COURT OF JUSTICE
OF THE EUROPEAN COMMUNITIES

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

Luxembourg 1999

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FOREWORD

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

This Annual Report demonstrates once again the breadth of the task which the Court of Justice of the European Communities must fulfil under the Treaties.

During the past year, the judicial activity of the Court of Justice and of the Court of First Instance continued to increase as in recent years. In 1998, the two courts were able to dispose of 750 cases, thereby slightly reducing the number of cases pending.

This result, encouraging though it may be, cannot, however, conceal the steady build-up of pending cases, which has been going on for several years. This phenomenon is not unrelated to the difficulties encountered in the attempts being made to reduce the length of proceedings. All the indications are that there is little chance that the situation will improve in the near future. A class of new cases concerning intellectual property rights, in particular the Community trade mark, is likely to add significantly to the number of cases pending. The third stage of Economic and Monetary Union, which began on 1 January 1999, is also likely to generate additional cases. Finally, the imminent entry into force of the Amsterdam Treaty, which provides for the creation of new procedures and confers wider jurisdiction on the Community judicature, undoubtedly heralds the advent of new judicial business.

Such concerns about the future should not, however, be allowed to hide the significance of the judgments delivered and orders made by the Court of Justice and the Court of First Instance in 1998, the most important of which are described in this report. Indeed, the increasing diversity of cases submitted to the two courts, whilst being evidence of the widening of the powers of the European Union, also demonstrates a real awareness, on the part of both national courts and participants in economic life, of Community legislation and case-law.

One of the essential tasks of the Court of Justice, besides its main function of stating the law, is to help ensure that its case-law is disseminated as broadly and as efficiently as possible, thus promoting greater awareness of the requirements of European law.

That is why, despite continuing budgetary constraints, the work on developing the various publications and databases through which judgments and orders of the Court of Justice and the Court of First Instance are disseminated was taken forward in 1998. In particular, the Institution's Internet site, which saw a consolidation of the surge in use experienced during the preceding year, is becoming an essential medium of information on, and indeed a key to the understanding of, Community law for the increasing number of users of this medium. From now on, the site will also carry the full text of the Opinions of the Advocates General.

Finally, I would like to stress the importance which the Court attaches to hosting the many official visits and study visits organised for national judges, lawyers, students and so forth, which must surely be a particularly effective instrument for enhancing their knowledge of Community law.

Chapter I

The Court of Justice of the European Communities

A - Proceedings of the Court of Justice in 1998

by Mr G.C. Rodríguez Iglesias, President

The judicial activity of the Court of Justice in 1998 was significant in terms of both the number of cases disposed of and the legal issues dealt with.

During this period, the Court delivered 254 judgments (compared with 242 in 1997) and made 120 orders (135 in 1997). It thus brought 374 cases to a close, corresponding to a gross figure, before joinder, of 420 cases. In 1997, a net total of 377 cases were disposed of (456 before joinder).

The number of cases brought in 1998 (485 before joinder) was slightly higher than in 1997 (445 before joinder).

On 31 December 1998, there were 664 cases pending (623 in 1997, in net figures).

A brief overview of the most important case-law developments in 1998 is set out below.

*

1. First, there were a number of judgments concerning the admissibility of applications to the Court of Justice and the Court of First Instance.

As regards *the fourth paragraph of Article 173 of the EC Treaty*, which governs applications for annulment by natural or legal persons other than the Member States and the institutions, the judgments in *Greenpeace, Glencore Grain and Others* and *Kruidvat* must be mentioned.

In its judgment of 2 April 1998 in Case C-321/95 P *Greenpeace Council and Others* v *Commission* [1998] ECR I-1651, the Court applied, *inter alia*, the conditions of admissibility laid down in the fourth paragraph of Article 173 to an action brought by an association for the protection of the environment. The applicant, together with certain private individuals, had brought an appeal against an order in which the Court of First Instance had declared inadmissible its application for annulment of a Commission decision approving Community

financial assistance for the construction of power stations by a Member State. The Court of Justice upheld the judgment of the Court of First Instance. As regards more specifically the nature and specific character of the environmental interests on which the action was based, the Court first held that, in so far as it concerned the financing of the power stations and not their construction, the contested decision could have only an indirect effect on the rights invoked. It also pointed out that the rights afforded to the applicants by the Community environmental legislation were, in that instance, fully protected by the national courts, before which proceedings had been brought.

By contrast, in four judgments delivered on 5 May 1998 (Case C-386/96 P *Dreyfus* v *Commission* [1998] ECR I-2309; Case C-391/96 P *Compagnie Continentale (France)* v *Commission* [1998] ECR I-2377 and Cases C-403/96 P and C-404/96 P *Glencore Grain* v *Commission* [1998] ECR I-2405 and I-2435), the Court annulled the judgments by which the Court of First Instance had declared inadmissible applications by several companies for annulment of decisions of the Commission. The Commission had relations with financial bodies and agents in the Russian Federation and the Ukraine in connection with the implementation of loans granted by the European Economic Community to those countries. In that context, it had adopted measures addressed to those financial bodies and agents by which it refused to recognise, for the purposes of the use of the Community loans, contracts for the purchase of wheat which had previously been entered into with the applicant undertakings. The Court of First Instance had considered that the Commission's decisions were not of direct concern to the undertakings since they had no legal relationship with it and the contested decisions were not addressed to them. That conclusion was not affected by the presence in the contracts at issue of a suspensory clause making performance of the contract and payment of the price subject to a positive decision by the Commission on the matter of financing.

On the basis of the socio-economic context in which the contracts were concluded, the Court held that those contracts had been entered into only subject to the obligations assumed by the Community, in its capacity as lender, and that the insertion into the contracts of that suspensory clause merely reflected the fact that the contracts were subject, for financial reasons, to the conclusion of the loan agreement with the Community. The Court held that the Commission's refusals had deprived the applicants of any real possibility of performing the contracts awarded to them or of obtaining payment for supplies already made and had thus directly affected their legal situation. The cases were therefore referred back to the Court of First Instance for judgment on the substance.

Finally, in Case C-70/97 P *Kruidvat* v *Commission*, not yet published in the ECR, the Court held that the Court of First Instance had not misconstrued the fourth paragraph of Article 173 in declaring inadmissible, in the absence of any individual interest, the application by a distributor of cosmetic products against a Commission decision declaring the provisions of Article 85(1) of the EC Treaty inapplicable to the standard form selective distribution agreement between a producer of luxury cosmetic products or its exclusive agents, on the one hand, and its specialised retailers, on the other.

The Court first supported the findings of the Court of First Instance, according to which, with regard to such a decision, the participation of a representative body in the administrative procedure before the Commission is not sufficient for one of its members to be individually distinguished for the purpose of Article 173 of the Treaty. According to the Court, the participation of such associations in the procedure cannot relieve their members of the need to establish a link between their individual situation and the action of the association. Second, the Court confirmed that the existence of national proceedings was not sufficient to distinguish the applicant individually. In the case heard, the applicant had been summoned to appear on the basis of the national legislation on business practices and had submitted in its defence that the selective distribution network at issue was unlawful under Article 85 of the Treaty. The Court pointed out that the fact that an action has consequently been brought against a trader by a party who benefits from, or is responsible for, the organisation of the distribution network, before the expiry of the time-limit for challenging a Commission decision relating to the network, is a matter of pure chance and not directly linked to that decision.

Finally, another aspect of that case was that the Court refused to establish an analogy between the position of the applicant, as an interested third party under Article 19(3) of Regulation No 17, and that of undertakings which are parties concerned, within the meaning of Article 93(2) of the EC Treaty, in the field of State aid, as assessed by the Court in, *inter alia*, Case C-198/91 *Cook* v *Commission* [1993] ECR I-2487. Whilst the legal interest of the latter in bringing proceedings was justified by the absence of any procedural guarantee, that was not the case as regards an undertaking such as the applicant, which had the opportunity to exercise its right to make its views known to the Commission, following the Commission's invitation to do so, but did not take advantage of that opportunity.

As regards *the procedure for obtaining preliminary rulings*, provided for in Article 177 of the EC Treaty, the judgments delivered by the Court in 1998 continued the trend of the preceding years. The Court thus confirmed that, in

order for a body to be able to refer questions for a preliminary ruling, it must perform a judicial function, which excludes a body such as the Skatterättsnämnden (Swedish Revenue Board), which acts in an administrative capacity when giving preliminary binding decisions, which serve the taxpayers' interests inasmuch as they are better able to plan their activities, but is not called upon to hear and determine cases (Case C-134/97 *Victoria Film*, not yet published in the ECR). Furthermore, 1998 saw the application, by the Court, for the first time of Article 104(3) of its Rules of Procedure, which provides that, where a question referred to the Court for a preliminary ruling is manifestly identical to a question on which the Court has already ruled, the Court may give its decision by reasoned order in which reference is made to its previous judgment. It used that simplified procedure for questions relating both to the interpretation (Order in Joined Cases C-405/96 to C-408/96 *Béton Express and Others* v *Direction Régionale des Douanes de la Réunion* [1998] ECR I-4253) and to the validity of Community law (order in Joined Cases C-332/96 and C-333/96 *Conata and Agrindustria* v *AIMA*, not yet published in the ECR).

The Court partially annulled a judgment of the Court of First Instance by upholding a plea put forward in the context of an appeal, according to which the *duration of the Court proceedings* had been excessive. The case involved a judgment in which the Court of First Instance had partially annulled a Commission decision relating to a proceeding under Article 85 of the Treaty in the welded steel mesh sector. Approximately five and a half years had elapsed between the date on which the application for annulment was lodged and the date on which the Court of First Instance delivered its judgment. Referring, by analogy, to the judgments of the European Court of Human Rights, the Court assessed the reasonableness of such a period in the light of the circumstances specific to the case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the applicant and of the competent authorities. The Court also took account, first, of the fact that in some respects the structure of the Community judicial system justifies allowing the Court of First Instance — which must find the facts and undertake a substantive examination of the case — a relatively longer period to investigate actions entailing an examination of complex facts and, second, of the constraints inherent in proceedings before the Community judicature, associated in particular with the language regime and the obligation to publish judgments in all the official languages of the Community. Bearing in mind all those factors, the Court concluded that, notwithstanding the relative complexity of the case, the proceedings before the Court of First Instance did not satisfy the requirements concerning disposal of cases within a reasonable time. For reasons of economy of procedure and in order to ensure an immediate and effective remedy regarding

a procedural irregularity of that kind, the Court decided to hold that the plea was well founded for the purposes of setting aside the contested judgment, but only in so far as it set the amount of the fine imposed on the appellant. In the absence of any indication that the length of the proceedings affected the outcome of the case in any way, it could not, however, be a ground for setting aside the contested judgment in its entirety. The Court considered that a sum of ECU 50 000 constituted reasonable satisfaction and reduced the amount of the fine accordingly.

In the same judgment, the Court also considered, and subsequently rejected, a whole series of pleas relating to the regularity of proceedings before the Court of First Instance. The appellant submitted that the Court of First Instance had infringed the general principle requiring prompt determination of judicial proceedings in giving judgment 22 months after the close of the oral procedure, the delay involved being such that the effect of that procedure was negated by the judges' reduced recollection of it. The Court held that no provision required the judgments of the Court of First Instance to be delivered within a specified period after the oral procedure and, furthermore, that it had not been established that the duration of the procedure had any impact on the outcome of the proceedings, in particular as far as any loss of evidence was concerned. The Court also considered that the general principles of Community law governing the right of access to the Commission's file did not, as such, apply to court proceedings, the latter being governed by specific provisions. A party asking the Court of First Instance to order the opposite party to produce certain documents had to identify those documents and provide at least minimum information indicating the utility of those documents for the purposes of the proceedings (Case C-185/95 P *Baustahlgewebe* v *Commission*, not yet published in the ECR).

Finally, as regards the conditions under which suspension of application of an act or interim measures are granted, under Articles 185 and 186 of the EC Treaty, the orders in Case C-363/98 P (R) *Emesa Sugar* v *Council*, not yet published in the ECR and Case C-364/98 P (R) *Emesa Sugar* v *Commission*, not yet published in the ECR) are of interest. It is apparent from those cases that, when he bases a decision to dismiss an application for suspension of execution of a measure or for interim measures on the absence of the requisite urgency, the judge hearing the application for interim measures cannot require that the applicant be able to plead incontestable urgency on the sole ground that the author of the contested measure acted in the exercise of a discretion. The mere fact that a discretion exists, in the absence of any consideration of *fumus boni juris* and any balancing of the interests at stake, does not determine the nature of the requirements relating to the condition of urgency. Otherwise, the effectiveness of provisional legal

protection would be removed or at any rate reduced, since it would be a matter of calling into question a measure adopted in the exercise of a broad discretion. In particular, there would be a risk of refusal of interim measures which might be necessary to preserve the effectiveness of the judgment on the substance of the case in circumstances where the *prima facie* case was particularly strong and the balance of interests tilted towards the party seeking the measure, and all because the urgency was not incontestable.

2. The scope of certain *general principles of Community law* has also been defined more precisely by the recent case-law of the Court concerning the primacy of Community law, the principle of effective judicial protection and the limits to the procedural autonomy which, in the absence of harmonisation, Member States have in implementing Community law, and the question of the abusive exercise of rights conferred by Community law.

It is settled case-law that, in the absence of Community rules governing the matter, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from Community law, provided that such rules are not less favourable than those governing similar domestic actions (*principle of equivalence*) and do not render virtually impossible or excessively difficult the exercise of rights conferred by Community law (*principle of effectiveness*). The Court has therefore recognised that national rules laying down reasonable limitation periods for bringing proceedings in the interests of legal certainty are compatible with Community law.

Several cases referred to the Court concerned the detailed rules relating to repayment of an Italian administrative tax for the registration of companies in the Italian Register of Companies, the incompatibility of which with Directive 69/335/EEC was apparent from the judgment which the Court had given in Joined Cases C-71/91 and C-178/91 *Ponente Carni* and *Cispadana Costruzioni* [1993] ECR I-1915.

In three judgments delivered on 15 September 1998, which were sequels to the judgment in Case C-188/95 *Fantask and Others* [1997] ECR I-6783, the Court interpreted Community law in order to enable national courts to evaluate the detailed rules governing such repayments. The Court first stated that the right to impose a time-limit for bringing proceedings was not affected by the fact that the temporal effect of a judgment such as that in *Ponente Carne* had not been limited. Whilst the effects of a Court judgment providing an interpretation normally go

back to the time at which the rule interpreted came into force, it is also necessary, if that interpretation is to be applied by the national court to facts predating the Court's judgment, for the detailed procedural rules governing legal proceedings under national law to have been observed as regards matters of form and substance. Second, the time-limit under national law may be reckoned from the date of payment of the charges in question, even if, at that date, the directive concerned had not yet been properly transposed into national law. To justify that conclusion, the Court pointed out that it did not appear that the conduct of the national authorities, in conjunction with the existence of the contested time-limit, had had the effect in that case, in contrast to the situation in Case C-208/90 *Emmott* v *Minister for Social Welfare and the Attorney General* [1991] ECR I-4269, of depriving the applicants of all opportunity of enforcing their rights before the national courts. Thirdly, as regards observance of the principle of equivalence, the Court held that a Member State could not be obliged to extend its most favourable rules governing recovery to all actions for repayment of charges or dues levied in breach of Community law. On the contrary, it could derogate from the ordinary rules governing actions between private individuals for the recovery of sums paid but not due by imposing a shorter time-limit or providing for less favourable rules for the payment of interest, provided that those rules applied in the same way to all actions for repayment of such charges, whether based on Community law or national law (Case C-231/96 *Edis* v *Ministero delle Finanze* [1998] ECR I-4951; Case C-260/96 *Ministero delle Finanze* v *Spac* [1998] ECR I-4997 and Joined Cases C-279/96 to C-281/96 *Ansaldo Energia and Others* v *Amministrazione delle Finanze dello Stato* [1998] ECR I-5025; to the same effect, see also Case C-228/96 *Aprile* v *Amministrazione delle Finanze dello Stato*, not yet published in the ECR, concerning the repayment of charges levied in breach of Community law in respect of customs transactions).

In national proceedings concerning the repayment of the same Italian tax, the Court also had to define the scope of its judgment in Case 106/77 *Simmenthal* [1978] ECR 629, in which it had held that incompatibility of a domestic charge with Community law had the effect "[of precluding] the valid adoption" of new national legislative measures (paragraph 17). In Joined Cases C-10/97 to C-22/97 *Ministero delle Finanze* v *IN.CO.GE. '90 and Others*, not yet published in the ECR, the Court reconsidered the judgment in *Simmenthal*, recalling that it had, essentially, held that every national court must, in a case within its jurisdiction, apply Community law in its entirety and protect rights which Community law confers on individuals, setting aside any provision of national law which may conflict with it, whether prior or subsequent to the Community rule. The Court held that it could not be inferred from that judgment that the incompatibility with Community law of a subsequently adopted rule of national law had the effect of

rendering that rule of national law non-existent. Furthermore, Community law did not require that any non-application, following a judgment given by the Court, of legislation introducing a levy contrary to Community law should deprive that levy retroactively of its character as a charge and divest the legal relationship, established when the charge in question was levied between the national tax authorities and the parties liable to pay it, of its fiscal nature. Any such reclassification was a matter for national law.

By contrast, in another case in which the Court was called upon to interpret Article 119 of the EC Treaty and Directive 75/117/EEC on equal pay for men and women, the Court held that the principle of effectiveness precluded an employer from relying on a two-year time-limit for bringing proceedings against a female employee, in a situation where the employer's deceit caused the delay in the bringing of proceedings for enforcement of the principle of equal pay. To hold otherwise would be to facilitate the breach of Community law by the employer. The situation would be different only if another remedy, enabling the employee to claim full compensation for the damage suffered, was available and it did not entail procedural rules or other conditions less favourable by comparison with those provided for in relation to similar domestic actions. On the latter point, the Court held that it would be appropriate for the national court concerned to consider whether the other possible remedy involved additional costs and delays by comparison with an action concerning what could be regarded as a similar right under domestic law (Case C-326/96 *Levez* v *T.H. Jennings (Harlow Pools)*, not yet published in the ECR).

The same principles of effectiveness and equivalence served to guide the Court in determining the extent to which a Member State could *set off an amount due to the beneficiary of aid under a Community measure against outstanding debts to that Member State* (Case C-132/95 *Jensen and Korn- og Foderstofkompagniet* v *Landbrugsministeriet, EF-Direktorat* [1998] ECR I-2975). In a case pending before the national court, the national authorities had withheld the full amount of area aid payable to a farmer on the basis of a Community regulation in order to discharge his VAT debt. Taking formal note that Community law, as it then stood, contained no general rules on the rights of national authorities to effect such set-off, the Court held that such a practice was permissible, provided that it did not impair the effectiveness of Community law and provided that the set-off was not made subject to less favourable conditions or procedures than those applicable to cases in which purely domestic claims were set off. Furthermore, it was for each Member State to define the conditions under which its national authorities could apply set-off and to regulate all incidental issues. Under Community law, neither the legal basis of the debt to the State nor the fact that

the amount set off against it may derive from the Community's own resources in any way affects the Member State's right to effect such set-off. Finally, the Court clearly distinguished that question from the problem of national authorities claiming payments from beneficiaries of Community aid to cover administrative costs relating to applications made by them (on this question, see also Joined Cases C-36/97 and C-37/97 *Kellinghusen and Ketelsen* v *Amt für Land- und Wasserwirtschaft* [1998] ECR I-6337).

Finally, in a case relating to company law, the Court confirmed its earlier case-law according to which Community law does not preclude national courts from applying a provision of national law in order to assess whether a right arising from a provision of Community law *is being exercised abusively,* provided however that when assessing the exercise of that right they do not alter the scope of that provision or compromise the objectives pursued by it. The question to be decided in the case before the national court was whether there was an abusive exercise of rights in a situation where a shareholder opposed an increase in a company's share capital, decided upon by a derogating procedure, by relying on Article 25 of the Second Company Law Directive 77/91/EEC, which reserves the power to decide on increases of share capital to the general meeting. The Court explained that the abusive nature of any recourse to Article 25 could not be established simply in the light of the fact that the contested increase in share capital resolved the financial difficulties threatening the existence of the company concerned and clearly enured to the shareholder's economic benefit, or that the shareholder did not exercise his preferential right to acquire new shares issued on the increase in share capital. Such considerations, ostensibly aimed at controlling an abuse of rights, would alter the scope of the decision-making power of the general meeting as provided for by Article 25 of the Second Directive 77/91 (Case C-367/96 *Kefalas and Others* v *Ellinikio Dimosio* [1998] ECR I-2843).

3. In the *institutional field*, besides the traditional issues of choice of legal basis for Community measures, there were, in 1998, issues relating to the procedures for the adoption of Commission decisions (comitology and collegiality) and to the financing of Community actions.

As regards the choice of *legal basis*, a judgment delivered on 28 May 1998 annulled a Council decision on the ground that, since it involved measures falling within the first, second and third indents of Article 129c(1) of the EC Treaty (trans-European networks), the procedure for the adoption of which is laid down in Article 129d, the decision could not be adopted on the basis of Article 235 of the EC Treaty (Case C-22/96 *Parliament* v *Council* [1998] ECR I-3231). That judgment is consistent with the settled case-law according to which the use of

Article 235 of the Treaty as the legal basis for a measure is justified only where no other provision of the Treaty gives the Community institutions the necessary power to adopt the measure in question.

The judgment in Case C-170/96 *Commission* v *Council* [1998] ECR I-2763 was considerably more novel since it was the first case in which a party had sought annulment of a measure adopted within the framework of the "third pillar" of the Treaty on European Union (EU Treaty) relating to cooperation in the fields of justice and home affairs and raised the question of the scope of the jurisdiction of the Court under the provisions of Article L of the EU Treaty. The Commission was seeking annulment of the joint action of 4 March 1996 adopted by the Council on the basis of Article K.3 of the EU Treaty on airport transit arrangements.

In its judgment, the Court found first of all that under Article L in conjunction with Article M of the EU Treaty it is the task of the Court to ensure that acts which the Council claims fall within the scope of Article K.3(2) of the EU Treaty do not encroach upon the powers which the EC Treaty confers on the Community. Since the Commission claimed that the contested act should have been based on Article 100c of the EC Treaty, the Court concluded that it had jurisdiction to review the content of that act in the light of that provision.

As regards the substance, Article 100c of the EC Treaty sets out the procedure for establishing the list of third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States. The Commission submitted that transit through the international area of an airport in a Member State must be regarded as entry into the territory of that Member State, so that the Community had the power to draw up rules on airport transit arrangements. The Court rejected that argument, considering that Article 100c, interpreted in the light of Article 3(d) of the EC Treaty, related only to the entry into and movement within the internal market by nationals of third countries and did not therefore concern mere passage by them through the international areas of airports situated in the Member States, without entering the internal market.

By its judgment in Case C-263/95 *Germany* v *Commission* [1998] ECR I-441, the Court annulled a Commission decision adopted in implementation of Council Directive 89/106/EEC on construction products on the ground that procedural requirements had been breached. It held that the Commission had breached certain aspects of the specific procedure, as provided for by the directive, according to which a standing committee, made up of representatives of the Member States and of the Commission, is involved in the adoption of decisions

implementing the directive. In this case, the German version of the draft decision had not been sent to the two separate addressees within the national authorities within the time-limit laid down by the directive and the vote within the Committee had not subsequently been postponed despite a request from the Member State concerned. In finding that there was an infringement of essential procedural requirements, the Court pointed out that the strict formal requirements laid down by the directive was a sufficient indication of the intention to ensure that Member States should have the time necessary to study the documents concerned, which might be particularly complex and require considerable contact and discussion between different administrative authorities or consultation of experts in various fields or of professional organisations.

The internal functioning of the Commission was considered in another judgment in which the Court examined the principle of *collegiality* (Case C-191/95 *Commission* v *Germany* [1998] ECR I-5449). This principle governs the functioning of the Commission and in Case C-137/92 P *Commission* v *BASF and Others* [1994] ECR I-2555 the Court had established that, as regards decisions which are adopted for the purpose of ensuring observance of the competition rules and in which the Commission finds that there has been an infringement of those rules, issues directions to undertakings and imposes pecuniary penalties upon them, the undertakings or associations of undertakings addressed by such decisions must be confident that the operative part and the statement of reasons had actually been adopted by the College of Commissioners.

In proceedings for failure to fulfil obligations brought against Germany under Article 169 of the EC Treaty, Germany submitted that the same principles applied in relation to the adoption of a reasoned opinion and the commencement of infringement proceedings before the Court.

The Court held that the decisions to issue a reasoned opinion and to commence proceedings were subject to the principle of collegiality and, since they were not measures of administration or management, could not be delegated. However, it considered that the formal requirements for effective compliance with the principle of collegiality vary according to the nature and legal effects of the acts concerned. The issue of a reasoned opinion is a preliminary step, which does not have any binding legal effect for the addressee. The same is also true of a decision to commence proceedings before the Court of Justice, which does not *per se* alter the legal position in question. The Court concluded that it was not necessary for the College itself formally to decide on the wording of the acts which give effect to those decisions and put them in final form. It was sufficient that those decisions be the subject of collective deliberation by the College of

Commissioners and that the information on which they were based be available to the members of the College. The plea of inadmissibility raised by Germany was therefore dismissed.

The sensitive question of *the relationship between budgetary powers and legislative powers* was at the centre of an action brought by the United Kingdom for annulment of a Commission decision to award grants for projects for overcoming social exclusion. The United Kingdom submitted that the Commission did not have competence to commit such expenditure under a budget heading, in the absence of the prior adoption of an act of secondary legislation authorising the expenditure in question (basic act). The Court held that such a basic act was necessary, except with regard to the implementation of budgetary appropriations for non-significant Community action. However, no definition of significant Community action was contained in any act of secondary legislation. In those circumstances, given that implementation of expenditure on the basis of the mere entry of the relevant appropriations in the budget is an exception to the fundamental rule that a basic act must first be adopted, the Court held that there could be no presumption that Community action is non-significant. The Commission must therefore clearly demonstrate that a planned measure is not significant Community action. In the instant case, the Court found that the purpose of the projects at issue was not to prepare future Community action or to launch pilot projects. Rather, it was clear from the actions envisaged, the aims pursued and the persons benefiting from them that they were intended to continue the initiatives of an earlier legislative programme, at a time when it was clear that the Council was not going to adopt a legislative proposal for continuing and extending the Community action in question. In response to the Commission's arguments, the Court set out a number of negative criteria to assist in defining "significant Community action". It made clear, firstly, that there is nothing to prevent significant Community action from entailing limited expenditure or having effects for only a limited period and, secondly, that the degree of coordination to which action is subject at Community level cannot determine whether it is significant or not (Case C-106/96 *United Kingdom* v *Commission* [1998] ECR I-2729).

4. As regards *the free movement of goods*, the judgments in *Chevassus-Marche*, *Decker*, *Lemmens* and *Generics* are worth noting.

To the large number of judgments concerning the levying of "*octroi de mer*" (dock dues) in the French overseas departments have now been added the judgments in Case C-212/96 *Chevassus-Marche* v *Conseil Régional de la Réunion* [1998] ECR I-743 and in Joined Cases C-37/96 and C-38/96 *Sodiprem and Others*

v *Direction Générale des Douanes* [1998] I-2039. Originally, the "*octroi de mer*" was charged only on imports into the French overseas departments (the "old" *octroi de mer*). The Council had adopted Decision 89/688/EEC in which it permitted the old "*octroi de mer*" to be maintained until 31 December 1992 and required that, from that date, the charge should apply to all products whether imported into or produced in the French overseas departments, whilst at the same time permitting a system of exemptions for the latter ("new" *octroi de mer*). The Court had ruled that the old *octroi de mer* was incompatible with the Treaty in so far as it constituted a charge having an effect equivalent to a customs duty on imports (judgment in *Legros*) and that the Council could not permit a charge such as the old *octroi de mer* to be maintained in force, even for a limited period (judgment in *Lancry*).
In the cases decided in 1998, the Court had to rule on the "new" *octroi de mer*. After examining the new charge, it accepted that the system of exemption for local production provided for in the decision was valid, considering that it was subject to sufficiently stringent conditions. In order to reach that conclusion, the Court started from the assumption that, although the Council could not introduce charges having an effect equivalent to a customs duty, it could, by contrast, by virtue of Articles 226 and 227(2) of the EC Treaty, derogate in particular from Article 95, provided that those derogations were strictly necessary and for limited periods and that priority was given to measures least disruptive of the functioning of the common market. The Court held that the system put in place by the Council satisfied those conditions.

The two judgments delivered on the same day in Case C-120/95 *Decker* v *Caisse de Maladie des Employés Privés* [1998] ECR I-1831 and Case C-158/96 *Kohll* v *Union des Caisses de Maladie* [1998] ECR I-1931, concerning, respectively, the free movement of goods and the freedom to provide services, can be considered together, since they raised the same question of principle, namely of determining the compatibility with Community law of a national rule under which reimbursement of the cost of spectacles acquired or out-patient medical services provided in another Member State is subject to specific prior authorisation at the tariffs in force in the State of insurance.

The Court noted that, although Community law does not affect the Member States' powers to organise their social security systems, the Member States must nevertheless, when exercising those powers, comply with Community law and, in particular, with Articles 30, 59 and 60 of the EC Treaty. It went on to hold that the national rules at issue constituted a barrier to the free movement of goods since they encourage insured persons to purchase those products in the State of insurance rather than in other Member States, and were thus liable to curb the

import of spectacles assembled in other States. They also represented a barrier to freedom to provide services since they deterred insured persons from approaching providers of medical services established in another Member State. The Court concluded that those barriers were not justified. Although it did not exclude the possibility that a risk of serious undermining of the financial balance of the social security system might constitute valid justification, it held that not to be the case in the case in point, in so far as flat-rate reimbursements were involved which had no effect on the financing or balance of the social security system. Nor was it established, as regards, in particular, the provision of services, that the contested rules were necessary in order to maintain a balanced medical and hospital system open to all.

The Court also had to clarify the scope of its judgment in Case C-194/94 *CIA Security International* [1996] ECR I-2201, concerning Directive 83/189/EEC, which provides for preventive control, at Community level, of national technical standards and regulations. The aim of that system is to avoid the creation of new obstacles to trade in goods between Member States. The Court had held in that judgment that breach by a Member State of its obligation to notify the Commission in advance of its technical standards constituted a substantive procedural defect such as to render the technical regulations in question inapplicable, and thus unenforceable against individuals.

In *Lemmens*, the Court stated that, while failure to notify renders technical regulations inapplicable inasmuch as they hinder the use and marketing of a product which is not in conformity with them, failure to notify does not have the effect of rendering unlawful any use of a product which is in conformity with the unnotified regulations. The same applies where such a product is used by the public authorities in proceedings against an individual, provided that the use is not liable to create an obstacle to trade which could have been avoided if the notification procedure had been followed. In the case before the national court which referred the case to the Court of Justice, that meant, in practice, that breach of the obligation to notify a technical regulation on breath-analysis apparatus did not have the effect of rendering evidence obtained by means of such apparatus, authorised in accordance with regulations which had not been notified, unusuable against an individual charged with driving while under the influence of alcohol (Case C-226/97 *Lemmens* [1998] ECR I-3711).

Finally, another judgment worth noting in the field of free movement of goods was delivered in Case C-368/96 *The Queen* v *The Licensing Authority, ex parte Generics (UK) and Others*, not yet published in the ECR. It concerned Directive 65/65/EEC on the approximation of national provisions relating to medicinal

products, which provides that a medicinal product may be placed on the market in a Member State only if marketing authorisation has been obtained for that purpose.

The questions raised related to the conditions to be satisfied by an applicant for marketing authorisation if the applicant is to be able to follow the *abridged procedure* for authorisation provided for by the directive, on the ground that the medicinal product concerned is essentially similar to a product which has been authorised within the Community, in accordance with the Community provisions in force, for not less than six (or ten) years and is marketed in the Member State in respect of which the application is made. That abridged procedure, which exempts the applicant from the obligation to provide pharmacological, toxicological and clinical data, also enables the applicant to save the time and expense necessary for gathering that data. In order to determine the meaning of "essentially similar medicinal products", the Court took into consideration a statement in the minutes of the Council according to which similarity is determined on the basis of three criteria: identical qualitative and quantitative composition in terms of active principles, possession of the same pharmaceutical form and bio-equivalence of the products. Furthermore, it must be apparent, in the light of scientific knowledge, that the medicinal product concerned does not differ significantly from the original product as regards safety or efficacy. The Court ruled that a product which had benefited from the abridged procedure could be authorised in respect of all the therapeutic indications already authorised for that product, including those that have been authorised for less than six (or ten) years. In so ruling, the Court did not follow the arguments of the Commission, which proposed that, in the exceptional circumstances of major therapeutic innovation — essentially where there is an entirely new therapeutic indication — the results of new tests should be protected in their turn in the same way as for any new medicinal product.

5. In the field of *agriculture*, the three most important judgments concerned once again the banana sector and the measures adopted to check the effects of "mad cow" disease. In both cases, the Court had to reply to questions referred for a preliminary ruling concerning the validity of a Community measure and also rule on an application for annulment lodged by a Member State in respect of the same measure.

In Case C-122/95, Germany sought annulment of the Council's approval of the conclusion of the framework agreement on *bananas* with four Central and South American States, included within the agreements reached in the Uruguay Round multilateral negotiations (1986 — 1994). That framework agreement was an

arrangement concluded by the Community following the condemnation, under the GATT, of the Community arrangements for importing bananas. Germany criticised, in particular, the discriminatory treatment accorded to the different categories of traders marketing bananas in the Community. The Court held that some of those differences in treatment accorded to traders within the Community were acceptable, since they were merely an automatic consequence of the different treatment accorded by the Community to third countries with which such traders had entered into commercial relations. That was not the case, however, with the quite manifest difference in treatment whereby certain traders were exempted from the export-licence system. That difference in treatment was on top of the already unequal treatment of the different categories of traders and the Court held that the Council had not established the need for that measure. The Court therefore partially granted the application (Case C-122/95 *Germany* v *Council* [1998] ECR I-973). In response to a question from a German court, the Court followed the same reasoning in concluding, in a separate judgment delivered on the same day, that a Commission implementing regulation was partially invalid (Joined Cases C-364/95 and C-365/95 *T. Port* v *Hauptzollamt Hamburg-Jonas* [1998] ECR I-1023).

In the cases concerning 'mad cow' disease the Court had to consider the Commission's exercise of its powers relating to animal health and their balancing with the requirements of the common market. By the contested decision, the Commission had adopted certain emergency measures to check the effects of 'mad cow' disease and had, in particular, prohibited the United Kingdom, which was particularly affected by that disease, from exporting to the other Member States and to third countries live or dead bovine animals and all products obtained from them. In view of the Commission's discretionary powers in this field, the Court conducted a limited judicial review and concluded that the decision was valid in the light of the arguments put forward in the two cases. It considered, in particular, that the Commission was entitled to react to the publication of new information concerning the disease and that confinement of the animals and products within a specific territory constituted an appropriate measure, even if it affected exports to third countries. In dismissing the plea that the measures adopted were disproportionate, the Court held in particular that, where there is uncertainty as to the existence or extent of risks to human health, the institutions may take protective measures without having to wait until the reality and seriousness of those risks becomes fully apparent. In response to a plea of illegality raised by the United Kingdom, the Court, referring to its previous case-law, ruled that the two directives on the basis of which the contested decision had been adopted had properly been based on Article 43 of the EC Treaty, even though those directives authorised the Commission incidentally to adopt safeguard

measures covering products which were not included in Annex II to the EC Treaty (Case C-157/96 *National Farmers' Union and Others* [1998] ECR I-2211 and Case C-180/96 *United Kingdom* v *Commission* [1998] ECR I-2265).

6. *Freedom of movement for persons* within the Union was the subject of numerous judgments in 1998, addressing a wide range of issues. Besides the usual questions relating to social security for migrant workers, the judgments of the Court touched upon the principle of citizenship of the Union, the use of languages, national public service, direct taxation of natural persons and, finally, the special rules relating to the Channel Islands and the Isle of Man.

Questions submitted for a preliminary ruling by a German court obliged the Court to consider, for the first time, the meaning and scope of the concept of *citizenship of the Union* introduced by the Maastricht Treaty. The reference concerned the situation of a Community national residing in Germany who was refused a social security benefit on the ground that she had no residence permit. The Court held that, compared with the treatment granted to nationals, her treatment entailed discrimination prohibited by Article 6 of the EC Treaty. However, the German Government submitted, *inter alia*, that the facts of the case did not fall within the scope *ratione personae* of the Treaty, so that the claimant could not rely on Article 6. In reply, the Court held that, even if the claimant did not have the status of a worker within the meaning of Community law, her situation was such that, as a national of a Member State lawfully residing in the territory of another Member State, she none the less came within the scope *ratione personae* of the Treaty provisions on European citizenship. Since Article 8(2) of the EC Treaty attached to the status of citizen of the Union the rights and duties laid down by the Treaty, such a citizen lawfully resident in the territory of the host Member State could therefore rely on Article 6 of the Treaty in all situations which fell within the scope *ratione materiae* of Community law (Case C-85/96 *Martínez Sala* v *Freistadt Bayern* [1998] ECR I-2691).

Still on the matter of *Article 6 of the Treaty*, the Court received a reference inquiring about the compatibility with Community law of national legislation intended to protect a linguistic minority in the Member State concerned. The reference came from Italy and concerned the Italian rules protecting the German-speaking community of the Province of Bolzano. Those rules provide that the German language is to be on an equal footing with Italian, in particular in relation to criminal proceedings. The question referred was whether it was compatible with Community law to refuse to allow those rules to be applied in favour of German-speaking Community nationals travelling and staying in Bolzano. The Court replied that Article 6 of the Treaty precludes any such refusal, since it

involves discrimination, or at least indirect discrimination, on the grounds of nationality, which impedes the right of Community nationals to go to the Member State concerned to receive services or the option of receiving services there. Furthermore, that discrimination did not appear to be justified with regard to the objective pursued, since it did not appear from the case-file that the objective of protecting the ethno-cultural minority would be undermined if the rules in issue were extended to cover German-speaking nationals of other Member States exercising their right to freedom of movement (Case C-274/96 *Bickel and Franz*, not yet published in the ECR).

In *Schöning-Kougebetopoulou*, the question was whether a clause contained in a collective agreement applicable to the public service of a Member State, which, in determining promotions of employees of that public service, did not take account of previous periods of comparable employment completed in the public service of another Member State, was compatible with Community law. The Court held that such a clause manifestly worked to the detriment of migrant workers who had spent part of their careers in the public service of another Member State and so contravened the principle of non-discrimination. Without prejudice to the derogation provided for by Article 48(4) of the EC Treaty, it also held that that clause was not justified (Case C-15/96 *Schöning-Kougebetopoulou* v *Freie und Hansestadt Hamburg* [1998] ECR I-47 and, to the same effect, Case C-187/96 *Commission* v *Greece* [1998] ECR I-1095).

As regards *direct taxation*, in the absence of Community rules the Member States have concluded many bilateral conventions in order, in particular, to avoid double taxation of frontier workers. Under such a convention between France and Germany, Mrs Gilly, who resided in France but worked in the public sector in Germany, was taxed in Germany on her public service pay because she was a German national. That pay was also taxed as part of the household's total income in France, but the fact that it was taxed in Germany entitled her to a tax credit equal to the amount of the French tax on the relevant income. Before the national court, Mr and Mrs Gilly claimed that they were subject to discriminatory and excessive taxation. Asked to interpret Community law, the Court held that differentiations resulting from the allocation of fiscal jurisdiction between two Member States could not be regarded as constituting discrimination prohibited under Article 48 of the Treaty. In the absence of any unifying or harmonising measures adopted in the Community context, they arose from the contracting parties' competence to define the criteria for allocating their powers of taxation as between themselves, with a view to eliminating double taxation. For the purposes of the allocation of fiscal jurisdiction, it was not unreasonable for the Member States to look to international practice and the model convention drawn

up by the OECD, in particular as regards the choice of the connecting factors. Strictly speaking, whether the tax treatment of the taxpayers concerned is favourable or unfavourable is determined not by the choice of the connecting factor but by the disparities between the tax scales of the Member States concerned and, in the absence of any Community legislation in this field, the determination of those scales is a matter for the Member States (Case C-336/96 *Gilly* v *Directeur des Services Fiscaux du Bas-Rhin* [1998] ECR I-2793).

As regards *social security benefits for migrant workers*, the judgments in *Molenaar*, *Gómez Rodríguez* and *Commission* v *France* are worth highlighting.

