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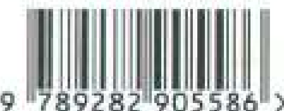

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COURT OF JUSTICE
OF THE EUROPEAN COMMUNITIES

ANNUAL REPORT

2000

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

Luxembourg 2001

http://www.curia.eu.int

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FOREWORD

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

In the course of the year 2000 the level of judicial activity increased. Over that period 901 cases were lodged, 503 at the Court of Justice and 398 at the Court of First Instance, and 870 were disposed of, 526 by the Court of Justice and 344 by the Court of First Instance. There is every reason to believe that the number of cases before the Community Courts will continue to grow. It was therefore with very great satisfaction that in 2000 the Court of Justice and the Court of First Instance received the Council's approval to amend their Rules of Procedure and introduce new instruments, in particular an accelerated procedure and a simplified procedure for disposing of cases.

Those measures, designed to improve the conduct of proceedings and to reduce their duration, would remain of little effect if the Court of Justice did not have sufficient resources to contend with changes in a workload over which it has no control. In this regard, the Court of Justice must express satisfaction at the understanding shown to it by the budgetary authorities, in particular the European Parliament. The resources granted under the 2001 budget should enable it, first, to continue to make judgments available in all the languages on the actual day of delivery and, second, to reduce the backlog of texts to be translated which seriously affects the period within which cases are dealt. However, if the trend of increasing numbers of cases were to persist, it would be for the budgetary authorities to adjust the resources allocated to the institution in order to maintain continuity of judicial activity.

For the Court of Justice as for the other institutions, the year 2000 was marked by the Intergovernmental Conference which took place, devoted to institutional reform of the European Union with a view to its enlargement. Terminating in December 2000 at the European Council in Nice, this conference resulted, so far as concerns the Court of Justice and the Court of First Instance, in a series of reforms which are very much along the lines of the ideas formulated by the Court of Justice itself, in particular the proposals set out in its discussion paper entitled "The Future of the Judicial System of the European Union (Proposals and Reflections)" which was presented to the Council of the Ministers of Justice in May 1999.

The Treaty of Nice confers jurisdiction on the Court of First Instance to hear and determine most classes of direct actions, excluding those which will be reserved for the Court of Justice by its Statute or assigned to judicial panels whose creation is provided for by the new Treaty.

The judicial panels, whose creation, on the initiative of the Commission or the Court of Justice, is intended to relieve the burden on the Court of First Instance to which they will be attached, will hear and determine at first instance certain classes of actions or proceedings brought in specific areas, such as litigation between the Community and members of its staff.

The new Treaty also allows the Court of First Instance to be conferred jurisdiction to hear and determine questions referred for a preliminary ruling in specific areas laid down by the Statute.

Because of these changes, review by the Court of Justice of decisions of the Court of First Instance will also be modified. Thus, the possibility of bringing an appeal before the Court of Justice may be subject to conditions and limits to be laid down by the Statute. Likewise, decisions which the Court of First Instance could be called on to give on questions referred for a preliminary ruling or in actions brought against decisions of the judicial panels will be subject to review by the Court of Justice only exceptionally, that is to say where there is a serious risk of the unity or consistency of Community law being affected. It will be for the First Advocate General to propose such review where he considers it necessary.

Accepting a proposal which the Court of Justice had previously put forward at the time of the Intergovernmental Conference which led to the Maastricht Treaty, the new Treaty provides that amendments to the Rules of Procedure of the Court of Justice and the Court of First Instance will henceforth require the approval of the Council acting by a qualified majority and no longer unanimously.

Furthermore, the Protocol on the Statute of the Court of Justice, with the exception of Title I concerning Judges and Advocates General, will in future be amended by the Council acting unanimously at the request of the Court of Justice and after consulting the Commission and the European Parliament, or at the request of the Commission and after consulting the Court and the European Parliament.

With a view to enlargement of the Union, the new Treaty establishes an express link for the first time between the number of Member States and the number of

Judges. In the Court of Justice, the number of Judges will have to be equal to that of the Member States and, in the Court of First Instance, it will have to be at least equal to that number, enabling the complement of members of the Court of First Instance to be increased if necessary.

With regard to the internal organisation and operation of the Court of Justice and the Court of First Instance, several innovations are introduced by the Treaty of Nice, in particular the election for three years of the Presidents of the Chambers of five Judges and the establishment, within the Court of Justice, of a Grand Chamber, presided over by the President of the Court and consisting of 11 Judges, including the Presidents of the Chambers of five Judges. The judgment of cases in plenary session will no longer be the rule but will become the exception, since the Court of Justice will sit in plenary session only in the cases laid down by the Statute. It will, however, be able to sit in plenary session where it considers that a case is of exceptional importance.

A final assessment of the outcome of the Intergovernmental Conference will be possible only when the necessary implementing measures have been adopted, a task to which the Court will contribute fully. It is nevertheless possible now to be pleased with the flexibility introduced into the Community judicial system and to hope that this development helps to reinforce its proper functioning.

Chapter I

The Court of Justice of the European Communities

A — Proceedings of the Court of Justice in 2000

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

1. This report is intended to provide a picture of the judicial activity of the Court of Justice over the past 12 months.

2. The Court increased its activity in 2000. It brought 526 cases to a close (395 in 1999 — gross figure, that is to say disregarding joinder), delivered 273 judgments (235 in 1999) and made 190 orders (143 in 1999). The number of new cases annually seems to be stabilising (503 in 2000 as against 543 in 1999 and 485 in 1998, gross figures), a development which enabled the Court to reduce the number of pending cases (from 896 to 873, gross figure). Nevertheless, the number of cases pending before the Court is still higher than in 1998 (748, gross figure).

The average duration of proceedings was unchanged overall compared with the preceding year, with the exception of an appreciable reduction in the time taken to deal with appeals (from 23 months in 1999 to 19 months in 2000).

Finally, a certain constancy may be observed as regards the distribution of cases between the Court in plenary session and Chambers of Judges: the Court in plenary session disposed of approximately one case in four, while the remaining judgments and orders were pronounced by Chambers of five Judges (almost one case in two) or Chambers of three Judges (more than one case in four).

3. The following pages provide a selective summary of the most significant developments in the case-law in 2000. As a summary of this kind necessarily takes the form of a synthesis, the Opinions of the Advocates General are not included. The full texts of the judgments and Opinions are available, in all the official Community languages, on the Court's Internet site: *www.curia.eu.int*.

4. On 1 July 2000 and 1 February 2001, important amendments to the Rules of Procedure of the Court of Justice entered into force. [1] Further amendments will follow on 1 February 2001. [2] [3]

4.1. The first set of amendments is intended to enable actions brought before the Court, especially references for preliminary rulings, to be dealt with more effectively.

Among the procedural instruments available to the Court following these amendments, which concern preliminary reference proceedings in particular, the reader's attention is drawn to the simplified procedure, requests for information, requests for clarification and the accelerated procedure.

The *simplified procedure* (Article 104(3) of the Rules of Procedure) allows the Court to give its decision by reasoned order where a question referred to it for a preliminary ruling is identical to a question on which it has already ruled (previously the two questions had to be manifestly identical), where the answer to such a question may be clearly deduced from existing case-law or where the answer to the question admits of no reasonable doubt. It did not take the Court long to make use of this new possibility, which enables the duration of proceedings to be reduced considerably in the circumstances specified. By order of 19 September 2000 in Case C-89/00 *Bicakci*, the Court answered a question referred to it for a preliminary ruling, concerning the interpretation of a decision adopted by the Association Council set up by the Association Agreement between the European Economic Community and Turkey, which was identical to one of the questions which had given rise to the judgment of 10 February 2000 in Case C-340/97 *Nazli*. In its order of 20 October 2000 in Case C-242/99 *Vogler*, the Court likewise chose to decide by reasoned order certain questions submitted for a preliminary ruling which admitted of no reasonable doubt, concerning the validity and interpretation of provisions of Regulation (EEC) No 1408/71 on the

[1] OJ 2000 L 122, p. 43.

[2] OJ 2000 L 322, p. 4.

[3] It may be noted for the sake of completeness that on 28 November 2000 the Court approved two amendments relating to Articles 16(7) and 103(4) of its Rules of Procedure and submitted them to the Council for approval.

application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community. [4]

The new version of the Rules of Procedure also provides that the Judge-Rapporteur and/or the Advocate General may *request from the parties all such information* relating to the facts, and all such documents or other particulars, as they may consider relevant (Article 54a of the Rules of Procedure). In addition, the Court may *request clarification from national courts* (Article 104(5) of the Rules of Procedure).

At the request of a national court, the President of the Court of Justice may exceptionally decide to apply an *accelerated procedure* to a reference for a preliminary ruling where the circumstances referred to by the national court establish that a ruling on the question put to the Court of Justice is a matter of exceptional urgency (Article 104a of the Rules of Procedure).

Finally, with regard both to preliminary reference proceedings and to direct actions, the Court may henceforth issue *practice directions* relating in particular to the preparation and conduct of the hearings before it and to the lodging of written statements of case or written observations (Article 125a of the Rules of Procedure) and may decide not to hold a hearing if none of the parties concerned submits an application setting out the reasons for which he wishes to be heard (Articles 44a and 104(4) of the Rules of Procedure).

As to the remainder, the amendments, which entered into force on 1 July 2000, are intended to adapt the Rules of Procedure to the new procedures for interpretation of Title IV of the EC Treaty and for the settlement of disputes under Title VI of the Treaty on European Union.

4.2. The second set of amendments to the Rules of Procedure of the Court of Justice concerns direct actions.

In order to reduce the duration of such proceedings, *an expedited procedure* is introduced, in which the written procedure is restricted to a single exchange of pleadings between the parties, while the oral procedure becomes mandatory and has decisive importance. The Court may also *shorten the time-limit for*

4 Regulation (EEC) No 1408/71 of 14 June 1971, in the amended and updated version contained in Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1), as amended by Council Regulation (EC) No 307/1999 of 8 February 1999 (OJ 1999 L 38, p. 1).

intervening, a possibility which is linked to the expedited procedure (new Article 62a of the Rules of Procedure).

In addition, the amendments approved adjust communication between the Court and the parties and other interested persons to take account of modern communication methods, regulating the transmission of documents by fax in particular and making consequential amendments to the provisions relating to the extension of time-limits on account of distance.

The amendments also clarify, in the light of experience, the provision of the Rules of Procedure relating to replies and rejoinders, in order to make it clear that, where the President grants an appellant's application to submit a reply, the other party is entitled to respond to it by lodging a rejoinder without first having to obtain leave to do so (Article 117(1) of the Rules of Procedure).

5. Certain conditions governing the *proceedings* which may be brought before the Community judicature were clarified in 2000, in particular with regard to the submission of observations on an Advocate General's Opinion, Treaty infringement proceedings, actions for annulment, references for a preliminary ruling, non-contractual liability of the Community and appeals against judgments of the Court of First Instance.

5.1. By order of 4 February 2000 in Case C-17/98 *Emesa Sugar*, the Court dismissed Emesa Sugar's application for leave to submit written observations in response to the Advocate General's Opinion, a possibility not provided for by the EC Statute of the Court of Justice or its Rules of Procedure. In response to the applicant's argument that it should nevertheless be allowed that opportunity by virtue of the case-law of the European Court of Human Rights concerning the scope of Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, and in particular the judgment of 20 February 1996 in *Vermeulen* v *Belgium* (Reports of Judgments and Decisions, 1996 I, p. 224), the Court found that, having regard to both the organic and the functional link between the Advocate General and the Court, that case-law does not appear to be transposable to the Opinions of the Court's Advocates General. The applicant's fundamental right to adversarial procedure was not infringed in that, with a view to the very purpose of adversarial procedure, the Court may of its own motion, on a proposal from the Advocate General or at the request of the parties, reopen the oral procedure, in accordance with Article 61 of its Rules of Procedure, if it considers that it lacks sufficient information or that the case must be dealt with on the basis of an argument which has not been debated between the parties.

5.2. With regard to Treaty infringement proceedings, in its judgment of 4 July 2000 in Case C-387/97 *Commission* v *Greece* the Court was given its first opportunity to apply the third subparagraph of Article 171(2) of the Treaty (now the third subparagraph of Article 228(2) EC). Under Article 171(2), where a Member State fails to take the necessary measures to comply with a judgment of the Court of Justice, the Commission may bring fresh Treaty infringement proceedings before the Court, specifying the amount of the periodic penalty payment to be paid by that State which it considers appropriate in the circumstances. By judgment of 7 April 1992 in Case C-45/91 *Commission* v *Greece* [1992] ECR I-2509, the Court had held that the Hellenic Republic had failed to fulfil certain obligations owed by it under two Community directives relating to waste and to toxic and dangerous waste respectively. In fresh proceedings brought by the Commission, the Court found that Greece had not implemented all the necessary measures to comply with the judgment in Case C-45/91 and that it had thus failed to fulfil its obligations under Article 171 of the Treaty. The Court stated that, while Article 171 does not specify the period within which a judgment finding a failure by a Member State to fulfil its obligations must be complied with, the importance of immediate and uniform application of Community law means that the process of compliance must be initiated at once and completed as soon as possible. As to the amount of the penalty payment, the Court found that, in the absence of provisions in the Treaty, the Commission may adopt guidelines — such as those contained in its memorandum on applying Article 171 of the Treaty [5] and its communication on the method of calculating the penalty payments [6] — for determining how the penalty payments which it intends to propose to the Court are calculated, so as, in particular, to ensure equal treatment between the Member States. While suggestions of the Commission cannot bind the Court, they are nevertheless a useful point of reference. The Court pointed out that, since the principal aim of penalty payments is that the Member State should remedy the breach of obligations as soon as possible, a penalty payment must be set that will be appropriate to the circumstances and proportionate both to the breach which has been found and to the ability to pay of the Member State concerned. It also acknowledged that the degree of urgency that the Member State concerned should fulfil its obligations may vary in accordance with the breach. The Court then held that the basic criteria which must be taken into account in order to ensure

5 Memorandum 96/C 242/07 of 21 August 1996 on applying Article 171 of the EC Treaty (OJ 1996 C 242, p. 6).

6 Communication 97/C 63/02 of 28 February 1997 on the method of calculating the penalty payments provided for pursuant to Article 171 of the EC Treaty (OJ 1997 C 63, p. 2).

that penalty payments have coercive force and Community law is applied uniformly and effectively are, in principle, the duration of the infringement, its degree of seriousness and the ability of the Member State to pay. In applying those criteria, regard should be had in particular to the effects of failure to comply on private and public interests and to the urgency of getting the Member State concerned to fulfil its obligations. Since the infringements in the case before it were serious or particularly serious and of considerable duration, the Court ordered Greece to pay to the Commission a penalty payment of EUR 20 000 for each day of delay in implementing the measures necessary to comply with the judgment in Case C-45/91, from delivery of its judgment until the judgment in Case C-45/91 has been complied with.

By order of 13 September 2000 in Case C-341/97 *Commission* v *Netherlands*, the Court held that a detailed opinion sent by the Commission to a Member State under Article 9(1) of Directive 83/189/EEC laying down a procedure for the provision of information in the field of technical standards and regulations [7] does not amount to a letter of formal notice meeting the requirements of Article 169 of the Treaty (now Article 226 EC). At the time when such an opinion is delivered, the Member State to which it is addressed cannot have infringed Community law, since the measure providing for a technical regulation exists only in draft form. The Court observed that the contrary view would result in the detailed opinion constituting a conditional formal notice whose existence would be dependent on the action taken by the Member State concerned in relation to the opinion and that the requirements of legal certainty, which are inherent in any procedure capable of becoming contentious, preclude such incertitude. It accordingly dismissed as inadmissible the action for failure to fulfil obligations brought by the Commission.

5.3. The concept of a measure against which an action for annulment may be brought was at the heart of Case C-514/99 *France* v *Commission* (order of 21 June 2000), which forms part of the body of litigation concerning the emergency measures adopted by the Commission to protect against bovine spongiform encephalopathy. The French Republic had brought an action for annulment of the decision allegedly adopted by the Commission not to amend, or indeed to repeal, the act by which it decided to lift the ban on British beef as from 1 August 1999. France contended that the existence of such a decision had been revealed by a statement made by the Commissioner responsible on 29 October 1999 and by the decision of the college of Commissioners to send the applicant a letter of formal

[7] Council Directive 83/189/EEC of 28 March 1983 (OJ 1983 L 109, p. 8).

notice for failure to comply with the act lifting the ban. The Court declared the application manifestly inadmissible, holding that neither the statement made nor the sending of the letter of formal notice could be regarded as the expression of a Commission decision refusing to amend the act lifting the ban, against which an action for annulment could be brought. In the statement, the Commissioner had merely set forth the opinion of the Scientific Steering Committee and expressed the hope that a solution would be found to the specific difficulties. Such a statement did not constitute the definition of a position by the Commission with regard to the allegedly new evidence forwarded by France to the Commission on the possible existence of a third route of contamination of cattle. With regard to the sending of the letter of formal notice, that action merely demonstrated the intention to bring before the Court the failure to implement the act lifting the ban.

In its judgment of 23 May 2000 in Case C-106/98 P *Comité d'Entreprise de la Société Française de Production and Others* v *Commission*, the Court ruled on the question whether bodies representing the employees of an undertaking in receipt of State aid are individually concerned by a Commission decision declaring such aid incompatible with the common market. The Court of First Instance had declared an application by bodies representing employees for annulment of such a decision inadmissible on the ground that it was not of direct and individual concern to them. In an appeal brought by those bodies, the Court of Justice upheld the analysis of the Court of First Instance relating to their lack of individual interest. Dismissing the appeal, it held that, by itself, the status as negotiators with regard to social aspects of a decision declaring State aid incompatible with the common market does not suffice to distinguish individually bodies representing the employees of the undertaking in receipt of the aid just as in the case of the person to whom that decision was addressed, where it is clear from the account of the facts in the decision at issue that that status constitutes only a tenuous link with the actual subject-matter of the decision and the bodies did not participate in the procedure initiated under Article 93(2) of the Treaty (now Article 88(2) EC). The position of the appellants was therefore not comparable to the position in Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy and Others* v *Commission* [1988] ECR 219 and Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125.

In its judgment in *Sardegna Lines*, the Court stated that, in certain circumstances, an undertaking is entitled to contest a Commission decision prohibiting a sectoral aid scheme (judgment of 19 October 2000 in Joined Cases C-15/98 and C-105/99 *Italian Republic and Sardegna Lines* v *Commission*). The Court held that an individual interest to contest such a decision before it may be invoked by an

undertaking which is concerned not only by virtue of being an undertaking in the sector which might benefit from the aid scheme at issue but also by virtue of being an actual beneficiary of individual aid granted under that scheme, the recovery of which has been ordered by the Commission.

5.4. With regard to the preliminary reference procedure, the cases of *Gabalfrisa*, *Abrahamsson* and *Österreichischer Gewerkschaftsbund* may be noted, in which the Court found it necessary to interpret the concept of a court or tribunal within the meaning of Article 177 of the EC Treaty (now Article 234 EC).

It should be remembered that, in order to determine whether a body making a reference is a court or tribunal for the purposes of Article 177 of the Treaty, which is a question governed by Community law alone, the Court takes account of a number of factors, such as whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is adversarial, whether it applies rules of law and whether it is independent (see, in particular, Case C-54/96 *Dorsch Consult* [1997] ECR I-4961, paragraph 23, and the case-law cited).

In Joined Cases C-110/98 to C-147/98 *Gabalfrisa and Others* (judgment of 21 March 2000) and Case C-407/98 *Abrahamsson* (judgment of 6 July 2000), the Court was given the opportunity to explain the factor related to the independence of the body making the reference. In *Gabalfrisa*, a question was referred to the Court for a preliminary ruling by a Tribunal Económico-Administrativo (Economic and Administrative Court) enjoying jurisdiction, in the Spanish tax administration, to hear and decide fiscal complaints within the framework of a kind of internal administrative action. The Court found that a separation of functions was ensured by law between, on the one hand, the departments of the tax authority responsible for taking the decisions and, on the other hand, the Tribunales Económico-Administrativos which ruled on complaints lodged against those decisions without receiving any instruction from the tax authority. It deduced therefrom that the Tribunales Económico-Administrativos, unlike the Directeur des Contributions Directes et des Accises (head of the Direct Taxes and Excise Duties Directorate) in question in Case C-24/92 *Corbiau* [1993] ECR I-1277, at paragraphs 15 and 16, had the character of a third party in relation to the departments which adopted the decision forming the subject-matter of the complaint and the independence necessary for them to be regarded as courts or tribunals for the purposes of Article 177 of the Treaty. In *Abrahamsson,* the Court referred to the same criteria of functional separation and third-party status in concluding that the Överklagandenämnden, an appeals committee with

jurisdiction in Sweden to undertake an independent examination of appeals lodged against decisions on appointments which are taken in universities and higher educational institutions, had the necessary independence for it to be treated as a court or tribunal within the meaning of Article 177 of the Treaty.

In its judgment of 30 November 2000 in Case C-195/98 *Österreichischer Gewerkschaftsbund*, the Court dealt with a reference for a preliminary ruling from the Oberster Gerichtshof (Austrian Supreme Court) adjudicating as a court of first and last instance on applications relating to substantive law in the field of employment law disputes which are brought by employers' or employees' bodies capable of entering into collective agreements. In such proceedings, the Oberster Gerichtshof does not rule on disputes in a specific case involving identified persons. It must base its legal assessment on the facts alleged by the applicant without further examination. Its decision is declaratory in nature and the right to bring proceedings is exercised collectively. Pointing out that the procedure is none the less intended to result in a decision that is judicial in character, the Court observed that the final decision is binding on the parties who cannot make a second application for a declaration relating to the same factual situation and raising the same legal questions and that, in addition, the decision is intended to have persuasive authority for parallel proceedings concerning individual employers and employees. The Court accordingly held that the Oberster Gerichtshof constitutes a court or tribunal within the meaning of Article 177 of the Treaty when it is called on to rule in such proceedings.

5.5. In the area of non-contractual liability of the Community, the Court brought to a close *Mulder and Others* v *Council and Commission*, in which the European Community, represented by the Council and the Commission, had been ordered by interlocutory judgment of 19 May 1992 ([1992] ECR I-3061) to make good the damage suffered by the applicants by reason of the fact that a Council regulation, as supplemented by a Commission regulation, did not provide for the allocation of a reference quantity to certain milk producers. Since the negotiations between the parties with a view to assessing the damage were not concluded, the applicants submitted their claims for compensation with supporting figures to the Court. By judgment of 27 January 2000 in Joined Cases C-104/89 and C-37/90 *Mulder and Others* v *Council and Commission*, the Court fixed the amount of compensation to be paid by the Council and the Commission to the milk producers.

5.6. As regards appellate review by the Court of Justice of judgments of the Court of First Instance, the Court stated in its judgment of 13 July 2000 in Case C-210/98 P *Salzgitter* v *Commission* that a question which touches on the

competence of the Commission must be raised by the Court of its own motion even though none of the parties has asked it to do so. This case centred on a Commission decision refusing to authorise planned German Government aid to a steel undertaking in one of the new German *Länder*, not because of the late notification of the plan but because the Commission lacked competence *ratione temporis* to approve it. An action for annulment of the Commission's decision was dismissed by the Court of First Instance without the question of the lateness of the notification being addressed in its judgment. In an appeal brought against that judgment, the Court of Justice stated that the period for notification of aid plans laid down by the Fifth Steel Aid Code operates as a time-bar such as to preclude the approval of any aid plan notified subsequent to it. Accordingly, where the plan has not been notified to it before the time-limit specifically laid down, the Commission is not entitled to authorise the aid. Inasmuch as that was a question which touched on the competence of the Commission and therefore had to be raised by the Court of its own motion, the Court of Justice found that the Court of First Instance erred in not holding that the aid plan had not been notified until after the expiry of the period laid down in Article 6 of the Fifth Code and that the Commission could in no way authorise the corresponding aid. However, since the operative part of the judgment of the Court of First Instance was shown to be well founded for other legal reasons, the Court of Justice dismissed the appeal.

6. During the past year, there were certain important developments in the Court's case-law relating to *general principles*. They essentially concerned Community and Member State liability for damage caused to individuals by breaches of Community law, the relationship between the principle of procedural autonomy and the general principle of access to Commission documents, and rights of the defence.

6.1. As regards liability of the Community for damage caused to individuals by breaches of Community law, the Court held in its judgment of 4 July 2000 in Case C-352/98 P *Laboratoires Pharmaceutiques Bergaderm and Goupil* v *Commission* that the concept of a "sufficiently serious breach" of Community law by an institution, which constitutes one of the three conditions for such liability to arise, must be interpreted in the same way with regard to an institution as it is for a Member State. A pharmaceutical company in liquidation and its chief executive had brought an action, which the Court of First Instance dismissed, seeking compensation for damage which they purportedly suffered as a result of the preparation and the adoption of a Commission directive relating to cosmetic products. Dismissing in turn the appeal brought before it, the Court of Justice

recalled the principle laid down in Joined Cases C-46/93 and C-48/93 *Brasserie du Pêcheur and Factortame* [1996] ECR I-1029 that the conditions under which the Member States may incur liability for damage caused to individuals by a breach of Community law cannot, in the absence of particular justification, differ from those governing the liability of the Community in like circumstances. The protection of the rights which individuals derive from Community law cannot vary depending on whether a national authority or a Community authority is responsible for the damage. Community law confers a right to reparation where three conditions are met: the rule of law infringed must be intended to confer rights on individuals; the breach must be sufficiently serious; and there must be a direct causal link between that breach and the damage sustained by the injured parties. As regards both non-contractual liability of the Community and that of the Member States, the decisive test for finding that a breach of Community law is sufficiently serious is whether the Member State or the Community institution concerned manifestly and gravely disregarded the limits on its discretion. Where the Member State or the institution has only considerably reduced, or even no, discretion, the mere infringement of Community law may be sufficient to establish the existence of a sufficiently serious breach. With regard to the argument that the Court of First Instance erred in law in considering that the directive at issue was a legislative measure, the Court of Justice stated that the general or individual nature of a measure taken by an institution is not a decisive criterion for identifying the limits of the discretion enjoyed by that institution.

The judgment of 4 July 2000 in Case C-424/97 *Haim* also contains some guidance as to the discretion of which account should be taken when establishing whether or not a Member State has committed a sufficiently serious breach of Community law. Mr Haim, a dentist, brought an action against an association of dental practitioners of social security schemes, a public-law body, in order to obtain compensation for the loss of earnings which he claimed to have suffered as a result of the refusal of that body to enrol him on the register of dental practitioners, in breach of Community law. The Court was asked for a preliminary ruling as to whether, where a national official has either applied national law conflicting with Community law or applied national law in a manner not in conformity with Community law, the mere fact that he did not have any discretion in taking his decision gives rise to a serious breach of Community law, within the meaning of the case-law of the Court. The Court answered that the existence and scope of the discretion which should be taken into account when establishing whether or not a Member State has committed a sufficiently serious breach of Community law must be determined by reference to Community law and not by reference to national law. The discretion which may be conferred by national law on the official or the institution responsible for the breach of

Community law is therefore irrelevant in this respect. The Court added that it is for each Member State to ensure that individuals obtain reparation for loss and damage caused to them by non-compliance with Community law, whichever public authority is responsible for the breach and whichever public authority is in principle, under the law of the Member State concerned, responsible for making reparation. Reparation for loss and damage caused to individuals by national measures taken in breach of Community law does not necessarily have to be provided by the Member State itself in order for its obligations under Community law to be fulfilled. Thus, in those Member States where certain legislative or administrative tasks are devolved to territorial bodies with a certain degree of autonomy or to any other public-law body legally distinct from the State, reparation for such loss and damage, caused by measures taken by a public-law body, may be made by that body. Community law therefore does not preclude, as in the case in point, a public-law body, in addition to the Member State itself, from being liable to make reparation for loss and damage caused to individuals as a result of measures which it took in breach of Community law.

6.2. In Joined Cases C-174/98 P and C-189/98 P *Netherlands and van der Wal* v *Commission* (judgment of 11 January 2000), the Court found it necessary to rule on the relationship between the right to a fair trial, the general principle of access to Commission documents, and the exception to that principle based on the protection of the public interest in the context of court proceedings within the meaning of Decision 94/90/ECSC, EC, Euratom on public access to Commission documents. [8] Mr van der Wal, a lawyer and member of a firm which deals with cases raising questions of Community law, asked the Commission for copies of certain letters by which it had replied to questions put to it by national courts within the framework of the cooperation between the latter and the Commission in applying Articles 85 and 86 of the EC Treaty (now Articles 81 EC and 82 EC). [9] Relying on the fact that disclosure of the replies could undermine the protection of the public interest, in particular the sound administration of justice, the Commission adopted a decision refusing Mr van der Wal access to the documents in question. Mr van der Wal then brought an action before the Court of First Instance for annulment of that decision, which was dismissed. In an appeal brought before it, the Court of Justice observed that the general principle of Community law under which every person has a right to a fair trial, inspired by Article 6 of the European Convention for the Protection of Human Rights and

8 Decision 94/90/ECSC, EC, Euratom of 8 February 1994 (OJ 1994 L 46, p. 58).

9 Notice 93/C 39/05 on cooperation between national courts and the Commission in applying Articles 85 and 86 of the EC Treaty (OJ 1993 C 39, p. 6).

Fundamental Freedoms, comprises the right to a tribunal that is independent of the executive in particular, but that it is not possible to deduce from that right or from the constitutional traditions common to the Member States that the court hearing a dispute is necessarily the only body empowered to grant access to the documents in the proceedings in question. The existence of an obligation on the Commission to refuse access to documents which it holds, on the ground that the protection of the public interest within the meaning of Decision 94/90 may be undermined, depends, in the context of its cooperation with national courts with a view to the application by them of Articles 85 and 86 of the Treaty, on the manner in which such cooperation works in practice. Where the documents supplied by the Commission to national courts are documents which it already possessed or which, although drafted with a view to particular proceedings, merely refer to the earlier documents, or in which the Commission merely expresses an opinion of a general nature, independent of the data relating to the case pending before the national court, the Commission must assess in each individual case whether such documents fall within the exceptions laid down by Decision 94/90. On the other hand, where the documents supplied by the Commission contain legal or economic analyses drafted on the basis of data supplied by the national court, they must be subject to national procedural rules in the same way as any other expert report, in particular as regards disclosure. The Commission must ensure that disclosure of documents of this kind does not constitute an infringement of national law. In the event of doubt, it must consult the national court and refuse access only if that court objects to disclosure of the documents. Accordingly, by interpreting Decision 94/90 as meaning that the exception based on protection of the public interest in the context of court proceedings obliges the Commission to refuse access to documents which it drafted solely for the purposes of such proceedings, the Court of First Instance erred in law. The Court of Justice therefore set aside the judgment of the Court of First Instance and annulled the decision of the Commission refusing Mr van der Wal access to the documents in question.

6.3. In its judgment of 21 September 2000 in Case C-462/98 P *Mediocurso v Commission*, the Court recalled that respect for the rights of defence is, in all proceedings initiated against a person which are liable to culminate in a measure adversely affecting that person, a fundamental principle of Community law which must be guaranteed even in the absence of any rules governing the proceedings in question. That principle requires that the addressees of decisions which significantly affect their interests should be placed in a position in which they may effectively make known their views. A company had brought an action for annulment of two Commission decisions reducing assistance of the European Social Fund for training programmes which had been funded, contending in

particular that its right to a prior hearing had not been observed. The Court of First Instance rejected the plea alleging breach of the rights of defence and the company thus brought an appeal before the Court of Justice. The latter found that the appellant had not been invited by or on behalf of the Commission to submit its observations after a reasonable period on the documents recording the actions for which it was criticised and on the basis of which the Commission adopted the decisions reducing the assistance of the European Social Fund, and that the appellant therefore had not been placed in a position effectively to make known its views on the accusations made against it. In such circumstances, the Court of First Instance was wrong to consider that the appellant's right to a proper hearing had been observed. The Court of Justice therefore set aside the judgment of the Court of First Instance and annulled the decisions of the Commission reducing the assistance of the European Social Fund.

7. So far as concerns the *relationship between Community law and international law*, the Court was given the opportunity in judgments of 4 July 2000 in Case C-62/98 *Commission* v *Portugal* and Case C-84/98 *Commission* v *Portugal* to explain the effect of the first paragraph of Article 234 of the EC Treaty (now, after amendment, the first paragraph of Article 307 EC) relating to the rights and obligations of Member States arising from agreements concluded before the entry into force of the Treaty. The Commission had brought two actions before the Court for declarations that, by failing to denounce or adjust two agreements concerning merchant shipping concluded with non-member States before its accession to the Communities, the Portuguese Republic had failed to fulfil its obligations under Regulation (EEC) No 4055/86 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries. [10] The Court recalled that the purpose of the first paragraph of Article 234 of the Treaty is to make it clear, in accordance with the principles of international law, that application of the Treaty does not affect the duty of the Member State concerned to respect the rights of third countries under a prior agreement and to perform its obligations thereunder. However, the second paragraph of Article 234 requires Member States to take all appropriate steps to eliminate any incompatibilities between such an agreement and the EC Treaty. The Court found that the Portuguese Republic had not succeeded in adjusting the agreements in question by diplomatic means within the time-limit laid down by Regulation No 4055/86. It stated that the existence of a difficult political situation in a third State which

[10] Council Regulation (EEC) No 4055/86 of 22 December 1986 (OJ 1986 L 378, p. 1).

is a contracting party cannot justify a continuing failure on the part of a Member State to fulfil its obligations under the Treaty. If a Member State encounters difficulties which make adjustment of an agreement impossible, it is incumbent on it to denounce the agreement in so far as such denunciation is possible under international law. The balance between the foreign-policy interests of a Member State and the Community interest is incorporated in Article 234 of the Treaty, in that it allows a Member State, first, not to apply a Community provision in order to respect the rights of third countries deriving from a prior agreement and to perform its obligations thereunder and, second, to choose the appropriate means of rendering the agreement concerned compatible with Community law. In the present cases, the agreements in question contained clauses expressly enabling the contracting parties to denounce the agreements, so that denunciation by the Portuguese Republic would not encroach upon the rights which the non-member States derived from those agreements. The Court therefore declared that Portugal had failed to fulfil its obligations.

The Court also revisited its jurisdiction to interpret Article 50 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPs Agreement, annexed to the Agreement establishing the World Trade Organisation). It will be recalled that, in Case C-53/96 *Hermès* [1998] ECR I-3603, the Court had already held that, to forestall future differences of interpretation, it had jurisdiction in the field of trade marks to interpret Article 50 of TRIPs even though the measures envisaged by that provision and the relevant procedural rules were those provided for by the domestic law of the Member State concerned, since TRIPs was an agreement concluded by the Community and its Member States under joint competence and Article 50 of TRIPs could apply both to situations falling within the scope of national law and to situations falling within the scope of Community law.

In Joined Cases C-300/98 and C-392/98 *Dior and Assco* (judgment of 14 December 2000), the national court asked whether the jurisdiction of the Court of Justice to interpret Article 50 of TRIPs is restricted solely to situations covered by trade-mark law. The Court replied that its jurisdiction to interpret Article 50 is not restricted to those situations. Article 50 constitutes a procedural provision which should be applied in the same way in every situation falling within its scope and is capable of applying both to situations covered by national law and to situations covered by Community law. The obligation of close cooperation which the Member States and the Community institutions have in fulfilling the commitments which were undertaken by them under joint competence when they concluded the WTO Agreement, including TRIPs, requires the judicial bodies of the Member States and the Community, for practical and legal reasons, to give

a uniform interpretation to such a provision. Only the Court of Justice acting in cooperation with the courts and tribunals of the Member States pursuant to Article 177 of the Treaty is in a position to ensure such uniform interpretation. The Court was also asked about the direct effect of Article 50(6) of TRIPs under Community law. It replied that, in a field to which TRIPs applies and in respect of which the Community has already legislated, the judicial authorities of the Member States are required by virtue of Community law, when they apply national rules with a view to ordering provisional measures for the protection of rights falling within such a field, to do so as far as possible in the light of the wording and purpose of Article 50 of TRIPs. In a field in respect of which the Community has not yet legislated and which consequently falls within the competence of the Member States, the protection of intellectual property rights, and measures adopted for that purpose by the judicial authorities, do not fall within the scope of Community law. Accordingly, Community law neither requires nor forbids that the legal order of a Member State should accord to individuals the right to rely directly on the rule laid down by Article 50(6) of TRIPs or that it should oblige the courts to apply that rule of their own motion.

8. In the *institutional domain*, most of the litigation was once again concerned with determining the legal basis for Community measures. In two cases, the Court explained the relationship between Article 129 of the Treaty (now, after amendment, Article 152 EC) and two other Treaty articles, namely Article 43 (now, after amendment, Article 37 EC) and Article 100a (now, after amendment, Article 95 EC).

First, in Case C-269/97 *Commission* v *Council* (judgment of 4 April 2000) the Commission brought an action for annulment of a Council regulation establishing a system for the identification and registration of bovine animals and the labelling of beef and beef products, adopted unanimously on the basis of Article 43 of the Treaty. The Commission contended that the correct legal basis for that regulation was Article 100a of the Treaty and that it therefore should have been adopted in accordance with the co-decision procedure. According to the Commission, recourse to Article 100a of the Treaty was justified by the fact that the principal objective of the regulation, adopted within the context of the bovine spongiform encephalopathy crisis, was the protection of human health referred to in Article 129 of the Treaty and that, in such an important field, the Parliament had to be able to participate in the legislative process. Dismissing the action, the Court recalled that, in the context of the organisation of the powers of the Community, the choice of the legal basis for a measure must rest on objective factors which are amenable to judicial review. Those factors include in particular

the aim and the content of the measure. In this connection, the fact that an institution wishes to participate more fully in the adoption of a given measure, the work carried out in other respects in the sphere of action covered by the measure and the context in which the measure was adopted are irrelevant. Article 43 of the Treaty is the appropriate legal basis for any legislation concerning the production and marketing of agricultural products listed in Annex II to the Treaty which contributes to the attainment of one or more of the objectives of the common agricultural policy set out in Article 39 of the Treaty (now Article 33 EC). In regulating the conditions for the production and marketing of beef and beef products with a view to improving the transparency of those conditions, the contested regulation was essentially intended to attain the objectives of Article 39 of the Treaty, in particular the stabilisation of the market in the products concerned. It was, therefore, rightly adopted on the basis of Article 43 of the Treaty. That conclusion is not undermined by the fact that the system introduced by the contested regulation will have positive effects for the protection of public health. Besides, the protection of health contributes to the attainment of the objectives of the common agricultural policy which are laid down in Article 39(1) of the Treaty, particularly where agricultural production is directly dependent on demand amongst consumers who are increasingly concerned to protect their health.

Second, in Case C-376/98 *Germany* v *Parliament and Council* (judgment of 5 October 2000), the Federal Republic of Germany applied for the annulment of Directive 98/43/EC of the Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products, which had been adopted on the basis of, *inter alia*, Article 100a of the Treaty. The Federal Republic of Germany contended in support of its application that Article 100a was not the proper legal basis for that directive. In its judgment, the Court considered in turn the question of the internal market and that of distortion of competition. With regard to the internal market, it observed that the measures referred to in Article 100a(1) are intended to improve the conditions for the establishment and functioning of the internal market. To construe that article as meaning that it vests in the Community legislature a general power to regulate the internal market would not only be contrary to the express wording of Articles 3(c) and 7a of the Treaty (now, after amendment, Articles 3(1)(c) EC and 14 EC), but would also be incompatible with the principle embodied in Article 3b of the Treaty (now Article 5 EC) that the powers of the Community are limited to those specifically conferred on it. Moreover, a measure adopted on the basis of Article 100a of the Treaty must genuinely have as its object the improvement of the conditions for the establishment and functioning of the internal market. While it is true that

recourse to Article 100a as a legal basis is possible if the aim is to prevent the emergence of future obstacles to trade resulting from multifarious development of national laws, the emergence of such obstacles must be likely and the measure in question must be designed to prevent them. The Court also pointed out that the first indent of Article 129(4) of the Treaty excludes any harmonisation of laws and regulations of the Member States designed to protect and improve human health and that other articles of the Treaty may not be used as a legal basis in order to circumvent that express exclusion of harmonisation. In the case in point, the Court found that, in principle, a directive prohibiting the advertising of tobacco products in periodicals, magazines and newspapers could be adopted on the basis of Article 100a with a view to ensuring the free movement of press products. However, the prohibition, in particular, of advertising on posters, parasols, ashtrays and other articles used in hotels, restaurants and cafés and the prohibition of advertising spots in cinemas in no way helped to facilitate trade in the products concerned. Moreover, the contested directive did not ensure free movement of products which were in conformity with its provisions. With regard to the question of distortion of competition, the Court held that, while appreciable distortions could be a basis for recourse to Article 100a in order to prohibit certain forms of sponsorship, they were not such as to justify the use of that legal basis for an outright prohibition of advertising of the kind imposed by the contested directive. The Court therefore allowed the application and annulled the directive.

9. With regard to *free movement of goods*, the Court considered whether Article 30 or 34 of the EC Treaty (now, after amendment, Articles 28 EC and 29 EC) precluded national legislation concerning the labelling, and the sale on rounds, of foodstuffs, the detention under customs control of goods presumed to be counterfeit, and an obligation to bottle wine in the region of production in order to be able to use the designation of origin. In other cases, it interpreted directives concerning more specific aspects of the free movement of goods, such as the import of plants originating in a non-member country and the procedure for the provision of information in the field of technical standards and regulations.

9.1. So far as concerns Article 30 of the Treaty, the judgment of 12 September 2000 in Case C-366/98 *Geffroy* may be noted in particular. In that case, national legislation provided, *inter alia*, that all mandatory labelling particulars for foodstuffs had to be written in French. The Court held that Article 30 of the Treaty and a directive on the harmonisation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs precluded a national provision from requiring the use of a specific language for

the labelling of foodstuffs, without allowing for the possibility for another language easily understood by purchasers to be used or for the purchaser to be informed by other means.

In Case C-254/98 *TK-Heimdienst* (judgment of 13 January 2000), the Court held that Article 30 of the Treaty precludes national legislation which provides that certain vendors of food products may not make sales on rounds in a given administrative district unless they also carry on their trade at a permanent establishment situated in that administrative district or in an adjacent municipality, where they also offer for sale the same goods as they do on their rounds. Such legislation relates to the selling arrangements for certain goods in that it lays down the geographical areas in which each of the traders concerned may sell his goods by that method. The application of such legislation to all traders operating in the national territory in fact impedes access to the market of the Member State of importation for products from other Member States more than it impedes access for domestic products. That conclusion is not affected by the fact that, in each part of the national territory, the legislation affects both the sale of products from other parts of the national territory and the sale of products imported from other Member States: for a national measure to be categorised as discriminatory or protective for the purposes of the rules on the free movement of goods, it is not necessary for it to have the effect of favouring national products as a whole or of placing only imported products at a disadvantage and not national products. Legislation of that kind cannot be justified either by objectives designed to protect the supplying of goods at short distance, since such aims of a purely economic nature cannot justify a barrier to the fundamental principle of the free movement of goods, or by the protection of public health, since that can be achieved by measures that have effects less restrictive of intra-Community trade.

In Case C-23/99 *Commission* v *France* (judgment of 26 September 2000), the Commission applied to the Court for a declaration that, by implementing, pursuant to the French Intellectual Property Code, procedures for the detention by the customs authorities of goods lawfully manufactured in a Member State of the European Community which were intended, following their transit through French territory, to be placed on the market in another Member State where they could be lawfully marketed, the French Republic had failed to fulfil its obligations under Article 30 of the EC Treaty. Granting the declaration, the Court pointed out that the national legislation at issue authorised the national customs authorities, on an application from the proprietor of the right in designs of spare parts for motor vehicles, to detain spare parts presumed to be counterfeit goods for a period of 10 days during which the applicant could refer the matter to the competent national courts. Such legislation had the effect of restricting the free

movement of goods. The Court then stated that intra-Community transit consisted in the transportation of goods from one Member State to another across the territory of one or more Member States and involved no use of the appearance of the protected design. That transit did not therefore form part of the specific subject-matter of the right of industrial and commercial property in designs. Since the manufacture and marketing of the product were lawful in the Member States where those operations took place, the impediment to the free movement of goods caused by the product's detention under customs control in the Member State of transit in order to prevent transit of the product was not justified on grounds of protection of industrial and commercial property set out in Article 36 of the EC Treaty (now, after amendment, Article 30 EC).

As regards Article 34 of the Treaty, mention will be made of the important judgment delivered on 16 May 2000 in Case C-388/95 *Belgium* v *Spain*. This case is a rare example of Treaty infringement proceedings brought by one Member State against another Member State under Article 170 of the EC Treaty (now Article 227 EC). The Kingdom of Belgium contended that, by maintaining in force national legislation under which wine has to be bottled in its region of production if the designation of origin is to be used, the Kingdom of Spain had failed to fulfil its obligations under Article 34 of the Treaty, as interpreted by the Court in its judgment of 9 June 1992 in Case C-47/90 *Delhaize* [1992] ECR I-3669, and Article 5 of the Treaty (now Article 10 EC). In *Delhaize*, the Court had held that such national provisions applicable to wine of designated origin which limited the quantity of wine that might be exported in bulk but otherwise permitted sales of wine in bulk within the region of production constituted measures having equivalent effect to a quantitative restriction on exports which were prohibited by Article 34 of the Treaty.

In *Belgium* v *Spain*, the Court confirmed that national provisions applicable to wine of designated origin under which use of the name of the region of production as a designation of origin is conditional on bottling in that region constitute such measures having equivalent effect, because they have the effect of specifically restricting patterns of exports of wine eligible to bear the designation of origin in question and thereby of establishing a difference of treatment between trade within a Member State and its export trade. As regards the compatibility with the Treaty of such a barrier, while the Court had found in *Delhaize* that it had not been shown that bottling in the region of production was an operation needed to preserve particular characteristics of the wine or to guarantee the origin of the wine or that the confinement of bottling to a specified area was, in itself, capable of affecting the quality of the wine, the Court now stated that new information had been produced to it in order to demonstrate that the reasons

underlying the obligation to bottle in the region of production were capable of justifying that obligation, and that it was necessary to examine the case before it in the light of that information. The Court observed that such an obligation pursued the aim of better safeguarding the quality of the product and, consequently, preserving the considerable reputation of the wine bearing the designation of origin, by strengthening control over its particular characteristics and its quality. The obligation was justified as a measure protecting the designation of origin which could be used by all the operators in the wine growing sector of the region of production and was of decisive importance to them. In addition, for wines transported and bottled in the region of production, the controls were far-reaching and systematic and were the responsibility of the totality of the producers themselves, who had a fundamental interest in preserving the reputation acquired. Only consignments which had been subjected to those controls could bear the designation of origin. Finally, the risk to which the quality of the product finally offered to consumers was exposed was greater where it has been transported and bottled outside the region of production than when those operations had taken place within the region. Following that examination, the Court concluded that legislation under which wine had to be bottled in its region of production if the designation of origin was to be used had to be regarded as compatible with Community law, despite its restrictive effects on trade, because it constituted a necessary and proportionate means of attaining the objective pursued, in that there were no less restrictive alternative measures capable of attaining it. The Court therefore dismissed the action brought by the Kingdom of Belgium.

9.2. The interpretation of directives relating to more specific aspects of the free movement of goods was at the heart of the cases of *Anastasiou* and *Unilever*.

In *Anastasiou and Others*, the Court specified the conditions which a Member State may impose for the import of plants originating in a non-member country when no phytosanitary certificate has been issued by the authorities empowered to issue certificates in the plants' country of origin (judgment of 4 July 2000 in Case C-219/98).

In *Unilever*, the Court was again asked about the consequences for individuals of breach of an obligation laid down by Directive 83/189/EEC. [11] Article 8 of that

[11] Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1983 L 109, p. 8), as amended by Directive 94/10/EC.

directive imposes an obligation on Member States to notify any draft technical regulation to the Commission. Article 9 obliges them to postpone the adoption of a draft technical regulation if the Commission or another Member State delivers a detailed opinion to the effect that the measure envisaged may create obstacles to the free movement of goods within the internal market. The Court had already held in Case C-194/94 *CIA Security International* [1996] ECR I-2201 that breach of the obligation to notify laid down by Article 8 of Directive 83/189 rendered the technical regulations at issue inapplicable, so that they were unenforceable against individuals, and that individuals might rely on Articles 8 and 9 of the directive before the national courts, which must decline to apply a national technical regulation which has not been notified in accordance with the directive.

In its judgment of 26 September 2000 in Case C-443/98 *Unilever*, the Court stated that the inapplicability of a technical regulation as a legal consequence of failure to comply with the obligation to notify laid down in Article 8 of the directive can be invoked in proceedings between individuals. The same applies to breach of the obligation, laid down in Article 9 of the directive, to postpone the adoption of a draft technical regulation. Whilst it is true that a directive cannot of itself impose obligations on an individual and cannot therefore be relied on as such against an individual, the case-law to that effect does not apply in proceedings between individuals where non-compliance with Article 8 or Article 9 of Directive 83/189, which constitutes a substantial procedural defect, renders a technical regulation adopted in breach of either of those articles inapplicable. In proceedings of that kind, Directive 83/189 does not in any way define the substantive scope of the legal rule on the basis of which the national court must decide the case before it. It creates neither rights nor obligations for individuals. The Court therefore ruled that a national court is required, in civil proceedings between individuals concerning contractual rights and obligations, to refuse to apply a national technical regulation which was adopted during a period of postponement of adoption prescribed in Article 9 of Directive 83/189.

10. Case-law relating to the *agricultural sector* was again plentiful in the past year, as is indicated by the cases of *France* v *Commission*, *Commission* v *Council* and *Mulder and Others* v *Council and Commission* which have already been referred to.

