ISSN 1680-8304

COURT OF JUSTICE
OF THE EUROPEAN COMMUNITIES

ANNUAL REPORT 2001

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES — ANNUAL REPORT 2001

EN

QD-AG-02-001-EN-C

OFFICE FOR OFFICIAL PUBLICATIONS
OF THE EUROPEAN COMMUNITIES

L-2985 Luxembourg

COURT OF JUSTICE
OF THE EUROPEAN COMMUNITIES

ANNUAL REPORT

2001

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

Luxembourg 2002

http://www.curia.eu.int

Court of Justice of the European Communities
L-2925 Luxembourg
Telephone: (352) 4303-1
Telex (Registry): 2510 CURIA LU
Telegraphic address: CURIA
Fax: (352) 4303-2600
Fax (Press and Infomation Division): (352) 4303-2500

Court of First Instance of the European Communities
L-2925 Luxembourg
Telephone: (352) 4303-1
Fax: (352) 4303-2100

Internet: http://www.curia.eu.int

Completed on 15 January 2002

A great deal of additional information on the European Union is available on the Internet.
It can be accessed through the Europa server (http://europa.eu.int).

Cataloguing data can be found at the end of this publication.

Luxembourg: Office for Official Publications of the European Communities, 2002

ISSN 1680-8304

Printed in Belgium

Table of Contents

page

Chapter I

The Court of Justice of the European Communities

Chapter II

Court of First Instance of the European Communities

Chapter III

Meetings and visits

Chapter IV

Tables and statistics

Chapter V

General Information

FOREWORD

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

This annual report contains, as is customary, figures showing the scale of the activity of both courts and an analysis of their decisions which brings to light the wide range of issues dealt with.

The mere number of the cases decided over the past year cannot provide an accurate measure of the level of judicial activity since those cases, and their degree of complexity, differed so much; each case had to be dealt with in an appropriate manner, at greater or lesser length and in varying depth. None the less, that figure is deserving of the closest attention, inasmuch as a comparison with the number of cases brought makes it possible to measure the impact which the year gone by has had on the number of pending cases and, therefore, on the duration of proceedings.

The statistics set out at the end of the report show that the level of activity of both courts was consistently high in 2001, substantially comparable to that of the previous year. The number of cases brought to a close was 434 at the Court of Justice and 340 at the Court of First Instance, while new cases brought numbered 504 and 345 respectively. The average duration of proceedings was broadly constant for the two years.

Apart from figures, this report contains a summary of the most important developments in the case-law, demonstrating the range of matters dealt with in the various fields of Community law.

With regard to its administrative functioning, the Court of Justice has, in particular, been mindful of matters relating to its translation service, which must work smoothly if proceedings are to be conducted at a reasonable speed and case-law is to be rapidly available to the public. The Court has thus considered the consequences for translation of the forthcoming enlargement and the difficulties which will arise from the increase in language combinations and the foreseeable growth in the number of cases. Those concerns have led the Court to embark upon a vast computer project designed to put in place a multilingual tool, adapted to judicial work, integrating all the stages in the life of documents, from inception to publication. This ambitious project, a

prototype of which has already been developed to the satisfaction of users, should be brought to a conclusion in 2002.

In addition, the Court, mindful of the institutional framework within which it works, began in 2001, in conjunction with the Court of First Instance, to address the future entry into force of the Treaty of Nice. Their reflections have related in particular to the sharing between them of jurisdiction over direct actions and to the setting up of a judicial panel for cases brought by European Union officials.

It is in that context, looking towards the future, that the Court embarks on the year of its 50th anniversary.

Chapter I

The Court of Justice of the European Communities

A – Proceedings of the Court of Justice in 2001

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

1. This part of the annual report is intended to give a clear picture of the activity of the Court of Justice of the European Communities over the year which has just ended. It does not cover Opinions of the Advocates General, which are of undeniable importance for a detailed understanding of the issues at stake in certain cases but would increase considerably the length of a report which must provide a brief description of the cases.

Apart from a rapid statistical appraisal (section 2) and a survey of application of the new procedural instruments in the course of the year (section 3), this part of the report summarises the main developments in the case-law in 2001, which are arranged as follows:

jurisdiction of the Court and procedure (section 4); general principles and constitutional and institutional cases (section 5); free movement of goods (section 6); freedom to provide services (section 7); right of establishment (section 8); competition rules (section 9); State aid (section 10); harmonisation of laws (section 11); social law (section 12); law concerning external relations (section 13); environmental law (section 14); transport policy (section 15); tax law (section 16); common agricultural policy (section 17); and law relating to Community officials (section 18).

A selection of this kind is necessarily limited. It includes only 53 of the 397 judgments and orders pronounced by the Court during the period in question and refers only to their essential points. The full texts of those decisions, of all the other judgments and orders and of the Opinions of the Advocates General are available, in all the official Community languages, on the Court's internet site (*www.curia.eu.int*). In order to avoid any confusion and to assist the reader, this report refers, unless otherwise indicated, to the numbering of EC Treaty articles established by the Treaty of Amsterdam.

2. As regards statistics, the Court brought 398 cases to a close. Of those cases, 244 were dealt with by judgments, one case concerned an opinion delivered under Article 300(6) EC and 153 cases gave rise to orders. Although these figures show a certain decrease compared with the previous year (463 cases brought to a close), they are slightly above the average for the years

1997-99 (approximately 375 cases brought to a close). On the other hand, the number of new cases arriving at the Court has stayed at the same level (504 in 2001, 503 in 2000). Consequently, the number of cases pending has increased to 839 (net figure, taking account of joinder), compared with 803 in 2000.

The duration of proceedings remained constant so far as concerns references for preliminary rulings and direct actions (approximately 22 and 23 months respectively). However, the average time taken to deal with appeals was reduced from 19 months in 2000 to 16 months in 2001.

As regards the distribution of cases between the Court in plenary session and Chambers of Judges, the former disposed of one case in five (in 2000 it disposed of one case in four), while the remaining judgments and orders were pronounced by Chambers of five Judges (60% of cases) or of three Judges (almost one case in four).

For further information with regard to the statistics for the 2001 judicial year, reference should be made to Chapter IV of this report.

3. Some general trends can already be identified from the use made by the Court of certain *new procedural instruments* which were inserted into its Rules of Procedure by amendments adopted on 16 May and 28 November 2000. [1]

The Court has made frequent use of its increased ability to give its decision on references for a preliminary ruling by means of a simplified procedure, in accordance with Article 104(3) of the Rules of Procedure (previously that procedure could be used only where a question was 'manifestly identical' to a question on which the Court had already ruled). The Court may now resort to the simplified procedure in three situations, namely where the question referred to it is identical to a question on which it has already ruled, 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. In such

[1] A codified version of the Rules of Procedure of the Court of Justice was published in the *Official Journal of the European Communities* of 1 February 2001 (OJ 2001 C 34, p. 1). See also the amendments of 3 April 2001 (OJ 2001 L 119, p. 1).

circumstances, the Court must first inform the court or tribunal which referred the question to it of its intentions and hear any observations submitted by the interested parties. The case may then be brought to a close by reasoned order, thus enabling, where it appears justified, a ruling to be given without presentation of oral argument and delivery of a written Opinion by the Advocate General.

Two orders made in 2001 illustrate the two very different uses which the Court may make of the simplified procedure where the question referred to it is identical to a question on which it has already ruled. First, the simplified procedure sometimes enables an answer to be given to the national court very quickly. Thus, in its order of 19 June 2001 in Joined Cases C-9/01 to C-12/01 *Monnier and Others* (not published in the ECR), the Court reiterated its previous case-law a mere five months or so after the national court had made the reference. Second, the simplified procedure is sometimes used to bring to a speedy close cases which have been stayed pending the outcome of a 'test' case. For example, in its order of 12 July 2001 in Case C-256/99 *Hung* (not published in the ECR), the Court replied to questions which it had been asked more than two years earlier, in April 1999. The explanation for the length of time taken is that the Court had stayed proceedings pending the conclusion of *Kaur* (judgment of 20 February 2001 in Case C-192/99 [2001] ECR I-1237), a case identical to *Hung*. The national court, although duly informed of the judgment delivered in the 'test' case, did not withdraw its questions, which led the Court to make an order with the same content.

The Court has also made getting on for 10 orders in circumstances where it considered that the answer to the questions submitted could be clearly deduced from existing case-law. Experience has shown that this power proves very useful when the Court intends to confirm that — even though there may be slight differences in the factual or legal context — general solutions previously reached by it remain valid. Thus, the Court held that, since it had previously found that the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), which is in Annex 1C to the Agreement establishing the World Trade Organisation (WTO), are not such as to create rights on which individuals may rely directly before the courts by virtue of Community law, the same applies, for the same reasons, to the provisions of the 1994 General Agreement on Tariffs and Trade (GATT), which is also annexed to the WTO Agreement (order in Case C-307/99 *OGT Fruchthandelsgesellschaft* [2001] ECR I-3159).

In 2001 the Court had recourse for the first time to the expedited or accelerated procedure available to it in the event of particular urgency (expedited procedure under Article 62a of the Rules of Procedure in respect of direct actions) or exceptional urgency (accelerated procedure under Article 104a in respect of references for a preliminary ruling).

The case in question concerned a reference from a Netherlands court relating to the policy pursued by the Community in connection with eradication of the foot-and-mouth epidemic. The national court made the reference on 27 April 2001 and the Court of Justice was able to provide it with an answer on 12 July 2001 (Case C-189/01 *Jippes and Others* [2001] ECR I-5689; see also section 17 below).

In all the other cases where use of the expedited or accelerated procedure was sought (five references for a preliminary ruling and two appeals), the request was answered in the negative. The references for a preliminary ruling most often concerned disputes relating to the award of public contracts. It is difficult at the moment to draw general lessons from these few cases. It appears, however, that the Court intends to use the expedited and accelerated procedures with caution only, where it appears properly justified in the event of particular or exceptional urgency, in order to avoid excessive disruption to other cases whose handling could be slowed down by a proliferation of expedited or accelerated proceedings. That implies in particular that, with regard to references for a preliminary ruling, the accelerated procedure is not designed to replace the obligation of referring courts to grant litigants interim judicial protection where it is felt necessary.

It may also be noted that the Court makes regular, albeit relatively restrained, use of the possibility available to it under Article 104(5) of its Rules of Procedure of requesting clarification from a national court which has referred questions to it for a preliminary ruling. Recourse to this power is liable to lengthen the time required to deal with cases, but sometimes proves invaluable in enabling the Court to assess correctly the legal problems which are raised. When the Court seeks such clarification, it ensures that the parties to the main proceedings and the other interested parties are given the opportunity to submit written or oral observations on the response of the national court.

Finally, with a view to facilitating and accelerating the conduct of proceedings before it, the Court will endeavour in the course of 2002 to issue practice directions for litigants, in accordance with Article 125a of the Rules of Procedure.

4. With regard to the *jurisdiction of the Court and procedure*, several interesting developments will be noted, concerning the preliminary reference procedure (4.1), the appeal procedure (4.2) and the interim relief procedure (4.3).

4.1. In Case C-239/99 *Nachi Europe* [2001] ECR I-1197, the case-law laid down in Case C-188/92 *TWD Textilwerke Deggendorf* [1994] ECR I-833 was applied in the field of anti-dumping measures. The question at issue was whether an undertaking which failed to bring an action for annulment of an anti-dumping duty affecting it could none the less plead that the anti-dumping duty was invalid before a national court. The anti-dumping regulation had been annulled so far as concerns the anti-dumping duties affecting the undertakings which brought an action for annulment. The Court held that an undertaking which had a right of action before the Court of First Instance to seek the annulment of the anti-dumping duty but which did not exercise it cannot plead the invalidity of that anti-dumping duty before a national court.

In Case C-1/99 *Kofisa Italia* [2001] ECR I-207, the Court's jurisdiction was contested in relation to a dispute where the Community legislation did not apply directly but the application of Community law resulted from the fact that national legislation conformed to Community law for the purpose of resolving an internal matter. The Court confirmed the case-law laid down by it in Case C-130/97 *Giloy* [1997] ECR I-4291, according to which 'a reference by a national court can be rejected only if it appears that the procedure laid down by Article [234 EC] has been misused and a ruling from the Court elicited by means of a contrived dispute, or it is obvious that Community law cannot apply, either directly or indirectly, to the circumstances of the case referred to the Court' (paragraph 22). The Court asserted its jurisdiction to give a ruling in disputes of the kind at issue where a question has been referred to it.

4.2. In its judgment in Joined Cases C-302/99 P and C-308/99 P *Commission and France* v *TF1* [2001] ECR I-5603, the Court interpreted the conditions under which an *appeal* may be brought against a judgment of the Court of First Instance. The Commission and the French Republic had brought appeals against the judgment of the Court of First Instance in Case T-17/96 *TF1* v *Commission* [1999] ECR II-1757 in so far as it declared TF1's action to be admissible. At first instance, that undertaking had brought an action against a failure on the part of the Commission to reach a decision under Article 86 EC. During the course of those proceedings, the Commission sent a letter to TF1 which constituted the definition of a position. The Court of First Instance therefore decided, after holding the action admissible, that there

was no longer any need to adjudicate the claim for a declaration of failure to act pursuant to Article 86 EC. In its judgment, the Court of Justice held that the grounds set out by the Court of First Instance were sufficient to establish that the action ceased to have any purpose once the Commission expressed its position. Since those grounds were such as to justify the decision of the Court of First Instance, any errors in the grounds of the judgment under appeal concerning the admissibility of the claim of failure to act had 'no effect on the operative part of that judgment'. Accordingly, the appeals were dismissed.

4.3. So far as concerns the *interim relief procedure*, it is worth drawing attention to the order of 14 December 2001 in Case C-404/01 P(R) *Commission* v *Euroalliages and Others* (not yet published in the ECR). Here, the Court of Justice annulled an order of the Court of First Instance which, in concluding that pecuniary loss was irreparable, relied on the fact that its reparation at a later stage in an action for damages was uncertain, given the wide discretion which the Commission had in the case in point.

The Court of Justice held in its order that the uncertainty as to reparation of pecuniary loss in any action for damages cannot be regarded in itself as a circumstance capable of establishing that such a loss is irreparable within the meaning of the Court's case-law. Proceedings for interim relief are not intended as a replacement for such an action for damages in order to eliminate that uncertainty. Their purpose is solely to ensure the full effectiveness of the definitive decision to be reached in the main proceedings, in this instance an action for annulment, to which the application for interim relief is an adjunct. That conclusion was not affected by the link, established by the order under appeal, between the wide discretion which the Commission had in the case in point and the uncertainty as to whether any action for damages would be successful. If that criterion were applied systematically, the irreparability of the loss would depend on the characteristics of the contested measure and not on the applicant's particular circumstances.

5. Among the cases relating to *general principles of Community law* or with *constitutional or institutional* implications, the most important concern the concept of citizenship of the Union, the legal basis for measures of secondary law adopted by the Community institutions and the principle of access to documents of the Community institutions. A judgment concerning observance by the Court of Auditors of the right to a hearing should also be noted.

5.1. The Court delivered two judgments which contain clarification of the effect of the concept of *citizenship of the Union*, introduced into Community law by the Maastricht Treaty.

Case C-184/99 *Grzelczyk* [2001] ECR I-6193 concerned the position of a French national who was studying in Belgium and had obtained entitlement to the 'minimex' (a minimum subsistence allowance paid by the Belgian State). Payment of that allowance to him was stopped because Belgian legislation made its grant conditional, in the case of nationals of other Member States, on their falling within the scope of Regulation (EEC) No 1612/68, [2] although that condition did not apply to Belgian nationals. In view of that disparity in treatment, the national tribunal before which Mr Grzelczyk challenged the decision stopping payment referred a question to the Court for a preliminary ruling. It inquired whether Articles 12 EC and 17 EC, relating to the principles of non-discrimination and of citizenship of the Union respectively, precluded the disparity in treatment.

In its judgment, the Court found first of all that the treatment accorded to Mr Grzelczyk constituted discrimination solely on the ground of nationality because the only bar to grant of the minimex was the fact that he was not a Belgian national. The Court then continued as follows: 'Within the sphere of application of the Treaty, such discrimination is, in principle, prohibited by Article [12 EC]. In the present case, Article [12 EC] must be read in conjunction with the provisions of the Treaty concerning citizenship of the Union in order to determine its sphere of application' (paragraph 30). It then stated that 'Union citizenship is destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for' (paragraph 31).

Having set out those principles, the Court considered Case 197/86 *Brown* [1988] ECR 3205, in which it had held that assistance given to students for their maintenance and training fell in principle outside the scope of the Treaty. It decided that certain changes subsequent to *Brown*, in particular the fact that the Maastricht Treaty introduced citizenship of the Union and a chapter

2 Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition, 1968 (II), p. 47).

devoted to education into the EC Treaty, and the adoption of Directive 93/96/EEC, [3] meant that there is no longer anything 'to suggest that students who are citizens of the Union, when they move to another Member State to study there, lose the rights which the Treaty confers on citizens of the Union' (paragraph 35). It then considered the possible impact of the limitations and conditions placed by Directive 93/96 on the right of residence of students; it interpreted the directive as allowing the host Member State to take the view that a student who has recourse to social assistance no longer fulfils the conditions of his right of residence and thus to take measures to withdraw his residence permit or not to renew it. However, the Court added that 'in no case may such measures become the automatic consequence of a student who is a national of another Member State having recourse to the host Member State's social assistance system' (paragraph 43).

In *Kaur*, cited above, the Court had to answer questions referred to it for a preliminary ruling which related to the relevant criteria for determining whether a person has the nationality of a Member State for the purposes of Article 17 EC and to the effect of the declarations made by the United Kingdom in 1972 and 1982 concerning the concept of a national of a Member State. So far as concerns the first point, the Court recalled its judgment in Case C-369/90 *Micheletti and Others* [1992] ECR I-4239, according to which 'under international law, it is for each Member State, having due regard to Community law, to lay down the conditions for the acquisition and loss of nationality' (paragraph 19). As to the effect of the declarations, the Court held that the 1972 declaration, which was made by the United Kingdom when it acceded to the European Communities in order to clarify the categories of citizens to be regarded as its nationals for the purposes of Community law, must be taken into consideration as an interpretative instrument for determining the persons to whom the Treaty applies. The 1982 declaration is merely an adaptation of the declaration made in 1972.

5.2. As regards the *cases relating to legal basis* which are to be noted, one concerns the legal basis for conclusion of an international Convention and the other relates to the legal basis for the directive on the legal protection of biotechnological inventions.

3 Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students (OJ 1993 L 317, p. 59).

