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ANNUAL REPORT

1999

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FOREWORD

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

This report shows that there continued to be a high level of judicial activity in 1999, notwithstanding a number of unfavourable circumstances. The constant increase in cases with which the Court of Justice and the Court of First Instance are faced was accompanied by other difficulties, connected in part to the inadequacy of the resources available to the Court's translation service. Despite considerable efforts, the lack of means of this service, underlined in a report drawn up at the request of the European Parliament in the context of the budgetary procedure, had an even more appreciable effect than in previous years on the handling of cases. In particular, the Court was unable on a number of occasions to make judgments available on the actual day of delivery in every language, undermining a fundamental advance of the past years with regard to dissemination of the case-law.

In addition, the need to carry out urgent remedial works to the main Court building because of the presence of asbestos compelled the Court of Justice, the Court of First Instance and their staff to engage in removals on the Kirchberg site. It was nevertheless possible to complete this vast operation, which required an exceptional effort, with a minimal impact on the operation of the institution.

Beyond their strictly judicial activity, the Court of Justice and the Court of First Instance drew up a discussion paper entitled "The Future of the Judicial System of the European Union (Proposals and Reflections)" which was submitted to the Council of Ministers of Justice in May 1999. The reasons which led the Court of Justice to take this initiative were, first, the prospect of institutional reform, regarded as essential in view of the enlargement of the European Union to include new Member States, and second, the difficult situation of the Court of Justice and the Court of First Instance, which requires urgent measures to be adopted in order to avoid a serious crisis.

This document includes, first, a series of proposals to amend the Rules of Procedure, which may be adopted as the Treaties now stand. The proposals are designed to allow more flexibility in the handling of cases, so that each case can be accorded the treatment it requires by reason of its characteristics and importance.

Second, the document contains proposals requiring amendments to the Treaties, which the Court of Justice wishes to be considered by the next intergovernmental conference. The main proposal, which the Court of Justice put forward when the Treaties were last revised, seeks relaxation of the system for amendment of the Rules of Procedure of the Court of Justice and of the Court of First Instance, which currently always requires the unanimous approval of the Council. The other proposals are the introduction of a system for filtering certain categories of appeals and reform of the system for dealing with staff cases.

Finally, the document opens up discussion on change to the Community judicial system in the longer term. It deals with alterations which could be envisaged in the composition and organisation of the Court of Justice and the Court of First Instance, having regard in particular to the proposed increase in the number of Member States. It then examines the possibility of transferring further jurisdiction to the Court of First Instance with regard to direct actions. Finally, it broaches the fundamental question of a radical reform of the system of references for a preliminary ruling, which could be necessary if the volume of cases were to continue to increase.

The Court of Justice is pleased that this document, circulated widely in all relevant spheres,[1] has helped to promote wide debate on the future of Community justice and has thus facilitated a global and ambitious approach to this problem when the forthcoming institutional reforms take place.

These grounds for optimism for the future were supplemented in 1999 by the celebration of the 10th anniversary of the Court of First Instance. The celebration, at which all relevant professional circles were represented, demonstrated that the Court of First Instance is fully integrated as a fundamental element of Community justice.

1 The document is available on the Court's Internet site at the following address: *http://curia.eu.int/en/txts/intergov/ave.pdf.*

Chapter I

The Court of Justice of the European Communities

A — Proceedings of the Court of Justice in 1999

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

1. The following pages are intended to provide a brief account of the judicial activity of the Court of Justice over the last 12 months.

2. Faced with an ever-increasing number of proceedings, the Court maintained a high level of activity in 1999 and brought 395 cases to a close (420 in 1998 — gross figures, that is to say disregarding joinder), delivering 235 judgments (254 in 1998) and making 143 orders (120 in 1998). The number of new cases, however, increased again compared with previous years (543 in 1999 as against 485 in 1998, gross figures), a development which led to a slight deterioration in the time required to deal with cases and an increase in the number of pending cases (from 748 to 896, gross figures).

The distribution of the cases between the Court in plenary session and Chambers of five or three Judges remained constant. Approximately one case in four was disposed of by the full Court, while the remaining judgments and orders were pronounced by Chambers of five Judges (approximately one case in two) or Chambers of three Judges (approximately one case in four).

As in 1998, preliminary reference proceedings were dealt with in about 21 months on average. The average period for consideration of direct actions and appeals, on the other hand, showed a slight increase.

3. There follows a necessarily subjective selection of the Court's case-law during 1999, designed to summarise the major developments. The complete texts of the judgments referred to are available in all the official Community languages on the Court's Internet site: *www.curia.eu.int*.

4. Certain conditions governing the *proceedings* which may be brought before the Community judicature have been clarified in 1999, in particular with regard to actions for annulment, preliminary reference proceedings and appeals against judgments of the Court of First Instance.

4.1. By order in Case C-153/98 P *Guérin Automobiles* v *Commission* [1999] ECR I-1441, the Court declared clearly unfounded an appeal brought against an

order of the Court of First Instance which had dismissed an action as manifestly inadmissible on the ground that proceedings were not commenced within the requisite time-limit. In response to the single plea in law put forward in the appeal, the Court held that, in the absence of express provisions of Community law, the Community administration and judicature could not be placed under a general obligation, on the adoption of every decision, to inform individuals of the remedies available or of the conditions under which they could exercise them. The Court pointed out that while, in the majority of the Member States, the administrative authorities were under an obligation to provide this information, it was generally the legislature that created and regulated the obligation; also, before the imposition of such an obligation, the detailed rules governing its application and the consequences of failing to comply with it would have to be established. It should be noted that, following that order, the unsuccessful applicant has brought an action against the 15 Member States before the European Court of Human Rights.

4.2. The issue at the heart of the judgment of 14 September 1999 in Case C-310/97 P *Commission* v *AssiDomän Kraft Products and Others*, not yet reported in the ECR, was that of establishing the effects which a judgment annulling a measure might have for persons not party to those proceedings. The case arose from a Commission decision relating to a proceeding under Article 85 of the EEC Treaty (now Article 81 EC); the decision was addressed to 43 persons and imposed a fine on the majority of them. Following an application brought by 26 of those persons, the Court annulled the decision, and annulled or reduced the fines imposed on the applicants. Subsequently, nine undertakings which had not challenged the decision requested the Commission to review their legal position in the light of that judgment and to reduce the fines which had been imposed on them. The Commission would not accede to their requests, a refusal which was then successfully challenged before the Court of First Instance. It held that the Commission was required, in accordance with Article 176 of the Treaty (now Article 233 EC) and the principle of good administration, to review, in the light of the grounds of the judgment of the Court of Justice, the legality of its original decision in so far as it related to those nine undertakings and to determine on the basis of such an examination whether it was appropriate to repay the fines.

On an appeal brought by the Commission, the Court of Justice refused to endorse the reasoning followed by the Court of First Instance and annulled its judgment. The Court of Justice found that the scope of an annulling judgment is limited in two respects: first, the aspects of a decision which concern persons to whom it is addressed other than the person who brings an action for annulment do not form part of the matter to be tried by the Community judicature; second, the

authority *erga omnes* exerted by an annulling judgment cannot entail annulment of a measure not challenged before the Community judicature but alleged to be vitiated by the same illegality, and the authority of a ground of such a judgment therefore cannot apply to the situation of persons who were not parties to the proceedings and with regard to whom the judgment cannot have decided anything whatever. Accordingly, since Article 176 of the Treaty requires the institution which adopted the annulled measure only to take the necessary measures to comply with the judgment annulling it, that provision does not mean that the Commission must, at the request of interested parties, re-examine identical or similar decisions allegedly affected by the same irregularity, addressed to persons other than the applicant. According to the Court, the principle of legal certainty also precludes such an obligation on the part of the institution concerned.

4.3. With regard to proceedings for preliminary rulings, widely differing problems were dealt with in the cases of *Andersson*, *De Haan Beheer*, *Azienda Nazionale Autonoma delle Strade (ANAS)* and *Radiotelevisione Italiana (RAI)*.

Andersson concerned the temporal scope of the Court's jurisdiction to give preliminary rulings (judgment of 15 June 1999 in Case C-321/97 *Andersson* v *Svenska Staten (Swedish State)*, not yet reported in the ECR). The question submitted by the national court related to the interpretation of the Agreement on the European Economic Area ("the EEA Agreement") and was concerned with the potential liability of an EFTA State, in that case Sweden, for damage caused to individuals by the incorrect transposition of a directive referred to in the EEA Agreement. The Court stated that in principle it had jurisdiction to answer a question which was raised before a court or tribunal of one of the Member States and related to the interpretation of an agreement concluded by the Council, such an agreement being, as far as the Community was concerned, an act of one of its institutions. However, the main proceedings were concerned with facts predating Sweden's accession to the European Union and the question submitted thus related to the interpretation of the EEA Agreement not with regard to the Community but as regards its application in the EFTA States. The Court therefore concluded that it had no jurisdiction to give an answer under the EC Treaty, nor had such jurisdiction been conferred on it within the framework of the EEA Agreement. It added that the fact that Sweden subsequently became a Member State of the European Union could not have the effect of attributing to the Court jurisdiction to interpret the EEA Agreement as regards its application to situations which did not come within the Community legal order. The same approach was followed in the judgment of 15 June 1999 in Case C-140/97 *Rechberger* v *Republic of Austria*, not yet reported in the ECR, at paragraph 38.

A noteworthy feature of the judgment in *De Haan Beheer* is that the Court, on a preliminary reference seeking interpretation of Community law on the incurrence and recovery of a customs debt, was led to find that a decision by the Commission which the national court had not even referred to was invalid (judgment of 7 September 1999 in Case C-61/98 *De Haan Beheer* v *Inspecteur der Invoerrechten en Accijnzen te Rotterdam*, not yet reported in the ECR). First, the Court answered in the negative the question whether, in the context of an external transit procedure, national customs authorities are under an obligation to inform a person acting as principal of the likelihood of fraud not involving him himself but liable, if carried out, to cause him to incur a customs debt. It then considered whether, in the event that such information is not provided, the principal could be exonerated from payment of the customs debt arising from the fraud. Under the legislation in force, such exoneration was possible in particular if two cumulative conditions were met, one of which was the existence of a "special situation". The Court noted that the Commission had been requested by the Member State concerned, in the context of the main proceedings and pursuant to the legislation in force, to rule on the question whether there was a "special situation" of that kind and had expressed the view that there was none in that instance. In those circumstances, the Court took the view that, although the national court had made no reference to that decision by the Commission, the existence and, even more so, the content of which were probably unknown to it at the time when it had made its order for reference, it was appropriate, in order to give the national court an answer that would be helpful in resolving the dispute before it, to determine whether the decision was a valid one. Such an approach also appeared to conform to the principle of procedural economy, in that the question whether the Commission decision was lawful had also been raised directly before the Court in another case, which had been stayed pending delivery of the judgment in *De Haan Beheer*. The Court finally declared in *De Haan Beheer* that the Commission decision was invalid.

Finally as regards preliminary reference proceedings, two orders may be noted in which the Court considered whether the Corte dei Conti (Italian Court of Auditors) constituted a "court or tribunal" within the meaning of Article 234 EC when it was faced with questions of interpretation of Community law in the context of *ex post facto* review procedures as to the legality, propriety and cost effectiveness of the management of certain State authorities (orders of 26 November 1999 in Case C-192/98 *Azienda Nazionale Autonoma delle Strade (ANAS)* and in Case C-440/98 *Radiotelevisione Italiana (RAI)*, both not yet reported in the ECR). It follows from these orders that the ability of a body to refer a question to the Court must be determined in accordance with both structural and functional criteria, so that a body may be treated as a "court or

tribunal" within the meaning of Article 234 EC when exercising judicial functions although it cannot be so treated when it exercises other functions, including functions of an administrative nature. On that basis the Court held that, in the case before it, the function of *ex post facto* review exercised by the Corte dei Conti essentially entailed assessing and checking the results of administrative activity, and did not amount to a judicial function. It therefore declared that it lacked jurisdiction to rule on the questions submitted by the Corte dei Conti.

4.4. Ten years after the creation of the Court of First Instance, the scope of the appellate review by the Court of Justice of its decisions was again at the heart of a number of judgments.

An appeal brought by the French Republic (Case C-73/97 P *French Republic* v *Comafrica and Others* [1999] ECR I-185) was the first case where the third paragraph of Article 49 of the EC Statute of the Court of Justice has been relied on. Under that provision the Member States and Community institutions which did not intervene in proceedings before the Court of First Instance may, except in staff cases, bring an appeal against the decision disposing of those proceedings. Apart from that procedural novelty, the case had a further special feature, since France was not challenging the outcome of the case as such, namely the dismissal of an action for annulment brought by some undertakings against a Commission regulation, but was contending that, instead of declaring the action unfounded, the Court of First Instance should have allowed the plea of inadmissibility raised by the Commission. The Court of Justice allowed the appeal, set aside the judgment of the Court of First Instance and, giving final judgment in the case, dismissed the application for annulment lodged by the undertakings as inadmissible.

The first paragraph of Article 41 of the EC Statute of the Court of Justice, which also applies to proceedings before the Court of First Instance, provides that an application for revision of a judgment may be made on discovery of a fact which is of such a nature as to be a decisive factor and which, when the judgment was given, was unknown to the Court and to the party claiming the revision. It follows from the judgments in Case C-2/98 P *de Compte* v *Parliament* [1999] ECR I-1787 and of 8 July 1999 in Case C-5/93 P *DSM* v *Commission*, not yet reported in the ECR, that an appeal may in principle be brought against a decision by which the Court of First Instance dismisses an application for revision as inadmissible. The Court of Justice held that the interpretation of the phrase "fact which is of such a nature as to be a decisive factor and which, when the judgment was given, was unknown to the Court and to the party claiming the revision" and the classification of the facts relied on by the party applying for revision as falling

within that phrase were points of law which could be subject to review by the Court of Justice on appeal.

On the other hand, the Court held that an order made by the Court of First Instance in connection with its examination of a case, requiring the Commission to produce copies of certain documents in order for them to placed on the file and brought to the attention of the other party, did not fall within the categories of measures against which an appeal could be brought. It based that conclusion on the wording of the first paragraph of Article 49 of the EC Statute of the Court of Justice (order of 4 October 1999 in Case C-349/99 P *Commission* v *ADT Projekt Gesellschaft der Arbeitsgemeinschaft Deutscher Tierzüchter*, not yet reported in the ECR).

5. As regards *links between Community law and national law*, the past year brought some judicial explanation of, first, the obligations of national courts and, second, the liability of Member States for harm caused to individuals by infringements of Community law.

5.1. In *Eco Swiss China Time*, a national court to which application had been made for annulment of an arbitration award was uncertain whether it had to grant that application on the ground that the award was contrary to Article 85 of the Treaty (now Article 81 EC). The national court's doubts arose from the fact that, under domestic procedural rules, it could grant such an application only on a limited number of grounds, one of them being inconsistency with public policy, which, according to the applicable national law, was not generally to be invoked on the sole ground that, because of the terms or the enforcement of an arbitration award, effect would not be given to a prohibition laid down by domestic competition law. In its answer, the Court acknowledged that it was in the interest of efficient arbitration proceedings that review of arbitration awards should be limited in scope and that annulment of or refusal to recognise an award should be possible only in exceptional circumstances. The Court nevertheless held, having regard to the importance of Article 85 for the functioning of the internal market, that if a national court was required by its domestic rules of procedure to grant an application for annulment of an arbitration award where such an application was founded on failure to observe national rules of public policy, it also had to grant such an application where it was founded on failure to comply with the prohibition laid down in Article 85(1). The Court based that conclusion in particular on the finding that arbitrators, unlike national courts and tribunals, were not in a position to request it to give a preliminary ruling on questions of interpretation of Community law. However, it was manifestly in the interest of

the Community legal order that, in order to forestall differences of interpretation, every Community provision should be given a uniform interpretation, irrespective of the circumstances in which it was to be applied. On the other hand, the Court did not call into question national rules of procedure according to which an interim arbitration award which was in the nature of a final award and in respect of which no application for annulment had been made within the prescribed time-limit acquired definitive force and could no longer be called into question by a subsequent arbitration award. The time-limit laid down in the case at issue, of three months from the lodging of the award at the registry of the court having jurisdiction in the matter, did not seem excessively short compared with those prescribed in the legal systems of the other Member States (judgment of 1 June 1999 in Case C-126/97 *Eco Swiss China Time* v *Benetton International*, not yet reported in the ECR).

5.2. The judgments delivered in *Konle* and *Rechberger* are noteworthy with regard to Member State liability for harm caused to individuals by infringements of Community law.

Rechberger contains some explanation of the concepts of a "sufficiently serious breach" and a "direct causal link" between that breach and the loss or damage sustained by the injured parties, concepts which constitute two of the three conditions for Member State liability to arise (judgment of 15 June 1999 in Case C-140/97 *Rechberger* v *Austria*, not yet reported in the ECR). A number of private individuals had brought proceedings against the Republic of Austria before an Austrian court, claiming that it should be held liable following the incorrect transposition of Directive 90/314/EEC on package travel, package holidays and package tours, [1] which had prevented them from obtaining the reimbursement of money paid to a travel organiser who became insolvent. More particularly, it was alleged, first, that Austria had restricted the protection provided for by the directive to trips with a departure date of 1 May 1995 or later although it had acceded to the European Union on 1 January of the same year. The Court held that the directive had not been transposed correctly and that such incorrect transposition amounted to a "sufficiently serious" breach of Community law which could give rise to liability on the part of the Member State even where it had implemented all the other provisions of the directive. The Member State enjoyed no margin of discretion as to the entry into force, in its own law, of the contested provision, so that the limitation of protection was manifestly incompatible with the obligations under the directive. The second complaint was

1 Council Directive of 13 June 1990 (OJ 1990 L 158, p. 59).

that instead of ensuring, in accordance with the directive, that the travel organiser had sufficient security for the refund of money paid over and for the repatriation of the consumer in the event of insolvency, the Republic of Austria had done no more than require, for the coverage of that risk, a contract of insurance or a bank guarantee calculated on the basis of the organiser's past or estimated turnover. The Court held that this likewise amounted to an incorrect transposition of the directive inasmuch as the consumer was not provided with an effective guarantee that the result intended by the directive would be achieved.

In both instances, Austria nevertheless denied liability, arguing that there was no direct causal link between the incorrect transposition of the directive and the loss or damage suffered by consumers if the date and scope of the implementing measures could have contributed to the occurrence of the loss or damage only as a result of a chain of wholly exceptional and unforeseeable events. The Court observed, however, that the national court had well and truly found that there was such a link in the case in point. Furthermore, the very aim of the directive was to arm consumers against the consequences of bankruptcy, whatever its causes. The Court therefore concluded that exceptional and unforeseeable events, in as much as they would not have presented an obstacle to the refund of money paid over or the repatriation of consumers if the guarantee system had been implemented in accordance with the directive, were not such as to exclude the existence of a direct causal link and consequently to preclude the Member State's liability.

In *Konle*, the national court asked whether, in Member States with a federal structure, reparation for damage caused to individuals by national measures taken in breach of Community law had necessarily to be provided by the federal State in order for the obligations of the Member State under Community law to be fulfilled. In its reply, the Court stated that it is for each Member State to ensure that individuals obtain reparation for damage caused to them by non-compliance with Community law, whichever public authority is responsible for the breach and whichever public authority is in principle, under the law of the Member State concerned, responsible for making reparation. On the other hand, Community law does not require Member States to make any change in the distribution of powers and responsibilities between the public bodies which exist in their territory; it is sufficient that the procedural arrangements in the domestic system enable the rights which individuals derive from the Community legal system to be effectively protected without it being more difficult to assert those rights than the rights which they derive from the domestic legal system (judgment of 1 June 1999 in Case C-302/97 *Konle* v *Austria*, not yet reported in the ECR).

6. So far as concerns *links between Community law and international law*, the Court held in its judgment of 23 November 1999 in Case C-149/96 *Portugal* v *Council*, not yet reported in the ECR, that, having regard to their nature and structure, the Agreement establishing the World Trade Organisation and the agreements and memoranda in Annexes 1 to 4 thereto ("the WTO agreements") were not in principle among the rules in whose light the Court was to review the legality of measures adopted by the Community institutions. Although the main purpose of the mechanism for resolving disputes under the WTO agreements was to secure the withdrawal of measures inconsistent with the WTO rules, the mechanism also provided the contracting parties with the possibility of the grant of compensation on an interim or even definitive basis. Consequently, to require the judicial organs to refrain from applying rules of domestic law which were inconsistent with the WTO agreements would have the consequence of depriving the legislative or executive organs of the contracting parties of that possibility afforded by the agreements of entering into negotiated arrangements even on a temporary basis. According to the Court, it followed that the WTO agreements, interpreted in the light of their subject-matter and purpose, did not determine the appropriate legal means of ensuring that they were applied in good faith in the legal order of the contracting parties. The Court noted that the same solution was, moreover, applied by other contracting parties, so that a different attitude at Community level might lead to disuniform application of the WTO rules, by depriving the legislative or executive organs of the Community of the scope for manoeuvre enjoyed by their counterparts in the Community's trading partners. As to the remainder, the Court established that the Community measure contested in the case was not designed to ensure the implementation in the Community legal order of a particular obligation assumed in the context of the WTO and that it did not make express reference to any specific provisions of the WTO agreements, the only instances where it would be for the Court to review the legality of the Community measure in question in the light of the WTO rules.

7. In the *institutional domain*, it was determination of the legal basis for Community measures which once more gave rise to most of the litigation, this year setting the Community institutions against each other.

Judgment was given in 1999 in three actions for annulment of Council measures brought by the European Parliament on the ground that its prerogatives had been infringed. In the first of those cases, the Parliament contended that a Council decision on the adoption of a multiannual programme to promote the linguistic diversity of the Community in the information society should have had a dual legal basis. It considered that, in addition to Article 130 of the EC Treaty (now

Article 157 EC), relating to industry, Article 128 (now, after amendment, Article 151 EC), which is devoted to culture, should have been the legal basis for the decision. In order to assess the merits of the case, the Court checked whether culture was an essential component of the contested decision, in the same way as industry, and could not be dissociated from industry, or whether the "centre of gravity" of the decision was to be found in the industrial aspect of the Community action. As regards the aims pursued by the decision, it found that the beneficiaries directly targeted by the concrete actions envisaged were enterprises, in particular small and medium-sized enterprises, whereas citizens were seen only as beneficiaries of linguistic diversity in general, in the context of the information society. Furthermore, the recitals in the preamble to the decision referring to the cultural aspects of the information society expressed findings or wishes of a general nature which did not allow those aspects to be seen, in themselves, as objectives of the programme. The main and predominant characteristic of the programme appeared in actual fact to be of an industrial nature. As regards the content of the contested decision, the Court stated that the main thrust of the actions covered was to ensure that undertakings did not disappear from the market or have their competitiveness undermined by communications costs caused by linguistic diversity. It therefore concluded overall that the effects on culture were only indirect and incidental as compared with the direct effects sought, which were of an economic nature and did not justify basing the decision on Article 128 of the Treaty as well. It accordingly dismissed the Parliament's application (Case C-42/97 *Parliament* v *Council* [1999] ECR I-869).

By contrast, another application brought by the Parliament was allowed in a judgment delivered two days later (judgment of 25 February 1999 in Joined Cases C-164/97 and C-165/97 *Parliament* v *Council* [1999] ECR I-1139). This judgment concerned two Council regulations on the protection of the Community's forests against atmospheric pollution and against fire which had been adopted on the basis of Article 43 of the EC Treaty (now, after amendment, Article 37 EC). Endorsing the arguments put forward by the applicant, the Court held that, although the measures referred to in the regulations could have certain positive repercussions on the functioning of agriculture, those consequences were incidental to the primary aim of the Community schemes for the protection of forests, which were intended to ensure that the natural heritage represented by forest ecosystems was conserved and turned to account, and did not merely consider their utility to agriculture.

In its judgment of 8 July 1999 in Case C-189/97 *Parliament* v *Council*, not yet reported in the ECR, the Court interpreted for the first time the term "agreements having important budgetary implications for the Community" used in the second

subparagraph of Article 228(3) of the Treaty (now, after amendment, the second subparagraph of Article 300(3) EC). In derogation from the normal procedure, which provides only for consultation of the Parliament, agreements of that type may be concluded only if the Parliament's assent is obtained. In its judgment, the Court first of all rejected the approach contended for by the Council, under which the overall budget of the Community was referred to in order to assess whether an agreement had important budgetary implications. It stated that all the appropriations allocated to external operations of the Community traditionally accounted for a marginal fraction of the Community budget, so that the provision at issue might be rendered wholly ineffective if the Council's criterion were applied. The Court also rejected two criteria proposed by the Parliament: first, the share of the expenditure at issue in relation to expenditure of the same kind under the relevant budget heading and, second, the rate of increase in expenditure under the agreement in question in relation to the financial section of the previous agreement. Three other criteria were ultimately adopted by the Court. It found, first, that the fact that expenditure under an agreement was spread over several years was relevant, since relatively modest annual expenditure could, over a number of years, represent a significant budgetary outlay. It then held that comparison of the expenditure under an agreement with the amount of the appropriations designed to finance the Community's external operations enabled that agreement to be set in the context of the budgetary outlay approved by the Community for its external policy, and offered an appropriate means of assessing the financial importance which the agreement actually had. Finally, where a sectoral agreement was involved, that analysis could, in appropriate cases, be complemented by a comparison between the expenditure entailed by the agreement and the whole of the budgetary appropriations for the sector in question, taking the internal and external aspects together. Applying those criteria to the case before it, the Court found that the fisheries agreement with Mauritania (the agreement in issue) had been concluded for five years, which was not a particularly lengthy period, and that while the annual amounts at issue exceeded 5% of expenditure on fisheries, they represented barely more than 1% of the whole of the payment appropriations allocated for external operations of the Community, a proportion which, whilst far from negligible, could scarcely be described as important. It therefore concluded that the agreement did not have important budgetary implications for the Community within the meaning of the second subparagraph of Article 228(3) of the Treaty and dismissed the Parliament's application.

In the final case it was, this time, the Commission which sought the annulment of a Council regulation on mutual assistance between the administrative authorities of the Member States and cooperation between those authorities and the

Commission to ensure the correct application of the law on customs and agricultural matters. The regulation's legal basis was Article 43 of the Treaty (now, after amendment, Article 37 EC) and Article 235 of the Treaty (now Article 308 EC). According to the Commission, the Council should have based the regulation on Article 43 together with Article 100a of the Treaty (now, after amendment, Article 95 EC), whose objective is to harmonise the laws of the Member States for the purpose of the establishment and functioning of the internal market. The Commission contended that the regulation was intended to ensure the proper functioning of the customs union and thus of the internal market, and that the protection of the financial interests of the Community within the meaning of Article 209a of the Treaty (now, after amendment, Article 280 EC), hence the fight against fraud, was not an independent objective but followed from the establishment of the customs union. The Court rejected that argument. It stated that the protection of the financial interests of the Community did not follow from the establishment of the customs union, but constituted an independent objective which, under the scheme of the Treaty, was placed in Title II (financial provisions) of Part V relating to the Community institutions and not in Part III on Community policies, which included the customs union and agriculture. The regulation at issue implemented the objective of protecting the financial interest of the Community by laying down, in the context of the customs union and the common agricultural policy, specific rules additional to the generally applicable legislation. Since Article 209a of the Treaty, in the version applicable when the regulation was adopted, indicated the objective to be attained but did not confer on the Community competence to set up a system of the kind at issue, recourse to Article 235 of the Treaty was justified (judgment of 18 November 1999 in Case C-209/97 *Commission* v *Council*, not yet reported in the ECR).

8. In the field of the *free movement of goods*, the judgments in *Kortas* and in *Colim* v *Bigg's Continent Noord* are to be noted, together with case-law specific to the movement of medicinal and plant protection products.

Like the case of *Commission* v *Council* referred to above, *Kortas* raised questions of interpretation of Article 100a of the Treaty, in particular Article 100a(4). That provision laid down a derogation procedure for Member States which, after the adoption of a harmonisation measure by the Council, deemed it necessary to apply national provisions on grounds of major needs referred to in Article 36 of the Treaty (now, after amendment, Article 30 EC) or national provisions relating to protection of the environment or the working environment. It is clear from the judgment, first, that a directive can have direct effect where its legal basis is Article 100a of the Treaty, notwithstanding the existence of that derogation

procedure. According to the Court, the general potential of a directive to have direct effect is wholly unrelated to its legal basis, depending instead on its intrinsic characteristics, that is to say on whether its provisions are unconditional and sufficiently precise. The national court also asked the Court whether the direct effect of a directive, where the deadline for its transposition into national law had expired, was affected by the existence of a notification made by a Member State pursuant to Article 100a(4), seeking confirmation of provisions of national law derogating from the directive. The Court replied in the negative, stating that measures for the harmonisation of Member State legislation which was such as to hinder intra-Community trade would be rendered ineffective if Member States retained the right unilaterally to apply national rules derogating from those measures. It therefore answered that a Member State was not authorised to apply the national provisions notified by it under Article 100a(4) until after it had obtained a decision from the Commission confirming them, even where the Commission was unreasonably slow in coming to a decision. The Court noted in that regard that Article 100a(4), as worded prior to the Treaty of Amsterdam, was silent as to the time within which the Commission had to adopt a position on the national rules notified to it. The Court declared however, for the sake of completeness, that the fact that there was no time-limit could not absolve the Commission from the obligation to act with all due diligence in discharging its responsibilities, since implementation of the notification scheme provided for by the Treaty required the Commission and the Member States to cooperate in good faith (judgment of 1 June 1999 in Case C-319/97 *Kortas*, not yet reported in the ECR).

The case of *Colim* v *Bigg's Continent Noord* which concerned Directive 83/189/EEC, [2] as amended by Directive 88/182/EEC, [3] continues a long series of cases on the Community legislation laying down a procedure for the provision of information in the field of technical standards and regulations. In the main proceedings, the national court was uncertain whether national legislation requiring labelling particulars, instructions for use and guarantee certificates for products to be given in the language or languages of the area where the products were placed on the market should have been notified as a technical regulation. In its judgment, the Court held that it was necessary to distinguish between the

2 Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1983 L 109, p. 8).

3 Council Directive 88/182/EEC of 22 March 1988 amending Directive 83/189 (OJ 1988 L 81, p. 75).

obligation to convey certain information about a product to consumers, which is carried out by affixing particulars to the product or adding documents to it such as instructions for use and the guarantee certificate, and the obligation to give that information in a specified language. The latter did not constitute a technical regulation but an ancillary rule necessary in order for the information to be effectively communicated. The judgment also contains some clarification regarding the limits on the ability of the Member States, even where the language requirements applicable to information appearing on imported products are not fully harmonised, to require that information to be given in specific languages (judgment of 3 June 1999 in Case C-33/97 *Colim* v *Bigg's Continent Noord*, not yet reported in the ECR).

9. The *movement of medicinal products and plant protection products* within the Community, and therefore the related case-law, present very specific features inasmuch as a marketing authorisation issued by the appropriate national authorities is in principle required before such products may be marketed in each Member State. The parent legislation is set out in Directive 65/65/EEC for proprietary medicinal products [4] and in Directive 91/414/EEC for plant protection products. [5]

9.1. First, it was the interpretation of Directive 65/65 that was raised by the questions referred to the Court for a preliminary ruling in *Upjohn* and *Rhône-Poulenc*. In the first of those two cases, the Court held that Directive 65/65 and, more generally, Community law did not require the Member States, in the context of procedures for the judicial review of national decisions revoking authorisations to market proprietary medicinal products, to give the competent national courts and tribunals the power to substitute their assessment of the facts — and, in particular, of the scientific evidence relied on in support of the revocation decision — for the assessment made by the national authorities competent to revoke such authorisations. In justifying that ruling, the Court referred by analogy to the restricted nature of the judicial review conducted by the Community judicature with regard to decisions of the Community authorities adopted on the basis of complex assessments (Case C-120/97 *Upjohn* v *The*

4 Council Directive 65/65/EEC of 26 January 1965 on the approximation of provisions laid down by law, regulation or administrative action relating to proprietary medicinal products (OJ, English Special Edition 1965-1966, p. 20).

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

Licensing Authority established by the Medicines Act 1968 and Others [1999] ECR I-223).

Rhône-Poulenc continued the line of case-law formed by Case 104/75 *De Peijper* [1976] ECR 613 and Case C-201/94 *Smith & Nephew and Primecrown* [1996] ECR I-5819. That case-law had facilitated the free movement of medicinal products within the Community by exempting imports from one Member State to another from the onerous procedure laid down by Directive 65/65 where the medicinal product in question was already covered by a marketing authorisation in the first Member State and was being imported as a parallel import of a product which was itself already covered by a marketing authorisation in the Member State of importation. In *Rhône-Poulenc* the medicinal product at issue was the subject of a marketing authorisation which had ceased to have effect in the Member State of importation, where a new version of that product was covered by a marketing authorisation. It was disputed in that State that the simplified procedure applicable to parallel imports could be used for the old version. In its judgment, the Court stated that none of the three grounds put forward by the holder of the marketing authorisation in the State of importation enabled the possibility of parallel importation to be ruled out in absolute terms. First, it was pointed out to the Court that the two versions of the medicinal product were not manufactured according to the same formulation, given that the version covered by a marketing authorisation in the State of importation was manufactured using different excipients and by a different manufacturing process. In that regard, the Court held that it was for the competent authorities of the Member State of importation to ensure that the medicinal product imported as a parallel product, even if not identical in all respects to that already authorised by them, had the same active ingredient and the same therapeutic effect and did not pose a problem of quality, efficacy or safety. Second, it was asserted that the drug monitoring ("pharmacovigilance") system would not work in the Member State of importation because the holder of the marketing authorisation in that State was not obliged to submit information regularly in relation to the product imported in parallel. The Court found, however, that drug monitoring could be ensured in particular through cooperation with the authorities of the other Member States. Finally, it was claimed that the particular benefit for public health which was provided by the new version, as compared with the old version, of the medicinal product could not be achieved if the old and new versions were both available on the market of the State of importation at the same time. The Court met that third objection by stating that, even if the argument were well founded, it did not follow that, in circumstances such as those of the main case, the national authorities were compelled to require parallel importers to follow the procedure laid down in Directive 65/65 if they took the view that, in normal

conditions of use, the medicinal product imported as a parallel import did not pose a risk as to quality, efficacy or safety (judgment of 16 December 1999 in Case C-94/98 *The Queen* v *The Licensing Authority established by the Medicines Act 1968 ex parte Rhône-Poulenc Rorer and Another*, not yet reported in the ECR).

9.2. In Case C-100/96 *The Queen* v *Ministry of Agriculture, Fisheries and Food ex parte British Agrochemicals Association* [1999] ECR I-1499, the Court held first of all that the case-law laid down in *Smith & Nephew and Primecrown*, cited above, relating to parallel imports of medicinal products, could be applied, *mutatis mutandis*, to the placing of plant protection products on the market, given the similarities of the two bodies of legislation. It then held that that case-law applied to a plant protection product imported from a State belonging to the European Economic Area in which it was already covered by a marketing authorisation granted in accordance with Directive 91/414. As regards the importation of plant protection products from third countries, on the other hand, the conditions which had led, in the decision in *Smith & Nephew and Primecrown*, to the non-applicability of the provisions of the directive concerning the procedure for the grant of marketing authorisation were not fulfilled and such a product therefore could not benefit from a marketing authorisation already granted in the Member State of importation for a product considered to be identical.

10. Of the numerous judgments delivered in 1999 relating to the *agricultural and fisheries sectors*, most concerned questions which were rather technical and of relatively limited importance. One judgment to note, however, is that of 5 October 1999 in Case C-179/95 *Spain* v *Council*, not yet reported in the ECR, which settled a dispute between the two parties in the field of Community fisheries policy. Spain challenged a number of Community provisions which, in the context of the system for the exchange of fishing quotas allocated to certain Member States, allowed anchovy fishing quotas to be transferred from the zone of allocation to an adjacent zone. Those provisions resulted, as regards the latter zone, in an increase in the total allowable catch ("TAC") for anchovies compared with the TAC set initially. Spain contended, first, that there had been a failure to take account of the objectives of the common fisheries policy. The Court had regard to the discretion which the Council enjoys when fixing TACs and distributing fishing quotas among Member States, and noted that when the Council fixed the initial TAC it did so by way of precaution and not on the basis of proven scientific data; the Court found that, in those circumstances, the increase in anchovy fishing quotas at issue could not be considered to be vitiated

by manifest error or misuse of power or clearly to exceed the bounds of the discretion enjoyed by the Council unless there were sufficient grounds for believing that it had disturbed the biological equilibrium of those resources, a fact which had not been established in the case before the Court. Spain also claimed that the principle of relative stability had been infringed since a new anchovy quota had been allocated in the zone at issue to a country, namely Portugal, which had never had a quota there, in flagrant breach of the obligation to preserve the percentage shares laid down for each of the two Member States between whom the stock had been divided, namely Spain and France. That line of argument was likewise not accepted by the Court. It found that the principle of relative stability did not preclude exchanges between Member States and that the exchange in dispute was the result of two regulations issued by the Council of which the first had been adopted on the same legal basis as the regulation on which Spain relied. As regards the conditions in which that exchange had been authorised, the Court noted first of all that there was no increase in fishing quotas in the two zones taken together, secondly, that the exchange did not adversely affect, in the zone to which quota could be transferred taken by itself, the fishing quota allocated to Member States not privy to the exchange and, finally, that the exchange in question had not been shown to jeopardise resources in the zones concerned or, therefore, to have an adverse effect on the rights of Member States to quotas there. The action was therefore dismissed.

11. The judgments delivered in 1999 concerning *freedom of movement for persons* within the European Union reflect the increasingly varied facets of that principle, be they professional regulation, checks at internal frontiers, social security or tax.

11.1. In order to facilitate freedom of movement for workers within the Community, the Community legislature has adopted directives laying down general systems for the recognition of diplomas and professional education and training. Those provisions apply in the case of "regulated" professions, that is to say whenever the conditions for taking up or pursuing a professional activity are directly or indirectly governed by legal provisions. In *Fernández de Bobadilla* the Court had to consider whether a profession governed by a collective agreement entered into by management and labour could be considered to be "regulated" within the meaning of the directives referred to above. The Court gave the answer that, in order not to impair the effectiveness of those directives, such a profession could be considered to be "regulated" where a collective agreement governed in a general way the right to take it up or pursue it, particularly if that was the result of a single administrative policy laid down at

national level or even if the terms of an agreement entered into by a public body and its staff representatives were common to other collective agreements entered into on an individual basis by other public bodies of the same kind. In the judgment, the Court also stated, with regard to non-regulated professions, that where a Member State did not have a general procedure for official recognition of diplomas issued in the other Member States which was consistent with Community law, it was for the public body seeking to fill a post itself to investigate whether the diploma obtained by the candidate in another Member State, together, where appropriate, with practical experience, was to be regarded as equivalent to the qualification required (judgment of 8 July 1999 in Case C-234/97 *Fernández de Bobadilla* v *Museo Nacional del Prado and Others*, not yet reported in the ECR).

11.2. The case of *Wijsenbeek* arose from the refusal, contrary to Netherlands law, of Mr Wijsenbeek to present his passport and establish his Netherlands nationality when entering the Netherlands at Rotterdam airport following a flight from Strasbourg. In the resulting criminal proceedings, Mr Wijsenbeek relied, in his defence, on the second paragraph of Article 7a and Article 8a of the EC Treaty (now, after amendment, Articles 14 EC and 18 EC). In answer to the national court's questions, the Court ruled that, as Community law stood at the time of the events in question, neither Article 7a nor Article 8a of the Treaty precluded a Member State from requiring a person, whether or not a citizen of the European Union, under threat of criminal penalties, to establish his nationality upon his entry into the territory of that Member State by an internal frontier of the Community, provided that the penalties applicable were comparable to those which applied to similar national infringements and were not disproportionate. The Court considered that, in order for an obligation to abolish controls of persons at the internal frontiers of the Community to exist, there had to be harmonisation of the laws of the Member States governing the crossing of the external borders of the Community, immigration, the grant of visas, asylum and the exchange of information on those questions (judgment of 21 September 1999 in Case C-378/97 *Wijsenbeek,* not yet reported in the ECR).

11.3. With regard to tax and social security, whether in relation to contributions or benefits, the Court sought to remove unjustified obstacles to freedom of movement for persons (*Terhoeve* with regard to social security contributions), while accepting that obstacles resulting directly from the absence of harmonisation of national laws cannot be avoided (*Gschwind* with regard to income tax and *Nijhuis* relating to a social security benefit).

Under the detailed Netherlands rules at issue in *Terhoeve* governing the calculation of social security contributions, a worker who had transferred his residence in the course of a year from one Member State to another in order to take up employment there was liable to be subject to greater contributions than those which would have been payable, in similar circumstances, by a worker who had continued to reside throughout the year in the Member State in question, without the first worker also being entitled to additional social benefits. The Court held that to be an obstacle to freedom of movement which could not be justified either by the fact that it stemmed from legislation whose objective was to simplify and coordinate the levying of income tax and social security contributions, or by difficulties of a technical nature preventing other methods of collection, or else by the fact that, in certain circumstances, other advantages relating to income tax could offset, or indeed outweigh, the disadvantage as to social contributions. With regard to the consequences which the national court had to draw where national legislation was incompatible with Community law in that way, the Court stated that the worker concerned was entitled to have his social security contributions set at the same level as that of the contributions which would be payable by a worker who continued to reside in the same Member State, since those arrangements, for want of the correct application of Community law, remained the only valid point of reference (Case C-18/95 *Terhoeve* v *Inspecteur van de Belastingdienst Particulieren/Ondernemingen Buitenland* [1999] ECR I-345).

By contrast, the German and Netherlands legislation at issue in *Gschwind* and *Nijhuis* was not held to be incompatible with the principle of freedom of movement for persons.

It will be remembered that, in Case C-279/93 *Schumacker* [1995] ECR I-225 and Case C-80/94 *Wielockx* [1995] ECR I-2493, the Court had interpreted Article 48 of the Treaty (now, after amendment, Article 39 EC) as meaning that a Community national who gained his main income and almost all of his family income in a Member State other than his State of residence was discriminated against if his personal and family circumstances were not taken into account for income tax purposes in the first State. Following those judgments, the German legislature provided that, where a Community national had neither permanent residence nor usual abode in Germany, he and his spouse could nevertheless under certain conditions be treated as being subject to tax in Germany on their total income and, on that basis, be entitled to the tax concessions accorded to residents to take account of their personal and family circumstances. In *Gschwind*, the Court held that the conditions laid down for that purpose by the German legislature are compatible with the Treaty, namely that at least 90% of

the total income of the non-resident married couple must be subject to tax in Germany or, if that percentage is not reached, that their income from foreign sources not subject to German tax must not be above a certain ceiling. The Court considered that, where those conditions are not satisfied, the State of residence is in a position to take into account the taxpayers' personal and family circumstances, since the tax base is sufficient there to enable that to be done (judgment of 14 September 1999 in Case C-391/97 *Gschwind* v *Finanzamt Aachen-Außenstadt*, not yet reported in the ECR).

Nijhuis concerned the entitlement of a Netherlands civil servant to a Netherlands invalidity pension in respect of the period before the entry into force of Regulation (EC) No 1606/98, [6] which, subject to certain derogating provisions, extended the basic legislation concerning social security for workers moving within the Community, namely Regulation (EEC) No 1408/71 [7] and Regulation (EEC) No 574/72, [8] to special schemes for civil servants. While those basic regulations were not directly applicable in the case before it, the national court inquired whether Articles 48 and 51 of the Treaty (now, after amendment, Articles 39 EC and 42 EC) nevertheless obliged it to apply them by analogy in order to grant invalidity benefit to a worker who had suffered an incapacity for work arising in another Member State. If they were not applied by analogy, Mr Nijhuis would be in a less favourable position than if he had not exercised his right as a worker to move freely but had worked only in the Netherlands. The Court held that, having regard to the wide discretion enjoyed by the Council, making such an application by analogy mandatory could be envisaged only if it were possible to overcome the negative consequences of the national legislation for workers who had exercised their right of free movement without having recourse to Community coordination measures. Since measures of that kind appeared essential in the case before it, the Court answered the question submitted in the negative (Case C-360/97 *Nijhuis* v *Bestuur van het Landelijk Instituut Sociale Verzekeringen* [1999] ECR I-1919).

6 Council Regulation (EC) No 1606/98 of 29 June 1998 amending Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 with a view to extending them to cover special schemes for civil servants (OJ 1998 L 209, p. 1).

7 Council Regulation of 14 June 1971 (OJ, English Special Edition 1971 (II), p. 416).

8 Council Regulation of 21 March 1972 (OJ, English Special Edition 1972 (I), p. 159).

12. *Freedom to provide services* within the Community was also the subject of significant judgments in 1999. The cases to be noted in particular are: *Calfa*; *Läärä* and *Questore di Verona* v *Zenatti*; *Eurowings*; and *Arblade and Leloup*.

12.1. Mrs Calfa, an Italian national who had been charged with possession for personal use, and with use, of prohibited drugs while staying as a tourist in Crete, appealed on a point of law against the decision of the criminal court ordering her to be expelled for life from Greece. The Court, when asked for a preliminary ruling, examined whether such a penalty was compatible with the Community rules on the freedom to provide services, Mrs Calfa being regarded as a recipient of tourist services. In its judgment, the Court concluded that there was clearly an obstacle to that freedom, and that the obstacle could not be justified by the public policy exception relied on by Greece. The national legislation provided for automatic expulsion following a criminal conviction, without any account being taken of the personal conduct of the offender or of the danger which that person represented for the requirements of public policy, contrary to Directive 64/221/EEC on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy [9] (Case C-348/96 *Calfa* [1999] ECR I-11).

12.2. The judgments delivered in *Läärä* and *Questore di Verona* v *Zenatti* fall very much within the same line of case-law as Case C-275/92 *Schindler* [1994] ECR I-1039. In accordance with that case-law, Community law does not preclude prohibitions relating to the organisation of lotteries, even though they constitute obstacles to the freedom to provide services, given the social-policy concerns and the concern to prevent fraud which justify them. The Court thus refused to find fault either with Finnish legislation which grants to a single public body exclusive rights to operate slot machines, in view of the public interest objectives justifying that legislation (judgment of 21 September 1999 in Case C-124/97 *Läärä* v *Kihlakunnansyyttäjä (Jyväskylä)*, not yet reported in the ECR), or with Italian legislation which reserves to certain bodies the right to take bets on sporting events (judgment of 21 October 1999 in Case C-67/98 *Questore di Verona* v *Zenatti*, not yet reported in the ECR). The Court held in particular that the fact that the games or gambling in issue were not totally prohibited was not enough to show that the national legislation was not in reality intended to achieve the public-interest objectives at which it was purportedly aimed. In *Läärä*, the Court gave a very direct ruling, stating that, since it enabled the public-interest objectives pursued to be achieved more easily, a decision to grant an exclusive

9 Council Directive of 25 February 1964 (OJ, English Special Edition 1963-1964, p. 117).

operating right to the licensed public body rather than to regulate the activities of various operators authorised to run such games within the framework of rules of a non-exclusive nature did not appear disproportionate having regard to the aim pursued. In *Zenatti*, by contrast, it stated that it was for the national court to verify whether, having regard to the specific rules governing its application, the Italian legislation was genuinely directed to realising the objectives which were capable of justifying it and whether the restrictions which it imposed did not appear disproportionate in the light of those objectives.

12.3. The case of *Eurowings* concerned German legislation relating to business tax on capital and earnings and raised once again the issue of the freedom of action available to the Member States with regard to tax in the absence of Community harmonisation. Under German law, when lessees lease goods from a lessor established in another Member State the taxable amount for calculation of the tax which they are required to pay is, in the majority of cases, larger — and therefore their treatment for tax purposes less favourable — than if they were to lease such goods from a lessor established in Germany. The Court pointed out first of all that the lessee, as the recipient of leasing services, could rely on the individual rights conferred on it by Article 59 of the Treaty (now, after amendment, Article 49 EC). It then found that the legislation at issue gave rise to a difference of treatment based on the place of establishment of the provider of services, which was prohibited by Article 59. However, Germany invoked the principle of coherency of the tax system, essentially contending that the advantage in favour of a lessee who dealt with a lessor established in Germany was counterbalanced by the fact that that lessor was himself subject to the tax at issue. The Court rejected that line of argument, since the link in question was merely indirect; indeed, the holder of a German lease was generally exempt solely as a result of the fact that the lessor himself was liable to the tax at issue, while the latter had a number of means of avoiding actually paying the tax. Nor did the Court accept that the fact that a lessor established in another Member State was subject there to lower taxation could justify a compensatory tax arrangement, because such an approach would prejudice the very foundations of the single market (judgment of 26 October 1999 in Case C-294/97 *Eurowings Luftverkehrs* v *Finanzamt Dortmund-Unna*, not yet reported in the ECR).

12.4. Last, the Court was asked about the limits imposed by Community law on the freedom of the Member States to regulate the social protection of persons working on their territory. In the main proceedings it was necessary to establish whether social obligations imposed by Belgian law, breach of which was punishable by penalties under Belgian public-order legislation, could be applied in respect of workers of an undertaking set up in another Member State who were

temporarily deployed in Belgium in order to perform a contract (judgment of 23 November 1999 in Joined Cases C-369/96 and C-376/96 *Arblade and Leloup*, not yet reported in the ECR).

The Court stated first of all that the fact that national rules were categorised as public-order legislation did not mean that they were exempt from compliance with the provisions of the Treaty, as otherwise the primacy and uniform application of Community law would be undermined. It then considered in turn whether the requirements imposed by the Belgian legislation had a restrictive effect on freedom to provide services, and, if so, whether, in the sector under consideration, such restrictions were justified by overriding reasons relating to the public interest. If they were, it established whether that interest was already protected by the rules of the Member State in which the service provider was established and whether the same result could be achieved by less restrictive rules. The Court thus acknowledged that provisions guaranteeing a minimum wage were justified but, in order for their infringement to justify the criminal prosecution of an employer established in another Member State, they had to be sufficiently precise and accessible for them not to render it impossible or excessively difficult in practice for such an employer to determine the obligations with which he was required to comply. On the other hand, the obligation to pay employer's contributions to the "timbres-intempéries" (bad weather stamps) and "timbres-fidélité" (loyalty stamps) schemes could be justified only if, first, the contributions payable gave rise to a social advantage for the workers concerned and, second, those workers did not enjoy in the State of establishment, by virtue of the contributions already paid by the employer in that State, protection which was essentially similar to that afforded by the rules of the Member State in which the services were provided. As regards obligations to draw up certain documents and to keep them in certain places and for a certain time, their compatibility with the Treaty essentially depended on whether they were necessary in order to enable effective review of compliance with the national legislation and on whether comparable obligations might exist in the State in which the undertaking was established.