Amongst that case-law, *Eurostock Meat Marketing* is also to be noted, a case which arose in the context of the bovine spongiform encephalopathy crisis (judgment of 5 December 2000 in Case C-477/98). Acting pursuant to Directive 89/662/EEC concerning veterinary checks in intra-Community trade with a view

to the completion of the internal market, the Commission adopted a decision in July 1997 prohibiting the use for any purpose of specified material presenting risks as regards transmissible spongiform encephalopathies, namely, in the case of bovine animals, the skull, tonsils and spinal cord of animals aged over 12 months. That list does not include cheek meat. The date on which that decision was to become applicable, initially set at 1 January 1998, was postponed several times and finally fixed at 30 June 2000. In December 1997, several days after the date on which the decision was to become applicable had been postponed for the first time, the Department of Agriculture for Northern Ireland enacted an order, as part of its programme to deal with the risk of bovine spongiform encephalopathy, prohibiting the import into Northern Ireland of specified risk material from a bovine animal which had been slaughtered or had died outside the United Kingdom at an age greater than 12 months and of any food containing such material. The list of specified risk material for the purposes of the Order was the same as that contained in the Commission decision. Pursuant to the 1997 Order, the Department of Agriculture seized and condemned a consignment of heads of bovine animals which had been imported from Ireland by a company which removes cheekmeat for human consumption, on the ground that the consignment contained specified risk material. The company maintained that the 1997 Order constituted a measure having an effect equivalent to a quantitative restriction on the free movement of goods, contrary to Article 30 of the EC Treaty, and that it was a measure which was neither justified nor authorised under Community law. According to the Department of Agriculture, on the other hand, the importation of the consignment in question could be prohibited as an interim protective measure authorised by Directive 89/662. Agreeing with such an interpretation of the relevant Community rules, the Court pointed out that, under Directive 89/662, the Member State of destination may, on serious public or animal-health grounds, take interim protective measures pending the measures to be taken by the Commission. The adoption by the Commission of a decision which is not immediately applicable cannot, as such, be regarded as precluding a Member State from itself taking interim protective measures pursuant to Directive 89/662. That directive is designed to set up a Community-wide protective system to replace possibly disparate interim protective measures taken in an emergency by Member States to counter serious risks. However, it is not until the Community rules are adopted, enter into force and become applicable to the products concerned that there is a risk of conflict between those rules and the interim protective measures previously adopted by the Member States. A national measure such as the 1997 Order, prohibiting imports of any specified risk material and also of any food containing such material, was justified under Directive 89/662 and was not disproportionate in the light of the risk of possible transmission of bovine spongiform encephalopathy. It was permissible to prohibit

imports of heads of bovine animals, since they contained material with very high infectivity and the slaughtering and transport methods used gave rise to a serious risk of contamination of healthy tissues.

The case of *Emsland-Stärke*, concerning abuses in the area of export refunds on agricultural products, should also be mentioned (judgment of 14 December 2000 in Case C-110/99). In that case, the Court held that a Community exporter can forfeit his right to payment of a non-differentiated export refund if (a) the product in respect of which the export refund was paid, and which is sold to a purchaser established in a non-member country, is, immediately after its release for home use in that non-member country, transported back to the Community under the external Community transit procedure and is there released for home use on payment of import duties, without any infringement being established and (b) that operation constitutes an abuse on the part of that Community exporter. A finding that there is an abuse presupposes an intention on the part of the Community exporter to benefit from an advantage as a result of the application of the Community rules by artificially creating the conditions for obtaining it. Evidence of this must be placed before the national court in accordance with the rules of national law, for instance by establishing that there was collusion between that exporter and the importer of the goods into the non-member country. The fact that, before being re-imported into the Community, the product was sold by the purchaser established in the non-member country concerned to an undertaking also established in that country with which he has personal and commercial links, is one of the facts which can be taken into account by the national court when ascertaining whether the conditions giving rise to an obligation to repay refunds are fulfilled.

11. During the past year, the Court found it necessary to consider the consequences of *freedom of movement for persons* in the most diverse areas: proof of bilingualism of job applicants, rules for the grant of compensation on termination of employment, the grant of leave to remain to the spouse of a migrant worker, temporary admission of Community nationals and the application of social security rules.

11.1. In Case C-281/98 *Angonese* (judgment of 6 June 2000), an Italian national whose mother tongue was German applied for a post with a bank in Italy. He challenged before the national court an obligation to prove his bilingualism (Italian/German) exclusively by means of a certificate issued by a single Italian province, when it was not in dispute that he was perfectly bilingual. The Court noted that the principle of non-discrimination laid down in Article 48 of the EC Treaty (now, after amendment, Article 39 EC) was drafted in general terms and

was not specifically addressed to the Member States. It therefore applied to conditions of work and employment set by private persons as well. An obligation requiring candidates to a recruitment competition to prove their linguistic knowledge only by means of one particular bilingualism certificate issued in a single province of a Member State put nationals of the other Member States at a disadvantage, given that persons not residing in that province had little chance of acquiring the certificate and it would be difficult, or even impossible, for them to gain access to the employment in question. Even though obliging an applicant for a post to have a certain level of linguistic knowledge could be legitimate and possession of a diploma, such as the certificate at issue here, could constitute a criterion for assessing that knowledge, the fact that it was impossible to submit proof of the required linguistic knowledge by any other means, in particular by equivalent qualifications obtained in other Member States, had to be considered disproportionate in relation to the aim in view. The requirement in question therefore constituted discrimination on grounds of nationality contrary to Article 48 of the Treaty.

Case C-190/98 *Graf* (judgment of 27 January 2000) related to Austrian legislation denying a worker entitlement to compensation on termination of employment if he terminates his contract of employment himself in order to take up employment with a new employer established in that Member State or in another Member State, but granting entitlement to such compensation if the contract ends without the termination being at the worker's own initiative or attributable to him. In answer to a question referred to it for a preliminary ruling, the Court held that Article 48 of the Treaty does not preclude such legislation. The legislation applies irrespective of the nationality of the worker concerned and does not affect migrant workers to a greater extent than national workers.

11.2. In Case C-356/98 *Kaba* (judgment of 11 April 2000), the applicant, married to a migrant worker who was a national of a Member State, had been refused indefinite leave to remain in another Member State because he had not previously resided there for four years. Pointing out that the legislation of the second State required prior residence of only 12 months for the spouses of persons settled in its territory, which persons are not subject to any restriction on the period for which they may remain there, the applicant contended before the national court that such legislation constituted discrimination contrary to Regulation No 1612/68 on freedom of movement for workers within the Community. [12] The Court

[12] Regulation (EEC) No 1612/68 of the Council of 15 October 1968 (OJ, English Special Edition 1968 (II), p. 475).

pointed out that, as Community law stands at present, the right of nationals of a Member State to reside in another Member State is not unconditional. That situation derives, first, from the provisions on the free movement of persons contained in Title III of Part Three of the EC Treaty and the secondary legislation adopted to give them effect and, second, from the provisions of Part Two of the Treaty, and more particularly Article 8a (now, after amendment, Article 18 EC), which, whilst granting citizens of the Union the right to move and reside freely within the Member States, expressly refers to the limitations and conditions laid down by the Treaty and by the measures adopted to give it effect. The Member States are therefore entitled to rely on any objective difference there may be between their own nationals and those of other Member States when they lay down the conditions under which leave to remain indefinitely in their territory is to be granted to the spouses of such persons. Consequently, legislation such as that at issue does not constitute discrimination contrary to Regulation No 1612/68.

Case C-357/98 *Yiadom* (judgment of 9 November 2000) concerned the position of a Community national not in possession of a residence permit who had been temporarily admitted to the territory of a Member State many months previously and was physically present there when the competent national authorities notified her of a decision prohibiting her from entering its territory for the purposes of national law. The Court held that a legal fiction under national law, according to which a national who is physically present in the territory of the host Member State is regarded as not yet having been the subject of a decision concerning entry, cannot result in that national being denied the procedural safeguards laid down in Article 9 of Directive 64/221. [13]

11.3. With regard to *social security*, the Court was called on to apply several provisions of Regulation No 1408/71 to persons working temporarily in another Member State. The cases of *FTS* and *Banks* are to be noted.

Case C-202/97 *FTS* (judgment of 10 February 2000) concerned the interpretation of a provision of Regulation No 1408/71, in the version codified by Regulation (EEC) No 2001/83, which derogates from the rule that a worker is to be subject to the legislation of the Member State in whose territory he is employed and allows the undertaking to which he is normally attached to keep him registered under the social security system of the Member State in which it is established.

[13] Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (OJ, English Special Edition 1963-1964, p. 117).

The Court held that, in order to benefit from the advantage afforded by that provision, an undertaking engaged in providing temporary personnel which, from one Member State, makes workers available on a temporary basis to undertakings based in another Member State must normally carry on its activities in the first State. That condition is satisfied where such an undertaking habitually carries on significant activities in the Member State in which it is established. The Court also held in this case that an E 101 certificate issued by the institution designated by the competent authority of a Member State is binding on the social security institutions of other Member States in so far as it certifies that workers posted by an undertaking providing temporary personnel are covered by the social security system of the Member State in which that undertaking is established. However, where the institutions of other Member States raise doubts as to the correctness of the facts on which the certificate is based or as to the legal assessment of those facts and, consequently, as to the conformity of the information contained in the certificate with Regulation No 1408/71, the issuing institution must re-examine the grounds on which the certificate was issued and, where appropriate, withdraw it.

Case C-178/97 *Banks* (judgment of 30 March 2000) concerned a provision of Regulation No 1408/71 as last amended and updated by Regulation (EEC) No 3811/86, which, for self-employed persons, is the provision corresponding to that at issue in *FTS*. Under that provision, a person normally self-employed in the territory of a Member State who performs work in the territory of another Member State is to continue to be subject to the legislation of the first Member State, provided that the anticipated duration of the work does not exceed 12 months. The Court held that the term "work" used in that provision covers any performance of work, whether in an employed or self-employed capacity. With regard to E 101 certificates, the Court confirmed the decision reached in *FTS*, adding that there is nothing to prevent an E 101 certificate from producing retroactive effects where appropriate.

In other cases, the Court ruled on aspects of national social security legislation directly in relation to Treaty provisions.

Case C-262/97 *Engelbrecht* (judgment of 26 September 2000) was concerned with the overlapping of pensions awarded under the legislation of different Member States. The Court held that the exercise of the right to free movement within the Community is impeded if a social advantage is lost or reduced simply because a benefit of the same kind awarded to a worker's spouse under the legislation of another Member State is taken into account when, on the one hand, the grant of that latter benefit has not led to any increase in the couple's total income and, on

the other, there has been a concomitant reduction of the same amount in the pension received by the worker under the legislation of that same State. Such a result might well discourage Community workers from exercising their right to free movement and would therefore constitute a barrier to that freedom enshrined in Article 48 of the Treaty.

In Case C-34/98 *Commission* v *France* and Case C-169/98 *Commission* v *France* (judgments of 15 February 2000) the Commission brought two actions before the Court for declarations that, by applying the social debt repayment contribution (contribution pour le remboursement de la dette sociale) and the general social contribution (contribution sociale généralisée) respectively to the employment income and substitute income of employed and self-employed persons resident in France (but — as regards the social debt repayment contribution — working in another Member State) who, by virtue of Regulation No 1408/71 were not subject to French social security legislation, the French Republic had failed to fulfil its obligations under that regulation and Articles 48 and 52 of the Treaty (now, after amendment, Articles 39 EC and 43 EC). Granting both applications, the Court found that both those contributions were allocated specifically and directly to the financing of the French social security scheme. They therefore fell within the scope of Regulation No 1408/71 and constituted levies caught by the prohibition against double contributions laid down by that regulation and by Articles 48 and 52 of the Treaty which that regulation was designed to implement. Such a conclusion could not be affected by the specific detailed allocation of the sums levied, the fact that payment of those contributions did not give entitlement to any direct and identifiable benefit in return, the limited number of the workers concerned or the minimal rate of the levies at issue.

In Case C-411/98 *Ferlini* (judgment of 3 October 2000) a Commission official contended before the national court that the invoice in respect of the care given at his wife's confinement and her stay in a public hospital of a Member State was drawn up on the basis of discriminatory scales of fees which were fixed on a uniform and unilateral basis by all the hospitals of that State operating as a group and applied to persons not affiliated to the national social security scheme, including EC officials; this resulted in a charge 71.43% higher than that applicable, for the same services, to persons subject to the national social security scheme. The Court stated first of all that there can be no doubt that an EC official has the status of a migrant worker. A national of a Member State working in another Member State does not lose his status of worker within the meaning of Article 48(1) of the Treaty through occupying a post within an international organisation, even if the rules relating to his entry into and residence in the country in which he is employed are specifically governed by an

international agreement. The Court then stated that the first paragraph of Article 6 of the EC Treaty (now, after amendment, the first paragraph of Article 12 EC), which prohibits discrimination on grounds of nationality, also applies in cases where a group or organisation, such as the hospitals group at issue, exercises a certain power over individuals and is in a position to impose on them conditions which adversely affect the exercise of the fundamental freedoms guaranteed under the Treaty. The Court found that the criterion of affiliation to the national social security scheme, on which the differentiation of fees for medical and hospital care was based, constituted indirect discrimination on the ground of nationality. First, the great majority of those affiliated to the Sickness Insurance Scheme common to the Institutions of the European Communities and not to the national social security scheme, although in receipt of medical and hospital care given in national territory, were nationals of other Member States. Second, the overwhelming majority of residents who were nationals were covered by the national social security scheme. The Court then stated that the considerable difference in treatment between persons affiliated to the national social security scheme and EC officials, in respect of the scales of fees for healthcare connected with childbirth, was not justified. The Court accordingly ruled that the application, on a unilateral basis, by a group of healthcare providers of a Member State to EC officials of scales of fees for medical and hospital maternity care which are higher than those applicable to residents affiliated to the national social security scheme of that State constitutes discrimination on the ground of nationality prohibited under the first paragraph of Article 6 of the Treaty, in the absence of objective justification in this respect.

Finally, in Case C-135/99 *Elsen* (judgment of 23 November 2000) the Court considered whether the competent institution of a Member State is required, for the purpose of the grant of an old-age pension, to take into account periods devoted to child-rearing completed in another Member State as though they had been completed in national territory. The question was asked with regard in particular to a person who, at the time when the child was born, was a frontier worker employed in the territory of the Member State to which the institution concerned belonged and residing in the territory of the other State. The Court found that to answer the question in the negative would disadvantage Community nationals who have exercised their right to move and reside freely in the Member States, as guaranteed in Article 8a of the EC Treaty (now, after amendment, Article 18 EC). It also noted that a number of provisions of Regulation No 1408/71 which concern this type of situation help to ensure freedom of movement not only for workers, but also for citizens of the Union, within the Community. The Court accordingly gave a positive answer to the question raised, intepreting the provisions of the EC Treaty directly.

12. A number of significant judgments related to the *freedom to provide services* within the Community. The cases of *Deliège* and *Corsten* may be noted in particular.

The important judgment of 11 April 2000 in Joined Cases C-51/96 and C-191/97 *Deliège* enabled the Court to define the scope of its judgment in Case C-415/93 *Bosman* [1995] ECR I-4921. *Deliège* centred on sports rules requiring judokas, professional or semi-professional athletes or persons aspiring to take part in a professional or semi-professional activity to have been authorised or selected by their federation in order to be able to participate in an international high-level sports competition which does not involve national teams competing against each other. Relying in particular on *Bosman*, the Court pointed out that the Treaty provisions concerning the freedom to provide services may apply to sporting activities and to the rules laid down by sports associations such as the selection rules referred to above. Those provisions not only apply to the action of public authorities but extend also to rules of any other nature aimed at regulating gainful employment and the provision of services in a collective manner. The Court then acknowledged that a high-ranking athlete's participation in an international competition is capable of involving the provision of a number of separate, but closely related, services which may fall within the scope of those provisions even if some of the services are not paid for by those for whom they are performed. However, in contrast to the rules applicable in the *Bosman* case, the selection rules at issue here do not determine the conditions governing access to the labour market by professional sportsmen and do not contain nationality clauses limiting the number of nationals of other Member States who may participate in a competition. These rules concern a tournament in which, once selected, the athletes compete on their own account, irrespective of their nationality. Although such selection rules inevitably have the effect of limiting the number of participants in a tournament, a limitation of that kind is inherent in the organisation of an international high-level sports event, which necessarily involves certain selection rules or criteria being adopted. Such rules cannot therefore be regarded as constituting a restriction on the freedom to provide services prohibited by the Treaty.

In Case C-58/98 *Corsten* (judgment of 3 October 2000) the Court held that Article 59 of the Treaty precludes rules of a Member State which make the carrying out on its territory of skilled trade work by providers of services established in other Member States subject to an authorisation procedure which is likely to delay or complicate exercise of the right to freedom to provide services, where examination of the conditions governing access to the activities

concerned has been carried out in accordance with an applicable Community directive and it has been established that those conditions are satisfied. Furthermore, any requirement of entry on the trades register of the host Member State, assuming it was justified by the overriding public-interest requirement of seeking to guarantee the quality of skilled trade work and to protect those who have commissioned such work, should neither give rise to additional administrative expense nor entail compulsory payment of subscriptions to the chamber of trades.

13. As regards the *right of establishment*, the most significant cases which the Court had to decide in 2000 centred on practice of the professions.

13.1. So far as concerns the medical professions, Case C-238/98 *Hocsman* v *Ministre de l'Emploi et de la Solidarité* (judgment of 14 September 2000) gave the Court the opportunity to explain the obligations on the competent authorities of a Member State under Article 52 of the Treaty where, in a situation not regulated by a directive on mutual recognition of diplomas, a Community national applies for authorisation to practise a profession, access to which depends, under national law, on the possession of a diploma or professional qualification, or on periods of practical experience. The Court ruled that, in such a situation, those authorities must take into consideration all the diplomas, certificates and other evidence of formal qualifications of the person concerned and his relevant experience, by comparing the specialised knowledge and abilities certified by those qualifications and that experience with the knowledge and qualifications required by the national rules. Such an interpretation of Article 52 of the Treaty is merely the expression by the Court of a principle which is inherent in the fundamental freedoms of the Treaty and remains relevant in situations not covered by directives relating to the mutual recognition of diplomas.

13.2. Practice of the profession of lawyer gave rise to the important judgment delivered on 7 November 2000 in Case C-168/98 *Luxembourg* v *Parliament and Council*, in which the Court dismissed the action brought by the Grand Duchy of Luxembourg for annulment of a directive to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (Directive 98/5/EC). The Grand Duchy of Luxembourg contended in particular that the directive infringes the second paragraph of Article 52 of the Treaty in that it introduces a difference in treatment between nationals and migrants and prejudices the public interest in consumer protection and in the proper administration of justice. The Court found that, in adopting Directive 98/5, the Community legislature did not infringe the principle

of non-discrimination laid down by Article 52 of the Treaty, since the situation of a migrant lawyer practising under his home-country title and the situation of a lawyer practising under the professional title of the host Member State are not comparable. Unlike the latter, the former may be forbidden to pursue certain activities and, with regard to the representation or defence of clients in legal proceedings, may be subject to certain obligations, as follows from the provisions of Directive 98/5. In adopting that directive with a view to making it easier for a particular class of migrant lawyers to exercise the fundamental freedom of establishment, the Community legislature chose, in preference to a system of *a priori* testing of qualification in the national law of the host Member State, a plan of action combining consumer information, restrictions on the extent to which or the detailed rules under which certain activities of the profession may be practised, a number of applicable rules of professional conduct, compulsory insurance, as well as a system of discipline involving both the competent authorities of the home Member State and the host State. The legislature has not abolished the requirement that the lawyer concerned should know the national law applicable in the cases he handles, but has simply released him from the obligation to prove that knowledge in advance. It has thus allowed, in some circumstances, gradual assimilation of knowledge through practice, that assimilation being made easier by experience of other laws gained in the home Member State. The legislature was also able to take account of the dissuasive effect of the system of discipline and the rules of professional liability. In making such a choice of the method and level of consumer protection and of ensuring the proper administration of justice, the Community legislature did not overstep the limits of the discretion available to it for the purpose of determining an acceptable level of protection of the public interest. In addition, contrary to the submissions advanced by the Grand Duchy of Luxembourg, Directive 98/5 was validly adopted by a qualified majority in accordance with the procedure laid down in Article 189b of the Treaty (now, after amendment, Article 251 EC) and on the basis of Article 57(1) and the first and third sentences of Article 57(2) of the Treaty (now, after amendment, Article 47(1) EC and the first and third sentences of Article 47(2) EC). The directive establishes a mechanism for the mutual recognition of the professional titles of migrant lawyers who wish to practise under their home-country professional title, supplementing the mechanism already in force, which, as regards lawyers, is intended to authorise the unrestricted practice of the profession under the professional title of the host Member State. Consequently, Directive 98/5 does not make any amendment to existing principles laid down by law governing the professions within the meaning of the second sentence of Article 57(2) of the Treaty, which would have required it to be adopted unanimously.

14. The judgments delivered in the past year concerning the *free movement of capital* allowed the Court to explain the restrictions which the Member States may impose on movements of capital on grounds of public policy or public security or for overriding reasons in the public interest such as the need to ensure the cohesion of the tax system.

Case C-54/99 *Église de Scientologie* (judgment of 14 March 2000) concerned Article 73d(1)(b) of the Treaty (now Article 58(1)(b) EC), under which the Member States may derogate from the prohibition on all restrictions on the movement of capital which is laid down and take measures which are justified on grounds of public policy or public security. The Court held that this provision precludes a system of prior authorisation for direct foreign investments which confines itself to defining in general terms the affected investments as being investments that are such as to represent a threat to public policy and public security, with the result that the persons concerned are unable to ascertain the specific circumstances in which prior authorisation is required. Such lack of precision does not enable individuals to be apprised of the extent of their rights and obligations deriving from the Treaty and is contrary to the principle of legal certainty.

In Case C-423/98 *Albore* (judgment of 13 July 2000), the Court stated that Article 73b of the Treaty (now Article 56 EC) precludes national legislation of a Member State which, on grounds relating to the requirements of defence of national territory, exempts the nationals of that Member State, and only them, from the obligation to apply for an administrative authorisation for any purchase of real estate situated within an area of national territory designated as being of military importance. The position would be different only if it could be demonstrated to the competent national court that, in a particular area, non-discriminatory treatment of nationals of all the Member States would expose the military interests of the Member State concerned to real, specific and serious risks which could not be countered by less restrictive procedures.

In Case C-35/98 *Verkooijen* (judgment of 6 June 2000), the Court held that Directive 88/361/EEC for the implementation of Article 67 of the Treaty [14] precludes a legislative provision of a Member State under which the grant of exemption from income tax payable on dividends that are paid to natural persons who are shareholders is subject to the condition that those dividends are paid by a company whose seat is in that Member State. A legislative provision of that

[14] Council Directive 88/361/EEC of 24 June 1988 (OJ 1988 L 178, p. 5).

kind has the effect of dissuading Community nationals residing in the Member State concerned from investing their capital in companies which have their seat in another Member State and also has a restrictive effect as regards such companies in that it constitutes an obstacle to the raising of capital in the Member State concerned, without the restriction being justified by an overriding reason in the public interest such as the need to ensure the cohesion of the tax system.

In Case C-251/98 *Baars* (judgment of 13 April 2000), the Court applied principles similar to those identified in *Verkooijen*, this time in relation to Article 52 of the Treaty.

15. In the field of *transport*, the judgment of 26 September 2000 in Case C-205/98 *Commission* v *Austria* may be noted.

In this case the Court found that, by twice raising the tolls for vehicles with more than three axles using the whole Brenner motorway, the Republic of Austria had failed to fulfil its obligations under Directive 93/89/EEC concerning taxes on certain vehicles used for the carriage of goods by road and road charges for the use of certain infrastructures. That directive provides that tolls are not to discriminate, direct or indirectly, on the grounds of the nationality of the haulier or of the origin or destination of the vehicle. In addition, toll rates must be related to the costs of infrastructure networks. The Court held that the increases imposed by the Republic of Austria constituted indirect discrimination on the grounds of the hauliers' nationality contrary to Directive 93/89, in so far as they affected vehicles with more than three axles which followed the full itinerary of the motorway and which, for the most part, were not registered in Austria, in contrast to vehicles with more than three axles carrying out similar transport operations on certain partial itineraries, the great majority of which were registered in Austria. The increases also constituted indirect discrimination on the grounds of the destination or origin of the vehicle contrary to Directive 93/89, since they operated to the detriment of vehicles engaged in transit traffic. Such tariff differences could not be justified in either case on grounds relating to environmental protection or based on national transport policy, since the directive, in the field covered by it, did not contemplate the possibility of reliance on such grounds in order to justify tariff arrangements which gave rise to indirect discrimination. In addition the toll regime did not comply with the requirement for a link between toll rates and the costs of construction, operation and development of the section in question, inasmuch as it took account of all sections of motorways financed by the Republic of Austria and not solely the section of that motorway for the use of which the toll was paid.

16. In the course of the past year the Court decided numerous disputes concerning *competition law*, brought before it by means of references for a preliminary ruling or appeals against decisions of the Court of First Instance.

16.1. As regards appeal proceedings, the Court was required in particular to review decisions of the Court of First Instance relating to fines imposed on undertakings for infringements of Articles 85 and 86 of the Treaty.

In the "cartonboard" cases, heavy fines had been imposed on cartonboard producers for infringement of Community competition law by participating in an agreement and concerted practice. In actions brought by the fined undertakings, the Court of First Instance reduced slightly the overall amount of the fines.

Ten appeals were brought before the Court of Justice, seeking to have the fines imposed by the Court of First Instance set aside or reduced. The Court of Justice dismissed five of the appeals by judgments of 16 November 2000 in Case C-282/98 P *Enso Española* v *Commission*, Case C-283/98 P *Mo och Domsjö* v *Commission*, Case C-298/98 P *Metsä-Serla Sales* v *Commission*, Case C-294/98 P *Metsä-Serla and Others* v *Commission* and Case C-297/98 P *SCA Holding* v *Commission*.

In judgments delivered on the same day, the Court allowed the other five appeals in part. In Case C-279/98 P *Cascades* v *Commission* and Case C-286/98 P *Stora Kopparbergs Bergslags* v *Commission*, the Court set aside the judgments of the Court of First Instance for error of law and referred the cases back to it. Responsibility could not be attributed to the appellants for infringements committed by companies acquired by them in respect of the period prior to the acquisition. In Case C-248/98 P *Koninklijke KNP BT* v *Commission*, Case C-280/98 P *Moritz J. Weig* v *Commission* and Case C-291/98 P *Sarrió* v *Commission*, the Court reduced the amount of the fines. In the first case, the fine was reduced by EUR 100 000 because the Court of First Instance had failed to deal with the appellant's argument that it should be liable for the infringements of its subsidiary only with effect from its acquisition. In the second case, the Court reduced the fine by EUR 600 000, holding that the Court of First Instance had infringed the principle of equal treatment by not applying to the undertaking in question the same method for calculation of the fine as that adopted by it when setting the amount of the fines imposed on the other undertakings which had cooperated with the Commission. In the third and last case, the fine was reduced by EUR 250 000 since the method adopted for calculation of all the fines of the

undertakings involved had, in the case of this undertaking, been departed from without explanation.

In Joined Cases C-395/96 P and C-396/96 P *Compagnie Maritime Belge Transports and Others* v *Commission* (judgment of 16 March 2000), undertakings which were members of a shipping conference had been fined by the Commission for infringement of Articles 85 and 86 of the Treaty. While reducing the amount of the fines imposed, the Court of First Instance dismissed the application for annulment brought by certain of those undertakings. On appeal, the Court of Justice upheld the judgment at first instance, save as regards the fines. It held that the Court of First Instance erred in law when it confirmed that the Commission was entitled to impose on members of a shipping conference individual fines, fixed in accordance with an assessment of their participation in the conduct in question, when the statement of objections was addressed only to the conference. The essential procedural safeguard which the statement of objections constitutes is an application of the fundamental principle of Community law which requires the right to a fair hearing to be observed in all proceedings. It follows that the Commission is required to specify unequivocally, in the statement of objections, the persons on whom fines may be imposed. A statement of objections which merely identifies a collective entity as the perpetrator of an infringement does not make the companies forming that entity sufficiently aware that fines will be imposed on them individually if the infringement is made out. Contrary to what the Court of First Instance held, the fact that the collective entity does not have legal personality is not relevant in this regard.

16.2. References to the Court for preliminary rulings related essentially to two distinct issues: first, the obligations of national courts in national proceedings relating to the application of Articles 85 and 86 of the Treaty where there are parallel proceedings before the Community Courts and, second, the interpretation of Article 90 of the EC Treaty (now Article 86 EC) concerning the application of the competition rules to public undertakings or undertakings with special or exclusive rights.

As regards the first issue, the Court delivered a judgment of fundamental importance on 14 December 2000 in Case C-344/98 *Masterfoods*. In that case, the Irish High Court had granted an injunction at first instance requiring an icecream manufacturer, Masterfoods, to observe an exclusivity clause contained in agreements concluded in Ireland between a competitor, HB, and retailers for the supply of freezer cabinets. The Commission, before which the matter had been brought in parallel with the national proceedings, adopted a decision running counter to that made by the High Court. According to the Commission, the

exclusivity clause was contrary to Article 85(1) of the Treaty and HB's inducement to retailers to enter into freezer-cabinet agreements subject to such a clause constituted an infringement of Article 86 of the Treaty. HB brought an action, within the period prescribed in the fifth paragraph of Article 173 of the Treaty (now, after amendment, the fifth paragraph of Article 230 EC), seeking annulment of the Commission's decision, and obtained an interim order suspending the operation of that decision until the Court of First Instance had given judgment terminating the proceedings before it. The Irish Supreme Court, called on, as appellate court, to decide whether the exclusivity clause was compatible with Articles 85(1) and 86 of the Treaty, made a preliminary reference to the Court of Justice in order for the latter to indicate how it should proceed in such a situation. The Court of Justice stated in answer to the national court that when it rules on an agreement or practice whose compatibility with Article 85(1) and Article 86 of the Treaty is already the subject of a Commission decision it cannot take a decision running counter to that of the Commission, even if the latter's decision conflicts with the decision given by a national court of first instance. In that connection, the fact that the President of the Court of First Instance has suspended the operation of the Commission's decision is irrelevant. Acts of the Community institutions are in principle presumed to be lawful until such time as they are annulled or withdrawn. The decision of the judge hearing an application to order the suspension of the operation of a contested act has only provisional effect. In addition, where the national court has doubts as to the validity or interpretation of an act of a Community institution it may, or must, in accordance with the second and third paragraphs of Article 177 of the Treaty, refer a question to the Court of Justice for a preliminary ruling. If, as here, the addressee of a Commission decision has, within the prescribed period, brought an action for annulment of that decision, it is for the national court to decide whether to stay proceedings until a definitive decision has been given in the action for annulment or in order to refer a question to the Court for a preliminary ruling. When the outcome of the dispute before the national court depends on the validity of the Commission decision, it follows from the obligation of sincere cooperation that the national court should, in order to avoid reaching a decision that runs counter to that of the Commission, stay its proceedings pending final judgment in the action for annulment by the Community Courts, unless it considers that, in the circumstances of the case, a reference to the Court of Justice for a preliminary ruling on the validity of the Commission decision is warranted.

So far as concerns application of the competition rules to public undertakings or undertakings with special or exclusive rights, the cases of *Deutsche Post*, *FFAD* and *Pavlov* will be mentioned.

In Joined Cases C-147/97 and C-148/97 *Deutsche Post* (judgment of 10 February 2000), the Court ruled that, in the absence of an agreement between the postal services of the Member States concerned fixing terminal dues in relation to the actual costs of processing and delivering incoming trans-border mail, it is not contrary to Article 90 of the Treaty, read in conjunction with Articles 59 and 86 of the Treaty, for a body such as Deutsche Post to exercise the right provided for by the Universal Postal Convention, in the version adopted on 14 December 1989, to charge internal postage on items of mail posted in large quantities with the postal services of a Member State other than the Member State to which that body belongs. If that body were obliged to forward and deliver to addressees resident in Germany mail posted in large quantities by senders resident in Germany using postal services of other Member States, without any provision allowing it to be financially compensated for all the costs occasioned by that obligation, the performance, in economically balanced conditions, of the task of general interest entrusted to it would be jeopardised. On the other hand, the exercise of such a right is contrary to Article 90(1) of the Treaty, read in conjunction with Article 86, in so far as the result is that such a body may demand the entire internal postage applicable in the Member State to which it belongs without deducting the terminal dues corresponding to those items of mail paid by the postal services of other Member States.

In Case C-209/98 *FFAD* (judgment of 23 May 2000), the Court held that Article 90 of the Treaty, read in conjunction with Article 86 of the Treaty, does not preclude the establishment of a local system under which, in order to resolve an environmental problem resulting from the absence of processing capacity for non-hazardous building waste destined for recovery, a limited number of specially selected undertakings may process such waste produced in the area concerned, thus making it possible to ensure a sufficiently large flow of such waste to those undertakings, and which excludes other undertakings from processing that waste, even though they are qualified to do so. However, Article 34 of the Treaty precludes a system for the collection and receipt of non-hazardous building waste destined for recovery, under which a limited number of undertakings are authorised to process the waste produced in a municipality, if that system constitutes, in law or in fact, an obstacle to exports in that it does not allow producers of waste to export it, in particular through intermediaries. Such an obstacle cannot be justified on the basis of Article 36 of the Treaty or in the interests of environmental protection, in particular by application of the principle referred to in Article 130r(2) of the Treaty (now, after amendment, Article 174(2) EC) that damage should as a priority be rectified at source, in the absence of any indication of danger to the health or life of humans, animals or plants or danger to the environment.

In Joined Cases C-180/98 to C-184/98 *Pavlov and Others* (judgment of 12 September 2000), the Court again ruled on whether compulsory affiliation to pension funds in the Netherlands is compatible with the competition rules. In three judgments of 21 September 1999 (in Case C-67/96 *Albany* [1999] ECR I-5751, Joined Cases C-115/97, C-116/97 and C-117/97 *Brentjens'* [1999] ECR I-6025 and Case C-219/97 *Drijvende Bokken* [1999] ECR I-6121), the Court had already held that the competition rules did not preclude the public authorities from deciding to make affiliation to a sectoral pension fund compulsory at the request of organisations representing employers and workers in a given sector or from granting such a fund the exclusive right to manage a supplementary pension scheme in a given sector.

In *Pavlov*, a Netherlands court asked the Court of Justice whether compulsory membership of an occupational pension scheme, this time for the members of a profession — in *Pavlov*, the medical specialists' profession — was compatible with the competition rules. A scheme of that kind originates in an agreement between the members of the profession under which they are to be guaranteed a certain level of pension, management of the scheme is to be entrusted to a fund and the public authorities are to be requested to make membership of the scheme compulsory for all members of the profession. The Court stated that, unlike the agreements concluded in the context of collective bargaining between employers and employees and aimed at improving employment conditions which were at issue in *Albany*, *Brentjens'* and *Drijvende Bokken*, cited above, an agreement between all the members of a profession could not be excluded, by reason of its nature and purpose, from the scope of Article 85(1) of the Treaty. Even though such an agreement is intended to guarantee a certain level of pension to all the members of a profession and thus to improve one aspect of their working conditions, namely their remuneration, it is not concluded in the context of collective bargaining between employers and employees. Furthermore, self-employed medical specialists carry on an economic activity and are thus undertakings within the meaning of the Treaty competition rules. When they decide, through their national association, to contribute collectively to a single occupational pension fund, they act as undertakings within the meaning of those articles and not as final consumers. However, their decision to set up such a fund does not appreciably restrict competition within the common market inasmuch as the cost of the supplementary pension scheme has only a marginal and indirect influence on the final cost of the services offered by the members of the profession. As for the request made to the Netherlands public authorities to make membership compulsory, it is made under a scheme identical to those existing under the national law of a number of countries concerning the exercise of regulatory authority in the social domain. Such schemes are designed to promote

the creation of supplementary pensions provided in connection with employed or self-employed activity and include a number of safeguards. That being so, a decision by the members of a profession to set up an occupational pension fund entrusted with the management of a supplementary pension scheme and to request the public authorities to make membership of that fund compulsory is not contrary to Article 85(1) of the Treaty, and Articles 5 and 85 of the Treaty cannot preclude public authorities from making membership of that fund compulsory. As to the remainder, the Court, referring to its judgments in *Albany*, *Brentjens'* and *Drijvende Bokken*, held that a pension fund which itself determines the amount of contributions and benefits and operates on the basis of the principle of capitalisation, which has been made responsible for managing a supplementary pension scheme set up by a profession's representative body and membership of which has been made compulsory by the public authorities for all members of that profession, is an undertaking within the meaning of the Treaty competition rules and that Articles 86 and 90 of the Treaty do not preclude the public authorities from conferring on a pension fund the exclusive right to manage a supplementary pension scheme for the members of a profession.

17. In the field of *supervision of State aid*, two cases will be noted, the first relating to aid in favour of a cooperative for the export of French books and the second to aid granted to undertakings in the new German *Länder*.

In Case C-332/98 *France* v *Commission* (judgment of 22 June 2000), the Court dismissed an action brought by the French Republic for the partial annulment of a Commission decision concerning State aid in favour of Coopérative d'Exportation du Livre Français. The French Republic argued that, while aid falling within the derogation from the competition rules provided for in Article 90(2) of the Treaty must be notified to the Commission, such aid is not subject to the obligation of temporary suspension laid down in the final sentence of Article 93(3) of the Treaty. The Court rejected that approach, since the purpose served by the provision introduced by Article 93(3) is not that of a mere obligation to notify but an obligation of prior notification which, as such, necessarily implies the suspensory effect required by the final sentence of Article 93(3). That provision does not therefore have the effect of disjoining the obligations laid down therein, that is to say, the obligation to notify any new aid and the obligation to suspend temporarily the implementation of that aid.

In its judgment of 19 September 2000 in Case C-156/98 *Germany* v *Commission*, the Court clarified the scope of the derogation provided for in Article 92(2)(c) of the Treaty (now, after amendment, Article 87(2)(c) EC). Under this provision,

aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany is compatible with the common market, in so far as it is required in order to compensate for the economic disadvantages caused by that division. The Court stated that, since Article 92(2)(c) constitutes a derogation from the general principle that State aid is incompatible with the common market, it must be construed narrowly. Its application to the new *Länder* is conceivable only on the same conditions as those applicable in the old *Länder* during the period preceding reunification. Since the phrase "division of Germany" refers historically to the establishment of the dividing line between the two occupied zones in 1948, the "economic disadvantages caused by that division" can only mean the economic disadvantages caused in certain areas of Germany by the isolation which the establishment of that physical frontier entailed, such as the breaking of communication links or the loss of markets as a result of the breaking off of commercial relations between the two parts of German territory. By contrast, the conception according to which Article 92(2)(c) of the Treaty permits full compensation for the undeniable economic backwardness suffered by the new *Länder*, disregards both the nature of that provision as a derogation and its context and aims. The economic disadvantages suffered by the new *Länder* as a whole have not been directly caused by the geographical division of Germany within the meaning of Article 92(2)(c) of the Treaty. The differences in development between the original and the new *Länder* are explained by causes other than the geographical rift caused by the division of Germany and in particular by the different politico-economic systems set up in each part of Germany.

18. In the past year, as in 1999, the Court delivered numerous judgments concerning *indirect taxation*. Only the cases relating to the charging of value added tax on road and bridge tolls will be mentioned in this report.

In those cases, the Commission brought infringement proceedings against five Member States for failure to charge value added tax on road and bridge tolls. By judgments of 12 September 2000 in Case C-276/97 *Commission* v *France*, Case C-358/97 *Commission* v *Ireland*, Case C-359/97 *Commission* v *United Kingdom*, Case C-408/97 *Commission* v *Netherlands* and Case C-260/98 *Commission* v *Greece*, the Court held that providing access to roads and bridges on payment of a toll constitutes a supply of services for consideration within the meaning of

Directive 77/388/EEC. [15] Use of the road or bridge depends on payment of a toll, the amount of which varies *inter alia* according to the category of vehicle used and the distance covered. There is, therefore, a direct and necessary link between the service provided and the financial consideration received. The Member States contended in defence that the operators of the roads and bridges are bodies governed by public law and are not to be considered to be taxable persons in respect of activities or transactions in which they engage as public authorities. The Court pointed out that, if the exemption from value added tax, laid down by the Sixth Directive, in respect of activities or transactions which bodies governed by public law engage in as public authorities is to apply, two conditions must be fulfilled: the activities must be carried out by a body governed by public law and they must be carried out by that body acting as a public authority. As regards the latter condition, activities pursued as public authorities are those engaged in by bodies governed by public law under the special legal regime applicable to them and do not include activities pursued by them under the same legal conditions as those that apply to private traders. In France, Ireland and the United Kingdom, the activity of providing access to roads and bridges on payment of a toll is, at least in certain cases, carried out not by a body governed by public law but by traders governed by private law. In such cases the exemption pleaded is not applicable. The Court therefore found that those three States had failed to fulfil their obligations. On the other hand, in Greece and the Netherlands the activity of providing access to roads and related infrastructures on payment of a toll is carried out by a body governed by public law and the Commission failed to establish that those bodies operate under the same conditions as private traders. Consequently, the Court dismissed the actions brought against Greece and the Netherlands.

19. So far as concerns *public procurement*, the Court was able, in a number of judgments, to interpret further the Community directives in this field, both in answer to questions referred to it by national courts for preliminary rulings and when deciding actions for annulment brought by the Commission against Member States. Among the latter, two actions brought against France may be noted.

First, in Case C-225/98 *Commission* v *France* (judgment of 26 September 2000), the Commission brought an action before the Court for a declaration that, in the

[15] Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

course of various procedures for the award of public works contracts for the construction and maintenance of school buildings, the French Republic had failed to fulfil its obligations under Article 59 of the Treaty and Directives 71/305/EEC [16] and 93/37/EEC. [17] The Commission complained in particular that France had failed to publish prior information notices and had expressly set forth as an award criterion in a number of contract notices a condition relating to employment, linked to a local project to combat unemployment. Rejecting the first complaint, the Court held that the publication of a prior information notice is compulsory only where the contracting authorities exercise their option to reduce the time-limits for the receipt of tenders. As regards the second complaint, the Court, referring to the judgment in Case 31/87 *Beentjes* [1988] ECR 4635, pointed out that, under Directive 93/37, the criteria on which the contracting authorities are to base the award of contracts are either the lowest price only or, when the award is made to the most economically advantageous tender, various criteria depending on the contract, such as price, period for completion, running costs, profitability, technical merit. None the less, Article 30 of that directive does not preclude all possibility for the contracting authorities to use as a criterion a condition linked to the combatting of unemployment provided that the condition is consistent with all the fundamental principles of Community law, in particular the principle of non-discrimination flowing from the provisions of the Treaty on the right of establishment and the freedom to provide services. In addition, such a criterion must be applied in conformity with all the procedural rules laid down in Directive 93/37, in particular the rules on advertising. It follows that an award criterion linked to the combatting of unemployment must be expressly mentioned in the contract notice so that contractors may become aware of its existence. Since the Commission criticised only the reference to such a criterion as an award criterion in the contract notice, and did not claim that the criterion was inconsistent with the fundamental principles of Community law, in particular the principle of non-discrimination, or that it had not been advertised in the contract notice, the Court also rejected the second complaint.

Second, in Case C-16/98 *Commission* v *France* (judgment of 5 October 2000), the Commission brought an action before the Court for a declaration that, in the course of a procurement procedure initiated by an organisation comprising various

16 Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts (OJ, English Special Edition 1971 (II), p. 682), as amended by Directive 89/440/EEC.

17 Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54).

joint municipal groupings for the award of contracts for electrification and street lighting work, the French Republic had failed to fulfil its obligations under Directive 93/38/EEC. [18] The Commission took the view that the contested contracts were lots of a single "work", which originated with a single contracting entity, and that the rules of the directive should have been applied to all of them, not merely to the six main lots. The Court stated that it was clear from the definition of "work" in Directive 93/38 that the existence of a work had to be assessed in the light of the economic and technical function of the result of the works concerned. So far as concerns artificial splitting of the work into electrification works and street lighting works, the Court found that an electricity supply network and a street lighting network had a different economic and technical function. Accordingly, works on those networks could not be considered to constitute lots of a single work artificially split contrary to Directive 93/38. Also, the definition of the term "work" set out in that directive did not make the existence of a work dependent on matters such as the number of contracting entities or whether the whole of the works could be carried out by a single undertaking. As regards artificial splitting of the electrification work on a geographical basis, the Court found that the networks were interconnectable and, taken as a whole, they fulfilled one economic and technical function, which consisted in the supply and sale of electricity to consumers in the *département* concerned. Moreover, in the case in point, there were important factors which militated in favour of those contracts being aggregated at that level, such as the fact that the invitations for tenders for the contested contracts were made at the same time, the similarities between the contract notices and the fact that the body comprising the joint municipal groupings responsible for electrification within the *département* initiated and coordinated the contracts within a single geographical area. Accordingly, the Court upheld the complaint that the work was artificially split on a geographical basis. The Court also found the failure to fulfil obligations proven in that the value of all but one of the contracts for electrification exceeded the thresholds established by Directive 93/38 for application of the directive and, by artificially splitting the works at issue, the French Republic infringed the provisions of the directive concerning thresholds.

Asked in Case C-324/98 *Telaustria and Telefonadress* (judgment of 7 December 2000) to give a preliminary ruling concerning the interpretation of the same directive, the Court held that public service concession contracts are not included

[18] Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1993 L 199 p. 84).

in the concept of "contracts for pecuniary interest concluded in writing" appearing in Directive 93/38 and therefore do not come within the scope of the directive. Notwithstanding the fact that, as Community law stands at present, public service concession contracts are excluded from its scope, the contracting entities concluding them are, none the less, bound to comply with the fundamental rules of the Treaty, in general, and the principle of non-discrimination on the ground of nationality, in particular.

20. As regards proceedings concerning *intellectual property*, apart from Case C-23/99 *Commission* v *France* which has already been referred to [19] only the judgment of 7 November 2000 in Case C-312/98 *Warsteiner Brauerei* will be mentioned, concerning Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs. [20]

In this judgment, the Court found that Regulation No 2081/92 only concerns geographical indications in respect of which there is a direct link between both a specific quality, reputation or other characteristic of the product and its specific geographical origin. Simple geographical indications of source, in the case of which there is no link between the characteristics of the product and its geographical provenance, do not fall within that definition of geographical indications and are not therefore protected under Regulation No 2081/92. However, such geographical indications may be protected under national legislation which prohibits the potentially misleading use of an indication of source in the case of which there is no link between the characteristics of the product and its geographical provenance.

21. In the field of *social policy*, the Court delivered a number of important judgments in the course of the past year relating to protection of the safety and health of workers, the safeguarding of employees' rights in the event of the transfer of an undertaking and the principle of equal treatment between men and women.

21.1. Protection of the safety and health of workers, specifically doctors in primary health care teams, was the central issue in Case C-303/98 *Simap*

19 See point 9.1.

20 Council Regulation (EEC) No 2081/92 of 14 July 1992 (OJ 1992 L 208, p. 1).

(judgment of 3 October 2000). A union of doctors in the public health service in a Spanish region contended before the national court that doctors in primary care teams at health centres were required to work without the duration of their work being subject to any daily, weekly, monthly or annual limits. In the absence of express national implementing measures, the union sought the application to those doctors of several provisions of Directive 93/104/EC concerning certain aspects of the organisation of working time. [21] The Court of Justice found that the activity of doctors in primary health care teams falls within the scope of Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work (the basic directive) and, in particular, of Directive 93/104. Their activity does not fall within the specific public service activities intended to uphold public order and security, essential for the proper functioning of society, which, because of their particular characteristics, are excluded from the scope of those directives. Time spent on call by doctors in primary health care teams must be regarded in its entirety as working time, and where appropriate as overtime, within the meaning of Directive 93/104 if the doctors are required to be present at the health centre. The characteristic features of working time are present in the case of time spent on call by the doctors where their presence at the health centre is required, that is to say they are working, at the employer's disposal and carrying out their duties: the fact that they are obliged to be present and available at the workplace with a view to providing their professional services means that they are carrying out their duties in that instance. To exclude duty on call from working time where physical presence is required would seriously undermine the objective pursued by the directive, which is to ensure the safety and health of workers by granting them minimum periods of rest and adequate breaks. The situation is different where doctors are on call by being contactable at all times without having to be at the health centre. In that situation they may manage their time with fewer constraints and pursue their own interests; accordingly, only time linked to the actual provision of primary care services must be regarded as working time. Next, the Court found that work performed by doctors in primary health care teams whilst on call constitutes shift work within the meaning of Directive 93/104: they are assigned successively to the same work posts on a rotational basis, which makes it necessary for them to perform work at different hours over a given period of days or weeks. The Court then held that, in the absence of national implementing provisions, Directive 93/104 confers on individuals a right whereby the reference period for the implementation of the maximum duration of their weekly working time must not exceed 12 months.

[21] Council Directive 93/104/EC of 23 November 1993 (OJ 1993 L 307, p. 18).

Finally, the individual consent of the workers concerned is necessary in order for a Member State to be able to exercise its power under Directive 93/104 to derogate from the provisions concerning the maximum weekly working time. Such individual consent cannot be replaced by a collective agreement.

21.2. In *Collino* and *Mayeur* the Court confirmed that Directive 77/187/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses [22] applies in two entirely contrasting situations: first, the transfer of an undertaking managed by a public body to a private-law company and, second, the transfer of an activity carried out by a private-law association to a legal person governed by public law.

Case C-343/98 *Collino and Chiappero* (judgment of 14 September 2000) concerned the transfer for value of an entity operating telecommunications services for public use and managed by a public body within the State administration to a private-law company established by a public body which held its entire capital. That transfer was effected, following decisions of the public authorities, by the grant of an administrative concession. The Court held that Directive 77/187 may apply to such a situation provided that the persons concerned by the transfer were originally protected as employees under national employment law.

In Case C-175/99 *Mayeur* (judgment of 26 September 2000), the Court held that Directive 77/187 applies where a municipality, a legal person governed by public law operating within the framework of specific rules of administrative law, takes over activities relating to publicity and information concerning the services which it offers to the public, where such activities were previously carried out, in the interests of that municipality, by a non-profit-making association which was a legal person governed by private law, provided that the transferred entity retains its identity. The mere fact that the activity engaged in by the old and the new employer is similar does not justify the conclusion that an economic entity has been transferred. An entity cannot be reduced to the activity entrusted to it. Its identity also emerges from other factors, such as its workforce, its managerial staff, the way in which its work is organised, its operating methods or indeed, where appropriate, the operational resources available to it.

22 Council Directive 77/187/EEC of 14 February 1977 (OJ 1977 L 61, p. 26).

21.3. In 2000 the principle of equal treatment between men and women again gave rise to numerous questions referred to the Court for a preliminary ruling. The questions related, in particular, to equal pay, access to employment and positive action by States in favour of women in the public sector.

As regards equal pay, the cases to be noted are *Jämställdhetsombudsmannen*, concerning equal salaries, and *Deutsche Telekom* and *Preston and Fletcher*, concerning the exclusion of part-time workers from occupational pension schemes.