In Case C-36/98 *Spain* v *Council* [2001] ECR I-779, the Court dismissed an action brought by the Kingdom of Spain for annulment of a Council decision concerning the conclusion of the Convention on cooperation for the protection and sustainable use of the river Danube, [4] adopted on the basis of Article 175(1) EC. In the applicant's submission, the decision should have been based exclusively on Article 175(2) EC, under which the Council is to act unanimously, because it approved a Convention relating to the management of water resources in the basin of the river Danube.

The Court upheld the choice of legal basis and dismissed the action. It determined first of all the respective scope of Article 175(1) EC and Article 175(2) EC, concluding that the concept of 'management of water resources' referred to in the latter 'does not cover every measure concerned with water, but covers only measures concerning the regulation of the use of water and the management of water in its quantitative aspects' (paragraph 55). It then recalled that where a measure pursues a twofold purpose or has a twofold component, it must be founded on the basis required by the main or predominant purpose or component. The Court deduced from a detailed examination of the international Convention that its 'primary purpose ... is the protection and improvement of the quality of the waters of the catchment area of the river Danube, although it also refers, albeit incidentally, to the use of those waters and their management in its quantitative aspects'. Accordingly, it concluded that the legal basis adopted by the Council was correct.

In the second case (judgment of 9 October 2001 in Case C-377/98 *Netherlands* v *Parliament and Council*, not yet published in the ECR), the Kingdom of the Netherlands sought the annulment of Directive 98/44/EC on the legal protection of biotechnological inventions. [5] This directive was adopted on the basis of Article 95 EC and its purpose is to require the Member States to protect biotechnological inventions through their patent laws. The Netherlands put forward a number of pleas, including the allegedly incorrect choice of Article 95 EC as the legal basis for the directive, breach of the principle of subsidiarity and breach of the fundamental right to respect for human dignity.

4 Council Decision 97/825/EC of 24 November 1997 concerning the conclusion of the Convention on cooperation for the protection and sustainable use of the river Danube (OJ 1997 L 342, p. 18).

5 Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions (OJ 1998 L 213, p. 13).

Its action was dismissed. So far as concerns the plea alleging that the legal basis chosen was incorrect, the Court recalled its previous case-law according to which Article 95 EC may be used as a legal basis where it is necessary to prevent the likely emergence of future obstacles to trade resulting from multifarious development of national laws (see the judgment in Case C-376/98 *Germany* v *Parliament and Council* [2000] ECR I-8419, paragraph 86). It held that that condition was met here. With regard to the argument that the directive should have been founded on Articles 157 EC and 163 EC, relating to industrial policy and research policy respectively, the Court observed that harmonisation of the legislation of the Member States 'is not an incidental or subsidiary objective of the Directive but is its essential purpose' (paragraph 28). Therefore, Article 95 EC constituted the correct legal basis. The Court held with regard to the plea concerning the principle of subsidiarity that the objective pursued by the directive could not have been achieved by action taken by the Member States alone. In view of the effects of the protection of biotechnological inventions on intra-Community trade, the objective could be better achieved by the Community. Furthermore, the directive gave sufficient reasons with regard to the principle of proportionality.

As to the plea concerning fundamental principles, the Court stated that it is for it, 'in its review of the compatibility of acts of the institutions with the general principles of Community law, to ensure that the fundamental right to human dignity and integrity is observed' (paragraph 70). It noted the various provisions of the directive and concluded that the latter frames the law on patents in a manner sufficiently rigorous to ensure that the human body effectively remains unavailable and inalienable and that human dignity is thus safeguarded.

5.3. So far as concerns transparency and the principle of access to documents of the institutions, the judgment of 6 December 2001 in Case C-353/99 P *Council* v *Hautala* (not yet published in the ECR) should be noted. This judgment was delivered on an appeal brought by the Council against the judgment of the Court of First Instance in Case T-14/98 *Hautala* v *Council* [1999] ECR II-2489 which had annulled a Council decision refusing Ms Hautala access to a report of the Council Working Group on Conventional Arms Exports on the ground that its disclosure would undermine the public interest. The judgment of the Court of Justice upheld both the outcome reached and the approach adopted by the Court of First Instance, accordingly rejecting all the pleas raised by the Council. The judgment underlined that Decision

93/731/EC [6] on public access to Council documents derives from Declaration No 17 of the Final Act of the Treaty on European Union, on the right of access to information. That decision thus does not concern only access to documents as such, but also access to the information contained in them. The Court stated that 'the principle of proportionality also requires the Council to consider partial access to a document which includes items of information whose disclosure would endanger one of the interests protected by Article 4(1) of Decision 93/731' (paragraph 27). In determining this appeal, the Court did not consider it necessary to decide whether the Court of First Instance had been wrong in relying on the existence of a 'principle of the right to information' (paragraph 31). It founded its reasoning simply on an interpretation of Decision 93/731, in the light of its objective and the principle of proportionality.

5.4. In Case C-315/99 P *Ismeri Europa* v *Court of Auditors* [2001] ECR I-5281, the company Ismeri Europa brought an appeal against the judgment of the Court of First Instance in Case T-277/97 *Ismeri Europa* v *Court of Auditors* [1999] ECR II-1825, in which the Court of First Instance had dismissed its application for damages for the loss allegedly suffered by it as a result of criticisms made against it by the Court of Auditors in Special Report No 1/96. [7] In its appeal, Ismeri Europa put forward six pleas for annulment, all rejected by the Court of Justice which upheld the judgment of the Court of First Instance.

Of those pleas, that relating to infringement of *the right to a hearing* merits particular attention. The Court observed that this right is a general principle of law whose observance is ensured by it and which applies to any procedure that may result in a decision by a Community institution perceptibly affecting a person's interests. Although the adoption and publication of reports of the Court of Auditors are not decisions directly affecting the rights of persons mentioned in such reports, they are capable of having consequences for those persons such that those concerned must be able to make observations on the points in the reports which refer to them by name, before the reports are definitively drawn up. However, the Court found that, in the present case, it followed from the flagrant and serious failure to observe the rules of sound

6 Council Decision 93/731/EC of 20 December 1993 on public access to Council documents (OJ 1993 L 340, p. 43).

7 Special Report No 1/96 of the Court of Auditors on the MED programmes, adopted on 30 May 1996 (OJ 1996 C 240, p. 1).

management that if Ismeri Europa had been given a hearing that would not have altered the view taken by the Court of Auditors as to the expediency of naming that company in its report. The Court also held that there may be specific circumstances, such as the gravity of the facts or the risk of confusion liable to harm the interests of third parties, allowing the Court of Auditors to mention by name in its reports persons who in principle are not subject to its supervision, provided that such persons have the right to a hearing. In such a case it is for the Community judicature to assess whether the naming of persons is necessary and proportionate to the objective pursued by publication of the report.

6. Case C-379/98 *PreussenElektra* [2001] ECR I-2099 relates to the *free movement of goods*, while also having a State aid dimension which will be dealt with in section 10 below. In this case, a German court was unsure as to the compatibility with Community law of German legislation which obliged electricity supply undertakings to purchase the electricity produced in their area of supply from renewable energy sources and to pay for it in accordance with a statutory minimum price. The national court sought a preliminary ruling on the interpretation of Articles 28 EC and 87 EC.

So far as concerns the free movement of goods, the Court found first of all that the German legislation constituted, at least potentially, an obstacle to intra-Community trade. However, it then stated that, 'in order to determine whether such a purchase obligation is nevertheless compatible with Article [28 EC], account must be taken, first, of the aim of the provision in question, and, second, of the particular features of the electricity market' (paragraph 72). Such a provision is designed to protect the environment and the health and life of humans, animals and plants. In addition, the Court observed that the nature of electricity is such that, once it has been allowed into the transmission or distribution system, it is difficult to determine its origin and in particular the source of energy from which it was produced. It also referred to a proposal for a directive in which the Commission had taken the view that the implementation in each Member State of a system of certificates of origin for electricity produced from renewable sources, capable of being the subject of mutual recognition, was essential in order to make trade in that type of electricity both reliable and possible in practice. The Court concluded from all those considerations that, 'in the current state of Community law concerning the electricity market', the German legislation was not incompatible with Article 28 EC (paragraph 81).

In Case C-405/98 *Gourmet International Products* [2001] ECR I-1795, the Court ruled that the Treaty provisions relating to the free movement of goods and the freedom to provide services do not preclude a prohibition, imposed by Swedish legislation, on the advertising of alcoholic beverages in periodicals, unless it is apparent that the protection of public health against the harmful effects of alcohol can be ensured by measures having less effect on intra-Community trade. The Court had to decide whether the case-law laid down in Joined Cases C-267/91 and C-268/91 *Keck and Mithouard* [1993] ECR I-6097 was applicable in the case in point. The Court stated that, if national provisions restricting or prohibiting certain selling arrangements are to avoid being caught by Article 28 EC, they must not be of such a kind as to prevent access to the market by products from another Member State or to impede access any more than they impede the access of domestic products. It held that, in the case of products like alcoholic beverages, the consumption of which is linked to traditional social practices and to local habits and customs, a prohibition of all advertising directed at consumers in the form of advertisements in the press is liable to impede access to the market by products from other Member States more than it impedes access by domestic products.

The Court's interpretation of the rules concerning the freedom to provide services was broadly similar. In concluding that there was an obstacle to that freedom, the Court took account of the international nature of the advertising market.

7. So far as concerns the *freedom to provide services*, Case C-368/98 *Vanbraekel and Others* [2001] ECR I-5363 and Case C-157/99 *Smits and Peerbooms* [2001] ECR I-5473 should be mentioned. These cases follow on from the judgments in Case C-120/95 *Decker* [1998] ECR I-1831 and Case C-158/96 *Kohll* [1998] ECR I-1931, where the Court had explained the effects of the provisions relating to the free movement of goods and the freedom to provide services with regard to the reimbursement by national social security schemes of medical costs incurred in another Member State.

In *Vanbraekel and Others*, a Belgian national had sought authorisation from her sickness insurance fund to undergo surgery in France. Authorisation was initially refused, but the Belgian court subsequently ordered the sickness insurance fund to reimburse the costs to her. The question arose as to whether those costs had to be reimbursed in accordance with the French scheme or in accordance with the Belgian scheme and whether a limitation on the amount

reimbursed was compatible with Regulation (EEC) No 1408/71. [8] The question also arose with regard to Article 49 EC (freedom to provide services).

The Court stated first of all that, in accordance with Article 22(1)(c) of Regulation No 1408/71, the legislation of the Member State in which the treatment is given is to be applied as regards the basis on which costs are borne, while the competent institution remains responsible for subsequently reimbursing the institution of the place of stay, as provided for in Regulation No 1408/71. Since the Belgian reimbursement scale was more favourable than the scale applicable in France, the Court then observed that the regulation does not have the effect of preventing or requiring additional reimbursement when the system in the State in which the person concerned is insured is more beneficial (a principle which follows from *Kohll*, cited above, paragraph 27). The Court finally founded its analysis on the provisions governing the freedom to provide services. Within this framework, the Court held that national legislation which does not guarantee a person covered by its social insurance scheme who has been authorised to receive hospital treatment in another Member State a level of payment equivalent to that to which he would have been entitled if he had received hospital treatment in the Member State in which he was insured entails a restriction of freedom to provide services. That restriction is not justified by overriding reasons in the general interest linked to the financial balance of a social security system, to the objective of maintaining a balanced medical and hospital service open to all, or to the need to maintain treatment capacity or medical competence on national territory.

In *Smits and Peerbooms*, two Netherlands nationals who had received medical treatment abroad sought reimbursement of the medical costs from their respective sickness insurance funds, under the social security system in force in the Netherlands. They were refused a refund, in accordance with Netherlands social security legislation, on the grounds that satisfactory and adequate treatment was available in the Netherlands, that the specific clinical treatment provided abroad had no additional advantage, that there was no medical necessity justifying the treatment and that, owing to the experimental nature of the treatment and the absence of scientific evidence of its effectiveness, it was not regarded as normal within the professional circles concerned.

[8] Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6).

The Court stated first of all that the provision of hospital services does constitute the provision of services within the meaning of Article 49 EC. Legislation which makes reimbursement of costs subject to prior authorisation and provides for such reimbursement to be refused in certain circumstances thus constitutes a barrier to freedom to provide services. So far as concerns the possibility of justifying that barrier, the Court examined the same grounds of justification as in the judgment in *Vanbraekel and Others*. It held that the requirement of prior authorisation for access to hospital treatment provided in another Member State is 'both necessary and reasonable' (paragraph 80), in order to safeguard the planning and accessibility of hospital treatment in a Member State. However, the conditions imposed by the Netherlands legislation for obtaining authorisation are compatible with Community law only in so far as the requirement for the treatment to be regarded as 'normal' is interpreted by reference to international medical science. Furthermore, authorisation can be refused on the ground of lack of medical necessity only if the same or equally effective treatment can be obtained without undue delay at an establishment having a contractual arrangement with the insured person's sickness insurance fund.

8. So far as concerns the *right of establishment*, Joined Cases C-397/98 and C-410/98 *Metallgesellschaft and Others* [2001] ECR I-1727 should be noted. Here, the Court ruled on the interpretation of freedom of establishment in relation to United Kingdom legislation. The legislation afforded companies resident in the United Kingdom the possibility of benefiting from a taxation regime which allowed them to pay dividends to their parent company without having to pay advance corporation tax where the parent company was also resident in the United Kingdom but denied them that possibility where the parent company had its seat in another Member State. The Court held that such legislation is contrary to Article 43 EC and cannot be justified by reasons of public interest. Furthermore, Community law requires that resident subsidiaries and their non-resident parent companies should have an effective legal remedy in order to obtain reimbursement or reparation of the loss which they have sustained as a result of the advance payment of tax by the subsidiaries. In accordance with well-established case-law, the rules relating to that legal remedy must not render practically impossible or excessively difficult the exercise of rights conferred by Community law. The Court also held that it is contrary to Community law for a national court to refuse or reduce a claim brought before it by a resident subsidiary and its non-resident parent company for reimbursement or reparation of the financial loss which they have suffered as a consequence of the advance payment of corporation tax

by the subsidiary, on the sole ground that they did not make use of the legal remedies available to them to challenge the decisions of the tax authorities, where national law denied resident subsidiaries and their non-resident parent companies the benefit of the taxation regime in question.

In Case C-108/96 *Mac Quen and Others* [2001] ECR I-837, the Court was required to rule on the interpretation of Article 43 EC in relation to a judicial interpretation of national legislation which had the effect of prohibiting opticians from carrying out certain optical examinations. It held that Article 43 does not in principle preclude such a prohibition, which could be justified by reasons relating to the protection of public health.

9. With regard to *competition law*, some developments in the case-law have arisen from *references for a preliminary ruling* (9.1), others from direct actions or appeals (9.2).

9.1. Case C-453/99 *Courage and Crehan* [2001] ECR I-6297 concerns the question whether a party to a contract which is contrary to Article 81 EC can rely on the breach of that provision before a national court to obtain compensation for loss which results from the unlawful contractual clause.

The Court founded its judgment on its case-law relating to the nature and effect of Community law, recalling Case 26/62 *Van Gend en Loos* [1963] ECR 1, Case 6/64 *Costa* [1964] ECR 585 and Joined Cases C-6/90 and C-9/90 *Francovich and Others* [1991] ECR I-5357, and on the consideration that Article 81 constitutes 'a fundamental provision which is essential for the accomplishment of the tasks entrusted to the Community and, in particular, for the functioning of the internal market' (paragraph 20).

The Court deduced from the nature of the Community legal order, the particularly important position of the competition rules in that order and other more specific considerations that 'any individual can rely on a breach of Article [81(1) EC] before a national court even where he is a party to a contract that is liable to restrict or distort competition within the meaning of that provision' (paragraph 24). That right entails, *inter alia*, the right to seek compensation for the loss caused. Accordingly, there cannot be any absolute bar to an action for damages being brought by one of the parties to a contract which violates Article 81(1) EC. Moreover, the bringing of such actions strengthens the working of the Community competition rules and discourages agreements or practices, which are frequently covert, that are liable to restrict

or distort competition. However, if it is established that the party relying on the breach of Article 81 EC bears significant responsibility for the distortion of competition, Community law does not preclude a rule of national law barring him from relying on his own unlawful actions to obtain damages.

In its judgment of 25 October 2001 in Case C-475/99 *Ambulanz Glöckner* (not yet published in the ECR), the Court interpreted Articles 81 EC, 82 EC and 86 EC. Questions were referred for a preliminary ruling in connection with a dispute between an undertaking and a German administrative body concerning a refusal to renew authorisation for the provision of patient transport services by ambulance. The national court was uncertain whether reasons related to the pursuit of a task of general economic interest were sufficient to justify the exclusion of all competition for that type of services.

The Court found first of all that the German legislation conferred on medical aid organisations a special or exclusive right within the meaning of Article 86(1) EC, which was therefore applicable in the case in point. With regard to Article 86(1) EC in conjunction with Article 82 EC, the Court found, in its analysis of the relevant market, that patient transport was a service distinct from that of emergency transport, and that the *Land* of Rhineland-Palatinate (Germany) constituted a substantial part of the common market, given its surface area and population. The Court nevertheless left it to the national court to determine the geographical extent of the market and whether a dominant position was occupied. According to the Court, there was potentially an abuse of a dominant position in that the legislation of the *Land* reserved to certain medical aid organisations an ancillary transport activity which could be carried on by independent operators. Finally, the Court concluded that such legislation was justified under Article 86(2) EC provided that it did not bar the grant of an authorisation to independent operators where the authorised medical aid organisations were unable to satisfy demand existing in the area of medical transport services.

9.2. So far as concerns *direct actions* and *appeals*, two judgments will be noted, one concerning air traffic and the other concerning the concept of Community interest in the context of Regulation No 17 [9] relating to implementation of the competition rules.

[9] Council Regulation No 17 of 6 February 1962 (First Regulation implementing Articles [81] and [82] of the Treaty) (OJ, English Special Edition 1959-1962, p. 87).

In Case C-163/99 *Portugal* v *Commission* [2001] ECR I-2613, the Court dismissed an action brought by the Portuguese Republic for annulment of a Commission decision relating to a proceeding pursuant to Article 86 EC. [10] In the contested decision, the Commission had found that the system of discounts on landing charges differentiated according to the origin of the flight, provided for by Portuguese legislation, was incompatible with Article 86(1) EC, in conjunction with Article 82 EC. The Portuguese Republic pleaded, *inter alia*, breach of the principle of proportionality. However, the Court held that the decision was not disproportionate, having regard to the wide discretion enjoyed by the Commission under Article 86(3) EC. The Portuguese Republic also contended that there had been no abuse of a dominant position with regard to discounts granted on the basis of the number of landings. The Court stated, however, that the system of discounts appeared to favour certain airlines, in the present case the national airlines.