13. With regard to *freedom of establishment*, the most important cases concluded in 1999 centred on questions of tax. While confirming that direct taxation fell within the competence of the Member States, the Court none the less declared incompatible with Article 52 of the EC Treaty (now, after amendment, Article 43 EC) provisions governing the taxation of companies in force in Greece, Germany and Sweden in so far as they involved differences in treatment between companies incorporated under national law and branches or agencies of companies

set up in other Member States when the two categories were in objectively comparable situations.

13.1. First, the Court found fault with Greek tax legislation under which companies having their seat in another Member State and carrying on business in Greece through a permanent establishment situated there could not benefit from a lower rate of tax on profits, when that possibility was accorded to companies having their seat in Greece and there was no objective difference in the situation between those two categories of companies which could justify such a difference in treatment (Case C-311/97 *Royal Bank of Scotland* v *Elliniko Dimosio (Greek State)* [1999] ECR I-2651). The Court held in particular that, while it was true that companies having their seat in Greece were taxed there on the basis of their world-wide income whereas companies carrying on business in that State through a permanent establishment were subject to tax there only on the basis of profits which the permanent establishment earned there, that circumstance was not such as to prevent the two categories of companies from being considered, all other things being equal, to be in a comparable situation as regards the method of determining the taxable base.

13.2. In *Saint-Gobain*, the Court considered the tax position of a permanent establishment in Germany of a company limited by shares which has its seat in another Member State and holds shares in companies established in other States (judgment of 21 September 1999 in Case C-307/97 *Saint-Gobain* v *Finanzamt Aachen-Innenstadt*, not yet reported in the ECR). It held that it was incompatible with the Treaty for such an establishment not to enjoy, on the same conditions as those applicable to companies limited by shares having their seat in Germany, certain concessions in relation to the taxation of those foreign shareholdings and of the related dividends. In so far as that difference in treatment resulted in part from bilateral treaties concluded with non-member countries, the Court observed that the Member States were free to conclude such bilateral treaties in order to eliminate double taxation, but the national treatment principle required them to grant to permanent establishments of Community companies the advantages provided for by those treaties on the same conditions as those which applied to resident companies.

13.3. The same approach led the Court to find contrary to the Treaty Swedish legislation which involved a difference of treatment between various types of intra-group transfers on the basis of the criterion of the subsidiaries' seat and thereby constituted an obstacle for Swedish companies wishing to form subsidiaries in other Member States (judgment of 18 November 1999 in Case C-200/98 *X and Y* v *Riksskatteverket*, not yet reported in the ECR).

13.4. In a further case concerning taxation, the Court held that Article 52 of the EC Treaty (now, after amendment, Article 43 EC) and Article 58 of the EC Treaty (now Article 48 EC) precluded French legislation under which undertakings established in France and exploiting proprietary medicinal products there were charged a special levy on their pre-tax turnover in certain of those products and were allowed to deduct from the amount payable only expenditure incurred on research carried out in France, when it applied to Community undertakings operating in that State through a secondary place of business (judgment of 8 July 1999 in Case C-254/97 *Baxter and Others* v *Premier Ministre and Others*, not yet reported in the ECR). Although there certainly existed French undertakings which incurred research expenditure outside France and foreign undertakings which incurred such expenditure within France, it remained the case that the tax allowance in question seemed likely to work more particularly to the detriment of undertakings having their principal place of business in other Member States and operating in France through secondary places of business. It was, typically, those undertakings which, in most cases, had developed their research activity outside France.

13.5. The final case relates to the limits which may be placed on an undertaking on the ground that it would use the right of establishment to circumvent the law of a Member State (Case C-212/97 *Centros* v *Erhvervs- og Selskabsstyrelsen* [1999] ECR I-1459). Here, Danish nationals resident in Denmark formed in the United Kingdom a company which did not trade in the United Kingdom. The Danish authorities opposed the registration of a branch of that company in Denmark — in their view, the undertaking was in fact seeking to circumvent national rules concerning, in particular, the paying up of a minimum capital. The Court held that a practice of that kind constituted an obstacle to freedom of establishment and that the fact that a national of a Member State who wished to set up a company chose to form it in the Member State whose rules of company law seemed to him the least restrictive and to set up branches in other Member States could not, in itself, constitute an abuse of the right of establishment. Nor did that obstacle fulfil the necessary conditions for it to be justified as an imperative requirement in the public interest that protected creditors. First of all, the practice at issue was not such as to attain the objective of protecting creditors which it purported to pursue since, if the company concerned had conducted business in the United Kingdom its branch would have been registered in Denmark, even though Danish creditors might have been equally exposed to risk. Secondly, creditors were on notice as to the company's nationality and could refer to certain rules of Community law which protected them. Finally, it was possible to adopt measures which were less restrictive or which interfered less with fundamental freedoms. While observing that there was

nothing to preclude the Member State concerned from adopting any appropriate measure for preventing or penalising fraud, either in relation to the company itself, or in relation to its members where it had been established that they were in fact attempting to evade their obligations towards creditors established on the territory of the State in question, the Court concluded that the refusal to register the company was contrary to the Treaty.

14. All of the most important cases on the *free movement of capital* decided in 1999 arose from questions referred for a preliminary ruling by Austrian courts.

14.1. A court asked whether Austrian legislation which required a mortgage securing a debt payable in the currency of another Member State to be registered in the national currency was compatible with Article 73b of the Treaty (now Article 56 EC). The Court provided some explanation of the terms "movements of capital" and "payments", stating first of all that the nomenclature in respect of movements of capital annexed to Directive 88/361/EEC [10] still had the same indicative value, for the purposes of defining the notion of capital movements, as it did before the entry into force of Article 73b et seq. of the EC Treaty, subject to the qualification, contained in the introduction to the nomenclature, that the list set out therein was not exhaustive. In the case before the Court, it followed that the mortgage was covered by Article 73b of the Treaty. Next, the Court stated that the requirement at issue constituted a restriction on the movement of capital since its effect was to weaken the link between the debt to be secured, payable in the currency of another Member State, and the mortgage, whose value could, as a result of subsequent currency exchange fluctuations, come to be lower than that of the debt to be secured. This could only reduce the effectiveness of such a security, and thus its attractiveness. Consequently, the legislation was liable to dissuade the parties concerned from denominating a debt in the currency of another Member State. Furthermore, it could well cause the contracting parties to incur additional costs, by requiring them, purely for the purposes of registering the mortgage, to value the debt in the national currency and, as the case may be, formally to record that currency conversion. Finally, the legislation could not be justified by an imperative requirement in the public interest on the ground that it was designed to ensure the foreseeability and transparency of the mortgage system, since it enabled lower-ranking creditors to establish the precise amount of prior-ranking debts, and thus to assess the value of the security offered to

10 Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty (OJ 1988 L 178, p. 5).

them, only at the price of a lack of security for creditors whose debts were denominated in foreign currencies (Case C-222/97 *Trummer and Mayer* [1999] ECR I-1661).

14.2. *Konle*, cited above, was mainly concerned with the ability of public authorities, in that case the *Land* of Tyrol, systematically to require an administrative authorisation prior to the acquisition of land, with an obligation for the acquirer to show that the acquisition would not be used to create a secondary residence. The Court stated that, to the extent that a Member State could justify the system by relying on a town and country planning objective, the restrictive measure inherent in such a requirement could be accepted only if it were not applied in a discriminatory manner and if the same result could not be achieved by other less restrictive procedures. The Court considered that not to be so in the case before it, in particular since the available documents revealed the intention of using the means of assessment offered by the authorisation procedure in order to subject applications from foreigners, including Community nationals, to a more thorough check than applications from Austrian nationals.

14.3. Finally, in *Sandoz*, a case relating to the taxation of a loan contracted by a resident borrower with a non-resident lender, the issue raised was whether a stamp duty charged on legal transactions was compatible with the free movement of capital. The Court found that there was an obstacle to the movement of capital, but that it was necessary in order to prevent infringements of national tax law and regulations, as provided for in Article 73d(1)(b) of the Treaty (now Article 58(1)(b) EC). The national legislation applied, irrespective of the nationality of the contracting parties or of the place where the loan was contracted, to all natural and legal persons resident in Austria who entered into a contract for a loan, and its main objective was to ensure equal tax treatment. On the other hand, the Court found that the legislation was contrary to the Treaty in so far as, in the case of loans contracted without being set down in a written instrument, a loan contracted in Austria was not subject to the duty at issue whereas, if it was contracted outside Austria, duty was payable by virtue of the existence of the loan being recorded by an entry in the borrower's books and records of account (judgment of 14 October 1999 in Case C-439/97 *Sandoz* v *Finanzlandesdirektion für Wien, Niederösterreich und Burgenland*, not yet reported in the ECR).

15. As in previous years, the bulk of the cases which the Court had to decide concerning the law on *competition between undertakings* arose either from

references by national courts for preliminary rulings or from appeals brought against decisions of the Court of First Instance.

15.1. As regards appeal proceedings, the case of *Ufex and Others* v *Commission* is to be noted, as are the judgments which finally disposed of the "polypropylene" cases. In those judgments, the Court confirmed almost without exception the assessments of the Court of First Instance (judgments of 8 July 1999 in Case C-49/92 P *Commission* v *Anic Partecipazioni*, Case C-51/92 P *Hercules Chemicals* v *Commission*, Case C-199/92 P *Hüls* v *Commission*, Case C-200/92 P *ICI* v *Commission*, Case C-227/92 P *Hoechst* v *Commission*, Case C-234/92 P *Shell International Chemical Company* v *Commission*, Case C-235/92 P *Montecatini* v *Commission* and Case C-245/92 P *Chemie Linz* v *Commission*, all not yet reported in the ECR).

The polypropylene appeals raised, first, fundamental questions relating to the concept of "non-existence" of a Community act and to the possibility of the Court of First Instance being obliged to grant a request made by a party for the oral procedure to be reopened. In response to the applicants' contentions that the Commission decision was non-existent, the Court recalled that acts of the Community institutions are in principle presumed to be lawful and accordingly produce legal effects, even if they are tainted by irregularities, until such time as they are annulled or withdrawn. However, by way of exception to that principle, acts tainted by an irregularity whose gravity is so obvious that it cannot be tolerated by the Community legal order must be treated as having no legal effect, even provisional, that is to say they must be regarded as legally non-existent. The purpose of this exception is to maintain a balance between two fundamental, but sometimes conflicting, requirements with which a legal order must comply, namely stability of legal relations and respect for legality. According to the Court, it is self-evident from the gravity of the consequences attaching to a finding that an act of a Community institution is non-existent that, for reasons of legal certainty, such a finding is reserved for quite extreme situations. As regards reopening of the oral procedure, the Court stated that the Court of First Instance is not obliged to accede to a request to that effect unless the party concerned relies on facts which may have a decisive influence on the outcome of the case and which it could not put forward before the close of the oral procedure. According to the Court, indications of a general nature relating to an alleged practice of the Commission that emerged from a judgment delivered in other cases or from statements made on the occasion of other proceedings do not amount to such facts. The Court also made it clear that the Court of First Instance was not obliged to order that the oral procedure be reopened on the ground of an alleged duty to raise of its own motion issues concerning the regularity of the procedure

by which the contested decision was adopted, since any such obligation could exist only on the basis of the factual evidence adduced before the Court of First Instance.

The polypropylene judgments also clarify certain matters relating to the conditions for applying Article 85 of the Treaty (now Article 81 EC). With regard to the concept of a concerted practice — which refers to a form of coordination between undertakings that, without having been taken to a stage where an agreement properly so-called has been concluded, knowingly substitutes for the risks of competition practical cooperation between the undertakings — the Court stated first that, like an agreement, a concerted practice falls under Article 85 where it has as its object the prevention, restriction or distortion of competition even in the absence of anti-competitive effects on the market. It also stated that while the concept of a concerted practice implies, besides undertakings' concerting with each other, subsequent conduct on the market, and a relationship of cause and effect between the two, the presumption must none the less be — subject to proof to the contrary, which the businesses concerned must adduce — that the undertakings taking part in the concerted action and remaining active on the market take account of the information exchanged with their competitors for the purposes of determining their conduct on that market. Second, the Court stated in relation to application of the rule of reason, which certain appellants relied on, that even if that rule does have a place in the context of Article 85(1) of the Treaty, in no event may it exclude application of that provision in the case of a restrictive arrangement involving producers accounting for almost all the Community market and concerning price targets, production limits and sharing out of the market. Third, certain appellants contended that the finding that the meetings in which they had taken part were unlawful amounted to a violation of the freedoms of expression, of peaceful assembly and of association. The Court, while acknowledging that those freedoms are protected in the Community legal order, rejected the plea since the meetings in question had not been held to be contrary to Article 85 *per se*, but only inasmuch as their purpose was anti-competitive. Fourth, the Court held that although a situation of necessity might allow conduct which would otherwise infringe Article 85 of the Treaty to be considered justified, such a situation can never result from the mere requirement to avoid financial loss. Fifth, the Court accepted that the presumption of innocence applies to the procedures relating to infringements of the competition rules applicable to undertakings that may result in the imposition of fines or periodic penalty payments. However, where it is established that an undertaking has taken part in meetings between undertakings of a manifestly anti-competitive nature, the view may be taken that it is for the undertaking to provide another explanation of the tenor of those meetings, without that

amounting to an undue reversal of the burden of proof or to the setting aside of the presumption of innocence.

Certain appellants also challenged the refusal to apply the limitation period in their favour because their conduct had allegedly been continuous over a number of years. The Court stated that, although the concept of a continuous infringement has different meanings in the legal orders of the Member States, it in any event comprises a pattern of unlawful conduct implementing a single infringement, united by a common subjective element. On that basis it held that the Court of First Instance had been right in holding that the activities which formed part of schemes and pursued a single purpose constituted a continuous infringement of the provisions of Article 85(1) of the Treaty, so that the five-year limitation period laid down by the legislation could not begin to run until the day on which the infringement ceased. Finally, with regard to the administrative proceedings, one appellant complained that the Court of First Instance had not drawn any consequences from the Commission's refusal to grant it access to the replies of the other producers to the statements of objections (*Hercules Chemicals* v *Commission*). The Court of Justice approved the approach followed by the Court of First Instance, which had not ruled on the lawfulness of such a refusal but had established that, even in the absence of the refusal, the proceedings would not have had a different outcome. According to the Court of Justice, such an approach is not tantamount to conferring rights of defence only on the innocent, because the undertaking concerned does not have to show that, if it had had access to the replies in question, the Commission decision would have been different in content, but only that it would have been able to use those documents for its defence.

Other important points may be found in the judgment in *Commission* v *Anic Partecipazioni*, cited above. First, the Court acknowledged that, given the nature of the infringements in question and the nature and degree of severity of the ensuing penalties, responsibility for committing the infringements of Article 85 of the Treaty was personal in nature. However, the mere fact that an undertaking takes part in such an infringement in ways particular to it does not suffice to exclude its responsibility for the entire infringement, including conduct put into effect by other participating undertakings but sharing the same anti-competitive object or effect. On the contrary, the undertaking may be regarded as responsible for the entire infringement, throughout the whole period of its participation in it, where it is established that it was aware of the offending conduct of the other participants or that it could reasonably have foreseen that conduct and that it was prepared to take the risk. Second, the Court held with regard to the burden of proving infringements that the Court of First Instance was entitled to find, without

unduly reversing the burden of proof, that since the Commission had been able to establish that an undertaking had participated in the meetings at which price initiatives had been decided on, planned and monitored, it was for the undertaking to adduce evidence that it had not subscribed to those initiatives. Third, the Court held that patterns of conduct by several undertakings may be a manifestation of a single infringement, corresponding partly to an agreement and partly to a concerted practice. Finally, the Court allowed the Commission's appeal in this case after observing that the Court of First Instance could not, without contradicting itself, on the one hand accept the view that there was a single infringement, responsibility for which could be attributed globally to every undertaking, and, on the other hand, partially annul the decision on the ground that it had not been proved that the undertaking had participated in some of the activities forming part of that single infringement.

15.2. In Case C-119/97 P *Ufex and Others* v *Commission* [1999] ECR I-1341, the Court was given the opportunity to clarify the extent to which the Commission may reject complaints relating to Article 86 of the Treaty (now Article 82 EC) for lack of a sufficient Community interest. The appellants challenged the statements of the Court of First Instance according to which the Commission was entitled, when assessing the Community interest, to take into account relevant factors other than those listed by the Court of First Instance in the case of *Automec II*. The Court rejected that plea, after stating that, in view of the fact that the assessment of the Community interest raised by a complaint depended on the circumstances of each case, the number of criteria of assessment the Commission could refer to should not be limited and, conversely, it should not be required to have recourse exclusively to certain criteria. On the other hand, the Court found fault with the statements of the Court of First Instance to the effect that establishing that infringements had taken place in the past was not covered by the functions conferred on the Commission by the Treaty and that the Commission might therefore lawfully decide that it was not appropriate to pursue a complaint regarding practices which had since ceased. The Court of Justice acknowledged that, in order to perform effectively its task of implementing competition policy, the Commission was entitled to give differing degrees of priority to the complaints brought before it, but the discretion which it had for that purpose was not unlimited. In particular, it could not regard as excluded in principle from its purview certain situations which came under the task entrusted to it by the Treaty, but had to assess in each case how serious the alleged interferences with competition were and how persistent their consequences were. According to the Court, the Commission remained competent if anti-competitive effects continued after the practices which caused them had ceased. In deciding to discontinue consideration of a complaint against such practices on the ground of lack of

Community interest, the Commission therefore could not rely solely on the fact that practices alleged to be contrary to the Treaty had ceased, without having ascertained that anti-competitive effects no longer continued and, if appropriate, that the seriousness of the alleged interferences with competition or the persistence of their consequences had not been such as to give the complaint a Community interest.

15.3. On 21 September 1999 the Court gave judgment in three cases concerning the application of the competition rules to conditions governing the affiliation of undertakings to sectoral pension funds (Case C-67/96 *Albany International* v *Stichting Bedrijfspensioenfonds Textielindustrie*, Joined Cases C-115/97, C-116/97 and C-117/97 *Brentjens' Handelsonderneming* v *Stichting Bedrijfspensioenfonds voor de Handel in Bouwmaterialen* and Case C-219/97 *Maatschappij Drijvende Bokken* v *Stichting Pensioenfonds voor de Vervoer- en Havenbedrijven*, all not yet reported in the ECR). The disputes before three Netherlands courts arose from the refusal of certain undertakings to pay their contributions to sectoral pensions funds to which they had been required to affiliate.

The Court ruled, first, that a decision taken by organisations representing employers and workers in a given sector, in the context of a collective agreement, to set up in that sector a single pension fund responsible for managing a supplementary pension scheme and to request the public authorities to make affiliation to that fund compulsory for all workers in that sector did not fall within the scope of Article 85 of the Treaty. In reaching that conclusion, the Court relied in particular on the social provisions of the EC Treaty and stated that while it was beyond question that certain restrictions of competition were inherent in collective agreements between organisations representing employers and workers, the social policy objectives pursued by such agreements would be seriously undermined if management and labour were subject to Article 85(1) of the Treaty when seeking jointly to adopt measures to improve conditions of work and employment. According to the Court, it therefore followed from an interpretation of the provisions of the Treaty as a whole which was both effective and consistent that agreements concluded in the context of collective negotiations between management and labour in pursuit of such objectives had to be regarded, because of their nature and purpose, as falling outside the scope of Article 85(1) of the Treaty. That was so in the case of agreements which were concluded in the form of collective agreements, following collective negotiations between organisations representing employers and workers, and sought generally to guarantee a certain level of pension for all workers in the sector, thus contributing directly to improving one of their working conditions, namely their remuneration. It also

followed from that conclusion that a decision by the public authorities to make affiliation to such sectoral pension funds compulsory at the request of organisations representing employers and workers in a given sector likewise could not be regarded as requiring or favouring the adoption of agreements, decisions or concerted practices contrary to Article 85 or reinforcing their effects.

On the other hand, the Court held that such pension funds were undertakings within the meaning of Article 85 et seq. of the Treaty inasmuch as they engaged in an economic activity in competition with insurance companies. The funds themselves determined the amount of the contributions and benefits and operated in accordance with the principle of capitalisation, the amount of the benefits provided depended on the financial results of the investments made by them, and in certain circumstances they could or had to grant exemption from affiliation to undertakings insured by other means.

Finally, the Court ruled that such a fund could be regarded as occupying a dominant position within the meaning of Article 86 of the Treaty (now Article 82 EC), but that its exclusive right to manage supplementary pensions in a given sector and the resultant restriction of competition could be justified under Article 90(2) of the Treaty (now Article 86(2) EC) as necessary for the performance of the particular social task of general interest with which it had been charged. The Member States could not be precluded, when determining what services of general economic interest to entrust to certain undertakings, from taking account of objectives pertaining to their national policy, and the Netherlands supplementary pension scheme fulfilled an essential social function in the pensions system of that State. The Court also established that the removal of the exclusive right conferred on such funds might make it impossible for them to perform the tasks of general economic interest entrusted to them under economically acceptable conditions and threaten their financial equilibrium.

15.4. In Joined Cases C-215/96 and C-216/96 *Bagnasco and Others* v *BPN and Carige* [1999] ECR I-135, the Court was asked to consider the compatibility with Article 85(1) of the EC Treaty of standard bank conditions which the Associazione Bancaria Italiana (Italian Banking Association) imposed on its members with regard to the conclusion of contracts for current-account credit facilities and for the provision of general guarantees. A particular feature of this case is that the Commission had already examined those standard bank conditions in the light of Article 85 and had found that they were not capable of appreciably affecting trade between Member States.

The conditions, first, allowed banks, in contracts for current-account credit facilities, to change the interest rate at any time by reason of changes on the money market, and to do so by means of a notice displayed on their premises or in such manner as they considered most appropriate. The Court found that, since any variation of the interest rate depended on objective factors, such a concerted practice was not covered by the prohibition under Article 85 inasmuch as it could not have an appreciable restrictive effect on competition. As regards the conditions which imposed certain clauses relating to the provision of general guarantees the Court, relying in particular on the findings made previously by the Commission, held that they were not, taken as a whole, liable to affect trade between Member States. Nor did the application of those two sets of conditions constitute abuse of a dominant position within the meaning of Article 86 of the Treaty.

16. In the field of *supervision of State aid*, the Court dismissed an action for annulment brought by the French Republic against a decision by the Commission (judgment of 5 October 1999 in Case C-251/97 *France* v *Commission*, not yet reported in the ECR). France argued that the contested national measures, namely graduated reductions of employers' social security contributions for undertakings in certain manufacturing sectors, were not caught by Article 92(1) of the Treaty (now Article 87(1) EC), since the advantage conferred was only the quid pro quo of exceptional additional costs which the undertakings had agreed to assume as a result of the negotiation of collective agreements and that, in any event, taking account of those additional costs, the contested measures were revealed to be financially neutral. The Court did not accept that line of argument. It pointed out first of all that the costs arose from collective agreements concluded between employers and trade unions which undertakings were bound to observe, and were included, by their nature, in the budgets of undertakings. It also found that those agreements were liable to generate gains in competitiveness for undertakings, so that it was impossible to evaluate with the required accuracy their final cost for undertakings.

17. While the Court's judgments in the field of *indirect taxation* are generally technical in nature and relatively limited in their scope, two cases concluded in 1999 are worth noting.

17.1. First, in the field of value added tax (VAT), the judgment of 7 September 1999 in Case C-216/97 *Gregg* v *Commissioners of Customs & Excise*, not yet reported in the ECR, expressly departs from the Court's earlier

ruling in Case C-453/93 *Bulthuis-Griffioen* v *Inspecteur der Omzetbelasting* [1995] ECR I-2341. *Gregg* concerned the scope of the exemptions for certain activities in the public interest, provided for by Article 13A(1) of Directive 77/388/EEC. [11] The national court essentially asked whether the use of the words "establishments" and "organisations" in that provision meant that only legal persons could be covered by those exemptions, to the exclusion of natural persons running a business. The Court replied in the negative, stating that its interpretation was consistent with the principle of fiscal neutrality which was inherent in the common system of VAT and in compliance with which the exemptions provided for in Article 13 of the Directive 77/338 had to be applied.

17.2. The second case related to the interpretation of Directive 69/335/EEC concerning indirect taxes on the raising of capital, [12] as amended by Directive 85/303/EEC. [13] In a dispute before the Supremo Tribunal Administrativo (Supreme Administrative Court) of Portugal, the issue was raised as to whether Portuguese legislation relating to a charge for the notarial certification of deeds recording an increase in a company's share capital and a change in its name and registered office was compatible with the directive. The Court found, first, that charges constituted taxes for the purposes of the directive where they were collected for drawing up notarially attested acts recording a transaction covered by the directive under a system where notaries were employed by the State and the charges in question were paid in part to that State for the financing of its official business. It then stated that a tax in the form of a charge collected for drawing up a notarially attested act recording a change in a company's name and registered office should be regarded as having the same characteristics as capital duty in so far as it was calculated by reference to the company's share capital. Otherwise it would be possible for Member States, while refraining from imposing taxes on the raising of capital as such, to tax that capital whenever the company amended its articles of association, thereby enabling the objective pursued by the directive to be circumvented. Thus, where such a charge amounted to a tax for the purposes of the directive, it was in principle prohibited under the directive and that prohibition could be relied on by individuals in

11 Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

12 Council Directive of 17 July 1969 (OJ, English Special Edition 1969 (II), p. 412).

13 Council Directive of 10 June 1985 amending Directive 69/335 (OJ 1985 L 156, p. 23).

proceedings before their national courts. Finally, the charge at issue could not fall within the derogation for duties paid by way of fees or dues since its amount increased in direct proportion to the capital raised and without any upper limit (judgment of 29 September 1999 in Case C-56/98 *Modelo* v *Director-Geral dos Registos e Notariado*, not yet reported in the ECR).

18. The Court delivered 10 judgments in 1999 in the field of *public procurement*, most in response to questions posed by national courts concerning the interpretation of Community directives.

18.1. In the case of *Alcatel Austria*, the national court was uncertain whether Austrian legislation was compatible with Directive 89/665/EEC, which regulates procedures for reviewing the award of public supply and public works contracts [14] and, if it was not, whether that directive could directly overcome the inadequacies of national law (judgment of 28 October 1999 in Case C-81/98 *Alcatel Austria and Others* v *Bundesministerium für Wissenschaft und Verkehr*, not yet reported in the ECR). In accordance with Austrian law as it applied at the time of this case, the contracting authority's decision as to whom to award the contract was one taken internally; there was no public notification of the decision and it was not open to challenge. It followed that a bidder who had participated in a tender procedure could not have that decision annulled, and was entitled only to claim damages once the contract consequent upon the award decision had been concluded.

In its judgment, the Court found first of all that a system of that kind was not compatible with the Community directive since it might lead to the systematic removal of the most important decision of the contracting authority, that is to say the award of the contract, from the purview of the measures envisaged in Article 2(1)(a) and (b) of Directive 89/665, namely the adoption of interim measures by way of interlocutory procedures and the setting aside of decisions. The Member States were required to ensure that the contracting authority's decision prior to the conclusion of the contract was in all cases open to review in a procedure whereby an applicant could have that decision set aside if the relevant conditions were met. Secondly, faced with that Austrian system in which there was no administrative law measure that the persons concerned might acquire

14 Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33).

knowledge of and that might, following an application, be set aside, the Court held that Community law could not be interpreted as meaning that the review body set up by the Austrian legislature could hear the applications covered by Article 2(1)(a) and (b) of the directive. It pointed out, however, that in such circumstances, those concerned could seek compensation, under the appropriate procedures in national law, for the damage suffered by reason of the failure to transpose a directive within the prescribed period.

18.2. In *Teckal*, the national court was uncertain whether a local authority had to follow the tendering procedures for public contracts provided for by Directive 93/36/EEC [15] where it entrusted the supply of products to a consortium of which it was a member. In its judgment, the Court of Justice noted first of all that, under the legislation governing public contracts in respect of products, whether the supplier is or is not itself a contracting authority is not conclusive. It then stated that a public contract exists where the contract is for valuable consideration and concluded in writing, and that it is therefore necessary to determine whether there has been an agreement between two separate persons. In that regard, in accordance with Article 1(a) of Directive 93/36, it is, in principle, sufficient if the contract was concluded between, on the one hand, a local authority and, on the other, a person legally distinct from that local authority. The directive can be inapplicable only in the case where the local authority exercises over the person concerned a control which is similar to that which it exercises over its own departments and, at the same time, that person carries out the essential part of its activities with the controlling local authority or authorities (judgment of 18 November 1999 in Case C-107/98 *Teckal* v *Comune di Viano and Another*, not yet reported in the ECR).

19. The increasing importance of *intellectual property* in the functioning of the economy is reflected in the development of the litigation to which it gives rise. As in previous years, the Court considered time and again the First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, [16] in particular Article 3 (grounds for refusal of registration or invalidity), Article 5 (rights conferred by a trade mark),

15 Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts (OJ 1993 L 199, p. 1).

16 First Council Directive of 21 December 1988 (OJ 1989 L 40, p. 1).

Article 6 (limitation of the effects of a trade mark) and Article 7 (exhaustion of the rights conferred by a trade mark).

19.1. In Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee* v *Boots- und Segelzubehör Walter Huber and Another* [1999] ECR I-2779, the Court provided substantial clarification as to the circumstances in which Article 3(1)(c) of the directive precludes registration of a trade mark consisting exclusively of a geographical name. In particular, it follows from the judgment that the registration of geographical names as trade marks is not prohibited solely where the names designate places which are, in the mind of the relevant class of persons, currently associated with the category of goods in question, but also in the case of geographical names which are liable to be used in future by the undertakings concerned as an indication of the geographical origin of that category of goods. The Court also defined the scope of the derogation, laid down in the first sentence of Article 3(3) of the directive, for trademarks which have acquired a distinctive character. It stated that a trade mark acquires distinctive character following the use which has been made of it where the mark has come to identify the product in respect of which registration is applied for as originating from a particular undertaking and thus to distinguish that product from goods of other undertakings.

19.2. Article 5(1) of the directive defines the extent of the rights conferred by a trade mark while, under Article 5(2), a trade mark having a reputation may enjoy protection extending to products or services which are not similar to those for which the trade mark is registered.

Article 5(1) provides in particular that the proprietor is to be entitled to prevent all third parties not having his consent from using in the course of trade any sign where, because of its identity with, or similarity to, the trade mark and the identity or similarity of the goods or services covered by the trade mark and the sign, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association between the sign and the trade mark. The Court stated in its judgment of 22 June 1999 in Case C-342/97 *Lloyd Schuhfabrik Meyer* v *Klijsen Handel*, not yet reported in the ECR, that it was possible that mere aural similarity between trade marks could create a likelihood of confusion of that kind. The more similar the goods or services covered and the more distinctive the earlier mark, the greater would be the likelihood of confusion. In this connection, the Court provided certain indications — additional to those contained in the judgment in *Windsurfing Chiemsee*, cited above — to assist national courts in determining the distinctive character of a trade mark.

As regards protection extending to non-similar products or services, provided for in Article 5(2), the Court stated in *General Motors* that, in order for a registered trade mark to enjoy such protection as a mark having a reputation, it had to be known by a significant part of the public concerned by the products or services which it covered. In examining whether that condition was fulfilled, the national court had to take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it. Territorially, it was sufficient for the reputation to exist in a substantial part of the Member State or, in the case of trade marks registered at the Benelux Trade Mark Office, in a substantial part of the Benelux territory, which part could consist of a part of one of the Benelux countries (judgment of 14 September 1999 in Case C-375/97 *General Motors* v *Yplon*, not yet reported in the ECR).

19.3. Rights conferred by a trade mark in accordance with Article 5 are subject to the limitations in Articles 6 and 7. These provisions, which are respectively concerned with the limitation of the effects of a trade mark and exhaustion of the rights conferred by a trade mark, were dealt with in the cases of *BMW*, *Sebago* and *Pharmacia & Upjohn*.

The questions submitted in *BMW* concerned a situation in which the BMW mark had been used to inform the public that the advertiser carried out the repair and maintenance of BMW cars or that he had specialised, or was a specialist, in the sale or repair and maintenance of such cars.

As regards sales activities, the Court stated that it was contrary to Article 7 of the directive for the proprietor of the BMW mark to prohibit the use of its mark by another person for the purpose of informing the public that he had specialised or was a specialist in the sale of second-hand BMW cars, provided that the advertising concerned cars which had been put on the Community market under that mark by the proprietor or with its consent and that the way in which the mark was used in that advertising did not constitute a legitimate reason, within the meaning of Article 7(2), for the proprietor's opposition. The Court made it clear that, if there was no risk that the public would be led to believe that there was a commercial connection between the reseller and the trade mark proprietor, the mere fact that the reseller derived an advantage from using the trade mark in that advertisements for the sale of goods covered by the mark, which were in other respects honest and fair, lent an aura of quality to his own business did not constitute a legitimate reason within the meaning of Article 7(2). The same limits applied *mutatis mutandis* — this time by virtue of Article 6 of the directive — if

the trade mark proprietor intended to prohibit a third party from using the mark for the purpose of informing the public of the repair and maintenance of goods covered by it (Case C-63/97 *BMW* v *Deenik* [1999] ECR I-905).

In *Sebago*, a further case on Article 7(1) of the directive and the exhaustion of rights conferred by a trade mark, the Court stated that, for there to be consent within the meaning of that provision, such consent had to relate to each individual item of the product in respect of which exhaustion was pleaded. The proprietor could therefore continue to prohibit the use of the mark in pursuance of the right conferred on him by the directive as regards individual items of the product which had been put on the market in the Community (or in the EEA following the entry into force of the EEA Agreement) without his consent (judgment of 1 July 1999 in Case C-173/98 *Sebago and Another* v *GB-Unic*, not yet reported in the ECR).

While technically relating to the interpretation of Article 36 of the Treaty (now Article 30 EC), the judgment in *Pharmacia & Upjohn* was also concerned with the concept of exhaustion of the rights conferred by a trade mark, referred to in Article 7 of the directive. This case involved defining the conditions in which a parallel importer was entitled to replace the original trade mark used by the proprietor in the Member State of export by the trade mark which the proprietor used in the Member State of import. The Court held that the parallel importer was not required to prove an intention on the part of the proprietor of the trade marks to partition the markets, but the replacement of the trade mark had to be objectively necessary if the proprietor were to be precluded from opposing it. This condition of necessity was satisfied if, in a specific case, the prohibition imposed on the importer against replacing the trade mark hindered effective access to the markets of the importing Member State, for example if a rule for the protection of consumers prohibited the use in that State of the trade mark used in the exporting Member State on the ground that it was liable to mislead consumers. In contrast, the condition of necessity would not be satisfied if replacement of the trade mark were explicable solely by the parallel importer's attempt to secure a commercial advantage (judgment of 12 October 1999 in Case C-379/97 *Pharmacia & Upjohn* v *Paranova*, not yet reported in the ECR).

20. The Court also annulled the measure by which the Commission had registered the name "Feta" as a protected designation of origin pursuant to Regulation (EEC) No 2081/92 on the protection of geographical indications and

designations of origin for agricultural products and foodstuffs [17] (Joined Cases C-289/96, C-293/96 and C-299/96 *Denmark and Others* v *Commission* [1999] ECR I-1541). The Court found that, in deciding that the name "Feta" did not constitute a generic name within the meaning of Article 3 of Regulation No 2081/92 and could therefore be registered, the Commission had wrongly minimised the importance to be attached to the situation existing in the Member States other than the State of origin and considered their national legislation to be entirely irrelevant.

21. The principle of *equality between men and women*, which is laid down in numerous provisions of Community law, prohibits discrimination on grounds of sex. However, there are often difficulties in proving such discrimination, as the Court's recent case-law shows.

21.1. Where a measure adopted by a Member State is not based directly on sex, it is necessary to establish that it has disparate effect as between men and women to such a degree as to amount to discrimination. The national court must verify whether the statistics available indicate that a considerably smaller percentage of women than men is able to fulfil the requirement imposed by the measure. If that is the case, there is in principle indirect sex discrimination (Case C-167/97 *Regina* v *Secretary of State for Employment ex parte Seymour-Smith and Perez* [1999] ECR I-623).

It may be that a difference in treatment, whether direct or indirect, is justified by objective factors unrelated to any discrimination on grounds of sex. In that case, it is for the Member State, as the author of the allegedly discriminatory rule, to show that the rule reflects a legitimate aim of its social policy, that that aim is unrelated to any discrimination based on sex, and that it could reasonably consider that the means chosen were suitable for attaining that aim (*Seymour-Smith and Perez*, cited above).

It may also be that male and female workers are in different situations, so that the difference in treatment does not constitute discrimination.

The Court thus held that the principle of equal pay does not preclude the making of a lump-sum payment exclusively to female workers who take maternity leave where that payment is designed to offset the occupational disadvantages which

17 Council Regulation of 14 July 1992 (OJ 1992 L 208, p. 1).

arise for those workers as a result of their being away from work (judgment of 16 September 1999 in Case C-218/98 *Abdoulaye and Others* v *Régie Nationale des Usines Renault*, not yet reported in the ECR).

Similarly, where national legislation grants a termination payment to workers who end their employment relationship prematurely in order to take care of their children owing to a lack of child-care facilities for them, Community law does not preclude that payment being lower than that received, for the same actual period of employment, by workers who give notice of resignation for an important reason related to working conditions in the undertaking or to the employer's conduct. Those payments cannot be compared with one another since the situations covered are different in substance and origin (judgment of 14 September 1999 in Case C-249/97 *Gruber* v *Silhouette International Schmied*, not yet reported in the ECR).

Following similar lines, even if there is a difference in pay between male and female workers, there is no discrimination on grounds of sex if those two categories of workers do not carry out the same work. In this connection, the Court held that work is not the same where the same activities are performed over a considerable length of time by persons the basis of whose qualification to exercise their profession is different (Case C-309/97 *Angestelltenbetriebsrat der Wiener Gebietskrankenkasse* v *Wiener Gebietskrankenkasse* [1999] ECR I-2865).

21.2. Remaining in the field of equal treatment for men and women, Article 2(2) of Directive 76/207/EEC [18] provides that the directive is to be without prejudice to the right of Member States to exclude from its field of application those occupational activities and, where appropriate, the training leading to such activities, for which, by reason of their nature or the context in which they are carried out, the sex of the worker constitutes a determining factor. In its judgment of 26 October 1999 in Case C-273/97 *Sirdar* v *The Army Board*, not yet reported in the ECR, the Court held that the exclusion of women from service in special combat units such as the British Royal Marines may be justified under that provision by reason of the nature of the activities in question and the context in which they are carried out. The competent authorities were entitled, in the exercise of their discretion as to whether to maintain the exclusion in question in the light of social developments, and subject to their not abusing the

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

principle of proportionality, to come to the view that the specific conditions for deployment of those assault units and in particular the rule of interoperability — that is to say the need for every Marine, irrespective of his specialisation, to be capable of fighting in a commando unit — justified their composition remaining exclusively male.

22. With regard to *environmental protection*, the conservation of wild birds within the framework of Directive 79/409/EEC, [19] relating to special protection areas, was again the subject of judgments in Treaty infringement proceedings. Those judgments confirmed the most important elements of the relevant case-law, in particular so far as concerns the obligation on the Member States to identify special protection areas and to provide for a legal status for their protection which is binding (judgments in Case C-166/97 *Commission* v *France* [1999] ECR I-1719 and of 25 November 1999 in Case C-96/98 *Commission* v *France*, not yet reported in the ECR). The Court noted that the Poitevin Marsh is of a very high ornithological value for numerous species, including species in danger of extinction or vulnerable to changes in their habitat, and that the Seine estuary is a particularly important ecosystem as a migration staging post, wintering area and breeding ground for a large number of species. In each case, the Court found that the legal status conferred on those areas for their protection was insufficient having regard to the requirements laid down by Article 4(1) and (2) of the directive.

23. Numerous cases relating to the interpretation of the *Brussels Convention* (Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters) were completed in 1999. Most of them concerned issues of jurisdiction, which is dealt with in Title II of the Convention.

23.1. Jurisdiction in contractual matters is governed by Article 5(1) of the Convention. That provision lays down, by way of exception to the general rule that the courts of the Contracting State in which the defendant is domiciled have jurisdiction, that in matters relating to a contract a defendant domiciled in a Contracting State may be sued in another Contracting State, in the courts for the "place of performance of the obligation in question". In accordance with settled

19 Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1).

case-law, that expression must not be given an independent interpretation but is to be interpreted by reference to the law which governs the obligation in question according to the conflict rules of the court seised. The Court confirmed that solution when the French Cour de Cassation (Court of Cassation) raised the issue again (judgment of 28 September 1999 in Case C-440/97 *GIE Groupe Concorde and Others* v *The Master of the vessel Suhadiwarno Panjan and Others*, not yet reported in the ECR). The Cour de Cassation had suggested in its order for reference that it would be preferable for national courts to determine the place of performance of the obligation by seeking to establish, having regard to the nature of the relationship creating the obligation and the circumstances of the case, the place where performance actually took place or should have taken place, without having to refer to the law which, under the rules on conflict of laws, governs the obligation at issue. The Court rejected that approach, after stating in particular that some of the questions which might arise in the context of the alternative approach suggested, such as identification of the contractual obligation forming the basis of proceedings, as well as of the principal obligation where there were several obligations, could hardly be resolved without reference to the applicable law.

In a further case concerning Article 5(1) of the Convention, the Court ruled that a court did not have jurisdiction to hear the whole of an action founded on two obligations of equal rank arising from the same contract when, according to the conflict rules of the State where that court was situated, one of those obligations was to be performed in that State and the other in another Contracting State (judgment of 5 October 1990 in Case C-420/97 *Leathertex Divisione Sintetici* v *Bodetex*, not yet reported in the ECR). In order to reach that conclusion the Court first ruled out all the grounds which could have justified centralising jurisdiction: (i) the contract at issue in the main proceedings was not a contract of employment, a circumstance which would have justified centralising jurisdiction at the place of performance of the obligation which characterised the contract; (ii) since Article 22 of the Convention, relating to the handling of related actions, is not a provision which confers jurisdiction, it does not enable a court before which a case is pending to be accorded jurisdiction to try a related case; and (iii) in the case of obligations of equal rank, the principle that jurisdiction is determined by the main obligation cannot be applied.

23.2 In Case C-99/96 *Mietz* v *Intership Yachting Sneek* [1999] ECR I-2227, the Court provided some clarification of the words "contract for the sale of goods on instalment credit terms" in Article 13, first paragraph, point 1, of the Convention. According to the judgment, this provision is intended to protect the purchaser only where the vendor has granted him credit, that is to say, where the

vendor has transferred to the purchaser possession of the goods in question before the purchaser has paid the full price. In such a case, first, the purchaser may, when the contract is concluded, be misled as to the real amount which he owes, and second, he will bear the risk of loss of those goods while remaining obliged to pay any outstanding instalments.

In the same judgment, the Court confirmed the interpretation of Article 24 of the Convention (provisional, including protective, measures) which it had adopted in Case C-391/95 *Van Uden* v *Deco-Line* [1998] ECR I-7091. According to the judgment, where the court hearing an application for provisional or protective measures has jurisdiction as to the substance of a case in accordance with Articles 2 and 5 to 18 of the Convention it may order such measures without that jurisdiction being subject to certain conditions and without any need to have recourse to Article 24 of the Convention. By contrast, a judgment delivered solely by virtue of the jurisdiction provided for under Article 24 and ordering interim payment of a contractual consideration does not constitute a provisional measure within the meaning of Article 24 unless, first, repayment to the defendant of the sum awarded is guaranteed if the plaintiff is unsuccessful as regards the substance of his claim and, second, the measure ordered relates only to specific assets of the defendant located or to be located within the confines of the territorial jurisdiction of the court to which application is made. A provisional decision which appears not to satisfy those two conditions cannot be the subject of an enforcement order under Title III of the Convention.

The Court also clarified the form in which parties could, in international trade or commerce, indicate their consent to a jurisdiction clause for the purposes of the third case mentioned in the second sentence of the first paragraph of Article 17 of the Convention (Case C-159/97 *Castelletti* v *Hugo Trumpy* [1999] ECR I-1597).

24. With regard to the *EEC-Turkey Association Agreement*, in Case C-262/96 *Sürül* v *Bundesanstalt für Arbeit* [1999] ECR I-2685 the Court, after re-opening the oral procedure in order to examine the effect of Article 9 of that agreement, delivered a judgment of great importance, by according for the first time direct effect to the principle of non-discrimination on grounds of nationality laid down in Article 3(1) of Decision No 3/80 on the application of the social security schemes of the Member States of the European Communities to Turkish

workers and members of their families. [20] The Court found first of all that no problems of a technical nature were liable to arise on application of that provision and that it was unnecessary to have recourse to additional coordinating measures for its application in practice. Therefore, the reasoning which had led the Court, in Case C-277/94 *Taflan-Met and Others* v *Bestuur van de Sociale Verzekeringsbank* [1996] ECR I-4085, to hold that Articles 12 and 13 of Decision No 3/80 did not have direct effect did not apply to Article 3(1). The Court then stated that Article 3(1) laid down in clear, precise and unconditional terms a prohibition of discrimination, based on nationality, against persons residing in the territory of any Member State to whom the provisions of Decision No 3/80 were applicable. Consideration of the purpose and the nature of the agreement of which Article 3(1) formed part did not contradict the finding that that principle of non-discrimination was capable of directly governing the situation of individuals. However, having regard to the fact that this was the first time that the Court had been called on to interpret Article 3(1) and that the judgment in *Taflan-Met and Others*, cited above, may well have created a situation of uncertainty, the Court limited the temporal effect of its judgment.

25. A number of cases concluded in 1999 concerned the *overseas countries and territories* ("the OCTs") associated with the Community under Part Four of the EC Treaty and Decision 91/482/EEC. [21] While acknowledging the special regime applicable to that association, the Court made it clear that trade between the OCTs and the Community does not necessarily benefit from a regime identical to that governing trade between Member States. Trade between Member States is transacted within the framework of the internal market, as distinct from trade between OCTs and the Community, which is governed by the imports regime. The Council may accordingly provide, for example, that provisions laying down health rules for imports of certain products from third countries apply to the placing on the Community market of such products from OCTs (judgment of 21 September 1999 in Case C-106/97 *Dutch Antillian Dairy Industry and Another* v *Rijksdienst voor de keuring van Vee en Vlees*, not yet reported in the ECR). The Council is also entitled, with a view to reconciling the principles of the association of the OCTs with the Community and those of the common agricultural policy, to adopt protective measures restricting exceptionally, partially

20 Decision of the Association Council of 19 September 1980 (OJ 1983 C 110, p. 60).

21 Council Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community (OJ 1991 L 263, p. 1).

and temporarily the freedom to import agricultural products from the OCTs (Case C-390/95 P *Antillean Rice Mills and Others* v *Commission* [1999] ECR I-769). Similarly, the entry into a Member State of goods coming from the OCTs must in principle be categorised as entry into the Community and not as an intra-Community transaction for the purposes of the Sixth Directive on VAT (Case C-181/97 *van der Kooy* v *Staatssecretaris van Financiën* [1999] ECR I-483).

26. With regard to the *status of officials and other members of staff of the European Communities*, the Court held that the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 does not preclude Belgian tax legislation under which Community officials whose income is exempt from tax in Belgium are excluded from entitlement to marital allowance. The allowance, a tax relief allowed only to households with a single income and to those with two incomes the second of which is below a given amount, can thus be refused to households in which one spouse is an official or other member of staff of the European Communities where his salary exceeds that amount (judgment of 14 October 1999 in Case C-229/98 *Vander Zwalmen and Massart* v *Belgian State*, not yet reported in the ECR).

B — Composition of the Court of Justice

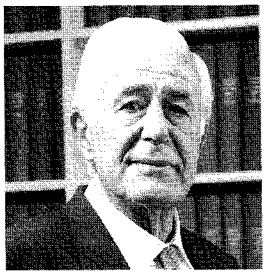
(Order of precedence as at 15 December 1999)

First row, from left to right:
Judge R. Schintgen; Judge L. Sevón; Judge J.C. Moithino de Almeida; President G.C. Rodríguez Iglesias; Judge D.A.O. Edward; First Advocate General N. Fennelly; Advocate General F.G. Jacobs.

Second row, from left to right:
Judge P. Jann; Advocate General P. Léger; Advocate General G. Cosmas; Judge C. Gulmann; Judge P.J.G. Kapteyn; Judge A.M. La Pergola; Judge J.-P. Puissochet; Judge G. Hirsch.

Third row, from left to right:
Judge F. Macken; Advocate General A. Saggio; Advocate General S. Alber; Advocate General D. Ruiz-Jarabo Colomer; Judge H. Ragnemalm; Judge M. Wathelet; Advocate General J. Mischo; Judge V. Skouris; R. Grass, Registrar.

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



Giuseppe Federico Mancini

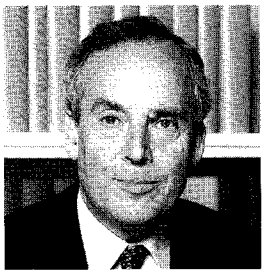
Born 1927; Titular Professor of Labour Law (Urbino, Bologna, Rome) and Comparative Private Law (Bologna); Member of the High Council of the Judiciary (1976-1981); Advocate General at the Court of Justice from 7 October 1982 to 6 October 1988; Judge at the Court of Justice from 7 October 1988 to 21 July 1999.

José Carlos de Carvalho Moitinho de Almeida

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

Gil Carlos Rodríguez Iglesias

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



Francis G. 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.