In Case C-236/98 *Jämställdhetsombudsmannen* (judgment of 30 March 2000), the Court replied in the negative to the question whether an inconvenient-hours supplement paid to midwives was to be taken into account in calculating the salary serving as the basis for a pay comparison for the purposes of Article 119 of the Treaty (Articles 117 to 120 of the Treaty have been replaced by Articles 136 EC to 143 EC) and Directive 75/117/EEC, [23] which concerns equal pay. That supplement varied from month to month according to the part of the day during which the hours were worked, a fact which made it difficult to make a comparison between, on the one hand, a midwife's salary and supplement, taken together, and, on the other hand, the basic salary of the comparator group (clinical technicians). The Court stated that if a difference in pay between the two groups compared was found to exist, and if the available statistical data indicated that there was a substantially higher proportion of women than men in the disadvantaged group, Article 119 of the Treaty required the employer to justify the difference by objective factors unrelated to any discrimination on grounds of sex. The Court also held that neither the reduction in working time, by reference to the standard working time for day-work of clinical technicians, awarded in respect of work performed by mid-wives according to a three-shift roster, nor the value of such a reduction, were to be taken into consideration when calculating the salary used as the basis for a comparison of the two groups' pay for the purposes of Article 119 of the Treaty and Directive 75/117. However, such a reduction could constitute an objective reason unrelated to any discrimination on grounds of sex such as to justify a difference in pay. It was for the employer to show that such was in fact the case.

[23] Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (OJ 1975 L 45, p. 19).

In Case C-50/96 *Deutsche Telekom* v *Schröder*, Joined Cases C-234/96 and C-235/96 *Deutsche Telekom* v *Vick and Conze* and Joined Cases C-270/97 and C-271/97 *Deutsche Post* v *Sievers und Schrage* (judgments of 10 February 2000), the Court pointed out that the exclusion of part-time workers from an occupational pension scheme constitutes discrimination prohibited by Article 119 of the Treaty if that measure affects a considerably higher percentage of female workers than male workers and is not justified on objective grounds unrelated to any discrimination based on sex. In the event of such discrimination, the possibility of relying on the direct effect of Article 119 of the Treaty is subject to a limitation in time whereby periods of service of the workers are to be taken into account only from 8 April 1976, the date of the judgment in Case 43/75 *Defrenne* [1976] ECR 455 (*Defrenne II*), for the purposes of their retroactive membership of the scheme and calculation of the benefits to which they are entitled, except in the case of workers or those claiming under them who have before that date initiated legal proceedings or introduced an equivalent claim. The limitation in time of the possibility of relying on the direct effect of Article 119 of the Treaty, resulting from the judgment in *Defrenne II*, does not preclude provisions of a Member State which lay down a principle of equal treatment by virtue of which part-time workers are entitled to retroactive membership of an occupational pension scheme and to receive a pension under that scheme, notwithstanding the risk of distortions of competition between economic operators of the various Member States.

Case C-78/98 *Preston and Fletcher* (judgment of 16 May 2000) likewise arose from claims of part-time workers to retroactive membership of occupational pension schemes from which they had been excluded in a manner contrary to Article 119 of the Treaty. National law required workers, however, to bring their claims within six months of the end of their employment and restricted the period in respect of which they could obtain entitlement to retroactive membership of the pension scheme from which they had been excluded to the two years before the date on which proceedings were instituted. The question was raised before the national court of the compatibility of such procedural rules with Community law. The Court of Justice answered that Community law does not preclude a national procedural rule which requires that a claim for membership of an occupational pension scheme (from which the right to pension benefits flows) must, if it is not to be time-barred, be brought within six months of the end of the employment to which the claim relates. The setting of a limitation period of that kind, inasmuch as it constitutes an application of the fundamental principle of legal certainty, complies with the Community-law principle of effectiveness, under which procedural rules for proceedings designed to ensure the protection of the rights acquired through the direct effect of Community law are not to be framed in such

a way as to render impossible or excessively difficult in practice the exercise of those rights. Such a limitation period must not, however, be less favourable for actions based on Community law than for those based on domestic law. On the other hand, the principle of effectiveness precludes a national procedural rule which restricts the periods of service taken into account when calculating pension rights to service after a date falling no earlier than two years prior to the date of claim. Even though such a rule does not totally deprive those concerned of access to membership, it prevents the entire record of service completed by them before the two years preceding the date on which they commenced their proceedings from being taken into account for the purposes of calculating the benefits which would be payable even after the date of the claim. The Court reiterated that the fact that a worker can claim retroactively to join an occupational pension scheme does not allow him to avoid paying the contributions relating to the period of membership concerned.

As regards access to employment, mention will be made of the cases of *Kreil*, relating to the limitation of access by women to military posts, and *Mahlburg*, which concerned a refusal to appoint a pregnant woman.

In Case C-285/98 *Kreil* (judgment of 11 January 2000), the applicant claimed before the national court that the Bundeswehr had refused to engage her in its maintenance branch. That refusal was founded on the German constitution, which imposes a general exclusion of women from military posts involving the use of arms and allows them access only to the medical and military-music services. Asked whether such an exclusion is compatible with Directive 76/207/EEC concerning access to employment, vocational training and promotion, and working conditions, [24] the Court of Justice held that this directive precludes the application of national provisions such as those of German law. The Court acknowledged that it is for the Member States to take decisions on the organisation of their armed forces. It does not follow, however, that such decisions are bound to fall entirely outside the scope of Community law. Some specific cases are covered by certain provisions of the Treaty, but the latter does not contain a general exception concerning all measures adopted by a Member State to safeguard public security. Any limitation of access by women to military posts must therefore comply with Directive 76/207, which permits the Member States to exclude from its scope occupational activities for which, by reason of

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

their nature or the context in which they are carried out, sex constitutes a determining factor; it must also comply with the principle of proportionality inasmuch as a derogation from an individual right — the equal treatment of men and women — is involved. In view of its scope, the exclusion at issue, which applied to almost all military posts in the Bundeswehr, could not be regarded as a derogating measure justified by the specific nature of the posts in question or by the particular context in which the activities in question were carried out.

In Case C-207/98 *Mahlburg* (judgment of 3 February 2000), the Court ruled that Directive 76/207 precludes a refusal to appoint a pregnant woman to a post for an indefinite period on the ground that a statutory prohibition on employment attaching to the condition of pregnancy prevents her from being employed in that post from the outset and for the duration of her pregnancy. The application of the provisions in the directive concerning the protection of pregnant women cannot result in unfavourable treatment regarding their access to employment.

The cases of *Badeck* and *Abrahamsson* concerned positive action by Member States in favour of women in the public sector.

Relying on Directive 76/207, the Court held in Case C-158/97 *Badeck* (judgment of 28 March 2000) that, in sectors of the public service where women were under-represented, a national rule could give priority, where male and female candidates had equal qualifications, to female candidates where that proved necessary for ensuring compliance with the objectives of a women's advancement plan, if no reasons of greater legal weight were opposed; however, the rule had to guarantee that candidatures were the subject of an objective assessment which took account of the specific personal situations of all candidates. The binding targets of the women's advancement plan for temporary posts in the academic service and for academic assistants, laid down by the national rule, could provide for a minimum percentage of women which was at least equal to the percentage of women among graduates, holders of higher degrees and students in each discipline. In so far as its objective was to eliminate under-representation of women, that rule could, in trained occupations in which women were under-represented and for which the State did not have a monopoly of training, allocate at least half the training places to women, unless despite appropriate measures for drawing the attention of women to the training places available there were not enough applications from women. It could also, where male and female candidates had equal qualifications, guarantee that qualified women who satisfied all the conditions required or laid down were called to interview, in sectors in which they were under-represented. Finally, a national rule relating to the composition of employees' representative bodies and administrative and

supervisory bodies could recommend that the legislative provisions adopted for its implementation took into account the objective that at least half the members of those bodies had to be women.

In *Abrahamsson*, cited above, [25] the Court interpreted for the first time Article 141(4) EC, which allows the Member States to maintain or adopt measures providing for special advantages intended to prevent or compensate for disadvantages in professional careers in order to ensure full equality between men and women in professional life. It held that both Directive 76/207 and Article 141(4) EC preclude national legislation which automatically grants preference to candidates belonging to the under-represented sex, if they are sufficiently qualified, subject only to the proviso that the difference between the merits of the candidates of each sex is not so great as to result in a breach of the requirement of objectivity in making appointments. Such a method is not such as to be permitted by Directive 76/207 since the selection of a candidate from among those who are sufficiently qualified is ultimately based on the mere fact of belonging to the under-represented sex, and this is so even if the merits of the candidate so selected are inferior to those of a candidate of the opposite sex. Nor can national legislation of that kind be justified by Article 141(4) EC given that the selection method in question appears, on any view, to be disproportionate to the aim pursued. Furthermore, the mere fact of restricting the scope of a positive discrimination measure of the kind in point is not capable of changing its absolute and disproportionate nature, so that the foregoing provisions also preclude such national legislation where it applies only to procedures for filling a predetermined number of posts. Finally, Community law does not in any way make application of the principle of equal treatment for men and women concerning access to employment conditional upon the level of the posts to be filled.

22. With regard to *consumer protection*, the Court was required in Joined Cases C-240/98 to C-244/98 *Océano Grupo* (judgment of 27 June 2000) to interpret Directive 93/13/EEC on unfair terms in consumer contracts. [26] The Court found that, where a jurisdiction clause is included, without being individually negotiated, in a contract between a consumer and a seller or supplier within the meaning of Directive 93/13 and it confers exclusive jurisdiction on a court in the territorial jurisdiction of which the seller or supplier has his principal place of business, it must be regarded as unfair within the meaning of the

25 See point 5.4.

26 Council Directive 93/13/EEC of 5 April 1993 (OJ 1993 L 95, p. 29).

directive in so far as it causes, contrary to the requirement of good faith, a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer. The Court ruled that the protection provided for consumers by Directive 93/13 entails the national court being able to determine of its own motion whether a term of a contract before it is unfair when making its preliminary assessment as to whether a claim should be allowed to proceed before the national courts. Also, the national court is obliged, when it applies national law provisions predating or postdating Directive 93/13, to interpret those provisions, so far as possible, in the light of the wording and purpose of the directive. The requirement for an interpretation in conformity with the directive requires the national court, in particular, to favour the interpretation that would allow it to decline of its own motion the jurisdiction conferred on it by virtue of an unfair term.

23. In the past year, cases before the Court regarding *environmental protection* were in plentiful supply. They concerned now traditional areas, such as hazardous waste, the conservation of natural habitats and assessment of the effects of public and private projects on the environment, but also new areas such as the marketing of genetically modified organisms ("GMOs").

That last area was at the heart of Case C-6/99 *Greenpeace France and Others* (judgment of 21 March 2000), in which Greenpeace France and other associations applied to the national court for annulment of a ministerial decree authorising the marketing of seeds of certain varieties of genetically modified maize. Taking the view that the decree could have serious consequences, the national court suspended it and asked the Court of Justice to rule on the margin of discretion available to a Member State under the machinery set up by Directive 90/220/EEC. [27] This directive lays down a mechanism for assessing the risks to human health and the environment posed by the deliberate release or the placing on the market of GMOs; the mechanism involves several stages of examination by the national or Community authorities before consent, valid throughout the Community, may be granted to place a GMO on the market. If the competent national authorities which receive an application from an undertaking to place a GMO on the market do not reject the application, they must forward the dossier to the Commission after issuing a favourable opinion.

[27] Council Directive 90/220/EEC of 23 April 1990 on the deliberate release into the environment of genetically modified organisms (OJ 1990 L 117, p. 15), as amended by Directive 97/35/EC.

The Court stated that the national authorities which so forward a matter to the Commission have, at that stage, every possibility of assessing the risks which the product constitutes for human health or the environment. Once the application has been put before the Commission, Directive 90/220 provides for a period during which the competent national authorities of the other Member States are consulted. The Court found that observance of the precautionary principle is reflected, first, in the undertaking's obligation immediately to notify the competent authority of new information regarding the risks of the product to human health or the environment and that authority's obligation immediately to inform the Commission and the other Member States about this information and, secondly, in the right of any Member State provisionally to restrict or prohibit the use and/or sale on its territory of a product which has received consent where it has justifiable reasons to consider that the product constitutes a risk to human health or the environment. Also, the system of protection put in place by Directive 90/220 necessarily implies that the Member State concerned cannot be obliged to give its consent in writing if in the meantime it has new information which leads it to consider that the product for which notification has been received may constitute a risk to human health and the environment. In such a case, the Member State concerned must immediately inform the Commission and the other Member States about this information in order that a decision may be taken on the matter in accordance with the procedure provided for in Directive 90/220. However, where, as in the case in point, the Member State has forwarded the application, with a favourable opinion, and the Commission has taken a favourable decision, the Member State must issue the "consent in writing", allowing the product to be placed on the market. Finally, where the national court finds that there may have been irregularities in the conduct of the examination of the application to place a product on the market such as to affect the validity of the Commission's favourable decision, that court must refer the matter to the Court of Justice for a preliminary ruling, if necessary ordering the suspension of application of the measures for implementing that decision until the Court of Justice has ruled on the question of validity. The Court of Justice is the only court with power to declare a Community act invalid.

As regards more traditional environmental areas, Case C-318/98 *Fornasar* (judgment of 22 June 2000) on the definition of hazardous waste may be noted. The Court stated that Directive 91/689/EEC on hazardous waste [28] does not prevent the Member States — including, for matters within their jurisdiction, the courts — from classifying as hazardous waste other than that featuring on the list

28 Council Directive 91/689/EEC of 12 December 1991 (OJ 1991 L 377, p. 20).

of hazardous waste laid down by Decision 94/904 establishing a list of hazardous waste pursuant to the directive, [29] and thus from adopting more stringent protective measures in order to prohibit the abandonment, dumping or uncontrolled disposal of such waste. If they do so, it is for the authorities of the Member State concerned which have competence under national law to notify the Commission of such cases in accordance with the directive.

Directive 85/337/EEC [30] was central to Case C-287/98 *Linster* (judgment of 19 September 2000). Under this directive, projects likely to have significant effects on the environment are to be subject to an environmental impact assessment and to procedures for informing the public. The directive does not apply to projects the details of which are adopted by a specific act of national legislation: the legislative process will normally enable the objectives pursued by the directive to be achieved, including the objective of supplying information. In the case in point, the owners of land to be acquired compulsorily, pursuant to an act of national legislation, for construction of a motorway link contested before the national court the legality of the compulsory purchase procedure on the basis that it did not comply with Directive 85/337. The Court of Justice held that the concept of a specific act of national legislation used in the directive must be given an autonomous interpretation because of requirements relating to the uniform application of Community law and the principle of equality. A measure adopted by a parliament after public parliamentary debate constitutes such an act where the legislative process has enabled the objectives pursued by Directive 85/337, including that of supplying information, to be achieved, and the information available to the parliament at the time when the details of the project were adopted was equivalent to that which would have been submitted to the competent authority in an ordinary procedure for granting consent for a project. The national court may review whether the national legislature kept within the limits of the discretion set by Directive 85/337, in particular where prior assessment of the environmental impact of the project has not been carried out, the information to be provided as a minimum by the developer has not been made available to the public and the members of the public concerned have not had an opportunity to express an opinion before the project is initiated, contrary to the requirements of the directive.

[29] Council Decision 94/904/EC of 22 December 1994 establishing a list of hazardous waste pursuant to Article 1(4) of Directive 91/689 (OJ 1994 L 356, p. 14).

[30] Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40).

Finally, with regard to Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, the Court stated in Case C-371/98 *First Corporate Shipping* (judgment of 7 November 2000) that a Member State may not take account of economic, social and cultural requirements or regional and local characteristics when selecting and defining the boundaries of the sites to be proposed to the Commission as eligible for identification as sites of Community importance for the purposes of that directive. In order to produce a draft list of sites of Community importance, capable of leading to the creation of a coherent European ecological net work of special areas of conservation, the Commission must have available an exhaustive list of the sites which, at national level, have an ecological interest which is relevant from the point of view of the directive's objective of conservation of natural habitats and wild fauna and flora. Only in that way is it possible to realise the objective, referred to in the directive, of maintaining or restoring the natural habitat types and the species' habitats concerned at a favourable conservation status in their natural range. That range may lie across one or more frontiers inside the Community and a Member State is not in a position to have precise detailed knowledge of the situation of habitats in the other Member States. That State therefore cannot of its own accord, whether because of economic, social or cultural requirements or because of regional or local characteristics, delete sites which at national level have an ecological interest relevant from the point of view of the objective of conservation without jeopardising the realisation of that objective at Community level.

24. So far as concerns interpretation of the *Brussels Convention* (Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters), the judgment of 28 March 2000 in Case C-7/98 *Krombach* is to be noted, concerning the concept of public policy as referred to in Article 27, point 1, of the Convention. Under that provision, a judgment given in a Contracting State is not to be recognised in another Contracting State if such recognition is contrary to public policy in the State in which recognition is sought. Relying on the nationality of the victim to found its jurisdiction, the court of the first State (the State of origin) convicted Mr Krombach of an intentional offence under the contempt procedure, that is to say without hearing the defence counsel instructed by Mr Krombach. The court of the State in which enforcement was sought of the civil judgment also obtained in that case asked the Court of Justice whether, in such a situation, it could take account of the fact that the court of the State of origin based its jurisdiction on the nationality of the victim of an offence and denied Mr Krombach the right to defend himself without appearing in person. The Court held that the Contracting States in principle remain free, by virtue of the proviso in Article 27, point 1, of the Convention, to determine, according to

their own conceptions, what public policy requires, but that the limits of that concept are a matter for interpretation of the Convention. Consequently, while it is not for the Court to define the content of the public policy of a Contracting State, it is none the less required to review the limits within which the courts of a Contracting State may have recourse to that concept for the purpose of refusing recognition to a judgment emanating from a court in another Contracting State. The court of the State in which enforcement is sought cannot, with respect to a defendant domiciled in that State, take account, for the purposes of the public-policy clause in Article 27, point 1, of the Convention, of the fact, without more, that the court of the State of origin based its jurisdiction on the nationality of the victim of an offence. Recourse to the public-policy clause can be envisaged only where recognition or enforcement of the judgment delivered in another Contracting State would be at variance to an unacceptable degree with the legal order of the State in which enforcement is sought inasmuch as it infringes a fundamental principle. In order for the prohibition of any review of the foreign judgment as to its substance to be observed, the infringement would have to constitute a manifest breach of a rule of law regarded as essential in the legal order of the State in which enforcement is sought or of a right recognised as being fundamental within that legal order. The Court then found that recourse to the public policy clause must be regarded as being possible in exceptional cases where the guarantees laid down in the legislation of the State of origin and in the Convention itself have been insufficient to protect the defendant from a manifest breach of his right to defend himself before the court of origin, as recognised by the European Convention for the Protection of Human Rights and Fundamental Freedoms. It follows from the case-law of the European Court of Human Rights that a national court of a Contracting State is entitled to hold that a refusal to hear the defence of an accused person who is not present at the hearing constitutes a manifest breach of a fundamental right. Accordingly, the court of the State in which enforcement is sought can, with respect to a defendant domiciled in that State and prosecuted for an intentional offence, take account, in relation to the public-policy clause, of the fact that the court of the State of origin refused to allow that person to have his defence presented unless he appeared in person.

25. In the context of the *EEC-Turkey Association Agreement*, the Court interpreted the principle of non-discrimination on grounds of nationality laid down by Decision No 3/80 of the Association Council with regard to social security benefits granted by a Member State under its legislation to Turkish nationals resident in its territory (judgment of 14 March 2000 in Joined Cases C-102/98 and C-211/98 *Kocak and Örs*). The Court held that that principle does not preclude a Member State from applying to Turkish workers legislation which, for

the purposes of awarding a retirement pension and determining the social security number allocated for that purpose, takes as the conclusive date of birth the one given in the first declaration made by the person concerned to a social security authority in that Member State and allows another date of birth to be taken into account only if a document is produced the original of which was issued before that declaration was made. Such national legislation applies irrespective of the nationality of the workers concerned and accords to the documents to be produced in order to set aside the date of birth indicated in the first declaration made to a social security authority the same probative value regardless of their provenance or origin. Unlike the provisions at issue in Case C-336/94 *Dafeki* [1997] ECR I-6761, the legislation at issue here does not place Turkish nationals in a different legal situation from that of nationals of the Member State in which they reside. Nor does it involve any difference of treatment such as to constitute indirect discrimination on grounds of nationality, since it is not permissible, on the basis of the principle of non-discrimination on grounds of nationality, to require a Member State which lays down rules regarding the determination of dates of birth for the purpose of establishing a social security number and of awarding a retirement pension to take account of particular circumstances which derive from the Turkish legislation on civil status and of the detailed arrangements for its application in practice.

26. With regard to the *overseas countries and territories* ("OCTs"), Case C-17/98 *Emesa Sugar* (judgment of 8 February 2000) will be mentioned, in which a number of questions were referred to the Court concerning the validity of Council Decision 97/803/EC of 24 November 1997 amending at mid-term Decision 91/482/EEC on the association of the overseas countries and territories with the European Economic Community. Confirming the validity of the contested decision, the Court rejected *inter alia* the argument that, having regard in particular to the second paragraph of Article 136 of the Treaty (now, after amendment, the second paragraph of Article 187 EC), there is a "locking" principle whereby the advantages accorded to the OCTs as the process of association is taken forward in stages cannot be detracted from. In weighing the various objectives laid down by the Treaty and whilst taking overall account of the experience acquired as a result of its earlier decisions, the Council, which enjoys for that purpose a considerable margin of discretion reflecting the political responsibilities entrusted to it by the provisions of the Treaty relating to agricultural policy and by Article 136 of the Treaty, may be prompted, in case of need, to curtail certain advantages previously granted to the OCTs. Provided it was established that the application of the rule on cumulation of origin in the sugar sector was liable to lead to significant disturbances in the functioning of a

common market organisation, the Council, after weighing the objectives of association of the OCTs against those of the common agricultural policy, was entitled to adopt, in compliance with the principles of Community law circumscribing its margin of discretion, any measure capable of bringing to an end or mitigating such disturbances, including the removal or limitation of advantages previously granted to the OCTs. That was particularly true where the advantages in question were of an extraordinary nature, having regard to the rules on the functioning of the Community market. The rule which allowed certain products from the ACP States, after certain operations had been carried out, to be classified as being of OCT origin fell into that category. As to the remainder, the Court rejected arguments alleging that the contested decision infringed the principle of the protection of legitimate expectations and the principle of proportionality, and Article 133(1) of the Treaty (now, after amendment, Article 184(1) EC) and the second paragraph of Article 136 of the Treaty.

27. This survey of the judgments delivered by the Court of Justice over the past year will end with a mention of Joined Cases C-432/98 P and C-433/98 P *Council* v *Chvatal and Others* (judgment of 5 October 2000), relating to the *regulations applicable to officials and other staff* of the European Communities. On the occasion of the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, the Council adopted a regulation in November 1995 authorising the European Parliament to adopt measures terminating the service of officials who had reached the age of 55. After the appointing authority had refused a request by certain officials of the Court of Justice to be entered on the list of persons having expressed an interest in such a measure for their release on the ground that only the Parliament could adopt such measures, those officials brought actions before the Court of First Instance for a declaration that the regulation in question was unlawful and for annulment of the decisions of the appointing authority. Their actions were successful. On appeal, the Court of Justice set aside the judgments of the Court of First Instance and, finding that the state of the proceedings allowed final judgment to be given, dismissed the actions brought by the officials. The Court of Justice pointed out that termination-of-service measures, such as those which were permitted by the contested regulation, do not have their legal origin in the Staff Regulations and therefore do not constitute a standard event in the careers of the persons concerned. Such measures must, on the contrary, be regarded as a practice to which the Community has resorted in specific cases in the interest of the proper functioning of its institutions. It follows, first, that a request to be entered on a list of persons having expressed their interest in such a measure presupposes the existence of a specific and lawful legislative provision which supplies a legal basis

for it and, second, that even if there is such a provision, the institution concerned is not obliged either to grant the requests submitted to it or to make even partial use of the power conferred on it to decide to terminate the service of some of its officials. The contested regulation authorised only the European Parliament to adopt measures to release staff. It therefore could not provide a legal basis for the requests of officials of other institutions. Thus, the Court of First Instance was wrong to declare admissible an objection of illegality raised against the contested regulation by the Court officials in proceedings for the annulment of a decision by which the appointing authority had rejected their requests to be entered on the list of officials interested in measures for their release.

B — Composition of the Court of Justice

(Order of precedence as at 7 October 2000)

First row, from left to right:
Judge V. Skouris; First Advocate General D. Ruiz-Jarabo Colomer; Judge C. Gulmann; President G.C. Rodríguez Iglesias; Judge A.M. La Pergola; Judge M. Wathelet; Advocate General F.G. Jacobs.

Second row, from left to right:
Judge R. Schintgen; Judge P. Jann; Advocate General A. Tizzano; Judge D.A.O. Edward; Advocate General P. Léger; Judge L. Sevón; Advocate General S. Alber; Advocate General J. Mischo.

Third row, from left to right:
Advocate General C. Stix-Hackl; Judge J.-P. Puissochet, Judge C.W.A. Timmermans; Judge N. Colneric, Judge F. Macken; Judge S. von Bahr; Judge J.N. Cunha Rodrigues; Advocate General L.A. Geelhoed; R. Grass, Registrar.

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.

David Alexander Ogilvy Edward

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

Antonio Mario La Pergola

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

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

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 from 31 January 1986 to 6 October 2000.

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 (Romania) and the University of Saarland; Honorary Bencher, Gray's Inn (London) and King's Inn (Dublin); Honorary Member of the Society of Advanced Legal Studies (London); Honorary Member of the Academia Asturiana de Jurisprudencia; Judge at the Court of Justice since 31 January 1986; President of the Court of Justice since 7 October 1994.

Francis G. Jacobs, QC

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

Paul Joan George Kapteyn

Born 1928; Official at the Ministry of Foreign Affairs; Professor, Law of International Organisations (Utrecht and Leiden); Member of the Raad van State; President of the Chamber for the Administration of Justice at the Raad van State; Member of the Royal Academy of Science; Member of the Administrative Council of the Academy of International Law, The Hague; Judge at the Court of Justice from 29 March 1990 to 6 October 2000.

Georges Cosmas

Born 1932; called to the Athens Bar; Junior Member of the Greek State Council in 1963; Member of the Greek State Council in 1973 and State Counsellor (1982-1994); Member of the Special Court which hears actions against judges; Member of the Superior Special Court which, in accordance with the Greek Constitution, has competence to harmonise the case-law of the three supreme courts of the country and ensures judicial review of the validity of both legislative and European elections; Member of the High Council of the Judiciary; Member of the High Council of the Ministry of Foreign Affairs; President of the Trademark Court of Second Instance; Chairman of the Special Legislative Drafting Committee of the Ministry of Justice; Advocate General at the Court of Justice from 7 October 1994 to 6 October 2000.

Jean-Pierre Puissochet

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

Philippe Léger

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

Günter Hirsch

Born 1943; Director at the Ministry of Justice of Bavaria; President of the Constitutional Court of Saxony and the Court of Appeal of Dresden (1992-1994); Honorary Professor of European Law and Medical Law at the University of Saarbrücken; Judge at the Court of Justice from 7 October 1994 to 14 July 2000.

Peter Jann

Born 1935; Doctor of Law of the University of Vienna (1957); appointed Judge and assigned to the Federal Ministry of Justice (1961); Judge in press matters at the Straf-Bezirksgericht, Vienna (1963-1966); spokesperson of the Federal Ministry of Justice (1966-1970), and subsequently appointed to the international affairs department of that Ministry; Adviser to the Justice Committee and spokesperson at the Parliament (1973-1978); Member of the Constitutional Court (1978); fulltime Judge-Rapporteur at that court until the end of 1994; Judge at the Court of Justice since 19 January 1995.

Hans Ragnemalm

Born 1940; Doctor of Law and Professor of Public Law at Lund University; Professor of Public Law and Dean of the Law Faculty of the University of Stockholm; Parliamentary Ombudsman; Regeringsråd (Judge at the Supreme Administrative Court of Sweden); Judge at the Court of Justice from 19 January 1995 to 6 October 2000.

Leif Sevón

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

Nial Fennelly

Born 1942; M.A. (Econ) from University College, Dublin; Barrister-at-Law; Senior Counsel; Chairman of the Legal Aid Board and of the Bar Council; Advocate General at the Court of Justice from 19 January 1995 to 6 October 2000.

Dámaso Ruiz-Jarabo Colomer

Born 1949; Judge at the Consejo General del Poder Judicial (General Council of the Judiciary); Professor; Head of the Private Office of the President of the Consejo General del Poder Judicial; *ad hoc* Judge to the European Court of Human Rights; Judge at the Tribunal Supremo (Supreme Court) since 1996; Advocate General at the Court of Justice since 19 January 1995.

Melchior Wathelet

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

Romain Schintgen

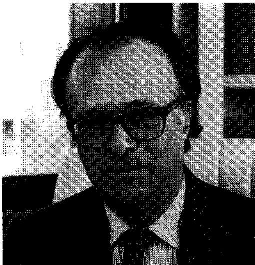
Born 1939; General Administrator at the Ministry of Labour; President of the Economic and Social Council; Director of the Société Nationale de Crédit et d'Investissement and of the Société Européenne des Satellites; Government Representative on the European Social Fund Committee, the Advisory Committee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

Siegbert Alber

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

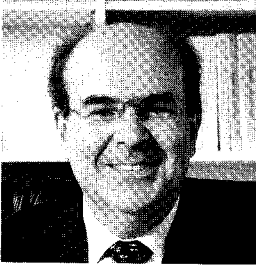
Jean Mischo

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



Antonio Saggio

Born 1934; Judge, Naples District Court; Adviser to the Court of Appeal, Rome, and subsequently the Court of Cassation; attached to the Ufficio Legislativo del Ministero di Grazia e Giustizia; Chairman of the General Committee in the Diplomatic Conference which adopted the Lugano Convention; Legal Secretary to the Italian Advocate General at the Court of Justice; Professor at the Scuola Superiore della Pubblica Amministrazione, Rome; Judge at the Court of First Instance from 25 September 1989 to 17 September 1995; President of the Court of First Instance from 18 September 1995 to 4 March 1998; Advocate General at the Court of Justice from 5 March 1998 to 6 October 2000.



Vassilios Skouris

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

Fidelma O'Kelly Macken

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

Ninon Colneric

Born 1948; studied in Tübingen, Munich and Geneva; following a period of academic research in London, awarded a doctorate in law by the University of Munich; Judge at the Arbeitsgericht Oldenburg; authorised, by the University of Bremen, to teach labour law, sociology of law and social law; Professor *ad interim* at the faculty of law of the universities of Frankfurt and Bremen; President of the Landesarbeitsgericht Schleswig-Holstein (1989); collaboration, as expert, on the European Expertise Service (EU) project for the reform of the labour law of Kirghizstan (1994-1995); Honorary Professor at the University of Bremen in labour law, specifically in European labour law; Judge at the Court of Justice since 15 July 2000.

Stig von Bahr

Born 1939; has worked with the Parliamentary Ombudsman and in the Swedish Cabinet Office and ministries, *inter alia* as assistant under-secretary in the Ministry of Finance; appointed Judge in the Kammarrätten (Administrative Court of Appeal), Gothenburg, in 1981 and Justice of the Regeringsrätten (Supreme Administrative Court) in 1985; has collaborated on a large number of official reports, mainly on the subject of tax legislation and accounting; has been *inter alia* Chairman of the Committee on Inflation-Adjusted Taxation of Income, Chairman of the Accounting Committee and Special Rapporteur for the Committee on Rules for Taxation of Private Company Owners; has also been Chairman of the Accounting Standards Board and Member of the Board of the National Courts Administration and the Board of the Financial Supervisory Authority; has published a large number of articles, mainly on the subject of tax legislation; Judge at the Court of Justice since 7 October 2000.

Antonio Tizzano

Born 1940; various teaching assignments at Italian universities; Legal Counsel to Italy's Permanent Representation to the European Communities (1984-1992); Member of the Bar at the Court of Cassation and other higher courts; Member of the Italian delegation in international negotiations and at intergovernmental conferences including those on the Single European Act and the Maastricht Treaty; various editorial positions; Member of the Independent Group of Experts appointed to examine the finances of the European Commission (1999); Professor of European Law, Director of the Institute of International and European Law (University of Rome); Advocate General at the Court of Justice since 7 October 2000.

José Narcíso da Cunha Rodrigues

Born 1940; various offices within the judiciary (1964-1977); Government assignments to carry out and coordinate studies on reform of the judicial system; Government Agent to the European Commission of Human Rights and the European Court of Human Rights (1980-1984); Expert on the Human Rights Steering Committee of the Council of Europe (1980-1985); Member of the Review Commission of the Criminal Code and the Code of Criminal Procedure; Attorney General (1984-2000); member of the supervisory committee of the European Union anti-fraud office (OLAF) (1999-2000); Judge at the Court of Justice since 7 October 2000.

Christiaan Willem Anton Timmermans

Born 1941; Legal Secretary at the Court of Justice of the European Communities (1966-1969); official of the European Commission (1969-1977); Doctor in Law (University of Leiden); Professor of European Law at the University of Groningen (1977-1989); Deputy Justice at Arnhem Court of Appeal; various editorial positions; Deputy Director-General at the Legal Service of the European Commission (1989-2000); Professor of European Law at the University of Amsterdam; Judge at the Court of Justice since 7 October 2000.

Leendert Adrie Geelhoed

Born 1942; Research Assistant, University of Utrecht (1970-1971); Legal Secretary at the Court of Justice of the European Communities (1971-1974); Senior Adviser, Ministry of Justice (1975-1982); Member of the Advisory Council on Government Policy (1983-1990); various teaching assignments; Secretary-General, Ministry of Economic Affairs (1990-1997); Secretary-General, Ministry of General Affairs (1997-2000); Advocate General at the Court of Justice since 7 October 2000.

Christine Stix-Hackl

Born 1957; Doctor of Laws (University of Vienna), postgraduate studies in European Law at the College of Europe, Bruges; member of the Austrian Diplomatic Service (from 1982); expert on European Union matters in the office of the Legal Adviser to the Ministry of Foreign Affairs (1984-1988); Legal Service of the European Commission (1989); Head of the "Legal Service - EU" in the Ministry of Foreign Affairs (1992-2000, Minister Plenipotentiary); participated in the negotiations on the European Economic Area and on the accession of the Republic of Austria to the European Union; Agent of the Republic of Austria at the Court of Justice of the European Communities; Austrian Consul-General in Zurich (2000); teaching assignments and publications; Advocate General at the Court of Justice since 7 October 2000.

Roger Grass

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

2. Changes in the composition of the Court of Justice in 2000

In 2000 the composition of the Court of Justice changed as follows:

On 14 July, Judge Günter Hirsch left the Court. He was replaced by Mrs Ninon Colneric as Judge.

On 6 October, Judges José Carlos de Carvalho Moitinho de Almeida, Paul Joan George Kapteyn and Hans Ragnemalm and Advocates General Nial Fennelly, Georges Cosmas and Antonio Saggio, having completed their terms of office, left the Court. They were replaced, respectively, by Mr José Narcíso da Cunha Rodrigues, Mr Christiaan Willem Anton Timmermans and Mr Stig von Bahr as Judges and by Mrs Christine-Stix Hackl, Mr Leendert Adrie Geelhoed and Mr Antonio Tizzano as Advocates General.

3. Order of precedence

from 1 January to 14 July 2000

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

R. GRASS, Registrar

from 15 July to 6 October 2000

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

R. GRASS, Registrar

from 7 October to 31 December 2000

G.C. RODRÍGUEZ IGLESIAS, President
C. GULMANN, President of the Third and Sixth Chambers
A.M. LA PERGOLA, President of the Fourth and Fifth Chambers
D. RUIZ-JARABO COLOMER, First Advocate General
M. WATHELET, President of the First Chamber
V. SKOURIS, President of the Second Chamber
F.G. JACOBS, Advocate General
D.A.O. EDWARD, Judge
J.-P. PUISSOCHET, Judge
P. LÉGER, Advocate General
P. JANN, Judge
L. SEVÓN, Judge
R. SCHINTGEN, Judge
S. ALBER, Advocate General
J. MISCHO, Advocate General
F. MACKEN, Judge
N. COLNERIC, Judge
S. von BAHR, Judge
A. TIZZANO, Advocate General
J.N. CUNHA RODRIGUES, Judge
C.W.A. TIMMERMANS, Judge
L.A. GEELHOED, Advocate General
C. STIX-HACKL, Advocate General

R. GRASS, Registrar

4. Former Members of the Court of Justice

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

Sir Gordon SLYNN, Advocate General (1981-1988), then Judge (1988-1992)
ROZES Simone, Advocate General (1981-1984)
VERLOREN van THEMAAT Pieter, Advocate General (1981-1986)
GRÉVISSE Fernand, Judge (1981-1982 and 1988-1994)
BAHLMANN Kai, Judge (1982-1988)
MANCINI G. Federico, Advocate General (1982-1988), then Judge (1988-1999)
GALMOT Yves, Judge (1982-1988)
KAKOURIS Constantinos, Judge (1983-1997)
LENZ Carl Otto, Advocate General (1984-1997)
DARMON Marco, Advocate General (1984-1994)
JOLIET René, Judge (1984-1995)
O'HIGGINS Thomas Francis, Judge (1985-1991)
SCHOCKWEILER Fernand, Judge (1985-1996)
Da CRUZ VILAÇA José Luis, Advocate General (1986-1988)
DIEZ DE VELASCO Manuel, Judge (1988-1994)
ZULEEG Manfred, Judge (1988-1994)
VAN GERVEN Walter, Advocate General (1988-1994)
TESAURO Giuseppe, Advocate General (1988-1998)
ELMER Michael Bendik, Advocate General (1994-1997)
IOANNOU Krateros, Judge (1997-1999)
De CARVALHO MOITINHO de ALMEIDA José Carlos, Judge (1986-2000)
KAPTEYN Paul Joan George, Judge (1990-2000)
COSMAS Georges, Advocate General (1994-2000)
HIRSCH Günter, Judge (1994-2000)
RAGNEMALM Hans, Judge (1995-2000)
FENNELLY Nial, Advocate General (1995-2000)
SAGGIO Antonio, Advocate General (1998-2000)

- Presidents

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

- Registrars

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

Chapter II

The Court of First Instance of the European Communities

A — Proceedings of the Court of First Instance in 2000

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

I. Activity of the Court of First Instance

1. The number of cases brought before the Court of First Instance in 2000, namely 387, [1] exceeds the total of 356 cases brought in 1999. The figure for the past judicial year includes a set of 59 actions brought by Italian undertakings for the annulment of a Commission decision ordering the recovery of State aid paid to them and 34 actions brought against decisions of the Boards of Appeal of the Office for Harmonisation in the Internal Market.

The total number of cases determined, excluding special proceedings, was 327 (or 241 after the joinder of cases). This figure includes the 41 "Cement" cases, the largest competition law matter ever brought before the Court of First Instance.

The number of judgments delivered by Chambers of five Judges (which have jurisdiction to decide actions concerning State aid rules and trade protection measures) was 24 (compared with 39 in 1999), while 82 judgments (74 in 1999) were delivered by Chambers of three Judges. No case was referred to the Court sitting in plenary session, nor was an Advocate General designated in any case.

The number of applications for interim relief lodged in the course of 2000 provides confirmation of the trend noted in 1999 (43 applications in 2000, compared with 38 in 1999, 26 in 1998 and 19 in 1997); 45 sets of proceedings for interim relief were disposed of in the course of the year.

The total number of cases pending at the end of the year, excluding special proceedings, came to 784 (compared with 724 in 1999).

Pursuant to the provisions of the Rules of Procedure enabling the Court to give decisions when constituted by a single Judge, 15 cases were allocated to a single Judge in the course of the year. Eleven judgments and four orders were pronounced by the Court sitting as a single Judge.

1 This figure does not include 11 special proceedings relating to matters such as legal aid and the taxation of costs.

2. On 16 November 2000 the Council approved amendments to the Rules of Procedure of the Court of First Instance which had been submitted to it on 21 January 2000 (OJ 2000 L 322, p. 4). These amendments, formally adopted by the Court on 6 December 2000, will enter into force at the beginning of 2001.

The new provisions will henceforth allow the Court to decide certain cases under a simplified procedure or, having regard to the particular urgency and the circumstances, under an expedited procedure. The time-limit for the intervention of third parties and the detailed rules governing their intervention have undergone consequential amendment.

The new provisions also regulate the transmission of documents by fax or other technical means of communication, provide for the possibility for the Court, in exceptional cases, to exclude the communication to the parties of documents the production of which must be ordered, and create a legal basis for the issue of practice directions to parties.

3. The work of the conference of the representatives of the Governments of the Member States, which began in February 2000, was completed in Nice on 11 December 2000. The outcome of that conference, so far as concerns the Court of Justice as an institution, is commented on by the President of the Court of Justice in the foreword to this report.

II. Developments in the case-law

The principal advances in the case-law in 2000 are set out below, the cases grouped into proceedings concerning the legality of measures (A), actions for damages (B) and applications for interim relief (C).

A. Proceedings concerning the legality of measures

A.1. Admissibility of actions for annulment

In the course of the past year, the Court of First Instance dismissed as inadmissible for lack of standing to bring proceedings a number of actions for annulment either of decisions which were not addressed to the applicants or of measures of a legislative nature. The actions were dismissed by way of judgment in seven cases (judgments of 22 February 2000 in Case T-138/98 *ACAV and Others* v *Council*, of 20 June 2000 in Case T-597/97 *Euromin* v *Council*, of 27

June 2000 in Joined Cases T-172/98 and T-175/98 to T-177/98 *Salamander and Others* v *Parliament and Council* (under appeal, Cases C-281/00 P and C-313/00 P) and of 13 December 2000 in Case T-69/99 *Danish Satellite TV* v *Commission*) and by way of order in the remainder.

By a number of decisions, the Court declared inadmissible actions for the annulment of regulations in the fields of agricultural and fisheries policy (in particular, *ACAV and Others* v *Council*, cited above, and order of 11 July 2000 in Case T-268/99 *FNAB and Others* v *Council* (under appeal, Case C-345/00 P)), the common commercial policy (*Euromin* v *Council*, cited above) and competition policy (orders of 12 July 2000 in Case T-45/00 *Conseil National des Professions de l'Automobile and Others* v *Commission* (under appeal, Case C-341/00 P) and of 19 October 2000 in Case T-58/00 *Bond van de Fegarbel-Beroepsverenigingen and Others* v *Commission*). The Court also dismissed as inadmissible actions for the annulment of a directive (*Salamander and Others* v *Parliament and Council*, cited above).

The Court also reiterated that, in the absence of express provisions of Community law, the Community administration and judicature cannot be placed under a general obligation to inform individuals of the remedies available or of the conditions under which they may exercise them (judgment of 24 February 2000 in Case T-145/98 *ADT Projekt* v *Commission*).

The developments in the case-law in 2000 concern the concept of a reviewable act, the point from which time starts to run for bringing an action, possession of a legal interest in bringing proceedings and standing to bring proceedings.

— Concept of a reviewable act

It is well-established case-law that any measure which produces binding legal effects such as to affect the interests of an applicant by bringing about a distinct change in his legal position is an act or a decision which may be the subject of an action for annulment under Article 173 of the EC Treaty (now, after amendment, Article 230 EC) (judgments of 17 February 2000 in Case T-241/97 *Stork Amsterdam* v *Commission*, of 10 May 2000 in Case T-46/97 *SIC* v *Commission*, of 8 June 2000 in Joined Cases T-79/96, T-260/97 and T-117/98 *Camar and Tico* v *Commission and Council* (under appeal, Case C-312/00 P) and of 29 November 2000 in Case T-213/97 *Eurocoton and Others* v *Council*). Consequently, where a measure against which an action for annulment has been brought comprises essentially distinct parts, only those parts of that measure

which produce such effects can be challenged (judgment of 27 September 2000 in Case T-184/97 *BP Chemicals* v *Commission* (under appeal, Case C-448/00 P)).

In order to determine whether a measure produces binding legal effects, it is necessary to look at its substance. That aspect was fully enlarged upon in the judgment of 22 March 2000 in Joined Cases T-125/97 and T-127/97 *Coca-Cola and Coca-Cola Enterprises* v *Commission*. In those cases, the applicants sought the annulment of part of the statement of reasons for Commission Decision 97/540/EC of 22 January 1997 declaring a concentration compatible with the common market and with the functioning of the European Economic Area Agreement (OJ 1997 L 218, p. 15). The Commission raised an objection of inadmissibility in both cases, which the Court upheld.

The Court found first of all that the mere fact that the contested decision declared the notified concentration compatible with the common market and thus, in principle, did not have an adverse effect on the applicants which had notified it to the Commission did not dispense the Court from examining whether the contested findings contained in that decision had binding legal effects such as to affect the applicants' interests.

The Court then considered, first, whether the finding of a dominant position produced binding legal effects. It held that the mere finding of a dominant position in the contested decision, even if likely in practice to influence the policy and future commercial strategy of the undertaking concerned, had no binding legal effects, so that the applicants' challenge to its merits was not admissible. In reaching that conclusion, the Court stated that such a finding is the outcome of an analysis of the structure of the market and of competition prevailing at the time the Commission adopts each decision. The conduct which the undertaking held to be in a dominant position subsequently comes to adopt in order to prevent a possible infringement of Article 86 of the EC Treaty (now Article 82 EC) is thus shaped by the parameters which reflect the conditions of competition on the market at a given time. Moreover, in the course of any decision applying Article 86 of the Treaty, the Commission must define the relevant market again and make a fresh analysis of the conditions of competition which will not necessarily be based on the same considerations as those underlying the previous finding of a dominant position. The Court also pointed out that the fact that, in the event of such a decision, the Commission may be influenced by that finding does not mean that, for that reason alone, the finding has binding legal effects. The undertaking concerned is not deprived of its right to bring an action for annulment before the Court of First Instance to challenge any Commission decision finding conduct to be an abuse.

Nor does the possibility that a national court applying Article 86 of the Treaty directly in the light of the decision-making practice of the Commission might reach the same finding that the undertaking concerned holds a dominant position mean that the contested finding has binding legal effects: that court, having to assess action taken after the contested decision in the context of a dispute brought before it, is not prevented from concluding that that undertaking is no longer in a dominant position.

The Court considered, second, whether a commitment to refrain from certain commercial practices which is entered into by an undertaking and contained in the decision in question can be the subject of an action for annulment. The Court held that it can be where it is clear from an analysis of its substance that it seeks to produce binding legal effects. In the case in point, the Court found that the declaration in the decision that the notified concentration was compatible with the common market was not affected by the commitment in the sense that, in the event of breach of the terms of the commitment, the Commission could not revoke its decision. The Court accordingly concluded that the commitment did not produce binding legal effects and therefore was not a measure open to challenge for the purposes of Article 173 of the Treaty.

In *Eurocoton and Others* v *Council*, cited above, an application for annulment of a Council "decision" not to adopt a definitive anti-dumping duty on imports of certain products was declared inadmissible. The Court found first of all that the applicants could not invoke a right to the adoption by the Council of a proposal for a regulation imposing definitive anti-dumping duties which had been submitted to it by the Commission. The Court then stated that the vote taken in the Council did not result in a simple majority in favour of that proposal for a regulation, so that the Council did not adopt any measure.

Salamander and Others v *Parliament and Council*, cited above, concerned Directive 98/43/EC on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products, [2] which, subject to derogations, prohibited all forms of advertising of tobacco products in the Community. That directive was to be transposed into national law no later than 30 July 2001. [3] Several

[2] Directive 98/43/EC of the European Parliament and of the Council of 6 July 1998 (OJ 1998 L 213, p. 9).

[3] The Court of Justice annulled the directive by judgment of 5 October 2000 in Case C-376/98 *Germany* v *Parliament and Council*.

undertakings marketing products other than tobacco under the brand names of tobacco products or operating in the tobacco-product advertising market sought the annulment of the directive. While the actions were dismissed as inadmissible on the ground that the applicants lacked standing to bring proceedings, the Court did not rule out the possibility that the directive, a legislative measure, could in certain circumstances be of direct and individual concern to certain businesses. However, consideration of this was not automatic, since the fourth paragraph of Article 173 of the Treaty makes no provision, for the benefit of individuals, for a direct action before the Community judicature challenging a directive.

— The point from which time starts to run for bringing an action

With regard to decisions adopted following the review procedure provided for by Article 93(2) of the EC Treaty (now Article 88(2) EC), the Court confirmed that, of the criteria referred to in the fifth paragraph of Article 173 of the EC Treaty, that of publication in the *Official Journal of the European Communities* must be applied when determining the point from which time starts to run for the bringing of an action for annulment by any person other than the Member State to which the decision is notified, even where that person had knowledge of the decision before its publication (judgment of 12 December 2000 in Case T-296/97 *Alitalia* v *Commission*).

— Legal interest in bringing proceedings

While a legal interest in bringing proceedings is not expressly required by Article 173 of the Treaty, it is none the less a condition which must be satisfied if an action for annulment brought by a natural or legal person is to be admissible (judgments of 27 January 2000 in Case T-256/97 *BEUC* v *Commission*, of 17 February 2000 in Case T-183/97 *Micheli and Others* v *Commission* and of 13 June 2000 in Joined Cases T-204/97 and T-270/97 *EPAC* v *Commission*; order of 10 February 2000 in Case T-5/99 *Andriotis* v *Commission and Cedefop*). The legal interest in bringing proceedings must be assessed as at the day on which the action is brought (judgment of 8 November 2000 in Case T-509/93 *Glencore Grain* v *Commission*) and must be personal to the natural or legal person who has brought the action (*BEUC* v *Commission*, cited above).

In its judgment of 6 July 2000 in Case T-139/99 *AICS* v *Parliament* (under appeal, Case C-330/00 P), the Court held, in the context of a procedure for the award of a public service contract, that the contracting institution could not maintain that a tenderer whose tender had not been accepted had no interest in bringing an action on the ground that it submitted a tender which could in no

event be accepted. Inasmuch as annulment of the decision not to accept its tender, on the ground that the method of the first successful tenderer for performance of the contract at issue was not permitted under the legislation of the Member State concerned, would entail reopening the tender procedure under different conditions, the applicant did indeed have a legal interest in bringing proceedings in order to be able to submit a fresh tender without being faced by competition from the first successful tenderer.

Also, in its judgment of 10 February 2000 in Joined Cases T-32/98 and T-41/98 *Netherlands Antilles* v *Commission* (under appeal, Case C-142/00 P), the Court confirmed that an infra-State entity cannot be regarded as having no interest in bringing proceedings for annulment of regulations merely because the Member State has an independent right of action under the second paragraph of Article 173 of the Treaty.