In Case C-449/98 P *IECC* v *Commission* [2001] ECR I-3875 and Case C-450/98 P *IECC* v *Commission* [2001] ECR I-3947, the Court dismissed two appeals in the competition field. One of the pleas raised merits particular attention. The appellant maintained that the Court of First Instance had committed an error of law with regard to the scope, the definition and the application of Article 3 of Regulation No 17 [11] and the legal concept of Community interest.

The Court of Justice upheld the judgment of the Court of First Instance. It stated that, in the context of competition policy, the Commission is entitled to give differing degrees of priority to the complaints brought before it. The discretion which it thus enjoys in that regard does not depend on the more or less advanced stage of the investigation of a case, which is only one of the circumstances that the Commission is required to take into consideration. The Court stated, however, that the Court of First Instance did not confer *unlimited* discretion on the Commission, because the Court of First Instance drew attention to the existence and scope of the review of the legality of a decision rejecting a complaint. The Court of Justice found that the Commission, in the exercise of its discretion, must take into consideration all the relevant matters of law and of fact in order to decide what action to take in response to a

10 Commission Decision 1999/199/EC of 10 February 1999 relating to a proceeding pursuant to Article 90 of the EC Treaty (now Article 86 EC) (IV/35.703 — Portuguese airports) (OJ 1999 L 69, p. 31).

11 Cited in footnote 9 above.

complaint, particularly those which the complainant brings to its attention. The number of criteria of assessment should not be limited, nor should the Commission be required to have recourse exclusively to certain criteria.

10. In the field of *State aid*, the most significant cases related to the concept of 'State resources', to the Commission's powers in the monitoring procedure and to the relationship between State aid and public service obligations imposed on undertakings by State rules.

The facts of *PreussenElektra* have been noted in section 6 of this review. From the point of view of State aid, the main issue was whether legislation such as the German legislation could be categorised as State aid. The Court pointed out that the concept of State aid has been defined by it as covering 'advantages granted directly or indirectly through State resources'. It then stated that 'the distinction made in [Article 87(1) EC] between "aid granted by a Member State" and aid granted "through State resources" does not signify that all advantages granted by a State, whether financed through State resources or not, constitute aid but is intended merely to bring within that definition both advantages which are granted directly by the State and those granted by a public or private body designated or established by the State' (paragraph 58). In the case in point, the Court found that the obligation imposed on private electricity supply undertakings to purchase electricity produced from renewable energy sources at fixed minimum prices did not involve any direct or indirect transfer of State resources to undertakings which produce that type of electricity. Accordingly, there was no State aid for the purposes of Article 87 EC. The Court also rejected the Commission's argument, put forward in the alternative, that in order to preserve the effectiveness of the State aid rules, read in conjunction with Article 10 EC, it is necessary for the concept of State aid to be interpreted in such a way as to include support measures which are decided upon by the State but financed by private undertakings. The Court held that the Treaty articles concerning State aid refer directly to measures emanating from the Member States. Article 10 EC cannot be used to extend the scope of Article 87 EC to conduct by States that does not fall within it.

In Case C-400/99 *Italy* v *Commission* (judgment of 9 October 2001, not yet published in the ECR), the Italian Republic had sought the annulment of a Commission decision to initiate the procedure under Article 88(2) EC in so far as that decision ruled on the suspension of the aid in question. The Commission asked the Court to declare the action inadmissible. It submitted that the suspension of the aid flowed directly from Article 88 EC rather than

from its decision. That decision was only a preparatory measure and therefore not open to an action for annulment.

In its judgment, the Court dismissed the objection of inadmissibility put forward by the Commission. It underlined the differences between the set of rules applicable to existing aid and that applicable to new aid. So far as concerns aid in the course of implementation the payment of which is continuing and which the Member State regards as existing aid, a contrary classification as new aid, even if provisional, adopted by the Commission in a decision to initiate the procedure under Article 88(2) EC in relation to that aid, has independent legal effects. The fact that, unlike the case of an injunction addressed to a Member State to suspend aid, it is for the Member State and, in appropriate cases, the economic operators concerned to draw the appropriate consequences from the decision themselves, does not affect the scope of its legal effects. The Court accordingly declared the action admissible. It also held the action admissible, for similar reasons, in relation to the measures which did not constitute aid in the Italian Government's submission but whose suspension had none the less been ordered by the contested decision.

Case C-53/00 *Ferring* (judgment of 22 November 2001, not yet published in the ECR) concerned the relationship between the State aid rules and public service obligations imposed on undertakings by State rules. Here, the French company Ferring sought the reimbursement of tax which it had been obliged to pay to the Agence centrale des organismes de sécurité sociale (central agency for social security bodies) by way of a direct sales tax on medicines. Ferring contended that restricting the tax to sales by pharmaceutical laboratories amounted to a grant of State aid to wholesale distributors and infringed the obligation to give advance notice laid down in Article 88(3) EC.

So far as concerns whether the measure at issue was to be classified as aid, the Court stated that the fact that undertakings are treated differently does not automatically imply the existence of an advantage for the purposes of Article 87 EC. There is no such advantage where the difference in treatment is justified by reasons relating to the logic of the system. It accordingly held that the set of tax rules at issue amounted to State aid to wholesale distributors only to the extent that the advantage in not being assessed to the tax exceeded the additional costs that they bore in discharging the public service obligations imposed on them by national law. The Court then considered the effect of Article 86(2) EC in the event that the tax constituted State aid. It observed that, if the advantage for wholesale distributors in not being assessed to the tax

exceeded the additional costs imposed on them, that advantage, to the extent that it exceeded the additional costs, could not be regarded as necessary to enable them to carry out the particular tasks assigned to them, within the meaning of that provision.

11. In the field of *harmonisation of laws*, cases on *the law of trade marks* will be noted, concerning both the directive relating to trade marks (11.1) and the regulation on the Community trade mark (11.2). Attention must also be drawn to a case on public procurement law (11.3) and to a case on liability for defective products (11.4).

11.1. Case C-517/99 *Merz & Krell* (judgment of 4 October 2001, not yet published in the ECR) concerned a question referred for a preliminary ruling as to the interpretation of Article 3 of Directive 89/104/EEC relating to trade marks. [12] In this case, Merz & Krell had filed an application for registration of the word mark Bravo in respect of writing implements. The application was refused by the Deutsches Patent- und Markenamt (German Patent and Trade Mark Office) on the ground that the word Bravo is purely a term of praise, devoid of any distinctive character. The national court referred for a preliminary ruling a question, divided into two parts, on the interpretation of Directive 89/104.

As regards the first part of the question, the Court held, in the light of the objectives of the directive, that 'it is through the use made of it that such a sign acquires the distinctive character which is a prerequisite for its registration ... However, whether a sign does have the capacity to distinguish as a result of the use made of it can only be assessed in relation to the goods or services covered by it' (paragraph 30). The Court therefore ruled that Article 3(1)(d) of the directive must be interpreted as 'only precluding registration of a trade mark where the signs or indications of which the mark is exclusively composed have become customary in the current language or in the bona fide and established practices of the trade to designate the goods or services in respect of which registration of that mark is sought' (paragraph 31).

The second part of the question was designed to ascertain whether Article 3(1)(d) of Directive 89/104 precludes registration of a trade mark

12 First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1).

where the signs or indications are advertising slogans, indications of quality or incentives to purchase even though they do not describe the properties or the characteristics of the goods and services. The Court held that, where the signs or indications concerned have become customary, it is of little consequence that they are used as advertising slogans, indications of quality or incitements to purchase the goods or services. However, registration of a trade mark is not excluded by that mere fact. It is for the national court to determine whether the signs or indications have become customary in the current language or in the bona fide and established practices of the trade to designate the goods or services covered by the mark.

In its judgment of 20 November 2001 in Joined Cases C-414/99 to C-416/99 *Zino Davidoff and Levi Strauss*, not yet published in the ECR, the Court clarified the interpretation of Directive 89/104 [13] with regard to exhaustion of the rights conferred by a trade mark. The case concerned the marketing in the United Kingdom of products previously placed on the market outside the European Economic Area (EEA). Article 7(1) of the directive provides that a trade mark 'shall not entitle the proprietor to prohibit its use in relation to goods which have been put on the market in the Community under that trade mark by the proprietor or with his consent'.

The Court clarified a number of points, of which the following should be noted. First, consent to the marketing of goods *may also be implied*, where it is to be inferred from facts and circumstances prior to, simultaneous with or subsequent to the placing of the goods on the market outside the EEA which unequivocally demonstrate that the proprietor has renounced his right to oppose marketing of the goods within the EEA. However, applying that criterion, consent cannot be inferred from the fact that the proprietor of the trade mark has not communicated his opposition to all subsequent purchasers, from the fact that the goods carry no warning of the prohibition on their being placed on the market within the EEA or from the particular features of the law governing the contract by which ownership of the products bearing the trade mark has been transferred.

11.2. In Case C-383/99 P *Procter & Gamble* v *OHIM* [2001] ECR I-6251, relating to Regulation (EC) No 40/94, [14] the Court annulled on appeal the

13 Cited in the preceding footnote.

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

judgment of the Court of First Instance in Case T-163/98 *Procter & Gamble* v *OHIM (BABY-DRY)* [1999] ECR II-2383 and the decision by the OHIM (Office for Harmonisation in the Internal Market), upheld by the Court of First Instance, to refuse to register 'BABY-DRY' as a Community trade mark in respect of disposable diapers made out of paper or cellulose and diapers made out of textile. The Court of Justice essentially held that 'the purpose of the prohibition of registration of purely descriptive signs or indications as trade marks is ... to prevent registration as trade marks of signs or indications which, because they are no different from the usual way of designating the relevant goods or services or their characteristics, could not fulfil the function of identifying the undertaking that markets them and are thus devoid of the distinctive character needed for that function' (paragraph 37). The Court added that, 'as regards trade marks composed of words ... descriptiveness must be determined not only in relation to each word taken separately but also in relation to the whole which they form. Any perceptible difference between the combination of words submitted for registration and the terms used in the common parlance of the relevant class of consumers to designate the goods or services or their essential characteristics is apt to confer distinctive character on the word combination enabling it to be registered as a trade mark' (paragraph 40). Applying those principles to the case in point, the Court found that word combinations like 'BABY-DRY' cannot be regarded as exhibiting, as a whole, descriptive character; they are lexical inventions bestowing distinctive power on the mark so formed and may not be refused registration under Article 7(1)(c) of Regulation No 40/94.

11.3. With regard to *public procurement law*, the judgment in Case C-399/98 *Ordine degli Architetti and Others* [2001] ECR I-5409 must be given a brief mention. This judgment concerned the interpretation of Directive 93/37/EEC on public works contracts. [15] The Court ruled that the directive precludes national urban development legislation under which, without the procedures laid down in the directive being applied, the holder of a building permit or approved development plan may execute infrastructure works directly, by way of total or partial set-off against the contribution payable in respect of the grant of the permit, in cases where the value of that work is the same as or exceeds the ceiling fixed by the directive. In reaching that conclusion, the Court found that the direct execution of infrastructure works in the circumstances provided for by the Italian legislation on urban

15 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).

development constitutes a 'public works contract' within the meaning of the directive. The necessary conditions for concluding that there is a public contract (a contracting authority, the execution of works or of a work, the existence of a contract for pecuniary interest concluded in writing, the tenderer's status as contractor) were met here. In paragraphs 57 to 97 of the judgment, the Court provided clarification concerning those elements of the concept of a public contract. Municipal authorities are under an obligation to comply with the procedures laid down in the directive whenever they award a contract which is found to be a public works contract. However, the directive is still given full effect if the national legislation allows the municipal authorities to require the developer holding the building permit to carry out the work contracted for in accordance with the procedures laid down in the directive.

11.4. In Case C-203/99 *Veedfald* [2001] ECR I-3569, the Court gave a ruling on the interpretation of Directive 85/374/EEC [16] which concerns liability for defective products. Here, it was necessary, in particular, to clarify the conditions for exemption from liability which are laid down in Article 7 of the directive. Mr Veedfald was due to undergo a kidney transplant operation. After a kidney had been removed from the donor, it was prepared for transplantation through flushing with a fluid. The fluid was defective and a kidney artery became blocked during the flushing process, making the kidney unusable for any transplant. The Court ruled that the exemption in Article 7(a) was inapplicable to the facts of the case: a defective product is put into circulation when it is used during the provision of a specific medical service, consisting in preparing a human organ for transplantation, and the damage caused to the organ results from that preparatory treatment. It also stated that the exemption from liability where an activity has no economic purpose does not extend to the case of a defective product which has been manufactured and used in the course of a medical service, even if that service is financed entirely from public funds and the patient is not required to pay any consideration.

12. So far as concerns *Community social law*, it is necessary to record one case on equal treatment for men and women (12.1), four cases relating to

16 Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ 1985 L 210, p. 29).

social security (12.2) and two cases concerning the interpretation of two different employment-related directives (12.3).

12.1. Case C-366/99 *Griesmar* (judgment of 29 November 2001, not yet published in the ECR) concerned the interpretation of Article 141 EC, which deals with equal treatment for men and women, in relation to French civil and military retirement pension rules which awarded only female civil servants a service credit for each of their children.

In the first part of its judgment, the Court applied the criteria laid down in Case C-7/93 *Beune* [1994] ECR I-4471 in order to establish whether the French retirement scheme for civil servants constitutes pay within the meaning of Article 141 EC. According to that judgment, the only decisive criterion is whether the pension is paid to the worker by reason of the employment relationship between him and his former employer, that is to say, the *criterion of employment*. The Court concluded that Article 141 applies: since the pension is 'determined directly by length of service and ... its amount is calculated on the basis of the salary which the person concerned received during his or her final six months at work', it satisfies the criterion of employment.

In the second part of the judgment, the Court found a difference in treatment on grounds of sex. The Court stated that the credit is linked to the bringing-up of children. It then observed that 'the situations of a male civil servant and a female civil servant may be comparable as regard the bringing-up of children' (paragraph 56). However, the French scheme does not permit a male civil servant to receive the credit, even if he can prove that he assumed the task of bringing up his children. Accordingly, the scheme introduces a difference in treatment on grounds of sex which cannot be justified under Article 6(3) of the Agreement on Social Policy, a provision which permits the Member States to help women conduct their professional life on an equal footing with men. Such a credit merely grants female civil servants who are mothers a service credit at the date of their retirement, without providing a remedy for the problems which they may encounter in the course of their career.

12.2. Case C-215/99 *Jauch* [2001] ECR I-1901 concerned frontier-zone workers, in the case in point a German national who had worked in Austria. The matter at issue was whether the care allowance which he had claimed constituted a special non-contributory benefit within the meaning of Article 10a of Regulation No 1408/71, [17] whose grant Member States could make subject to a residence condition. The allowance was included on the list of special non-contributory benefits which forms Annex IIa to that regulation. The Austrian Government contended that its inclusion on the list was sufficient for it to be classified as such a benefit.

Faced with that argument, the Court recalled that Regulation No 1408/71 was adopted to give effect to Article 42 EC and that it must be interpreted in the light of the objective of that provision, which is to establish the greatest possible freedom of movement for migrant workers. That freedom of movement would not be attained if, as a consequence of the exercise of their right to freedom of movement, workers were to lose the social security advantages which represent the counterpart of contributions which they have paid. Accordingly, provisions which derogate from the principle of the exportability of social security benefits must be interpreted strictly. This means that, in addition to being listed in Annex IIa to Regulation No 1140/71, those benefits must be both special and non-contributory.

The question whether the allowance at issue could be regarded as special had already been decided in Case C-160/96 *Molenaar* [1998] ECR I-843, according to which it constituted a sickness benefit. Furthermore, the allowance was contributory since there was an indirect link between it and sickness insurance contributions. Accordingly, the Court ruled that the allowance must be provided irrespective of the Member State in which a person reliant on care, who satisfies the other conditions for receipt of the benefit, is resident.

In its judgment in Case C-33/99 *Fahmi and Esmoris Cerdeiro-Pinedo Amado* [2001] ECR I-2415, the Court gave a preliminary ruling on the interpretation of Articles 39 EC and 43 EC, Regulation No 1408/71, [18] Regulation No

17 Cited in footnote 8 above, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1).

18 Cited in footnote 8 above, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6), as amended by Council Regulation (EEC) No 1247/92 of 30 April 1992 (OJ 1992 L 136, p. 1).

1612/68 [19] and the EEC-Morocco Cooperation Agreement. [20] Mr Fahmi, a Moroccan national, and Mrs Esmoris Cerdeiro-Pinedo Amado, a Spanish national, had worked in the Netherlands. After becoming unfit for work, they returned to Morocco and Spain respectively and continued to receive an allowance for incapacity for work. By virtue of that allowance, they were both also entitled to allowances for dependent children. However, they were refused payment of those allowances, on the ground that in each case their child had already reached the age of 18 years, following a decision by the Netherlands legislature gradually to abolish the allowances from that age and to replace them with study finance paid directly to students. The questions asked by the national court were essentially designed to ascertain whether the respective rules applicable to Mr Fahmi and Mrs Esmoris Cerdeiro-Pinedo Amado precluded such a refusal.

The Court found first of all that neither the EEC-Morocco Cooperation Agreement nor the Community provisions invoked preclude a national measure which gradually abolishes an allowance for dependent children aged between 18 and 27 years pursuing studies provided that, as was the case with the legislation at issue in the main proceedings, abolition of the allowance does not involve discrimination based on nationality. So far as concerns the Spanish national, the Court, interpreting Regulation No 1408/71, ruled that a person entitled to a pension payable under the legislation of a single Member State and residing on the territory of another Member State cannot rely on that regulation in order to obtain study finance from the State from which he receives his pension. The Court reached the same conclusion in relation to Regulation No 1612/68 and Article 39 EC. As regards the latter provision in particular, the Court held that where a worker has ceased work and returned to his Member State of origin, where his children also live, the conditions to which the grant of study finance is subject are not capable of impeding the right to freedom of movement which that worker enjoys under Article 39 EC. So far as concerns the case of a Moroccan national, the Court concluded that, where his dependent children do not reside in the Community, it follows from the wording of Article 41(1) and (3) of the EEC-Morocco Cooperation Agreement, which imposes a residence condition, that neither he nor his children can rely, in relation to study finance such as that at issue in the main

19 Cited in footnote 2 above.

20 Cooperation Agreement between the European Economic Community and the Kingdom of Morocco signed at Rabat on 27 April 1976 and approved on behalf of the Community by Council Regulation (EEC) No 2211/78 of 26 September 1978 (OJ 1978 L 264, p. 1).

proceedings, on the provision of that agreement laying down the prohibition of discrimination on the basis of nationality.