Paul Joan George Kapteyn

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

Claus Christian Gulmann

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

John Loyola Murray

Born 1943; Barrister (1967) and Senior Counsel (1981); Private practice at the Bar of Ireland; Attorney General (1987); former Member of the Council of State; former Member of the Bar Council of Ireland; Bencher of the Honourable Society of King's Inns; Judge at the Court of Justice from 7 October 1991 to 5 October 1999.

David Alexander Ogilvy Edward

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

Antonio Mario La Pergola

Born 1931; Professor of Constitutional Law and General and Comparative Public Law at the Universities of Padua, Bologna and Rome; Member of the High Council of the Judiciary (1976-1978); Member of the Constitutional Court and President of the Constitutional Court (1986-1987); Minister for Community Policy (1987-1989); elected to the European Parliament (1989-1994); Judge at the Court of Justice from 7 October 1994 to 31 December 1994; Advocate General at the Court of Justice from 1 January 1995 to 14 December 1999; Judge at the Court of Justice since 15 December 1999.

Georges Cosmas

Born 1932; called 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 Superior Special Court which, in accordance with the Greek Constitution, has competence 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 at 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 for 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

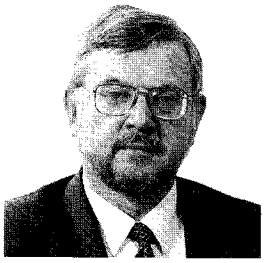
Born 1943; Director at the Ministry of Justice of Bavaria; President of the Constitutional Court of Saxony and the Court of Appeal of Dresden (1992-1994); Honorary Professor of European Law and Medical Law at the University of Saarbrücken; Judge at the Court of Justice since 7 October 1994.

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 Law Faculty of the University of Stockholm; Parliamentary Ombudsman; Regeringsråd (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 in 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; Judge at the Tribunal Supremo (Supreme Court) since 1996; Advocate General at the Court of Justice since 19 January 1995.

Melchior Wathelet

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

Romain Schintgen

Born 1939; General Administrator at the Ministry of Labour; President of the Economic and Social Council; Director of the Société Nationale de Crédit et d'Investissement and of the Société Européenne des Satellites; Government Representative on the European Social Fund Committee, the Advisory Committee on Freedom of Movement for Workers and the Administrative Board of the European Foundation for the Improvement of Living and Working Conditions; Judge at the Court of First Instance from 25 September 1989 to 11 July 1996; Judge at the Court of Justice since 12 July 1996.

Krateros M. Ioannou

Born 1935; called to the Thessaloniki Bar in 1963; received Doctorate in International Law from the University of Thessaloniki in 1971; Professor of Public International Law and Community Law in the Law Faculty of the University of Thrace; Honorary Legal Adviser to the Ministry of Foreign Affairs; Member of the Hellenic Delegation to the General Assembly of the UN since 1983; Chairman of the Committee of Experts on the Improvement of the Procedure under the Convention on Human Rights of the Council of Europe from 1989 to 1992; Judge at the Court of Justice from 7 October 1997 to 10 March 1999.

Siegbert Alber

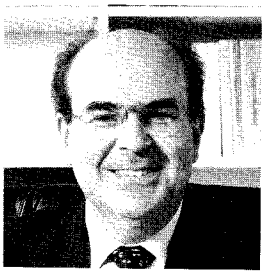
Born 1936; studied law at the Universities of Tübingen, Berlin, Paris, Hamburg and Vienna; further studies at Turin and Cambridge; Member of the Bundestag from 1969 to 1980; Member of the European Parliament in 1977; Member, then Chairman (1993-1994), of the Committee on Legal Affairs and Citizens' Rights;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

Jean Mischo

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

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 from 25 September 1989 to 17 September 1995; President of the Court of First Instance from 18 September 1995 to 4 March 1998; Advocate General at the Court of Justice since 5 March 1998.



Vassilios Skouris

Born 1948; graduated in law from the Free University, Berlin (1970); awarded doctorate in constitutional and administrative law at Hamburg University (1973); Assistant Professor at Hamburg University (1972-1977); Professor of Public Law at Bielefeld University (1978); Professor of Public Law at the University of Thessaloniki (1982); Minister of Internal Affairs (1989 and 1996); Member of the Administrative Board of the University of Crete (1983-1987); Director of the Centre for International and European Economic Law, Thessaloniki (from 1997); President of the Greek Association for European Law (1992-1994); Member of the Greek National Research Committee (1993-1995); Member of the Higher Selection Board for Greek Civil Servants (1994-1996); Member of the Academic Council of the Academy of European Law, Trier (from 1995); Member of the Administrative Board of the Greek National Judges' College (1995-1996); Member of the Scientific Committee of the Ministry of Foreign Affairs (1997-1999); President of the Greek Economic and Social Council in 1998; Judge at the Court of Justice since 8 June 1999.

Fidelma O'Kelly Macken

Born 1945; Called to the Bar of Ireland (1972); Legal Advisor, Patent and Trade Mark Agents (1973-1979); Barrister (1979-1995) and Senior Counsel (1995-1998) of the Bar of Ireland; member of the Bar of England and Wales; Judge of the High Court in Ireland (1998); Lecturer in Legal Systems and Methods and "Averil Deverell" Lecturer in Commercial Law, Trinity College, Dublin; Bencher of the Honourable Society of King's Inns; Judge at the Court of Justice since 6 October 1999.

Roger Grass

Born 1948; Graduate of the Institut d'Études Politiques, Paris, and awarded higher degree in public law; 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.

2. Changes in the composition of the Court of Justice in 1999

In 1999 the composition of the Court of Justice changed as follows:

On 8 June 1999 Vassilios Skouris took office as Judge, following the death of Judge Krateros M. Ioannou on 10 March 1999.

Following the death of Judge G. Federico Mancini on 21 July 1999, Mr Antonio Mario La Pergola, Advocate General at the Court of Justice, took office as Judge on 15 December 1999.

On 5 October 1999 Judge John Loyola Murray left the Court. He was replaced by Mrs Fidelma O'Kelly Macken as Judge.

3. Order of precedence

from 1 January to 7 June 1999

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

R. GRASS, Registrar

from 8 June to 6 October 1999

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

R. GRASS, Registrar

from 7 October to 15 December 1999

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

R. GRASS, Registrar

from 15 December to 31 December 1999

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

R. GRASS, Registrar

4. Former Members of the Court of Justice

PILOTTI Massimo, Judge (1952-1958), President from 1952 to 1958
SERRARENS Petrus Josephus Servatius, Judge (1952-1958)
RIESE Otto, Judge (1952-1963)
DELVAUX Louis, Judge (1952-1967)
RUEFF Jacques, Judge (1952-1959 and 1960-1962)
HAMMES Charles Léon, Judge (1952-1967), President from 1964 to 1967
VAN KLEFFENS Adrianus, Judge (1952-1958)
LAGRANGE Maurice, Advocate General (1952-1964)
ROEMER Karl, Advocate General (1953-1973)
ROSSI Rino, Judge (1958-1964)
DONNER Andreas Matthias, Judge (1958-1979), President from 1958 to 1964
CATALANO Nicola, Judge (1958-1962)
TRABUCCHI Alberto, Judge (1962-1972), then Advocate General (1973-1976)
LECOURT Robert, Judge (1962-1976), President from 1967 to 1976
STRAUSS Walter, Judge (1963-1970)
MONACO Riccardo, Judge (1964-1976)
GAND Joseph, Advocate General (1964-1970)
MERTENS DE WILMARS Josse J., Judge (1967-1984), President from 1980 to 1984
PESCATORE Pierre, Judge (1967-1985)
KUTSCHER Hans, Judge (1970-1980), President from 1976 to 1980
DUTHEILLET DE LAMOTHE Alain Louis, Advocate General (1970-1972)
MAYRAS Henri, Advocate General (1972-1981)
O'DALAIGH Cearbhall, Judge (1973-1974)
SØRENSEN Max, Judge (1973-1979)
MACKENZIE STUART Alexander J., Judge (1973-1988), President from 1984 to 1988
WARNER Jean-Pierre, Advocate General (1973-1981)
REISCHL Gerhard, Advocate General (1973-1981)
O'KEEFFE Aindrias, Judge (1975-1985)
CAPOTORTI Francesco, Judge (1976), then Advocate General (1976-1982)
BOSCO Giacinto, Judge (1976-1988)
TOUFFAIT Adolphe, Judge (1976-1982)
KOOPMANS Thymen, Judge (1979-1990)
DUE Ole, Judge (1979-1994), President from 1988 to 1994
EVERLING Ulrich, Judge (1980-1988)
CHLOROS Alexandros, Judge (1981-1982)
Sir Gordon SLYNN, Advocate General (1981-1988), then Judge (1988-1992)

ROZES Simone, Advocate General (1981-1984)
VERLOREN van THEMAAT Pieter, Advocate General (1981-1986)
GRÉVISSE Fernand, Judge (1981-1982 and 1988-1994)
BAHLMANN Kai, Judge (1982-1988)
MANCINI G. Federico, Advocate General (1982-1988), then Judge (1988-1999)
GALMOT Yves, Judge (1982-1988)
KAKOURIS Constantinos, Judge (1983-1997)
LENZ Carl Otto, Advocate General (1984-1997)
DARMON Marco, Advocate General (1984-1994)
JOLIET René, Judge (1984-1995)
O'HIGGINS Thomas Francis, Judge (1985-1991)
SCHOCKWEILER Fernand, Judge (1985-1996)
Da CRUZ VILAÇA José Luis, Advocate General (1986-1988)
DIEZ DE VELASCO Manuel, Judge (1988-1994)
ZULEEG Manfred, Judge (1988-1994)
VAN GERVEN Walter, Advocate General (1988-1994)
TESAURO Giuseppe, Advocate General (1988-1998)
ELMER Michael Bendik, Advocate General (1994-1997)
IOANNOU Krateros, Judge (1997-1999)

- Presidents

PILOTTI Massimo (1952-1958)
DONNER Andreas Matthias (1958-1964)
HAMMES Charles Léon (1964-1967)
LECOURT Robert (1967-1976)
KUTSCHER Hans (1976-1980)
MERTENS DE WILMARS Josse J. (1980-1984)
MACKENZIE STUART Alexander John (1984-1988)
DUE Ole (1988-1994)

- Registrars

VAN HOUTTE Albert (1953-1982)
HEIM Paul (1982-1988)
GIRAUD Jean-Guy (1988-1994)

Chapter II

The Court of First Instance of the European Communities

A — Proceedings of the Court of First Instance in 1999

by Mr Bo Vesterdorf, President of the Court of First Instance

I. Activity of the Court of First Instance

1. On 19 October 1999 the Court of First Instance of the European Communities celebrated the first 10 years of its existence. On 25 September 1989 the first members of the Court had taken an oath before the Court of Justice and the first decision was delivered three months later, in December 1989.

In the opening addresses given by the President of the Court of First Instance and the President of the Court of Justice on that day, it was recalled that the Single European Act had opened the way for the institutional innovation which the creation of this new Community court constituted. The stated objectives, set out in the preamble to Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing the Court of First Instance, had been to improve the judicial protection of individuals by establishing a second court and to enable the Court of Justice to concentrate on its fundamental task of ensuring the uniform interpretation of Community law. In that regard, the progressive widening of the jurisdiction of the Court of First Instance was considered to be a tangible sign of success in the task initially entrusted to it. It was also mentioned that thought is now being given to reform of the Community court structure.

The President of the Court of First Instance pointed out that, after 10 years, approximately 2 000 cases have been decided.

During the study day of 19 October, two subjects were elaborated upon by eminent lawyers and gave rise to lively discussion. The first subject was the judicial protection of individuals. The second was that of openness, a topical and much debated subject, chosen because of the growth in litigation concerning access to documents of the Community institutions and the drawing up of new rules provided for by Article 255 EC (which was introduced by the Treaty of Amsterdam), governing exercise of the right of access.

2. The number of cases brought before the Court of First Instance in 1999, namely 356, [1] substantially exceeds the total of 215 cases brought in 1998, but

[1] The figures which follow do not include special proceedings relating to matters such as legal aid and the taxation of costs.

is lower than the number recorded in 1997 (624 cases). [2] The number of cases brought in 1999 includes a group of 71 applications brought by managers of Netherlands petrol stations for the annulment of a Commission decision ordering the reimbursement of State aid paid to them.

The total number of cases determined was 634 (or 308 after the joinder of cases). This figure includes the cases brought in 1994 contesting decisions by which the Commission had found infringements of the competition rules in relation to steel beams (11 cases determined) and polyvinylchloride (12 cases determined). It also includes the disposal of a large group of cases which was burdening the Registry: the Court of First Instance had dismissed an action of a customs agent against the Council and the Commission, and when the Court of Justice dismissed the appeal challenging that judgment numerous applicants discontinued their actions.

Nevertheless, 88 cases relating to milk quotas and 59 staff cases concerning re-examination of the grading of the persons concerned remain pending. A total of 724 cases were pending at the end of the year (compared with 1 002 cases in 1998).

The number of judgments delivered by Chambers of five Judges (which have jurisdiction to decide actions concerning State aid rules and trade protection measures) was 39 (compared with 42 in 1998) while 74 judgments (88 in 1998) were delivered by Chambers of three Judges. In 1999 no case was referred to the Court sitting in plenary session, nor was an Advocate General designated in any case.

The number of applications for interim relief lodged in the course of 1999 provides confirmation that this special form of proceedings is being used more and more widely (38 applications in 1999, compared with 26 in 1998 and 19 in 1997); 37 sets of proceedings for interim relief were disposed of in the course of the year. The Court ordered the suspension of operation of the contested measure on three occasions.

Appeals were lodged against 61 decisions of the Court of First Instance (out of 177 appealable decisions). In total, 72 appeals were brought before the Court of

[2] In 1997 several groups of similar cases were brought: customs agents claiming compensation for harm suffered by reason of the completion of the internal market provided for by the Single European Act, officials seeking re-examination of their grade on recruitment, and cases concerning milk quotas.

Justice. [3] The percentage of appealable decisions against which an appeal was brought was higher than in the previous two years (70 appeals and 214 appealable decisions in 1998; 35 appeals and 139 appealable decisions in 1997); the percentage was 40.6% as at 31 December 1999 whereas it was 32.7% and 25.1% at the end of 1998 and 1997 respectively.

1999 also saw the delivery of the first decision in the field of protection of intellectual property (trade marks and designs). The number of appeals brought against decisions of the Boards of Appeal of the Office for Harmonisation in the Internal Market, established by Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) is beginning, as forecast, to increase, 18 appeals being lodged in 1999.

3. On 26 April 1999 the Council adopted a decision amending Decision 88/591, enabling the Court to give decisions when constituted by a single Judge (OJ 1999 L 114, p. 52). The amendment to the Rules of Procedure of the Court of First Instance implementing that decision, adopted on 17 May 1999, was published in the *Official Journal of the European Communities* (OJ 1999 L 135, p. 92).

Eight cases have been allocated to a single Judge under these new provisions. Two judgments have been delivered by the Court sitting as a single Judge (judgments of 28 October 1999 in Case T-180/98 *Cotrim* v *Cedefop* and of 9 December 1999 in Case T-53/99 *Progoulis* v *Commission*, both not yet reported in the ECR).

4. Also, proposed amendments to Decision 88/591 and to the Rules of Procedure of the Court of First Instance have been submitted to the Council by the Court of Justice.

First, an amendment is proposed to Decision 88/591 which would extend the jurisdiction of the Court of First Instance by allowing it, in particular, to decide, within defined areas, certain actions for annulment brought by the Member States. That proposal, which was submitted on 14 December 1998, is currently being discussed within the Council's ad hoc working party on the Court of Justice. The opinions of the Commission and the Parliament have not yet been given.

[3] Of the 72 appeals, 16 were brought against the judgments delivered by the Court of First Instance in two groups of competition cases.

Second, on 27 April 1999 the Court of Justice and the Court of First Instance submitted to the Council proposals under 225 EC (formerly Article 168a of the EC Treaty) concerning the newly conferred jurisdiction in the area of intellectual property. The main proposal was an increase to 21 in the number of Judges of the Court of First Instance,

5. In the course of the year, progress was made with regard to discussion of the reform of the court structure of the European Union. With a view to the forthcoming intergovernmental conference, a discussion paper entitled The Future of the Judicial System of the European Union (Proposals and Reflections) was drawn up in May 1999. This document was submitted by the President of the Court of Justice to the Council of Ministers of Justice, which met in Brussels on 27 and 28 May 1999.

In addition, a discussion group on the future of the Community judicial system, set up by the European Commission and comprising eminent lawyers, will complete its work at the beginning of the year 2000.

II. Developments in the case-law

The principal advances in the case-law in 1999 are set out below, grouped according to the main subject areas of the disputes which were before the Court.

1. *Competition rules applicable to undertakings*

The *case-law concerning competition rules applicable to undertakings* was developed by judgments concerning the ECSC Treaty, the EC Treaty and Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings.

(a) The ECSC Treaty

The Court delivered its judgments in a series of 11 cases brought in 1994 which had arisen from Commission Decision 94/215/ECSC of 16 February 1994 relating to a proceeding pursuant to Article 65 of the ECSC Treaty concerning agreements and concerted practices engaged in by European producers of steel beams. By that decision the Commission found that 17 European steel undertakings and the trade association Eurofer had participated in a series of agreements, decisions and concerted practices designed to fix prices, share markets and exchange confidential information on the market for beams in the Community, in breach of

Article 65(1) of the ECSC Treaty, [4] and imposed fines on 14 undertakings operating within the sector for infringements committed between 1 July 1988 and 31 December 1990. Eleven addressees of the decision, including the trade association Eurofer, applied for its annulment and, in a subsidiary claim, the undertakings sought the reduction of the fines which had been imposed on them.

By judgments delivered on 11 March 1999, [5] the Court held that the Commission had satisfactorily proved most of the anti-competitive activities complained of in the decision. The partial annulment of the decision for lack of proof thus relates only to minor aspects of the alleged infringements. The level of proof required in order to establish that an infringement of Article 65 of the ECSC Treaty has been committed is set out in particular in the judgment in *Thyssen Stahl*, where it is stated that attendance by an undertaking at meetings involving anti-competitive activities suffices to establish its participation in those activities, in the absence of proof capable of establishing the contrary.

The Court also held that the allegations that the Commission had, under its policy for the management of the crisis in the steel industry, encouraged or tolerated the infringements which had been recorded were not well founded.

However, the fundamental contribution of these judgments is, without a doubt, their clarification of the scope of the competition rules in the ECSC Treaty and, more particularly, the ruling that the legal concepts contained in Article 65 of that Treaty do not differ from those referred to in Article 85 of the EC Treaty (now Article 81 EC).

As regards, first of all, the *specific characteristics of the legislative framework laid down by the ECSC Treaty*, which need to be taken into account when

4 Article 65(1) of the ECSC Treaty prohibits "all agreements between undertakings, decisions by associations of undertakings and concerted practices tending directly or indirectly to prevent, restrict or distort normal competition within the common market".

5 In Case T-134/94 *NMH Stahlwerke* v *Commission*, T-136/94 *Eurofer* v *Commission* (under appeal before the Court of Justice, Case C-179/99 P), Case T-137/94 *ARBED* v *Commission* (under appeal, Case C-176/99 P), Case T-138/94 *Cockerill-Sambre* v *Commission*, Case T-141/94 *Thyssen Stahl* v *Commission* (under appeal, Case C-194/99 P), Case T-145/94 *Unimétal* v *Commission*, Case T-147/94 *Krupp Hoesch* v *Commission* (under appeal, Case C-195/99 P), Case T-148/94 *Preussag* v *Commission* (under appeal, Case C-182/99 P), Case T-151/94 *British Steel* v *Commission* (under appeal, Case C-199/99 P), Case T-156/94 *Aristrain* v *Commission* (under appeal, Case C-196/99 P) and Case T-157/94 *Ensidesa* v *Commission* (under appeal, Case C-198/99 P), all not yet reported in the ECR.
With the exception of the judgment in *Thyssen Stahl* v *Commission* which will be reported in full, the ECR will contain only those paragraphs of the other judgments which, in the Court's view, it is useful to report.

assessing the conduct of undertakings, the Court acknowledged in *Thyssen Stahl* that the steel market is an oligopolistic market, in which the system of Article 60 of the Treaty ensures, through the compulsory publication of scales of prices and transportation charges, publicity for the prices charged by the various undertakings. Nevertheless, the resulting immobility or parallelism of prices is not, in itself, contrary to the Treaty if it results not from an agreement, even tacit, between the parties concerned, but from the interplay of the strengths and strategies of independent and opposed economic units on the market. It follows that the idea that every undertaking must determine independently the market policy which it intends to pursue, without collusion with its competitors, is inherent to the ECSC Treaty and in particular to Articles 4(d) and 65(1).

Moreover, the Court responded to the argument that the Commission had misconstrued the scope of Article 65(1) of the ECSC Treaty by stating that, while the oligopolistic character of the markets covered by the Treaty may, to some extent, weaken the effects of competition, that consideration cannot justify an interpretation of Article 65 authorising undertakings to behave in such a way as reduces competition even further, particularly through price-fixing. In view of the consequences which the oligopolistic structure of the market may have, it is all the more necessary to protect residual competition (judgment in *Thyssen Stahl*).

In another argument it was alleged that the Commission had misinterpreted Article 60 of the ECSC Treaty. The Court, after recalling the objectives pursued by the obligation in Article 60(2) that the price lists applied by undertakings within the common market be published, acknowledged that the system laid down by Article 60, and in particular the prohibition on departing from the price list, even temporarily, constitutes a significant restriction on competition. However, that fact does not prevent application of the prohibition of anti-competitive agreements which is laid down in Article 65(1). The Court stated that the prices which appear in the price lists must be fixed by each undertaking independently, without any agreement, even a tacit agreement, between them (judgment in *Thyssen Stahl*).

With regard to *the legal classification of anti-competitive conduct*, it is apparent from these judgments that there is an agreement within the meaning of Article 65(1) of the ECSC Treaty where undertakings have expressed the common desire to conduct themselves on a market in a particular manner. The Court added (judgment in *Thyssen Stahl*) that it saw no reason to interpret the concept of "agreement" in Article 65(1) of the ECSC Treaty differently from the concept

of "agreement" in Article 85(1) of the EC Treaty (in that regard, see Case T-1/89 *Rhône-Poulenc* v *Commission* [1991] ECR II-867, paragraph 120).

The prohibition by Article 65(1) of the ECSC Treaty of "concerted practices" in principle has the same purpose as the parallel prohibition of "concerted practices" in Article 85(1) of the EC Treaty. More particularly, it seeks to ensure the effectiveness of the prohibition under Article 4(d) of the ECSC Treaty by bringing within that prohibition a form of coordination between undertakings which, without having reached the stage where an agreement properly so-called has been concluded, knowingly substitutes practical cooperation between them for the risks of normal competition under the ECSC Treaty (judgment in *Thyssen Stahl*).

In this connection, where an undertaking (i) reveals to its competitors, during a meeting attended by most of them and set in a context of regular collusion, what its future market conduct will be in regard to prices, calling on them to adopt the same conduct, and thus acts with the express intention of influencing their future competitive activities, and (ii) is reasonably able to count on its competitors complying in large measure with its call or, at least, on their bearing it in mind when deciding on their own commercial policy, the undertakings concerned replace the risks of normal competition under the ECSC Treaty with practical cooperation between them, which must be regarded as a "concerted practice" within the meaning of Article 65(1) of that Treaty (judgment in *Thyssen Stahl*).

As regards the argument that the concept of a "concerted practice" in Article 65(1) of the ECSC Treaty presupposes that the undertakings have engaged in the practices which were the subject of their concertation, in particular by uniformly increasing their prices, the Court held (judgment in *Thyssen Stahl*) that the case-law relating to the EC Treaty can be transposed to the sphere of application of Article 65 of the ECSC Treaty; accordingly, *in order to be able to conclude that a concerted practice existed, it is not necessary for the concertation to have had an effect on the conduct of competitors on the market*. It is sufficient to find that each undertaking was bound to take into account, directly or indirectly, the information obtained during its contacts with its competitors. The Court also made it clear that undertakings "engage" in a concerted practice within the meaning of Article 65(5) of the ECSC Treaty where they take part in a scheme which is designed to eliminate the uncertainty about their future market conduct and necessarily implies that each of them takes into account the information obtained from its competitors. It is therefore not necessary to demonstrate that the exchanges of information in question led to a specific result or were put into effect on the relevant market.

Finally, the reference in Article 65(1) of the ECSC Treaty to agreements "tending" to distort normal competition is an expression which includes the formula "have as their object" found in Article 85(1) of the EC Treaty. The Commission was therefore correct in holding in the contested decision that, in order to establish an infringement of Article 65(1) of the ECSC Treaty, it was not obliged to demonstrate that there was an adverse effect on competition (judgment in *Thyssen Stahl*).

Other developments contained in the "steel beam" judgments of 11 March 1999, relating to the attribution of responsibility for conduct in breach of the competition rules, observance of the rights of the defence and the conditions in which an exchange of information is prohibited under Article 65 of the ECSC Treaty, may be noted.

First of all, the Court provided further clarification of the rules for determining *who may be held responsible for conduct which infringes the competition rules*.

In *NMH Stahlwerke* v *Commission*, it was held that in certain specific circumstances an infringement of the competition rules may be attributed to the economic successor of the legal person who was the perpetrator of the infringement even where that legal person has not ceased to exist on the date on which the decision finding the infringement is adopted, in order that the practical effect of those rules is not compromised because of changes to, *inter alia*, the legal form of the undertakings concerned. In the case before the Court, since (i) the concept of an undertaking, for the purposes of Article 65 of the ECSC Treaty, is economic in meaning, (ii) on the date on which the decision was adopted it was the applicant that was pursuing the economic activity to which the infringements related, and (iii) on that date the perpetrator, in the strict sense, of the infringements had ceased trading, the Court considered that the Commission was entitled to attribute the infringement in question to the applicant.

In the judgment in *Unimétal* v *Commission*, the Court recalled the case-law according to which the fact that a subsidiary has separate legal personality is not sufficient to rule out the possibility of its conduct being attributed to the parent company, in particular where the subsidiary does not determine its market conduct independently but in all material respects carries out the instructions given to it by the parent company (see Case 48/69 *ICI* v *Commission* [1972] ECR 619), and on that basis attributed responsibility in the reverse direction by holding the subsidiary answerable for the infringement committed by the parent company. The Court had regard to the case-law of the Court of Justice in *ICI* v *Commission* and to the fact that the company responsible for coordinating the action of a group

of companies may be held answerable for infringements committed by the companies in the group, even where they are not subsidiaries in the legal sense of the term. It then held that the case-law, given the fundamental concept of economic unity which underlies it, may in certain circumstances lead to a subsidiary being held responsible for the conduct of a parent company. The Commission was therefore entitled to attribute the conduct of the parent company (Usinor Sacilor) to its subsidiary (Unimétal) when it was apparent that the latter was the principal perpetrator and beneficiary of the infringements committed, while its parent company confined itself to an accessory role of providing administrative assistance, without having any decision-making power or freedom of initiative.

In the case of *Aristrain* v *Commission*, the applicant, Aristrain Madrid — the only undertaking in the Aristrain group to which the decision had been addressed — disputed, first, that it could be held responsible for the conduct of its sister company, Aristrain Olaberría, which was legally independent and bore sole responsibility for its own commercial activity and, second, that a fine could be imposed on it of an amount which took account not only of its conduct and turnover but also of those of the sister company. The Court stated that, in view of the economic unit formed by a parent group and its subsidiaries, the actions of subsidiaries may in certain conditions be attributed to a parent company. However, in the case before it, since, owing to the composition of the group and the dispersal of its shareholders, it was impossible or exceedingly difficult to identify the legal person at its head to which, as the person responsible for coordinating the group's activities, responsibility could have been attributed for the infringements committed by the various companies in the group, the Commission was entitled to hold the two subsidiaries Aristrain Madrid and Aristrain Olaberría — companies which constituted a single "undertaking" within the meaning of Article 65(5) of the ECSC Treaty and had been duly shown to have participated equally in the various infringements — jointly and severally liable for all the acts of the group. This outcome ensured that the formal separation between those companies, resulting from their separate legal personality, could not outweigh the unity of their conduct on the market for the purposes of applying the competition rules. In the particular circumstances of the case, the Commission was therefore justified in attributing to Aristrain Madrid responsibility for the behaviour of its sister company Aristrain Olaberría and in imposing on the two sister companies a single fine of an amount calculated with reference to their combined turnover while rendering them jointly and severally liable for payment.

The Court had to review whether the Commission had infringed an undertaking's *rights of defence* by addressing to it a decision imposing a fine calculated on the basis of its turnover, without first having formally sent it a statement of objections or even indicated its intention of holding it responsible for the infringements committed by its subsidiary (judgment in *ARBED* v *Commission*).

According to the Court, an omission of that kind may constitute a procedural irregularity capable of adversely affecting the rights of defence of the undertaking, such as those guaranteed by Article 36 of the ECSC Treaty. However where, as in the case before the Court: (i) the parent company (ARBED) and its subsidiary (TradeARBED) have replied interchangeably to the requests for information which the Commission has addressed to the subsidiary, which is regarded by the parent company as merely a sales "agency" or "organisation"; (ii) the parent company has spontaneously regarded itself as the addressee of the statement of objections formally notified to its subsidiary, has been fully aware of the statement and has instructed a lawyer to defend its interests; (iii) the parent company has been requested to provide the Commission with certain information concerning its turnover from the products concerned and during the period of infringement referred to in the statement of objections; and (iv) the parent company has been given the opportunity to submit its observations on the objections which the Commission proposed to uphold against its subsidiary and on the attribution of responsibility contemplated, a procedural irregularity of that kind is not such as to entail the annulment of the contested decision.

The exchange of confidential information through the "Poutrelles" Committee (the monitoring of orders and deliveries) and the Walzstahl-Vereinigung, complained of in Article 1 of the operative part of the decision addressed to the undertakings, was held to constitute a separate infringement of Article 65(1) of the ECSC Treaty. In particular, the Court stated in the judgment in *Thyssen Stahl* that a system enabling the distribution of information, broken down by undertaking and by Member State, relating to the orders and deliveries on the main Community markets of the undertakings party to the system was — given the up-to-date nature of that information which was intended solely for the manufacturers party to the arrangement to the exclusion of consumers and other competitors, the homogenous nature of the products concerned and the degree of market concentration — capable of appreciably influencing the conduct of the participating undertakings. That was so because each undertaking knew that it was being kept under close surveillance by its competitors and because it could, if necessary, react to the conduct of its competitors, on the basis of considerably more recent and accurate data than those available by other means. Consequently, such information exchange systems had appreciably reduced the

decision-making independence of the participating producers by substituting practical cooperation between them for the normal risks of competition.

The *fines* imposed on the undertakings to which the decision was addressed had been set in the light of the criteria set out in Article 65(5) of the ECSC Treaty, which requires the Commission to take into account the turnover of the undertaking concerned as the basic criterion for calculating the fine. The ECSC Treaty is based on the principle that the turnover realised on the products which were the subject of a restrictive practice constitutes an objective criterion giving a proper measure of the harm which that practice does to normal competition.

In the judgment in *British Steel* v *Commission* (Case T-151/94), the Court pointed out that, in the absence of extenuating or aggravating circumstances, or other duly established exceptional circumstances, the Commission is required, by virtue of the principle of equal treatment, to apply, for the purpose of calculating the fine, the same percentage of turnover to undertakings which took part in the same infringement.

In ruling on the aggravating circumstance of recidivism, which the Commission had taken into account in order to increase certain fines, the Court noted that recidivism, as understood in a number of national legal systems, implies that a person has committed fresh infringements after having been penalised for similar infringements. In the judgment in *Thyssen Stahl*, the Court held that the Commission had erred in law by taking into consideration, with regard to recidivism, infringements penalised in a previous decision when the greater part of the infringement period taken into account against the applicant in the contested decision predated the adoption of the first decision.

As regards possible extenuating circumstances, the Court, confirming previous case-law (Case T-2/89 *Petrofina* v *Commission* [1991] ECR II-1087 and Case T-308/94 *Cascades* v *Commission* [1998] ECR II-925), held that the fact that an undertaking which has been proved to have participated in collusion on prices with its competitors did not behave on the market in the manner agreed with its competitors is not necessarily a matter which must be taken into account when determining the amount of the fine to be imposed. An undertaking which, despite colluding with its competitors, follows a more or less independent policy on the market may simply be trying to exploit the cartel for its own benefit (judgments in *Cockerill-Sambre* v *Commission* and *Aristrain* v *Commission*).

Nor is a reduction in the amount of the fine justified on grounds of cooperation during the administrative procedure unless the conduct of the undertaking

involved enabled the Commission to establish an infringement more easily and, where relevant, to bring it to an end. The Court found in *ARBED* v *Commission*, *Cockerill-Sambre* v *Commission* and *Aristrain* v *Commission* that the Commission had correctly considered that the conduct during the administrative procedure of the undertakings concerned (which, with a few exceptions, did not admit any of the factual allegations made against them) did not justify any reduction in the amount of the fines.

Finally, the Court held that the fixing of a fine, in the exercise of its unlimited jurisdiction, is by nature not an arithmetically precise exercise. Also, the Court is not bound by the Commission's calculations, but must carry out its own assessment, taking all the circumstances of the case into account (judgments in *ARBED* v *Commission*, *Unimétal* v *Commission*, *Krupp Hoesch* v *Commission*, *Preussag* v *Commission*, *Cockerill-Sambre* v *Commission*, *British Steel* v *Commission*, *Aristrain* v *Commission* and *Ensidesa* v *Commission*). In the exercise of its unlimited jurisdiction, the Court reduced some of the fines, thus bringing their total amount down to EUR 65 449 000.

With regard to matters of a more procedural nature, the Court referred in some of the judgments to its case-law, which began with its judgment in Joined Cases T-213/95 and T-18/96 *SCK and FNK* v *Commission* [1997] ECR II-1739, relating to the principle that the Commission is to act within a reasonable period when it adopts decisions following administrative proceedings in competition matters. The question whether the length of the administrative proceedings is reasonable must be answered by reference to the particular circumstances of each case. The Court found in the judgment in *Aristrain* v *Commission* that a period of approximately 36 months from the first inspections in the undertaking's offices to the adoption of the final decision was not unreasonable. Also, having regard to the size and complexity of the case as well as to the number of undertakings involved, the Court considered that the fact that there was a gap of approximately 13 months — several of which were devoted to an internal inquiry carried out at the request of the undertakings concerned themselves — between the administrative hearing and the adoption of the decision did not constitute a breach of that principle.

It was also in *Aristrain* v *Commission* that the Court ruled on a plea for annulment alleging infringement of the right to an independent and impartial tribunal. The applicant contended in particular that the guarantees enshrined in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the ECHR") had been violated because, first, the procedure followed by the Commission does not confer the functions of

investigation and decision on different organs or persons and, second, the decision adopted by the Commission cannot, under the Treaty, form the subject-matter of an appeal to a tribunal with unlimited jurisdiction as required by the ECHR. In response to this plea, the Court pointed out that fundamental rights form an integral part of the general principles of law, the observance of which the Community judicature ensures, and that the procedural guarantees provided for by Community law do not preclude the Commission from combining the functions of prosecutor and judge. It also recalled that the requirement for effective judicial review of any decision of the Commission establishing and penalising an infringement of the Community competition rules is a general principle of Community law which follows from the constitutional traditions common to the Member States. The Court then held that in actions based on the second paragraph of Article 33 and the second paragraph of Article 36 of the ECSC Treaty, the review of the legality of a Commission decision establishing an infringement of the competition rules and imposing a fine on the natural or legal person concerned on that basis must be regarded as an effective judicial review of the decision. The pleas on which the natural or legal person concerned may rely in support of his application for annulment or amendment of a financial penalty are of such a kind as to enable the Court to assess the merits both in law and in fact of any accusation made by the Commission in the field of competition (see, in the context of the EC Treaty, Case T-348/94 *Enso Española* v *Commission* [1998] ECR II-1875).

(b) The EC Treaty

(b.1) Article 85 of the EC Treaty (now Article 81 EC)

On 20 April 1999 the Court delivered a long judgment [6] under the EC Treaty, deciding 12 cases brought by undertakings involved in the polyvinylchloride ("PVC") sector. The starting point, as regards judicial decisions, in this matter is the judgment of 27 February 1992 in Joined Cases T-79/89, T-84/89, T-85/89, T-86/89, T-89/89, T-91/89, T-92/89, T-94/89, T-96/89, T-98/89, T-102/89 and T-104/89 *BASF and Others* v *Commission* [1992] ECR II-315, by which the Court declared non-existent Commission Decision 89/190/EEC of 21 December 1988 penalising the PVC producers for infringement of Article 85(1) of the EEC Treaty ("the 1988 decision"). On appeal by the Commission, the Court of Justice, in its

[6] Joined Cases T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94 *Limburgse Vinyl Maatschappij and Others* v *Commission*, not yet reported in the ECR. Eight appeals against that judgment have been brought before the Court of Justice (Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P, C-251/99 P, C-252/99 P and C-254/99 P).

judgment of 15 June 1994 in Case C-137/92 P *Commission* v *BASF and Others* [1994] ECR I-2555 ("the judgment of 15 June 1994"), set aside the judgment of the Court of First Instance and simultaneously annulled the 1988 decision.

Following that judgment, the Commission adopted, on 27 July 1994, a fresh decision in relation to the producers who had been the subject of the original decision, with the exception of Solvay and Norsk Hydro ("the 1994 decision"). By this second decision, the Commission found that there had been an agreement and/or concerted practice contrary to Article 85 of the EC Treaty under which the producers supplying PVC in the Community took part in regular meetings in order to fix target prices and target quotas, plan concerted initiatives to raise price levels and monitor the operation of those collusive arrangements. Article 3 of the 1994 decision confirmed the fines imposed in 1988 on each of the 12 undertakings still involved in the infringement proceedings, amounting to ECU 19 000 000 in total.

In their actions, the 12 undertakings to which the 1994 decision had been addressed claimed that that decision should be annulled and the fines annulled or reduced. The substantial volume of the written pleadings submitted by the applicants is noteworthy: they set out, on more than 2 000 pages, nearly 80 distinct grounds of challenge, expressed in the five languages of the case.

With regard to the claims for annulment of the decision, the Court considered first the pleas alleging defects of form and procedure and then the pleas on the substance.

The various *pleas alleging defects of form and procedure* fell into four main categories, the applicants contending: (a) that the Commission's appreciation of the scope of the judgment of 15 June 1994 annulling the 1988 decision and the consequences it drew therefrom were wrong; (b) that there were irregularities in the adoption and authentication of the 1994 decision; (c) that the procedure prior to the adoption of the 1988 decision was vitiated by irregularities; and (d) that insufficient reasons were given for the 1994 decision so far as concerned certain questions falling within the preceding three categories.

While none of the pleas as to procedure raised by the applicants was upheld, some of the Court's findings should be noted.

Certain applicants contended that the Commission had infringed the general legal principle *non bis in idem* (no one shall be tried twice for the same offence) by adopting a fresh decision following the judgment of 15 June 1994. The Court

stated that the Commission could not bring proceedings against an undertaking under Regulation No 17 [7] and Regulation No 99/63 [8] for infringement of Community competition rules, or penalise it by the imposition of a fine, for anti-competitive conduct which the Court of First Instance or the Court of Justice had already found to be either proven or unproven by the Commission in relation to that undertaking. In the case before it, the Court of First Instance rejected this plea because, first, the Commission's adoption of the 1994 decision after the 1988 decision had been annulled did not result in the applicants' incurring a penalty twice in respect of the same offence and, second, when the Court of Justice annulled the 1988 decision in its judgment of 15 June 1994 it did not rule on any of the substantive pleas raised by the applicants, so that the Commission was merely remedying the formal defect found by the Court of Justice when it adopted the 1994 decision and did not take action against the applicants twice in relation to the same set of facts.

Among the pleas based on lapse of time, certain applicants argued that the Commission had offended against the principle that it must act within a reasonable time. The Court observed that the Commission had to comply with the general principle of Community law laid down in *SCK and FNK* v *Commission*, cited above. It then found that the administrative procedure before the Commission had lasted for a total of some 62 months, pointing out that the period during which the Community judicature had examined the legality of the 1988 decision and the validity of the judgment of the Court of First Instance could not be taken into account in determining the duration of that procedure. It held that the Commission had acted consistently with the principle in question.

In determining whether the administrative procedure before the Commission was reasonable, the Court drew a distinction between the procedural stage opening with the investigations in the PVC sector in November 1983, based on Article 14 of Regulation No 17, and the procedural stage which started on the date upon which the undertakings concerned received notification of the statement of objections, and considered separately whether the time taken for each of those two stages was reasonable. Its reasonableness was assessed in relation to the individual circumstances of the case, and in particular its context, the conduct of the parties during the procedure, what was at stake for the various undertakings

[7] Council Regulation No 17 of 6 February 1962 (First Regulation implementing Articles 85 and 86 of the Treaty, OJ, English Special Edition 1959-1962, p. 87).

[8] Commission Regulation No 99/63/EEC of 25 July 1963 on the hearings provided for in Article 19(1) and (2) of Council Regulation No 17 (OJ, English Special Edition 1963-1964, p. 47).

concerned and the case's complexity. As regards the second stage, the Court considered that the criterion of what was at stake for the undertakings involved was of particular importance. First, the notification of the statement of objections in a procedure for establishing an infringement presupposes the initiation of the procedure under Article 3 of Regulation No 17. By initiating that procedure, the Commission evidences its intention to proceed to a decision finding an infringement (see, to that effect, Case 48/72 *Brasserie de Haecht* v *Wilkin Janssen* [1973] ECR 77). Secondly, it is only on receipt of the statement of objections that an undertaking may take cognisance of the subject-matter of the procedure which is initiated against it and of the conduct of which it is accused by the Commission. Undertakings thus have a specific interest in that second stage of the procedure being conducted with particular diligence by the Commission, without, however, their defence rights being affected. In the present case, the length of the second procedural stage before the Commission, that is to say 10 months, was held to be reasonable.

The Court provided an important clarification with regard to the plea in support of the claims for annulment of the 1994 decision which alleged infringement of the principle requiring the Commission to act within a reasonable time. It held that *infringement of that principle, if established, would justify the annulment of the 1994 decision only in so far as it also constituted an infringement of the rights of defence of the undertakings concerned.* According to the Court, where it has not been established that the undue delay has adversely affected the ability of the undertakings concerned to defend themselves effectively, *failure to comply with the principle that the Commission must act within a reasonable time cannot affect the validity of the administrative procedure and can therefore be regarded only as a cause of damage capable of being relied on before the Community judicature* in the context of an action based on Article 178 and the second paragraph of Article 215 of the EC Treaty (now Article 235 EC and the second paragraph of Article 308 EC respectively).

The scope of the judgment of 15 June 1994 was likewise discussed before the Court, since certain applicants contended that the annulment of the 1988 decision by the Court of Justice had called into question the validity of the preparatory measures taken before that decision was adopted. The Court of First Instance rejected those claims since it considered, having regard to the operative part of the judgment of 15 June 1994 read in the light of its grounds, that the Court of Justice had annulled the 1988 decision on account of a procedural defect affecting only the manner in which it was finally adopted by the Commission. Since the procedural defect had occurred at the final stage of the adoption of the 1988

decision, the annulment did not affect the validity of the measures preparatory to that decision, before the stage at which the defect was found.

The applicants also challenged the detailed procedure for the adoption of the 1994 decision, after the annulment of the 1988 decision, on the ground that, even if the defect occurred at the final stage of the adoption of the 1988 decision, the Commission could only have remedied the defect if it had complied with certain procedural guarantees before adopting the 1994 decision (the opening of a new administrative procedure, the completion of certain procedural stages provided for by secondary legislation and, more generally, the right to be heard). In that regard, the Court essentially stated that observance of the rights of the defence requires that each undertaking or association of undertakings concerned be given the opportunity to be heard as to the objections raised against each of them which the Commission proposes to deal with in the final decision finding infringement of the competition rules. In the present case, since the annulment of the 1988 decision had not affected the validity of the measures preparatory to that decision, taken prior to the stage at which the defect had occurred, the Court held that the validity of the statement of objections sent to each of the applicants at the beginning of April 1988 was not affected by the judgment of 15 June 1994, nor was the validity of the oral stage of the administrative procedure which had taken place before the Commission in September 1988. A new hearing of the undertakings concerned would therefore have been required before the 1994 decision only if, and to the extent that, the latter had contained objections which were new in relation to those set out in the original decision annulled by the Court of Justice.

The *pleas on the substance* put forward by the applicants were also rejected, so that the findings made by the Commission were confirmed, with the exception, however, of the allegations that Société Artésienne de Vinyle ("SAV") had participated in the infringement after the first half of 1981. [9]

The applicants put forward a series of pleas on the matter of evidence. In this connection, the Court considered whether the evidence used by the Commission against the undertakings was admissible. In particular, it had to decide on the admissibility and the merits of the plea relied on by certain applicants that, in carrying out its investigations, the Commission had infringed the principle of inviolability of the home. Drawing a distinction between decisions to investigate and authorisations to investigate, the Court held that certain undertakings could,

9 The fine imposed on SAV was accordingly reduced by the Court.

in so far as documents obtained by the Commission were used against them, challenge, in the actions brought by them against the 1994 decision, the legality of decisions to investigate addressed to other undertakings [10] whose actions to challenge the legality of those decisions directly, if brought, may or may not have been admissible. Similarly, in an action for the annulment of the final decision, the applicants could challenge the legality of the authorisations to investigate, which were not measures that could be challenged by an action under Article 173 of the EC Treaty (now, after amendment, Article 230 EC). With regard to the merits, the Court stated that the plea had to be understood as alleging infringement of the general principle of Community law ensuring protection against intervention by the public authorities in the sphere of private activities of any person, whether natural or legal, which was disproportionate or arbitrary (Joined Cases 46/87 and 227/88 *Hoechst* v *Commission* [1989] ECR 2859, Case 85/87 *Dow Benelux* v *Commission* [1989] ECR 3137 and Joined Cases 97/87, 98/87 and 99/87 *Dow Chemical Ibérica* v *Commission* [1989] ECR 3165). It pointed out, in ruling on the challenge to the validity of the formal acts relating to the investigations, that it was apparent from Article 14(2) of Regulation No 17 that investigations carried out on a simple authorisation were based on the voluntary cooperation of the undertakings. Since the undertakings did in fact cooperate in an investigation carried out on authorisation, the plea alleging undue interference by the public authority in the sphere of private activities of the natural or legal person concerned was unfounded, in the absence of any evidence that the Commission went beyond the cooperation offered by the undertakings.

Infringement of the "right to silence" and of the privilege against self-incrimination was also pleaded before the Court. In its assessment of the merits of this plea, [11] the Court stated that it had to consider whether, in the absence of any right to silence expressly granted by Regulation No 17, certain limitations on the Commission's powers of investigation were nevertheless implied by the need to safeguard the rights of the defence, which the Court has held to be a fundamental principle of the Community legal order. It noted that, while the rights of the defence had to be observed in administrative procedures which could

[10] Since a decision to investigate is a measure against which an action for annulment may be brought under Article 173 of the Treaty (now, after amendment, Article 230 EC), an undertaking to which such a decision is addressed that does not challenge it within the period laid down is time barred in an action brought against the decision adopted following the administrative procedure from arguing that the decision to investigate is unlawful.

[11] Since Regulation No 17 draws a distinction between requests for information (Article 11(2)) and decisions requiring information to be provided (Article 11(5)), the admissibility of this plea was dealt with in the same way as the admissibility of the plea concerning authorisations to investigate and decisions to investigate.

lead to the imposition of penalties, it was also necessary to prevent those rights from being irremediably impaired during preliminary inquiry procedures which could be decisive in providing evidence of the unlawful nature of conduct engaged in by undertakings (Case 374/87 *Orkem* v *Commission* [1989] ECR 3283 and Case T-34/93 *Société Générale* v *Commission* [1995] ECR II-545). It was true that, in order to ensure the effectiveness of Article 11(2) and (5) of Regulation No 17, the Commission was entitled to compel an undertaking to provide all necessary information concerning such facts as might be known to it and to disclose to the Commission, if necessary, such documents relating thereto as were in its possession, even if the latter could be used to establish, against it or another undertaking, the existence of anti-competitive conduct. However, the Commission could not, by a decision to request information, undermine the undertaking's defence rights. Thus it could not compel an undertaking to provide it with answers which might involve an admission on its part of the existence of an infringement which it was incumbent upon the Commission to prove. Within the limits restated in that way, the Court assessed, and ultimately rejected, the applicants' arguments.

With regard to requests for information (which do not place undertakings under an obligation to reply), the Court stated, first, that by making such requests the Commission could not be regarded as compelling an undertaking to provide it with answers which might involve an admission on its part of the existence of an infringement which it was incumbent upon the Commission to prove and, second, that the refusal to reply to requests for information, or the impossibility of replying to them, could not in itself constitute proof of an undertaking's participation in an agreement.

Next, the Court confirmed that, under Article 85 of the EC Treaty, the Commission could classify conduct alleged against undertakings as an agreement "and/or" a concerted practice. *In the context of a complex infringement which involved many producers seeking over a number of years to regulate the market between them the Commission could not be expected to classify the infringement precisely, for each undertaking and for any given moment, as in any event both those forms of infringement were covered by Article 85 of the EC Treaty.* The Commission was therefore entitled to classify that type of complex infringement as an agreement "and/or" concerted practice, inasmuch as the infringement included elements which were to be classified as an "agreement" and elements which are to be classified as a "concerted practice".

As regards proof that an undertaking has participated in a concerted practice, the Court held that where the proof is based not on a mere finding of parallel market

conduct but on documents showing that the practices were the result of concerted action, the burden is on the undertakings concerned not merely to submit an alleged alternative explanation for the facts found by the Commission but to challenge the existence of those facts established on the basis of the documents produced by the Commission.

The Court also stated that an undertaking could be held *responsible for an overall cartel* such as the cartel referred to in Article 1 of the operative part of the 1994 decision, [12] even though it were shown to have participated directly only in one or some of its constituent elements, *if it were shown that it knew, or must have known, that the collusion in which it participated was part of an overall plan intended to distort competition and that the overall plan included all the constituent elements of the cartel.*

The judgment contains a ruling with regard to the question of *determining who is to be made answerable for the infringement committed.* It states that where the legal entity which was responsible for the operation of the undertaking at the time when the infringement was committed exists at law, the Commission is justified in holding that legal entity liable.