The applicant was found to have no interest in bringing proceedings in Case T-49/97 *TAT European Airlines* v *Commission* (order of 27 January 2000). The Court stated that, where a Commission decision authorising State aid is annulled in its entirety, that annulment has the effect of removing the legal basis of subsequent decisions relating to payment of the different tranches of aid. Accordingly, the decision adopted by the Commission after the annulling judgment, reaffirming that the aid was compatible with the common market and authorising afresh the payment of tranches of aid, had to be regarded as an independent decision replacing the previous decisions of authorisation, and not as a measure purely confirming them. The adoption of the new decision, which created, and therefore replaced, rights as regards the authorisations to pay the tranches of aid, resulted in the loss of all legitimate interest in continuing an action for the annulment of one of the previous decisions authorising payment of a tranche of the aid.

— Standing to bring proceedings

The fourth paragraph of Article 230 EC provides that "any natural or legal person may ... institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former".

The condition that a person must be directly concerned by the contested Community measure means that the measure must directly affect his legal situation and leave no discretion to the addressees of that measure who are entrusted with the task of implementing it, such implementation being purely

automatic and resulting from the Community rules alone without the application of other intermediate rules.

In *Salamander and Others* v *Parliament and Council*, cited above, the Court found that the legal situation of businesses was not directly affected. It held that Directive 98/43, whose legality the applicants contested, could not of itself impose obligations on an individual and could therefore not be relied on as such against an individual. Accordingly, a directive which, as in the case in point, required the Member States to impose obligations on businesses was not of itself, before the adoption of the national transposition measures and independently of them, such as to affect directly the legal situation of those businesses. The Court also held that the directive left the Member States a power of assessment, such that the applicants could not be directly concerned by it.

On the other hand, in *ACAV and Others* v *Council*, cited above, it was on the ground of lack of individual concern that the Court dismissed as inadmissible an action brought by albacore tuna fishermen established on Ile-d'Yeu (France) for the annulment of Regulation (EC) No 1239/98, [4] inasmuch as it provides that, from 1 January 2002, no vessel may keep on board, or use for fishing, drift-nets intended for the capture of certain species, including albacore.

First, the Court found that the contested regulation had general application since it applied without distinction to any vessel which was flying the flag of a Member State and was using drift-nets in the fishing areas specified, or was likely to do so, and not only to operators who, prior to its adoption, may have obtained authorisations to engage in those activities from the Member State whose flag they flew. The Court then considered whether it could be concluded from certain circumstances that the regulation, despite its general scope, was of individual concern to the applicants. It found that the regulation was of concern to them only in their objective capacity as albacore fishermen using a certain fishing technique in a specific area, in the same way as it was of concern to any other operator in the same situation, and that there was no concrete indication in the regulation that the measures in question were adopted specifically taking account of their situation. In response to arguments going to the serious economic impact which the regulation had on the applicants' business, the Court pointed out that the fact that a legislative measure could have specific effects which differed

4 Council Regulation (EC) No 1239/98 of 8 June 1998 amending Regulation (EC) No 894/97 laying down certain technical measures for the conservation of fishery resources (OJ 1998 L 171, p. 1).

according to the various persons to whom it applied was not such as to differentiate them in relation to all the other operators concerned where that measure was applied on the basis of an objectively determined situation.

However, several actions for the annulment of measures of general application were declared admissible. In *Netherlands Antilles* v *Commission*, cited above, the Court held that an autonomous authority of a Member State endowed with legal personality under national law and forming part of the overseas countries and territories (OCTs), such as the Government of the Netherlands Antilles, was entitled to challenge Regulation (EC) No 2352/97 introducing specific measures in respect of imports of rice originating in the OCTs [5] and Regulation (EC) No 2494/97 [6] which was adopted within the framework of those measures. First, although the contested regulations were, by their nature, of general application and did not constitute decisions within the meaning of Article 189 of the EC Treaty (now Article 249 EC), the applicant was individually concerned by them inasmuch as the Commission, when envisaging their adoption, was obliged to take account of the applicant's particular situation, by virtue of Article 109(2) of Decision 91/482/EEC. [7] Second, the applicant was directly concerned by the contested regulations. The Court stated with regard to Regulation No 2352/97 that it contained comprehensive rules leaving no latitude to the authorities of the Member States, since it regulated in a binding manner the machinery for the submission and issue of licences for the import of rice from the OCTs and authorised the Commission to suspend their issue if a quota determined by it was exceeded or there were serious disturbances of the market.

In one of the cases decided by the judgment in *Camar and Tico* v *Commission and Council*, cited above, the applicants sought the annulment of a Commission decision rejecting a request for adjustment of a tariff quota. A negative decision being at issue, the Court recalled that a refusal constitutes an act in respect of which an action for annulment may be brought provided that the act which the

5 Commission Regulation (EC) No 2352/97 of 27 November 1997 introducing specific measures in respect of imports of rice originating in the overseas countries and territories (OJ 1997 L 326, p. 21).

6 Commission Regulation (EC) No 2494/97 of 12 December 1997 on the issuing of import licences for rice falling within CN code 1006 and originating in the overseas countries and territories under the specific measures introduced by Regulation (EC) No 2352/97 (OJ 1997 L 343, p. 17).

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

Community institution refuses to adopt could itself have been contested under Article 173 of the Treaty. In the case in point, since the negative decision by the Commission related to the adoption of a regulation, the Court considered whether the applicants would have been directly and individually concerned by the regulation. In declaring the action admissible, the Court stated that the applicants, as the main importers of the product concerned by the tariff quota, were affected by the Commission's refusal by reason of circumstances in which they were differentiated from all other operators trading on the same market.

In the field of State aid, the Court considered of its own motion the admissibility of an application for annulment of a decision declaring State aid illegal and incompatible with the common market and ordering its recovery from the recipients (judgment of 29 September 2000 in Case T-55/99 *CETM* v *Commission*). The Court held that, since the Spanish Confederation for the Transport of Goods (CETM) protected the interests of those of its members which had received the aid in question and were required to make repayment pursuant to the contested decision, it was entitled to apply for annulment of that decision only in so far as it was directed at undertakings which were members of the CETM and whose main business was the transport of goods by road.

In the field of anti-dumping, the Court found it necessary to consider pleas of inadmissibility on the ground of lack of standing in several cases seeking the annulment of regulations. They were, depending on the circumstances, rejected (judgments of 29 June 2000 in Case T-7/99 *Medici Grimm* v *Council* and of 26 September 2000 in Case T-80/97 *Starway* v *Council*) or upheld (judgment of 26 September 2000 in Joined Cases T-74/97 and T-75/97 *Büchel & Co. Fahrzeugteilefabrik* v *Council and Commission*).

A.2. Review of legality

1. Competition rules applicable to undertakings

The *case-law on competition rules applicable to undertakings* was developed exclusively by judgments concerning the rules of the EC Treaty. The judgment

of 15 March 2000 in the "Cement" cases ("the *Cement* judgment") [8] by itself disposed of 41 cases. The contribution made by the *Cement* judgment is multifaceted and only a small part of it can be recorded in this report.

The developments in the case-law in the past year cover a wide variety of issues: the scope of the Community competition rules; agreements and concerted practices prohibited by Article 85 of the EC Treaty (now Article 81 EC); abuses of dominant position prohibited by Article 86 of the Treaty; observance of the rights of the defence; examination of complaints relating to Articles 85 and 86; and determining the applicable penalties.

1.1. Scope of the Community competition rules

(a) Concept of an undertaking or association of undertakings

For the purposes of Community competition law, the concept of an undertaking, as defined by the Court of Justice in Case C-41/90 *Höfner and Elser* [1991] ECR I-1979, covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed. In addition, it is well established that any activity consisting in offering goods and services on a given market is an economic activity.

Relying on that settled-case law, the Court of First Instance found, in its judgment of 30 March 2000 in Case T-513/93 *CNSD* v *Commission*, that the activity of customs agents was an economic activity and that customs agents had to be regarded as undertakings within the meaning of Article 85 of the Treaty. Therefore, the professional body bringing together representatives of that profession (the CNSD) had to be regarded as an association of undertakings within the meaning of Article 85. The public-law status of the CNSD could not preclude the application of that article.

[8] Judgment of 15 March 2000 in Joined Cases T-25/95, T-26/95, T-30/95 to T-32/95, T-34/95 to T-39/95, T-42/95 to T-46/95, T-48/95, T-50/95 to T-65/95, T-68/95 to T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95. The names of the parties are set out in a table at the end of this section of the report.

The appeals to the Court of Justice against that judgment have been registered as Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P.

The Court also found that, having regard to the national legislation, the members of the CNSD could not be characterised as independent experts and that they were not required to set tariffs taking into account the general interest and the interests of undertakings in other sectors or users of the services in question, in addition to the interests of the undertakings or associations of undertakings in the sector which appointed them. Consequently, the decisions by which that body established tariffs for professional services had to be regarded not as State decisions by means of which it performed public functions but as decisions of an association of undertakings capable of falling within the scope of Article 85(1) of the Treaty.

The *Cement* judgment upheld the approach taken by the Commission in the contested decision that it was not necessary that trade associations had a commercial or economic activity of their own in order for Article 85(1) of the Treaty to be applicable to them. Article 85(1) applies to associations in so far as their activities or those of the undertakings belonging to them are calculated to produce the results which it aims to suppress.

Finally, in the judgment of 12 December 2000 in Case T-128/98 *Aéroports de Paris* v *Commission*, the Court pointed out that the provisions of the EC Treaty concerning competition were applicable to the activities of an entity which could be severed from the activities in which it engaged as a public authority. Accordingly, the fact that Aéroports de Paris was a public corporation placed under the authority of the minister responsible for civil aviation and that it managed facilities in public ownership did not in itself mean that it could not be regarded as an undertaking. After drawing a distinction between, on the one hand, purely administrative activities and, on the other, the management and operation of the Paris airports, activities which were remunerated by commercial fees that varied according to turnover, the Court held that the latter were services amounting to a business activity. The activity as manager of the airport infrastructures, which enabled Aéroports de Paris to determine the procedures and conditions under which suppliers of groundhandling services carried out their activities and to levy commercial fees in return, could not be classified as a supervisory activity and had to be considered to be an activity of an economic nature.

(b) State measures and conduct of undertakings

In 1993 the CNSD brought an action before the Court of First Instance for annulment of a Commission decision finding that the tariff for services provided by customs agents which had been adopted by the CNSD constituted an

infringement of Article 85(1) of the Treaty. Before the Court gave judgment, the Commission brought an action before the Court of Justice under Article 169 of the EC Treaty (now Article 226 EC) for a declaration that the Italian Republic had failed to fulfil its obligations under Article 5 of the EC Treaty (now Article 10 EC) and Article 85 of the EC Treaty. The Court of First Instance thus stayed the proceedings before it pending the judgment of the Court of Justice, which was delivered on 18 June 1998. In its judgment (Case C-35/96 *Commission* v *Italy* [1998] ECR I-3851), the Court of Justice held that, "by adopting and maintaining in force a law which, in granting the relative decision-making power, requires the [CNSD] to adopt a decision by an association of undertakings contrary to Article 85 of the EC Treaty, consisting of setting a compulsory tariff for all customs agents, the Italian Republic has failed to fulfil its obligations under Articles 5 and 85 of the Treaty". The judgment of 30 March 2000 in *CNSD* v *Commission*, cited above, brought the proceedings before the Court of First Instance to a close.

The fundamental issue, which had not been analysed in detail by the Court of Justice in its judgment, was whether Article 85(1) of the Treaty was incorrectly applied in the Commission decision, in that, in the absence of autonomous conduct on the part of the CNSD and its members, adoption of the tariff at issue did not constitute a decision by an association of undertakings within the meaning of Article 85. Recalling first of all that Article 85 may apply if it is found that national legislation does not preclude undertakings from engaging in autonomous conduct which prevents, restricts or distorts competition, the Court found that national legislation requiring the CNSD to adopt a uniform and mandatory tariff imposed major limitations on competition and made it difficult in practice for there to be real competition in terms of prices between customs agents. However, it did not as such preclude the continued existence of a certain amount of competition capable of being prevented, restricted or distorted by the autonomous activity of customs agents, inasmuch as it did not lay down specific price levels or ceilings that were necessarily to be taken into account in establishing the tariff and did not define the criteria on the basis of which the CNSD was to draw up that tariff. Since such a body had room for manoeuvre in performing the obligations imposed on it by the national legislation, within which it could and ought to have acted in such a way as not to restrict the existing level of competition, the restrictive effects on competition of a tariff set by it could arise from its conduct.

(c) Sectoral arrangements

In *Aéroports de Paris* v *Commission*, cited above, the Court considered whether the Commission had been entitled to apply Regulation No 17 [9] to the activities of Aéroports de Paris. The applicant contended that the Commission should have applied Regulation (EEC) No 3975/87 [10] which, with two other regulations, replaced Regulation No 141. [11] According to the Court, the intention expressed by the legislature in Regulation No 141 to exempt from the application of Regulation No 17 only activities directly relating to the provision of transport services in the strict sense was continued in Regulation No 3975/87, so that that regulation, which is specific in nature, applies only to activities directly relating to the supply of air transport services. Since the applicant was not an "undertaking in the air transport sector" and did not provide air transport services, the Commission was entitled to apply Regulation No 17.

1.2. Agreements and concerted practices prohibited by Article 85(1) of the EC Treaty

— The *Cement* judgment

On 30 November 1994 the Commission adopted a decision, addressed to 42 undertakings and associations of undertakings, in which it found that there had been a series of agreements and concerted practices aimed at sharing the European markets in white cement and in grey cement. According to the Commission, those agreements and practices constituted a single infringement in which the 42 addressees of the decision had participated and whose starting point was January 1983: then, the representatives of the European cement producers, members of Cembureau (the professional association of European cement manufacturers), met and entered into an agreement which was designed to ensure non-transhipment to home markets and prohibited any export of cement within Europe likely to destabilise the neighbouring markets. It was found in Article 1 of the contested decision that that agreement, called "the Cembureau agreement", existed and that

9 Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition 1959-62, p. 87).

10 Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector (OJ 1987 L 374, p. 1).

11 Regulation No 141 of the Council exempting transport from the application of Council Regulation No 17 (OJ, English Special Edition 1959-62, p. 241).

all the undertakings and associations of undertakings to which the decision was addressed participated in it, in breach of the prohibition laid down in Article 85(1) of the Treaty. The Cembureau agreement was described in the contested decision as a single and continuous agreement, in that it was implemented in the framework of bilateral or multilateral agreements and concerted practices. It was found in Articles 2 to 6 of the contested decision that those agreements and concerted practices existed and that the various undertakings and associations of undertakings participated in them. [12] However, the date on which the infringement ceased was uncertain. Fines amounting overall to approximately EUR 250 000 000 were imposed on the addressees of the decision.

Before the Court, all the applicants denied that they had participated in the agreement referred to in Article 1 of the contested decision. The Court found, after consideration of the documents mentioned in the decision, that the Commission had proved the existence of the Cembureau agreement and that there had in fact been an agreement between all the applicant undertakings on non-transhipment to home markets.

In that context, the Court provided some clarification on the standard of proof required in order to establish that an undertaking has participated in an agreement or concerted practice. It indicated that where an undertaking or an association of undertakings has, even without playing an active role, participated in one or more meetings at which a concurrence of wills emerged or was confirmed on the principle of anti-competitive conduct and it has, by virtue of its presence, subscribed to or at least given the impression to the other participants that it subscribed to the subject-matter of the anti-competitive agreement which was concluded and subsequently confirmed at those meetings, it must, unless it proves

[12] The contested decision found that there were agreements and concerted practices between Cembureau and its members concerning the exchange of information designed to facilitate the implementation of the Cembureau agreement. It also found that there were specific cross-border agreements, relating to Franco-Italian relations, Hispano-Portuguese relations and Franco-German relations. It set out the collusion which allegedly took place between several European producers as a reaction to imports of Greek cement and clinker into Member States of the Community in the mid-1980s, which gave rise to the setting up of a group known as the European Task Force, the setting up of a joint trading company, the adoption of measures to defend the Italian market and the adoption of measures for the purchase of quantities of cement or clinker likely to destabilise the market. Finally, it alleged that a number of undertakings and associations of undertakings participated in concerted practices contrary to Article 85(1) of the Treaty in the framework of two committees set up by the trade in order to discuss export problems: the European Cement Export Committee and the European Export Policy Committee.

that it openly distanced itself from the unlawful concerted action or informed the other participants that it intended to take part in those meetings with different objects in mind, be considered to have participated in that agreement. In the absence of such proof that it distanced itself, the fact that that undertaking or association of undertakings does not abide by the outcome of the meetings is not such as to relieve it of full responsibility for the fact that it participated in the agreement or concerted practice.

The Court also held that there is no principle of Community law which precludes the Commission from relying on a single piece of evidence in order to conclude that Article 85(1) of the Treaty has been infringed, provided that its evidential value is undoubted and that the evidence itself definitely attests to the existence of the infringement in question. In this connection, in order to assess the evidential value of a document, regard should be had first to the credibility of the account it contains. Regard should be had in particular to the person from whom the document originates, the circumstances in which it came into being, the person to whom it was addressed and whether, on its face, it appears sound and reliable.

In its consideration of whether the existence of the agreements and concerted practices referred to in Article 4 of the contested decision was established, the Court stated that the mere fact that a producer from a Member State knew that the purchases from it by other European producers had the object of halting, or at least reducing, its direct sales in the European markets does not allow the conclusion that it was party to an agreement or concerted practice contrary to Article 85(1) of the Treaty. Such knowledge can be deemed to reveal unlawful conduct only if it is established that it was accompanied by the adherence of that producer to the object pursued by the other European producers through the purchases concerned. In so far as that object is against the interests of the producer in question, only evidence of an undertaking by it that, in return for the purchases, it would halt or reduce its direct sales on the European markets could be deemed to constitute adherence by it to that object.

According to the contested decision, the Cembureau agreement was constituted by "the whole of the arrangements adopted within the framework of Cembureau and the bilateral and/or multilateral meetings and contacts". In ruling on the applicants' claims, the Court considered whether the infringement found could be categorised as a single and continuous agreement. Before concluding that it could, the Court stated that some of the conduct referred to in the operative part of the contested decision pursued the same anti-competitive objective as the Cembureau agreement and could therefore be regarded as elements of the

infringement referred to in Article 1 of the decision. In that context, it stated that bilateral or multilateral agreements or concerted practices can be regarded as constituent elements of a single anti-competitive agreement only if it is established that they form part of an overall plan pursuing a common objective. Finding, however, that identity of object between such agreements or concerted practices and such an anti-competitive agreement is not sufficient for an undertaking party to the former to be held to be party to the latter, the Court then considered whether the applicants had been aware of the existence of the Cembureau agreement. According to the Court, it is only if the undertaking knew, or ought to have known, when it participated in those agreements or concerted practices that it was taking part in the single agreement that its participation in the agreements or concerted practices concerned may constitute the expression of its accession to the single agreement.

After completing its analysis of the evidence referred to in the contested decision, the Court held that the participation of certain undertakings in the single agreement had not been proved by the Commission to the requisite standard (namely Buzzi, Castle, Cedest, ENCI, Titan, Heracles, Nordcement, Alsen-Breitenburg and Rugby). As regards the other addressees of the decision, the Court held that the duration of their participation in the infringement was less than that found by the Commission. In this connection, it took due account of the system for establishing the infringement adopted in the contested decision under which, first, participation by an undertaking or association in a measure implementing the agreement constituted proof of its accession to that agreement and, second, the Commission had chosen to rely solely on specific documentary evidence to establish the agreement and the measures implementing it and the participation of each party in them. Thus, the Commission could not, without such direct documentary evidence, presume that a party continued to adhere to the agreement beyond the point at which it was last shown to have participated in a measure implementing the agreement.

The findings of the Court relating to the concept of a concerted practice are to be noted. It pointed out that a concerted practice implies the existence of reciprocal contacts. That condition of reciprocity is met where one competitor discloses its intentions or future conduct on the market to another when the latter requests it or, at the very least, accepts it. That is the case where the meeting at which a party was informed by its competitor of the latter's intentions or future conduct was held at the former's behest and it is apparent from the minutes of the meeting drawn up by it that it expressed no reservations or objections at all when its competitor informed it of its intentions. The attitude of that party during the meeting cannot, in those circumstances, be reduced to the purely passive role of

a recipient of the information which its competitor unilaterally decided to pass on to it, without any request on its part.

— Other judgments

The distinction between, on the one hand, genuinely unilateral conduct of a manufacturer in the context of the contractual relations maintained by it with its dealers and, on the other, conduct which is only ostensibly unilateral was clarified in the judgments of 6 July 2000 in Case T-62/98 *Volkswagen* v *Commission* (under appeal, Case C-338/00 P) and of 26 October 2000 in Case T-41/96 *Bayer* v *Commission* (under appeal, Cases C-2/01 P and C-3/01 P).

In *Volkswagen* v *Commission*, the Court partly upheld an application for annulment of a Commission decision imposing a fine of EUR 102 000 000 on the Volkswagen group for infringement of Article 85(1) of the Treaty. It confirmed the decision to a very large extent, but reduced the fine to EUR 90 000 000, in particular because the Commission failed to establish that the infringement had been committed throughout the period found in the decision. The Commission complained in its decision that Volkswagen had entered into agreements with the Italian dealers in its distribution network in order to prohibit or restrict sales in Italy of Volkswagen and Audi vehicles to final consumers from other Member States and to dealers in its distribution network in other Member States. Amongst the means employed by Volkswagen to prevent or restrict those parallel imports from Italy were a system of supply quotas for Italian dealers and a bonus system discouraging them from selling to non-Italian customers. The Court essentially found that the Commission had proved the existence of those measures, which it held capable of partitioning the market in certain products between Member States and thus rendering more difficult the interpenetration of trade which the Treaty is intended to create.

The Court, relying on existing case-law, held that a call by a motor vehicle manufacturer to its authorised dealers is not a unilateral act which falls outside the scope of Article 85(1) of the Treaty but is an agreement within the meaning of that provision if, as in the case in point, it forms part of a set of continuous business relations governed by a general agreement drawn up in advance. The Court added that Article 85(1) may not in any event be declared inapplicable where the parties to a selective distribution contract conduct themselves in such a way as to restrict parallel imports. The very spirit of Regulation (EEC) No

123/85 [13] is to make the exemption available under it subject to the condition that users will, through the possibility of parallel imports, be allowed a fair share of the benefits resulting from the exclusive distribution.

By contrast, in *Bayer* v *Commission* the Court annulled a Commission decision of 10 January 1996 finding that there was an agreement between Bayer and its French and Spanish wholesalers intended to prevent the export of the medicinal product "Adalat" (or "Adalate") to the United Kingdom and imposing a fine of EUR 3 000 000 on Bayer.

The case arose from the fact that the price of Adalat in the United Kingdom was much higher than the price set by the French and Spanish health authorities. That caused wholesalers established in France and Spain to export Adalat to the United Kingdom. The effects of the parallel imports on sales of Adalat by the United Kingdom subsidiary of the Bayer group led the latter to fulfil orders placed by French and Spanish wholesalers only to the extent of their normal needs. The Commission, with which those wholesalers lodged a complaint, found that the Bayer group had infringed Article 85(1) of the Treaty and fined it on that basis.

The Court held that the Commission had failed to prove the existence of an agreement between Bayer and its French and Spanish wholesalers. After noting that there was no direct documentary evidence of the conclusion of an agreement between the parties, the Court found that the Commission had not established the existence of an acquiescence by the other parties, express or implied, in the attitude adopted by the manufacturer, the actual conduct of the former being clearly contrary to the new policy of the latter. The Commission therefore could not find that Bayer's conduct, adopted in the context of the contractual relations maintained by it with its dealers, in reality formed the basis of an agreement between undertakings within the meaning of Article 85(1) of the Treaty.

1.3. Abuse of dominant position

By decision of 11 June 1998, the Commission found that Aéroports de Paris had infringed Article 86 of the Treaty by using its dominant position to impose discriminatory commercial fees at the Paris airports of Orly and Roissy-Charles de Gaulle on suppliers of certain kinds of groundhandling services. In *Aéroports*

[13] Commission Regulation (EEC) No 123/85 of 12 December 1984 on the application of Article 85(3) of the EEC Treaty to certain categories of motor vehicle distribution and servicing agreements (OJ 1985 L 15, p. 16), replaced, with effect from 1 October 1995, by Commission Regulation (EC) No 1475/95 of 28 June 1995 (OJ 1995 L 145, p. 25).

de Paris v *Commission*, cited above, the Court dismissed the application for annulment of that decision, after finding that the definition of the product market and of the geographical market adopted by the Commission was correct, that Aéroports de Paris did occupy a dominant position within the meaning of Article 86 and that that position had been abused.

1.4. Rights of the defence

(a) Access to the file

— Access of undertakings under investigation to the Commission file

The rules governing access to the Commission's investigation file were confirmed and explained in the *Cement* judgment. Practically all the undertakings to which the decision was addressed complained that the Commission had allowed them insufficient access to the file during the administrative procedure.

The Court thus recalled the rule, flowing in particular from the general principle of equality of arms, that, in order to allow the parties to defend themselves effectively, the Commission has an obligation to make available to them the entire investigation file, except for documents containing business secrets of other undertakings, other confidential information and internal documents of the Commission. In accordance with its judgments in the *Soda ash* cases, [14] the Court held that if the Commission takes the view that certain documents contain business secrets or other confidential information, it must prepare non-confidential versions of the documents in question or have them prepared by the parties from which the documents come. If preparation of non-confidential versions of all the documents proves difficult, it must send to the parties concerned a sufficiently precise list of the documents posing problems so as to enable them to ascertain, with knowledge of the facts, whether the documents described are likely to be relevant for their defence. In the case in point, the Court found that a list of documents which did not describe the content of the documents was not sufficiently precise.

The Court explained the consequences for the legality of the final decision of a lack of proper access to the file during the administrative procedure in competition matters, stating that such a *finding cannot in itself lead to annulment*

[14] Case T-30/91 *Solvay* v *Commission* [1995] ECR II-1775 and Case T-36/91 *ICI* v *Commission* [1995] ECR II-1847.

of the contested decision. Access to the file is not an end in itself, but is intended to protect the rights of the defence. Thus, the right of access to the file is inseparable from and dependent on the principle of the rights of the defence. The contested decision therefore cannot be annulled unless it is found that lack of proper access to the file prevented the parties from perusing documents which were likely to be of use in their defence and thus infringed their rights of defence.

When, in the context of an action seeking annulment of the Commission's final decision, an applicant challenges the Commission's refusal to disclose a document or documents in the file, it is for the Court to require production of the documents and to examine them, action which the Court took in the *Cement* cases since it requested the Commission to forward the file to it so that it could be inspected in its entirety by the parties. The Court cannot act as a substitute for the Commission; its examination must first of all be directed at the question whether there is an objective link between the documents which could not be inspected during the administrative procedure and an objection adopted against the applicant concerned in the contested decision. If there is no such link, the documents in question are of no use in the defence of the applicant invoking them. If the opposite is true, it must be examined whether the failure to disclose them could have impaired the defence of that applicant during the administrative procedure. It is therefore necessary to examine the evidence adduced by the Commission in support of the objection and to assess whether the documents not disclosed might, in the light of that evidence, have had a significance which ought not to have been disregarded. The Court found that the rights of several applicants had been infringed because there was a chance, even if only small, that the outcome of the administrative procedure might have been different if those undertakings could have relied on the document during that procedure.

The Court also defined an "incriminating document" *vis-à-vis* an undertaking which is party to a competition proceeding as a document used by the Commission to support a finding of an infringement in which that undertaking is alleged to have participated. The rights of the defence are therefore not infringed merely because the undertaking was unable to express its views during the administrative procedure on a document used in the contested decision. It is necessary for the undertaking to prove that in the decision the Commission used a new item of evidence in order to sustain an infringement in which it is alleged to have participated.

Finally, the Court confirmed that the Commission is under no obligation to grant access to internal documents during the administrative procedure in competition matters. Furthermore, in proceedings before the Community judicature such

documents are not to be communicated to the applicants, unless the circumstances of the case are exceptional and the applicants make out a plausible case for the need to do so. That restriction on access to internal documents is justified by the need to ensure the proper functioning of the institution when it deals with infringements of the Treaty competition rules.

— Access of third parties to the Commission file

In judgments of 30 March 2000 in Case T-65/96 *Kish Glass* v *Commission* (under appeal, Case C-241/00 P) and of 30 November 2000 in Case T-5/97 *Industrie des Poudres Sphériques* v *Commission*, the Court had the opportunity to reiterate that an undertaking which has lodged a complaint with the Commission cannot claim to have a right of access to the file held by the Commission on the same basis as the undertaking under investigation.

(b) Statement of objections

In the *Cement* cases, the applicants alleged various infringements of their rights of defence during the administrative procedure. Several of them, who were not present at the meeting of 14 January 1983 (see above), contended that in the decision the Commission had considered that they were represented at that meeting and had thereby participated in the agreement from the date on which the meeting was held, when that was not included in the statement of objections. The Court held that the Commission should have announced its intention to take the meeting of 14 January 1983 as the starting date of the infringement for all the undertakings to which its future decision would be addressed. The Court thus determined, for each undertaking, the starting date of its participation in the infringement without having regard to the criterion concerning representation adopted by the Commission.

Also, various associations of undertakings contended that the Commission had not announced its intention to impose fines on them in the statement of objections. The Court held that the Commission was not entitled to impose a fine on an undertaking or an association of undertakings where it had not previously informed the party concerned of its intention to do so in the statement of objections, which must make it possible for that party to defend itself not only against a finding of an infringement but also against the imposition of a fine. Since the argument of the various associations was well founded, the fines imposed on associations of undertakings were annulled.

1.5. Examination of complaints by the Commission

The obligations owed by the Commission when dealing with complaints submitted under Article 3 of Regulation No 17 are defined by settled case-law of the Court of Justice and the Court of First Instance. Several judgments helped to refine the obligations on the Commission and attest to the review of its assessments which is carried out (judgments in *Stork Amsterdam* v *Commission*, cited above, in *Kish Glass* v *Commission*, cited above, of 25 May 2000 in Case T-77/95 RV *Ufex and Others* v *Commission*, of 26 October 2000 in Case T-154/98 *Asia Motor and Others* v *Commission* (under appeal, Case C-1/01 P) and in *Industrie des Poudres Sphériques* v *Commission*, cited above).

— In *Stork Amsterdam* v *Commission*, the Court held that, when the Commission reopens an administrative procedure for examination of a complaint on which it has been decided to take no action, it must properly state the reasons for its change of position in a decision rejecting the complaint, in particular where the decision to reopen the administrative procedure was not based on the presence or awareness of new points of fact or law warranting re-examination of the matter. Since the requirement as to reasoning was not met, the contested decision was annulled.

— In its judgment in *Ufex and Others* v *Commission*, cited above, delivered after the Court of Justice had referred the case back to it by judgment of 4 March 1999 in Case C-119/97 P *Ufex and Others* v *Commission* [1999] ECR I-1341, [15] the Court of First Instance found that the Commission had not complied with its obligations in the context of its examination of the complaint made to it by the applicant. Here, the complaint was rejected on the basis of lack of Community interest, as the unlawful practices complained of had ceased. While the Court confirmed that the Commission may reject a complaint on the ground of lack of a sufficient Community interest in further investigation of the case, it held, in accordance with the judgment of the Court of Justice, that the Commission is obliged to assess, on the basis of all the elements of fact and law obtained, the seriousness and duration of the alleged infringements and whether they continue to have effects, even if the allegedly abusive practices have ceased since the complaint was made. After examining the contested decision, the Court found that the Commission had failed to comply with its obligations. It therefore annulled the contested decision.

[15] In its judgment the Court of Justice set aside the judgment of the Court of First Instance in Case T-77/95 *SFEI and Others* v *Commission* [1997] ECR II-1.

1.6. Determining the amount of fines

In the *Cement* judgment, the Court found it necessary to reduce appreciably the amount of the fines imposed on the undertakings whose participation in the agreement was established, the fines having been set by reference to the gravity and the duration of the infringement. [16]

In particular, the Court explained the extent of the obligation to provide a statement of reasons for a decision imposing fines on a number of undertakings or associations for infringement of the Community competition rules. It recalled that this obligation must be assessed *inter alia* in the light of the fact that the gravity of the infringement depends on a large number of factors, without there being a binding or exhaustive list of the criteria to be applied, and that the Commission has a discretion when determining the amount of each fine. It then reiterated that it is desirable that, in order to enable undertakings to define their position in full knowledge of the facts, they should be able to determine in detail, in accordance with such system as the Commission might consider appropriate, the method of calculating the fine imposed upon them, without their being obliged, in order to do so, to bring court proceedings against the decision. That is so especially where the Commission uses detailed arithmetical formulas to calculate the fines. Such explanations, which it is for the Court to seek if necessary from the Commission, do not, however, constitute an additional *a posteriori* statement of reasons for the contested decision, but translate into figures the criteria set out in it that are capable of being quantified. [17]

16 This, in conjunction with other factors, resulted in the overall amount of the fines being reduced from approximately EUR 250 000 000 to approximately EUR 110 000 000 (see p. 146 of this report).

17 See, in this regard, the reference to the judgments delivered on appeal in the "cartonboard" cases in the section of this report devoted to the proceedings of the Court of Justice in 2000 (paragraph 16.1., p. 47 et seq.)

2. State aid

In the field of State aid, the Court decided actions brought under the fourth paragraph of Article 173 of the EC Treaty [18] and Article 33 of the ECSC Treaty. [19] Its decisions explain various aspects of the substantive law on aid.

2.1. Concept of State aid

The Court was required in a number of cases to rule, first, on the constituents of the *concept of State aid* and, second, on the distinction between new and existing aid.

(a) Constituents of the concept of State aid

For the purposes of Community law, aid is an advantage, granted by the State or by means of State resources, in favour of certain undertakings or certain products. In the past year the Court considered both the notion of an advantage conferred by a State measure and the need for the measure to be specific in nature.

— In *EPAC* v *Commission*, cited above, the Court recalled that the concept of State aid embraces not only positive benefits, such as subsidies themselves, but also interventions which, in various forms, mitigate the charges which are normally included in the budget of an undertaking and which, without therefore being subsidies in the strict meaning of the word, are similar in character and have the same effect. In determining whether a State measure constitutes aid, it is necessary to establish whether the recipient undertaking receives an economic advantage which it would not have obtained under normal market conditions.

In its action for annulment of a Commission decision declaring aid granted to it by the Portuguese Government illegal and incompatible with the common market,

[18] Judgments of 16 March 2000 in Case T-72/98 *Astilleros Zamacona* v *Commission*; in *SIC* v *Commission*, cited above; in *EPAC* v *Commission*, cited above; of 15 June 2000 in Joined Cases T-298/97, T-312/97, T-313/97, T-315/97, T-600/97 to T-607/97, T-1/98, T-3/98 to T-6/98 and T-23/98 *Alzetta and Others* v *Commission* (under appeal, Case C-298/00 P); in *BP Chemicals* v *Commission*, cited above; in *CETM* v *Commission*, cited above; in *Alitalia* v *Commission*, cited above; and of 14 December 2000 in Case T-613/97 *Ufex and Others* v *Commission*.

[19] Order of 25 July 2000 in Case T-110/98 *RJB* v *Commission* (under appeal, Case C-371/00 P) and judgment of 29 June 2000 in Case T-234/95 *DSG* v *Commission* (under appeal, Case C-323/00 P).

EPAC submitted that the Commission had infringed Article 92(1) of the EC Treaty (now, after amendment, Article 87(1) EC) in taking the view that the guarantee granted to it by the Portuguese authorities constituted State aid. The Court thus examined whether, under normal market conditions, the guarantee granted by the Portuguese State to EPAC for the purpose of enabling it to obtain a loan from banking institutions would also have been given by a private operator in view, above all, of the risk of the guarantee being enforced in the event of non-repayment of the loan. Having regard, in particular, to EPAC's seriously exposed financial position, the Court found that the Commission was justified in taking the view that, in the circumstances of the case, a private operator would not have granted EPAC the guarantee.

— In determining whether an undertaking which benefits from a measure adopted by a public authority would have obtained the same economic advantages from a private investor operating under market conditions, the Commission is entitled to use the private-investor test. This test is useful when deciding whether an undertaking has received aid within the meaning of Article 92(1) of the Treaty. It is also useful when deciding whether a measure adopted by a public authority, acting as an economic operator or through the intermediary of an economic operator, in favour of an undertaking constitutes State aid for the purposes of Article 4(c) of the ECSC Treaty, as the Court held in *DSG* v *Commission*, cited above. Clarification by the Community judicature of concepts referred to in the provisions of the EC Treaty relating to State aid is relevant when applying the corresponding provisions of the ECSC Treaty to the extent that the clarification is not incompatible with that Treaty. It is therefore permissible, to that extent, to refer to the case-law on State aid deriving from the EC Treaty in order to assess the legality of decisions regarding aid covered by the ECSC Treaty.

In *DSG* v *Commission*, an action for annulment of a Commission decision declaring State aid incompatible with the ECSC Treaty and the Steel Aid Code and ordering its recovery, the Court recalled the case-law of the Court of Justice according to which the conduct of the private investor, with which that of a public investor pursuing public policy objectives is to be compared, is not necessarily that of an ordinary investor laying out capital with a view to realising a profit in the medium to long term, but must at least be the conduct of a private holding company or a private group of undertakings pursuing a structural policy, whether general or sectoral, and guided by prospects of profitability in the longer term. Relying on that case-law, the Court of First Instance held that the applicant had not established that the Commission obviously erred in its assessment in taking the view that a private investor would not have granted loans such as those which

were in dispute given the financial situation of the recipient undertaking, its need for investment and the situation of the market for the products concerned.

— A decision by the Commission concerning the recapitalisation of the company Alitalia was annulled in *Alitalia* v *Commission*, cited above, for failure to state reasons and manifest errors of assessment. In that case, the Court had to determine whether the Commission was entitled to conclude that the capital injection of ITL 2 750 billion by the Italian State finance company IRI constituted State aid within the meaning of Article 92(1) of the Treaty.

First, the Court rejected the applicant's argument that that investment satisfied the private-investor test because of the participation of private investors in its capital. It held that a capital contribution from public funds satisfies the private-investor test and does not constitute State aid if, *inter alia*, it was made at the same time as a significant capital contribution on the part of a private investor made in comparable circumstances, which was not the case here.

Second, the Court found that the Commission had failed to provide sufficient reasoning for applying a rate of return of 30% as the minimum rate that an investor acting in accordance with the laws of the market would have demanded before injecting the capital concerned. That minimum rate for an investment by public authorities in an airline had been applied by the Commission in a decision relating to the company Iberia. The applicant's argument, put forward in the administrative procedure before the Commission, that its situation had to be distinguished from Iberia's formed an essential part of its case that IRI's investment satisfied the private-investor test, and warranted a reply from the Commission in the contested decision. Since the Commission did not explain in the contested decision why it considered it necessary to apply to IRI's investment the same minimum rate of 30% as it had adopted in the Iberia decision, the Court found that it had erred in its reasoning.

Third, the Court found that, in the contested decision, the Commission did not reassess the minimum and internal rates of return on the basis of the final version of the applicant's restructuring plan, a step which it should have taken in order to be able to make an accurate assessment of whether IRI's investment satisfied the private-investor test.

— In *CETM* v *Commission*, cited above, the Court recalled that a State aid measure must be specific in nature, that is to say its application must be selective.

In order for the selective nature of a measure to be regarded as established, it is necessary to determine whether the measure entails advantages accruing exclusively to certain undertakings or certain sectors of activity. In *CETM* v *Commission*, an action seeking the annulment of a Commission decision concerning a Spanish system of aid for the purchase of commercial vehicles in so far as it declared certain aid illegal and incompatible with the common market, the Court reviewed whether the measure was specific in nature. It stated that the fact that aid is not aimed at one or more specific recipients defined in advance, but that it is subject to a series of objective criteria pursuant to which it may be granted, within the framework of a predetermined overall budget allocation, to an indefinite number of beneficiaries who are not initially individually identified, cannot suffice to call in question the selective nature of a measure and, accordingly, its classification as State aid within the meaning of Article 92(1) of the Treaty. In the case in point, a measure which was intended to, and did in fact, benefit, among users of commercial vehicles, only natural persons, small and medium-sized enterprises, local and regional public bodies and bodies providing local public services (to the exclusion of other users of vehicles of that type, such as large undertakings) was considered to be selective and therefore specific for the purposes of Article 92(1) of the Treaty.

(b) Distinction between new and existing aid

Systems of financial aid to local road haulage contractors were set up by Laws of the Friuli-Venezia Giulia Region of Italy of 1981 and 1985 but were not notified to the Commission. In a decision adopted in 1997, the Commission declared incompatible with the common market the aid granted to companies engaged in transport operations at an international level and the aid granted, from 1 July 1990, to companies engaged exclusively in transport operations at a local, regional or national level, and it ordered recovery of the aid.

In their action for annulment of the decision, the hauliers contended in particular that the aid for local, regional and national transport had to be treated as existing aid because it was provided for by laws preceding the liberalisation of the sector concerned and therefore was not subject to the obligation to notify. The Court therefore had to decide whether aid granted under an aid system established before a market was opened up to competition had to be regarded, with effect from the date of that liberalisation, as new aid or as existing aid.

In *Alzetta and Others* v *Commission*, [20] cited above, the Court held that existing aid is not only aid introduced before the Treaty entered into force or before the accession of the Member State concerned to the European Communities and aid which has been properly put into effect under the conditions laid down in Article 93(3) of the Treaty, but also aid established in a market that was initially closed to competition. At the time of its establishment, such aid did not come within the scope of Article 92(1) of the Treaty, which, having regard to the requirements set out in that provision regarding effect on trade between Member States and repercussions on competition, applies only to sectors open to competition. The liberalisation, which is not attributable to the competent authorities of the Member State concerned, cannot be regarded as a material alteration to the aid system, and therefore subject to the obligation to notify under Article 93(3) of the Treaty. On the contrary, liberalisation is a precondition for the applicability of Treaty provisions on State aid in some specific sectors, such as the transport sector, which was initially closed to competition.

In the case in point, as the international road haulage sector had been opened up to competition with effect from 1969, the systems of aid established in 1981 and 1985 in that sector had to be regarded as new systems of aid which should thus have been notified to the Commission pursuant to Article 93(3) of the Treaty.

On the other hand, as the cabotage market was liberalised only from 1 July 1990, the systems of aid introduced in 1981 and 1985 had to be regarded as existing systems and not new systems of aid, so that aid to undertakings engaged solely in local, regional or national transport could be the subject, at most, of a decision finding it incompatible as to the future. Pursuant to Article 93(1) and (2) of the Treaty and in accordance with the principle of legal certainty, the Commission is, as part of its constant review of existing aid, only empowered to require the elimination or modification of such aid within a period which it is to determine. That aid can, therefore, lawfully be implemented as long as the Commission has not found it to be incompatible with the common market.

The contested decision was therefore annulled in so far as it declared that aid granted with effect from 1 July 1990 to undertakings engaged solely in local, regional or national transport was illegal and required recovery of that aid.

[20] The Friuli-Venezia Giulia Region also brought an action for annulment of the decision. The objection of inadmissibility raised by the Commission against that action was rejected by judgment of 15 June 1999 in Case T-288/97 *Regione Autonoma Friuli-Venezia Giulia* v *Commission* [1999] ECR II-1871. That case is still in progress.

2.2. Derogations from the prohibition

— As regards derogations from the prohibition of aid which is laid down by Article 92(1) of the Treaty, the judgment in *Astilleros Zamacona* v *Commission*, cited above, is to be mentioned. In that judgment, the Court reviewed the legality of a decision in which the Commission had found that the conditions for application of a derogation from the prohibition of operating aid in the shipbuilding industry — a derogation provided for by Directive 90/684/EEC [21] — were not met. In its review, which led it to dismiss the action, the Court had regard to the objective, context and wording of the second subparagraph of Article 4(3) of that directive, which permits a departure from the principle of progressive reduction in the level of aid where ships are not built within a three-year period, and concluded that that provision must be interpreted restrictively.

Also, in *EPAC* v *Commission*, cited above, the Court found that the Commission had not erred in law in considering that the criteria relating to rescue aid contained in the "Community guidelines on State aid for rescuing and restructuring firms in difficulty" (OJ 1994 C 368, p. 12) were not met and that a State guarantee granted to EPAC therefore could not be considered to be rescue aid compatible with the common market.

— In *BP Chemicals* v *Commission*, cited above, the Court partially annulled a Commission decision, adopted without opening the formal examination procedure, authorising an aid scheme of the French authorities for biofuels under which bioethanol in particular was exempted from excise duty. Directive 92/81/EEC [22] allows the Member States to provide for certain exemptions or reduced rates within their territory in respect of pilot projects for the technological development of more environmentally-friendly products. The Court found that it had not been established that the aid scheme at issue actually concerned a pilot project within the meaning of the directive. It accordingly concluded that the Commission had infringed Directive 92/81 and exceeded the powers conferred on it by Article 93(3) of the Treaty.

This judgment gave the Court the opportunity to explain that the margin of discretion which the Commission lawfully intends leaving to the Member States

[21] Council Directive 90/684/EEC of 21 December 1990 on aid to shipbuilding (OJ 1990 L 380, p. 27).

[22] Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils (OJ 1992 L 316, p. 12).

in applying the concept of "pilot projects for the technological development of more environmentally-friendly products" referred to in Article 8(2) of Directive 92/81 must be distinguished from the margin of discretion conferred on the Commission by Article 93 of the Treaty in order to determine to what extent State aid is compatible with the common market within the meaning of Article 92 of the Treaty. Whereas the power conferred on the Commission by Article 93 of the Treaty presupposes that that institution will undertake discretionary appraisals of complex economic and social situations, judicial review of which must be of a limited nature, any appraisal of an application of the provision of Directive 92/81 at issue must, in contrast, be guided by a plausible interpretation of the legislative concepts of a vague and indeterminate character used in it, an appraisal which, in the last resort, is a matter for the Community judicature. Consequently, it is incumbent both on the Commission, when appraising a notified aid scheme, and on the Community judicature before which an action for annulment has been brought to ensure observance of the limits inherent in any contextual and reasonable interpretation of terms used in Community legislation.

2.3. Examination of complaints by the Commission

— In *SIC* v *Commission*, cited above, the Court annulled a Commission decision concerning measures in favour of the operator of the Portuguese public television channels, RTP (Radiotelevisão Portuguesa). RTP was financed not only by advertising revenue from its channels but also by State grants paid annually in connection with its contribution to public service obligations.

The case was brought by a commercial company which, since 1992, has been running one of the main private television channels in Portugal, SIC (Sociedade Independente de Communicação). SIC, which is financed exclusively by advertising revenue, submitted complaints to the Commission on two occasions (in 1993 and 1996), objecting to the grants paid to RTP and other measures in RTP's favour since it took the view that they were State aid that distorted competition. It contended that those measures should therefore have been notified to the Commission in advance and authorised by it.

In the contested decision, adopted in November 1996, the Commission concluded that the measures criticised by SIC in its first complaint of 1993 did not constitute State aid for the purposes of Community law. It is that classification of the measures and, in particular, the failure to open the formal examination procedure provided for by Article 93(2) of the Treaty that the applicant challenged before the Court. It is to be remembered that it is only within the framework of that procedure, which is designed to enable the Commission to be fully informed of

all the facts of the case, that the Treaty imposes an obligation on the Commission to give the parties concerned notice to submit their comments.

After noting that, on completion of the preliminary stage of the procedure, the Commission had adopted a decision in favour of the measures complained of by SIC, the Court examined whether the assessments upon which the Commission had relied presented serious difficulties justifying initiation of the formal examination procedure.

With regard to the grants paid each year to RTP by the Portuguese State, the Court pointed out that, according to the decision itself, they resulted in the recipient being given a financial advantage, a determining criterion of the concept of aid. As to the possible effect of that advantage on the conditions of competition, it was pointed out that RTP was a public operator in the advertising market and therefore in direct competition with other television operators. Consequently, the Court found that the Commission's assessment that State aid was not involved was, at the least, capable of raising serious difficulties requiring initiation of the formal procedure.

Those measures had been presented as intended to offset the additional cost of the public service obligations assumed by RTP, but the Court pointed out that that circumstance has no bearing on the classification of a measure as State aid. It may be taken into account by the Commission only when authorising aid, under the conditions provided for by specific provisions of the Treaty.

As regards the other measures complained of (tax exemptions, payment facilities, rescheduling of the debt owed by RTP to the Portuguese social security authority and waiver of interest and of corresponding sums for late payment), the Court found that, according to the documents in the file, the Commission was likewise confronted with serious difficulties of assessment at the end of the preliminary examination.

The Court also found that the duration of the preliminary examination, approximately three years, far exceeded the period normally required for a preliminary examination. That, in conjunction with the other findings made, confirmed that there were serious difficulties of assessment requiring the second stage of the examination procedure to be initiated in order to allow interested third parties to submit their observations.

— In its decision concerning aid allegedly granted by France to SFMI-Chronopost, which was adopted after a formal examination procedure, the

Commission concluded that the logistical and commercial assistance afforded by La Poste (the French Post Office), a legal entity governed by public law, to its subsidiary SFMI-Chronopost did not constitute State aid to the latter. The applicants, companies competing with SFMI-Chronopost in the express courier services market, had drawn attention to that assistance in a complaint made to the Commission. In its judgment in Case T-613/97 *Ufex and Others* v *Commission*, cited above, the Court found in their favour and annulled the Commission decision. It found that the Commission should have examined whether the full costs paid by SFMI-Chronopost to La Poste for the provision of logistical and commercial assistance took account of the factors which an undertaking acting under normal market conditions would have had to take into consideration when fixing the remuneration for the services provided. The Court held that, since the Commission did not carry out that check, it based its decision on a misinterpretation of Article 92 of the Treaty.

The other pleas put forward by the applicants were rejected, in particular the plea alleging infringement of the rights of the defence. The Court stated that the parties concerned within the meaning of Article 93(2) of the Treaty have only the right to be involved in the administrative procedure to the extent appropriate in the light of the circumstances of the case, so that the Commission is not obliged to forward to them the observations or information which it has received from the Member State concerned by the procedure.

2.4. Obligation to recover aid

In several cases the Court developed the case-law according to which undertakings to which aid has been granted cannot, in principle, entertain legitimate expectations as to its legality unless it has been granted in compliance with the procedure laid down by Article 93 of the Treaty.

With regard to the question whether recipients of unlawful aid are able to plead exceptional circumstances which could have formed the basis of legitimate expectations on their part that the aid was lawful, the Court held in *EPAC* v *Commission*, cited above, that, even if the applicant had pleaded such circumstances in order to oppose recovery of the aid, it would have been for a national court before which such a case was brought to assess the material circumstances. On the same question, the Court found, however, in subsequent judgments — *Alzetta and Others* v *Commission* and *CETM* v *Commission*, both cited above — that such circumstances were not present, while pointing out in *CETM* v *Commission* that that assessment was made irrespective of whether or not

the recipients of unlawful aid are entitled to plead such circumstances before the Community judicature.

