agreement, relating to the export prohibition, between the subsidiaries of the applicant, a pharmaceutical products manufacturer, and wholesalers in the two States first mentioned, the decision enjoined the applicant, first, to inform those wholesalers that exportation was permitted within the Community and, second, to introduce into its applicable general conditions a statement to the same effect. After analysing the facts of the case (the way in which the wholesalers perceived the conduct of the applicant's subsidiaries, any indications of tacit consent on their part to the alleged export prohibition and to the trend to parallel importation during the period under consideration), the President of the Court of First Instance concluded that the applicant's argument that the alleged agreement did not exist was not at first sight manifestly unfounded. The condition as to urgency was also fulfilled. First, the contested decision affected the applicant's freedom to define its commercial policy or created, at least, uncertainty as to independence in defining its business policy in circumstances in which it did not have control over prices in the exporting countries as a result of action by the official authorities. Secondly, the subsidiary's need in the importing country to reduce prices there in order to avoid a significant growth in parallel imports could involve a large and irrecoverable drop in its profits, deprive its pharmaceutical branch of its economic base and lead to the dismissal of many employees. Such damage likely to be caused to the applicant by immediate implementation of the provision in question would be disproportionate in relation to the other interests in play. Thus it was in the interest of the wholesalers to increase their exports, since the markets in which they operated were not entirely partitioned, as was attested by the level of their parallel imports in the third Member State concerned. As regards the interest of the competent authorities and of the consumers and taxpayers of that latter State, the President of the Court noted the finding in the contested decision that the prices charged by the applicant's subsidiary were subject, in that State, to indirect control by the abovementioned authorities. Accordingly, the President upheld the application for interim measures.

Finally in the field of competition cases, mention should be made of the order in Case T-134/94, T-136/94, T-137/94, T-138/94, T-141/94, T-145/94,

T-147/94, T-148/94, T-151/94, T-156/94 and T-157/94 *NMH Stahlwerke and Others v Commission* [1996] ECR II-537 concerning Article 23 of the Protocol on the ECSC Statute of the Court of Justice. That article provides that, where proceedings are instituted against a decision of one of the institutions of the Community, that institution is under a duty to transmit to the Court all the documents relating to the case before the Court. In the present case, the Court was called upon, in the context of an action based on the competition rules laid down by the ECSC, to rule on whether the applicants should have access to the file which, pursuant to Article 23, the Commission had lodged with the Court Registry. To that end, the Court rejected the argument of a number of the applicants that that article, together with the principle *audi alteram partem*, mean that all parties should have unconditional, unlimited access to such a file. In this connection, the Court drew a distinction between the different categories of documents concerned. As regards documents which the Commission has classified as confidential in the interests of one of the applicants or of third persons who are not party to these proceedings, it pointed out the need to balance the requirements of Article 23 against the protection of business secrets ensured, in the legitimate interests of those undertakings, by Article 47 of the ECSC Treaty. The Court concluded therefrom that the Commission cannot object to the disclosure of such documents where the parties from which they originate themselves do not oppose their disclosure (as was the case, in this instance, in respect of most of the documents concerned), unless such disclosure constitutes, in itself, a breach of the competition rules laid down by the ECSC Treaty. Such an infringement was not proved in the present case. The Court considered the other documents falling under the two abovementioned categories separately, checking, in particular, whether, in view of the age of the information or the fact that their contents are well-known, they were (still) of some commercial value. Finally, with regard to documents classified by the Commission as confidential on the ground that they are internal documents, the Court pointed out, first, that Article 23, cited above, which has no equivalent in the Protocol on the EC Statute of the Court of Justice or in the Protocol on the EAEC Statute of the Court of Justice, the performance by the institution concerned of its obligation to transmit the file, which applies specifically to proceedings before the Community judicature in an action against a decision originating from an ECSC institution, does not depend on the judicature's adopting any measure of inquiry. That obligation extends, as a general rule, to all the documents relating to the case, without its being necessary at this stage to provide for an exception in principle for internal documents. The very principle of judicial supervision of acts of the administration in a Community based on the rule of law precludes the application of a general rule of administrative confidentiality *vis-à-vis* the Court

of Justice. The Court found that, at the risk of infringing a basic rule of law, to base a judicial decision on facts and documents of which the parties themselves, or one of them, have not been able to formulate an opinion, the documents transmitted to the Community judicature pursuant to that rule should, in principle, be made accessible to all the parties to the proceedings. The defendant could not therefore justify objecting to the disclosure of those internal documents to the applicants merely by referring to its administrative practice or to the case-law relating, in both cases, to the EC Treaty. The Court acknowledged, in any event, that access to the Commission's internal documents, on the basis of Article 23, cited above, may be made subject to restrictions, in particular where the documents which have already been produced are sufficient to elucidate the Court or where unconsidered disclosure of certain documents which, by reason of their nature or their content, warrant special protection, would impair the sound functioning of the institutions, detrimental to the attainment of the objectives of the ECSC Treaty. The conflict which the Court had to resolve pursuant to those criteria consisting of, on the one hand, the principle of the effectiveness of administrative action and, on the other, the principle of judicial supervision of administrative acts (while respecting the rights of the defence and the principle *audi alteram partem*) could not be resolved by the Court on the basis of the information then available to it. The Commission had not yet indicated the reasons why, in its view, it should, exceptionally, be released from its obligations under Article 23. The Court accordingly asked it to specify the documents which, by reason of their specific nature or content, it considered could not be communicated to the applicants and the reasons which it considered to warrant such exceptional treatment and to lodge, where appropriate, a non-confidential version of those documents.

In the field of *State aid*, several judgments concerned the admissibility of actions brought by individuals challenging measures taken by Community authorities or of the pleas in law put forward in support of such actions.

Refusal of the Commission to propose "appropriate measures" relating to an aid scheme, pursuant to Article 93(1) of the EC Treaty, cannot be considered to be a decision which may be the subject of an action for annulment since the act requested by the applicant is merely a proposal which produced no binding legal effects and could not therefore have been the subject of an action under Article 173 of the EC Treaty. The Court pointed out, however, that it was open to the undertakings which were active on the market concerned to contest, before the national courts, the decision of national authorities to grant State aid to an undertaking which competes with them. If the aid forms part of a

general aid scheme, undertakings may call in question in such national proceedings the validity of the Commission's decision to approve that scheme. If a question as to the validity of that decision is raised before a national court, that court may or, in certain circumstances, must refer a question to the Court of Justice for a preliminary ruling under Article 177 of the Treaty (Case T-330/94 *Salt Union v Commission* [1996] ECR II-1475; see also Case T-154/94 *Comité des Salines de France et Compagnie des Salins du Midi et des Salines de l'Est v Commission* [1996] ECR II-1379).

In Case T-398/94 *Kahn Scheepvaart v Commission* [1996] ECR II-477 the Court dismissed as inadmissible the action brought by a company operating sea-going vessels seeking the annulment of a decision, addressed to the government of a Member State, whereby the Commission had extended the authorisation of fiscal schemes to promote ship building (both similar to and different from those operated by the applicant), without restriction to vessels already specified and without a finding as to the compatibility of individual aids with the common market. According to the Court, that extension amounted to approval of the application of provisions of general application, and was thus itself of general application with regard to the potential beneficiaries of those provisions. Furthermore, it was not of individual concern to the applicant, which is thus affected only by virtue of its objective capacity as a transport undertaking (in the same manner as any other trader who is, or might be in the future, in the same situation) and, at that, only potentially and indirectly, until after the practical application of the contested aid scheme. The mere fact that the contested decision adopted, following an amendment to another Community provision, was preceded by a complaint lodged by the applicant was not such as to distinguish it individually from all other persons, and thus confer on it standing to bring proceedings against a general aid scheme. In so far as the contested decision consisted in not initiating the procedure under Article 93(2) of the EC Treaty, the Court found that the case-law of the Court of Justice, according to which such decisions are of individual concern to "competing undertakings", did not apply in the present case. So far as concerns approval of a general aid scheme, there cannot be, before individual aids have been granted, any undertakings which correspond to that description. To treat as admissible an application by an undertaking which is only indirectly and potentially affected by the that scheme and is thus only marginally concerned by a Commission decision of general application would be tantamount to giving a virtually unlimited number of undertakings the right to bring proceedings against a decision and would deprive the concept of "individual concern" of its legal content and would thus exceed the power conferred on the Court by the fourth paragraph of Article 173 of the EC Treaty. Such a solution would be

unacceptable, even in the possible absence of a remedy under national law (for the criteria as to admissibility in the event of the approval of individual aids by the Commission, without initiating the procedure under Article 93(2) of the EC Treaty, see Case T-266/94 *Skibsværftsforeningen and Others v Commission* [1996] ECR II-1399).

So far as concerns pleas which may be put forward in support of an action against a Commission decision approving a national aid measure, the Court stated that the fact that, during the administrative procedure before the Commission, the applicant refrained, from submitting observations on a given problem, which was clearly mentioned when the procedure was opened, does not prevent it from raising it in its application. No provision in the field of State aid lays down such a restriction (Case T-380/94 *AIUFFASS and AKT v Commission* [1996] ECR II-2169; an appeal against that judgment has been lodged with the Court of Justice).

In the judgment in Case T-227/94 *AITEC v Commission* [1996] ECR II-351, the Court was called upon to hear and determine an action brought under Article 175 of the EC Treaty in which the applicant, an association of undertakings which had lodged a complaint requesting the Commission to take action in order to enforce its decision on an aid in favour of an undertaking in the sector concerned, criticised the defendant for failing to take action inasmuch as it had neither brought the matter before the Court of Justice (see the second subparagraph of Article 93(2) of the EC Treaty) nor addressed to the applicant a decision in response to its complaint. After dismissing that part of the action relating to bringing the matter before the Court, in accordance with settled case-law, the Court of First Instance was to decide whether the Commission was required to take a decision *vis-à-vis* the applicant, as laid down by Article 175. The Court replied in the negative. In the absence of the implementing regulations provided for by Article 94 of the EC Treaty, Community law does not provide for the adoption of any such decision. Furthermore, the principles laid down in the case-law, relating to the individual's right to receive a decision on a complaint lodged under Article 85 or Article 86 of the EC Treaty were not capable of being transposed to the present case. The second subparagraph of Article 93(2) does not provide for the involvement of individuals (contrary to the first subparagraph of that provision on the review of draft aid projects), and the Commission must have a wide discretion as to the method in which a decision finding aid to be illegal is implemented, which may raise complex issues concerning the recovery of such aid. That solution does not preclude the possibility that, in certain cases, the Commission may be bound, in the interests of sound administration and

transparency, to inform a complainant of the steps taken in consequence of its decision. In the present case, the Commission had, nevertheless maintained an adequate exchange of information with the applicant. The application was therefore dismissed as inadmissible.

Case T-358/94 *Air France v Commission* [1996] ECR II-2109, concerning a decision taken by the Commission in the air transport sector is worthy of note with regard to the substantive rules applicable in matters of State aids. A wholly owned subsidiary of an entity which, in the Commission's view, was controlled by the public authorities of the Member State concerned, had subscribed to securities issued by an undertaking in that sector. The Court confirmed the Commission's finding that that measure constituted an aid incompatible with the common market. In particular, it considered that the contested investment was the result of activities attributable to the Member State in question. The fact that the abovementioned entity (which had been the source of the contested investment and had found the necessary funds) belonged to the public sector could be inferred from its tasks, the method of appointing its directors and its being subject to the legislature. Legislative power is one of the constitutional powers of the State and thus conduct of the legislature is necessarily imputable to the State (see the case-law of the Court of Justice concerning, first, State liability for the conduct of constitutionally independent institutions tantamount to failure by the Member State to fulfil its obligations and, secondly, to the fact that the means of redress provided for by the second subparagraph of Article 93(2) of the Treaty is merely a variant of the action for a declaration of failure to fulfil Treaty obligations). The public law nature of that body was not called into question by the information concerning its internal organisation or guaranteeing its independence *vis-à-vis* other bodies. The Court also held that the resources which made it possible for the disputed investment to be made were State resources, even though the funds managed by the entity in question, deposited by private savers, could be withdrawn by them at any time. The constant balance generated by deposits and withdrawals of funds remained permanently at its disposal, and the disputed investment, financed with the help of that balance, was liable to distort competition in the same way as if that investment had been financed by means of revenue from taxation or compulsory contributions. In those circumstances, the fact that the said investment was not the subject of approval of the government of the Member State concerned did not affect characterisation. The Court also confirmed the Commission's finding that that investment would not have been acceptable to a private investor operating normally in a market economy and thus constituted State aid. Finally, the Court rejected the complaint that there was no adequate statement of reasons and that the Commission should have

shown that the amount whose repayment (after deduction of interest) was ordered corresponds to the aid element. Since the case involved a very complex issue of securities, which had already been subscribed and whose inherent characteristics could no longer be altered as such, the Commission could, in the view of the Court, order the repayment of the injected capital and give as its reason for that choice an overall statement to the effect that the risks involved were disproportionate to the advantages gained. The Commission was not required to elaborate how a different issue of securities would have been acceptable to a prudent private investor.

In the field of *anti-dumping*, Case T-162/94 *NMB France and Others v Commission* [1996] ECR II-427 ought to be mentioned. In that case, several undertakings which were the European subsidiaries of a group established in a third country, sought the annulment of decisions whereby the Commission had (partially) rejected their requests for reimbursement of anti-dumping duties levied upon their imports. In the contested decision, those duties had been treated as a cost and thus deducted, when constricting the export price, from the price at which the product was imported and resold for the first time to an independent purchaser. The result of that method of calculation is that, in order for an associated importer to be able to claim full reimbursement of the anti-dumping duties paid, it is necessary not only for the dumping which led initially to the imposition of those duties to have been eliminated ("single jump"), but, moreover, that the amount of those selfsame duties should have been reflected in the price (the "double jump" or "duty as a cost" rule, provided for by the applicable basic regulation (Regulation (EEC) No 2423/88)). The Court found first of all that the status of *res judicata* of a judgment of the Court of Justice relating to previous decisions on reimbursement and to complaints partially different to those in the present case did not render the latter inadmissible. As regards substance, it considered that examination of questions purely of law raised by the applicants did not indicate that the "duty as a cost" rule breached the principle of proportionality, account being taken of the wide margin of discretion which the Community legislature enjoys in matters of common commercial policy. That rule, based on reasonable grounds, was not manifestly inappropriate to the aim of affording the Community industry fair protection. Where, following the imposition of duties, there does not appear to be any change in the conduct of the group of undertaking nor, in particular, of the associated importer, the dumping margin is increased by reason of the absorption of those duties by that group. Thus, it is true that the fact of making a "single jump" (rather than a "double jump" which eliminates dumping in any event) avoids such an increase, but does not mean that there has been a definitive change of market behaviour which would

lead to a mandatory reimbursement of the full duties paid. For the same reasons, the legislature was not required to resort to different options, instead of keeping the contested rule, reflected in the new provisions, more favourable to the applicants, adopted during the proceedings before the Court of First Instance both within GATT (the 1994 Anti-Dumping Code) and the Community (new basic regulation, Regulation (EC) No 3283/94). The 1979 Anti-Dumping Code itself contained no provision relating to that specific problem, known to the contracting parties, but on this point evinced great flexibility and thus did not preclude the Community from introducing, by way of implementation, the "duty as a cost" rule. In the Court's view, the application of that code could not be substantially influenced by an interpretation arrived at in the light of a subsequent code, still less the 1994 Code. On the one hand, according to the Court, the 1994 Code presupposes the existence of that rule with regard to the construction of the export price (and provides only for a relaxation in its implementation in respect of reimbursement) and, on the other, like its predecessor, it is the result of multilateral negotiations which reflect economic developments and the relative strengths of the parties at the material time. The principle of non-discrimination, relied upon by applicants in view of the different treatment reserved to independent importers, was moreover not breached. Unlike associated importers, those operators are unconnected with dumping practices and, in any event, associated importers are in a position to have full knowledge of the circumstances underlying it. Moreover, the anti-dumping duties which an independent importer pays upon importation constitute an additional cost which it must cope with so that the contested rule merely places the two categories of trader in question on the same footing.

The judgment in Case T-60/92 *Noonan v Commission* [1996] ECR II-215 provided an opportunity for the Court to rule on the principles governing access to employment in the *Community civil service*. The applicant's candidature for a general competition organised with a view to constituting a reserve list for the recruitment of typists was rejected on the ground that, since she held a university degree, she fulfilled one of the exclusion criteria laid down in the competition notice. According to the Court, that criterion and, therefore, the contested decision itself, were unlawful inasmuch as they were incompatible with the principle of equal treatment in conjunction with the first paragraph of Article 27 of the Staff Regulations of the European Communities (the Staff Regulations). Under that provision, recruitment is to be directed to securing for the institution the services of officials of the highest standard of ability, efficiency and integrity. At the technical level, possession of a university degree did not prevent, in the Court's view, the candidates concerned from performing the tasks connected with the posts to be filled, and

there was nothing to indicate that it would have had a negative effect on the quality of their work or on their efficiency. The consideration that, in the absence of the contested criterion, the other candidates' chances of passing the competition would be reduced or even eliminated could not be upheld because in no way does it call in question the ability of candidates in the first of those categories to accomplish the tasks which successful candidates in the competition were to be called upon to perform in the same way as other candidates. The Court also rejected the Commission's argument that graduate candidates would allegedly be at an advantage, after recruitment, as regards future promotion or internal competitions. According to the Court, it had not been shown that the interests of the service, which was decisive in the choice of selection criteria, require the choice of a criterion based on possession of university qualifications. Finally, in support of its argument that, after recruitment, graduates might feel frustrated by the nature of their tasks, a situation which could affect their own work or the working conditions of those around them, the Commission did not provide evidence of any relevant experience, either within its own departments or in those of other Community institutions. Nor did it have sufficient information in order to make a forecast in that regard.

Two judgments (Joined Cases T-177/94 and T-377/94 *Altmann v Commission* [1996] ECR II-2041 and Case T-99/95 *Stott v Commission* [1996] ECR II-2227) concern the status of certain employees of the Joint European Torus (JET), a European Atomic Energy Community joint undertaking (see Article 45 et seq. of the EAEC Treaty), established in the United Kingdom at the United Kingdom Atomic Energy Authority (the host organisation). The applicants, British nationals, were members of staff of the host organisation assigned to JET. In that capacity they continued to be employed by that organisation under the employment conditions provided for by it, in accordance with the JET statutes. Those statutes provided for two other categories of staff assigned to JET who, by contrast, were recruited by the Commission to temporary posts in accordance with the "conditions of employment of other servants of the European Communities". This concerned, on the one hand, staff made available by the members of the joint undertaking other than the host organisation (namely the corresponding organisations in the other Member States, the EAEC itself and a non-Member State), and, on the other, "all other personnel". In both cases, the applicants had challenged the rejection of their requests to be recruited as temporary staff as personnel falling within one of the two latter categories.

In the *Altmann* case, the applicants sought employment as other personnel, which the Commission refused by reference, essentially, to the provisions of the JET Statutes relating to the employment of staff made available by the host organisation. The Court upheld their application and held that, without objective justification, those provisions drew a distinction between two categories of employees according to the member organisation which made the employee concerned available to the joint undertaking. Since all the members of staff assigned to JET were in a comparable situation (recruited, in fact, by way of the same competition, without necessarily having been in contact with the organisation which had made them available, and promoted according to the same criteria), the employees made available by the host organisation were treated altogether less advantageously than the other employees. That difference concerned the conditions and the security of their employment and, above all, their chances of access to the European civil service. Moreover, the statutes did not make it possible to remedy that situation for they precluded persons made available by the host organisation from being recruited as "other personnel". The Court of First Instance concluded that there no longer existed any of the circumstances which initially could have justified, in the view of the Court of Justice, their being treated differently by comparison with the rest of the staff assigned to JET (see Joined Cases 271/83, 15/84, 36/84, 113/84, 158/84, 203/84 and 13/85 *Ainsworth and Others v Commission and Council* [1987] ECR 167). Considering that the authority of *res judicata* of that judgment did not preclude the bringing of the present action, directed against a different decision and based, in part, on other factual and legal grounds, the Court of First Instance held that the fact that the Court of Justice had concluded, at the time, that the relevant provisions were lawful did not prevent their being declared inapplicable henceforth, in view of the changed circumstances referred to above. In any event, the Court of First Instance could declare inapplicable the Council's decision to maintain the system of recruitment after the period initially provided for in respect of JET's activities, without undermining the principle of legal certainty, after the Court of Justice's judgment and which produced legal effects in its own right.