Also, where large numbers of operating companies are active in both production and marketing and are also designed to cover specific geographical areas, the Commission is entitled to address its decision to the group's holding company rather than to one of its operating companies.

In adopting measures of organisation of procedure, the Court informed the parties in May 1997 of its decision to allow each of the applicants *access to the Commission's administrative file* on the matter which gave rise to the 1994 decision, save for internal Commission documents and documents containing business secrets or other confidential information. After consulting the file, almost all the applicants lodged observations at the Court Registry and the Commission submitted observations in reply. A number of pleas for annulment relating to access to the Commission's administrative file were raised before the Court, which rejected all of them. It found that during the administrative procedure the Commission had not given the applicants proper access to the file, but that was not sufficient of itself to warrant annulment of the 1994 decision. It explained that an alleged infringement of the rights of the defence had to be

[12] The cartel consisted in the regular organisation over the years of meetings of rival producers, the aim of which was to establish illicit practices intended to organise artificially the functioning of the PVC market.

examined in relation to the specific circumstances of each particular case, because it was effectively the objections raised by the Commission which determined the infringement which was alleged to have been committed. It was therefore necessary to consider whether the applicant's ability to defend itself had been affected by the conditions in which it had access to the Commission's administrative file. In that respect, *it was sufficient for a finding of infringement of defence rights for it to be established that non-disclosure of the documents in question might have influenced the course of the procedure and the content of the decision to the applicant's detriment* (Case T-30/91 *Solvay* v *Commission* [1995] ECR II-1775 and Case T-36/91 *ICI* v *Commission* [1995] ECR II-1847; see also, in the area of State aids, Case 259/85 *France* v *Commission* [1987] ECR 4393). If that had been so, the administrative procedure would have been defective and the decision would have had to be annulled.

With regard to fines, those imposed on SAV, Elf Atochem and Imperial Chemical Industries were reduced by the Court in the exercise of the unlimited jurisdiction conferred upon it. The Court found that the estimate of the average market shares of Elf Atochem and Imperial Chemical Industries which the Commission had taken into account when setting the fines was exaggerated, so that the fines imposed on both those undertakings were too high.

In two similar judgments delivered on 19 May 1999 (Case T-175/95 *BASF Coatings* v *Commission* and Case T-176/95 *Accinauto* v *Commission*, both not yet reported in the ECR), the Court held that the Commission had not erred in its assessment when finding that an agreement entered into in 1982 by BASF Coatings and Accinauto was contrary to Article 85(1) of the EC Treaty. In order to reach that conclusion, the Court determined whether the parties to the agreement had agreed upon a restriction on the freedom of the authorised dealer, namely Accinauto, to carry out passive sales of the products covered by the exclusive distribution contract to customers based in Member States other than the State in which the exclusive arrangement applied. For the purposes of its assessment, the Court specified that the factors to be taken into account included the wording of the relevant clause of the contract, the scope of the other terms of the contract which related to the authorised dealer's obligation under that clause and the factual and legal circumstances surrounding the conclusion and implementation of the agreement which enabled its purpose to be elucidated.

In Joined Cases T-185/96, T-189/96 and T-190/96 *Riviera Auto Service and Others* v *Commission* [1999] ECR II-93, the Court dismissed actions brought by former dealers of VAG France in which they sought the annulment of decisions by the Commission rejecting complaints lodged by them under Article 3 of

Regulation No 17. Those complaints alleged infringements of Article 85(1) of the EC Treaty, namely refusals, based on Volkswagen's standard-form distribution agreement, to supply them after their removal from the distribution network. This judgment provides an illustration of the Commission's power (acknowledged in Case T-24/90 *Automec* v *Commission* [1992] ECR II-2223) to dismiss a complaint where it finds that the case lacks a sufficient Community interest to justify pursuing the investigation. The Court reiterated the various principles established by the case-law concerning the exercise of that power (see *Automec* v *Commission*, Case T-5/93 *Tremblay and Others* v *Commission* [1995] ECR II-185 and Case T-186/94 *Guérin* v *Commission* [1995] ECR II-1753).

The judgments of 13 December 1999 in Joined Cases T-189/95, T-39/96 and T-123/96 *SGA* v *Commission* and Joined Cases T-9/96 and T-211/96 *Européenne Automobile* v *Commission*, both not yet reported in the ECR, also illustrate the conditions in which the Commission may exercise the power accorded to it.

(b.2) Article 86 of the EC Treaty (now Article 82 EC)

Irish Sugar, the sole processor of sugarbeet in Ireland and the principal supplier of sugar in that Member State, brought an action before the Court for the annulment of a Commission decision of 14 May 1997 relating to a proceeding pursuant to Article 86 of the EC Treaty. This case led the Court to consider the problem of joint dominant positions and to assess whether certain behaviour in relation to prices constitutes an abuse (judgment of 7 October 1999 in Case T-228/97 *Irish Sugar* v *Commission*, not yet reported in the ECR, under appeal in Case C-497/99 P).

First of all, the Court recalled the case-law of the Court of Justice on the control of concentrations, according to which a joint dominant position consists in a number of undertakings being able together, in particular because of factors giving rise to a connection between them, to adopt a common policy on the market and act to a considerable extent independently of their competitors, their customers, and ultimately consumers (Joined Cases C-68/94 and C-30/95 *France and Others* v *Commission* [1998] ECR I-1375). In the case before it, the Court stated that the mere independence of the economic entities concerned was not sufficient to remove the possibility of their holding a joint dominant position and that the connecting factors identified by the Commission showed that the applicant and Sugar Distributors Ltd ("SDL"), the distributor of sugar supplied by the applicant, had the power to adopt a common market policy. The following were identified as connecting factors: the applicant's shareholding in SDL's parent

company (Sugar Distribution (Holding) Ltd), its representation on the boards of Sugar Distribution (Holding) Ltd and SDL, the policy-making structure of the companies and the communication process established to facilitate it, and the direct economic ties constituted by SDL's commitment to obtain its supplies exclusively from the applicant and the applicant's financing of all consumer promotions and rebates offered by SDL to its customers.

Second, the fact that two undertakings are in a vertical commercial relationship does not, according to the Court, affect the finding that there is a joint dominant position. The Court agreed with the Commission that, unless one supposes there to be a lacuna in the application of Article 86 of the EC Treaty, it cannot be accepted that undertakings in a vertical relationship, without however being integrated to the extent of constituting one and the same undertaking, should be able abusively to exploit a joint dominant position.

Finally, the Commission was entitled to take the view that the individual conduct of one of the undertakings together holding a joint dominant position constituted the abusive exploitation of that position. Whilst the existence of a joint dominant position may be deduced from the position which the economic entities concerned together hold on the market in question, the abuse does not necessarily have to be the action of all the undertakings. It only has to be capable of being identified as one of the manifestations of a joint dominant position being held. Therefore, undertakings occupying such a position may engage in joint or individual abusive conduct.

The Court also confirmed that the applicant had a dominant position in the industrial sugar market simply by virtue of holding a market share of over 50%.

The Commission's findings concerning abuses by the applicant of its dominant position in the Irish industrial and retail sugar markets were also reviewed by the Court, which confirmed almost all of those findings. [13] In order to determine whether the pricing practices of which the applicant was accused in fact constituted an abuse, the Court, relying on case-law of the Court of Justice, stated that it was necessary to consider all the circumstances, particularly the criteria and rules governing the grant of the discount at issue, and to investigate whether, in providing an advantage not based on any economic service justifying it, the discount tended to remove or restrict the buyer's freedom in choosing his sources

[13] Only one of the unlawful acts alleged was held to be unfounded. That finding justified a reduction in the fine.

of supply, to bar competitors from access to the market, to apply dissimilar conditions to equivalent transactions with other trading parties or to strengthen the dominant position by distorting competition.

In particular, the Court confirmed that border rebates granted in the form of special allowances to certain customers established near the border with Northern Ireland, in order to compete with cheap imports of sugar from Northern Ireland intended for retail sale, amounted to an abuse. The parties to the case differed as to whether or not special rebates to customers facing competition constitute a reaction that is compatible with the particular responsibility owed by an undertaking holding a dominant position, in so far as the prices in question are not predatory within the meaning of the judgments of the Court of Justice in Case C-62/86 *AKZO* v *Commission* [1991] ECR I-3359 and Case C-333/94 P *Tetra Pak* v *Commission* [1996] ECR I-5951. According to the Court, the applicant infringed subparagraph (c) of the second paragraph of Article 86 of the EC Treaty since, by granting a rebate of that kind, it applied dissimilar conditions to equivalent transactions with other trading parties, thereby placing the latter at a competitive disadvantage. The applicant's argument that it was lawful to grant the special rebates having regard, in particular, to the defensive nature of its conduct was therefore not accepted. The Court held in relation to this argument that, *even though the existence of a dominant position does not deprive an undertaking placed in that position of the right to protect its own commercial interests when they are threatened, the protection of the commercial position of an undertaking in a dominant position with the characteristics of that of the applicant at the time in question must, at the very least, in order to be lawful, be based on criteria of economic efficiency and be consistent with the interests of consumers*. In the case before the Court, the applicant had not shown that those conditions were fulfilled.

Finally, the Court considered, in connection with the claim seeking a reduction of the fine, whether the Commission had, in the procedure prior to the adoption of the contested decision, failed to comply with the general principle of Community law that it must act within a reasonable time, in accordance with the criteria laid down in *SCK and FNK* v *Commission*, cited above. Having regard to the particular circumstances of the case, the total duration of the administrative proceedings — approximately 80 months — was not held to be unreasonable.

By judgment of 16 December 1999 in Case T-198/98 *Micro Leader Business* v *Commission*, not yet reported in the ECR, the Court annulled a decision by the Commission rejecting a complaint lodged by Micro Leader Business, a company specialising in the wholesale marketing of office and computer equipment, in

which it had alleged that actions of Microsoft France and Microsoft Corporation were contrary to Articles 85 and 86 of the EC Treaty. The Court considered that the Commission had not erred in law or manifestly erred in its assessment when it found that the matters brought to its attention by the complainant contained no evidence of the existence of an agreement or concerted practice within the meaning of Article 85(1). It held, on the other hand, that the contested decision contained a manifest error in the assessment of the infringement of Article 86 alleged by the complainant, namely that the resale prices of Microsoft products on the French market were influenced by means of a prohibition on importing French-language versions of products marketed by Microsoft Corporation on the Canadian market. The Court stated that the Commission could not argue, without undertaking further investigation into the complaint, that the information in its possession did not constitute evidence of abusive conduct by Microsoft — in the Court's view that information contained an indication that Microsoft applied dissimilar conditions in the Canadian and Community markets to equivalent transactions and that the Community prices were excessive. The Court pointed out that while, as a rule, the *enforcement of copyright by its holder, as in the case of the prohibition on importing certain products from outside the Community into a Member State of the Community, was not in itself a breach of Article 86 of the EC Treaty, such enforcement could, in exceptional circumstances, involve abusive conduct* (Joined Cases C-241/91 P and C-242/91 P *RTE and ITP* v *Commission* [1995] ECR I-743).

In an action brought under Article 175 of the EC Treaty (now Article 232 EC) the Court found that the Commission had unlawfully failed to act (judgment of 9 September 1999 in Case T-127/98 *UPS Europe* v *Commission*, not yet reported in the ECR). The case arose from a complaint under Article 3(2) of Regulation No 17 which the applicant had sent to the Commission in July 1994, alleging conduct on the part of Deutsche Post contrary to Article 86 of the EC Treaty. The applicant asked the Court for a declaration that the Commission had unlawfully failed to take a decision on its complaint although (on the date when the application was brought) six months had elapsed since it submitted observations on the notification sent to it by the Commission under Article 6 of Regulation No 99/63. The Court stated that where, as in the case before it, the procedure for examining a complaint has entered its third stage (Case T-64/89 *Automec* v *Commission* [1990] ECR II-367), the Commission is required either to initiate a procedure against the subject of the complaint or to adopt a definitive decision rejecting the complaint, against which proceedings for annulment may be brought before the Community judicature (Case C-282/95 P *Guérin Automobiles* v *Commission* [1997] ECR I-1503). That decision must, in accordance with the principles of good administration, be adopted within a

reasonable time after receipt by the Commission of the complainant's observations. The Court held that the issue as to whether the period between the submission of the applicant's observations in response to the notification under Article 6 of Regulation No 99/63 and the formal request asking the Commission to take a position on the complaint is acceptable must be assessed having regard to the years already spent on the investigation, the present state of the investigation of the case and the attitudes of the parties considered as a whole. The Court granted the application before it since the Commission had not justified its failure to take action within the periods concerned and had not denied its failure to act.

(c) Regulation No 4064/89

The Court delivered four judgments relating to the control of concentrations and mergers (judgments of 4 March 1999 in Case T-87/96 *Assicurazioni Generali and Unicredito* v *Commission*, of 25 March 1999 in Case T-102/96 *Gencor* v *Commission*, of 28 April 1999 in Case T-221/95 *Endemol* v *Commission*, and of 15 December 1999 in Case T-22/97 *Kesko* v *Commission*, all not yet reported in the ECR). None of the applications was allowed.

Assicurazioni Generali and Unicredito v *Commission* helped to define the circumstances in which Regulation No 4064/89 is applicable to joint ventures. In that case, the applicant contested a Commission decision adopted under Article 6(1)(a) of Regulation No 4064/89 (corrected version, OJ 1990 L 257, p. 13), by which the Commission had found that the creation of a joint venture notified to it did not constitute a concentration within the meaning of Article 3 of the regulation [14] and therefore fell outside the regulation's scope. The Court found that the decision adopted constituted a definitive decision which could form the subject-matter of an action for annulment under Article 173 of the Treaty in order to secure judicial protection of the applicants' rights under Regulation No 4064/89. It then held that the Commission had not erred in its assessment when it found that the operation notified was not in the nature of a concentration.

The Court assessed the effect of the parent companies' support on the operational autonomy of the joint venture, for which purpose it had regard to the

[14] It follows from the wording of Article 3 (in the version applicable at the time when the contested decision was adopted, before the entry into force of Council Regulation (EC) No 1310/97 of 30 June 1997 amending Regulation No 4064/89 (OJ 1989 L 180, p. 1)) that the creation of a joint venture is covered by Regulation No 4064/89 only if the joint venture enjoys operational autonomy and its creation does not have as its object or effect the coordination of the competitive behaviour of the participating undertakings.

characteristics of the market in question and determined the extent to which the joint venture carried out the functions normally performed by other undertakings operating on that market. It then held that, where the joint venture is dependent on its parent companies for the provision of a body of services beyond an initial running-in period during which such assistance may be deemed to be justified in order to enable it to gain access to the market, it has no operational autonomy and therefore cannot be regarded as being in the nature of a concentration.

In *Gencor* v *Commission*, the Court dismissed an application for annulment of the Commission decision of 24 April 1996 prohibiting a concentration involving Gencor Ltd, a company incorporated under South African law operating in the mineral resources and metals industries, and Lonrho Plc, a company incorporated under English law with interests in the same industries. The basis for the Commission's decision was that the concentration would have led to the creation of a dominant duopoly position between the entity resulting from the concentration and another company (Amplats) in the world platinum and rhodium market as a result of which effective competition would have been significantly impeded in the common market. The South African Competition Board did not oppose the operation under national rules.

First, the Court confirmed that the Commission had competence to rule on the concentration. It rejected the plea put forward by Gencor that the Commission could not apply Regulation No 4064/89 to a transaction relating to economic activities conducted within the territory of a non-member country and approved by the authorities of that country. The Court observed that Regulation No 4064/89 does not require that, in order for a concentration to be regarded as having a Community dimension within the meaning of Article 1 of the regulation, the undertakings party to the concentration must be established in the Community or that the mining and/or production activities covered by the concentration must be carried out within Community territory. Since the objective of the regulation is to ensure that competition is not distorted in the common market, concentrations which, while relating to mining and/or production activities conducted outside the Community, create or strengthen a dominant position significantly impeding effective competition in the common market fall within the regulation's field of application. Moreover, the regulation adopts as a criterion sales operations within the common market rather than production operations.

The Court also held that the contested decision was compatible with the rules of public international law given that it was *foreseeable that the concentration*, while proposed by undertakings established outside the Community, *would have an immediate and substantial effect in the Community*.

Second, the Court confirmed, on the basis of the legislative objective, that Regulation No 4064/89 applies to cases of collective dominant positions (see Joined Cases C-68/94 and C-30/95 *France and Others* v *Commission* [1998] ECR I-1375).

Third, the Court held that the Commission had been fully entitled to find that the concentration would have created a collective dominant position. The Court observed that, while the existence of very large market shares is highly important in determining whether there is a dominant position, it is not a constant factor when making such a determination: its importance varies from market to market according to the structure of those markets, especially so far as production, supply and demand are concerned. The fact that the parties to an oligopoly hold large market shares does not necessarily have the same significance, compared to the analysis of an individual dominant position, with regard to the opportunities for those parties, as a group, to act to a considerable extent independently of their competitors, their customers and, ultimately, of consumers. Nevertheless, particularly in the case of a duopoly, a large market share is, in the absence of evidence to the contrary, likewise a strong indication of the existence of a collective dominant position.

The Court also held that *links of a structural nature do not have to exist in order for it to be found that two or more independent economic entities hold a collective dominant position; rather, the entities must be linked economically, in a more general manner*. The Court stated that there is no reason whatsoever in legal or economic terms to exclude from the notion of economic links the relationship of interdependence existing between the parties to a tight oligopoly within which, in a market with the appropriate characteristics, in particular in terms of market concentration, transparency and product homogeneity, those parties are in a position to anticipate one another's behaviour and are therefore strongly encouraged to align their conduct in the market, in particular in such a way as to maximise their joint profits by restricting production with a view to increasing prices.

Finally, the Court held that, under Regulation No 4064/89, the Commission has power to accept from the undertakings concerned only such commitments as are capable of enabling it to conclude that the concentration at issue would not create or strengthen a dominant position within the meaning of Article 2(2) and (3) of the regulation, it being unimportant *whether a commitment is categorised as behavioural or structural*.

In *Endemol* v *Commission*, the applicant sought the annulment of the Commission decision of 20 September 1995 which had declared the agreement creating the joint venture Holland Media Groep to be incompatible with the common market. The Court was required to determine the extent of the Commission's powers in relation to concentrations without a Community dimension when a Member State requests it under Article 22(3) of Regulation No 4064/89 to examine whether such a concentration is compatible with that regulation. The Court observed that Article 22 did not grant to the Member State the power to control the Commission's conduct of the investigation once it had referred the concentration in question to it or to define the scope of the Commission's investigation.

This case also enabled the Court to define the extent of rights of the defence. The Court held that the principles governing access to the files in procedures under Articles 85 and 86 of the Treaty were applicable to access to the files in concentration cases examined under Regulation No 4064/89, even though their application could reasonably be adapted to the need for speed, which characterised the general scheme of that regulation. It followed that access to certain documents could be refused, in particular in the case of documents or parts of documents containing other undertakings' business secrets, internal Commission documents, information enabling complainants to be identified where they wished to remain anonymous and information disclosed to the Commission subject to an obligation of confidentiality. Also, the right of undertakings to protection of their business secrets had to be balanced against safeguarding the rights of the defence, so that the Commission could be required to reconcile the opposing interests by preparing non-confidential versions of documents containing business secrets or of other sensitive information.

Finally, the Court found that, in this instance, joint control within the meaning of Article 3(3) of Regulation No 4064/89 was exercised over the joint venture. In order to reach that conclusion, the Court examined the provisions of the merger agreement governing the procedure for the adoption of the most important strategic decisions and the provision under which issues submitted to the general meeting had to be decided by consensus. It also noted that the shareholders' committee, which took decisions by unanimous vote, had to give its prior approval to certain decisions of the managing board which went beyond what was necessary to protect the interests of a minority shareholder.

Article 22(3) of Regulation No 4064/89, whose scope was analysed in the above case, was also considered by the Court in *Kesko* v *Commission*, where it dismissed an application for annulment of a Commission decision declaring a concentration involving Kesko and Tuko to be incompatible with the common

market. The applicant disputed that the Commission, to which a request had been submitted by the Finnish Office of Free Competition, had the power under Article 22(3) to adopt the decision. In rejecting that challenge, the Court stated, first, that *the notion of a request by a "Member State" within the meaning of Article 22(3) was not limited to requests from a government or ministry but also encompassed requests from national authorities such as the Finnish Office of Free Competition* and, second, that the Commission had had good grounds for considering that the Finnish Office for Free Competition was competent to submit the request, having regard to the information available to it at the time of the adoption of the contested decision.

The applicant also contended that the contested decision had failed to establish that the concentration had an effect on intra-Community trade. The Court held that it was necessary to apply to the criterion of an effect on trade between Member States, within the meaning of Article 22(3) of Regulation No 4064/89, an interpretation which was consistent with that given to it in the context of Articles 85 and 86 of the EC Treaty. The Commission was thus entitled in the context of Article 22(3) to take account of potential effects of the concentration on trade between Member States, provided that they were sufficiently appreciable and foreseeable, without being required to establish that the concentration had actually affected intra-Community trade.

2. *State aid*

In the field of State aid, the Court decided numerous cases brought under the fourth paragraph of Article 173 of the EC Treaty [15] and Article 33 of the ECSC

[15] Judgments in Case T-14/96 *BAI* v *Commission* [1999] ECR II-139; in Case T-86/96 *Arbeitsgemeinschaft Deutscher Luftfahrt-Unternehmen and Hapag-Lloyd* v *Commission* [1999] ECR II-179; of 15 June 1999 in Case T-288/97 *Regione Autonoma Friuli Venezia-Giulia* v *Commission*, not yet reported in the ECR; of 17 June 1999 in Case T-82/96 *ARAP and Others* v *Commission*, not yet reported in the ECR (under appeal, Case C-321/99 P); of 6 October 1999 in Case T-123/97 *Salomon* v *Commission*, not yet reported in the ECR; of 6 October 1999 in Case T-110/97 *Kneissl Dachstein Sportartikel* v *Commission*, not yet reported in the ECR; of 15 December 1999 in Joined Cases T-132/96 and T-143/96 *Freistaat Sachsen and Volkswagen* v *Commission*, not yet reported in the ECR; and order of 30 September 1999 in Case T-182/98 *UPS Europe* v *Commission*, not yet reported in the ECR.

Treaty. [16] It also dealt with an action for a declaration under Article 175 of the EC Treaty that the Commission had failed to act (judgment of 3 June 1999 in Case T-17/96 *TF1* v *Commission*, not yet reported in the ECR; under appeal, Cases C-302/99 P and C-308/99 P) and an action for damages (judgment in Case T-230/95 *BAI* v *Commission* [1999] ECR II-123).

So far as concerns the *admissibility of actions pursuant to the fourth paragraph of Article 173 of the EC Treaty*, the Court had to determine an application (*ARAP and Others* v *Commission*, under appeal in Case C-321/99 P) for the annulment of a decision adopted by the Commission under the preliminary examination procedure provided for by Article 93(3) of the EC Treaty (now Article 88(3) EC) as well as applications for the annulment of decisions adopted following the examination procedure laid down in Article 93(2) of the EC Treaty. With regard to the latter decisions, the Court confirmed that, of the criteria referred to in the fifth paragraph of Article 173 of the EC Treaty, that of publication in the *Official Journal of the European Communities* must be adopted when determining the starting point for the period within which a person other than the Member State to which a decision is notified may institute proceedings (*Salomon* v *Commission* and *Kneissl Dachstein Sportartikel* v *Commission*) even where the Commission has sent to the applicant the text of its press release announcing the adoption of the decision (Case T-14/96 *BAI* v *Commission*). [17]

In *Arbeitsgemeinschaft Deutscher Luftfahrt-Unternehmen and Hapag-Lloyd* v *Commission*, the Court dismissed as inadmissible an action brought by an association and an undertaking for the annulment of a Commission decision declaring fiscal aid given to German airlines in the form of a depreciation facility to be incompatible with the common market.

[16] Judgments in Joined Cases T-129/95, T-2/96 and T-97/96 *Neue Maxhütte Stahlwerke and Lech-Stahlwerke* v *Commission* [1999] ECR II-17 (under appeal, Case C-111/99 P); of 25 March 1999 in Case T-37/97 *Forges de Clabecq* v *Commission*, not yet reported in the ECR (under appeal, Case C-179/99 P); of 12 May 1999 in Joined Cases T-164/96 to T-167/96, T-122/97 and T-130/97 *Moccia Irme and Others* v *Commission*, not yet reported in the ECR (under appeal, Cases C-280/99 P, C-281/99 P and C-282/99 P); of 7 July 1999 in Case T-106/96 *Wirtschaftsvereinigung Stahl* v *Commission*, not yet reported in the ECR; of 7 July 1999 in Case T-89/96 *British Steel* v *Commission*, not yet reported in the ECR; of 9 September 1999 in Case T-110/98 *RJB Mining* v *Commission*, not yet reported in the ECR (under appeal, Case C-427/99 P); and of 16 December 1999 in Case T-158/96 *Acciaierie di Bolzano* v *Commission*, not yet reported in the ECR.

[17] A similar interpretation was placed on Article 33 of the ECSC Treaty in *Forges de Clabecq* v *Commission*, in *British Steel* v *Commission* (Case T-89/96) and in *Wirtschaftsvereinigung Stahl* v *Commission*, all cited above.

With regard to the undertaking's standing to bring proceedings, the Court found first of all that, in prohibiting the temporal extension of tax provisions of general application, the contested decision affected the undertaking merely by virtue of its objective position as a potential beneficiary of the depreciation facility in question, in the same way as any other operator who was, or might in the future be, in the same situation. The prohibited tax advantage therefore was not individual in nature. The Court then held that the fact that a natural or legal person is an interested third party within the meaning of Article 93(2) of the EC Treaty cannot confer on it standing to bring an action against the decision adopted at the end of the second stage of the examination. In other words, a natural or legal person may be individually concerned by reason of its status as an interested third party only by a Commission decision refusing to initiate the examination stage provided for by Article 93(2). Where the Commission has adopted its decision at the end of the second stage of the examination, interested third parties have in fact availed themselves of their procedural guarantees, *so that they can no longer be regarded, by virtue of that status alone, as being individually concerned by that decision within the meaning of Article 173 of the EC Treaty*. Finally, the Court held that the fact that the undertaking participated in the procedure under Article 93(2) did not of itself suffice to distinguish it individually as it would the person to whom the contested decision was addressed.

This case also gave the Court the opportunity to reiterate the conditions in which a trade association is treated as having standing to bring an action for the purposes of Article 173 of the EC Treaty. In this instance, since the association could not be regarded as having legitimately taken the place of one or more of its members (in accordance with the solution in Joined Cases T-447/93, T-448/93 and T-449/93 *AITEC and Others* v *Commission* [1995] ECR II-1971) and did not have the status of negotiator within the meaning of the judgments in Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy and Others* v *Commission* [1988] ECR 219 and Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125, its application was not admissible.

In its judgments in *Regione Autonoma Friuli-Venezia Giulia* v *Commission* and *Freistaat Sachsen and Volkswagen* v *Commission*, the Court declared admissible actions brought by infra-State authorities, thereby confirming its previous case-law (Case T-214/95 *Vlaams Gewest* v *Commission* [1998] ECR II-717).

The case of *Regione Autonoma Friuli-Venezia Giulia* v *Commission* arose from a decision addressed to the Italian Republic by which the Commission declared aid granted by the Friuli-Venezia Giulia Region in Italy to road haulage companies in the Region to be incompatible with the common market and ordered

that the aid be reimbursed. The Court found that the contested decision concerned the Region individually since the decision not only affected measures adopted by it but, in addition, prevented it from exercising its own powers as it saw fit. Furthermore, the decision prevented it from continuing to apply the legislation in question, nullified the effects of that legislation and required it to initiate the administrative procedure for the recovery of the aid from the beneficiaries. The Region was also directly concerned by the decision since the national authorities, to which the decision was addressed, did not act in the exercise of a discretion when communicating it to the Region. Nor did the Region's interest in bringing proceedings merge with that of the Italian State inasmuch as it had rights and interests of its own: the aid with which the contested decision was concerned constituted a set of measures taken in the exercise of the legislative and financial autonomy which was vested in it directly under the Italian constitution.

The Court adopted a similar legal analysis in the case brought by the Freistaat Sachsen (Free State of Saxony), a *Land* in the Federal Republic of Germany, for the partial annulment of Commission Decision 96/666/EC of 26 June 1996 concerning aid granted to the Volkswagen Group for works in Mosel and Chemnitz. The Court thus accepted that this territorial entity had standing to bring the proceedings (*Freistaat Sachsen and Volkswagen* v *Commission*).

In *UPS Europe* v *Commission* the Court allowed the objection of inadmissibility raised by the Commission, on the ground that the letter which the Commission had sent to the applicant, the author of the complaint containing allegations of State aid, had no legal effects. By that letter the applicant was informed, first, that the Commission had decided not to initiate for the time being a procedure for the review of aid under Article 93 of the EC Treaty and, second, that the Commission did not preclude "the possibility that State aid aspects might be involved in the case".

So far as concerns the application of *Article 175 of the EC Treaty*, the Court, as it did the year before in Case T-95/96 *Gestevisión Telecinco* v *Commission* [1998] ECR II-3407, made a declaration that the Commission had failed to act with regard to State aid. In *TF1* v *Commission* the Court held that the Commission had unlawfully failed to adopt a decision on the part of the complaint lodged by the applicant which concerned State aid granted to public television channels. In this instance, in order to assess whether, at the time when the Commission was called upon to act pursuant to Article 175 of the Treaty, it had been under any obligation to act, the Court had regard to the period from the date on which the complaint was lodged (in March 1993) to the date on which the Commission was

called upon to act (in October 1995). The Court found that so much time had elapsed that the Commission ought to have been able to complete its preliminary examination of the measures at issue and adopt a decision on them, unless the delay could be justified by exceptional circumstances. Since no circumstances of that kind were established, the Commission had unlawfully failed to act once the two-month period starting from the request to act expired.

The Court was required to interpret the *concept of State aid* in several cases: Case T-14/96 *BAI* v *Commission*, *Forges de Clabecq* v *Commission* and *Neue Maxhütte Stahlwerke and Lech Stahlwerke* v *Commission*.

In its judgment in Case T-14/96 *BAI* v *Commission*, the Court annulled the decision by the Commission to terminate a review procedure initiated in relation to an agreement concluded by the Regional Council of Biscay and Ferries Golfo de Vizcaya on the ground that it did not constitute State aid. It held that the Commission's assessment was based on a misinterpretation of Article 92(1) of the Treaty, observing that a State measure in favour of an undertaking which takes the form of an agreement to purchase travel vouchers cannot be excluded in principle from the concept of State aid merely because the parties undertake reciprocal commitments. In this instance, the Court found, first, that it had not been established that the purchase of travel vouchers by the Regional Council of Biscay was in the nature of a normal commercial transaction and, second, that the aid in question affected trade between Member States because the undertaking which received it provided transport between towns situated in different Member States and competed with shipping lines established in other Member States.

In its judgment in *Forges de Clabecq* v *Commission* the Court dismissed an action for annulment of a decision by the Commission declaring financial assistance granted to the applicant to be incompatible with the common market. It held that a capital contribution and advances made on that contribution, the waiver of debts, the provision of State guarantees in respect of loans and the grant of bridging loans could be regarded as aid within the meaning of Article 4(c) of the ECSC Treaty. It stated that aid for the purposes of that provision included any payment in cash or in kind made in support of an undertaking other than the payment by the purchaser or consumer for the goods or services which it produced, and also any intervention which alleviated the normal burdens on an undertaking's budget.

By the judgment in *Neue Maxhütte Stahlwerke and Lech Stahlwerke* v *Commission*, the Court dismissed applications brought by two German steel undertakings, Neue Maxhütte Stahlwerke and Lech Stahlwerke for the annulment

of three Commission decisions. In essence, the applicants disputed the categorisation as State aid, within the meaning of the ECSC Treaty, of certain financial measures adopted in their favour by the *Land* of Bavaria. In the contested decisions, the Commission had considered that a normal private investor operating in a market economy would not have granted them the benefit of such measures. The Court confirmed that analysis, holding that the Commission had not infringed Article 4(c) of the ECSC Treaty.

In this connection, the Court stated that the concepts referred to in the provisions of the EC Treaty relating to State aid are relevant when applying the corresponding provisions of the ECSC Treaty to the extent that they are not incompatible with that Treaty. *It is therefore permissible, to that extent, to refer to the case-law on State aid deriving from the EC Treaty, in particular the case-law defining the concept of State aid, in order to assess the legality of decisions regarding aid covered by Article 4(c) of the ECSC Treaty.* In order to determine whether a transfer of public resources to a steel undertaking constituted State aid within the meaning of Article 4(c) of the ECSC Treaty, the Court applied the private investor test and stated that, in the case before it, the injection of capital by a public investor without any prospect of profitability, even in the long term, constituted State aid. In view of the fact that Neue Maxhütte Stahlwerke was heavily overindebted, the Commission was entitled to consider that a private investor, even one operating on the scale of a group in a broad economic context, could not, in normal market conditions, have been able to count on an acceptable return, even in the longer term, on the invested capital. The Court accepted that parent companies may, for a limited period, bear the losses of one of their subsidiaries in order to enable the latter to close down its operations under the best possible conditions, when such decisions may be motivated not solely by the likelihood of an indirect material profit but also by other considerations, such as a desire to protect the group's image or to redirect its activities. None the less, a private investor cannot reasonably allow himself, after years of continuous losses, to make a contribution of capital which, in economic terms, proves to be not only costlier than selling the assets, but is moreover linked to the sale of the undertaking, which removes any hope of profit, even in the longer term.

On several occasions the Court was called on to examine whether the Commission had applied the *derogations from the prohibition of aid* correctly.

As regards the derogations under Article 92(3) of the EC Treaty, the cases of *Salomon* v *Commission* and *Kneissl Dachstein Sportartikel* v *Commission* may be noted. Here the applicants contested a Commission decision declaring that,

subject to certain conditions, aid granted by the Austrian Government to the company Head Tyrolia Mares in the form of capital injections was compatible with the common market as restructuring aid.

The two judgments, in which the applications for annulment were dismissed, define the scope of the review carried out by the Court when it assesses whether State aid is compatible with the common market. The Court observed that the Commission enjoys a broad discretion in the application of Article 92(3) of the EC Treaty. Since that discretion involves complex economic and social appraisals, the Court must, in reviewing a decision adopted in such a context, confine its review to determining whether the Commission complied with the rules governing procedure and the stating of reasons, whether the facts on which the contested finding was based are accurately stated and whether there has been any manifest error in the assessment of those facts or any misuse of powers. In particular, it is not for the Court to substitute its own economic assessment for that of the author of the decision.

The Court found in *Kneissl Dachstein Sportartikel* v *Commission* that since the Commission was justified in that instance in finding that the survival of the undertaking receiving the aid would contribute to the maintenance of a competitive market structure, the aid could not be regarded as favouring a single undertaking. In addition, it stated that it was clear from the disjunctive nature of the conjunction "or" used in Article 92(3)(c) of the EC Treaty [18] that aid to facilitate development either of certain activities or of certain economic areas could be regarded as compatible with the common market. Consequently, the grant of authorisation for aid was not necessarily subordinate to the provision's regional aim.

The Court also found in this judgment, when ruling on a plea alleging that the reduction of capacity imposed on the undertaking in receipt of the aid was insufficient, that, in the context of aid for restructuring an undertaking in difficulty, the reductions in capacity could not be equated with the reduction in jobs, since the relationship between the number of employees and production capacity depended on a number of factors, in particular the products manufactured and the technology used.

[18] Under this provision, "aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest" may be considered to be compatible with the common market.

In *ARAP and Others* v *Commission*, the applicants challenged a Commission decision concerning State aid granted by Portugal to an undertaking for the establishment of a beet sugar refining plant in Portugal. The aid comprised, in particular, tax relief which, in the applicants' submissions, was incompatible with the common agricultural policy in the sugar sector. The Court found that, since that aid was designed to permit use of the quota of 70 000 tonnes of sugar expressly allocated to Portugal by the Community legislation so that undertakings could "start up" production there, it could not be denied that it contributed to attainment of the aims pursued in the context of the common agricultural policy.

In *Freistaat Sachsen and Volkswagen* v *Commission* the Community judicature was called on for the first time to interpret Article 92(2)(c) of the EC Treaty, under which aid is compatible with the common market where it is "granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division". In ruling on a plea alleging infringement of Article 92(2)(c), the Court found that the conception of the applicants and the German Government, according to which that provision permitted full compensation for the undeniable economic backwardness suffered by the new *Länder* until such time as they reached a level of development comparable with that of the original *Länder*, disregarded both the nature of the provision as a derogation and its context and aims. The Court pointed out that the economic disadvantages suffered by the new *Länder* as a whole had not been caused by the division of Germany within the meaning of Article 92(2)(c). The Commission could therefore correctly state that *the derogation laid down in Article 92(2)(c) should not be applied to regional aid for new investment projects* and that the derogations provided for in Article 92(3)(a) and (c) of the EC Treaty and the Community framework were sufficient to deal with the problems faced by the new *Länder*. The allegations that Article 92(3) of the EC Treaty had been infringed were rejected as unfounded.

In the context of the ECSC Treaty, the derogations founded on Article 95 of that Treaty were considered in the judgments in *Wirtschaftsvereinigung Stahl* v *Commission* and in *British Steel* v *Commission* (Case T-89/96).

By their actions, the United Kingdom undertaking British Steel and the German association Wirtschaftsvereinigung Stahl sought the annulment of a Commission decision approving the grant of aid by the Irish Government to the steel company Irish Steel on the basis that it would be restructured and privatised. After finding that *the Commission could approve the restructuring aid by an individual decision directly based on Article 95 of the Treaty* since the fifth Community code

governing aid to the steel industry ("the Fifth Steel Aid Code") did not provide for such aid, the Court held that the Commission had not manifestly erred in its assessment. In that regard, it noted that the measures for restricting production and sales imposed on Irish Steel in return for approval of the aid were sufficient to eliminate distortion of competition and stated that *the Commission was not required to impose capacity reductions as a condition for granting State aid in the coal and steel sector* — such a reduction would in this instance have brought about the closure of the undertaking, which possessed only one mill. The Court also found that the restoration of the undertaking receiving the aid to economic health, which was liable to prevent the economic difficulties in the area concerned from worsening, served the objectives of the ECSC Treaty. The Court also held in these judgments that, under the ECSC Treaty, failure to give prior notification of aid did not excuse or even prevent the Commission from taking action on the basis of Article 95 of that Treaty and, where appropriate, declaring the aid compatible with the common market. Since the Commission had found that the aid for the restructuring of Irish Steel was necessary for the proper functioning of the common market and that it did not give rise to unacceptable distortion of competition, the fact that notification had not been made did not affect the legality of the contested decision, whether as a whole or solely in so far as the non-notified aid was concerned.

By contrast, in *Forges de Clabecq* v *Commission*, the Commission refrained from authorising by way of derogation under Article 95 of the ECSC Treaty aid falling outside the Fifth Steel Aid Code which the Belgian authorities had granted to the undertaking Forges de Clabecq. According to the Court, the Commission had not made a manifest error in coming to that decision on the ground that there was no aim in the ECSC Treaty requiring the aid to be authorised. Noting that, in spite of numerous generous measures to assist it, the undertaking was almost bankrupt, the Court stated that it was not unreasonable of the Commission to take the view that the fresh measures envisaged would not secure the undertaking's viability over any period.

The Court also confirmed two Commission decisions declaring that aid which the Italian authorities planned to grant to a number of undertakings was incompatible with the common market within the meaning of Article 4(c) of the ECSC Treaty (*Moccia Irme and Others* v *Commission*). In its judgment the Court held that, within the framework of the strict rules imposed by the Fifth Steel Aid Code, the purpose of the requirement of regular production laid down in the second indent of Article 4(2) of the code, under which an undertaking seeking aid for closure must have been producing ECSC steel products on a regular basis, is to ensure

that aid for closure achieves maximum effectiveness on the market so as to reduce steel production as substantially as possible.

A need for an interpretation of the rules applicable to State aid in the coal sector gave rise to an *interlocutory judgment* restricted to two questions of law. Those questions had been raised by RJB Mining, a company established in the United Kingdom, in its action for the annulment of the Commission decision authorising German aid to the coal industry for 1997 amounting to DEM 10.4 thousand million (*RJB Mining* v *Commission*). The questions were: (i) whether the Commission was authorised by Commission Decision No 3632/93/ECSC [19] to give *ex post facto* approval to aid which had already been paid without its prior approval; and (ii) whether the Commission had power under Article 3 of that decision to authorise the grant of operating aid provided only that the aid enabled the recipient undertakings to reduce their production costs and achieve a relative decrease in aid, without their having any reasonable chance of achieving economic viability within the foreseeable future.

The Court held in reply to the first question that the plea alleging a prohibition on giving *ex post facto* approval to aid paid without prior approval was unfounded.

With regard to the answer to the second question, it should be noted that, under Article 3 of Decision No 3632/93, Member States which intend to grant *operating aid* for the 1994 to 2002 coal production years to coal undertakings are required to submit to the Commission in advance "a modernisation, rationalisation and restructuring plan *designed to improve the economic viability of the undertakings concerned* by reducing production costs".

The Court found, contrary to the interpretation put forward by the applicant, that no provision in Decision No 3632/93 states expressly that operating aid must be strictly reserved for undertakings with reasonable chances of achieving economic viability in the long term, in the sense that they must be capable of meeting competition on the world market on their own merits. The provisions require only that economic viability "improve". It follows that *improvement in the economic viability of a given undertaking necessarily means no more than a reduction in the level of its non-profitability and its non-competitiveness*. It is to be secured by a significant reduction in production costs making it possible for

[19] Commission Decision No 3632/93/ECSC of 28 December 1993 establishing Community rules for State aid to the coal industry (OJ 1993 L 329, p. 12).

a relative decrease in the operating aid granted to the undertakings concerned to be achieved.

3. *Article 90 of the EC Treaty (now Article 86 EC)* [20]

In it judgment in *TF1* v *Commission* (under appeal before the Court of Justice, Cases C-302/99 P and C-308/99 P), the Court declared admissible an action pursuant to Article 175 of the EC Treaty for a declaration that the Commission had unlawfully failed to act under Article 90 of the Treaty. In reaching that conclusion, the Court stated that the wide discretion which the Commission enjoys in implementing Article 90 of the Treaty cannot undo the protection provided by the general principle of Community law that any person must be able to obtain effective judicial review of decisions which may infringe a right conferred by the Treaties. Referring to the judgment of the Court of Justice in Case C-107/95 P *Bundesverband der Bilanzbuchhalter* v *Commission* [1997] ECR I-947, where it was held that the possibility could not be ruled out that exceptional situations might exist where an individual had standing to bring proceedings against a refusal by the Commission to adopt a decision pursuant to its supervisory functions under Article 90(1) and (3) of the Treaty, the Court found, having regard to the facts brought to its notice, that the applicant was in such a situation. However, the action for failure to act was not examined as to the substance because the Commission sent a letter to the applicant in the course of the judicial proceedings.

The judgment of 8 July 1999 in Case T-266/97 *Vlaamse Televisie Maatschappij* v *Council*, not yet reported in the ECR, relates to an action challenging Commission Decision 97/606/EC of 26 June 1997 which declared that the legislative provisions granting Vlaamse Televisie Maatschappij the exclusive right to broadcast television advertising in Flanders were incompatible with Article 90(1) of the EC Treaty, read in conjunction with Article 52 of that Treaty (now, after amendment, Article 43 EC). The decision was based on the ground that the State measures forming the legal basis of the exclusive right were

[20] Article 90(1) of the EC Treaty requires the Member States, in the case of public undertakings and undertakings to which they grant special or exclusive rights, neither to enact nor to maintain in force any measure contrary to the rules contained in the Treaty, in particular to those rules provided for in Article 6 of the EC Treaty (now, after amendment, Article 12 EC) and in Article 85 to Article 94 (now Article 89 EC).

Article 90(3) of the EC Treaty requires the Commission to ensure that Member States comply with their obligations as regards the undertakings referred to in Article 90(1) and expressly empowers it to take action for that purpose by means of directives and decisions.

incompatible with Article 52 of the EC Treaty and were not justified "on imperative grounds in the public interest".

This judgment defined the extent of the rights granted to third parties in the procedure leading to the adoption of decisions under Article 90(3) of the EC Treaty and confirmed the manner in which Article 90(1) of the EC Treaty is to be applied in conjunction with Article 52 of that Treaty.

With regard to the first aspect, the Court, referring to the judgment of the Court of Justice in Joined Cases C-48/90 and C-66/90 *Netherlands and Others* v *Commission* [1992] ECR I-565, found that an undertaking falling within Article 90(1) of the EC Treaty which is the direct beneficiary of the State measure at issue, is expressly named in the applicable law, is directly covered by the contested decision and is directly affected by the economic consequences of that decision (like the applicant), is entitled to be heard by the Commission during that procedure. The Court stated that observance of that right requires the Commission to communicate formally to the undertaking benefitting from the contested State measure the specific objections which it raises against the measure as set out in the letter of formal notice addressed to the Member State and, where appropriate, in any subsequent correspondence, and to grant it an opportunity to make known its views effectively on those objections. *However, it does not require the Commission to afford the undertaking benefitting from the measure an opportunity to make known its views on the observations submitted by the Member State against which the procedure has been initiated, whether in response to objections that have been addressed to it or in response to observations submitted by interested third parties, nor formally to transmit to the undertaking a copy of any complaint which may have given rise to the procedure.* In the case before it, the Court found that the applicant had been properly heard.

As regards the second aspect, Article 90(1) of the Treaty, read in conjunction with Article 52 thereof, must be applied where a measure adopted by a Member State constitutes a restriction on the freedom of establishment of nationals of another Member State in its territory and, at the same time, gives an undertaking advantages by granting it an exclusive right, unless the State measure is pursuing a legitimate objective compatible with the Treaty and is *permanently* justified by overriding reasons relating to the public interest, such as cultural policy and the maintenance of pluralism in the press. In such a case it is still necessary for the State measure to be appropriate for ensuring attainment of the objective it pursues and not to go beyond what is necessary for that purpose.

The Court found, first, that there was an obstacle to freedom of establishment and, second, that the barrier could not be justified by an overriding reason relating to the public interest. The application was therefore not granted.

4. *Access to Council and Commission documents*

The Court was required to rule on the conditions governing public access to documents [21] of the Commission (judgments of 19 July 1999 in Case T-188/97 *Rothmans* v *Commission*, of 14 October 1999 in Case T-309/97 *Bavarian Lager* v *Commission* and of 7 December 1999 in Case T-92/98 *Interporc* v *Commission*, all not yet reported in the ECR) and of the Council (judgment of 19 July 1999 in Case T-14/98 *Hautala* v *Council*, not yet reported in the ECR; under appeal, Case C-353/99 P). In addition, by order of 27 October 1999 in Case T-106/99 *Meyer* v *Commission*, not yet reported in the ECR (under appeal, Case C-436/99 P), the Court dismissed an action as inadmissible where the applicant had requested information without specifying any document or written text.

In *Rothmans* v *Commission* the Court held that the Commission had unlawfully refused to give access to minutes of the Customs Code Committee by relying on the *rule on authorship contained in the code of conduct*. Under that rule, where a document held by an institution was written by a natural or legal person, a Member State, another Community institution or body or any other national or international body, the application for access must be sent direct to the author.

The Court held that, *for the purposes of the Community rules on access to documents, "comitology" committees established pursuant to Decision 87/373 laying down the procedures for the exercise of implementing powers conferred on the Commission* [22] *come under the Commission itself* and that the Commission is itself therefore responsible for ruling on applications for access to documents of those committees, such as the minutes in question in that case. "Comitology" committees assist the Commission to carry out the tasks given to it by the Council, have a chairman provided by the Commission and do not have their own infrastructural back-up. The Court found that a committee of that kind therefore

21 On 6 December 1993 the Council and the Commission approved a code of conduct concerning public access to Council and Commission documents (OJ 1993 L 340, p. 41). In order to implement the principles laid down by the code, the Council adopted, on 20 December 1993, Decision 93/731/EC on public access to Council documents (OJ 1993 L 340, p. 43). The Commission likewise adopted, on 8 February 1994, Decision 94/90/ECSC, EC, Euratom on public access to Commission documents (OJ 1994 L 46, p. 58).

22 Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ 1987 L 197, p. 33.)

cannot be regarded as being "another Community institution or body" within the meaning of the code of conduct adopted by Decision 94/90.

The dispute between the company Interporc and the Commission concerning imports of "Hilton" beef from Argentina continues to give rise to litigation (see, as regards the lawfulness of the decision rejecting the request for remission of import duty, the judgments in Case T-42/96 *Eyckeler & Malt* v *Commission* [1998] ECR II-401 and Case T-50/96 *Primex Produkte Import-Export and Others* v *Commission* [1998] ECR II-3773). It will be recalled that in its judgment in Case T-124/96 *Interporc* v *Commission* [1998] ECR II-231 ("*Interporc I*"), the Court found fault with a refusal by the Commission, founded on the exception relating to the protection of the public interest with regard to court proceedings, to grant access to certain documents: the Commission's decision contained no explanation from which it might be ascertained whether all the documents requested did indeed fall within the scope of the exception relied upon because they bore a relation to a decision whose annulment was sought in a case pending before the Court.

In implementing the judgment in *Interporc I*, the Commission adopted a fresh decision refusing access as regards the documents — emanating from Member States, authorities of a non-member country and the Commission itself — to which the applicant had not yet had access in connection with the pending proceedings referred to above. In dealing with the legality of that decision, the Court was required to clarify the scope of, first, the exception relating to the protection of the public interest and, second, the rule on authorship (set out above in relation to *Rothmans* v *Commission*).