Like Mrs Gilly, Mr and Mrs Molenaar lived in France but worked in Germany, where they challenged the requirement to join a German social care insurance scheme, since they had been informed that, despite that requirement, they were not entitled to benefits under the scheme while they resided in France. In response to a question from the national court, the Court of Justice considered, in turn, the nature of the benefit concerned and the consequences to be drawn in relation to a situation such as that of the Molenaars. It held that the social care insurance scheme involved cash sickness benefits for the purposes of Regulation (EEC) No 1408/71 and, consequently, that entitlement to those allowances could not be made dependent upon the insured person's residence in the Member State in which he was insured. Since that was an established principle, the Court considered that Community law did not confer upon persons in the same situation as Mr and Mrs Molenaar the right to be exempted from the payment of contributions for the financing of social care insurance (Case C-160/96 *Molenaar* v *Allgemeine Ortskrankenkasse Baden-Württemberg* [1998] ECR I-843).

The *Gómez Rodríguez* case concerned the grant of orphans' pensions by a German body to Spanish residents. The claimants had received German orphans' pensions in the period preceding Spain's accession to the Communities, on the basis of a bilateral convention between the two States. After accession, the Spanish institution had sole competence. When they reached the age of 18, the age at which their entitlement to orphans' pensions came to an end under Spanish law, the claimants re-applied for the pensions under German law, which provides for a higher age limit, but their application was refused. In response to a question from the national court before which that refusal was challenged, the Court considered, *inter alia*, whether Articles 48 and 51 of the EC Treaty precluded the loss of social security advantages as a result of the inapplicability, following the entry into force of Regulation No 1408/71, of a bilateral social security convention. It recalled that it had declared such an effect to be incompatible with

Community law in Case C-227/89 *Rönfeldt* v *Bundesversicherungsanstalt für Angestellte* [1991] ECR I-323. In this case, however, the Court restricted the scope of that judgment, by declaring that that principle could not apply in so far as, when the benefits are set under the regulation for the first time, a comparison has already been made of the advantages resulting from Regulation No 1408/71 and from a bilateral social security convention, with the result that it was more advantageous to apply the Regulation than the convention. The Court pointed out that the opposite conclusion would mean that any migrant worker in the same position as the claimants could at any time ask for either the arrangements under the Regulation or those under the convention to be applied, depending on the most advantageous outcome at that given time, which would cause considerable administrative difficulties despite there being no basis for this approach in Regulation No 1408/71 (Case C-113/96 *Gómez Rodríguez* v *Landesversicherungsanstalt Rheinprovinz* [1998] ECR I-2461).

In another case, the Court granted an application by the Commission for a declaration that, by not allowing frontier workers residing in Belgium to qualify for supplementary retirement pension points after being placed in early retirement, the French Republic had failed to fulfil its obligations under the Treaty. The Court held that the scheme in question constituted a condition of dismissal which was indirectly discriminatory towards migrant workers, prohibited by Article 7 of Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community. The Court refused to grant the French Government's request that the effects of the judgment be limited in time, holding that there was nothing to justify departure from the principle that interpretative judgments have retroactive effect (Case C-35/97 *Commission* v *France* [1998] ECR I-5325).

Finally, still on the subject of freedom of movement for persons, the special rules applicable to the Channel Islands and the Isle of Man were the subject of a judgment delivered on 16 July 1998 in response to an order for reference from the Royal Court of Jersey (Case C-171/96 *Pereira Roque* v *His Excellency the Lieutenant Governor of Jersey* [1998] ECR I-4607). This was the first time that a court of the Island of Jersey had used the preliminary ruling procedure.

7. Articles 52 and 59 of the EC Treaty, governing *freedom of establishment* and *freedom to provide services*, did not give rise to many judgments during the period under review. Besides the *Kohll* case, which has already been considered above, two important cases, both concerning the restrictions which those two freedoms may entail for the Member States' sovereignty in fiscal matters, should none the less be mentioned.

The *ICI* case related to allegedly discriminatory fiscal treatment in the matter of corporation tax. The national court essentially asked the Court whether Article 52 of the Treaty precludes legislation of a Member State which, in the case of companies established in that State belonging to a consortium through which they control a holding company, makes a particular form of tax relief subject to the requirement that the holding company's business consist wholly or mainly in the holding of shares in subsidiaries that are established in the Member State concerned. The Court first recalled that the provisions concerning freedom of establishment prohibit, in particular, the Member State of origin from hindering the establishment in another Member State of one of its nationals or of a company incorporated under its legislation. That was the case in this instance since, under the United Kingdom legislation, consortium relief was available only to companies controlling, wholly or mainly, subsidiaries whose seats were in the national territory. The Court also rejected the reasons put forward by the United Kingdom Government in justification of that discrimination, based on the risk of tax avoidance and the diminution of tax revenue resulting from the fact that revenue lost through the granting of tax relief on losses incurred by resident subsidiaries could not be offset by tax on the profits of non-resident subsidiaries. On the latter point, the Court considered that the discrimination was not necessary to protect the cohesion of the tax system at issue (Case C-264/96 *ICI* v *Kenneth Hall Colmer* (*Her Majesty's Inspector of Taxes*) [1998] ECR I-4695).

The *Safir* case concerned the effect of national rules governing taxation of savings in the form of capital life insurance on the freedom to provide services within the Community of companies offering that type of savings product. The Swedish legislation provided for taxation arrangements which were technically quite different depending on whether the insurance company was established in Sweden or abroad. If the company was established in Sweden, the tax, calculated on the basis of the company's share capital, was levied on that company, whereas if the company was established abroad it was the person who had taken out life insurance who had to pay a tax on the premiums paid, after registering himself and declaring the payment of the premium. The Court held that the Swedish legislation had a number of aspects liable to dissuade individuals from taking out insurance with companies not established in Sweden and liable to dissuade insurance companies from offering their services on the Swedish market (obligation to take specific steps, greater surrender costs after a short period, obligation to provide precise information concerning the revenue tax to which the company is subject and uncertainty created by differences of assessment on the part of the Swedish authorities). In view of the fact that the legislation also lacked transparency when other more transparent systems were conceivable, the Court came to the conclusion that Article 59 of the Treaty precluded the

application of the system under consideration (Case C-118/96 *Safir* v *Skattemyndigheten i Dalarnas Län* [1998] ECR I-1897).

8. *Competition* law, in the broad sense, comprising both competition between undertakings and the control of concentrations and State aid, held the attention of the Court in many cases, brought to it through references for preliminary rulings, through direct actions by the Member States or by the institutions or through appeals against judgments of the Court of First Instance. The main cases disposed of in 1998 came to it through all those avenues.

First, as regards the *prohibition of restrictive agreements*, laid down in Article 85 of the Treaty, questions were referred to the Court of Justice by a national court which had to appraise the validity, under Article 85, of a contract containing an obligation to export luxury cosmetics to a non-member country and a prohibition of reimporting and marketing those products in the Community. The Court held that such stipulations were to be construed not as being intended to exclude parallel imports and marketing of the contractual product within the Community but as being designed to enable the producer to penetrate the market in the third country concerned. That means that it is not an agreement which, by its very nature, is prohibited by Article 85(1). As regards the question whether such an agreement falls within the scope of that provision on the ground that it has the *effect* of preventing, restricting or distorting competition within the common market and is liable to affect the pattern of trade between Member States, that is a question for the national court to determine. In order to assist it in that task, the Court indicated that that might be the case where the Community market in the products in question is characterised by an oligopolistic structure or by an appreciable difference between the prices charged for the contractual product within the Community and those charged outside the Community and where, in view of the position occupied by the supplier of the product at issue and the extent of the supplier's production and sales in the Member States, the prohibition entails a risk that it might have an appreciable effect on the patterns of trade between Member States such as to undermine attainment of the objectives of the common market. Finally, the Court explained that such agreements do not escape the prohibition laid down in Article 85(1) on the ground that the Community supplier concerned distributes his products within the Community through a selective distribution network covered by an exemption decision under Article 85(3) (Case C-306/96 *Javico* v *Yves Saint Laurent Parfum* [1998] ECR I-1983).

The *Bronner* case, concerning *Article 86 of the EC Treaty*, raised the question of the application in Community law of the doctrine of "essential facilities". The Court had to determine whether the refusal by a press undertaking holding a very

large share of the daily newspaper market in a Member State and operating the only nationwide newspaper home-delivery scheme in that Member State to allow the publisher of a rival newspaper to have access to the scheme in return for appropriate remuneration constituted an abuse of a dominant position. The question was based on the premise that, by reason of the small circulation of its newspaper, the second publisher was unable, either alone or in cooperation with other publishers, to set up and operate its own home-delivery scheme.

In order to answer that question, the Court explained that it was for the national court first to determine whether home-delivery schemes were indeed a separate market in relation to other methods of distributing daily newspapers. If so, the existence of a dominant position within the meaning of Article 86 would seem to be established. It was also necessary to determine whether the refusal to allow the publisher of the rival newspaper access to the scheme did constitute an actual abuse. On this point, the Court stated that, in order for that to be the case, it was necessary not only for the refusal of the service comprised in home delivery to be likely to eliminate all competition on the daily newspaper market on the part of the person requesting the service and for such refusal to be incapable of being objectively justified, but also for the service in itself to be indispensable for carrying on that person's business, in that there was no actual or potential substitute for the home-delivery scheme. According to the Court, that was not the situation in a case such as that before it, for two reasons. In the first place, other methods of distributing daily newspapers existed and were used, even though they might be less advantageous for the distribution of some of them. Second, there were no obstacles to make it impossible, or even unreasonably difficult, for any other publisher of daily newspapers to establish, alone or in cooperation with other publishers, its own nationwide home-delivery scheme and use it to distribute its own daily newspapers. On the latter point, the Court pointed out that, for access to the existing system to be capable of being regarded as indispensable, it would be necessary at the very least to establish that it was not economically viable to create a second home-delivery scheme for the distribution of daily newspapers *with a circulation comparable* to that of the daily newspapers distributed by the existing scheme (Case C-7/97 *Bronner* v *Mediaprint Zeitungs- und Zeitschriftenverlag & Co and Others*, not yet published in the ECR).

In Joined Cases C-68/94 and C-30/95, which concerned applications for annulment of a decision concerning *the control of concentrations between undertakings*, the Court addressed, *inter alia*, the theory of the failing company defence and the question of collective dominant positions (*France and Others* v *Commission* [1998] ECR I-1375).

As regards the theory of the failing company defence, the Commission had stated, in the contested decision, that a concentration which would normally be considered as leading to the creation or reinforcement of a dominant position on the part of the acquiring undertaking may be regarded as not being the cause of the dominant position if, in the event of the concentration being prohibited, that undertaking would inevitably achieve or reinforce a dominant position. According to the Commission, that was normally the case if it was clear that (1) the acquired undertaking would in the near future be forced out of the market if not taken over by another undertaking; (2) the acquiring undertaking would gain the market share of the acquired undertaking if it were forced out of the market (absorption of market shares test); and (3) there was no less anti-competitive alternative purchase. The Court broadly approved that approach and, in particular, upheld the absorption of market shares test, which helps to ensure that the concentration has a neutral effect in relation to the deterioration of the competitive structure of the market.

The Court also had to determine whether the merger regulation applied to cases involving a collective dominant position and so allowed the Commission to prevent any concentration leading to the creation or strengthening of a dominant position, whether held by one or more undertakings. The Court answered that question in the affirmative, on the basis of both the purpose and the general scheme of the regulation in point. A concentration which created or strengthened a dominant position on the part of the parties concerned with an entity not involved in the concentration was liable to prove incompatible with the objective pursued by the regulation, namely a system of undistorted competition.

According to the Court, in order to establish that a collective dominant position exists in a given case, the Commission must assess, using a prospective analysis of the reference market, whether the concentration which has been referred to it leads to a situation in which effective competition on the relevant market is significantly impeded by the undertakings involved in the concentration and one or more other undertakings which together are able, in particular because of correlating factors existing between them, to adopt the same conduct on the market and act to a considerable extent independently of their competitors, their customers and also of consumers. Such an approach necessitates a close examination of, in particular, the circumstances which, in each individual case, are relevant for assessing the effects of the concentration on competition in the reference market. As regards the decision in point, the Court considered that the Commission's analysis had certain flaws which affected the economic assessment of the concentration in question and that it had not been proved in law that the

concentration would entail a collective dominant position liable to act as a significant barrier to effective competition on the relevant market.

In the *State aid* field, an appeal by the Commission against a judgment given by the Court of First Instance in 1995 in Case T-95/94 *Sytraval and Brink's France* v *Commission* [1995] ECR II-2651 gave the Court the opportunity to define more precisely the Commission's obligations in examining a complaint and in stating the reasons for its dismissal (Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719). The Court explained that decisions adopted by the Commission in this field are always addressed to the Member States concerned. Since neither the Treaty nor Community legislation lays down the procedure for dealing with complaints objecting to State aid, the position is the same where such decisions concern State measures objected to in complaints on the ground that they constitute State aid contrary to the Treaty and the Commission refuses to initiate the procedure provided for in Article 93(2) because it considers that the measures complained of do not constitute State aid within the meaning of Article 92 of the Treaty or that they are compatible with the common market. Where the Commission adopts such a decision and proceeds, in accordance with its duty of sound administration, to inform the complainants of its decision, it is the decision addressed to the Member State, and not the letter to the complainant informing him of that decision, which must be challenged in any action for annulment which the complainant may bring.

The Court also examined the extent of the Commission's obligations when it receives a complaint alleging that national measures provide State aid. First, it ruled that there was no basis for imposing on the Commission, as the Court of First Instance had done, a duty to conduct in certain circumstances an exchange of views and arguments with the complainant. Contrary to what had been held by the Court of First Instance, the Commission was under no duty to examine on its own initiative objections which the complainant would certainly have raised if the information obtained by the Commission during its investigation had been disclosed to it. According to the Court, that criterion, which would require the Commission to put itself in the complainant's shoes, is not an appropriate criterion for defining the scope of the Commission's duty to investigate. However, the Court went on to hold that the Commission was required, in the interests of sound administration of the fundamental rules of the Treaty relating to State aid, to examine complaints diligently and impartially, which might make it necessary for it to examine matters not expressly raised by a complainant. Finally, as regards the stating of reasons for a Commission decision finding that there is no State aid as alleged by a complainant, the Court stated that the Commission must at least provide the complainant with an adequate explanation

of the reasons for which the facts and points of law put forward in the complaint have failed to demonstrate the existence of State aid. The Commission is not required, however, to define its position on matters which are manifestly irrelevant or insignificant or plainly of secondary importance.

9. Two judgments merit a detour into the field of *indirect taxation*.

In *Outokumpu* the Court was, *inter alia*, asked about the compatibility with *Article 95 of the Treaty* of a tax which is levied on electricity of domestic origin at rates which vary according to its method of production, whereas on imported electricity it is levied at a flat rate which is higher than the lowest rate but lower than the highest rate applicable to electricity of domestic origin. In so far as that differentiation was based on environmental considerations, the Court acknowledged that it pursued an objective which was compatible with Community law and even constituted one of the essential objectives of the Community. It held, however, that those considerations did not affect the settled case-law according to which Article 95 of the Treaty is infringed where the taxation on the imported product and that on the similar domestic product are calculated in a different manner on the basis of different criteria which lead, if only in certain cases, to higher taxation being imposed on the imported product. The Court therefore concluded that the national tax was incompatible with Article 95, after having pointed out that the national legislation at issue did not give the importer even the opportunity of demonstrating that the electricity imported by him has been produced by a particular method in order to qualify for the rate applicable to electricity of domestic origin produced by the same method (Case C-213/96 *Outokumpo* [1998] ECR I-1777).

As regards *excise duties*, a national court referred a question to the Court concerning a situation in which cigarettes and tobacco were released for consumption in Luxembourg where they were acquired from a company for the use of private individuals in the United Kingdom through another company acting, in return for payment, as agent for those individuals. Transportation of the goods was also arranged by the second company on behalf of those individuals and effected by a professional carrier charging for his services. The Court held that Directive 92/12/EEC on products subject to excise duty did not preclude the levying of excise duty in the United Kingdom (Case C-296/95 *The Queen* v *Commissioners of Customs and Excise, ex parte EMU Tabac and Others* [1998] ECR I-1605).

10. The Community legislation on *public procurement* is the source of an increasing number of cases before the Court, mainly as a result of questions

referred for a preliminary ruling by national courts. Two important judgments have helped to clarify the concept of "contracting authority" for the purposes of the directives coordinating the procedures for the award of public works contracts (Case C-44/96 *Mannesmann Anlagenbau Austria and Others* v *Strohal Rotationsdruck* [1998] ECR I-73) and contracts for services (Case C-360/96 *Gemeente Arnhem and Gemeente Rheden* v *BFI Holding*, not yet published in the ECR). The concept of "contracting authority" is important since it designates those bodies whose participation in the conclusion of a contract for works or services determines the application to that contract of the Community public procurement rules. In interpreting that concept the Court therefore referred to the objective of the directives concerned, which is to avoid the risk of preference being given to national tenderers or applicants whenever a contract is awarded by the contracting authorities.

According to the directives, "contracting authorities" is to mean the State, regional or local authorities, bodies governed by public law and associations formed by one or more of such authorities or bodies governed by public law. It is primarily the concept of "body governed by public law" which raises difficulties of interpretation in practice. According to the directives, that category applies to any body (1) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, (2) having legal personality, and (3) financed, for the most part, by the State or regional or local authorities, or other bodies governed by public law; or subject to managerial supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities or by other bodies governed by public law. The Court confirmed that those three conditions are cumulative.

As regards the first condition, the Court held, as regards public service contracts, that the absence of an industrial or commercial character is a criterion intended to clarify the meaning of the term "needs in the general interest" and does not mean that all needs in the general interest are not industrial or commercial in character (*BFI Holding*). As regards public works contracts, the Court thus held that that condition is satisfied where a body is established in order to produce, on an exclusive basis, official administrative documents, some of which require secrecy or security measures, whilst others are intended for the dissemination of legislative, regulatory and administrative documents of the State. Those documents are closely linked to public order and the institutional operation of the State and require guaranteed supply and production conditions which ensure that standards of confidentiality and security are observed (*Mannesmann*). In the field

of services, the removal and treatment of household refuse may also be regarded as constituting a need in the general interest (*BFI Holding*).

Again as regards the concept of needs in the general interest, not having an industrial or commercial character, the Court held that that term does not exclude needs which are also met or could be met by private undertakings. However, although the absence of competition is not a condition necessarily to be taken into account in defining a body governed by public law, the existence of significant competition may none the less be indicative of the absence of a need in the general interest, not having an industrial or commercial character (*BFI Holding*).

The Court also made it clear that the condition that the body must have been established for the "*specific*" purpose of meeting needs in the general interest, not having an industrial or commercial character, does not mean that it should be entrusted *only* with meeting such needs. It may therefore pursue other activities, which may even represent the major part of its activities, without losing the character of a contracting authority (*Mannesmann*, *BFI Holding*). Furthermore, since the directive on public works contracts makes no distinction between public works contracts awarded by a contracting authority for the purposes of fulfilling its task of meeting needs in the general interest and those which are unrelated to that task, all works contracts, of whatever nature, entered into by such an entity, are to be considered to be public works contracts (*Mannesmann*).

Finally, the Court added that a contract cannot cease to be a public works contract when the rights and obligations of the contracting authority are transferred to an undertaking which is not a contracting authority. The aim of the directive, which is the effective realisation of freedom of establishment and freedom to provide services in the field of public works contracts, would be undermined if application of the regime established by the directive could be excluded in such a case. The situation would be different only if it were to be established that, from the outset, the whole of the project at issue fell within the objects of the undertaking concerned and the works contracts relating to that project were entered into by the contracting authority on behalf of that undertaking (*Mannesmann*).

11. The field of *intellectual property rights* was the subject of a number of interesting judgments during the period covered by this report, relating to Directive 89/104/EEC to approximate the laws of the Member States relating to trade marks and Directive 92/100/EEC on rental right and lending right and on certain rights related to copyright.

The Court was asked to interpret Article 4(1)(b) of Directive 89/104, according to which "[a] trade mark shall not be registered or, if registered, shall be liable to be declared invalid ... (b) if because of its identity with, or similarity to, the earlier trade mark and the identity or similarity of the goods or services covered by the trade marks, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark". The Court pointed out that the likelihood of confusion on the part of the public must be appreciated globally, taking into account all relevant factors and that that global assessment implies some interdependence between the relevant factors and in particular a similarity between the trade marks and between the goods and services covered by them. In that respect, the Court held that registration of a trade mark may have to be refused, despite a lesser degree of similarity between the goods or services covered, where the marks are very similar and the earlier mark, in particular its reputation, is highly distinctive. It followed that the distinctive character of the earlier trade mark, and in particular its reputation, must be taken into account when determining whether the similarity between the goods or services covered by the two trade marks is sufficient to give rise to the likelihood of confusion. The Court also stated that there may be a likelihood of confusion even where the public perception is that the goods or services have different places of production. By contrast, there can be no such likelihood where it does not appear that the public could believe that the goods and services come from the same undertaking or, as the case may be, from economically-linked undertakings (Case C-39/97 *Canon* v *Metro-Goldwyn-Mayer* [1998] ECR I-5507).

Directive 89/104 contains, furthermore, a rule concerning "*Community* exhaustion", by virtue of which the right conferred by a trade mark is exhausted, with the result that the proprietor of the trade mark is no longer entitled to prohibit its use, where the products have been put on the market *in the EEA* by the proprietor or with his consent. In *Silhouette*, the Court was asked whether the directive left it open to the Member States to make provision in their national law for the principle of *international* exhaustion (the principle that the proprietor's rights are exhausted once the trade-marked product has been put on the market, *no matter where that occurs* and thus also in respect of products put on the market in a non-member country). The Court replied to that question in the negative, on the ground, in particular, that that is the only interpretation of the directive which is fully capable of ensuring that the purpose of the directive is achieved, namely to safeguard the functioning of the internal market. A situation in which some Member States could provide for international exhaustion while others provided for Community exhaustion only would inevitably give rise to obstacles to the free movement of goods and the freedom to provide services

(Case C-355/96 *Silhouette International Schmied* v *Hartlauer Handelsgesellschaft* [1998] ECR I-4799).

Again as regards the principle of exhaustion, this time Community exhaustion, a national court asked the Court of Justice whether that principle was not breached by Directive 92/100, in so far as that directive provides for an *exclusive rental right*. On the one hand, the directive requires Member States to provide a right to authorise or prohibit the rental and lending of originals and copies of copyright works and, on the other, it provides that those rights are not to be exhausted by any sale or other act of distribution. The rental right remains one of the prerogatives of the author and producer notwithstanding the sale of the physical recording. In order to assess the validity of that approach, the Court pointed out that literary and artistic works may be the subject of commercial exploitation by means other than the sale of the recordings made of them and that specific protection of the rental right may be justified on grounds of the protection of industrial and commercial property, pursuant to Article 36 of the EC Treaty. The introduction by the Community legislation of an exclusive rental right cannot therefore constitute a breach of the principle of exhaustion of the distribution right, the purpose and scope of which are different. After also holding that the general principle of freedom to pursue a trade or profession had not been impaired in a disproportionate manner, the Court concluded that the contested provision of the directive was valid (Case C-200/96 *Metronome Musik* v *Music Point Hokamp* [1998] ECR I-1953).

In a second judgment, the Court interpreted the same exclusive rental right, as regards video films, as meaning that that right can, by its very nature, be exploited by repeated and potentially unlimited transactions, each of which involves the right to remuneration. The specific right to authorise or prohibit rental would be rendered meaningless if it were held to be exhausted as soon as the object was first offered for rental. It follows that the holder of an exclusive rental right may prohibit copies of a film being offered for rental in a Member State even where the offering of those copies for rental has been authorised in the territory of another Member State (Case C-61/97 *FDV and Others* v *Laserdisken* [1998] ECR I-5171).

12. The first judgment of the Court of Justice disposing of an appeal brought against a judgment of the Court of First Instance in the field of *dumping* was delivered on 10 February 1998 in Case C-245/95 P *Commission* v *NTN and Koyo Seiko* [1998] ECR I-401. The main issue was the assessment of injury in the context of review of a regulation imposing anti-dumping duties. The Court of First Instance had stated that a regulation modifying existing anti-dumping duties

after such a review should establish the existence of injury within the meaning of Article 4(1) of the basic regulation. In its appeal, the Commission submitted, to the contrary, that the initial investigation requires a finding of injury but the amendment of an anti-dumping measure does not and that anti-dumping duties may be adjusted even if no additional injury is found. The Court of Justice rejected that argument. According to the Court, even if no criterion relating to the risk of recurrence of injury is to be found in the basic regulation, it is nevertheless true that in the course of a review consideration must be given to the question whether the expiry of an anti-dumping measure previously imposed could once more lead to injury or to a threat of injury and such consideration must comply with the provisions of Article 4 of the basic regulation.

13. As in previous years, the principle of *equal treatment of men and women* resulted in numerous references to the Court for a preliminary ruling. In addition to a judgment of principle concerning the situation of homosexual couples, the Court provided certain interpretations of Council Directives 75/117/EEC, 76/207/EEC and 92/85/EEC.

In *Grant*, the national tribunal sought to ascertain whether an employer's refusal to grant travel concessions to the person of the same sex with whom an employee has a stable relationship constitutes discrimination prohibited by Article 119 of the Treaty and Directive 75/117, where such concessions are granted to an employee's spouse or the person of the opposite sex with whom an employee has a stable relationship outside marriage. The Court first pointed out that what was concerned was not discrimination directly based on sex, since the contested provision is applied regardless of the sex of the worker concerned (concessions are also refused to a male worker living with a person of the same sex). Second, the Court considered whether a stable relationship between persons of the same sex had to be treated as equivalent to marriage or to a stable relationship with a partner of the opposite sex, bearing in mind the current state of Community law, the laws of the Member States and the case-law of the European Court of Human Rights. It concluded that, in the present state of the law within the Community, such equivalence is not accepted and that therefore it is only the legislature which can, should it consider it appropriate, adopt measures which may affect that position. Furthermore, the Court held that its reasoning in Case C-13/94 *P* v *S* [1996] ECR I-2143 was limited to the case of a worker's gender reassignment and did not apply to differences of treatment based on a person's sexual orientation (Case C-249/96 *Grant* v *South West Trains* [1998] ECR I-621).

In addition to Article 119 of the Treaty, the principle of equal treatment of men and women finds expression in Community law *inter alia* in Directive 75/117,

concerning equal pay, Directive 76/207, concerning access to employment, vocational training and promotion and working conditions and Directive 92/85, which is intended to improve the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (which was interpreted for the first time by the Court in *Boyle and Others*, discussed below).

In *Brown*, noting that, by virtue of Directive 76/207, a woman is protected against dismissal on the grounds of her absence, during maternity leave, the Court stated that the principle of non-discrimination required similar protection throughout the period of pregnancy. As regards direct discrimination on grounds of sex, Directive 76/207 therefore precluded dismissal of a female worker at any time during her pregnancy for absences due to incapacity for work caused by an illness resulting from that pregnancy. The Court expressly reversed its decision in Case C-400/95 *Larsson* v *Føtex Supermarked* [1997] ECR I-2757, paragraph 23 and concluded, in passing, that where a woman is absent owing to illness resulting from pregnancy or childbirth, and that illness arose during pregnancy and persisted during and after maternity leave, her absence not only during maternity leave but also during the period extending from the start of her pregnancy to the start of her maternity leave cannot be taken into account for the purpose of computing the period justifying her dismissal under national law (Case C-394/96 *Brown* v *Rentokil Initial UK* [1998] ECR I-4185).

In order to enable a British court to assess the validity of a maternity scheme applied to staff of a public body, the Court provided it with a series of answers relating to the interpretation of Article 119 of the Treaty and the three aforementioned directives. Those replies determine the rights of female workers before, during and after their maternity leave and concern the payments to which they are entitled, the time when they must commence their maternity leave, the accrual of rights to annual leave and pension rights and the relationship between maternity leave and sick leave. The Court thus held that a clause in a contract of employment which makes the application of a maternity scheme that is more favourable than the statutory scheme conditional on the pregnant woman's returning to work after the birth of the child, failing which she is required to repay the difference between the contractual maternity pay and the statutory payments in respect of that leave, did not constitute discrimination on grounds of sex. The Court also held that, although the right to the minimum period of 14 weeks' maternity leave provided for by the directive is one which may be waived by workers (with the exception of the two weeks' compulsory maternity leave), if a woman becomes ill during the period of statutory maternity leave and places herself under the (more favourable) sick leave arrangements, and the sick leave

terminates before the expiry of the period of maternity leave, the period of sick leave does not affect the duration of the maternity leave, which continues until the end of the period of 14 weeks initially determined (Case C-411/96 *Boyle and Others* v *Equal Opportunities Commission* [1998] ECR I-6401).

According to Article 6 of Directive 76/207, Member States are to ensure effective judicial protection for persons who consider themselves wronged by a breach of the principle of equal treatment of men and women. In *Coote*, the Court held that that provision requires Member States to introduce into their national legal systems such measures as are necessary to ensure judicial protection for workers whose employer, after the employment relationship has ended, refuses to provide references as a reaction to legal proceedings brought to enforce compliance with the principle of equal treatment within the meaning of Directive 76/207. In the absence of that requirement, fear of such retaliatory measures on the part of the employer might deter workers who considered themselves the victims of discrimination from pursuing their claims by judicial process, and would consequently be liable seriously to jeopardise implementation of the aim pursued by the directive (Case C-185/97 *Coote* v *Granada Hospitality* [1998] ECR I-5199).

14. The objective of *consumer protection* served as a criterion for the Court in the interpretation of two Council directives adopted in that field. As regards Directive 85/577/EEC to protect the consumer in respect of contracts negotiated away from business premises, the Court held that a contract of guarantee concluded by a natural person who is not acting in the course of his trade or profession does not come within the scope of the directive where it guarantees repayment of a debt contracted by another person who, for his part, is acting within the course of his trade or profession (Case C-45/96 *Bayerische Hypotheken- und Wechselbank* v *Dietzinger* [1998] ECR I-1199). By contrast, the Court interpreted Directive 90/314/EEC on package travel, package holidays and package tours as meaning that the purchaser of a package holiday who has paid the travel organiser for the costs of his accommodation before travelling on his holiday and is compelled, following the travel organiser's insolvency, to pay the hotelier for his accommodation again in order to be able to leave the hotel and return home, is covered by the security for refund of money paid over (Case C-364/96 *Verein für Konsumenteninformation* v *Österreichische Kreditversicherungs* [1998] ECR I-2949).

15. In the field of *environmental protection* the Court declared, in response to an action for failure to fulfil obligations brought by the Commission, that by classifying as special protection areas (SPAs) territories whose number and total

area are clearly smaller than the number and total area of the territories suitable for classification as SPAs within the meaning of Article 4(1) of Directive 79/409/EEC on the conservation of wild birds, the Kingdom of the Netherlands had failed to fulfil its obligations. The Court first stated that the classification as SPAs of the most suitable territories in number and size for the conservation of the species mentioned in Annex I to the directive constituted an obligation which it was not possible for the Member States to avoid by adopting other special conservation measures. Next, although the Member States have a margin of discretion in the application of ornithological criteria in order to identify the most suitable territories, they are none the less obliged to classify as SPAs all the sites which, applying those ornithological criteria, appear to be the most suitable for conservation of the species in question. Finally, the Netherlands having challenged the results of the inventory on which the Commission based its action, the Court held that it was the only document containing scientific evidence which had been produced to it and, in those circumstances, although not legally binding on the Member States concerned, the inventory could be used by the Court as a basis of reference (Case C-3/96 *Commission* v *Netherlands* [1998] ECR I-3031).

In response to questions referred for a preliminary ruling concerning, in particular, the validity of a Council regulation concerning substances which deplete the ozone layer, the Court found it necessary to set out a number of considerations concerning the scope of *Article 130r* of the EC Treaty, which concerns Community environmental policy. First, in view of the need to strike a balance between certain of the objectives and principles mentioned in Article 130r and of the complexity of the implementation of those criteria, review by the Court must necessarily be limited to the question whether the Council committed a manifest error of appraisal regarding the conditions for the application of Article 130r. Next, Article 130r(1) does not require the Community legislature, whenever it adopts measures to preserve, protect and improve the environment in order to deal with a specific environmental problem, to adopt at the same time measures relating to the environment as a whole. Finally, whilst it is undisputed that Article 130r(2) requires Community policy in environmental matters to aim for a high level of protection, such a level of protection, to be compatible with that provision, does not necessarily have to be the highest that is technically possible (Case C-284/95 *Safety Hi-Tech* v *S & T* [1998] ECR I-4301 and Case C-341/95 *Bettati* v *Safety Hi-Tech* [1998] ECR I-4355).

16. As regards the interpretation of the *Brussels Convention* (Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters), the reader's attention is drawn to the judgment of 17 November 1998 in Case C-391/95 *Van Uden* v *Kommanditgesellschaft in Firma*

Deco-Line, not yet published in the ECR, which concerns the rules of jurisdiction which apply to the grant of provisional and protective measures. The questions referred to the court related to the jurisdiction of a court hearing an application for interim relief under the Convention and, in particular, Article 24 thereof, pursuant to which "[a]pplication may be made to the courts of a Contracting State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Convention, the courts of another Contracting State have jurisdiction as to the substance of the case".

As regards Article 24, the national court's questions related mainly to three aspects, namely: (1) the relevance of the fact that the dispute was subject, under the terms of the contract, to arbitration; (2) whether the jurisdiction of the court hearing the application for interim relief is subject to the condition that the measures sought must take effect or be capable of taking effect in the State of that court and (3) the relevance of the fact that the case relates to a claim for interim payment.

On the first point, the Court held that where the subject-matter of an application for provisional measures relates to a question falling within the scope *ratione materiae* of the Convention, the Convention is applicable and Article 24 thereof may confer jurisdiction on the court hearing that application even where proceedings have already been, or may be, commenced on the substance of the case and even where those proceedings are to be conducted before arbitrators. As regards the second point, it is apparent from the judgment that the granting of provisional or protective measures on the basis of Article 24 is conditional on, *inter alia*, the existence of a real connecting link between the subject-matter of the measures sought and the territorial jurisdiction of the Contracting State of the court before which those measures are sought. A court ordering measures on the basis of Article 24 must also take into consideration the need to impose conditions or stipulations such as to guarantee their provisional or protective character. Finally, on the third point, the Court held that, in view of the risk of circumvention by such a measure of the rules of jurisdiction laid down by the Convention, interim payment of a contractual consideration does not constitute a provisional measure within the meaning of Article 24 of the Convention 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 sought relates only to specific assets of the defendant located or to be located within the confines of the territorial jurisidiction of the court to which application is made.

17. Finally, to conclude this overview of the case-law of the Court in 1998, mention should be made of the two judgments delivered on 16 June 1998, which raised the question of the relationship between Community law and international law (Case C-53/96 *Hermès International* v *FHT Marketing Choice* [1998] ECR I-3603 and Case C-162/96 *Racke* v *Hauptzollamt Mainz* [1998] ECR I-3655). In the first case, the Court was called upon to interpret a provision of an international convention whilst, in the second, it had to assess the validity of a Community measure in the light of a rule of customary international law.

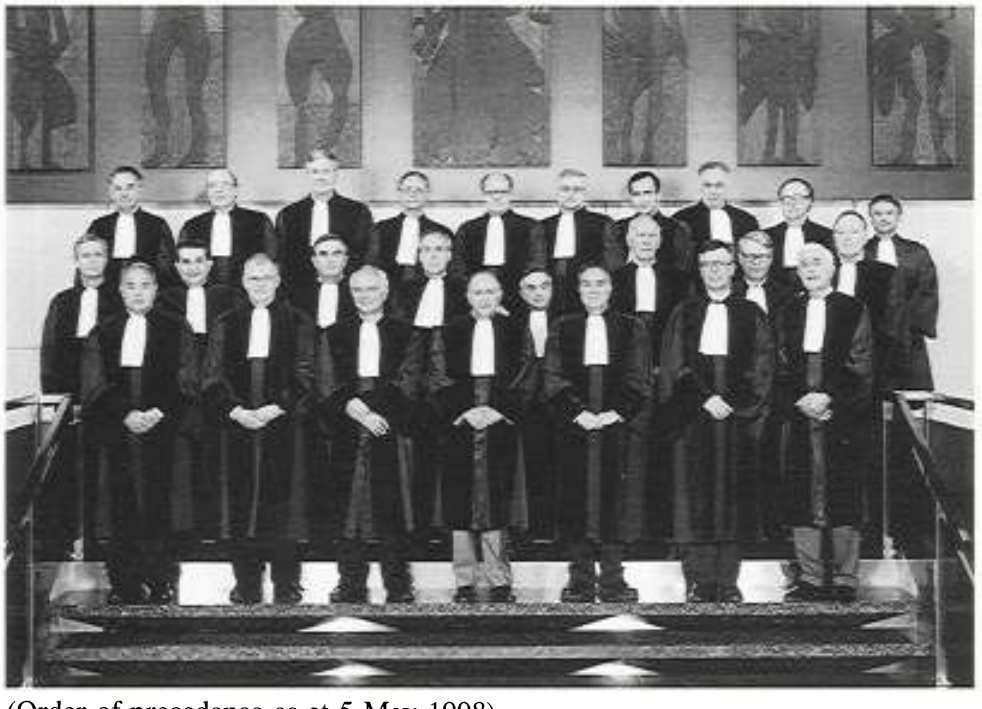
In respect of trade marks, the international registration of which designates the Benelux, Hermès had applied to a national court for an interim order requiring a third party to cease infringement of its copyright and trade mark. In order to determine the scope of the measure it was required to adopt, the court to which the application was made first considered whether the interim decision provided for under domestic law fell within the definition of provisional measure within the meaning of Article 50 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement, annexed to the WTO Agreement) and therefore applied to the Court for an interpretation of that provision.

In order to determine whether it had jurisdiction to provide the interpretation requested by the national court, the Court considered whether it was in the Community interest that the Netherlands provision in question should be interpreted in conformity with the TRIPS Agreement. In doing this, it pointed out, on the one hand, that the WTO Agreement had been concluded by the Community and ratified by its Member States without any allocation between them of their respective obligations towards the other contracting parties and, second, that the Council had adopted Regulation (EC) No 40/94 on the Community trade mark which provides, *inter alia*, that rights arising from that trade mark may be safeguarded by the adoption of provisional, including protective, measures under national law. The Court concluded that when the national courts adopted such measures in accordance with their domestic law, for the protection of rights arising under a Community trade mark, they were required to do so, as far as possible, in the light of Article 50 of the TRIPS Agreement. The Court therefore considered it had jurisdiction to interpret that provision. It is true that in this case the dispute concerned a national trade mark and not a Community trade mark but, according to the Court, since Article 50 of the TRIPS Agreement can always apply irrespective of the trade mark concerned, it is clearly in the Community interest that, in order to forestall future differences of interpretation, that article should be interpreted uniformly, whatever the circumstances in which it is to apply. On the substance, the Court held, next, that the decision referred to by the national court, which is expressly characterised

in national law as an "immediate provisional measure" and must be adopted "on grounds of urgency", did indeed constitute a provisional measure within the meaning of the TRIPS Agreement. According to the Court, that conclusion was not affected either by the fact that the national measure must be adopted in accordance with the principle *audi alteram partem*, nor by the fact that a reasoned decision must be given in writing, nor the fact that it must be delivered after assessment by the judge of the substantive aspects of the case, nor the fact that an appeal may be brought against it nor, finally, the fact that it is, in practice, frequently accepted by the parties as a "final" resolution of their dispute.

In *Racke*, the Court held that its jurisdiction to give preliminary rulings under Article 177 of the Treaty concerning the validity of acts of the Community institutions could not be limited by the grounds on which the validity of those measures may be contested and that it was therefore required to take into account the fact that they might be contrary to a rule of international law. In this instance, the rule in question was a rule of customary international law, codified in the Vienna Convention on the Law of Treaties and concerning the conditions under which a party may terminate or withdraw from a Treaty as a result of a fundamental change of circumstances. The Court held that such rules of customary international law are binding upon the Community institutions and form part of the Community legal order. It also held that the plaintiff may, before a national court, incidentally challenge the validity of a Community regulation under rules of customary international law in order to rely upon rights which it derives directly from an agreement of the Community with a non-Member country. In this instance, the Court concluded that the regulation at issue was valid in the light of the rules of customary international law invoked.

B - Composition of the Court of Justice



(Order of precedence as at 5 May 1998)

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

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

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

Giuseppe Tesauro

Born 1942; Titular Professor of International Law and Community Law at the University of Naples; Advocate before the Corte di Cassazione; Member of the Council for Contentious Diplomatic Affairs at the Ministry of Foreign Affairs; Advocate General at the Court of Justice from 7 October 1988 to 4 March 1998.

Paul Joan George Kapteyn

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

Claus Christian Gulmann

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

John Loyola Murray

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

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

Giuseppe Federico Mancini

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

José Carlos de Carvalho Moitinho de Almeida

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

Gil Carlos Rodríguez Iglesias

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

Francis Jacobs QC

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

David Alexander Ogilvy Edward

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

Antonio Mario La Pergola

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

Georges Cosmas

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

Jean-Pierre Puissochet

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

Philippe Léger

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

Günter Hirsch

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

Peter Jann

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

Hans Ragnemalm

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

Leif Sevón

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

Nial Fennelly

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

Dámaso Ruiz-Jarabo Colomer

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

Melchior Wathelet

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

Romain Schintgen

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

Krateros M. Ioannou

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

Siegbert Alber

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

Jean Mischo

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

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.