In the *Stott* case, the applicant sought to obtain employment at the Commission, on this occasion as staff made available by a national organisation other than the host organisation on the basis of a "return ticket". To that end, the JET statutes provided that each member undertook to reemploy members of staff, which it had assigned to the project and who had been recruited as temporary staff by the Commission, as soon as their work on the project had been completed. Budgetary constraints and the projected "end of JET" on 31 December 1996 were cited in support of the rejection of the applicant's

request. Moreover, according to the Commission, in order to accede to his request resort would have had to have been had to an irregular procedure, that is to say the creation of a new corresponding post, in order to appoint the applicant and at the same time eliminate all the other candidates, after the applicant resigned from his current post. That reasoning was tantamount to saying, in the Court's view, that the aforementioned provisions of the JET Statutes did not make it possible for the applicant to change employer while keeping the same post at JET. According to the Court, the latter argument was derived from an erroneous interpretation of the Statute, in conflict with the general principle of equal treatment. The result was that the mobility of staff made available to JET by the host organisation was hampered by comparison with that of the other European research staff at JET, without there being any objective justification for that restriction either in the nature and characteristics of the Joint Undertaking or in the special situation of the host organisation. Furthermore, in so far as the applicant could show that he was properly assigned to the Project by a member of JET and that he had a post on the JET staff, the Commission no longer had any margin of discretion enabling it to rely on budgetary constraints or the imminent conclusion of the Project. The Court thus upheld the application.

In Case T-368/94 *Blanchard v Commission* [1996] ECR II-41, the Court gave judgment on the procedures governing the part played by officials and their trade unions or staff associations (hereinafter «"union"») in elections to the Staff Committee provided for by Article 9 of the Staff Regulations. The contested decisions precluded the applicant, a union member, from standing for election in the context of a list of candidates submitted as a second list by that organisation and accepted by the electoral office. By the first decision, adopted following complaints lodged by candidates on other lists, the electoral office asked the union in question to withdraw one of the two lists mentioned. By two subsequent decisions, it rejected the offers made to it to the effect that, first, the union only submitted the other list initially lodged and that, secondly, the candidates on the list headed by the applicant should submit a separate list, without the union designation or any reference to its name. The electoral office accepted only the union list and refused that headed by the applicant. The Court held the action to be admissible. The fact that an interlocutory order of the President of the Court of First Instance had allowed the applicant to put himself forward as a candidate, and do so successfully, in the contested elections did not affect the admissibility of the action which, in fact, sought to defend his interests as an elector concerned to exercise his right to vote in observance of the applicable rules and as a member of a union whose electoral results could have been different if those rules had been respected. So far as

concerns the first decision (the request to the union to withdraw one of the two lists), the Court held that it was to be regarded as the withdrawal of an unlawful decision and did not infringe, in particular, either the prohibition on each candidate to withdraw his candidature or the rules laid down in the Staff Regulations relating to complaints. On substance, the Court concluded that the decision was lawful, since the electoral rules provided for the lodging of only one list per union. Such a rule is not, of itself, contrary to the principles of freedom and democracy or of equal treatment (account being taken also of the freedom reserved to all officials to stand for election and that concerning the designation of lists and publication thereof: see below the arguments relating to the other two contested decisions). In particular it does not infringe the right of an official to vote or to be an elector or to vote for a list of candidates or be elected. Nor does it infringe the right of a union to submit a list or the principle that lists must be accorded equal treatment, and it does not give rise to any discrimination based on union membership. Likewise, the Court rejected the plea alleging breach of the principle of representativity and the principle that a channel must be available for the expression of opinion by the staff. Finally, it rejected the objection that the electoral rules were unlawful and based on infringement of the right of association and breach of the principle that all officials have the right to stand for election. By contrast, the Court annulled (without, however, calling into question the validity of the electoral procedure undertaken or the result thereof) the decisions relating to rejection of the offer to draw up an independent list or to lodge such a list. For the purpose of interpreting the electoral rules, in the absence of express provisions in that respect, the Court expounded the following principles. The right of all officials to stand for election on an independent list also extends to union members, irrespective of the official's union duties. So far as concerns publicity, a candidate on an independent list may openly declare his affiliation to a union and describe his union duties. The independent list and its candidates may advertise the fact that they share a union's views or show their support for the ideas and policies defended by a union. Even independent lists may mention in their designations the name of a union which is also standing for election, where that union does not object and the designation does not simply consist in reproducing the name under which the union at issue is itself participating in the elections, even with the addition of a numeral so that it can be distinguished from the union's "official list". Subject to those reservations, such a reference in the designation of the list enhances the transparency of the electoral interrelationship, reduces the likelihood of mistake or confusion on the part of the voter and does not affect the equal treatment of lists or the competition between the unions, nor does it amount to a circumvention of the rule restricting the number of candidates per list.

Finally, mention should be made of an order of 14 May in Case T-194/95 *intv II Area Cova and Others v Council* [1996] ECR II-343, in which the Court decided that, in order to observe the time-limit laid down for applications for leave to intervene (Article 115(1) of the Rules of Procedure of the Court of First Instance), it is not sufficient to lodge the application in the form of a fax. Under Article 43(1) of the Rules of Procedure, the original of every pleading must be signed by the party's agent or lawyer, which means, according to the Court, that that very original must actually be received at the Registry. The Court refers also to the provisions of the Instructions to the Registrar who, in accordance with that interpretation of the Rules of Procedure, treats lodgment of a document received at the Registry by means of facsimile transmission as being within the time-limit only if that time-limit is one which could be extended under Article 103 of the Rules of Procedure. The time-limit for intervention does not fall within that category (nor does Article 115, cited above, itself provide for an extension). Thus, Article 10(3) of the aforementioned Instructions provide that applications to intervene may not be lodged by means of a facsimile transmission.

B – Composition of the Court of First Instance



First row, from left to right:

Judge H. Kirschner, Judge K. Lenaerts, Judge B. Vesterdorf; A. Saggio, President; Judge R. García-Valdecasas y Fernández, Judge C.W. Bellamy, Judge C.P. Briët.

Second row, from left to right:

Judge M. Jaeger, Judge R. Moura Ramos, Judge J. Azizi, Judge P. Lindh, Judge A. Kalogeropoulos, Judge V. Tiili, Judge A. Potocki, Judge J.D. Cooke; H. Jung, Registrar.

I – Order of precedence

from 1 to 10 January 1996

A. SAGGIO, President of the Court of First Instance
D.P.M. BARRINGTON, President of the Fourth Chamber and the Fourth Chamber, Extended Composition
H. KIRSCHNER, President of the Second Chamber and the Second Chamber, Extended Composition
R. SCHINTGEN, President of the Fifth Chamber and the Fifth Chamber, Extended Composition
C.P. BRIËT, President of the Third Chamber and the Third Chamber, Extended Composition
B. VESTERDORF, Judge
R. GARCÍA-VALDECASAS Y FERNÁNDEZ, Judge
K. LENAERTS, JUDGE
C.W. BELLAMY, Judge
A. KALOGEROPOULOS, Judge
V. TIILI, Judge
P. LINDH, Judge
J. AZIZI, Judge
A. POTOCKI, Judge
R. MOURA RAMOS, Judge

H. JUNG, Registrar

from 11 January to 11 July 1996

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

H. JUNG, Registrar

from 12 July to 30 September 1996

A. SAGGIO, President of the Court of First Instance
H. KIRSCHNER, President of the Second Chamber and the Second Chamber,
Extended Composition
C.P. BRIËT, President of the Third Chamber and the Third Chamber,
Extended Composition
R. GARCÍA-VALDECASAS Y FERNÁNDEZ, President of the Fifth
Chamber and the Fifth Chamber, Extended Composition
K. LENAERTS, President of the Fourth Chamber and the Fourth Chamber,
Extended Composition
B. VESTERDORF, Judge
C.W. BELLAMY, 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

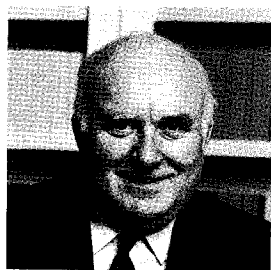
H. JUNG, Registrar

from 1 October to 31 December 1996

A. SAGGIO, President of the Court of First Instance
B. VESTERDORF, President of the Third Chamber and the Third Chamber,
Extended Composition
R. GARCÍA-VALDECASAS Y FERNÁNDEZ, President of the Fifth
Chamber and the Fifth Chamber, Extended Composition
K. LENAERTS, President of the Fourth Chamber and the Fourth Chamber,
Extended Composition
C.W. BELLAMY, President of the Second Chamber and the Second Chamber,
Extended Composition
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

II – The Members of the Court of First Instance (in order of entry into office)



Donal Patrick Michael Barrington

Born 1928; Barrister; Senior Counsel; Specialist in constitutional and commercial law; Judge at the High Court; Chairman of the General Council of the Bar of Ireland; Bencher of King's Inns; Chairman of the Educational Committee Council of King's Inns; Judge at the Court of First Instance from 25 September 1989 to 10 January 1996.



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; Judge at the Court of First Instance since 25 September 1989.



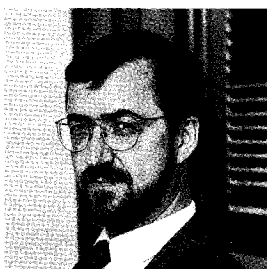
Romain Schintgen

Born 1939; avocat-avoué; General Administrator at the Ministry of Labour and Social Security; President of the Economic and Social Council; Director, *inter alia*, 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.



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.



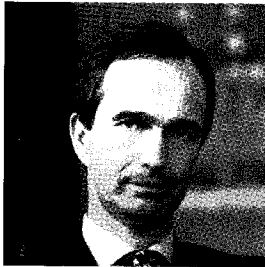
Pernilla Lindh

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.



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.

III – Changes in the composition of the Court of First Instance in 1996

In 1996, the composition of the Court of First Instance changed as follows:

On 10 January Mr D.P.M. Barrington was appointed to the Supreme Court of Ireland and left the Court of First Instance; he was replaced by Judge J.D. Cooke.

On 11 July 1996, Mr Marc Jaeger entered into office as Judge at the Court of First Instance, replacing Mr R. Schintgen, who was appointed as Judge at the Court of Justice.

For more details, please see the section under the heading "Formal Sitzings", p. 91.

Meetings and visits

A – Official visits and Functions at the Court of Justice and the Court of First Instance in 1996

10 January	Mr Alexei Gloukhov, Russian Ambassador to Luxembourg
10 January	Sir Nicholas Lyell, Attorney General (United Kingdom)
11 January	Mr Luigi Guidobono Cavalchini Garofoli, Ambassador, Permanent Representative of the Italian Republic to the EU
16 January	Brazilian Judges
17 January	Riksdagens Konstitutionsutskott (Constitutional committee of the Swedish Parliament)
24 January	President and Presidents of Chambers of the korkein hallinto-oikeus / högsta förvaltningsdomstolen (Supreme Administrative Court of Finland)
29 January	Mr Bernhard Friedmann, President of the Court of Auditors of the European Communities
31 January	Mr Giorgio Zagari, Avvocato generale dello Stato (Italy)
8 February	Mr Michael E. Parmly, Counsellor at the Embassy of the United States of America in Luxembourg
13 February	Mr Clay Constantinou, United States Ambassador to Luxembourg, and Mr Robert Faucher, Second Secretary at the Embassy
14 February	Mr Mircea Cosea, Minister of State of Romania, and Mr Tudorel Postolache, Romanian Ambassador to Luxembourg

15 February	Mr Jovan Tegovski, Macedonian Ambassador to Belgium
29 February	Mr Bjørn Haug, President, Mr Thor Vilhjálmsson and Mr Carl Baudenbacher, Judges, and Mr Per Christiansen, Registrar, of the EFTA Court
7 March	Mr Tudorel Postolache, Romanian Ambassador to Luxembourg
12 March	Ausschuss für Bundes- und Europaangelegenheiten des Niedersächsischen Landtages (Committee for Federal and European Matters of the Parliament of Lower Saxony)
13 March	Suomen eduskunnan perustuslakivaliokunta / Finlands riksdags grundlagsutskott (Finnish Parliament's Constitutional Commission)
21 March	Mr Yves D. Yehouessi, President of the Court of Justice of the West African Economic and Monetary Union (UEMOA) (Burkina Faso)
25 March	Mr Jorma S. Aalto, Suomen oikeuskansleri / Justitiekansler (Finnish Chancellor of Justice)
19 April	Official visit of Mr Rodríguez Iglesias, President, to Turin, to receive the degree of doctor honoris causa from the University of Turin
23 April	Ms Riitta Uosukainen, President, and Mr Matti Louekoski, Vice-President of the Finnish Parliament
25 April	Mr Axel Lautenberg, Ambassador Extraordinary and Plenipotentiary of the Swiss Confederation to the EU
29 April	Select Committee on European Legislation — House of Commons (United Kingdom)

30 April	Sir Daryl Dawson, Judge at the High Court of Australia
13 May	Mr Carlos Ferrer Salat, President of the Economic and Social Committee of the European Communities
14 May	Lord Mackay of Drumadoon, Lord Advocate, and Mr Paul Cullen QC, Solicitor General for Scotland
14 May	Mr Clay Constantinou, United States Ambassador to Luxembourg, and Mr Robert Faucher, Second Secretary at the Embassy
17 May	Round table organised in conjunction with the United States Embassy in Luxembourg on the launch of the "Dean Acheson Legal Stage Program"
20 May	Mr Josef Magerl, Austrian Ambassador to Luxembourg
22 May	Ausschuss für Bundes- und Europaangelegenheiten des Bayerischen Landtages (Committee for Federal and European Matters of the Parliament of Bavaria)
from 27 to 31 May	Official visit of Judge Rodríguez Iglesias, President, to Romania at the invitation of the National Commission for the Integration of Romania into the European Union, the Romanian Academy and the Romanian Prime Minister
3 June	Mr Evangelos Venizelos, Minister for Justice of the Hellenic Republic
10 and 11 June	Meeting of magistrates of the Member States
13 June	Mr Baudouin de la Kethulle de Ryhove, Belgian Ambassador to Luxembourg
20 June	Mr Masahiko Iwasaki, Ambassador Extraordinary and Plenipotentiary of Japan to Luxembourg

21 June	Ständiger Beirat des Bundesrates (Permanent Consultative Committee of the Bundesrat)
27 June	Mr Giovanni Maria Flick, Minister for Justice of the Italian Republic
1 July	Lecture delivered by the President, Mr Rodríguez Iglesias, entitled "le pouvoir judiciaire de la Communauté européenne au stade actuel de l'évolution de l'Union", at the sixth session of the Academy of European Law of the European University Institute, Florence
2 July	Mr Hannes Swoboda, amtsführender Stadtrat der Stadt Wien für internationale Angelegenheiten (Head of the international department of the commune of Vienna), and Mr Josef Magerl, Austrian Ambassador to Luxembourg
4 July	Mr Thomas Wernly, Ambassador of the Swiss Confederation to Luxembourg
8 July	Delegation from the Supremo Tribunal Federal do Brasil (Supreme Federal Court of Brazil)
11 July	Mr Pasqual Maragall, President of the Committee of the Regions of the European Union
11 July	Mr Charles D. Gonthier, Judge at the Cour suprême du Canada / Supreme Court of Canada
24 September	Delegation from the Council of the Bars and Law Societies of the European Community (CCBE)
27 September	Ms Ivana Janů, Vice-President of the Constitutional Court of the Czech Republic
1 October	Lecture delivered by the President, Rodríguez Iglesias, in Vienna on the occasion of the setting up of the Verfassungsgerichtshof: "Verfassungsperspektiven der europäischen Gerichtsbarkeit"

8 and 9 October	Mr Hans Gammeltoft-Hansen, Folketingets Ombudsmand (Ombudsman of the Danish Parliament)
14 and 15 October	Judicial Study Visit by magistrates of the Member States
21 and 22 October	Mr Niels Pontoppidan, President of the Højesteret (Supreme Court of Denmark) and the presidents of the Danish high courts
25 October	Danish Ambassadors and Ms R. Bjerregaard, Member of the European Commission
29 October	Mr W. Cimoszewicz, Prime Minister of the Republic of Poland
11 November	Mr Liviu-Petru Zapîrtan, Romanian Ambassador to Luxembourg
20 November	Delegation from the Bundesfinanzhof and from several Finanzgerichte (Federal Republic of Germany)
21 November	Mr Bjørn Haug, President, Mr Thor Vilhjásson and Mr Carl Baudenbacher, Judges, and Mr Per Christiansen, Registrar, of the EFTA Court
21 November	Ms Eliane Liekendael, Procureur général (Senior representative of the Public Attorney's office) at the Court of Cassation of Belgium, accompanied by a delegation from the Court of Cassation of Belgium
27 November	Ms Margarita Mariscal de Gante y Míron, Minister for Justice of the Kingdom of Spain
29 November	Mr Albert Rohan, Secretary General of the Ministry of Foreign Affairs of the Republic of Austria and Mr Josef Magerl, Austrian Ambassador to Luxembourg
9 December	Mr A. Vernon Weaver, Ambassador, United States Representative to the EU

11 December	Ms Nora Owen, Minister for Justice of Ireland
11 December	Mr Nicoloz Tcherkezichvili and Ms Lamara Tchorgolachvili, judges at the Constitutional Court of Georgia
12 December	Mr Juan José Uranga, Ambassador, Argentine Representative to the EU

B – Study visits to the Court of Justice and the Court of First Instance in 1996
(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	10	90	2	-	376	-	160	638
DK	8	2	-	-	191	-	70	271
D	388	393	63	174	946	70	433	2,467
EL	9	80	1	-	2	-	-	92
E	25	78	-	44	320	-	-	467
F	62	162	-	290	426	30	81	1,051
IRL	8	18	4	25	88	-	-	143
I	45	103	-	15	234	-	15	412
L	4	-	-	46	40	-	-	90
NL	68	12	-	-	344	-	-	424
A	42	214	4	141	169	-	75	645
P	13	6	-	20	128	-	-	167
FIN	13	132	-	42	31	-	95	313
S	101	92	-	58	55	-	194	500
UK	71	81	-	100	1,404	-	32	1,688
Third countries	85	99	26	83	371	-	445	1,109
Mixed groups	30	45	-	20	470	-	-	565
TOTAL	982	1,607	100	1,058	5,595	100	1,600	11,042

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 1996, 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.

Study visits to the Court of Justice and the Court of First Instance in 1996

(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	1	2	1	-	11	-	4	19
DK	1	1	-	-	6	-	3	11
D	12	14	2	6	30	2	15	81
EL	2	4	1	-	1	-	-	8
E	2	7	-	3	10	-	-	22
F	5	7	-	11	19	1	3	46
IRL	1	1	1	1	3	-	-	7
I	3	6	-	3	11	-	1	24
L	1	-	-	2	-	-	-	3
NL	3	1	-	-	11	-	-	15
A	2	7	3	10	6	-	5	33
P	2	1	-	2	4	-	-	9
FIN	3	9	-	3	2	-	5	22
S	7	6	-	7	2	-	11	33
UK	7	5	-	4	39	-	5	60
Third countries	5	4	2	4	14	-	22	51
Mixed groups	1	2	-	1	12	-	-	16
TOTAL	58	77	10	57	181	3	74	460

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

² Other than teachers accompanying student groups.

Formal sittings

In 1996, the Court of Justice held four formal sittings:

- | | |
|------------|---|
| 10 January | Formal sitting on the occasion of the departure of Judge Donal P.M. Barrington and of the entry into office of Mr John D. Cooke as judge at the Court of First Instance |
| 31 January | Formal sitting on the occasion of the entry into office at the Court of Auditors of Ms K. Nikolaou, Mr F. Colling, Mr M.B. Engwirda and Mr J.F. Bernicot |
| 12 June | Formal sitting in memory of Judge Fernand Schockweiler |
| 11 July | Formal sitting on the occasion of the entry into office at the Court of Justice of Judge Romain Schintgen and of the entry into office at the Court of First Instance of Mr Marc Jaeger |

The addresses given at those sittings are set out in the section which follows.

Formal sitting of the Court of Justice of 10 January 1996

on the occasion of the departure of Judge Donal P.M. Barrington and of the entry into office of Mr John D. Cooke as Judge at the Court of First Instance

- Address by G.C. Rodríguez Iglesias, President of the Court of Justice p. 97
- Address by A. Saggio, President of the Court of First Instance p. 99
- Address by Judge Donal P.M. Barrington p. 101

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

Your Excellencies,
Ladies and Gentlemen,

We are here today not only to welcome John Cooke but also to express our gratitude to Donal Barrington on the occasion of his departure.

President Saggio is better placed than I to pay tribute to Mr Barrington's qualities as a lawyer and as a person. Before he addresses you, however, I should like briefly to concur with the sentiments expressed by him and to tell you, dear Donal, how much we have all appreciated your individuality, your warmth and your ability. As you leave us to take up the highest judicial office in your country, I should like, on behalf of the Court and in my personal capacity, to offer you our best wishes, both in your professional activities and on a personal level.

* * *

Turning now to you, Mr Cooke, I am very glad to welcome you to our Institution, which will be enriched by your great experience.

Your professional career has been closely linked to the judicial world in the broadest sense of the term. Since being called to the Irish Bar in 1966, you have tirelessly developed and expanded your activities as a legal practitioner, appearing with equal success before both national and international courts.

The Court of Justice has been privileged to observe your activities.

You possess, in fact, a remarkably broad knowledge and experience of Community law, a field in which you took up immediately upon the accession to the Community of Ireland and of the United Kingdom in 1973. You have participated, in various capacities, in numerous important cases which the Court has been called upon to hear and determine since then.