In *CETM* v *Commission*, the Court also held that the total length of the administrative procedure for examination of the State measures, assessed by distinguishing the duration of the preliminary examination procedure (approximately one year) and that of the formal procedure (approximately two years), was not so exceptional as to provide a basis for a legitimate expectation on the part of the undertakings that the aid granted to them was lawful.

3. Trade protection measures

The Court ruled on a number of aspects of the anti-dumping rules (judgments in *BEUC* v *Commission*, cited above; of 30 March 2000 in Case T-51/96 *Miwon* v *Council*; in *Medici Grimm* v *Council*, cited above; in *Starway* v *Council*, cited above; and of 29 September 2000 in Case T-87/98 *International Potash Company* v *Council*).

Two Council regulations were partially annulled (in *Medici Grimm* v *Council* and in *Starway* v *Council*).

By its application, the company Medici Grimm asked the Court to review the legality of a Council regulation adopted on completion of a procedure for the interim review of anti-dumping measures, amending a regulation imposing a definitive anti-dumping duty on imports of leather handbags originating in the People's Republic of China ("the initial regulation"). It was found in the contested regulation that there had been no dumping as regards transactions between the applicant and Lucci Creation, a company based in Hong Kong, during the investigation period preceding the adoption of the initial regulation. The applicant submitted that the contested regulation was unlawful in that the Council had not granted reimbursement of the anti-dumping duties paid by it before the contested regulation was adopted. The Court found in its favour.

The review procedure initiated by the Commission was intended to enable undertakings which had not participated in the anti-dumping proceeding to obtain individual treatment on the basis of their export prices. To do that, the same investigation period was adopted as for the initial investigation. The Court held that, where the institutions find that one of the factors on the basis of which the definitive anti-dumping duties were imposed is missing, it is not possible to

consider that the conditions laid down in Article 1 of Regulation (EC) No 384/96 [23] were satisfied at the time when the original regulation was adopted and that the trade protection measures were therefore necessary. In those circumstances, the institutions are bound to abide by all the consequences flowing from their choice of investigation period for the review in question and, where they find that the person concerned did not engage in dumping during that period, they must give that finding retroactive effect. Failure to follow this approach would result in the unjust enrichment of the Community at the applicant's expense.

The case of *Starway* v *Council* raised, in particular, the question whether, in the context of an investigation concerning the circumvention of anti-dumping measures, the Community institutions may request importers, in the interests of administrative efficiency, to produce certificates of origin in order to prove the accuracy of the information given in their customs declarations, with a view to ensuring that the objective of Article 13 of Regulation No 384/96, namely to thwart circumvention, is attained. The Court's answer was essentially in the affirmative. However, it held that the Community institutions cannot, without infringing that provision, require certificates of origin to the exclusion of any other means of proof where they are or should be aware that some of the traders concerned are unable to produce such certificates for reasons beyond their control. Such a refusal of other means of proof is tantamount to denying the person concerned the right to produce exculpatory documents. Accordingly, the Community institutions, which did not carefully and impartially examine the documents sent to them, could not validly reject them as being, without further consideration, of no evidential value.

The Court also annulled on the ground of misinterpretation of Regulation No 384/96 a Commission decision refusing to regard an association, the Bureau Européen des Unions de Consommateurs (BEUC), as an interested party within the meaning of that regulation in an anti-dumping proceeding because the latter concerned a product not commonly sold at retail level (*BEUC* v *Commission*, cited above).

The Court found, first of all, that the Commission was right to interpret Regulation No 384/96 in the light of the GATT Antidumping Code of 1994. However, it held that it does not follow from Article 6.11 and 6.12 of the Antidumping Code that the Commission is entitled to interpret Regulation No

[23] Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1).

384/96 so as to confine the right of a consumer organisation to be considered an interested party solely to antidumping proceedings concerning products commonly sold at the retail level.

It also held that the Commission does not have grounds for automatically excluding consumer organisations from the circle of interested parties within the meaning of Articles 5(10), 6(7) and 21 of Regulation No 384/96 by applying a general criterion such as the distinction between products sold at the retail level and other products, without giving them an opportunity to show their interest in the products in question.

4. Association of the overseas countries and territories

The application of Council Decision 91/482/EEC on the association of the overseas countries and territories (OCTs) with the European Economic Community, amended at mid-term by Decision 97/803, is the source of a significant body of litigation before the Court relating both to the validity of the mid-term amendment decision and to safeguard measures adopted by the Commission under Article 109 of Decision 91/482 in respect of imports of rice and sugar.

In a case concluded in 2000 (*Netherlands Antilles* v *Commission*, cited above), the Court granted an application brought by the Netherlands Antilles for annulment of a Commission regulation introducing specific measures in respect of imports of rice originating in the OCTs and of a second regulation founded on that regulation. It held that the Commission had failed to comply with Article 109 of Decision No 91/482, as interpreted by the Court of Justice in Case C-390/95 P *Antillean Rice Mills and Others* v *Commission* [1999] ECR I-769, by not establishing the existence of a causal link between application of Decision 91/482 and the emergence of disturbances of the Community market.

5. Agriculture

In the field of agricultural policy in the broad sense, application of the legislation concerning the common organisation of the market in bananas again gave rise to several judgments.

In Case T-251/97 *T. Port* v *Commission* (judgment of 28 March 2000) and Case T-252/97 *Anton Dürbeck* v *Commission* (judgment of 19 September 2000; under

appeal, Case C-430/00 P), the applicants, fruit importers, sought the annulment of Commission decisions refusing, in the first case, and agreeing only in part, in the second, to grant them additional import licences within the framework of the transitional measures provided for by Article 30 of Regulation (EEC) No 404/93. [24] That regulation established common arrangements for importing bananas in place of the various national arrangements. Since there was a danger of that changeover resulting in disturbances in the internal market, Article 30 allowed the Commission to take specific transitional measures considered necessary in order to overcome difficulties encountered by traders following the establishment of the common organisation of the market but originating in the state of national markets prior to the entry into force of Regulation No 404/93.

In Case T-251/97, the Commission had considered that the circumstances pleaded by T. Port did not amount to a case of excessive hardship such as to justify a special grant of import licences, in particular because the contracts for the supply of bananas could not be taken into account since they were concluded after Regulation No 404/93 had been published in the *Official Journal of the European Communities*. The Court upheld the Commission's analysis and dismissed the action.

In Case T-252/97, the Commission had adopted a decision granting in part the request for additional import licences made by Anton Dürbeck. In its application for annulment of the decision, that company submitted that the transitional measures adopted by the Commission pursuant to Article 30 of Regulation No 404/93 were insufficient to enable it to overcome the excessive hardship. The Court found that that article, which is to be interpreted restrictively as a derogation from the general provisions of Regulation No 404/93, had been applied reasonably by the Commission when it took the view that it was only required to compensate for the costs which the trader concerned had to incur in order to adapt to the new legal conditions. The application was dismissed.

Finally, in *Camar and Tico* v *Commission and Council*, cited above, where one of the actions was founded on Article 175 of the EC Treaty (now Article 232 EC), the Court found that the Commission had unlawfully failed to adopt, on the basis of Article 30 of Regulation No 404/93, the measures necessary to enable the applicant to overcome its supply difficulties.

[24] Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organisation of the market in bananas (OJ 1993 L 47, p. 1).

6. Trade mark law

The case-law on trade marks was developed by a number of judgments concerning assessment of the conditions for registration of a Community mark laid down by Regulation (EC) No 40/94. [25]

Thus, the Court upheld decisions of Boards of Appeal of the Office for Harmonisation in the Internal Market in which they had refused registration as a Community trade mark, on the basis of the lack of distinctive character — referred to in Article 7(1)(b) of Regulation No 40/94 — in relation to the products and services concerned in each of the cases submitted, of the words "Companyline" (judgment of 12 January 2000 in Case T-19/99 *DKV* v *OHIM* ("*Companyline*"); under appeal, Case C-104/00 P), "TRUSTEDLINK" (judgment of 26 October 2000 in Case T-345/99 *Harbinger* v *OHIM* ("*TRUSTEDLINK*"), "Investorworld" (judgment of 26 October 2000 in Case T-360/99 *Community Concepts* v *OHIM* ("*Investorworld*") and "electronica" (judgment of 5 December 2000 in Case T-32/00 *Messe München* v *OHIM* ("*electronica*"). Also, by judgment of 30 March 2000 in Case T-91/99 *Ford Motor* v *OHIM* ("*OPTIONS*"), it held that the Office had correctly refused to register the word "OPTIONS" as a Community trade mark under Article 7(3) of Regulation No 40/94, since distinctive character acquired through the use of the trade mark had not been demonstrated in the substantial part of the Community where it was devoid of any such character under Article 7(1)(b), (c) and (d) of that regulation.

On the other hand, the Court held that a Board of Appeal had erred in law in relying, as an absolute ground for refusal, on the idea that the mark consisted exclusively of a shape which resulted from the nature of the goods themselves, as provided for in Article 7(1)(e)(i) of Regulation No 40/94 (judgment of 16 February 2000 in Case T-122/99 *Procter & Gamble* v *OHIM* ("*soap bar shape*").

The case-law was also developed by useful clarifications regarding the jurisdiction of Boards of Appeal of the Office. It was found in *Procter & Gamble* v *OHIM* ("*soap bar shape*") that an appeal to a Board of Appeal seeking to have the examiner's refusal to register a Community trade mark on an absolute ground overturned places the Board of Appeal, in the examination of the merits of the application for registration, in the position of the examiner. It follows that, under Article 62(1) of Regulation No 40/94, the Board of Appeal is competent to reopen

[25] Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

the examination of the application in the light of all the absolute grounds for refusal set out in Article 7 of the regulation, without being limited by the examiner's reasoning. However, by raising of its own motion and *a posteriori* a formal irregularity not raised by the examiner, the Board of Appeal exceeded its powers: if the examiner had initially dismissed the application for registration as inadmissible owing to a formal irregularity, the applicant would have had the choice of either appealing to the Board of Appeal or immediately making a fresh application for registration to the Office.

In addition, the general Community-law principle of the protection of the rights of the defence, enshrined in Article 73 of Regulation No 40/94, requires the Board of Appeal to accord the person concerned an opportunity to express his views on absolute grounds for refusal of registration of a Community trade mark which it applies of its own motion. The Court found that, by failing to accord that opportunity to the applicant, the Board of Appeal had infringed the applicant's rights of defence.

7. Access to Council and Commission documents

The Court was required to rule on the conditions governing public access to documents [26] of the Commission (judgments of 13 September 2000 in Case T-20/99 *Denkavit Nederland* v *Commission* and of 12 October 2000 in Case T-123/99 *JT's Corporation* v *Commission*) and of the Council (judgment of 6 April in Case T-188/98 *Kuijer* v *Council*; under appeal, Case C-239/00 P).

— In *Kuijer* v *Council* the Court found fault with the Council's refusal, founded on the exception relating to protection of the public interest (international relations), to provide access to certain documents connected with the activities of the Centre for Information, Discussion and Exchange on Asylum. The Council's decision was annulled on two grounds. First, the decision contained no explanation enabling it to be verified whether the Council had examined whether disclosure of each of the documents at issue was in fact liable to damage the

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

relations of the European Union with the countries to which they referred. When assessing the plea concerning breach of the duty to state reasons, the Court was also given the opportunity to explain the requirements with regard to reasoning placed on the institution when it adopts a decision confirming the rejection of an application for access to documents on the basis of the same grounds. In such a case, it is appropriate to consider the sufficiency of the reasons given in the light of all the exchanges between the institution and the applicant, taking into account also the information available to the applicant about the nature and content of the requested documents. In certain circumstances, as in the case in point, the context in which the decision is adopted may make the requirements as to reasoning more stringent. Inasmuch as, during the procedure in which application was made for access to documents, the applicant had put forward factors capable of casting doubt on whether the first refusal was well founded, the Council, when replying to the confirmatory application, had to state why those factors were not such as might warrant a change in its position.

Second, the Court, relying expressly on the judgment in Case T-14/98 *Hautala* v *Council* [1999] ECR II-2489 (under appeal, Case C-353/99 P), [27] held that the Council should have examined the possibility of disclosing certain passages in the documents to which access was sought.

— It was also in direct reliance on *Hautala* v *Council*, and on grounds identical to those in *Kuijer* v *Council*, that the Court found in *JT's Corporation* v *Commission* that the Commission's decision had to be annulled in so far as it refused access to certain documents (mission reports and Commission correspondence with the Government of Bangladesh). The refusal had been based on the exception relating to protection of the public interest (inspections and investigations) and on Article 19 of Council Regulation (EEC) No 1468/81, [28] which provides that information obtained in connection with customs investigations is confidential in nature. With regard to a further category of documents, namely correspondence sent by the Government of Bangladesh to the Commission, the Court held that the Commission was entitled to rely on the authorship rule to refuse access.

27 That judgment is mentioned in the Court's Annual Report for 1999.

28 Council Regulation (EEC) No 1468/81 of 19 May 1981 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs or agricultural matters (OJ 1981 L 144, p. 1).

— In *Denkavit Nederland* v *Commission*, the Court upheld the Commission's refusal, founded on the mandatory exceptions relating to protection of the public interest (inspections and investigations) and of commercial and industrial secrecy, to grant access to a Commission inspection report concerning the combating of swine fever in the Netherlands. Since that document in fact related to an inspection and the Commission had not erred in its assessment that its disclosure could undermine the protection of the public interest, the Court dismissed the action for annulment, stating that that exception was sufficient in itself to justify refusal of access to the document.

8. Customs cases

The Community legislation laying down the conditions for the repayment or remission of import duties (in particular Article 13 of Regulation (EEC) No 1430/79) [29] was, once again, at the heart of a case. By judgment of 18 January 2000 in Case T-290/97 *Mehibas Dordtselaan* v *Commission*, the Court dismissed an action contesting the legality of a Commission decision refusing a request submitted by the Kingdom of the Netherlands for repayment to the applicant of agricultural levies.

The applicant was a customs agent which, after paying agricultural levies, had to pay the Netherlands customs authorities supplementary levies because the value of the imported goods was actually higher than the value which had been declared. That error in the declarations was caused by the submission of fraudulent invoices by the importer of the goods. Subsequently, the applicant applied to the Netherlands authorities for repayment of the supplementary levies. The application was sent to the Commission, which found in an initial decision that the application was not justified. However, in the light of the Court's judgment in Case T-346/94 *France-Aviation* v *Commission* [1995] ECR II-2841, the Commission revoked its initial decision. It was only after ascertaining that the application contained a "statement for the file" made by the person concerned that it then decided that the application for repayment was not justified. In that second decision, the Commission stated in particular that the fact that invoices proved to be inaccurate was a trade risk to be assumed by any person making a customs declaration and could not itself be regarded as a special circumstance.

[29] 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).

In its judgment, the Court found that there were irregularities in the procedure whereby the Commission had adopted the second decision. It found in particular that the statement for the file which was required only partly met the principles laid down in *France-Aviation*; it followed from *France-Aviation* that the right to be heard had to be guaranteed not only during the first stage of the administrative procedure, which takes place at national level, but also during the second stage, which takes place before the Commission. [30] However, it had not been established that without the irregularities which occurred in the present case the procedure might have resulted in a different decision.

The Court also held that the Commission had not manifestly erred in its assessment of Article 13 of Regulation No 1430/79 by confirming that the submission of documents subsequently found to be falsified or inaccurate did not in itself constitute a special situation justifying the remission or repayment of import duties, even where such documents had been presented in good faith.

9. Community funding

— Of the decisions in this field, mention will be made first of all of the action taken following the three judgments of the Court of Justice of 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 Case C-403/96 P *Glencore Grain* v *Commission* [1998] ECR I-2405), in which it set aside the judgments by which the Court of First Instance had declared inadmissible actions brought by international trading companies for the annulment of decisions adopted by the Commission in the exercise of its powers concerning the management of financing intended for the former Soviet Union. The cases were referred back to the Court of First Instance, which dismissed the actions on the merits (judgment of 8 November 2000 in Joined Cases T-485/93, T-491/93, T-494/93 and T-61/98 *Dreyfus and Others* v *Commission*). It held that the Commission was correct in refusing to approve amendments to contracts for the purchase of wheat concluded between a Russian State-owned company and the applicants — contracts which the Commission had approved — on the ground that the condition of free competition had not been fulfilled. When the applicants agreed new contractual terms with the Russian State-owned company, they had

[30] In the judgment, reference is made to Case T-42/96 *Eyckeler & Malt* v *Commission* [1998] ECR II-401 and Case T-50/96 *Primex Produkte Import-Export and Others* v *Commission* [1998] ECR II-3773, which are included in the Court's Annual Report for 1998.

not been required to compete with at least two independent undertakings, contrary to the relevant legislation.

— The European Social Fund (ESF) participates in the financing of operations concerning vocational training and guidance, the successful completion of which is guaranteed by the Member States concerned. The applicable legislation provides that, when the financial assistance is not used in accordance with the conditions set out in the decision of approval of the ESF, the Commission may suspend, reduce or withdraw the assistance. It was decisions by the Commission suspending financial assistance granted by the ESF to a Portuguese company that the Court again had to deal with (judgment of 27 January 2000 in Joined Cases T-194/97 and T-83/98 *Branco* v *Commission*).

In *Branco* v *Commission*, the Court recalled that, when suspending such financial assistance, the Commission assesses complex facts and accounts which are the subject only of restricted review by the Court. In the case in point, it held that the Commission had not manifestly erred in its assessment when it found that there were grounds for suspecting an irregularity which justified suspension. The judgment is noteworthy above all because the Court held in relation to a plea alleging infringement of the principle of legal certainty that the Commission must decide, in the exercise of a power vested in itself alone, on claims for final payment of financial assistance by taking a decision within a reasonable time, either by ordering full payment or by suspending, reducing or withdrawing the aid. However, the fact that there has been unreasonable delay in adopting a decision suspending assistance cannot lead to its annulment. If such decisions were annulled on the sole ground that they were late, the Commission could do no more than adopt, pursuant to Article 176 of the Treaty (now Article 233 EC), fresh decisions to suspend assistance since it would still not have the information it needed to calculate eligible expenditure. In those circumstances, an annulling judgment would be wholly pointless.

— In *ADT Projekt* v *Commission*, cited above, the Court dismissed as unfounded an action for annulment of a decision by the Commission not to award the applicant a contract relating to a project under the TACIS programme. The decision to award the contract to a tenderer other than the applicant company had been adopted after a first evaluation of the tenders had been cancelled by the contracting authority. The Court found, in answer to a claim by the applicant, that the procedure which had led to the adoption of the decision by the Commission to carry out a second evaluation of the tenders was not unlawful in any way. After pointing out that the contracting authority is not bound by the evaluation committee's proposal, it held that, in the circumstances of the case, the

Commission had good grounds, in order to restore equal treatment and, thereby, equality of opportunity for all the tenderers, which it is bound to ensure at each stage of a tendering procedure, for cancelling the evaluation procedure and organising a fresh one, open to the same tenderers as those who had competed in the first evaluation procedure.

— The question of the conditions to which financial assistance under the European Regional Development Fund (ERDF) is subject was raised in a case brought by the Council of European Municipalities and Regions against the Commission. In its judgment of 3 February 2000 in Joined Cases T-46/98 and T-151/98 *CEMR* v *Commission*, the Court held, first, that the contested decision contained in a debit note had to be annulled on the ground of inadequate reasoning in particular because it did not explain why the receipts which the applicant had supplied to the Commission were not sufficient evidence of the expenditure actually incurred. The Court then recalled that grant of financial assistance is subject not only to compliance with the conditions laid down by the Commission in the decision granting assistance but also to compliance with the terms of the application for assistance in respect of which that decision has been given. In the case in point, since the programme of work together with a planned budget, submitted at the time of the application for financial assistance, had been accepted by the Commission, the latter could not, without infringing the principles of the protection of legitimate expectations and legal certainty, regard an activity envisaged in the initial budget as ineligible and consequently reduce the financial assistance as regards the approved amount. Since the plea was partially upheld, the contested decision was annulled in that respect.

— Finally, in the judgment of 14 December 2000 in Case T-105/99 *CEMR* v *Commission* the question was raised as to whether the Commission may effect set-off against entities to which Community funds are owed but which also owe sums of Community origin. In the circumstances of the case, the Court, taking account of the principle of the effectiveness of Community law which implies that the funds of the Community are to be made available and used in accordance with their purpose, held that the Commission was not entitled to adopt a decision effecting set-off between its and the applicant's mutual claims without first ensuring that the decision did not pose a risk for the use of the Community funds for the purposes for which they were intended and for the carrying out of certain activities, when it could have acted otherwise without jeopardising the recovery of the applicant's alleged debt to it and the proper use of the contested sums.

10. Staff cases

A substantial number of judgments were delivered in staff cases. Among the judgments, a circumstance sufficiently rare to be noted is the finding that a Community institution misused its powers (judgments of 16 June 2000 in Case T-84/98 *C* v *Council* and of 12 December 2000 in Case T-223/99 *Dejaiffe* v *OHIM*). The Court also ruled on the freedom of expression of Community officials (judgment of 14 July 2000 in Case T-82/99 *Cwik* v *Commission*; under appeal, Case C-340/00 P) and annulled decisions adopted by the appointing authority within the framework of disciplinary proceedings (judgment of 15 June 2000 in Case T-211/98 *F* v *Commission*) or at the conclusion of such proceedings (judgment of 17 May 2000 in Case T-203/98 *Tzikis* v *Commission*).

B. Actions for damages

In the course of the year, a number of applications for the Community to be held liable were dismissed (in particular, by orders of 15 June 2000 in Case T-614/97 *Aduanas Pujol Rubio and Others* v *Council and Commission*, of 16 June 2000 in Joined Cases T-611/97 and T-619/97 to T-627/97 *Transfluvia and Others* v *Council and Commission*, and of 26 June 2000 in Joined Cases T-12/98 and T-13/98 *Argon and Another* v *Council and Commission*; and judgments of 21 June 2000 in Case T-429/93 *Le Goff and Others* v *Council* and in Case T-537/93 *Tromeur* v *Council and Commission*, of 27 June 2000 in Case T-72/99 *Meyer* v *Commission* (under appeal, Case C-301/00 P), and in *Eurocoton and Others* v *Council*, cited above). By contrast, the Court held in *Camar and Tico* v *Commission and Council*, cited above, and in its judgment of 24 October 2000 in Case T-178/98 *Fresh Marine Company* v *Commission* (under appeal, Case C-472/00 P) that the conditions laid down by the second paragraph of Article 215 of the EC Treaty (now the second paragraph of Article 288 EC) were met, namely unlawfulness of the alleged conduct of the institution concerned, actual damage and the existence of a causal link between the unlawful conduct and the alleged damage. The emphasis will be placed on the first of those three conditions for the incurring of Community liability.

In accordance with long-established case-law, in the field of administrative action any infringement of law constitutes illegality which may give rise to liability on the part of the Community. It is therefore of particular interest whether an act is classified as administrative.

In *Camar and Tico* v *Commission and Council*, the Court held that a decision by which the Commission refused to take provisional measures to allow the annual quantity allocated to the applicant for the purpose of obtaining import licences for traditional ACP bananas to be calculated on the basis of the quantities which it marketed in 1988, 1989 and 1990 — even if it was based on Article 30 of Regulation No 404/93 on the common organisation of the market in bananas, a provision which obliges the Commission to take the transitional measures it judges necessary to assist the transition from national arrangements to the common organisation of the market in bananas and which gives the Commission broad discretionary power — was nevertheless an individual decision and therefore administrative in nature.

In *Fresh Marine Company* v *Commission*, the Court for the first time awarded damages to an undertaking in an anti-dumping case without the undertaking having to prove that the defendant institution had committed a sufficiently serious breach of a superior rule of law for the protection of individuals. In principle, the measures of the Council and Commission in connection with a proceeding relating to the possible adoption of anti-dumping measures must be regarded as constituting legislative action involving choices of economic policy, so that the Community can incur liability by virtue of such measures only if there has been a sufficiently serious breach. However, where the operation in question, of an administrative nature, does not involve any choices of economic policy and confers on the Commission only very little or no discretion, mere infringement of Community law is sufficient to lead to the non-contractual liability of the Community.

In the case in point, the Commission did not take account of corrections of clerical errors contained in a report drawn up by the applicant, Fresh Marine Company, when checking whether the latter had complied with an undertaking not to sell its products in the Community below an average price in order to avoid the application of anti-dumping duties. The Commission was thereby led to conclude that the undertaking as to price appeared to have been infringed and that it was necessary to adopt provisional measures in relation to the applicant's imports. However, the Commission subsequently reconsidered its position, finding that the undertaking as to price had in fact been complied with.

The Court held that the checking of the report by the Commission constituted an operation of an administrative nature and that, when analysing the report, the Commission committed an error which would not have been committed in similar circumstances by an administrative authority exercising ordinary care and

diligence. That finding allowed the Court to conclude that the institution's conduct amounted to an illegality such as to render the Community liable.

C. Applications for interim relief

In addition to applications for interim relief made in the field of competition law (orders of the President of the Court of First Instance of 14 April 2000 in Case T-144/99 R *EPI* v *Commission*, of 28 June 2000 in Case T-191/98 R II *Cho Yang Shipping* v *Commission* and of 14 December 2000 in Case T-5/00 R *FEG* v *Commission* — under appeal, Case C-7/01 P(R)) and in staff cases, there were a number of applications for the suspension of operation of decisions authorising the marketing of a medicinal product (order of the President of the Court of First Instance of 7 April 2000 in Case T-326/99 R *Olivieri* v *Commission*) or, conversely, withdrawing authorisation.

The suspension of operation sought by such applications was ordered a number of times (in particular, by order of the President of the Court of First Instance of 28 June 2000 in Case T-74/00 R *Artegodan* v *Commission*). [31] It may be noted from those orders that a mere reference to the protection of public health cannot be sufficient to justify the withdrawal of an authorisation of that kind. In *Artegodan* v *Commission*, the President held that, notwithstanding the preponderance which unquestionably had to be given to the requirements of the protection of public health as against economic considerations, the balance of interests inclined towards suspension of operation of the Commission decision withdrawing marketing authorisation for a medicinal product inasmuch as the Commission had not succeeded in demonstrating that the protective measures contained in a previous decision, which were based on facts identical to those

[31] The Court followed the same reasoning in a number of subsequent orders deciding applications for interim relief on facts very much comparable to those in *Artegodan* v *Commission*: orders of 19 October 2000 in Case T-141/00 R *Laboratoires Pharmaceutiques Trenker* v *Commission* (under appeal, Case C-459/00 P(R)) and of 31 October 2000 in Case T-76/00 R *Farmaceutici and Others* v *Commission* (under appeal, Case C-474/00 P(R)), in Case T-83/00 R I *Hänseler* v *Commission* (under appeal, Case C-475/00 P(R)), in Case T-83/00 R II *Schuck* v *Commission* (under appeal, Case C-476/00 P(R)), in Case T-84/00 R *Laboratórios Roussel and Laboratoires Roussel Diamant* v *Commission* (under appeal, Case C-477/00 P(R)), in Case T-85/00 R *Laboratórios Roussel and Roussel Iberica* v *Commission* (under appeal, Case C-478/00 P(R)), in Case T-132/00 R *Gerot Pharmazeutika* v *Commission* (under appeal, Case C-479/00 P(R)) and in Case T-137/00 R *Cambridge Healthcare* v *Commission* (under appeal, Case C-471/00 P(R)).

giving rise to the contested decision, had proved insufficient to protect public health.

In a quite different field, an application for interim relief was granted by order of 2 May 2000 in Case T-17/00 R *Rothley and Others* v *Parliament*, a case brought by 71 Members of the European Parliament (MEPs) against the Parliament concerning the manner in which investigations are conducted by the European Anti-Fraud Office (OLAF). A brief account of the background is helpful for explaining the significance of the decision.

In May 1999 the European Parliament and the Council adopted a regulation concerning investigations conducted by the OLAF. The regulation provides, *inter alia*, that the OLAF may conduct investigations within the institutions, the latter being informed when the OLAF's employees conduct an investigation on their premises or consult a document or request information held by them. Under an agreement subsequently concluded between the Parliament, the Council and the Commission, each institution was to adopt common rules containing the measures required to ensure smooth operation of the investigations carried out by the OLAF within those institutions. In November 1999 the Parliament adopted a decision amending its Rules of Procedure, making it possible to apply the rules provided for by the interinstitutional agreement. The legality of that decision was challenged before the Court by a number of MEPs, who also sought its suspension.

In the order, the President of the Court of First Instance considered whether the conditions for granting interim relief were met, having first found that the application for relief was admissible because the contested decision was capable of producing legal effects going beyond the mere internal organisation of the Parliament's work and of being of direct and individual concern to the applicants.

In his consideration of the requirement for there to be a *prima facie* case, the President found it necessary to carry out a *prima facie* assessment of the extent of the immunity enjoyed by MEPs. After interpreting the provisions of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 in the light of their context and purpose and with regard to the time at which they were adopted, he did not exclude the possibility that the Protocol protected MEPs against certain actions by the institutions or Community organs, such as the OLAF, since those actions might be preliminary to legal proceedings before a national court and might hinder the internal working of the Parliament.

The President then considered whether the contested decision contained provisions ensuring that the immunity of MEPs would not be compromised; he found that it did not contain any specific guarantee with regard to respect for the rights of MEPS when the OLAF exercised its powers of investigation. In particular, the OLAF employees could have access to MEPs' offices within the Parliament, in their absence or without their consent, in order to obtain certain information. The condition relating to urgency was therefore satisfied since, if interim relief had not been granted, the MEPs would have been at risk of suffering serious and irreparable damage.

Finally, the President weighed the competing interests and considered that, while it was unarguably in the Community's interest to prevent and to combat fraud and any other illegal activity detrimental to the financial interests of the Community, it was equally in the Community's interest that MEPs should be able to carry out their activities with the assurance that their independence would not be compromised.

Consequently, in order to ensure that the applicants' interests were protected in the interim while at the same time preserving as best possible the interests of the Community, the President, first, ordered suspension of the operation of those provisions of the Parliament's decision requiring the applicants to cooperate with the OLAF and to inform the President of the Parliament or the OLAF and, second, ordered the Parliament to notify the Members concerned without delay of any imminent measure of the OLAF to be taken concerning them and to authorise employees of the OLAF to have access to those Members' offices only with their consent.

"Cement" cases: amounts of the fines

Case number	Names of the parties	Amounts of the fines imposed by the Commission (Decision 94/815/EC of 30 November 1994) (Euros)	Amounts of the fines imposed by the Court of First Instance (Euros)
T-25/95	*Cimenteries CBR* v *Commission*	8 032 000	1 711 000
T-26/95	*Cembureau — Association Européenne du Ciment* v *Commission*	100 000	
T-30/95	*Fédération de l'Industrie Cimentière Belge* v *Commission*	100 000	
T-31/95	*Eerste Nederlandse Cementindustrie (ENCI)* v *Commission*	7 316 000	
T-32/95	*Vereniging Nederlandse Cementindustrie (VNC)* v *Commission*	100 000	
T-34/95	*Ciments Luxembourgeois* v *Commission*	1 052 000	617 000
T-35/95	*Dyckerhoff* v *Commission*	13 284 000	7 055 000
T-36/95	*Syndicat National de l'Industrie Cimentière (SFIC)* v *Commission*	100 000	
T-37/95	*Vicat* v *Commission*	8 272 000	2 407 000
T-38/95	*Groupe Origny* v *Commission*	2 522 000	
T-39/95	*Ciments Français* v *Commission*	25 768 000	13 570 000
T-42/95	*Heidelberger Zement* v *Commission*	15 652 000	7 056 000
T-43/95	*Lafarge Coppée* v *Commission*	23 900 000	14 248 000
T-44/95	*Aalborg Portland* v *Commission*	4 008 000	2 349 000
T-45/95	*Alsen* v *Commission*	3 841 000	
T-46/95	*Alsen* v *Commission*	1 850 000	
T-48/95	*Bundesverband der Deutschen Zementindustrie* v *Commission*	100 000	

T-50/95	*Unicem* v *Commission*	11 652 000	6 399 000
T-51/95	*Fratelli Buzzi* v *Commission*	3 652 000	
T-52/95	*Compañia Valenciana de Cementos Portland* v *Commission*	1 866 000	638 000
T-53/95	*The Rugby Group* v *Commission*	5 144 000	
T-54/95	*British Cement Association* v *Commission*	100 000	
T-55/95	*Asland* v *Commission*	5 337 000	740 000
T-56/95	*Castle Cement* v *Commission*	7 964 000	
T-57/95	*Heracles General Cement Company* v *Commission*	5 748 000	
T-58/95	*Corporación Uniland* v *Commission*	1 971 000	592 000
T-59/95	*Agrupación de Fabricantes de Cemento de España (Oficemen)* v *Commission*	70 000	
T-60/95	*Irish Cement* v *Commission*	3 524 000	2 065 000
T-61/95	*Cimpor — Cimentos de Portugal* v *Commission*	9 324 000	4 312 000
T-62/95	*Secil — Companhia Geral de Cal e Cimento* v *Commission*	3 017 000	1 395 000
T-63/95	*Associação Técnica da Indústria de Cimento (ATIC)* v *Commission*	70 000	
T-64/95	*Titan Cement Company* v *Commission*	5 625 000	
T-65/95	*Italcementi — Fabbriche Riunite Cemento* v *Commission*	33 580 000	25 701 000
T-68/95	*Holderbank Financière Glarus* v *Commission*	5 331 000	1 918 000
T-69/95	*Hornos Ibéricos Alba (Hisalba)* v *Commission*	1 784 000	836 000
T-70/95	*Aker RGI* v *Commission*	40 000	14 000
T-71/95	*Scancem (publ)* v *Commission*	40 000	14 000
T-87/95	*Cementir — Cementerie del Tirreno* v *Commission*	8 248 000	7 471 000
T-88/95	*Blue Circle Industries* v *Commission*	15 824 000	7 717 000

T-103/95	*Enosi Tsimentoviomichanion Ellados* v *Commission*	100 000	
T-104/95	*Tsimenta Chalkidos* v *Commission*	1 856 000	510 000

B — Composition of the Court of First Instance

(Order of precedence as at 1 January 2000)

First row, from left to right:
Judge J. Azizi; Judge V. Tiili; Judge R. García-Valdecasas y Fernández; President B. Vesterdorf; Judge K. Lenaerts; Judge J. Pirrung; Judge P. Lindh.

Second row, from left to right:
Judge N.J. Forwood; Judge P. Mengozzi; Judge M. Jaeger; Judge R.M. Moura Ramos; Judge A. Potocki; Judge J.D. Cooke; Judge A.W.H. Meij; Judge M. Vilaras; H. Jung, Registrar.

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

Bo Vesterdorf

Born 1945; Lawyer-linguist at the Court of Justice; Administrator in the Ministry of Justice; Examining Magistrate; Legal Attaché in the Permanent Representation of Denmark to the European Communities; Temporary Judge at the Østre Landsret; Head of the Administrative Law Division in the Ministry of Justice; Head of Division in the Ministry of Justice; University Lecturer; Member of the Steering Committee on Human Rights at the Council of Europe (CDDH), and subsequently Member of the Bureau of the CDDH; Judge at the Court of First Instance since 25 September 1989; President of the Court of First Instance since 4 March 1998.

Rafael García-Valdecasas y Fernández

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

Koenraad Lenaerts

Born 1954; lic.iuris, Ph.D. in Law (Katholieke Universiteit Leuven); Master of Laws, Master in Public Administration (Harvard University); Professor of European Law, Katholieke Universiteit Leuven; Visiting Professor at the Universities of Burundi, Strasbourg and Harvard; Professor at the College of Europe, Bruges; Legal Secretary at the Court of Justice; Member of the Brussels Bar; Judge of the Court of First Instance since 25 September 1989.

Virpi Tiili

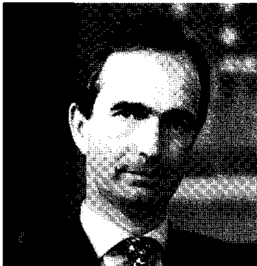
Born 1942; Doctor of Laws of the University of Helsinki; assistant lecturer in civil and commercial law at the University of Helsinki; Director of Legal Affairs and Commercial Policy at the Central Chamber of Commerce of Finland; Director General of the Office for Consumer Protection, Finland; Judge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

Pernilla Lindh

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

Josef Azizi

Born 1948; Doctor of Laws and Bachelor of Sociology and Economics of the University of Vienna; Lecturer and senior lecturer at the Vienna School of Economics and the Faculty of Law of the University of Vienna; Ministerialrat and Head of Department at the Federal Chancellery; Judge at the Court of First Instance since 18 January 1995.



André Potocki

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

Rui Manuel Gens de Moura Ramos

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

John D. Cooke

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

Marc Jaeger

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

Jörg Pirrung

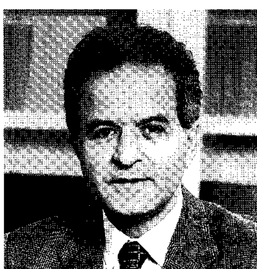
Born 1940; academic assistant at the University of Marburg; civil servant in the German Federal Ministry of Justice (Division for International Civil Procedure Law, Division for Children's Law); Head of the Division for Private International Law in the Federal Ministry of Justice; Head of a Subsection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

Paolo Mengozzi

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

Arjen W.H. Meij

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



Mihalis Vilaras

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

Nicholas James Forwood

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

Hans Jung

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

2. Order of precedence

from 1 January to 30 September 2000

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

H. JUNG, Registrar

from 1 October to 31 December 2000

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

H. JUNG, Registrar

3. Former Members of the Court of First Instance

Da CRUZ VILAÇA José Luis (1989-1995), President from 1989 to 1995
SAGGIO Antonio (1989-1998), President from 1995 to 1998
BARRINGTON Donal Patrick Michael (1989-1996)
EDWARD David Alexander Ogilvy (1989-1992)
KIRSCHNER Heinrich (1989-1997)
YERARIS Christos (1989-1992)
SCHINTGEN Romain Alphonse (1989-1996)
BRIËT Cornelis Paulus (1989-1998)
BIANCARELLI Jacques (1989-1995)
KALOGEROPOULOS Andreas (1992-1998)
BELLAMY Christopher William (1992-1999)

- Presidents

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

Chapter III

Meetings and visits

A — Official visits and functions at the Court of Justice and the Court of First Instance in 2000

12 January	Ms Birgitta Dahl, President of the Swedish Parliament
13 January	Mr Giovanni Perego, Chairman of the Consultative Committee of the European Coal and Steel Community
27 January	Mr Herbert Mertin, Minister for Justice of the *Land* Rhineland-Palatinate
3 February	HE Richard Morningstar, Ambassador of the Mission of the United States of America to the European Union
10 February	HE Panayotis C. Macris, Ambassador of the Hellenic Republic to the Grand Duchy of Luxembourg
14 February	Mr Antonio Vitorino, Member of the European Commission
17 February	Mr Vicente Álvarez Areces, Prime Minister of Asturias
23 February	HE Harry Kney-Tal, Ambassador Extraordinary and Plenipotentiary and Head of the Israeli Mission to the European Union
13 and 14 March	Delegation of the Supreme Court of Israel including its President
14 March	HE Liviu-Petru Zapirtan, Ambassador Extraordinary and Plenipotentiary of Romania to the Grand Duchy of Luxembourg
17 March	HE Ampalavanar Selverajah, Ambassador Extraordinary and Plenipotentiary and Head of Mission of the Republic of Singapore in Brussels
23 March	Mr G. Canivet, First President of the French Court of Cassation

23 March	Mr Jean André Gréther, Ambassador Extraordinary and Plenipotentiary and Head of the Mission of the Principality of Monaco to the European Union
30 March	Mr Hans-Jürgen Papier, Vice-President of the German Constitutional Court
10 April	HE Nils Gunnar Watz, Swedish Ambassador to the Grand Duchy of Luxembourg
10 May	Mr Luzius Wildhaber, President of the European Court of Human Rights, and Mr Marc Fischbach, Judge at that Court
11 May	HE Pierre Friederich, Ambassador Extraordinary and Plenipotentiary of the Swiss Confederation to the Grand Duchy of Luxembourg
11 May	Mr Reinhold Bocklet, Minister of State with responsibility for German and European issues in the Bavarian Prime Minister's Office
17 May	Delegation from the French Council of State
25 May	Mr Mario Monti, Member of the European Commission
5 June	HE Ann Wilkens, Swedish Ambassador to the Grand Duchy of Luxembourg
6 June	Delegation from the Rioja Consultative Council
8 June	Delegation of Presidents and Judges from courts of appeal and the National Justice Council of Hungary
19 and 20 June	Judges' Forum
26 June	Delegation from the European Federation of Administrative Judges
27 June	Delegation from the Bundesgerichtshof (German Federal Court of Justice)

29 and 30 June	Mr Ronan Keane, Chief Justice of the Supreme Court of Ireland
3 July	HE Gunnar Lund, Permanent Representative of the Kingdom of Sweden to the European Union
13 July	Delegation from the Romanian Legislative Council
18 September	HE Gordon Geoffrey Wetherell, British Ambassador to the Grand Duchy of Luxembourg
18 September	HE Tudorel Postolache, Ambassador Extraordinary and Plenipotentiary of Romania to the Grand Duchy of Luxembourg
19 September	Delegation from the Italian High Council of the Judiciary
27 September	HE Christian Strohal, Austrian Ambassador to the Grand Duchy of Luxembourg
18 October	Committee for Legal and Constitutional Issues of the Parliament of Lower Saxony
6 and 7 November	Delegation from the French High Council of the Judiciary
20 and 21 November	Judicial Study Visit
27 November	Delegation from the Council of the Bars and Law Societies of the European Community (CCBE)
5 December	Mr A. Kruse, Director-General for Legal Affairs at the Swedish Ministry of Foreign Affairs

B — Study visits to the Court of Justice and the Court of First Instance in 2000

(Number of visitors)

	National judiciary [1]	Lawyers, legal advisers, trainees	Community law lecturers, teachers [2]	Diplomats, parliamentarians, political groups, national civil servants	Students, trainees, EC-EP	Members of professional associations	Others	TOTAL
B	86	110	—	—	349	73	53	671
DK	8	41	—	—	157	—	—	219
D	370	424	—	132	787	24	243	1 980
EL	63	73	17	—	175	—	22	350
E	24	35	1	21	240	40	55	416
F	59	139	31	89	736	19	17	1 090
IRL	12	—	—	—	74	—	5	91
I	24	145	3	4	201	—	20	397
L	4	—	—	—	59	—	60	123
NL	22	33	35	—	353	—	—	443
A	33	51	3	41	196	—	2	326
P	9	1	1	—	27	21	—	59
FIN	8	71	—	—	35	21	20	155
S	28	64	9	36	43	—	25	205
UK	45	13	6	47	608	—	—	719
Third countries	235	81	6	197	787	220	41	1 567
Mixed groups	20	30	31	33	246	30	—	390
TOTAL	1 050	1 311	143	613	5 073	448	563	9 201

(cont.)

1 The number of judges of the Member States who participated in the Judges' Forum and judicial study visit organised by the Court of Justice is included under this heading. In 2000 the figures were as follows: Belgium: 10; Denmark: 8; Germany: 24; Greece: 8; Spain: 24; France: 24; Ireland: 8; Italy: 24; Luxembourg: 4; Netherlands: 8; Austria: 8; Portugal: 8; Finland: 8; Sweden: 8; United Kingdom: 24.