Roger Grass

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

2. Changes in the composition of the Court of Justice in 1998

In 1998 the composition of the Court of Justice changed as follows:

On 4 March 1998, Advocate General Giuseppe Tesauro left the Court. He was replaced by Mr Antonio Saggio, Past President of the Court of First Instance, as Advocate General.

3. Order of precedence

from 1 January to 4 March 1998

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

R. GRASS, Registrar

from 5 March to 6 October 1998

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

R. GRASS, Registrar

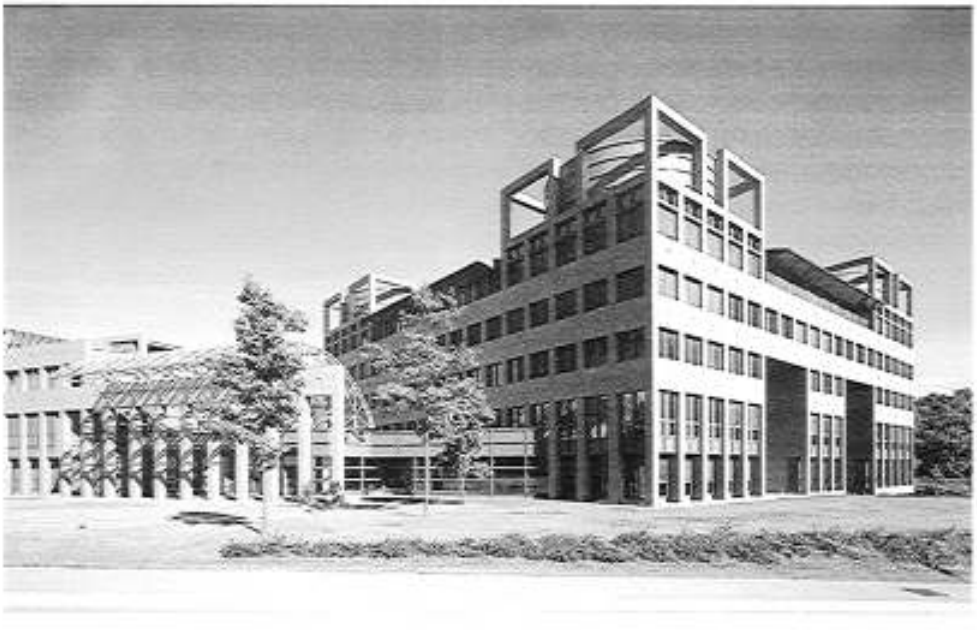
from 7 October to 31 December 1998

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. LEGER, *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
M. 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

Chapter II

The Court of First Instance of the European Communities



A - Proceedings of the Court of First Instance in 1998

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

I. Proceedings of the Court of First Instance

1. The number of cases brought before the Court of First Instance in 1998, 215, [1] is close to the figure in 1995 and 1996 (244 and 220 new cases respectively). 1997, during which 624 new cases were registered, was characterised by several series of similar cases (in particular customs agents seeking compensation for the harm suffered as a result of the completion of the internal market provided for by the Single European Act, officials seeking reconsideration of their classification in grade at the time of their recruitment and new milk quota cases).

The total number of cases concluded increased by 84% over the preceding year, to reach 319 (after joinder, 252 cases were concluded), including 150 cases decided by a judgment. That figure includes, *inter alia*, a group of 17 cases brought in 1994 against a Commission decision finding there to be a breach of the competition rules in the cartonboard sector and imposing penalties in that respect.

The Court of First Instance therefore decided a greater number of cases than were brought before it (as in 1990, 1992, 1994 and 1995). That fact is all the more worthy of note since, in 1998, oral procedures were organised in the voluminous cases involving cartels of undertakings in the polyvinylchloride (so-called "PVC") sector (12 actions), the steel beams sector (11 actions) and the cement sector (41 actions).

The total number of cases pending at the end of the year (1 002 cases) is lower than in 1997. It includes several series of cases, namely 297 cases in which proceedings have been stayed pending a judgment of the Court of Justice on the appeal brought against the judgment of the Court of First Instance dismissing the application by a customs commissioner against the Council and the Commission,

[1] The figures below do not include special procedures concerning, in particular, legal aid and taxation of costs.

190 milk quota cases and 65 staff cases seeking annulment of decisions of the institutions rejecting requests for reconsideration of a classification in grade [2].

With the exception of staff cases, the majority of cases pending before the Court of First Instance are actions seeking the annulment of a measure and based on Article 173 of the EC Treaty or Article 33 of the ECSC Treaty. 17.2% of all cases pending concern the Staff Regulations of Officials.

42 judgments were delivered by chambers of five judges (with jurisdiction to hear actions relating to the rules on State aid and trade protection measures) whilst 88 judgments were delivered by chambers of three judges. No case was brought before the plenary court in 1998 and no Advocate General was designated.

The number of applications for interim measures registered in 1998 increased slightly (26 applications, whereas 19 applications had been lodged in 1997; 21 sets of interim proceedings were completed in 1998. Suspension of the operation of the contested measure was ordered on two occasions.

As regards the number of appeals brought against actionable decisions of the Court of First Instance (67 appeals in respect of the 214 actionable decisions against which an appeal was brought or the time-limit for bringing an appeal had expired), it was slightly higher than that of the previous year (35 appeals in respect of 139 actionable decisions). 31.3% of decisions had been the subject of an appeal at 31 December 1998, whilst 25.1% of decisions had been the subject of an appeal at 31 December 1997.

1998 also saw the initiation of proceedings in the first cases concerning the protection of intellectual property rights (trade marks and designs). The first action against a decision of one of the Boards of Appeal of the Office for Harmonisation in the Internal Market was registered on 6 October 1998.

2. The Rules of Procedure of the Court of First Instance had been amended in 1997, in order, *inter alia*, to enable it to dismiss, by way of reasoned order, an action manifestly lacking any legal basis (OJ 1997 L 103, p. 6; rectification: OJ 1997 L 351, p. 72). Nine orders made in 1998 dismissed actions as manifestly lacking any legal basis.

2 Excluding these three series of similar cases, 450 cases were pending at the end of the year.

3. The proposal for the amendment of Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing the Court of First Instance and the proposal for the amendment of the Rules of Procedure of the Court of First Instance intended to enable it to deliver single judge decisions had been submitted to the Council by the Court of Justice on 7 February 1997. The Commission has given its opinion on the proposals submitted to it. The European Parliament, which was consulted by the Council in accordance with Articles 168a(2) of the EC Treaty, 32d(2) of the ECSC Treaty and 140a(2) of the Euratom Treaty issued a favourable opinion on 8 October 1998 on the proposal for a Council decision amending Decision 88/591. The legislative procedure is therefore following its course.

4. Three members of the Court of First Instance left office in 1998.

Mr Saggio, President of the Court of First Instance until 4 March 1998, was appointed Advocate General at the Court of Justice and the terms of office of Judges Briët and Kalogeropoulos came to an end.

Mr Vesterdorf was elected President of the Court of First Instance from 4 March to 31 August 1998, and subsequently re-elected for the period until 31 August 2001. Judges Meij and Vilaras replaced Mr Briët and Mr Kalogeropoulos respectively.

II. Developments in the case-law

A. *The main subject areas of disputes*

1. Competition

In the *field of competition law*, 1998 saw in particular the delivery of 17 judgments in the "*Cartonboard*" cases (Case T-295/94 *Buchmann* v *Commission* [1998] ECR II-813; Case T-304/94 *Europa Carton* v *Commission* [1998] ECR II-869; Case T-308/94 *Cascades* v *Commission* [1998] ECR II-923; Case T-309/94 *KNP BT* v *Commission* [1998] ECR II-1007; Case T-310/94 *Gruber + Weber* v *Commission* [1998] ECR II-1043; Case T-311/94 *BPB de Eendracht* v *Commission* [1998] ECR II-1129; Case T-317/94 *Weig* v *Commission* [1998] ECR II-1235; Case T-319/94 *Fiskeby* v *Commission* [1998] ECR II-1331; Case T-327/94 *SCA Holding* v *Commission* [1998] ECR II-1373; Case T-334/94 *Sarrió* v *Commission* [1998] ECR II-1439; Case T-337/94 *Enso-Gutzeit* v

Commission [1998] ECR II-1571; Case T-338/94 *Finnboard* v *Commission* [1998] ECR II-1617; Joined Cases
T-339/94 to T-342/94 *Metsä-Serla and Others* v *Commission* [1998] ECR II-1727; Case T-347/94 *Mayr-Melnhof* v *Commission* [1998] ECR II-1751; Case T-348/94 *Enso Española* v *Commission* [1998] ECR II-1875; Case T-352/94 *MoDo* v *Commission* [1998] ECR II-1989; and Case T-354/94 *Stora* v *Commission* [1998] ECR II-2111). The parties presented oral argument at a nine-day hearing which ended on 8 July 1997.

Those cases arose from Commission Decision 94/601/EC of 13 July 1994 in which the Commission held that 19 producers supplying cartonboard in the European Community had infringed Article 85(1) of the EC Treaty (hereinafter "the Treaty") by participating, for a period which varied according to the undertakings concerned but did not extend beyond April 1991, in an agreement and concerted practice originating in mid-1986 whereby they had, *inter alia*, planned and implemented simultaneous and uniform price increases throughout the Community; reached an understanding on maintaining the market shares of the major producers at constant levels, subject to modification from time to time; and, increasingly from early 1990, taken concerted measures to control the supply of the product in the Community in order to ensure the implementation of the concerted price increases. According to the decision, the infringement had taken place within a body known as the "Product Group Paperboard", which comprised several groups or committees, including the "Presidents Working Group", which brought together senior representatives of the main suppliers of cartonboard in the Community, and the "Joint Marketing Committee", which was set up in late 1987.

The total amount of the fines imposed on the undertakings was ECU 131 750 000.

All but two of the companies to which the decision was addressed brought actions for its annulment. One of the 17 companies concerned withdrew its action in the course of the proceedings.

Four Finnish undertakings, which were members of the trade association Finnboard and, as such, held jointly and severally liable for payment of the fine imposed on it, also brought actions against the decision (Joined Cases T-339/94, T-340/94, T-341/94 and T-342/94).

In its judgments, the Court of First Instance held, *inter alia*, that the Commission had, in the majority of the cases, adequately proved the existence of the anti-

competitive conduct alleged in the decision. Only in one case, Case T-337/94 *Enso-Gutzeit* v *Commission*, did it hold that the Commission had not proven that the applicant had participated in the cartel. The decision was therefore annulled in its entirety as regards that applicant.

In the other cases, the Court of First Instance distinguished between undertakings which had participated in the Presidents Working Group, the principal body of the Product Group Paperboard, and those which had not taken part in its meetings. The Court's judgments gave due effect to that distinction.

In the cases in which the applicants had taken part in meetings of the Presidents Working Group (Cascades, Finnboard, KNP, Mayr-Melnhof, MoDo, Sarrió, Stora and Weig), it held that the Commission had proved their participation in the constituent elements of the infringement, that is to say collusion on prices, production stoppages and market shares.

In the other cases, it held, where the plea had been raised by the applicants, that the Commission had not established to the requisite legal standard that the undertakings had participated in collusion on market shares. It therefore annulled Article 1 of the decision in so far as the applicant undertakings had been held responsible for participating in that type of collusion. In doing so, it clearly laid down the conditions under which an undertaking may be held responsible for an overall cartel such as that described in Article 1 of the contested decision.

Thus, *in order to be entitled to hold each addressee of a decision, such as the cartonboard decision, responsible for an overall cartel during a given period, the Commission must demonstrate that each undertaking concerned either consented to the adoption of an overall plan comprising the constituent elements of the cartel or that it participated directly in all those elements during that period. An undertaking may also be held responsible for an overall cartel even though it is shown that it participated directly only in one or some of the constituent elements of that cartel, if it is shown that it knew, or must have known, that the collusion in which it participated was part of an overall plan and that the overall plan included all the constituent elements of the cartel. Where that is the case, the fact that the undertaking concerned did not participate directly in all the constituent elements of the overall cartel cannot relieve it of responsibility for the infringement of Article 85(1) of the Treaty. Such a circumstance may nevertheless be taken into account when assessing the seriousness of the infringement which it is found to have committed* (Case T-295/94 *Buchmann* v *Commission*; Case T-304/94 *Europa Carton* v *Commission*; Case T-311/94 *BPB de Eendracht* v

Commission; Case T-334/94 *Sarrió* v *Commission*; Case T-348/94 *Enso Española* v *Commission*).

As regards the *fines*, the Court of First Instance held that *the general level of fines adopted by the Commission was justified*. In these cases, fines of a basic level of 9 or 7.5% of the turnover on the Community cartonboard market in 1990 of each undertaking addressed by the Decision had been imposed, respectively, on the undertakings considered to be the cartel "ringleaders" and on the other undertakings.

The Court also defined the scope of the Commission's duty to state reasons when criteria are systematically taken into account by it in order to fix the amount of fines. Thus, where the Commission finds that there has been an infringement of the competition rules and imposes fines it must, if it systematically took into account certain basic factors in order to fix the amount of the fines (reference turnover in a reference year, basic rates for calculating fines, and rates of reduction in the amount of fines), set out those factors in the body of the decision so that the addressees of the decision may verify that the level of the fine is correct and assess whether there has been any discrimination (Case T-295/94 *Buchmann* v *Commission*, Case T-308/94 *Cascades* v *Commission*; Case T-309/94 *KNP BT* v *Commission*; Case T-317/94 *Weig* v *Commission*; Case T-319/94 *Fiskeby* v *Commission*; Case T-327/94 *SCA Holding* v *Commission*; Case T-334/94 *Sarrió* v *Commission*; Case T-338/94 *Finnboard* v *Commission*; Case T-347/94 *Mayr-Melnhof* v *Commission*; Case T-348/94 *Enso Española* v *Commission*; Case T-352/94 *MoDo* v *Commission*; Case T-354/94 *Stora* v *Commission*).

The disputed decision was the first in which the level of fines imposed on undertakings had been reduced on the ground that those undertakings had cooperated with the Commission. The Commission had reduced the amount of the fines by one third or by two thirds, according to the degree of cooperation by the undertaking during the administrative procedure. The Court held that such reductions were justified only if the conduct of the undertaking made it easier for the Commission to establish an infringement and, as the case may be, to put an end to it. Thus, an undertaking which *expressly* states that it is not contesting the factual allegations on which the Commission bases its objections may be regarded as having facilitated the Commission's task of finding and bringing to an end infringements of the Community competition rules. The Court held that the Commission is entitled to take the view that such conduct constitutes an acknowledgement of the factual allegations, thus proving that those allegations are correct, and that that conduct may justify a reduction in the fine (Case T-317/94

Weig v *Commission*; Case T-311/94 *BPB de Eendracht* v *Commission*; Case T-327/94 *SCA Holding* v *Commission*; Case T-347/94 *Mayr-Melnhof* v *Commission*; Case T-352/94 *MoDo* v *Commission*). By contrast, a decision not to reply to the statement of objections, or not to express a view, in such a reply, on the Commission's factual allegations in the statement of objections, and a decision to challenge all or most of those allegations in a reply — all of which are ways of exercising rights of the defence during the administrative procedure before the Commission — cannot justify a reduction in the fine on grounds of cooperation during the administrative procedure (Case T-311/94 *BPB de Eendracht* v *Commission*; Case T-327/94 *SCA Holding* v *Commission*; Case T-347/94 *Mayr-Melnhof* v *Commission*; Case T-352/94 *MoDo* v *Commission*).

The applicants in Joined Cases T-339/94, T-340/94, T-341/94 and T-342/94, member companies of the trade association Finnboard, disputed that they could be held jointly and severally liable for payment of the fine imposed on Finnboard (Article 3 of the contested decision); they asserted that the Commission had not established their participation in anti-competitive conduct.

The Court did not uphold their submission. It held that an undertaking may be declared jointly and severally liable with another undertaking for payment of a fine imposed on the latter, which intentionally or negligently committed an infringement, provided that the Commission demonstrates, in the same decision, that that infringment could also have been found to have been committed by the undertaking held jointly and severally liable for the fine. The economic and legal links between Finnboard and the applicants were such that the Commission could in fact have held each of the applicants specifically and formally liable for the infringement.

The applicant in Case T-304/94 *Europa Carton* v *Commission* claimed that the Commission had calculated its fine on the basis of an incorrect figure, which included not only turnover from sales of cartonboard to third parties but also the value of internal deliveries of cartonboard to folding carton factories which were owned by the applicant and did not therefore have separate legal personality from it. The Court upheld the Commission's approach, holding that it had rightly taken the turnover figure calculated on that basis in order to determine the amount of the fine. It pointed out that no provision stated that internal supplies within one company could not be taken into account in order to determine the amount of the fine. It also stated that, despite the applicant's assertion that it had not derived any benefit from the cartel when it supplied its cartonboard to its own factories, and even though the Commission had asserted in its defence that internal deliveries were not affected by the unlawfully agreed increases in the

price of cartonboard, the applicant had not adduced any evidence as to the value of those deliveries. It therefore held that the applicant's folding carton factories, which is to say, the applicant itself, had therefore benefited from the cartel by using cartonboard from its own production as a raw material since, unlike competing convertors, the applicant had not had to bear the cost increases caused by the concerted price increases.

To conclude the main questions relating to fines in this series of cases, it should be noted that the total amount by which the fines were reduced by the Court, in the exercise of its unlimited jurisdiction, was ECU 11 870 000.

Article 2 of the contested decision directed the undertakings to put an end to the infringement. It was partially annulled. After considering the extent of the various prohibitions which that article placed on the undertakings, the Court held that some of the applicants had rightly argued that the scope of the order to desist was too wide. Having pointed out that the obligations which the Commission may impose on undertakings may not exceed what is appropriate and necessary to attain the objective sought, namely to restore compliance with the rules infringed, it held that a prohibition seeking to prevent the exchange of purely statistical information which is not in, or capable of being put into, the form of individual information, on the ground that the information exchanged might be used for anti-competitive purposes, exceeds what is necessary in order to bring the conduct in question into line with what is lawful.

Other findings are also of interest.

The Court had occasion to recall the case-law of the Court of Justice according to which fundamental rights form an integral part of the general principles of law whose observance the Community judicature ensures. It stated that, to that end, the Court of Justice and the Court of First Instance draw inspiration from the constitutional traditions common to the Member States and from the guidelines supplied by international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories. It pointed out that the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (hereinafter "ECHR") has special significance in that respect (Case 222/84 *Johnston* v *Chief Constable of the Royal Ulster Constabulary* [1986] ECR 1651, paragraph 18 and Case C-299/95 *Kremzow* v *Austria* [1997] ECR I-2629, paragraph 14). Furthermore, it noted that, under Article F(2) of the Treaty on European Union, "the Union shall respect fundamental rights, as guaranteed by the [ECHR] and as they appear from the constitutional traditions common to the Member States, as general principles

of Community law" (Case T-347/94 *Mayr-Melnhof* v *Commission* and Case T-348/94 *Enso Española* v *Commission*).

In Case T-347/94, Mayr-Melnhof submitted that its rights of defence had been infringed because the Commission had placed pressure on undertakings to refrain from challenging the charges against them in return for a reduction in their fine. It claimed that such an approach conflicted with Article 6 of the ECHR. The Court rejected that claim, holding first of all that it had no jurisdiction to apply the ECHR when reviewing an investigation under competition law, as the ECHR was not itself part of Community law. Referring, however, to the above case-law, it held that it was necessary to examine whether the Commission had failed to observe the rights of the defence, a fundamental principle of the Community legal order, by exercising unlawful pressure on the applicant during the administrative procedure, so as to induce it to acknowledge the factual allegations in the statement of objections. On that point it held that the fact that, without specifying the size of a reduction, the Commission indicates, during the administrative procedure, to an undertaking involved in the investigation that it would be possible to reduce the fine to be imposed, if it were to admit all or most of the factual allegations, cannot of itself constitute pressure on that undertaking.

In Case T-348/94 *Enso-Española* v *Commission*, the applicant pleaded that the decision should be annulled because its fundamental right to an independent and impartial tribunal had been infringed. It pointed out, in particular, that the rights guaranteed under Article 6 of the ECHR had not been respected, since the bias on the part of the Commission resulting from the fact that the investigation conducted in the context of the procedure leading to the imposition of a penalty coincided with the adoption of the decision terminating the procedure cannot be redressed by means of a subsequent action before a court that has full jurisdiction, which is contrary to the obligations imposed by the ECHR. In response to that argument the Court of First Instance, after recalling the case-law mentioned above, stated first of all that Community law confers upon the Commission a supervisory role which includes the task of taking proceedings in respect of infringements of Articles 85(1) and 86 of the Treaty and that Council Regulation No 17 of 6 February 1962, the first regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition 1959-1962, p. 87), gives the institution the power to impose, by decision, fines on undertakings and associations of undertakings which have infringed those provisions either intentionally or negligently. Next it pointed out that the requirement for effective judicial review of any Commission decision that finds and punishes an infringement of those Community competition rules is a general principle of Community law which follows from the common constitutional traditions of the Member States.

In the instant case, it held, on the basis of three considerations, that that general principle of Community law had not been infringed. First, the Court of First Instance is an independent and impartial court, established by Council Decision 88/591. Second, by virtue of Article 3(1)(c) of that decision, the Court of First Instance is to exercise the jurisdiction conferred on the Court of Justice by the Treaties establishing the Communities and by the acts adopted in implementation thereof, *inter alia,* in actions brought against an institution of the Communities by natural or legal persons pursuant to Article 173 of the Treaty relating to the implementation of the competition rules applicable to undertakings. In the context of such actions, the review of the legality of a Commission decision finding an infringement of the competition rules and imposing a fine in that respect on the natural or legal person concerned must be regarded as effective judicial review of the measure in question. The pleas which may be relied on in support of the application for annulment are of such a nature as to allow the Court to assess the correctness in law and in fact of any accusation made by the Commission in competition proceedings. Finally, in accordance with Article 17 of Regulation No 17, the Court has unlimited jurisdiction within the meaning of Article 172 of the Treaty in actions challenging decisions whereby the Commission has fixed a fine or periodic penalty payment and may cancel, reduce or increase the fine or periodic penalty imposed. It follows that the Court has jurisdiction to assess whether the fine or penalty payment imposed is proportionate to the seriousness of the infringement found.

Ten appeals have been brought before the Court of Justice against the judgments of the Court of First Instance, namely against the judgments in Case T-308/94 *Cascades* v *Commission*, Case T-309/94 *KNP BT* v *Commission*, Case T-317/94 *Weig* v *Commission*, Case T-327/94 *SCA Holding* v *Commission*, Case T-334/94 *Sarrió* v *Commission*, Case T-338/94 *Finnboard* v *Commission*, Joined Cases T-339/94 to T-342/94 *Metsä-Serla and Others* v *Commission*, Case T-348/94 *Enso Española* v *Commission*, Case T-352/94 *MoDo* v *Commission* and Case T-354/94 *Stora* v *Commission* (see OJ 1998 C 299).

In three judgments the Court of First Instance had to assess the lawfulness of Commission decisions rejecting complaints alleging the existence of conduct contrary to the Community competition rules.
In Case T-111/96 *ITT Promedia* v *Commission* [1998] ECR II-2937, it dismissed an application by a company incorporated under Belgian law whose activities involve the publication of commercial telephone directories in Belgium, for annulment of a Commission decision definitively rejecting the heads of the applicant's complaint concerning infringements of Article 86 of the Treaty allegedly committed by Belgacom. In its complaint, the applicant had submitted

that the infringements at issue consisted, first, of the fact that Belgacom had initiated vexatious litigation against it before the Belgian courts and, second, of Belgacom's request that the applicant transfer to Belgacom its industrial and commercial know-how in accordance with contractual commitments entered into between the two parties in 1984.

As regards the litigation, the Commission had considered in the contested decision that, in principle, "the bringing of an action, which is the expression of the fundamental right of access to a judge, cannot be characterised as an abuse" unless "an undertaking in a dominant position brings an action (i) which cannot reasonably be considered as an attempt to establish its rights and can therefore only serve to harass the opposite party and, (ii) which is conceived in the framework of a plan whose goal is to eliminate competition". In the light of that opinion, it had concluded that, in this instance, the three actions brought by Belgacom before the Belgian courts could reasonably be regarded as having been brought with a view to asserting its rights and did therefore not constitute an abuse within the meaning of Article 86 of the Treaty. After pointing out that the applicant was challenging the application in this case of the two cumulative criteria relied on by the Commission but had not challenged the compatibility of those criteria as such with Article 86 of the Treaty, the Court of First Instance considered whether the Commission had correctly applied those two criteria. Before considering the pleas raised by the applicant in an attempt to show that the first of the two cumulative criteria was satisfied, the Court of First Instance pointed out, *inter alia*, that the ability to assert one's rights through the courts and the judicial control which that entails constitute the expression of a general principle of law which underlies the constitutional traditions common to the Member States and which is also laid down in Articles 6 and 13 of the ECHR. It stated that, since access to the Court is a fundamental right and a general principle ensuring the rule of law, it is only in wholly exceptional circumstances that the fact that legal proceedings are brought is capable of constituting an abuse of a dominant position within the meaning of Article 86 of the Treaty. Furthermore, since the two cumulative criteria constitute an exception to the general principle of access to the courts which ensures the rule of law, they must be construed and applied strictly, in a manner which does not defeat the application of the general rule. None of the four pleas in support of the claim for annulment, seeking to show that the first of the two cumulative criteria was satisfied, was finally accepted.

As regards the claim for performance of a provision of a 1984 agreement requiring the transfer to Belgacom of the applicant's industrial and commercial know-how, in order to enable Belgacom to ensure the continuity of the publication

of directories, [3] the Commission had considered that a claim for performance of a contract cannot in itself constitute an abuse within the meaning of Article 86 of the Treaty. That assessment was challenged by the applicant in the context of its seventh plea. In its findings the Court of First Instance, on the basis of the objective nature of the concept of abuse, as explained by the Court of Justice in Case 85/76 *Hoffmann-La Roche* v *Commission* [1979] ECR 461, paragraph 91, recalled that it follows from the nature of the obligations imposed by Article 86 of the Treaty that, in specific circumstances, undertakings in a dominant position may be deprived of the right to adopt a course of conduct or take measures which are not in themselves abuses and which would even be unobjectionable if adopted or taken by non-dominant undertakings. Thus, the conclusion of a contract or the acquisition of a right may amount to abuse for the purposes of Article 86 of the Treaty if that contract is concluded or that right is acquired by an undertaking in a dominant position. *A claim for performance of a contractual obligation may also constitute an abuse for the purposes of Article 86 of the Treaty if, in particular, that claim exceeds what the parties could reasonably expect under the contract or if the circumstances applicable at the time of the conclusion of the contract have changed in the meantime.* In this instance, the Court of First Instance held that the applicant had not submitted any evidence to show that those conditions were satisfied.

In two judgments delivered on 16 September 1998, [4] (Case T-110/95 IECC v *Commission* [1998],not yet published in the ECR, and Joined Cases T-133/95 and T-204/95 *IECC* v *Commission* [1998], not yet published in the ECR, the Court of First Instance dealt with actions against Commission decisions rejecting, respectively, heads of the complaint lodged under Article 3(2) of Regulation No 17 by International Express Carriers Conference (IECC), an organisation representing the interests of certain undertakings which provide express mail services and offer, *inter alia*, "remail" services. IECC had essentially claimed in its complaint, first, that a number of public postal operators established in the Community and in non-member countries had concluded a price-fixing agreement

3 Pursuant to agreements entered into in 1969 and 1984 between the predecessors in title of ITT Promedia and Belgacom, the last of which expired in February 1995, the applicant was granted the exclusive right to publish and distribute the official telephone directory in the name of Régie des Télégraphes et Téléphones, and commercial directories in its own name. The applicant published commercial directories under the trade name "Gouden Gids/Pages d'Or".

4 In a third judgment of the same date (Case T-28/95 *IECC* v *Commission* [1998], not yet published in the ECR), the Court of First Instance considered that there was no longer any need to adjudicate on the application for a declaration of failure to act lodged by the same applicant against the Commission, under Article 175 of the Treaty, since the action had become devoid of purpose.

in 1987 in regard to terminal dues and, second, that a number of those operators were attempting to operate a market-allocation scheme on the basis of Article 23 of the Universal Postal Union Convention, adopted in 1964 under the aegis of the United Nations Organisation, with a view to declining delivery of mail posted by customers with public postal operators in countries other than those in which they resided. The Commission had rejected the first part of IECC's complaint relating to the application of Article 85 of the Treaty to the price-fixing agreement in regard to terminal dues (the decision at issue in Case T-110/95). It subsequently sent the applicant, on 6 April 1995, a decision rejecting the second part of its complaint, in so far as it concerned, in particular, the interception of commercial ABA remail (the decision at issue in Case T-133/95). Finally, on 14 August 1995, it adopted a decision concerning the application of the competition rules to the use of Article 23 of the Universal Postal Union Convention for the interception of ABC remail (the decision at issue in Case T-204/95).

The application in Case T-110/95, which was dismissed as unfounded, raised, in particular, the question whether, in the circumstances of the case, the Commission could rely on the insufficient Community interest of the case in order not to continue investigation of the matter and consequently to reject the applicant's complaint. The Court of First Instance first recalled that Article 3 of Regulation No 17 does not confer on a person who lodges an application under that article the right to obtain from the Commission a decision, within the meaning of Article 189 of the Treaty, regarding the existence or otherwise of an infringement of Article 85 or Article 86 or of both. It therefore rejected the applicant's argument that the Commission could no longer reject its complaint given the advanced stage reached in the investigation. In particular it referred to the absence of any *written provision requiring* the Commission to adopt a decision as to whether the alleged infringement exists and pointed out that the Commission may take a decision to close its file on a complaint for lack of sufficient Community interest not only before commencing an investigation of the case but also after taking investigative measures, if that course seems appropriate to it at that stage of the procedure. Nor did it accept the argument that the matters listed by the Court of First Instance in its judgment in Case T-24/90 *Automec* v *Commission* [1992] ECR II-2223 [5] are the only factors which the Commission should take into account

5 In that judgment, the Court of First Instance held (paragraph 86) that: "[i]n order to assess the Community interest in further investigation of a case, the Commission must take account of the circumstances of the case, and especially of the legal and factual particulars set out in the complaint referred to it. The Commission should, in particular, after assessing with all due care the legal and factual particulars submitted by the complainant, balance the significance of the alleged infringement as regards the functioning of the common market, the probability of establishing the

when assessing the Community interest in further investigation of the case. It held in that respect that the Commission is *not required to balance solely those matters which the Court listed in its judgment in* Automec *v* Commission and *it is thus entitled to take account of other relevant factors when making its assessment. The assessment of the Community interest is necessarily based on an examination of the circumstances particular to each case, carried out subject to review by the Court.*

In this instance, the Court of First Instance validated the Commission's assessment rejecting the relevant part of the complaint on the basis that there was no Community interest, on the ground that the undertakings against which the complaint had been directed were to change the conduct complained of in the manner it recommended. It considered that, in view of the general objective of the activities of the Community laid down by Article 3(g) of the Treaty, namely the institution of a system ensuring that competition in the common market is not distorted, and the general task of supervision conferred on the Commission by Articles 89 and 155 of the Treaty, that institution may decide, subject to the requirement that it gives reasons for such a decision, that it is not appropriate to investigate a complaint alleging practices contrary to Article 85(1) of the Treaty where the facts under examination give it proper cause to assume that the conduct of the undertakings concerned will be amended in a manner conducive to the general interest. In such a situation, it is for the Commission, as part of its task of ensuring that the Treaty is properly applied, to decide whether it is in the Community interest to encourage undertakings challenged in administrative proceedings to change their conduct in view of the complaints made against them and to require from them assurances that such conduct will in fact be altered along the lines recommended by the Commission, rather than formally declaring in a decision that such conduct by undertakings is contrary to the Treaty rules on competition. An appeal has been brought against that judgment (Case C-449/98 P).

The action against the decision of 14 August 1995 (Case T-204/95), which related to the Commission's final assessment of the part of the complaint relating to the interception by certain public postal operators of ABC remail, was dismissed in its entirety. The Court of First Instance held, *inter alia*, that *the Commission was lawfully entitled to decide, on condition that it provided reasons for such a decision, that it was not appropriate to pursue a complaint denouncing practices*

existence of the infringement and the scope of the investigation required in order to fulfil, under the best possible conditions, its task of ensuring that Articles 85 and 86 of the Treaty are complied with". That paragraph is reproduced verbatim at paragraph 51 of the judgment in Case T-110/95.

which were subsequently discontinued. The Commission was entitled to take the view that, where operators against which a complaint had been made had given undertakings and the applicant had failed to provide any evidence whatever that those undertakings had been disregarded, and the Commission had carefully examined the facts of the case, it was unnecessary for it to examine the complaint any further.

By contrast, the Court of First Instance partially annulled the decision of 6 April 1995 in so far as it related to physical commercial ABA remail (Case T-133/95). The applicant challenged the Commission's assessment that the interception of that type of mail did not constitute an abuse of a dominant position within the meaning of Article 86 of the Treaty, in so far as such interception results from the need for the public postal operators to protect their national monopoly in the distribution of mail from circumvention. The Court of First Instance decided in favour of the applicant, holding that the interception by public postal operators of international ABA remail — where mail originating in country A, where the public postal operator has a statutory postal monopoly, has been transported by private companies to country B and put into the postal system there in order to be sent via the traditional international postal system back to country A — cannot be regarded as lawful under Article 86 of the Treaty. Such interception cannot be justified by the mere existence of the postal monopoly and its alleged circumvention by ABA remail or by the fact that there may be an imbalance between the costs which a public postal operator bears in delivering incoming mail and the remuneration which it receives, where it is the result of an agreement concluded among the public postal operators themselves and, unless the Commission demonstrates otherwise, cannot be the only means by which the public postal operator of the country of destination can recover the costs involved in delivering that mail.

Deutsche Post AG and IECC respectively have brought appeals against the judgments of the Court of First Instance in Case T-133/95 and Case T-204/95 (Case C-428/98 P and C-450/98 P).

The judgment in Joined Cases T-374/94, T-375/94, T-384/94 and T-388/94 *European Night Services and Others* v *Commission* [1998], not yet published in the ECR, concerns the application of the competition rules to agreements entered into between the railway undertakings British Rail, Deutsche Bundesbahn, NV Nederlandse Spoorwegen and Société Nationale des Chemins de Fer Français concerning the carriage of passengers by rail through the Channel Tunnel. European Night Services (hereinafter "ENS"), acting on behalf of those railway undertakings before the Commission, had submitted an application seeking a [5]

declaration either that the competition rules did not apply to those agreements or that the agreements were exempt. [6] The first agreement notified concerned the formation by those railway undertakings of ENS, whose business was to consist of providing and operating overnight passenger rail services between points in the United Kingdom and the Continent through the Channel Tunnel. The other agreements notified comprised operating agreements concluded by ENS with the four railway undertakings, under which each of them agreed to provide ENS with certain services, including traction over its network (locomotive, train crew and path), cleaning services on board, servicing of equipment and passenger-handling services. By its decision, the Commission had declared Article 85(1) of the Treaty and Article 53(1) of the Agreement on the European Economic Area (hereinafter "EEA Agreement") inapplicable to the ENS agreements for a period of eight years. That exemption was subject to the condition that the railway undertakings concerned would supply to any "international grouping" of railway undertakings or any "transport operator" wishing to operate night passenger trains through the Channel Tunnel the same necessary rail services as they had agreed to supply to ENS, on the same technical and financial terms as they allowed to ENS.

The Court of First Instance annulled the contested decision on several grounds. It essentially held that the statement of reasons for the contested decision did not enable it to make a ruling on the shares held by ENS on the various relevant markets for services and geographic markets and, consequently, on whether the agreements had an appreciable effect on trade between Member States. Furthermore, it considered that the Commission had not made a correct and adequate assessment of the economic and legal context in which those agreements were concluded.

As regards the condition to which the exemption was subject, the applicants claimed that by imposing on the parent undertakings the condition that necessary rail services be provided not only to international groupings but also to transport operators, the Commission had applied the rules on competition in a manner contrary to the regulatory framework set out by Council Directive 91/440 EEC of 21 July 1991 on the development of the Community's railways (OJ 1991 L

6 That application was submitted pursuant to Regulation (EEC) No 1017/68 of the Council of 19 July 1968 applying rules of competition to transport by rail, road and inland waterway (OJ, English Special Edition 1968 (I), p. 302).

237, p. 25). [7] After considering the question whether ENS provided its international passenger rail services activities as an "international grouping" in accordance with Directive 91/440 [8] or, as claimed by the Commission, as a "transport operator" and therefore subject to the competition provisions of the Treaty, the Court of First Instance held that the Commission had interpreted the term "international grouping" restrictively, by transposing the term "transport operator" from the market for combined transport of goods into the market for the transport of passengers, despite the fact that that concept has no role in that market as it actually functions.

In view of the conditions to which grant of the exemption was made subject, the Court of First Instance, referring to the case-law concerning the prohibition of abuse of a dominant position, held that an undertaking may not be regarded as being in possession of infrastructure, products or services which are "necessary" or "essential" for entry to the relevant market unless such infrastructure, products or services are not interchangeable and unless, by reason of their special characteristics — in particular the prohibitive cost of and/or time reasonably required for reproducing them — there is no viable alternative available to potential competitors of the joint venture, which are thereby excluded from the market.

Finally, the Court of First Instance upheld the plea based on the insufficient duration of the exemption granted. It stated in that respect that the duration of an exemption granted under Article 85(3) of the Treaty or Article 5 of Regulation No 1017/68, and Article 53(3) of the EEA Agreement must be sufficient to enable the beneficiaries to achieve the benefits justifying such exemption. Where such benefits cannot be achieved without considerable investment, the length of time required to ensure a proper return on that investment is an essential factor to be taken into account when determining the duration of an exemption. That factor is particularly important where the exemption relates to an agreement for the creation of a joint venture offering completely new services, involving major investments and substantial financial risks and requiring the pooling of know-how

7 The Commission had categorised the ENS as a transport operator and, in the decision, had concluded from that categorisation that any special treatment accorded to that company by the undertakings which had made the notification should also be accorded to third parties, whether international groupings or transport operators, on the same technical and financial terms.

8 Under Article 3 of that Directive, an international grouping is defined as "any association of at least two railway undertakings established in different Member States for the purpose of providing international transport services between Member States".

by the undertakings participating in the agreement. In this instance, it considered that the decision did not contain any detailed assessment of the length of time required to achieve a return on the investments in question under conditions of legal certainty and, also in that respect, was vitiated by an absence of reasoning.

2. State aid

In the *field of State aid*, the Court of First Instance ruled on ten actions brought pursuant to the fourth paragraph of Article 173 of the Treaty (Case T-67/94 *Ladbroke Racing* v *Commission* [1998] ECR II-1; Case T-214/95 *Vlaams Gewest* v *Commission* [1998] ECR II-717; Case T-16/96 *Cityflyer Express* v *Commission* [1998] ECR II-757; Joined Cases T-371/94 and T-394/94 *British Airways and Others* v *Commission* [1998] ECR II-2405; Case T-11/95 *BP Chemicals* v *Commission* [1998], not yet published in the ECR; Case T-140/95 *Ryanair* v *Commission* [1998] ECR, not yet published in the ECR; Joined Cases T-126/96 and T-127/96 *BFM and EFIM* v *Commission* [1998], not yet published in the ECR; Case T-188/95 *Waterleiding Maatschappij "Noord-West Brabant"* v *Commission* [1998], not yet published in the ECR; orders in Case T-189/97 *Comité d'Entreprise de la Société Française de Production and Others* v *Commission* [1998] ECR II-335 and Case T-238/97 *Comunidad Autónoma de Cantabria* v *Council* [1998] ECR II-2271), on one action based on Article 33 of the ECSC Treaty (Case T-129/96 *Preussag Stahl* v *Commission* [1998] ECR II-609) and on two actions seeking a declaration under Article 175 of the Treaty that the Commission had failed to act (Case T-107/96 *Pantochim* v *Commission* [1998] ECR II-311 and Case T-95/96 *Gestevisión Telecinco* v *Commission* [1998], not yet published in the ECR).

As regards the *admissibility* of the actions based on the fourth paragraph of Article 173 of the Treaty, the Court of First Instance ruled on applications for annulment of Commission decisions adopted in the context of the preliminary examination stage provided for by Article 93(3) of the Treaty and, also, of decisions adopted at the end of the examination procedure provided for by Article 93(2) of the Treaty.