In addition, you have wide experience, both as an advocate and as an arbitrator, in the field of national and international arbitration. You have also performed important duties within a number of associations of advocates. Amongst these, I would mention in particular your Presidency of the CCBE.

Lastly, you have also pursued important activities in the academic field. In that regard, I would merely single out your position as Director of the prestigious Irish Centre for European Law at Trinity College, Dublin.

I am sure that the diversity and complementary nature of your experience in all those fields will enable you to contribute in full to the work of the Court of First Instance.

I extend to you, Mr Cooke, every good wish in the performance of your new duties and now invite you to take the oath and sign the solemn declaration as required by the Statute.

Address by A. Saggio, President of the Court of First Instance

Mr President,
Members of the Court of Justice and of the Court of First Instance,
Your Excellencies,
Ladies and Gentlemen,

The Court of First Instance has already embarked on its seventh year of activity. Our first plenary sitting was held as long ago as September 1989. Of the Members present on that occasion, only eight continue in office. Seven of our colleagues have joined us since then, some of them more recently than others. That evolutionary process — I would almost call it revolutionary, were it not for the fact that that term represents the antithesis of the functions of a judicial forum — has resulted not only from the accession to the Community of three new Member States, which has enabled us to benefit from the cultivated and sensitive contributions of two female colleagues, a privilege of which we are very proud, but also from the professional career of some of us who have been called upon to sit in the Court of Justice or to exercise important functions at national level, to which they have brought the benefit of the experience gained by them as Members of the Community judicature.

Today we are witnessing a further reduction in the number of "founder members" of the Court of First Instance: Judge Donal Barrington, President of Chamber, is leaving us to take up the high office of Judge of the Supreme Court of Ireland. Thus the founder members of the Court of First Instance now represent a minority.

We are losing an eminent colleague. On a solemn occasion such as this, I should like in a few words to testify to the numerous reasons for the profound esteem in which Donal Barrington is held by each and every one of us. This is not mere empty rhetoric.

Dear Donal, let me say it again: you are a highly valued colleague. Within the Court of First Instance, you very quickly came to be appreciated for your remarkable qualities, both professional and human.

In the professional sphere, you have shared with us the benefit of your invaluable experience. We have never ceased to wonder at your ability to simplify the most

intricate technical problems and to go straight to the crux of a matter. We have admired your unwavering attention to the specific demands of each individual case, and your wide-ranging and deep knowledge of the law as an integrated body of rules combining different legal and cultural traditions. Every day, in our activities as Members of the Community judicature, we discover and rediscover that unity born of diversity: it is what makes our work fascinating and justifies our hopes for the future of Europe.

My dear Donal, we have benefitted so much, not only from your legal skills, your deep insights into legal problems and your pragmatic approach, but also from your outstanding personal qualities. During our discussions, often extremely animated, on both legal and administrative matters, you have always shown equanimity, wisdom and good humour. We are all very much in your debt. On this solemn occasion it is my privilege to pay tribute to the exemplary way in which you have exercised your functions.

But these remarks must not hide the fact that during these six years you have been not merely an eminent colleague but also a friend: always willing, always warm. You have had, as well, the great good fortune to have at your side your charming wife, Eileen.

Eileen, we will always remember your great kindness, your vivacity, your humour and your infectious zest for life.¹

Dear Donal, dear Eileen, it only remains for us to congratulate you and to wish you every good fortune, albeit that our wishes are tinged with sadness.

Although you will be greatly missed, it is with the utmost pleasure that we greet the arrival of our new colleague, John Cooke, to whom we extend a warm welcome.

¹

Translator's note: the passages in italics were read in English.

Address by Judge Donal P.M. Barrington

First, I should like to say how much I have enjoyed working here in Luxembourg during the past six and a half years and I should like to thank all of you who have made my work here such a pleasure. I am honoured to have been a founder member of the Court of First Instance and to have played a small part in a great experiment. My wife and I leave Luxembourg with the fondest memories and with profound thanks to all who have made our stay here so agreeable.

I come from a common law country but from one which, on becoming independent, more than 70 years ago, adopted a written constitution with a charter of rights and judicial review of legislation. For constitutional lawyers in Ireland, prior to entry to the EEC in 1973, the great foreign source of inspiration was the Constitution of the United States of America. As a result we were used to the effort to resolve complex questions of fact in the light of complex questions of principle. Exposure to the civil law system was still a shock but perhaps not quite so great a shock as it would have been to a common lawyer trained in the tradition of parliamentary sovereignty.

The Community system permits the Court to deliver one judgment only. In a young Community it is probably right that the final court of appeal should speak with one voice as this tends to enhance its authority. The American Federal Supreme Court adopted the same system, as a matter of prudence, in the early years of the American Constitution. Later, however, the Court felt free to allow dissenting judgments.

Ireland, in general, follows the common law rule and each judge is permitted to give his own judgment assenting with, or dissenting from, the majority. There is however one very significant exception to this rule. When our Supreme Court sits to rule on the constitutionality of an Act of Parliament passed since 1937 the Court pronounces one judgment only and the existence of a minority view may not be disclosed. For complex procedural reasons the same rule does not apply to Acts of Parliament passed prior to 1937. The scholar can therefore observe the two systems working side by side in the same court. I think that most scholars would agree that the second system leads to sharper analysis and a fuller discussion of the issues involved in the case.

The argument from authority probably still applies to the European Court of Justice but one could ask oneself whether it applies at all to the European Court

of First Instance? There is an argument that Community law is in part an evolution from the common traditions of the Member States and that this requires that judges should sit in chambers rather than individually. Might it not be possible that the citizen would get a clearer view of the evolutionary process if judges were free to give individual opinions?

One of the reasons for the establishment of the Court of First Instance was to give the private individual a better measure of judicial protection by granting him an original hearing and a right of appeal. Curiously enough the Member States, while granting this additional protection to private citizens made no similar provision to protect themselves. Now one hears a complaint that the Member States have no right of appeal against decisions of the Court of Justice. To grant such a right would be to distort the normal workings of a judicial system. On the other hand it would be possible, without any amendment to the treaties, to give the Court of First Instance power to hear and determine, subject to appeal to the Court of Justice, complaints brought by Member States. Would this not be a simpler method of meeting the criticism?

Finally, it is already clear that there is going to be a huge expansion in the work load of the Court of First Instance in the years ahead and it is doubtful if the Court of First Instance, as presently organised, is in the best position to tackle this increased workload or if its rules of procedure allow it the necessary flexibility to meet this new challenge. Increasing the membership of the Court of First Instance would not present the same constitutional difficulties as increasing the membership of the Court of Justice would. That solution may have to be looked at, in time, but first we should enquire as to whether we can make ourselves more efficient by better organisation of our work practices. But here we come up against another problem. Community institutions have only the powers which the Member States have agreed to confer upon them. Courts in particular must act only within the jurisdiction which they have been granted. It is right also that they should act only within rules of procedure approved by the Council of Ministers. That said, however, one might ask if our statute and our rules of procedure should not allow us more flexibility in the way we tackle our work. Is it really necessary that staff cases should be decided by a chamber of three judges? Should all trademark cases receive the same treatment? Should not the Court be, in some measure, free to experiment as to the best procedural methods for tackling its problems?

These are some of the questions I would wish to raise. I am happy to leave the answers to you.

Formal sitting of the Court of Justice on 31 January 1996

on the occasion of the entry into office at the Court of Auditors of Ms K. Nikolaou, Mr F. Colling, Mr M.B. Engwirda and Mr J.-F. Bernicot

- Address by G.C. Rodríguez Iglesias, President
of the Court of Justice p. 105

- Address by B. Friedmann, President of the Court
of Auditors p. 107

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

Presidents,
Your Excellencies,
Ladies and Gentlemen,

We are here today to witness the taking of the oath by the new Members of the European Court of Auditors.

They are joining that institution at a time when the protection of the financial interests of the European Communities is becoming the subject of particularly keen attention. This is specifically reflected in the strengthening of measures to combat fraud on the Community budget and the elimination of corruption which may be connected with it. In these times of economic difficulty, stringency is also the order of the day when it comes to the use of public funds. At a time when most of the Member States are facing a period of budgetary austerity, such stringency is essential if the Community institutions are to maintain their legitimacy in the eyes of the public at large.

The Court of Auditors clearly has a predominant role to play in such circumstances, since it is responsible for ensuring that all revenue and expenditure of the Community is subjected to detailed scrutiny.

To that end, the Treaties have conferred on the Court of Auditors the specific powers which it needs in order to perform those tasks to the full. The importance of the work of the Court of Auditors is, moreover, reflected in the interest to which its observations give rise, both within the restricted circle of specialists and amongst the public at large throughout the Community.

However, powers amount to nothing without the men — and women — who exercise them.

For that reason, the Court of Auditors may count itself fortunate to have secured for itself the services of persons as highly qualified as you, Madam, and as you, Sirs.

You have acquired those qualifications either in the national audit bodies of your native countries or in the course of brilliant careers in the private and academic sectors. The diversity of the experience which you are able to offer should enrich the Court of Auditors and should, in particular, play a part in strengthening its links with its national counterparts, as provided for by the Treaty itself, in Article 188c.

The Treaty directly confers on you rights which are designed to enable you, in the general interest of the Community, to be completely independent in the performance of your duties. It also imposes obligations on you both during and after your term of office. You are asked to make a solemn declaration that you will comply with them. To that end, I will shortly be inviting you to take the oath before the Court of Justice.

Address by B. Friedmann, President of the Court of Auditors

Mr President,
Members of the Court of Justice,
Your Excellencies,
Ladies and Gentlemen,
Dear colleagues,

We have just heard the Court of Justice, in the person of its President, express certain sentiments which are greatly appreciated by the Court of Auditors. I am most grateful to him. My thanks are also due for the congratulations which the Court so kindly extended to me on the occasion of my election to the office of President of the Court of Auditors. I am convinced that the excellent relationship between our two institutions will be maintained in the future, and our recent fruitful exchange of views constitutes an assurance of this.

The Court of Auditors has just welcomed four new Members, to whom, on behalf of the Board, I once again offer my warmest congratulations.

Today, on this momentous occasion for our Institution, I should like to pay special tribute to the memory of Daniel Strasser, our French Member, who died on 16 December 1995. He was a great European, and the effects of his activities in the field of the public finances of the Community were felt far beyond the European institutions. Mr Strasser made a very great contribution to the work of the Board and his often decisive intervention testified to his commitment to the defence of the financial and budgetary interests of the Community.

In a very much happier connection, I should also like to express the Court's gratitude to my predecessor, Mr Middelhoek, and to the two departing Members, Mr Androutsopoulos and Mr Thoss, for the very significant contribution which they have made to the development of the Court. On behalf of the Board, I offer each of them our best wishes for the future.

Seeing us gathered here today on an occasion such as this, I am prompted to reflect on the way in which the role of the Court of Auditors is perceived by the citizens of Europe. The first point to note is that, for European citizens, Europe is frequently synonymous with the common market. Although Europe as a concept is not always very precisely understood, it primarily evokes the idea of

the pursuit of economic and financial policy. It follows that attention is becoming increasingly focused on the economic effects and the redistributive function of the Community budget; and it is clear that, in such a scheme, the Court of Auditors has a role to play.

It is an important role in several respects.

First, by keeping the public informed of the use to which Community funds are put, and by assessing that use in the light of the criteria which it is required by the Treaties to apply, the Court of Auditors provides the people of Europe with one of several points of reference whereby the confidence placed in the Community may be gauged.

Next, it will be noted that, over the course of time, the scope of the Community's finances has grown considerably in response to the diversification and expansion of the functions of the Community. It follows that the performance by the Court in the best possible manner of the tasks conferred on it by the Treaties will enable the Community to avoid the pitfall of excessive regulation, which means, in the final analysis, that the Court of Auditors constitutes one of the guarantors of the rights of the individual.

From time immemorial, the budget has constituted a political instrument of fundamental importance. In the same way, the role of the citizens' representatives in any democratic system involves *inter alia* not only the creation of the means by which action can be taken to ensure the functioning of the public service but also the regular monitoring of the way in which those means are employed. In order to be fully able to exercise that democratic control, the assemblies to which the executive is answerable must be provided with the data needed to enable them to form an objective and well-founded opinion.

The main task of an independent Court of Auditors is, specifically, to make information of value rapidly available in summary form to the authority responsible for reviewing policy. The way in which the Court fulfils that task makes it an essential component in the machinery of democracy. For my part, I am convinced that, together with our new colleagues, we will continue to work effectively in the interests of the Union and that we will take care not to disappoint the expectations of the people of Europe.

Mr President, I thank the Court of Justice for having allowed me to make this address at this sitting.

Formal sitting of the Court of Justice on 12 June 1996

Address by G.C. Rodríguez Iglesias, President of the Court of Justice, in memory of Judge Fernand Schockweiler

Your Excellencies,
Ladies and Gentlemen,

It is with great sadness that we today pay tribute to the memory of our colleague and friend Fernand Schockweiler. Our sadness is magnified by the fact that his untimely death cut short, with brutal suddenness, a friendship and a collaboration the fruits of which we all thought we would continue to enjoy for many years to come.

Fernand Schockweiler died suddenly on 1 June last, a few days after his 61st birthday. He leaves the Court bereft of one of its most experienced and most esteemed Members.

Fernand Schockweiler's childhood was cruelly marked by the war; at the age of only seven, he suffered the experience of deportation. There can be no doubt that that painful experience played a decisive role in his attachment to the rule of law, to justice and to the construction of Europe.

If one had to sum up Fernand Schockweiler's professional life in a few words, one might describe it as a life wholly devoted to the public service, and in particular to the service of justice, in which he always excelled.

After achieving brilliant results in his studies in Luxembourg and at the *Faculté de Droit* in Paris, culminating in his being awarded the degree of Doctor of Laws, he entered the service of the Luxembourg Ministry of Justice in 1961, rising rapidly through its ranks to become Government Adviser in 1974 and subsequently Chief Government Adviser in 1982.

His work at the Ministry of Justice comprised a significant foreign dimension. He represented Luxembourg on numerous international bodies, including, in particular, various committees of the Council of Europe.

In October 1985 Fernand Schockweiler was appointed Judge at the Court of Justice. Over a period of more than ten and a half years in that office, his outstanding abilities, allied to the rigour of his approach to his duties, were to work wonders and assure him a central place in the development of our institution.

I am prevented by the confidentiality of the deliberations of the Court from citing any examples to illustrate the decisive influence which Fernand Schockweiler exerted on our case-law. I can however tell you that, when I arrived at the Court in January 1986, the abundance of his notes for the deliberations and the respect with which he was heard in them gave me the impression that I was dealing with someone who had already been in the institution for many years, even though he had arrived only three months before me.

Day after day, he devoted himself heart and soul to his work, commanding the respect of his peers by the soundness of his proposals and the speed with which he produced them. Unfailing in his respect for the principle of collegiality which characterises our work, he was rigorously faithful to the line taken by the Court, even where it diverged appreciably from his own approach. A lover of truth, he was always completely objective in his presentation of cases.

Through his work, Fernand Schockweiler thus demonstrated his unfailing dedication to the principal task of the Court. His first and foremost concern was that the Court's judgments should be of a high quality and delivered without undue delay. He was also keenly attentive to the smooth running of the institution's administrative machinery. He was, finally, always available to assist the Court during judicial vacations.

He nevertheless found the time to speak at major conferences and to publish numerous treatises on the law, particularly in the sphere of administrative law and private international law, his main fields of specialisation.

Fernand Schockweiler maintained his exceptional devotion to the service of the Court to the very end. On 24 May last, in a precarious state of health following the surgery which he had just undergone, he once again participated in the deliberations of the Court. The last draft judgment distributed by him is dated 28 May.

A great jurist and a great worker, Fernand Schockweiler was also an excellent friend. I had particular occasion to admire his human qualities when, during the fatal illness of our colleague René Joliet, he gave him his unstinting support, imbued with great warmth and affection.

Not only will we sorely miss his professional abilities; we have also been cruelly robbed of the warmth of the bonds of human friendship which he forged.

Once again, I extend to his family our sympathy and our condolences, and ask you to join me in a minute's silence as we remember him.

Formal sitting of the Court of Justice on 11 July 1996

on the occasion of the entry into office of Judge Romain Schintgen as Judge of the Court of Justice and of the entry into office of Mr Marc Jaeger as Judge of the Court of First Instance

- Address by G.C. Rodríguez Iglesias, President
of the Court p. 115

- Address by A. Saggio, President of the Court
of First Instance p. 117

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

Your Excellencies,
Ladies and Gentlemen,

While we are here today to witness the taking of the oath by the new Members of the Court of Justice and of the Court of First Instance, I should like to take this opportunity to recall to mind the cruelly sudden departure of our colleague and friend Fernand Schockweiler, whom we remember with an aching sense of loss.

Please allow me, Mr Schintgen, to welcome you most warmly to the Court of Justice.

I hardly need recall here that, as a Judge at the Court of First Instance, you were amongst those who assisted at its christening in 1989 and that, since then, you have performed your duties there with every success.

Your previous professional experience had prepared you admirably for a career on the bench.

After achieving brilliant results in your studies in Luxembourg and France, culminating in your being awarded the degree of Doctor of Laws in 1964, you initially practised as an *avocat*, and subsequently as an *avocat-avoué*, at the Luxembourg Bar.

You very soon joined the Luxembourg civil service, working in the Ministry of Employment and Social Security. Rising through all the ranks, you were appointed Chief Government Adviser in 1984 and, finally, Administrator General in 1987.

I should also like to lay particular stress on the very wide experience of international affairs which you have acquired over the years and on which you will undoubtedly be able to draw to the benefit of the Court of Justice.

In particular, you have performed important functions in a number of Community institutions and organisations. A specialist in social and labour law, you put your knowledge of those fields into practice in the Council's Working Party on Social

Questions, the European Social Fund, the Advisory Committee on Freedom of Movement for Workers and the European Foundation for the Improvement of Living and Working Conditions.

You also represented your country on the Manpower and Social Affairs Committee of the OECD and in the International Labour Organisation.

Those numerous activities have not prevented you from building up a reputation — based not least on your published works — as an expert in the field of labour law, which you have explored in all its aspects, from the standpoint of both Luxembourg law and European law.

Very active in the academic world, you took up this year the office of President of the International University Institute, Luxembourg.

I am convinced that your very extensive experience, allied to your profound knowledge of the workings of our institution, will contribute greatly to our work, as will the level-headedness and open-mindedness for which you are already known.

I wish you, Mr Schintgen, every success in your new functions, and now invite you to take the oath and sign the solemn declaration as required by Article 2 of the Statute.

Mr Jaeger,

It is first and foremost the President of the Court of First Instance who has the privilege of welcoming you in your new functions.

I should merely like to recall that you possess a profound knowledge of the institution, by virtue of your lengthy experience as a Legal Secretary. You have also practised at the Luxembourg Bar, prior to entering the ranks of the judiciary and becoming Vice-President of the Luxembourg Tribunal d'Arrondissement.

There can be no doubt that the experience thus gained by you, together with your teaching activities, will enable you to make a valuable contribution to the work of the Court of First Instance.

Address by A. Saggio, President of the Court of First Instance

We are today seeing a further reduction in the number of those Members of the Court of First Instance who were present at its creation in September 1989: the "founders" — if I may be permitted once again to use that expression — now number no more than six.

Please be assured, however, that I do not say that with regret. I am merely stating a fact, which prompts me to embark upon reflections of a more general nature: the roll of the men and women called upon to exercise judicial functions will inevitably change, but the institution will continue to fulfil its role with the same commitment and the same consciousness of its responsibilities. Moreover, an injection of fresh blood cannot but enrich the Court in its work. It is true that excessively frequent changes in its membership may be prejudicial to the effectiveness with which it operates. However, Judge Romain Schintgen's tenure as a Judge of the Court of First Instance has been long enough to enable him to make a singularly useful and valuable contribution to the administration of justice.

Romain Schintgen is leaving us today to take up the high office of Judge at the Court of Justice. He is not really departing, but merely moving on to perform other functions within our institution.

In fulfilling his new responsibilities, he will bring to his work the experience which he has acquired over many years as a Judge at the Court of First Instance. That experience is marked by the intense thoughtfulness which he has brought to his consideration of many areas of law, and by his unfailing attentiveness to developments in the Community legal order.

With the departure of Romain Schintgen, the Court of First Instance is losing a most highly valued Member. I should like on this occasion to testify to the reasons for the profound esteem in which Romain Schintgen is held by each and every one of us.

Dear Romain, you are an eminent colleague. When you took up office as a Judge at the Court of First Instance, you already possessed very wide experience of the highest calibre, particularly in the field of labour law, which you had acquired in the Luxembourg administration and which was enhanced by your active involvement in international affairs. That experience, coupled with your

intelligence and your erudition, qualified you for the title of "judge" in the most exalted sense of the term.

We immediately appreciated your qualities, both human and professional: your equanimity and composure in discussion, your attention to the arguments of your interlocutors, your invariably measured style, your discretion, your unassuming nature allied to great force of personality, your capacity for taking a clear and unequivocal view on matters and, finally, your sense of responsibility, manifested in particular in the thoroughness with which you examine cases.