In Case C-43/99 *Leclere and Deaconescu* [2001] ECR I-4265, Mr Leclere, a frontier-zone worker of Belgian nationality, and his wife brought proceedings against a Luxembourg institution which had refused to award them maternity, childbirth and child-raising allowances on the ground that they did not reside in Luxembourg. The national court referred questions to the Court of Justice for a preliminary ruling on the interpretation of several provisions of Regulation No 1408/71 [21] and of Regulation No 1612/68. [22] It also raised the issue of whether certain articles of, and annexes to, Regulation No 1408/71 are compatible with Articles 39 EC and 42 EC.

The questions as to validity concerned the compatibility with the Treaty of the provisions of the regulation which, as an exception, permit a residence condition to be imposed for the award of Luxembourg childbirth and maternity allowances. The Court stated first of all that, having regard to the wide discretion which the Council enjoys in implementing Articles 39 EC and 43 EC, the exclusion of childbirth allowances from the scope of Regulation No 1408/71 does not infringe those provisions. However, that exclusion does not have the effect of dispensing Member States from the need to comply with other rules of Community law, in particular Regulation No 1612/68. On the other hand, the Court held that the inclusion of the maternity allowance in the scheme of derogations provided for in Article 10a of Regulation No 1408/71, relating to special non-contributory benefits paid exclusively in the territory of the Member State of residence, was contrary to Articles 39 EC and 42 EC, since that allowance does not amount to a special non-contributory benefit of that kind.

The Court held with regard to the child-raising allowance that it is not one of the family allowances which, pursuant to Regulation No 1408/71, are to be paid to persons receiving pensions irrespective of the Member State in whose territory they are residing, since the amount of the allowance is fixed irrespective of the number of children raised in the same home and the allowance therefore does not correspond to the definition of 'family allowances' in the regulation. In addition, the Court held that a person in receipt of an invalidity pension who resides in a Member State other than the

21 Cited in footnote 17 above.

22 Cited in footnote 2 above.

State providing his pension is not a worker within the meaning of Regulation No 1612/68 and does not enjoy rights attaching to that status unless they derive from his previous professional activity. Such an interpretation results from the fact that Article 39 EC and Regulation No 1612/68 protect a former worker against any discrimination affecting rights acquired during the former employment relationship but, since he is no longer engaged in an employment relationship, he cannot acquire new rights having no links with his former activity.

Joined Cases C-95/99 to C-98/99 and C-180/99 *Khalil and Others* (judgment of 11 October 2001, not yet published in the ECR) concerned the right of a number of stateless persons and refugees, or their spouses, to child benefit and child-raising allowance in Germany. For a certain period the German Government had confined grant of those allowances to foreigners in possession of a residence entitlement or a residence permit, so that the grant of such benefits to those stateless persons and refugees was discontinued. Before the German courts they pleaded Articles 2 and 3 of Regulation No 1408/71. [23] The Bundessozialgericht (German Federal Social Court) asked the Court of Justice two questions of Community law. In its first question, it asked whether Regulation No 1408/71 is applicable to stateless persons and refugees when they do not have the right to freedom of movement. Should the answer to that question be in the affirmative, it asked whether that regulation remains applicable if the stateless persons and refugees in question have travelled directly to a Member State from a non-member country and have not moved within the Community.

The Court interpreted the first question as casting doubt on the validity of including stateless persons and refugees among the persons covered by Regulation No 1408/71. It pointed out that it was necessary to consider this question as at the date of their inclusion in the regulation, that is to say as at 1971, when the legal basis for the regulation was Article 7 of the EEC Treaty (now, after amendment, Article 12 EC) and Article 51 of the EEC Treaty (now, after amendment, Article 42 EC). Examining the international context at the time of their inclusion, the Court found that the Member States had entered into an obligation at international level to allow stateless persons and refugees to benefit from social security under the same conditions as apply to the nationals of other States. The inclusion of stateless persons and refugees among the persons covered by the regulation thus merely reflects the content

[23] Cited in footnote 8 above.

of rules of international law. The Court stated that Article 42 EC provides for recourse to the technique of coordinating the national social security schemes. In effecting such coordination, the Council could use Article 42 EC in order to take account of the States' international obligations, by including stateless persons and refugees among the persons covered by the regulation. Their inclusion was accordingly valid.

So far as concerns the second question, the Court ruled that 'workers who are stateless persons or refugees residing in the territory of one of the Member States, and members of their families, cannot rely on the rights conferred by Regulation No 1408/71 where they are in a situation which is confined in all respects within that one Member State' (paragraph 72). The Court interpreted Regulation No 1408/71 in the light of Article 42 EC, which constitutes the basis for the inclusion of refugees and stateless persons among the persons covered by that regulation. According to the Court, it follows from Article 42 EC and the case-law relating to Regulation No 1408/71 that that regulation constitutes an instrument coordinating the social security schemes of the Member States and that it does not apply to activities which have no factor linking them with any of the situations governed by Community law and which are confined in all relevant respects within a single Member State.

12.3. In Case C-350/99 *Lange* [2001] ECR I-1061, the Court interpreted certain provisions of Directive 91/533 [24] which relates to an employer's obligation to inform employees of the conditions applicable to the employment relationship. The questions had been asked in proceedings concerning the validity of Mr Lange's dismissal on the ground that he refused to work overtime. The Court interpreted the directive as obliging an employer to notify an employee of a term requiring him to work overtime whenever requested to do so by his employer. That information may take the form of a mere reference to the relevant laws, regulations, administrative or statutory provisions or collective agreements. The Court stated that no provision of the directive requires an essential element of the contract or employment relationship to be regarded as inapplicable where it has not been mentioned in a written document delivered to the employee or has not been mentioned in such a document with sufficient precision. Finally, the Court ruled that the directive does not require the national court to apply or to refrain from

[24] Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ 1991 L 288, p. 32).

applying, in the context of the directive, principles of national law under which the proper taking of evidence is deemed to have been obstructed where a party to the proceedings has not complied with his legal obligations to provide information.

In Case C-173/99 *BECTU* [2001] ECR I-4881, an English court referred a question to the Court of Justice for a preliminary ruling on the interpretation of Article 7 of Directive 93/104 [25] concerning certain aspects of the organisation of working time. The main question was whether this directive allows a Member State to make the accrual of rights to paid annual leave conditional on prior completion of a minimum period of 13 weeks' uninterrupted employment with the same employer.

The Court answered that question in the negative, after a detailed examination of the directive's context and objective. It stated in particular that 'the entitlement of every worker to paid annual leave must be regarded as a particularly important principle of Community social law from which there can be no derogations and whose implementation by the competent national authorities must be confined within the limits expressly laid down by Directive 93/104' (paragraph 43).

13. With regard to *law concerning the Community's external relations*, reference will be made to Opinion 2/00 (13.1), to certain questions concerning the interpretation of association agreements (13.2) and to a judgment relating to the interpretation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) (13.3).

13.1. Opinion 2/00 of 6 December 2001 (not yet published in the ECR) concerned the Cartagena Protocol on Biosafety, an international instrument which was drawn up within the framework of the Convention on Biological Diversity signed on 5 June 1992 by the European Economic Community and its Member States at the conference in Rio de Janeiro known as the 'Earth Summit'. The Commission's request for an Opinion was designed to ascertain whether the competence of the Community to approve the Protocol had to be founded on Article 133 EC, relating to common commercial policy, and Article 174(4) EC, relating to the environment, and whether the powers of the

25 Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (OJ 1993 L 307, p. 18).

Member States were residual or preponderant in relation to those of the Community.

Certain governments and the Council contested the admissibility of the request on the ground that it concerned neither the compatibility of the Protocol with the Treaty nor the division of powers between the Community and the Member States under the Protocol. However, the Court stated: 'the choice of the appropriate legal basis has constitutional significance. Since the Community has conferred powers only, it must tie the Protocol to a Treaty provision which empowers it to approve such a measure' (paragraph 5). Recourse to an incorrect legal basis could invalidate the measure concluding the Protocol, a situation which would be liable to create complications that the special procedure laid down in Article 300(6) EC is specifically designed to forestall. On the other hand, that procedure involving a prior reference to the Court is not intended to solve difficulties associated with implementation of an envisaged agreement which falls within shared Community and Member State competence. The Court accordingly held the request for an Opinion admissible only as to the question whether the Protocol falls within exclusive Community competence or within shared Community and Member State competence.

On the substance, the Court declared that competence to conclude the Cartagena Protocol was shared between the European Community and the Member States. It rejected the Commission's argument that the Protocol essentially falls within the scope of Article 133 EC while certain more specific matters in the Protocol are covered by Article 174 EC. Its reasoning was founded on settled case-law concerning the legal basis for measures. In the light of the context, aim and content of the Protocol, the Court found that 'its main purpose or component is the protection of biological diversity against the harmful effects which could result from activities that involve dealing with [modified living organisms], in particular from their transboundary movement' (paragraph 34). That finding, and other considerations relating in particular to the fact that the Protocol is an instrument intended essentially to improve biosafety and not to promote, facilitate or govern trade, led the Court to declare that 'conclusion of the Protocol on behalf of the Community must be founded on a single legal basis, specific to environmental policy' (paragraph 42).

13.2. In Case C-63/99 *Gloszczuk* [2001] ECR I-6369, Case C-257/99 *Barkoci and Malik* [2001] ECR I-6557 and Case C-235/99 *Kondova* [2001] ECR I-6427, the Court interpreted identical provisions concerning the right of establishment which is provided for by the Europe Agreements establishing an

association between the Community and its Member States and, respectively, the Republic of Poland, the Czech Republic and the Republic of Bulgaria. [26] Since the clarification provided by the Court is substantially similar in all three cases, reference will be made to the judgment in *Gloszczuk* only.

The Court found first of all that the provisions of the association agreement which lay down a prohibition preventing Member States from discriminating, on grounds of nationality, against Polish nationals wishing to pursue economic activities as self-employed persons within the territory of those States have direct effect, since such provisions establish a precise and unconditional principle which is sufficiently operational to be applied by a national court and which is therefore capable of governing the legal position of individuals. The direct effect of those provisions means that individuals may invoke them before the courts of the host Member State. However, such direct effect does not prevent the authorities of the host State from applying national laws and regulations regarding entry, stay and establishment. Next, the Court stated that the right of establishment laid down by the association agreement presupposes a right to enter and remain. However, the interpretation of the right of establishment under Community law cannot be extended to similar provisions in the association agreement, which has a more limited aim than the EC Treaty. In the context of the association agreement, the right of establishment is not an absolute privilege, since its exercise may be limited by the legislation of the host Member State concerning entry, stay and establishment, subject to the condition that the benefits accruing to the Republic of Poland under the agreement are not nullified or impaired. Finally, the Court reviewed whether the restrictions imposed on the right of establishment were compatible with that condition. In this regard, the Court held compatible with the association agreement a system of prior control which makes the issue of leave to enter

26 Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, concluded and approved on behalf of the Community by Decision 93/743/Euratom, ECSC, EC of the Council and the Commission of 13 December 1993 (OJ 1993 L 348, p. 1); Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part, concluded and approved on behalf of the Community by Decision 94/910/ECSC, EC, Euratom of the Council and the Commission of 19 December 1994 (OJ 1994 L 360, p. 1); Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part, concluded and approved on behalf of the Community by Decision 94/908/ECSC, EC, Euratom of the Council and the Commission of 19 December 1994 (OJ 1994 L 358, p. 1).

and remain subject to the condition that the applicant must show that he genuinely intends to take up an activity as a self-employed person without at the same time entering into employment or having recourse to public funds, and that he possesses, from the outset, sufficient financial resources and has reasonable chances of success. The association agreement does not preclude the host Member State from rejecting an application for establishment made by a Polish national pursuant to Article 44(3) of that agreement on the sole ground that the Polish national was residing illegally within the territory of that State because of false representations made for the purpose of obtaining initial leave to enter it or of non-compliance with the conditions attached to that entry. Thus, the host State may require the submission of a new application for establishment to the competent authorities in the State of origin or in another country.

Case C-268/99 *Jany and Others* (judgment of 20 November 2001, not yet published in the ECR) concerned the right of establishment of several Polish and Czech nationals. The Netherlands authorities had refused them residence permits to enable them to work as self-employed prostitutes. So far as concerns the general interpretation (direct effect, limits and so forth) of the relevant provisions of the association agreements between the Community and its Member States and, respectively, the Republic of Poland and the Czech Republic, the Court referred to the case of *Gloszczuk*. The question then arose as to whether the activity of prostitution carried on in a self-employed capacity falls within the concept of 'economic activities as self-employed persons'.

The Court stated that this concept has the same meaning and scope as the concept of 'activities as self-employed persons' used in Article 43 EC. Prostitution carried on in a self-employed capacity falls within the scope of the right of establishment as provided for by the association agreements and by the EC Treaty itself.

Furthermore, as regards the possible limitations which a Member State might impose in view of the specific nature of the activity of prostitution, the Court ruled that prostitution is an economic activity carried on in a self-employed capacity provided that it is being carried on (i) outside any relationship of subordination as to the choice of that activity, working conditions and conditions of remuneration, (ii) under the relevant person's own responsibility and (iii) in return for remuneration paid to that person directly and in full.

In reaching this conclusion, the Court rejected an argument raised by the national court as possibly limiting application of the association agreements,

namely the immorality of the activity of prostitution. The Court, relying on its case-law (Case C-159/90 *Society for the Protection of Unborn Children Ireland* [1991] ECR I-4685), pointed out that 'it is not for the Court to substitute its own assessment for that of the legislatures of the Member States where an allegedly immoral activity is practised legally' (paragraph 56). The Court then stated that, 'far from being prohibited in all Member States, prostitution is tolerated, even regulated, by most of those States, notably the Member State concerned in the present case' (paragraph 57). The Kingdom of the Netherlands could not have recourse to the public-policy derogation provided for by the association agreements because applicability of that derogation is subject to the condition that the State which relies on it has adopted effective measures to monitor and repress like activities pursued by its own nationals.

13.3. In Case C-89/99 *Schieving-Nijstad and Others* [2001] ECR I-5851, the Court confirmed its case-law (Case C-53/96 *Hermès* [1998] ECR I-3603 and Joined Cases C-300/98 and C-392/98 *Dior and Others* [2000] ECR I-11307) relating to Article 50 of TRIPs, an agreement set out in Annex 1 C to the WTO Agreement. That article is a procedural provision relating to provisional judicial protection of intellectual property rights which is to be applied by Community and national courts in accordance with obligations assumed both by the Community and by the Member States. As in *Dior and Others*, the Court held that that procedural provision of TRIPs does not have direct effect. Nevertheless, where the judicial authorities are called upon to apply national rules with a view to ordering provisional measures for the protection of intellectual property rights falling within a field to which TRIPs applies and in respect of which the Community has already legislated, they are required to do so as far as possible in the light of the wording and purpose of Article 50, so as to ensure that a balance is struck between the competing rights and obligations of the right holder and of the defendant.

14. In the *environmental* field, Case C-324/99 *DaimlerChrysler* (judgment of 13 December 2001, not yet published in the ECR) should be mentioned. This case concerned the interpretation of Regulation (EEC) No 259/93 [27] on shipments of waste in the Community. In proceedings between DaimlerChrysler and the *Land* of Baden-Württemberg, the

27 Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (OJ 1993 L 30, p. 1).

Bundesverwaltungsgericht (German Federal Administrative Court) sought a preliminary ruling on a number of questions concerning the compatibility with Community law of a decree of the *Land* enacted pursuant to that regulation. The decree had been adopted on the basis of a provision in the regulation which permits the Member States, in certain cases, to adopt measures prohibiting generally the export of waste for disposal. That provision also requires the measures of prohibition to be taken 'in accordance with the Treaty'.

The national court was uncertain first of all whether that expression means that it is necessary to verify whether the prohibition is consistent with primary law, in particular Articles 28 EC, 29 EC and 30 EC. In this connection, the Court of Justice observed that the national court had not questioned the validity of Article 4(3)(a) of Regulation No 259/93 in the light of Articles 28 EC, 29 EC and 30 EC. It recalled the case-law according to which, 'where a matter is regulated in a harmonised manner at Community level, any national measure relating thereto must be assessed in the light of the provisions of that harmonising measure and not of Articles [28 EC, 29 EC and 30 EC]' (paragraph 32, which cites Case C-37/92 *Vanacker and Lesage* [1993] ECR I-4947, paragraph 9). The Court then conducted a detailed examination of Regulation No 259/93, concluding that it regulates in a harmonised manner the question of shipments of waste and that, accordingly, national measures must be assessed in the light of the provisions of the regulation and not of Articles 28 EC, 29 EC and 30 EC. In addition the expression 'in accordance with the Treaty' was interpreted by the Court 'as meaning that, in addition to being compatible with the Regulation, such ... measures must also comply with the general rules or principles of the Treaty to which no direct reference is made in the legislation adopted in the field of waste shipments' (paragraph 45).

By its other questions, the national court asked the Court of Justice whether certain aspects of the German waste disposal legislation were compatible with Regulation No 259/93. The Court ruled that that regulation does not authorise a Member State which has introduced an obligation to offer waste for disposal to an approved body to provide that any shipment of such waste to treatment installations in other Member States is authorised only on condition that the intended disposal satisfies the environmental requirements of the legislation of the State of origin. Likewise, the regulation precludes a Member State from applying to shipments of such waste its own procedure in relation to the notification, offer and allocation of waste separate from that laid down in the regulation.

15. In the field of transport policy, the cases of *Italy* v *Commission* and *Analir* will be noted.

In Case C-361/98 *Italy* v *Commission* [2001] ECR I-385, the Court dismissed an action brought by the Italian Government for annulment of a decision adopted by the Commission pursuant to Regulation (EEC) No 2408/92. [28] The contested decision prohibited the Italian Republic from applying certain rules distributing traffic between the Milan airports at Linate and Malpensa, on the ground that they had discriminatory effects in favour of Alitalia. The rules were also considered to be contrary to the principle of proportionality. The Italian Government contended that the Commission had exceeded the limits of the power conferred on it by Regulation No 2408/92: the regulation refers only to the principle of non-discrimination on the ground of the nationality of the air carrier, whereas the contested decision was based on the principle of proportionality.