In *BP Chemicals* v *Commission*, the applicant challenged the Commission's decision approving, at the end of the procedure provided for by Article 93(2), the aid paid by ENI to EniChem in the form of two capital injections and finding, at the end of the preliminary examination under Article 93(3), that the third injection did not involve State aid. Having held that the whole of the proceedings had been brought against the decision within the period prescribed in the fifth paragraph of Article 173 (that time-limit had started to run on the date of publication of the

decision in the *Official Journal of the European Communities*, to the extent that the contested decision had not previously been notified to the applicant), the Court of First Instance considered whether the contested measure was of direct and individual concern to the applicant. The action was declared inadmissible as regards the first two capital injections, since the applicant had not complained to the Commission, and had not approached that institution under its own name with a view to submitting comments as a party concerned within the meaning of Article 93(2) of the Treaty. Nor was the *applicant distinguished individually by virtue of its participation, as a member of a working party made up of representatives of industry and the Department of Trade and Industry, in the preparation of the observations submitted to the Commission by the United Kingdom, since those observations were submitted in the name of the United Kingdom and in its capacity as a Member State.* Finally, in view of the structure of the market and the overall situation of the petrochemical industry at the time the contested aid was paid (1993 and 1994), it was held that the information provided by the applicant did not distinguish it individually for the purposes of the fourth paragraph of Article 173 of the Treaty. In the context of its examination of the admissibility of the action as regards the third capital injection, the Court of First Instance referred to the judgment of the Court of Justice in Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719. It held that the principle that the persons intended to benefit from the procedural guarantees afforded by Article 93(2) of the Treaty may secure compliance therewith only if they are able to challenge a decision not to open the procedure in proceedings before the Community judicature *applies whether the ground on which the decision is taken is that the Commission regards the aid as compatible with the common market or that, in its view, the very existence of aid must be discounted.* The applicant, in its capacity as a party concerned within the meaning of Article 93(2) of the Treaty, was therefore individually concerned by the decision in so far as that measure concerned the third capital injection.

In *Waterleiding Maatschappij "Noord-West Brabant"* v *Commission*, the Court of First Instance considered the admissibility of the action brought by a water distribution company for annulment of a Commission decision approving, without initiating the procedure provided for in Article 93(2) of the Treaty, the aid measures in a Netherlands law introducing taxes on consumption for the protection of the environment. In that respect, it held that, in its capacity as a party concerned within the meaning of Article 93(2), the applicant was directly and individually concerned by the contested decision in so far as it concerned the two aid elements in the Dutch law, namely the relief for self-supplying undertakings and the exemption for irrigation or watering purposes. In its assessment, it considered that the general nature of a measure notified by a

Member State to the Commission does not in itself preclude the applicant from being regarded as having the status of a party concerned within the meaning of Article 93(2) of the Treaty provided that the applicant challenging the Commission decision declaring an aid scheme to be compatible with the common market on the basis of Article 93(3) demonstrates that its competitive position in the market is affected by the grant of the aid. In this instance, it was held that the competitive position of the applicant in the market would be affected by one of the tax reliefs provided for for self-supplying undertakings. It was held that, by means of that aid, the beneficiaries, which "are current or potential customers of the applicant ... are encouraged to switch to self-supply to meet their water needs". The Court of First Instance found there to be "a switch towards self-supply" and held that the relief at issue "directly [affected] the structure of the market in the provision of water in which the applicant [operated]" and "[affected] its competitive position on that market". The same approach was taken in respect of an "exemption for irrigation or watering purposes", capable of causing a certain amount of "desertion" to self-extraction. However, it was apparent from the facts of the case that, as regards those two aid elements, the contested decision confirmed previous decisions which had not been challenged within the required period. The application was therefore dismissed as inadmissible.

In the judgments in *Vlaams Gewest* v *Commission* and *Cityflyer Express* v *Commission* the Court of First Instance dealt with two applications for annulment of the Commission decision of 26 July 1995 concerning aid granted by the Flemish Region to the Belgian airline Vlaamse Luchttransportmaatschappij (hereinafter "VLM"). In that decision the Commission had concluded that the loan granted by the Flemish Region to VLM included components of State aid which were unlawful and incompatible with the common market. Consequently the Commission required the Belgian authorities to order that interest at the rate of 9.3% be paid on that loan and that the aid component, equal to interest charged at that rate on the amount borrowed since the date of the loan, be repaid.

The contribution of the judgment in *Vlaams Gewest* v *Commission* consists of the examination of the conditions of admissibility of actions brought under the fourth paragraph of Article 173 by a region. In that case, the Court of First Instance held that the contested decision had a direct and individual effect on the legal position of the Flemish region by directly preventing it from exercising its own powers, which here consisted of granting the aid in question, as it saw fit, and required it to modify the loan contract entered into with VLM.

In *Cityflyer Express* v *Commission*, the Court of First Instance dismissed the plea of inadmissibility raised by the Commission. According to the Commission, the

applicant had no interest in bringing the proceedings, since if the decision were to be annulled and VLM subsequently to obtain new financing from a credit institution, VLM's financial situation would improve owing to the fall in interest rates which occurred after the adoption of the contested decision. The Court of First Instance held in that respect that, in its capacity as a competitor of the company receiving the aid, the applicant had a legal interest in bringing proceedings, since the contested decision was *liable to have an adverse effect on its competitive position*.

As is apparent from the order in *Comité d'Entreprise de la Société Française de Production and Others*, although a trade union may have the status of a party concerned within the meaning of Article 93(2) of the Treaty, it is neither directly nor individually concerned by the Commission's decision declaring aid to be incompatible with the common market. An appeal has been brought against that order (Case C-106/98 P).

Furthermore, the Court of First Instance considered that a Spanish regional authority, which was challenging the legality of a Council regulation on aid to certain shipyards under restructuring, on the ground that its application would result in a limitation of the activities of a shipyard established on its territory and would therefore have serious socio-economic consequences in that territory, cannot be regarded as being concerned for the purposes of the fourth paragraph of Article 173 of the Treaty (order in *Comunidad Autónoma de Cantabria* v *Council*). It held that any general interest the applicant might have, as a third party, in obtaining a result which would favour the economic prosperity of a given undertaking and, consequently, the level of employment in the geographical region where it carries on its activities, was not in itself sufficient for the applicant to be regarded as being directly concerned, for the purposes of the fourth paragraph of Article 173 of the Treaty, by the contested regulation, nor — *a fortiori* — as individually concerned.

As regards the *substance*, the Court of First Instance partially annulled the Commission decision of 27 July 1994 regarding the aid Italy had decided to grant to EniChem SpA, on the ground that, at the end of the examination pursuant to Article 93(3) of the Treaty, the Commission had not been in a position to overcome all the difficulties raised by the question whether the last of the three capital injections referred to by the contested decision constituted aid within the meaning of Article 92(1) of the Treaty and that it had therefore infringed the applicant's rights as a party concerned within the meaning of Article 93(2) of the Treaty (*BP Chemicals* v *Commission*).

Similarly, it annulled the Commission decision authorising the French authorities to grant aid, in the period 1994 to 1996, in favour of Compagnie Nationale Air France, in the form of a FF 20 billion capital increase to be paid in three tranches and aimed at its restructuring, on the ground that it had failed to state reasons in respect of two essential elements (*British Airways and Others* v *Commission*). In its examination, the Commission had considered that a genuine restructuring of Air France would be in the common interest, by contributing to the development of the European air transport industry and improving its competitiveness. It had also considered that the amount of aid did not appear to be excessive for the successful accomplishment of the restructuring plan and that that aid did not affect trade to an extent contrary to the common interest, in the light of the commitments made by the French Government. It had concluded that the aid was compatible with the common market and the EEA Agreement, provided that the French authorities complied with 16 commitments made at the time the decision was drafted.

The Court of First Instance considered that it was not sufficiently clear from the decision whether the Commission had examined the extent to which the modernisation of the Air France fleet, consisting of the purchase of 17 new aircraft for a total of FF 11.5 billion, could be partially financed by the aid at issue. It also considered that the decision was vitiated by a failure to state reasons as regards the effects of the aid on competitors of Air France worldwide. Although it conceded that the conditions imposed in the decision, limiting Air France's freedom and preventing it from pursuing an aggressive price policy on all the routes which it operated within the EEA, were explained in sufficient detail in the decision, it considered, by contrast, that the decision did not contain any indication as to the assessment of the effects of the aid on the competitive position of Air France in regard to its network of non-EEA routes and the associated feeder traffic.

In several cases, the Court of First Instance reviewed whether the Commission was reasonably able to conclude whether or not a measure by a Member State constituted State aid for the purposes of Article 92(1) of the Treaty. It recalled, in *BFM and EFIM* v *Commission*, that the Commission has a wide discretion when determining, at the end of a complex economic appraisal, whether a particular measure may be regarded as aid within the meaning of Article 92(1) of the Treaty where the State did not act as an ordinary economic agent. Judicial review by the Court of First Instance is restricted to determining whether the Commission complied with the rules governing procedure and the statement of reasons, whether the facts on which the contested finding was based are accurate and whether there was any manifest error of assessment or misuse of powers. In

the circumstances of the case, the Court of First Instance held that the Commission had not committed any manifest error of assessment.

In a decision dated July 1995 concerning the aid granted by the Flemish region to the airline VLM, the Commission had considered that the difference between the interest which VLM would have paid under normal market conditions and that actually paid constituted aid within the meaning of Article 92(1) of the Treaty. In response to the applicant's assertion that the Commission had committed manifest errors of assessment in not also classifying the principal sum loaned as aid, the Court of First Instance held that the manifest errors allegedly committed in the assessment had not been proven (*Cityflyer Express* v *Commission*).

In *Ladbroke Racing* v *Commission*, the Court of First Instance pointed out that the concept of aid is objective, the test being whether a State measure confers an advantage on one or more particular undertakings. The characterisation of a measure as State aid, which, according to the Treaty, is the responsibility of both the Commission and the national courts, cannot in principle justify the attribution of a broad discretion to the Commission, save for particular circumstances owing to the complex nature of the State intervention in question. The relevance of the causes or aims of State measures falls to be appraised only in the context of determining — pursuant to Article 92(3) of the Treaty — whether such measures are compatible with the common market. It is only in cases where Article 92(3) falls to be applied and where, accordingly, the Commission must rely on complex economic, social, regional and sectoral assessments, that a broad discretion is conferred on that institution.

In that case, the applicant, a company belonging to the Ladbroke Group, whose activities include organising and providing betting services in connection with horse-races in the United Kingdom and other countries in the Community, had submitted a complaint to the Commission in respect of several forms of aid which the French authorities had granted to Paris Mutuel Urbain (PMU), the body with the exclusive right to manage the organisation of off-course totalisator betting by the racecourse undertakings, and which it claimed were incompatible with the common market. Of the seven measures adopted by the French Government in favour of the PMU with regard to which the procedure under Article 93(2) of the Treaty was initiated, three were identified by the Commission in its final decision as State aid within the meaning of Article 92(1) of the Treaty, eligible for exemption under Article 92(3)(c) of the Treaty, namely (i) the waiver from 1982 to 1985 of the sums deriving from the practice of rounding down betters' winnings to the nearest 10 centimes; (ii) the exemption prior to 1989 from the one-month delay rule for the deduction of VAT; (iii) the exemption from the

housing levy up to 1989. As regards the four other measures, the Commission had found that various advantages granted to the PMU, through the amendment of the allocation of the public levies, cash-flow benefits whereby the PMU was authorised to defer payment of certain charges levied on horse-race betting, the exemption from corporation tax and the retention of unclaimed winnings by PMU did not constitute State aid. Following its assessment, the Court of First Instance concluded that the decision should be annulled, in particular in so far as the Commission had decided that several measures did not constitute State aid.

As regards the amendment of the allocation of the public levies, it considered that although both tax legislation and the implementation of national tax arrangements are matters for the national authorities, the exercise of those powers may, in certain cases, prove incompatible with Article 92(1) of the Treaty. In that respect the Commission was not entitled to conclude that a tax measure, involving the reduction of the share of the PMU's revenue from horse-racing bets accruing to the French authorities did not constitute State aid within the meaning of Article 92(1) but a "reform in the form of a tax adjustment that is justified by the nature and economy of the system in question", on the ground that the measure is ongoing in character, is not aimed at financing an *ad hoc* operation and is merely a limited reduction in the rate of taxation.

As regards the cash-flow benefits, the Court of First Instance held that the decision of the French authorities had had the effect of granting financial advantages to the undertaking and improving its financial position. The fact that that decision could also indirectly benefit a number of other operators whose affairs depend on the principal activities of the undertaking to which the aid was granted was not held to be conclusive and it does not follow that the measure in question was a general measure outside the ambit of Article 92(1) of the Treaty. At the very most it means that the measure may qualify for the sectoral derogation provided for in Article 92(3)(c) of the Treaty.

As regards the retention of unclaimed winnings by the PMU, the Court of First Instance held that the condition for applying Article 92(1) of the Treaty, namely that State funds are transferred to the recipient, is satisfied where a Member State permits the body responsible for the operation of totalisator betting to retain unclaimed winnings, in order to finance social security expenditure. In this instance, all the French legislature did was in effect to waive revenue which would otherwise have been paid to the Treasury. However, in so far as those resources were used to finance social expenditure, they constituted a reduction in the social security commitments which the undertaking would normally have had to discharge and hence a grant of aid.

In the same case, the Court of First Instance was also called upon to determine whether the Commission had infringed Article 93(2) of the Treaty by deciding, when exercising its power of appraisal as to whether to instruct the French authorities to recover aid declared incompatible with the common market, to restrict the effects in time of such a decision on the ground that the Member State concerned considered that a judgment of a national court [9] was liable to give rise to a legitimate expectation on the part of the PMU, the recipient of the aid, that the latter was lawful. It replied that the Commission was not entitled to impose such a temporal limitation on that ground. It was not for the Member State concerned, but for the recipient undertaking, in the context of proceedings before the public authorities or before the national court, to invoke the existence of exceptional circumstances on the basis of which it had entertained legitimate expectations, leading it to decline to repay the unlawful aid.

The French Republic has brought an appeal against that judgment before the Court of Justice (Case C-83/98 P).

In its judgment in *Ryanair* v *Commission*, the Court of First Instance dismissed the applicant's application for annulment of the Commission decision authorising the Irish Government to pay the second of three tranches of aid to the Aer Lingus Group. In 1993, following a procedure initiated pursuant to Article 93(2) of the Treaty, the Commission had authorised Ireland to provide aid of IRL 175 million to the Aer Lingus Group, in the form of a capital injection in the context of a restructuring plan. That injection was to be made in three successive tranches: IRL 75 million to be paid in 1993, IRL 50 million in 1994 and IRL 50 million in 1995. The aid at issue had, however, been approved subject to certain conditions. In particular, the payment of the second and third tranches was conditional upon the Aer Lingus Group achieving an IRL 50 million annual reduction in costs.

In December 1994, the Commission had found that the Aer Lingus Group had not achieved that target. However, it had conceded that the progress of the restructuring and the results already achieved were satisfactory, despite the fact that the stipulated objective had not been achieved in full. It therefore authorised the Irish Government to pay the second tranche of the aid by a decision which Ryanair challenged before the Court of First Instance.

9 The French Conseil d'État.

In this case, one of the questions which arose was *which administrative procedure should be followed by the Commission when it has approved State aid payable in tranches under Article 92(3)(c) of the Treaty, following a procedure under Article 93(2), subject to the fulfilment of a certain number of conditions, but it subsequently becomes apparent that one of those conditions has not been fulfilled.* In that respect, the Court of First Instance held that the effect of failure to comply with a condition imposed in a decision approving aid is to raise a presumption that subsequent tranches of the aid *cannot be released without a new Commission decision granting a formal derogation from the condition in question.* It stated that, once the Commission has adopted a decision approving aid subject to conditions at the end of a procedure under Article 93(2), it is not entitled to depart from the scope of its initial decision without re-opening that procedure. *It follows that, if one of the conditions to which approval of an aid was subject is not satisfied, the Commission may normally adopt a decision derogating from that condition without re-opening the procedure under Article 93(2) of the Treaty only in the event of relatively minor deviations from the initial condition, which leave it with no doubt as to whether the aid at issue is still compatible with the common market.* However, the Commission enjoys a power to manage and monitor the implementation of aid to be awarded in tranches, which must, in particular, enable it to deal with developments which could not have been foreseen when the initial decision was adopted. In this instance, since the deviation from the condition at issue was relatively minor (IRL 42.4 million rather than IRL 50 million) and the Commission had not dispensed Aer Lingus from compliance with that condition, but had merely extended by one year the time-limit within which the IRL 50 million reduction in costs was to be achieved, the Court of First Instance held that the Commission had not departed from the scope of the 1993 decision. It also pointed out that the cost réduction had not been achieved as a result of circumstances which could not have been foreseen at the time the initial decision was adopted, in particular, a social conflict which had developed at Team Aer Lingus, a maintenance subsidiary.

Furthermore, it considered that Ryanair had not proved that the developments in Aer Lingus' activities should have led the Commission to entertain doubts as to the compatibility of the second tranche of the aid with the common market, thus obliging it to re-open the procedure under Article 93(2) of the Treaty.

Finally, since none of the other grounds of challenge raised by the applicant were accepted, the application was dismissed.

As regards the application of *Article 175 of the Treaty*, the Court of First Instance formally declared, for the first time, that the Commission had failed to act in the

field of State aid (*Gestevisión Telecinco* v *Commission*). The applicant, Gestevisión Telecinco, a private commercial television company, had submitted two complaints to the Commission in March 1992 and November 1993, alleging that the subsidies granted by the autonomous Spanish communities and the central Spanish State to certain regional television companies were incompatible with the common market. Since the Commission had still not adopted a position on the two complaints in February 1996, the applicant had set in motion the procedure under Article 175 of the Treaty and lodged an application for a declaration that the Commission had failed to fulfil its obligations under the Treaty, by failing to adopt a decision in relation to the two complaints submitted by it and by failing to initiate the procedure provided for under Article 93(2) of the Treaty.

The Court of First Instance first pointed out that the investigation of the alleged aid took place at the analysis stage provided for by Article 93(3) of the Treaty and that, by its action, *the applicant was asking it to declare that the Commission had failed to adopt one of the three decisions it is required to adopt vis-à-vis the Member State concerned at the end of that stage*. That is to say either a decision finding that the State measure at issue does not constitute State aid within the meaning of Article 92(1) of the Treaty, or a decision conceding that, although constituting aid within the meaning of Article 92(1) of the Treaty, the measure is compatible with the common market under Article 92(2) or (3) of the Treaty or, finally, a decision to initiate the analysis stage provided for by Article 93(2). Having stated that the applicant could be considered as directly and individually concerned by such measures, the Court concluded that the application was admissible. As regards the substance, it considered whether, at the time when the Commission was formally called upon to define its position, it was under a duty to act. It pointed out that, at that time, the Commission's investigation of the first complaint had already taken 47 months and the investigation of the second complaint 26 months. It considered that, in those circumstances, the Commission should have been in a position to adopt a decision on the aid in question, unless it could show exceptional circumstances justifying such periods. It considered that not to be the case and held that the Commission had failed to fulfil its obligations under the Treaty.

It should be noted that the judgment in *Gestevisión Telecinco* v *Commission* was the only judgment, in 1998, declaring that an institution had failed to act.

According to Article 4(c) of the *ECSC Treaty*, aid granted by the Member States to the steel industry, in any form whatsoever, is prohibited. On the basis of Article 95 of that Treaty, on 27 November 1991 the Commission adopted Decision No 3855/91/ECSC establishing Community rules for aid to the steel

industry (OJ 1991 L 362, p. 57), the so-called "Fifth Steel Aids Code". The interpretation of certain provisions of the Fifth Code were at the heart of the dispute in *Preussag Stahl* v *Commission*. In that case, the German Government had notified the Commission of two proposals for aid to the company Walzwerk Ilsenburg, one in May 1994 and the other in November 1994. As regards the latter, the Commission had informed the German authorities that it would be impossible for it to give a decision before the deadline of 31 December 1994 laid down by the Code. Since the German authorities maintained the notification of that proposal, by decision adopted in May 1996 the Commission found that the regional aid to the company constituted State aid incompatible with the common market and prohibited under the Treaty and the Code and ordered it to be repaid. The Court of First Instance dismissed the application for annulment of that decision lodged by the company concerned, Preussag Stahl, the successor in title to Walzwerk Ilsenburg. As regards the application of Decision No 3855/91, it pointed out in particular that the deadline of 31 December 1994 laid down for the payment of regional investment aid was necessarily the deadline imposed on the Commission for adopting decisions on the compatibility of that category of aid. After the expiry of that time-limit, such aid could no longer be regarded as compatible with the common market on the basis of Article 1(1) of Decision No 3855/91 and was thus prohibited pursuant to Article 4(c) of the ECSC Treaty. Firstly, in the light of the provisions of Decision No 3855/91, aid to which that decision applied could be put into effect only with the prior approval of the Commission. Secondly, unlike the EC Treaty, which empowers the Commission to adopt decisions on the compatibility of State aids on a permanent basis, the derogation allowed by Decision No 3855/91 to the principle of the absolute prohibition of aid in Article 4(c) of the ECSC Treaty was limited in time and must therefore be interpreted even more strictly since, according to the 11th recital in the preamble to the decision, "as regional investment aids are exceptional in nature, there would [have been] no justification in maintaining them beyond the appropriate period for the modernisation of the steel plants concerned, which [was] set at three years".

Furthermore, the general scheme of the procedural provisions of Decision No 3855/91 indicated that it was designed to afford the Commission a period of at least six months within which to give a decision on the compatibility of planned aid notified to it. In this case, the Commission therefore needed at least six months before the deadline of 31 December 1994 in order to open and close the procedure before that deadline. Since planned aid was notified after 30 June 1994, the Commission was no longer required to adopt a decision on its compatibility before 31 December 1994. By having maintained the notification of the planned aid on a date which left the institution substantially less than the

six-month period required by the Code, the German authorities had taken the risk of making it impossible for the Commission to examine the planned aid before its powers in that respect expired. In the absence of any proof of manifest negligence on its part, the Commission could therefore not be criticised for the fact that that risk materialised.

An appeal has been brought against that judgment before the Court of Justice (Case C-210/98 P).

3. Access to documents of the Council and the Commission

The Court of First Instance had cause to rule on the conditions of public access to documents [10] of the Commission (Case T-124/96 *Interporc* v *Commission* [1998] ECR II-231 and Case T-83/96 *Van der Wal* v *Commission* [1998] ECR II-545) and of the Council (Case T-174/95 *Svenska Journalistförbundet* v *Council* [1998] ECR II-2289).
The judgment in *Interporc* v *Commission* censured the Commission's refusal to provide access to certain documents, on the basis of the exception for protection of the public interest (court proceedings). The decision contained no explanation from which it was possible to ascertain whether all the documents requested did indeed fall within the scope of the exception relied upon because they bore relation to a decision whose annulment was sought in a case pending before the Court of First Instance.

By contrast, the judgment in *Van der Wal* v *Commission* dismissed the application for annulment of a Commission decision refusing to grant access to *letters which the Directorate-General for Competition (DG IV) had sent to various national courts*. The Court of First Instance considered that the Commission was entitled to rely on the exception provided for by Decision 94/90 of 8 February 1994, based on the protection of the public interest (court proceedings), in order to refuse to grant access to documents sent to a national court in response to a request for information from that court in the context of the cooperation based on the Commission's notice on the application of Articles 85 and 86 of the Treaty, even though the Commission was not a party to the proceedings pending before

10 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 implementation of the principles set out by that Code, on 20 December 1993 the Council adopted Decision 93/731/EC on public access to Council documents (OJ 1993 L 340, p. 43). Similarly, on 8 February 1994, the Commission adopted Decision 94/90/ECSC, EC, Euratom on public access to Commission documents (OJ 1994 L 46, p. 58).

the national court which gave rise to the request. It held in that respect that that exception to the general principle of access to documents is designed to ensure respect for the right of every person to a fair hearing by an independent tribunal and is not restricted to the protection of the interests of the parties in the context of specific court proceedings. Consequently, the decision whether or not to grant access to documents drafted by the Commission for the sole purposes of a particular court case was a matter exclusively for the appropriate national court on the basis of its own rules of procedure and, in particular, the principles of confidentiality applicable to documents on the file. The Court of First Instance also considered that sufficient reasons had been given for the contested decision. The Kingdom of the Netherlands and Mr Van der Wal respectively have brought appeals against that judgment (registered as Case C-174/98 P and C-189/98 P).

In *Svenska Journalistförbundet* v *Council* the Court of First Instance was required to review the legality of the Council's refusal to disclose certain documents concerning the European Police Office (Europol) to an association of Swedish journalists. The Council had based its refusal on both the mandatory exception based upon the protection of public security and also the discretionary exception based upon protection of the confidentiality of its proceedings. Considering a plea of inadmissibility based on an absolute bar to proceeding, the Court of First Instance first held that, although it has no jurisdiction to review the legality of measures adopted under Title VI of the Treaty on European Union (Provisions on Co-operation in the fields of Justice and Home Affairs), it does have jurisdiction to review the legality of decisions of the Council taken under Decision 93/731 of 20 December 1993. As regards the substance, it recalled the requirements of a proper statement of reasons for a refusal based on exceptions to the general principle of access to any document. In this instance, in the absence of any explanation as to why the disclosure of the documents would in fact have been liable to prejudice a particular aspect of public security, it was not possible for the Court of First Instance to determine whether the documents to which access had been refused fell within one of those exceptions. Furthermore, in so far as it concerned the exception based upon protection of the confidentiality of proceedings, the contested decision did not permit the journalists' association and, therefore, the Court of First Instance, to check whether the Council had complied with its duty to carry out a genuine balancing of the interests concerned.

Furthermore, that case raised a procedural issue, which had not previously arisen. The applicant had published an edited version of the defence on the Internet and encouraged the public to send their comments to the Council's Agents. Referring to the general principle of the due administration of justice, according to which parties have the right to defend their interests free from all external influences,

and particularly from influences on the part of members of the public, it held that such actions involved abuses of procedure which should be taken into account in awarding costs.

4. Trade protection measures

In *the field of anti-dumping duties*, the Court of First Instance ruled on the substance in four cases (Case T-97/95 *Sinochem* v *Council* [1998] ECR II-85, Case T-118/96 *Thai Bicycle Industry* v *Council* [1998] ECR II-2991, Case T-232/95 *CECOM* v *Council* [1998] ECR II-2679 and Case T-2/95 *Industrie des Poudres Sphériques* v *Council* [1998], not yet published in the ECR). It dismissed the four actions, all seeking annulment of Council regulations imposing definitive anti-dumping duties on imports from countries not members of the Community, as unfounded. It also dismissed two actions as inadmissible (orders in Case T-84/97 *BEUC* v *Commission* [1998] ECR II-795 and Case T-267/97 *Broome & Wellington* v *Commission* [1998] ECR II-2191). Finally, in Case T-147/97 *Champion Stationery and Others* v *Council* [1998], not yet published in the ECR), the Court of First Instance rejected the applicants' sole plea in law based on infringement of their rights of the defence.

In *Thai Bicycle Industry* v *Council*, the applicant, a company incorporated under the law of Thailand, was challenging the legality of a Council regulation imposing a definitive anti-dumping duty on imports of bicycles originating in Indonesia, Malaysia and Thailand and collecting that duty definitively. The main question raised was whether the Council had infringed Article 2(3)(b)(ii) of 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) or had committed a manifest error of assessment by using a new criterion in establishing the profit margin to be included in the constructed normal value of the applicant's products exported to the Community. In this instance it had not been possible for the Commission and Council to determine the dumping margin of the bicycles produced by the applicant by comparing the normal value of those products with their export prices to the Community. Those institutions therefore had to establish the constructed value of those products by adding to the production costs of the exported models a reasonable amount for selling, general and administrative expenses and a reasonable profit margin. The Court of First Instance held that, in order to calculate that profit margin, the Council had been entitled to consider that where a producer realises profits on a sales volume which is less than 10% of the total volume of its domestic sales of the like product, those profits are not reliable within the meaning of Article 2(3)(b)(ii) of Regulation No 2423/88 and

are consequently not suitable for use in calculating the aforementioned margin.

In *Sinochem* v *Council*, the applicant, a State company in the People's Republic of China which had been the sole exporter of furfuraldehyde [11] from the People's Republic of China, challenged the legality of a Council Regulation imposing a definitive anti-dumping duty on imports of that product from that country in the light, in particular, of several provisions of Regulation No 2423/88. In particular, it submitted that, in the circumstances of that case, an anti-dumping measure limited to imports of furfuraldehyde only intended for the cleaning of lubricating oils would have been adequate to remove the injury. The Court of First Instance did not accept that argument. It held that the imposition of anti-dumping duties on the whole of the imports of the product at issue from China was not contrary either to Article 2(1) of Regulation No 2423/88 or to the principle of proportionality, since the two different applications of furfuraldehyde did not correspond to two separate markets and the product was the same. Since none of the other pleas in law raised were held to be founded, the application was dismissed in its entirety.

The Committee of European Copier Manufacturers (CECOM) had brought an action before the Court of First Instance for annulment of a provision of a Council Regulation imposing a definitive anti-dumping duty on plain paper photocopiers originating in Japan and due to expire, in principle, two years after its entry into force (*CECOM* v *Council*). The definitive anti-dumping duty in question had been adopted following a procedure for the review of the measures initially adopted by the Council in 1987. As regards the question whether the Council could, pursuant to Regulation No 2423/88, adopt anti-dumping measures for a period of less than five years, the Court of First Instance held that *Article 15(1) of that regulation* [12] *must be construed as allowing the Council a discretionary power to fix at less than five years the period of application of definitive anti-dumping duties adopted following a procedure for the review of the measures initially adopted if, owing to special circumstances, such a limitation best serves to protect the differing interests of the parties to the procedure and maintain the equilibrium between those interests which Regulation No 2423/88 seeks to establish*. The other pleas in law were also rejected.

11 Furfuraldehyde is a chemical used, first, as a selective solvent in oil refining for the production of lubricating oils and, second, as a raw material for the production of furfuryl alcohol.

12 Article 15(1) of Regulation No 2423/88 provides that "anti-dumping ... duties ... shall lapse after five years from the date on which they entered into force or were last modified or confirmed".

Finally, the judgment in *Industrie des Poudres Sphériques* v *Council* settled the dispute arising from the resumption by the Commission of the anti-dumping procedure finalised by a Council regulation imposing a definitive anti-dumping duty on imports of calcium metal originating in China and Russia [13] following a judgment of the Court of Justice annulling a previous Council Regulation with the same subject-matter (Case C-358/89 *Extramet Industrie* v *Council* [1992] ECR I-3813 [14]). *It therefore fell to the Court of First Instance to consider the effect of a judgment annulling such a regulation on the administrative procedure leading to its adoption.* It held in that respect that, as regards an act concluding an administrative proceeding which comprises several stages, the annulment does not necessarily entail the annulment of the entire procedure prior to the adoption of the contested act regardless of the grounds, procedural or substantive, of the judgment pronouncing the annulment. In particular, when, in the context of an anti-dumping proceeding, the annulment of a regulation fixing the duties imposed is based on a finding that the institutions did not follow the proper procedure in determining the injury suffered by the Community producer, the preliminary measures preparatory to the investigation, which led to the adoption of that regulation, and in particular the initiation of the proceeding under Article 7(1) of Regulation No 2423/88 are not affected by the unlawfulness found by the Court. In those circumstances, the Commission could lawfully resume the proceeding on the basis of all the acts in the proceeding which were not affected by the annulment in order to conduct an investigation into the same reference period as that taken into account in the Council regulation annulled by the Court or where, as in this case, the anti-dumping is still in progress after the judgment pronouncing the annulment, conduct a fresh investigation relating to a different reference period. An appeal has been brought against that judgment (Case C-458/98 P).

As regards the orders dismissing two applications as inadmissible, they ruled, respectively, on an application for annulment by the Bureau Européen des Unions de Consommateurs against a Commission decision which merely confirmed a previous decision not challenged within the time-limits (order in *BEUC* v

13 Adopted pursuant to Regulation No 2423/88.

14 The Court of Justice had annulled the Council regulation at issue on the grounds that the Community institutions had not actually considered whether the Community producer of the product referred to in the regulation had by its conduct itself contributed to the injury suffered and had not established that the injury on which they based their conclusions did not derive from the factors as mentioned by the applicant, and had therefore not followed the proper procedure in determining the injury.

Commission) and an application for annulment of the act whereby the Commission had initiated anti-dumping proceedings, that is to say a purely preparatory act which was not capable of having an immediate and irrevocable effect on the applicant's legal position (order in *Broome and Wellington* v *Commission*).

5. Customs disputes

The Community legislation governing the detailed rules for repayment or remission of import duties (Article 13 of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties (OJ 1979 L 175, p. 1), and Article 239 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) was at the centre of three cases (Case T-42/96 *Eyckeler & Malt* v *Commission* [1998] ECR II-401; Case T-195/97 *Kia Motors Nederland and Broekman Motorships* v *Commission* [1998], not yet published in the ECR and Case T-50/96 *Primex Produkte Import-Export and Others* v *Commission* [1998], not yet published in the ECR). In each of those three cases, the Court of First Instance annulled the contested decision of the Commission. By contrast, it dismissed as unfounded actions challenging the legality of a Commission decision ordering the post-clearance recovery of customs duties (Joined Cases T-10/97 and T-11/97 *Unifrigo Gadus and CPL Imperial 2* v *Commission* [1998] ECR II-2231); an appeal has been brought against that judgment (Case C-299/98 P).

In Case T-42/96 *Eyckeler & Malt* v *Commission* the Court of First Instance heard an action for annulment of the Commission decision rejecting an application for remission of import duties submitted to the German authorities by Eyckeler & Malt, a company which had imported high- quality beef from Argentina. Those imports had been subject to customs duty but had been granted an exemption from levies pursuant to the Community tariff quota opened by the Council in respect of 1991 and 1992, since the applicant had submitted the certificates of authenticity required by the applicable legislation for that purpose. It was subsequently discovered that those certificates had been falsified and the applicant, from whom the German authorities had sought post-clearance payment of the import duties, applied to those authorities for remission of the import duties. At the end of the administrative customs procedure, the Commission had addressed the contested decision to the Federal Republic of Germany; in that decision, *inter alia*, *it alleged for the first time that Eyckeler & Malt had failed to exercise due care* by omitting to adopt all the necessary safeguards concerning its interlocutors in Argentina.
In concluding that the decision should be annulled, the Court of First Instance accepted that the Commission had, firstly, breached the applicant's rights of

defence and, secondly, committed a manifest error of assessment. As regards the rights of the defence, it pointed out that respect for those rights in all proceedings which are initiated against a person and are liable to culminate in a measure adversely affecting that person is a fundamental principle of Community law which must be guaranteed, even in the absence of any rules governing the procedure in question. The Court of First Instance stressed that it is all the more important that respect for that right be guaranteed where the Commission has a margin of assessment in adopting the measure, such as in procedures for the remission or repayment of import or export duties. In circumstances such as those of that case, it considered that that principle requires not only that the person concerned should be placed in a position in which he may effectively make known his views on the relevant circumstances, but also that he should at least be able to put his own case on the documents taken into account by the Commission, or even have access to all non-confidential official documents concerning the contested decision, where it is alleged that the Commission committed serious breaches of its obligations. More specifically, it held that, in customs procedures such as those in this case, when the Commission contemplated diverging from the position taken by the competent national authorities, it had a duty to arrange for a hearing of the person alleged to have failed to act with due care or to have acted with obvious negligence. The same question arose in *Primex Produkte Import-Export and Others* v *Commission*, and the Court of First Instance gave an identical answer in its judgment of 17 September 1998. The Commission has brought appeals against the judgments in *Eyckeler & Malt* v *Commission* and *Primex Produkte Import-Export and Others* v *Commission* before the Court of Justice (Case C-163/98 P and Case C-417/98 P).

6. Social policy

The European Social Fund (ESF) participates in the financing of vocational training and guidance operations, the successful completion of which is to be guaranteed by the Member States. When the financial assistance is not used in conformity with the ESF's conditions for approval, the relevant legislation provides that the Commission may suspend, reduce or withdraw the aid. In fact, the Court of First Instance had to rule on Commission decisions reducing the financial assistance granted by the ESF to Portuguese companies (Case T-72/97 *Proderec* v *Commission* [1998] ECR II-2847; Joined Cases T-180/96 and T-181/96 *Mediocurso* v *Commission* [1998], not yet published in the ECR and Case T-142/97 *Branco* v *Commission* [1998], not yet published in the ECR). Each of those three judgments states in so far as is necessary the nature and scope of the certification, by the Member State concerned, of the accuracy of the facts

and accounts in the claims for payment of the balance of the financial assistance. [15] In *Proderec* v *Commission* and *Mediocurso* v *Commission* the Court of First Instance also considered whether, as the applicants claimed, their rights of defence had been infringed in so far as they had not been granted a hearing by the Commission before it adopted the decisions reducing the financial assistance concerned. In both cases, the Court of First Instance, having recalled that *the Commission was not entitled to adopt a decision to reduce ESF aid without first giving the beneficiary the possibility, or ensuring that it had the possibility, of effectively setting forth its views on the proposed reduction*, rejected the pleas, holding that the applicants had had the possibility of effectively setting forth their views.

Only in *Mediocurso* v *Commission* did the Court of First Instance annul a small part of one of the contested decisions on the grounds that the statement of reasons was defective. The other actions were dismissed.

Appeals have been brought against all three of those judgments (Case C-341/98 P, Case C-462/98 P and Case C-453/98 P).

7. The admissibility of actions under the fourth paragraph of Article 173 of the EC Treaty

The Court of First Instance dismissed as inadmissible several actions seeking either the annulment of decisions which were not addressed to the applicants or the annulment of legislative measures. Only one case in the second category was determined by way of judgment (Case T-135/96 *UEAPME* v *Council* [1998] ECR II-2335), the others being settled by way of order. In addition to the cases of inadmissibility of actions for annulment of regulations in the field of commercial policy or State aid already mentioned [16] several decisions declared inadmissible actions for annulment of regulations in the fields of agricultural policy *lato sensu* (in particular, orders in Joined Cases T-14/97 and T-15/97 *Sofivo and Others* v *Council* [1998] ECR II-2601; Case T-269/97 *Azienda Agricola Tre e Mezzo and Carlo Bazzocchi* v *Commission* [1998], not yet published in the ECR; Case T-100/94 *Michailidis and Others* v *Commission* [1998], not yet published in the

15 As required by Article 5 of Council Regulation (EC) No 2950/83 of 17 October 1983 on the implementation of Council Decision 83/516/EEC on the tasks of the European Social Fund (OJ 1983 L 289, p. 1).

16 In the field of State aid, only one case was involved (order in Case T-238/97 *Comunidad Autónoma de Cantabria* v *Council*).

ECR; Case T-109/97 *Molkerei Großbraunshain and Bene Nahrungsmittel* v *Commission* [1998], not yet published in the ECR; Case T-609/97 *Regione Puglia* v *Commission and Spain* [1998], not yet published in the ECR); Case T-38/98 *ANB and Others* v *Council* [1998], not yet published in the ECR and Case T-39/98 *Sadam Zuccherifici Divisione della SECI SpA and Others* v *Council* [1998], not yet published in the ECR) and economic and monetary policy (order in Case T-207/97 *Berthu* v *Council* [1998] ECR II-509), and a directive in the field of social policy (*UEAPME* v *Council*).

In particular, by the order in *Molkerei Großbraunshain and Bene Nahrungsmittel* v *Commission,* the Court of First Instance declared inadmissible the application by a cheese producer in the German canton of Altenburger Land for annulment of Commission Regulation (EC) No 123/97 of 23 January 1997 supplementing the Annex to Commission Regulation (EC) No 1107/96 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Regulation (EEC) No 2081/92 [17] in so far as it provided for the registration of the protected designation of origin 'Altenburger Ziegenkäse' for a geographical area extending beyond the borders of that canton. It held, firstly, that, by its nature and scope, the contested regulation was a legislative measure and did not constitute a decision within the meaning of the fourth paragraph of Article 189 of the Treaty. In that respect it held that the legislation at issue, which recognised the right of any undertaking whose products satisfy the geographical and qualitative requirements, to market those products under the protected designation of origin, applied to objectively determined situations and produced legal effects for persons defined in a general and abstract manner. It pointed out that the protection resulting from the designation of origin "Altenburger Ziegenkäse" for a specific geographic area had been objectively determined in relation to one of the aims of Regulation No 2081/92, namely the promotion of certain rural areas. Secondly, it recalled that, in certain circumstances, even a legislative measure which applies to the traders concerned in general, may be of individual concern to some of them, provided that the measure affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons (Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853). That was not the case in this instance. In that respect, the Court of First Instance considered, *in particular*, that the mere fact that, before adopting the regulation, the

17 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).