However, we are here today to salute you not only as a valued colleague who has made a remarkable contribution to the work of the Court of First Instance but also as a friend. The seven years which we have spent working together have created real bonds of friendship which will, I am sure, remain strong since we will be continuing to work alongside you in the same institution.

Our feelings of friendship extend also to your charming wife, Lucie, whose kindness and deep sense of hospitality we have so much appreciated. Thanks to your "privileged" position — if I may use that term — as nationals of our host country, you have revealed to us the countless delightful facets of your homeland, Luxembourg, which affords us such a pleasant environment in which to live and work, and in which we have rapidly come to feel at home, thanks to the warmth of your welcome, for which we are profoundly grateful.

I now turn to our new colleague, Marc Jaeger, whom I am very pleased to welcome.

Marc Jaeger, you are — if I may use the expression — "l'uomo giusto al posto giusto". You possess, in the highest measure, all the qualities required of a Judge within our institution.

In the course of your career you have acquired, by virtue of your varied and complementary activities, a profound knowledge of the exercise of judicial functions. Following a period of high promise spent in practice at the Luxembourg Bar, you acquired remarkable professional experience in your capacity both as a member of the national judiciary and as a Legal Secretary at the Court of Justice, to which you were seconded for ten years.

You have also been very active in the academic field. In particular, you have specialised in a new and momentous field of law, that of information technology.

Special mention must be made of the courses which you regularly give in that subject at the Centre Universitaire de Luxembourg.

Moreover, you have held positions of responsibility in that field at international level, in your capacity as a member of the Committee of Experts on Computer Crime set up by the Council of Europe.

Finally, you are the author of a number of learned publications concerning information technology, criminal law and, in particular, Community law.

I am convinced that the Court of First Instance will be enriched by your knowledge, your experience and your powers of perception.

Having said that, I would add, dear Marc, that you are not only an experienced jurist but also a person possessed of a very sensitive feel for human relations. I should like to draw particular attention to that quality, which you share with your wife, to whom I likewise extend a warm welcome.

Annex I

A — Proceedings of the Court of Justice

I — Synopsis of the judgments delivered by the Court of Justice in 1996

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Case	Date	Parties	Subject-Matter
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AGRICULTURE

C-276/94	18 January 1996	Finn Ohrt	Definition of vessel engaged in a fisheries inspection — Obligations of the skipper of the vessel to be inspected
C-212/94	8 February 1996	FMC plc & Others v Intervention Board for Agricultural Produce & Others.	Common organisation of the markets in sheepmeat and goatmeat — Clawback — Method of calculation — Validity — Proof — Reimbursement of undue payments
C-63/93	15 February 1996	Fintan Duff & Others v Minister for Agriculture and Food & Others	Additional levy on milk — Special reference quantities on account of a development plan — Obligation or discretionary power
C-296/93 and C-307/93	29 February 1996	Republic of France and Ireland v Commission of the European Communities	Common organisation of the market in beef and veal — Conditions for intervention
C-299/94	28 March 1996	Anglo Irish Beef Processors International & Others v Minister for Agriculture, Food and Forestry	Differentiated export refunds — <i>Force majeure</i> — Additional security — Release of security — Resolution of the UN Security Council
C-127/94	6 June 1996	The Queen v Ministry of Agriculture, Fisheries and Food, ex parte: H. & R. Ecroyd Holdings Ltd and John Rupert Ecroyd	Milk production quota scheme — Allocation of special reference quantities — Powers and/or duties of the Member States
C-198/94	6 June 1996	Italian Republic v Commission of the European Communities	Clearance of EAGGF accounts — 1991 financial year
C-205/94	13 June 1996	Firma Binder GmbH & Co. International v Hauptzollamt Stuttgart-West	Frozen strawberries — Protective measures
C-303/94	18 June 1996	European Parliament v Council of the European Union	Directive concerning the placing of plant protection products on the market — Prerogatives of the Parliament

Case	Date	Parties	Subject-Matter
C-50/94	4 July 1996	Hellenic Republic v Commission of the European Communities	Clearance of EAGGF accounts — Expenditure for 1990
C-295/94	4 July 1996	Hüpeden & Co. KG v Hauptzollamt Hamburg-Jonas	Preserved cultivated mushrooms — Measures of market management
C-296/94	4 July 1996	Bernhard Pietsch v Hauptzollamt Hamburg-Waltershof	Preserved mushrooms — Protective measures
C-304/95	11 July 1996	Commission of the European Communities v Hellenic Republic	Failure to fulfil obligations — Directive 92/5/EEC — Failure to transpose within the prescribed period
C-254/94, C-255/94 and C-269/94	12 September 1996	Fattoria autonoma tabacchi & Others v Ministero dell'Agricoltura e delle Foreste & Others	Common market organisation — Raw tobacco — Council Regulation (EEC) No 2075/92 — Commission Regulation (EEC) No 3477/92
C-117/95	26 September 1996	Commission of the European Communities v Italian Republic	Failure of a Member State to fulfil its obligations — Directive 92/35/EEC — Directive 92/40/EEC — Failure to transpose within the period prescribed
C-41/94	3 October 1996	Federal Republic of Germany v Commission of the European Communities	Clearance of accounts — EAGGF — Special premium for beef and veal producers — Expenditure disallowed
C-64/95	17 October 1996	Konservenfabrik Lubella Friedrich Büker GmbH & Co. KG v Hauptzollamt Cottbus	Common organisation of the market in fruit and vegetables — Protective measures — Sour cherries
C-86/94	24 October 1996	H.J.A.M. van Iersel (curator in het faillissement van Pluimvee- en wildverwerkende industrie De Venhorst BV) v Staatsecretaris van Landbouw, Natuurbeheer en Visserij	Health inspections and controls — Circumstances in which an undertaking is obliged to pay the fee for cutting operations
C-172/95	24 October 1996	Société sucrière agricole de Maizy & Others v Directeur régional des impôts	Common organisation of the markets in the sugar sector — Chargeable event for storage, production and elimination levies — Period in respect of which elimination levies are payable

Case	Date	Parties	Subject-Matter
C-325/95	24 October 1996	Commission of the European Communities v Ireland	Failure of a Member State to fulfil its obligations — Directives 91/67/EEC, 91/492/EEC, 91/493/EEC and 92/48/EEC — Failure to transpose within the prescribed period
C-315/95	7 November 1996	Commission of the European Communities v Italian Republic	Failure to fulfil obligations — Failure to transpose Directives 93/48/EEC, 93/49/EEC, 93/52/EEC, 93/61/EEC and 93/85/EEC
C-68/95	26 November 1996	T. Port GmbH & Co. KG v Bundesanstalt für Landwirtschaft und Ernährung	Bananas — Common organisation of the markets — Import rules — Cases of hardship — Assessment of validity — Interim measures
C-69/95	5 December 1996	Italian Republic v Commission of the European Communities	EAGGF — Clearance of accounts — 1991 — Milk and milk products
C-91/96	5 December 1996	Commission of the European Communities v Hellenic Republic	Failure to fulfil obligations not contested — Directives 92/118/EEC and 93/52/EEC — Failure to transpose within the prescribed periods

APPROXIMATION OF LAWS

C-273/94	11 January 1996	Commission of the European Communities v Kingdom of the Netherlands	Failure of a Member State to fulfil its obligations — Obligation to give prior notification under Directive 83/189/EEC
C-239/94	29 February 1996	Commission of the European Communities v Republic of Ireland	Failure to fulfil obligations — Directive 91/263/EEC — Failure to transpose
C-238/95	14 March 1996	Commission of the European Communities v Italian Republic	Failure to fulfil obligations — Directive 93/67/EEC — Assessment of risks to man and the environment posed by dangerous substances
C-239/95	14 March 1996	Commission of the European Communities v Kingdom of Belgium	Failure of a Member State to fulfil its obligations — Transposition of Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices

Case	Date	Parties	Subject-Matter
C-297/94	21 March 1996	Dominique Bruyère & Others v Belgian State	Veterinary medicinal products — Directives 81/851/EEC and 90/676/EEC
C-129/94	28 March 1996	Rafael Ruiz Bernáldez	Compulsory insurance of motor vehicles — Exclusion of damage caused by drunken drivers
C-303/95	11 July 1996	Commission of the European Communities v Italian Republic	Failure to fulfil obligations — Directive 91/157/EEC
C-289/94	17 September 1996	Commission of the European Communities v Italian Republic	Failure to fulfil obligations — Duty of prior notification under Directive 83/189/EEC
C-380/95	3 October 1996	Commission of the European Communities v Hellenic Republic	Failure by a Member State to fulfil its obligations — Directive 91/414/EEC — Failure to transpose
C-221/94	7 November 1996	Commission of the European Communities v Grand Duchy of Luxembourg	Failure of a Member State to fulfil its obligations — Non-transposition of Directive 91/263/EEC — Telecommunications — Telecommunications terminal equipment — Mutual recognition of their conformity
C-302/94	12 December 1996	The Queen v Secretary of State for Trade & Industry, Ex parte: British Telecommunications plc	Telecommunications — Directive on open network provision — Special or exclusive rights — Directive on leased lines — Provision of a minimum set of leased lines
C-104/95	12 December 1996	Georgios Kontogeorgas v Kartonpak AE	Approximation of laws — Self-employed commercial agents — Entitlement to commission — Commercial transactions concluded during the period covered by the agency contract
C-218/96 to C-222/96	12 December 1996	Commission of the European Communities v Kingdom of Belgium	Failure to fulfil obligations — Failure to transpose Directives 92/32/EEC, 92/69/EEC, 93/67/EEC, 93/86/EEC and 93/105/EC

Case	Date	Parties	Subject-Matter
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COMMERCIAL POLICY

C-99/94	28 March 1996	Robert Birkenbeul GmbH & Co. KG v Hauptzollamt Koblenz	Anti-dumping duties on imports of electric motors
C-241/95	12 December 1996	The Queen v Intervention Board for Agricultural Produce, Ex parte: Accrington Beef Co. Ltd & Others	Frozen beef — Common import rules — Community tariff quota — Newcomers

COMPANY LAW

C-441/93	12 March 1996	Panagis Pafitis & Others v Trapeza Kentrikis Ellados AE & Others	Company law — Directive 77/91/EEC — Alteration of capital of a bank in the form of a public limited liability company — Direct effect of Articles 25(1) and 29(3) of the directive — Abuse of rights
C-392/93	26 March 1996	The Queen v H.M. Treasury, ex parte: British Telecommunications plc	Interpretation of Directive 90/531/EEC — Telecommunications — Transposition into national law — Obligation to pay compensation in the event of incorrect implementation
C-318/94	28 March 1996	Commission of the European Communities v Federal Republic of Germany	Failure to fulfil obligations — Public works contracts — Failure to publish a tender notice
C-87/94	25 April 1996	Commission of the European Communities v Kingdom of Belgium	Public contracts — Transport sector — Directive 90/531/EEC
C-234/95	2 May 1996	Commission of the European Communities v French Republic	Failure of a Member State to fulfil its obligations — Directive 92/50/EEC
C-253/95	2 May 1996	Commission of the European Communities v Federal Republic of Germany	Failure of a Member State to fulfil its obligations — Directive 92/50/EEC

Case	Date	Parties	Subject-Matter
C-311/95	2 May 1996	Commission of the European Communities v Hellenic Republic	Failure of a Member State to fulfil its obligations — Directive 92/50/EEC
C-234/94	27 June 1996	Waltraud Tomberger v Gebrüder von der Wettern GmbH	Directive 78/660/EEC — Annual accounts — Balance sheet — Date at which profit is made
C-236/95	19 September 1996	Commission of the European Communities v Hellenic Republic	Failure by a Member State to fulfil its obligations — Failure to implement Directive 89/665/EEC within the prescribed period — Review procedures relating to public supply and public works contracts

COMPETITION

C-480/93 P	11 January 1996	Zunis Holding SA & Others v Commission of the European Communities	Appeals — Competition — Merger control — Admissibility of an action for annulment of a decision refusing to reopen the procedure
C-226/94	15 February 1996	Grand Garage Albigeois SA & Others v Garage Massol SARL	Competition — Vehicle distribution — Regulation (EEC) No 123/85 — Applicability as against third parties — Independent reseller
C-309/94	15 February 1996	Nissan France SA & Others v Jean-Luc Dupasquier of Garage Sport Auto & Others	Competition — Vehicle distribution — Regulation (EEC) No 123/85 — Applicability as against third parties — Parallel importer — Simultaneous conduct of business as both intermediary and independent reseller
C-73/95 P	24 October 1996	VIHO Europe BV v Commission of the European Communities	Competition — Groups of companies — Article 85(1) of the Treaty
C-91/95 P	24 October 1996	Roger Tremblay & Others v Commission of the European Communities	Appeal — Competition — Rejection of a complaint — Absence of Community interest

Case	Date	Parties	Subject-Matter
C-333/94 P	14 November 1996	Tetra Pak International SA v Commission of the European Communities	Appeal — Competition — Dominant position — Definition of the product markets — Application of Article 86 of the Treaty to practices carried out by a dominant undertaking on a market distinct from the dominated market — Tied sales — Predatory prices — Fine

CONVENTION ON JURISDICTION

C-275/94	14 March 1996	Roger van der Linden v Berufsgenossenschaft der Feinmechanik und Elektrotechnik	Brussels Convention — Interpretation of Article 47(1) — Documents to be produced by a party applying for enforcement — Obligation to produce proof of service of the judgment delivered — Possibility of producing proof of service after the application has been made
C-78/95	10 October 1996	Bernardus Hendrikman and Maria Feyen v Magenta Druck & Verlag GmbH	Brussels Convention — Interpretation of Article 27(2) — Recognition of a decision — Definition of a defendant in default of appearance

ECSC

C-18/94	2 May 1996	Barbara Hopkins & Others v National Power plc & Others	ECSC Treaty — Discrimination between producers — Application of Articles 4 and 63 of the Treaty — Direct effect — EC Treaty — Abuse of dominant position — Article 86 of the Treaty — Compensation for damage resulting from infringement of those provisions — Powers of the Commission and of the national court
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Case	Date	Parties	Subject-Matter
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ENVIRONMENT AND CONSUMERS

C-149/94	8 February 1996	Didier Vergy	Council Directive 79/409/EEC on the conservation of wild birds — Prohibition of sale — Specimen born and reared in captivity
C-202/94	8 February 1996	Godefridus van der Feesten	Council Directive 79/409/EEC on the conservation of wild birds — Scope — Protected species — Application of the Directive to a subspecies not occurring naturally in the wild in the European territory of the Member States
C-209/94 P	15 February 1996	Buralux SA, Satrod SA and Ourry SA v Council of the European Union	Appeal — Transfer of waste
C-118/94	7 March 1996	Associazione Italiana per il World Wildlife Fund & Others v Regione Veneto	Council Directive 79/409/EEC on the conservation of wild birds — Hunting — Conditions for exercise of the Member States' power to derogate
C-192/94	7 March 1996	El Corte Inglés SA v Cristina Blázquez Rivero	Direct effect of unimplemented directives — Council Directive 87/102/EEC concerning consumer credit
C-160/95	28 March 1996	Commission of the European Communities v Hellenic Republic	Failure of a Member State to fulfil its obligations — Non-transposition of Directive 91/156/EEC — Waste
C-161/95	28 March 1996	Commission of the European Communities v Hellenic Republic	Failure of a Member State to fulfil its obligations — Non-transposition of Directive 91/271/EEC — Urban waste water treatment
C-274/93	25 April 1996	Commission of the European Communities v Grand Duchy of Luxembourg	Failure by a Member State to fulfil obligations — Failure to implement Council Directive 86/609/EEC — Protection of animals used for experimental and other scientific purposes
C-133/94	2 May 1996	Commission of the European Communities v Kingdom of Belgium	Assessment of the effects of certain projects on the environment — Council Directive 85/337/EEC

Case	Date	Parties	Subject-Matter
C-237/95	20 June 1996	Commission of the European Communities v Italian Republic	Failure to fulfil obligations — Failure to transpose Directives 89/369/EEC and 89/429/EEC
C-44/95	11 July 1996	The Queen v Secretary of State for the Environment, ex parte: Royal Society for the Protection of Birds	Directive 79/409/EEC on the conservation of wild birds — Directive 92/43/EEC on the conservation of the natural habitats of wild fauna and flora — Delimitation of Special Protection Areas — Discretion enjoyed by the Member States — Economic and social considerations — Lappel Bank
C-58/95, C-75/95, C-112/95, C-119/95, C-123/95, C-135/95, C-140/95, C-141/95, C-154/95 and C-157/95	12 September 1996	S. Gallotti & Others	Approximation of laws — Waste — Directive 91/156/EEC
C-168/95	26 September 1996	Luciano Arcaro	Cadmium discharges — Interpretation of Council Directives 76/464/EEC and 83/513/EEC — Direct effect — Possibility for a directive to be relied on against an individual
C-312/95	17 October 1996	Commission of the European Communities v Grand Duchy of Luxembourg	Failure to fulfil obligations — Council Directives 90/219/EEC and 90/220/EEC — Genetically modified organisms
C-72/95	24 October 1996	Aannemersbedrijf P.K. Kraaijeveld BV & Others v Gedeputeerde Staten van Zuid-Holland	Environment — Directive 85/337/EEC — Assessment of the effects of certain public and private projects on the environment
C-262/95	7 November 1996	Commission of the European Communities v Federal Republic of Germany	Failure to fulfil obligations — Non-transposition of Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC and 86/280/EEC on the discharge of certain dangerous substances into the aquatic environment

Case	Date	Parties	Subject-Matter
C-142/95 P	12 December 1996	Associazione agricoltori della provincia di Rovigo & Others v Commission of the European Communities	Appeal — Natural or legal persons — Act of direct and individual concern to them
C-297/95	12 December 1996	Commission of the European Communities v Federal Republic of Germany	Failure by a Member State to fulfil obligations — Directive 91/271/EEC — Urban waste water treatment
C-298/95	12 December 1996	Commission of the European Communities v Federal Republic of Germany	Failure by a Member State to fulfil obligations — Failure to transpose Directives 78/659/EEC and 79/923/EEC within the periods prescribed — Quality of fresh waters needing protection or improvement in order to support fish life — Quality required of shellfish waters
C-302/95	12 December 1996	Commission of the European Communities v Italian Republic	Failure of a Member State to fulfil its obligations — Directive 91/271/EEC — Urban waste water treatment
C-10/96	12 December 1996	Ligue royale belge for the protection of birds ASBL & Others v Région Wallonne	Council Directive 79/409/EEC on the conservation of wild birds — Prohibition of capture — Derogations

EXTERNAL RELATIONS

C-360/93	7 March 1996	European Parliament v Council of the European Union	Common commercial policy — Services — Government procurement
C-25/94	19 March 1996	Commission of the European Communities v Council of the European Union	FAO — Fishery agreement — Right to vote — Member States — Community
C-326/94	23 May 1996	A. Maas & Co. NV v Belgische Dienst voor Bedrijfsleven en Landbouw, now Belgisch Interventie- en Restitutiebureau	Food aid — Security — Obligations of the successful tenderer — Reference price

Case	Date	Parties	Subject-Matter
C-84/95	30 July 1996	Bosphorus Hava Yolları Turizm ve Ticaret AS v Minister for Transport, Energy and Communications & Others	Embargo against the Federal Republic of Yugoslavia (Serbia and Montenegro) — Impounding of an aircraft
C-61/94	10 September 1996	Commission of the European Communities v Federal Republic of Germany	Failure of a Member State to fulfil its obligations — International Dairy Arrangement
C-277/94	10 September 1996	Z. Taflan Met & Others v Bestuur van de Sociale Verzekeringsbank	EEC-Turkey Association Agreement — Decision of the Association Council — Social Security — Entry into force — Direct effect
C-126/95	3 October 1996	A. Hallouzi-Choho v Bestuur van de Sociale Verzekeringsbank	EEC-Morocco Cooperation Agreement — Article 41(1) — Principle of non-discrimination in matters of social security — Direct effect — Spouse of a Moroccan migrant worker — Special procedures for applying the Netherlands legislation on general old-age insurance
C-268/94	3 December 1996	Portuguese Republic v Council of the European Union	Cooperation Agreement between the European Community and the Republic of India — Development cooperation — Respect for human rights and democratic principles — Cooperation in the fields of energy, tourism, culture, drug abuse control and protection of intellectual property — Competence of the Community — Legal basis