As to the exception for the protection of the public interest with regard to court proceedings, the Commission had stated in the contested decision that some of the documents requested concerned legal proceedings pending before the Court (Case T-50/96) and therefore could not be disclosed to the applicant. The Court held that the exception based on the existence of court proceedings had to be interpreted as meaning that *the protection of the public interest precluded the disclosure of the content of documents drawn up by the Commission solely for the purposes of specific court proceedings*, that is to say not only the pleadings or other documents lodged and internal documents concerning the investigation of the case before the court, but also correspondence concerning the case between the Directorate-General concerned and the Legal Service or a lawyers' office. The purpose of that definition of the scope of the exception was to ensure, first, the protection of work done within the Commission and, second, confidentiality and the safeguarding of professional privilege for lawyers. However, the

exception based on the protection of the public interest with regard to court proceedings contained in the code of conduct could not enable the Commission to escape from its obligation to disclose documents which had been drawn up in connection with a purely administrative matter. That principle had to be respected even if the disclosure of such documents in proceedings before the Community judicature might be prejudicial to the Commission. The Court also made it clear that the existence of court proceedings seeking the annulment of the decision taken following the administrative procedure in question was immaterial in that regard. Consequently, the Court concluded that the contested decision had to be annulled in so far as it refused access to documents emanating from the Commission.

It was held in the judgment that the Commission had been fully entitled, on the basis of the rule on authorship, to refuse access to the documents emanating from the Member States and the Argentine authorities.

The judgment in *Bavarian Lager* v *Commission* confirmed the Commission's refusal, founded on the exception relating to the protection of the public interest, to grant access to a draft reasoned opinion which it had drawn up under Article 169 of the EC Treaty (now Article 226 EC). The disclosure of such preparatory documents relating to the investigation stage of the procedure under Article 169 could undermine the proper conduct of the procedure inasmuch as the procedure's purpose, which is to enable the Member State to comply of its own accord with the requirements of the Treaty or, if appropriate, to justify its position, could be jeopardised.

In *Hautala* v *Council* the Court annulled a decision by which the Council had refused access to a report on conventional arms exports without having examined the possibility of disclosing extracts from it.

In response to an application made by Mrs Hautala, the Council refused to grant her access to the report on the ground that it contained sensitive information whose disclosure would prejudice the relations of the European Union with non-member countries. It thus based its refusal on the exception relating to the protection of the public interest with regard to international relations. The Court found first of all that the Council had given adequate consideration to the application for access to the document. It then held that it had not been shown that the Council had erred in its assessment in considering that access to the report could harm the public interest.

It stated, however, that since the principle was that public access to documents should be as wide as possible, the exceptions to that principle laid down in Article 4(1) of Decision 97/731 had to be interpreted and applied restrictively. The aim of protecting the public interest could be achieved even if the Council did no more than remove, after examination, the passages in the contested report which might harm international relations. In so doing, the Council had to balance the interest in public access to the unremoved passages against the interests of good administration, having regard to the burden of work which could result from the grant of partial access.

5. *Trade protection measures*

In the field of anti-dumping duties, the Court ruled on the substance in four cases (judgments of 12 October 1999 in Case T-48/96 *Acme* v *Council*, of 20 October 1999 in Case T-171/97 *Swedish Match Philippines* v *Council*, of 28 October 1999 in Case T-210/95 *EFMA* v *Council* and of 15 December 1999 in Joined Cases T-33/98 and T-34/98 *Petrotub* v *Council*, all not yet reported in the ECR). The four actions, which all sought the annulment of Council regulations imposing definitive anti-dumping duties on imports from countries not members of the Community, were dismissed by the Court as unfounded.

In *Acme* v *Council*, the applicant, a company incorporated under Thai law, challenged the legality of a Council regulation imposing definitive anti-dumping duties on imports of microwave ovens originating in the People's Republic of China, the Republic of Korea, Malaysia and Thailand and collecting definitively the provisional duty imposed. The fundamental question raised was whether the Council had infringed Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidised imports from countries not members of the European Economic Community (OJ 1988 L 209, p. 1), first, by falling back on the general provision, laid down in the final part of Article 2(3)(b)(ii), under which the expenses incurred and the profit realised were to be determined "on any other reasonable basis" when calculating the constructed normal value and, second, by using the Korean data for that purpose and not the data relating to the company responsible for exporting the microwave ovens produced by the applicant. Having regard to the documents in the case, the Court found that, for the purpose of determining the constructed normal value, the institutions had been entitled to conclude that the data relating to that exporter could not be used since they were unreliable, and that they had correctly taken as a basis the data relating to Korean producers.

The judgment in *Swedish Match Philippines* v *Council* was concerned in particular with the question whether the Community institutions were entitled to find that material injury could be caused to the Community industry where the extent of the export of the product concerned to the Community during the period of the investigation was extremely limited. In the case before the Court, of the lighters exported from the three countries covered by the investigation (the Philippines, Thailand and Mexico), those manufactured in the Philippines and exported by Swedish Match Philippines accounted, according to the applicant, for only 0.0083%.

The Court had regard to the wording of certain provisions in Council Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1) and to the absence of a provision obliging the Community institutions to consider, in anti-dumping proceedings, whether and if so how far each exporter responsible for dumping individually contributes to the injury caused to the Community industry. It found that, for the purposes of determining the existence of injury, the Community legislature had chosen to use the territorial scope of one or more countries, considering all dumped imports from the country or countries concerned together. It therefore rejected the applicant's ground of challenge.

In *EFMA* v *Council*, the Court set out the method for determining the profit margin which the Council is to use when it calculates the target price, that is to say the minimum price required to remove the injury caused to the Community industry by the imports of the product concerned (in that case, ammonium nitrate from Russia).

First, it stated that this profit margin must be limited to the profit margin which the Community industry could reasonably count on under normal conditions of competition, in the absence of the dumped imports.

Second, where the undertakings in the Community industry have different production costs, and thus different profit levels, the Community institutions have no choice, when determining the target price, but to calculate the weighted average of the production costs of the Community producers as a whole and to add to it the average profit margin which they consider reasonable in view of all the relevant circumstances. The Court added that the Council has no authority to calculate the target price solely on the basis of the highest production costs, as to do so would result in the setting of a target price which is unrepresentative of the Community as a whole.

Finally, the judgment in *Petrotub and Republica* v *Council*, which confirmed the regulation subject to challenge, clarifies the scope of the procedural rights granted to exporters under Regulation No 384/96. The Court, interpreting the relevant provisions of that regulation — in particular Article 20(2) relating to disclosure — in the light of its general scheme and the general principles of Community law, held that exporters are entitled to be informed, at least summarily, of the considerations concerning the Community interest.

6. *Agriculture*

In the field of agricultural policy in the broad sense, the most significant judgments in terms of substantive law [23] concern the banana sector.

In the judgments of 28 September 1999 in Case T-612/97 *Cordis* v *Commission* (under appeal, Case C-442/99 P) and Case T-254/97 *Fruchthandelsgesellschaft Chemnitz* v *Commission*, both not yet reported in the ECR, the applicants, companies incorporated under German law, sought the annulment of Commission decisions refusing to grant them additional import licences under the transitional measures provided for in Article 30 of Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organisation of the market in bananas (OJ 1993 L 47, p. 1). This regulation introduced a common system for the importation of bananas which replaced the various national arrangements. Since the changeover risked causing disturbances in the internal market, Article 30 allowed the Commission to take specific transitional measures it considered necessary in order to overcome difficulties encountered by traders following the establishment of the common organisation of the market but originating in the state of national markets prior to the entry into force of Regulation No 404/93.

In Case T-254/97 the Commission had considered that the case of Fruchthandelsgesellschaft Chemnitz was not one of excessive hardship such as to justify the special grant of import licences because it appeared from the facts that this company, which was formed after the publication of Regulation No 404/93 in the *Official Journal of the European Communities*, could not have acted without having been able to foresee the consequences which its action would have after the establishment of the common organisation of the market in bananas. The Court confirmed that analysis and dismissed the action.

[23] Issues of admissibility raised by actions in the field of agricultural policy are to be found in the section on admissibility.

In Case T-612/97 the Commission had taken the view that the problems encountered by the company Cordis Obst und Gemüse Großhandel were not due to the transition to the common organisation of the markets. At the conclusion of its examination the Court confirmed that assessment too and dismissed the action.

In its judgment of 12 October 1999 in Case T-216/96 *Conserve Italia* v *Commission*, not yet reported in the ECR (under appeal, Case C-500/99 P), the Court confirmed that aid from the European Agricultural Guidance and Guarantee Fund granted pursuant to Council Regulation (EEC) No 355/77 of 15 February 1977 on common measures to improve the conditions under which agricultural products are processed and marketed (OJ 1977 L 51, p. 1) could be discontinued in the event of a serious breach of fundamental obligations. Such a breach was considered to occur where a recipient of aid failed to comply with its undertaking not to start work on the project before receipt of the application for aid by the Commission, failed to inform the Commission of this and, in response to a request for information, forwarded a copy which was not consistent with the original of the contract for the sale of a machine referred to in the subsidised project.

In its judgment of 14 October 1999 in Joined Cases T-191/96 and T-106/97 *CAS Succhi di Frutta* v *Commission*, not yet reported in the ECR (under appeal, Case C-496/99 P), the Court found that the Commission had failed to observe the terms of the notice of invitation to tender prescribed by Commission Regulation (EC) No 228/96 of 7 February 1996 on the supply of fruit juice and fruit jams intended for the people of Armenia and Azerbaijan, and had offended against the principles of transparency and equal treatment, by permitting the successful tenderer, in payment for the supply, to withdraw from the market quantities of a product different from that prescribed by the regulation. The Court, which considered that the case-law of the Court of Justice concerning the award of public works contracts could be applied to the case before it, held that the Commission was obliged to specify clearly in the notice of invitation to tender the subject-matter and the conditions of the tendering procedure, and to comply strictly with the conditions laid down, so as to afford equality of opportunity to all tenderers when formulating their tenders. In particular, the Commission could not subsequently amend the conditions of the tendering procedure, and in particular those relating to the tender to be submitted, in a manner not laid down by the notice of invitation to tender itself, without offending against the principle of transparency.

Milk quotas gave rise to a number of judgments. Although its interest relates to the law governing the institutions, the judgment of 20 May 1999 in Case

T-220/97 *H & R Ecroyd* v *Commission*, not yet reported in the ECR, will be dealt with now under this heading. The judgment deals with the effects of a declaration that a provision in a regulation is unlawful and with the resulting obligations for the Community institutions.

The Court of Justice had, on a reference for a preliminary ruling, declared invalid a provision of Regulation No 857/84, [24] as amended (judgment in Case C-127/94 *R* v *MAFF ex parte Ecroyd* [1996] ECR I-2731). The Court of First Instance stated, on the basis of case-law of the Court of Justice, that that judgment had the legal effect of requiring the competent Community institutions to adopt the measures necessary to remedy the illegality. In those circumstances, they were to take the measures that were required in order to comply with the judgment containing the ruling in the same way as they were, under Article 176 of the EC Treaty (now Article 233 EC), in the case of a judgment annulling a measure or declaring that the failure of a Community institution to act was unlawful. The Court added, however, that, for that purpose, the institutions had not only to adopt the essential legislative or administrative measures but also to make good the damage which had resulted from the unlawful act, subject to fulfilment of the conditions laid down in the second paragraph of Article 215 of the EC Treaty, namely the presence of fault, harm and a causal link. Thus, the Commission could have initiated action with a view to compensating the applicant, because the conditions for non-contractual liability of the Community to arise were satisfied.

7. *Social policy*

The European Social Fund ("the ESF") participates in the financing of operations concerning vocational training and guidance, the successful completion of which is guaranteed by the Member States. The applicable legislation provides that, when the financial assistance is not used in accordance with the conditions set out in the decision of approval of the ESF, the Commission may suspend, reduce or withdraw the assistance. It was decisions by the Commission reducing financial assistance granted by the ESF to Portuguese companies that the Court had to deal with in its judgments of 16 September 1999 in Case T-182/96 *Partex* v *Commission* (under appeal, Case C-465/99 P) and of 29 September 1999 in Case T-126/97 *Sonasa* v *Commission*, both not yet reported in the ECR.

[24] Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13).

In *Partex* v *Commission*, the Court clarified, to the extent necessary, the effect of certification by the Member State concerned of the accuracy of the facts and accounts contained in claims for payment of the balance of the financial assistance ("final payment claims") [25] and confirmed that the Member State may alter its assessment of a final payment claim if it considers that it contains irregularities which had not been previously detected.

The Court examined, under one of the pleas for annulment, the reasonableness of the period which had elapsed between the lodging of the final payment claim by the national authorities in October 1989 and the adoption of the contested decision in August 1996. Having regard to a series of events, it was held that in this instance each of the procedural steps leading up to the adoption of the contested decision had taken place within a reasonable time.

It is to be noted above all that the Court annulled the contested decision in part, on the grounds of insufficient reasoning. Referring to the judgment in Case T-85/94 *Branco* v *Commission* [1995] ECR II-45, the Court stated that in a case, such as the instance before it, where the Commission purely and simply confirmed the proposal of a Member State to reduce financial assistance initially granted, a Commission decision could be regarded as sufficiently reasoned either when the decision itself clearly demonstrated the reasons justifying the reduction in the assistance or, if that was not the case, when it referred sufficiently clearly to a measure of the competent national authorities in the Member State concerned in which those authorities clearly set out the reasons for such a reduction. In addition, if it appeared from the file that the Commission did not diverge on any particular point from the measures adopted by the national authorities, it could properly be considered that the content of those measures formed part of the reasons given for the Commission's decision, at least in so far as the person receiving the assistance had been able to take cognisance thereof. The Court found that, in this instance, those conditions were not met as regards several reductions in the sums sought by the applicant in his final payment claim.

8. *Admissibility of actions under the fourth paragraph of Article 173 of the EC Treaty*

The Court dismissed a number of actions seeking the annulment either of decisions not addressed to the applicants or of measures of a legislative nature.

[25] Such certification is provided for by Article 5 of Council Regulation (EEC) No 2950/83 of 17 October 1983 on the implementation of Decision 83/516/EEC on the tasks of the European Social Fund (OJ 1983 L 289, p. 1).

In three cases — see *Arbeitsgemeinschaft Deutscher Luftfahrt-Unternehmen and Hapag-Lloyd* v *Commission*, referred to above in relation to State aid, and judgments of 8 July 1999 in Case T-168/95 *Eridania and Others* v *Council* (under appeal, Case C-352/99 P) and Case T-158/95 *Eridania and Others* v *Council* (under appeal, Case C-351/99 P), both not yet reported in the ECR — the actions were dismissed by means of a judgment, in the others by an order.

In addition to the instances already referred to where actions for the annulment of decisions in the fields of State aid and access to documents were inadmissible, the Court declared inadmissible a number of actions for the annulment of regulations in the fields of agricultural and fisheries policy (in particular, orders of 26 March 1999 in Case T-114/96 *Biscuiterie-confiserie LOR and Confiserie du Tech* v *Commission*, not yet reported in the ECR; of 29 April 1999 in Case T-78/98 *Unione provinciale degli agricoltori di Firenze and Others* v *Commission*, not yet reported in the ECR; of 8 July 1999 in Case T-12/96 *Area Cova and Others* v *Council and Commission* and in Case T-194/95 *Area Cova and Others* v *Council*, neither yet reported in the ECR (under appeal, Cases C-300/99 P and C-301/99 P); of 9 November 1999 in Case T-114/99 *CSR Pampryl* v *Commission*, not yet reported in the ECR; and of 23 November 1999 in Case T-173/98 *Unión de Pequeños Agricultores* v *Council*, not yet reported in the ECR; and judgments in Case T-168/95 *Eridania and Others* v *Council* and in Case T-158/95 *Eridania and Others* v *Council*, cited above) and of customs nomenclature (order of 29 April 1999 in Case T-120/98 *Alce* v *Commission*, not yet reported in the ECR). Finally, the Court held that an application for annulment of a regulation was admissible in its judgment of 1 December 1999 in Joined Cases T-125/96 and T-152/96 *Boehringer Ingelheim Vetmedica and C.H. Boehringer Sohn* v *Commission*, not yet reported in the ECR.

The developments in the case-law in 1999 concern the following matters: establishing the point from which time starts to run for bringing an action, possession of a legal interest in bringing proceedings and standing to bring proceedings.

As regards the point from which time starts to run, the fifth paragraph of Article 173 of the EC Treaty provides that the time-limit of two months [26] for bringing an action for annulment starts to run from publication of the measure or

[26] Without prejudice to the extensions of time-limits on account of distance from Luxembourg, specified in Annex II to the Rules of Procedure of the Court of Justice and applicable to the Court of First Instance by virtue of Article 102(2) of its Rules of Procedure.

from its notification to the applicant or, in the absence thereof, from the day on which it came to the applicant's knowledge, as the case may be. It is therefore only if the measure is not published or notified to the applicant that time starts to run from the day on which it came to his knowledge. In this connection, it is settled case-law that the request for the full text of the measure must be made within a reasonable period from the date on which the measure's existence became known to the person concerned. In *CAS Succhi di Frutta* v *Commission*, cited above, the Court took the view that a reasonable period for requesting the full text of the contested decision had "long since elapsed", as a period of three months separated the date on which, at the latest, the contested decision had come to the applicant's knowledge and the date on which it received a copy of that decision in proceedings for interim measures before the President of the Court.

While a legal interest in bringing proceedings is not expressly required by Article 173 of the EC Treaty, it is none the less a condition which must be satisfied if an action for annulment is to be admissible. In particular, a natural or legal person must demonstrate a personal interest in the annulment of the contested measure. Thus, an action brought by olive oil producers for the annulment of Regulation No 644/98 in so far as it provided for registration solely of the name 'Toscano' as a protected geographical indication was dismissed as inadmissible because the producers did not have a legal interest in bringing the proceedings (*Unione provinciale degli agricoltori di Firenze and Others* v *Commission*). The Court found, first, that they used, for the marketing of their products, names other than the name which had been registered for the purposes of Regulation (EEC) No 2081/92 [27] and, second, that their right to submit an application for registration of the names in question as designations of origin or geographical indications remained unimpaired so that the maintenance in force of Regulation No 644/98 could in no way affect their interests.

As regards standing to bring proceedings where the measure is of a legislative nature, in *Biscuiterie-confiserie LOR and Confiserie du Tech* v *Commission* the Court declared inadmissible an action brought by French confectionery producers who manufactured "tourons", some with the name "Jijona" and "Alicante". The action was for the annulment of Commission Regulation (EC) No 1107/96 of 12 June 1996 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Regulation No 2081/92, in so far as it registered the names "Turrón de Jijona" and "Turrón de Alicante" as

[27] Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1).

protected geographical indications. The Court found, first, that the contested regulation was, by nature and by virtue of its sphere of application, of a legislative nature and did not constitute a decision within the meaning of the fourth paragraph of Article 189 of the EC Treaty — it applied to objectively determined situations and produced its legal effects with respect to categories of persons envisaged in the abstract, namely any undertaking which manufactured a product having objectively defined characteristics. Second, the Court recalled that it was conceivable that a provision of a legislative nature could be of individual concern to natural or legal persons where it affected them by reason of certain attributes which were peculiar to them or by reason of factual circumstances which differentiated them from all other persons and by virtue of these factors distinguished them individually just as in the case of the addressee of a decision (Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853). However, that was not the case here. The Court held that the applicants' *use for many years of the names* "Jijona" and "Alicante" when marketing the "tourons" they manufactured did not distinguish them individually as the applicant had been in *Codorniu* v *Council*, since that undertaking, unlike the applicants, had been prevented by the legislative provision regulating the use of a designation from *using a trade mark which it had registered and used for a long period.* The applicants had not shown that the use of the geographical names in respect of which they claimed rights stemmed from a similar specific right which they had acquired at national or Community level before the adoption of the contested regulation and which had been adversely affected by that regulation.

The Court made a similar assessment in *CSR Pampryl* v *Commission*, where a cider producer which, for a number of years, had marketed cider under various names including the indication "Pays d'Auge" contested a regulation registering as a protected designation of origin the names "Pays d'Auge/Pays d'Auge-Cambremer". The Court also found that Regulation No 2081/92 did not lay down specific procedural guarantees, at Community level, for the benefit of individuals, so that the admissibility of the action could not be assessed in the light of such guarantees.

While the Court declared the actions brought by Area Cova and others to be inadmissible in its orders in those two cases, it recalled some of the instances in which measures of a legislative nature could be of individual concern, within the meaning of the judgment in *Codorniu* v *Council*, to applicants other than trade associations. First, that may be so where an overriding provision of law requires the body responsible for the contested measure to take into account the applicant's particular circumstances. Second, the fact that a person intervenes in some way or other in the procedure leading to the adoption of a Community measure is not

capable of distinguishing that person individually with regard to the measure in question unless the applicable Community legislation grants him certain procedural guarantees. Third, the economic impact of a contested regulation on an applicant's interests is not such as to distinguish it individually where it is not placed in a situation similar to the very special situation of the applicant in Case C-358/89 *Extramet Industrie* v *Council* [1991] ECR I-2501. Since the applicants failed to show that they were in any of those situations [28] and their other arguments were rejected, the Court held that they did not have standing to challenge the legality of the regulations at issue. These orders also reiterated the conditions in which trade associations are entitled to bring actions on the basis of Article 173 of the EC Treaty. Finally, while the Court dismissed the actions as inadmissible, it nevertheless stated that the applicants could challenge the measures adopted on the basis of the Community legislation before the national courts and call into question there the validity of that legislation.

The Court concluded in *Boehringer Ingelheim Vetmedica and C.H. Boehringer Sohn* v *Commission* that the first applicant was individually concerned by the Commission regulation whose annulment it sought. [29] In order to reach this conclusion, the Court, after stating that the contested measure did not amount to a decision within the meaning of Article 189 of the EC Treaty, found that the applicant had established the existence of a series of factors resulting in a particular situation which, as regards the measure in question, differentiated it from all other traders. The Court noted in this connection that the contested regulation was adopted after a formal request by the applicant for a maximum residue limit to be fixed for a chemical compound, on the basis of the file which it had submitted in accordance with Regulation No 2377/90. The Court also pointed out that Regulation No 2377/90 provided for the involvement of the applicant, as the undertaking responsible for the marketing of the veterinary medicinal products concerned, in the procedure for establishing maximum residue limits. Furthermore, relying on the judgment in Case T-120/96 *Lilly Industries*

[28] The applicants were Spanish shipowners contesting: (i) Council Regulation (EC) No 1761/95 of 29 June 1995 amending, for the second time, Regulation (EC) No 3366/94 laying down for 1995 certain conservation and management measures for fishery resources in the Regulatory Area as defined in the Convention on Future Multilateral Cooperation in the North-West Atlantic Fisheries (OJ 1995 L 171, p. 1) (Case T-194/95); and (ii) Commission Regulation (EC) No 2565/95 of 30 October 1995 concerning the stopping of fishing for Greenland halibut by vessels flying the flag of a Member State (OJ 1995 L 262, p. 27) (Case T-12/96).

[29] Commission Regulation (EC) No 1312/96 of 8 July 1996 amending Annex III of Council Regulation (EEC) No 2377/90 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin (OJ 1996 L 170, p. 8).

v *Commission* [1998] ECR II-2571, in which it was held that the applicant had standing to challenge a decision refusing to include a substance in one of the annexes to Regulation No 2377/90, the Court decided that a person who is responsible for placing a product on the market, and who has made an application for a maximum residue limit to be fixed, is just as concerned by the provisions of a regulation setting certain limits on the validity of those maximum residue limits as he would be by a refusal.

9. *Non-contractual liability of the Community*

While several applications for the Community to be held liable were dismissed in the course of the year (judgments in Case T-1/96 *Böcker-Lensing and Schulze-Biering* v *Council and Commission* [1999] ECR II-1, in Case T-230/95 *BAI* v *Commission* and of 15 June 1999 in Case T-277/97 *Ismeri Europa* v *Court of Auditors*, not yet reported in the ECR (under appeal, Case C-315/99 P); order of 4 August 1999 in Case T-106/98 *Fratelli Murri* v *Commission*, not yet reported in the ECR (under appeal, Case C-399/99 P)), the Court held in its judgment of 9 July 1999 in Case T-231/97 *New Europe Consulting and Brown* v *Commission*, not yet reported in the ECR, that the conditions laid down by the second paragraph of Article 215 of the EC Treaty were met — that is to say the conduct of the Commission was unlawful, there was real damage, and a direct causal link existed between the unlawful conduct and the damage.

In that last case, the first applicant, a consultancy chosen to implement a specific programme within the framework of the PHARE programme, claimed that the Community should make good the harm which the Commission had caused it, first, by sending a fax to a number of programme coordinators which contained accusations against it and recommended that they should not consider proposals which it might submit in the future, even though no investigation had taken place and it had not been given the opportunity to be heard and, second, by sending a rectification after undue delay. As regards the first unlawful act alleged, the Court found, in particular, that observance of the principle of sound administration required the Commission to conduct an inquiry into the alleged irregularities committed by the first applicant, in the course of which it would have been given the opportunity to be heard, and to consider the effects that its conduct could have had on the image of the undertaking. On the other hand, the second allegation of unlawful conduct was not upheld because the rectification was made immediately after the Commission realised its error. The Court then held that the harm to the image of the first applicant, which pursued activities within the context of the PHARE programme, and the non-pecuniary harm suffered by its manager had been established. Since the applicants proved the

causal link, the Court assessed the damages and ordered the Commission to pay them a total of EUR 125 000.

10. *Trade mark law*

The first action challenging a decision of one of the Boards of Appeal of the Office for Harmonisation in the Internal Market ("the Office") was lodged on 6 October 1998.

On 8 July 1999 the Court gave judgment in that case (Case T-163/98 *Procter & Gamble* v *OHIM (Baby-Dry)*, not yet reported in the ECR; under appeal, Case C-383/99 P). The action arose from a decision of the Board of Appeal dismissing the appeal brought by the applicant against the refusal of the examiner to register the term "Baby-Dry" for "disposable diapers made out of paper or cellulose" and "diapers made out of textile", on the ground that that term was not capable of constituting a Community trade mark. The Court confirmed that analysis. Like the Board of Appeal, it took the view that the sign was composed exclusively of words which could serve in trade to designate the intended purpose of the goods.

On the other hand, the Court found that the Board of Appeal had been wrong to declare that one of the applicant's lines of argument was inadmissible. The Court held that it followed from the provisions and the scheme of Regulation No 40/94 that it was not open to the Board of Appeal simply to reject the line of argument, as it had done in this instance, solely on the ground that it had not been raised before the examiner. Having considered the appeal, it should either have ruled on the substance or have remitted the matter to the examiner.

Finally, this judgment makes it clear that it is not for the Court, in an action challenging a decision of a Board of Appeal, to rule on a claim concerning the possible application of a provision of Regulation No 40/94 (in this instance Article 7(3), which relates to establishing whether a trade mark has become distinctive after the use which has been made of it) where the merits of the claim have not been considered by the Office.

11. *Staff cases*

A large number of judgments were again delivered in staff cases. Three judgments in particular are worth noting.

The first concerns the extent of the freedom of expression enjoyed by Community officials (Joined Cases T-34/96 and T-163/96 *Connolly* v *Commission* [1999]

ECR-SC II-463; under appeal, Case C-274/99 P). Mr Connolly, a Commission official who held the post of Head of Unit in the Directorate-General for Economic and Financial Affairs, published a book during a period of leave taken on personal grounds. On his return to work, he was subject to disciplinary proceedings for infringement of the obligations imposed by the Staff Regulations of Officials of the European Communities. Those proceedings resulted in his being removed from his post, in particular because he had failed to ask for permission to publish his work, whose content, according to the Commission, was prejudicial to the realisation of economic and monetary union, which he had the task of bringing about, and to the institution's image and reputation. In addition, his conduct as a whole was considered to have harmed the dignity of his post.

Mr Connolly applied to the Court for annulment of the opinion of the Disciplinary Board and of the decision to remove him from his post. First, the Court confirmed that, as laid down in Article 11 of the Staff Regulations, officials could not accept payment (in this instance royalties) from a source outside the institution without permission. The reason for this prohibition was the need to guarantee the independence and loyalty of officials.

Next, it held that freedom of expression, a fundamental right also enjoyed by Community officials, had not been infringed. The provision requiring an official to abstain from any action and, in particular, any public expression of opinion which might reflect on his position (Article 12 of the Staff Regulations) did not constitute a bar to the freedom of expression of officials, but placed reasonable limits on the exercise of that right in the interests of the service. The Court also referred to the aims pursued by Article 12 of the Staff Regulations, namely to ensure a dignified image in keeping with the particularly correct and respectable behaviour one was entitled to expect from members of an international civil service and to preserve the loyalty of officials to the institution employing them, loyalty which was all the more vital where the official had a high grade.

Nor was the freedom of expression of officials impaired by the need to obtain permission before publication (Article 17 of the Staff Regulations), which was required only where the text dealt with the work of the Communities. The Court pointed out that such permission could be refused only where publication was liable to prejudice the interests of the Communities, and that the assessment of the institution concerned was subject to review by the Community judicature.

Since the truth of the matters alleged was proved and the penalty imposed was appropriate, the Court dismissed the action.

The second judgment confirmed a decision rejecting a request for maternity leave to be shared between the father and the mother (judgment of 26 October 1999 in Case T-51/98 *Burrill and Noriega Guerra* v *Commission*, not yet reported in the ECR). Article 58 of the Staff Regulations essentially provides that pregnant women are entitled to 16 weeks' leave. In its judgment, the Court held that the interpretation under which the leave entitlement provided for by Article 58 is expressly reserved to women is not contrary to the principle of equal treatment for men and women. In accordance with the case-law of the Court of Justice, maternity leave meets two specific types of need of the woman: first, to protect her biological condition during and after pregnancy until her physical and mental functions have returned to normal following childbirth and, second, to protect the special relationship between a woman and her child over the period which follows pregnancy and childbirth, by preventing that relationship from being disturbed by the burdens resulting from working at the same time. Article 58 accordingly pursues an objective of equal treatment between male and female workers.

The Court also held that Article 58 of the Staff Regulations does not disadvantage women: it does not prohibit the mother from working for a period of 16 weeks since she may, subject to certain conditions, resume work before the expiry of that period.

The third judgment laid down that it is possible to obtain a refund of that part of pension rights transferred to the Community scheme which is not taken into consideration in the calculation of the years of pensionable service (judgment of 10 November 1999 in Joined Cases T-103/98, T-104/98, T-107/98, T-113/98 and T-118/98 *Kristensen and Others* v *Council*, not yet reported in the ECR). The Court held that, in the absence of express provisions in the Staff Regulations, the Council cannot require, solely on the basis of the principle of solidarity, that any surplus which may result from the transfer of pension rights acquired under national pension schemes be paid into the Community budget. The plea alleging that the Communities were unjustly enriched was upheld and the contested decisions were annulled.

12. *Applications for interim relief*

Applications for interim relief in staff cases and in competition cases [30]

[30] These applications were lodged in connection with Commission decisions imposing fines for breach of competition rules: see, in particular, the orders of 21 June 1999 in Case T-56/99 R *Marlines* v *Commission*, not yet reported in the ECR; of 9 July 1999 in Case T-9/99 R *HFB Holding and Others* v *Commission*, not yet reported in the ECR (the appeal against that order was dismissed by order of the President of the Court

accounted for 40% and 20% respectively of the applications lodged in 1999. However, three orders made in other fields are dealt with here.

By orders of 30 June 1999 in Case T-13/99 R *Pfizer Animal Health* v *Council* and Case T-70/99 R *Alpharma* v *Council*, not yet reported in the ECR, the President of the Court dismissed two applications for suspension of the operation of the Council regulation of 17 December 1998 removing virginiamycin and bacitracin zinc from the list of antibiotics authorised as additives in animal feed. Those antibiotics are respectively produced by Pfizer Animal Health SA/NV, a company incorporated under Belgian law, and Alpharma Inc., a company established in the United States. The regulation, whose annulment is also sought, prohibits the marketing of both antibiotics in all the Member States from 1 July 1999 at the latest. It may be noted that, in *Pfizer Animal Health* v *Council*, the applicant was supported by four associations and two stock farmers and that the Council was supported by the Commission and three Member States.

In each of the orders, the President of the Court found first of all that the contested regulation, despite its legislative nature, might be of direct and individual concern to Pfizer and Alpharma and therefore declared that the applications for interim relief were admissible.

As regards the condition relating to the existence of a prima facie case, the President of the Court found in both orders that each of the companies and the Council disagreed fundamentally as to the circumstances in which the competent authorities might adopt a measure withdrawing authorisation in respect of an antibiotic as a precautionary step. That question required very thorough examination, which could not be undertaken in the context of proceedings for interim relief.

With regard, next, to the condition relating to *urgency*, the President of the Court examined whether implementation of the regulation risked causing serious and irreparable damage to the applicants. In both cases, the suspension sought could be justified only if it appeared that, in the absence of such relief, Pfizer and Alpharma would be placed in a situation which could endanger their very existence or irremediably affect their market share. The President of the Court

of Justice of 14 December 1999 in Case C-335/99 P(R) *HFB and Others* v *Commission*, not yet reported in the ECR); of 20 July 1999 in Case T-59/99 R *Ventouris* v *Commission*, not yet reported in the ECR; and of 21 July 1999 in Case T-191/98 R *DSR-Senator Lines* v *Commission*, not yet reported in the ECR (the appeal against that order was dismissed by order of the President of the Court of Justice of 14 December 1999 in Case C-364/99 P(R) *DSR-Senator Lines* v *Commission*, not yet reported in the ECR).

found at the end of his appraisals that this was not the case. In reaching the conclusion that the financial loss which Pfizer (Case T-13/99 R) would suffer was not such as to prevent it from remaining able to continue its operations until the main proceedings were disposed of, the President of the Court pointed out that, for the purposes of assessing the economic circumstances of the applicant, consideration could be given, in particular, to the characteristics of the group of which, by virtue of its shareholding structure, it formed part.

Although the President of the Court found that there were no grounds of urgency justifying suspension of the operation of the regulation, he proceeded to balance the various interests at stake. He found that the balance of interests favoured the maintenance of the contested regulation, since damage to commercial and social interests of the kind that would be sustained by the applicants and the parties supporting Pfizer could not outweigh the damage to public health which would be liable to be caused by suspension of the contested regulation, and which could not be remedied if the main action were subsequently dismissed. In the light of that consideration, *there could be no question but that the requirements of the protection of public health had to take precedence over economic considerations* (see, in particular, the order of 12 July 1996 in Case C-180/96 R *United Kingdom* v *Commission* [1996] ECR I-3903). He also pointed out that, where there was uncertainty as to the existence or extent of risks to human health, the institutions could take protective measures without having to wait until the reality and seriousness of those risks became fully apparent. Having regard to the information placed before him, the President of the Court found that it was not impossible that bacteria which had become resistant due to the feeding to livestock of antibiotic additives such as virginiamycin and bacitracin zinc could be transmissible from animals to humans and the risk of increased antimicrobial resistance in human medicine on account of their use in animal feed therefore could not be ruled out. If increased antimicrobial resistance in human medicine were to occur, the potential consequences for public health would be very serious, since, if they developed resistance, certain bacteria could no longer be effectively combated by certain medicines used in the treatment of humans, in particular those of the family including virginiamycin and bacitracin. On the basis of the risk found by him, the President of the Court dismissed the applications for suspension of the operation of the regulation. The appeal brought against the order in *Pfizer Animal Health* v *Commission* was dismissed by the President of the Court of Justice (order of 18 November 1999 in Case C-329/99 P(R) *Pfizer Animal Health* v *Council*, not yet reported in the ECR).

A dispute of a constitutional nature led the President of the Court to order suspension of the implementation of a measure of the European Parliament

preventing a political group from being set up (order of 25 November 1999 in Case T-222/99 R *Martinez and de Gaulle* v *Parliament*, not yet reported in the ECR). Article 29 of the Rules of Procedure of the Parliament provides that Members may form themselves into groups according to their political affinities. Following the European elections in June 1999, the Technical Group of Independent Members — Mixed Group, whose constitutional rules provided that the Members within it were to be totally independent politically *vis-à-vis* one another, was set up. Since the Parliament took the view that the conditions laid down for the setting up of a political group were not satisfied, it adopted on 14 September 1999 a measure interpreting Article 29 of the Rules of Procedure, which prevented the Technical Group of Independent Members from being set up. Two Members, Mr Martinez and Mr de Gaulle, brought an action for annulment of that measure and applied in parallel for its implementation to be suspended.

In his order, the President of the Court was required first of all to deal with the issue of the admissibility of the application for interim relief. While the Community judicature reviews the legality of measures of the European Parliament intended to produce legal effects with regard to third parties, measures which relate only to the internal organisation of its work, on the other hand, cannot be challenged in an action for annulment. In this instance, the President of the Court found that it was possible for the contested measure to amount to a measure producing legal effects beyond the framework solely of the internal organisation of the Parliament's work, since it denied certain Members of that institution the possibility of exercising their parliamentary mandate in the same conditions as Members belonging to a political group and therefore prevented them from participating as fully as such Members in the process for the adoption of Community measures. In addition, he held that the contested measure was, prima facie, of direct and individual concern to the members seeking its annulment, in particular since it prevented them from belonging to the Technical Group of Independent Members. The application for interim relief was therefore declared admissible.

As regards the pleas establishing a prima facie case for the grant of the relief sought, the President of the Court stated that an infringement of the principle of equal treatment could not be ruled out. While Article 29 of the Rules of Procedure of the Parliament did not prevent it from making different assessments, in the light of all the relevant facts, in relation to the various statements for the setting up of a political group submitted to the President of the Parliament, a difference in treatment of that kind nevertheless amounted to unlawful discrimination if it appeared arbitrary. In this instance, it could not be ruled out that the Parliament arbitrarily discriminated against the Members wishing to set

up the Technical Group of Independent Members. In this connection, the President of the Court recorded that the Parliament, as constituted following the last elections, did not oppose the setting up of another political group presented by the applicants as a mixed group.

Since the condition relating to urgency was also met and suspension of the implementation of the contested measure until the Court ruled on the main proceedings could not prejudice the organisation of the departments of the defendant institution, the President of the Court ordered implementation of the measure to be suspended.

B — Composition of the Court of First Instance

(Order of precedence as at 30 September 1999)

First row, from left to right:

Judge R. García-Valdecasas y Fernández; Judge J.D. Cooke; Judge A. Potocki; President B. Vesterdorf; Judge R.M. Moura Ramos; Judge M. Jaeger; Judge K. Lenaerts.

Second row, from left to right:

Judge M. Vilaras; Judge P. Mengozzi; Judge J. Azizi; Judge V. Tiili; Judge C.W. Bellamy; Judge P. Lindh; Judge J. Pirrung; Judge A.W.H. Meij; H. Jung, Registrar.

1. The Members of the Court of First Instance

(in order of their entry into office)

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 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; President of the Court of First Instance since 4 March 1998.

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; lic.iuris, Ph.D. in Law (Katholieke Universiteit Leuven); Master of Laws, Master in Public Administration (Harvard University); Professor of European Law, 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; Judge of 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 first three editions of *Bellamy & Child, Common Market Law of Competition*; Judge at the Court of First Instance from 10 March 1992 to 15 December 1999.

Virpi Tiili

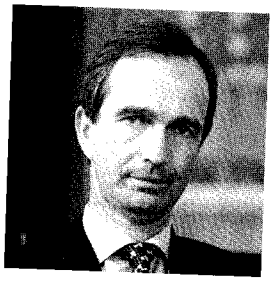
Born 1942; Doctor of Laws of the University of Helsinki; assistant lecturer in civil and commercial law at the University of Helsinki; Director of Legal Affairs and Commercial Policy at the Central Chamber of Commerce of Finland; Director General of the Office for Consumer Protection, Finland; Judge 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 Trade Department 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 Bachelor of Sociology and Economics of the University of Vienna; Lecturer and senior lecturer at the Vienna School of Economics and the Faculty of Law of the University of Vienna; Ministerialrat and Head of Department at the Federal Chancellery; Judge at the Court of First Instance since 18 January 1995.

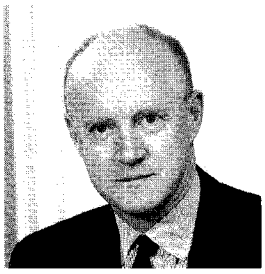


André Potocki

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.

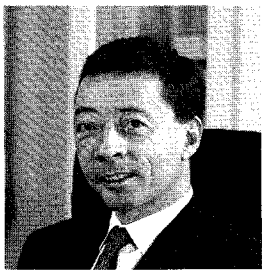
Rui Manuel Gens de Moura Ramos

Born 1950; Professor, Law Faculty, Coimbra, and at the Law Faculty of the Catholic University, Oporto; Jean Monnet Chair; Course Director (French language) at The Hague Academy of International Law (1984) and Visiting Professor in the Faculty of Law, Paris I University (1995); Portuguese Government delegate to the United Nations Commission on International Trade Law (Uncitral), The Hague Conference on Private International Law, the *Comité international de l'état civil* and the Council of Europe Committee on Nationality; member of the Institute of International Law; Judge at the Court of First Instance since 18 September 1995.



John D. Cooke

Born 1944; called to the Bar of Ireland 1966; admitted also to the Bars of England & Wales, of Northern Ireland and of New South Wales; Practising barrister 1966 to 1996; admitted to the Inner Bar in Ireland (Senior Counsel) 1980 and New South Wales 1991; President of the Council of the Bars and Law Societies of the European Community (CCBE) 1985 to 1986; Visiting Fellow, Faculty of Law, University College Dublin; Fellow of the Chartered Institute of Arbitrators; President of the Royal Zoological Society of Ireland 1987 to 1990; Bencher of the Honourable Society of Kings Inns, Dublin; Honorary Bencher of Lincoln's Inn, London; Judge at the Court of First Instance since 10 January 1996.



Marc Jaeger

Born 1954; lawyer; *attaché de justice*, delegated to the Public Attorney's Office; Judge, Vice-President of the Luxembourg District Court; teacher at the Centre Universitaire de Luxembourg (Luxembourg University Centre); member of the judiciary on secondment, Legal Secretary at the Court of Justice from 1986; Judge at the Court of First Instance since 11 July 1996.

Jörg Pirrung

Born 1940; academic assistant at the University of Marburg; civil servant in the German Federal Ministry of Justice (Division for International Civil Procedure Law, Division for Children's Law); Head of the Division for Private International Law in the Federal Ministry of Justice; Head of a Subsection for Civil Law; Judge at the Court of First Instance since 11 June 1997.

Paolo Mengozzi

Born 1938; Professor of International Law and holder of the Jean Monnet Chair of European Community law at the University of Bologna; Doctor *honoris causa* of the Carlos III University, Madrid; visiting professor at the Johns Hopkins University (Bologna Center), the Universities of St. Johns (New York), Georgetown, Paris-II, Georgia (Athens) and the Institut Universitaire International (Luxembourg); co-ordinator of the European Business Law Pallas Program of the University of Nijmegen; member of the consultative committee of the Commission of the European Communities on public procurement; Under-Secretary of State for Trade and Industry during the Italian tenure of the Presidency of the Council; member of the working group of the European Community on the World Trade Organisation (WTO) and director of the 1997 session of The Hague Academy of International Law research centre devoted to the WTO; Judge at the Court of First Instance since 4 March 1998.

Arjen W.H. Meij

Born 1944; Justice at the Supreme Court of the Netherlands (1996); Judge and Vice-President at the College van Beroep voor het Bedrijfsleven (Administrative Court for Trade and Industry) (1986); Judge Substitute at the Court of Appeal for Social Security, and Substitute Member of the Administrative Court for Customs Tariff Matters; Legal Secretary at the Court of Justice of the European Communities (1980); Lecturer in European Law in the Law Faculty of the University of Groningen and Research Assistant at the University of Michigan Law School; Staff Member of the International Secretariat of the Amsterdam Chamber of Commerce (1970); Judge at the Court of First Instance since 17 September 1998.

Mihalis Vilaras

Born 1950; lawyer; Junior Member of the Greek Council of State; Member of the Greek Council of State; Associate Member of the Superior Special Court of Greece; national expert with the Legal Service of the European Commission, then Principal Administrator in Directorate General V (Employment, Industrial Relations, Social Affairs); Member of the Central Legislative Drafting Committee of Greece; Director of the Legal Service in the General Secretariat of the Greek Government; Judge at the Court of First Instance since 17 September 1998.

Nicholas James Forwood

Born 1948; graduated 1969 from Cambridge University (Mechanical Sciences and Law); called to the English Bar in 1970, thereafter practising in London (1971-1979) and also in Brussels (1979-1999); called to the Irish Bar in 1982; appointed Queen's Counsel in 1987, and Bencher of the Middle Temple 1998; representative of the Bar of England and Wales at the Council of the Bars and Law Societies of the EU (CCBE) and Chairman of the CCBE's Permanent Delegation to the European Court of Justice; Treasurer of the European Maritime Law Organisation (board member since 1991); and a Governing Board member of the World Trade Law Association; Judge at the Court of First Instance since 15 December 1999.

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 of the Court of Justice; Registrar of the Court of First Instance since 10 October 1989.

2. Changes in the composition of the Court of First Instance in 1999

In 1999 the composition of the Court of First Instance changed as follows:

On 15 December 1999, Judge Christopher William Bellamy left the Court of First Instance. He was replaced by Mr Nicholas James Forwood as Judge.

3. Order of precedence

from 1 January to 30 September 1999

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

H. JUNG, Registrar

from 1 October to 14 December 1999

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

H. JUNG, Registrar

from 15 December to 31 December 1999

B. VESTERDORF, President of the Court of First Instance
R. GARCÍA-VALDECASAS Y FERNÁNDEZ, President of Chamber
K. LENAERTS, President of Chamber
V. TIILI, President of Chamber
J. PIRRUNG, President of Chamber
P. LINDH, Judge
J. AZIZI, Judge
A. POTOCKI, Judge
R.M. MOURA RAMOS, Judge
J.D. COOKE, Judge
M. JAEGER, Judge
P. MENGOZZI, Judge
A.W.H. MEIJ, Judge
M. VILARAS, Judge
N. FORWOOD, Judge

H. JUNG, Registrar

4. Former Members of the Court of First Instance

Da CRUZ VILAÇA José Luis (1989-1995), President from 1989 to 1995
SAGGIO Antonio (1989-1998), President from 1995 to 1998
BARRINGTON Donal Patrick Michael (1989-1996)
EDWARD David Alexander Ogilvy (1989-1992)
KIRSCHNER Heinrich (1989-1997)
YERARIS Christos (1989-1992)
SCHINTGEN Romain Alphonse (1989-1996)
BRIËT Cornelis Paulus (1989-1998)
BIANCARELLI Jacques (1989-1995)
KALOGEROPOULOS Andreas (1992-1998)

- Presidents

Da CRUZ VILAÇA José Luis (1989-1995)
SAGGIO Antonio (1995-1998)

Chapter III

Meetings and visits

A — Official visits and functions at the Court of Justice and the Court of First Instance in 1999

13 January	Mr Enrico Letta, Minister for Community Policies of the Italian Republic
19 January	Mr Jan O. Karlsson, President of the Court of Auditors of the European Communities
25 January	Mr Jorge Sampaio, President of the Portuguese Republic
25 January	Dr Wendelin Weingartner, Head of Government of the *Land* of Tyrol
28 January	HE Mr Henry Söderholm, Finnish Ambassador to the Grand Duchy of Luxembourg
24 February	HRH the Prince of Asturias
8 March	Prof. Dr Herta Däubler-Gmelin, Minister for Justice of the Federal Republic of Germany
15 March	Mr Luc Frieden, Minister for Justice, Minister for the Budget and Minister for Relations with Parliament of the Grand Duchy of Luxembourg
18 March	Mr Klas Bergenstrand, Prosecutor-General of the Kingdom of Sweden
26 to 30 April	Delegation from the Court of Justice of the Common Market for Eastern and Southern Africa (Comesa)
27 April	Ms Joyce Quin, Minister of State, Foreign and Commonwealth Office of the United Kingdom
27 April	Mr Frank Jensen, Minister for Justice of the Kingdom of Denmark
29 April	Delegation from the Supreme Court of Justice of the Portuguese Republic
3 May	HE Nicolas Schmit, Ambassador Extraordinary and Plenipotentiary of the Grand Duchy of Luxembourg in Brussels

3 and 4 May	Judges' Forum
3 June	HE Monseigneur Faustino Sainz Muñoz, Apostolic Nuncio to the European Communities
9 June	Delegation from the Constitutional Committee of the Finnish Parliament
11 June	Mr Alexander Schaub, Director-General of DG IV at the Commission of the European Communities
17 June	Competition Authority of Ireland
22 June	"Committee of Wise Men" — discussion group on the future of the judicial system of the European Union (meeting organised by the Commission)
1 July	HE Paulo Couto Barbosa, Portuguese Ambassador to the Grand Duchy of Luxembourg
7 September	Prof. Dr Goll, Minister for Justice of Baden-Würtemberg
8 September	Delegation from the Standing Committee on the Constitution of the Swedish Parliament
10 September	Delegation from the General Committee for European Affairs of the Lower House of the States General of the Netherlands
14 September	Delegation from the Consultative Council of the Government of Catalonia
16 September	Delegation from the Legislative Committee of the Finnish Parliament
20 September to 1 October	Delegation from the Court of Justice of the West African Economic and Monetary Union
23 September	Delegation from the Spanish General Council of the Notariat
23 September	Mr Ewald Nowotny, Vice-President of the European Investment Bank
29 September	The Right Honourable the Lord Williams of Mostyn QC, Attorney General, United Kingdom

4 to 8 October	Delegation from the Court of Justice of Comesa
5 October	Mr Kálmán Györgyi, Principal State Prosecutor of the Republic of Hungary
6 October	Mr Johannes Rau, President of the Federal Republic of Germany
7 October	HE Cloaldo Hugueney, Ambassador Extraordinary and Plenipotentiary of Brazil to the European Union in Brussels
11 and 12 October	Delegation from the Raad van State (Council of State) of the Netherlands
11 to 22 October	Delegation from the Court of Justice of the West African Economic and Monetary Union
13 October	HE James C. Hormel, United States Ambassador to the Grand Duchy of Luxembourg
19 October	Tenth anniversary of the Court of First Instance
25 and 26 October	Delegation from the Supreme Court of the Republic of Austria
28 October	Mr Johannes Koskinen, Minister for Justice of the Republic of Finland
28 October	HE Gregor Woschnagg, Ambassador Extraordinary and Plenipotentiary of the Republic of Austria in Brussels
10 November	Delegation from the Committee on Legal Affairs and the Internal Market of the European Parliament
11 November	Mrs Erna Hennicot-Schoepges, Minister for Culture, Higher Education and Research and Minister for Public Works of the Grand Duchy of Luxembourg
22 November	Opening ceremony for Finnish works of art, performed by Mrs Tarja Halonen, Minister for Foreign Affairs of the Republic of Finland
26 November	Delegation from the European Court of Human Rights
29 November to 10 December	Mr Raphaël Péyomon Ouattara, Registrar of the Court of Justice of the West African Economic and Monetary Union

7 December	House of Lords Select Committee on the European Union, Sub-Committee E: Laws and Institutions
13 to 17 December	Study visit to the Court of Justice by Mr A.M. Akiwumi, Member of the Court of Justice of Comesa
15 to 16 December	Mr Abraham Zinzindohoue, President of the Supreme Court of the Republic of Benin

B — Study visits to the Court of Justice and the Court of First Instance in 1999

(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	61	84	—	—	749	52	—	946
DK	23	39	20	30	126	92	35	365
D	299	563	36	284	612	137	252	2 183
EL	55	5	7	—	39	50	—	156
E	33	113	3	29	203	38	—	419
F	35	153	—	178	351	—	92	809
IRL	8	—	5	3	122	—	—	138
I	28	110	6	—	361	25	68	598
L	4	100	—	—	75	45	60	284
NL	28	1	2	—	252	—	—	283
A	9	25	52	67	250	—	20	423
P	10	1	6	16	32	4	14	83
FIN	20	17	1	22	10	7	47	124
S	8	44	13	55	28	18	18	184
UK	45	19	15	5	881	16	31	1 012
Third countries	115	119	42	168	806	—	—	1 250
Mixed groups	40	174	15	16	184	74	24	527
TOTAL	821	1 567	223	873	5 081	558	661	9 784

(cont.)