Commission had received comments from the applicant concerning the contested geographical area and responded to its comments, was not capable of distinguishing him individually with regard to all other traders since, in the absence of expressly guaranteed procedural rights, it would be contrary to the wording and to the spirit of Article 173 of the Treaty to allow any individual who participated in the preparation of a legislative measure, subsequently to bring an action against that measure. An appeal has been brought against that order (Case C-447/98 P).

In bringing his action, Mr Berthu, a Member of the European Parliament, was seeking the annulment of Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro (OJ 1997 L 162, p. 1) which provides, *inter alia*, that every reference in a legal instrument to the ecu, as referred to in Article 109g of the Treaty, is to be replaced by a reference to the euro at a rate of one euro to one ecu. The Court of First Instance held that while the applicant was affected by the change in the name of the single currency, it was only in his objective capacity as citizen of a Member State and user of the single currency, and in the same way as any other citizen or undertaking in a Member State. Therefore since the applicant had not shown that he was affected by that regulation by reason of certain attributes which were peculiar to him or by reason of circumstances in which he was differentiated from all other persons, the applicant could not claim that that measure was of individual concern to him. The fact that he held a French fungible Treasury bond drawn in ecu was not enough to give him *locus standi* under the fourth paragraph of Article 173 of the Treaty. The application was therefore dismissed as inadmissible (order in *Berthu* v *Council*).

Finally, in its judgment in *UEAPME* v *Council*, the Court of First Instance dismissed as inadmissible an application by Union Européenne de l'Artisanat et des Petites et Moyennes Entreprises (UEAPME) for annulment of Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by Union des Confédérations de l'Industrie et des Employeurs d'Europe (UNICE), Centre Européen de l'Entreprise Publique (CEEP) and Confédération Européenne des Syndicats (ETUC) (OJ 1996 L 145, p. 4). That directive had been adopted by the Council on the basis of Article 4(2) of the Agreement on social policy concluded between the Member States of the European Community with the exception of the United Kingdom of Great Britain and Northern Ireland, annexed to Protocol (No 14) on social policy, annexed to the Treaty establishing the European Community. By reason of the procedural mechanism applied for the adoption of the directive in that case, the applicant, a European association which represents and defends at European level small and

medium-sized undertakings, had not been among the associations which concluded the framework agreement on parental leave, namely UNICE, CEEP and ETUC, and submitted it to the Commission for implementation by the Council on a proposal from the Commission.

In concluding that the application was inadmissible, a plea which was formally raised by the Council, the Court of First Instance first held that, by its nature, the contested directive was a legislative measure and did not therefore constitute a decision within the meaning of Article 189 of the Treaty. Second, it held that UEAPME was not individually concerned by the contested directive, since it was not affected by it by reason of certain attributes peculiar to it or by reason of circumstances which differentiated it from all other persons. In that respect it examined, first, whether, in view of the particular features of the procedure culminating in the adoption of the directive, the applicant did, as it claimed, possess special rights in the context of the procedural mechanisms established by the Agreement on social policy. Following its examination, it held that UEAPME could not claim to possess either a general right to participate in the negotiation stage provided for by Article 4(2) of that Agreement or, in the context of this case, an individual right to participate in negotiation of the framework agreement. It also examined whether, in view of the procedural route followed in adopting the directive, the Commission and the Council had ascertained the representativity of the social partners who concluded the agreement which was endowed by the Council, acting on a proposal from the Commission, with a legislative foundation at Community level. *In this instance*, the Commission and the Council had properly taken the view that the collective representativity of the organisations which signed the framework agreement was sufficient in relation to that agreement's content, having regard to their cross-industry character and the general nature of their mandate, for its implementation at Community level by means of a Council legislative measure. Therefore, *the applicant was not entitled to require the Council to prevent the implementation of the framework agreement at Community level by the adoption of the directive* and could not be regarded as individually concerned by that measure. An appeal has been brought against that judgment before the Court of Justice (Case C-316/98 P).

8. Non-contractual liability of the Community

Case T-113/96 *Dubois et Fils* v *Council and Commission* [1998] ECR II-125 is of particular interest since, by this judgment, the Court of First Instance expressed its opinion in respect of an application for a declaration that the Council and Commission are liable under the second paragraph of Article 215 of the EC Treaty for the damage caused to the applicant by the repercussions on its activities

as a customs agent of the implementation of the Single Act establishing an area without frontiers between the Member States of the Community from 1 January 1993. It should be pointed out that 295 actions with the same subject-matter were brought in 1997.

The Court of First Instance first considered the applicant's claim based on the Community's strict liability and, secondly, the claim based on its liability for fault. With regard to the former, the Court of First Instance held that the actual thrust of the application was to impute liability to the Community on account of the Single Act, a direct and necessary consequence of which was the abolition of customs and tax frontiers. Without there being any need to answer the question whether in Community law the Community can incur non-contractual liability without any fault, it therefore observed that the Single Act — an international treaty adopted and approved by the Member States — constituted neither an act of the Community institutions nor an act of the servants of the Community in the performance of their duties and could not therefore give rise to liability on the part of the Community. The first claim was therefore rejected as inadmissible. In support of the second claim, the applicant relied on the inadequate nature of the Community's compensatory measures and its disregard for the principles of Community law. The Court of First Instance held that claim to be unfounded for two reasons. First, the Community was under no legal obligation to compensate the applicant. Second, even if a legal obligation to act had been infringed, the conditions entailing the non-contractual liability of the Community as a result of that failure to act in respect of acts of a legislative nature were not satisfied in the circumstances of the case. None of the higher-ranking rules of law relied on by the applicant, namely the principle of respect for vested rights, the principle of protection of legitimate expectations and the freedom to pursue a trade or profession had been breached. In view of those factors, the Court of First Instance dismissed the application. The appeal to the Court of Justice against that judgment was registered as Case C-95/98 P. As stated above, 297 cases remain pending before the Court of First Instance, awaiting the judgment of the Court of Justice.

In this section reference should also be made to the judgment in Case T-149/96 *Coldiretti and Others* v *Council and Commission* [1998], not yet published in the ECR, which dismisses as inadmissible the claims for compensation submitted by Confederazione Nazionale Coltivatori Diretti (Coldiretti), a confederation made up of regional and provincial federations of farmers, on the ground that it had no legal interest in bringing the proceedings. Indeed, Coldiretti did not allege *any damage to its own interests for which it was claiming compensation; nor did it plead any assignment of rights or any express mandate authorising it to bring*

proceedings for compensation for losses suffered by its member associations or by the individual farmers who are members of those associations. The applications for compensation made in the same case by 110 individual farmers were also dismissed as unfounded. Those farmers essentially maintained that the Community institutions, and the Commission in particular, had misused the powers and duties assigned to them by the legislation in force with a view to preventing the spread of bovine spongiform encephalopathy — so-called 'mad cow' disease — and that they were thus liable for the serious disturbances which had occurred in the market in beef and veal. In the light of the material in the file, the Court of First Instance held that the fall in demand for beef and veal which gave rise to the damage pleaded by the individual farmers had been caused by the effect on public opinion of a press release in March 1996 by an advisory body to the United Kingdom Government, that is to say by the concern which knowledge of the possible transmissibility of the disease to humans prompted amongst European consumers of beef and veal. Furthermore, it held that the applicants had not established that the fall in demand had been caused by allegedly wrongful acts and omissions on the part of the Council and the Commission.

As for the judgment in Case T-184/95 *Dorsch Consult* v *Council and Commission* [1998] ECR II-667, it states that in the event of the principle of the Community's liability in respect of a lawful act being recognized as forming part of Community law *such liability can be incurred only if the damage alleged, if deemed to constitute a "still subsisting injury", affects a particular circle of economic operators in a disproportionate manner by comparison with others (special damage) and exceeds the limits of the economic risks inherent in operating in the sector concerned (unusual damage), without the legislative measure that gave rise to the alleged damage being justified by a general economic interest*. In the circumstances of the case, the ground on which the application was dismissed was, however, the fact that the applicant, a company owed outstanding debts by the Iraqi authorities in respect of services provided under a contract of technical assistance, had been unable to demonstrate to the requisite legal standard that those debts had become definitively irrecoverable. The Court of First Instance could therefore not establish that the damage alleged was actual and certain. An appeal has been brought against that judgment before the Court of Justice (Case C-237/98 P).

9. Staff cases

Following the judgment in Case T-17/95 *Alexopoulou* v *Commission* [1995] ECR-SC II-683, "*Alexopoulou I*", concerning the classification in grade of officials at the time of their recruitment, a series of cases were brought before the Court of

First Instance, all seeking annulment of decisions of the institutions rejecting applications for reconsideration of the classification in grade. [18]

With the exception of certain cases which had specific features, those cases can be split into two categories comprising, on the one hand, those brought by officials who submitted an application for reclassification more than three months after the definitive decision classifying them in grade (first category) and, on the other, those brought by officials who challenged the decision concerning their classification in grade within the time-limits laid down by the Staff Regulations (second category).

As regards the first category of case, the Court of First Instance held, in an order in Case T-16/97 *Chauvin* v *Commission* [1997] ECR-SC II-681), that, since the applicant had been unable to put forward any new facts which caused time to start running afresh in relation to the periods prescribed by the Staff Regulations, he was out of time for the purposes of contesting the decision fixing his classification in grade. In that respect, it had stated that the judgment in *Alexopoulou I* did not constitute a material new fact capable of causing time to start running afresh for the purposes of enabling the applicant to lodge a complaint. Since no appeal was brought against that order, the reasoning has been taken up in other cases (orders in Case T-160/97 *Gevaert* v *Commission* [1998] ECR-SC II-1363; Case T-237/97 *Progoulis* v *Commission* [1998] ECR-SC II-1569; Case T-235/97 *Campoli* v *Commission* [1998], not yet published in the ECR and Case T-224/97 *Martínez del Peral Cagigal* v *Commission* [1998], not yet published in the ECR). Appeals have been brought against the orders in *Gevaert* v *Commission* (Case C-389/98 P), *Martínez del Peral Cagigal* v *Commission* (Case C-459/98 P) and *Campoli* v *Commission* (Case C-7/99 P).

As regards the second category of cases, the judgment in Case T-12/97 *Barnett* v *Commission* [1997] ECR-SC II-863) had dismissed an application for annulment of a Commission decision rejecting a complaint, submitted within the time-limit laid down by the Staff Regulations, against a decision classifying the applicant in grade *which was adopted after the judgment in Alexopoulou I.* It was held that the applicant had not furnished any evidence such as to lead the Court to believe that the appointing authority had exercised its *wide discretion* under Article 31(2) of the Staff Regulations in a manifestly erroneous manner. By order of 13 February 1998 (Case T-195/96 *Alexopoulou* v *Commission* [1998] ECR-SC II-117), a new action brought by Mrs Alexopoulou was also dismissed by the

[18] Seven cases of this type were brought in 1996, 74 in 1997 and 3 in 1998.

Court of First Instance, on the basis of Article 111 of the Rules of Procedure. Since an appeal has been brought against that order (Case C-155/98 P), the cases falling within the secondary category have been stayed pending the decision of the Court of Justice.

10. Applications for interim measures

In 1998, the President of the Court of First Instance ordered the suspension of execution of a contested measure on just one occasion (order in Case T-65/98 R *Van den Bergh Foods* v *Commission* [1998] ECR II-2641).

The applicant Van den Bergh Foods, formerly HB Ice Cream, a wholly-owned subsidiary of Unilever NV/plc, is the principal manufacturer of ice cream in Ireland. Its practice, in that country, *is to make freezer cabinets available to retailers selling its ice creams on condition that they be used exclusively for the sale of those ice creams*. In 1990 its competitor Mars had brought proceedings in an Irish court for a declaration that the exclusivity requirement in HB Ice Cream's freezer-cabinet agreements was void under domestic law and under Articles 85 and 86 of the Treaty. Its application was, however, dismissed and the case has been continued before the Supreme Court which, on 10 June 1998, expressed its intention to seek a preliminary ruling from the Court of Justice under Article 177 of the Treaty in order that the case be dealt with in conformity with Community law. In September 1991, Mars had submitted a complaint to the Commission on the basis of Regulation No 17, concerning HB Ice Cream's provision to a large number of retailers of freezer-cabinets to be used exclusively for its own products. Changes, in the form suggested by the Commission, had been made to the distribution agreements between HB Ice Cream and retailers, for the purposes of obtaining an exemption under Article 85(3) of the Treaty. However, considering that those changes had not achieved the expected results in terms of outlets rendered accessible, the Commission issued a new statement of objections and, on 11 March 1998, finally adopted the decision [19] in respect of which Van den Bergh Foods brought an action for annulment and applied for suspension of execution. In that decision, the Commission (i) found that the exclusivity provision in the freezer-cabinet agreements concluded in Ireland between Van den Bergh Foods and retailers for the placement of cabinets in retail outlets having only one or more freezer-cabinets supplied by Van den Bergh

19 Commission Decision 98/531/EC of 11 March 1998 relating to a proceeding under Articles 85 and 86 of the EC Treaty (Case Nos IV/34.073, IV/34.395 and IV/35.436 — Van den Bergh Foods Limited), published in the *Official Journal of the European Communities* after delivery of the order by the President (OJ 1998 L 246, p. 1).

Foods for the stocking of single-wrapped items of impulse ice-cream and not having a freezer-cabinet either procured by themselves or provided by another ice-cream manufacturer constituted an infringement of Article 85(1) of the Treaty; (ii) rejected the request for an exemption for the exclusivity provision submitted pursuant to Article 85(3) of the Treaty and (iii) found that there was an infringement of Article 86 of the Treaty. Furthermore, that decision required Van den Bergh Foods *immediately to cease the infringements and, within three months of notification of the decision, to inform the retailers concerned by the freezer-cabinet agreements constituting infringements of Article 85(1) of the Treaty of the operative part of the decision and to notify them that the exclusivity provisions in question were void.*

The President of the Court of First Instance considered that the conditions for suspension of execution were satisfied in this case. [20] As regards the requirements of a *prima facie* case, he pointed out that the applicant was challenging the degree of foreclosure of the market on which the Commission had based its conclusion that there was an infringement of the competition rules. Such an argument, which is relevant for the purposes of assessing the degree of restriction of competition on the market within the meaning of Article 85(1) of the Treaty, needs to be examined thoroughly. Such an examination was not possible in the context of interlocutory proceedings. He also highlighted the very close links between the assessment made by the Commission in this case under Article 85(1) and the assessment made under Article 85(3) and Article 86 of the Treaty. Furthermore, he pointed out that the national court had held in 1992 that the exclusivity provision did not infringe the Community competition rules. As regards the condition of *urgency*, he held that any effect on the applicant's distribution system as a result of revocation of the exclusivity requirement would be serious and irreparable. In those circumstances, he *struck a balance between the interests at stake*, namely the risk to the applicant of finding its distribution system modified and the Commission's interest in putting an immediate end to what it regarded as an infringement. In that respect, he pointed out that, in view of the fact that the length of the administrative procedure which culminated in the contested decision was due in part to steps taken by the Commission itself, it was not entitled to claim that immediate enforcement of the decision was a matter of urgency. Furthermore, finding that there was an apparent contradiction between the views of the Commission and those of the national court in the application of

20 Article 104(2) of the Rules of Procedure provides that an application for interim measures is to state the subject-matter of the proceedings, the circumstances giving rise to urgency and the pleas of fact and law establishing a *prima facie* case for the interim measures applied for.

Articles 85 and 86 of the Treaty and in view of the fact that the Supreme Court had expressed its intention to refer the case to the Court of Justice under Article 177 of the Treaty, he held that, in the circumstances of the case, the adverse effects of the contradiction observed could be contained only by not interfering with the proceedings brought before the national court. He therefore granted the requested suspension of execution.

Furthermore, the legal value of amicable settlements which may be reached by the parties before the judge hearing an application for interim measures and are recorded in the minutes of the interlocutory hearing was made clear by the President of the Court of First Instance in an order in Case T-42/98 R *Sabbatucci* v *Parliament* [1998], not yet published in the ECR. It was held that *an amicable settlement reached between the parties before the judge hearing the application for interim measures is legally binding and this Court must ensure that it is respected.*

B - Composition of the Court of First Instance

(Order of precedence as at 8 December 1998)

First row, from left to right:

Judge R. García-Valdecasas y Fernández; Judge J.D. Cooke; Judge A. Potocki; President B. Vesterdorf; Judge R. 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. Meij; H. Jung, Registrar.

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

Antonio Saggio

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

Cornelis Paulus Briët

Born 1944; Executive Secretary, D. Hudig & Co., Insurance Broker, and subsequently Executive Secretary with Granaria BV; Judge, Arrondissementsrechtbank (District Court), Rotterdam; Member of the Court of Justice of the Dutch Antilles; Cantonal Judge, Rotterdam; Vice-President, Arrondissementsrechtbank Rotterdam; Judge at the Court of First Instance from 25 September 1989 to 17 September 1998.

Bo Vesterdorf

Born 1945; Lawyer-linguist at the Court of Justice; Administrator in the Ministry of Justice; Examining Magistrate; Legal Attaché in the Permanent Representation of Denmark to the European Communities; Temporary Judge at the Østre Landsret; Head of the Constitutional and Administrative Law Division in the Ministry of Justice; Head of Division in the Ministry of Justice; University Lecturer; Member of the Steering Committee on Human Rights at the Council of Europe (CDDH), and subsequently Member of the Bureau of the CDDH; Judge at the Court of First Instance since 25 September 1989; 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; Professor at the Katholieke Universiteit Leuven; Visiting Professor at the universities of Burundi, Strasbourg and Harvard; Professor at the College of Europe, Bruges; Legal Secretary at the Court of Justice; Member of the Brussels Bar; Member of the International Relations Council of the Katholieke Universiteit Leuven; Judge at the Court of First Instance since 25 September 1989.

Christopher William Bellamy

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

Andreas Kalogeropoulos

Born 1944; Lawyer (Athens); legal secretary to Judges Chloros and Kakouris at the Court of Justice; professor of public and Community law (Athens); legal adviser; senior attaché at the Court of Auditors; Judge at the Court of First Instance from 18 September 1992 to 17 September 1998.

Virpi Tiili

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

Pernilla Lindh

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

Josef Azizi

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

André Potocki

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

Rui Manuel Gens de Moura Ramos

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

John D. Cooke SC

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

Marc Jaeger

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

Jörg Pirrung

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

Paolo Mengozzi

Born in 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), at 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 Organization (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 in 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 from 17 September 1998.

Mihalis Vilaras

Born in 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 from 17 September 1998.

Hans Jung

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

2. Changes in the composition of the Court of First Instance in 1998

In 1998, the composition of the Court of First Instance changed as follows:

Following the appointment of Mr Antonio Saggio, President, as Advocate General at the Court of Justice, Mr Paolo Mengozzi took office as Judge of the Court of First Instance on 4 March 1998. The Judges of the Court of First Instance then elected Judge Bo Vesterdorf as President of the Court of First Instance.

On 17 September 1998, Judge Cornelis Paulus Briët and Judge Andreas Kalogeropoulos, having completed their term of office, left the Court of First Instance. They were replaced by Mr Arjen Meij and Mr Mihalis Vilaras as Judges. Judge Bo Vesterdorf was re-elected President of the Court of First Instance on 17 September 1998, for a further period of three years.

3. Order of precedence

from 1 January to 4 March 1998

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

Registrar H. JUNG

from 4 March to 21 September 1998

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

Registrar H. JUNG

from 21 September to 31 December 1998

B. VESTERDORF, President of the Court of First Instance
A. POTOCKI, President of Chamber
R. 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. MEIJ, Judge
M. VILARAS, Judge

Registrar H. JUNG

Chapter III

Meetings and visits

A - Official visits and functions at the Court of Justice and the Court of First Instance in 1998

19 to 23 January	Delegation from the Court of Justice of the WAEMU (West African Economic and Monetary Union): Judge Mouhamadou Moctar Mbacke and Judge Dobo Martin Zonou
22 January	Prof. Edzard Schmidt-Jortzig, Bundesminister der Justiz der Bundesrepublik Deutschland (Minister for Justice of the Federal Republic of Germany)
26 to 30 January	Delegation from the Court of Justice of the WAEMU: Judge Youssouf Any and Judge Kaledji Rémi Afangbedji and Advocate General Malet Diakite
13 February	Delegación del Tribunal Constitucional de España (Delegation from the Constitutional Court of Spain)
24 February	Mr David Andrews, Legal Adviser to the United States Department of State
5 March	HE Mr Richard Marsh, Chaplain to the Archbishop of Canterbury accompanied by HE Mr John Nicholas Elam, United Kingdom Ambassador to Luxembourg
19 March	Presentation of the *Liber amicorum* in honour of Judge G.F. Mancini
27 April	HE The Most Reverend and Right Honourable Dr. George L. Carey, the Archbishop of Canterbury accompanied by Mrs Eileen Carey and HE Mr John Nicholas Elam, United Kingdom Ambassador to Luxembourg

29 April	The Right Honourable Lord Irvine of Lairg, Lord Chancellor
11 and 12 May	Judges' Forum
20 May	Mr Yury Strizhov, Adviser at the Russian Embassy in Luxembourg
20 May	HE Mr Roger Guevara Mena, Ambassador of the Republic of Nicaragua in Belgium
28 May	HE Mr Willy J. B. De Valck, Belgian Ambassador Luxembourg
11 June	Delegation from the Bosnian Ministry of Justice
18 June	Delegación de la Corte Centroamericana de Justicia (Delegation from the Central American Court of Justice)
1 July	HE Mr Baohua Ding, Chinese Ambassador to Luxembourg
2 July	HRH Grand-Duc héritier Henri, Lieutenant-Représentant de Son Altesse Royale le Grand-Duc Jean and HRH la Grande-Duchesse héritière Maria Teresa
6 and 7 July	Delegation of the US Supreme Court
6 and 7 July	Representatives of the Law Schools participating in the Dean Acheson legal stage program «Dean Acheson Delegation»
9 July	HE Ms Jane Debenest, French Ambassador to Luxembourg
13 July	Dr Christine Stix-Hackl, Gesandte im österreichischen Bundesministerium für auswärtige Angelegenheiten (Minister in the Austrian Ministry for Foreign Affairs)

24 July	HE Mr Jean-Jacques Kasel, Luxembourg Ambassador to Belgium
15 September	Mr Alexander Schaub, Director General of DG IV (Competition) of the Commission of the European Communities
18 September	Mgr Alain Lebeaupin, representative of the Holy See to the European Communities
21 to 25 September	Mr Donatien Yves Yehouessi, President of the Court of Justice of the WAEMU
25 September	European International Private Law Group
8 October	Mr Lamine Sidimé, First President of the Supreme Court of the Republic of Guinea
26 and 27 October	Judicial Study Visit
28 October	Delegação do Tribunal Constitucional Português (Delegation from the Portuguese Constitutional Court)
29 October	Mr Jacques Poos, Minister for Foreign Affairs
11 November	Ms Waltraud Klasnic, Landeshauptmann der Steiermark (Governor of the Region of Styria) and HE Mr Josef Magerl, Austrian Ambassador to Luxembourg
12 November	Mr Jean-Marc Mohr, Chairman of the ECSC Consultative Committee
12 November	HE Mr Horst Pakowski, German Ambassador to Luxembourg
16 November	Delegation from the Conseil des Barreaux de la Communauté Européenne (CCBE)

19 November	HE Mr J. S. L. Gualtherie van Weezel, Netherlands Ambassador to Luxembourg
24 November	HE Mr William Ehrman, United Kingdom Ambassador to Luxembourg
26 November	HE Mr Shojiro Imanishi, Japanese Ambassador to Luxembourg
3 December	Delegation from the French Cour de Cassation
4 December	Delegazione della Corte Costituzionale Italiana (Delegation from the Italian Constitutional Court)
10 and 11 December	Mr David Byrne, S.C., Attorney General of Ireland
14 December	Mr Wildhaber, President of the European Court of Human Rights

B - Study visits to the Court of Justice and the Court of First Instance in 1998

(Number of visitors)

	National judiciary[1]	Lawyers, legal advisers trainees	Community law lecturers, teachers[2]	Diplomats, parlementarians, political groups	Students, trainees, EC-EP	Members of professional associations	Others	TOTAL
B	22	–	–	119	487	20	–	648
DK	30	–	12	136	120	67	33	398
D	241	458	33	264	1141	45	100	2.282
EL	97	1	3	4	136	–	–	241
E	24	65	–	–	317	–	79	485
F	26	173	1	260	727	40	–	1.227
IRL	8	12	–	–	65	–	–	85
I	24	99	10	106	165	–	40	444
L	2	20	–	–	30	–	–	52
NL	97	–	–	8	219	–	–	324
A	107	16	154	95	399	16	6	793
P	13	33	–	–	3	–	–	49
FIN	55	131	4	20	–	–	73	283
S	35	75	10	40	25	3	10	198
UK	38	97	5	31	862	–	69	1 102
Third countries	163	215	30	119	737	–	24	1 288
Mixed groups	2	290	–	22	363	35	13	725
TOTAL	984	1 685	262	1 224	5 796	226	447	10 624

(cont.)

[1] The number of magistrates of the Member States who participated at the meetings and judicial study visits organised by the Court of Justice is included under this heading. In 1998 the figures were as follows: Belgium: 10; Denmark: 8; Germany: 24; Greece: 8; Spain: 24; France: 24; Ireland: 8; Italy: 24; Luxembourg: 2; Netherlands: 8; Austria: 8; Portugal: 8; Finland: 8; Sweden: 8; United Kingdom: 24.

[2] Other than teachers accompanying student groups.

(cont.)

Study visits to the Court of Justice and the Court of First Instance in 1998

(Number of groups)

	National judiciary [1]	Lawyers, legal advisers, trainees	Community law lecturers, teachers[2]	Diplomats, parlementarians, policial groups, national civil servants	Students, trainees, EC/EP	Members of professional associations	Others	TOTAL
B	3	–	–	2	14	1	–	20
DK	5	–	1	4	4	2	2	18
D	8	21	3	11	38	2	4	87
EL	6	1	3	1	5	–	–	16
E	2	4	–	–	13	–	2	21
F	3	8	1	8	24	1	–	45
IRL	2	1	–	–	4	–	–	7
I	2	3	10	2	5	–	1	23
L	2	–	–	–	1	–	–	3
NL	5	–	–	3	7	–	–	15
A	4	2	6	7	14	1	1	35
P	2	4	–	–	1	–	–	7
FIN	5	7	3	1	–	–	4	20
S	4	7	1	4	1	1	1	19
UK	4	3	5	2	25	–	3	42
Third countries	7	7	3	4	28	–	5	54
Mixed groups	1	5	–	2	9	1	2	20
TOTAL	65	73	36	51	193	9	25	452

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

[2] Other than teachers accompanying student groups.

C - Formal sittings in 1998

In 1998 the Court held five formal sittings:

14 January	Formal sitting in memory of Mr Giacinto Bosco, former Judge at the Court of Justice
4 March	Formal sitting on the occasion of the departure of Mr Giuseppe Tesauro, Advocate General at the Court of Justice. End of Mr Antonio Saggio's term of office as President of the Court of First Instance and his entry into office as Advocate General at the Court of Justice. Entry into office of Mr Paolo Mengozzi as Judge at the Court of First Instance
17 September	Formal sitting on the occasion of the departure of Mr Cornelis P. Briët and Mr Andreas Kalogeropoulos, Judges at the Court of First Instance. Entry into office of Mr Arijen W. H. Meij and Mr Mihalis Vilaras, as Judges at the Court of First Instance
7 October	Formal sitting in memory of Mr Alberto Trabucchi, former Judge and Advocate General at the Court of Justice
18 November	Formal sitting in memory of Mr Gerhard Reischl, former Advocate General at the Court of Justice

D - Participation in visits or official functions in 1998

25 February	Visit by the President of the Court to the President of the Spanish Government, Mr José María Aznar, in Madrid
8 and 9 April	Official visit by the President of the Court to Athens, at the invitation of the Minister for Foreign Affairs
20 to 22 April	Delegation from the Court to the VIth Congress of the International Association of Higher Administrative Courts in Lisbon
22 to 26 April	Official visit by the President of the Court to Budapest, at the invitation of the Minister for Justice and the President of the National Council for Justice of the Republic of Hungary
9 May	Participation by the President of the Court at the European Congress chaired by HRH the Queen of the Netherlands in The Hague
14 to 16 May	Delegation from the Court to the Symposium of Attorneys General of the Supreme Courts in Stockholm
3 to 6 June	Delegation from the Court and the Court of First Instance to the XVIIIth Congress of the International Federation for European Law in Stockholm
15 to 17 June	Delegation from the Court to the XVIth Symposium of Higher Administrative Courts of the European Union in Stockholm
30 June	Participation by the President of the Court at the opening ceremony of the European System of Central Banks in Frankfurt

20 to 22 July	Official visit by a delegation from the Court to Dresden, at the invitation of the Prime Minister and Minister for Justice of the Land of Saxony
19 September	Delegation from the Court and the Court of First Instance in the context of the World Exhibition in Lisbon
22 September	The President of the Court delivers the main lecture in the opening session of the "62. Deutscher Juristentag" on the theme "Reflections on the creation of a European legal order" in Bremen
29 September to 3 October	Official visit by a delegation from the Court to London and Edinburgh. Meetings with the Lord Chancellor, the Minister for European Affairs and the attorney General. Workshops with members of the judiciary of England, Scotland and Wales and professors of European law. Participation in the ceremony for the opening of the judicial year in London
6 to 9 October	Delegation from the Court and the Court of First Instance to the IXth Symposium of European Patent Judges in Madrid
3 November	Delegation from the Court to the inaugural ceremony of the new European Court of Human Rights at the Council of Europe in Strasbourg
10 December	Participation by the President of the Court at the ceremony organised on the occasion of the 50th Anniversary of the Declaration of Human Rights in Vienna

Chapter IV

Tables and Statistics

A - Proceedings of the Court of Justice

1. Synopsis of the judgments delivered by the Court of Justice in 1998

page

1. Synopsis of the judgments delivered by the Court of Justice in 1998

Case	Date	Parties	Subject-matter
ACCESSION OF NEW MEMBER STATES			
C-171/96	16 July 1998	Rui Alberto Pereira Roque v His Excellency the Lieutenant Governor of Jersey	Free movement of persons — Act of Accession 1972 — Protocol No 3 concerning the Channel Islands and the Isle of Man — Jersey
C-233/97	3 December 1998	KappAhl Oy	Free movement of goods — Products in free circulation — Act of Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden — Derogations — Article 99
AGRICULTURE			
C-125/96	15 January 1998	Hartmut Simon v Hauptzollamt Frankfurt am Main	Additional milk levy — Date on which it becomes payable — Article 15(4) of Regulation (EEC) No 1546/88 — Meaning of «any levy amount due»
C-346/96	29 January 1998	Belgisch Interventie- en Restitutiebureau v Prolacto NV	Common agricultural policy — Food aid — Supply of skimmed-milk powder — Successful tenderer's failure to discharge its obligations — Loss of security — Payment of the additional costs resulting from a fresh tendering procedure — Cumulation
C-161/96	29 January 1998	Südzucker Mannheim v Ochsenfurt AG v Hauptzollamt Mannheim	Common organisation of the markets in the sugar sector — Failure to complete the customs formalities for export from the Community — Consequences — Principle of proportionality

Case	Date	Parties	Subject-matter
C-61/95	29 January 1998	Hellenic Republic v Commission of the European Communities	Clearance of EAGGF accounts — Expenditure for 1991
C-4/96	19 February 1998	Northern Ireland Fish Producers' Organisation Ltd (NIFPO) and Northern Ireland Fishermen's Federation v Department of Agriculture for Northern Ireland	Fisheries — Hague Preferences — TACs — Cod and whiting — Discretion of the Community legislature — Relative stability — Principles of proportionality and non-discrimination
C-364/95 and C-365/95	10 March 1998	T. Port GmbH & Co. v Hauptzollamt Hamburg-Jonas	Bananas — Common organisation of the market — Import regime — Framework Agreement on Bananas — GATT — Article 234 of the EC Treaty
C-344/96	12 March 1998	Commission of the European Communities v Federal Republic of Germany	Failure to fulfil obligations — Failure to transpose Directives 93/62/EEC, 93/63/EEC, 93/64/EEC, 93/78/EEC, 93/79/EEC and 94/3/EC
C-324/96	26 March 1998	Odette Nikou Petridi Anonymos Kapnemporiki AE v Athanasia Simou and Others	Common organisation of the markets — Raw tobacco — System of maximum guaranteed quantities — Validity of Council Regulations (EEC) Nos 1114/88, 1251/89 and 1252/89 and of Commission Regulation (EEC) No 2046/90
C-157/96	5 May 1998	The Queen v Ministry of Agriculture, Fisheries and Food, Commissioners of Customs & Excise, ex parte: National Farmers' Union and Others	Agriculture — Animal health — Emergency measures against bovine spongiform encephalopathy — "Mad cow disease"
C-180/96	5 May 1998	United Kingdom of Great Britain and Northern Ireland v Commission of the European Communities	Agriculture — Animal health — Emergency measures against bovine spongiform encephalopathy — "Mad cow disease"

Case	Date	Parties	Subject-matter
C-132/95	19 May 1998	Bent Jensen and Others v Landbrugsministeriet - EF-Direktoratet	Community law — Principles — Set-off of amounts paid under Community law against debts payable to a Member State — Common agricultural policy — Regulation (EEC) No 1765/92 — Support system for producers of certain arable crops
C-129/97 and C-130/97	9 June 1998	Yvon Chiciak and Fromagerie Chiciak and Others	Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs — Exclusive competence of the Commission — Scope of the protection of names comprising several terms
C-41/97	11 June 1998	Belgische Staat v Foodic BV (a company in liquidation) and Others	Interpretation of Regulation (EEC) No 1767/82 — Specific import levies on certain milk products — Description of Kashkaval cheese — Completion of IMA 1 certificate by the competent authority not in compliance with the conditions laid down in Regulation No 1767/82
C-210/96	16 July 1998	Gut Springenheide GmbH and Rudolf Tusky v Oberkreisdirektor des Kreises Steinfurt — Amt für Lebensmittelüberwachung and Others	Marketing standards for eggs — Promotional descriptions or statements liable to mislead the purchaser — Reference consumer
C-287/96	16 July 1998	Kyritzer Stärke GmbH v Hauptzollamt Potsdam	Agriculture — Common organisation of the markets — Production refunds — System of securities — Time-limits — Primary requirement — Subordinate requirement
C-298/96	16 July 1998	Oelmühle Hamburg AG and Jb. Schmidt Söhne GmbH & Co. KG v Bundesanstalt für Landwirtschaft und Ernährung	Unduly paid Community subsidy — Recovery — Application of national law — Conditions and limits

Case	Date	Parties	Subject-matter
C-372/96	17 September 1998	Antonio Pontillo v Donatab Srl	Common organisation of the markets — Raw tobacco — System of prices and premiums — Validity of Council Regulation (EEC) No 1738/91
C-263/97	29 September 1998	The Queen v Intervention Board for Agricultural Produce, ex parte: First City Trading Ltd and Others	Agriculture — Common organisation of the markets — Beef — Export refunds — Beef of British origin repatriated to the United Kingdom as a result of the announcements and decisions made in relation to «mad cow disease» — *Force majeure*
C-209/96	1 October 1998	United Kingdom of Great Britain and Northern Ireland v Commission of the European Communities	EAGGF — Clearance of accounts — 1992 and 1993 financial years — Beef and veal
C-232/96	1 October 1998	French Republic v Commission of the European Communities	EAGGF — Clearance of accounts — 1992 and 1993 financial years — Beef and veal — Cereals
C-233/96	1 October 1998	Kingdom of Denmark v Commission of the European Communities	EAGGF — Clearance of accounts — 1992 and 1993 financial years — Beef and veal
C-238/96	1 October 1998	Ireland v Commission of the European Communities	EAGGF — Clearance of accounts — 1992 and 1993 financial years — Beef and veal
C-242/96	1 October 1998	Italian Republic v Commission of the European Communities	EAGGF — Clearance of accounts — 1992 and 1993 financial years — Beef and veal
C-27/94	1 October 1998	Kingdom of the Netherlands v Commission of the European Communities	EAGGF — Clearance of accounts — 1990 financial year — Export refunds on barley
C-385/97	15 October 1998	Commission of the European Communities v Hellenic Republic	Failure of a Member State to fulfil its obligations — Directives 93/118/EC and 94/59/EC — Failure to transpose within the prescribed period

Case	Date	Parties	Subject-matter
C-386/97	15 October 1998	Commission of the European Communities v Hellenic Republic	Failure of a Member State to fulfil its obligations — Directive 95/23/EC — Failure to transpose within the prescribed period
C-9/97 and C-118/97	22 October 1998	Raija-Liisa Jokela and Laura Pitkäranta	Definition of national court or tribunal — Agriculture — Compensatory allowance for permanent natural handicaps — Conditions for granting the allowance
C-36/97 and C-37/97	22 October 1998	Hilmar Kellinghausen and Amt für Land- und Wasserwirtschaft Kiel Ernst-Detlef Ketelsen and Amt für Land- und Wasserwirtschaft Husum	Common agricultural policy — Administrative fees — Charging to beneficiaries
C-375/96	29 October 1998	Galileo Zaninotto v Ispettorato Centrale Repressione Frodi — Ufficio di Conegliano — Ministero delle Risorse Agricole, Alimentari and Forestali	Agriculture — Common organisation of the agricultural markets — Market in wine — Compulsory distillation scheme
C-269/96	12 November 1998	Sucreries and Raffineries d'Erstein SA and Fonds d'Intervention et de Régularisation du Marché du Sucre (FIRS)	Council Regulations (EEC) Nos 1785/81 and 2225/86 — Aid for the marketing of cane sugar produced in the French overseas departments — Concept of refinery
C-102/96	12 November 1998	Commission of the European Communities v Federal Republic of Germany	Failure of a Member State to fulfil its obligations — Directives 64/433/EEC, 91/497/EEC and 89/662/EEC — Requirement for special marking and heat treatment of meat from boars
C-352/96	12 November 1998	Italian Republic v Council of the European Union	Action for annulment — Regulation (EC) No 1522/96 — Introduction and administration of certain tariff quotas for imports of rice and broken rice

Case	Date	Parties	Subject-matter
C-162/97	19 November 1998	Gunnar Nilsson, Per Olov Hagelgren, Solweig Arrborn	Free movement of goods — Prohibition of quantitative restrictions and measures having equivalent effect between Member States — Derogations — Protection of the life and health of animals — Improvement of livestock — Breeding of pure-bred breeding animals of the bovine species — Artificial insemination
C-235/97	19 November 1998	French Republic v Commission of the European Communities	EAGGF — Clearance of accounts — 1993 financial year — Cereals — Export refunds in respect of processed cheese
C-308/97	25 November 1998	Giuseppe Manfredi v Regione Puglia	Wine — New planting of vines — Table grapes
C-290/97	10 December 1998	Georg Bruner v Hauptzollamt Hamburg-Jonas	Export refunds — Nomenclature of agricultural products
C-374/96	16 December 1998	Florian Vorderbrüggen and Hauptzollamt Bielefeld	Additional levy on milk — Special reference quantity — Definitive grant — Conditions
C-186/96	17 December 1998	Stefan Demand and Hauptzollamt Trier	Milk — Additional levy scheme — Additional reference quantity — Temporary withdrawal — Conversion into a definitive reduction — Loss of compensation — General principles of law and fundamental rights

APPROXIMATION OF LAWS

C-263/95	10 February 1998	Federal Republic of Germany v Commission of the European Communities	Approximation of laws — Construction products — Standing Committee on Construction
C-139/97	12 February 1998	Commission of the European Communities v Italian Republic	Failure to fulfil obligations — Failure to transpose Directive 94/2/EC

Case	Date	Parties	Subject-matter
C-144/97	12 February 1998	Commission of the European Communities v French Republic	Failure of a Member State to fulfil its obligations — Directive 92/74/EEC
C-163/97	12 March 1998	Commission of the European Communities v Kingdom of Belgium	Failure of a Member State to fulfil its obligations — Failure to transpose Directive 92/74/EEC
C-127/95	2 April 1998	Norbrook Laboratories Ltd v Ministry of Agriculture, Fisheries and Food	Directives 81/851/EEC and 81/852/EEC — Veterinary medicinal products — Marketing authorisation
C-145/97	7 May 1998	Commission of the European Communities v Kingdom of Belgium	Failure to fulfil obligations — Obligation of prior communication under Directive 83/189/EEC
C-364/96	14 May 1998	Verein für Konsumenteninformatio n v Österreichische Kreditversicherungs AG	Directive 90/314/EEC on package travel, package holidays and package tours — Extent of protection against the risk of the organiser's insolvency
C-298/97	28 May 1998	Commission of the European Communities v Kingdom of Spain	Failure of a Member State to fulfil its obligations — Directive 91/157/EEC — Failure by a Member State to adopt programmes provided for in Article 6 of the directive
C-226/97	16 June 1998	Johannes Martinus Lemmens	Directive 83/189/EEC — Procedure for the provision of information in the field of technical standards and regulations — Direct effect of the directive
C-385/96	14 July 1998	Hermann Josef Goerres	Approximation of laws — Labelling and presentation of foodstuffs — Directive 79/112/EEC — Consumer protection — Language
C-355/96	16 July 1998	Silhouette International Schmied GmbH & Co. KG v Hartlauer Handelsgesellschaft mbH	Directive 89/104/EEC — Exhaustion of trade mark — Goods put on the market in the Community or in a non-member country