The Court recalls in the judgment that, in interpreting a provision of Community law, it is necessary 'to consider not only its wording but also the context in which it occurs and the objects of the rules of which it forms part' (paragraph 31). The Court deduced from the recitals in the preamble to Regulation No 2408/92 that that regulation is intended to define the conditions for applying in the air transport sector the principle of the freedom to provide services which is enshrined in the Treaty. It found that the Italian measures declared by the Commission to be incompatible with the regulation constituted restrictions on the freedom to provide services. The Court concluded that, in order for those restrictions to be capable of being authorised under the regulation, they had to be proportionate to the purpose for which they were adopted. Consequently, the Commission had been fully entitled to examine whether the Italian measures were proportionate and appropriate for the purpose of achieving the objective pursued.

Case C-205/99 *Analir and Others* [2001] ECR I-1271 concerned freedom to provide services in the field of maritime transport within Member States. The Tribunal Supremo (Spanish Supreme Court) had referred for a preliminary ruling three questions on the interpretation of several articles of Regulation

28 Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes (OJ 1992 L 240, p. 8).

(EEC) No 3577/92, [29] which applies the principle of freedom to provide services to maritime transport within Member States (maritime cabotage). The questions were asked in connection with several actions brought by Spanish shipping companies for annulment of the Spanish legislation on regular maritime cabotage lines and public-interest shipping on the ground that it was contrary to Community legislation.

By its first question, the national court asked whether it is compatible with Regulation No 3577/92 to make the provision of island cabotage services subject to prior administrative authorisation. The Court of Justice stated that the aim of the regulation is to apply the freedom to provide services to maritime cabotage. It recalled its case-law concerning the freedom to provide services and concluded that a system of prior authorisation constitutes a restriction of that freedom. That restriction may nevertheless be justified as a means of imposing public service obligations, provided that the scheme of prior authorisation complies with a number of conditions: (i) a real public service need arising from the inadequacy of the regular transport services under conditions of free competition can be demonstrated; (ii) the scheme is necessary and proportionate to the aim pursued; and (iii) the scheme is based on objective, non-discriminatory criteria which are known in advance to the undertakings concerned. In its reply to the second question, the Court held that Regulation No 3577/92 permits a Member State to include in the conditions for granting and maintaining prior administrative authorisation a condition enabling account to be taken of the solvency of a Community shipowner, such as the requirement that he is to have no outstanding tax or social security debts, provided that such a condition is applied on a non-discriminatory basis. In answering the third question, the Court interpreted Article 4(1) of the regulation as permitting a Member State to impose public service obligations on some shipping companies and, at the same time, to conclude public service contracts with others for the same line or route, provided that a real public service need can be demonstrated and in so far as that application of the two methods concurrently is on a non-discriminatory basis and is justified in relation to the public-interest objective pursued.

29 Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ 1992 L 364, p. 7).

16. In the field of *tax*, cases on value added tax (VAT) remain plentiful and, of these, Case C-34/99 *Primback* [2001] ECR I-3833 is to be noted. In this case, the Court interpreted the provisions of the Sixth Directive 77/388/EEC [30] which relate to the taxable amount. A retailer sold goods by means of interest-free credit granted to purchasers by a person other than the seller. The finance company subsequently paid to the vendor a sum lower than the price of the goods, the difference being the consideration for granting the credit. Consumers were not informed of that financial transaction entered into without their knowledge. The legal question was what amount (the net amount actually received by the seller or the full amount payable by the purchaser) should be regarded as the taxable amount for VAT purposes. The Court held that in such circumstances the taxable amount for the purposes of calculating VAT consists of the full amount payable by the purchaser.

In a case relating to tax law and insurance law (Case C-191/99 *Kvaerner* [2001] ECR I-4447), the Court gave a preliminary ruling on the interpretation of Directive 88/357/EEC concerning insurance, [31] in particular on the definition of establishment and of the State where the risk is situated. In its judgment, the Court ruled that Articles 2 and 3 of the directive permit a Member State to levy insurance tax on a legal person established in another Member State in respect of premiums which that legal person has paid to an insurer, also established in another Member State, to cover the business risks of its subsidiary or sub-subsidiary established in the Member State making the levy. The outcome is the same if the legal person which has paid the premiums and the legal person whose business risks are covered are two companies in the same group linked by a relationship other than that of parent and subsidiary company.

17. Three cases relating to the *common agricultural policy* are to be noted, respectively concerning Community measures to combat foot-and-mouth disease, emergency measures to protect against bovine spongiform

30 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).

31 Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC (OJ 1988 L 172, p. 1).

encephalopathy, and the protection of geographical indications and designations of origin.

Jippes and Others, cited above, is the first instance where the accelerated procedure under Article 104a of the Rules of Procedure in respect of references for a preliminary ruling has been applied. In this case, the Court was required to decide whether the ban on vaccination against foot-and-mouth disease provided for by Directive 85/311 and the Commission decision adopted pursuant to that directive [32] was valid in the light of the Treaty and in particular the principle of proportionality, given the need to safeguard animal welfare.

The Court held that the Community institutions are obliged to take account of the health and protection of animals in the formulation and implementation of the common agricultural policy, adding that fulfilment of that obligation can be verified in a review of the proportionality of the measure. After examining the proportionality of the measure imposing the ban on preventive vaccination, the Court concluded that, having regard to the Council's wide discretionary power in the matter, the ban did not exceed the limits of what was appropriate and necessary in order to attain the objective pursued by the Community rules. So far as concerns the decision adopted by the Commission pursuant to Directive 85/511, that is to say Decision 2001/246, the Court held that the directive constituted an adequate legal basis for its adoption. Finally, the Commission decision did not infringe the principle of equal treatment, since the animals which could be vaccinated under the Community rules were not in a situation comparable to that of Ms Jippes' animals.

In its judgment of 13 December 2001 in Case C-1/00 *Commission* v *France* (not yet published in the ECR), the Court declared that the French Republic had acted unlawfully by refusing to adopt the measures necessary in order to

32 Council Directive 85/511/EEC of 18 November 1985 introducing Community measures for the control of foot-and-mouth disease (OJ 1985 L 315, p. 11), as amended by Council Directive 90/423/EEC of 26 June 1990 (OJ 1990 L 224, p. 13). Commission Decision 2001/246/EC of 27 March 2001 laying down the conditions for the control and eradication of foot-and-mouth disease in the Netherlands in application of Article 13 of Directive 85/511 (OJ 2001 L 88, p. 21), as amended by Commission Decision 2001/279/EC of 5 April 2001 (OJ 2001 L 96, p. 19).

comply with Council Decision 98/256 and Commission Decision 1999/514, [33] relating to emergency measures to protect against bovine spongiform encephalopathy. Those decisions had lifted the export ban so far as concerns certain meat and meat products from cattle slaughtered in the United Kingdom, subject to the strict conditions of a date-based export scheme. Contrary to those decisions, the French Republic unilaterally decided to maintain the ban.

However, its failure to fulfil its obligations was not as extensive as the Commission claimed. The Commission did not establish that the French Government would have prevented the import of all beef and veal or all meat-based products from other Member States not bearing the distinct mark of products subject to the export scheme established by the decisions in question on the ground that certain consignments of meat or of cut, processed or rewrapped products could include beef, veal or products of United Kingdom origin which would not be identifiable as such. Accordingly, the application for a finding of failure to fulfil obligations was dismissed in so far as it concerned that category of products. The Commission also sought a declaration that Article 28 EC, relating to free movement of goods, had been infringed. The Court observed with regard to this claim that the Commission had offered no justification for a finding of an infringement separate from that already found in relation to the decisions referred to above. It therefore dismissed this part of the Commission's application. It likewise rejected the Commission's claim relating to breach of Article 10 EC, which the French Republic had not infringed given the difficulties in interpreting and implementing Decision 98/256.

Case C-269/99 *Kühne and Others* (judgment of 6 December 2001, not yet published in the ECR) concerned a question referred for a preliminary ruling relating to the validity of the registration of the designation 'Spreewälder Gurken' as a geographical indication of origin under Regulation (EEC) No

[33] Council Decision 98/256/EC of 16 March 1998 concerning emergency measures to protect against bovine spongiform encephalopathy, amending Decision 94/474/EC and repealing Decision 96/239/EC (OJ 1998 L 113, p. 32), in the version resulting from Commission Decision 98/692/EC of 25 November 1998 (OJ 1998 L 328, p. 28). Commission Decision 1999/514/EC of 23 July 1999 setting the date on which dispatch from the United Kingdom of bovine products under the date-based export scheme may commence by virtue of Article 6(5) of Decision 98/256 (OJ 1999 L 195, p. 42).

2081/92. [34] The Court found it necessary to rule on the division of powers between the Member State which has submitted an application for registration and the Commission. The Court stated that it is for the Member State to check whether the application for registration is justified with regard to the conditions laid down by that regulation. It is for the Commission, in turn, to verify, in particular, whether the specification which accompanies the application complies with Regulation No 2081/92 and, on the basis of the information contained in the specification, whether the designation satisfies the requirements of Article 2(2)(a) or (b) of the regulation. That system of division of powers is attributable particularly to the fact that registration presupposes verification that a certain number of conditions have been met, a task which requires, to a great extent, detailed knowledge of matters particular to the Member State concerned, which the competent authorities of that State are best placed to check. Thus, questions such as whether a denomination is established by usage or concerning the definition of the geographical area fall within the checks which must be carried out by the competent national authorities. So far as concerns the argument that it was not possible to challenge at national level the measure consisting of the application for registration, the Court recalled the case-law according to which it is for the national courts to rule on the lawfulness of an application for registration of a designation and, consequently, to regard an action brought for that purpose as admissible, even if the domestic rules of procedure do not provide for this in such a case (Case C-97/91 *Oleificio Borelli* v *Commission* [1992] ECR I-6313, paragraph 13).

18. So far as concerns the *law relating to Community officials*, three cases will be mentioned. It should be noted that, in so far as they raised questions regarding fundamental rights, their interest is not limited to interpretation of the Staff Regulations of Officials of the European Communities but also relates to the Community legal order as a whole.

In Case C-274/99 P *Connolly* v *Commission* [2001] ECR I-1611, the Court defined the scope of the freedom of expression of Community officials so far as concerns publications dealing with the work of the Community, which, under Article 17 of the Staff Regulations, must be submitted by them for prior permission. When Mr Connolly, a Commission official, published a book

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

without having first requested permission as required by the Staff Regulations, disciplinary proceedings were brought against him. Following delivery of an opinion by the Disciplinary Board, Mr Connolly was dismissed. He brought proceedings before the Court of First Instance for annulment of the decision removing him from his post. That action was dismissed by the Court of First Instance's judgment in Joined Cases T-34/96 and T-163/96 *Connolly* v *Commission* [1999] ECR-SC I-A-87 and II-463. Mr Connolly appealed against that judgment to the Court of Justice.

The appeal was dismissed. In its judgment, the Court of Justice recalled that fundamental rights, which include freedom of expression, form an integral part of the general principles of Community law. In the same terms as those used by the European Court of Human Rights, the Court of Justice observed that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for the development of every man. Limitations on freedom of expression, such as those set out in Article 10(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms are to be interpreted strictly. The need to seek prior permission for the publication of any matter dealing with the work of the Communities forms part of the protection of the institutions' rights. Such rules requiring prior permission reflect the relationship of trust which must exist between employers and employees, particularly when they discharge high-level responsibilities in the public service. The Court pointed out that the Community judicature must ensure a fair balance between freedom of expression and the legitimate interests of the institutions and applied those principles to the specific facts. It concluded from the facts that Mr Connolly was dismissed not because he had failed to apply for prior permission or because he had expressed a dissentient opinion, but because he published material severely criticising members of the Commission and other superiors and challenging fundamental aspects of Community policies. Accordingly, he committed an irremediable breach of the trust which the Commission is entitled to expect from its officials and, as a result, made it impossible for any employment relationship to be maintained with the institution.

In its judgment of 13 December 2001 in Case C-340/00 P *Commission* v *Cwik* (not yet published in the ECR), the Court upheld on appeal the judgment delivered by the Court of First Instance in Case T-82/99 *Cwik* v *Commission* [2000] ECR-SC I-A-155 and II-713. The Court of First Instance had annulled a decision by the Commission refusing Mr Cwik, a European Communities official, permission to publish the text of a lecture that he had given. The Court recalled the principles which it had laid down in *Connolly* v

Commission, cited above, and rejected the grounds of appeal put forward by the Commission. It held that the Court of First Instance did not fail to have regard to the preventive function of the prior permission procedure laid down by the Staff Regulations, but simply criticised the reasons put forward to substantiate the decision to refuse publication: those reasons had merely stated that there was a risk that the interests of the European Communities would be prejudiced where an official's opinion was different from the view expressed by the Commission. The Court stated that a refusal of permission to publish can be warranted only where there is a real risk of serious prejudice to the interests of the European Communities, established on the basis of specific, objective factors.

In Joined Cases C-122/99 P and C-125/99 P *D and Sweden* v *Council* [2001] ECR I-4319, the Court dismissed two appeals brought by D and the Kingdom of Sweden against the judgment of the Court of First Instance in Case T-264/97 *D* v *Council* [1999] ECR-SC I-A-1 and II-1, in which the Court of First Instance had dismissed D's action for annulment of the refusal by the Council of the European Union to award him the household allowance. The facts were as follows. D, a European Communities official of Swedish nationality working at the Council, had registered a partnership with another Swedish national of the same sex in Sweden. He applied to the Council for his status as a registered partner to be treated as being equivalent to marriage for the purpose of obtaining the household allowance provided for in the Staff Regulations of Officials of the European Communities. The Council rejected his application on the ground that the provisions of the Staff Regulations could not be construed as allowing a registered partnership to be treated as being equivalent to marriage. The Court of First Instance confirmed the legality of that decision and the Court of Justice dismissed the appeals brought against the Court of First Instance's judgment.

Among the grounds of appeal, the most important were those relating to interpretation of the Staff Regulations and to equal treatment. The Court stated that, having regard to the great diversity displayed by national rules in their legal treatment of couples of the same sex, the Community judicature could not interpret the Staff Regulations in such a way that legal situations distinct from marriage were treated in the same way as marriage. It added that 'only the legislature can, where appropriate, adopt measures to alter that situation, for example by amending the provisions of the Staff Regulations' (paragraph 38). So far as concerns application of the principle of equal treatment, the Court had to consider whether the situation of an official who has registered a partnership between persons of the same sex is comparable to that of a married

official. It stated that those situations were not comparable, given the great diversity of relevant national laws and the absence of any general assimilation of marriage and other forms of statutory union.

B — Composition of the Court of Justice

(Order of precedence as at 1 January 2001)

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.

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

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.

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.

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 Minister for Justice (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 Minister for Justice (1986); President of the Regional Court at Bobigny (1986-1993); Head of the Private Office of the 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.

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); spokesman 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 spokesman at the Parliament (1973-1978); appointed as Member of the Constitutional Court (1978); permanent Judge-Rapporteur at that court until the end of 1994; Judge at the Court of Justice since 19 January 1995.

Leif Sevón

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

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.

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 Minister for Justice; Legal Secretary to the President of the Court of Justice; Registrar at the Court of Justice since 10 February 1994.

2. Order of precedence

from 1 January to 6 October 2001

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

from 7 October to 31 December 2001

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

3. 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 2001

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

. A feature of the statistics relating to the judicial activity of the Court of First Instance of the European Communities in 2001 is their consistency with those of the previous year.

In general the number of cases registered, cases determined and cases pending was, to within a few cases, the same as in 2000.

In 2001, 327 cases were brought before the Court of First Instance. [1] That figure is lower than that for 2000, which was 387, chiefly because there were no series of cases.

The number of cases determined, excluding special forms of procedure, was 325 (or 216 after the joinder of cases) — compared with 327 in 2000 —. It is interesting that the number of cases decided in the field of intellectual property has increased significantly, from seven in 2000 to 30 the following year.

The number of judgments delivered by Chambers of five Judges was 14 (compared with 24 in 2000 and 39 in 1999), while 96 judgments (82 in 2000 and 74 in 1999) were delivered by Chambers of three Judges. The Court of First Instance sitting as a single judge delivered 10 judgments (11 in 2000).

No case was referred to the Court sitting in plenary session, nor was an Advocate General designated in any case.

There was again a significant number of applications for interim relief: 37 applications were made (43 in 2000 and 38 in 1999) and 41 sets of proceedings for interim relief were disposed of (45 in 2000).

The total number of cases pending at the end of the year, excluding special forms of procedure, came to 786 (compared with 784 in 2000).

1 That figure does not include the 18 special forms of procedure, *inter alia* applications for legal aid and taxation of costs.

The average duration of proceedings fell from 23.5 months in 2000 to 19.5 months.

. On 1 February 2001 amendments to the Rules of Procedure of the Court of First Instance intended to expedite proceedings (OJ 2000 L 322, p. 4) came into force. It is still too soon to assess the practical impact of those amendments on the average length of proceedings. However, it can be recorded that 12 applications for expedited procedure were lodged in 2001 and that 2 of them were granted as at 31 December of that year.

The Conference of Representatives of the Governments of the Member States adopted a Decision on 6 June 2001 appointing members of the Court of First Instance for the period 1 September 2001 to 31 August 2007. By that decision the terms of office of Judges J.D. Cooke, N.J. Forwood, R. García-Valdecasas y Fernández, P. Lindh, P. Mengozzi and J. Pirrung were renewed.

The representatives of the governments of the Member States also appointed Mr Hubert Legal a member of the Court to succeed Judge Potocki whose term of office had come to an end.

Mr Vesterdorf was re-elected President of the Court of First Instance for the period from 20 September 2001 to 3 August 2004.

Developments in the case-law [2]

The principal advances in the case-law in 2001 are set out below, the cases grouped into proceedings concerning the legality of measures (I), into which group the vast majority of the cases decided by the Court of First Instance fall, actions for damages (II) and applications for interim relief (III).

2 To assist the reader, articles of the EC and ECSC Treaties are cited in the version in force since 1 May 1999.

I. Proceedings concerning the legality of measures

A. *Admissibility of actions for annulment under Article 230 EC*

The developments in the case-law concern the concept of a reviewable act, possession of a legal interest in bringing proceedings and standing to bring proceedings.

1. 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 230 EC.

. In its judgment of 18 September 2001 in Case T-112/99 *M6 and Others* v *Commission* (not yet published in the ECR), the Court of First Instance held that any natural or legal person may bring an action for annulment of a decision of a Community institution which does not allow, in whole or in part, a clear and precise request from that person which falls within the competence of that institution. In such a situation the total or partial rejection of the request produces binding legal effects capable of affecting the interests of its maker. In that case it held that the operative part of a Commission decision which granted negative clearance (relating to a clause of the notified agreement) and an exemption (relating to other clauses of that agreement) under the competition rules for only part of the duration of the notified agreement produced, as regards the parties to that agreement, binding legal effects capable of affecting their interests.