[1] The number of judges of the Member States who participated in the meetings and judicial study visits organised by the Court of Justice is included under this heading. In 1999 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 student groups.

Study visits to the Court of Justice and the Court of First Instance in 1999
(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	3	2	—	—	11	2	—	18
DK	2	2	1	1	4	3	2	15
D	9	21	2	11	24	5	10	82
EL	5	4	4	—	3	1	—	17
E	3	5	3	2	10	2	—	25
F	3	11	—	7	14	—	3	38
IRL	1	—	1	1	5	—	—	8
I	2	7	5	—	12	1	2	29
L	1	2	—	—	2	1	1	7
NL	3	1	1	—	9	—	—	14
A	2	5	3	8	8	—	1	27
P	2	1	1	2	3	1	1	11
FIN	3	2	1	2	2	1	2	13
S	1	2	1	5	1	1	1	12
UK	3	2	2	1	25	1	2	36
Third countries	6	14	2	16	30	—	—	68
Mixed groups	1	3	1	1	4	2	1	13
TOTAL	50	84	28	57	167	21	26	433

[1] This heading includes, *inter alia*, the judicial meetings and study visits.

[2] Other than teachers accompanying student groups.

C — Formal sittings in 1999

21 April	Formal sitting in memory of Mr Krateros Ioannou, Judge at the Court of Justice
7 June	Formal sitting on the occasion of the entry into office of Mr Vassilios Skouris as Judge at the Court of Justice
17 September	Formal sitting for the giving of solemn undertakings by the President and the new Members of the Commission of the European Communities
5 October	Formal sitting on the occasion of the departure from office of Mr John Murray, Judge at the Court of Justice, and the entry into office of Mrs Fidelma O'Kelly Macken as Judge at the Court of Justice
18 October	Formal sitting in memory of Mr G. Federico Mancini, Judge at the Court of Justice
15 December	Formal sitting on the occasion of the taking up of duties by Mr Antonio M. La Pergola as Judge at the Court of Justice, and the departure from office of Mr Christopher W. Bellamy, Judge at the Court of First Instance, together with the entry into office of Mr Nicholas J. Forwood as Judge at the Court of First Instance

D — Visits and participation in official functions in 1999

13 January	Attendance of the President and a delegation from the Court of Justice at the formal sitting for the reopening of the Court of Cassation in Paris
15 to 17 February	Delegation from the Court of Justice at a symposium organised by the West African Economic and Monetary Union in Ouagadougou
16 February	Visit by the President and a delegation from the Court of Justice to the Spanish Constitutional Court in Madrid
24 and 25 March	Delegation from the Court of Justice at a conference organised by the Committee on Civil Liberties and Internal Affairs of the European Parliament in Brussels
6 to 9 April	Official visit by the President to the Central American Court of Justice in Managua
26 April	Participation of the President, at the invitation of the President of the Danish Parliament, at a symposium organised on the occasion of the 150th anniversary of the constitution of Denmark, in Copenhagen. Lecture given by the President at the symposium on "The European Legal Order from a Constitutional Perspective"
10 and 11 May	Delegation from the Court of Justice at the preparatory meeting for the symposium of Councils of State and supreme administrative courts in Vienna
13 May	Delegation from the Court of Justice at the presentation of the "Internationaler Karlpreis" to Mr Tony Blair, Prime Minister of the United Kingdom, in Aachen
14 May	The President of the Court of Justice presides over the ceremony for the grant of the international prize "Justice in the World" conferred on Professor Aharon Barak, President of the Supreme Court of Israel, by the foundation "International Union of Judges" in Madrid

14 and 15 May	Delegation from the Court of Justice at the annual meeting of the Association of German, Italian and French Administrative Judges, in Rome
17 to 19 May	Delegation from the Court of Justice at the "XI Conference of the European Constitutional Courts" in Warsaw
25 May	Delegation from the Court of Justice at the presentation of the annual report of the Autorità Garante della Concorrenza e del Mercato (Competition and Trade Authority) in Rome
10 June	Participation of the President at the opening ceremony for the seat of the Office for Harmonisation in the Internal Market (OHIM) in Alicante
11 June	The President delivers the opening address at the symposium on Fundamental Rights in Europe and North America, in Trier
13 July	The President delivers the opening address for the lectures on the powers of the State and the European Union organised by the Spanish General Council of the Judiciary, in La Coruña
27 September	Participation of the President and a delegation from the Court of Justice at the symposium on the Judicial Architecture of the European Union, organised by the Council of the Bars and Law Societies of the European Community and the Finnish Association of European Law, in Helsinki
30 September	Delegation from the Court of Justice at the opening session of the 50th academic year of the College of Europe in Bruges
1 October	Delegation from the Court of Justice at the ceremony for the opening of the judicial year in London
2 and 3 November	Official visit by the President and a delegation from the Court of Justice to the Constitutional Court, the Supreme Court and the General Council of the Judiciary in Madrid

19 and 20 November	Participation of the President and a delegation from the Court of Justice at a symposium organised by the Council of the Bars and Law Societies of the European Community and the College of Europe on "Revising the Judicial Architecture of the European Union", in Bruges
13 December	Participation of the President and a delegation from the Court of Justice, at the invitation of the Vice-President of the French Conseil d'État (Council of State), at the celebration of the bicentenary of that institution in Paris
14 December	Participation of the President at the opening ceremony for the new seat of the European Parliament in Strasbourg
17 December	Participation, with observer status, of a delegation from the Court of Justice in the working group entrusted with drawing up the charter of fundamental rights of the European Union, in Brussels

Chapter IV

Tables and statistics

A - Proceedings of the Court of justice

I. Synopsis of the judgments delivered by the Court of Justice in 1999

Case	Date	Parties	Subject-matter
AGRICULTURE			
C-416/97	21 January 1999	Commission of the European Communities v Italian Republic	Failure of Member State to fulfil its obligations — Directives 93/119/EC, 94/42/EC, 94/16/EC and 93/118/EC — Non-transposition within the prescribed time-limits
C-54/95	21 January 1999	Federal Republic of Germany v Commission of the European Communities	Clearance of accounts — EAGGF — Refusal to allow expenditure — 1991
C-73/97 P	21 January 1999	French Republic	Appeal — Banana sector — Annulment of Regulation (EC) No 3190/93 — Plea of inadmissibility
C-181/96	28 January 1999	Georg Wilkens v Landwirtschaftskammer Hannover	Additional milk levy — Special reference quantity — Non-marketing and conversion undertaking — Obligations — Failure to fulfil — Withdrawal of the conversion premium — Retroactive annulment of a quota allocation
C-303/97	28 January 1999	Verbraucherschutzverein eV v Sektkellerei G.C. Kessler GmbH und Co.	Brand name — Sparkling wine — Article 13(2)(b) of Regulation (EEC) No 2333/92 — Description of product — Consumer protection — Risk of confusion
C-354/97	9 February 1999	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Directives 93/74/EEC, 94/28/EC, 94/39/EC, 95/9/EC and 95/10/EC

Case	Date	Parties	Subject-matter
C-179/97	2 March 1999	Kingdom of Spain v Commission of the European Communities	Fisheries — Conservation of maritime resources — Inspection of fishing vessels — Joint international inspection programme adopted by the North-West Atlantic Fisheries Organisation
C-100/96	11 March 1999	The Queen v Ministry of Agriculture, Fisheries and Food, *ex parte*: British Agrochemicals Association Ltd	Marketing authorisation — Plant protection product imported from an EEA State or a third country — Identical to a plant protection product already authorised by the Member State of importation — Assessment of identical nature — Member States' power of assessment
C-289/96, C-293/96 and C-299/96	16 March 1999	Kingdom of Denmark, Federal Republic of Germany and French Republic v Commission of the European Communities	Council Regulation (EEC) 2081/92 — Commission Regulation (EC) No 1107/96 — Registration of geographical indications and designations of origin — Feta
C-59/97	18 March 1999	Italian Republic v Commission of the European Communities	EAGGF — Clearance of accounts — Financial year 1992
C-28/94	22 April 1999	Kingdom of the Netherlands v Commission of the European Communities	EAGGF — Clearance of accounts — 1990 financial year — Butter
C-31/98	28 April 1999	Peter Luksch v Hauptzollamt Weiden	Agriculture — Common organisation of the markets — Fruit and vegetables — Importation of sour cherries from a third country — Levy of a countervailing charge equal to the difference between the minimum price and the import price — Applicability to spoiled goods

Case	Date	Parties	Subject-matter
C-288/97	29 April 1999	Consorzio fra i Caseifici dell'Altopiano di Asiago v Regione Veneto	Milk — Additional levy — Meaning of purchaser — Producers' cooperative
C-376/97	10 June 1999	Bezirksregierung Lüneburg v Karl-Heinz Wettwer	Special premium for beef producers — Obligation to keep cattle on the applicant's holding for a minimum period — Transfer of the holding during that period by way of anticipated succession inter vivos — Effect on entitlement to the premium
C-14/98	1 July 1999	Battital Srl v Regione Piemonte	Sanitary and phytosanitary protection of plants — Directive 77/93/EEC — Directive 92/76/EEC — Ban on introducing into Italy plants of the Citrus genus from third countries — Limitation in time
C-374/97	9 September 1999	Anton Feyrer v Landkreis Rottal-Inn	Directive 85/73/EEC — Fees in respect of health inspections and controls of fresh meat — Direct effect
C-64/98 P	9 September 1999	Odette Nicos Petrides Co. Inc. v Commission of the European Communities	Appeal — Action for compensation — Common organisation of the market in raw tobacco — Commission decisions rejecting bids in tendering procedures in respect of tobacco held by intervention agencies — Inadequate statement of reasons, principles of proportionality, equal treatment and the right to a fair hearing

Case	Date	Parties	Subject-matter
C-106/97	21 September 1999	Dutch Antillian Dairy Industry Inc., Verenigde Douane-Agenten BV v Rijksdienst voor de keuring van Vee en Vlees	Association of overseas countries and territories — Imports of butter originating in the Netherlands Antilles — Health rules on milk-based products — Article 131 of the EC Treaty (now, after amendment, Article 182 EC), Article 132 of the EC Treaty (now, after amendment, Article 183 EC), and Articles 136 and 227 of the EC Treaty (now, after amendment, Articles 187 EC and 299 EC) — Directive 92/46/EEC—Decision 94/70/EC
C-179/95	5 October 1999	Kingdom of Spain v Council of the European Union	Fisheries — Regulation laying down limits on and distributing fishing opportunities among Member States — Fishing quota exchanges — Annulment
C-240/97	5 October 1999	Kingdom of Spain v Commission of the European Communities	EAGGF — Clearance of accounts — 1993 — Export refunds for butter, beef and veal — Aid for processing of citrus fruit
C-10/98 P	5 October 1999	Azienda Agricola «Le Canne» Srl v Commission of the European Communities	Appeal — Aquaculture — Regulations (EEC) Nos 4028/86 and 1116/88 — Community financial aid — Reduction of aid
C-104/97 P	14 October 1999	Atlanta AG v European Community, represented by 1) Council of the European Union and 2) Commission of the European Communities	Appeal — Action for damages — Common organisation of the markets — Bananas — Import arrangements
C-44/97	21 October 1999	Federal Republic of Germany v Commission of the European Communities	Clearance of accounts — EAGGF — Expenditure disallowed — 1992-1993 financial years

Case	Date	Parties	Subject-matter
C-253/97	28 October 1999	Italian Republic v Commission of the European Communities	EAGGF — Clearance of accounts — Financial year 1993
C-151/98 P	18 November 1999	Pharos SA v Commission of the European Communities	Appeal — Veterinary medicinal products — Somatosalm — Procedure for setting maximum residue limits — Adaptation Committee — Failure to deliver opinion — Deadline for proposing measures to the Council
C-74/98	16 December 1999	DAT-SCHAUB amba v Ministeriet for Fødevarer, Landbrug og Fiskeri	Agriculture — Common organisation of the market — Beef and veal — Export refunds — Beef processed before entering the country of import — International agreements — Effects — Cooperation Agreement between the European Economic Community, of the one part, and the countries parties to the Charter of the Cooperation Council for the Arab States of the Gulf, of the other part
C-137/99	16 December 1999	Commission of the European Communities v Hellenic Republic	Failure by a Member State to fulfil its obligations — Failure to transpose Directive 96/43/EC
C-101/98	16 December 1999	Union Deutsche Lebensmittelwerke GmbH v Schutzverband gegen Unwesen in der Wirtschaft eV	Protection of designations used in marketing of milk and milk products — Regulation (EEC) No 1898/87 — Directive 89/398/EEC — Use of the designation cheese to describe a dietary product in which the natural fat has been replaced by vegetable fat

Case	Date	Parties	Subject-matter

APPROXIMATION OF LAWS

C-120/97	21 January 1999	Upjohn Ltd and The Licensing Authority and Others	Proprietary medicinal products — Revocation of a marketing authorisation — Judicial review
C-347/97	21 January 1999	Commission of the European Communities v Kingdom of Belgium	Failure of a Member State to fulfil its obligations — Directive 91/157/EEC on batteries and accumulators containing certain dangerous substances — Failure by a Member State to adopt programmes provided for in Article 6 of the directive
C-237/97	11 February 1999	AFS Intercultural Programs Finland ry v Kuluttajavirasto	Directive 90/314/EEC on package travel, package holidays and package tours — Scope — Organisation of student exchanges
C-63/97	23 February 1999	Bayerische Motorenwerke AG (BMW) and BMW Nederland BV v Ronald Karel Deenik	Trade-marks directive — Unauthorised use of the BMW trade mark in advertisements for a garage business
C-319/98	25 February 1999	Commission of the European Communities v Kingdom of Belgium	Failure by a Member State to fulfil its obligations — Directive 94/47/EC — Non-transposition
C-112/97	25 March 1999	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil its obligations — Directive 90/396/EEC — Heaters — Installation in living areas
C-425/97 to C-427/97	11 May 1999	Adrianus Albers, Martinus van den Berkmortel and Leon Nuchelmans	Directive 83/189/EEC — Technical regulations — Obligation to notify — Prohibition on growth promoters

Case	Date	Parties	Subject-matter
C-319/97	1 June 1999	Antoine Kortas	Article 100a(4) of the EC Treaty (now, after amendment, Article 95(4) to (9) EC — Directive 94/36/EC on colours for use in foodstuffs — Notification of national legislation derogating therefrom — No confirmation from the Commission — Effect
C-33/97	3 June 1999	Colim NV v Bigg's Continent Noord NV	Approximation of laws — Procedure for the provision of information in the field of technical standards and regulations — Directive 83/189/EEC — Labelling and presentation of products — Consumer protection — Language
C-140/97	15 June 1999	Walter Rechberger and Renate Greindl, Hermann Hofmeister and Others v Republic of Austria	Directive 90/314/EEC on package travel, package holidays and package tours —Travel offered at a reduced price to the subscribers of a daily newspaper — Implementation — Liability of the Member State
C-342/97	22 June 1999	Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV	Directive 89/104/EEC — Trade mark law — Likelihood of confusion — Aural similarity
C-60/98	29 June 1999	Butterfly Music Srl v Carosello Edizioni Musicali e Discografiche Srl (CEMED)	Copyright and related rights — Directive 93/98/EEC — Harmonisation of the term of protection
C-173/98	1 July 1999	Sebago Inc., Ancienne Maison Dubois et Fils SA v G-B Unic SA	Trade mark — Exhaustion of a trade-mark proprietor's rights — Proprietor's consent

Case	Date	Parties	Subject-matter
C-178/98	8 July 1999	Commission of the European Communities v French Republic	Failure to fulfil obligations — Directive 91/157/EEC on batteries and accumulators containing certain dangerous substances — Failure of a Member State to adopt the programmes provided for by Article 6 of the Directive
C-215/98	8 July 1999	Commission of the European Communities v Hellenic Republic	Failure by a Member State to fulfil its obligations — Directive 91/157/EEC on batteries and accumulators containing certain dangerous substances — Failure by a Member State to adopt the programmes provided for in Article 6 of the Directive
C-375/97	14 September 1999	General Motors Corporation v Yplon SA	Directive 89/104/EEC — Trade marks — Protection — Non-similar products or services — Trade mark having a reputation
C-401/98	14 September 1999	Commission of the European Communities v Hellenic Republic	Failure by a Member State to fulfil its obligations — Directive 94/47/EC — Non-transposition
C-392/97	16 September 1999	Farmitalia Carlo Erba Srl	Proprietary medicinal products — Supplementary protection certificate
C-391/98	21 October 1999	Commission of the European Communities v Hellenic Republic	Failure by a member State to fulfil its obligations — Directive 93/43/EEC — Failure to transpose within the prescribed period

Case	Date	Parties	Subject-matter
C-94/98	16 December 1999	The Queen, ex parte: Rhône-Poulenc Rorer Ltd, May & Baker Ltd v The Licensing Authority established by the Medicines Act 1968 (represented by The Medicines Control Agency)	Medicinal products — Marketing authorisation — Parallel imports

ASSOCIATION OF THE OVERSEAS COUNTRIES AND TERRITORIES

C-390/95 P	11 February 1999	Antillean Rice Mills NV and Others v Commission of the European Communities	Competence of the Council to impose restrictions on the import of agricultural products originating in the overseas countries and territories

COMPANY LAW

C-103/97	4 February 1999	Josef Köllensperger GmbH & Co. KG, Atzwanger Ag v Gemeindeverband Bezirkskrankenhaus Schwaz	National court or tribunal within the meaning of Article 177 of the EC Treaty — Procedures for the award of public supply contracts and public works contracts — Body responsible for review procedures
C-258/97	4 March 1999	Hospital Ingenieure Krankenhaustechnik Planungs-Gesellschaft mbH (HI) v Landeskrankenanstalten-Betriebsgesellschaft	Public service contracts — Effect of a directive not transposed into national law

Case	Date	Parties	Subject-matter
C-272/97	22 April 1999	Commission of the European Communities v Federal Republic of Germany	Failure by a Member State to fulfil its obligations — Reasoned opinion — Principle of collegiality — Directive 90/605/EEC amending the scope of Directives 78/660/EEC and 83/349/EEC — Annual accounts and consolidated accounts
C-108/97 and C-109/97	4 May 1999	Windsurfing Chiemsee Produktions- und Vertriebs GmbH (WSC) v Boots- und Segelzubehör Walter Huber Franz Attenberger	Directive 89/104/EEC — Trade marks — Geographical indications of origin
C-225/97	19 May 1999	Commission of the European Communities v French Republic	Failure of a Member State to fulfil obligations — Freedom to provide services — Public procurement procedures — Water, energy, transport and telecommunications sectors
C-185/98	20 May 1999	Commission of the European Communities v Hellenic Republic	Failure by a Member State to fulfil obligations — Failure to transpose Directive 92/101/EEC
C-275/97	14 September 1999	DE + ES Bauunternehmung GmbH v Finanzamt Bergheim	Directive 78/660/EEC — Annual accounts — Principle of a true and fair view — Principle that valuations must be made on a prudent basis — Principle that valuations must be made separately — Global provisions for a number of potential liabilities — Conditions governing the making of provisions

Case	Date	Parties	Subject-matter
C-27/98	16 September 1999	Metalmeccanica Fracasso SpA, Leitschutz Handels- und Montage GmbH v Amt der Salzburger Landesregierung für den Bundesminister für wirtschaftliche Angelegenheiten	Public works contract — Contract awarded to sole tenderer judged to be suitable
C-213/98	12 October 1999	Commission of the European Communities v Ireland	Failure by a Member State to fulfil its obligations — Directive 92/100/EEC
C-328/96	28 October 1999	Commission of the European Communities v Republic of Austria	Failure of a Member State to fulfil its obligations — Public works contracts — Admissibility — Compatibility with Community law of conditions governing invitations to tender — Failure to publish a contract notice in the Official Journal of the European Communities
C-81/98	28 October 1999	Alcatel Austria AG and Others, Siemens AG Österreich, Sag-Schrack Anlagentechnik AG v Bundesministerium für Wissenschaft und Verkehr	Public procurement — Procedure for the award of public supply and works contracts — Review procedure
C-275/98	18 November 1999	Unitron Scandinavia A/S, 3-S A/S, Danske Svineproducenters Serviceselskab v Ministeriet for Fødevarer, Landbrug og Fiskeri	Public supply contracts — Directive 93/36/EEC — Award of public supply contracts by a body other than a contracting authority

Case	Date	Parties	Subject-matter
C-107/98	18 November 1999	Teckal Srl v Comune di Viano, Azienda Gas-Acqua Consorziale (AGAC) di Reggio Emilia	Public service and public supply contracts — Directives 92/50/EEC and 93/36/EEC — Award by a local authority of a contract for the supply of products and provision of specified services to a consortium of which it is a member
C-212/98	25 November 1999	Commission of the European Communities v Ireland	Failure to fulfil obligations — Failure to transpose Directive 93/83/EEC
C-176/98	2 December 1999	Holst Italia SpA v Comune di Cagliari	Directive 92/50/EEC — Public service contracts — Proof of standing of the service provider — Possibility of relying on the standing of another company

COMPETITION

C-215/96 and C-216/96	21 January 1999	Carlo Bagnasco and Others Banca Popolare di Novara soc. coop. arl and Others	Competition — Articles 85 and 86 of the EC Treaty — Standard bank conditions for current-account credit facilities and for the provision of general guarantees
C-59/98	25 February 1999	Commission of the European Communities v Grand Duchy of Luxembourg	Failure of a Member State to fulfil its obligations — Failure to transpose Directive 94/46/EC
C-119/97 P	4 March 1999	Union française de l'express (Ufex) and Others v Commission of the European Communities	Appeal — Competition — Dismissal of an application for annulment — Commission's task under Articles 85 and 86 of the EC Treaty — Assessment of Community interest

Case	Date	Parties	Subject-matter
C-126/97	1 June 1999	Eco Swiss China Time Ltd v Benetton International NV	Competition — Application by an arbitration tribunal, of its own motion, of Article 81 EC (ex Article 85) — Power of national courts to annul arbitration awards
C-49/92 P	8 July 1999	Commission of the European Communities v Anic Partecipazioni SpA	Appeal — Commission's Rules of Procedure — Procedure for the adoption of a decision by the College of Members of the Commission — Competition rules applicable to undertakings — Concepts of agreement and concerted practice — Responsibility of an undertaking for an infringement as a whole — Attachment of liability for the infringement — Fine
C-51/92 P	8 July 1999	Hercules Chemicals NV v Commission of the European Communities	Appeal — Procedure — Obligation to deliver judgments in cases concerning the same decision at the same time — Rules of Procedure of the Commission — Procedure for the adoption of a decision by the College of Members of the Commission — Competition rules applicable to undertakings — Rights of the defence — Access to the file — Fine

Case	Date	Parties	Subject-matter
C-199/92 P	8 July 1999	Hüls AG v Commission of the European Communities	Appeal — Rules of Procedure of the Court of First Instance — Reopening of the oral procedure — Commission's Rules of Procedure — Procedure for the adoption of a decision by the College of Members of the Commission — Competition rules applicable to undertakings — Concepts of agreement and concerted practice — Principles and rules applicable to evidence — Presumption of innocence — Fine
C-200/92 P	8 July 1999	Imperial Chemical Industries plc (ICI) v Commission of the European Communities	Appeal — Rules of Procedure of the Court of First Instance — Reopening of the oral procedure — Commission's Rules of Procedure — Procedure for the adoption of a decision by the College of Members of the Commission
C-227/92 P	8 July 1999	Hoechst AG v Commission of the European Communities	Appeal — Rules of Procedure of the Court of First Instance — Reopening of the oral procedure — Commission's Rules of Procedure — Procedure for the adoption of a decision by the College of Members of the Commission
C-234/92 P	8 July 1999	Shell International Chemical Company Ltd v Commission of the European Communities	Appeal — Rules of Procedure of the Court of First Instance — Reopening of the oral procedure — Commission's Rules of Procedure — Procedure for the adoption of a decision by the College of Members of the Commission

Case	Date	Parties	Subject-matter
C-235/92 P	8 July 1999	Montecatini SpA v Commission of the European Communities	Appeal — Commission's Rules of Procedure — Procedure for the adoption of a decision by the College of Members of the Commission — Competition rules applicable to undertakings — Concepts of agreement and concerted practice — Limitation periods — Fine
C-245/92 P	8 July 1999	Chemie Linz GmbH v Commission of the European Communities	Appeal — Rules of Procedure of the Court of First Instance — Reopening of the oral procedure — Commission's Rules of Procedure — Procedure for the adoption of a decision by the College of Members of the Commission
C-5/93 P	8 July 1999	DSM NV v Commission of the European Communities	Appeal — Application for revision — Admissibility
C-310/97 P	14 September 1999	Commission of the European Communities v AssiDomän Kraft Products AB and Others	Appeal — Effects in relation to third parties of a judgment annulling a measure
C-22/98	16 September 1999	Jean Claude Becu, Annie Verweire, Smeg NV, Adia Interim NV	Competition — National legislation allowing only recognised dockers to perform certain dock duties — Meaning of undertaking — Special or exclusive rights
C-67/96	21 September 1999	Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie	Compulsory affiliation to a sectoral pension scheme — Compatibility with competition rules — Classification of a sectoral pension fund as an undertaking

Case	Date	Parties	Subject-matter
C-115/97, C-116/97 and C-117/97	21 September 1999	Brentjens' Handelsonderneming BV v Stichting Bedrijfspensioenfonds voor de Handel in Bouwmaterialen	Compulsory affiliation to a sectoral pension scheme — Compatibility with competition rules — Classification of a sectoral pension fund as an undertaking
C-219/97	21 September 1999	Maatschappij Drijvende Bokken BV v Stichting Pensioenfonds voor de Vervoer- en Havenbedrijven	Compulsory affiliation to a sectoral pension scheme — Compatibility with competition rules — Classification of a sectoral pension fund as an undertaking

CONVENTION ON JURISDICTION AND THE ENFORCEMENT OF JUDGMENTS

C-159/97	16 March 1999	Trasporti Castelletti Spedizioni Internazionali SpA v Hugo Trumpy SpA	Brussels Convention — Article 17 — Agreement conferring jurisdiction — Form according with usages in international trade or commerce
C-99/96	27 April 1999	Hans-Hermann Mietz v Intership Yachting Sneek BV	Brussels Convention — Concept of provisional measures — Construction and delivery of a motor yacht
C-267/97	29 April 1999	Eric Coursier v Fortis Bank SA, Martine Coursier, née Bellami	Brussels Convention — Enforcement of judgments — Article 31 — Enforceability of a judgment — Collective proceedings for the discharge of debts

Case	Date	Parties	Subject-matter
C-260/97	17 June 1999	Unibank A/S v Flemming G. Christensen	Brussels Convention — Interpretation of Article 50 — Meaning of document which has been formally drawn up or registered as an authentic instrument and is enforceable in one Contracting State — Document drawn up without any involvement of a public officer — Articles 32 and 36
C-440/97	28 September 1999	GIE Groupe Concorde and Others v Capitaine commandant le navire «Suhadiwarno Panjan» and Others	Brussels Convention — Jurisdiction in contractual matters — Place of performance of the obligation
C-420/97	5 October 1999	Leathertex Divisione Sintetici SpA v Bodetex BVBA	Brussels Convention — Interpretation of Articles 2 and 5(1) — Commercial agency agreement — Action founded on separate obligations arising from the same contract and regarded as equal in rank — Jurisdiction of the court seised to hear the whole action

EAEC

C-161/97 P	22 April 1999	Kernkraftwerke Lippe-Ems GmbH v Commission of the European Communities	Euratom Treaty — Action for annulment and action for damages — Conclusion of a contract for the supply of uranium — Simplified procedure — Powers of the Agency — Time-limit for conclusion of the contract — Legal obstacle to conclusion — Diversification policy — Origin of the uranium — Market-related prices

Case	Date	Parties	Subject-matter

ENVIRONMENT AND CONSUMERS

C-150/97	21 January 1999	Commission of the European Communities v Portuguese Republic	Failure by a Member State to fulfil its obligations — Directive 85/337/EEC
C-207/97	21 January 1999	Commission of the European Communities v Kingdom of Belgium	Failure of a Member State to fulfil its obligations — Council Directive 76/464/EEC — Water pollution — Failure to transpose
C-164/97 and C-165/97	25 February 1999	European Parliament v Council of the European Union	Regulations on the protection of forests against atmospheric pollution and fire — Legal basis — Article 43 of the EC Treaty — Article 130s of the EC Treaty — Parliament's prerogatives
C-195/97	25 February 1999	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil its obligations — Failure to transpose Directive 91/676/EEC
C-166/97	18 March 1999	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Conservation of wild birds — Special protection areas
C-423/97	22 April 1999	Travel Vac SL v Manuel José Antelm Sanchis	Directive 85/577/EEC — Scope — Time-share contracts — Right of renunciation
C-340/96	22 April 1999	Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland	Failure to fulfil obligations — Directive 80/778/EEC — Water intended for human consumption — Rules designed to ensure implementation of water-quality standards

Case	Date	Parties	Subject-matter
C-293/97	29 April 1999	The Queen v Secretary of State for the Environment, Minister of Agriculture, Fisheries and Food, ex parte: H.A. Standley and Others and D.G.D. Metson and Others, Intervener: National Farmer's Union	Directive 91/676/EEC — Protection of waters against pollution caused by nitrates from agricultural sources — Identification of waters affected by pollution — Designation of vulnerable zones — Criteria — Validity in the light of the polluter pays principle, the principle that environmental damage should as a priority be rectified at source, the principle of proportionality and the right to property
C-198/97	8 June 1999	Commission of the European Communities v Federal Republic of Germany	Failure by a Member State to fulfil its obligations — Directive 76/160/EEC — Quality of bathing water — Admissibility of an action brought pursuant to Article 226 EC (ex Article 169) — Reasoned opinion — Observance of the principle of the collegiality of the Commission — Failure to comply with Articles 4(1) and 6(1) of Directive 76/160/EEC
C-102/97	9 September 1999	Commission of the European Communities v Federal Republic of Germany	Failure of a Member State to fulfil obligations — Directive 87/101/EEC — Disposal of waste oils — Transposition of the directive

Case	Date	Parties	Subject-matter
C-217/97	9 September 1999	Commission of the European Communities v Federal Republic of Germany	Failure of a Member State to fulfil obligations — Directive 90/313/EEC — Freedom of access to information on the environment — Definition of public authorities — Exclusion of the courts, criminal prosecution authorities and disciplinary authorities — Partial communication of information — Exclusion of the right to information during administrative proceedings — Amount of charges and mode of collecting them
C-435/97	16 September 1999	World Wildlife Fund (WWF) and Others v Autonome Provinz Bozen and Others	Environment — Directive 85/337/EEC — Assessment of the effects of certain public and private projects
C-392/96	21 September 1999	Commission of the European Communities v Ireland	Environment — Directive 85/337/EEC — Assessment of the effects of certain public or private projects — Setting of thresholds
C-231/97	29 September 1999	A.M.L. van Rooij v Dagelijks bestuur van het waterschap de Dommel	Environment — Directive 76/464/EEC — Discharge — Possibility for a Member State to adopt a wider definition of discharge than that in the directive
C-232/97	29 September 1999	L. Nederhoff & Zn. v Dijkgraaf en hoogheemraden van het Hoogheemraadschap Rijnland	Environment — Directives 76/464/EEC, 76/769/EEC and 86/280/EEC — Discharge — Possibility for a Member State to adopt more stringent measures than those provided for in Directive 76/464/EEC — Effect of Directive 76/769/EEC on such a measure

Case	Date	Parties	Subject-matter
C-175/98 and C-177/98	5 October 1999	Criminal proceedings against Paulo Lirussi and Francesca Bizzaro	Waste — Directives 75/442/EEC and 91/689/EEC — Meaning of temporary storage, pending collection, on the site where it is produced — Meaning of waste management
C-365/97	9 November 1999	Commission of the European Communities v Italian Republic	Failure to fulfil obligations - Directives 75/442/EEC and 91/156/EEC - Management of waste
C-184/97	11 November 1999	Commission of the European Communities v Federal Republic of Germany	Failure to fulfil obligations — Council Directive 76/464/EEC — Aquatic pollution — Failure to transpose
C-96/98	25 November 1999	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Directive 79/409/EEC — Conservation of wild birds — Special protection areas

EXTERNAL RELATIONS

C-416/96	2 March 1999	Nour Eddline El-Yassini v Secretary of State for the Home Department	Definition of court or tribunal for the purposes of Article 177 of the Treaty — EEC-Morocco Cooperation Agreement — First paragraph of Article 40 — Principle of non-discrimination as regards working conditions or remuneration — Direct effect — Scope — Refusal to extend a residence permit, bringing to an end the employment of a Moroccan worker in a Member State

Case	Date	Parties	Subject-matter
C-262/96	4 May 1999	Sema Sürül v Bundesanstalt für Arbeit	EEC-Turkey Association Agreement — Decision of the Association Council — Social Security — Principle of non-discrimination on grounds of nationality — Direct effect — Turkish national authorised to reside in a Member State — Entitlement to family allowances under the same conditions as nationals of that State
C-321/97	15 June 1999	Ulla-Brith Andersson and Susanne Wåkerås-Andersson v Svenska staten (Swedish State)	Article 234 EC (ex-Article 177) — EEA Agreement — Jurisdiction of the Court of Justice — Accession to the European Union — Directive 80/987/EEC — Liability of a State
C-189/97	8 July 1999	European Parliament v Council of the European Union	EC/Mauritania fisheries agreement — Agreements with important budgetary implications for the Community
C-179/98	11 November 1999	Belgian State v Fatna Mesbah	EEC-Morocco Cooperation Agreement — Article 41(1) — Principle of non-discrimination in the field of social security — Scope ratione personae
C-89/96	23 November 1999	Portuguese Republic v Commission of the European Communities	Action for annulment — Commercial policy — Quantitative restrictions on imports of textile products — Products originating in India — Regulation (EC) No 3053/95 — Partial withdrawal
C-149/96	23 November 1999	Portuguese Republic v Council of the European Union	Commercial policy — Access to the market in textile products — Products originating in India and Pakistan

Case	Date	Parties	Subject-matter

FREE MOVEMENT OF CAPITAL

C-222/97	16 March 1999	Manfred Trummer and Peter Mayer	Free movement of capital — National prohibition on the creation of a mortgage in a foreign currency — Interpretation of Article 73b of the EC Treaty
C-439/97	14 October 1999	Sandoz GmbH v Finanzlandesdirektion für Wien, Niederösterreich und Burgenland	Loan agreements — Stamp duty — Rules governing imposition — Discrimination
C-200/98	18 November 1999	X AB, Y AB v Riksskatteverket	Freedom of establishment — Payment made by a Swedish company to its subsidiary — Exemption from corporation tax

FREE MOVEMENT OF GOODS

C-77/97	28 January 1999	Österreichische Unilever GmbH v Smithkline Beecham Markenartikel GmbH	Interpretation of Article 30 of the EC Treaty and Council Directive 76/768/EEC — Cosmetic products — National legislation imposing advertising restrictions
C-280/97	9 February 1999	ROSE Elektrotechnik GmbH & Co. KG v Oberfinanzdirektion Köln	Combined nomenclature — Tariff headings — Junction box without cables or contacts
C-383/97	9 February 1999	Staatsanwaltschaft Osnabrück v Arnoldus van der Laan	Labelling and presentation of foodstuffs — Article 30 of the EC Treaty and Directive 79/112/EEC — Dutch formed shoulder ham composed of shoulder ham pieces

Case	Date	Parties	Subject-matter
C-86/97	25 February 1999	Reiner Woltmann v Hauptzollamt Potsdam	Theft of goods — Customs duties — Remission — Special situation
C-87/97	4 March 1999	Consorzio per la tutela del formaggio Gorgonzola v Käserei Champignon Hofmeister Gmbh & Co. KG, Eduard Bracharz GmbH	Articles 30 and 36 of the EC Treaty — Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs
C-109/98	22 April 1999	CRT France International SA v Directeur Régional des Impôts de Bourgogne	Tax on the supply of CB sets — Charge having equivalent effect — Internal taxation — Applicability of the prohibition thereof to trade with non-member countries
C-405/97	28 April 1999	Mövenpick Deutschland GmbH für das Gastgewerbe v Hauptzollamt Bremen	Combined nomenclature — Tariff heading 0802 — Dried walnut pieces temporarily stored at a temperature of - 24° C
C-255/97	11 May 1999	Pfeiffer Großhandel GmbH v Löwa Warenhandel GmbH	Articles 30 and 52 of the EC Treaty (now, after amendment, Articles 28 EC and 43 EC) — Industrial and commercial property — Trade name
C-350/97	11 May 1999	Wilfried Monsees v Unabhängiger Verwaltungssenat für Kärnten	Articles 30, 34 and 36 of the EC Treaty (now, after amendment, Articles 28, 29 and 30 EC) — Free movement of goods — Prohibition of quantitative restrictions and measures having equivalent effect — Derogations — Protection of health and life of animals — International transport of live animals for slaughter

Case	Date	Parties	Subject-matter
C-412/97	22 June 1999	ED Srl v Italo Fenocchio	Free movement of goods — Freedom to provide services — Free movement of payments — National provision prohibiting the issue of a summary payment order to be served outside national territory — Compatibility
C-61/98	7 September 1999	De Haan Beheer BV v Inspecteur der Invoerrechten en Accijnzen te Rotterdam	Customs duties — External transit — Fraud — Incurrence and recovery of a customs debt
C-124/97	21 September 1999	Markku Juhani Läärä, Cotswold Microsystems Ltd, Oy Transatlantic Software Ltd v Kihlakunnansyyttäjä (Jyväskylä), Suomen valtio (Finnish State)	Freedom to provide services — Exclusive operating rights — Slot machines
C-44/98	21 September 1999	BASF AG v Präsident des Deutschen Patentamts	Free movement of goods — Measures having equivalent effect — European patent ruled void ab initio *for failure to file a translation*
C-379/97	12 October 1999	Pharmacia & Upjohn SA, formerly Upjohn SA v Paranova A/S	Trade-mark rights — Pharmaceutical products — Parallel imports — Replacement of a trade mark

Case	Date	Parties	Subject-matter
C-223/98	14 October 1999	Adidas AG	Free movement of goods — Regulation (EC) No 3295/94 — Prohibition of release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods — Provision of national law requiring the names of consignees of consignments detained by the customs authorities pursuant to the regulation to be kept confidential — Compatibility of the provision with Regulation (EC) No 3295/94
C-233/98	21 October 1999	Hauptzollamt Neubrandenburg v Lensing & Brockhausen GmbH	Community transit — Offence —Recovery of duties — Competent State
C-97/98	21 October 1999	Peter Jägerskiöld v Torolf Gustafsson	Free movement of goods — Definition of «goods» — Angling rights — Freedom to provide services
C-48/98	11 November 1999	Firma Söhl & Söhlke v Hauptzollamt Bremen	Community Customs Code and implementing Regulation — Exceeding of time-limits for the customs clearance of non-Community goods in temporary storage — Failure having «no significant effect on the correct operation of the temporary storage or customs procedure in question» — Extension of period — «Obvious negligence

Case	Date	Parties	Subject-matter

FREEDOM OF MOVEMENT FOR PERSONS

C-348/96	19 January 1999	Donatella Calfa	Public policy — Tourist from another Member State — Conviction for drug use — Exclusion for life from a Member State's territory
C-18/95	26 January 1999	F. C. Terhoeve v Inspecteur van de Belastingdienst Particulieren/Ondernemingen buitenland	Freedom of movement for workers — Combined assessment covering income tax and social security contributions — Non-applicability to workers who transfer their residence from one Member State to another of a social contributions ceiling applicable to workers who have not exercised their right to freedom of movement — Possible offsetting by income tax advantages — Possible incompatibility with Community law — Consequences
C-320/95	25 February 1999	José Ferreiro Alvite v Instituto Nacional de Empleo (Inem) and Others	Article 51 of the EC Treaty — Article 67 of Regulation (EEC) No 1408/71 — Unemployment allowance for claimants of more than 52 years of age
C-90/97	25 February 1999	Robin Swaddling v Adjudication Officer	Social security — Income support — Conditions of entitlement — Habitual residence
C-131/97	25 February 1999	Annalisa Carbonari and Others v Università degli Studi di Bologna and Others	Right of establishment — Freedom to provide services — Doctors — Medical specialties — Training periods — Remuneration — Direct effect

Case	Date	Parties	Subject-matter
C-212/97	9 March 1999	Centros Ltd v Erhvervs- og Selskabsstyrelsen	Freedom of establishment — Establishment of a branch by a company not carrying on any actual business — Circumvention of national law — Refusal to register
C-360/97	20 April 1999	Herman Nijhuis v Bestuur van het Landelijk Instituut Sociale Verzekeringen	Social security — Incapacity for work — Special scheme for civil servants — Point 4(a) of Section J of Annex VI to Regulation (EEC) No 1408/71 — Articles 48 and 51 of the EC Treaty
C-311/97	29 April 1999	Royal Bank of Scotland plc v Elliniko Dimosio (Greek State)	Freedom of establishment — Tax legislation — Tax on company profits
C-302/97	1 June 1999	Klaus Konle v Republic of Austria	Freedom of establishment — Free movement of capital — Articles 52 of the EC Treaty (now, after amendment, Article 43 EC) and 56 EC (ex Article 73b) — Authorisation procedure for the acquisition of immovable property — Article 70 of the Act concerning the conditions of accession of the Republic of Austria — Secondary residences — Liability for breach of Community law
C-211/97	3 June 1999	Paula Gómez Rivero v Bundesanstalt für Arbeit	Social security — Article 16(2), first sentence, of Regulation (EEC) No 1408/71 — Right of option — Effects

Case	Date	Parties	Subject-matter
C-337/97	8 June 1999	C.P.M. Meeusen v Hoofddirectie van de Informatie Beheer Groep	Regulation (EEC) No 1612/68 — Free movement of persons — Concept of worker — Freedom of establishment — Study finance — Discrimination on the ground of nationality — Residence requirement
C-234/97	8 July 1999	Teresa Fernández de Bobadilla v Museo Nacional del Prado, Comité de Empresa del Museo Nacional del Prado, Ministerio Fiscal	Recognition of qualifications — Restorer of cultural property — Directives 89/48/EEC and 92/51/EEC — Concept of regulated profession — Article 48 of the EC Treaty (now, after amendment, Article 39 EC
C-391/97	14 September 1999	Frans Gschwind v Finanzamt Aachen-Außenstadt	Article 48 of the EC Treaty (now, after amendment, Article 39 EC) — Equal treatment — Taxation of non-residents' income — Taxation scale for married couples
C-307/97	21 September 1999	Compagnie de Saint-Gobain, Zweigniederlassung Deutschland v Finanzamt Aachen-Innenstadt	Freedom of establishment — Taxes on companies' income — Tax concessions
C-378/97	21 September 1999	Florus Ariël Wijsenbeek	Freedom of movement for persons — Right of citizens of the European Union to move and reside freely — Border controls — National legislation requiring persons coming from another Member State to present a passport
C-397/96	21 September 1999	Caisse de pension des employés privés v Dieter Kordel, Rainer Kordel, Frankfurter Allianz Versicherungs AG	Social security — Institution responsible for benefits — Right of action against liable third party — Subrogation

Case	Date	Parties	Subject-matter
C-442/97	18 November 1999	Jozef van Coile v Rijksdienst voor Pensioenen	Social security — Regulation (EEC) No 1408/71 (as amended by Regulation (EEC) No 1248/92) — Benefits of the same kind payable under the legislation of two or more Member States — Provision on reduction, suspension or withdrawal laid down by the legislation of a Member State — National legislation acknowledging periods in accordance with a legal presumption (war years presumption) where no pension right payable under another scheme (including a foreign scheme) is established for them
C-161/98	18 November 1999	Georges Platbrood v Office National des Pensions (ONP)	Social security — Regulation (EEC) No 1408/71 (as amended by Regulation (EEC) No 1248/92) — Benefits of the same kind payable under the legislation of two or more Member States — Provision on reduction, suspension or withdrawal laid down by the legislation of a Member State — National legislation acknowledging periods in accordance with a legal presumption (war years presumption) where no pension right payable under another scheme (including a foreign scheme) is established for them

Case	Date	Parties	Subject-matter

FREEDOM TO PROVIDE SERVICES

C-366/97	11 February 1999	Procédure Pénale v Massimo Romanelli and Paolo Romanelli	Freedom to provide services — Credit institutions — Repayable funds
C-241/97	20 April 1999	Försäkringsaktiebolaget Skandia (publ)	Insurance Directives 73/239/EEC and 79/267/EEC — Restrictions on choice of assets
C-250/98	28 April 1999	Commission of the European Communities v French Republic	Failure by a Member State to fulfil obligations — Failure to transpose Directive 89/594/EEC
C-224/97	29 April 1999	Erich Ciola v Land Vorarlberg	Free movement of services — Restriction — Moorings — Restriction for boat-owners resident in another Member State
C-417/97	3 June 1999	Commission of the European Communities v Grand Duchy of Luxembourg	Failure of a Member State to fulfil its obligations — Transferable securities — Investment services — Directive 93/22/EEC — Partial implementation
C-203/98	8 July 1999	Commission of the European Communities v Kingdom of Belgium	Failure by a Member State to fulfil its obligations — Articles 6 and 52 of the EC Treaty (now, after amendment, Articles 12 EC and 43 EC) — Air traffic — Registration of aircraft
C-108/98	9 September 1999	RI.SAN. Srl v Comune di Ischia, Italia Lavoro SpA, formerly GEPI SpA, Ischia Ambiente SpA	Freedom of establishment — Freedom to provide services — Organisation of urban waste collection service
C-67/98	21 October 1999	Questore di Verona v Diego Zenatti	Freedom to provide services — Taking of bets

Case	Date	Parties	Subject-matter
C-294/97	26 October 1999	Eurowings Luftverkehrs AG v Finanzamt Dortmund-Unna	Freedom to provide services — Trade tax — Add-back to the taxable amount — Exemption inapplicable to the lessee where the proprietor of the goods leased is established in another Member State and is therefore not liable to the tax
C-6/98	28 October 1999	Arbeitsgemeinschaft Deutscher Rundfunkanstalten (ARD) v PRO Sieben Media AG	Television broadcasting — Limitation on transmission time allocated to advertising
C-55/98	28 October 1999	Skatteministeriet v Bent Vestergaard	Freedom to provide services — Income tax — Taxable income — Deduction of expenses for professional training courses — Distinction according to the location of the courses
Cases C-369/96 and C-376/96	23 November 1999	Jean-Claude Arblade, Arblade & Fils SARL Bernard Leloup, Serge Leloup, Sofrage SARL	Freedom to provide services — Temporary deployment of workers for the purposes of performing a contract — Restrictions
C-239/98	16 December 1999	Commission of the European Communities v French Republic	Failure to fulfil obligations — Non-transposition of Directives 92/49/EEC and 92/96/EEC — Direct insurance other than life assurance and direct life assurance

LAW GOVERNING THE INSTITUTIONS

C-245/95 P-INT	19 January 1999	NSK Ldt and Others v Commission and Others	Appeal — Dumping — Ball bearings originating in Japan — Interpretation

Case	Date	Parties	Subject-matter
C-42/97	23 February 1999	European Parliament v Council of the European Union	Council Decision 96/664/EC — Promotion of linguistic diversity of the Community in the information society — Legal basis
C-65/97	25 February 1999	Commission of the European Communities v Cascina Laura Sas si arch. Aldo Delbò e C.e.a.	Article 181 of the EC Treaty — Arbitration clause — Non-performance of a contract
C-69/97	27 April 1999	Commission of the European Communities v SNUA Srl	Arbitration clause — Breach of contract
C-172/97	10 June 1999	Commission of the European Communities v SIVU du Plan d'Eau de la Vallée du Lot et Hydro-Réalisations SARL	Arbitration clause — Non-performance of a contract
C-334/97	10 June 1999	Commission of the European Communities v Comune di Montorio al Vomano	Article 238 EC (ex Article 181) — Arbitration clause — Non-performance of two contracts
C-209/97	18 November 1999	Commission of the European Communities v Council of the European Union	Regulation (EC) No 515/97 — Legal basis — Article 235 of the EC Treaty (now Article 308 EC) or Article 100a of the EC Treaty (now, after amendment, Article 95 EC)

NEW ACCESSIONS

C-206/97	29 June 1999	Kingdom of Sweden v Council of the European Union	Accession of the Kingdom of Sweden — Fisheries — Determination of total allowable catches of certain fish — Cod