Case	Date	Parties	Subject-matter
C-136/96	16 July 1998	The Scotch Whisky Association v Compagnie Financière Européenne de Prises de Participation (Cofepp) and Others	Definition, description and presentation of spirit drinks — Regulation (EEC) No 1576/89 — Conditions for the use of the generic term "whisky" — Drinks consisting entirely of whisky and water
C-39/97	29 September 1998	Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc. (formerly Pathe Communications Corporation)	Trade mark law — Likelihood of confusion — Similarity of goods or services
C-127/97	1 October 1998	Willi Burstein v Freistaat Bayern	Article 100a(4) of the EC Treaty
C-79/98	6 October 1998	Commission of the European Communities v Kingdom of Belgium	Failure to fulfil obligations — Failure to transpose Directive 94/69/EC
C-283/97	15 October 1998	Commission of the European Communities v Kingdom of Belgium	Failure of a Member State to fulfil its obligations — Directive 92/73/EEC — Failure to transpose within the prescribed period
C-284/97	15 October 1998	Commission of the European Communities v French Republic	Failure of a Member State to fulfil its obligations — Directive 93/40/EEC — Failure to transpose within the prescribed period
C-26/98	22 October 1998	Commission of the European Communities v Ireland	Failure of a Member State to fulfil its obligations — Directive 94/26/EC — Failure to transpose within the prescribed period
C-368/96	3 December 1998	The Queen ex parte: Generics (UK) Ltd v The Licensing Authority established by the Medicines Act 1968 (represented by The Medicines Control Agency)	Medicinal products — Marketing authorisation — Abridged procedure — Essentially similar products

Case	Date	Parties	Subject-matter
BRUSSELS CONVENTION			
C-351/96	19 May 1998	Drouot assurances SA v Consolidated metallurgical industries (CMI industrial sites) e.a.	Brussels Convention — Interpretation of Article 21 — Lis alibi pendens — *Definition of "same parties" — Insurance company and its insured»*
C-51/97	27 October 1998	Réunion Européenne SA and Others v Spliethoff's Bevrachtingskantoor BV and Capitaine Commandant le Navire «Alblasgracht V002»	Brussels Convention — Interpretation of Articles 5(1) and (3) and 6 — Claim for compensation by the consignee or insurer of the goods on the basis of the bill of lading against a defendant who did not issue the bill of lading but is regarded by the plaintiff as the actual maritime carrier
C-391/95	17 November 1998	Van Uden Maritime BV, agissant sous le nom Van Uden Africa Line / Kommanditgesellschaft in Firma Deco-Line e.a.	Brussels Convention — Arbitration clause — Interim payment — Meaning of provisional measures
C-250/97	17 December 1998	Dansk Metalarbejderforbund, acting on behalf of John Lauge and Others v Lønmodtagernes Garantifond	Directive 75/129/EEC — Collective redundancies — Termination of the establishment's operations as the result of a judicial decision
COMMERCIAL POLICY			
C-245/95 P	10 February 1998	Commission of the European Communities v NTN Corporation and Koyo Seiko Co. Ltd	Appeal — Dumping — Ball bearings originating in Japan
C-150/94	19 November 1998	United Kingdom of Great Britain and Northern Ireland v Council of the European Union	Actions for annulment — Common commercial policy — Regulation (EC) No 519/94 — Import quotas for certain toys from the People's Republic of China

Case	Date	Parties	Subject-matter

COMMUNITY CITIZENSHIP

C-323/97	9 July 1998	Commission of the European Communities v Kingdom of Belgium	Right to vote and to stand as a candidate in municipal elections
C-284/94	19 November 1998	Kingdom of Spain v Council of the European Union	Action for annulment — Common commercial policy — Regulations (EC) Nos 519/94 and 1921/94 — Import quotas for certain toys from the People's Republic of China

COMPANY LAW

C-44/96	15 January 1998	Mannesmann Anlagenbau Austria AG and Others v Strohal Rotationsdruck GesmbH	Public procurement — Procedure for the award of public works contracts — State printing office — Subsidiary pursuing commercial activities
C-8/97	19 February 1998	Commission of the European Communities v Hellenic Republic	Failure by a Member State to fulfil obligations — Directive 90/434/EEC — Failure to transpose
C-367/96	12 May 1998	Alexandros Kefalas and Others v Elliniko Dimosio (Greek State) and Others	Company law — Public limited liability company in financial difficulties — Increase in the capital of the company by administrative decision — Abusive exercise of a right arising from a provision of Community law
C-323/96	17 September 1998	Commission of the European Communities v Kingdom of Belgium	Failure by a Member State to fulfil obligations — Public works contracts — Directives 89/440/EEC and 93/37/EEC — Failure to publish a contract notice — Application of negotiated procedure without justification

Case	Date	Parties	Subject-matter
C-76/97	24 September 1998	Walter Tögel v Niederösterreichische Gebietskrankenkasse	Public service contracts — Direct effect of a directive not transposed into national law — Classification of services for the transport of patients
C-111/97	24 September 1998	EvoBus Austria GmbH v Niederösterreichische Verkehrsorganisations G.m.b.H. (Növog)	Public procurement in the water, energy, transport and telecommunications sectors — Effect of a directive which has not been transposed
C-191/95	29 September 1998	Commission of the European Communities v Federal Republic of Germany	Failure by a Member State to fulfil its obligations — Reasoned opinion — Principle of collegiality — Company law — Directives 68/151/EEC and 78/660/EEC — Annual accounts — Penalties for failure to disclose
C-360/96	10 November 1998	Gemeente Arnhem, Gemeente Rheden v BFI Holding BV	Public service contracts — Meaning of contracting authority — Body governed by public law
C-353/96	17 December 1998	Commission of the European Communities v Ireland	Failure of a Member State to fulfil obligations — Public supply contracts — Review procedures — Definition of contracting authority
C-306/97	17 December 1998	Connemara Machine Turf Co. Ltd v Coillte Teoranta	Public supply contracts — Definition of contracting authority

COMPETITION

C-68/94 and C-30/95	31 March 1998	French Republic v Commission of the European Communities	Community control of concentrations between undertakings — Collective dominant position
C-306/96	28 April 1998	Javico International and Javico AG v Yves Saint Laurent Parfums SA (YSLP)	Competition — Luxury cosmetic products — Selective distribution system — Obligation to export to a non-member country — Prohibition of re-importation into, and of marketing in, the Community

Case	Date	Parties	Subject-matter
C-230/96	30 April 1998	Cabour SA et Nord Distribution Automobile SA v Arnor «SOCO» SARL, in the presence of: Automobiles Peugeot SA et Automobiles Citroën SA	Competition — Vehicle distribution — Validity of exclusive dealership agreement — Article 85(1) and (3) of the EC Treaty — Regulation (EEC) No 123/85 — Regulation (EC) No 1475/95
C-401/96 P	7 May 1998	Somaco SARL v Commission of the European Communities	Appeals — Competition — No anti-competitive conduct in Martinique by reason of irresistible pressure on the part of the local administration — Distortion of evidence
C-7/95 P	28 May 1998	John Deere Ltd v Commission of the European Communities	Appeal — Admissibility — Question of law — Question of fact — Competition — Information exchange system — Restriction of competition — Refusal to grant an exemption
C-8/95 P	28 May 1998	New Holland Ford Ltd v Commission of the European Communities	Appeal — Admissibility — Question of law — Question of fact — Competition — Information exchange system — Restriction of competition — Refusal to grant an exemption
C-35/96	18 June 1998	Commission of the European Communities v Italian Republic	Action for failure to fulfil obligations — Agreements, decisions and concerted practices — Fixing of business tariffs — Customs agents — Legislation reinforcing the effects of an agreement
C-38/97	1 October 1998	Autotrasporti Librandi Snc di Librandi F. & C. v Cuttica Spedizioni e Servizi Internazionali Srl	Competition — Road transport — Mandatory tariff — State legislation — Concepts of general interest and public interest
C-279/95 P	1 October 1998	Langnese-Iglo GmbH v Commission of the European Communities	Competition — Article 85 of the EC Treaty — Exclusive purchasing agreements for ice-cream — Comfort letter — Prohibition of concluding exclusive agreements in the future

Case	Date	Parties	Subject-matter
C-70/97 P	17 November 1998	Kruidvat BVBA v Commission of the European Communities	Appeal — Selective distribution system — Luxury cosmetic products — Undertaking directly and individually concerned
C-7/97	26 November 1998	Oscar Bronner GmbH & Co. KG v Mediaprint Zeitungs- und Zeitschriftenverlag GmbH & Co. KG	Article 86 of the EC Treaty — Abuse of a dominant position — Refusal of a media undertaking holding a dominant position in the territory of a Member State to include a rival daily newspaper of another undertaking in the same Member State in its newspaper home-delivery scheme
C-185/95 P	17 December 1998	Baustahlgewebe GmbH v Commission of the European Communities	Appeal — Admissibility — Duration of procedure — Preparatory inquiries — Access to the file — Competition — Agreements, decisions and concerted practices — Fines

ENERGY

C-48/96 P	14 May 1998	Windpark Groothusen GmbH & Co. Betriebs KG v Commission of the European Communities	Appeal — Financial support in the energy sector — Thermie programme — Right to full legal protection — Duty to state reasons — Right to a hearing — Discretion

ENVIRONMENT AND CONSUMERS

C-92/96	12 February 1998	Commission of the European Communities v Kingdom of Spain	Failure to fulfil obligations — Directive 76/160/EEC — Quality of bathing water
C-45/96	17 March 1998	Bayerische Hypotheken- und Wechselbank AG v Edgar Dietzinger	Protection of the consumer in respect of contracts negotiated away from business premises — Guarantee

Case	Date	Parties	Subject-matter
C-3/96	19 May 1998	Commission of the European Communities v Kingdom of the Netherlands	Conservation of wild birds — Special protection areas
C-213/97	28 May 1998	Commission of the European Communities v Portuguese Republic	Failure by a Member State to fulfil its obligations — Directives 86/280/EEC and 88/347/EEC — Failure to transpose within the prescribed period
C-232/95 and C-233/95	11 June 1998	Commission of the European Communities v Hellenic Republic	Failure to fulfil obligations — Directive 76/464 — Water pollution — Non-transposition
C-206/96	11 June 1998	Commission of the European Communities v Grand Duchy of Luxembourg	Failure by a Member State to fulfil its obligations — Non-transposition of Directive 76/464/EEC
C-321/96	17 June 1998	Wilhelm Mecklenburg v Kreis Pinneberg — Der Landrat	Environment — Access to information — Directive 90/313/EEC — Administrative measure for the protection of the environment — Preliminary investigation proceedings
C-214/97	17 June 1998	Commission of the European Communities v Portuguese Republic	Failure of a Member State to fulfil its obligations — Directive 75/440/EEC — Failure to transpose within the prescribed period
C-81/96	18 June 1998	Burgemeester en wethouders van Haarlemmerliede en Spaarnwoude and Others v Gedeputeerde Staten van Noord-Holland	Council Directive 85/337/EEC — New consent for a zoning plan
C-183/97	18 June 1998	Commission of the European Communities v Portuguese Republic	Failure of a Member State to fulfil its obligations — Failure to transpose Directive 80/68/EEC
C-208/97	18 June 1998	Commission of the European Communities v Portuguese Republic	Failure to fulfil obligations — Directive 84/156/EEC — Failure to transpose within the prescribed period

Case	Date	Parties	Subject-matter
C-192/96	25 June 1998	Beside BV and Others v Minister van Volkhuisvesting, Ruimtelijke Ordening en Milieubeherr	Management, transport and storage of municipal/household waste — Illegal traffic
C-203/96	25 June 1998	Chemische Afvalstoffen Dusseldorp BV and Others v Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer	Shipments of waste for recovery — Principles of self-sufficiency and proximity
C-343/97	9 July 1998	Commission of the European Communities v Kingdom of Belgium	Failure of a Member State to fulfil its obligations — Failure to transpose Directives 90/220/EEC and 94/51/EC
C-285/97	16 July 1998	Commission of the European Communities v Portuguese Republic	Failure of a Member State to fulfil its obligations — Failure to transpose Directive 94/51/EC within the prescribed period
C-339/97	16 July 1998	Commission of the European Communities v Grand Duchy of Luxembourg	Failure of a Member State to fulfil its obligations — Failure to transpose Directives 94/15/EC and 94/51/EC
C-285/96	1 October 1998	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil its obligations — Non-transposition of Directive 76/464/EEC — Judgment by default
C-71/97	1 October 1998	Commission of the European Communities v Kingdom of Spain	Failure by a Member State to fulfil its obligations — Failure to transpose a directive
C-268/97	15 October 1998	Commission of the European Communities v Kingdom of Belgium	Failure of a Member State to fulfil its obligations — Directive 86/609/EEC
C-229/97	15 October 1998	Commission of the European Communities v Portuguese Republic	Failure of a Member State to fulfil its obligations — Failure to transpose fully Directive 76/869/EEC
C-324/97	15 October 1998	Commission of the European Communities v Italian Republic	Failure of a Member State to fulfil its obligations — Directive 95/27/EC — Failure to transpose within the prescribed period

Case	Date	Parties	Subject-matter
C-326/97	15 October 1998	Commission of the European Communities v Kingdom of Belgium	Failure of a Member State to fulfil its obligations — Directive 95/27/EC — Failure to transpose within the prescribed period
C-301/95	22 October 1998	Commission of the European Communities v Federal Republic of Germany	Failure of a Member State to fulfil its obligations — Incorrect transposition of Directive 85/337/EEC
C-214/96	25 November 1998	Commission of the European Communities v Kingdom of Spain	Failure to fulfil obligations — Failure to transpose Directive 76/464/EEC

EXTERNAL RELATIONS

C-113/97	15 January 1998	Henia Babahenini v Belgian State	EEC-Algeria Cooperation Agreement — Article 39(1) — Principle of non-discrimination in the field of social security — Direct effect — Scope — Disability allowance
C-122/95	10 March 1998	Federal Republic of Germany v Council of the European Union	Framework Agreement on Bananas — GATT 1994 — Final Act
C-314/96	12 March 1998	Ourdia Djabali v Caisse d'Allocations Familiales de l'Essonne	EEC-Algeria Cooperation Agreement — Article 39(1) — Principle of non-discrimination in the field of social security — Disabled adults' allowance — Reference for a preliminary ruling
C-53/96	16 June 1998	Hermès International v FHT Marketing Choice BV	Agreement establishing the World Trade Organisation — TRIPS Agreement — Article 177 of the Treaty — Jurisdiction of the Court of Justice — Article 50 of the TRIPS Agreement — Provisional measures

Case	Date	Parties	Subject-matter
C-162/96	16 June 1998	A. Racke GmbH & Co. v Hauptzollamt Mainz	EEC/Yugoslavia Cooperation Agreement — Suspension of trade concessions — Vienna Convention on the Law of Treaties — *Rebus sic stantibus* clause
C-159/96	19 November 1998	Portuguese Republic v Commission of the European Communities	Commercial policy — Quantitative limits on imports of textile products — Products originating in the People's Republic of China — Additional imports — Commission's powers of implementation
C-210/97	19 November 1998	Haydar Akman et Oberkreisdirektor des Rheinisch-Bergischen-Kreises	EEC-Turkey Association Agreement — Freedom of movement for workers — Article 7, second paragraph, of Decision No 1/80 of the Association Council — Right of a child of a Turkish worker to respond to any offer of employment in the host Member State in which he has completed vocational training — Situation of a child whose father, having been legally employed in the host Member State for more than three years, has returned to Turkey at the time when the child's training is completed
C-1/97	26 November 1998	Mehmet Birden v Stadtgemeinde Bremen	EEC-Turkey Association Agreement — Freedom of movement for workers — Article 6(1) of Decision No 1/80 of the Association Council — Scope — Turkish national with a fixed-term employment contract under a programme financed by the public authorities and designed to assist the integration of persons dependent on social assistance into the labour market

Case	Date	Parties	Subject-matter

FREEDOM OF MOVEMENT FOR PERSONS

C-15/96	15 January 1998	Kalliope Schöning-Kougebetopoulou v Freie und Hansestadt Hamburg	Freedom of movement for persons — Collective agreement applicable to public sector employees — Promotion on grounds of seniority — Professional experience acquired in another Member State
C-366/96	12 February 1998	Louisette Cordelle v Office National des Pensions (ONP)	Social security — Articles 12(2) and 46a of Regulation (EEC) No 1408/71 — National rules against overlapping — Benefits of the same kind
C-160/96	5 March 1998	Manfred Molenaar, Barbara Fath-Molenaar v Allgemeine Ortskrankenkasse Baden-Württemberg	Freedom of movement for workers — Benefits designed to cover the risk of reliance on care
C-194/96	5 March 1998	Hilmar Kulzer v Freistaat Bayern	Regulation (EEC) No 1408/71 — Worker who has not exercised the right to freedom of movement — Retired civil servant — Article 73 — Family benefits — German institution competent — Article 77 — National legislation
C-187/96	12 March 1998	Commission of the European Communities v Hellenic Republic	Failure of a Member State to fulfil its obligations — Freedom of movement for workers — Article 48 of the EC Treaty — Article 7 of Regulation (EEC) No 1612/68 — Person working in the public service of a Member State — Mutual recognition of periods of employment in the public service of another Member State

Case	Date	Parties	Subject-matter
C-215/97	30 April 1998	Barbara Bellone v Yokohama SpA	Directive 86/653/EEC — Independent commercial agents — National rules providing that commercial agency contracts concluded by persons not entered on the register of agents are void
C-24/97	30 April 1998	Commission of the European Communities v Federal Republic of Germany	Failure of a Member State to fulfil its obligations — Right of residence — Obligation to hold identity papers — Penalties
C-113/96	7 May 1998	Manuela Gómez Rodríguez et Gregorio Gómez Rodríguez v Landesversicherungsanstalt Rheinprovinz	Social security for migrant workers — Orphans' benefits
C-350/96	7 May 1998	Clean Car Autoservice GesmbH v Landeshauptmann von Wien	Freedom of movement for workers — National legislation requiring legal persons to appoint as manager a person residing in the country — Indirect discrimination
C-85/96	12 May 1998	María Martínez Sala v Freistaat Bayern	Articles 8a, 48 and 51 of the EC Treaty — Definition of "worker" — Article 4 of Regulation (EEC) No 1408/71 — Child-raising allowance — Definition of "family benefit" — Article 7(2) of Regulation (EEC) No 1612/68 — Definition of "social advantage" — Requirement of possession of a residence permit or authorisation
C-336/96	12 May 1998	Époux Robert Gilly v Directeur des Services Fiscaux du Bas-Rhin	Articles 6, 48 and 220 of the EC Treaty — Equal treatment — Bilateral convention for the avoidance of double taxation — Frontier workers
C-297/96	11 June 1998	Vera A. Partridge v Adjudication Officer	Social security — Special non-contributory benefits — Articles 4(2a), 5 and 10a of and Annex VI to Regulation (EEC) No 1408/71 — Attendance allowance — Non-exportability

Case	Date	Parties	Subject-matter
C-275/96	11 June 1998	Anne Kuusijärvi v Riksförsäkringsverket	Social security — Regulation (EEC) No 1408/71 — Personal scope — Parental benefit — Maintenance of entitlement to benefits after transfer of residence to another Member State
C-225/95, C-226/95 and C-227/95	2 July 1998	Anestis Kapasakalis, Dimitris Skiathitis et Antonis Kougiagkas v Elliniko Dimossio (Greek State)	Directive 89/48/EEC — General system for the recognition of higher-education diplomas — Scope — Situation purely internal to a Member State
C-264/96	16 July 1998	Imperial Chemical Industries plc (ICI) v Kenneth Hall Colmer (Her Majesty's Inspector of Taxes)	Right of establishment — Corporation tax — Surrender by one company to another company in the same group of tax relief on trading losses — Residence requirement imposed on group companies — Discrimination according to the place of the corporate seat— Obligations of the national court
C-93/97	16 July 1998	Fédération Belge des Chambres Syndicales de Médecins ASBL v Flemish Community and Others	Directive 93/16/EEC — Specific training in general medical practice — Article 31
C-35/97	24 September 1998	Commission of the European Communities v French Republic	Failure to fulfil obligations — Article 48 of the EC Treaty — Unemployment benefits — Award of supplementary retirement pension points — Conditions of dismissal — Article 7 of Regulation (EEC) No 1612/68 — Frontier workers
C-132/96	24 September 1998	Antonio Stinco and Ciro Panfilo v Istituto Nazionale della Previdenza Sociale (INPS)	Old-age pension — Calculation of the theoretical amount of a benefit — Inclusion of the amount necessary to attain the statutory minimum pension
C-143/97	22 October 1998	Office National des Pensions (ONP) v Francesco Conti	Social security — Articles 12(2), 46(3) and 46b of Regulation (EEC) No 1408/71 — Old age and death (insurance) — National rules against overlapping

Case	Date	Parties	Subject-matter
C-230/97	29 October 1998	Ibiyinka Awoyemi	Driving licence — Interpretation of Directive 80/1263/EEC — Failure to comply with the obligation to exchange a licence issued by one Member State to a national of a non-member country for a licence from another Member State in which that person is now resident — Criminal penalties — Effect of Directive 91/439/EEC
C-185/96	29 October 1998	Commission of the European Communities v Hellenic Republic	Failure of a Member State to fulfil its obligations — Benefits for large families — Discrimination
C-114/97	29 October 1998	Commission of the European Communities v Kingdom of Spain	Failure of a Member State to fulfil obligations — Free movement of workers — Freedom of establishment — Freedom to provide services — Private security activities — Nationality conditions
C-193/97 and C-194/97	29 October 1998	Manuel de Castro Freitas, Raymond Escallier v Ministre des Classes Moyennes et du Tourisme	Freedom of establishment — Directive 64/427/EEC — Activities of self-employed persons in manufacturing and processing industries — Conditions for taking up an occupation
C-279/97	10 December 1998	Bestuur van het Landelijk Instituut Sociale Verzekeringen v C.J.M. Voeten and Others	Social security — Frontier workers — Invalidity — Medical examination
C-153/97	17 December 1998	Aristóteles Grajera Rodríguez and Instituto Nacional de la Seguridad Social (INSS) and Others	Social security — Old-age pensions — Calculation of benefits — Heading D, paragraph 4, of Annex VI to Regulation (EEC) No 1408/71

Case	Date	Parties	Subject-matter
C-244/97	17 December 1998	Rijksdienst voor Pensioenen v Gerdina Lustig	Regulation (EEC) No 1408/71 — Old-age benefits — Articles 45 and 49 — Calculation of benefits where the person concerned does not simultaneously fulfil the conditions laid down by all the legislations under which periods of insurance or residence were completed

FREEDOM TO PROVIDE SERVICES

C-163/96	12 February 1998	Silvano Raso and Others	Freedom to provide services — Competition — Special or exclusive rights — Undertakings holding a port terminal concession
C-118/96	28 April 1998	Jessica Safir v Skattemyndigheten i Dalarnas län, formerly Skattemyndigheten i Kopparbergs län	Freedom to provide services — Free movement of capital — Taxation of savings in the form of life assurance — Legislation of a Member State establishing different tax regimes according to the place of establishment of the undertaking providing the services
C-158/96	28 April 1998	Raymond Kohll v Union des Caisses de Maladie	Freedom to provide services — Reimbursement of medical expenses incurred in another Member State — Prior authorisation of the competent institution — Public health — Dental treatment
C-410/96	1 December 1998	André Ambry	Freedom to provide services — Free movement of capital — Provision of financial security — Travel agency arranging the security required to carry on its activities with a credit institution or insurance company established in another Member State

Case	Date	Parties	Subject-matter

FREE MOVEMENT OF GOODS

C-80/96	15 January 1998	Quelle Schickedanz AG and Co. v Oberfinanzdirektion Frankfurt am Main	Common Customs Tariff — Classification of a set of goods — Validity of Point 6 of the Annex to Commission Regulation (EC) No 1966/94
C-292/96	15 January 1998	Göritz Intransco International GmbH v Hauptzollamt Düsseldorf	Community Customs Code — Community transit procedure — Simplified procedures — Authorised consignor status — Conditions for granting
C-315/96	29 January 1998	Lopex Export GmbH v Hauptzollamt Hamburg-Jonas	Customs duty — Classification of goods — Regulation amending classification — Binding tariff information issued previously — Validity
C-212/96	19 February 1998	Paul Chevassus-March v Conseil Régional de la Réunion	«Dock dues» (octroi de mer) — Fiscal rules applicable to the French overseas departments — Decision 89/688/EEC — Charges having an effect equivalent to a customs duty — Internal taxation
C-270/96	12 March 1998	Laboratoires Sarget SA v Fonds d'Intervention et de Régularisation du Marché du Sucre (FIRS)	Refund for use of sugar in the manufacture of certain chemical products — Anti-asthenia products — Tariff classification

Case	Date	Parties	Subject-matter
C-1/96	19 March 1998	The Queen v Minister of Agriculture, Fisheries and Food, ex parte: Compassion in World Farming Ltd	Articles 34 and 36 of the EC Treaty — Directive 91/629/EEC — European Convention on the Protection of Animals Kept for Farming Purposes — Recommendation concerning Cattle — Export of calves from a Member State maintaining the level of protection laid down by the Convention and the Recommendation — Export to Member States which comply with the Directive but do not observe the standards laid down in the Convention or the Recommendation and use intensive farming systems prohibited in the exporting State — Quantitative restrictions on exports — Exhaustive harmonisation — Validity of the Directive
C-213/96	2 April 1998	Outokumpu Oy	Excise duty on electricity — Rates of duty varying according to the method of producing electricity of domestic origin — Flat rate for imported electricity
C-120/95	28 April 1998	Nicolas Decker v Caisse de Maladie des Employés Privés	Free movement of goods — Articles 30 and 36 of the EC Treaty — Reimbursement of medical expenses incurred in another Member State — Prior authorisation of the competent institution — Purchase of spectacles
C-200/96	28 April 1998	Metronome Musik GmbH v Music Point Hokamp GmbH	Copyright and related rights — Rental and lending right — Validity of Directive 92/100/EEC
C-284/95	14 July 1998	Safety Hi-Tech Srl v S. & T. Srl	Regulation (EC) No 3093/94 — Measures to protect the ozone layer — Restrictions on the use of hydrochlorofluorocarbons and halons — Validity

Case	Date	Parties	Subject-matter
C-341/95	14 July 1998	Gianni Bettati v Safety Hi-Tech Srl	Regulation (EC) No 3093/94 — Measures to protect the ozone layer — Restrictions on the use of hydrochlorofluorocarbons and halons — Validity
C-389/96	14 July 1998	Aher-Waggon GmbH v Bundesrepublik Deutschland	Measures having equivalent effect — Directives on noise emissions from aircraft — Stricter domestic limits — Barrier to the importation of an aircraft — Environmental protection
C-400/96	17 September 1998	Jean Harpegnies	Plant protection products — National legislation requiring approval by the competent authorities — Article 30 of the EC Treaty
C-61/97	22 September 1998	Foreningen af danske Videogramdistributører v Laserdisken	Copyright and related rights — Videodisc rental
C-413/96	24 September 1998	Skatteministeriet v Sportgoods A/S	Customs duty — Constitution of a customs debt — Post-clearance recovery of import duties — Remission of import duties
C-184/96	22 October 1998	Commission of the European Communities v French Republic	Failure of a Member State to fulfil its obligations — Article 30 of the EC Treaty
C-370/96	26 November 1998	Covita AVE v Elliniko Dimosio (Greek State)	Regulation (EEC) No 1591/92 — Countervailing charge on cherries originating in Bulgaria — Entry in the accounts — Post-clearance recovery
C-247/97	3 December 1998	Marcel Schoonbroodt and Others v Belgian State	Article 177 of the EC Treaty — Jurisdiction of the Court — National legislation reproducing Community provisions — Relief from customs duties — Fuel on board motorised road vehicles — Definition of standard tanks
C-259/97	3 December 1998	Uwe Clees v Hauptzollamt Wuppertal	Common Customs Tariff — Collections and collectors' pieces of historical or ethnographic interest — Old cars

Case	Date	Parties	Subject-matter
C-67/97	3 December 1998	Ditlev Bluhme	Free movement of goods — Prohibition of quantitative restrictions and measures having equivalent effect between Member States — Derogations — Protection of the health and life of animals — Bees of the subspecies Apis mellifera mellifera (Læsø brown bee)
C-328/97	10 December 1998	Glob-Sped AG v Hauptzollamt Lörrach	Combined Nomenclature — Headings Nos 3004 and 2106 — Vitamin- C-based preparations

HOME AFFAIRS AND JUSTICE

C-170/96	12 May 1998	Commission of the European Communities v Council of the European Union	Act of the Council — Joint action regarding airport transit visas — Legal basis

LAW GOVERNING THE INSTITUTIONS

C-386/96 P	5 May 1998	Société Louis Dreyfus et Cie v Commission of the European Communities	Emergency assistance given by the Community to the States of the former Soviet Union — Loan — Documentary credit — Action for annulment — Admissibility — "Directly concerned"
C-391/96 P	5 May 1998	Compagnie Continentale (France) SA v Commission of the European Communities	Emergency assistance given by the Community to the States of the former Soviet Union — Loan — Documentary credit — Action for annulment — Admissibility — "Directly concerned"
C-403/96 P	5 May 1998	Glencore Grain Ltd v Commission of the European Communities	Emergency assistance given by the Community to the States of the former Soviet Union — Loan — Documentary credit — Action for annulment — Admissibility — "Directly concerned"

Case	Date	Parties	Subject-matter
C-404/96 P	5 May 1998	Glencore Grain Ltd v Commission of the European Communities	Emergency assistance given by the Community to the States of the former Soviet Union — Loan — Documentary credit — Action for annulment — Admissibility — "Directly concerned»
C-22/96	28 May 1998	European Parliament v Council of the European Union	Council Decision 95/468/EC — IDA — Telematic networks — Legal basis
C-337/96	3 December 1998	Commission of the European Communities v Industrial Refuse & Coal Energy Ltd	Arbitration clause — Breach of contract
C-221/97	10 December 1998	Aloys Schröder and Others v Commission of the European Communities	Non-contractual liability of the Community — Control of classical swine fever in the Federal Republic of Germany

OWN RESOURCES OF THE EUROPEAN COMMUNITIES

C-366/95	12 May 1998	Landbrugsministeriet — EF-Direktoratet v Steff-Houlberg Export I/S and Others	Community aid unduly paid — Recovery — Application of national law — Conditions and limits

PRINCIPLES OF COMMUNITY LAW

C-231/96	15 September 1998	Edilizia Industriale Siderurgica Srl (Edis) v Ministero delle Finanze	Recovery of sums paid but not due — Procedural time-limits under national law
C-260/96	15 September 1998	Ministero delle Finanze v Spac SpA	Recovery of sums paid but not due — Procedural time-limits under national law
Cases C-279/96, C-280/96 and C-281/96	15 September 1998	Ansaldo Energia SpA and Others v Amministrazione delle Finanze dello Stato and Others	Recovery of sums paid but not due — Procedural time-limits under national law — Interest

Case	Date	Parties	Subject-matter
Cases C-10/97 to C-22/97	22 October 1998	Ministero delle Finanze v IN.CO.GE.'90 Srl and Others	Recovery of sums paid but not due — Treatment of a national charge incompatible with Community law
C-228/96	17 November 1998	Aprile Srl, in liquidation v Amministrazione delle Finanze dello Stato	Charges having equivalent effect — Recovery of sums paid but not due — Procedural time-limits under national law
C-274/96	24 November 1998	Horst Otto Bickel, Ulrich Franz	Freedom of movement for persons — Equal treatment — Language rules applicable to criminal proceedings

REGIONAL POLICY

C-321/95 P	2 April 1998	Stichting Greenpeace Council (Greenpeace International) and Others v Commission of the European Communities	Appeal — Natural or legal persons — Measures of direct and individual concern to them

SOCIAL POLICY

C-249/96	17 February 1998	Lisa Jacqueline Grant v South West Trains Ltd	Equal treatment of men and women — Refusal of travel concessions to cohabitees of the same sex
C-319/94	12 March 1998	Jules Dethier Équipement SA v Jules Dassy and Sovam SPRL, in liquidation	Safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses — Transfer of an undertaking being wound up voluntarily or by the court — Power of the transferor and transferee to dismiss employees for economic, technical or organisational reasons — Employees dismissed shortly before the transfer and not taken on by the transferee

Case	Date	Parties	Subject-matter
C-136/95	30 April 1998	Caisse Nationale d'Assurance Vieillesse des Travailleurs Salariés (CNAVTS) v Évelyne Thibault	Equal treatment for men and women — Directive 76/207/EEC — Maternity leave — Right to an assessment of performance
Cases C-377/96 to C-384/96	30 April 1998	August De Vriendt and Others v Rijkdienst voor Pensioenen and Others	Directive 79/7/EEC — Equal treatment — Old-age and retirement pensions — Method of calculation — Pensionable age
C-106/96	12 May 1998	United Kingdom of Great Britain and Northern Ireland v Commission of the European Communities	Community action programme to combat social exclusion — Funding — Legal basis
C-243/95	17 June 1998	Kathleen Hill and Ann Stapleton v The Revenue Commissioners and Department of Finance	Equal treatment for men and women — National civil servants — Job-sharing scheme — Incremental credit determined on the basis of the criterion of actual time worked — Indirect discrimination
C-394/96	30 June 1998	Mary Brown v Rentokil Ltd	Equal treatment for men and women — Dismissal of a pregnant woman — Absences due to illness arising from pregnancy
C-125/97	14 July 1998	A.G.R. Regeling v Bestuur van de Bedrijfsvereniging voor de Metaalnijverheid	Social policy — Directive 80/987/EEC — Guarantee institutions' obligation to pay — Outstanding claims
C-235/95	16 July 1998	AGS Assedic Pas-de-Calais v François Dumon	Social policy — Protection of employees in the event of the insolvency of their employer — Directive 80/987/EEC — Article 4 — Direct effect — Whether national provisions fixing the ceiling for the guarantee of payment may be relied upon against individuals where the Commission has not been informed

Case	Date	Parties	Subject-matter
C-185/97	22 September 1998	Belinda Jane Coote v Granada Hospitality Ltd	Council Directive 76/207/EEC — Refusal of an employer to provide references for a former employee who was dismissed
C-154/96	22 October 1998	Louis Wolfs v Office National des Pensions (ONP)	Directive 79/7/EEC — Equal treatment — Old-age and retirement pensions — Method of calculation — Pensionable age
C-411/96	27 October 1998	Margaret Boyle and Others v Equal Opportunities Commission	Equal pay and equal treatment for men and women — Maternity leave — Rights of pregnant women in respect of sick leave, annual leave and the accrual of pension rights
C-364/97	27 October 1998	Commission of the European Communities v Ireland	Failure to fulfil obligations — Non-transposition of Directive 93/103/EC
C-410/97	29 October 1998	Commission of the European Communities v Grand Duchy of Luxembourg	Failure of a Member State to fulfil its obligations — Failure to transpose Directive 92/29/EEC
C-399/96	12 November 1998	Europièces SA v Wilfried Sanders, Automotive Industries Holding Company SA	Social policy — Harmonisation of laws — Transfers of undertakings — Safeguarding of workers' rights — Directive 77/187/EEC — Scope — Transfer of an undertaking in voluntary liquidation
C-66/96	19 November 1998	Handels- og Kontorfunktionærernes Forbund i Danmark and Others v Fællesforeningen for Danmarks Brugsforeninger and Others	Equal treatment for men and women — Remuneration — Working conditions for a pregnant woman

Case	Date	Parties	Subject-matter
C-326/96	1 December 1998	B. S. Levez v T. H. Jennings (Harlow Pools) Ltd	Social policy — Men and women — Equal pay — Article 119 of the EC Treaty — Directive 75/117/EEC — Remedies for breach of the prohibition on discrimination — Pay arrears — Domestic legislation placing a two-year limit on awards for the period prior to the institution of proceedings — Similar domestic actions
C-127/96, C-229/96 to C-74/97	10 December 1998	Francisco Hernández Vidal SA v Prudencia Gómez Pérez and Others	Safeguarding of employees' rights in the event of transfers of undertakings
C-173/96 and C-247/96	10 December 1998	Francisca Sánchez Hidalgo and Others v Asociación de Servicios Aser and Others	Safeguarding of employees' rights in the event of transfers of undertakings
C-2/97	17 December 1998	Società Italiana Petroli SpA (IP) v Borsana Srl	Social policy — Protection of safety and health of workers — Use of work equipment — Risks related to exposure to carcinogens — Directives 89/655/EEC and 90/349/EEC

STAFF REGULATIONS

C-259/96 P	14 May 1998	Council of the European Union v Lieve de Nil et Christiane Impens	Appeal — Officials — Internal competition — Measures implementing a judgment annulling a decision — Promotion to a higher category following a competition with no retroactive effect — Material and non-material damage
C-62/97 P	28 May 1998	Commission of the European Communities v María Lidia Lozano Palacios	Appeal — Officials — Former national expert on detachment — Installation allowance
C-291/97 P	11 June 1998	H v Commission of the European Communities	Appeal — Officials — Invalidity procedure — Assessment of facts

Case	Date	Parties	Subject-matter
C-252/96 P	19 November 1998	European Parliament v Enrique Gutiérrez de Quijano y Lloréns	Appeals — Proceedings before the Court of First Instance — Prohibition of new pleas — Applicability to the Court of First Instance — Officials — Inter-institutional transfer
C-316/97 P	19 November 1998	European Parliament v Giuliana Gaspari	Appeal — Officials — Sick leave — Medical certificate — Medical officer's examination — Findings at variance with the medical certificate — Obligation to state reasons — Rights of the defence

STATE AID

C-280/95	29 January 1998	Commission of the European Communities v Italian Republic	State aid — Fiscal bonus on certain taxes — Recovery of aid — Not absolutely impossible
C-309/95	19 February 1998	Commission of the European Communities v Council of the European Union	Exceptional aid to producers of table wine in France
C-367/95 P	2 April 1998	Commission of the European Communities v Chambre Syndicale Nationale des Entreprises de Transport de Fonds et Valeurs (Sytraval) and Brink's France SARL	Appeal — State aid — Complaint by a competitor — Commission's obligations concerning the investigation of a complaint and the provision of reasons for rejecting it
Cases C-52/97 to C-54/97	7 May 1998	Epifanio Viscido and Others v Ente Poste Italiane	Aid granted by Member States — Meaning — National law providing that only one public utility is relieved of the obligation of observing a rule of general application relating to fixed-term employment contracts
C-415/96	12 November 1998	Kingdom of Spain v Commission of the European Communities	State aid for undertakings in the textile sector — Consequences of an annulling judgment for acts preparatory to the act annulled

Case	Date	Parties	Subject-matter
C-200/97	1 December 1998	Ecotrade Srl v Altiforni e Ferriere di Servola SpA (AFS)	State aid — Definition — Advantage conferred without any transfer of public funds — Insolvent undertakings — Article 92 of the EC Treaty — Article 4(c) of the ECSC Treaty

TAXATION

C-37/95	15 January 1998	Belgische Staat v Ghent Coal Terminal NV	Value added tax — Sixth VAT Directive — Article 17 — Right to deduct — Adjustment of deductions
C-346/95	12 February 1998	Elisabeth Blasi v Finanzamt München I	Sixth VAT Directive — Exemption — Letting of immovable property — Exclusion of accommodation in the hotel sector or in sectors with a similar function
C-318/96	19 February 1998	SPAR Österreichische Warenhandels AG v Finanzlandesdirektion für Salzburg	Article 33 of the Sixth Directive — Turnover taxes — Levy towards the functioning of chambers of commerce (Kammerumlage)
C-347/96	5 March 1998	Solred SA v Administración General del Estado	Directive 69/335/EEC — Duty charged on documents recording the contribution of a part of the share capital
C-296/95	2 April 1998	The Queen v Commissioners of Customs and Excise, ex parte: EMU Tabac SARL, The Man in Black Ltd, and John Cunningham	Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products — Member State in which duty is payable — Purchase through an agent
C-37/96 and C-38/96	30 April 1998	Sodiprem SARL and Others and Roger Albert SA v Direction Générale des Douanes	Dock dues (octroi de mer) — Fiscal rules applicable to the French overseas departments — Decision 89/688/EEC — Charges having an effect equivalent to a customs duty — Internal taxation