. In the case of acts or decisions which are prepared in several stages, including on completion of an internal procedure, in principle only those measures definitively laying down the position of the institution on the conclusion of that procedure, and not intermediate measures intended for preparation of the final decision, constitute reviewable acts.

. In its order of 20 March 2001 in Case T-59/00 *Compagnia Portuale Pietro Chiesa* v *Commission* [2001] ECR II-1019, the Court of First Instance recalled that an institution which is empowered to find that there has been an infringement and inflict a sanction in respect of it and to which private persons may make complaint, as is the case with the Commission in competition law,

necessarily adopts a measure producing legal effects when it terminates an investigation following such a complaint. In this case it was held that an act cannot be regarded as terminating such a procedure if, in that act, the Commission is merely informing the person concerned of the state of progress in the procedure initiated against a Member State — for the purposes of establishing whether or not there has been a breach of Article 82 EC in conjunction with Article 86 EC — and giving its preliminary observations regarding its investigation of the latter. Such an act constitutes an intermediary measure.

. In Case T-186/98 *Inpesca* v *Commission* [2001] ECR II-557 (under appeal, Case C-170/01 P), it was held that, if a request for reconsideration by a Community institution of a decision which has become definitive is based on substantial new facts, the institution concerned is bound to comply with that request. After reconsidering the decision, the institution must take a new decision, the legality of which may, where necessary, be challenged before the Community judicature. If, on the other hand, the request for reconsideration is not based on such facts, the institution is not required to comply with it. It follows that an action brought against a decision refusing to reconsider a decision which has become definitive will be declared admissible if it appears that the request is actually based on substantial new facts. On the other hand, if it appears that the request is not based on such facts, an action against the decision refusing to reconsider it will be declared inadmissible. In its judgment, the Court of First Instance pointed out that a reconsideration, based on substantial new facts, of a previous decision which has become final is governed by the general principles of administrative law, as defined in the case-law of the Court of Justice and the Court of First Instance, and went on to find that the applicant had not established the existence of any facts of that nature which would imply an obligation to reconsider the decision rejecting its request for financial aid.

. It is also settled case-law that an action for annulment of an act which merely confirms another decision which has become definitive is inadmissible. The concept of a confirmatory act has been developed in case-law *inter alia* in order to prevent the bringing of an action which has the effect of recommencing the time-limits for bringing an action once they have expired. Where there has been no such circumvention of the time-limits for bringing an action, the Community judicature has on some occasions acknowledged the admissibility of claims made against both a confirmed decision and a confirmatory decision in the same action. However, in its order of 25 October 2001 in Case T-354/00 *M6* v *Commission* (not yet published in the ECR), the

Court of First Instance held that this solution cannot be applied where the two decisions are contested in two separate actions and the applicant can make his point of view and put his arguments in the action concerning the first decision.

. The first paragraph of Article 230 EC provides that the Community judicature is to review the legality of 'acts of the European Parliament intended to produce legal effects in regard to third parties'. By their action for annulment, several Members of the European Parliament, the *Front national* and the *Lista Emma Bonino* disputed the legality of the act of 14 September 1999 whereby the Parliament decided to adopt the general interpretation of Rule 29(1) of its Rules of Procedure [3] proposed by the Committee on Constitutional Affairs and the view expressed by it on the conformity with that Rule of the statement of formation of the 'Technical Group of Independent Members — Mixed Group' (TDI Group) and to declare the non-existence *ex tunc* of that group.

According to the Court of First Instance such an act is open to challenge before the Community judicature if the legal effects it produces go beyond the internal organisation of the work of the Parliament (judgment of 2 October 2001 in Joined Cases T-222/99, T-327/99 and T-329/99 *Martinez and Others* v *Parliament*, not yet published in the ECR (under appeal, Cases C-486/01 P and C-488/01 P)). In that regard, it held, as a preliminary point, that while the purpose of the rules of procedure of a Community institution is to organise the internal functioning of its services in the interests of good administration and the rules laid down have therefore as their essential purpose to ensure the smooth conduct of the procedure, that alone does not preclude an act of the Parliament such as that mentioned above from having legal effects in regard to third parties and thus from being capable of forming the subject-matter of an action for annulment. As regards the case under discussion the Court of First Instance held, first, that the act of 14 September 1999 affects the conditions under which the parliamentary functions of the Members concerned are exercised *inter alia* because they cannot form a political group, and thus produces legal effects in their regard. It went on to observe that, as representatives of the peoples of the States brought together in the Community, such Members must, in regard to an act emanating from the Parliament and

3 Rule 29(1) ('Formation of political groups') of the Rules of Procedure of the European Parliament, in the version in force as from 1 May 1999 (OJ 1999 L 202, p. 1), provides: 'Members may form themselves into groups according to their political affinities'.

producing legal effects as regards the conditions under which the electoral mandate is exercised, be regarded as third parties within the meaning of the first paragraph of Article 230 EC.

2. Legal interest in bringing proceedings

While a legal interest in bringing proceedings is not expressly required by Article 230 EC, 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. Such an interest exists only if the annulment of the measure is of itself capable of having legal consequences (see *inter alia* judgments of the Court of First Instance in Case T-188/99 *Euroalliages* v *Commission* [2001] ECR II-1757, and of 22 November 2001 in Case T-9/98 *Mitteldeutsche Erdoel-Raffinerie* v *Commission*, not yet published in the ECR). The interest in bringing proceedings for annulment is assessed as at the date when the action is brought (judgment in *Mitteldeutsche Erdoel-Raffinerie* v *Commission*) and the natural or legal person who brings that action must have a personal interest in bringing proceedings.

According to the Court of First Instance, the latter criterion is not fulfilled where an action brought by a legal person seeks the annulment of a decision addressed to another person refusing that person access to documents. In such a case, the applicant — here the parent company of the addressee of the contested decision — cannot be considered to have an interest in seeking the annulment of such a decision, since it does not affect its own rights. The Court held that the applicant did not itself make a request for access to documents and that the possibility of making such a request was not in question (order of 30 April 2001 in Case T-41/00 *British American Tobacco International (Holdings)* v *Commission* [2001] ECR II-1301).

3. 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*'.

In 2001 the Court of First Instance dismissed as inadmissible for lack of standing to bring proceedings several actions seeking annulment either of decisions which were not addressed to the applicants or of acts of a legislative nature. In some cases the action was dismissed by judgment (judgments of the Court of First Instance in Joined Cases T-38/99 to T-50/99 *Sociedade Agrícola dos Arinhos and Others* v *Commission* [2001] ECR II-585, in Case T-69/96 *Hamburger Hafen- und Lagerhaus and Others* v *Commission* [2001] ECR II-1037, in Case T-166/99 *Andres de Dios and Others* v *Council* [2001] ECR II-1857 and in Joined Cases T-198/95, T-171/96, T-230/97, T-174/98 and T-225/99 *Comafrica and Dole Fresh Fruit Europe* v *Commission* [2001] ECR II-1975), and in others, by order.

(a) Direct concern

The condition that an individual 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. The same applies where the opportunity for addressees of the measure not to give effect to the Community measure is purely theoretical and their intention to act in conformity with it is not in doubt.

. There was a finding that the legal situation of a trader was not directly affected in the order in Case T-244/00 *Coillte Teoranta* v *Commission* [2001] ECR II-1275. According to the Court of First Instance, a trader is not directly concerned by a Commission decision addressed to the Member States excluding from Community financing, on the ground of failure to comply with the Community rules, various items of expenditure on the part of the paying agencies which were declared under the European Agricultural Guidance and Guarantee Fund (EAGGF), including those relating to aid paid to that trader. The decision concerns only the financial relations between the EAGGF and the Member States and does not include any provision requiring the national bodies concerned to recover the sums indicated from their recipients. Its proper execution requires only that the Member State concerned refund to the EAGGF the sums corresponding to the expenditure excluded from Community financing. In those circumstances, reimbursement of the Community aid paid to that trader in the financial years concerned would be the direct consequence, not of that decision, but of the action which would be taken for that purpose by the competent authorities on the basis of their national legislation in order

to fulfil obligations under the Community rules on the subject. In that regard, it cannot be excluded that particular circumstances may lead the national authorities concerned to decide not to claim repayment of the aid granted from the recipient and themselves to bear the burden of reimbursing to the EAGGF the sums which they had wrongly considered themselves authorised to pay.

. On the other hand, in the field of State aid, the Court of First Instance held that an undertaking in receipt of an investment premium was directly concerned by a Commission decision addressed to a Member State declaring incompatible with the common market a provision of that State's annual tax law prolonging the period within which the investment project had to have been executed in order to benefit from the premium, since the obligation to repeal that provision contained in the decision necessarily had the consequence of requiring the national authorities to recover the amount of the premium from the undertaking concerned (judgment in *Mitteldeutsche Erdoel-Raffinerie* v *Commission*, cited above).

(b) Individual concern

Since the judgment of the Court of Justice in Case 25/62 *Plaumann* v *Commisssion* [1963] ECR 95, it is settled case-law that persons other than those to whom a decision is addressed may claim to be individually concerned within the meaning of the fourth paragraph of Article 230 EC if that decision affects their legal position by reason of certain attributes peculiar to them or by reason of a factual situation which differentiates them from all other persons and distinguishes them individually in the same way as the addressee. The question whether that condition is fulfilled has been specifically addressed in a number of decisions, only some of which are of note. [4]

[4] For an assessment of individual concern, see also the orders of the Court of First Instance in Joined Cases T-112/00 and T-122/00 *Iberotam and Others* v *Commission* [2001] ECR II-97, in Case T-49/00 *Iposeca* v *Commission* [2001] ECR II-163, in Case T-215/00 *La Conqueste* v *Commission* [2001] ECR II-181 (under appeal, Case C-151/01 P) and the order of 11 September 2001 in Case T-270/99 *Tessa and Tessas* v *Council* (not yet published in the ECR, under appeal, Case C-461/01 P); and the judgments in *Martinez and Others* v *Parliament*, cited above, *Comafrica and Dole Fresh Fruit Europe* v *Commission*, cited above, the judgments of 19 September 2001 in Case T-58/99 *Mukand and Others* v *Council*, and of 6 December 2001 in Case T-43/98 *Emesa Sugar* v *Council*, not yet published in the ECR.

. Portuguese breeders of fighting bulls sought annulment of a provision of a Commission decision prohibiting them from dispatching such bulls from Portugal to Spain and France for cultural and sporting events. [5] However, since the applicants failed to establish that the contested measure was of individual concern to them, their action was dismissed as inadmissible by judgment of 7 February 2001 in *Sociedade Agrícola dos Arinhos and Others* v *Commission*, cited above. In that regard, the Court of First Instance held that the fact that the bulls bred by the exporters were intended to fight at cultural and sporting events, that the export and transportation of those animals were subject to specific rules which ensure strict control of all the animals exported and that those exporters were entered in herd books of fighting bulls did not constitute a particular situation differentiating the applicants, in respect of the contested decision, from any other breeder or exporter of bovine animals affected by the prohibition on dispatch laid down by that decision. It also held that the decision concerned them only by reason of their objective status as exporters of bovine animals, by the same token as all other operators exercising the same activity of dispatching from the Member State concerned. Moreover, the fact that a person intervenes, in one way or another, in the procedure leading to the adoption of a Community measure is not such as to differentiate him from any other person in respect of the measure in question except where the Community legislation applicable grants him certain procedural safeguards. However, that is not the case with the provisions of Directives 89/662 and 90/425 concerning veterinary and zootechnical checks applicable in intra-Community trade. [6]

. By order of 19 September 2001 in Joined Cases T-54/00 and T-73/00 *Federación de Cofradías de Pescadores de Guipúzcoa and Others* v *Council* (not yet published in the ECR), the Court of First Instance declared inadmissible actions for annulment brought by owners of fishing vessels established in Spain against part nine of Annex I D to Regulation (EC) No

5 Commission Decision 98/653/EC of 18 November 1998 concerning emergency measures made necessary by the occurrence of bovine spongiform encephalopathy in Portugal (OJ 1998 L 311, p. 23).

6 Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market (OJ 1990 L 224, p. 29), and Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market (OJ 1989 L 395, p. 13).

2742/1999, [7] which, by way of exchanges of catch quotas between the French Republic and the Portuguese Republic, allowed 3 000 tonnes of the anchovy quota of 5 220 tonnes allocated to Portugal in ICES zones IX and X and CECAF area 34.1.1 to be fished in the waters of ICES zone VIII, which is under the sovereignty or within the jurisdiction of the French Republic. [8] The applicants were not affected by the contested provision, which is of general application, by reason of certain attributes peculiar to them or by reason of a factual situation which differentiated them, as regards that provision, from all other persons. In particular, when it adopted that provision, the Council was under no obligation to take account of the particular situation of the applicants.

Despite the inadmissibility of the actions for annulment, the Court of First Instance pointed out that the contested measure could always be called into question by the persons concerned if they considered themselves the victims of damage caused directly by that measure under the procedure for non-contractual liability laid down in Articles 235 EC and 288 EC. It concluded that the general principle of Community law according to which any person whose rights and freedoms have been infringed has the right to an effective remedy, which is inspired by Article 13 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) of 4 November 1950, was respected in this case.

. The case leading to the judgment of 27 June 2001 in *Andres de Dios and Others* v *Council*, cited above, gave the Court of First Instance the opportunity to observe that the term 'decision' in the fourth paragraph of Article 230 EC has the technical meaning employed in Article 249 EC. Since it applies to objectively determined situations and produces legal effects with respect to categories of persons envisaged generally and in the abstract, Council Decision 1999/307/EC of 1 May 1999 laying down the detailed arrangements for the integration of the Schengen Secretariat into the General Secretariat of the Council (OJ 1999 L 119, p. 49), despite being entitled a 'decision', is an act of a legislative nature. Turning to the question of the

7 Council Regulation (EC) No 2742/1999 of 17 December 1999 fixing for 2000 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where limitations in catch are required, and amending Regulation (EC) No 66/98 (OJ 1999 L 341, p. 1).

8 The ICES Zone is the statistical zone identified by the International Council for the exploration of the sea. CECAF is the acronym for the Fishery Committee for the Eastern Central Atlantic.

applicants' standing to seek annulment of the act — of which they were not the addressees — the Court of First Instance held that they were not individually concerned by that act. In response to the argument that they were individually distinguished as a result of the Council's failure to establish a recruitment procedure consistent with the relevant provisions of the Staff Regulations of officials of the European Communities, in which they could have taken part, the Court of First Instance held that such an argument, by which the applicants complained that the institution deprived them of procedural rights, was irrelevant for the purpose of assessing the admissibility of an action brought against a legislative measure unless the institution's choice was shown to constitute an abuse of procedure. However, no evidence of this had been adduced in this case. It also pointed out that for the existence of a closed class of individuals to be a relevant factor distinguishing the persons in question individually in relation to a legislative act, the institution adopting the contested act must have been under an obligation to take account, at the time of adoption of the act, of the particular circumstances of those individuals. As no evidence was adduced which would support a finding that the applicants were individually concerned, their action was dismissed as inadmissible.

. In the field of State aid, it is clear from the judgment in *Hamburger Hafen- und Lagerhaus and Others* v *Commission*, cited above, that a party must be a competitor of the beneficiary of State aid to have standing as a party concerned within the meaning of Article 88(2) EC. As it was not in direct competition with the beneficiary of the aid, the applicant company was not deemed to have standing as a party concerned and its action for annulment of the Commission decision approving State aid without initiating the formal assessment procedure provided for by that provision was declared inadmissible.

However, the Court of First Instance ruled admissible an action for annulment, brought by one of the beneficiaries of a general aid scheme, of a Commission decision declaring a provision of a finance law incompatible with the common market and ordering recovery from undertakings in receipt of aid granted under that provision. In the judgment in *Mitteldeutsche Erdoel-Raffinerie* v *Commission*, cited above, the applicant was held to be individually concerned by the contested decision. The Court of First Instance observed that several factors, demonstrating that account was specifically taken of the applicant's investment project, placed it in a situation which differentiated it from all other operators.

. Several cases gave the Court of First Instance an opportunity to recall the conditions under which a professional association is deemed to have standing to bring an action under Article 230 EC (orders in *Iberotam and Others* v *Commission* and *Federación de Cofradías de Pescadores de Guipúzcoa and Others* v *Council*, cited above; judgment in *Hamburger Hafen- und Lagerhaus and Others* v *Commission*, cited above). None of the applicant associations could be considered to represent one or several of its members (following the solution devised in the judgment in Joined Cases T-447/93, T-448/93 and T-449/93 *AITEC and Others* v *Commission* [1995] ECR II-1971) or to have the capacity of negotiator within the meaning of the judgments of the Court of Justice 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.

4. Time-limit for bringing an action

In its order of 14 February 2001 in Case T-3/00 *Pitsiorlas* v *Council and ECB* [2001] ECR II-717 (under appeal, Case C-193/01 P), the Court again made the point that an excusable error may, in exceptional circumstances, have the effect of not making the applicant out of time. It pointed out that this is so, in particular, when the conduct of the institution concerned has been, either alone or to a decisive extent, such as to give rise to pardonable confusion in the mind of a party acting in good faith and exercising all the diligence required of a normally experienced person. However, in this case, since the circumstances put forward by the applicant were not regarded as exceptional circumstances giving rise to an excusable error, the action for annulment, to the extent that it impugned the Council's decision, was dismissed as inadmissible.

B. Review of legality

1. Competition rules applicable to undertakings

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

The lessons to be drawn from the case-law in 2001 cover a wide variety of issues: the scope of the Community competition rules; agreements and concerted practices prohibited by Article 81 EC and Article 65 CS; abuses of

dominant position prohibited by Article 82 EC; observance of the rights of the defence; examination of complaints of infringements of the competition rules; and determining the applicable penalties.

(a) Scope of the Community competition rules

(a.1) Scope *ratione materiae*

Do the rules which organise the exercise of a liberal profession fall within the scope *ratione materiae* of Article 81 EC? That is, in essence, the question on which the Court of First Instance ruled in its judgment in Case T-144/99 *Institut des mandataires agréés* v *Commission* [2001] ECR II-1087, holding that rules which organise the exercise of a profession cannot be considered to fall as a matter of principle outside the scope of Article 81(1) EC merely because they are classified as 'rules of professional conduct' by the competent bodies. In so holding it endorses the approach taken by the Commission in the decision [9] which prompted the action. It follows that an examination on a case-by-case basis is essential in order to assess the validity of such rules under that provision of the Treaty, in particular by taking account of their impact on the freedom of action of the members of the profession and on its organisation and also on the recipients of the services in question.