FREE MOVEMENT OF GOODS

C-446/93	18 January 1996	SEIM — Sociedade de Exportação e Importação de Materiais Lda v Subdirector-Geral das Alfândegas	Repayment or remission of import duties
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Case	Date	Parties	Subject-Matter
C-166/94	8 February 1996	Pezullo Molini Pastifici Mangimifici SpA v Ministero delle Finanze	Inward processing arrangements — National legislation providing for default interest on agricultural levies and VAT for the period between temporary and definitive importation
C-143/93	13 February 1996	Gebroeders van Es Douane Agenten BV v Inspecteur der Invoerrechten en Accijnzen	Effect of the repeal of a Council regulation on a Commission regulation concerning customs classification adopted on the basis of the former regulation — Commission's discretionary powers when drawing up a classification regulation
C-300/94	29 February 1996	Tirma SA v Administración General del Estado	Protocol No 2 to the Act of Accession of Spain and Portugal — Canary Islands — Customs territory of the Community — Processed agricultural products — Exemption from customs duties — Article 5 of Regulation (EEC) No 3033/80 — Variable component
C-194/94	30 April 1996	CIA Security International SA v Signalson SA and Securitel SPRL	Interpretation of Article 30 of the EC Treaty and of Directive 83/189/EEC laying down a procedure for the provision of information in the field of technical standards and regulations — National legislation on the marketing of alarm systems and networks — Prior administrative approval
C-153/94 and C-204/94	14 May 1996	The Queen v Commissioners of Customs & Excise, ex parte: Faroe Seafood Co. Ltd, Føroya Fiskasøla L/F (C-153/94) The Queen v Commissioners of Customs & Excise, ex parte: John Smith and Celia Smith trading as Arthur Smith (a firm) (C-204/94)	Customs procedure applicable to certain products originating in the Faroe Islands — Concept of originating products — Post-clearance recovery of customs duties

Case	Date	Parties	Subject-Matter
C-5/94	23 May 1996	The Queen v Ministry of Agriculture, Fisheries and Food, ex parte: Hedley Lomas (Ireland) Ltd	Free movement of goods — Protection of animals — Harmonising directive — Article 36 of the EC Treaty — Non-contractual liability of a Member State for breach of Community law
C-418/93 to C-421/93, C-460/93 to C-464/93, C-9/94 to C-11/94, C-14/94, C-15/94, C-23/94, C-24/94 and C-332/94	20 June 1996	Semerano Casa Uno Srl & Others v Sindaco del Comune di Erbusco & Others	Interpretation of Articles 30, 36 and 52 of the EC Treaty and Directives 64/223/EEC and 83/189/EEC — Prohibition of certain kinds of Sunday and public-holiday trading
C-121/95	20 June 1996	VOBIS Microcomputer AG v Oberfinanzdirektion München	Common Customs Tariff — Tariff headings — Basic module for the assembly of a data-processing machine — Classification in the Combined Nomenclature
C-293/94	27 June 1996	Jacqueline Brandsma	Free movement of goods — Derogations — Protection of public health — Powers of the Member States — Biocides
C-240/95	27 June 1996	Rémy Schmit	Free movement of goods — Motor vehicles — National system of model-year dates — Discrimination against parallel imports
C-427/93, C-429/93 and C-436/93	11 July 1996	Bristol-Myers Squibb & Others v Paranova A/S	Directive 89/104/EEC to approximate the laws of the Member States relating to trade marks — Article 36 of the EC Treaty — Repackaging of trade-marked products
C-71/94, C-72/94 and C-73/94	11 July 1996	Eurim-Pharm Arzneimittel GmbH v Beiersdorf AG & Others	Repackaging of trade-marked products — Article 36 of the EC Treaty

Case	Date	Parties	Subject-Matter
C-232/94	11 July 1996	MPA Pharma GmbH v Rhône-Poulenc Pharma GmbH	Repackaging of trade-marked products — Article 36 of the EC Treaty
C-246/94 to C-249/94	17 September 1996	Cooperativa Agricola Zootechnica S. Antonio & Others v Amministrazione delle Finanze dello Stato	Commission Regulations (EEC) Nos 612/77 and 1384/77 — Special import arrangements in respect of certain young male bovine animals for fattening — Council Directive 79/623/EEC
C-341/94	26 September 1996	André Allain v Ministère Public	Customs declaration — Country of origin — German unification — Penalties
C-126/94	7 November 1996	Société Cadi Surgelés & Others v Ministre des Finances & Others	Free movement of goods — Common Customs Tariff — Common commercial policy — Fiscal rules applicable to French overseas départements — Goods from non-member countries
C-201/94	12 November 1996	The Queen v The Medicines Control Agency, ex parte: Smith & Nephew Pharmaceuticals Ltd and Primecrown Ltd v The Medicines Control Agency	Proprietary medicinal products — Parallel imports — Direct effect of Directive 65/65/EEC — Marketing authorisation
C-313/94	26 November 1996	F.lli Graffione SNC v Ditta Fransa	Prohibition of the use of a trade mark in a Member State — Prohibition of importation from another Member State of a product bearing the same trade mark — Article 30 of the EC Treaty and the Trade Mark Directive
C-267/95 and C-268/95	5 December 1996	Merck & Co. Inc. & Others v Primecrown Ltd & Others Beecham Group plc v Europharm of Worthing Ltd	Act of Accession of Spain and Portugal — Interpretation of Articles 47 and 209 — End of transitional period — Articles 30 and 36 of the EC Treaty — Parallel imports of unpatentable pharmaceuticals
C-38/95	12 December 1996	Ministero delle Finanze v Foods Import Srl	Common Customs Tariff — Tariff headings — Fish of the Molva molva kind

Case	Date	Parties	Subject-Matter
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FREEDOM OF MOVEMENT FOR PERSONS

C-164/94	1 February 1996	Georgios Arantitis v Land Berlin	General system for the recognition of higher-education diplomas — Conditions indirectly imposed by national rules — Regulated profession
C-308/94	1 February 1996	Office National de l'Emploi v Heidemarie Naruschawicus	Social security for migrant workers — Council Regulation No 1408/71 — Worker residing in a Member State other than the competent Member State — Unemployment benefit
C-53/95	15 February 1996	Inasti (Institut National d'Assurances Sociales pour Travailleurs Indépendants) v Hans Kemmler	Freedom of establishment — Social security for self-employed persons working in two Member States
C-193/94	29 February 1996	Sofia Skanavi and Konstantin Chryssanthakopoulos	Freedom of movement for persons — Driving licences — Obligation to exchange them — Penalties
C-307/94	29 February 1996	Commission of the European Communities v Italian Republic	Failure of a Member State to fulfil its obligations — Directive 85/432/EEC
C-334/94	7 March 1996	Commission of the European Communities v French Republic	Failure of a State to fulfil obligations — Registration of vessels — Right to fly the French flag — Nationality requirements for owner and crew — Failure to comply with the judgment in Case 167/73
C-315/94	14 March 1996	Peter de Vos v Stadt Bielefeld	Freedom of movement for persons — Military service — Social advantage
C-238/94	26 March 1996	José García & Others v Mutuelle de Prévoyance Sociale d'Aquitaine & Others	Non-life insurance — Council Directive 92/49/EEC — Scope
C-243/94	28 March 1996	Alejandro Rincón Moreno v Bundesanstalt für Arbeit	Social security for migrant workers — Family benefits — Article 74 of Regulation (EEC) No 1408/71

Case	Date	Parties	Subject-Matter
C-272/94	28 March 1996	Michel Guiot and Climatec SA	Employer's contributions — Loyalty stamps — Bad-weather stamps — Freedom to provide services
C-308/93	30 April 1996	Bestuur van de Sociale Verzekeringsbank v J.M. Cabanis-Issarte	Social security for migrant workers — Voluntary old-age insurance — Surviving spouse of a worker — Equal treatment
C-214/94	30 April 1996	Ingrid Boukhalfa v Bundesrepublik Deutschland	National of a Member State established in a non-member country — Employed on the local staff of the embassy of another Member State in that non-member country — Treated differently from local staff having the nationality of the Member State whose embassy is involved — Applicability of Community law — Prohibition of discrimination based on nationality
C-206/94	2 May 1996	Brennet AG v Vittorio Paletta	Social security — Recognition of incapacity for work
C-237/94	23 May 1996	John O'Flynn v Adjudication Officer	Social advantages for workers — Funeral payment
C-101/94	6 June 1996	Commission of the European Communities v Italian Republic	Dealing in transferable securities
C-170/95	13 June 1996	Office National de l'Emploi (ONEM) v Calogero Spataro	Social security — Unemployment benefit — Article 69(4) of Regulation No 1408/71
C-107/94	27 June 1996	P.H.Asscher v Staatssecretaris van Financiën	Article 52 of the EC Treaty — Requirement of equal treatment — Income tax on non-residents
C-473/93	2 July 1996	Commission of the European Communities v Grand Duchy of Luxembourg	Failure of a Member State to fulfil its obligations — Freedom of movement for persons — Employment in the public service
C-173/94	2 July 1996	Commission of the European Communities v Kingdom of Belgium	Failure of a Member State to fulfil its obligations — Freedom of movement for persons — Employment in the public service
C-290/94	2 July 1996	Commission of the European Communities v Hellenic Republic	Failure of a Member State to fulfil its obligations — Freedom of movement for persons — Employment in the public service

Case	Date	Parties	Subject-Matter
C-25/95	11 July 1996	Siegried Otte v Federal Republic of Germany	Social security for migrant workers — Community rules — Matters covered — Benefit paid to workers in the coal industry who have passed a specified age-limit and have been laid off as a result of closure of the undertaking employing them or rationalisation measures (adaptation allowance) — Benefit paid by way of subsidy — Method of calculating benefits — Taking into account of a pension paid under the legislation of another Member State — Conditions and limits
C-222/94	10 September 1996	Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland	Failure to fulfil obligations — Directive 89/552/EEC — Telecommunications — Television broadcasting — Jurisdiction over broadcasters
C-11/95	10 September 1996	Commission of the European Communities v Kingdom of Belgium	Directive 89/552/EEC — Transmission of programmes by cable
C-251/94	12 September 1996	Eduardo Lafuente Nieto v Instituto Nacional de la Seguridad Social (INSS) and Tesorería General de la Seguridad Social (TGSS)	Social security — Invalidity — Articles 46 and 47 of Regulation (EEC) No 1408/71 — Calculation of benefits
C-278/94	12 September 1996	Commission of the European Communities v Kingdom of Belgium	Failure of a Member State to fulfil its obligations — Indirect discrimination on grounds of nationality — Children of migrant workers — Social advantages — Young people seeking first employment — Access to special employment programmes
C-245/94 and C-312/94	10 October 1996	Ingrid Hoever and Iris Zachow v Land Nordrhein-Westfalen	Social security — Family benefits — Article 73 of Regulation (EEC) No 1408/71 — Article 4(1) of Directive 79/7/EEC — Article 7(2) of Regulation (EEC) No 1612/68

Case	Date	Parties	Subject-Matter
C-335/95	24 October 1996	Institut national d'assurances sociales pour travailleurs indépendants (Inasti) v Michel Picard	Social security for migrant workers — Old-age and death insurance — Benefits — Concurrent award of pensions under the legislation of two Member States — Automatic award upon submission of a claim to the competent institution of one of the Member States — Claim to be made to the institution of the Member State of residence in order to obtain award of both pensions concurrently
C-3/95	12 December 1996	Reisebüro Broede v Gerd Sandker	Freedom to provide services — Judicial recovery of debts — Authorisation — Article 59 of the EC Treaty
C-320/94, C-328/94, C-329/94, C-337/94, C-338/94 and C-339/94	12 December 1996	Reti Televisive Italiane SpA (RTI) & Others v Ministero delle Poste e Telecomunicazioni	Interpretation — Directive 89/552/EEC — Television broadcasting activities

LAW GOVERNING THE INSTITUTIONS

C-130/91 REV II	16 January 1996	ISAE/VP (Instituto Social de Apoio ao Emprego e à Valorização Profissional) & Others v Commission of the European Communities	Application for revision — Inadmissibility
C-271/94	26 March 1996	European Parliament v Council of the European Union	Council Decision 94/445/EC — Edicom — Telematic networks — Legal basis
C-58/94	30 April 1996	Kingdom of the Netherlands v Council of the European Union	Action for annulment — Rules on public access to Council documents

Case	Date	Parties	Subject-Matter
C-144/95	13 June 1996	Ministère Public v Jean-Louis Maurin and Metro SA	Request for a preliminary ruling — Interpretation of the principles concerning observance of the rights of the defence and of the adversarial nature of proceedings — National legislation on the prevention of fraud — Foodstuffs — No jurisdiction
C-76/95	24 October 1996	Commission of the European Communities v Royale Belge SA & Others	Officials — Insurance against accidents and occupational diseases

PRINCIPLES OF COMMUNITY LAW

C-177/94	1 February 1996	Gianfranco Perfli	Freedom of establishment — Freedom to provide services — Judicial procedure — Discrimination
C-46/93 and C-48/93	5 March 1996	Brasserie du pêcheur SA v Bundesrepublik Deutschland The Queen v Secretary of State for Transport, ex parte: Factortame Ltd & Others	Principle of Member State liability for damage caused to individuals by breaches of Community law attributable to the State — Breaches attributable to the national legislature — Conditions for State liability — Extent of reparation
C-43/95	26 September 1996	Data Delecta Aktiebolag and Ronny Forsberg v MSL Dynamics Ltd	Equal treatment — Discrimination on grounds of nationality — Security for the costs of judicial proceedings
C-178/94, C-179/94, C-188/94, C-189/94 and C-190/94	8 October 1996	Erich Dillenkofer & Others v Bundesrepublik Deutschland	Directive 90/314/EEC on package travel, package holidays and package tours — Non-transposition — Liability of the Member State and its obligation to make reparation

PRIVILEGES AND IMMUNITIES

C-191/94	28 March 1996	AGF Belgium SA v European Economic Community & Others	Protocol on the Privileges and Immunities of the Communities — Additional motor insurance premiums
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Case	Date	Parties	Subject-Matter
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SOCIAL POLICY

C-280/94	1 February 1996	Y.M. Posthuma-van Damme & Others v Bestuur van de Bedrijfsvereniging voor Detailhandel, Ambachten en Huisvrouwen & Others	Equal treatment for men and women — Social security — Directive 79/7/EEC — Interpretation of the judgment of 24 February 1994 in Case C-343/92
C-457/93	6 February 1996	Kuratorium für Dialyse und Nierentransplantation eV v Johanna Lewark	Indirect discrimination against women workers — Compensation for attendance at training courses providing staff council members with the necessary knowledge for performing their functions
C-8/94	8 February 1996	C.B. Laperre v Bestuurscommissie beroepszaken in de provincie Zuid-Holland	Equal treatment for men and women in matters of social security — Article 4(1) of Directive 79/7/EEC — Statutory scheme of social assistance for older and/or partially incapacitated workers who are long-term unemployed — Conditions relating to previous employment and age
C-342/93	13 February 1996	Joan Gillespie & Others v Northern Health and Social Services Board & Others	Equal treatment for men and women — Maternity pay
C-278/93	7 March 1996	Edith Freers and Hannelore Speckmann v Deutsche Bundespost	Indirect discrimination against women workers — Compensation for attendance at training courses providing members of staff committees with the knowledge necessary for performing their duties
C-171/94 and C-172/94	7 March 1996	Albert Merckx and Patrick Neuhuys v Ford Motors Company Belgium SA	Safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses — Concept of a transfer — Transfer of a dealership
C-13/94	30 April 1996	P v S and Cornwall County Council	Equal treatment for men and women — Dismissal of a transsexual

Case	Date	Parties	Subject-Matter
C-228/94	11 July 1996	Stanley Charles Atkins v Wrekin District Council, Department of Transport	Equal treatment of men and women — Concessionary fares on public passenger transport services — Scope of Directive 79/7 — Link with retirement age
C-79/95	26 September 1996	Commission of the European Communities v Kingdom of Spain	Failure to fulfil obligations — Failure to transpose a directive
C-298/94	15 October 1996	Annette Henke v Gemeinde Schierke and Verwaltungsgemeinschaft "Brocken"	Safeguarding of employees' rights in the event of transfers of undertakings — Transfer of certain administrative functions of a municipality to a body created for that purpose by several municipalities
C-435/93	24 October 1996	Francina Johanna Maria Dietz v Stichting Thuiszorg Rotterdam	Equal pay for men and women — Right to join an occupational pension scheme — Right to payment of a retirement pension — Part-time workers
C-32/95 P	24 October 1996	Commission of the European Communities v Lisrestal — Organização Gestão de Restaurantes Colectivos Ld. ^a & Others	European Social Fund — Decision reducing financial assistance initially granted — Infringement of the rights of the defence — Right of interested parties to be heard
C-77/95	7 November 1996	Bruna-Alessandra Züchner v Handelskrankenkasse (Ersatzkasse) Bremen	Equal treatment for men and women in matters of social security — Directive 79/7/EEC — Working population
C-84/94	12 November 1996	United Kingdom of Great Britain and Northern Ireland v Council of the European Union	Council Directive 93/104/EC concerning certain aspects of the organisation of working time — Action for annulment
C-305/94	14 November 1996	Claude Rotsart de Hertaing v J. Benoidt SA, in liquidation & Others	Safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses — Transfer to the transferee of the rights and obligations arising from a contract of employment — Date of transfer

Case	Date	Parties	Subject-Matter
C-74/95 and C-129/95	12 December 1996	X	Directive 90/270/EEC on the minimum safety and health requirements for work with display screen equipment — Definition of worker — Eye and eyesight tests — Definition of workstation for the purposes of Articles 4 and 5 — Extent of the obligations laid down in Articles 4 and 5

STAFF CASES

C-254/95 P	4 July 1996	European Parliament v Angelo Innamorati	Appeal — Officials — Competitions — Rejection of candidature — Statement of reasons for the decision of a selection board in an open competition
C-294/95 P	12 November 1996	Girish Ojha v Commission of the European Communities	Appeal — Official — Posting outside the Community — Reassignment in the interests of the service — Action for annulment — Compensation for non-material damage

STATE AID

C-56/93	29 February 1996	Kingdom of Belgium v Commission of the European Communities	State aid — Preferential tariff system for supplies of natural gas to Dutch nitrate fertiliser producers
C-122/94	29 February 1996	Commission of the European Communities v Council of the European Union	Common agricultural policy — State aid
C-39/94	11 July 1996	Syndicat français de l'Express international (SFEL) & Others v La Poste & Others	State aid — Jurisdiction of national courts when the matter is also pending before the Commission — Definition of State aid — Consequences of infringement of the last sentence of Article 93(3) of the EC Treaty

Case	Date	Parties	Subject-Matter
C-241/94	26 September 1996	Republic of France v Commission of the European Communities	Concept of State aid within the meaning of Article 92(1) of the Treaty — State intervention of a social character
C-311/94	15 October 1996	IJssel-Vliet Combinatie BV v Minister van Economische Zaken	State aid for the construction of a fishing vessel
C-329/93, C-62/95 and C-63/95	24 October 1996	Federal Republic of Germany & Others v Commission of the European Communities	State aid — Guarantee given by the public authorities in favour indirectly of a shipbuilding undertaking for the acquisition of an undertaking in another sector — Diversification of the activities of the recipient undertaking — Recovery

TAXATION

C-197/94 and C-252/94	13 February 1996	Société Bautiaa & Others v Directeur des Services Fiscaux des Landes & Others	Article 7(1) of Directive 69/335/EEC — Indirect taxes on the raising of capital — Capital duty — Mergers between companies — Exemption
C-110/94	29 February 1996	Intercommunale voor zeewaterontziltling (INZO) v Belgian State	VAT — Concept of economic activity — Status of taxable person — Activity confined to a profitability study for a project, followed by the abandonment of the project
C-215/94	29 February 1996	Jürgen Mohr v Finanzamt Bad Segeberg	VAT — Definition of supply of services — Definitive discontinuation of milk production — Compensation received under Regulation (EEC) No 1336/86
C-468/93	28 March 1996	Gemeente Emmen v Belastingdienst Grote Ondernemingen	Sixth VAT Directive — Article 13B(h) and Article 4(3)(b) — Supply of building land
C-231/94	2 May 1996	Faaborg-Gelting Linien A/S v Finanzamt Flensburg	Reference for a preliminary ruling — VAT — Restaurant transactions on board ship — Place of taxable transactions

Case	Date	Parties	Subject-Matter
C-331/94	23 May 1996	Commission of the European Communities v Hellenic Republic	VAT — Taxation of transportation of persons, round trips by sea and package tours
C-2/94	11 June 1996	Fa. Denkavit Internationaal BV & Others v Kamer van Koophandel en Fabrieken voor Midden-Gelderland & Others	Directive 69/335/EEC — Registration levy payable to Chamber of Trade and Industry
C-155/94	20 June 1996	Wellcome Trust Ltd v Commissioners of Customs & Excise	Sixth VAT Directive — Concept of economic activity
C-306/94	11 July 1996	Régie dauphinoise — Cabinet A. Forest SARL v Ministre du Budget	Value added tax — Interpretation of Article 19(2) of the Sixth Directive 77/388/EEC — Deduction of input tax — Incidental financial transactions — Calculation of the deductible proportion
C-302/93	26 September 1996	E. Debouche v Inspecteur der Invoerrechten en Accijnzen	Value added tax — Interpretation of Article 17(2) and (3)(a) of Directive 77/388/EEC and of Article 3(b) and the first paragraph of Article 5 of Directive 79/1072/EEC — Refund of value added tax to taxable persons not established in the territory of the country
C-230/94	26 September 1996	Renate Enkler v Finanzamt Homburg	Sixth VAT Directive — Definition of economic activity — Taxable amount
C-287/94	26 September 1996	A/S Richard Frederiksen & Co. v Skatteministeriet	Raising of capital — Capital duty — Interest-free loan granted by a parent company to its subsidiary — Company income tax
C-327/94	26 September 1996	Jürgen Dudda v Finanzamt Bergisch Gladbach	Sixth VAT Directive — Interpretation of Article 9(2)(c) — Sound-engineering for artistic or entertainment events — Place where the services are supplied
C-283/94, C-291/94 and C-292/94	17 October 1996	Denkavit Internationaal BV & Others v Bundesamt für Finanzen	Harmonisation of tax legislation — Taxation of company profits — Parent companies and subsidiaries