Case	Date	Parties	Subject-matter
C-390/96	7 May 1998	Lease Plan Luxembourg SA v Belgische Staat	Sixth VAT Directive — Car-leasing services — Fixed establishment — Rules governing reimbursement of VAT to taxable persons not established in the territory of the State — Principle of non-discrimination
C-124/96	7 May 1998	Commission of the European Communities v Kingdom of Spain	Failure of a Member State to fulfil its obligations — Sixth Council Directive 77/388/EEC — Exemption of certain supplies of services closely linked to sport or physical education — Unjustified restrictions
C-3/97	28 May 1998	John Charles Goodwin and Edward Thomas Unstead	Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Sixth Council Directive 77/388/EEC — Scope — Supply of counterfeit perfume products
C-361/96	11 June 1998	Société Générale des Grandes Sources d'Eaux Minérales Françaises v Bundesamt für Finanzen	Value added tax — Interpretation of Article 3(a) of the Eighth Council Directive 79/1072/EEC — Obligation of taxpayers not established in the country concerned to annex the original invoices or import documents to applications for a refund of the tax — Possibility of annexing a duplicate where the original has been lost for reasons beyond the control of the taxpayer
C-283/95	11 June 1998	Karlheinz Fischer v Finanzamt Donaueschingen	Tax provisions — Sixth VAT Directive — Application to the organisation of unlawful games of chance — Determination of the taxable amount
C-68/96	17 June 1998	Grundig Italiana SpA v Ministero delle Finanze	National tax on audiovisual and photo-optical products — Internal taxation — Possible incompatibility with Community law

Case	Date	Parties	Subject-matter
C-43/96	18 June 1998	Commission of the European Communities v French Republic	Failure to fulfil obligations — Sixth Council Directive 77/388/EEC — Article 17(2) and (6) — Right to deduct VAT — Exclusions provided for by national rules predating the Sixth Directive
C-172/96	14 July 1998	Commissioners of Customs & Excise v First National Bank of Chicago	Sixth VAT Directive — Scope — Foreign exchange transactions
C-319/96	24 September 1998	Brinkmann Tabakfabriken GmbH v Skatteministeriet	Tax on the consumption of manufactured tobacco — Directive 79/32/EEC — Cigarettes — Smoking tobacco — Concept — Non-contractual liability of a Member State for breach of Community law
C-308/96 and C-94/97	22 October 1998	Commissioners of Customs & Excise v T.P. Madgett and R.M. Baldwin T.P. Madgett et R.M. Baldwin v Commissioners of Customs & Excise	VAT — Article 26 of the Sixth VAT Directive — Scheme for travel agents and tour operators — Hotel undertakings — Accommodation and travel package — Basis of calculation of the margin
C-4/97	27 October 1998	Manifattura Italiana Nonwoven SpA v Direzione Regionale delle Entrate per la Toscana	Directive 69/335/EEC — Taxes on the raising of capital — Tax on companies' net assets
C-31/97 and C-32/97	27 October 1998	Fuerzas Eléctricas de Catalunya SA (FECSA) and Autopistas Concesionaria Española SA v Departament d'Economía i Finances de la Generalitat de Catalunya	Directive 69/335/EEC — Indirect taxes on the raising of capital — Duty on notarial deeds recording the repayment of debenture loans
C-152/97	27 October 1998	Abruzzi Gas SpA (Agas) v Amministrazione Tributaria di Milano	Directive 69/335/EEC — Indirect taxes on the raising of capital — Merger of companies — Acquisition by a company which already holds all the securities of the companies acquired

Case	Date	Parties	Subject-matter
C-134/97	12 November 1998	Victoria Film A/S	Act of accession of the Kingdom of Sweden — Sixth VAT Directive — Transitional provisions — Exemptions — Services provided by authors, artists and performers — Lack of jurisdiction of the Court
C-149/97	12 November 1998	The Institute of the Motor Industry v Commissioners of Customs & Excise	VAT — Exemptions — Non-profit-making organisations with aims of a trade-union nature
C-85/97	19 November 1998	Société Financière d'Investissements SPRL (SFI) v Belgian State	VAT — Limitation period — Starting-point — Method of calculation
C-381/97	3 December 1998	Belgocodex SA v Belgian State	First and Sixth VAT Directives — Letting and leasing of immovable property — Right to opt for taxation
C-236/97	17 December 1998	Skatteministeriet v Aktieselskabet Forsikringsselskabet Codan	Directive 69/335/EEC — Indirect taxes on the raising of capital — Tax on transfer of shares not listed on a Stock Exchange

TRANSPORT

C-175/97	5 March 1998	Commission of the European Communities v French Republic	Directive 93/89/EEC on the application by Member States of taxes on certain vehicles used for the carriage of goods by road and tolls and charges for the use of certain infrastructures — Non-transposition
C-313/97	12 March 1998	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil its obligations — Directive 94/57/EC — Failure to transpose within the prescribed period

Case	Date	Parties	Subject-matter
C-387/96	17 March 1998	Anders Sjöberg	Social legislation relating to road transport — Exception granted for vehicles used by public authorities to provide public services which are not in competition with professional road hauliers — Obligation on the driver to carry an extract from the duty roster
C-47/97	30 April 1998	E. Clarke & Sons (Coaches) Ltd and D.J. Ferne	Social legislation relating to road transport — Compulsory use of a tachograph — Exemption for vehicles used for the carriage of passengers on regular services where the route covered does not exceed 50 km
C-368/97	14 May 1998	Commission of the European Communities v Kingdom of Belgium	Failure to fulfil obligations — Failure to transpose Directive 94/57/EC
C-176/97 and C-177/97	11 June 1998	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 maritime transport services — Maritime Agreement concluded with a third country — Cargo-sharing arrangement
C-266/96	18 June 1998	Corsica Ferries France SA v Gruppo Antichi Ormeggiatori del Porto di Genova Coop. arl, and Others	Freedom to provide services — Maritime transport — Undertakings holding exclusive rights — Mooring services for vessels in ports — Compliance with the competition rules — Tariff
C-431/97	15 September 1998	Commission of the European Communities v Ireland	Failure to fulfil obligations — Council Directive 94/57/EC — Failure to transpose
C-412/96	17 September 1998	Kainuun Liikenne Oy and Oy Pohjolan Liikenne Ab	Transport — Public service obligations — Application for termination of part of a service obligation

2. Synopsis of the other decisions of the Court of Justice which appeared in the "Proceedings" in 1998

Case	Date	Parties	Subject-matter
C-9/98	8 July 1998	Ermanno Agostini and Others v Ligue Francophone de Judo et Disciplines Associées ASBL and Others	Reference for a preliminary ruling — Inadmissibility
C-162/98	12 November 1998	Generalstaatsanwalt-schaft v Hans-Jürgen Hartmann	Application for interpretation of an agreement concluded between certain Member States under Article 8 of Directive 93/89/EEC — Lack of jurisdiction of the Court
C-149/98 P	19 November 1998	Anne-Marie Toller v Commission of the European Communities	Appeal manifestly inadmissible and manifestly unfounded

3. 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 1998

General trend in the work of the Court up to 31 December 1998

General proceedings of the Court

Table 1: **General proceedings in 1998** [1]

Completed cases	374	(420)
New cases	485	
Cases pending	664	(748)

Cases decided

Table 2: **Nature of proceedings**

References for a preliminary ruling	204	(246)
Direct actions	132	(136)
Appeals	36	(36)
Opinions	–	–
Special forms of procedure[2]	2	(2)
Total	374	(420)

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); objection lodged against judgment (Article 94 of the Rules of Procedure); third party proceedings (Article 97 of the Rules of Procedure); interpretation of a judgment (Article 102 of the Rules of Procedure); revision of a judgment (Article 98 of the Rules of Procedure); rectification of a judgment (Article 66 of the Rules of Procedure); attachment procedure (Protocol on Privileges and Immunities); cases concerning immunity (Protocol on Privileges and Immunities).

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

Nature of proceedings	Judgments	Non-interlocutory orders[2]	Interlocutory orders[3]	Other orders[4]	Opinions	Total
References for a preliminary ruling	157	9	–	38	–	204
Direct actions	76	2	-	54	–	132
Appeals	20	15	2	1	–	38
Subtotal	253	26	2	93	–	374
Opinions	–	–	–	–	–	–
Special forms of procedure	–	1	1	-	–	2
Subtotal	1	1	–	-	–	2
TOTAL	254	27	2	93	–	376

1 Net figures.

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

3 Orders made following an application on the basis of Article 185 or 186 of the EEC Treaty or of the corresponding provisions of the EAEC and ECSC Treaties (orders made in respect of an appeal *against* an interim order or an order on an application for leave to intervene are included under "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	58	(61)							58	(61)
Action partially founded	2	(2)							2	(2)
Action unfounded	13	(13)			13	(13)			26	(26)
Action partially inadmissible and founded	1	(1)							1	(1)
Action partially inadmissible and unfounded	1	(1)							1	(1)
Annulment and referred back					5	(5)			5	(5)
Partial annulment and referred back					1	(1)			1	(1)
Partial annulment and not referred back					1	(1)			1	(1)
Inadmissible	1	(1)					1	(1)	2	(2)
Preliminary ruling	1	(1)	157	(193)					157	(193)
Total judgments	76	(79)	157	(193)	20	(20)	1	(1)	254	(293)
Orders										
Action unfounded					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					1	(1)			1	(1)
Action manifestly inadmissible	2	(2)							2	(2)
Appeal manifestly inadmissible and unfounded					9	(9)			9	(9)
Appeal manifestly unfounded					1	(1)			1	(1)
Annulment and referred back					2	(2)			2	(2)
Subtotal	2	(2)	7	(8)	15	(15)	1	(1)	25	(26)
Removal from the Register	51	(52)	38	(39)	1	(1)			90	(92)
Referred back to the Court of First Instance	3	(3)							3	(3)
Art. 104 (3) of the Rules of Procedure			2	(6)					2	(6)
Subtotal	54	(55)	40	(45)	1	(1)			95	(101)
Total orders	56	(57)	47	(53)	16	(16)	1	(1)	120	(127)
Opinions										
TOTAL	132	(136)	204	(246)	36	(36)	2	(2)	374	(420)

Table 5: **Bench hearing case**

Bench hearing case	Judgments		Orders[1]		Total	
Full Court	32	(45)	5	(9)	37	(54)
Small plenum	32	(37)	–	–	32	(37)
Chambers (3 judges)	40	(44)	16	(16)	56	(60)
Chambers (5 judges)	150	(167)	2	(3)	152	(170)
President	–	–	4	(4)	4	(4)
Total	254	(293)	27	(32)	281	(325)

Table 6: **Basis of the action**

Basis of the action	Judgments/Opinions		Orders[2]		Total	
Article 169 of the EC Treaty	54	(56)	–	–	54	(56)
Article 173 of the EC Treaty	21	(22)	1	(1)	22	(23)
Article 177 of the EC Treaty	154	(190)	9	(14)	163	(204)
Article 181 of the EC Treaty	1	(1)	1	(1)	2	(2)
Article 1 of the 1971 Protocol	3	3	–	–	3	(3)
Article 49 of the EC Statute	20	(20)	11	(11)	31	(31)
Article 50 of the EC Statute	-	-	4	(4)	4	(4)
Total EC Treaty	253	(292)	26	(31)	279	(323)
Article 98 of the Rules of Procedure	1	(1)	1	(1)	2	(2)
OVERALL TOTAL	254	(293)	27	(32)	281	(325)

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).

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	37	(41)	2	(3)	39	(44)
State aid	5	(7)	1	(1)	6	(8)
Community citizenship	1	(1)	-	-	1	(1)
Economic and social cohesion	-	-	1	(1)	1	(1)
Competition	13	(14)	1	(1)	14	(15)
Brussels Convention	3	(3)	–	–	3	(3)
Institutional measures	1	(1)	-	(-)	1	(1)
Social measures	20	(30)	–	–	20	(30)
Energy	2	(2)	1	(1)	3	(3)
Environment	26	27	-	-	26	(27)
Taxation	25	(28)	2	(5)	27	(33)
Home Affairs and Justice	1	(1)	–	–	1	(1)
Freedom of establishment and to provide services	15	(18)	1	(1)	16	(19)
Free movement of goods	7	(7)	2	(3)	9	(10)
Freedom of movement for workers	11	(11)	–	–	11	(11)
Commercial policy	6	(6)	–	–	6	(6)
Industrial policy	1	(1)	–	–	1	(1)
Fisheries policy	2	(2)	–	–	2	(2)
Principles of Community law	5	(19)	3	(3)	8	(22)
Approximation of laws	27	(27)	1	(1)	28	(28)
External relations	6	(6)	3	(3)	9	(9)
Own resources	3	(3)	–	–	3	(3)
Social security for migrant workers	13	(13)	–	–	13	(13)
Staff Regulations	5	(5)	7	(7)	12	(12)
Common Customs Tariff	5	(5)	–	–	5	(5)
Transport	9	(10)	2	(2)	11	(12)
Customs Union	5	(5)	–	–	5	(5)
Total	254	(293)	27	(32)	281	(325)
ECSC Treaty	–	–	-	-	-	-
EAEC Treaty	-	-	–	–	-	-
OVERALL TOTAL	254	(293)	27	(32)	281	(325)

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]

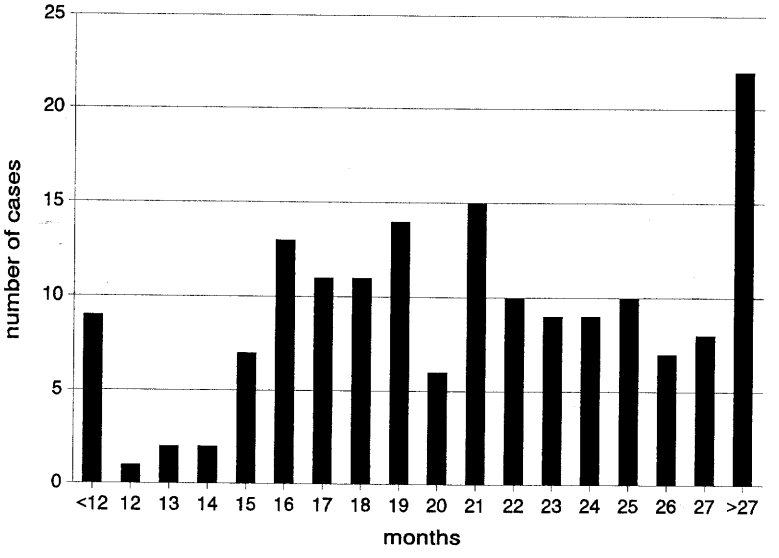
Table 8: **Nature of proceedings**
(Decisions by way of judgments and orders[2])

References for a preliminary ruling	21.4
Direct actions	21.0
Appeals	20.3

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

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

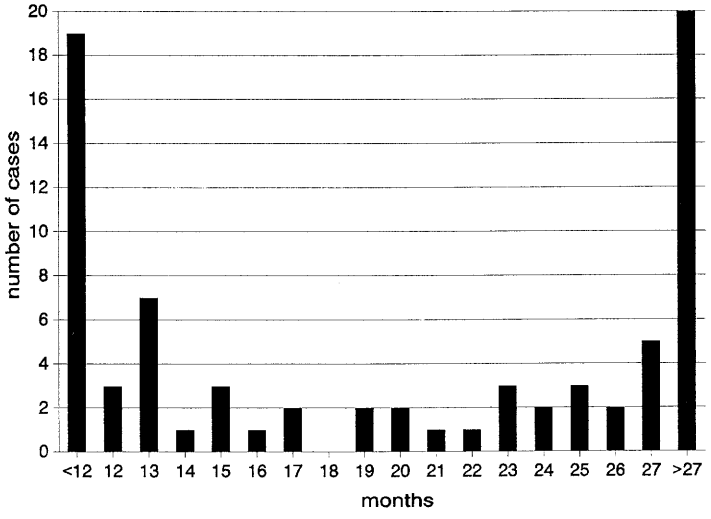
Figure I: **Duration of proceedings in references for a preliminary ruling (judgments and orders[1])**



Cases/ Months	12	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	27
References for a preliminary ruling	9	1	2	2	7	13	11	11	14	6	15	10	9	9	10	7	8	22

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

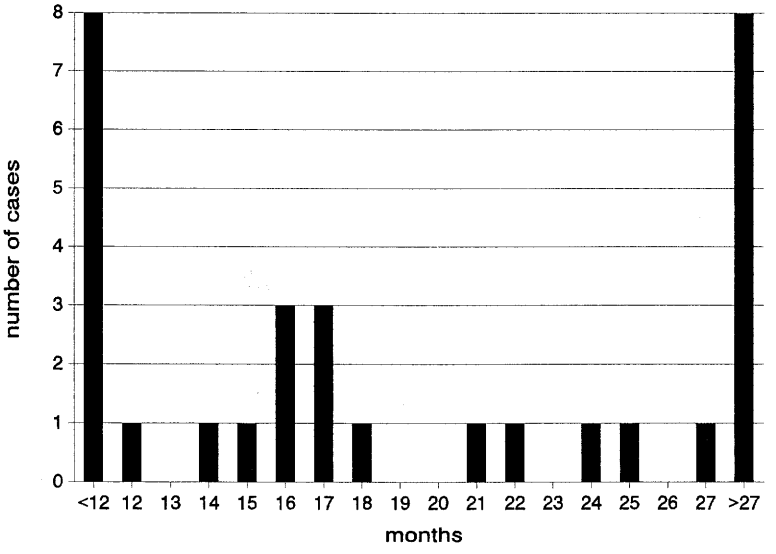
Figure II: **Duration of proceedings in direct actions (judgments and orders[1])**



Cases/ Months	12	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	27
Direct actions	19	3	7	1	3	1	2	0	2	2	1	1	3	2	3	2	5	20

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	8	1	0	1	1	3	3	1	0	0	1	1	0	1	1	0	1	8

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	264
Direct actions	147
Appeals	70
Opinions/Deliberations	–
Special forms of procedure	4
Total	485

[1] Gross figures.

Table 10: **Type of action**

References for a preliminary ruling	264
Direct actions	147
of which:	
– for annulment of measures	25
– for failure to act	–
– for damages	-
– for failure to fulfil obligations	118
– on arbitration clauses	4
Appeals	70
Opinions/Deliberations	–
Total	481
Special forms of procedure	4
of which:	
– Legal aid	–
– Taxation of costs	2
– Revision of a judgment/order	1
– Application for a garnishee order	–
- Third-party proceedings	-
– Interpretation of a judgment	1
Total	4
Applications for interim measures	2

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

Subject-matter of the action	Direct actions	References for a preliminary ruling	Appeals	Total	Special forms of procedure
Accession of new Member States	1	-	–	1	–
Agriculture	14	16	8	38	–
State aid	8	2	3	13	–
Overseas countries and territories	–	1	3	4	–
Competition	1	13	14	28	–
Brussels Convention	-	4	4	-	–
Culture	-	-	1	1	–
Company law	7	12	-	19	–
Law governing the institutions	5	–	8	13	–
Environment and consumers	10	20	–	30	–
Taxation	9	64	–	73	–
Free movement of capital	3	3	–	6	–
Free movement of goods	3	26	3	32	–
Freedom of movement for persons	14	22	–	36	–
Freedom to provide services	9	25	–	34	–
Commercial policy	2	1	4	7	–
Social policy	10	19	4	33	–
Principles of Community law	1	3	–	4	–
Privileges and Immunities	-	1	-	1	-
Approximation of laws	25	18	–	43	–
External relations	1	9	1	11	–
Transport	23	4	–	27	–
Total EC Treaty	146	263	49	458	–
Law governing the institutions	1	–	–	1	–
Total EAEC Treaty	1	–	-	1	–
State aid	–	1	1	2	–
Iron and steel	-	–	1	1	–
Total ECSC Treaty	-	1	2	3	–
Law governing the institutions	–	–	-	-	4
Staff Regulations	–	–	19	19	–
Total	–	–	19	19	4
OVERALL TOTAL	147	264	70	481	4

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

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

Brought against	**1998**	**From 1953 to 1998**
Belgium	22	225
Denmark	1	21
Germany	5	122
Greece	17	160
Spain	6	60[2]
France	22	185[3]
Ireland	10	84
Italy	12	355
Luxembourg	8	86
Netherlands	3	59
Austria	4	5
Portugal	5	41
Finland	1	1
Sweden	1	1
United Kingdom	1	41[4]
Total	118	1 446

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

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

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

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

Table 13: **Basis of the action**

Basis of the action	1998
Article 169 of the EC Treaty	116
Article 170 of the EC Treaty	–
Article 171 of the EC Treaty	2
Article 173 of the EC Treaty	25
Article 175 of the EC Treaty	–
Article 177 of the EC Treaty	261
Article 178 of the EC Treaty	–
Article 181 of the EC Treaty	3
Article 225 of the EC Treaty	–
Article 228 of the EC Treaty	–
Article 1 of the 1971 Protocol	2
Article 49 of the EC Statute	64
Article 50 of the EC Statute	4
Total EC Treaty	477
Article 41 of the ECSC Treaty	1
Article 49 of the ECSC Treaty	2
Total ECSC Treaty	3
Article 153 of the EAEC Treaty	1
Total EAEC Treaty	1
Total	481
Article 74 of the Rules of Procedure	2
Article 98 of the Rules of Procedure	1
Article 102 of the Rules of Procedure	1
Protocol on Privileges and Immunities	–
Total special forms of procedure	4
OVERALL TOTAL	485

Cases pending as at 31 December 1998

Table 14: **Nature of proceedings**

References for a preliminary ruling	339	(413)
Direct actions	230	(236)
Appeals	91	(95)
Special forms of procedure	4	(4)
Opinions/Deliberations	–	–
Total	664	(748)

Table 15: **Bench hearing case**

Bench hearing case	Direct actions		References for a preliminary ruling		Appeals		Other procedures[1]		Total	
Grand plenum	176	(180)	236	(301)	65	(67)	1	(1)	478	(549)
Small plenum	5	(5)	29	(31)					34	(36)
Subtotal	181	(185)	265	(332)	65	(67)	1	(1)	512	(585)
President of the Court										
Subtotal										
First chamber	4	(4)	5	(5)	1	(1)			10	(10)
Second chamber	2	(2)	7	(7)			1	(1)	10	(10)
Third chamber	6	(6)	1	(1)	1	(1)	1	(1)	9	(9)
Fourth chamber	3	(3)	2	(2)	1	(1)	1	(1)	7	(7)
Fifth chamber	13	(14)	36	(40)	7	(9)			56	(63)
Sixth chamber	21	(22)	23	(26)	16	(16)			60	(64)
Subtotal	49	(51)	74	(81)	26	(28)	3	(3)	152	(163)
TOTAL	230	(236)	339	(413)	91	(95)	4	(4)	664	(748)

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 Chiffres bruts; procédures particulières exclues.

2 Chiffres nets.

3 Y compris les avis.

4 A partir de 1990, les recours de fonctionnaires sont introduits devant le Tribunal de première 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
Total	6 223 [4]	3 902	266	10 391	313	4 761

1 Chiffres bruts; procédures particulières exclues.

2 Chiffres nets.

3 Y compris les avis.

4 Dont 2 388 recours de fonctionnaires jusqu'au 31 décembre 1989.

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	–	11	4	17					5	108
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

continues

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

Year	B	DK	D	EL	E	F	IRL	I	L	NL	A	P	FIN	S	UK	Total
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
Total	397	78	1 113	53	121	594	37	581	42	493	59	31	11	23	269	3 902

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

Belgium	
Cour de cassation	50
Cour d'arbitrage	1
Conseil d'État	19
Other courts or tribunals	327
Total	**397**
Denmark	
Højesteret	14
Other courts or tribunals	64
Total	**78**
Germany	
Bundesgerichtshof	66
Bundesarbeitsgericht	4
Bundesverwaltungsgericht	45
Bundesfinanzhof	167
Bundessozialgericht	52
Staatsgerichtshof	1
Other courts or tribunals	778
Total	**1 113**
Greece	
Cour de cassation	2
Conseil d'État	7
Other courts or tribunals	44
Total	**53**
Spain	
Tribunal Supremo	2
Tribunales Superiores de justicia	28
Audiencia Nacional	1
Juzgado Central de lo Penal	7
Other courts or tribunals	83
Total	**121**
France	
Cour de cassation	57
Conseil d'État	15
Other courts or tribunals	522
Total	**594**
Ireland	
Supreme Court	10
High Court	15
Other courts or tribunals	12
Total	**37**
Italy	
Corte suprema di Cassazione	63
Consiglio di Stato	28
Other courts or tribunals	490
Total	**581**
Luxembourg	
Cour supérieure de justice	10
Conseil d'État	13
Other courts or tribunals	19
Total	**42**
Netherlands	
Raad van State	32
Hoge Raad der Nederlanden	86
Centrale Raad van Beroep	38
College van Beroep voor het Bedrijfsleven	95
Tariefcommissie	34
Other courts or tribunals	208
Total	**493**
Austria	
Oberster Gerichtshof	15
Bundesvergabeamt	7
Verwaltungsgerichtshof	2
Other courts or tribunals	25
Total	**59**
Portugal	
Supremo Tribunal Administrativo	18
Other courts or tribunals	13
Total	**31**
Finland	
Korkein hallinto-oikeus	2
Other courts or tribunals	9
Total	**11**
Sweden	
Högsta Domstolen	1
Marknadsdomstolen	3
Regeringsrätten	3
Other courts or tribunals	16
Total	**23**
United Kingdom	
House of Lords	23
Court of Appeal	10
Other courts or tribunals	236
Total	**269**
OVERALL TOTAL	**3 902**

B - Proceedings of the Court of First Instance

1. Synopsis of the judgments delivered by the Court of First Instance in 1998

page

1. Synopsis of the judgments delivered by the Court of First Instance in 1998

Case	Date	Parties	Subject-matter
ARBITRATION CLAUSE			
T-203/96	17 December 1998	Embassy Limousines & Services v European Parliament	Arbitration clause — Existence of a contract — Non-contractual liability — Withdrawal of an invitation to tender — Legitimate expectations — Assessment of damage
AGRICULTURE			
T-246/93	4 February 1998	Günther Bühring v Council of the European Union and Commission of the European Communities	Action for damages — Non-contractual liability — Milk — Additional levy — Reference quantity — Conversion undertaking — Forced sale of holding — Damage — Causal link — Limitation period
T-93/95	4 February 1998	Bernard Laga v Commission of the European Communities	Action for annulment — Compensation payable to milk producers — Regulation (EEC) No 2187/93 — Offer of compensation — Acts of national authorities — Control — Competence — Action for damages — Admissibility
T-94/95	4 February 1998	Jean-Pierre Landuyt v Commission of the European Communities	Action for annulment — Compensation payable to milk producers — Regulation (EEC) No 2187/93 — Offer of compensation — Acts of national authorities — Control — Competence — Action for damages — Admissibility

Case	Date	Parties	Subject-matter
T-119/95	14 July 1998	Alfred Hauer v Council of the European Union and Commission of the European Communities	Action for annulment — Regulation (EEC) No 816/92 — Time-limit for bringing proceedings — Admissibility — Action for damages — Common organisation of the market in milk and milk products — Reference quantities — Additional levy — Reduction of reference quantities without compensation
T-81/97	16 July 1998	Regione Toscana v Commission of the European Communities	Integrated Mediterranean programmes — Community financial assistance — Regulation (EEC) No 4256/88 — Regulation (EEC) No 2085/93
T-54/96	15 September 1998	Oleifici Italiani SpA et Fratelli Rubino Industrie Olearie SpA v Commission of the European Communities	Agriculture — Financing of intervention measures — Suspension of all payment due for storage of a consignment of olive oil pending verification of its characteristics — Action for annulment and for damages
T-112/95	24 September 1998	Peter Dethlefs and 38 other farmers v Council of the European Union and Commission of the European Communities	Claims for compensation — Non-contractual liability — Milk — Additional levy — Producers who have entered into non-marketing or conversion undertakings — Compensation — Regulation (EEC) No 2187/93 — Interest
T-149/96	30 September 1998	Confederazione Nazionale Coltivatori Diretti (Coldiretti) v Council of the European Union	Common agricultural policy — Animal health — Bovine spongiform encephalopathy — Action for damages — Regulation (EC) No 1357/96 — Additional premiums — Action for annulment — Trade association — Inadmissible

Case	Date	Parties	Subject-matter
T-222/97	25 November 1998	Alfons Steffens v Council of the European Union	Action for damages — Non-contractual liability — Milk — Additional levy — Reference quantity — Producers having entered into non-marketing or conversion undertakings — Compensation — Regulation (EEC) No 2187/93 — Limitation period

COMMERCIAL POLICY

T-97/95	29 January 1998	Sinochem National Chemicals Import & Export Corporation v Council of the European Union	Anti-dumping — Furfuraldehyde — Factors justifying the opening of an investigation — Principle of proportionality — Injury — Rejection of an undertaking — Regulation (EEC) No 2423/88
T-369/94 and T-85/95	19 February 1998	DIR International Film Srl v Commission of the European Communities	Action for annulment — Decision of the European Film Distribution Office (EFDO) — Instructions given by the Commission — Decisions imputable to the Commission — Action programme to promote the development of the European audiovisual industry (MEDIA) — Financing of film distribution — Criteria for assessment — Statement of reasons
T-118/96	17 July 1998	Thai Bicycle Industry Co. Ltd v Council of the European Union	Dumping — Normal value — Constructed value — Production costs — Selling, general and administrative expenses — Profit margin — OEM adjustment

Case	Date	Parties	Subject-matter
T-2/95	15 October 1998	Industrie des Poudres Sphériques v Council of the European Union	Anti-dumping measures — Regulation (EEC) No 2423/88 — Calcium metal — Resumption of an anti-dumping investigation — Right to a fair hearing — Like product — Damage — Community interest — Statement of reasons — Misuse of powers — Unenforceability of an anti-dumping regulation against an importer
T-147/97	19 November 1998	Champion Stationery Mfg Co. Ltd and Others v Council of the European Union	Anti-dumping duties — Administrative procedure — Final disclosure — Modification of anti-dumping duties — Rights of defence

COMPETITION

T-334/94	14 May 1998	Sarrió SA v Commission of the European Communities	Competition — Article 85(1) of the EC Treaty — Concept of single infringement — Information exchange — Order — Fine — Determination of the amount — Method of calculation — Statement of reasons — Mitigating circumstances
T-347/94	14 May 1998	Mayr-Melnhof Kartongesellschaft mbH v Commission of the European Communities	Competition — Article 85(1) of the EC Treaty — Concept of agreement — Information exchange — Order — Fine — Determination of the amount — Statement of reasons — Mitigating circumstances — Rights of the defence — Cooperation during the administrative procedure — Principle of equal treatment

Case	Date	Parties	Subject-matter
T-295/94	14 May 1998	Buchmann GmbH v Commission of the European Communities	Competition — Article 85(1) of the EC Treaty — Proof of participation in collusion — Fine — Determination of the amount — Statement of reasons
T-304/94	14 May 1998	Europa Carton AG v Commission of the European Communities	Competition — Article 85(1) of the EC Treaty — Proof of participation in collusion — Fine — Turnover — Determination of the amount — Mitigating circumstances
T-308/94	14 May 1998	Cascades SA v Commission of the European Communities	Competition — Article 85(1) of the EC Treaty — Liability for the infringement — Fine — Statement of reasons — Mitigating circumstances
T-309/94	14 May 1998	NV Koninklijke KNP BT v Commission of the European Communities	Competition — Article 85(1) of the EC Treaty — Liability for unlawful conduct — Fine — Statement of reasons
T-310/94	14 May 1998	Gruber + Weber GmbH & Co. KG v Commission of the European Communities	Competition — Article 85(1) of the EC Treaty — Proof of participation in collusion — Fine — Determination of the amount — Statement of reasons — Products to which the infringement relates
T-311/94	14 May 1998	BPB de Eendracht NV, formerly Kartonfabriek de Eendracht NV v Commission of the European Communities	Competition — Article 85(1) of the EC Treaty — Rights of the defence — Proof of participation in collusion — Information exchange — Order — Fine — Statement of reasons — Determination of the amount — Cooperation during the administrative procedure

Case	Date	Parties	Subject-matter
T-317/94	14 May 1998	Moritz J. Weig GmbH & Co. KG v Commission of the European Communities	Competition — Article 85(1) of the EC Treaty — Concept of agreement — Order to desist — Fine — Determination of the amount — Statement of reasons — Mitigating circumstances
T-319/94	14 May 1998	Fiskeby Board AB v Commission of the European Communities	Competition — Article 85(1) of the EC Treaty — Fines — Determination of the amount — Mitigating circumstances — Statement of reasons
T-327/94	14 May 1998	SCA Holding Ltd v Commission of the European Communities	Competition — Article 85(1) of the EC Treaty — Liability for unlawful conduct — Fine — Statement of reasons — Mitigating circumstances
T-337/94	14 May 1998	Enso-Gutzeit Oy v Commission of the European Communities	Article 85(1) of the EC Treaty — Infringement — Proof
T-338/94	14 May 1998	Finnish Board Mills Association — Finnboard v Commission of the European Communities	Competition — Article 85(1) of the EC Treaty — Information exchange — Order — Fine — Determination of the amount — Statement of reasons — Cooperation during the administrative procedure
T-348/94	14 May 1998	Enso Española SA v Commission of the European Communities	Competition — Article 85(1) of the EC Treaty — Right to an independent and impartial tribunal — Rights of the defence — Statement of reasons — Fine — Determination of the amount — Method of calculation — Mitigating circumstances — Principle of equal treatment — Principle of proportionality

Case	Date	Parties	Subject-matter
T-352/94	14 May 1998	Mo och Domsjö AB v Commission of the European Communities	Competition — Article 85(1) of the EC Treaty — Liability for unlawful conduct — Relevant product market — Information exchange — Order — Fine — Determination of the amount — Statement of reasons — Mitigating circumstances
T-354/94	14 May 1998	Stora Kopparbergs Bergslags AB v Commission of the European Communities	Competition — Article 85(1) of the EC Treaty — Admission of matters of fact or of law during the administrative procedure — Consequences — Liability for unlawful conduct — Information exchange — Order — Fine — Statement of reasons — Mitigating circumstances
T-339/94 to T-342/94	14 May 1998	Metsä-Serla Oy and Others v Commission of the European Communities	Article 15(2) of Regulation No 17 — Joint and several liability for payment of a fine
T-111/96	17 July 1998	ITT Promedia NV v Commission of the European Communities	Competition — Actions for annulment — Rejection of a complaint — Article 86 of the EC Treaty — Abuse of a dominant position — Actions before national courts — Right of access to the courts — Claim for performance of an agreement — Manifest error of assessment — Obligation to carry out an examination — Error of characterisation — Inadequate statement of reasons

Case	Date	Parties	Subject-matter
T-374/94, T-375/94, T-384/94 and T-388/94	15 September 1998	European Night Services Ltd (ENS) and Others v Commission of the European Communities	Competition — Transport by rail — Agreements on overnight rail services through the Channel Tunnel — Restrictions on competition — Directive 91/440/EEC — Appreciable effect on trade — Supply of necessary services — Essential facilities — Statement of reasons — Admissibility
T-28/95	16 September 1998	International Express Carriers Conference (IECC) v Commission of the European Communities	Competition — Action for a declaration of failure to act — No need for the case to proceed to judgment
T-110/95	16 September 1998	International Express Carriers Conference (IECC) v Commission of the European Communities	Competition — Remail — Action for annulment — Partial rejection of a complaint — Community interest
T-133/95 and T-204/95	16 September 1998	International Express Carriers Conference (IECC) v Commission of the European Communities	Competition — Remail — Action for annulment — Partial rejection of a complaint

ECONOMIC POLICY

T-232/95	8 July 1998	Committee of European Copier Manufacturers (Cecom) v Council of the European Union	Anti-dumping duties on plain paper photocopiers — Review — Period of application of the anti-dumping duty — Manifest error of assessment

Case	Date	Parties	Subject-matter
ECSC			
T-129/96	31 March 1998	Preussag Stahl AG v Commission of the European Communities	State aid — Article 93(2) of the EC Treaty — Notice of initiation of procedure — Aid not explicitly mentioned — Aid to companies located in disadvantaged regions — Restructuring — Recovery of aid — Limitation period
ENVIRONMENT AND CONSUMERS			
T-105/96	17 February 1998	Pharos SA v Commission of the European Communities	Regulation (EEC) No 2377/90 — Inclusion of somatosalm in the list of substances not subject to maximum residue limits — Action for failure to act — Action for damages
T-120/96	25 June 1998	Lilly Industries Ltd v Commission of the European Communities	Regulation No 2377/90 — Request for inclusion of a recombinant bovine somatotrophin (BST) in the list of substances not subject to maximum residue limits — Rejection by the Commission — Application for annulment
EXTERNAL RELATIONS			
T-184/95	28 April 1998	Dorsch Consult Ingenieurgesellschaft mbH v Council of the European Union and Commission of the European Communities	Non-contractual liability for an unlawful act — Regulation No 2340/90 — Embargo on trade with Iraq — Impairment of rights equivalent to expropriation — Liability for an unlawful act — Damage

Case	Date	Parties	Subject-matter
T-13/96	29 October 1998	TEAM Srl v Commission of the European Communities	PHARE programme — Decision to annul an invitation to tender and issue a new invitation to tender — Action for damages — Admissibility — Damage resulting from the loss suffered by a tenderer, from its loss of profit and from the harm caused to its image

FREE MOVEMENT OF GOODS

T-42/96	19 February 1998	Eyckeler & Malt AG v Commission of the European Communities	Action for annulment — Importation of high-quality beef («Hilton beef») — Regulation (EEC) No 1430/79 — Article 13 — Commission decision refusing remission of import duties — Rights of the defence — Manifest error of assessment
T-10/97 and T-11/97	9 June 1998	Unifrigo Gadus Srl and CPL Imperial 2 SpA v Commission of the European Communities	Post-clearance recovery of customs duties — Regulation (EEC) No 1697/79 — Regulation (EEC) No 2454/93
T-195/97	16 July 1998	Kia Motors Nederland BV and Broekman Motorships BV v Commission of the European Communities	Commission decision declaring that repayment of import duties is not justified — Application for annulment — Article 239 of the Customs Code — Duty to state reasons

Case	Date	Parties	Subject-matter
T-50/96	17 September 1998	Primex Produkte Import-Export GmbH & Co. KG, Gebr. Kruse GmbH and Interporc Im- und Export GmbH v Commission of the European Communities	Action for annulment — Importation of high-quality beef (Hilton beef) — Regulation (EEC) No 1430/79 — Article 13 — Commission decision refusing remission of import duties — Rights of the defence — Manifest error of assessment

LAW GOVERNING THE INSTITUTIONS

T-113/96	29 January 1998	Édouard Dubois et Fils v Council of the European Union and Commission of the European Communities	Non-contractual liability — Single European Act — Customs agent
T-124/96	6 February 1998	Interporc Im- und Export GmbH v Commission of the European Communities	Commission Decision 94/90/ECSC, EC, Euratom on public access to Commission documents — Decision refusing access to documents — Protection of the public interest (court proceedings)
T-83/96	19 March 1998	Gerard van der Wal v Commission of the European Communities	Access to information — Commission Decision 94/90/ECSC/EC/Euratom — Refusal of access — Scope of the exception relating to the protection of the public interest — Court proceedings — Article 6 of the European Convention on Human Rights

Case	Date	Parties	Subject-matter
T-174/95	17 June 1998	Svenska Journalistförbundet v Council of the European Union	Access to information — Council Decision 93/731/EC — Refusal of an application for access to Council documents — Action for annulment — Admissibility — Title VI of the Treaty on European Union — Scope of the exception concerning the protection of public security — Confidentiality of the Council's proceedings — Statement of reasons — Publication of the defence on the Internet — Abuse of procedure
T-199/96	16 July 1998	Laboratoires Pharmaceutiques Bergaderm SA and Jean-Jacques Goupil v Commission of the European Communities	Cosmetic products — Directive 76/768/EEC — Directive 95/34/EC — Sun creams and bronzing products — Public health — Non-contractual liability of the Community
T-109/96	16 July 1998	Gilberte Gebhard v European Parliament	Officials — Auxiliary staff — Auxiliary session interpreters of the European Parliament — Legality of levying Community tax on their remuneration
T-202/96 and T-204/96	16 July 1998	Andrea von Löwis and Marta Alvarez-Cotera v Commission of the European Communities	Freelance conference interpreters — Lawfulness of levying Community tax on their remuneration

Case	Date	Parties	Subject-matter
T-121/97	30 September 1998	Richie Ryan v Court of Auditors of the European Communities	Action for annulment — System of payment for the members of the Court of Auditors — Departure from office — Pension — No increase — Infringement of the basic regulation — Statement of reasons — Legitimate expectations — Principle of non-discrimination