2 Other than teachers accompanying student groups.

Study visits to the Court of Justice and the Court of First Instance in 2000
(Number of groups)

	National judiciary [1]	Lawyers, legal advisers, trainees	Community law lecturers, teachers [2]	Diplomats, parliamentarians, political groups, national civil servants	Students, trainees, EC-EP	Members of professional associations	Others	TOTAL
B	3	3	—	—	10	1	2	19
DK	—	1	—	1	5	—	—	7
D	10	16	—	5	26	2	8	67
EL	3	5	4	—	6	—	1	19
E	—	5	1	1	10	1	2	20
F	4	6	2	4	25	1	1	43
IRL	2	—	—	—	2	—	1	5
I	—	7	1	2	6	—	1	17
L	—	—	—	—	3	—	1	4
NL	1	1	2	—	14	—	—	18
A	1	5	2	3	7	—	2	20
P	1	1	1	—	1	1	—	5
FIN	—	3	—	—	1	1	1	6
S	2	6	1	3	3	—	2	17
UK	2	2	1	2	19	—	1	27
Third countries	13	10	4	10	27	2	6	72
Mixed groups	1	1	1	2	8	1	—	14
TOTAL	43	72	20	33	173	10	29	380

1 This heading includes, *inter alia*, the Judges' Forum and judicial study visit.

2 Other than teachers accompanying student groups.

C — Formal sittings in 2000

20 January	Formal sitting on the occasion of the presentation of a volume of essays in tribute to Mr Fernand Schockweiler
8 March	Formal sitting for the giving of solemn undertakings by the new Members of the Court of Auditors
7 June	Formal sitting in memory of Mr Constantinos N. Kakouris, former Member of the Court of Justice
14 June	Formal sitting in memory of Mr Riccardo Monaco, former Member of the Court of Justice
14 July	Formal sitting on the occasion of the departure from office of Mr Günter Hirsch, Judge at the Court of Justice, and the entry into office of Mrs Ninon Colneric as Judge at the Court of Justice
6 October	Formal sitting on the occasion of the partial renewal of the membership of the Court of Justice (see "Changes in the composition of the Court of Justice in 2000", p. 85)
15 November	Formal sitting in memory of Lord Mackenzie-Stuart, former Judge and President of the Court of Justice

D — Visits and participation in official functions in 2000

6 January	Attendance of a delegation from the Court of Justice at the formal sitting for the reopening of the Court of Cassation in Paris
25 January	Attendance of a delegation from the Court of Justice and the Court of First Instance at the formal sitting of the European Court of Human Rights in Strasbourg
20 March	Conference of the President of the Court of Justice on "The Court of Justice of the European Communities and the courts of the Member States — components of judicial power in the European Union" at the invitation of the Juristische Studiengesellschaft, at the seat of the Bundesgerichtshof (German Federal Court of Justice) in Karlsruhe on the occasion of the 50th anniversary of that court
7 April	Participation of the President of the Court of Justice at the "Millenium Conference — Britain in Europe" organised by the Oxford Institute of European Comparative Law of the University of Oxford, in London
15 to 22 April	Official visit of a delegation from the Court of Justice, including the President, to the United States Supreme Court in Washington D.C.
7 to 11 May	Delegation from the Court of Justice at the "XVIIth Conference between the Councils of State and the Supreme Administrative Judicial Bodies of the EU" in Vienna
15 May	Participation of a delegation from the Court of Justice and the Court of First Instance at the opening of the conference "Judicial experience in the context of Community justice", at the invitation of the President of the Supreme Court of Justice of Portugal, in Lisbon
18 May	Meeting of the President of the Court of Justice with Mrs Nicole Fontaine, President of the European Parliament, in Strasbourg

23 May	Delegation from the Court of Justice at the celebration of the Constitution Day of the Federal Republic of Germany in Berlin
26 May	Visit of the President of the Court of First Instance to Mr Niels Helveg Petersen, Danish Minister for Foreign Affairs, in Copenhagen
30 May to 2 June	Delegation from the Court of Justice at the Conference of the Supreme Courts and Attorneys General of Member States of the European Union, in London
1 to 3 June	Delegations from the Court of Justice and the Court of First Instance at the 19th Conference of the International Federation for European Law (FIDE), in Helsinki
3 July	Delegation from the Court of Justice at the official opening ceremony for the headquarters of the International Tribunal for the Law of the Sea, in Hamburg
3 and 4 July	Delegation from the Court of Justice at the commemoration of the anniversary of the Constitutional Court in Madrid
20 July	Participation of the President of the Court of Justice and of a delegation from the Court of Justice and the Court of First Instance at the ceremony for the entry into office of Mr Günter Hirsch as President of the Bundesgerichtshof in Karlsruhe
7 September	Visit of the President of the Court of Justice to Mr Michel Barnier, Member of the European Commission, in Brussels
15 September	The President of the Court of Justice presides over the session "Judicial Review of Administrative Action" at a symposium in honour of Mr Walter van Gerven at the Catholic University of Louvain

19 to 22 September	Delegation from the Court of Justice at the 10th Symposium of European Patent Judges in Luxembourg
27 September	Attendance of the President of the Court of Justice and the President of the Court of First Instance at the ceremonies on the accession to the throne of His Royal Highness the Grand Duke Henri of Luxembourg
2 October	Delegation from the Court of Justice and the Court of First Instance at the ceremony for the opening of the judicial year in London
2 October	Participation of a delegation from the Court of Justice at a seminar, with the President of the European Court of Human Rights and the Presidents of several European constitutional courts, organised in connection with Constitution Day by the Austrian Constitutional Court, in Vienna
12 October	Delegation from the Court of Justice at the celebration of the 50th anniversary of the Bundesfinanzhof (Federal Finance Court) in Munich
17 October	Delegation from the Court of Justice at the official opening ceremony for the headquarters of the Community Plant Variety Office in Angers
30 October	Visit of the President of the Court of Justice to Mr Josep Piqué i Camp, Spanish Minister for Foreign Affairs, in Madrid
4 November	Delegation from the Court of Justice at the commemorative ceremony in Rome marking the 50th anniversary of the signature of the European Convention for Human Rights
7 November	Participation of the President of the Court of First Instance at a symposium in honour of the Supreme Court of Denmark at the University of Copenhagen

8 November	Participation of the President of the Court of Justice at the symposium "Emergence of a European constitutional system — the interlinking of national and European constitutional law" on the occasion of the presentation of the book with the same title, written under the editorship of Professor Jürgen Schwarze, to the representation of the *Land* of Baden-Württemberg in Berlin
10 to 12 November	Visit of a delegation from the Court of Justice, including the President, to the Honourable Society of King's Inns in Dublin
4 and 5 December	Participation of the President of the Court of Justice and of a delegation from the Court of Justice and the Court of First Instance at the symposium "Common principles for a system of justice of the States of the European Union" organised in Paris by the Court of Cassation in connection with the French presidency of the European Union
18 December	Visit of the President of the Court of Justice to Mr Angel Acebes, the Spanish Minister for Justice, in Madrid
18 December	Participation of the President of the Court of First Instance at a conference in Paris organised by the Court of Cassation on "Reform of the Judicial System of the Union"

Chapter IV

Tables and statistics

A – PROCEEDINGS OF THE COURT OF JUSTICE

1. SYNOPSIS OF THE JUDGMENTS DELIVERED BY THE COURT OF JUSTICE IN 2000

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1. SYNOPSIS OF THE JUDGMENTS DELIVERED BY THE COURT OF JUSTICE IN 2000

AGRICULTURE

Case	Date	Parties	Subject-matter
C-414/98	20 January 2000	Landerzeugergemeinschaft eG Groß Godems v Amt für Landwirtschaft Parchim	Regulation (EEC) No 4115/88 — Aid for the extensification of production — Penalties applicable
C-104/89 and C-37/90	27 January 2000	J.M. Mulder, W.H. Brinkhoff, J.M.M. Muskens, T. Twijnstra, O. Heinemann v Council of the European Union and Commission of the European Communities	Additional levy on milk — Non-contractual liability — Reparation and assessment of damage
C-217/98	21 March 2000	Hauptzollamt Hamburg-Jonas v LFZ Nordfleisch AG	Common organisation of the markets — Beef and veal — Export refund — Withdrawal of the application for advance payment — Effect on the security
C-269/97	4 April 2000	Commission of the European Communities v Council of the European Union	Regulation (EC) No 820/97 — Legal basis
C-292/97	13 April 2000	Kjell Karlsson and Others	Additional levy on milk — Milk quota scheme in Sweden — Initial allocation of milk quotas — National rules — Interpretation of Regulation (EEC) No 3950/92 — Principle of equal treatment

Case	Date	Parties	Subject-matter
C-56/99	11 May 2000	Gascogne Limousin Viandes SA v Office National Interprofessionnel des Viandes de l'Élevage et de l'Aviculture (Ofival)	Beef and veal — Premium for early marketing of calves — Grant thereof dependent on average carcase weight of calves slaughtered in each Member State during 1995 — Validity under Article 40(3) of the EC Treaty (now, following amendment, Article 34(2) EC)
C-301/98	18 May 2000	KVS International BV v Minister van Landbouw, Natuurbeheer en Visserij	Animal health in the veterinary sector in intra-Community trade in and imports of deep-frozen semen of domestic animals of the bovine species — Certification of bovine semen intended for export to a Member State — Directives 88/407/EEC and 93/60/EEC — Scope *ratione temporis*
C-242/97	18 May 2000	Kingdom of Belgium v Commission of the European Communities	EAGGF — Clearance of accounts — 1993 — Cereals, beef and veal
C-273/98	25 May 2000	Hans-Josef Schlebusch v Hauptzollamt Trier	Additional levy on milk — Original and special reference quantities — Accumulation — Definitive allocation of a special reference quantity — Conditions — Temporary transfer of part of an original reference quantity before the definitive allocation of a special reference quantity
C-359/98 P	25 May 2000	Ca' Pasta Srl v Commission of the European Communities	Appeal — Regulation (EEC) No 4028/86 — Community financial aid — Procedure for discontinuing the aid — Suspension of payment of the aid originally granted — Actionable measure

Case	Date	Parties	Subject-matter
C-91/99	8 June 2000	Commission of the European Communities v Portuguese Republic	Failure by a Member State to fulfil its obligations — Directive 96/43/EC — Failure to transpose within the prescribed period
C-190/99	8 June 2000	Commission of the European Communities v Ireland	Failure by a Member State to fulfil its obligations — Directive 96/43/EC — Failure to transpose within the prescribed period
C-348/97	15 June 2000	Commission of the European Communities v Federal Republic of Germany	Failure by a Member State to fulfil its obligations — Trade with the German Democratic Republic prior to German reunification — Regulation (EEC) No 2252/90 — Abolition of customs formalities — Failure to charge import levies in inter-German trade — Failure to make own resources available to the Commission
C-470/98	15 June 2000	Commission of the European Communities v Hellenic Republic	Failure by a Member State to fulfil its obligations — Incomplete transposition of Directive 90/675/EEC
C-147/96	22 June 2000	Kingdom of the Netherlands v Commission of the European Communities	Action for annulment — Commission's refusal to include an overseas country in the provisional list of third countries established by Article 23 of Directive 92/46/EEC — Actionable measure
C-45/97	6 July 2000	Kingdom of Spain v Commission of the European Communities	EAGGF — Clearance of accounts — Financial years 1992 and 1993
C-289/97	6 July 2000	Eridania SpA v Azienda Agricola San Luca di Rumagnoli Viannj	Sugar — Price regime — Marketing year 1996/97 — Regionalisation — Deficit zones — Classification of Italy — Validity of Regulations Nos 1580/96 and 1785/81

Case	Date	Parties	Subject-matter
C-356/97	6 July 2000	Molkereigenossenschaft Wiedergeltingen eG v Hauptzollamt Lindau	Additional levy on milk — Annual statement of quantities of milk delivered to purchaser — Late communication — Penalty — Validity of Article 3(2) of Regulation (EEC) No 536/93
C-402/98	6 July 2000	Agricola Tabacchi Bonavicina Snc di Mercati Federica (ATB) and Others v Ministero per le Politiche Agricole, Azienda di Stato per gli Interventi nel Mercato Agricolo (AIMA), Mario Pittaro	Common organisation of the markets — Raw tobacco — Validity of Council Regulation (EC) No 711/95 and of Commission Regulations (EC) Nos 1066/95 and 1067/95
C-117/99	13 July 2000	Union Nationale Interprofessionnelle des Légumes Transformés (Unilet), Gilles Le Bars v Association Comité Économique Régional Agricole Fruits et Légumes de Bretagne (Cerafel)	Common organisation of the markets — Fruit and vegetables — Producers' organisations — Imposition of fees on non-member producers of fresh products — Exemption for non-member producers of products intended for processing — Lawfulness of the exemption
C-46/97	13 July 2000	Hellenic Republic v Commission of the European Communities	Clearance of EAGGF accounts — 1992 financial year
C-243/97	13 July 2000	Hellenic Republic v Commission of the European Communities	Clearance of EAGGF accounts — 1993 financial year
C-369/98	14 September 2000	The Queen v Minister of Agriculture, Fisheries & Food, *ex parte*: Trevor Robert Fisher and Penny Fisher	Aid schemes — Computerised database — Disclosure of information
C-22/99	26 September 2000	Cristoforo Bertinetto v Biraghi SpA	Common organisation of the markets — Milk and milk products — Milk-price — Article 3 of Regulation (EEC) No 804/68

Case	Date	Parties	Subject-matter
C-372/98	12 October 2000	The Queen v Ministry of Agriculture, Fisheries and Food, *ex parte*: J.H. Cooke & Sons	Common Agricultural Policy — Regulation (EEC) No 1765/92 — Regulation (EC) No 762/94 — Aids linked to the area down to arable crops and set-aside — Meaning of an area which has been cultivated in the previous year with a view to harvest
C-114/99	17 October 2000	Roquette Frères SA v Office National Interprofessionnel des Céréales (ONIC)	Common organisation of the markets — Export refunds — Cereals — Conditions for payment — Processing as a product likely to be re-imported into the Community
C-155/99	19 October 2000	Giuseppe Busolin and Others v Ispettorato Centrale Repressione Frodi — Ufficio di Conegliano — Ministero delle Risorse Agricole, Alimentari e Forestali	Common organisation of the agricultural markets — Market in wine — Compulsory distillation scheme
C-312/98	7 November 2000	Schutzverband gegen Unwesen in der Wirtschaft eV v Warsteiner Brauerei Haus Cramer GmbH & Co. KG	Protection of geographical indications and designations of origin — Regulation (EEC) No 2081/92 — Scope — National rules prohibiting the potentially misleading use of simple geographical indications of source
C-148/99	9 November 2000	United Kingdom of Great Britain and Northern Ireland v Commission of the European Communities	EAGGF — Clearance of accounts — 1995 financial year — Regulation (EEC) No 1164/89 — Aid for fibre flax and hemp
C-214/98	16 November 2000	Commission of the European Communities v Hellenic Republic	Failure by a Member State to fulfil its obligations — Non-transposition of certain provisions of Directive 93/118/EEC
C-436/98	30 November 2000	HMIL Ltd v Minister for Agriculture, Food and Forestry	Common organisation of the markets — Special export refunds and private storage aid for certain pieces of beef

Case	Date	Parties	Subject-matter
C-477/98	5 December 2000	Eurostock Meat Marketing Ltd v Department of Agriculture for Northern Ireland	Animal health — National emergency measures against bovine spongiform encephalopathy — Specified risk material
C-2/99	7 December 2000	Döhler GmbH v Hauptzollamt Darmstadt	Common organisation of the markets — Production refunds — Article 7 of Regulation (EEC) No 2169/86, as amended by Regulation (EEC) No 165/89 — Esterified or etherified starch — Proper use — Penalties — Meaning of party concerned
C-395/99	7 December 2000	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil its obligations — Directives 96/51/EC and 96/93/EC — Failure to transpose directives within the prescribed periods
C-110/99	14 December 2000	Emsland-Stärke GmbH v Hauptzollamt Hamburg-Jonas	Export refunds — Goods immediately re-imported into the Community — Abuse of rights
C-99/99	14 December 2000	Italian Republic v Commission of the European Communities	Action for annulment — Regulation (EC) No 2815/98 — Marketing standards for olive oil
C-245/97	14 December 2000	Federal Republic of Germany v Commission of the European Communities	EAGGF — Clearance of accounts — 1993 financial year — Promotion of milk products

Case	Date	Parties	Subject-matter

APPROXIMATION OF LAWS

Case	Date	Parties	Subject-matter
C-208/98	23 March 2000	Berliner Kindl Brauerei AG v Andreas Siepert	Consumer credit — Directive 87/102 — Scope — Contracts of guarantee — Not covered
C-327/98	23 March 2000	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Directive 93/15/EEC
C-465/98	4 April 2000	Verein gegen Unwesen in Handel und Gewerbe Köln eV v Adolf Darbo AG	Labelling and presentation of foodstuffs — Directive 79/112/EEC — Strawberry jam — Risk of deception
C-420/98	13 April 2000	W.N. v Staatssecretaris van Financiën	Directive 77/799/EEC — Mutual assistance by the authorities of the Member States in the field of direct taxation — Spontaneous exchange of information
C-348/99	13 April 2000	Commission of the European Communities v Grand Duchy of Luxembourg	Failure by a Member State to fulfil its obligations — Directive 96/9/EC — Failure to transpose within the prescribed period
C-123/99	13 April 2000	Commission of the European Communities v Hellenic Republic	Failure by a Member State to fulfil its obligations — Failure to transpose Directive 94/62/EC
C-107/97	18 May 2000	Max Rombi, Arkopharma v Organisation Générale des Consommateurs (Orgeco), Union Départementale 06	Food supplements — Directive 89/398/EEC — Transposition — Conditions — Retention of previous national legislation — Additive — L-carnitine

Case	Date	Parties	Subject-matter
C-375/98	8 June 2000	Ministério Público, Fazenda Pública v Epson Europe BV	Harmonisation of tax laws — Parent companies and subsidiaries — Exemption, in the Member State of the subsidiary, from withholding tax on profits distributed by the subsidiary to the parent company
C-425/98	22 June 2000	Marca Moda CV v Adidas AG, Adidas Benelux BV	Directive 89/104/EEC — Article 5(1)(b) — Trade marks — Likelihood of confusion — Likelihood of association between the sign and the trade mark
C-219/98	4 July 2000	Regina v Minister of Agriculture, Fisheries and Food, *ex parte*: S.P. Anastasiou (Pissouri) Ltd and Others	Directive 77/93/EEC — Issue of phytosanitary certificates by a non-member country other than the country of origin of the plants — Produce originating in the part of Cyprus to the north of the United Nations Buffer Zone
C-366/98	12 September 2000	Yannick Geffroy v Casino France SNC	Free movement of goods — National legislation on the marketing of a product — Description and labelling — National legislation requiring use of the official language of the Member State — Directive 79/112/EEC
C-348/98	14 September 2000	Vitor Manuel Mendes Ferreira, Maria Clara Delgado Correia Ferreira v Companhia de Seguros Mundial Confiança SA	Compulsory insurance against civil liability in respect of motor vehicles — Directives 84/5/EEC and 90/232/EEC — Minimum amounts of cover — Type of civil liability — Injury caused to a member of the family of the insured person or driver
C-443/98	26 September 2000	Unilever Italia SpA v Central Food SpA	Technical standards and regulations — Obligations of notification and postponement of adoption — Applicability in civil proceedings

Case	Date	Parties	Subject-matter
C-376/98	5 October 2000	Federal Republic of Germany v European Parliament and Council of the European Union	Directive 98/43/EC — Advertising and sponsorship of tobacco products — Legal basis — Article 100a of the EC Treaty (now, after amendment, Article 95 EC)
C-74/99	5 October 2000	The Queen v Secretary of State for Health and Others, *ex parte*: Imperial Tobacco Ltd and Others	Directive 98/43/EC — Advertising and sponsorship of tobacco products — Validity
C-314/98	12 October 2000	Snellers Auto's BV v Algemeen Directeur van de Dienst Wegverkeer	First authorisation of a vehicle for use on the public highway — Determination of the date — Technical standards and regulations — Article 30 of the EC Treaty (now, after amendment, Article 28 EC)
C-3/99	12 October 2000	Cidrerie Ruwet SA v Cidre Stassen SA, HP Bulmer Ltd	Free movement of goods — Directive 75/106/EEC — Partial harmonisation — Prepackaged liquids — Making-up by volume — Cider — Prohibition by a Member State of nominal volumes not mentioned by the directive
C-37/99	16 November 2000	Roelof Donkersteeg	Directive 83/189/EEC — Technical standards and regulations — Obligation to notify — Footwear disinfecting facilities on agricultural holdings — Vaccination of pigs
C-320/99	23 November 2000	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Directive 97/68/EC — Non-road mobile machinery — Emission of gaseous and particulate pollutants

Case	Date	Parties	Subject-matter

ASSOCIATION OF THE OVERSEAS COUNTRIES AND TERRITORIES

Case	Date	Parties	Subject-matter
C-17/98	8 February 2000	Emesa Sugar (Free Zone) NV v Aruba	Decision 97/803/EC — Sugar imports — ACP/OCT cumulation of origin — Assessment of validity — National court — Interim measures

BRUSSELS CONVENTION

Case	Date	Parties	Subject-matter
C-8/98	27 January 2000	Dansommer A/S v Andreas Götz	Article 16(1) — Exclusive jurisdiction in proceedings having as their object tenancies of immovable property — Scope
C-7/98	28 March 2000	Dieter Krombach v André Bamberski	Enforcement of judgments — Public policy
C-38/98	11 May 2000	Régie Nationale des Usines Renault SA v Maxicar SpA, Orazio Formento	Enforcement of judgments — Intellectual property rights relating to vehicle body parts — Public policy
C-412/98	13 July 2000	Group Josi Reinsurance Company SA v Universal General Insurance Company (UGIC)	Personal scope — Plaintiff domiciled in a non-Contracting State — Material scope — Rules of jurisdiction in matters relating to insurance — Dispute concerning a reinsurance contract
C-387/98	9 November 2000	Coreck Maritime GmbH v Handelsveem BV and Others	Article 17 — Clause conferring jurisdiction — Formal conditions — Effects

Case	Date	Parties	Subject-matter

COAL AND STEEL

Case	Date	Parties	Subject-matter
C-274/97	16 May 2000	Commission of the European Communities v Coal Products Ltd	Arbitration clause — Interest rebate
C-210/98 P	13 July 2000	Salzgitter AG (formerly Preussag Stahl) v Commission of the European Communities	Appeal — Decision 3855/91/ECSC (Fifth Steel Aid Code) — Notification of planned aid after expiry of the prescribed period — Effects
C-441/97 P	23 November 2000	Wirtschaftsvereinigung Stahl, Thyssen Stahl AG, Preussag Stahl AG, Hoogovens Staal BV v Commission of the European Communities	Appeal — ECSC — Commission Decision No 3855/91/ECSC (Fifth Aid Code) — State aid for steel undertakings in the Italian public sector — Misuse of powers — Principle of non-discrimination — Principle of necessity
C-1/98 P	23 November 2000	British Steel plc v Commission of the European Communities	Appeal — ECSC — Commission Decision No 3855/91/ECSC (Fifth Aid Code) — Individual Commission decisions authorising State aid for steel undertakings — Competence of the Commission — Legitimate expectations

COMMERCIAL POLICY

Case	Date	Parties	Subject-matter
C-383/98	6 April 2000	The Polo/Lauren Company LP v PT. Dwidua Langgeng Pratama International Freight Forwarders	Common commercial policy — Regulation (EC) No 3295/94 — Prohibition of the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods — Whether applicable to goods in external transit — Validity

Case	Date	Parties	Subject-matter
C-230/98	18 May 2000	Amministrazione delle Finanze dello Stato v Schiavon Silvano	Common commercial policy — Regulation (EEC) No 545/92 and Regulation (EEC) No 859/92 — Imports into the Community of baby-beef originating in and coming from the former Yugoslav Republic of Macedonia — Body competent to issue certificates of origin
C-46/98 P	21 September 2000	European Fertilizer Manufacturers Association (EFMA) v Council of the European Union	Appeal — Anti-dumping — Ineffective pleas — Right to a fair hearing
C-458/98 P	3 October 2000	Industrie des Poudres Sphériques v Council of the European Union	Appeal — Anti-dumping — Regulation (EEC) No 2423/88 — Calcium metal — Admissibility — Re-opening of an anti-dumping procedure after annulment of the regulation adopting an anti-dumping duty — Right to a fair hearing

COMPANY LAW

Case	Date	Parties	Subject-matter
C-293/98	3 February 2000	Entidad de Gestión de Derechos de los Productores Audiovisuales (Egeda) v Hostelería Asturiana SA (Hoasa)	Copyright — Satellite broadcasting and cable retransmission
C-373/97	23 March 2000	Dionysios Diamantis v Elliniko Dimosio, Organismos Ikonomikis Anasinkrotisis Epikhiriseon AE (OAE)	Company law — Second Directive 77/91/EEC — Public limited liability company in financial difficulties — Increase in the capital of the company by administrative decision — Abuse of a right arising from a provision of Community law

Case	Date	Parties	Subject-matter
C-225/98	26 September 2000	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Public works contracts — Directives 71/305/EEC, as amended by Directive 89/440/EEC, and 93/37/EEC — Construction and maintenance of school buildings by the Nord-Pas-de-Calais Region and the Département du Nord
C-380/98	3 October 2000	The Queen v H.M. Treasury, *ex parte*: The University of Cambridge	Public contracts — Procedure for the award of public contracts for services, supplies and works — Contracting authority — Body governed by public law
C-16/98	5 October 2000	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Directive 93/38/EEC — Public works contracts in the water, energy, transport and telecommunications sectors — Electrification and street lighting works in the *département* of the Vendée — Definition of work
C-337/98	5 October 2000	Commission of the European Communities v French Republic	Failure to fulfil obligations — Public procurement contracts in the transport sector — Directive 93/38/EEC — Applicability *ratione temporis* — Rennes urban district light railway project — Contract awarded by negotiated procedure without a prior call for competition
C-324/98	7 December 2000	Telaustria Verlags GmbH, Telefonadress GmbH v Post & Telekom Austria AG	Public service contracts — Directive 92/50/EEC — Public service contracts in the telecommunications sector — Directive 93/38/EEC — Public service concession

Case	Date	Parties	Subject-matter
C-94/99	7 December 2000	ARGE Gewässerschutz v Bundesministerium für Land- und Forstwirtschaft	Public service contracts — Directive 92/50/EEC — Procedure for the award of public procurement contracts — Equal treatment of tenderers — Discrimination on grounds of nationality — Freedom to provide services

COMPETITION

Case	Date	Parties	Subject-matter
C-147/97 and C-148/97	10 February 2000	Deutsche Post AG v Gesellschaft für Zahlungssysteme mbH (GZS), Citicorp Kartenservice GmbH	Public undertaking — Postal service — Non-physical remail
C-395/96 P and C-396/96 P	16 March 2000	Compagnie Maritime Belge Transports SA, Compagnie Maritime Belge SA, Dafra-Lines A/S v Commission of the European Communities	Competition — International maritime transport — Liner conferences — Regulation (EEC) No 4056/86 — Article 86 of the EC Treaty (now Article 82 EC) — Collective dominant position — Exclusivity agreement between national authorities and liner conferences — Liner conference insisting on application of the agreement — Fighting ships — Loyalty rebates — Rights of defence — Fines — Assessment criteria
C-265/97 P	30 March 2000	Coöperatieve Vereniging De Verenigde Bloemenveilingen Aalsmeer BA (VBA) v Florimex BV and Vereniging van Groothandelaren in Bloemkwekerijproducten v Commission of the European Communities	Appeal — Decision rejecting a complaint — Compatibility with Article 2 of Regulation No 26 of a fee charged to external suppliers on floricultural products supplied to wholesalers established on the premises of a cooperative society of auctioneers — Statement of reasons

Case	Date	Parties	Subject-matter
C-266/97 P	30 March 2000	Coöperatieve Vereniging De Verenigde Bloemenveilingen Aalsmeer BA (VBA) v Vereniging van Groothandelaren in Bloemkwekerijproducten (VGB), Florimex BV v Commission of the European Communities	Appeal — Closure of procedure on a complaint in the absence of a response by the complainants within the time-limit notified to them — Compatibility with Article 85(1) of the Treaty of a fee levied on suppliers who have concluded agreements relating to the delivery of floricultural products to undertakings established on the premises of a cooperative auction society — Compatibility with Article 85(1) of the EC Treaty of an exclusive purchase obligation accepted by certain wholesalers reselling such products to retailers in a specific trading area forming part of the same premises — Discrimination — Effect on trade between Member States — Assessment by reference to a body of rules taken as a whole — Lack of appreciable effect
C-286/95 P	6 April 2000	Commission of the European Communities v Imperial Chemical Industries plc (ICI)	Appeal — Action for annulment — Pleas in law — Infringement of essential procedural requirements — Failure to authenticate a decision adopted by the college of Commissioners — Issue that may be raised of the Court's own motion
C-287/95 P and C-288/95 P	6 April 2000	Commission of the European Communities v Solvay SA	Appeal — Actions for annulment — Pleas in law — Infringement of essential procedural requirements — Failure to authenticate decisions adopted by the college of Commissioners — Issue that may be raised of the Court's own motion

Case	Date	Parties	Subject-matter
C-209/98	23 May 2000	Sydhavnens Sten & Grus ApS v Københavns Kommune	Article 90 of the EC Treaty (now Article 86 EC) in conjunction with Articles 34 of the EC Treaty (now, after amendment, Article 29 EC) and 86 of the EC Treaty (now Article 82 EC) — Directive 75/442/EEC — Regulation (EEC) No 259/93 — Special or exclusive right to collect building waste — Environmental protection
C-258/98	8 June 2000	Giovanni Carra and Others	Dominant position — Public undertakings — Placement of workforce — Statutory monopoly
C-180/98 to C-184/98	12 September 2000	Pavel Pavlov and Others v Stichting Pensioenfonds Medische Specialisten	Compulsory membership of an occupational pension scheme — Compatibility with competition rules — Classification of an occupational pension fund as an undertaking
C-222/98	21 September 2000	Hendrik van der Woude v Stichting Beatrixoord	Agreements and dominant position — Collective agreement — Contribution to workers' sickness insurance
C-248/98 P	16 November 2000	NV Koninklijke KNP BT v Commission of the European Communities	Appeal — Article 85(1) of the EC Treaty (now Article 81(1) EC) — Fines — Statement of reasons — Power of unlimited jurisdiction
C-279/98 P	16 November 2000	Cascades SA v Commission of the European Communities	Appeal — Article 85(1) of the EC Treaty (now Article 81(1) EC) — Liability for the infringement — Fines — Statement of reasons — Principle of non-discrimination

Case	Date	Parties	Subject-matter
C-280/98 P	16 November 2000	Moritz J. Weig GmbH & Co. KG v Commission of the European Communities	Appeal — Article 85(1) of the EC Treaty (now Article 81(1) EC) — Fines — Determination of the amount — Statement of reasons — Mitigating circumstances
C-282/98 P	16 November 2000	Enso Española SA v Commission of the European Communities	Appeal — Article 85(1) of the EC Treaty (now Article 81(1) EC) — Statement of reasons — Principle of equal treatment — Costs
C-283/98 P	16 November 2000	Mo och Domsjö AB v Commission of the European Communities	Appeal — Article 85(1) of the EC Treaty (now Article 81(1) EC) — Fines — Determination of the amount — Statement of reasons — Power of unlimited jurisdiction
C-286/98 P	16 November 2000	Stora Kopparbergs Bergslags AB v Commission of the European Communities	Appeal — Article 85(1) of the EC Treaty (now Article 81(1) EC) — Fines — Statement of reasons — Liability for the infringement
C-291/98 P	16 November 2000	Sarrió SA v Commission of the European Communities	Appeal — Article 85(1) of the EC Treaty (now Article 81(1) EC) — Concept of single infringement — Exchange of information — Order — Fines — Determination of the amount — Method of calculation — Statement of reasons — Mitigating circumstances
C-294/98 P	16 November 2000	Metsä-Serla Oyj, UPM-Kymmene Oyj, Tamrock Oy, Kyro Oyj Abp v Commission of the European Communities	Appeal — Article 15(2) of Regulation No 17 — Joint and several liability for payment of fine
C-297/98 P	16 November 2000	SCA Holding Ltd v Commission of the European Communities	Appeal — Article 85(1) of the EC Treaty (now Article 81(1) EC) — Liability for the infringement — Fines — Statement of reasons — Mitigating circumstances

Case	Date	Parties	Subject-matter
C-298/98 P	16 November 2000	Metsä-Serla Sales Oy v Commission of the European Communities	Appeal — Article 85(1) of the EC Treaty (now Article 81(1) EC) — Fines — Determination of the amount — Statement of reasons — Cooperation during the administrative procedure
C-422/99	30 November 2000	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil its obligations — Failure to implement Directive 97/51/EC
C-423/99	7 December 2000	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil its obligations — Failure to transpose Directive 98/10/EC
C-214/99	7 December 2000	Neste Markkinointi Oy v Yötuuli Ky and Others	Competition — Exclusive purchasing agreements — Service-station agreements — Duration — Significant contribution made by one supplier's contracts to the closing-off of the market — Distinction between the contracts of the same supplier
C-344/98	14 December 2000	Masterfoods Ltd v HB Ice Cream Ltd HB Ice Cream Ltd v Masterfoods Ltd	Articles 85 and 86 of the EC Treaty (now Articles 81 EC and 82 EC) — Parallel proceedings before national and Community courts

CULTURE

Case	Date	Parties	Subject-matter
C-164/98 P	27 January 2000	DIR International Film Srl and Others v Commission of the European Communities	MEDIA Programme — Criteria for the grant of loans — Discretionary power — Statement of reasons

Case	Date	Parties	Subject-matter

ENVIRONMENT AND CONSUMERS

Case	Date	Parties	Subject-matter
C-6/99	21 March 2000	Association Greenpeace France and Others v Ministère de l'Agriculture et de la Pêche and Others	Directive 90/220/EEC — Biotechnology — Genetically modified organisms — Decision 97/98/EC — Maize seeds
C-256/98	6 April 2000	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora
C-274/98	13 April 2000	Commission of the European Communities v Kingdom of Spain	Failure by a Member State to fulfil its obligations — Directive 91/676/EEC
C-307/98	25 May 2000	Commission of the European Communities v Kingdom of Belgium	Failure by a Member State to fulfil its obligations — Directive 76/160/EEC — Quality of bathing water
C-384/97	25 May 2000	Commission of the European Communities v Hellenic Republic	Failure by a Member State to fulfil its obligations — Water pollution — Obligation to adopt programmes in order to reduce pollution caused by certain dangerous substances — Failure to transpose Directive 76/464/EEC
C-418/97 and C-419/97	15 June 2000	ARCO Chemie Nederland Ltd v Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer Vereniging Dorpsbelang Hees, Stichting Werkgroep Weurt+, Vereniging Stedelijk Leefmilieu Nijmegen v Directeur van de dienst Milieu en Water van de provincie Gelderland	Environment — Directives 75/442/EEC and 91/156/EEC — Concept of waste

Case	Date	Parties	Subject-matter
C-318/98	22 June 2000	Criminal proceedings against Giancarlo Fornasar, Andrea Strizzolo, Giancarlo Toso, Lucio Mucchino, Enzo Peressutti Sante Chiarcosso	Waste — Definition of hazardous waste — Directive 91/689/EEC — Decision 94/904/EC — More stringent measures of protection
C-240/98 to C-244/98	27 June 2000	Océano Grupo Editorial SA v Rocío Murciano Quintero Salvat Editores SA v José M. Sánchez Alcón Prades and Others	Directive 93/13/EEC — Unfair terms in consumer contracts — Jurisdiction clause — Power of the national court to examine of its own motion whether that clause is unfair
C-236/99	6 July 2000	Commission of the European Communities v Kingdom of Belgium	Failure by a Member State to fulfil its obligations — Failure to transpose Directive 91/271/EEC
C-261/98	13 July 2000	Commission of the European Communities v Portuguese Republic	Failure by a Member State to fulfil its obligations — Directive 76/464/EEC — Aquatic pollution — Failure to transpose
C-287/98	19 September 2000	State of the Grand Duchy of Luxembourg v Berthe Linster, Aloyse Linster, Yvonne Linster	Environment — Directive 85/337/EEC — Assessment of the effects of certain public and private projects — Specific act of national legislation — Effect of the directive
C-371/98	7 November 2000	The Queen v Secretary of State for the Environment, Transport and the Regions, *ex parte*: First Corporate Shipping Ltd	Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Definition of the boundaries of sites eligible for designation as special areas of conservation — Discretion of the Member States — Economic and social considerations — Severn Estuary

Case	Date	Parties	Subject-matter
C-69/99	7 December 2000	Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland	Failure by a Member State to fulfil its obligations — Directive 91/676/EEC — Protection of waters against pollution caused by nitrates from agricultural sources — Identification of waters affected by pollution — Specifying of surface freshwaters
C-374/98	7 December 2000	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Directives 79/409/EEC and 92/43/EEC — Conservation of wild birds — Special protection areas
C-38/99	7 December 2000	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Conservation of wild birds — Hunting periods
C-435/99	12 December 2000	Commission of the European Communities v Portuguese Republic	Failure by a Member State to fulfil its obligations — Failure to transpose Directives 76/464/EEC, 78/176/EEC, 78/659/EEC, 80/68/EEC, 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC and 86/280/EEC

Case	Date	Parties	Subject-matter

EXTERNAL RELATIONS

Case	Date	Parties	Subject-matter
C-340/97	10 February 2000	Ömer Nazli, Caglar Nazli, Melike Nazli v Stadt Nürnberg	EEC-Turkey Association Agreement — Freedom of movement for workers — Articles 6(1) and 14(1) of Decision No 1/80 of the Association Council — Registration as duly belonging to the labour force of a Member State — Turkish worker detained pending trial and subsequently sentenced to a suspended term of imprisonment — Expulsion on general preventive grounds
C-102/98 and C-211/98	14 March 2000	Ibrahim Kocak v Landesversicherungsanstalt Oberfranken und Mittelfranken Ramazan Örs v Bundesknappschaft	EEC-Turkey Association Agreement — Decisions of the Association Council — Social security — Principle of non-discrimination on grounds of nationality — Direct effect — Scope — Legislation of a Member State on determination of dates of birth for the purposes of allocating a social security number and awarding a retirement pension
C-329/97	16 March 2000	Sezgin Ergat v Stadt Ulm	EEC-Turkey Association Agreement — Free movement of workers — First paragraph of Article 7 of Decision No 1/80 of the Association Council — Member of a Turkish worker's family — Extension of residence permit — Definition of legal residence — Application for extension of a temporary residence permit lodged after its expiry

Case	Date	Parties	Subject-matter
C-37/98	11 May 2000	The Queen v Secretary of State for the Home Department, *ex parte*: Abdulnasir Savas	EEC-Turkey Association — Restrictions on freedom of establishment and right of residence — Article 13 of the Association Agreement and Article 41 of the Additional Protocol — Direct effect — Scope — Turkish national unlawfully present in the host Member State
C-237/98 P	15 June 2000	Dorsch Consult Ingenieurgesellschaft mbh v Council of the European Union, Commission of the European Communities	Appeal — Non-contractual liability — Embargo on trade with Iraq — Lawful act — Damage
C-13/99 P	15 June 2000	TEAM Srl v Commission of the European Communities	Appeal — PHARE programme — Decision to annul an invitation to tender and to issue a new invitation to tender — Action for damages — Categorisation of reparable damage — Causal link — Measures of organisation of procedure — Measures of inquiry
C-65/98	22 June 2000	Safet Eyüp v Landesgeschäftsstelle des Arbeitsmarktservice Vorarlberg	EEC-Turkey Association Agreement — Free movement of workers — Article 7, first paragraph, of Decision No 1/80 of the Association Council — Member of a Turkish worker's family — Meaning of legal residence — Periods in which the person authorised to join the worker cohabited with him — Right to work as an employed person — Application for interim measures

Case	Date	Parties	Subject-matter
C-300/98 and C-392/98	14 December 2000	Parfums Christian Dior SA v Tuk Consultancy BV Assco Gerüste GmbH and Rob van Dijk, trading as Assco Holland Steigers Plettac Nederland v Wilhelm Layher GmbH & Co. KG, Layher BV	Agreement establishing the World Trade Organisation — TRIPs Agreement — Article 177 of the EC Treaty (now Article 234 EC) — Jurisdiction of the Court of Justice — Article 50 of the TRIPs Agreement — Provisional measures — Interpretation — Direct effect

FREE MOVEMENT OF CAPITAL

Case	Date	Parties	Subject-matter
C-54/99	14 March 2000	Association Église de Scientologie de Paris, Scientology International Reserves Trust v Premier Ministre	Direct foreign investments — Prior authorisation — Public policy and public security
C-35/98	6 June 2000	Staatssecretaris van Financiën v B.G.M. Verkooijen	Direct taxation of share dividends — Exemption — Limitation to shares in companies whose seat is within national territory
C-478/98	26 September 2000	Commission of the European Communities v Kingdom of Belgium	Loans issued abroad — Prohibition of acquisition by Belgian residents

FREE MOVEMENT OF GOODS

Case	Date	Parties	Subject-matter
C-220/98	13 January 2000	Estée Lauder Cosmetics GmbH & Co. OHG v Lancaster Group GmbH	Marketing of a cosmetic product whose name includes the term lifting — Articles 30 and 36 of the EC Treaty (now, after amendment, Articles 28 EC and 30 EC) — Directive 76/768/EEC

Case	Date	Parties	Subject-matter
C-254/98	13 January 2000	Schutzverband Gegen Unlauteren Wettbewerb v TK-Heimdienst Sass GmbH	Article 30 of the EC Treaty (now, after amendment, Article 28 EC) — Sale on rounds of baker's, butcher's and grocer's wares — Territorial restriction
C-246/98	23 March 2000	Criminal proceedings against Berendse-Koenen M. G. en Berendse H. D. Maatschap	Directive 83/189/EEC — Prohibition on growth promoters — Measures having equivalent effect
C-310/98 and C-406/98	23 March 2000	Hauptzollamt Neubrandenburg v Leszek Labis, Sagpol SC Transport Miedzynarodowy i Spedycja	External transit operation — Circulation under a TIR carnet — Offences and irregularities — Proof of the place where an offence or irregularity was committed — Time-limit for furnishing proof — Types of admissible evidence — Compensation procedure
C-309/98	28 March 2000	Holz Geenen GmbH v Oberfinanzdirektion München	Common Customs Tariff — Tariff headings — Classification in the combined nomenclature — Regulation (EC) No 1509/97 — Rectangular wood blocks used in the construction of window frames
C-388/95	16 May 2000	Kingdom of Belgium v Kingdom of Spain	Article 34 of the EC Treaty (now, after amendment, Article 29 EC) — Regulation (EEC) No 823/87 — Quality wines produced in a specified region — Designations of origin — Obligation to bottle in the region of production — Justification — Consequences of an earlier judgment giving a preliminary ruling — Article 5 of the EC Treaty (now Article 10 EC)

Case	Date	Parties	Subject-matter
C-473/98	11 July 2000	Kemikalieinspektionen v Toolex Alpha AB	National general prohibition on the use of trichloroethylene — Article 36 of the EC Treaty (now, after amendment, Article 30 EC)
C-441/98 and C-442/98	21 September 2000	Kapniki Mikhailidis AE v Idrima Koinonikon Asphalision (IKA)	Charges having equivalent effect — Tobacco exports — Levy imposed for the benefit of a social fund
C-23/99	26 September 2000	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Free movement of goods — Procedures for detention under customs control — Goods in transit — Industrial property right — Spare parts for the repair of motor vehicles
C-42/99	26 September 2000	Fábrica de Queijo Eru Portuguesa Ld.ª v Tribunal Técnico Aduaneiro de Segunda Instância	Free movement of goods — Common Customs Tariff — Tariff heading — Cheese or casein — Regulation (EEC) No 3174/88
C-9/99	3 October 2000	Échirolles Distribution SA v Association du Dauphiné and Others	National legislation on book prices
C-339/98	19 October 2000	Peacock AG v Hauptzollamt Paderborn	Common customs tariff — Tariff headings — Tariff classification of network cards — Classification in the Combined Nomenclature
C-15/99	19 October 2000	Hans Sommer GmbH & Co. KG v Hauptzollamt Bremen	Common Customs Tariff — Customs value — Cost of analysing goods — Post-clearance recovery of import duties — Remission of import duties

Case	Date	Parties	Subject-matter
C-217/99	16 November 2000	Commission of the European Communities v Kingdom of Belgium	Failure to fulfil obligations — Free movement of goods — Measures having equivalent effect — Nutrients and foodstuffs containing nutrients — Obligation to submit a notification file — Obligation to include notification number on labelling
C-448/98	5 December 2000	Criminal proceedings against Jean-Pierre Guimont	Measures having equivalent effect to a quantitative restriction — Purely internal situation — Manufacture and marketing of Emmenthal cheese without rind
C-213/99	7 December 2000	José Teodoro de Andrade v Director da Alfândega de Leixões	Release of goods for free circulation — Expiry of the period within which a customs-approved use must be assigned — Procedure for putting goods up for sale or levying an *ad valorem* duty
C-55/99	14 December 2000	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Free movement of goods — Measures having equivalent effect — Medical reagents — Compulsory registration procedure applicable to all reagents — Obligation to state the registration number on the external packaging and the notice accompanying each reagent

Case	Date	Parties	Subject-matter

FREEDOM OF MOVEMENT FOR PERSONS

Case	Date	Parties	Subject-matter
C-190/98	27 January 2000	Volker Graf v Filzmoser Maschinenbau GmbH	Freedom of movement for workers — Compensation on termination of employment — Refusal where a worker terminates his contract of employment in order to take a job in another Member State
C-202/97	10 February 2000	Fitzwilliam Executive Search Ltd v Bestuur van het Landelijk Instituut Sociale Verzekeringen	Social security for migrant workers — Determination of the legislation applicable — Temporary workers posted to another Member State
C-34/98	15 February 2000	Commission of the European Communities v French Republic	Social security — Financing — Legislation applicable
C-169/98	15 February 2000	Commission of the European Communities v French Republic	Social security — Finance — Legislation applicable
C-355/98	9 March 2000	Commission of the European Communities v Kingdom of Belgium	Failure by a Member State to fulfil its obligations — Free movement of workers — Freedom of establishment — Freedom to provide services — Private security activities — Requirement of prior authorisation — Obligation for legal persons to have their place of business in national territory — Obligation for managers and employees to reside in national territory — Requirement of an identification card issued in accordance with national legislation

Case	Date	Parties	Subject-matter
C-178/97	30 March 2000	Barry Banks and Others v Théâtre Royal de la Monnaie	Social security for migrant workers — Determination of the legislation applicable — Scope of the E 101 Certificate
C-356/98	11 April 2000	Arben Kaba v Secretary of State for the Home Department	Regulation (EEC) No 1612/68 — Free movement of workers — Social advantage — Right of the spouse of a migrant worker to obtain leave to remain indefinitely in the territory of a Member State
C-251/98	13 April 2000	C. Baars v Inspecteur der Belastingen Particulieren/Ondernemingen Gorinchem	Freedom of establishment — Assets invested in shares in companies established in the taxing Member State — Exemption from wealth tax — Assets invested in shares in companies established in another Member State — No exemption
C-176/96	13 April 2000	Jyri Lehtonen, Castors Canada Dry Namur-Braine ASBL v Fédération Royale Belge des Sociétés de Basket-ball ASBL (FRBSB)	Freedom of movement for workers — Competition rules applicable to undertakings — Professional basketball players — Sporting rules on the transfer of players from other Member States
C-87/99	16 May 2000	Patrick Zurstrassen v Administration des Contributions Directes	Article 48 of the EC Treaty (now, after amendment, Article 39 EC) — Equal treatment — Income tax — Separate residence of spouses — Joint assessment to tax for married couples
C-424/98	25 May 2000	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil its obligations — Right of residence — Directives 90/364/EEC, 90/365/EEC and 93/96/EEC — Conditions as to resources

Case	Date	Parties	Subject-matter
C-281/98	6 June 2000	Roman Angonese v Cassa di Risparmio di Bolzano SpA	Access to employment — Certificate of bilingualism issued by a local authority — Article 48 of the EC Treaty (now, after amendment, Article 39 EC) — Council Regulation (EEC) No 1612/68
C-302/98	15 June 2000	Manfred Sehrer v Bundesknappschaft	Freedom of movement for workers — Social security — Sickness insurance contributions levied by a Member State on supplementary retirement pensions payable under an agreement in another Member State — Basis for calculating contributions — Taking into account of contributions already deducted in that other Member State
C-424/97	4 July 2000	Salomone Haim v Kassenzahnärztliche Vereinigung Nordrhein	Member State liability in the event of a breach of Community law — Breaches attributable to a public-law body of a Member State — Conditions for the liability of the Member State and of a public-law body of that State — Compatibility of a language requirement with freedom of establishment
C-73/99	6 July 2000	Viktor Movrin v Landesversicherungsanstalt Westfalen	Social security — EC Treaty — Council Regulation (EEC) No 1408/71 — Recipient of retirement pensions — Compulsory sickness insurance scheme in Member State of residence — Contribution — Grant under the legislation of another Member State

Case	Date	Parties	Subject-matter
C-456/98	13 July 2000	Centrosteel Srl v Adipol GmbH	Directive 86/653/EEC — Self-employed commercial agents — National legislation providing that commercial agency contracts concluded by persons not entered in the register of agents are void
C-423/98	13 July 2000	Alfredo Albore	Freedom of establishment — Free movement of capital — Articles 52 of the EC Treaty (now, after amendment, Article 43 EC) and 73b of the EC Treaty (now Article 56 EC) — Authorisation procedure for the purchase of immovable property — Areas of military importance — Discrimination on grounds of nationality
C-238/98	14 September 2000	Hugo Fernando Hocsman v Ministre de l'Emploi et de la Solidarité	Article 52 of the EC Treaty (now, after amendment, Article 43 EC) — Council Directive 93/16/EEC — Community national holding an Argentine diploma recognised by the authorities of a Member State as equivalent in that State to a university degree in medicine and surgery — Obligations of another Member State with respect to an application to practise medicine on its territory
C-16/99	14 September 2000	Ministre de la Santé v Jeff Erpelding	Council Directive 93/16/EEC — Interpretation of Articles 10 and 19 — Use of the title of specialist doctor in the host Member State by a doctor who has obtained in another Member State a qualification not included as regards that State on the list in Article 7 of the directive

Case	Date	Parties	Subject-matter
C-124/99	21 September 2000	Carl Borawitz v Landesversicherungsanstalt Westfalen	Social security for migrant workers — Equal treatment — National legislation fixing, in connection with the transfer abroad of retroactive pension payments, a higher minimum amount than that paid within the country
C-262/97	26 September 2000	Rijksdienst voor Pensioenen v Robert Engelbrecht	Social security — Freedom of movement for workers — Retirement pension — Increase in respect of dependent spouse — Articles 12 and 46a of Regulation (EEC) No 1408/71 — Overlapping of pensions awarded under the legislation of different Member States
C-411/98	3 October 2000	Angelo Ferlini v Centre Hospitalier de Luxembourg	Workers — Regulation (EEC) No 1612/68 — Equal treatment — Persons not affiliated to the national social security scheme — Officials of the European Communities — Application of scales of fees for medical and hospital expenses connected with childbirth
C-371/97	3 October 2000	Cinzia Gozza and Others v Università degli Studi di Padova and Others	Right of establishment — Freedom to provide services — Doctors — Medical specialties — Training periods — Remuneration — Direct effect
C-168/98	7 November 2000	Grand Duchy of Luxembourg v European Parliament, Council of the European Union	Action for annulment — Freedom of establishment — Mutual recognition of diplomas — Harmonisation — Obligation to state reasons — Directive 98/5/EC — Practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was acquired

Case	Date	Parties	Subject-matter
C-357/98	9 November 2000	The Queen v Secretary of State for the Home Department, *ex parte*: Nana Yaa Konadu Yiadom	Freedom of movement for persons — Derogations — Decisions regarding foreign nationals — Temporary admission — Judicial safeguards — Legal remedies — Articles 8 and 9 of Directive 64/221/EEC
C-381/98	9 November 2000	Ingmar GB Ltd v Eaton Leonard Technologies Inc.	Directive 86/653/EEC — Self-employed commercial agent carrying on his activity in a Member State — Principal established in a non-member country — Clause submitting the agency contract to the law of the country of establishment of the principal
C-404/98	9 November 2000	Josef Plum v Allgemeine Ortskrankenkasse Rheinland, Regionaldirektion Köln	Social security for migrant workers — Determination of the legislation applicable — Workers posted to another Member State
C-75/99	9 November 2000	Edmund Thelen v Bundesanstalt für Arbeit	Social security — Articles 6 and 7 of Regulation (EEC) No 1408/71 — Applicability of a convention between Member States on unemployment insurance
C-421/98	23 November 2000	Commission of the European Communities v Kingdom of Spain	Failure by a Member State to fulfil its obligations — Articles 2 and 10 of Directive 85/384/EEC — Restrictions on the exercise of activities as an architect according to the definition of the profession in the Member State in which the relevant qualification was obtained

Case	Date	Parties	Subject-matter
C-135/99	23 November 2000	Ursula Elsen v Bundesversicherungsanstalt für Angestellte	Social security for migrant workers — Regulation (EEC) No 1408/71 — Articles 3 and 10 and Annex VI, Section C, point 19 — Old-age insurance — Validation of periods of child-rearing completed in another Member State
C-195/98	30 November 2000	Österreichischer Gewerkschaftsbund, Gewerkschaft öffentlicher Dienst v Republik Österreich	Article 177 of the EC Treaty (now Article 234 EC) — Definition of court or tribunal of a Member State — Freedom of movement for persons — Equal treatment — Seniority — Part of career spent abroad
C-141/99	14 December 2000	Algemene Maatschappij voor Investering en Dienstverlening NV (AMID) v Belgische Staat	Freedom of establishment — Tax legislation — Direct taxes — Deduction of business losses — Previous tax year

FREEDOM TO PROVIDE SERVICES

Case	Date	Parties	Subject-matter
C-358/98	9 March 2000	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil its obligations — Provision of cleansing, disinfection, disinfestation, rodent-control and sanitation services — Undertakings established in other Member States — Obligation to register

Case	Date	Parties	Subject-matter
C-51/96 and C-191/97	11 April 2000	Christelle Deliège v Ligue Francophone de Judo et Disciplines Associées ASBL, Ligue Belge de Judo ASBL, Union Européenne de Judo Christelle Deliège v Ligue Francophone de Judo et Disciplines Associées ASBL, Ligue Belge de Judo ASBL, François Pacquée	Competition rules applicable to undertakings — Judokas — Sports rules providing for national quotas and national federations' selection procedures for participation in international tournaments
C-296/98	11 May 2000	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Directives 92/49/EEC and 92/96/EEC — National legislation requiring notification to the competent minister, when first marketing a standard form contract of insurance, of the conditions of contract
C-206/98	18 May 2000	Commission of the European Communities v Kingdom of Belgium	Failure by a Member State to fulfil its obligations — Directive 92/49/EEC — Direct insurance other than life assurance
C-58/99	23 May 2000	Commission of the European Communities v Italian Republic	Privatisation of public undertakings — Grant of special powers
C-264/99	8 June 2000	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil its obligations — Articles 12 EC, 43 EC and 49 EC — Haulage by operators established in other Member States — National rules requiring enrolment on the register of undertakings

Case	Date	Parties	Subject-matter
C-109/99	21 September 2000	Association Basco-Béarnaise des Opticiens Indépendants v Préfet des Pyrénées-Atlantiques	Directives 73/239/EEC and 92/49/EEC — Objects of insurance undertakings limited to the business of insurance and operations arising directly therefrom, to the exclusion of all other commercial business
C-58/98	3 October 2000	Josef Corsten	Directive 64/427/EEC — Skilled services in the building trade — National rules requiring foreign skilled trade undertakings to be entered on the trades register — Proportionality
C-319/99	23 November 2000	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Failure to transpose Directive 95/47/EC

INDUSTRIAL POLICY

Case	Date	Parties	Subject-matter
C-384/99	30 November 2000	Commission of the European Communities v Kingdom of Belgium	Failure by a Member State to fulfil its obligations — Telecommunications — Interconnection of networks — Interoperability of services — Provision of universal service

LAW GOVERNING THE INSTITUTIONS

Case	Date	Parties	Subject-matter
C-174/98 P and C-189/98 P	11 January 2000	Kingdom of the Netherlands, Gerard van der Wal v Commission of the European Communities	Appeal — Access to information — Commission Decision 94/90/ECSC, EC, Euratom — Scope of the exception relating to protection of the public interest — Inadequate statement of reasons — Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms — Principles of equality between the parties and rights of the defence
C-156/97	17 February 2000	Commission of the European Communities v Van Balkom Non-Ferro Scheiding BV	Arbitration clause — Rescission of a contract — Right to reimbursement of advance payments
C-387/97	4 July 2000	Commission of the European Communities v Hellenic Republic	Failure by a Member State to fulfil its obligations — Judgment of the Court establishing such failure — Non-compliance — Article 171 of the EC Treaty (now Article 228 EC) — Financial penalties — Periodic penalty payment — Waste — Directives 75/442/EEC and 78/319/EEC
C-352/98 P	4 July 2000	Laboratoires pharmaceutiques Bergaderm SA v Jean-Jacques Goupil	Appeal — Non-contractual liability of the Community — Adoption of Directive 95/34/EC
C-356/99	9 November 2000	Commission of the European Communities v Hitesys SpA	Arbitration clause — Non-performance of contract — Recovery of moneys advanced — Procedure in default of defence