Case	Date	Parties	Subject-Matter
C-217/94	24 October 1996	Eismann Alto Adige Srl v Ufficio IVA di Bolzano	Value added tax — Interpretation of Article 22(8) of the Sixth Directive (77/388/EEC) as amended by Directive 91/680/EEC — Equal treatment of domestic transactions and transactions carried out between Member States by taxable persons
C-288/94	24 October 1996	Argos Distributors Ltd v Commissioners of Customs & Excise	Value added tax — Sixth Directive — Taxable amount
C-317/94	24 October 1996	Elida Gibbs Ltd v Commissioners of Customs and Excise	Value added tax — Sixth Directive — Money-off and cash-back coupons — Taxable amount
C-85/95	5 December 1996	John Reisdorf v Finanzamt Köln-West	Value added tax — Interpretation of Article 18(1)(a) of the Sixth Council Directive 77/388/EEC — Deduction of input tax paid — Obligation of the taxable person — Possession of an invoice
C-47/95, C-48/95, C-49/95, C-50/95, C-60/95, C-81/95, C-92/95 and C-148/95	12 December 1996	Olasagasti & C. Srl & Others v Amministrazione delle Finanze dello Stato	Regulation (EEC) No 3835/90 — Regulation (EEC) No 3587/91 — Regulation (EEC) No 3416/91 — Act of Accession of Spain and Portugal — Article 5(1) and (2) of Regulation (EEC) No 1697/79 — Regulation (EEC) No 1715/90 — Regulation (EEC) No 2164/91 — Customs duties — Tariff preferences — Agricultural products — Post-clearance recovery — Binding information — Tuna in olive oil

TRANSPORT

C-335/94	21 March 1996	Hans Walter Mrozek and Bernhard Jäger	Social legislation relating to road transport — Derogation for refuse vehicles
C-39/95	21 March 1996	Pierre Goupil	Social legislation relating to road transport — Derogation for refuse vehicles

II – Synopsis of the other decisions of the Court of Justice in 1996

Case	Date	Parties	Subject-matter
C-120/94	19 March 1996	Commission of the European Communities v Hellenic Republic	Removal from the Register
Opinion 2/94	28 March 1996	Opinion pursuant to Article 228(6) of the EC Treaty	Accession by the Community to the European Convention for the Protection of Human Rights and Fundamental Freedoms
C-137/95 P	25 March 1996	Vereniging van Samenwerkende Prijsregelende Organisaties in de Bouwnijverheid & Others v Commission of the European Communities	Appeal — Competition — Decisions of associations of undertakings — Exemption — Appraisal of the gravity of the infringements — Appeal manifestly unfounded
C-270/95 P	28 March 1996	Christina Kik v Council of the European Union and Commission of the European Communities	Regulation (EC) No 40/94 on the Community trade mark — Languages — Actions for annulment of measures — Natural and legal persons — Acts of direct and individual concern to them — Appeal manifestly unfounded
C-180/96 R	12 July 1996	United Kingdom of Great Britain and Northern Ireland v Commission of the European Communities	Application for interim relief — Agriculture — Animal health — Emergency measures against bovine spongiform encephalopathy
C-239/96 R and C-240/96 R	24 September 1996	United Kingdom of Great Britain and Northern Ireland v Commission of the European Communities	Applications for interim measures — Social policy — Community measures to assist the elderly — Community measures to combat poverty and social exclusion

III – Statistical information ¹

General proceedings of the Court

Table 1: General proceedings in 1996

Cases dealt with

Table 2: Nature of proceedings
Table 3: Judgments, opinions, orders
Table 4: Means by which terminated
Table 5: Bench hearing case
Table 6: Basis of the action
Table 7: Subject-matter of the action

Length of proceedings

Table 8: Nature of proceedings
Figure I: Duration of judgments and orders in references for a preliminary ruling
Figure II: Duration of judgments and orders in direct actions
Figure III: Duration of judgments and orders in appeals

¹ A new computer-based system, introduced in 1996, for the management of cases before the Court has resulted in a change (since then) in the presentation of the statistics appearing in this Annual Report. This means that for certain tables and graphics comparison with statistics prior to 1995 is not possible.

New cases

Table 9:	Nature of proceedings
Table 10:	Type of action
Table 11:	Subject-matter of the action
Table 12:	Actions for failure to fulfil obligations
Table 13:	Basis of the action

Cases pending as at 31 December 1996

Table 14:	Nature of proceedings
Table 15:	Bench hearing case

General trend in the work of the Court until 31 December 1996

Table 16:	New cases and judgments
Table 17:	New references for a preliminary ruling (by Member State per year)
Table 18:	New references for a preliminary ruling (by Member State and by court or tribunal)

General proceedings of the Court

Table 1: General proceedings in 1996 ¹

Completed cases	280	(349)
New cases	423	
Cases pending	612	(694)

Cases dealt with

Table 2: Nature of proceedings

References for a preliminary ruling	146	(205)
Direct actions	103	(113)
Appeals	26	(26)
Opinions ²	1	(1)
Special forms of procedure ³	4	(4)
Total	280	(349)

¹ In this table and the tables which follow, the figures in brackets (gross figure) represent the total number of cases, *without* account being taken of cases joined on grounds of similarity (one case number = one case). The *net figure* represents the number of cases after *account has been taken* of those joined on grounds of similarity (one series of joined cases = one case).

² Opinion of the Court of 28.3.1996 on the accession by the Communities to the Convention for the Protection of Human Rights and Fundamental Freedoms.

³ 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 98 of the Rules of Procedure); attachment order (Protocol on Privileges and Immunities); cases regarding immunity (Protocol on Privileges and Immunities).

Table 3: Judgments, opinions, orders ¹

Nature of proceedings	Judgments	Non-interlocutory orders ²	Interlocutory orders	Other orders ³	Opinions	Total
References for a preliminary ruling	123	8	—	15	—	146
Direct actions	59	—	3	44	—	106
Appeals	9	17	—	—	—	26
Subtotal	191	25	3	59	—	278
Opinions	—	—	—	—	1	1
Special forms of procedure	2	1	—	1	—	4
Subtotal	2	1	—	1	1	5
TOTAL	193	26	3	60	1	283

¹ Net figures.

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

³ 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
<i>Judgments</i>					
Action founded	44 (50)				44 (50)
Action partly founded	5 (5)				5 (5)
Action unfounded	9 (10)		7 (7)		16 (17)
Action inadmissible	1 (1)			2 (2)	3 (3)
Annulment and not referred back			1 (1)		1 (1)
Partial annulment and not referred back			1 (1)		1 (1)
Preliminary ruling		123 (181)			123 (181)
Total judgments	59 (66)	123 (181)	9 (9)	2 (2)	193 (258)
<i>Orders</i>					
Action partly founded				1 (1)	1 (1)
Action unfounded			2 (2)		2 (2)
Manifest lack of jurisdiction		2 (2)			2 (2)
Manifest inadmissibility		6 (6)			6 (6)
Appeal manifestly inadmissible			5 (5)		5 (5)
Appeal manifestly inadmissible and unfounded			3 (3)		3 (3)
Appeal manifestly unfounded			7 (7)		7 (7)
Subtotal		8 (8)	17 (17)	1 (1)	26 (26)
Removal from the Register	42 (45)	15 (16)		1 (1)	58 (62)
No need to adjudicate	1 (1)				1 (1)
Referred back to the Court of First Instance	1 (1)				1 (1)
Subtotal	44 (47)	15 (16)		1 (1)	60 (64)
Total orders	44 (47)	23 (24)	17 (17)	2 (2)	86 (90)
<i>Opinions</i>					1 (1)
TOTAL	103 (113)	146 (205)	26 (26)	4 (4)	280 (349)

Table 5: **Bench hearing case**

Bench hearing case	Judgments		Orders ¹		Total	
Full Court	17	(22)	7	(7)	24	(29)
Small plenum	34	(40)	—	—	34	(40)
Chambers (Bench: 5 judges)	109	(154)	2	(2)	111	(156)
Chambers (Bench: 3 judges)	33	(42)	15	(15)	48	(57)
President	—	—	2	(2)	2	(2)
Total	193 ²	(258)	26	(26)	219	(284)

Table 6: **Basis of the action**

Basis of the action	Judgments/Opinions		Orders ³		Total	
Article 169 of the EC Treaty	42	(46)	—	—	42	(46)
Article 173 of the EC Treaty	16	(19)	—	—	16	(19)
Article 177 of the EC Treaty	120	(178)	8	(8)	128	(186)
Article 181 of the EC Treaty	1	(1)	—	—	1	(1)
Article 228 of the EC Treaty	1	(1)	—	—	1	(1)
Article 1 of the 1971 Protocol	2	(2)	—	—	2	(2)
Article 49 of the EC Statute	8	(8)	14	(14)	22	(22)
Article 50 of the EC Statute	—	—	1	(1)	1	(1)
Total EC Treaty	190	(255)	23	(23)	213	(278)
Article 41 of the EAEC Treaty	1	(1)	—	—	1	(1)
Article 49 of the EAEC Statute	1	(1)	2	(2)	3	(3)
Total EAEC Treaty	2	(2)	2	(2)	4	(4)
TOTAL	192	(257)	25	(25)	217	(282)
Article 74 of the Rules of Procedure	—	—	1	(1)	1	(1)
Article 98 of the Rules of Procedure	2	(2)	—	—	2	(2)
OVERALL TOTAL	194	(259)	26	(26)	220	(285)

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).

² Not including Opinions of the Court.

³ Orders terminating the case (other than by removal from the Register, declaration that the case will not proceed to judgment or referral back to the Court of First Instance).

Table 7: Subject-matter of the action

Subject-matter of the action	Judgments/Opinions		Orders ¹		Total	
Agriculture	22	(25)	—	—	22	(25)
State aid	6	(8)	1	(1)	7	(9)
Competition	6	(6)	3	(3)	9	(9)
Brussels Convention	2	(2)	—	—	2	(2)
Institutional measures	2 ²	(2)	2	(2)	4	(4)
Social measures	16	(18)	—	—	16	(18)
Right of establishment	12	(16)	—	—	12	(16)
Environment	19	(28)	1	(1)	20	(29)
Taxation	17	(20)	1	(1)	18	(21)
European Social Fund	2	(2)	—	—	2	(2)
Freedom of establishment and services	3	(8)	—	—	3	(8)
Free movement of capital			—	—		
Free movement of goods	11	(32)	3	(3)	14	(35)
Free movement of services	5	(5)	1	(1)	6	(6)
Freedom of movement for workers	6	(6)	—	—	6	(6)
EC public procurement contracts			—	—		
Commercial policy	7	(7)	—	—	7	(7)
Fisheries policy	3	(3)	1	(1)	4	(4)
Economic and monetary policy	—	—	1	(1)	1	(1)
Principles of Community law	1	(1)	2	(2)	3	(3)
Privileges and immunities	1	(1)	—	—	1	(1)
Approximation of laws	21	(25)	—	—	21	(25)
External relations	1	(1)	1	(1)	2	(2)
Transeuropean networks	1	(1)	—	—	1	(1)
Own resources	2	(3)	—	—	2	(3)
Social security for migrant workers	11	(12)	—	—	11	(12)
Staff Regulations	4	(4)	8	(8)	12	(12)
Common Customs Tariff	4	(4)	—	—	4	(4)
Value added tax	1	(1)	—	—	1	(1)
Transport	2	(2)	—	—	2	(2)
Customs Union	5	(15)	—	—	5	(15)
Total	193	(258)	25	(25)	218	(283)
EAEC Treaty	1	(1)	1	(1)	2	(2)
OVERALL TOTAL	194	(259)	26	(26)	220	(285)

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).

² Including one Opinion of the Court.

Length of proceedings ¹

Table 8: **Nature of proceedings**

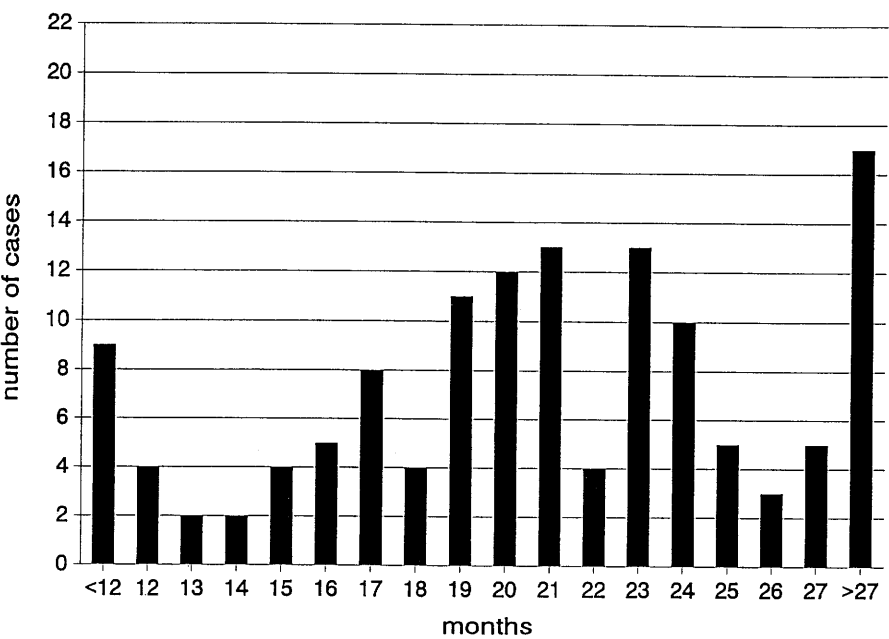
(Decisions by way of judgments and orders ²)

References for a preliminary ruling	20.8
Direct actions	19.6
Appeals	14.0

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

² Orders 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.

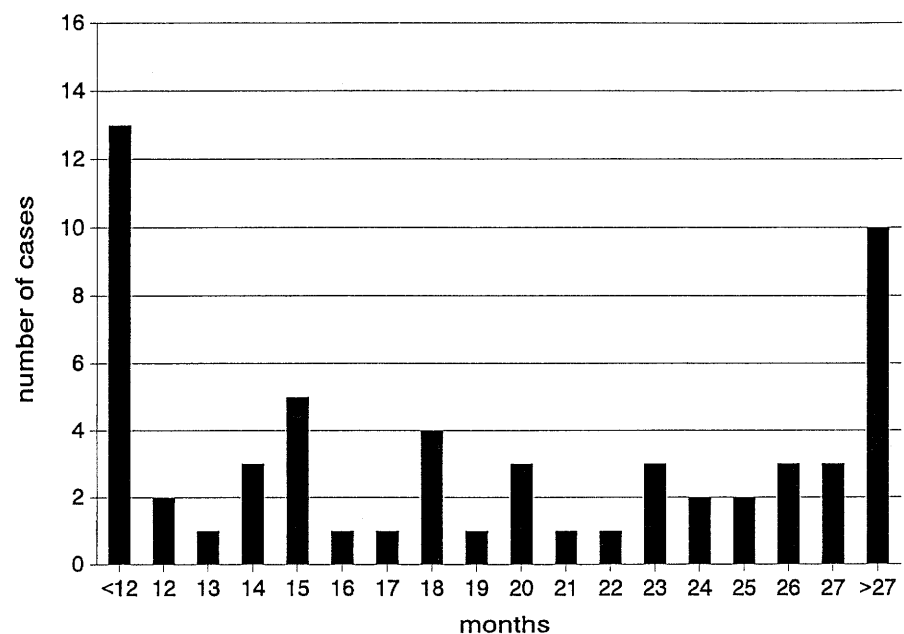
Figure I: Duration of judgments and orders ¹ in references for a preliminary ruling



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	9	4	2	2	4	5	8	4	11	12	13	4	13	10	5	3	5	17

¹ Orders other than orders disposing of a case by removal from the Register or not to proceed to judgment.

Figure II: Duration of judgments and orders ¹ in direct actions

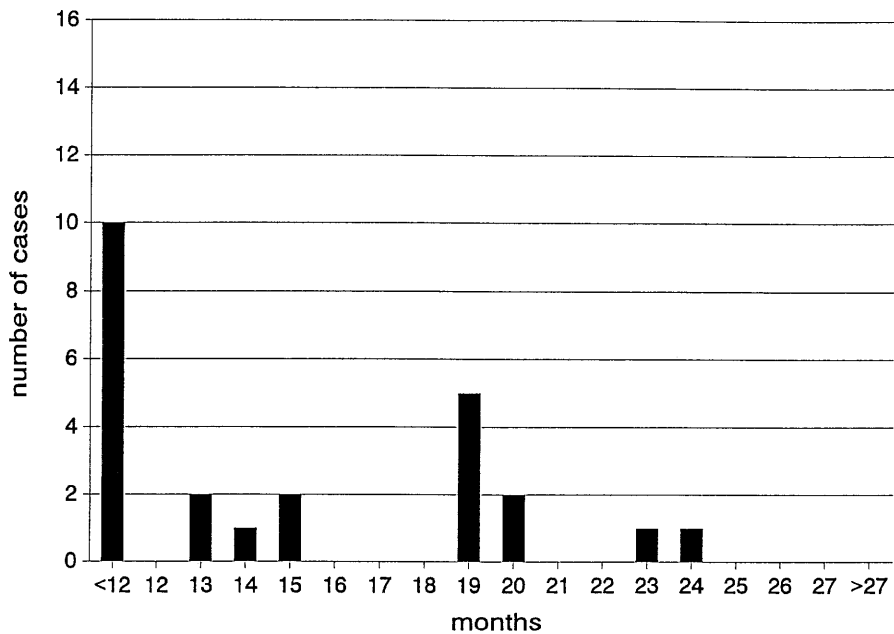


Cases/ Months	< 12	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	> 27
Direct actions	13	2	1	3	5	1	1	4	1	3	1	1	3	2	2	3	3	10

¹

Orders 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 judgments and orders ¹ in appeals



Cases/ Months	< 12	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	> 27
Appeals	10	0	2	1	2	0	0	0	5	2	0	0	1	1	0	0	0	0

¹ Orders 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	256
Direct actions	132
Appeals	28
Opinions/Deliberations	—
Special forms of procedure	7
Total	423

Table 10: Type of action

References for a preliminary ruling	256
Direct actions	132
of which:	
— For annulment of measures	36
— For failure to act	—
— For damages	—
— For failure to fulfil obligations	93
— On arbitration clauses	3
Appeals	28
Opinions/Deliberations	—
Total	416
Special forms of procedure of which:	7
— Legal aid	—
— Taxation of costs	3
— Revision of a judgment/order	2
— Application for a garnishee order	1
— Third-party proceedings	1
Total	423
Applications for interim measures	4

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	—	9	—	9	—
Agriculture	33	21	1	55	—
State aid	7	—	—	7	—
Competition	5	8	7	20	—
Brussels Convention	—	3	—	3	—
Company law	7	8	—	15	—
Law governing the institutions	5	—	7	12	2
Energy	2	—	1	3	—
Environment and consumers	14	22	—	36	—
Taxation	5	24	—	29	—
Free movement of capital	1	1	—	2	—
Free movement of goods	1	30	—	31	—
Freedom of movement for persons	12	57	—	69	—
Commercial policy	—	3	—	3	—
Regional policy	1	—	—	1	—
Social policy	6	36	—	42	—
Principles of Community law	—	16	—	16	—
Approximation of laws	25	7	—	32	—
External relations	3	7	—	10	—
Transport	—	3	—	3	—
Total EC Treaty	127	255	16	398	2
Protection of the general public	2	—	—	2	—
Total EAEC Treaty	2	—	—	2	—
State aid	1	—	—	1	—
Law governing the institutions	—	—	—	—	1
Commercial policy	—	1	—	1	—
Total ECSC Treaty	1	1	—	2	1
Law governing the institutions	1	—	—	1	3
Privileges and immunities	—	—	—	—	1
Staff Regulations	1	—	12	13	—
Total	2	—	12	14	4
OVERALL TOTAL	132	256	28	416	7

¹ Taking no account of applications for interim measures (4).

Table 12: Actions for failure to fulfil obligations ¹

Brought against	1996	from 1953 to 1996
Belgium	20	184
Denmark	—	20
Germany	9	97
Greece	17	133
Spain	9	47 ²
France	11	148 ³
Ireland	4	68
Italy	9	323
Luxembourg	4	70
Netherlands	2	53
Austria	1	1
Portugal	6	21
Finland	—	—
Sweden	—	—
United Kingdom	1	39 ⁴
Total	93	1204

¹ Articles 169, 170, 171 of the EC Treaty, and Articles 88, 141, 142, 143 of the EAEC 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 Kingdom of Spain.