In this case that approach yielded real results as the Court of First Instance confirmed, on one point, the Commission's finding that a simple prohibition, under a code of conduct, of comparative advertising between professional representatives restricts competition in that it limits the ability of more efficient professional representatives to develop their services. This has the consequence, *inter alia*, that the clientele of each professional representative is crystallised within a national market.

9 Commission Decision 1999/267/EC of 7 April 1999 relating to a proceeding pursuant to Article [81] of the EC Treaty (IV/36.147 EPI code of conduct) (OJ 1999 L 106, p. 14).

(a.2) Rule of reason

In an action for annulment of a Commission decision of 3 March 1999 [10] the applicant companies (Métropole télévision (M6), France Télécom, Suez-Lyonnaise des eaux and Télévision française 1 SA (TF1)) submitted that the application of a 'rule of reason' would have shown that Article 81(1) EC did not apply to the exclusivity clause and to the clause relating to the special-interest channels agreed on when Télévision par satellite (TPS) was set up, with the result that those two clauses should not have been examined under Article 81(3) EC — and still less exempted — as they were by the Commission.

According to the Court of First Instance (judgment in *M6 and Others* v *Commission*, cited above), the existence of a rule of reason in the application of Article 81(1) EC cannot be upheld. It took the view that an interpretation of Article 81(1) EC requiring — in accordance with a rule of reason — the pro and anti-competitive effects of an agreement to be weighed in order to determine whether it is caught by the prohibition laid down in Article 81(1) EC is difficult to reconcile with the rules prescribed by Article 81 EC. That article expressly provides, in its third paragraph, for the possibility of exempting agreements that restrict competition where they satisfy a number of conditions, in particular where they are indispensable to the attainment of certain objectives and do not afford undertakings the possibility of eliminating competition in respect of a substantial part of the products in question. It is only in the precise framework of that provision that the pro and anti-competitive aspects of a restriction may be weighed. Otherwise Article 81(3) EC would lose much of its effectiveness.

Citing certain judgments in which the Court of Justice and the Court of First Instance favoured a more flexible interpretation of the prohibition laid down in Article 81(1) EC, the Court of First Instance none the less took the view that those judgments could not be interpreted as establishing the existence of a rule of reason in Community competition law. They are, rather, part of a broader trend in the case-law according to which it is not necessary to hold, wholly abstractly and without drawing any distinction, that any agreement restricting the freedom of action of one or more of the parties is necessarily caught by the prohibition laid down in Article 81(1) EC. In assessing the

10 Commission Decision 1999/242/EC of 3 March 1999 relating to a proceeding pursuant to Article [81] of the EC Treaty (IV/36.237 — TPS) (OJ 1999 L 90, p. 6).

applicability of that article to an agreement, account should be taken of the actual conditions in which it functions, in particular the economic and legal context in which the undertakings operate, the nature of the products or services covered by the agreement and the actual operation and structure of the market concerned.

(a.3) Ancillary restrictions

The same judgment, *M6 and Others* v *Commission*, gave the Court of First Instance an opportunity to clarify the concept of ancillary restriction in Community competition law and the implications of such a definition. In essence the applicants submitted that the Commission should have classified the exclusivity clause and the clause relating to special-interest channels (which were the subject of an exemption under Article 81(3) EC) as ancillary restrictions on the creation of the TPS (with regard to which the Commission took the view that it did not need to intervene under Article 81(1) EC).

As regards the concept of an 'ancillary restriction' the Court of First Instance took the view that it covers any restriction which is directly related and necessary to the implementation of a main operation.

A restriction 'directly related' to implementation of a main operation must, according to this judgment, be understood to be any restriction which is subordinate to the implementation of that operation and which has an evident link with it. The condition that a restriction be necessary implies a two-fold examination, establishing, first, whether the restriction is objectively necessary for the implementation of the main operation and, second, whether it is proportionate to it. Examination of the objective necessity of a restriction in relation to the main operation cannot but be relatively abstract. If, without the restriction, the main operation is difficult or even impossible to implement, the restriction may be regarded as objectively necessary for its implementation. However, if the duration or the scope of the restriction exceed what is necessary in order to implement the operation, it must be assessed separately under Article 81(3).

As regards the consequences, the Court of First Instance took the view that the compatibility of that restriction with the competition rules must be examined with that of the main operation. Thus, if the main operation does not fall within the scope of the prohibition laid down in Article 81(1) EC, the same holds for the restrictions directly related to and necessary for that operation. If, on the other hand, the main operation is a restriction within the meaning

of that provision but benefits from an exemption under Article 81(3) EC, that exemption also covers those ancillary restrictions. In this case the Court of First Instance held that the Commission did not commit a manifest error of assessment in not classifying the above clauses as restrictions that were ancillary to the creation of TPS and therefore making a separate analysis of their compatibility with the competition rules.

(b) Prohibited agreements

(b.1) Agreements prohibited by Article 81(1) EC

. Several cases gave the Court of First Instance an opportunity to review the legality of Commission decisions finding infringements of Article 81(1) EC. In its judgment in Joined Cases T-202/98, T-204/98 and T-207/98 *Tate & Lyle and Others* v *Commission* [2001] ECR II-2035 (under appeal, Case C-359/01 P), it held that the conditions for prohibiting an agreement had been correctly applied by the Commission in its decision of 14 October 1998 [11] and, therefore, dismissed the application on that point.

. The problem of restrictions of competition generated by the cumulative effect of similar vertical agreements was dealt with in depth in the judgment in Case T-25/99 *Roberts* v *Commission* [2001] ECR II-1881.

In that case, the operators of a pub in the United Kingdom claimed, in a complaint under Article 3(2) of Regulation No 17 of the Council of 6 February 1992, First Regulation implementing Articles [81] and [82] of the Treaty (OJ, English Special Edition 1959-1962, p. 87), that the lease used by the local brewery, Greene King, from which, as tenants, they were subject to an obligation to obtain beer, was contrary to Article 81(1) EC. Their complaint was rejected by the Commission on the ground that the standard lease used by Greene King did not fall within the scope of that article. The action which they brought before the Court of First Instance sought the annulment of that decision.

[11] Commission Decision 1999/210/EC of 14 October 1998 relating to a proceeding pursuant to Article [81] of the EC Treaty Case IV/F-3/33.708 — British Sugar plc, Case IV/F-3/33.709 — Tate & Lyle plc, Case IV/F-3/33.710 — Napier Brown & Company Ltd, Case IV/F-3/33.711 — James Budgett Sugars Ltd (OJ 1999 L 76, p. 1).

Having ascertained in detail that the contested decision correctly defined the relevant market as that of the distribution of beer in establishments selling alcoholic beverages for consumption on the premises — the same as that identified by the Court of Justice in Case C-234/89 *Delimitis* [1991] ECR I-935 — the Court considered whether the Commission was right to find that Greene King's network of agreements, consisting of the leases with a purchasing obligation concluded between that brewery and its tenants, did not make a significant contribution to that foreclosure of the relevant market, so that the agreements were not caught by the prohibition in Article 81(1) EC. The Court of First Instance endorsed that conclusion.

In that connection it recalled, first, that in order to assess whether a standard beer supply agreement contributes to the cumulative effect of closing off the market produced by all such agreements, it is necessary, as held in the case-law of the Court of Justice, to take into consideration the position of the contracting parties in the market. The contribution also depends on the duration of the agreements. If it is manifestly excessive in relation to the average duration of agreements generally concluded in the relevant market, the individual agreement falls under the prohibition laid down in Article 81(1) EC. A brewery holding a relatively small share of the market which ties its sales outlets for many years may contribute to foreclosure of the market as significantly as a brewery with a comparatively strong position in the market which regularly frees its outlets at frequent intervals. In this case neither the market share of the brewer nor the duration of the beer supply contracts were held to contribute significantly to the foreclosure of the market.

The Court of First Instance went on to consider whether a network of agreements of a wholesaling brewery, here Greene King, which does not in itself significantly contribute to the foreclosure of the market, may be linked to networks of agreements of supplying breweries, which do contribute significantly to such foreclosure, and may thus fall within the scope of Article 81(1) EC. Two conditions must be met in that regard. First, it must be considered whether the beer supply agreements concluded between that wholesaling brewery and the supplying breweries, known as 'upstream' agreements, may be regarded as forming part of the supplying breweries' networks of agreements. That condition is satisfied if the upstream agreements contain terms which may be analysed as a purchasing obligation (commitments to purchase minimum quantities, stocking obligations or non-competition obligations). Second, for not only the 'upstream' agreements but also the agreements concluded between the wholesaling brewery and the establishments tied to it — the 'downstream' agreements — to be attributed to the supplying

breweries' networks of agreements, it is also necessary for the agreements between the supplying breweries and the wholesaling brewery to be so restrictive that access to the wholesaling brewery's network of 'downstream' agreements is no longer possible, or at least very difficult, for other breweries. If the restrictive effect of the 'upstream' agreements is limited, other breweries are able to conclude supply agreements with the wholesaling brewery and so enter the latter's network of 'downstream' agreements. They are thus in a position to have access to all the establishments in that network without it being necessary to conclude separate agreements with each outlet. The existence of a network of 'downstream' agreements thus constitutes a factor which can promote penetration of the market by other breweries. Concluding its analysis, the Court of First Instance held that the Commission did not make a manifest error of assessment in concluding in the contested decision (point 106) that Greene King's network of 'downstream' agreements could not be attributed to those of the supplying breweries which had concluded beer supply agreements with Greene King.

(b.2) Agreements prohibited by Article 65 CS

. Wirtschaftsvereinigung Stahl, the German steel industry trade association, and 16 of its members had notified the Commission of an agreement on an information exchange system which was declared contrary to Article 65(1) CS by decision of 26 November 1997. [12] That decision was annulled (judgment in Case T-16/98 *Wirtschaftsvereinigung Stahl and Others* v *Commission* [2001] ECR II-1217), the Court of First Instance having pointed out that the Commission wrongly took account in its assessment of matters which were not notified to it. In that regard it recalled that information exchange agreements are not generally prohibited automatically but only if they have certain characteristics relating, in particular, to the sensitive and accurate nature of recent data exchanged at short intervals. Where the Commission based its assessment on the combined effect of the exchange of the three ECSC questionnaires 2-71, 2-73 and 2-74, whereas the notified agreement does not provide for the exchange of ECSC questionnaire 2-73, which specifically furnishes the most accurate and detailed data and is accordingly likely to reveal the strategy of the various producers, that fact has the effect of completely invalidating the analysis made by the Commission. If the Commission had

12 Commission Decision 98/4/ECSC of 26 November 1997 relating to a proceeding pursuant to Article 65 of the ECSC Treaty (Case IV/36.069 — Wirtschaftsvereinigung Stahl) (OJ 1998 L 1, p. 10).

taken account of the real scope of the notified agreement, it is not inconceivable that its evaluation would have been different and that it would have considered that the agreement was not contrary to Article 65(1) CS.

. By its decision of 21 January 1998 [13] the Commission found that a number of undertakings had reached an agreement to use with effect from the same date identical reference values in the method for calculating the alloy surcharge (the alloy surcharge is a price supplement calculated on the basis of the prices of alloying materials used by stainless steel producers (nickel, chromium and molybdenum), which is added to the basic price for stainless steel) with a view to securing an increase in the price of stainless steel. It imposed penalties on them on that basis.

In its judgment of 13 December 2001 in Joined Cases T-45/98 and T-47/98 *Krupp Thyssen and Acciai speciali Terni* v *Commission* (not yet published in the ECR), the Court of First Instance upheld that decision, holding that the two applicants had committed an infringement deriving from their participation in an agreement concerning the introduction and application, in a concerted manner, of the same reference values for alloys in the formula for calculating the alloy surcharge. In its findings it recalled that the Commission is not obliged, in order to establish an infringement of Article 65(1) CS, to demonstrate that there was an adverse effect on competition, provided that it has established the existence of an agreement or concerted practice intended to restrict competition, even though the agreement related only to one component of the final price of stainless steel flat products.

(c) Exemptions from prohibition

The duration of an exemption must be sufficient to enable the beneficiaries to achieve the benefits justifying such exemption. However, some applicants disputed the legality of decisions addressed to them on the ground that they considered the duration of the individual exemption granted to them to be too short (judgments in *Institut des mandataires agréés* v *Commission* and *M6 and Others* v *Commission*, cited above). However, neither of those two actions was upheld in that regard.

13 Commission Decision 98/247/ECSC of 21 January 1998 relating to a proceeding under Article 65 of the ECSC Treaty (Case IV/35.814 — Alloy Surcharge) (OJ 1998 L 100, p. 55).

In its findings in *M6 and Others* v *Commission* the Court of First Instance held that the applicants had not adduced sufficient evidence that the Commission had made a manifest error of assessment in determining the duration of the exemption under Article 81(3) EC, pointing out that, with regard to complex evaluations on economic matters, judicial review of those evaluations must confine itself to an examination of the relevance of the facts and of the legal consequences which the Commission deduces from them.

(d) Abuse of dominant position

In its judgment of 22 November 2001 in Case T-139/98 *AAMS* v *Commission* (not yet published in the ECR), the Court of First Instance upheld the Commission decision [14] finding that Autonoma dei Monopoli di Stato, a body forming part of the financial administration of the Italian State which, in particular, engages in the production, import, export and wholesale distribution of manufactured tobaccos, in taking advantage of its dominant position on the Italian market had engaged in improper behaviour in order to protect its position on the Italian market for cigarettes, in breach of Article 82 EC.

(e) Rights of the defence

. Mannesmannröhren-Werke brought an action before the Court of First Instance for annulment of a Commission decision taken pursuant to Article 11(5) of Regulation No 17 requiring it to reply to certain questions within the period prescribed on penalty of a fine. The applicant claimed that the decision infringed its rights of defence.

In its judgment in Case T-112/98 *Mannesmannröhren-Werke* v *Commission* [2001] ECR II-729, the Court of First Instance partially upheld that claim, basing its findings on the reasoning of the Court of Justice in *Orkem*. [15] In so ruling, the Court of First Instance asserted that there is no absolute right to silence in Community competition proceedings but confirmed that an undertaking to which a decision requesting information is addressed has the

14 Commission Decision 98/538/EC of 17 June 1998 relating to a proceeding pursuant to Article [82] of the EC Treaty (IV/36.010-F3 — Amministrazione Autonoma dei Monopoli di Stato) (OJ 1998 L 252, p. 47).

15 Judgment in Case 374/87 *Orkem* v *Commission* [1989] ECR 3283.

right to refuse to give replies in which it would be forced to admit the existence of an infringement. In this case, the Court of First Instance partially annulled the Commission decision in so far as it contained questions calling upon the undertaking to describe the purpose of certain meetings and the decisions adopted during them.

As regards the arguments to the effect that Article 6(1) and (2) of the ECHR enables a person in receipt of a request for information to refrain from answering the questions asked, even if they are purely factual in nature, and to refuse to produce documents to the Commission, the Court of First Instance pointed out that the applicant cannot directly invoke the ECHR before the Community court.

However, it emphasised that Community law does recognise as fundamental principles both the rights of defence and the right to fair legal process. It is in application of those principles, *which offer, in the specific field of competition law, at issue in the present case, protection equivalent to that guaranteed by Article 6 of the ECHR*, that the Court of Justice and the Court of First Instance have consistently held that the recipient of requests sent by the Commission pursuant to Article 11(5) of Regulation No 17 is entitled to confine himself to answering questions of a purely factual nature and to producing only the pre-existing documents and materials sought and, moreover, is so entitled as from the very first stage of an investigation initiated by the Commission. It added that the fact of being obliged to answer purely factual questions put by the Commission and to comply with its requests for the production of documents already in existence cannot constitute a breach of the principle of respect for the rights of defence or impair the right to fair legal process. There is nothing to prevent the addressee of such questions or requests from showing, whether later during the administrative procedure or in proceedings before the Community courts, when exercising his rights of defence, that the facts set out in his replies or the documents produced by him have a different meaning from that ascribed to them by the Commission.

As regards the possible implications for the assessment of this case of the Charter of fundamental rights of the European Union (OJ 2000 C 364, p. 1), proclaimed on 7 December 2000 in Nice and cited by the applicant, the Court of First Instance confined itself to observing that the Charter had not yet been proclaimed on the date of the adoption of the contested decision (15 May 1998) and could therefore have no implications for the legality of that decision.

. In its judgment in *Krupp Thyssen Stainless and Acciai speciali Terni* v *Commission*, cited above, the Court of First Instance held that Krupp Thyssen Stainless, although it had made a statement by which it agreed to be held liable for conduct imputed to Thyssen Stahl since the latter's business in the product sector concerned by the infringement had been transferred to it, had not waived its right to be heard as to the facts. In that regard, while such a statement takes account *inter alia* of economic considerations specific to concentrations of undertakings and constitutes an exception to the principle that a natural or legal person may be penalised only for acts imputed to it individually, it must be interpreted strictly. In particular, unless he gives some indication to the contrary, the person making such a statement cannot be presumed to have waived the right to exercise his rights of defence. In the light of those considerations, the Court of First Instance partially annulled Article 1 of the contested decision.

(f) Examination of complaints by the Commission

While it has been settled case-law since the judgment in Case 125/78 *Gema* v *Commission* [1979] ECR 3173 that Article 3(2) of Regulation No 17 does not entitle the applicant within the meaning of that article to require from the Commission a final decision within the meaning of Article 249 EC as regards the existence or non-existence of an infringement of Article 81 EC and/or Article 82 EC, the Commission is obliged nevertheless to examine carefully the factual and legal particulars brought to its notice by the complainant in order to decide whether they disclose conduct of such a kind as to distort competition in the common market and affect trade between the Member States (judgment in Case T-206/99 *Métropole télévision* v *Commission* [2001] ECR II-1057), and inform the complainant of the reasons why it decides, if it does, to close the file.

A number of cases gave the Court of First Instance an opportunity to ascertain whether the obligations incumbent upon the Commission in the processing of complaints referred to it were respected (judgments in Joined Cases T-197/97 and T-198/97 *Weyl Beef Products and Others* v *Commission* [2001] ECR II-303, Case T-26/99 *Trabisco* v *Commission* [2001] ECR II-633, Case T-62/99 *Sodima* v *Commission* [2001] ECR II-655, Case T-115/99 *SEP* v *Commission* [2001] ECR II-691 and *Métropole télévision* v *Commission*, cited above; order in *Compagnia Portuale Pietro Chiesa* v *Commission*, cited above). One case also concerned the obligations of the Commission in respect of a complaint relating to infringements of the ECSC Treaty (Case T-89/98

NALOO v *Commission* [2001] ECR II-515 (under appeal, Cases C-172/01 P, C-175/01 P, C-176/01 P and C-180/01 P).