Case	Date	Parties	Subject-matter

PRINCIPLES OF COMMUNITY LAW

Case	Date	Parties	Subject-matter
C-88/99	28 November 2000	Roquette Frères SA v Direction des Services Fiscaux du Pas-de-Calais	Recovery of sums paid but not due — National procedural rules — Capital duty levied in respect of a merger

REGIONAL POLICY

Case	Date	Parties	Subject-matter
C-443/97	6 April 2000	Kingdom of Spain v Commission of the European Communities	Coordination of structural instruments — Internal Commission guidelines — Net financial corrections

SOCIAL POLICY

Case	Date	Parties	Subject-matter
C-285/98	11 January 2000	Tanja Kreil v Bundesrepublik Deutschland	Equal treatment for men and women — Limitation of access by women to military posts in the Bundeswehr
C-207/98	3 February 2000	Silke-Karin Mahlburg v Land Mecklenburg-Vorpommern	Equal treatment for men and women — Access to employment — Refusal to employ a pregnant woman

Case	Date	Parties	Subject-matter
C-50/96	10 February 2000	Deutsche Telekom AG v Lilli Schröder	Equal pay for men and women — Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC) — Protocol concerning Article 119 of the EC Treaty — Occupational social security schemes — Exclusion of part-time workers from a supplementary occupational retirement pension scheme — Retroactive membership — Entitlement to a pension — Relationship between national law and Community law
C-234/96 and C-235/96	10 February 2000	Deutsche Telekom AG v Agnes Vick, Ute Conze	Equal pay for men and women — Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC) — Protocol concerning Article 119 of the EC Treaty — Occupational social security schemes — Exclusion of part-time workers from a supplementary occupational retirement pension scheme — Retroactive membership — Entitlement to a pension — Relationship between national law and Community law

Case	Date	Parties	Subject-matter
C-270/97 and C-271/97	10 February 2000	Deutsche Post AG v Elisabeth Sievers Brunhilde Schrage	Equal pay for men and women — Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC) — Protocol concerning Article 119 of the EC Treaty — Occupational social security schemes — Exclusion of part-time workers from a supplementary occupational retirement pension scheme — Retroactive membership — Entitlement to a pension — Relationship between national law and Community law — Interpretation consonant with national law
C-386/98	9 March 2000	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil its obligations — Directive 93/104/EC — Organisation of working time — Failure to transpose into national law
C-439/98	16 March 2000	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil its obligations — Directive 95/30/EC — Protection of workers from risks related to exposure to biological agents at work
C-158/97	28 March 2000	Georg Badeck and Others	Equal treatment of men and women — Employment in the administration — Measures for the promotion of women

Case	Date	Parties	Subject-matter
C-236/98	30 March 2000	Jämställdhetsombudsmannen v Örebro läns Landsting	Male and female workers — Equal pay for work of equal value — Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC) — Directive 75/117/EEC — Comparison of a midwife's pay with that of a clinical technician — Taking into account a supplement and a reduction in working time for inconvenient working hours
C-226/98	6 April 2000	Birgitte Jørgensen v Foreningen af Speciallæger, Sygesikringens Forhandlingsudvalg	Directives 76/207/EEC and 86/613/EEC — Equal treatment for men and women — Self-employed activity — Downgrading of medical practices
C-78/98	16 May 2000	Shirley Preston and Others v Wolverhampton Healthcare NHS Trust and Others Dorothy Fletcher and Others v Midland Bank plc	Men and women — Equal pay — Membership of an occupational pension scheme — Part-time workers — Exclusion — National procedural rules — Principle of effectiveness — Principle of equivalence
C-45/99	18 May 2000	Commission of the European Communities v French Republic	Failure to fulfil obligations — Failure to transpose Directive 94/33/EC
C-104/98	23 May 2000	Johann Buchner and Others v Sozialversicherungsanstalt der Bauern	Directive 79/7/EEC — Equal treatment for men and women in matters of social security — Early old-age pension on account of incapacity for work — Pensionable age different according to sex

Case	Date	Parties	Subject-matter
C-196/98	23 May 2000	Regina Virginia Hepple and Others v Adjudication Officer	Directive 79/7/EEC — Equal treatment for men and women in matters of social security — Benefits under an accident at work and occupational disease insurance scheme — Introduction of a link to retirement age
C-50/99	25 May 2000	Jean-Marie Podesta v Caisse de Retraite par Répartition des Ingénieurs Cadres & Assimilés (CRICA) and Others	Equal pay for men and women — Private, inter-occupational, supplementary retirement pension scheme based on defined contributions and run on a pay-as-you-go basis — Survivors' pensions for which the age conditions for grant vary according to sex
C-46/99	8 June 2000	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Directive 93/104/EC — Organisation of working time — Failure to transpose
C-407/98	6 July 2000	Katarina Abrahamsson, Leif Anderson v Elisabet Fogelqvist	Concept of national court or tribunal — Equal treatment for men and women — Positive action in favour of women — Compatibility with Community law
C-11/99	6 July 2000	Margrit Dietrich v Westdeutscher Rundfunk	Directive 90/270/EEC on the minimum safety and health requirements for work with display screen equipment — Scope — Meaning of display screen equipment for the purposes of Article 2 — Meaning of «drivers' cabs or control cabs for vehicles or machinery» for the purposes of Article 1
C-166/99	13 July 2000	Marthe Defreyn v Sabena SA	Equal pay for men and women — Additional pre-retirement payment

Case	Date	Parties	Subject-matter
C-343/98	14 September 2000	Renato Collino, Luisella Chiappero v Telecom Italia SpA	Directive 77/187/EEC — Safeguarding employees' rights in the event of transfers of undertakings — Transfer of an entity managed by a public body forming part of the State administration to a private company whose capital is publicly owned — Definition of an employee — Taking into account of employees' total length of service by the transferee
C-462/98 P	21 September 2000	Mediocurso — Estabelecimento de Ensino Particular Ld.[a] v Commission of the European Communities	Appeal — European Social Fund — Training programmes — Reduction of financial assistance — Rights of defence — Right to be heard
C-175/99	26 September 2000	Didier Mayeur v Association Promotion de l'Information Messine (APIM)	Maintenance of workers' rights in the event of transfer of an undertaking — Transfer to a municipality of an activity previously carried out, in the interests of that municipality, by a legal person established under private law
C-322/98	26 September 2000	Bärbel Kachelmann v Bankhaus Hermann Lampe KG	Male and female workers — Access to employment and working conditions — Equal treatment — Conditions governing dismissal
C-303/98	3 October 2000	Sindicato de Médicos de Asistencia Pública (Simap) v Conselleria de Sanidad y Consumo de la Generalidad Valenciana	Protection of the safety and health of workers — Directives 89/391/EEC and 93/104/EC — Scope — Doctors in primary health care teams — Average period of work — Inclusion of time on call — Night workers and shift workers

Case	Date	Parties	Subject-matter
C-79/99	7 December 2000	Julia Schnorbus v Land Hessen	Equal treatment for men and women — Rules on access to practical legal training in *Land* Hesse — Priority for applicants who have completed military or civilian service
C-457/98	14 December 2000	Commission of the European Communities v Hellenic Republic	Failure to fulfil obligations — Directive 96/97/EC — Implementation of the principle of equal treatment for men and women in occupational social security schemes — Failure to transpose

STAFF REGULATIONS OF OFFICIALS

Case	Date	Parties	Subject-matter
C-284/98 P	16 March 2000	European Parliament v Roland Bieber	Appeal — Officials — Leave on personal grounds — Reinstatement — Non-contractual liability of the Community — Determination of the period to be taken into account for calculating the damage suffered
C-153/99 P	13 April 2000	Commission of the European Communities v Antonio Giannini	Appeal — Implementation of a judgment of the Court of First Instance — Abuse of power
C-82/98 P	25 May 2000	Max Kögler v Court of Justice of the European Communities, Council of the European Union	Appeal — Action brought by official — Weighting applicable to retirement pension
C-154/99 P	29 June 2000	Corrado Politi v European Training Foundation	Appeal — Temporary staff — Time-limit for lodging complaint — Time-limit for initiating proceedings — Error in classification — Admissibility

Case	Date	Parties	Subject-matter
C-174/99 P	13 July 2000	European Parliament v Pierre Richard	Officials — Recruitment procedure — Application of Article 29(1) of the Staff Regulations
C-432/98 P and C-433/98 P	5 October 2000	Council of the European Union v Christiane Chvatal and Others Council of the European Union v Antoinette Losch	Appeal — Officials — Termination of service as a result of the accession of new Member States — Objection that Regulation (EC, Euratom, ECSC) No 2688/95 is unlawful — Objection inadmissible
C-434/98 P	5 October 2000	Council of the European Union v Silvio Busacca and Others	Appeal — Officials — Dispute between the Community and its servants — Appeal by an institution which did not intervene at first instance — Inadmissible
C-126/99	9 November 2000	Roberto Vitari v European Training Foundation	Local staff — Article 79 of the Conditions of Employment of other Servants — Fixed-term contract of employment — Conversion into contract for an indefinite period — Whether or not national legislation applicable
C-207/99 P	9 November 2000	Commission of the European Communities v Claudine Hamptaux	Appeal — Officials — Promotion — Consideration of comparative merits

STATE AID

Case	Date	Parties	Subject-matter
C-83/98 P	16 May 2000	French Republic v Ladbroke Racing Ltd, Commission of the European Communities	Appeal — Competition — State aid

Case	Date	Parties	Subject-matter
C-106/98 P	23 May 2000	Comité d'Entreprise de la Société Française de Production and Others v Commission of the European Communities	Appeal — Natural and legal persons — Measure of direct and individual concern to them — State aid — Decision declaring aid incompatible with the common market — Trade unions and works councils
C-332/98	22 June 2000	French Republic v Commission of the European Communities	Aid for the Coopérative d'Exportation du Livre Français (CELF)
C-404/97	27 June 2000	Commission of the European Communities v Portuguese Republic	Failure to fulfil obligations — State aid incompatible with the common market — Recovery — Absolute impossibility
C-156/98	19 September 2000	Federal Republic of Germany v Commission of the European Communities	Aid granted to undertakings in the new German *Länder* — Tax provision favouring investment
C-288/96	5 October 2000	Federal Republic of Germany v Commission of the European Communities	State aid — Operating aid — Guidelines in the fisheries sector — Article 92(1) and (3)(c) of the EC Treaty (now, after amendment, Article 87(1) and (3)(c) EC) — Rights of the defence — Statement of reasons
C-480/98	12 October 2000	Kingdom of Spain v Commission of the European Communities	State aid — Aid granted to undertakings in the Magefesa group
C-15/98 and C-105/99	19 October 2000	Italian Republic Sardegna Lines — Servizi Marittimi della Sardegna SpA v Commission of the European Communities	State aid — Aid from the Region of Sardinia to shipping companies in Sardinia — Adverse effect on competition and trade between Member States — Statement of reasons

Case	Date	Parties	Subject-matter

TAXATION

Case	Date	Parties	Subject-matter
C-23/98	27 January 2000	Staatssecretaris van Financiën v J. Heerma	Sixth VAT Directive — Transactions between a partner and a partnership
C-12/98	3 February 2000	Miguel Amengual Far v Juan Amengual Far	Sixth VAT Directive — Leasing or letting of immovable property — Exemptions
C-228/98	3 February 2000	Kharalambos Dounias v Ipourgos Ikonomikon	Taxes on imported products — Taxable value — Articles 30 and 95 of the EC Treaty (now, after amendment, Articles 28 and 90 EC) — Council Regulation (EEC) No 1224/80
C-434/97	24 February 2000	Commission of the European Communities v French Republic	Action for failure to fulfil obligations — Directive 92/12/EEC — Specific tax levied on beverages with a high alcohol content
C-437/97	9 March 2000	Evangelischer Krankenhausverein Wien v Abgabenberufungskommission Wien Wein & Co. HandelsgesmbH v Oberösterreichische Landesregierung	Indirect taxation — Municipal beverage duty — Sixth VAT Directive — Directive 92/12/EEC
C-110/98 to C-147/98	21 March 2000	Gabalfrisa SL and Others v Agencia Estatal de Administración Tributaria (AEAT)	Meaning of national court or tribunal for the purposes of Article 177 of the EC Treaty (now Article 234 EC) — Admissibility — Value added tax — Interpretation of Article 17 of Sixth Directive 77/388/EEC — Deduction of tax paid on inputs — Activities prior to carrying out economic transactions on a regular basis

Case	Date	Parties	Subject-matter
C-98/98	8 June 2000	Commissioners of Customs & Excise v Midland Bank plc	Value added tax — First and Sixth VAT Directives — Deduction of input tax — Taxable person carrying out both taxable and exempt transactions — Attribution of input services to output transactions — Need for a direct and immediate link
C-396/98	8 June 2000	Grundstückgemeinschaft Schloßstraße GbR v Finanzamt Paderborn	Turnover tax — Common system of value added tax — Article 17 of the Sixth Directive 77/388/EEC — Deduction of input tax — Deduction precluded by an amendment to national legislation removing the possibility of opting for taxation of the letting of immovable property
C-400/98	8 June 2000	Finanzamt Goslar v Brigitte Breitsohl	Turnover tax — Common system of value added tax — Articles 4, 17 and 28 of the Sixth Directive 77/388/EEC — Status as taxable person and exercise of the right to deduct in the event of failure of the economic activity envisaged, prior to the first VAT determination — Supplies of buildings and the land on which they stand — Whether possible to limit the option for tax to buildings only, thereby excluding the land
C-365/98	15 June 2000	Brinkmann Tabakfabriken GmbH v Hauptzollamt Bielefeld	Directive 92/80/EEC — National tax consisting either in a specific duty for products which are not above a certain price, or in an *ad valorem* duty for products which are above that price

Case	Date	Parties	Subject-matter
C-455/98	29 June 2000	Tullihallitus v Kaupo Salumets and Others	Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Sixth Directive — Tax on importation — Scope — Contraband importation of ethyl alcohol
C-136/99	13 July 2000	Ministre du Budget, Ministre de l'Économie et des Finances v Société Monte Dei Paschi Di Siena	Turnover tax — Common system of value added tax — Refund of the tax to taxable persons not established in the country — Article 17 of the Sixth Directive 77/388/EEC and Articles 2 and 5 of the Eighth Directive 79/1072/EEC
C-36/99	13 July 2000	Idéal Tourisme SA v Belgian State	VAT — Sixth Directive 77/388/EEC — Transitional provisions — Retention of the exemption for international passenger transport by air — No exemption for international passenger transport by coach — Discrimination — State aid
C-276/97	12 September 2000	Commission of the European Communities v French Republic	Failure to fulfil obligations — Article 4(5) of the Sixth VAT Directive — Access to roads on payment of a toll — Failure to levy VAT — Regulations (EEC, Euratom) Nos 1552/89 and 1553/89 — Own resources accruing from VAT
C-358/97	12 September 2000	Commission of the European Communities v Ireland	Failure to fulfil obligations — Article 4(5) of the Sixth VAT Directive — Access to roads on payment of a toll — Failure to levy VAT — Regulations (EEC, Euratom) Nos 1552/89 and 1553/89 — Own resources accruing from VAT

Case	Date	Parties	Subject-matter
C-359/97	12 September 2000	Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland	Failure to fulfil obligations — Article 4(5) of the Sixth VAT Directive — Access to roads on payment of a toll — Failure to levy VAT — Regulations (EEC, Euratom) Nos 1552/89 and 1553/89 — Own resources accruing from VAT
C-408/97	12 September 2000	Commission of the European Communities v Kingdom of the Netherlands	Failure to fulfil obligations — Article 4(5) of the Sixth VAT Directive — Access to roads on payment of a toll — Failure to levy VAT
C-260/98	12 September 2000	Commission of the European Communities v Hellenic Republic	Failure to fulfil obligations — Article 4(5) of the Sixth VAT Directive — Access to roads on payment of a toll — Failure to levy VAT — Regulations (EEC, Euratom) Nos 1552/89 and 1553/89 — Own resources accruing from VAT
C-384/98	14 September 2000	D v W	Sixth VAT Directive — Exemption for medical care provided in the exercise of the medical and paramedical professions — Supply by a doctor approved as a court expert of an opinion in a paternity dispute
C-454/98	19 September 2000	Schmeink & Cofreth AG & Co. KG v Finanzamt Borken Manfred Strobel v Finanzamt Esslingen	Sixth VAT Directive — Obligation of Member States to provide for the possibility of adjusting tax improperly mentioned on an invoice — Conditions — Good faith of issuer of invoice

Case	Date	Parties	Subject-matter
C-177/99 and C-181/99	19 September 2000	Ampafrance SA v Directeur des Services Fiscaux de Maine-et-Loire Sanofi Synthelabo, formerly Sanofi Winthrop SA v Directeur des Services Fiscaux du Val-de-Marne	VAT — Deduction of tax — Exclusion of the right of deduction — Entertainment costs — Proportionality
C-19/99	21 September 2000	Modelo Continente SGPS SA v Fazenda Pública	Directive 69/335/EEC — Indirect taxes on the raising of capital — Charge for drawing up a notarially attested act recording an increase in the share capital of a capital company and an amendment to its statutes
C-134/99	26 September 2000	IGI — Investimentos Imobiliários SA v Fazenda Pública	Directive 69/335/EEC — Indirect taxes on the raising of capital — Charges for entries in a national register of legal persons — Duties paid by way of fees or dues
C-216/98	19 October 2000	Commission of the European Communities v Hellenic Republic	Failure to fulfil obligations — Directive 95/59/EC — Article 9 — Minimum price — Manufactured tobacco
C-142/99	14 November 2000	Floridienne SA, Berginvest SA v Belgian State	Sixth VAT Directive — Deduction of input tax — Undertaking subject to tax on only one part of its operations — Deductible proportion — Calculation — Holding company collecting share dividends and loan interest from its subsidiaries — Involvement in management of subsidiaries

Case	Date	Parties	Subject-matter
C-482/98	7 December 2000	Italian Republic v Commission of the European Communities	Action for annulment — Council Directive 92/83/EEC — Harmonisation of the structures of excise duties on alcohol and alcoholic beverages — Commission Decision 98/617/EC of 21 October 1998 denying authority to Italy to refuse the grant of exemption to certain products exempt from excise duty under Council Directive 92/83 — Cosmetic products
C-446/98	14 December 2000	Fazenda Pública v Câmara Municipal do Porto	Sixth VAT Directive — Taxable persons — Bodies governed by public law — Letting of spaces for the parking of vehicles

TRANSPORT

Case	Date	Parties	Subject-matter
C-62/98	4 July 2000	Commission of the European Communities v Portuguese Republic	Failure by a Member State to fulfil its obligations — Regulation (EEC) No 4055/86 — Freedom to provide services — Maritime transport — Article 234 of the EC Treaty (now, after amendment, Article 307 EC)
C-84/98	4 July 2000	Commission of the European Communities v Portuguese Republic	Failure by a Member State to fulfil its obligations — Regulation (EEC) No 4055/86 — Freedom to provide services — Maritime transport — Article 234 of the EC Treaty (now, after amendment, Article 307 EC)

Case	Date	Parties	Subject-matter
C-160/99	13 July 2000	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Freedom to provide services — Regulation (EEC) No 3577/92 — Maritime cabotage — Ships flying the French flag
C-205/98	26 September 2000	Commission of the European Communities v Republic of Austria	Failure by a Member State to fulfil its obligations — Directive 93/89/EEC — Tolls — Brenner motorway — Prohibition of discrimination — Obligation to set toll rates by reference to the costs of the infrastructure network concerned
C-408/99	26 September 2000	Commission of the European Communities v Ireland	Failure by a Member State to fulfil its obligations — Directives 94/55/EC and 96/86/EC — Failure to transpose into national law within the period prescribed
C-193/99	28 September 2000	Graeme Edgar Hume	Social legislation relating to road transport — Weekly rest period — Postponement
C-347/99	14 December 2000	Commission of the European Communities v Ireland	Failure by a Member State to fulfil its obligations — Failure to transpose Directive 95/50/EC

2. SYNOPSIS OF THE OTHER DECISIONS OF THE COURT OF JUSTICE WHICH APPEARED IN THE "PROCEEDINGS" IN 2000

Case	Date	Parties	Subject-matter
C-17/98 (order)	4 February 2000	Emesa Sugar (Free Zone) NV v Aruba	Procedure — Application for leave to submit observations in response to the Opinion of the Advocate General — Fundamental rights
C-428/98 P (order)	11 May 2000	Deutsche Post AG v International Express Carriers Conference (IECC) and Others	Appeal — Competition — Abuse of a dominant position — Postal services — Remail

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

General activity of the Court

Table 1: General activity in 2000

Cases completed

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

Length of proceedings

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

New cases

Table 9: Nature of proceedings
Table 10: Type of action
Table 11: Subject-matter of the action

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

Table 12: Actions for failure to fulfil obligations
Table 13: Basis of the action

Cases pending as at 31 December 2000

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

General trend in the work of the Court up to 31 December 2000

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

General activity of the Court

Table 1: **General activity in 2000** [1]

Completed cases	463	(526)
New cases		(503)
Cases pending	803	(873)

Cases completed

Table 2: **Nature of proceedings**

References for a preliminary ruling	211	(268)
Direct actions	178	(180)
Appeals	74	(78)
Opinions	—	—
Special forms of procedure[2]	—	—
Total	463	(526)

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

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

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

Nature of proceedings	Judgments	Non-interlocutory orders[2]	Interlocutory orders[3]	Other orders[4]	Opinions	Total
References for a preliminary ruling	152	17	—	42	—	211
Direct actions	84	4	2	90	—	180
Appeals	37	32	—	5	—	74
Subtotal	273	53	2	137	—	465
Opinions	—	—	—	—	—	—
Special forms of procedure	—	—	—	—	—	—
Subtotal	—	—	—	—	—	—
TOTAL	273	53	2	137	—	465

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

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

Table 4: **Means by which terminated**

Form of decision	Direct actions		References for a preliminary ruling		Appeals		Special forms of procedure	Total	
Judgments									
Action founded	58	(59)						58	(59)
Action partially founded	7	(7)						7	(7)
Action partially inadmissible and founded	1	(2)						1	(2)
Action unfounded	16	(16)			23	(24)		39	(40)
Appeal partially inadmissible and unfounded					1	(1)		1	(1)
Appeal manifestly inadmissible					1	(1)		1	(1)
Set aside and referred back					1	(1)		1	(1)
Partially set aside and referred back					2	(2)		2	(2)
Set aside and not referred back					3	(5)		3	(5)
Partially set aside and not referred back					6	(7)		6	(7)
Inadmissible	2	(2)						2	(2)
Preliminary ruling			152	(207)				152	(207)
Total judgments	84	(86)	152	(207)	37	(41)		273	(334)

(cont.)

(cont.)

Form of decision	Direct actions		References for a preliminary ruling		Appeals		Special forms of procedure	Total	
Orders									
Action unfounded					3	(3)		3	(3)
Action partially founded									
Manifest lack of jurisdiction									
Inadmissibility	1	(1)						1	(1)
Manifest inadmissibility	3	(3)	2	(2)				5	(5)
Appeal manifestly inadmissible					3	(3)		3	(3)
Appeal manifestly inadmissible and unfounded					21	(21)		21	(21)
Appeal unfounded									
Appeal manifestly unfounded					5	(5)		5	(5)
Subtotal	4	(4)	2	(2)	32	(32)		38	(38)
Removal from the Regsiter	90	(90)	42	(44)	4	(4)		136	(138)
No need to adjudicate					1	(1)		1	(1)
Art. 104(3) of the Rules of Procedure			15	(15)				15	(15)
Subtotal	90	(90)	57	(59)	5	(5)		152	(154)
Total orders	94	(94)	59	(61)	37	(37)		190	(192)
Opinions									
TOTAL	178	(180)	211	(268)	74	(78)		463	(526)

Table 5: **Bench hearing case**

Bench hearing case	Judgments		Orders[1]		Total	
Full Court	27	(31)	6	(6)	33	(37)
Small plenum	44	(91)	—	—	44	(91)
Chambers (3 judges)	50	(50)	40	(40)	90	(90)
Chambers (5 judges)	152	(162)	3	(3)	155	(165)
President	—	—	4	(4)	4	(4)
Total	273	(334)	53	(53)	326	(387)

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

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

Basis of the action	Judgments/Opinions		Orders [2]		Total	
Article 169 of the EC Treaty (now Article 226 EC)	60	(60)	1	(1)	61	(61)
Article 170 of the EC Treaty (now Article 227 EC)	1	(1)	—	—	1	(1)
Article 171 of the EC Treaty (now Article 228 EC)	1	(1)	—	—	1	(1)
Article 173 of the EC Treaty (now after amendment, Article 230 EC)	18	(19)	3	(3)	21	(22)
Article 177 of the EC Treaty (now Article 234 EC)	148	(203)	17	(17)	165	(220)
Article 178 of the EC Treaty (now Article 235 EC)	1	(2)	—	—	1	(2)
Article 181 of the EC Treaty (now Article 238 EC)	2	(2)	—	—	2	(2)
Article 1 of the 1971 Protocol	4	(4)	—	—	4	(4)
Article 49 of the EC Statute	34	(38)	28	(28)	62	(66)
Article 50 of the EC Statute	—	—	4	(4)	4	(4)
Total EC Treaty	269	(330)	53	(53)	322	(383)
Article 42 EA	1	(1)	—	—	1	(1)
Article 49 of the EA Statute	3	(3)	—	—	3	(3)
Total EA Treaty	4	(4)	—	—	4	(4)
Overall Total	273	(334)	53	(53)	326	(387)

[1] Following the renumbering of articles by the Treaty of Amsterdam, the method of citation of Treaty articles has been substantially modified since 1 May 1999.

[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	38	(39)	5	(5)	43	(44)
Approximation of laws	25	(29)	—	—	25	(29)
Brussels Convention	5	(5)	—	—	5	(5)
Commercial policy	4	(4)	—	—	4	(4)
Common Customs Tariff	1	(1)	—	—	1	(1)
Common foreign and security policy	—	—	1	(1)	1	(1)
Competition	24	(31)	9	(9)	33	(40)
Customs Union	6	(7)	—	—	6	(7)
Economic and social cohesion	1	(1)	—	—	1	(1)
Energy	2	(2)	—	—	2	(2)
Environment	16	(17)	1	(1)	17	(18)
European Social fund	1	(1)	1	(1)	2	(2)
External relations	2	(3)	1	(1)	3	(4)
Financial provisions	—	—	1	(1)	1	(1)
Fisheries policy	1	(1)	—	—	1	(1)
Freedom of establishment and to provide services	23	(24)	9	(9)	32	(33)
Freedom of movement for workers	11	(11)	1	(1)	12	(12)
Free movement of capital	3	(3)	—	—	3	(3)
Free movement of goods	14	(15)	1	(1)	15	(16)
Institutional measures	2	(3)	1	(1)	3	(4)
Principles of Community law	—	—	1	(1)	1	(1)
Social measures	25	(27)	12	(12)	37	(39)
Social security for migrant workers	13	(14)	2	(2)	15	(16)
Staff Regulations	9	(10)	4	(4)	13	(14)
State aid	8	(9)	1	(1)	9	(10)
Taxation	29	(67)	1	(1)	30	(68)
Transport	6	(6)	1	(1)	7	(7)
Total						
CS Treaty						
EA Treaty						
OVERALL TOTAL						

[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** [2]
(Decisions by way of judgments and orders[3])

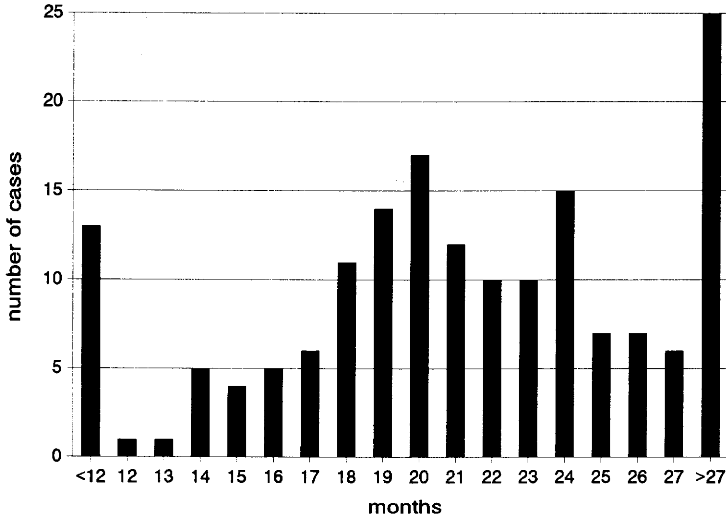
References for a preliminary ruling	21.6
Direct actions	23.9
Appeals	19.0

[1] The following types of cases are excluded from the calculation of the length of proceedings: cases with an interlocutory judgement or a measure of inquiry; opinions and deliberations; special forms of procedure (e.g.: taxation of costs, legal aid, application to set aside a judgment, third party proceedings, interpretation of a judgment, revision of a judgment, rectification of a judgment, attachment procedure, cases concerning immunity); cases completed by an order of removal from the register, declaration that the case will not to proceed to judgment or referral or transfer to the Court of First Instance; procedures for interim measures and appeals on interim measures and on leave to intervene.

[2] In this table and the figures which follow, the length of proceedings is expressed in months and tenths of months.

[3] 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.

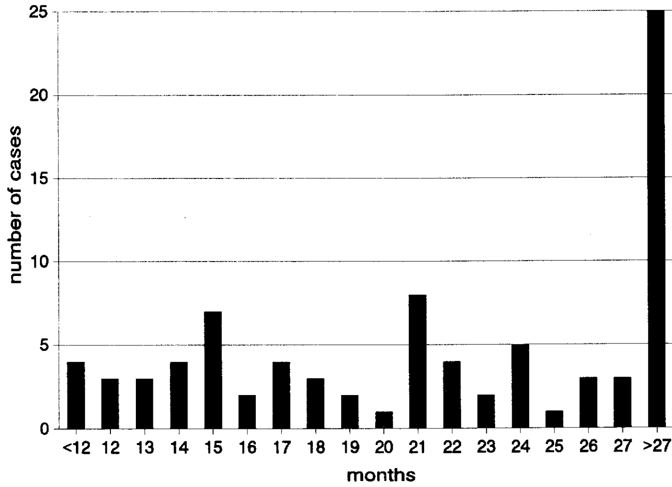
Figure I: **Duration of proceedings in references for a preliminary ruling (judgments and orders[1])**



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	13	1	1	5	4	5	6	11	14	17	12	10	10	15	7	7	6	25

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

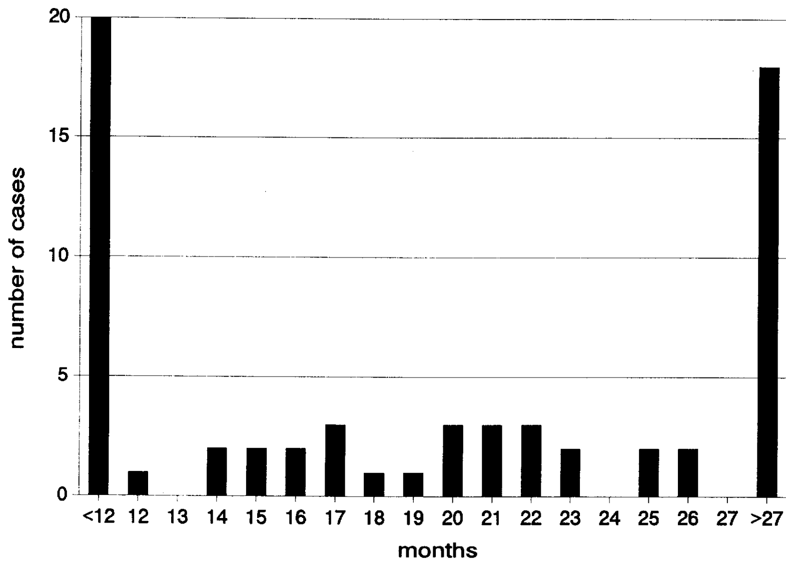
Figure II: **Duration of proceedings in direct actions (judgments and orders[1])**



Cases/ Months	< 12	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	> 27
Direct actions	4	3	3	4	7	2	4	3	2	1	8	4	2	5	1	3	3	25

[1] Other than orders disposing of a case by removal from the register, a declaration that the case will not proceed to judgment or referral 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	20	1	0	2	2	2	3	1	1	3	3	3	2	0	2	2	0	18

[1] Other than orders disposing of a case by removal from the register, a declaration that the case will not proceed to judgment or referral to the Court of First Instance.

New cases [1]

Table 9: **Nature of proceedings**

References for a preliminary ruling	224
Direct actions	197
Appeals	79
Opinions/Deliberations	2
Special forms of procedure	1
Total	503

[1] Gross figures.

Table 10: **Type of action**

References for a preliminary ruling	224
Direct actions	197
of which:	
– for annulment of measures	40
– for failure to act	—
– for damages	—
– for failure to fulfil obligations	157
– on arbitration clauses	—
– others	—
Appeals	79
Opinions/Deliberations	2
Total	502
Special forms of procedure of which:	1
– Legal aid	—
– Taxation of costs	—
– Revision of a judgment/order	—
– Application for an attachment procedure	1
– Third party proceedings	—
– Interpretation of a judgment	—
– Application to set aside a judgment	—
Total	1
Applications for interim measures	4

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 States	1	1	—	2	—
Agriculture	37	45	6	88	—
Approximation of laws	17	9	—	26	—
Brussels Convention	—	9	—	9	—
Commercial policy	3	3	3	9	—
Common foreign and security policy	—	—	1	1	—
Community own resources	2	—	—	2	—
Company law	11	13	1	25	—
Competition	2	6	14	22	—
Environment and consumers	33	13	11	57	—
External relations	1	6	—	7	2
Freedom of movement for persons	6	24	2	32	—
Freedom to provide services	10	8	—	18	—
Free movement of capital	—	6	—	6	—
Free movement of goods	7	21	—	28	—
Industrial policy	13	3	—	16	—
Intellectual property	—	5	1	6	—
Law governing the institutions	5	1	3	9	—
Principles of Community law	3	4	—	7	
Procedure	—	—	1	1	—
Regional policy	—	—	1	1	—
Social policy	11	15	19	45	—
State aid	13	1	4	18	—
Taxation	6	24	—	30	—
Transport	15	7	—	22	—
Total EC Treaty	196	224	67	487	2
State aid	1	—	4	5	—
Total CS Treaty	1	—	4	5	—
Privileges and immunities	—	—	—	—	1
Staff Regulations	—	—	8	8	—
Total	—	—	8	8	1
OVERALL TOTAL	197	224	79	500	3

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

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

Brought against	2000	From 1953 to 2000
Belgium	5	243
Denmark	—	22
Germany	12	143
Greece	18	190
Spain	9	76[2]
France	25	245[3]
Ireland	14	111
Italy	22	406
Luxembourg	11	111
Netherlands	12	72
Austria	8	21
Portugal	10	64
Finland	4	5
Sweden	3	5
United Kingdom	4	51[4]
Total	157	1 765

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

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

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

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

Table 13: **Basis of the action**

Basis of the action	**2000**
Article 157 of the EC Treaty (now Article 213 EC)	—
Article 169 of the EC Treaty (now Article 226 EC)	157
Article 170 of the EC Treaty (now Article 227 EC)	—
Article 171 of the EC Treaty (now Article 228 EC)	—
Article 173 of the EC Treaty (now, after amendment, Article 230 EC)	38
Article 175 of the EC Treaty (now Article 232 EC)	—
Article 177 of the EC Treaty (now Article 234 EC)	215
Article 178 of the EC Treaty (now Article 235 EC)	—
Article 180 of the EC Treaty (now Article 237 EC)	1
Article 181 of the EC Treaty (now Article 238 EC)	—
Article 225 of the EC Treaty (now Article 298 EC)	—
Article 228 of the EC Treaty (now, after amendment, Article 300 EC)	2
Article 1 of the 1971 Protocol	9
Article 49 of the EC Statute	62
Article 50 of the EC Statute	13
Total EC Treaty	497
Article 33 CS	1
Article 49 CS	4
Total CS Treaty	5
Total EA Treaty	—
Total	502
Protocol on privileges and immunities	1
Total special forms of procedure	1
OVERALL TOTAL	503

Cases pending as at 31 December 2000

Table 14: **Nature of proceedings**

References for a preliminary ruling	374	(432)
Direct actions	322	(326)
Appeals	103	(111)
Special forms of procedure	2	(2)
Opinions/Deliberations	2	(2)
Total	803	(873)

Table 15: **Bench hearing case**

Bench hearing case	Direct actions		References for a preliminary ruling		Appeals		Other procedures[1]		Total	
Grand plenum	247	(251)	291	(328)	82	(86)	3	(3)	623	(668)
Small plenum	5	(5)	13	(18)	3	(3)			21	(26)
Subtotal	252	(256)	304	(346)	85	(89)	3	(3)	644	(694)
President of the Court					8	(8)			8	(8)
Subtotal					8	(8)			8	(8)
First chamber	3	(3)	5	(9)					8	(12)
Second chamber	6	(6)	6	(6)					12	(12)
Third chamber	5	(5)	1	(1)			1	(1)	7	(7)
Fourth chamber	7	(7)			3	(4)			10	(11)
Fifth chamber	20	(20)	29	(41)	3	(3)			52	(64)
Sixth chamber	29	(29)	29	(29)	4	(7)			62	(65)
Subtotal	70	(70)	70	(86)	10	(14)	1	(1)	151	(171)
TOTAL	322	(326)	374	(432)	103	(111)	4	(4)	803	(873)

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

General trend in the work of the Court up to 31 December 2000

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

(contd.)

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

2 Net figures.

3 Including opinions of the Court.

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

Year	New cases[1]					Judgments[2]
	Direct actions[3]	References for a preliminary ruling	Appeals	Total	Applications for interim measures	
1991	142	186	14	342	9	204
1992	253	162	25	440	4	210
1993	265	204	17	486	13	203
1994	128	203	13	344	4	188
1995	109	251	48	408	3	172
1996	132	256	28	416	4	193
1997	169	239	35	443	1	242
1998	147	264	70	481	2	254
1999	214	255	72	541	4	235
2000	199	224	79	502	4	273
Total	6 636 [4]	4 381	417	11 434	321	5 269

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

2 Net figures.

3 Including opinions of the Court.

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

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

Year	B	DK	D	EL	E	F	IRL	I	L	NL	A	P	FIN	S	UK	BENELUX	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

(cont.)

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

(cont.)

Year	B	DK	D	EL	E	F	IRL	I	L	NL	A	P	FIN	S	UK	BENELUX	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
1999	13	3	49	3	4	17	2	43	4	23	56	7	4	5	22		255
2000	15	3	47	3	5	12	2	50	—	12	31	8	5	4	26	1[1]	224
Total	425	84	1209	59	130	623	41	674	46	528	146	46	20	32	317	1	4381

1 Case C-265/00 *Campina Melkunie*.

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

Belgium	
Cour de cassation	51
Cour d'arbitrage	1
Conseil d'État	20
Other courts or tribunals	353
Total	**425**

Denmark	
Højesteret	16
Other courts or tribunals	68
Total	**84**

Germany	
Bundesgerichtshof	75
Bundesarbeitsgericht	4
Bundesverwaltungsgericht	50
Bundesfinanzhof	176
Bundessozialgericht	62
Staatsgerichtshof	1
Other courts or tribunals	841
Total	**1 209**

Greece	
Cour de cassation	2
Conseil d'État	7
Other courts or tribunals	50
Total	**59**

Spain	
Tribunal Supremo	5
Audiencia Nacional	1
Juzgado Central de lo Penal	7
Other courts or tribunals	117
Total	**130**

France	
Cour de cassation	61
Conseil d'État	20
Other courts or tribunals	542
Total	**623**

Ireland	
Supreme Court	12
High Court	15
Other courts or tribunals	14
Total	**41**

Italy	
Corte suprema di Cassazione	65
Consiglio di Stato	34
Other courts or tribunals	575
Total	**674**

Luxembourg	
Cour supérieure de justice	10
Conseil d'État	13
Cour administrative	1
Other courts or tribunals	22
Total	**46**

Netherlands	
Raad van State	40
Hoge Raad der Nederlanden	100
Centrale Raad van Beroep	41
College van Beroep voor het Bedrijfsleven	99
Tariefcommissie	34
Other courts or tribunals	214
Total	**528**

Austria	
Verfassungsgerichtshof	2
Oberster Gerichtshof	27
Bundesvergabeamt	9
Verwaltungsgerichtshof	23
Vergabekontrollsenat	3
Other courts or tribunals	82
Total	**146**

Portugal	
Supremo Tribunal Administrativo	27
Other courts or tribunals	19
Total	**46**

Finland	
Korkein hallinto-oikeus	5
Korkein oikeus	1
Other courts or tribunals	14
Total	**20**

Sweden	
Högsta Domstolen	2
Marknadsdomstolen	3
Regeringsrätten	8
Other courts or tribunals	19
Total	**32**

United Kingdom	
House of Lords	24
Court of Appeal	16
Other courts or tribunals	277
Total	**317**

BENELUX	
Court of Justice	1[1]
Total	**1**

OVERALL TOTAL **4 381**

[1] Case C-265/00 *Campina Melkunie*.

B — PROCEEDINGS OF THE COURT OF FIRST INSTANCE

1. SYNOPSIS OF THE JUDGMENTS DELIVERED BY THE COURT OF FIRST INSTANCE IN 2000

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1. SYNOPSIS OF THE JUDGMENTS DELIVERED BY THE COURT OF FIRST INSTANCE IN 2000

Case	Date	Parties	Subject-matter

AGRICULTURE

Case	Date	Parties	Subject-matter
T-138/98	22 February 2000	Armement Coopératif Artisanal Vendéen (ACAV) and Others v Council of the European Union	Fisheries — Regulation (EC) No 1239/98 — Prohibition of drift-nets — Action for annulment — Inadmissibility
T-251/97	28 March 2000	T. Port GmbH & Co. v Commission of the European Communities	Agriculture — Common organisation of the market — Bananas — Application for allocation of additional import licences — Article 30 of Regulation (EEC) No 404/93 — Action for annulment
T-79/96 T-260/97 and T-117/98	8 June 2000	Camar srl, Tico srl v Commission of the European Communities, Council of the European Union	Common organisation of the markets — Bananas — Application for additional import licences — Adjustments of tariff quota in the event of necessity — Transitional measures
T-429/93	21 June 2000	Successors of Edmond Ropars and Others v Council of the European Union	Action for damages — Non-contractual liability — Milk — Additional levy — Reference quantity — Producer having entered into an undertaking to convert — Transfer of a holding

Case	Date	Parties	Subject-matter
T-537/93	21 June 2000	Hervé Tromeur v Council of the European Union, Commission of the European Communities	Action for damages — Non-contractual liability — Milk — Additional levy — Reference quantity — Producer having entered into an undertaking to convert — Production not resumed on expiry of the undertaking
T-252/97	19 September 2000	Anton Dürbeck GmbH v Commission of the European Communities	Bananas — Imports from ACP States and third countries — Request for additional import licences — Case of hardship — Transitional measures — Article 30 of Regulation (EEC) No 404/93 — Limitation of damage — Action for annulment

COAL AND STEEL

Case	Date	Parties	Subject-matter
T-234/95	29 June 2000	DSG Dradenauer Stahlgesellschaft mbH v Commission of the European Communities	ECSC — Action for annulment — State aid — Private investor test — Economic unity — Amount of aid — Misuse of powers

COMMERCIAL POLICY

Case	Date	Parties	Subject-matter
T-32/98 and T-41/98	10 February 2000	Government of the Netherlands Antilles v Commission of the European Communities	Association of the overseas countries and territories — Regulation (EC) No 2352/97 — Regulation (EC) No 2494/97 — Application for annulment — Admissibility — OCT Decision — Safeguard measure — Causal link
T-51/96	30 March 2000	Miwon Co. Ltd v Council of the European Union	Anti-dumping — Breach of a price undertaking — Injury to the Community
T-597/97	20 June 2000	Euromin SA v Council of the European Union	Action for annulment — Dumping — Inadmissibility
T-7/99	29 June 2000	Medici Grimm KG v Council of the European Union	Dumping — Regulation closing an interim review — Retroactivity — Recovery of duties — Action for annulment — Admissibility
T-74/97 and T-75/97	26 September 2000	Büchel & Co. Fahrzeugteilefabrik GmbH v Council of the European Union, Commission of the European Communities	Extension of an anti-dumping duty — Exemption — Bicycle parts — Action for annulment — Inadmissibility
T-80/97	26 September 2000	Starway SA v Council of the European Union	Extension of an anti-dumping duty — Exemption — Action for annulment — Admissibility — Assembly operation — Burden of proof — Statement of reasons — Manifest error of assessment

Case	Date	Parties	Subject-matter
T-87/98	29 September 2000	International Potash Company v Council of the European Union	Anti-dumping duties — Fixed duty combined with a variable duty — Dumping margin — Principle of proportionality — Statement of reasons
T-178/98	24 October 2000	Fresh Marine Company SA v Commission of the European Communities	Provisional anti-dumping and countervailing duties — Farmed Atlantic salmon — Non-contractual liability of the Community
T-213/97	29 November 2000	Comité des Industries du Coton et des Fibres Connexes de l'Union Européenne (Eurocoton) and Others v Council of the European Union	Action for damages — Dumping — Failure by the Council to adopt definitive duties — Action for annulment — Actionable measure

COMPANY LAW

Case	Date	Parties	Subject-matter
T-139/99	6 July 2000	Alsace International Car Service (AICS) v European Parliament	Public services contract — Passenger transport by chauffeur-driven vehicles — Invitation to tender — Compliance with national law — Principles of sound administration and of the duty to cooperate in good faith — Rejection of a tender

Case	Date	Parties	Subject-matter

COMPETITION

Case	Date	Parties	Subject-matter
T-241/97	17 February 2000	Stork Amsterdam BV v Commission of the European Communities	Administrative procedure — Examination of complaints — Infringement of Article 85 of the EC Treaty (now Article 81 EC) — Comfort letters — Reopening the procedure — Statement of reasons — Duty to provide — Extent — Cooperation agreement — Exclusive mutual supply clause — No-compete clause
T-25/95, T-26/95, T-30/95 to T-32/95, T-34/95 to T-39/95, T-42/95 to T-46/95, T-48/95, T-50/95 to T-65/95, T-68/95 to T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95	15 March 2000	Cimenteries CBR SA and Others v Commission of the European Communities	Article 85(1) of the EC Treaty (now Article 81(1) EC) — Cement market — Rights of the defence — Access to the file — Single and continuous infringement — General agreement and measures of implementation — Liability for an infringement — Evidence of participation in the general agreement and measures of implementation — Links between the general agreement and the measures of implementation as regards objects and participants — Fine — Determination of the amount

Case	Date	Parties	Subject-matter
T-125/97 and T-127/97	22 March 2000	The Coca-Cola Company, Coca-Cola Enterprises Inc. v Commission of the European Communities	Regulation (EEC) No 4064/89 — Decision declaring a concentration compatible with the common market — Action for annulment — Statement of reasons — Admissibility
T-65/96	30 March 2000	Kish Glass & Co. Ltd v Commission of the European Communities	Float glass — Rights of defence and procedural rights of the complainant — Product market and geographical market — Article 86 of the EC Treaty (now Article 82 EC)
T-513/93	30 March 2000	Consiglio Nazionale degli Spedizionieri Doganali v Commission of the European Communities	Customs agents — Definitions of undertaking and association of undertakings — Decision by an association of undertakings — Fixing of tariffs — State rules — Applicability of Article 85(1) of the EC Treaty (now Article 81 EC)
T-77/95 RV	25 May 2000	Union Française de l'Express (Ufex), DHL International, Service CRIE, May Courier v Commission of the European Communities	Rejection of a complaint — Community interest — Referral back by the Court of Justice

Case	Date	Parties	Subject-matter
T-62/98	6 July 2000	Volkswagen AG v Commission of the European Communities	Distribution of motor vehicles — Partitioning of the market — Article 85 of the EC Treaty (now Article 81 EC) — Regulation (EEC) No 123/85 — Disclosure to the press — Business secrets — Good administration — Fines — Gravity of the infringement
T-154/98	26 October 2000	Asia Motor France SA, Jean-Michel Cesbron, Monin Automobiles SA, Europe Auto Service (EAS) SA v Commission of the European Communities	Article 85 of the EC Treaty (now Article 81 EC) — Obligations regarding the investigation of complaints — Legality of grounds for rejection — Manifest error of assessment — Article 176 of the EC Treaty (now Article 233 EC) — Admissibility of a new plea in law
T-41/96	26 October 2000	Bayer AG v Commission of the European Communities	Parallel imports — Article 85(1) of the EC Treaty (now Article 81(1) EC) — Meaning of agreement between undertakings — Proof of the existence of an agreement — Market in pharmaceutical products
T-5/97	30 November 2000	Industrie des Poudres Sphériques v Commission of the European Communities	Action for annulment — Rejection of a complaint — Article 86 of the EC Treaty (now Article 82 EC) — Misuse of the anti-dumping procedure — Statement of reasons — Rights of the defence

Case	Date	Parties	Subject-matter
T-128/98	12 December 2000	Aéroport de Paris v Commission of the European Communities	Air transport — Airport management — Applicable regulation — Regulation No 17 and Regulation (EEC) No 3975/87 — Abuse of dominant position — Discriminatory fees

ENVIRONMENT AND CONSUMERS

Case	Date	Parties	Subject-matter
T-172/98, T-175/98, T-176/98 and T-177/98	27 June 2000	Salamander AG and Others v European Parliament, Council of the European Union	Action for annulment — Directive 98/43/EC — Prohibition of advertising and sponsorship of tobacco products — Admissibility

EXTERNAL RELATIONS

Case	Date	Parties	Subject-matter
T-145/98	24 February 2000	ADT Projekt Gesellschaft der Arbeitsgemeinschaft Deutscher Tierzüchter mbH v Commission of the European Communities	Action for annulment — Action for damages — Admissibility — TACIS programme — Invitation to tender — Irregularities in the tendering procedure
T-485/93, T-491/93, T-494/93 and T-61/98	8 November 2000	Société anonyme Louis Dreyfus & Cie, Glencore Grain Ltd, Compagnie Continentale (France) v Commission of the European Communities	Action for annulment — Action for damages — Emergency aid provided by the Community to the States of the former Soviet Union — Invitation to tender —
T-509/93	8 November 2000	Glencore Grain Ltd v Commission of the European Communities	Action for annulment — Emergency aid provided by the Community to the States of the former Soviet Union — Invitation to tender —