Table 13: **Basis of the action**

Basis of the action	1996
Article 169 of the EC Treaty	91
Article 170 of the EC Treaty	—
Article 171 of the EC Treaty	—
Article 173 of the EC Treaty	35
Article 175 of the EC Treaty	—
Article 177 of the EC Treaty	252
Article 178 of the EC Treaty	—
Article 181 of the EC Treaty	3
Article 225 of the EC Treaty	—
Article 228 of the EC Treaty	—
Article 1 of the 1971 Protocol	3
Article 49 of the EC Statute	24
Article 50 of the EC Statute	2
Total EC Treaty	410
Article 33 of the ECSC Treaty	1
Article 38 of the ECSC Treaty	—
Article 41 of the ECSC Treaty	1
Article 49 of the ECSC Treaty	2
Total ECSC Treaty	4
Article 141 of the EAEC Treaty	2
Article 50 of the EAEC Statute	—
Total EAEC Treaty	2
Total	416
Article 74 of the Rules of Procedure	3
Article 97 of the Rules of Procedure	1
Article 98 of the Rules of Procedure	2
Protocol on Privileges and Immunities	1
Total special forms of procedure	7
OVERALL TOTAL	423

Cases pending as at 31 December 1996

Table 14: Nature of proceedings

References for a preliminary ruling	382	(457)
Direct actions	166	(172)
Appeals	59	(60)
Special forms of procedure	5	(5)
Opinions/Deliberations	—	—
Total	612	(694)

Table 15: Bench hearing case

Bench hearing case	Direct actions	References for a preliminary ruling	Appeals	Other procedures ¹	Total
Large plenum	138 (139)	253 (279)	43 (43)	1 (1)	435 (462)
Small plenum	8 (12)	23 (51)	6 (7)		37 (70)
Subtotal	146 (151)	276 (330)	49 (50)	1 (1)	472 (532)
President of the Court			1 (1)	1 (1)	2 (2)
Subtotal			1 (1)	1 (1)	2 (2)
First Chamber		4 (4)	2 (2)		6 (6)
Second Chamber	1 (1)	9 (11)		1 (1)	11 (13)
Third Chamber		3 (3)		1 (1)	4 (4)
Fourth Chamber		7 (9)	1 (1)		8 (10)
Fifth Chamber	5 (5)	35 (48)	3 (3)		43 (56)
Sixth Chamber	14 (15)	48 (52)	3 (3)	1 (1)	66 (71)
Subtotal	20 (21)	106 (127)	9 (9)	3 (3)	138 (160)
TOTAL	166 (172)	382 (457)	59 (60)	5 (5)	612 (694)

¹

Including special forms of procedure and opinions of the Court.

General trend in the work of the Court until 31 December 1996

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	1216	106		1322	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
Total	5907 ⁵	3400	161	9468	310	4265

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 Of which, 2 388 are staff cases until 31 December 1989.

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

Year	B	DK	D	GR	E	F	IRL	I	L	NL	AUT	P	SF	SV	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
Total	366	64	1018	46	57	568	33	493	37	448	8	22	3	10	227	3400

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		Luxembourg	
Cour de cassation	46	Cour supérieure de justice	9
Conseil d'État	18	Conseil d'État	13
Other courts or tribunals	302	Other courts or tribunals	15
Total	366	Total	37
Denmark		Netherlands	
Højesteret	12	Raad van State	26
Other courts or tribunals	52	Hoge Raad	76
Total	64	Centrale Raad van Beroep	36
Germany		College van Beroep voor het	
Bundesgerichtshof	57	Bedrijfsleven	93
Bundesarbeitsgericht	4	Tariefcommissie	33
Bundesverwaltungsgericht	43	Other courts or tribunals	184
Bundesfinanzhof	154	Total	448
Bundessozialgericht	48	Austria	
Other courts or tribunals	712	Oberster Gerichtshof	2
Total	1018	Bundesvergabeamt	1
Greece		Other courts or tribunals	5
Simvoulio tis Epikratias	6	Total	8
Other courts or tribunals	40	Portugal	
Total	46	Supremo Tribunal Administrativo	12
Spain		Other courts or tribunals	10
Tribunal Supremo	1	Total	22
Tribunales Superiores		Finland	
de justicia	22	Korkein hallinto-oikeus	1
Audiencia Nacional	1	Other courts or tribunals	2
Juzgado Central de lo Penal	7	Total	3
Other courts or tribunals	26	Sweden	
Total	57	Högsta Domstolen	1
France		Marknadsdomstolen	3
Cour de cassation	55	Other courts or tribunals	6
Conseil d'État	12	Total	10
Other courts or tribunals	501	United Kingdom	
Total	568	House of Lords	20
Ireland		Court of Appeal	3
Supreme Court	8	Other courts or tribunals	204
High Court	15	Total	227
Other courts or tribunals	10		
Total	33		
Italy			
Corte suprema di Cassazione	60		
Consiglio di Stato	19		
Other courts or tribunals	414		
Total	493	OVERALL TOTAL	3400

B – Proceedings of the Court of First Instance

I – Synopsis of the judgments delivered by the Court of First Instance in 1996

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Case	Date	Parties	Subject-matter
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AGRICULTURE

T-551/93, T-231/94 to T-234/94	24 April 1996	Industrias Pesqueras Campos SA and Others v Commission of the European Communities	Community financial aid — Application for compensation in the event of non-payment — Application for annulment of decisions withdrawing aid
T-226/94	21 June 1996	Paul Dischamp SA v Commission of the European Communities	Suspension of the buying-in of butter by the intervention agencies — Action for damages
T-482/93	10 July 1996	Martin Weber and Maria Weber and Others v Commission of the European Communities	Common agricultural policy — Support system for oilseeds — Regulations (EEC) Nos 3766/91 and 525/93 — Actions for annulment of measures — Inadmissibility
T-298/94	7 November 1996	Roquette Frères SA v Council of the European Union	Common agricultural policy — Quota system in relation to the production of potato starch — Regulation (EC) No 1868/94 — Action for annulment — Closed group of traders — Inadmissibility
T-521/93	11 December 1996	Atlanta AG and Others v Council of the European Union and Commission of the European Communities	Common organisation of the markets — Bananas — Import arrangements — Actions for damages
T-70/94	11 December 1996	Comafrika SpA and Others v Commission of the European Communities	Common organisation of the markets — Bananas — Legality of reduction coefficient — Action for damages

COMMERCIAL POLICY

T-162/94	5 June 1996	NMB France SARL and Others v Commission of the European Communities	Anti-dumping duties — Ball-bearings — Reimbursement — "Duty as a cost" rule — Difference of treatment between associated importers and independent importers — Previous judgment of the Court of Justice — Res judicata
T-161/94	11 July 1996	Sinochem Heilongjiang v Council of the European Union	Anti-dumping — Action for annulment — Admissibility — Conduct of the investigation — Injury

Case	Date	Parties	Subject-matter
T-155/94	18 September 1996	Climax Paper Converters Ltd v Council of the European Union	Anti-dumping duties — State-trading country — Individual treatment — Single dumping margin

COMPANY LAW

T-19/95	8 May 1996	Adia interim SA v Commission of the European Communities	Public service contract — Agency staff — Tender vitiated by a calculation error — Statement of reasons of the decision rejecting the tender — No obligation for the contracting authority to contact the tenderer
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COMPETITION

T-575/93	9 January 1996	Casper Koelman v Commission of the European Communities	Regulation No 17 — Rejection of a complaint — Statement of reasons — National court
T-528/93, T-542/93, T-543/93 and T-546/93	11 July 1996	Métropole télévision SA and Others v Commission of the European Communities	Competition — Decisions of associations of undertakings — Agreements between undertakings — Exemption decision
T-353/94	18 September 1996	Postbank NV v Commission of the European Communities	Competition — Administrative procedure — Notification of the statement of objections and the minutes of the hearing — Commission decision allowing third parties to the administrative procedure to produce those documents in national legal proceedings — Measure against which an action may be brought — Professional secrecy — Business secrets
T-387/94	18 September 1996	Asia Motor France SA and Others v Commission of the European Communities	Competition — Obligations with regard to the investigation of complaints — Legality of grounds for rejection — Manifest error of assessment — Statement of reasons

Case	Date	Parties	Subject-matter
T-57/91	24 September 1996	NALOO v Commission of the European Communities	ECSC Treaty — Competition — National undertaking owning coal reserves and enjoying a statutory monopoly on the granting of extraction licences — Consideration on the part of the licensee represented by payment of a royalty or supply of the coal to the licensor — Rate of royalties levied — Price of coal supplied — Whether compatible with the ECSC Treaty
T-24/93, T-25/93, T-26/93 and T-28/93	8 October 1996	Compagnie Maritime Belge SA and Others v Commission of the European Communities	Competition — International maritime transport — Liner conferences — Regulation (EEC) No 4056/86 — Effect on trade — Collective dominant position — Implementation of an agreement providing for an exclusive right — Fighting ships — Loyalty rebates — Fines — Assessment criteria
T-79/95 and T-80/95	22 October 1996	Société nationale des chemins de fer français and British Railways Board v Commission of the European Communities	Competition — Channel Tunnel — Reservation of 50% of tunnel capacity for two railway companies — Restrictions on competition — Exemption — Access for third parties
T-49/95	11 December 1996	Van Megen Sports Group BV v Commission of the European Communities	Competition — Article 85 of the EC Treaty — Proof of infringement — Fine — Statement of the reasons for the decision
T-16/91	12 December 1996	Rendo NV and Others v Commission of the European Communities	Competition — Implied rejection of a complaint — Statement of reasons — Appeal — Referral of a case back to the Court of First Instance — Continuation of the proceedings — Costs
T-19/92	12 December 1996	Groupeement d'achat Édouard Leclerc v Commission of the European Communities	Selective distribution system — Luxury cosmetic products
T-87/92	12 December 1996	BVBA Kruidvat v Commission of the European Communities	Selective distribution system — Luxury cosmetic products
T-88/92	12 December 1996	Groupeement d'achat Édouard Leclerc v Commission of the European Communities	Selective distribution system — Luxury cosmetic products

Case	Date	Parties	Subject-matter
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ENVIRONMENT AND CONSUMERS

T-336/94	16 October 1996	Efisol SA v Commission of the European Communities	Regulation (EEC) No 594/91 on substances that deplete the ozone layer — Allocation of quotas — Import licences — Refusal to grant — Application for compensation — Protection of legitimate expectations
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EXTERNAL RELATIONS

T-175/94	11 July 1996	International Procurement Services SA v Commission of the European Communities	Action for compensation — Public contract — European Development Fund — Non-contractual liability — Determination of the origin of goods
T-485/93	24 September 1996	Société Louis Dreyfus et Cie v Commission of the European Communities	Emergency assistance given by the Community to the States of the former Soviet Union — Invitation to tender — Action for annulment — Admissibility — Action for damages — Admissibility
T-491/93	24 September 1996	Richco Commodities Ltd v Commission of the European Communities	Emergency assistance given by the Community to the States of the former Soviet Union — Invitation to tender — Action for annulment — Admissibility — Action for damages — Admissibility
T-494/93	24 September 1996	Compagnie Continentale (France) v Commission of the European Communities	Emergency assistance given by the Community to the States of the former Soviet Union — Invitation to tender — Action for annulment — Admissibility
T-509/93	24 September 1996	Richco Commodities Ltd v Commission of the European Communities	Emergency assistance given by the Community to the States of the former Soviet Union — Invitation to tender — Action for annulment — Admissibility

Case	Date	Parties	Subject-matter
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FREEDOM OF MOVEMENT FOR PERSONS

T-230/94	21 March 1996	Frederick Farrugia v Commission of the European Communities	Action for annulment — Commission decision refusing to award a fellowship to the applicant — Criteria for eligibility — British Overseas citizen — Erroneous reasons — Non- contractual liability — Non-material damage
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FREE MOVEMENT OF GOODS

T-75/95	5 June 1996	Günzler Aluminium GmbH v Commission of the European Communities	Action for annulment — Commission decision refusing remission of import duties
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LAW GOVERNING THE INSTITUTIONS

T-108/94	16 January 1996	Elena Candiote v Council of the European Union	Artists' competition — Rules of the competition — Lawfulness of the selection procedure — Powers of the Selection Committee
T-382/94	6 June 1996	Confederazione Generale dell'Industria Italiana (Confindustria) v Aldo Romoli	Appointment of the members of the Economic and Social Committee
T-146/95	11 July 1996	Giorgio Bernardi v European Parliament	Actions for annulment — Ombudsman — Nominations — Appointment procedure — Inadmissibility — Principle of non-discrimination

SOCIAL POLICY

T-271/94	11 July 1996	Eugénio Branco Ld. ^a v Commission of the European Communities	Applications for annulment — European Social Fund — Reduction of financial assistance initially granted — Absence of an act which may be challenged — Inadmissibility
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Case	Date	Parties	Subject-matter
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STAFF CASES

T-368/94	9 January 1996	Pierre Blanchard v Commission of the European Communities	Staff Regulations — Staff Committee — Elections — Right of trade unions or staff associations to submit several lists
T-23/95	9 January 1996	Efthimia Bitha and Others v Commission of the European Communities	Insurance against the risk of accident and of occupational disease of officials of the Community — Entitlement to benefits provided for in Article 73(2) of the Staff Regulations — Accidental death — Underwater diving
T-122/95	1 February 1996	Daniel Chabert v Commission of the European Communities	Officials — Household allowance — Recovery of undue payment
T-589/93	15 February 1996	Susan Ryan-Sheridan v European Foundation for the Improvement of Living and Working Conditions	Officials — Agents of the European Foundation for the Improvement of Living and Working Conditions — Recruitment procedure — Rejection of internal candidature — Action for annulment — Action for compensation
T-125/95	15 February 1996	Hassan Belhanbel v Commission of the European Communities	Officials — Competition — Decision of the selection board that a candidate has failed in the oral test — Extent of the duty to state reasons
T-235/94	27 February 1996	Roberto Galtieri v European Parliament	Officials — Household allowance — Recovery of undue payment — Misuse of powers — Legitimate expectations — Damages
T-294/94	28 February 1996	Konstantinos Dimitriadis v Court of Auditors of the European Communities	Officials — Duty to provide assistance — Article 24 of the Staff Regulations
T-15/95	28 February 1996	Nuno do Paço Quesado v Commission of the European Communities	Officials — Annulment of the Commission's decision fixing the applicant's grade — Reinstatement after secondment at the applicant's request
T-547/93	29 February 1996	Orlando Lopes v Court of Justice of the European Communities	Officials — Staff reports — Rejection of candidatures for promotion — Applications for annulment and compensation

Case	Date	Parties	Subject-matter
T-280/94	29 February 1996	Orlando Lopes v Court of Justice of the European Communities	Officials — Rejection of candidatures for promotion — Flexible working hours — Applications for annulment and compensation
T-93/94	6 March 1996	Michael Becker v Court of Auditors of the European Communities	Officials — Classification in step — Seniority — Equal treatment — Duty to have regard to the interests of officials
T-141/95	6 March 1996	Kirsten Schelbeck v European Parliament	Officials — Remuneration — National allowances — Discontinuance of application of the rule against overlapping — Scope of entitlement to reimbursement
T-146/94	7 March 1996	Calvin Williams v Court of Auditors of the European Communities	Officials — Obligations — Acts detrimental to the dignity of the public service — Duty of loyalty — Disciplinary proceedings — Dismissal
T-362/94	7 March 1996	Jan Robert De Rijk v Commission of the European Communities	Officials — Supplementary sickness insurance scheme for officials posted outside the Communities — Procedure for reimbursement of medical expenses
T-361/94	12 March 1996	Henry A. Weir v Commission of the European Communities	Officials — Partial permanent invalidity — Equal treatment — Fluctuation in purchasing power — Delay in dealing with the case — Default interest — Admissibility
T-376/94	21 March 1996	Georgette Otten v Commission of the European Communities	Officials — Invalidity Committee — Composition — Decision to retire an official on account of invalidity
T-10/95	21 March 1996	Akli Chehab v Commission of the European Communities	Officials — Partial permanent invalidity — Recognition of deterioration
T-60/92	28 March 1996	Muireann Noonan v Commission of the European Communities	Officials — Recruitment — Competition for category C — Refusal to admit to the competition — Candidates holding a university degree
T-40/95	28 March 1996	V. v Commission of the European Communities	Officials — Disciplinary measures — removal from post — Statement of reasons — Aggravating circumstances
T-13/95	18 April 1996	Nicolaos Kyrpitsis v Economic and Social Committee of the European Communities	Officials — Vacancy notice — Transfer — Interests of the service — Rejection of candidature — Duty to state reasons

Case	Date	Parties	Subject-matter
T-113/95	23 April 1996	Giuseppe Mancini v Commission of the European Communities	Officials — Admissibility — Period for lodging complaint
T-6/94	24 April 1996	A v European Parliament	Officials — Unauthorised absence — Remuneration — Article 60 of the Staff Regulations — Inadmissibility
T-274/94	25 April 1996	Antonio Castellacci v Commission of the European Communities	Officials — Household allowance — Residence condition — Allowance for persons treated as a dependent child — Recovery of undue payments
T-82/95	14 May 1996	Carmen Gómez de Enterría y Sanchez v European Parliament	Officials — Retirement in the interests of the service — Article 50 of the Staff Regulations — Protection of the interests of the official concerned
T-326/94	15 May 1996	Konstantinos Dimitriadis v Court of Auditors of the European Communities	Official — Staff report — Damages
T-148/95	21 May 1996	W v Commission of the European Communities	Officials — Partial permanent invalidity — Surgical operation
T-153/95	21 May 1996	Raymond Kaps v Court of Justice of the European Communities	Officials — Competition — Selection board — Oral test — Decision of the selection board not to enter the applicant on the reserve list — Extent of the duty to state reasons — Extent of judicial review
T-140/94	22 May 1996	Enrique Guriérrez de Quijano y Llorens v European Parliament	Officials — Action for annulment — Action for compensation — Inter- institutional transfer — Article 29(1) of the Staff Regulations
T-92/94	5 June 1996	Rodolfo Maslias v European Parliament	Officials — Household allowance — Income of partner above the ceiling prescribed in the Staff Regulations — Retrospective recovery of the allowance — Recovery of undue payments
T-262/94	6 June 1996	Jean Baiwir v Commission of the European Communities	Officials — Objection of illegality — Correlation between the complaint and the application — New method of calculating career profiles for categories B, C and D at the Commission — List of officials deemed most deserving of promotion — Articles 5(3) and 45 of the Staff Regulations — Principle of non-discrimination — Manifest errors of assessment in fact and in law — Action for compensation

Case	Date	Parties	Subject-matter
T-391/94	6 June 1996	Jean Baiwir v Commission of the European Communities	Officials — Act adversely affecting an official — Time-limits prescribed by the Staff Regulations — Inadmissibility — Action for compensation
T-110/94	11 June 1996	Beatriz Sánchez Mateo v Commission of the European Communities	Officials — Transfer of part of an official's remuneration in a currency other than that of the country in which the institution is situated — Inadmissibility
T-111/94	11 June 1996	Giovanni Ouzounoff Popoff v Commission of the European Communities	Officials — Transfer of part of an official's remuneration in a currency other than that of the country in which the institution is situated — Inadmissibility
T-118/95	11 June 1996	Miguel Anacoreta Correia v Commission of the European Communities	Officials — Recruitment procedure — Post at Grade A 1
T-147/95	11 June 1996	Geneviève Pavan v European Parliament	Officials — Household allowance — Allowance paid from other sources — Article 67(2) of the Staff Regulations
T-150/94	18 June 1996	Juana de la Cruz Vela Palacios v Economic and Social Committee of the European Communities	Officials — Actions for annulment of measures and compensation — Admissibility — Submission of a complaint by fax — Staff report — Delay — Statement of reasons for the award of poorer marks than in the previous staff report — Non-material damage
T-293/94	18 June 1996	Juana de la Cruz Vela Palacios v Economic and Social Committee of the European Communities	Officials — Admissibility — Act adversely affecting an official — Intermediate assessment report — Duty to act in good faith — Disciplinary action
T-573/93	19 June 1996	Manuel Francisco Caballero Montoya v Commission of the European Communities	Officials — Person treated as a dependent child — Article 2(4) of Annex VII to the Staff Regulations — General implementing provisions — Illegality — Misapplication — Retrospective effect
T-41/95	21 June 1996	Andrew Macrae Moat v Commission of the European Communities	Officials — Action for compensation — Implementation of a judgment annulling an appointment — Late completion of staff report