Case	Date	Parties	Subject-matter
C-355/97	7 September 1999	Landesgrundverkehrsreferent der Tiroler Landesregierung v Beck Liegenschaftsverwaltungsgesellschaft mbH, Bergdorf Wohnbau GmbH, in liquidation	Article 70 of the Act of Accession of Austria — Secondary residences — Procedure relating to the acquisition of immovable property in the Tyrol — Concept of existing legislation

PRINCIPLES OF COMMUNITY LAW

C-343/96	9 February 1999	Dilexport Srl v Amministrazione delle Finanze dello Stato	Internal taxes contrary to Article 95 of the Treaty — Recovery of sums paid but not due — National rules of procedure
C-172/98	29 June 1999	Commission of the European Communities v Kingdom of Belgium	Failure of a Member State to fulfil its obligations — Article 6 of the EC Treaty (now, after amendment, Article 12 EC) — Freedom of establishment — Requirement for there to be Belgian members in order for an association to be granted legal personality

PRIVILEGES AND IMMUNITIES

C-229/98	14 October 1999	Georges Vander Zwalmen and Élisabeth Massart v Belgian State	Officials and other servants of the European Communities — Personal income tax — Taxation of the spouse of a Community official

Case	Date	Parties	Subject-matter
REGIONAL POLICY			
C-308/95	5 October 1999	Kingdom of the Netherlands v Commission of the European Communities	European Regional Development Fund — Projects co-financed by the ERDF — Decision to conclude projects
C-84/96	5 October 1999	Kingdom of the Netherlands v Commission of the European Communities	European Regional Development Fund — Automatic release
SOCIAL POLICY			
C-167/97	9 February 1999	Regina v Secretary of State for Employment, ex parte: Seymour-Smith and Pérez	Men and women — Equal pay — Equal treatment — Compensation for unfair dismissal — Definition of pay — Right of a worker not to be unfairly dismissed — Whether falling under Article 119 of the EC Treaty or Directive 76/207/EEC — Legal test for determining whether a national measure constitutes indirect discrimination for the purposes of Article 119 of the EC Treaty — Objective justification
C-309/97	11 May 1999	Angestelltenbetriebsrat der Wiener Gebietskrankenkasse and Wiener Gebietskrankenkasse	Equal pay for men and women
C-336/97	17 June 1999	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil obligations — Incomplete transposition of Directive 82/501/EEC

Case	Date	Parties	Subject-matter
C-186/98	8 July 1999	Maria Amélia Nunes, Evangelina de Matos	Financial assistance granted from the European Social Fund — Improper use of funds — Penalties under Community law and national law
C-354/98	8 July 1999	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Failure to implement Directive 96/97/EC
C-281/97	9 September 1999	Andrea Krüger v Kreiskrankenhaus Ebersberg	Equal treatment for men and women — End-of-year bonus — Conditions for granting
C-249/97	14 September 1999	Gabriele Gruber v Silhouette International Schmied GmbH & Co. KG	Equal pay for men and women — Payments on termination of employment — Indirect discrimination
C-218/98	16 September 1999	Oumar Dabo Abdoulaye and Others v Régie nationale des usines Renault SA	Interpretation of Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC) and of Directives 75/117/EEC and 76/207/EEC — Collective agreement providing for an allowance for pregnant women going on maternity leave
C-362/98	21 September 1999	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil its obligations — Failure to transpose Directive 93/103/EC
C-433/97 P	5 October 1999	IPK-München GmbH v Commission of the European Communities	Appeal — Annulment of a decision of the Commission to refuse to pay the balance of financial assistance
C-333/97	21 October 1999	Susanne Lewen v Lothar Denda	Equal pay for male and female workers — Entitlement to a Christmas bonus — Parental leave and maternity leave

Case	Date	Parties	Subject-matter
C-430/98	21 October 1999	Commission of the European Communities v Grand Duchy of Luxembourg	Failure by a Member State to fulfil its obligations — Directive 94/45/EC — Failure to transpose within the prescribed period
C-273/97	26 October 1999	Angela Maria Sirdar v The Army Board, Secretary of State for Defence	Equal treatment for men and women — Refusal to employ a woman as a chef in the Royal Marines
C-187/98	28 October 1999	Commission of the European Communities v Hellenic Republic	Failure by a Member State to fulfil its obligations — Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC) — Directives 75/117/EEC and 79/7/EEC — Equal pay for men and women — Family and marriage allowances — Old-age pensions — Calculation — Failure to abolish discriminatory conditions retroactively
C-234/98	2 December 1999	G.C. Allen and others v Amalgamated Construction Co. Ltd	Safeguarding of employees' rights in the event of transfers of undertakings — Transfer within a group of companies
C-26/99	16 December 1999	Commission of the European Communities v Grand Duchy of Luxembourg	Failure by a Member State to fulfil its obligations — Failure to transpose Directive 95/30/EC
C-198/98	16 December 1999	G. Everson, T.J. Barrass v Secretary of State for Trade and Industry, Bell Lines Ltd, en liquidation	Social policy — Protection of employees in the event of the insolvency of their employer — Directive 80/987/EEC — Employees residing and employed in a State other than that in which the employer has its principal establishment — Guarantee institution

Case	Date	Parties	Subject-matter
C-47/99	16 December 1999	Commission of the European Communities v Grand Duchy of Luxembourg	Failure by a Member State to fulfil its obligations — Directive 94/33/EC — Failure to transpose within the prescribed period
C-382/98	16 December 1999	The Queen v Secretary of State for Social Security, ex parte: John Henry Taylor	Directive 79/7/EEC — Equal treatment for men and women in matters of social security — Grant of a winter fuel payment — Link with pensionable age

STAFF REGULATIONS OF OFFICIALS

C-304/97 P	18 March 1999	Fernando Carbajo Ferrero v European Parliament	Officials — Internal competition — Appointment to a post of head of division
C-2/98 P	18 March 1999	Henri de Compte v European Parliament	Officials — Application for revision of a judgment of the Court of First Instance — Appeal to the Court of Justice
C-430/97	10 June 1999	Jutta Johannes v Hartmut Johannes	Officials — Pension rights — Apportionment of pension rights in divorce proceedings
C-155/98 P	1 July 1999	Spyridoula Celia Alexopoulou v Commission of the European Communities	Appeal — Action declared manifestly unfounded or manifestly inadmissible — Officials — Classification in grade
C-257/98 P	9 September 1999	Arnaldo Lucccioni v Commission of the European Communities	Appeal — Action for damages
C-327/97 P	5 October 1999	Christos Apostolidis and Others v Commission of the European Communities	Appeal — Remuneration — Weighting coefficient — Compliance with a judgment of the Court of First Instance

Case	Date	Parties	Subject-matter
C-191/98 P	18 November 1999	Georges Tzoanos v Commission of the European Communities	Appeal — Dismissal of an application for annulment of a decision ordering removal from post — Concurrent disciplinary and criminal proceedings (Fifth paragraph of Article 88 of the Staff Regulations
C-150/98 P	16 December 1999	Economic and Social Committee of the European Communities v E	Appeal — Officials — Freedom of expression in relation to hierarchical superiors — Duty of loyalty and obligation to uphold the dignity of the service — Disciplinary measure — Relegation in step

STATE AID

C-342/96	29 April 1999	Kingdom of Spain v Commission of the European Communities	State aid — Application of the statutory interest rate to agreements for the repayment of wages and the payment of debts in respect of social security contributions
C-6/97	19 May 1999	Italian Republic v Commission of the European Communities	State aid — Definition — Tax credit — Recovery — Absolute impossibility
C-295/97	17 June 1999	Industrie Aeronautiche e Meccaniche Rinaldo Piaggio SpA v International Factors Italia SpA (Ifitalia), Dornier Luftfahrt GmbH, Ministero della Difesa	State aid — Article 92 of the EC Treaty (now, after amendment, Article 87 EC) — New aid — Prior notification
C-75/97	17 June 1999	Kingdom of Belgium v Commission of the European Communities	State aid — Definition — Increased reductions in social security contributions in certain industrial sectors — «Maribel bis/ter» scheme

Case	Date	Parties	Subject-matter
C-256/97	29 June 1999	Déménagements-Manutention Transport SA (DMT)	Article 92 of the EC Treaty (now, after amendment, Article 87 EC) — Concept of State aid — Payment facilities granted by a public body responsible for collecting employers' and workers' social security contributions
C-251/97	5 October 1999	French Republic v Commission of the European Communities	Article 92 of the EC Treaty (now, after amendment, Article 87 EC) — Concept of aid — Relief on social security contributions in consideration for the costs arising for undertakings from collective agreements concerning the reorganisation and reduction of working time

TAXATION

C-181/97	28 January 1999	A.J. van der Kooy v Staatssecretaris van Financiën	Part Four of the EC Treaty — Article 227 of the EC Treaty — Article 7(1)(a) of Sixth Directive 77/388/EEC — Goods in free circulation in overseas countries and territories
C-349/96	25 February 1999	Card Protection Plan Ltd (CPP) v Commissioners of Customs & Excise	Sixth VAT Directive — Package of services — Single service — Concept — Exemptions — Insurance transactions — Assistance activities — Supplies of services by insurance intermediaries — Restriction of the insurance exemption to transactions of authorised insurers

Case	Date	Parties	Subject-matter
C-48/97	27 April 1999	Kuwait Petroleum (GB) Ltd v Commissioners of Customs & Excise	Sixth VAT Directive — Sales promotion scheme — Goods supplied on redemption of vouchers — Supply for consideration — Price discounts and rebates — Definition
C-136/97	29 April 1999	Norbury Developments Ltd v Commissioners of Customs & Excise	VAT — Sixth Directive — Transitional provisions — Maintenance of exemptions — Supply of building land
C-338/97, C-344/97 and C-390/97	8 June 1999	Erna Pelzl and Others v Steiermärkische Landesregierung Wiener Städtische Allgemeine Versicherungs AG and Others v Tiroler Landesregierung STUAG Bau-Aktiengesellschaft v Kärtner Landesregierung	Article 33 of Sixth Directive 77/388/EEC — Turnover taxes — Contributions to tourism associations and to a tourism development fund
C-346/97	10 June 1999	Braathens Sverige AB (formerly Transwede Airways AB) v Riksskatteverket	Directive 92/81/EEC — Harmonisation of the structures of excise duties on mineral oils — Mineral oils supplied for use as aviation fuel for purposes other than private pleasure flying — Exemption from the harmonised duty
C-394/97	15 June 1999	Sami Heinonen	Goods contained in travellers' personal luggage — Travellers arriving from non-member countries — Duty-free allowances — Prohibition on imports linked to minimum period spent abroad
C-421/97	15 June 1999	Yves Tarantik v Direction des Services Fiscaux de Seine-et-Marne	Article 95 of the EC Treaty (now, after amendment, Article 90 EC) — Differential tax on motor vehicles

Case	Date	Parties	Subject-matter
C-166/98	17 June 1999	Société Critouridienne de Distribution (Socridis) v Receveur Principal des Douanes	Internal taxation — Article 95 of the EC Treaty (now, after amendment, Article 90 EC) — Directives 92/83/EEC and 92/84/EEC — Different taxation of wine and beer
C-158/98	29 June 1999	Staatssecretaris van Financiën v Coffeeshop «Siberië» vof	Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Sixth Directive — Scope — Supply of a table for the sale of narcotic drugs
C-254/97	8 July 1999	Société Baxter and Others v Premier Ministre and Others	Internal taxation — Tax deduction — Expenditure on research — Proprietary medicinal products
C-216/97	7 September 1999	Jennifer Gregg and Mervyn Gregg v Commissioners of Customs and Excise	VAT — Sixth Directive — Exemptions for certain activities in the public interest — Establishment — Organisation — Meaning — Services performed by an association of two natural persons (partnership)
C-414/97	16 September 1999	Commission of the European Communities v Kingdom of Spain	Failure of a Member State to fulfil obligations — Imports and acquisitions of armaments — Sixth VAT Directive — National legislation not complying therewith
C-56/98	29 September 1999	Modelo SGPS SA v Director-Geral dos Registos e Notariado	Directive 69/335/EEC — Indirect taxes on the raising of capital — Charge for drawing up a notarially attested act recording an increase in share capital and a change in a company's name and registered office

Case	Date	Parties	Subject-matter
C-305/97	5 October 1999	Royscot Leasing Ltd and Royscot Industrial Leasing Ltd, Allied Domecq plc, T.C. Harrison Group Ltd v Commissioners of Customs & Excise	VAT — Article 11(1) and (4) of the Second Directive — Article 17(2) and (6) of the Sixth Directive — Right of deduction — Exclusions by national rules predating the Sixth Directive
C-350/98	11 November 1999	Henkel Hellas ABEE v Elliniko Dimosio	Directive 69/335/EEC — Indirect taxes on the raising of capital — Tax on the capitalisation of undistributed profits

TRANSPORT

C-170/98	14 September 1999	Commission of the European Communities v Kingdom of Belgium	Failure to fulfil obligations — Regulation (EEC) No 4055/86 — Freedom to provide services — Maritime transport
C-171/98, C-201/98 and C-202/98	14 September 1999	Commission of the European Communities v Kingdom of Belgium and Grand Duchy of Luxembourg	Failure to fulfil obligations — Regulation (EEC) No 4055/86 — Freedom to provide services — Maritime transport
C-193/98	28 October 1999	Alois Pfennigmann	Directive 93/89/EEC — Carriage of goods by road — Vehicle tax — User charges for the use of certain infrastructures — Heavy goods vehicles
C-315/98	11 November 1999	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil its obligations — Directive 95/21/EC
C-138/99	16 December 1999	Commission of the European Communities v Grand Duchy of Luxembourg	Failure by a Member State to fulfil its obligations — Directive 94/56/EC — Air transport — Civil aviation — Investigation of accidents and incidents — Transposition

II. Synopsis of the other decisions of the Court of Justice which appeared in the "Proceedings" in 1999

Case	Date	Parties	Subject-matter
C-28/98 and C-29/98	21 April 1999	Marc Charreire, Jean Hirtsmann v Directeur des Services Fiscaux de la Moselle	Orders for reference — Inadmissibility
C-436/97 P	27 April 1999	Deutsche Bahn AG v Commission of the European Communities	Appeal — Admissibility — Competition — Carriage by rail of maritime containers — Dominant position — Abuse — Fines
C-95/98	8 July 1999	Édouard Dubois et Fils SA v Council of the European Union Commission of the European Communities	Appeal — Non-contractual responsibility — Single European Act — Authorised customs agent
C-35/98	17 September 1999	Staatssecretaris van Financiën v B.G.M. Verkooijen	Application to reopen the oral procedure

III. Statistics of judicial activity of the Court of Justice *

General proceedings of the Court

Cases decided

length of proceedings

New cases

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

Cases pending as at 31 December 1999

General trend in the work of the Court up to 31 December 1999

General proceedings of the Court

Table 1: **General proceedings in 1999** [1]

Completed cases	378	(395)
New cases	543	
Cases pending	801	(896)

Cases completed

Table 2: **Nature of proceedings**

References for a preliminary ruling	180	(192)
Direct actions	136	(141)
Appeals	57	(57)
Opinions	—	—
Special forms of procedure[2]	5	(5)
Total	378	(395)

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

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

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

Nature of proceedings	Judgments	Non-interlocutory orders[2]	Interlocutory orders[3]	Other orders[4]	Opinions	Total
References for a preliminary ruling	136	9	—	35	—	180
Direct actions	72	—	1	64	—	137
Appeals	26	28	3	3	—	60
Subtotal	234	37	4	102	—	377
Opinions	—	—	—	—	—	—
Special forms of procedure	1	4	—	—	—	5
Subtotal	1	4	—	—	—	5
TOTAL	235	41	4	102	—	382

[1] Net figures.

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

[3] Orders made following an application on the basis of Article 185 or 186 of the EEC Treaty (now Articles 242 and 243 EC) or of the corresponding provisions of the EAEC and ECSC Treaties (orders made in respect of an appeal *against* an interim order or an order on an application for leave to intervene are included under "Appeals" in the "Non-interlocutory orders" column).

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

Table 4: **Means by which terminated**

Form of decision	Direct actions		References for a preliminary ruling		Appeals		Special forms of procedure		Total	
Judgments										
Action founded	46	(51)					1	(1)	47	(52)
Action partially founded	11	(11)							11	(11)
Action unfounded	14	(14)			18	(18)			32	(32)
Annulment and referred back					2	(2)			2	(2)
Annulment and not referred back					4	(4)			4	(4)
Partial annulment and not referred back					2	(2)			2	(2)
Inadmissible	1	(1)							1	(1)
Preliminary ruling			136	(146)					136	(146)
Total judgments	72	(77)	136	(146)	26	(26)	1	(1)	235	(250)
Orders										
Action unfounded							1	(1)	1	(1)
Action partially founded							2	(2)	2	(2)
Manifest lack of jurisdiction			3	(3)					3	(3)
Inadmissibility							1	(1)	1	(1)
Manifest inadmissibility			4	(5)					4	(5)
Appeal manifestly inadmissible					3	(3)			3	(3)
Appeal manifestly inadmissible and unfounded					15	(15)			15	(15)
Appeal unfounded					4	(4)			4	(4)
Appeal manifestly unfounded					6	(6)			6	(6)
Subtotal			7	(8)	28	(28)	4	(4)	39	(40)
Removal from the Register	64	(64)	35	(35)	3	(3)			102	(102)
Art. 104 (3) of the Rules of Procedure			2	(3)					2	(3)
Subtotal	64	(64)	37	(38)	3	(3)			104	(105)
Total orders	64	(64)	44	(46)	31	(31)	4	(4)	143	(145)
Opinions										
TOTAL	136	(146)	180	(192)	57	(57)	5	(5)	378	(395)

Table 5: **Bench hearing case**

Bench hearing case	Judgments		Orders[1]		Total	
Full Court	25	(29)	12	(14)	37	(43)
Small plenum	33	(35)	—	—	33	(35)
Chambers (3 judges)	43	(46)	24	(24)	67	(70)
Chambers (5 judges)	134	(140)	1	(1)	135	(141)
President	—	—	4	(4)	4	(4)
Total	235	(250)	41	(43)	276	(293)

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

Table 6: **Basis of the action** [1]

Basis of the action	Judgments/Opinions		Orders[2]		Total	
Article 169 of the EC Treaty (now Article 226 EC)	46	(48)	—	—	46	(48)
Article 173 of the EC Treaty (now, after amendment, Article 230 EC)	22	(25)	—	—()	22	(25)
Article 177 of the EC Treaty (now Article 234 EC)	130	(140)	9	(11)	139	(151)
Article 181 of the EC Treaty (now Article 238 EC)	4	(4)	—	—	4	(4)
Article 1 of the 1971 Protocol	6	(6)	—	—	6	(6)
Article 49 of the EC Statute	25	(25)	24	(24)	49	(49)
Article 50 of the EC Statute	—	—	4	(4)	4	(4)
Total EC Treaty	233	(248)	37	(39)	270	(287)
Article 50 EA	1	(1)	—	—	1	(1)
Total EA Treaty	1	(1)	—	—	1	(1)
Article 74 of the Rules of Procedure	—	—	4	(4)	4	(4)
Article 102 of the Rules of Procedure	1	(1)	—	—	1	(1)
Overall Total	235	(250)	41	(43)	276	(293)

1 Pursuant to the renumbering of the articles by the Treaty of Amsterdam, since 1st May 1999, the method of citation of the articles of the treaties was substantially modified. A Note in relation to the renumbering is published at page 289 of this Report.

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

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

Subject-matter of the action	Judgments/Opinions		Orders[1]		Total	
Agriculture	24	(26)	4	(4)	28	(30)
Approximation of laws	28	(31)	2	(2)	30	(33)
Brussels Convention	6	(6)	—	—	6	(6)
Commercial policy	3	(3)	2	(2)	5	(5)
Common Customs Tariff	1	(1)	—	—	1	(1)
Competition	18	(21)	7	(7)	25	(28)
Customs Union	4	(4)	2	(2)	6	(6)
Economic and social cohesion	3	(3)	—	—	3	(3)
EC public procurement contracts	—	—	1	(1)	1	(1)
Energy	4	(4)	—	—	4	(4)
Environment	21	(23)	—	—	23	(23)
European citizenship	1	(1)	—	—	1	(1)
European Social fund	1	(1)	1	(1)	2	(2)
External relations	2	(2)	—	—	2	(2)
Financial provisions	—	—	1	(1)	1	(1)
Fisheries policy	5	(5)	—	—	5	(5)
Freedom of establishment and to provide services	28	(29)	1	(1)	29	(30)
Freedom of movement for workers	4	(4)	—	—	4	(4)
Free movement of capital	2	(2)	—	—	2	(2)
Free movement of goods	13	(13)	2	(2)	15	(15)
Industrial policy	1	(1)	—	—	1	(1)
Institutional measures	1	(1)	—	—	1	(1)
Principles of Community law	2	(2)	—	—	2	(2)
Privileges and immunity	1	(1)	—	—	1	(1)
Social measures	17	(17)	3	3	20	(20)
Social security for migrant workers	9	(9)	—	—	9	(9)
Staff Regulations	8	(8)	8	(8)	16	(16)
State aid	6	(6)	1	(1)	7	(7)
Taxation	16	(18)	5	(7)	21	(25)
Transport	5	(7)	1	(1)	6	(8)
Total	234	(249)	41	(43)	275	(292)
CS Treaty	—	—	—	—	—	—
EA Treaty	1	(1)	—	—	1	(1)
OVERALL TOTAL	235	(250)	41	(43)	276	(293)

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

Length of proceedings[1]

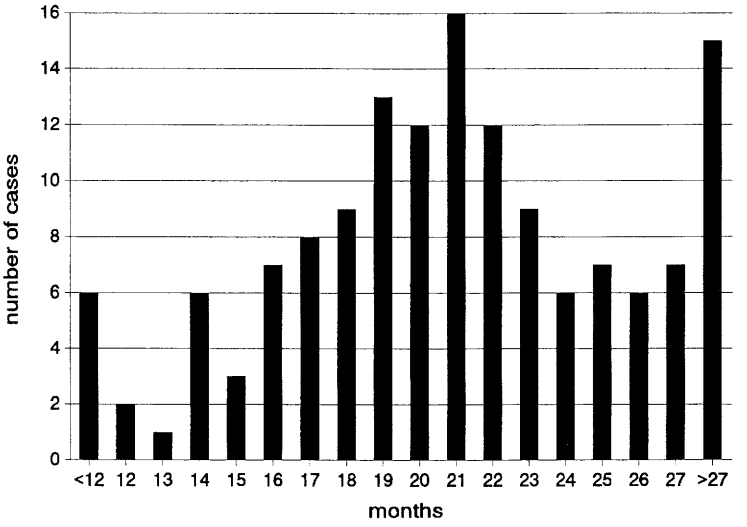
Table 8: **Nature of proceedings**
(Decisions by way of judgments and orders[2])

References for a preliminary ruling	21,2
Direct actions	23,0
Appeals	23,0

1 The following types of cases are excluded from the calculation of the length of proceedings: cases with an interlocutory judgement or a measure of inquiry; opinions and deliberations; special forms of procedure (e.g.: taxation of costs, legal aid, application to set aside a judgment, third party proceedings, interpretation of a judgment, revision of a judgment, rectification of a judgment, attachment procedure, cases concerning immunity); cases completed by an order of removal from the Register, declaration that the case will not to proceed to judgment, referring cases back or transferring cases to the Court of First Instance; procedures for interim measures and appeals on interim measures and on leave to intervene. In this table and the graphics which follow, the length of proceedings is expressed in months and decimal months.

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

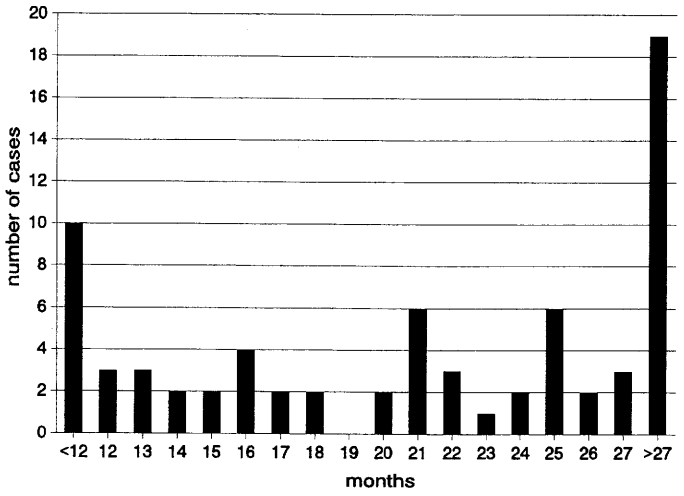
Figure I: **Duration of proceedings in references for a preliminary ruling (judgments and orders[1])**



Cases/ Months	< 12	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	> 27
References for a preliminary ruling	6	2	1	6	3	7	8	9	13	12	16	12	9	6	7	6	7	15

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

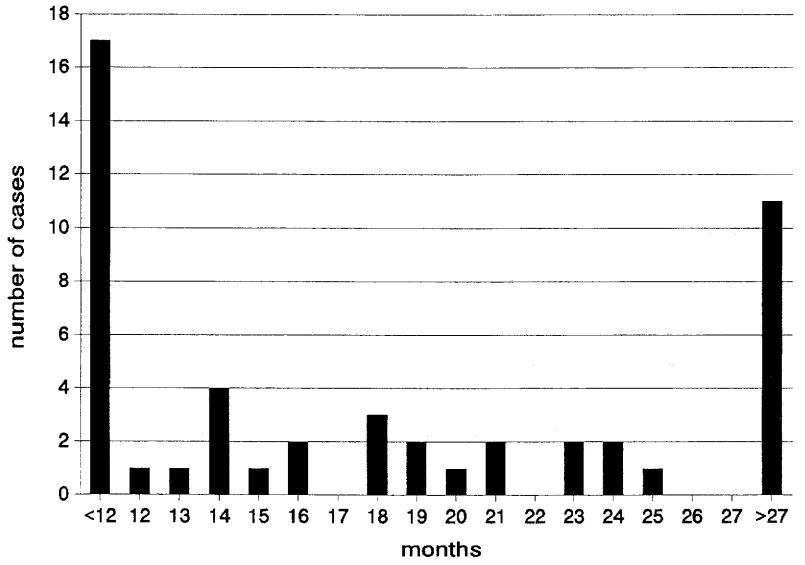
Figure II: **Duration of proceedings in direct actions (judgments and orders[1])**



Cases/ Months	< 12	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	> 27
Direct actions	10	3	3	2	2	4	2	2	0	2	6	3	1	2	6	2	3	19

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

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



Cases/ Months	< 12	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	> 27
Appeals	17	1	1	4	1	2	0	3	2	1	2	0	2	2	1	0	0	11

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

New cases [1]

Table 9: **Nature of proceedings**

References for a preliminary ruling	255
Direct actions	214
Appeals	72
Opinions/Deliberations	—
Special forms of procedure	2
Total	543

Table 10: **Type of action**

References for a preliminary ruling	255
Direct actions	214
of which:	
– for annulment of measures	46
– for failure to act	—
– for damages	—
– for failure to fulfil obligations	162
– on arbitration clauses	5
- others	1
Appeals	72
Opinions/Deliberations	—
Total	541
Special forms of procedure	2
of which:	
– Legal aid	—
– Taxation of costs	1
– Revision of a judgment/order	—
– Application for an attachment procedure	—
– Third party proceedings	—
– Interpretation of a judgment	—
– Application to set aside a judgment	
Total	2
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
Agriculture	49	18	13	80	—
Approximation of laws	26	16	—	42	—
Association of the Overseas countries and territories	—	—	1	1	—
Brussels Convention	—	2	—	2	—
Commercial policy	—	11	—	11	—
Community own resources	—	1	—	1	—
Company law	1	9	—	10	—
Competition	9	7	13	29	—
Energy	2	—	—	2	—
Environment and consumers	34	7	—	41	—
European citizenship	—	2	—	2	—
External relations	—	10	2	12	—
Freedom of movement for persons	11	57	1	69	—
Freedom to provide services	14	9	—	23	—
Free movement of capital	—	3	—	3	—
Free movement of goods	6	15	2	23	—
Industrial policy	4	1	—	5	—
Intellectual property	—	1	1	2	—
Law governing the institutions	7	—	4	11	1
Principles of Community law	—	4	—	4	—
Procedure	—	1	—	1	—
Regional policy	2	—	—	2	—
Social policy	11	19	3	33	—
State aid	13	1	1	15	—
Taxation	6	55	—	61	—
Transport	16	5	1	22	—
Total EC Treaty	211	254	42	507	1
Law governing the institutions	1	—	—	1	—
Total EA Treaty	1	—	—	1	—
Competition	—	—	1	1	—
Iron and steel	1	—	8	9	—
State aid	1	—	6	7	—
Total CS Treaty	2	—	15	17	—
Law governing the institutions (Rules of procedure)	—	—	—	—	1
Staff Regulations	—	1	15	16	—
Total	—	1	15	16	1
OVERALL TOTAL	214	255	72	541	2

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

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

Brought against	1999	From 1953 to 1999
Belgium	13	238
Denmark	1	22
Germany	9	131
Greece	12	172
Spain	7	67[2]
France	35	220[3]
Ireland	13	97
Italy	29	384
Luxembourg	14	100
Netherlands	1	60
Austria	8	13
Portugal	13	54
Finland	—	1
Sweden	1	2
United Kingdom	6	47[4]
Total	162	1 608

[1] Articles 169, 170, 171, 225 of the EC Treaty (now Articles 226 EC, 227 EC, 228 EC, 298 EC), Articles 141, 142, 143 EA and Article 88 CS.

[2] Including one action under Article 170 of the EC Treaty (now Article 227 EC), brought by the Kingdom of Belgium.

[3] Including one action under Article 170 of the EC Treaty (now Article 227 EC), brought by Ireland.

[4] Including two actions under Article 170 of the EC Treaty (now Article 227 EC), brought by the French Republic and the Kingdom of Spain respectively.

Table 13: **Basis of the action**

Basis of the action	1999
Article 157 of the EC Treaty (now Article 213 EC)	1
Article 169 of the EC Treaty (now Article 226 EC)	161
Article 170 of the EC Treaty (now Article 227 EC)	—
Article 171 of the EC Treaty (now Article 228 EC)	1
Article 173 of the EC Treaty (now, after amendment, Article 230 EC	43
Article 175 of the EC Treaty (now Article 232 EC)	—
Article 177 of the EC Treaty (now Article 234 EC)	253
Article 178 of the EC Treaty (now Article 235 EC)	—
Article 181 of the EC Treaty (now Article 238 EC)	5
Article 225 of the EC Treaty (now Article 298 EC)	—
Article 228 of the EC Treaty (now, after amendment, Article 300 EC)	—
Article 1 of the 1971 Protocol	2
Article 49 of the EC Statute	53
Article 50 of the EC Statute	4
Total EC Treaty	523
Article 33 CS	2
Article 49 CS	15
Total CS Treaty	17
Article 146 EA	1
Total EA Treaty	1
Total	541
Article 74 of the Rules of Procedure	1
Article 94 of the Rules of Procedure	1
Total special forms of procedure	2
OVERALL TOTAL	543

Table 14: **Nature of proceedings**

References for a preliminary ruling	394	(476)
Direct actions	303	(309)
Appeals	103	(110)
Special forms of procedure	1	(1)
Opinions/Deliberations	—	—
Total	801	(896)

Table 15: **Bench hearing case**

Bench hearing case	Direct actions		References for a preliminary ruling		Appeals		Other procedures[1]		Total	
Grand plenum	248	(252)	276	(306)	69	(73)			593	(631)
Small plenum	14	(14)	30	(76)	4	(5)			48	(95)
Subtotal	262	(266)	306	(382)	73	(78)			641	(726)
President of the Court										
Subtotal										
First chamber	2	(2)	8	(8)					10	(10)
Second chamber	2	(2)	5	(5)	2	(2)			9	(9)
Third chamber	3	(3)	2	(2)			1	(1)	6	(6)
Fourth chamber	2	(2)	2	(2)	1	(1)			5	(5)
Fifth chamber	15	(15)	34	(38)	21	(23)			70	(76)
Sixth chamber	17	(19)	37	(39)	6	(6)			60	(64)
Subtotal	41	(43)	88	(94)	30	(32)	1	(1)	160	(170)
TOTAL	303	(309)	394	(476)	103	(110)	1	(1)	801	(896)

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

Table 16: **New cases and judgments**

Year	New cases[1]					Judgments[2]
	Direct actions[3]	Reference for a preliminary ruling	Appeals	Total	Applications for interim measures	
1953	4	–		4	–	–
1954	10	–		10	–	2
1955	9	–		9	2	4
1956	11	–		11	2	6
1957	19	–		19	2	4
1958	43	–		43	–	10
1959	47	–		47	5	13
1960	23	–		23	2	18
1961	25	1		26	1	11
1962	30	5		35	2	20
1963	99	6		105	7	17
1964	49	6		55	4	31
1965	55	7		62	4	52
1966	30	1		31	2	24
1967	14	23		37	–	24
1968	24	9		33	1	27
1969	60	17		77	2	30
1970	47	32		79	–	64
1971	59	37		96	1	60
1972	42	40		82	2	61
1973	131	61		192	6	80
1974	63	39		102	8	63
1975	61	69		130	5	78
1976	51	75		126	6	88
1977	74	84		158	6	100
1978	145	123		268	7	97
1979	1 216	106		1 322	6	138
1980	180	99		279	14	132
1981	214	108		322	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

continues

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.

Year	New cases[1]					Judgments[2]
	Direct actions[3]	References for a preliminary ruling	Appeals	Total	Applications for interim measures	
1991	142	186	14	342	9	204
1992	253	162	25	440	4	210
1993	265	204	17	486	13	203
1994	128	203	13	344	4	188
1995	109	251	48	408	3	172
1996	132	256	28	416	4	193
1997	169	239	35	443	1	242
1998	147	264	70	481	2	254
1999	214	255	72	541	4	235
Total	6 437 [4]	4 157	338	10 932	317	4 996

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

2 Net figures.

3 Including opinions of the Court.

4 Up to 31 December 1989, 2 388 of them are staff cases.

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

Year	B	DK	D	EL	E	F	IRL	I	L	NL	A	P	FIN	S	UK	Total
1961	–		–			–		–	–	1						1
1962	–		–			–		–	–	5						5
1963	–		–			–		–	1	5						6
1964	–		–			–		2	–	4						6
1965	–		4			2		–	–	1						7
1966	–		–			–		–	–	1						1
1967	5		11			3		–	1	3						23
1968	1		4			1		1	–	2						9
1969	4		11			1		–	1	–						17
1970	4		21			2		2	–	3						32
1971	1		18			6		5	1	6						37
1972	5		20			1		4	–	10						40
1973	8	–	37			4	–	5	1	6					–	61
1974	5	–	15			6	–	5	–	7					1	39
1975	7	1	26			15	–	14	1	4					1	69
1976	11	–	28			8	1	12	–	14					1	75
1977	16	1	30			14	2	7	–	9					5	84
1978	7	3	46			12	1	11	–	38					5	123
1979	13	1	33			18	2	19	1	11					8	106
1980	14	2	24			14	3	19	–	17					6	99
1981	12	1	41	–		17	–	12	4	17					5	109
1982	10	1	36	–		39	–	18	–	21					4	129
1983	9	4	36	–		15	2	7	–	19					6	98
1984	13	2	38	–		34	1	10	–	22					9	129
1985	13	–	40	–		45	2	11	6	14					8	139
1986	13	4	18	2	1	19	4	5	1	16		–			8	91
1987	15	5	32	17	1	36	2	5	3	19		–			9	144
1988	30	4	34	–	1	38	–	28	2	26		–			16	179
1989	13	2	47	2	2	28	1	10	1	18		1			14	139
1990	17	5	34	2	6	21	4	25	4	9		2			12	141
1991	19	2	54	3	5	29	2	36	2	17		3			14	186
1992	16	3	62	1	5	15	–	22	1	18		1			18	162
1993	22	7	57	5	7	22	1	24	1	43		3			12	204
1994	19	4	44	–	13	36	2	46	1	13		1			24	203
1995	14	8	51	10	10	43	3	58	2	19	2	5	–	6	20	251
1996	30	4	66	4	6	24	–	70	2	10	6	6	3	4	21	256
1997	19	7	46	2	9	10	1	50	3	24	35	2	6	7	18	239
1998	12	7	49	5	55	16	3	39	2	21	16	7	2	6	24	264
1999	13	3	49	3	4	17	2	43	4	23	56	7	4	5	22	255
Total	410	81	1 162	56	125	611	39	624	46	516	115	38	15	28	291	4 157

1 Articles 177 of the EC Treaty (now Article 234 EC), 41 CS, 150 EA, 1971 Protocol.

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

Belgium	
Cour de cassation	50
Cour d'arbitrage	1
Conseil d'État	20
Other courts or tribunals	339
Total	**410**
Denmark	
Højesteret	15
Other courts or tribunals	66
Total	**81**
Germany	
Bundesgerichtshof	68
Bundesarbeitsgericht	4
Bundesverwaltungsgericht	46
Bundesfinanzhof	171
Bundessozialgericht	61
Staatsgerichtshof	1
Other courts or tribunals	811
Total	**1162**
Greece	
Court of Cassation	2
Council of State	7
Other courts or tribunals	47
Total	**56**
Spain	
Tribunal Supremo	4
Audiencia Nacional	1
Juzgado Central de lo Penal	7
Other courts or tribunals	113
Total	**125**
France	
Cour de cassation	58
Conseil d'État	19
Other courts or tribunals	534
Total	**611**
Ireland	
Supreme Court	11
High Court	15
Other courts or tribunals	13
Total	**39**
Italy	
Corte suprema di Cassazione	63
Consiglio di Stato	30
Other courts or tribunals	531
Total	**624**
Luxembourg	
Cour supérieure de justice	10
Conseil d'État	13
Cour administrative	1
Other courts or tribunals	22
Total	**46**
Netherlands	
Raad van State	35
Hoge Raad der Nederlanden	94
Centrale Raad van Beroep	41
College van Beroep voor het Bedrijfsleven	98
Tariefcommissie	34
Other courts or tribunals	214
Total	**516**
Austria	
Oberster Gerichtshof	20
Bundesvergabeamt	8
Verwaltungsgerichtshof	19
Vergabekontrollsenat	1
Other courts or tribunals	67
Total	**115**
Portugal	
Supremo Tribunal Administrativo	22
Other courts or tribunals	16
Total	**38**
Finland	
Korkein hallinto-oikeus	3
Korkein oikeus	1
Other courts or tribunals	11
Total	**15**
Sweden	
Högsta Domstolen	2
Marknadsdomstolen	3
Regeringsrätten	6
Other courts or tribunals	17
Total	**28**
United Kingdom	
House of Lords	24
Court of Appeal	12
Other courts or tribunals	255
Total	**291**
OVERALL TOTAL	**4 157**

B - Proceedings of the Court of First Instance

I. Synopsis of the judgments delivered by the Court of First instance in 1999

I. Synopsis of the judgments delivered by the Court of First Instance in 1999

Case	Date	Parties	Subject-matter
AGRICULTURE			
T-1/96	13 January 1999	Bernhard Böcker-Lensing and Ludger Schulze-Beiering v Council of the European Union and Commission of the European Communities	(Action for damages — Non-contractual liability — Milk — Additional levy — Reference quantity — Producer having entered into a non-marketing undertaking — Voluntary non-resumption of production upon expiry of the undertaking — Acts of national authorities
T-220/97	20 May 1999	H. & R. Ecroyd Holdings Ltd v Commission of the European Communities	Milk — Reference quantity — Compliance with a judgment of the Court of Justice
T-158/95	8 July 1999	Eridania Zuccherifici Nazionali SpA and Others v Council of the European Union	Common organisation of markets in the sugar sector — System of compensation for storage costs — Action for annulment — Natural and legal persons — Inadmissibility
T-168/95	8 July 1999	Eridania Zuccherifici Nazionali SpA and Others v Council of the European Union	Common organisation of markets in the sugar sector — Fixing of derived intervention prices for deficit areas — Action for annulment — Natural and legal persons — Inadmissibility
T-254/97	28 September 1999	Fruchthandelsgesellschaft mbH Chemnitz v Commission of the European Communities	Bananas — Imports from ACP States and third countries — Application for import licences — Case of hardship — Transitional measures — Regulation (EEC) No 404/93

Case	Date	Parties	Subject-matter
T-612/97	28 September 1999	Cordis Obst und Gemüse Großhandel GmbH v Commission of the European Communities	Bananas — Imports from ACP States and third countries — Request for import licences — Case of hardship — Transitional measures — Regulation (EEC) No 404/93
T-216/96	12 October 1999	Conserve Italia Soc.Coop.arl (formerly Massalombarda Colombani) v Commission of the European Communities	Agriculture — European Agricultural Guidance and Guarantee Fund — Discontinuation of financial aid — Regulation (EEC) No 355/77 — Regulation (EEC) No 4253/88 — Regulation (EEC) No 4256/88 — Regulation (EC, Euratom) No 2988/95 — Principle of legality of penalties — Legitimate expectations — Misuse of powers — Principle of proportionality — Statement of reasons
T-191/96 and T-106/97	14 October 1999	CAS Succhi di Frutta SpA v Commission of the European Communities	Common agricultural policy — Food aid — Tendering procedure — Payment of successful tenderers in fruit other than that specified in the notice of invitation to tender

AID CODE

T-158/96	16 December 1999	Acciaierie di Bolzano SpA v Commission of the European Communities	ECSC Treaty — Action for annulment — State aid — Decision finding the aid to be imcompatible and ordering its repayment — Aid not notified — Applicable steel aid code — Right to a fair hearing — Legitimate expectations — Interest rates applicable — Statement of reasons

Case	Date	Parties	Subject-matter

COMMERCIAL POLICY

T-48/96	12 October 1999	Acme Industry Co. Ltd v Council of the European Union	Dumping — Articles 2(3)(b)(ii) and 2(10)(b) of Regulation (EEC) No 2423/88 — Retroactive application of Regulation (EC) No 3283/94 — Constructed normal value — Establishing sales, general and administrative expenses and profit margin — Reliability of data — Treatment of import duties and indirect taxes
T-171/97	20 October 1999	Swedish Match Philippines Inc. v Council of the European Union	Protection against dumping — Imposition of duty on imports of pocket lighters from the Philippines — Causal connection between the extremely limited quantity of exports and the existence of injury to Community industry
T-210/95	28 October 1999	European Fertilizer Manufacturers' Association (EFMA) v Council of the European Union	Anti-dumping duties — Elimination of injury — Target price — Profit margin on the costs of production
T-33/98 and T-34/98	15 December 1999	Petrotub SA and Republica SA v Council of the European Union	Anti-dumping duties — Seamless pipes and tubes of iron or non-alloy steel — Europe agreement with Romania — Normal value — Dumping margin — Injury — Procedural rights of exporters

Case	Date	Parties	Subject-matter
COMMUNITY TRADE MARK			
T-163/98	8 July 1999	The Procter & Gamble Company v Office for Harmonisation in the Internal Market	Community trade mark — Term «Baby-Dry» — Absolute ground for refusal — Extent of review by the Boards of Appeal — Extent of review by the Court of First Instance
COMPETITION			
T-185/96, T-189/96 and T-190/96	21 January 1999	Riviera Auto Service Établissements Dalmasso SA and Others v Commission of the European Communities	Competition — Article 85 of the EC Treaty — Exclusive motor vehicle distribution system — Block exemption — Rejection of complaints made by former dealers — Error in law — Manifest error of assessment — Claim for annulment — Claim for damages
T-87/96	4 March 1999	Assicurazioni Generali SpA et Unicredito SpA v Commission of the European Communities	Concentration — Regulation (EEC= No 4064/89 — Joint venture — Classification — Definitive or preparatory nature of the decision finding a joint venture to be of a cooperative nature — Criteria governing a concentrative joint venture: operational autonomy and absence of coordination between the undertakings concerned — Right of undertakings concerned to be heard — Statement of reasons

Case	Date	Parties	Subject-matter
T-102/96	25 March 1999	Gencor Ltd v Commission of the European Communities	Competition — Regulation (EEC) No 4064/89 — Decision declaring a concentration incompatible with the common market — Action for annulment — Admissibility — Legal interest in bringing proceedings — Territorial scope of Regulation (EEC) No 4064/89 — Collective dominant position — Commitments
T-305/94, T-306/94, T-307/94, T-313/94, T-314/94, T-315/94, T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94	20 April 1999	Limbourgse Vinyl Maatshappij NV, Elf Atochem SA, BASF AG, Shell International Chemical Company Ltd, DSM NV and DSM Kunststoffen BV, Wacker-Chemie GmbH, Hoechst AG, Société Artésienne de Vinyle, Montedison SpA, Imperial Chemical Industries plc, Hüls AG, Enichem SpA v Commission of the European Communities	Competition — Article 85 of the EC Treaty — Effects of a judgment annulling a measure — Rights of the defence — Fine
T-221/95	28 April 1999	Endemol Entertainment Holding BV v Commission of the European Communities	Competition — Regulation (EEC) No 4064/89 — Decision declaring a concentration incompatible with the common market — Article 22 of Regulation No 4064/89 — Rights of the defence — Access to the file — Dominant position
T-175/95	19 May 1999	BASF Coatings AG v Commission of the European Communities	Competition — Article 81(1) EC (ex-Article 85(1)) — Exclusive distribution agreement — Parallel imports

Case	Date	Parties	Subject-matter
T-176/95	19 May 1999	Accinauto SA v Commission of the European Communities	Competition — Article 81(1) EC (ex-Article 85(1)) — Exclusive distribution agreement — Parallel imports
T-17/96	3 June 1999	Télévision française 1 SA (TF1) v Commission of the European Communities	State aid — Public television — Complaint — Action for declaration of failure to act — Commission's obligation to make inquiries — Time-limit — Procedure of Article 88(2) EC (ex Article 93(2)) — Serious difficulties — Article 81 EC (ex Article 85) — Formal notice — Adoption of position — Article 86 EC (ex Article 90) — Admissibility
T-266/97	8 July 1999	Vlaamse Televisie Maatschappij NV v Commission of the European Communities	Article 90(3) of the EC Treaty (now Article 86(3) EC) — Right to be heard — Article 90(1) of the EC Treaty (now Article 86(1) EC), read in conjunction with Article 52 of the EC Treaty (now, after amendment, Article 43 EC) — Exclusive right to broadcast television advertising in Flanders
T-127/98	9 September 1999	UPS Europe SA v Commission of the European Communities	Competition — Action for failure to act — Commission's obligation to investigate — Reasonable period
T-228/97	7 October 1999	Irish Sugar plc v Commission of the European Communities	Article 86 of the EC Treaty (now Article 82 EC) — Dominant position and joint dominant position — Abuse — Fine

Case	Date	Parties	Subject-matter
T-189/95, T-39/96 and T-123/96	13 December 1999	Service pour le groupement d'acquisitions (SGA) v Commission of the European Communities	Competition — Distribution of motor vehicles — Examination of complaints — Action for a declaration of failure to act, for annulment and for compensation
T-190/95 and T-45/96	13 December 1999	Société de distribution de mécaniques et d'automobiles (Sodima) v Commission of the European Communities	Competition — Distribution of motor-vehicles — Examination of complaints — Action for declaration for failure to act, for annulment and for compensation — Inadmissibility
T-9/96 and T-211/96	13 December 1999	Européenne automobile SARL v Commission of the European Communities	Competition — Distribution of motor-vehicles — Examination of complaints — Action for a declaration of failure to act, for annulment and for compensation
T-22/97	15 December 1999	Kesko Oy v Commission of the European Communities	Control of concentrations — Action for annulment — Admissibility — Object of the proceedings — Competence of the Commission under Article 22(3) of Regulation (EEC) No 4064/89 — Effect on trade between Member States — Creation of a dominant position
T-198/98	16 December 1999	Micro Leader Business v Commission of the European Communities	Competition — Complaint — Rejection — Articles 85 and 86 of the EC Treaty (now Articles 81 and 82 EC) — Prohibition on importing software marketed in a third country — Exhaustion of copyright — Directive 91/250/EEC

Case	Date	Parties	Subject-matter
EAEC			
T-10/98	10 June 1999	E-Quattro Snc v Commission of the European Communities	Arbitration clause — Payment obligation — Non-performance
ECSC			
T-129/95, T-2/96 and T-97/96	21 January 1999	Neue Maxhütte Stahlwerke and Others v Commission of the European Communities	ECSC — Action for annulment — State aid for steel undertakings — Criterion of the conduct of a private investor — Principle of proportionality — Statement of reasons — Right to a fair hearing
T-134/94	11 March 1999	NMH Stahlwerke GmbH v Commission of the European Communities	ECSC Treaty — Competition — Agreements between undertakings — Information exchange system — Fine — Whether answerable for the infringement
T-136/94	11 March 1999	Eurofer ASBL v Commission of the European Communities	ECSC Treaty — Competition — Agreements between undertakings — Information exchange system
T-137/94	11 March 1999	ARBED SA v Commission of the European Communities	ECSC Treaty — Competition — Agreements between undertakings, decisions by associations of undertakings and concerted practices — Price-fixing — Market sharing — Systems for the exchange of information

Case	Date	Parties	Subject-matter
T-138/94	11 March 1999	COCKERILL-SAMBRE SA v Commission of the European Communities	ECSC Treaty — Competition — Agreements between undertakings, decisions by associations of undertakings and concerted practices — Price-fixing — Market sharing — Systems for the exchange of information
T-141/94	11 March 1999	Thyssen Stahl AG v Commission of the European Communities	ECSC Treaty — Competition — Agreements between undertakings, decisions by associations of undertakings and concerted practices — Price-fixing — Market sharing — Systems for the exchange of information
T-145/94	11 March 1999	Unimétal — Société française des aciers longs SA v Commission of the European Communities	ECSC Treaty — Competition — Agreements between undertakings, decisions by associations of undertakings and concerted practices — Price-fixing — Market sharing — Systems for the exchange of information
T-147/94	11 March 1999	Krupp Hoesch Stahl AG v Commission of the European Communities	ECSC Treaty — Competition — Agreements between undertakings — Price-fixing — Systems for the exchange of information
T-148/94	11 March 1999	Preussag Stahl AG v Commission of the European Communities	ECSC Treaty — Competition — Agreements between undertakings, decisions by associations of undertakings and concerted practices — Price-fixing — Market sharing — Systems for the exchange of information