SOCIAL POLICY

T-135/96	17 June 1998	Union Européenne de l'Artisanat et des Petites et Moyennes Entreprises (UEAPME) v Council of the European Union	Agreement on social policy — Annulment of a directive — Whether action admissible — Status of management and labour in the process for the adoption of the directive — Representativity of management and labour
T-72/97	16 July 1998	Proderec — Formação e Desinvolvimento de Recursos Humanos, ACE v Commission of the European Communities	European Social Fund — Decision to reduce two amounts of financial assistance — Action for annulment — Admissibility — Certification of factual and accounting accuracy — Lack of competence of the national body — Statement of reasons — Rights of the defence

Case	Date	Parties	Subject-matter
T-180/96 and T-181/96	15 September 1998	Mediocurso - Estabelecimento de Ensino Particular, Ld.ª v Commission of the European Communities	European Social Fund — Approval decision — Reduction in financial assistance — Opportunity for the beneficiary to be heard beforehand — Consultation of the Member State — Protection of legitimate expectations — Legal certainty — Statement of reasons — Manifest error of assessment
T-142/97	15 September 1998	Eugénio Branco Ldª v Commission of the European Communities	Action for annulment — European Social Fund — Reduction in financial assistance — Certification by the Member State — Misappraisal of the facts — Legitimate expectations — Legal certainty — Proportionality

STAFF REGULATIONS

T-176/96	13 January 1998	Cornelis Volger v European Parliament	Officials — Action for annulment — Admissibility — Decision to assign to non-active status — Article 41 of the Staff Regulations — Duty to have regard to officials' interests
T-98/96	22 January 1998	Mario Costacurta v Commission of the European Communities	Officials — Decision reassigning an official — Article 7 of the Staff Regulations — Annex X to the Staff Regulations
T-62/96	29 January 1998	Willy de Corte v Commission of the European Communities	Officials — Partial permanent invalidity — Accident — Link between cause and effect

Case	Date	Parties	Subject-matter
T-157/96	29 January 1998	Paolo Salvatore Affatato v Commission of the European Communities	Officials — General competitions — Non-registration on the list of successful candidates — Letter correcting a letter initially sent to the candidate — Legal relationship between the institution and a candidate in a competition — Obligation to provide a statement of reasons — Damages for material and non-material damage — Permissibility
T-56/96	17 February 1998	Alberto Maccaferri v Commission of the European Communities	Officials — Temporary staff — Recruitment procedure — Transfer of post — Absence of statement of reasons — Misuse of powers — Legitimate expectations
T-91/96	17 February 1998	Nicole Hankart v Council of the European Union	Officials — Open competition — Detailed practical organisational arrangements — Loss of a written test — Non-admission to the next test
T-183/96	17 February 1998	E v Economic and Social Committee of the European Communities	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 — Principle of proportionality
T-142/96	19 February 1998	Anne-Marie Toller v Commission of the European Communities	Officials — Opinion of the Invalidity Committee — Incompetence — Decision ordering removal from post — Application for re-examination — Material new factor — Time-bar — Admissibility

Case	Date	Parties	Subject-matter
T-169/96	19 February 1998	Jean-Pierre Pierard v Commission of the European Communities	Representation of officials and servants of the Commission on administrative bodies and on organs set up under the Staff Regulations — Staff assigned to posts outside the European Union — No need to adjudicate
T-3/97	19 February 1998	Anna Maria Campogrande v Commission of the European Communities	Officials — Vacancy notice — Level of the post to be filled — Appointment to a grade A4/A5 post of head of unit — Illegality of the decision of the Commission of 19 July 1988 — Rejection of application for post
T-196/97	19 February 1998	Donato Continolo v Commission of the European Communities	Officials — Thermal cure — Article 59 of the Staff Regulations — Sick leave — Special leave
T-146/96	4 March 1998	Maria da Graça De Abreu v Court of Justice of the European Communities	Probationary officials — Appointment of a former member of the temporary staff — Maintenance of seniority in step — Principle of equality of treatment — Objection of illegality
T-221/96	5 March 1998	Immacolata Manzo-Tafaro v Commission of the European Communities	Officials — Refusal to promote an official — Consideration of comparative merits — Age and seniority taken into consideration
T-183/95	17 March 1998	Giuseppe Carraro v Commission of the European Communities	Officials — Article 24 of the Staff Regulations — Duty to provide assistance — Decision implicitly rejecting a request

Case	Date	Parties	Subject-matter
T-74/96	19 March 1998	Georges Tzoanos v Commission of the European Communities	Officials — Decision ordering removal from post — Action for annulment — Concurrent disciplinary proceedings and criminal proceedings — Errors of assessment — Right to a fair hearing — Articles 12, 13, 14, 21 and 86 of the Staff Regulations — Principle of proportionality — Principle of equal treatment — Misuse of powers
T-86/97	2 April 1998	Réa Apostolidis v Court of Justice of the European Communities	Officials — Suspension of promotion procedure — Disciplinary proceedings
T-205/95	30 April 1998	Giampaolo Cordiale v European Parliament	Officials — Exchanges of officials between the Parliament and national administrations — Subsistence allowance — Travel expenses — Complaint — Express rejection — Inadmissibility of the action
T-184/94	12 May 1998	Martin O'Casey v Commission of the European Communities	Officials — Annulment of the decision rejecting the applicant's candidature for the post of assistant to the Deputy Director of the ITER joint work site at Naka, Japan — Offer of the post — Breach of the agreement — Claim for damages

Case	Date	Parties	Subject-matter
T-159/96	12 May 1998	Rüdiger Wenk v Commission of the European Communities	Officials — Recruitment — Post of Head of a Commission delegation — Notice of vacancy — Legality — Decision rejecting an application for a post — Obligation to provide a statement of reasons — Comparative examination of the merits of the candidates — Discretion of the appointing authority — Protection of legitimate expectations — Duty to have regard for the welfare and interests of officials
T-165/95	14 May 1998	Arnaldo Lucaccioni v Commission of the European Communities	Officials — Action for damages — Occupational disease — Damage — Taking into account benefits received under Article 73 of the Staff Regulations — Duration of the procedure for recognising an occupational disease — Fault
T-21/97	14 May 1998	Sofia Goycoolea v Commission of the European Communities	Temporary staff — False information given in the application for appointment — Article 50(1) of the Conditions of Employment of Other Servants — Third subparagraph of Article 5(1) of the Staff Regulations — Conditions governing the form in which complaints are to be made
T-177/96	26 May 1998	Mario Costacurta v Commission of the European Communities	Officials — Remuneration — Weighting — Special derogations applying to officials posted to non-member countries — Contrary to the principles of the equivalence of purchasing power and equal treatment

Case	Date	Parties	Subject-matter
T-205/96	26 May 1998	Roland Bieber v European Parliament	Officials — Belated reinstatement — Liability — Damage
T-78/96 and T-170/96	28 May 1998	W v Commission of the European Communities	Officials — Actions for annulment and for compensation — Admissibility — Reassignment — Interests of the service — Duty to have regard for the welfare of officials — Misuse of power — Statement of reasons — Liability — Administrative fault
T-171/95 and T-191/95	9 June 1998	Al and Others and Becker and Others v Commission of the European Communities	Officials — Pensions — Weighting — Change of capital — Retroactive effect — Regulation (ECSC, EC, Euratom) No 3161/94 — Action for annulment — Admissibility — Act adversely affecting an official
T-172/95	9 June 1998	Valentino Chesi, Margot Jost and Ralph Loebisch v Council of the European Union	Officials — Pensions — Weighting — Change of capital — Retroactive effect — Regulation (ECSC, EC, Euratom) No 3161/94 — Action for annulment — Admissibility — Act adversely affecting an official
T-173/95	9 June 1998	Erich Biedermann, Walter Hedderich and Alfred Wienrich v Court of Auditors of the European Communities	Officials — Pensions — Weighting — Change of capital — Retroactive effect — Regulation (ECSC, EC, Euratom) No 3161/94 — Action for annulment — Admissibility — Act adversely affecting an official

Case	Date	Parties	Subject-matter
T-176/97	9 June 1998	Alan Hick v Economic and Social Committee of the European Communities	Officials — Promotion — Official made available to work in the department in which he was previously employed — Secondment in the interests of the service — Misuse of powers
T-167/97	11 June 1998	Kyriakos Skrikas v European Parliament	Officials — Decision not to promote an official — Action for annulment — Admissibility — Act adversely affecting an official — Consideration of the comparative merits — Inter-institutional transfer — Article 45(1) of the Staff Regulations
T-236/97	2 July 1998	Giovanni Ouzounoff Popoff v Commission of the European Communities	Officials — Transfers of part of pay in the currency of a Member State other than the country where the institution has its seat
T-238/95, T-239/95, T-240/95, T-241/95 and T-242/95	7 July 1998	Francesco Mongelli and Others v Commission of the European Communities	Officials — Pensions — Weighting — Determination — Exchange rate
T-116/96, T-212/96 and T-215/96	7 July 1998	Italo Telchini, Enrico Palermo and Fabrizio Gillet v Commission of the European Communities	Officials — Pensions — Weighting — Determination — Exchange rate — Retroactive adjustment
T-130/96	8 July 1998	Gaetano Aquilino v Council of the European Union	Officials — Sick leave — Article 59 of the Staff Regulations — Medical certificates — Not accepted — Medical checks organised by the institution — Article 60 of the Staff Regulations — Unauthorised absences — Recovered from the official's salary

Case	Date	Parties	Subject-matter
T-192/96	14 July 1998	Giorgio Lebedef v Commission of the European Communities	Staff committee — Procedures — Amendment of the Staff Committee Rules — General Assembly — Electoral system — Admissibility
T-42/97	14 July 1998	Giorgio Lebedef v Commission of the European Communities	Officials — Refusal to authorise "secondment on union duties" to the person designated by a Trade Union — Admissibility
T-219/97	14 July 1998	Anita Brems v Council of the European Union	Officials — Action for annulment — Thermal cure — Article 59 of the Staff Regulations — Sick leave — Special leave
T-156/96	16 July 1998	Claus Jensen v Commission of the European Communities	Officials — Pay — Installation allowance — Recovery of undue payments
T-162/96	16 July 1998	Sandro Forcheri v Commission of the European Communities	Officials — Secondment in the interest of the service — Temporary posting — Entitlement to secondment differential allowance — Discretion of the administration
T-93/96	16 July 1998	Catherine Presle v Centre Européen pour le Développement de la Formation Professionnelle	Officials — Change of posting — Obligation to state reasons — Principle of protection of legitimate expectations — Duty of care
T-144/96	16 July 1998	Y v European Parliament	Officials — Criminal conviction — Disciplinary measure — Removal from post — Grounds — Duty to have regard for the welfare of Officials

Case	Date	Parties	Subject-matter
T-219/96	16 July 1998	Y v European Parliament	Officials — Article 88 of the Staff Regulations — Suspension — Deductions from remuneration — Pension rights — Damages
T-28/97	17 July 1998	Agnès Hubert v Commission of the European Communities	Officials — Action for annulment — Transfer/reposting — Interests of the service — Absence of statement of reasons — Action for compensation
Cases T-66/96 and T-221/97	21 July 1998	John Mellett v Court of Justice of the European Communities	Officials — Admissibility — Establishment — Legitimate expectations — Equal treatment
T-23/96	15 September 1998	Elsa De Persio v Commission of the European Communities	Official — Reassignment — Request for transfer from the Language Service to Category A — Removal of barriers to such transfers
T-94/96	15 September 1998	Martin Hagleitner v Commission of the European Communities	Officials — Open competition — Selection board — Examiners — Correction of tests
T-3/96	15 September 1998	Roland Haas, Hans-Werner Schmidt, Siegfried Schweikle, Albert Veith and Horst Wohlfeil v Commission of the European Communities	Officials — Proportion of remuneration transferred — Weighting — Adjustment of capital sum — Retroactivity
T-193/96	16 September 1998	Lars Bo Rasmussen v Commission of the European Communities	Officials — Staff report — Reiteration of the contents of the previous report — Belated inclusion in the personal file of the person concerned

Case	Date	Parties	Subject-matter
T-215/97	16 September 1998	Sari Kristiina Jouhki v Commission of the European Communities	Official — Notice of competition — Not admitted to competition
T-234/97	16 September 1998	Lars Bo Rasmussen v Commission of the European Communities	Officials — Promotion — Equal treatment — Consideration of comparative merits
T-154/96	30 September 1998	Christiane Chvatal and Others v Court of Justice of the European Communities	Officials — Termination of service as a result of the accession of new Member States — Act adversely affecting an official — Objection of illegality — Legality of Regulation (EC, Euratom, ECSC) No 2688/95 — Equal treatment — Infringement of essential procedural requirements — Prior consultation of the institutions and of the Staff Regulations Committee
T-13/97	30 September 1998	Antoinette Losch v Court of Justice of the European Communities	Officials — Termination of service as a result of the accession of new Member States — Act adversely affecting an official — Objection of illegality — Legality of Regulation (EC, Euratom, ECSC) No 2688/95 — Equal treatment — Infringement of essential procedural requirements — Prior consultation of the institutions and of the Staff Regulations Committee
T-43/97	30 September 1998	Isabelle Adine-Blanc v Commission of the European Communities	Officials — Auxiliary staff — Duration of contract — Principle of the protection of legitimate expectations — Duty to have regard for the welfare and interests of officials — Principle of sound administration

Case	Date	Parties	Subject-matter
T-164/97	30 September 1998	Silvio Busacca and Others v Court of Auditors of the European Communities	Officials — Termination of service as a result of the accession of new Member States — Act adversely affecting an official — Objection of illegality — Legality of Regulation (EC, Euratom, ECSC) No 2688/95 — Equal treatment — Infringement of essential procedural requirements — Prior consultation of the institutions and of the Staff Regulations Committee
T-40/95	16 October 1998	V v Commission of the European Communities	Officials — Disciplinary procedure — Removal from post — Appeal — Case referred back to the Court of First Instance — Verification of the facts — Right to a fair hearing
T-100/96	21 October 1998	Miguel Vicente-Nuñez v Commission of the European Communities	Officials — Classification — Additional seniority in grade — Professional experience and university education before recruitment
T-294/97	12 November 1998	Manuel Tomás Carrasco Benítez v Commission of the European Communities	Officials — Internal competition reserved for Category A temporary staff — Application by a Grade B 5 official — Unlawfulness of the notice of competition
T-91/96 (125)	12 November 1998	Council of the European Union v Nicole Hankart	Officials — Action for revision — Decisive new fact — None — Inadmissible
T-217/96	17 November 1998	Lut Fabert-Goossens v Commission of the European Communities	Temporary staff — Selection procedure — Practical experience acquired — Classification in grade
T-131/97	17 November 1998	Carmen Gómez de Enterría y Sanchez v European Parliament	Officials — Retirement from work — Article 50 of the Staff Regulations

Case	Date	Parties	Subject-matter
T-233/97	15 December 1998	Folmer Bang-Hansen v Commission of the European Communities	Officials — Transfer of pension rights — Article 11(2) of Annex VIII to the Staff Regulations

STATE AID

T-67/94	27 January 1998	Ladbroke Racing Ltd v Commission of the European Communities	Action for annulment — State aid — Market in bet-taking — Article 92(1) and (3) of the EC Treaty — Definition of aid — Tax measures — Obligation to refund
T-107/96	17 February 1998	Pantochim SA v Commission of the European Communities	State aid — Action for failure to act — No need to adjudicate — Action for damages — Claim for an order requiring a Member State to modify the conditions for the grant of aid already accorded — Factual circumstances — Commission's lack of competence
T-214/95	30 April 1998	Het Vlaamse Gewest (Région Flamande) v Commission of the European Communities	Application for annulment — Air transport — State aid — Small amount — Distortion of competition — Effect on trade between Member States — Statement of reasons

Case	Date	Parties	Subject-matter
T-16/96	30 April 1998	Cityflyer Express Ltd v Commission of the European Communities	Action for annulment — Air transport — State aid — Interest-free loan — Amount of the aid — Principle of the market economy investor — Principle of proportionality — Manifest error of assessment — Statement of reasons — Need for exchange of argument between the Commission and the complainant
T-371/94 and T-394/94	25 June 1998	British Airways plc and Others v Commission of the European Communities British Midland Airways Ltd v Commission of the European Communities	State aid — Air transport — Airline company in a critical financial situation — Authorisation for an increase in capital
T-11/95	15 September 1998	BP Chemicals Limited v Commission of the European Communities	State aid — Action for annulment — Time-limits — Persons individually concerned — Private market economy investor principle — Opening of the procedure provided for in Article 93(2) of the Treaty
T-140/95	15 September 1998	Ryanair v Commission of the European Communities	State aid — Formal investigation procedure under Article 93(2) of the Treaty — Conditional decision approving aid in the form of a capital injection to be carried out in tranches — Precondition of payment of the second tranche not satisfied — Subsequent decision authorising payment of the second tranche — Action for annulment

Case	Date	Parties	Subject-matter
T-95/96	15 September 1998	Gestevisión Telecinco SA v Commission of the European Communities	State aid — Public service television — Complaint — Action for declaration of failure to act — Commission's duty to investigate — Time-limit — Procedure under Article 93(2) — Serious difficulties
T-126/96 and T-127/96	15 September 1998	Breda Fucine Meridionali SpA (BFM) and Ente Partecipazioni e Finanziamento Industria Manifatturiere (EFIM) v Commission of the European Communities	State aid — Article 93(2) of the EC Treaty — Notice of initiation of procedure — Aid not explicitly mentioned — Aid to companies located in disadvantaged regions — Restructuring — Recovery of aid — Limitation period
T-188/95	16 September 1998	Waterleiding Maatschappij «Noord-West Brabant» NV v Commission of the European Communities	State aid — Tax exemptions — Refusal to open the procedure laid down by Article 93(2) of the Treaty — Meaning of parties concerned — Confirmatory act — Inadmissibility

TRANSPORT

T-155/97	1 October 1998	Natural van Dam and Danser Container Line BV AG v Commission of the European Communities	Inland waterway transport — Structural improvements — Conditions for bringing new vessels into service — Exclusion

2. Synopsis of the other decisions of the Court of First Instance which appeared in the "Proceedings" in 1998

Case	Date	Parties	Subject-matter
T-65/98	7 July 1998	Van den Bergh Foods Ltd v Commission of the European Communities	Competition — Interlocutory proceedings — Intervention — Confidentiality — Suspension of execution

3. 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

Miscellaneous

Table 1: **General proceedings of the Court of First Instance in 1996, 1997 and 1998**[1]

	1996		1997		1998	
New cases	229		644		238	
Cases dealt with	172	(186)	179	(186)	279	(348)
Cases pending	476	(659)	640	(1117)	569	(1007)

[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 (1996, 1997 and 1998)**[1] [2]

Nature of proceedings	1996	1997	1998
Other actions	122	469	136
Staff cases	98	155	79
Special forms of procedure	9	20	23
Total	229 [3]	644 [4]	238 [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 6 concerned milk quota cases.

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

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

Table 3: **Type of action (1996, 1997 and 1998)**

Type of action	1996	1997	1998
Action for annulment of measures	89	133	117
Action for failure to act	15	9	2
Action for damages	14	327	14
Arbitration clause	4	1	3
Staff cases	98	154	79
Total	220 [1]	624 [2]	215 [3]
Special forms of procedure			
Legal aid	2	6	6
Taxation of costs	5	13	9
Interpretation or review of a judgment	2	-	–
Objection to a judgment	-	1	7
Revision of a judgment	-	–	1
Total	9	20	23
OVERALL TOTAL	229	644	238

1 Of which 6 cases concerned milk quotas.

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

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

Table 4: **Basis of action (1996, 1997 and 1998)**

Basis of the action	1996	1997	1998
Article 173 of the EC Treaty	79	127	105
Article 175 of the EC Treaty	15	9	2
Article 178 of the EC Treaty	14	327	13
Article 181 of the EC Treaty	4	1	3
Total EC Treaty	112	464	123
Article 33 of the ECSC Treaty	10	6	12
Total ECSC Treaty	10	6	12
Article 151 of the EAEC Treaty	-	–	1
Total EAEC Treaty	-	–	1
Staff Regulations	98	154	79
Total	220	624	215
Article 84 of the Rules of Procedure	–	1	7
Article 92 of the Rules of Procedure	5	13	9
Article 94 of the Rules of Procedure	2	6	6
Article 125 of the Rules of Procedure	1	–	1
Article 129 of the Rules of Procedure	1	-	–
Article 129 of the Rules of Procedure	1	-	–
Total special forms of procedure	9	20	23
OVERALL TOTAL	229	644	238

Table 5: **Subject-matter of the action (1996, 1997 et 1998)**[1]

Subject-matter of the action	1996	1997	1998
Accession of new Member States	1	-	–
Agriculture	30	55	19
State aid	18	28	16
Overseas countries and territories	-	–	5
Arbitration clause	-	-	2
Competition	25	24	23
Company law	-	3	3
Law governing the institutions	13	306	10
Environment and consumers	3	3	4
Free movements of goods	3	17	7
Free movement of goods - patent rights			1
Freedom of movement for persons	1	-	2
Commercial policy	5	18	12
Regional policy	1	1	2
Social policy	8	4	10
Research, information, education and statistics	-	1	-
External relations	3	3	5
Transport	1	1	3
Total EC Treaty	112	464	124
State aid	2	1	3
Competition	-	-	8
Iron and Steel	8	5	-
Total ECSC Treaty	10	6	11
Law governing the institutions	-	–	1
Total EAEC Treaty	-	–	1
Staff Regulations	98	154	79
Total	220	624	215

1 Special forms of procedure excluded.

Table 6: **Cases dealt with in 1996, 1997 and 1998**

Nature of proceedings	1996		1997		1998	
Other actions	87	(98)[1]	87	(92)[2]	142	(199)[3]
Staff cases	76	(79)	79	(81)	110	(120)
Special forms of procedure	9	(9)	13	(13)	27	(29)
Total	172	(186)	179	(186)	279	(348)

1 Of which 8 concerned milk quotas cases.

2 Of which 5 concerned milk quota cases.

3 Of which 64 concerned milk quota cases.

Table 7: **Results of cases (1998)**

Form of decision	Other actions		Staff cases		Special forms of procedure		Total	
Judgments								
Action inadmissible	6	(9)	7	(8)	1	(1)	14	(18)
Action unfounded	30	(35)	31	(38)			61	(73)
Action partially founded	19	(20)	8	(8)			27	(28)
Action founded	12	(16)	12	(13)			24	(29)
No need to give a decision	2	(2)	1	(1)			3	(3)
Total judgments	69	(82)	59	(68)	1	(1)	129	(151)
Orders								
Removal from the Register	33	(74)	27	(28)	3	(3)	63	(105)
Action inadmissible	28	(31)	19	(19)			47	(50)
No need to give a decision	4	(4)					4	(4)
Action founded					9	(10)	9	(10)
Action partially founded					6	(7)	6	(7)
Action unfounded					6	(7)	6	(7)
Action manifestly unfounded	4	(4)	5	(5)			9	(9)
Disclaimer of jurisdiction	2	(2)					2	(2)
Lack of jurisdiction	2	(2)					2	(2)
Total orders	73	(117)	51	(52)	26	(28)	150	(197)
Total	142	(199)	110	(120)	27	(29)	279	(348)

Table 8: **Basis of action (1998)**

Basis of action	Judgments		Orders		Total	
Article 173 of the EC Treaty	52	(64)	47	(56)	99	(120)
Article 175 of the EC Treaty	4	(4)	4	(4)	8	(8)
Article 178 of the EC Treaty	10	(10)	19	(54)	29	(64)
Article 181 of the EC Treaty	3	(4)	1	(1)	4	(5)
Total EC Treaty	69	(82)	71	(115)	140	(197)
Article 33 of ECSC Treaty	1	(1)	1	(1)	2	(2)
Article 35 of the ECSC Treaty			1	(1)	1	(1)
Total ECSC Treaty	1	(1)	2	(2)	3	(3)
Staff Regulations	58	(67)	51	(52)	109	(119)
Article 84 of the Rules of Procedure			6	(6)	6	(6)
Article 92 of the Rules of Procedure			14	(16)	14	(16)
Article 94 of the Rules of Procedure			6	(6)	6	(6)
Article 125 of the Rules of Procedure	1	(1)			1	(1)
Total Special forms of procedure	1	(1)	26	(28)	27	(29)
OVERALL TOTAL	129	(151)	150	(197)	279	(348)

Table 9: **Subject-matter of the action (1998)**[1]

Subject-matter of the action	Judgments		Orders		Total	
Agriculture	9	(9)	33	(77)	42	(86)
State Aid	10	12	5	(5)	15	(17)
Arbitration clause	3	(4)	1	(1)	4	(5)
Economic and social adhesion			1	(1)	1	(1)
Competition	22	(29)	12	(12)	34	(41)
Company law			1	(1)	1	(1)
Law governing the institutions	6	(6)	3	(3)	9	(9)
Environment and consumers	2	(2)	1	(1)	3	(3)
Free movement of goods	4	(5)	2	(2)	6	(7)
Freedom of movement for peronss			2	(2)	2	(2)
Commercial policy	5	(6)	7	(7)	12	(13)
Social policy	4	(5)	3	(3)	7	(8)
Economic and monetary policy	1	(1)			1	(1)
External relations	2	(2)			1	(1)
Transport	1	(1)			1	(1)
Total EC Treaty	69	(82)	71	(115)	140	(197)
State aid	1	(1)			1	(1)
Competition			2	(2)	2	(2)
Total ECSC Treaty	1	(1)	2	(2)	3	(3)
Staff Regulations	58	(67)	51	(52)	109	(119)
OVERALL TOTAL	128	(150)	124	(169)	252	(319)

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

Table 10: **Bench hearing case (1998)**

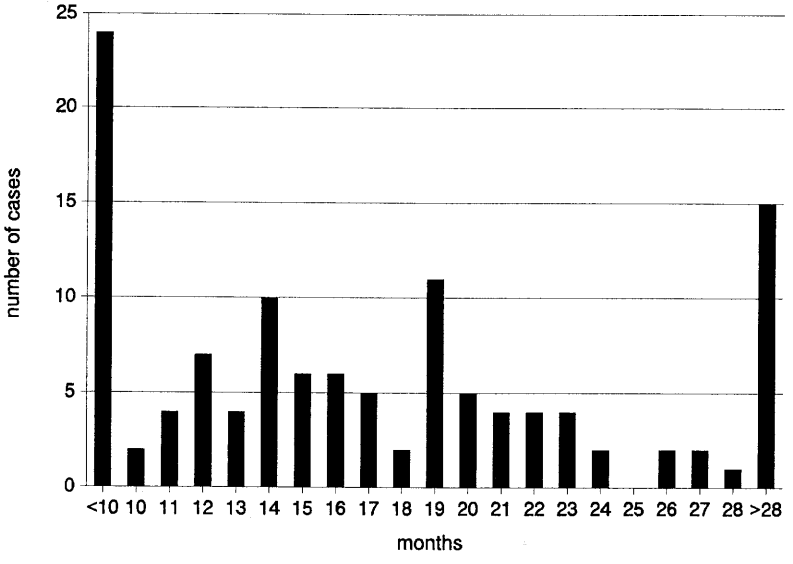
Bench hearing case	Total
Chambers (3 judges)	218
Chambers (5 judges)	127
Not assigned	3
Total	348

Table 11: **Length of proceedings (1998)**[1]
(judgments and orders)

	Judgments/Orders
Other actions	20.0
Staff cases	16.7

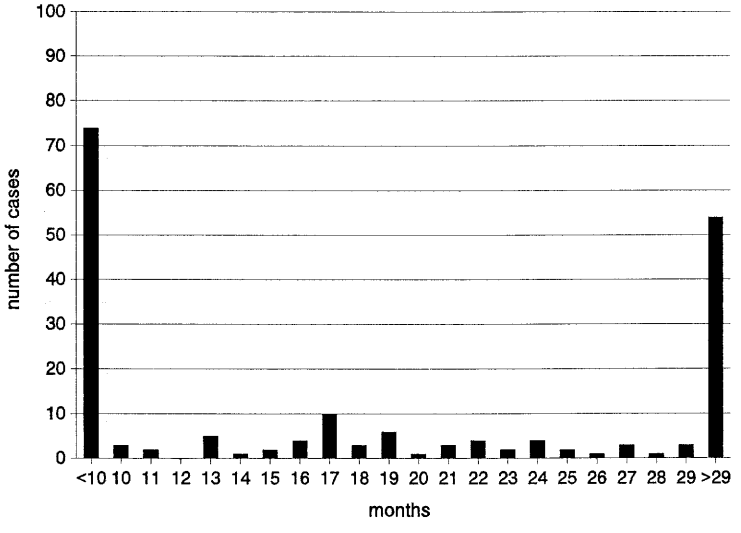
1 In this table and the graphics which follow, the length of proceedings is expressed in months and decimal months.

Figure I: **Length of proceedings in Staff cases (judgments and orders) (1998)**



Cases: Months	< 10	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	28
Staff Cases	24	2	4	7	4	10	6	6	5	2	11	5	4	4	4	2	0	2	2	1	15

Figure II: **Length of proceedings in other actions (judgments and orders) (1998)**



Cases/ Months	10	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	29
Others actions	74	3	2	0	5	1	2	4	10	3	6	1	3	4	2	4	2	1	3	1	3	54

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

Nature of proceedings	1996		1997		1998	
Other actions	339	(515)[1]	425	(892)[2]	425	(829)[3]
Staff cases	133	(140)	205	(214)	163	(173)
Special forms of procedure	4	(4)	10	(11)	5	(5)
Total	476	(659)	640	(1 117)	569	(1 007)

1 Of which 229 are milk quota cases.

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

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

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

Basis of action	1996		1997		1998	
Article 173 of the EC Treaty	216	(228)	274	(294)	256	(279)
Article 175 of the EC Treaty	21	(21)	18	(18)	12	(12)
Article 178 of the EC Treaty	69	(232	113	(549)	100	(498)
Article 181 of the EC Treaty	4	(4)	4	(5)	3	(3)
Total EC Treaty	310	(485)	409	(866)	371	(792)
Article 33 of ECSC Treaty	27	(27)	16	(26)	29	(36)
Article 35 of the ECSC Treaty	1	(1)	1	(1)		
Total ECSC Treaty	28	(28)	17	(27)	29	(36)
Article 146 of the EAEC Treaty	1	(2)	-	-	-	-
Article 151 of the EAEC Treaty	-	-	-	-	1	(1)
Total EAEC Treaty	1	(2)			1	(1)
Staff Regulations	133	(140)	204	(213)	163	(173)
Article 84 of the Rules of Procedure	-	-	-		1	(1)
Article 92 of the Rules of Procedure	2	(2)	8	(9)	2	(2)
Article 94 of the Rules of Procedure	-	-	2	(2)	2	(2)
Article 125 of the Rules of Procedure	1	(1)	-	-	-	-
Article 129 of the Rules of Procedure	1	(1)	-	-	-	-
Total Special forms of procedure	4	(4)	10	(11)	5	(5)
OVERALL TOTAL	476	(659)	640	(1 117)	569	(1 007)

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

Subject-matter of the action	1996		1997		1998	
Accession of new Member States	1	(1)	-	-	-	-
Agriculture	95	(266)	127	(298)	107	(231)
State Aid	32	(32)	46	(47)	28	(46)
Overseas countries and territories	-	-	-	-	5	(5)
Arbitration clause	4	(4)	5	(6)	3	(3)
Economic and social cohesion	1	(1)	1	(1)	-	-
Competition	125	(129)	125	(132)	111	(114)
Company law			2	(2)	4	(4)
Law governing the institutions	10	(10)	33	(308)	33	(309)
Environment and consumers	3	(3)	5	(5)	6	(6)
Free movement of goods	3	(3)	20	(20)	20	(20)
Free movement of goods - patent rights					1	(1)
Freedom of movement for persons	-	-	-	-	-	-
Commercial policy	16	(16)	26	(28)	27	(27)
Regional policy	-	-	1	(1)	3	(3)
Social policy	11	(11)	8	(8)	10	(10)
Economic and monetary policy	1	(1)	1	(1)	-	-
Research, information, education, and statistics	-	-	1	(1)	1	(1)
External relations	7	(7)	7	(7)	10	(10)
Transport	1	(1)	1	(1)	3	(3)
Total EC Treaty	310	(485)	409	(866)	372	(793)
State aid	16	(16)	15	(15)	10	(17)
Competition	1	(1)	1	(1)	7	(7)
Iron and steel	11	(11)	1	(11)	11	(11)
Supply	1	(2)	-	-	-	-
Law governing the institutions	-	-	-	-	1	(1)
Total EAEC Treaty	1	(2)	-	-	1	(1)
Staff Regulations	133	(140)	204	213	163	(173)
Total	472	(655)	630	1 106	564	(1 002)

Table 15: **General trend**

Year	New cases[1]	Cases pending as at 31 December		Cases decided		Judgments delivered		Number of decisions of the Court of First Instance which have been the subject of an appeal[2]	
1989	169	164	(168)	1	(1)	–	–	–	–
1990	59	123	(145)	79	(82)	59	(61)	16	*(46)*
1991	95	152	(173)	64	(67)	41	(43)	13	*(62)*
1992	123	152	(171)	104	(125)	60	(77)	24	*(86)*
1993	596	638	(661)	95	(106)	47	(54)	16	*(66)*
1994	409	432	(628)	412	(442)	60	(70)	12	*(101)*
1995	253	427	(616)	197	(265)	98	(128)	47	*(152)*
1996	229	476	(659)	172	(186)	107	(118)	27	*(122)*
1997	644	640	(1 117)	179	(186)	95	(99)	35	*(139)*
1998	238	569	(1 007)	279	(348)	130	(151)	67	*(214)*
Total	2 815			1 582	(1 808)	697	(801)	257	*(993)*

1 Including special forms of procedure.

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

Table 16: **Results of appeals[1] from 1 January to 31 December 1998** (judgments and orders)

	Unfounded	Appeal manifestly unfounded	Appeal manifestly inadmissible	Appeal manifestly inadmissible and unfounded	Annulment and referred back	Partial annulment and referred back	Partial annulment - not referred back	Removal from the Register	Total
Agriculture	1								1
State aid	1			1					2
Overseas countries and territories	1				2				3
Competition	5	1					1		7
Company Law				1					1
Law governing the institutions	1		1		4			1	7
Energy	1								1
Commercial policy	1								1
Regional policy	1								1
Staff Regulations	3			7	1	1			12
Total	15	1	1	9	7	1	1	1	36

1 Termination by decision of the Court of Justice.

Chapter V

General Information

A - Publications and databases

Text of judgments and opinions

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

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

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

In the Member States and in certain non-member countries, the Reports are on sale at the addresses shown on the last page of this booklet (price of the 1995, 1996, 1997 and 1998 Reports: ECU 170 excluding VAT). In other countries, orders should be addressed to the Internal Services Division of the Court of Justice, Publications Sections, L-2925 Luxembourg.

2. Reports of European Community Staff Cases

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

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

information please contact the Internal Services Division of the Court of Justice, Publications Section, L-2925 Luxembourg.

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

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

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

Subscribers to the Reports may pay a subscription to receive offset copies in one or more of the official Community languages of the texts contained in the Reports of Cases before the Court of Justice and the Court of First Instance, with the exception of the texts appearing only in the Reports of European Community Staff Cases. The annual subscription fee is at present BFR 13200, excluding VAT.

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.

This document is published in all eleven official languages. A new edition is being prepared; this can be obtained from addresses indicated on the back page of the present edition.

(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 of the Press and 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 business 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 Internet.

(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.

(c) Diary

A multilingual, weekly list of the judicial business 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 diary is published every Thursday and is available on our 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**, offers easy access to a wide range of information and documents concerning the institution. Most of those documents are available in the 11 official languages. The index page, reproduced below, gives an indication of the contents of the site at present.

Of particular interest e is «Recent case-law», which offers 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 on the site, in the 11 official languages, from 3 p.m. on 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)

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Recent case-law

Proceedings

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

3.1 Library

(a) «Bibliographie courante»

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

- Part A: Legal publications concerning European integration;

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

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

(b) Legal Bibliography of European Integration

Annual publication based on books acquired and periodicals analysed during the year in question in the area of Community law. Since the 1990 edition this Bibliography has become an official European Communities publication. It contains approximately 6000 bibliographical references with a systematic index of subject-matter and an index of authors.

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

3.2. Research and Documentation

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

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

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

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

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

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

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

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

from 1976 to 1991 and the case-law of the courts of the Member States from 1973 to 1990. Price ECU 40, excluding VAT.

(b) Index A-Z

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

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

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

(d) Brussels and Lugano Conventions – Multilingual edition

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

The work, which contains an introduction in English and French, was published in 1997 and will be updated periodically. Price: ECU 30, excluding VAT.

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 amongst which are the following:

(e) Bulletin périodique de jurisprudence

This document assembles, for each quarterly, half-yearly and yearly period, all the summaries of the judgments of the Court of Justice and of the Court of First Instance which will appear in due course in the Reports of Cases before the Court. It is set out in a systematic form identical to that of the Digest of Community Law, A series. It is available only in French.

(f) Jurisprudence en matière de fonction publique communautaire (January 1988-December 1997)

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.

(g) Jurisprudence nationale en matière de droit communautaire

The Court has established an internal data bank covering the case-law of the courts of the Member States concerning Community law. Using that data bank, it is possible to ask for research on specific points to be carried out and to obtain, in French only, the results of the search.

Enquiries concerning these research tools should be sent to the Library, Research and Documentation Directorate of the Court of Justice, L-2925 Luxembourg.

Databases

CELEX

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

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

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

RAPID — OVIDE/EPISTEL

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

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

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

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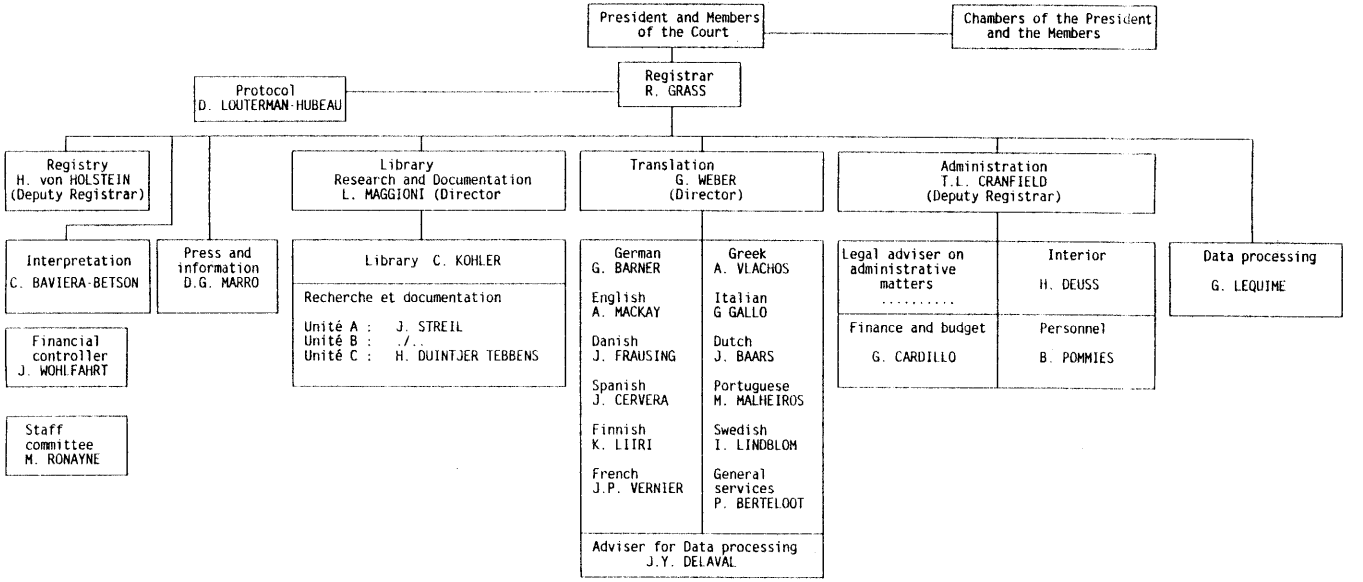

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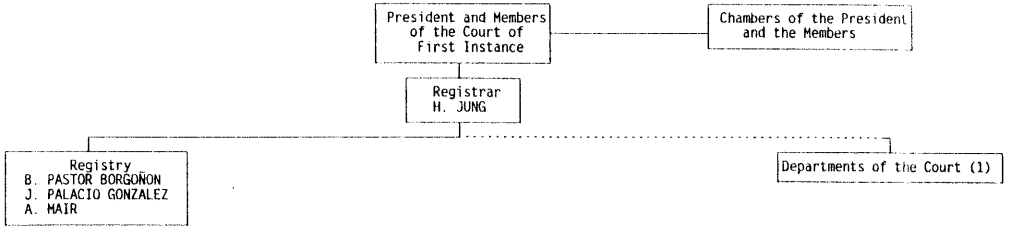

(1) Pursuant to the new Article 45 of the Protocol on the Statute of the Court of Justic, "Officials and other servants attached to the Court of Justice shall render their services to the Court of First Instance to enable it to function".

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