Case	Date	Parties	Subject-matter

FREE MOVEMENT OF GOODS

T-290/97	18 January 2000	Mehibas Dordtselaan BV v Commission of the European Communities	Action for annulment — Poultry imports — Article 13 of Regulation (EEC) No 1430/79 — Commission decision refusing repayment of agricultural levies — Revoked — Statement for the file — Legality — Legitimate expectations — Legal certainty — Manifest errors of assessment — Duty to provide reasons

FREEDOM TO PROVIDE SERVICES

T-69/99	13 December 2000	Danish Satellite TV (DSTV) A/S (Eurotica Rendez-vous Television) v Commission of the European Communities	Television Without Frontiers directive — National restrictions on the retransmission across frontiers of television broadcasts — Finding by the Commission that those restrictions are compatible with Community law — Action for annulment — Admissibility

INTELLECTUAL PROPERTY

Case	Date	Parties	Subject-matter
T-19/99	12 January 2000	DKV Deutsche Krankenversicherung AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	Community trade mark — Companyline — Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94
T-122/99	16 February 2000	The Procter & Gamble Company v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	Community trade mark — Soap bar shape — Formal irregularity in an application for registration — Absolute grounds for refusal to register — Review by the Board of Appeal of its own motion — Observance of the rights of the defence — Sign consisting exclusively of a shape which results from the nature of the goods themselves — Earlier registration of the mark in some Member States
T-91/99	30 March 2000	Ford Motor Company v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	Community trade mark — The word OPTIONS — Absolute ground for refusal — Lack of distinctive character — Article 7(3) of Regulation (EC) No 40/94 — Acquisition through use in part of the Community
T-345/99	26 October 2000	Harbinger Corporation v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	Community trade mark — The term TRUSTEDLINK — Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94

Case	Date	Parties	Subject-matter
T-360/99	26 October 2000	Community Concepts AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	Community trade mark — Investorworld — Absolute ground for refusal — Lack of distinctive character
T-32/00	5 December 2000	Messe München GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	Community trade mark— electronica — Absolute ground for refusal — Lack of distinctive character — Descriptiveness — Articles 7(1)(b) and (c) of Regulation (EC) No 40/94 — Fee for appeal — Article 44 of Regulation (EC) No 40/94

LAW GOVERNING THE INSTITUTIONS

Case	Date	Parties	Subject-matter
T-256/97	27 January 2000	Bureau Européen des Unions de Consommateurs (BEUC) v Commission of the European Communities	Antidumping proceeding — Consumer association — Refusal of recognition as an interested party — Agreement on implementation of Article VI of GATT 1994 — Articles 6(7) and 21 of Regulation (EC) No 384/96
T-188/98	6 April 2000	Aldo Kuijer v Council of the European Union	Transparency — Council Decision 93/731/EC on public access to Council documents — Refusal of an application for access — Protection of the public interest — International relations — Obligation to state reasons — Partial access

Case	Date	Parties	Subject-matter
T-20/99	13 September 2000	Denkavit Nederland BV v Commission of the European Communities	Decision 94/90/ECSC, EC, Euratom — Public access to Commission documents — Inspection report — Exceptions relating to protection of the public interest (inspections and investigations) and of commercial secrecy
T-123/99	12 October 2000	JT's Corporation Ltd v Commission of the European Communities	Transparency — Access to documents — Decision 94/90/ECSC, EC, Euratom — Scope of the exception based on protection of the public interest — Inspection and investigation tasks — Authorship rule — Statement of reasons
T-83/99, T-84/99 and T-85/99	26 October 2000	Carlo Ripa di Meana, Leoluca Orlando, Gastone Parigi v European Parliament	Deputies at the European Parliament — Provisional retirement pension scheme — Time-limit for submitting application — Acquired knowledge — Admissibility

REGIONAL POLICY

Case	Date	Parties	Subject-matter
T-46/98 and T-151/98	3 February 2000	Conseil des Communes et Régions d'Europe (CCRE) v Commission of the European Communities	Action for annulment — European Regional Development Fund — Reduction of financial assistance — Failure to state reasons — Legitimate expectations — Legal certainty

Case	Date	Parties	Subject-matter
T-72/99	27 June 2000	Karl L. Meyer v Commission of the European Communities	Action for damages — OCTs — Project financed by the EDF — Legitimate expectations — Supervisory duty incumbent on the Commission
T-105/99	14 December 2000	Conseil des Communes et Régions d'Europe (CCRE) v Commission of the European Communities	Community law — Principle of effectiveness of Community law — Principle of sound financial management — Set-off between a debt owed to the Commission and sums payable by way of Community contributions

RESEARCH, INFORMATION, EDUCATION, STATISTICS

Case	Date	Parties	Subject-matter
T-183/97	17 February 2000	Carla Micheli, Andrea Peirano, Carlo Nike Bianchi, Marinella Abbate v Commission of the European Communities	Action for annulment — Community policy on research and technological development — MAST III programme — Decision adopting the list of proposals for actions eligible for a Community contribution — Exclusion of a proposal for Community financing — Interest in bringing proceedings — No need to adjudicate

Case	Date	Parties	Subject-matter

SOCIAL POLICY

Case	Date	Parties	Subject-matter
T-194/97 and T-83/98	27 January 2000	Eugénio Branco, Ld.[a] v Commission of the European Communities	European Social Fund — Action for failure to act — Admissibility — Action for annulment — Reduction in financial assistance — Certification by the Member State — Misappraisal of the facts — Legitimate expectations — Legal certainty — Proportionality

STAFF REGULATIONS OF OFFICIALS

Case	Date	Parties	Subject-matter
T-86/98	26 January 2000	Dimitrios Gouloussis v Commission of the European Communities	Promotion — Grade A 2 post — Action for annulment
T-60/99	3 February 2000	Malcolm Townsend v Commission of the European Communities	Joint sickness insurance scheme — Cover for spouses
T-171/98	22 February 2000	Maria Adelina Biasutto v Council of the European Union	Sickness leave — Improper absence — Article 59 of the Staff Regulations — Procedure to be followed in the case of absence on sickness leave
T-22/99	22 February 2000	Gustave Rose v Commission of the European Communities	Refusal of promotion — Guide to promotion — Protection of legitimate expectations — Misuse of powers — Consideration of comparative merits
T-164/98	23 February 2000	Giuseppe Carraro v Commission of the European Communities	Staff report — Action for annulment — Action for damages

Case	Date	Parties	Subject-matter
T-223/97 and T-17/98	23 February 2000	Reinder Kooyman and Petra Van Eynde-Neutens v European Parliament	Members of the auxiliary staff — Auxiliary session interpreters of the Parliament — Legality of deduction of Community tax from their remuneration
T-82/98	24 February 2000	Frans Jacobs v Commission of the European Communities	Promotion — Absence of staff report — Irregularity of promotions procedure
T-10/99	9 March 2000	Miguel Vicente Nuñez v Commission of the European Communities	Promotion — Consideration of comparative merits — List of officials judged to be the most deserving — Staff report — Defective statement of reasons
T-29/97	9 March 2000	Alain Libéros v Commission of the European Communities	Member of the temporary staff — Classification in grade — Professional experience
T-95/98	23 March 2000	Christos Gogos v Commission of the European Communities	Internal competition — Failure in oral tests — Composition of the selection board — Equal treatment
T-197/98	23 March 2000	Charlotte Rudolph v Commission of the European Communities	Period for complaint — Notification of decision — Languages — Annulment of medical examination as recruited on the ground of false statement
T-18/98	13 April 2000	Peter Reichert v European Parliament	Article 4 of Annex VII to the Staff Regulations — Expatriation allowance — Place in which main occupation is carried on

Case	Date	Parties	Subject-matter
T-177/97	10 May 2000	Odette Simon v Commission of the European Communities	Claim for status as member of the temporary staff
T-34/99	11 May 2000	Philippe Pipeaux v European Parliament	Thalassotherapy — Refusal of prior authorisation — Reasons
T-121/99	16 May 2000	Sean Irving v Commission of the European Communities	Disciplinary measures — Removal from post — Time-limits for proceedings — Rights of the defence
T-203/98	17 May 2000	Yannis Tzikis v Commission of the European Communities	Disciplinary proceedings — Removal from post — Reasons — Real situation — Manifest error of assessment
T-173/99	25 May 2000	Gilbert Elkaïm, Philippe Mazuel v Commission of the European Communities	Open competition based on qualifications and tests — Breach of the notice of competition — Equality of treatment of the applicants — Principle of good administration — Misuse of powers and procedure
T-211/98	15 June 2000	F v Commission of the European Communities	Suspension — No prior hearing — Action for annulment and damages
T-51/99	15 June 2000	Sophia Fantechi v Commission of the European Communities	Expatriation allowance — Services provided for an international organisation established in the place of employment — Article 4(1)(a) of Annex VII to the Staff Regulations

Case	Date	Parties	Subject-matter
T-84/98	16 June 2000	C v Council of the European Union	Action for annulment — Invalidity Committee — Retirement — Breach of essential procedural requirements — Misuse of powers — Non-material damage
T-47/97	27 June 2000	Onno Plug v Commission of the European Communities	Cover against risk of accident and occupational disease — Article 73 of the Staff Regulations — Articles 18 and 19 of the Rules relating to cover against the risk of accident and occupational disease — Rate of permanent partial invalidity — *Res judicata* — Action for damages
T-67/99	27 June 2000	K v Commission of the European Communities	Administration's duty of assistance — Article 24 of the Staff Regulations — Scope — Limits
T-111/99	5 July 2000	Ignacio Samper v European Parliament	Publication of a new notice of vacancy following the annulment of a decision making an appointment — Re-establishment of career — Duty to have regard for the welfare and interests of officials — Interests of the service — Misuse of powers — Refusal to grant a temporary posting
T-134/99	11 July 2000	Anna Skrzypek v Commission of the European Communities	Family allowances — Orphan's pension — Conditions of grant — Actual maintenance of the child
T-24/99	13 July 2000	Claudio d'Aloya v Council of the European Union	Promotion — Action for annulment — Action for damages

Case	Date	Parties	Subject-matter
T-87/99	13 July 2000	Michel Hendrickx v European Centre for the Development of Vocational Training (Cedefop)	Non-renewal of contract — Rejection of applications for two posts — Admissibility — Competence — Legality of vacancy notices — Recruitment procedure
T-157/99	13 July 2000	Helga Griesel v Council of the European Union	Refusal of promotion — Statement of reasons — Examination of the comparative merits of the candidates
T-82/99	14 July 2000	Michael Cwik v Commission of the European Communities	Authorisation to publish — Second paragraph of Article 17 of the Staff Regulations — Interests of the Communities — Manifest error of assessment
T-146/99	14 July 2000	Rui Teixeira Neves v Court of Justice of the European Communities	Internal competition — Competition notice — Appointment to the post of legal adviser — Mandatory requirement — Preferential criterion — Statement of reasons — Misuse of powers
T-259/97	12 September 2000	Rui Teixeira Neves v Court of Justice of the European Communities	Duty to serve the institution loyally and to preserve the dignity of the office — Principle of separation of powers — Trade-union freedom — Disciplinary regime — Sanction
T-101/98 and T-200/98	19 September 2000	Gisela Stodtmeister v Council of the European Union	Refusal of promotion — Action for annulment — Absence of staff report — Action for compensation

Case	Date	Parties	Subject-matter
T-261/97	20 September 2000	Eleonore Orthmann v Commission of the European Communities	Scientific or technical services — Advancement from Category B to Category A —Interest in bringing proceedings
T-203/99	20 September 2000	Patrizia de Palma, Jacqueline Escale, Claudine Hamptaux and Harry Wood v Commission of the European Communities	Leave for trade union purposes
T-220/99	20 September 2000	Joachim Behmer v European Parliament	Appointment on promotion — Grade LA 3 — Consideration of the comparative merits
T-317/99	27 September 2000	Franz Lemaître v Commission of the European Communities	Expatriation allowance — Installation allowance — Article 4(1)(b) and Article 5 of Annex VII to the Staff Regulations
T-187/98	3 October 2000	Pascual Juan Cubero Vermurie v Commission of the European Communities	Promotions — Mobility — Admissibility
T-130/99	3 October 2000	David Crabbe v European Centre for the Development for Vocational Training (Cedefop)	Language service — No need to adjudicate
T-202/99	5 October 2000	Léon Rappe v Commission of the European Communities	Promotion — Staff report — Delay in drawing up
T-27/99	17 October 2000	Humbert Drabbe v Commission of the European Communities	Pensions — Acquired rights — Rights acquired before taking up post with the Commission — Transfer to the Community scheme — Submission of application — Time-limits

Case	Date	Parties	Subject-matter
T-138/99	26 October 2000	Luc Verheyden v Commission of the European Communities	Prior administrative complaint — Time-limits — New element — Promotion — Consideration of comparative merits
T-44/97	8 November 2000	Piera Ghignone and Others v Council of the European Union	Remuneration — Posting to a non-member country — Adaptation of weightings — Recovery of excess
T-175/97	8 November 2000	Bernard Bareyt and Others v Commission of the European Communities	Members of temporary staff — Remuneration — Posting to a non-member country — Adaptation of weightings — Retroactive effect — Recovery of excess
T-158/98	8 November 2000	Bernard Bareyt and Others v Commission of the European Communities	Members of temporary staff — Posting to a non-member country — Remuneration — Fixing of a specific weighting for Naka (Japan) — Retroactive effect — Recovery of excess
T-210/98	8 November 2000	E v Commission of the European Communities	Dependent child allowance — Double allowance in respect of child with mental or physical handicap — Suspension — Recovery of amount paid but not due
T-261/99	15 November 2000	Jean Dehon v European Parliament	Promotion — Vacancy notice — Consideration of comparative merits — Equal opportunity

Case	Date	Parties	Subject-matter
T-20/00	15 November 2000	Ivo Camacho-Fernandes v Commission of the European Communities	Occupational disease — Exposure to asbestos and other contaminating agents — Irregularity of opinion of medical board — Default procedure
T-214/99	21 November 2000	Manuel Tomás Carrasco Benítez v Commission of the European Communities	Recruitment — Access to internal competition — Competition notice — Condition relating to length of service — Professional experience of candidate
T-23/00	21 November 2000	A v Commission of the European Communities	Conviction by a national criminal court — Disciplinary procedure — Dismissal
T-136/98	5 December 2000	Anna Maria Campogrande v Commission of the European Communities	Duty of assistance — Sexual harassment
T-197/99	5 December 2000	Anthony Gooch v Commission of the European Communities	Action for annulment — Non-contractual liability of the Community — Place of recruitment — Withdrawal of an administrative act — Presumption of legality of an administrative act
T-223/99	12 December 2000	Luc Dejaiffe v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	Members of temporary staff — Early termination of fixed-term contract as member of temporary staff — Interest of the service — Manifest error of appraisal — Misuse of powers — Non-contractual liability of the Community

Case	Date	Parties	Subject-matter
T-11/00	12 December 2000	Michel Hautem v European Investment Bank	Removal from post — Failure to comply with a judgment annulling a decision — Article 233 EC — Non-contractual liability of the Community — Non-material damage — Compensation
T-130/98 and T-131/98	13 December 2000	Francis Panichelli v European Parliament	Members of temporary staff — Recruitment on the basis of Article 2(c) of the Conditions of Employment of Other Servants — Prospects of upgrading post — No promotion to Grade A 4 — Staff report — Action for annulment and damages — Dismissal under Article 47(2)(a) of the Conditions — Compliance with internal procedure — Grounds for decision of dismissal — Misuse of powers
T-110/99 and T-260/99	13 December 2000	F v European Parliament	Absences — Production of medical certificates — Failure to appear for check-ups — Deduction of sick leave from annual leave — Action for annulment — Claims for damages
T-213/99	14 December 2000	Luc Verheyden v Commission of the European Communities	Action for annulment — Measures and instructions relating to working discipline — Act adversely affecting official — Action for damages — Inadmissibility

Case	Date	Parties	Subject-matter
T-352/99	14 December 2000	M v Commission of the European Communities	Sick leave — Absences regarded as irregular — Deduction from annual leave entitlement — Articles 59 and 60 of the Staff Regulations — Refusal of medical certificate — Absence for less than four days — Effects of medical check

STATE AID

Case	Date	Parties	Subject-matter
T-72/98	16 March 2000	Astilleros Zamacona SA v Commission of the European Communities	Shipbuilding — Article 4(3) of Council Directive 90/684/EEC — Determination of the ceiling for production aid
T-46/97	10 May 2000	SIC — Sociedade Independente de Comunicação, SA v Commission of the European Communities	Financing of public television channels — Complaint — Failure to open the procedure under Article 93(2) of the EC Treaty (now Article 88(2) EC) — Action for annulment
T-204/97 and T-270/97	13 June 2000	EPAC — Empresa para a Agroalimentação e Cereais, SA v Commission of the European Communities	Action for annulment — Article 92(1) and (3) of the EC Treaty (now, after amendment, Article 87(1) and (3) EC) — Concept of aid — State guarantee for financing of public undertaking — Suspension of aid — No need to give judgment

Case	Date	Parties	Subject-matter
T-298/97, T-312/97, T-313/97, T-315/97, T-600/97, T-601/97, T-602/97, T-603/97, T-604/97, T-605/97, T-606/97, T-607/97, T-1/98, T-3/98, T-4/98, T-5/98, T-6/98 and T-23/98	15 June 2000	Alzetta Mauro and Others v Commission of the European Communities	Carriage of goods by road — Action for annulment — Effect on trade between Member States and distortion of competition — Conditions for derogation from prohibition laid down in Article 92(1) of the EC Treaty (now, after amendment, Article 87(1) EC) — New or existing aid — Principle of protection of legitimate expectations — Principle of proportionality — Statement of reasons
T-184/97	27 September 2000	BP Chemicals Ltd v Commission of the European Communities	Action for annulment — Interest in bringing proceedings — Partial inadmissibility — Article 92(3) of the EC Treaty (now, after amendment, Article 87(3) EC) — Directive 92/81/EEC — Meaning of pilot projects for the technological development of more environmentally-friendly products
T-55/99	29 September 2000	Confederación Española de Transporte de Mercancías v Commission of the European Communities	Aid within the meaning of Article 92(1) of the EC Treaty (now, after amendment, Article 87(1) EC) — Statement of reasons — Obligation to recover aid — Legitimate expectations of recipients — Principle of proportionality

Case	Date	Parties	Subject-matter
T-296/97	12 December 2000	Alitalia — Linee Aeree Italiane SpA v Commission of the European Communities	Recapitalisation of Alitalia by the Italian authorities — Classification of the measure — Private investor test — Examination by the Commission
T-613/97	14 December 2000	Union Française de l'Express (Ufex), DHL International, Federal Express International (France), CRIE v Commission of the European Communities	Rights of defence — Access to the file — Duty to state reasons — Postal sector — Cross-subsidies between reserved and competitive sectors — Concept of State aid — Normal market conditions

TRANSPORT

Case	Date	Parties	Subject-matter
T-63/98	1 February 2000	Transpo Maastricht BV and Marco Ooms v Commission of the European Communities	Inland waterway transport — Structural improvements — Application of Regulation (EEC) No 1101/89 — Exemption

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

Summary of the activity of the Court of First Instance

Table 1: General activity of the Court of First Instance in 1998, 1999 and 2000

New cases

Table 2: Nature of proceedings (1998, 1999 and 2000)
Table 3: Type of action (1998, 1999 and 2000)
Table 4: Basis of the action (1998, 1999 and 2000)
Table 5: Subject-matter of the action (1998, 1999 and 2000)

Cases decided

Table 6: Cases decided in 1998, 1999 and 2000
Table 7: Results of cases (2000)
Table 8: Basis of the action (2000)
Table 9: Subject-matter of the action (2000)
Table 10: Bench hearing case (2000)
Table 11: Length of proceedings (2000)
Figure I: Length of proceedings in staff cases (judgments and orders) (2000)
Figure II: Length of proceedings in other actions (judgments and orders) (2000)

Cases pending

Table 12: Cases pending as at 31 December each year
Table 13: Basis of the action as at 31 December each year
Table 14: Subject-matter of the action as at 31 December each year

Miscellaneous

Table 15: General trend

Table 16: Results of appeals from 1 January to 31 December 2000

Summary of the activity of the Court of First Instance

Table 1: **General activity of the Court of First Instance in 1998, 1999 and 2000**[1]

	1998		1999		2000	
New cases		(238)		(384)		(398)
Cases dealt with	279	(348)	322	(659)	258	(344)
Cases pending	569	(1007)	663	(732)	661	(786)

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

New cases

Table 2: **Nature of proceedings (1998, 1999 and 2000)**[1] [2]

Nature of proceedings	1998	1999	2000
Other actions	135	254	242
Intellectual property	1	18	34
Staff cases	79	84	111
Special forms of procedure	23	28	11
Total	238[3]	384[4]	398[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 actions brought by officials of the European Communities and intellectual property cases.

2 The following are considered to be "special forms of procedure" (in this and the following tables): 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 CFI Rules of Procedure).

3 Of which 2 were milk quota cases and 2 were actions brought by customs agents.

4 Of which 71 cases concerned service-stations.

5 Of which 3 cases concerned service-stations and 59 concerned State aid in the region of Venice.

Table 3: **Type of action (1998, 1999 and 2000)**

Type of action	1998	1999	2000
Action for annulment	116	220	220
Action for failure to act	2	15	6
Action for damages	14	19	17
Arbitration clause	3	1	-
Intellectual property	1	18	34
Staff cases	79	83	110
Total	215[1]	356[2]	387[3]
Special forms of procedure			
Legal aid	6	7	6
Taxation of costs	9	6	3
Interpretation or review of a judgment	—	—	1
Rectification of a judgment	7	15	1
Revision of a judgment	1	—	—
Total	23	28	11
OVERALL TOTAL	238	384	398

1 Of which 2 were milk quota cases and 2 were actions brought by customs agents.

2 Of which 71 cases concerned service-stations.

3 Of which 3 cases concerned service-stations and 59 concerned State aid in the region of Venice.

Table 4: **Basis of the action (1998, 1999 and 2000)**

Basis of the action	1998	1999	2000
Article 63 of Regulation (EC) No 40/94	1	18	34
Article 173 of the EC Treaty (now, after amendment, Article 230 EC) [1]	104	215	219
Article 175 of the EC Treaty (now Article 232 EC)	2	14	6
Article 178 of the EC Treaty (now Article 235 EC)	13	17	17
Article 181 of the EC Treaty (now Article 238 EC)	3	1	—
Total EC Treaty	123	265	276
Article 33 of the CS Treaty	12	5	1
Article 35 of the CS Treaty	—	1	—
Article 40 of the CS Treaty	—	1	—
Total CS Treaty	12	7	1
Article 151 of the EA Treaty	1	1	—
Total EA Treaty	1	1	—
Staff Regulations	79	83	110
Total	215	356	387
Article 84 of the Rules of Procedure	7	15	1
Article 92 of the Rules of Procedure	9	6	3
Article 94 of the Rules of Procedure	6	7	6
Article 125 of the Rules of Procedure	—	—	1
Article 129 of the Rules of Procedure	1	—	—
Total special forms of procedure	23	28	11
OVERALL TOTAL	238	384	398

[1] Following the renumbering of articles by the Treaty of Amsterdam, the method of citation of Treaty articles has been substantially modified since 1 May 1999.

Table 5: **Subject-matter of the action (1998, 1999 and 2000)**[1]

Subject-matter of the action	1998	1999	2000
Agriculture	19	42	23
Arbitration clause	2	—	—
Association of overseas countries and and territories	5	4	6
Commercial policy	12	5	8
Common foreign and security policy	—	2	1
Company law	3	2	4
Competition	23	34	36
Culture	—	—	2
Environment and consumers	4	5	14
European citizenship	—	—	2
External relations	5	1	8
Freedom of movement for persons	2	2	8
Freedom to provide services	—	1	—
Free movements of goods	7	10	17
Intellectual property	1	18	34
Law governing the institutions	10	19	29
Regional policy	2	2	—
Research, information, education and statistics	—	1	1
Social policy	10	12	7
State aid	16	100	80
Transport	3	2	—
Total EC Treaty	124	262	280
Competition	8	—	—
Iron and Steel	—	1	—
State aid	3	6	1
Total CS Treaty	11	7	1
Law governing the institutions	1	1	—
Total EA Treaty	1	1	—
Staff Regulations	79	86	106
Total	215	356	387

1 Special forms of procedure are not included.

Cases dealt with

Table 6: **Cases dealt with in 1998, 1999 and 2000**

Nature of proceedings	1998		1999		2000	
Other actions	141	(199)[1]	227	(544)[2]	136	(219)[3]
Intellectual property	1	(1)	2	(2)	7	(7)
Staff cases	110	(120)	79	(88)	98	(101)
Special forms of procedure	27	(29)	14	(25)	17	(17)
Total	279	(348)	322	(659)	258	(344)

1 Of which 64 were milk quota cases.

2 Of which 102 were milk quota cases and 284 were actions brought by customs agents.

3 Of which 8 were milk quota cases and 13 were actions brought by customs agents.

Table 7: **Results of cases (2000)**

Form of decision	Other actions		Intellectual property		Staff cases		Special forms of procedure		Total	
Judgments										
Action inadmissible	8	(14)	—	—	1	(1)	—	—	9	(15)
Action unfounded	22	(28)	5	(5)	28	(29)	—	—	55	(62)
Action partially founded	12	(62)	—	—	15	(17)	—	—	27	(79)
Action founded	11	(20)	1	(1)	10	(10)	—	—	22	(31)
No need to give a decision	2	(3)	—	—	1	(1)	—	—	3	(4)
Total judgments	55	(127)	6	(6)	55	(58)	—	—	116	(191)
Orders										
Removal from the register	36	(37)	1	1	20	(20)	1	(1)	58	(59)
Action inadmissible	13	(13)	—	—	15	(15)	—	—	28	(28)
No need to give a decision	7	(7)	—	—	2	(2)	—	—	9	(9)
Action founded	—	—	—	—	—	—	3	(3)	3	(3)
Action partially founded	—	—	—	—	—	—	6	(6)	6	(6)
Action unfounded	1	(1)	—	—	1	(1)	7	(7)	9	(9)
Action manifestly unfounded	17	(27)	—	—	5	(5)	—	—	22	(32)
Disclaimer of jurisdiction	1	(1)	—	—	—	—	—	—	1	(1)
Lack of jurisdiction	6	(6)	—	—	—	—	—	—	6	(6)
Total orders	81	(92)	1	(1)	43	(43)	17	(17)	142	(153)
Total	136	(219)	7	(7)	98	(101)	17	(17)	258	(344)

Table 8: **Basis of the action (2000)**

Basis of the action	Judgments		Orders		Total	
Article 63 of Regulation (EC) No 40/94	6	(6)	1	(1)	7	(7)
Article 173 of the EC Treaty (now, after amendment, Article 230 EC)	47	(117)	48	(48)	95	(165)
Article 175 of the EC Treaty (now Article 232 EC)	2	(2)	14	(14)	16	(16)
Article 178 of the EC Treaty (now Article 235 EC)	4	(5)	17	(28)	21	(33)
Article 181 of the EC Treaty (now Article 238 EC)	1	(2)	—	—	1	(2)
Total EC Treaty	60	(132)	80	(91)	140	(223)
Article 33 of CS Treaty	1	(1)	1	(1)	2	(2)
Article 35 of the CS Treaty	—	—	1	(1)	1	(1)
Total CS Treaty	1	(1)	2	(2)	3	(3)
Staff Regulations	55	(58)	43	(43)	98	(101)
Total	116	(191)	125	(136)	241	(327)
Article 84 of the Rules of Procedure	—	—	3	(3)	3	(3)
Article 92 of the Rules of Procedure	—	—	8	(8)	8	(8)
Article 94 of the Rules of Procedure	—	—	6	(6)	6	(6)
Total special forms of procedure	—	—	17	(17)	17	(17)
OVERALL TOTAL	116	(191)	142	(153)	258	(344)

Table 9: **Subject-matter of the action (2000)**[1]

Subject-matter of the action	Judgments		Orders		Total	
Agriculture	7	(7)	7	(8)	14	(15)
Arbitration clause	1	(2)	—	—	1	(2)
Association of the Overseas Countries and Territories	—	—	1	(1)	1	(1)
Commercial policy	9	(11)	6	(6)	15	(17)
Company law	1	(1)	3	(3)	4	(4)
Competition	11	(52)	9	(9)	20	(61)
Environment and consumers	1	(4)	3	(3)	4	(7)
European citizenship	—	—	1	(1)	1	(1)
External relations	3	(5)	1	(1)	4	(6)
Freedom of movement for persons	—	—	4	(4)	4	(4)
Freedom to provide services	1	(1)	—	—	1	(1)
Free movement of goods	1	(1)	4	(4)	5	(5)
Intellectual property	6	(6)	1	(1)	7	(7)
Law governing the institutions	5	(8)	14	(24)	19	(32)
Regional policy	3	(4)	1	(1)	4	(5)
Research, information, education and statistics	1	(1)	—	—	1	(1)
Social policy	1	(2)	16	(16)	17	(18)
State aid	8	(26)	9	(9)	17	(35)
Transport	1	(1)	1	(1)	2	(2)
Total EC Treaty	60	(132)	81	(92)	141	(224)
State aid	1	(1)	2	(2)	3	(3)
Total CS Treaty	1	(1)	2	(2)	3	(3)
Staff Regulations	55	(58)	42	(42)	97	(100)
OVERALL TOTAL	116	(191)	125	(136)	241	(327)

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

Table 10: **Bench hearing case (2000)**

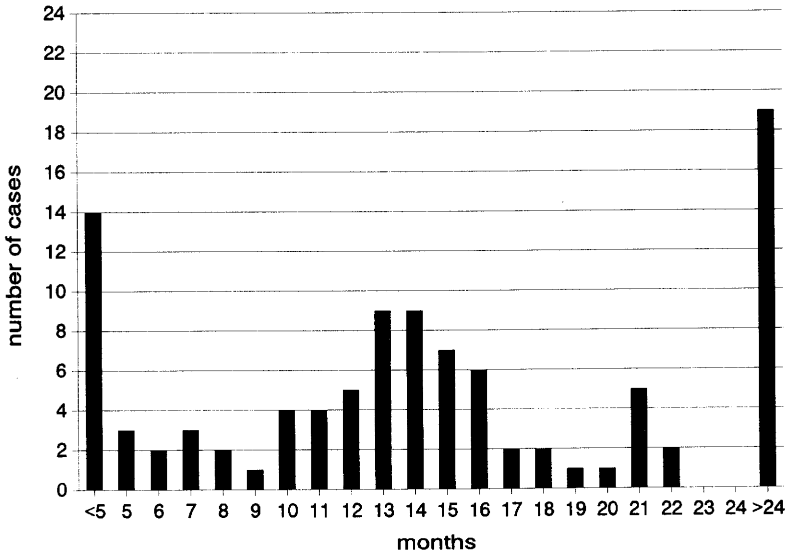
Bench hearing case	Total
Chambers (3 judges)	214
Chambers (5 judges)	112
Single judge	15
Cases not assigned	3
Total	344

Table 11: **Length of proceedings (2000)**[1]
(judgments and orders)

	Judgments/Orders
Other actions	27.5
Intellectual property	9.1
Staff cases	15.6

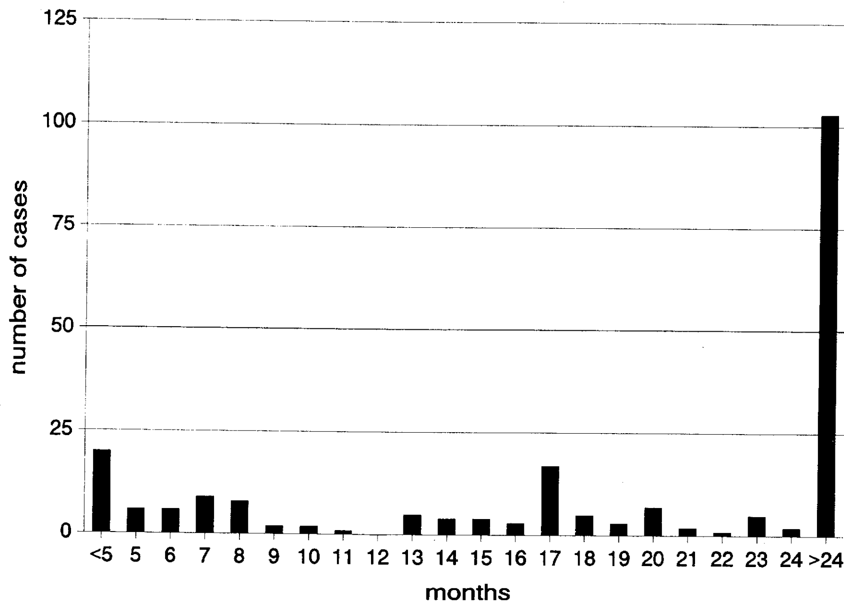
1 In this table, the length of proceedings is expressed in months and tenths of months.

Figure I: **Length of proceedings in staff cases (judgments and orders) (2000)**



Cases/ Months	<5	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	>24
Staff Cases	14	3	2	3	2	1	4	4	5	9	9	7	6	2	2	1	1	5	2	0	0	19

Figure II: **Length of proceedings in other actions (judgments and orders) (2000)**



Cases/ Months	<5	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	>24
Other actions	20	6	6	9	8	2	2	1	0	5	4	4	3	17	5	3	7	2	1	5	2	103

Cases pending

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

Nature of proceedings	1998		1999		2000	
Other actions	400	(829)[1]	471	(538)[2]	445	(561)[3]
Intellectual property	1	(1)	17	(17)	44	(44)
Staff cases	163	(173)	167	(169)	170	(179)
Special forms of procedure	5	(5)	8	(8)	2	(2)
Total	569	(1 007)	663	(732)	661	(786)

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

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

3 Of which 80 are milk quota cases, 74 are cases concerning service-stations and 59 are cases concerning State aid in the region of Venice.

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

Basis of the action	1998		1999		2000	
Article 63 of Regulation (EC) No 40/94	—	—	17	(17)	44	(44)
Article 173 of the EC Treaty (now, after amendment, Article 230 EC)	256	(279)	360	(383)	360	(436)
Article 175 of the EC Treaty (now Article 232 EC)	12	(12)	14	(14)	4	(4)
Article 178 of the EC Treaty (now Article 235 EC)	100	(498)	80	(123)	68	(107)
Article 181 of the EC Treaty (now Article 238 EC)	3	(3)	1	(2)	1	(1)
Total EC Treaty	371	(792)	472	(539)	477	(592)
Article 33 of the CS Treaty	29	(36)	14	(14)	12	(13)
Article 35 of the CS Treaty	—	—	1	(1)	—	—
Article 40 of the CS Treaty	—	—	1	(1)	1	(1)
Total CS Treaty	29	(36)	16	(16)	13	(14)
Article 151 of the EA Treaty	1	(1)	1	(1)	1	(1)
Total EA Treaty	1	(1)	1	(1)	1	(1)
Staff Regulations	163	(173)	166	(168)	168	(177)
Total	564	(1 002)	655	(724)	659	(784)
Article 84 of the Rules of Procedure	1	(1)	2	(2)	—	—
Article 92 of the Rules of Procedure	2	(2)	5	(5)	—	—
Article 94 of the Rules of Procedure	2	(2)	1	(1)	1	(1)
Article 122 of the Rules of Procedure	—	—	—	—	1	(1)
Total special forms of procedure	5	(5)	8	(8)	2	(2)
OVERALL TOTAL	569	(1 007)	663	(732)	661	(786)

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

Subject-matter of the action	1998		1999		2000	
Agriculture	107	(231)	100	(144)	97	(152)
Arbitration clause	3	(3)	1	(2)	—	—
Association of overseas countries and territories	5	(5)	6	(6)	11	(11)
Common foreign and security policy	—	—	2	(2)	3	(3)
Commercial policy	27	(27)	25	(25)	16	(16)
Company law	4	(4)	4	(4)	4	(4)
Competition	111	(114)	101	(104)	74	(79)
Culture	—	—	—	—	2	(2)
Environment and consumers	6	(6)	8	(8)	15	(15)
European citizenship	—	—	—	—	1	(1)
External relations	10	(10)	7	(7)	9	(9)
Free movement of goods	20	(20)	26	(26)	24	(38)
Freedom of movement for persons	—	—	1	(1)	5	(5)
Freedom to provide services	—	—	1	(1)	—	—
Intellectual property	1	(1)	17	(17)	44	(44)
Law governing the institutions	33	(309)	33	(34)	31	(31)
Regional policy	3	(3)	4	(5)	—	—
Research, information, education, and statistics	1	(1)	1	(1)	1	(1)
Social policy	10	(10)	15	(15)	4	(4)
State aid	28	(46)	114	(131)	135	(176)
Transport	3	(3)	3	(3)	1	(1)
Total EC Treaty	372	(793)	469	(536)	477	(592)
Competition	7	(7)	6	(6)	6	(6)
Iron and steel	11	(11)	1	(1)	1	(1)
State aid	10	(17)	9	(9)	6	(7)
Total CS Treaty	28	(35)	16	(16)	13	(14)
Law governing the institutions	1	(1)	1	(1)	1	(1)
Total EA Treaty	1	(1)	1	(1)	1	(1)
Staff Regulations	163	(173)	169	(171)	168	(177)
Total	564	(1 002)	655	(724)	659	(784)

Miscellaneous

Table 15: **General trend**

Year	New cases[1]	Cases pending as at 31 December		Cases decided		Judgments delivered[2]		Number of decisions of the Court of First Instance which have been the subject of an appeal[3]	
1989	169	164	(168)	1	(1)	–	–	–	–
1990	59	123	(145)	79	(82)	59	(61)	16	*(46)*
1991	95	152	(173)	64	(67)	41	(43)	13	*(62)*
1992	123	152	(171)	104	(125)	60	(77)	24	*(86)*
1993	596	638	(661)	95	(106)	47	(54)	16	*(66)*
1994	409	432	(628)	412	(442)	60	(70)	12	*(101)*
1995	253	427	(616)	197	(265)	98	(128)	47	*(152)*
1996	229	476	(659)	172	(186)	107	(118)	27	*(122)*
1997	644	640	(1 117)	179	(186)	95	(99)	35	*(139)*
1998	238	569	(1 007)	279	(348)	130	(151)	67	*(214)*
1999	384	663	(732)	322	(659)	115	(150)	60[4]	*(177)*
2000	398	661	(786)	258	(344)	117	(191)	69	*(217)*
Total	3 597			2 162	(2 811)	929	(1 142)	386	*(1 387)*

1 Including special forms of procedure.

2 The figures in brackets indicate the number of cases decided by judgment.

3 The italicised figures in brackets indicate the total number of decisions which could have been the subject of a challenge — judgments, and orders relating to admissibility, concerning interim measures, declaring that it is not necessary to proceed to judgment or refusing leave to intervene — in respect of which the deadline for bringing an appeal expired or against which an appeal was brought.

4 This figure does not include the appeal introduced against the order of inquiry of 14th September 1999 in Case T-145/98. This appeal was declared inadmissible by the Court since the challenged decision was not open to appeal.

Table 16: **Results of appeals from 1 January to 31 December 2000**
(judgments and orders)

	Unfounded	Appeal manifestly unfounded	Appeal manifestly inadmissible	Appeal manifestly inadmissible and unfounded	Appeal partially inadmissible	Annulment and referred back	Annulment not referred back	Partial annulment and referred back	Partial annulment not referred back	Removal from the register	No need to adjudicate	TOTAL
Agriculture	1	1		1			1					4
Association of overseas countries and territories										1		1
Common foreign and security policy	1											1
Commercial policy	2											2
Competition	11	2		3				1	6	1		24
Culture						1						1
External relations	2		1									3
Free movement of goods				1						2		3
Freedom of movement for persons		1	1									2
Iron and steel	1											1
Laws governing the institutions					1		2					3
Procedure											1	1
Social policy		1		12					1			14
Staff Regulations	5		2	3			2		1			13
State aid	4											4
Transport		1										1
Total	27	6	4	20	1	1	5	1	8	4	1	78

Chapter V

General Information

A — Publications and databases

Texts 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 publication (price of the 1995, 1996, 1997, 1998, 1999 and 2000 Reports: EUR 170 excluding VAT). In other countries, orders should likewise be addressed to the sales offices referred to. For further information please contact the Interior Division of the Court of Justice, Publications Section, L-2925 Luxembourg.*

2. Reports of European Community Staff Cases

From 1994 the Reports of European Community Staff Cases (ECR-SC) contain 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 publication (price: EUR 70, excluding VAT). In other countries, orders should be addressed to the Office for Official Publications of the European Communities, L-2985 Luxembourg. For further information please contact the Interior Division of the Court of Justice, Publications Section, L-2925 Luxembourg.

The cost of subscription to the two abovementioned publications is EUR 205, excluding VAT. For further information please contact the Interior 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 Interior Division of the Court of Justice of the European Communities, L-2925 Luxembourg, on payment of a fixed charge for each document, at present EUR 14.87 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 EUR 327.22, excluding VAT.

Please note that all the recent judgments of the Court of Justice and of the Court of First Instance are accessible quickly and free of charge on the Court's internet site (*www.curia.eu.int*, see also 2.(a) below) under "Case-law". Judgments are available on the site, in all 11 official languages, from approximately 3 p.m. on the day they are delivered. The Advocate General's Opinions are also available on that site, in the language of the Advocate General as well as, initially, in the language of the case.

Other publications

1. Documents from the Registry of the Court of Justice

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

This work contains the main provisions concerning the Court of Justice and the Court of First Instance to be found in the Treaties, in secondary law and in a number of Conventions. Consultation is facilitated by an index.

The Selected Instruments are available in all the official languages. The 1999 edition may be obtained from the addresses given on the last page of this publication. All the texts are also published on the internet at http://curia.eu.int.en/txts/acting/index.htm.

(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.

Lists may be obtained on request from the Interior Division of the Court of Justice, Publications Section, L-2925 Luxembourg

2. Publications from 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 proceedings of the Court of Justice and the Court of First Instance containing a short summary of judgments and brief notes on Opinions delivered by the Advocates General and new cases brought in the previous week. It also records the more important events happening during the daily life of the institution.

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

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

(b) Annual Report

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

(c) Diary

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

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

(d) Internet site of the Court of Justice

The Court's site, located at **www.curia.eu.int**, offers easy access to a wide range of information and documents concerning the institution. Most of these 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 note is "Case-law", which, since June 1997, has offered 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 approximately 3 p.m. on the day of delivery. 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 and Court of First Instance

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

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.

This bibliography has been available since January 2000 on the Court's internet site.

(b) Legal Bibliography of European Integration

Annual publication based on books acquired and periodicals analysed during the year in question in the area of Community law. Since the 1990 edition this bibliography has become an official European Communities publication. It contains approximately 6 000 bibliographical references with a systematic index of subject-matter and an index of authors.

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

3.2. Research and Documentation

The Research and Documentation Service produces a number of documents facilitating access to the case-law of the Court of Justice and the Court of First Instance. It also prepares annual documentation on both Community and national case-law relating to the Brussels and Lugano Conventions.

As specified below, these documents are available either in printed form or electronically via the Court's internet site.

3.2.1. Documents relating to the case-law of the Court of Justice and the Court of First Instance

(a) Digest of case-law relating to the European Communities

The "Digest of case-law relating to the European Communities — A Series", covering the case-law of the Court of Justice and the Court of First Instance to the exclusion of staff cases and of case-law relating to the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, was first published in loose-leaf form. A consolidated and bound edition has been published in French (*"Répertoire de jurisprudence de droit communautaire 1977-1990"*) and in German (in 1995 and 1998 respectively).

Price of the consolidated edition: EUR 100, excluding VAT.

Since 1991 the A Series has been continued in the form of the *Bulletin périodique de jurisprudence*, a working document in French which is not published commercially (see (d)(i) below).

The summaries of judgments and orders of the Court of Justice and the Court of First Instance contained in the *Bulletin périodique de jurisprudence* are also becoming available on the Court's internet site, under the heading "Digest of Community case-law" in "Research and Documentation". Currently the summaries for 1996 and 1997 appear there.

(b) A-Z Index

Computer-generated publication containing a numerical list of all the cases brought before the Court of Justice and the Court of First Instance since 1954, an alphabetical list of names of parties, and a list of national courts or tribunals which have referred cases to the Court for a preliminary ruling. The A-Z Index gives details of the publication of the Court's judgments in the Reports of Cases before the Court.

This publication is available in English and French. Volume II is updated annually.

Volume I (1953 to 1988). Price: EUR 11, excluding VAT.
Volume II (1989 to March 2000). Price: EUR 18, excluding VAT.

The numerical list in the A-Z Index is also available on the Court's internet site.

(c) Notes — Références des notes de doctrine aux arrêts de la Cour de justice et du Tribunal de première instance

This publication gives references to legal literature relating to the judgments of the Court of Justice and of the Court of First Instance since their inception.

It is updated annually. Price: EUR 15, excluding VAT.

It is also available on the Court's internet site, under the heading "Research and Documentation".

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

(d) Working documents which are not published commercially

(i) Bulletin périodique de jurisprudence

A publication in French assembling periodically from 1991, and most recently for 1998 and 1999, the summaries of the judgments and orders of the Court of Justice and the Court of First Instance, set out in a systematic form identical to that of the "Répertoire de jurisprudence de droit communautaire". A consolidated version covering the case-law from 1991 to 1995 is also available.

(ii) Jurisprudence en matière de fonction publique communautaire (January 1988 to December 1999)

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.

(iii) Internal databases

The Court has established internal databases covering the case-law of the courts of the Member States concerning Community law and also the Brussels, Lugano

and Rome Conventions. It is possible to request interrogation of the databases on specific points and to obtain, in French, the results of such a search.

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

3.2.2 Documents relating to the Brussels and Lugano Conventions

(a) Information pursuant to Protocol No 2 annexed to the Lugano Convention

Annual documentation covering the case-law of the Court of Justice relating to the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters and the case-law of national courts relating both to that Convention and to the Lugano Convention, "parallel" to the Brussels Convention.

The documentation, prepared for the benefit of, and sent to, the competent authorities of the Contracting Parties to the Lugano Convention, is available on the Court's internet site, under the heading "Research and documentation". The documentation for 1997 and 1998 currently appears there; that for 1999 and 2000 will follow in 2001. [1]

(b) Digest of case-law relating to the European Communities — D Series

The documentation referred to in (a) above is a continuation of the "Digest of case-law relating to the European Communities — D Series", which was published in loose-leaf form between 1981 and 1993 and contains the case-law of the Court of Justice and national courts relating to the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters. With the publication of Issue 5 (February 1993) in German, French, Italian, English, Danish and Dutch, the D Series of the Digest covers the case-law of the Court of Justice from 1976 to 1991 and the case-law of the courts of the Member States from 1973 to 1990.

Price: EUR 40, excluding VAT.

1 The documentation for 1992 to 1996 has been published by the Swiss Institute for Comparative Law under the title *Recueil de la jurisprudence de la Cour des Communautés européennes et des Cours suprêmes des États parties relative à la convention de Lugano*, Vols I to V.

(c) Brussels and Lugano Conventions — Multilingual edition

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

The work, which contains an introduction in English and French, was published in 1997.

Price: EUR 30, excluding VAT.

Interinstitutional databases

Celex

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

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

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

Rapid — Ovide/Epistel

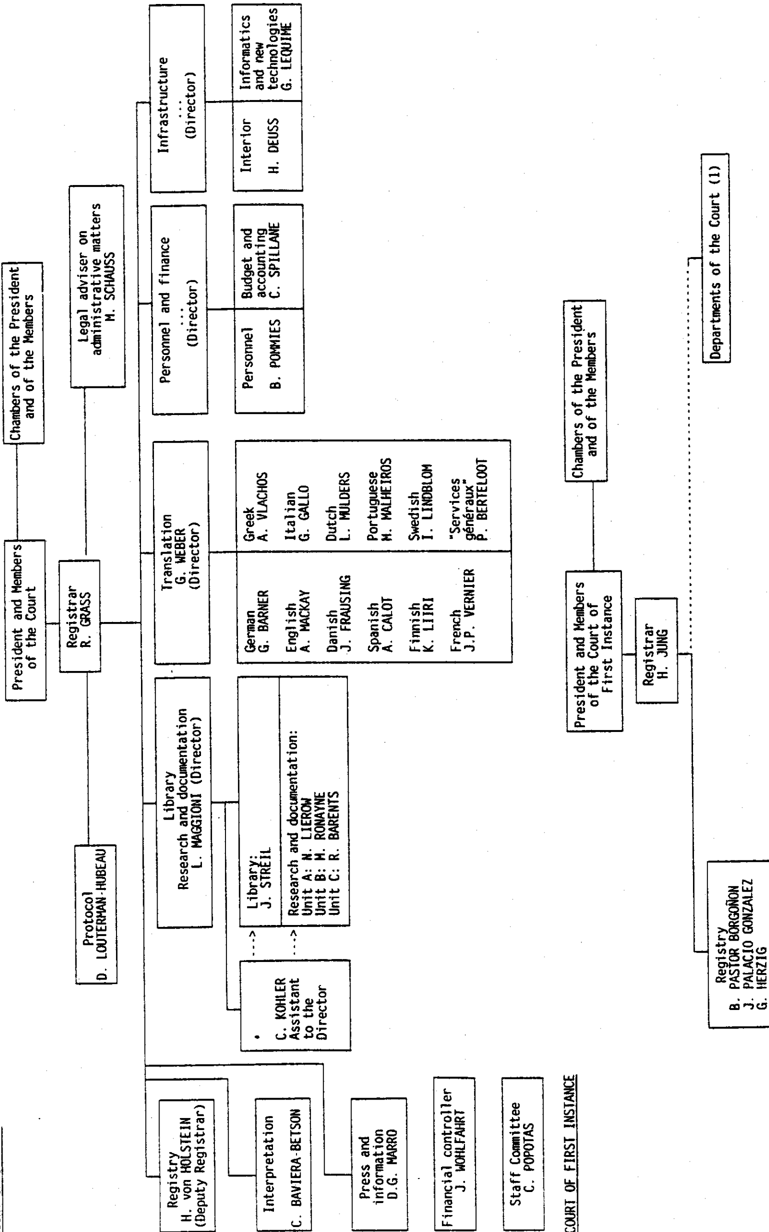
The database Rapid, which is managed by the Spokesman's Service of the Commission of the European Communities, and the database Ovide/Epistel, managed by the European Parliament, will contain the French version of the Proceedings of the Court of Justice and the Court of First Instance (see above).

The official online versions of Celex and Rapid are provided by Eurobases, as well as by certain national servers.

Finally, a range of online and CD-ROM products have been produced under licence.

For further information, write to: Office for Official Publications of the European Communities, 2 rue Mercier, L-2985 Luxembourg.

B — Abridged Organisational Chart of the Court of Justice and the Court of First Instance



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Court of Justice of the European Communities

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