Case	Date	Parties	Subject-matter
T-91/95	26 June 1996	Lieve de Nil and Christiane Impens v Council of the European Union	Officials — Internal competition for "upgrading" — Measures for implementing a judgment of annulment — Article 176 of the EC Treaty — New tests — Reclassification — Non-retroactivity — Material and non-material damage — Compensation
T-500/93	28 June 1996	Y v Court of Justice of the European Communities	Officials — Actions for annulment — Disciplinary proceedings — Right to a fair hearing — Evidence of witnesses — "Legitimate response" — Defence of justification — Mitigating circumstances — Statement of reasons — Actions for damages — Non-material damage
T-587/93	11 July 1996	Elena Ortega Urretavizcaya v Commission of the European Communities	Officials — Temporary staff — Offer — Contract as a temporary servant — Alteration of the grade and duties — Legitimate expectations
T-102/95	11 July 1996	Jean-Pierre Aubineau v Commission of the European Communities	Officials — Temporary staff — Contract of employment — Transfer — Place of employment
T-170/95	11 July 1996	Paolo Carrer v Court of Justice of the European Communities	Officials — Competition — Selection board — Decision of the selection board finding a candidate had failed the oral test — Principle of equal treatment — Infringement of the notice of competition — Assessment by the selection board
T-158/94	19 September 1996	François Brunagel v European Parliament	Officials — Recruitment procedure — Application of Article 29(2) of the Staff Regulations — Assessment of the candidates' professional abilities — Misuse of powers — Non-discrimination — Statement of reasons
T-386/94	19 September 1996	Alain-Pierre Allo v Commission of the European Communities	Officials — The so-called "seconde filière" procedure for promotion to Grade A 3 — Actions for annulment — Personnel file — Absence of staff reports — Action for damages
T-182/94	24 September 1996	Ricardo Marx Esser and Casto Del Amo Martinez v European Parliament	Officials — Representation — Staff committee — Elections — List of agents entitled to vote — Following the ballot, removal of the names of agents on leave on personal grounds

Case	Date	Parties	Subject-matter
T-185/95	24 September 1996	Giovanni Sergio v Commission of the European Communities	Officials — Transfer of pension rights — General provisions for implementing the Staff Regulations — Period allowed for the submission of a request
T-192/94	26 September 1996	Henry Maurissen v Court of Auditors of the European Communities	Action for annulment — Staff report — Admissibility — Statement of reasons — Review by the Court — Limits
T-356/94	2 October 1996	Sergio Vecchi v Commission of the European Communities	Officials — Vacancy notice — Obvious error — Misuse of powers — Statement of reasons — Admissibility
T-36/94	16 October 1996	Alberto Capitanio v Commission of the European Communities	Officials — Reinstatement — Determination of the level of post — Measure adversely affecting an official
T-37/94	16 October 1996	Dimitrios Benecos v Commission of the European Communities	Officials — Reinstatement — Determination of the level of post — Measure adversely affecting an official
T-56/94	16 October 1996	Raffaele de Santis v Commission of the European Communities	Officials — Vacancy notice — Misuse of procedure
T-378/94	16 October 1996	Josephus Knijff v Court of Auditors of the European Communities	Officials — Temporary staff appointed in consultation with the controlling national institutions — Application of the rules concerning their grading
T-21/95 and T-186/95	5 November 1996	Marco Mazzocchi-Alemani v Commission of the European Communities	Officials — Supplementary sickness insurance scheme for officials posted in non-member countries — Procedure for reimbursement of medical expenses — Application of ceilings
T-272/94	19 November 1996	Claude Brulant v European Parliament	Officials — Promotion — Abuse of process
T-135/95	20 November 1996	Z v Commission of the European Communities	Officials — Action for annulment — Unauthorised absence from work — Articles 59 and 60 of the Staff Regulations — Medical certificates — Incapacity for work

Case	Date	Parties	Subject-matter
T-144/95	21 November 1996	Christos Michaël v Commission of the European Communities	Promotion — Practical guide to promotion procedure — Grade A officials — List of officials considered most deserving of promotion — List of officials promoted — Act adversely affecting the official
T-177/95	11 December 1996	Patrick Barraux and Others v Commission of the European Communities	Officials — Special weighting
T-177/94 and T-377/94	12 December 1996	Henk Altmann and Others and Margaret Casson and Others v Commission of the European Communities	JET joint undertaking — Status of temporary servant
T-33/95	12 December 1996	Maria Lidia Lozano Palacios v Commission of the European Communities	Officials — Former national expert on secondment — Daily allowances — Installation allowance — Reimbursement of removal expenses — Place of recruitment
T-74/95	12 December 1996	Viriato Monteiro da Silva v Commission of the European Communities	Officials — Former national expert on secondment — Daily allowances — Installation allowance — Place of recruitment
T-99/95	12 December 1996	Peter Esmond Stott v Commission of the European Communities	JET joint undertaking — Status of temporary contract
T-130/95	12 December 1996	X v Commission of the European Communities	Officials — Promotion — Comparative examination of merits — Staff report — Delay in drawing up — Action for annulment and compensation
T-132/95	12 December 1996	Peter Gammeltoft v Commission of the European Communities	Member of the temporary staff — Former national expert on secondment — Former member of the auxiliary staff — Installation allowance — Reimbursement of removal expenses
T-137/95	12 December 1996	Paolo Mozzaglia v Commission of the European Communities	Officials — Former national expert on secondment — Daily allowances — Installation allowance — Place of recruitment — Reimbursement of travelling expenses on taking up duties

Case	Date	Parties	Subject-matter
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STATE AID

T-277/94	22 May 1996	Associazione Italiana Tecnico Economica del Cemento (AITEC) v Commission of the European Communities	Decision declaring State aid unlawful – Requests for initiation of Treaty infringement proceedings – Rejected – Action for annulment of measures – Decision – Inadmissible – Action for declaration of failure to act – Inadmissible
T-398/94	5 June 1996	Kahn Scheepvaart BV v Commission of the European Communities	State aid – Shipbuilding – General aid scheme – Action for annulment – Admissibility
T-266/94	22 October 1996	Foreningen af Jernskibs- og Maskinbyggerier i Danmark, Skibsværftsforeningen and Others v Commission of the European Communities	State aid – Shipbuilding – Exceptional rules – Shipyards in the former German Democratic Republic
T-330/94	22 October 1996	Salt Union Ltd v Commission of the European Communities	State aid – Refusal of the Commission to propose "appropriate measures" pursuant to Article 93(1) of the Treaty – Action for annulment – Inadmissible
T-154/94	24 October 1996	Comité des Salines de France and Others v Commission of the European Communities	State aid – General regional aid scheme – Letter from the Commission concerning aid – Action for annulment – Inadmissible
T-358/94	12 December 1996	Compagnie nationale Air France v Commission of the European Communities	State aid – Air transport – Airline company in a critical financial situation
T-380/94	12 December 1996	Association internationale des utilisateurs de fils de filaments artificiels et synthétiques et de soie naturelle (AIUFFASS) and Others v Commission of the European Communities	Action for annulment – State aid – Textiles – Trade association – Admissibility – Manifest error of assessment – Excess capacity

II – Synopsis of the other decisions of the Court of First Instance in 1996

Case	Date	Parties	Subject-matter
T-219/95 R	22 December 1996	Marie-Thérèse Danielsson and Others v Commission of the European Communities	Nuclear tests conducted by a Member State – Application for interim relief – Article 34 of the EAEC Treaty – Application for suspension of the operation of a Commission decision regarding nuclear tests
T-228/95 R	12 February 1996	S. Lehrfreund Ltd v Council of the European Union and Others	Protection of animals – Regulation – Prohibition on imports of furs – Suspension of operation
T-41/96 R	3 June 1996	Bayer AG v Commission of the European Communities	Competition – Application for interim measures – Suspension of operation of a measure
T-194/95 Intv I	25 June 1996	Area Cova, SA, and Others v Council of the European Union	Intervention
T-76/96 R	13 July 1996	The National Farmers' Union and Others v Commission of the European Communities	Common Agricultural Policy – Emergency measures for protection of public health – Proceedings for interim relief – Application for suspension of application of a Commission decision relating to certain emergency measures for protection against bovine spongiform encephalopathy
T-52/96 R	12 July 1996	Sogecable SA v Commission of the European Communities	Competition – Interlocutory proceedings – Suspension of operation – Interim measures

III – Statistical information

Summary of the proceedings of the Court of First Instance in 1994, 1995 and 1996

Table 1:	General proceedings of the Court, 1994, 1995 and 1996
Table 2:	New cases in 1994, 1995 and 1996
Table 3:	Cases decided in 1994, 1995 and 1996
Table 4:	Pending cases on 31 December each year

New cases in 1994, 1995 and 1996

Table 5:	Type of action
Table 6:	Basis of the action

Cases dealt with in 1996

Table 7:	Means by which terminated
Table 8:	Basis of the action

Miscellaneous

Table 9:	General trend
Table 10:	Outcome of appeals from 1 January to 31 December 1996

Summary of the proceedings of the Court of First Instance in 1994, 1995 and 1996

Table 1: General proceedings of the Court, 1994, 1995 and 1996 ¹

	1994	1995	1996
New cases	409	253	229
Cases dealt with	412 (442)	198 (265)	172 (186)
Pending cases	433 (628)	427 (616)	476 (659)

¹ In the tables which follow, the figures in brackets (gross figure) represent the total number of cases, *without* account being taken of cases joined on grounds of similarity (one case number = one case). The *net figure* represents the number of cases after *account has been taken* of those joined on grounds of similarity (one series of joined cases = one case).

Table 2: New cases in 1994, 1995 and 1996 ^{1 2}

Nature of proceedings	1994	1995	1996
Direct actions	316	165	122
Staff cases	81	79	98
Special forms of procedure	12	9	9
Total	409 ³	253 ⁴	229 ⁵

¹ In this table and those on the following pages, "direct actions" refer to actions brought by natural and legal persons other than cases 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 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); taxation of costs (Art. 92 CFI Rules of Procedure); legal aid (Art. 94 CFI Rules of Procedure).

³ Of which 14 cases were referred back by the Court on 18 April 1994.

⁴ Of which 32 cases concerned milk quotas.

⁵ Of which 5 cases concerned milk quotas.

Table 3: Cases decided in 1994, 1995 and 1996

Nature of proceedings	1994		1995		1996	
Direct actions	339	(358)	125	(186)	87	(98) ¹
Staff cases	67	(78)	62	(64)	76	(79)
Special forms of procedure	6	(6)	11	(15)	9	(9)
Total	412	(442)	198	(265)	172	(186)

Table 4: Pending cases on 31 December each year

Nature of proceedings	1994		1995		1996	
Direct actions	321	(512) ²	305	(491) ³	339	(515) ⁴
Staff cases	103	(106)	118	(121)	133	(140)
Special forms of procedure	9	(10)	4	(4)	4	(4)
Total	433	(628)	427	(616)	476	(659)

¹ Of which 8 cases concerned milk quotas.

² Of which 258 cases concerned milk quotas.

³ Of which 231 cases concerned milk quotas.

⁴ Of which 227 cases concerned milk quotas.

New cases in 1994, 1995 and 1996

Table 5: Type of action

Type of action	1994	1995	1996
Action for annulment of measures	135	120	89
Action for failure to act	7	9	15
Action for damages	174	36	14
Arbitration clause	—	—	4
Staff cases	81	79	98
Total	397 ¹	244 ²	220 ³
<i>Special forms of procedure</i>			
Legal aid	4	1	2
Taxation of costs	6	7	5
Interpretation or revision of a judgment	2	—	2
Objection to a judgment	—	1	—
Total	12	9	9
OVERALL TOTAL	409	253	229

¹ Of which 173 cases concerned milk quotas.

² Of which 32 cases concerned milk quotas.

³ Of which 5 cases concerned milk quotas.

Table 6: **Basis of the action**

Basis of the action	1994	1995	1996
Article 173 of the EC Treaty	120	116	79
Article 175 of the EC Treaty	4	9	15
Article 178 of the EC Treaty	174	36	14
Article 181 of the EC Treaty	—	—	4
Total EC Treaty	298	161	112
Article 33 of the ECSC Treaty	14	3	10
Article 35 of the ECSC Treaty	2	—	—
Total ECSC Treaty	16	3	10
Article 146 of the EAEC Treaty	1	1	—
Article 148 of the EAEC Treaty	1	—	—
Article 151 of the EAEC Treaty	—	—	—
Total EAEC Treaty	2	1	—
Staff Regulations	82	79	98
Total	398	244	200
Article 92 of the Rules of Procedure	5	7	5
Article 94 of the Rules of Procedure	4	1	2
Article 122 of the Rules of Procedure	-	1	—
Article 125 of the Rules of Procedure	2	—	1
Article 129 of the Rules of Procedure	-	—	1
Total special forms of procedure	11	9	9
OVERALL TOTAL	409	253	229

Cases dealt with in 1996

Table 7: Means by which terminated

Means by which terminated	Direct actions		Staff cases		Special forms of procedure		Total	
<i>Judgments</i>								
Action inadmissible	13	(13)	7	(8)	—	—	20	(21)
No need to adjudicate	1	(1)	—	—	—	—	1	(1)
Action unfounded	16	(20)	28	(28)	—	—	44	(48)
Action partly founded	5	(8)	20	(21)	—	—	25	(29)
Action well founded	4	(8)	11	(11)	—	—	15	(19)
Interlocutory proceedings	2	—	—	—	—	—	2	—
Total judgments	41	(50)	66	(68)	—	—	107	(118)
<i>Orders</i>								
Removal from the Register	34	(34)	6	(7)	1	(1)	41	(42)
Action inadmissible	11	(11)	3	(3)	—	—	14	(14)
Lack of jurisdiction	—	—	—	—	—	—	—	—
No need to adjudicate	3	(3)	1	(1)	—	—	4	(4)
Action well founded	—	—	—	—	—	—	—	—
Action partly founded	—	—	—	—	6	(6)	6	(6)
Action unfounded	—	—	—	—	2	(2)	2	(2)
Declining jurisdiction	—	—	—	—	—	—	—	—
Total orders	48	(48)	10	(11)	9	(9)	67	(68)
Total	89	(98)	76	(79)	9	(9)	174	(186)

Table 8: **Basis of the action**

Basis of the action	Judgments		Orders		Total	
Article 173 of the EC Treaty	36	(45)	35	(35)	71	(80)
Article 175 of the EC Treaty	—	—	4	(4)	4	(4)
Article 178 of the EC Treaty	4	(4)	8	(8)	12	(12)
Total EC Treaty	40	(49)	47	(47)	87	(96)
Article 33 of the ECSC Treaty	1	(1)	—	—	1	(1)
Article 146 of the EAEC Treaty	—	—	1	(1)	1	(1)
Staff Regulations	66	(68)	10	(11)	76	(79)
Article 92 of the Rules of Procedure	—	—	7	(7)	7	(7)
Article 94 of the Rules of Procedure	—	—	2	(2)	2	(2)
Total special forms of procedure	—	—	9	(9)	9	(9)
OVERALL TOTAL	107	(118)	67	(68)	174	(186)

Miscellaneous

Table 9: General trend

	1994	1995	1996
New cases before the Court of First Instance ¹	409	253	229
Cases pending before the Court of First Instance on 31 December	433 (628)	427 (616)	476 (659)
Cases decided	412 (442)	198 (265)	172 (186)
Judgments delivered	60 (70)	98 (128)	107 (118)
Number of decisions of the Court of First Instance which have been the subject of an appeal ²	13 [94]	48 [131]	27 [122]

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 10: **Outcome of appeals ¹ from 1 January to 31 December 1996**
(judgments and orders)

	Unfounded	Appeal manifestly unfounded	Appeal manifestly inadmissible	Appeal manifestly inadmissible and unfounded	Annulment and not referred back	Partial annulment and not referred back	Total
Competition	6	1	—	—	—	—	7
Company law	—	1	—	—	—	—	1
Law governing the institutions	—	2	—	—	—	—	2
Environment and consumers	2	—	—	—	—	—	2
Regional policy	—	1	—	—	—	—	1
Social policy	1	—	—	—	—	—	1
External relations	—	—	—	2	—	—	2
Staff Regulations	—	2	5	1	1	1	10
Total	9	7	5	3	1	1	26

¹ Brought to a close by decision of the Court of Justice.

C – 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 1996 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.

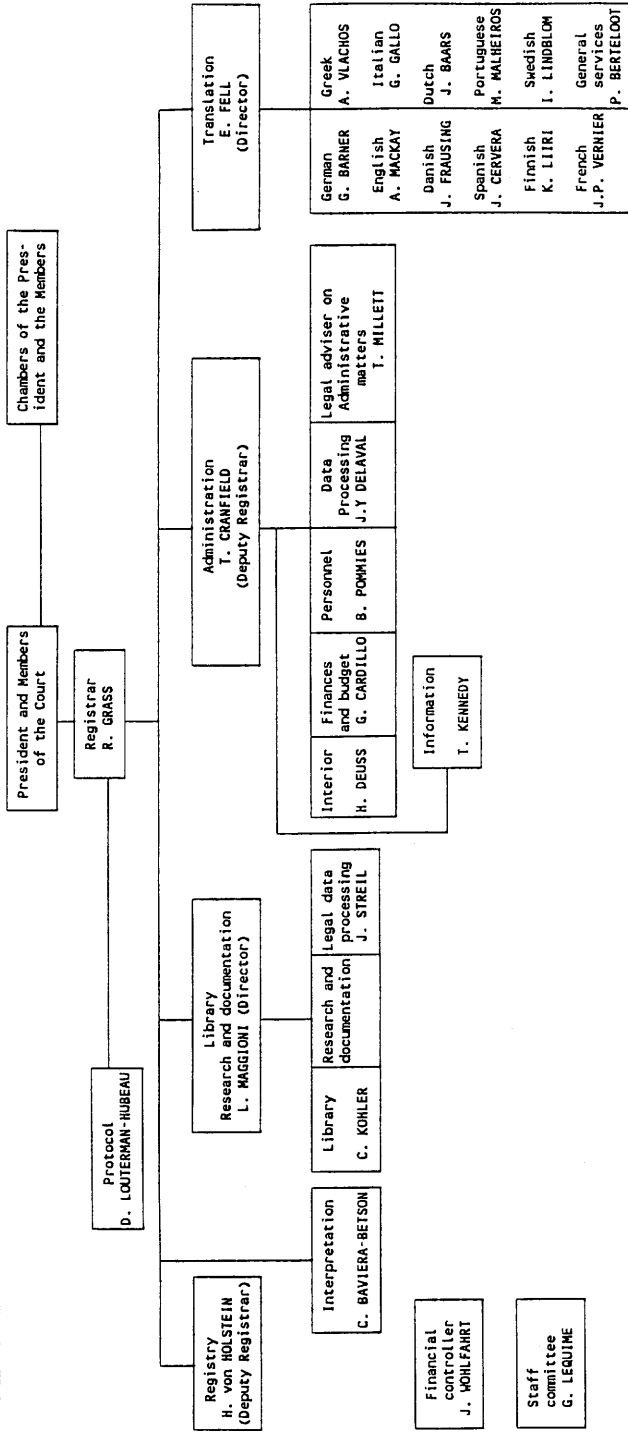
**Table showing by Member State judgments delivered on questions of
Community law between 1 January and 31 December 1996**

Member State	Decisions on questions of Community law other than those concerning the Brussels Convention	Decisions concerning the Brussels Convention	Total
Belgium	60	21	81
Denmark	13	6	19
Germany	187	14	201
Greece	21	—	21
Spain	155	1	156
France	124	17	141
Ireland	12	6	18
Italy	234	3	237
Luxembourg	4	—	4
Netherlands	224	26	250
Austria	12	—	12
Portugal	7	—	7
Finland	7	—	7
Sweden	9	—	9
United Kingdom	115	23	138
Total	1 184	117	1 301

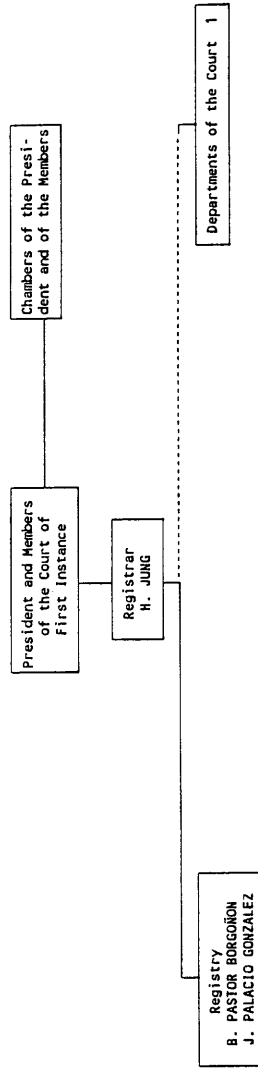
Annex II

The Administration: Abridged Organizational Chart

Court of Justice



Court of First Instance



(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".

Annex III

Publications and General Information

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 and 1996 Reports: ECU 170 excluding VAT). In other countries, orders should be addressed to the Internal Services Division of the Court of Justice, Publications Sections, 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, 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 12 000, excluding VAT.

Other publications

1. Documents from the Registry of the Court of Justice

- (a) Selection Instruments relating to the Organisation, 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.

- (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.

(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 and the texts of addresses delivered at formal sittings of the Court.

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 32, 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. Publications in the other official Community languages is being studied. 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 and Danish (the Dutch version will be available during 1997) 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 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) 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.

(e) 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.

(f) 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 Europae 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.

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 Community. Finnish and Swedish bases will be introduced from 1996.

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.

The Court's address, telephone, telex and telefax numbers are as follows:

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

L-2925 Luxembourg

Telephone: 4303-1

Telex (Registry): 2510 CURIA LU

Telegraphic address: CURIA

Telefax (Court): 4303 2036

Telefax (Information Service): 4303 2600

Court of Justice of the European Communities

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