Case	Date	Parties	Subject-matter
T-151/94	11 March 1999	British Steel plc v Commission of the European Communities	ECSC Treaty — Competition — Agreements between undertakings, decisions by associations of undertakings and concerted practices — Price-fixing — Market sharing — Systems for the exchange of information
T-156/94	11 March 1999	Siderúrgica Aristrain Madrid, SL v Commission of the European Communities	ECSC Treaty — Competition — Agreements between undertakings, decisions by associations of undertakings and concerted practices — Price-fixing — Market sharing — Systems for the exchange of information
T-157/94	11 March 1999	Empresa Nacional Siderúrgica, SA (Ensidesa) v Commission of the European Communities	ECSC Treaty — Competition — Agreements between undertakings, decisions by associations of undertakings and concerted practices — Price-fixing — Market sharing — Systems for the exchange of information
T-37/97	25 March 1999	Forges de Clabecq SA v Commission of the European Communities	ECSC — State aid — Action for annulment — Objection of illegality — Fifth Steel Aid Code
T-164/96, T-165/96, T-166/96, T-167/96, T-122/97 and T-130/97	12 May 1999	Moccia Irme SpA and Others v Commission of the European Communities	Actions for annulment — State aid — ECSC Treaty — Fifth Steel Aid Code — Requirement of regular productin within the meaning of Article 4(2) of the Fifth Steel Aid Code

Case	Date	Parties	Subject-matter
T-89/96	7 July 1999	British Steel plc v Commission of the European Communities	ECSC — Action for annulment — Admissibility — State aid — Individual decision authorising State aid to a steel undertaking — Legal basis — Article 4(c) and Article 95, first paragraph, of the Treaty — Counterpart measures in exchange for public funding — No capacity reduction required — Principle of non-discrimination — Infringement of essential procedural requirements
T-106/96	7 July 1999	Wirtschaftsvereinigung Stahl v Commission of the European Communities	ECSC — Action for annulment — Admissibility — State aid — Individual decision authorising State aid to a steel undertaking — Legal basis — Article 4(c) and Article 95, first paragraph, of the Treaty — Incompatibility with the provisions of the Treaty — Principle of equal treatment — Principle of proportionality — Legitimate expectations — Counterpart measures in exchange for public funding — No capacity reduction required — Infringement of essential procedural requirements
T-110/98	9 September 1999	RJB Mining plc v Commission of the European Communities	ECSC Treaty — State aid — Operating aid — Authorisation ex post facto of aid already paid — Improvement of viability of recipient undertakings for the purpose of Article 3 of Decision No 3632/93/ECSC

Case	Date	Parties	Subject-matter

ENVIRONMENT AND CONSUMERS

T-112/97	22 April 1999	Monsanto Company v Commission of the European Communities	Regulation (EEC) No 2377/90 — Application to include a recombinant bovine somatotrophin (BST) in the list of substances not subject to a maximum residue limit — Rejection by the Commission — Action for annulment — Admissibility
T-125/96 and T-152/96	1 December 1999	Boehringer Ingelheim Vetmedica GmbH et C.H. Boehringer Sohn v Council of the European Union Boehringer Ingelheim Vetmedica GmbH et C.H. Boehringer Sohn v Commission of the European Communities	Directive prohibiting the use of beta-agonists in stockfarming — Regulation limiting the validity of maximum residue limits of veterinary medicinal products to certain therapeutic purposes — Action for annulment — Admissibility — Principle of proportionality

EXTERNAL RELATIONS

T-277/97	15 June 1999	Ismeri Europa Srl v Court of Auditors of the European Communities	Non-contractual liability — MED programmes — Report of the Court of Auditors — Criticisms concerning the applicant
T-231/97	9 July 1999	New Europe Consulting Ltd and Michael P. Brown v Commission of the European Communities	PHARE programme — Action for damages — Conditions — Principle of sound administration — Assessment of damage

Case	Date	Parties	Subject-matter

LAW GOVERNING THE INSTITUTIONS

T-14/98	19 July 1999	Heidi Hautala v Council of the European Union	Public right of access to Council documents — Decision 93/731/EC — Exceptions to the principle of access to documents — Protection of the public interest concerning international relations — Partial access
T-188/97	19 July 1999	Rothmans International BV v Commission of the European Communities	Commission Decision 94/90/ECSC, EC, Euratom on public access to Commission documents — Decision refusing access to documents — Rule on authorship — Comitology committees
T-309/97	14 October 1999	The Bavarian Lager Company Ltd v Commission of the European Communities	Transparency — Access to information — Commission Decision 94/90/ECSC, EC, Euratom on public access to Commission documents — Scope of the exception relating to protection of the public interest — Draft reasoned opinion under Article 169 of the EC Treaty (now Article 226 EC)
T-92/98	7 December 1999	Interporc Im- und Export GmbH v Commission of the European Communities	Action for annulment — Transparency — Access to documents — Decision 94/90/ECSC, EC, Euratom — Rejection of a request for access to Commission documents — Scope, first, of the exception based on protection of the public interest (court proceedings) and, second, of the authorship rule — Statement of reasons

Case	Date	Parties	Subject-matter

SOCIAL POLICY

T-182/96	16 September 1999	Partex - Companhia Portuguesa de Serviços, SA v Commission of the European Communities	Social policy — European Social Fund — Action for annulment — Reduction in financial assistance — Facts and accounts certified as accurate — Competence ratione temporis of the State concerned — Statement of reasons — Rights of the defence — Abuse of rights — Legitimate expectations — Protection of acquired rights — Misuse of powers
T-126/97	29 September 1999	Sonasa — Sociedade Nacional de Segurança, Ld.ª v Commission of the European Communities	Action for annulment — European Social Fund — Reduction of financial assistance — Legitimate expectations — Legal certainty — Sound administration — Inadequate statement of reasons

STAFF REGULATIONS OF OFFICIALS

T-264/97	28 January 1999	D v Council of the European Union	Refusal to grant the applicant household allowance in respect of his partner
T-35/98	10 February 1999	André Hecq and Syndicat des Fonctionnaires Internationaux and Européens (SFIE) v Commission of the European Communities	Officials — Bureau of the local Staff Committee — Elections — Duties of the institutions — Admissibility

Case	Date	Parties	Subject-matter
T-200/97	11 February 1999	Carmen Jiménez v Office for Harmonization in the Internal Market	Officials — Competitions — Inclusion on a list of suitable candidates — Procedural irregularity — Principle of non-discrimination — Manifest error of assessment
T-244/97	11 February 1999	Chantal Mertens v Commission of the European Communities	Officials — Competitions — Conditions for admission — Evidence
T-21/98	11 February 1999	Carlos Alberto Leite Mateus v Commission of the European Communities	Officials — Compatibility of the status of an official with that of a member of the temporary staff — Resignation — Obligation to state reasons — Call for expressions of interest
T-79/98	11 February 1999	Manuel Tomás Carrasco Benítez v Agence Européenne pour l'Evaluation des Médicaments (EMEA)	Temporary staff — Grading — Professional experience — Manifest error of assessment — Acquired rights — Protection of legitimate expectations — Duty to have regard for the welfare and interests of staff — Reasonable career prospects — Equal treatment and non-discrimination — Absence of a statement of reasons
T-282/97 and T-57/98	25 February 1999	Antonio Giannini v Commission of the European Communities	Officials — Notice of vacancy — Appointment — Compliance with a judgment of the Court of First Instance — Misuse of powers

Case	Date	Parties	Subject-matter
T-212/97	9 March 1999	Agnès Hubert v Commission of the European Communities	Officials — Staff report — Principles of good administration and of legal certainty — Failure to give reasons — General provisions for implementing Article 43 of the Staff Regulations — Guide to the drafting of staff reports — Manifest errors of assessment — Misuse of powers — Action for annulment
T-273/97	9 March 1999	Pierre Richard v European Parliament	Officials — Recruitment procedure — Application of Article 29(1) of the Staff Regulations — Recruitment of a person appearing on the reserve list of an open competition reserved for nationals of the new Member States — Rejection of candidature
T-257/97	11 March 1999	Hans C. Herold v Commission of the European Communities	Official — Partial permanent invalidity — Aggravation of injuries — Action for annulment — Action for compensation — Principle of equal treatment — Duty to have regard for the welfare of officials — Failure to act with due care and attention
T-66/98	11 March 1999	Giuliana Gaspari v European Parliament	Officials — Thermal cure — Decision rejecting an application for prior authorisation for reimbursement of costs — Statement of reasons — Medical opinion — Respect for private life
T-76/98	25 March 1999	Claudine Hamptaux v Commission of the European Communities	Officials — Promotion — Consideration of comparative merits

Case	Date	Parties	Subject-matter
T-50/98	14 April 1999	Lars Bo Rasmussen v Commission of the European Communities	Officials — Refusal or promotion — Consideration of comparative merits — Criteria of assessment — Action for annulment — Action for damages
T-148/96 and T-174/96	22 April 1999	Ernesto Brognieri v Commission of the European Communities	Officials — Action for annulment and for damages — Admissibility — Failure to take account of Case T-583/93 — Article 26 of the Staff Regulations — Manifest error
T-283/97	27 April 1999	Germain Thinus v Commission of the European Communities	Officials — Refusal of promotion — Consideration of comparative merits — Other factors to be taken into account — Statement of reasons
T-161/97	4 May 1999	Massimo Marzola v Commission of the European Communities	Officials — Transfer of pension rights — Period prescribed for submission of request — Knowledge acquired — Admissibility — Duty to have regard for the welfare or interests of officials — Statement of reasons
T-242/97	4 May 1999	Z. v European Parliament	First Chamber)
T-203/95	19 May 1999	Bernard Connolly v Commission of the European Communities	Officials — Article 88 of the Staff Regulations — Suspension — Admissibility — Reasons — Alleged fault — Infringement of Articles 11, 12 and 17 of the Staff Regulations — Equal treatment
T-34/96 and T-163/96	19 May 1999	Bernard Connolly v Commission of the European Communities	Officials — Disciplinary procedure — Removal from post — Articles 11, 12 and 17 of the Staff Regulations — Freedom of expression — Duty of loyalty and dignity of the service

Case	Date	Parties	Subject-matter
T-214/96	19 May 1999	Bernard Connolly v Commission of the European Communities	Officials — Article 90(1) of the Staff Regulations — Action for compensation — Pre-litigation procedure complying with the Staff Regulations — Inadmissibility
T-114/98 and T-115/98	1 June 1999	Doleres Rodriquez Perez and Others v Commission of the European Communities José Maria Olivares Ramos and Others v Commission of the European Communities	Official — Transfer of pension rights — National procedures — Application for financial assistance
T-295/97	3 June 1999	Dimitrios Coussios v Commission of the European Communities	Officials — Grant of an invalidity pension — Relationship between the procedures provided for in Articles 73 and 78 of the Staff Regulations

Case	Date	Parties	Subject-matter
T-112/96 and T-115/96	6 July 1999	Jean-Claude Séché v Commission of the European Communities	Officials — Refusal of promotion — Comparative examination of the merits — Statement of reasons — Token appointment — Principle of equal treatment —Discrimination on the grounds of age, sex and nationality — Duty to have due regard to the welfare of officials — Correspondence between grade and duties — Article 27, third paragraph, of the Staff Regulations — Misuse of powers and procedure — Principles of the protection of legitimate expectations and of good faith — Right to a temporary posting — Decision on the grant of a temporary posting — Discretion of the administration — Right to the differential allowance — Fault on the part of the administration — Non-material damage —Dismissal of applications for preparatory inquiries
T-203/97	6 July 1999	Bo Forvass v Commission of the European Communities	Officials — Temporary agents — Grading — Article 31(2) of the Staff Regulations — Duty to have due regard to the welfare of officials — Erroneous notice — Protection of legitimate expectations
T-36/96	8 July 1999	Giuliana Gaspari v European Parliament	Officials — Appeal — Reference back to the Court of First Instance — Sick leave — Medical certificate — Annual medical check-up — Conclusions conflicting with the medical certificate

Case	Date	Parties	Subject-matter
T-20/98	19 July 1999	Q v Council of the European Union	Officials — Action for annulment — Recovery of sums overpaid — Article 23 of Annex X to the Staff Regulations
T-168/97	19 July 1999	Daniel Varas Carrión v Council of the European Union	Officials — Open competition — Non-admittance to the tests — Knowledge of languages
T-74/98	19 July 1999	Luciano Mammarella v Commission of the European Communities	Officials — Social security — Invalidity pension — Outside contractor contractually bound to the institution — Works contract systematically renewed
T-98/98	21 September 1999	Tania Trigari-Venturin v Translation Centre for Bodies of the European Union	Probationer member of the temporary staff — Dismissal for incompetence at the end of the probationary period — Action for annulment — Correlation between grade and the duties to be performed — Delay in transmission of social documentation — Action for compensation — Damage
T-157/98	21 September 1999	Graça Oliveira v European Parliament	Officials — Promotion — Examination of comparative merits
T-28/98	28 September 1999	J v Commission of the European Communities	Officials — Article 7(3) of Annex VII to the Staff Regulations — Place of origin — Place of recruitment — Centre of interests

Case	Date	Parties	Subject-matter
T-48/97	28 September 1999	Erik Dan Frederiksen v European Parliament	Officials — Promotion — Judgments ordering annulment — Enforcement measures — Article 176 of the EC Treaty (now Article 233 EC) — Misuse of powers — Material and non-material damage — Compensation
T-140/97	28 September 1999	Michel Hautem v European Investment Bank	Officials — Removal from post — Articles 1, 4, 5 and 40 of the Staff Regulations of the European Investment Bank — Manifest error of assessment of the facts — Counterclaim — Rejection of an application for measures of inquiry
T-141/97	28 September 1999	Bernard Yasse v European Investment Bank	Officials — Removal from post — Articles 1, 4 and 40 of the Staff Regulations of the European Investment Bank — Manifest error of assessment of the facts — Rights of the defence — Essential procedural requirements — Principle of proportionality — Counterclaim — Rejection of an application for measures of inquiry
T-91/98	28 September 1999	Jürgen Wettig v Commission of the European Communities	Officials — Temporary staff — Classification — Article 32 of the Staff Regulations
T-68/97	29 September 1999	Martin Neumann and Irmgard Neumann-Schölles v Commission of the European Communities	Officials — Orphan's pension

Case	Date	Parties	Subject-matter
T-42/98	7 October 1999	Maria Paola Sabbatucci v European Parliament	Staff case — Action for annulment of decisions of the Committee of Tellers — Interpretation of the electoral rules of the European Parliament — Exclusion of the applicant from the persons elected to the Staff Committee
T-119/98	7 October 1999	André Hecq v Commission of the European Communities	Officials — Mission expenses — Calculation of the daily subsistence allowance — Length of mission — Travel by private car
T-51/98	26 October 1999	Ann Ruth Burrill et Alberto Noriega Guerra v Commission of the European Communities	Officials — Working conditions — Maternity leave — Sharing between two parents
T-180/98	28 October 1999	Elizabeth Cotrim v Cedefop	Members of the temporary staff — Settling-in allowance — Early termination of the contract — Recovery of undue payment
T-102/98	9 November 1999	Christina Papadeas v Committee of the Regions	Officials — Internal competition — Non-admission to the oral tests — Assessment of the selection board — Principle of non-discrimination — Principle of sound administration and duty to have regard for the welfare of officials
T-103/98, T-104/98, T-107/98, T-113/98 and T-118/98	10 November 1999	Svend Bech Kristensen and Others v Council of the European Union	Officials — Actions for annulment — Transfer of pension rights — Calculation of years of pensionable service — Application for refund of excess amount

Case	Date	Parties	Subject-matter
T-129/98	23 November 1999	Enrico Sabbioni v Commission of the European Communities	Officials — Compulsory transfer — Measure adversely affecting an official — Statement of reasons — Misuse of powers
T-299/97	9 December 1999	Vicente Alonso Morales v Commission of the European Communities	Officials — Actions for annulment — Conditions for admission to a competition — Completed university studies leading to a diploma — Studies to become a technical engineer undertaken in Spain
T-53/99	9 December 1999	Nicolaos Progoulis v Commission of the European Communities	Staff case
T-300/97	15 December 1999	Benito Latino v Commission of the European Communities	Officials — Occupation disease — Exposure to asbestos — Rate of permanent partial invalidity — Irregularity of the opinion of the medical board — Failure to state reasons
T-27/98	15 December 1999	Albert Nardone v Commission of the European Communities	Officials — Occupational disease — Exposure to asbestos and other substances — Rate of permanent partial invalidity — Irregularity of the opinion of the medical board
T-144/98	15 December 1999	Dino Cantoreggi v European Parliament	Officials — Promotion — Examination of comparative merits
T-143/98	16 December 1999	Michael Cendrowicz v Commission of the European Communities	Officials — Appointments — Determination of the level at which posts are to be filled — Vacancy notice — Consideration of the comparative merits — Manifest error

Case	Date	Parties	Subject-matter
STATE AID			
T-230/95	28 January 1999	Bretagne Angleterre Irlande (BAI) v Commission of the European Communities	Action for damages — Non-contractual liability — State aid — Communication to claimant of decision addressed to the Member State concerned — Delay — Material and non-material damage — Causal link
T-14/96	28 January 1999	Bretagne Angleterre Irlande (BAI) v Commission of the European Communities	State aid — Application for annulment — Decision to terminate a review procedure initiated under Article 93(2) of the Ec Treaty — Concept of State aid within the meaning of Article 92(1) of the EC Treaty
T-86/96	11 February 1999	Arbeitsgemeinschaft Deutscher Luftfahrt-Unternehmen v Commission of the European Communities	State aid — Air transport — Tax measure — Action for annulment — Inadmissible
T-288/97	15 June 1999	Regione Autonoma Friuli Venezia Giulia v Commission of the European Communities	Action for annulment — Decision of the Commission — State aid — Action brought by a territorial unit of the State — Admissibility
T-82/96	17 June 1999	Associação dos Refinadores de Açúcar Portugueses (ARAP), Alcântara Refinarias - Açúcares SA, RAR Refinarias de Açúcar Reunidas SA v Commission of the European Communities	State aid — Complaints from competing undertakings — Judicial protection of complainants — Sugar — Aid granted in implementation of a general State aid scheme approved by the Commission — State aid for vocational training — State aid for co-financing under the rules on Structural Funds

Case	Date	Parties	Subject-matter
T-110/97	6 October 1999	Kneissl Dachstein Sportartikel AG v Commission of the European Communities	Decision authorising State aid for restructuring — Time from which limitation period begins to run in regard to a third party — Conditions governing the compatibility of aid
T-123/97	6 October 1999	Salomon SA v Commission of the European Communities	Decision authorising State aid for restructuring — Time from which limitation period begins to run in regard to a third party — Conditions governing the compatibility of aid
T-132/96 and T-143/96	15 December 1999	Freistaat Sachsen, Volkswagen AG et Volkswagen Sachsen GmbH v Commission of the European Communities	State aid — Compensation for economic disadvantages caused by the division of Germany — Serious disturbance in the economy of a Member State — Regional economic development — Community Framework on State Aid to the Motor Vehicle Industry

II. Statistics of judicial activity of the Court of First Instance

Summary of the proceedings of the Court of First Instance

New cases

Cases decided

Cases pending

Table 1: **General proceedings of the Court of First Instance in 1997, 1998 and 1999**[1]

	1997		1998		1999	
New cases	644		238		384	
Cases dealt with	179	(186)	279	(348)	322	(659)
Cases pending	640	(1117)	569	(1007)	663	(732)

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

Table 2: **Nature of proceedings (1997, 1998 and 1999)**[1] [2]

Nature of proceedings	1997	1998	1999
Other actions	469	136	254
Intellectual property			18
Staff cases	155	79	84
Special forms of procedure	20	23	28
Total	644[3]	238[4]	384[5]

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

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

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

4 Of which 2 cases concerned milk quota cases and 2 concerned actions brought by customs agents.

5 Of which 71 cases concerned service-stations.

Table 3: **Type of action (1997, 1998 and 1999)**

Type of action	1997	1998	1999
Action for annulment	133	117	220
Action for failure to act	9	2	15
Action for damages	327	14	19
Arbitration clause	1	3	1
Intellectual property		1	18
Staff cases	154	79	83
Total	624[1]	215[2]	356[3]
Special forms of procedure			
Legal aid	6	6	7
Taxation of costs	13	9	6
Interpretation or review of a judgment	—	—	—
Rectification of a judgment	1	7	15
Revision of a judgment	—	1	—
Total	20	23	28
OVERALL TOTAL	644	238	384

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

2 Of which 2 cases concerned milk quotas and 2 cases concerned actions brought by customs agents.

3 Of which 71 cases concerned service-stations.

Table 4: **Basis of action (1997, 1998 and 1999)**

Basis of the action	1997	1998	1999
Article 63 of regulation EC n° 40/94		1	18
Article 173 of the EC Treaty (now Article 230 EC) [1]	127	105	215
Article 175 of the EC Treaty (now Article 232 EC)	9	2	14
Article 178 of the EC Treaty (now Article 235 EC)	327	13	17
Article 181 of the EC Treaty (now Article 238 EC)	1	3	1
Total EC Treaty	464	123	265
Article 33 of the CS Treaty	6	12	5
Article 35 of the CS Treaty	—	—	1
Article 40 of the CS Treaty	—	—	1
Total CS Treaty	6	12	7
Article 151 of the EA Treaty	—	1	1
Total EA Treaty	—	1	1
Staff Regulations	154	79	83
Total	624	215	356
Article 84 of the Rules of Procedure	1	7	15
Article 92 of the Rules of Procedure	13	9	6
Article 94 of the Rules of Procedure	6	6	7
Article 125 of the Rules of Procedure	—	1	—
Article 129 of the Rules of Procedure	—	—	—
Total special forms of procedure	20	23	28
OVERALL TOTAL	644	238	384

[1] Pursuant to the renumbering of the articles by the Treaty of Amsterdam, since 1st May 1999, the method of citation of the articles of the treaties was substantially modified. A Note in relation to the renumbering is published at page 289 of this Report.

Table 5: **Subject-matter of the action (1997, 1998 et 1999)**[1]

Subject-matter of the action	1997	1998	1999
Accession of new Member States	—	—	—
Agriculture	55	19	42
Arbitration clause	—	2	—
Association of Overseas countries and territories	—	5	4
Commercial policy	18	12	5
Common foreign and security policy	—	—	2
Company law	3	3	2
Competition	24	23	34
Environment and consumers	3	4	5
External relations	3	5	1
Freedom of movement for persons	—	2	2
Freedom to provide services	—	—	1
Free movements of goods	17	7	10
Intellectual property	—	1	18
Law governing the institutions	306	10	19
Regional policy	1	2	2
Research, information, education and statistics	1	—	1
Social policy	4	10	12
State aid	28	16	100
Transport	1	3	2
Total EC Treaty	464	124	262
Competition	—	8	—
Iron and Steel	5	—	1
State aid	1	3	6
Total ECSC Treaty	6	11	7
Law governing the institutions	—	1	1
Total EAEC Treaty	—	1	1
Staff Regulations	154	79	86
Total	624	215	356

1 Special forms of procedure excluded.

Table 6: **Cases dealt with in 1997, 1998 and 1999**

Nature of proceedings	1997		1998		1999	
Other actions	87	(92)[1]	142	(199)[2]	227	(544)[3]
Intellectual property	—	—	1	1	2	(2)
Staff cases	79	(81)	110	(120)	79	(88)
Special forms of procedure	13	(13)	27	(29)	14	(25)
Total	179	(186)	279	(348)	322	(659)

1 Of which 5 concerned milk quota cases.

2 Of which 64 concerned milk quota cases.

3 Of which 102 concerned milk quota cases and 284 concerned actions brought by customs agents.

Table 7: **Results of cases (1999)**

Form of decision	Other actions		Intellectual property		Staff cases		Special forms of procedure		Total	
Judgments										
Removal from the Register	1	(1)	—	—	1	(1)			2	(2)
Action inadmissible	4	(8)	—	—	3	(3)			7	(11)
Action unfounded	35	(55)	—	—	24	(25)			59	(80)
Action partially founded	15	(19)	—	—	9	(12)			24	(31)
Action founded	8	(8)	1	(1)	12	(17)			21	(26)
No need to give a decision	—	—	—	—	—	—			—	—
Total judgments	63	(91)	1	(1)	49	(58)			113	(150)
Orders										
Removal from the Register	127	(414)	—	—	19	(19)	—	—	146	(433)
Action inadmissible	24	(26)	1	(1)	7	(7)	1	(1)	33	(35)
No need to give a decision	9	(9)	—	—	—	—	—	—	9	(9)
Action founded	—	—	—	—	—	—	2	(13)	2	(13)
Action partially founded	—	—	—	—	—	—	2	(2)	2	(2)
Action unfounded	—	—	—	—	—	—	9	(9)	9	(9)
Action manifestly unfounded	3	(3)	—	—	4	(4)	—	—	7	(7)
Disclaimer of jurisdiction	1	(1)	—	—	—	—	—	—	1	(1)
Lack of jurisdiction	—	—	—	—	—	—	—	—	—	—
Total orders	164	(453)	1	(1)	30	(30)	14	(25)	209	(509)
Total	227	(544)	2	(2)	79	(88)	14	(25)	322	(659)

Table 8: **Basis of action (1999)**

Basis of action	Judgments		Orders		Total	
Article 63 of the regulation EC n° 40/94	1	(1)	1	(1)	2	(2)
Article 173 of the EC Treaty (now Article 230 EC)	36	(55)	52	(55)	88	(110)
Article 175 of the EC Treaty (now Article 232 EC)	5	(7)	5	(5)	10	(12)
Article 178 of the EC Treaty (now Article 235 EC)	4	(4)	103	(388)	107	(392)
Article 181 of the EC Treaty (now Article 238 EC)	—	—	2	(2)	2	(2)
Total EC Treaty	46	(67)	163	(451)	209	(518)
Article 151 of the EA Treaty	1	(1)	—	—	1	(1)
Total EA Treaty	1	(1)	—	—	1	(1)
Article 33 of CS Treaty	17	(24)	2	(3)	19	(27)
Article 35 of the CS Treaty	—	—	—	—	—	—
Total CS Treaty	17	(24)	2	(3)	19	(27)
Staff Regulations	49	(58)	30	(30)	79	(88)
Article 84 of the Rules of Procedure	—	—	3	(14)	3	(14)
Article 92 of the Rules of Procedure	—	—	3	(3)	3	(3)
Article 94 of the Rules of Procedure	—	—	8	(8)	8	(8)
Article 125 of the Rules of Procedure	—	—	—	—	—	—
Total Special forms of procedure	—	—	14	(25)	14	(25)
OVERALL TOTAL	113	(150)	209	(509)	322	(659)

Table 9: **Subject-matter of the action (1999)**[1]

Subject-matter of the action	Judgments		Orders		Total	
Agriculture	8	(10)	109	(119)	117	(129)
Arbitration clause	—	—	1	(1)	1	(1)
Association of the Overseas Countries and Territories	—	—	3	(3)	3	(3)
Commercial policy	4	(5)	2	(2)	6	(7)
Company law	—	—	1	(2)	1	(2)
Competition	16	(33)	9	(10)	25	(43)
Environment and consumers	2	(2)	1	(1)	3	(3)
External relations	2	(2)	2	(2)	4	(4)
Freedom of movement for persons	—	—	1	(1)	1	(1)
Free movement of goods	—	—	4	(4)	4	(4)
Intellectual property	1	(1)	1	(1)	2	(2)
Law governing the institutions	4	(4)	15	(290)	19	(294)
Research, information, education and statistics	—	—	1	(1)	1	(1)
Social policy	2	(2)	5	(5)	7	(7)
State aid	7	(8)	7	(7)	14	(15)
Transport	—	—	1	(2)	1	(2)
Total EC Treaty	46	(67)	163	(451)	209	(518)
Competition	—	—	1	(2)	1	(2)
Iron and steel	11	(11)	—	—	11	(11)
State aid	6	(13)	1	(1)	7	(14)
Total CS Treaty	17	(24)	2	(3)	19	(27)
Law governing the institutions	1	(1)	—	—	1	(1)
Total EA Treaty	1	(1)	—	—	1	(1)
Staff Regulations	49	(58)	30	(30)	79	(88)
OVERALL TOTAL	113	(150)	195	(484)	308	(634)

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

Table 10: **Bench hearing case (1999)**

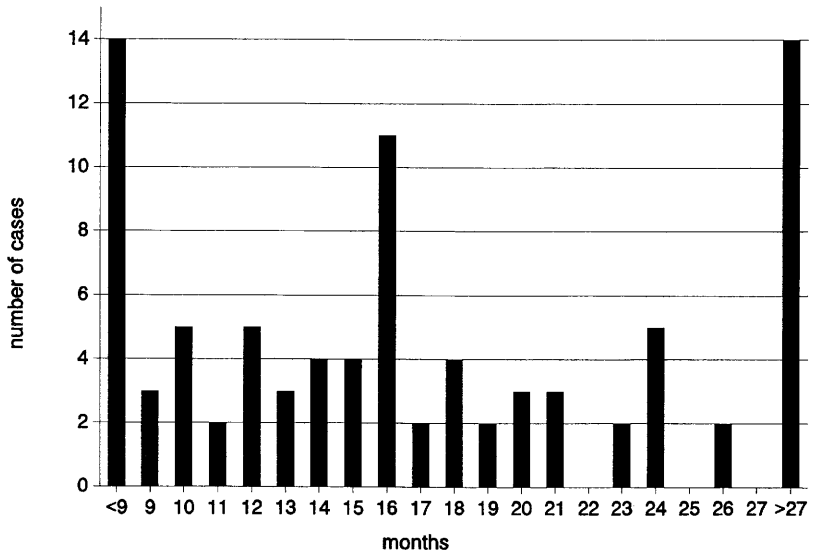
Bench hearing case	Total
President	1
Chambers (3 judges)	488
Chambers (5 judges)	160
Single judge	3
Not assigned	7
Total	659

Table 11: **Length of proceedings (1999)**[1]
(judgments and orders)

	Judgments/Orders
Other actions	12.6
Intellectual property	8.6
Staff cases	17.0

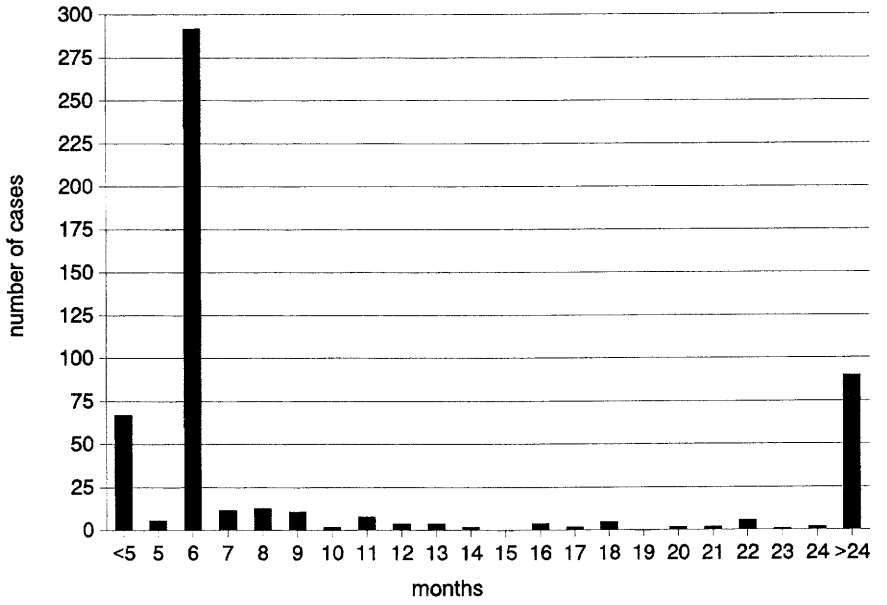
1 In this table, the length of proceedings is expressed in months and decimal months.

Figure I: **Length of proceedings in Staff cases (judgments and orders) (1999)**



Cases/ Months	<9	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	>27
Staff Cases	14	3	5	2	5	3	4	4	11	2	4	2	3	3	0	2	5	0	2	0	14

Figure II: **Length of proceedings in other actions (judgments and orders) (1999)**



Cases/ Months	<5	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	>24
Others actions	67	6	292	12	13	11	2	8	4	4	2	0	4	2	5	0	2	2	6	1	2	90

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

Nature of proceedings	1997		1998		1999	
Other actions	425	(892)[1]	425	(829)[2]	471	(538)[3]
Intellected property	—	—	1	(1)	17	(17)
Staff cases	205	(214)	163	(173)	167	(169)
Special forms of procedure	10	(11)	5	(5)	8	(8)
Total	640	(1 117)	569	(1 007)	663	(732)

1 Of which 252 are milk quota cases and 295 are cases brought by Customs agents.

2 Of which 190 are milk quota cases and 297 are cases brought by customs agents.

3 Of which 88 are milk quota cases, 13 are cases concerning customs agents and 71 are cases concerning service-stations.

Table 13: **Basis of action as at 31 December each year**

Basis of action	1997		1998		1999	
Article 63 of regulation CE n° 40/94	—	—	—	—	17	(17)
Article 173 of the EC Treaty (now Article 230 EC)	274	(294)	256	(279)	360	(383)
Article 175 of the EC Treaty (now Article 232 EC)	18	(18)	12	(12)	14	(14)
Article 178 of the EC Treaty (now Article 235 EC)	113	(549)	100	(498)	80	(123)
Article 181 of the EC Treaty (now Article 238 EC)	4	(5)	3	(3)	1	(2)
Total EC Treaty	409	(866)	371	(792)	472	(539)
Article 33 of the CS Treaty	16	(16)	29	(36)	14	(14)
Article 35 of the CS Treaty	1	(1)	—	—	1	(1)
Article 40 of the CS Treaty	—	—	—	—	1	(1)
Total CS Treaty	17	(27)	29	(36)	16	(16)
Article 146 of the EA Treaty	—	—	—	—	—	—
Article 151 of the EA Treaty	—	—	1	(1)	1	(1)
Total EA Treaty		()	1	(1)	1	(1)
Staff Regulations	204	(213)	163	(173)	166	(168)
Article 84 of the Rules of Procedure	—	—	1	(1)	2	(2)
Article 92 of the Rules of Procedure	8	(9)	2	(2)	5	(5)
Article 94 of the Rules of Procedure	2	(2)	2	(2)	1	(1)
Article 125 of the Rules of Procedure	—	—	—	—	—	—
Article 129 of the Rules of Procedure	—	—	—	—	—	—
Total Special forms of procedure	10	(11)	5	(5)	8	(8)
OVERALL TOTAL	640	(1 117)	569	(1 007)	663	(732)

Table 14: **Subject-matter of the action as at 31 December each year**

Subject-matter of the action	1997		1998		1999	
Accession of new Member States	—	—	—	—	—	—
Agriculture	127	(298)	107	(231)	100	(144)
Arbitration clause	5	(6)	3	(3)	1	(2)
Association of Overseas countries and territories	—	—	5	(5)	6	(6)
Common foreign and security policy	—	—	—	—	2	(2)
Commercial policy	26	(28)	27	(27)	25	(25)
Company law	2	(2)	4	(4)	4	(4)
Competition	125	(132)	111	(114)	101	(104)
Economic and monetary policy	1	(1)	—	—	—	—
Economic and social cohesion	1	(1)	—	—	—	—
Environment and consumers	5	(5)	6	(6)	8	(8)
External relations	7	(7)	10	(10)	7	(7)
Free movement of goods	20	(20)	20	(20)	26	(26)
Freedom of movement for persons	—	—	—	—	1	(1)
Freedom to provide services	—	—	—	—	1	(1)
Intellectual property	—	—	1	(1)	17	(17)
Law governing the institutions	33	(308)	33	(309)	33	(34)
Regional policy	1	(1)	3	(3)	4	(5)
Research, information, education, and statistics	1	(1)	1	(1)	1	(1)
Social policy	8	(8)	10	(10)	15	(15)
State Aid	46	(47)	28	(46)	114	(131)
Transport	1	(1)	3	(3)	3	(3)
Total EC Treaty	409	(866)	372	(793)	469	(536)
State aid	15	(15)	10	(17)	9	(9)
Competition	1	(1)	7	(7)	6	(6)
Iron and steel	1	(11)	11	(11)	1	(1)
Total CS Treaty	17	(27)	28	(35)	16	(16)
Supply	—	—	—	—	—	—
Law governing the institutions	—	—	1	(1)	1	(1)
Total EA Treaty	—	—	1	(1)	1	(1)
Staff Regulations	204	213	163	(173)	169	(171)
Total	630	(1 106)	564	1 002	655	(724)

Table 15: **General trend**

Year	New cases[1]	Cases pending as at 31 December	Cases decided	Judgments delivered[2]	Number of decisions of the Court of First Instance which have been the subject of an appeal[3]
1989	169	164 (168)	1 (1)	– –	– –
1990	59	123 (145)	79 (82)	59 (61)	16 *(46)*
1991	95	152 (173)	64 (67)	41 (43)	13 *(62)*
1992	123	152 (171)	104 (125)	60 (77)	24 *(86)*
1993	596	638 (661)	95 (106)	47 (54)	16 *(66)*
1994	409	432 (628)	412 (442)	60 (70)	12 *(101)*
1995	253	427 (616)	197 (265)	98 (128)	47 *(152)*
1996	229	476 (659)	172 (186)	107 (118)	27 *(122)*
1997	644	640 (1 117)	179 (186)	95 (99)	35 *(139)*
1998	238	569 (1 007)	279 (348)	130 (151)	67 *(214)*
1999	384	663 (732)	322 (659)	115 (150)	60[4] *(177)*
Total	3 199		904 (2 467)	812 (951)	317 *(1 170)*

1 Including special forms of procedure.

2 The figure in brackets indicate the number of cases decided by judgement.

3 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.

4 This figure does not include the appeal introduced against the order of inquiry of 14th september 1999 in the case T-145/98. In fact, this appeal was declared inadmissible by the Court since the challanged decision was not subject of an appeal.

Table 16: **Results of appeals[1] from 1 January to 31 December 1999**
(judgments and orders)

	Unfounded	Appeal manifestly unfounded	Appeal manifestly inadmissible	Appeal manifestly inadmissible and unfounded	Annulment and referred back	Annulment-not referred back	Partial annulment and referred back	Partial annulment - not referred back	Removal from the Register	Total
Agriculture	3	1		1		2		1		8
Competition	10			2	1	1		1	2	17
Free movement of goods				2						2
Free movement of persons				1						1
Law governing the institutions		2	2	2						6
Overseas countries and territories	1									1
Social policy				3	1				1	5
Staff Regulations	7	2	1	4		1				15
State aid		1								1
Supply	1									1
Total	22	6	3	15	2	4	—		3	57

1 Termination by decision of the Court of Justice.

Chapter V

General Information

A — Note on the citation of articles of the Treaties in the publications of the Court of Justice and the Court of First Instance

Pursuant to the renumbering of the articles of the Treaty on European Union (EU) and of the Treaty establishing the European Community (EC), brought about by the Treaty of Amsterdam, the Court of Justice and the Court of First Instance have introduced, with effect from 1 May 1999, a new method of citation of the articles of the EU, EC, ECSC and Euratom Treaties.

That new method is primarily designed to avoid all risk of confusion between the version of an article as it stood prior to 1 May 1999 and the version applying after that date. The principles on which that method operates are as follows:

— Where reference is made to an article of a Treaty as it stands after 1 May 1999, the number of the article is immediately followed by two letters indicating the Treaty concerned:

  EU for the Treaty on European Union
  EC for the EC Treaty
  CS for the ECSC Treaty
  EA for the Euratom Treaty.

  Thus, 'Article 234 EC' denotes the article of that Treaty as it stands after 1 May 1999.

— Where, on the other hand, reference is made to an article of a Treaty as it stood before 1 May 1999, the number of the article is followed by the words 'of the Treaty on European Union', 'of the EC (or EEC) Treaty', 'of the ECSC Treaty' or 'of the EAEC Treaty', as the case may be.

  Thus, 'Article 85 of the EC Treaty' refers to Article 85 of that Treaty before 1 May 1999.

— In addition, as regards the EC Treaty and the Treaty on European Union, again where reference is made to an article of a Treaty as it stood before 1 May 1999, the initial citation of the article in a text is followed by a reference in brackets to the corresponding provision of the same Treaty as it stands after 1 May 1999, as follows:

  — '*Article 85 of the EC Treaty (now Article 81 EC)*', where the article has not been amended by the Treaty of Amsterdam;

— '*Article 51 of the EC Treaty (now, after amendment, Article 42 EC)*', where the article has been amended by the Treaty of Amsterdam;
— '*Article 53 of the EC Treaty (repealed by the Treaty of Amsterdam)*', where the article has been repealed by the Treaty of Amsterdam.

— By way of exception to the latter rule, the initial citation of (the former) Articles 117 to 120 of the EC Treaty, which have been replaced *en bloc* by the Treaty of Amsterdam, is followed by the following wording in brackets: '*(Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC)*'.

For example:

— '*Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC)*'.

The same applies to Articles J to J.11 and K to K.9 of the Treaty on European Union.

For example:

— '*Article J.2 of the Treaty on European Union (Articles J to J.11 of the Treaty on European Union have been replaced by Articles 11 EU to 28 EU)*';

— '*Article K.2 of the Treaty on European Union (Articles K to K.9 of the Treaty on European Union have been replaced by Articles 29 EU to 42 EU)*'.

B — Publications and databases

Text of judgments and opinions

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

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

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

In the Member States and in certain non-member countries, the Reports are on sale at the addresses shown on the last page of this section (price of the 1995, 1996, 1997 and 1998 Reports: EUR 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: EUR 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 EUR 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.

Please note that all the recent judgments of the Court of Justice and of the Court of First Instance are accessible quickly and free of charge on the Court's internet site (*www.curia.eu.int*, see also 2.(a) below) under "Case-law". Judgments are available on the site, in all eleven official languages, from approximately 3 o'clock on the day they are delivered. The Advocate General's Opinions are also available on that site, in the language of the Advocate General as well as, initially, in the language of the case.

Other publications

1. Documents from the Registry of the Court of Justice

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

This work contains the main 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. Consultation is facilitated by an index.

The Selected Instruments are available in the official languages. A new edition is about to be published; it may be ordered from the addresses given on the last page of this publication.

(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 Division 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 in 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 year.

The Proceedings are also published every week on the Court's internet site.

(b) Annual Report

A 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. The 1998 edition is available exclusively in English and French.

(c) Diary

A multilingual weekly list of the judicial activity of the Court of Justice and the Court of First Instance, announcing the hearings, readings of Opinions and delivery of judgments taking place in the week in question; it also gives an overview of the subsequent week. There is a brief description of each case and the subject-matter is indicated. The weekly calendar is published every Thursday and is available on the Court's internet site.

Orders for the documents referred to above, available free of charge in all the official languages of the Communities must be sent, in writing, to the Press and Information Division of the Court of Justice, L-2925 Luxembourg, stating the language required.

(d) Internet site of the Court of Justice

The Court's site, located at **www.curia.eu.int**, has been offering easy access to a wide range of information and documents concerning the institution. Most of those documents are available in the eleven official languages. The index page, reproduced below, gives an indication of the contents of the site at present.

Of particular interest to note is "Case-law", which offers, since June 1997, rapid access free of charge to all the recent judgments delivered by the Court of Justice and the Court of First Instance. The judgments are available at the site, in the eleven official languages, from 3 p.m. of the day of delivery. The Opinions of the Advocates General are also available under this heading in both the language of the Advocate General and the language of the case.

The Court of Justice of the European Communities
(Court of Justice and Court of First Instance)

Introduction	**Research and Documentation**
Press and Information	**Library**
Case-law	**Texts relating to the institution**

3.Publications of the Library, Research and Documentation Directorate of the Court of Justice

3.1Library

(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 approximately 6 000 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 EUR 42, excluding VAT.

3.2.Research and Documentation

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

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

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

A Series:case-law of the Court of Justice and the Court of First Instance of the European Communities, excluding cases brought by officials and other servants of the European Communities and cases relating to the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters;

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

The A Series covers the case-law of the Court of Justice of the European Communities from 1977. A consolidated version covering the period 1977 to 1990 will replace the various loose-leaf issues which were published since 1983. The French version is already available and will be followed by German, English, Danish, Italian and Dutch versions. Publications in the other official Community languages is being studied.

Price EUR 100, excluding VAT.

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

The first issue of the D Series was published in 1981. With the publication of Issue 5 (February 1993) in German, French, Italian, English, Danish and Dutch, it covers at present the case-law of the Court of Justice of the European

Communities from 1976 to 1991 and the case-law of the courts of the Member States from 1973 to 1990.

Price EUR 40, excluding VAT.

(b)Index A-Z

Computer generated 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: EUR 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: EUR 15, excluding VAT.

(d)Brussels and Lugano Conventions - Multilingual edition

A collection of the texts of the Brussels Convention of 27 September 1968 and Lugano Convention of 16 September 1988 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, together with the acts of accession,protocols and declarations relating thereto, in all the original languages.

The work, which contains an introduction in English and French, was published in 1997 and will be updated periodically.

Price: EUR 30, 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:

(a)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 of Community Law Series A. It is available in French.

(b)Jurisprudence en matière de fonction publique communautaire (January 1988 - December 1998)

A publication in French containing abstracts of 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.

(c)Internal databases

The Court has established internal databases covering the case-law of the courts of the Member States concerning Community law and also the Brussels, Lugano and Rome conventions. It is possible to ask for interrogation of that database on specific points to and to obtain, in French, the results of such a search.

For further information apply to the Library, Research and Documentation Directorate of the Court of Justice, L-2925 Luxembourg.

Interinstitutional 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 (internet address: http:/europa.eu.int/celex).

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

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

Rapid — Ovide/Epistel

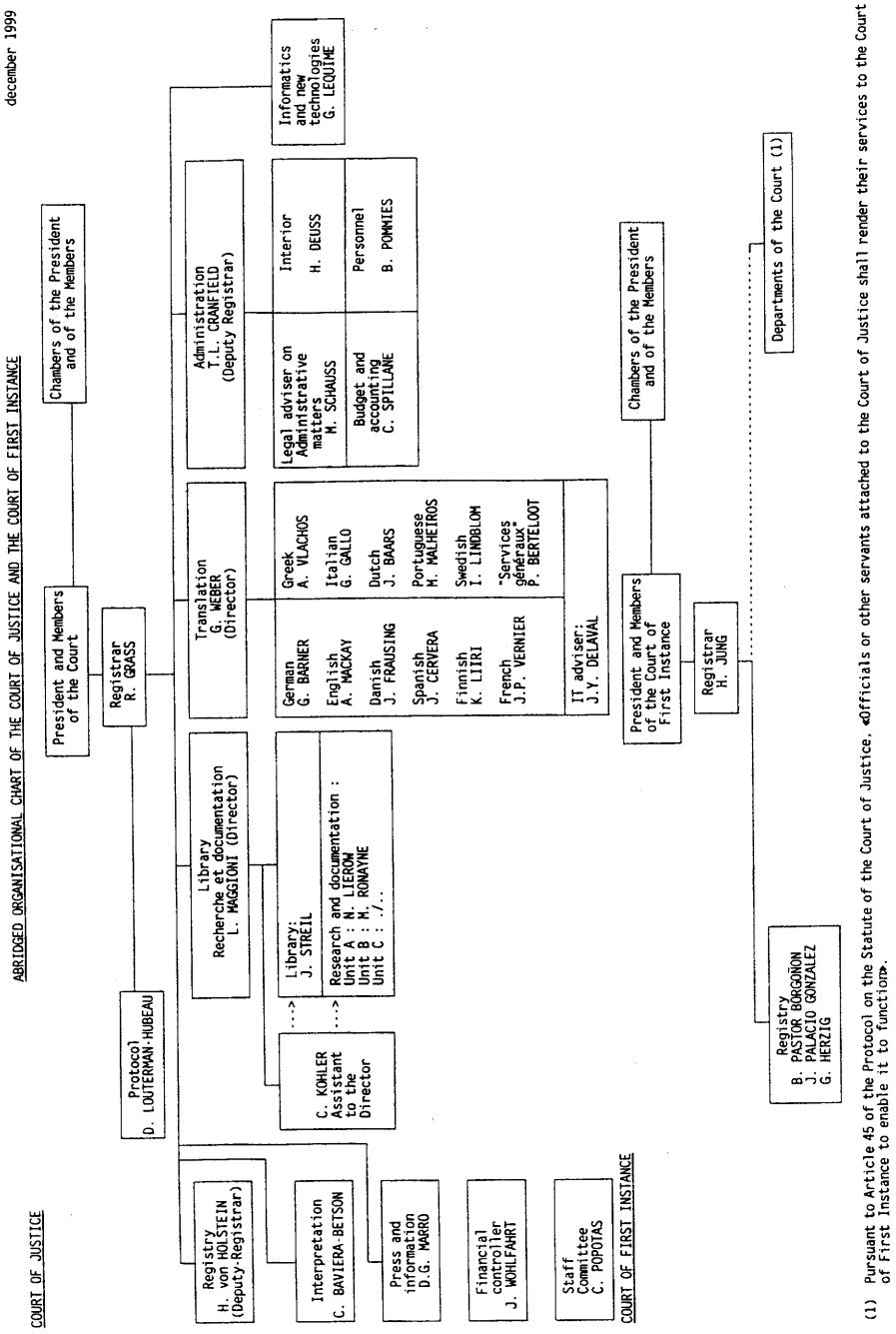
The database Rapid, which is managed by the Spokesman's Service of the Commission of the European Communities, and the database Ovide/Epistel, managed by the European Parliament, will contain the French version of the Proceedings of the Court of Justice and the Court of First Instance (see above).

The official 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.

C — Abridged Organizational Chart of the Court of Justice and the Court of First Instance



(1) Pursuant to Article 45 of the Protocol on the Statute of the Court of Justice, «officials or other servants attached to the Court of Justice shall render their services to the Court of First Instance to enable it to function».

The Court of Justice may be contacted at:

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The Court on Internet: *www.curia.eu.int*

Court of Justice of the European Communities

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