. One of the obligations incumbent upon the Commission is the obligation to state reasons for the measures it adopts. In two judgments, *Métropole télévision* v *Commission* and *NALOO* v *Commission*, cited above, the Court of First Instance raised of its own motion the Commission's failure to state reasons for the contested decisions and annulled them.

In *Métropole télévision* v *Commission* the contested decision rejected a complaint in which Métropole télévision criticised the practices of the European Broadcasting Union (EBU) in refusing its application for admission several times.

To understand the Court's ruling, it is necessary to bear in mind that, by its judgment in Joined Cases T-528/93, T-542/93, T-543/93 and T-546/93 *Métropole and Others* v *Commission* [1996] ECR II-649, the Court of First Instance annulled the decision granting an exemption under Article 81(3) EC *inter alia* for the EBU's statutes.

Following that judgment annulling the decision, in which the Court of First Instance did not rule on the application to the case in point of Article 81(1) EC, the Commission went back on its position concerning the application of that provision to the EBU's membership rules, expressing the view in the decision rejecting the complaint that those rules did not fall within the scope of that provision of the Treaty. Although the Court allowed such a substantial change in the Commission's position, it took the view that it required a statement of reasons. No reasons were stated in the case in point.

. The Court of First Instance also reviewed the merits of decisions rejecting complaints. It was essentially a matter of ascertaining whether the Commission was justified in rejecting a complaint on the ground of insufficient Community interest in pursuing examination of the case or because the conditions for the application of the Community competition rules in the EC Treaty were not satisfied.

For instance, in *Métropole télévision* v *Commission*, the Court of First Instance found not only that there was no statement of reasons, which in itself made the act voidable, but also that the Commission had infringed the obligations incumbent upon it when examining a complaint for infringement of Article 81 EC in failing to assess the possible persistence of anti-competitive effects and

their impact on the market in question, even if those practices had ceased since the matter was referred to it.

. Finally, in its judgments in *Trabisco* v *Commission* and *Sodima* v *Commission*, cited above, the Court of First Instance held that, although it is true that the Commission is required to adopt, within a reasonable time, a decision on a complaint under Article 3 of Regulation No 17, the fact that it exceeds a reasonable time, even if proven, does not necessarily in itself justify annulment of the contested decision. It observed that, as regards application of the competition rules, a failure to act within a reasonable time can constitute a ground for annulment only in the case of a decision finding an infringement, where it has been proved that infringement of that principle has adversely affected the ability of the undertakings concerned to defend themselves. Except in that specific circumstance, failure to comply with the principle that a decision must be adopted within a reasonable time cannot affect the validity of the administrative procedure conducted under Regulation No 17. Accordingly, the plea alleging the unreasonable duration of the administrative procedure was ineffective in that connection.

(g) Determining the amount of fines

. In 1998 the Commission adopted guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty (OJ 1998 C 9, p. 3). The first cases involving the application of those guidelines have come before the Court of First Instance.

Having been fined ECU 39.6 million, by a Commission decision, [16] for infringement of Article 81(1) EC on the industrial and retail sugar markets, British Sugar argued before the Court of First Instance that the concept of aggravating circumstances introduced by the guidelines is not in conformity with Article 15(2) of Council Regulation No 17. In its judgment in *Tate & Lyle and Others* v *Commission*, the Court held that that argument was without foundation. The procedure followed by the Commission to fix the amount of the fine, in the first stage assessing the gravity solely by reference to factors relating to the infringement itself, such as its nature and its impact on the market, and in the second, modifying the assessment of the gravity by reference to circumstances relating to the undertaking concerned, which,

16 See footnote 11.

moreover, leads the Commission to take into account not only possible aggravating circumstances but also, in appropriate cases, attenuating circumstances, is far from being contrary to the letter and the spirit of Article 15(2) of Regulation No 17. It allows the Commission, particularly in the case of infringements involving many undertakings, to take account in its assessment of the gravity of the infringement, of the different role played by each undertaking and its attitude towards the Commission during the course of the proceedings.

An undertaking may adopt a cooperative attitude towards the Commission. Such cooperation may be rewarded pursuant to the Commission Notice on the non-imposition or reduction of fines in cartel cases (OJ 1996 C 207, p. 4).

The extent of the cooperation, its classification as such and whether it is actually taken into account by the Commission in fixing the amount of the fine are, however, subject to dispute, as the cases of *Tate & Lyle* v *Commission* — in which the Court of First Instance held that the Commission did not correctly assess the extent of the cooperation by Tate & Lyle — and *Krupp Thyssen Stainless and Acciai speciali Terni* v *Commission*, cited above, and Case T-48/98 *Acerinox* v *Commission* (judgment of 13 December 2001, not yet published in the ECR) show.

In the latter two judgments, the Court of First Instance held that the Commission had breached the principle of equal treatment in applying one of the criteria laid down in the above notice in a discriminatory manner.

The dispute on this point arose because the Commission allowed a reduction in the amount of the fines imposed on the applicants which was less than that allowed to Usinor, the first undertaking to reply to the Commission's questions regarding the alleged infringement, on the ground that the applicants had provided no further evidence than that in the first reply received. In reply to a question from the Court, the Commission confirmed that it had sent the same questionnaire to all the undertakings.

Since the Commission did not show that the applicants had had any knowledge of the answers given by Usinor, the mere fact that one of those undertakings was the first to acknowledge the facts could not constitute an objective reason for treating the undertakings concerned differently. The appraisal of the extent of the cooperation shown by undertakings cannot depend on purely random factors, such as the order in which they are questioned by the Commission.

(h) Concentrations

Only one case on the subject of concentrations of undertakings was decided by the Court of First Instance. It fell within the rules of the ECSC Treaty (Case T-156/98 *RJB Mining* v *Commission* [2001] ECR II-337 (under appeal, Joined Cases C-157/01 P and C-169/01 P)). The case arose from the Commission decision of 29 July 1998 [17] authorising, under Article 66 CS, the merger of three German coal producers, RAG Aktiengesellschaft (RAG), Saarbergwerke AG (SBW) and Preussag Anthrazit GmbH. The price to be paid by RAG for the acquisition of SBW was fixed at one German mark. That merger formed part of an agreement ('the Kohlekompromiß') concluded between those three companies and the German authorities, which provided for the grant of State aid by the German Government.

In annulling the contested decision, the Court of First Instance held that in adopting a decision on the compatibility of a concentration between undertakings with the common market the Commission must take into account the consequences which the grant of State aid to those undertakings has on the maintenance of effective competition in the relevant market. The Court explained that although the Commission was not required to assess the legality of the supposed aid, namely the price paid for the acquisition of SBW, it could not, in its analysis of the competitive situation under Article 66(2) CS, refrain from assessing whether, and if so to what extent, the financial and thus the commercial strength of the merged entity was strengthened by the financial support provided by that supposed aid.

2. State aid

The Court decided actions seeking the annulment of decisions taken under the rules of the EC Treaty (Case T-73/98 *Prayon-Rupel* v *Commission* [2001] ECR II-867, Case T-288/97 *Regione autonoma Friuli-Venezia Giulia* v *Commission* [2001] ECR II-1169, Case T-187/99 *Agrana Zucker und Stärke* v *Commission* [2001] ECR II-1587 (under appeal, Case C-321/01 P) and of the ECSC Treaty (Case T-6/99 *ESF Elbe-Stahlwerke Feralpi* v *Commission* [2001] ECR II-1523

17 Commission decision of 29 July 1998 authorising the acquisition by RAG Aktiengesellschaft of control of Saarbergwerke AG and Preussag Anthrazit GmbH (Case No IV/ECSC.1252-RAG/Saarbergwerke AG/Preussag Anthrazit).

and Joined Cases T-12/99 and T-63/99 *UK Coal* v *Commission* [2001] ECR II-2153).

(a) Examination by the Commission

By decision of 1 October 1997, the Commission decided that the extension by the German authorities of the aid scheme for investment projects in the new *Länder*, a scheme which it had previously approved, constituted State aid incompatible with the common market. One company which stood to benefit from that extension, Mitteldeutsche Erdoel-Raffinerie, which had been unable to complete its investment project in the time allowed by the original aid scheme for reasons beyond its control, brought an action which gave rise to the judgment in *Mitteldeutsche Erdoel-Raffinerie* v *Commission*, cited above, annulling, *in respect of the applicant*, the contested decision. The Court of First Instance held that the Commission was not justified in concluding *as far as the applicant was concerned*, that the legal provision at issue introduced *additional* State aid or was incompatible with the common market.

In its findings the Court stated that, in the decision it adopts following its examination, the Commission can consider that some specific applications of the aid scheme notified constitute aid while others do not, or can declare certain applications only to be incompatible with the common market. In the exercise of its wide discretion, it may differentiate between the beneficiaries of the aid scheme notified by reference to certain characteristics they have or conditions they satisfy. It is even possible that the Commission should not confine itself to carrying out a general, abstract analysis of the aid scheme notified, but should also be obliged to examine the specific case of one of the undertakings benefiting from the aid. In the case in point, such an examination was required not only in view of the particular features of the case, but also because, during the administrative procedure, the Government of the Member State concerned had expressly asked for that to be done.

(b) Opening of the formal examination procedure

On account of its failure to initiate the procedure under Article 88(2) EC, the Commission was censured by the Court of First Instance which annulled the decision of the Commission to raise no objection to the grant of aid by the Federal Republic of Germany to Chemische Werke Piesteritz GmbH (judgment

in *Prayon-Rupel* v *Commission*, cited above). The conditions under which that procedure must be initiated were defined.

In that regard, it is settled case-law that the procedure under Article 88(2) EC is obligatory if the Commission experiences serious difficulties in establishing whether or not aid is compatible with the common market. The Commission cannot therefore limit itself to the preliminary procedure under Article 88(2) EC and take a favourable decision on a State measure which has been notified unless it is in a position to reach the firm view, following an initial investigation, that the measure cannot be classified as aid within the meaning of Article 87(1) EC, or that the measure, whilst constituting aid, is compatible with the common market. On the other hand, if the initial analysis results in the Commission taking the contrary view of the aid's compatibility with the common market or does not enable all the difficulties raised by the assessment of the measure in question to be overcome, the Commission has a duty to gather all necessary views and to that end to initiate the procedure under Article 88(2) EC.

When the Commission decides, on the basis of the factual and legal circumstances of the case, whether the difficulties involved in assessing the compatibility of the aid require the initiation of that procedure, that decision must satisfy three requirements.

Firstly, under Article 88 EC the Commission's power to find aid to be compatible with the common market upon the conclusion of the preliminary procedure is restricted to aid measures that raise no serious difficulties. That criterion is thus an exclusive one. The Commission may not, therefore, decline to initiate the formal investigation procedure in reliance upon other circumstances, such as third party interests, considerations of economy of procedure or any other ground of administrative convenience.

Secondly, where it encounters serious difficulties, the Commission must initiate the formal procedure, having no discretion in this regard. Whilst its powers are circumscribed as far as initiating the formal procedure is concerned, the Commission nevertheless enjoys a certain margin of discretion in identifying and evaluating the circumstances of the case in order to determine whether or not they present serious difficulties. In accordance with the objective of Article 88(3) EC and its duty of good administration, the Commission may, amongst other things, engage in talks with the notifying State or with third parties in an endeavour to overcome, during the preliminary procedure, any difficulties encountered.

Thirdly, the notion of serious difficulties is an objective one. Whether or not such difficulties exist requires investigation of both the circumstances under which the contested measure was adopted and its content, conducted objectively, comparing the grounds of the decision with the information available to the Commission when it took a decision on the compatibility of the disputed aid with the common market. It follows that judicial review by the Court of First Instance of the existence of serious difficulties will, by nature, go beyond simple consideration of whether or not there has been a manifest error of assessment.

In this case the applicant succeeded in proving the existence of serious difficulties. That proof was furnished by reference to a body of consistent evidence, namely that the Commission did not possess sufficient information and the fact that the procedure conducted by the Commission significantly exceeded, both in terms of the duration of the administrative procedure and in terms of the circumstances under which it was conducted, the normal parameters of a preliminary examination carried out pursuant to Article 88(3) EC.

(c) Distinction between new and existing aid

. By its judgment in *Regione autonoma Friuli-venezia Giulia* v *Commission*, cited above, the Court of First Instance confirmed the solution it had adopted in its judgment 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* [2000] ECR II-2319 (under appeal, Case C-298/00 P). [18]

Laws of the Friuli-Venezia Giulia Region (Italy) of 1981 and 1985 provide for financial aid measures for local road haulage firms, but those measures were not notified to the Commission. In a decision adopted in 1997, the Commission declared the aid granted to international road haulage firms and that granted, from 1 July 1990 to firms carrying out exclusively local, regional or national haulage incompatible with the common market and ordered its recovery.

[18] This judgment was commented on in the 2000 Annual Report.

Upholding the solution originally devised in the judgment in *Alzetta and Others* v *Commission*, the Court of First Instance held that a system of aid established in a market that was initially closed to competition must, when that market is liberalised, be regarded as an existing aid system, in so far as at the time of its establishment it did not come within the scope of Article 87(1) EC, which applies only to sectors open to competition.

In this case, as the cabotage market was only liberalised from 1 July 1990, aid granted to undertakings engaged solely in local, regional or national transport, under systems set up in 1981 and 1985, must be classified as existing aid and can be the subject, if at all, only of a decision finding it incompatible as to the future.

Conversely, since the international road haulage sector was opened up to competition from 1969 onwards, the systems of aid established in 1981 and 1985 in that sector should have been regarded as new systems of aid which were subject, as such, to the obligation of notification laid down by Article 88(3) EC.

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

As the Court of Justice now has before it an action for annulment of the decision at issue in the case under consideration, brought by the Italian Republic (Case C-372/97), and appeals against those two judgments of the Court of First Instance, the Court of Justice will give a final ruling on the issue of law thus decided.

. The judgment in *Agrana Zucker und Stärke* v *Commission*, cited above, recalls that if the Commission has not responded within two months of full notification of a new aid plan the Member State concerned may put the proposed aid into effect provided, however, that it has given prior notice to the Commission, and that aid will then come under the scheme for existing aid. Compliance with that obligation to give notice is designed to establish, in the interest of the parties concerned and of the national courts, the date from which the aid falls under the scheme for existing aid. Where that obligation has not been met the aid concerned cannot be regarded as existing aid.

(d) Derogations from the prohibition

The Court's findings as to derogations from the prohibition laid down by the EC Treaty (*inter alia* the judgment in *Agrana Zucker und Stärke* v *Commission*, cited above) confirm previous, well-established decisions.

However, in connection with the ECSC Treaty, the interpretation of the rules applicable to State aid in the coal sector gave rise to some more precise definitions in the proceedings between UK Coal, formerly RJB Mining, and the Commission.

On 9 September 1999 the Court had delivered an *interlocutory judgment* in Case T-110/98 *RJB Mining* v *Commission* [1999] ECR II-2585, [19] confined to two questions of law, raised by RJB Mining in its action for annulment of the Commission decision authorising financial aid from the Federal Republic of Germany for the coal industry in 1997. Those two questions were whether the Commission is authorised by Decision No 3632/93/ECSC [20] to give *ex post facto* approval to aid which has already been paid without its prior approval and whether the Commission has power under Article 3 of that decision to authorise the grant of operating aid provided only that the aid enables the recipient undertakings to reduce their production costs and achieve degression of aid, without their having any reasonable chance of achieving economic viability within the foreseeable future.

The Court of First Instance gave the same replies to those questions, raised in actions for annulment of Commission decisions authorising financial aid from the Federal Republic of Germany for the coal industry in 1998 and 1999, in its judgment in *UK Coal* v *Commission*, cited above.

Thus, it took the view that the plea based on the alleged prohibition on authorising *ex post facto* aid paid without prior authorisation was unfounded. It also dismissed the plea based on the Commission's alleged lack of authority by reason of late notification by the Federal Republic of Germany of certain financial aid, the Court taking the view that the time-limit for notification provided for by Decision No 3632/93 is a purely procedural time-limit of an indicative nature.

19 That judgment was commented on in the 1999 Annual Report.

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

The answer given to the second question makes it justifiable to point out again that Article 3 of Decision No 3632/93 provides that Member States which intend to grant *operating aid* for 1994 to 2002 to coal undertakings are required to submit to the Commission in advance 'a modernisation, rationalisation and restructuring plan [*designed*] *to improve the economic viability of the undertakings concerned* by reducing production costs'.

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

Moreover, this case gave the Court an opportunity to define the term 'degression of aid', one of the objectives set by Decision No 3632/93. In that regard, it pointed out that, as provided in Article 3(1) of Decision No 3632/93, operating aid is intended solely to cover the difference between production costs and the selling price on the world market. By virtue of Article 3(2) of that decision, that aid may be authorised only if there is at least a trend towards a reduction in the production costs of the undertakings receiving it. In that context, the first indent of Article 2(1) of the decision sets as 'one of the ... objectives' to be attained that of 'achieving degression of aids', an aim to be achieved in the light of coal prices on international markets. The economic realities, namely the structural unprofitability of the Community coal industry, in the light of which the decision was taken, must be taken into account when interpreting Article 2(1) of that decision. As neither the Community institutions, the Member States or the undertakings concerned have a significant influence on the price on the world market, the Commission cannot be reproached for having attached overriding importance, in terms of a degression of aid to the coal industry, to reducing production costs, since any reduction necessarily means that the volume of aid is smaller than if the reduction had not occurred, irrespective of movements in world market prices.

Finally, the claim that the Commission did not take sufficient account in its assessment of aid from the Federal Republic of Germany to the coal industry in 1998 and 1999 of the question whether the merger of the three German coal

producers [21] entailed aid which was not notified was rejected, as the Court of First Instance took the view that the Commission did not make a manifest error of assessment in authorising State aid.

(e) Obligation to recover aid

The obligation to recover aid declared incompatible with the common market was examined in *Regione autonoma Friuli-Venezia Giulia* v *Commission* and *Agrana Zucker und Stärke* v *Commission*. However, as regards the obligation to recover, the judgment in *ESF Elbe-Stahlwerke Feralpi* v *Commission* is most worthy of attention. In that case, the Court held, in a finding sufficiently rare to be noteworthy, that the principle of legitimate expectations precluded the recovery of one element of aid from its beneficiary.

In that judgment the Court of First Instance held that the principle of legitimate expectations precluded the Commission from ordering the recovery of aid, when, according to information from third parties, it considered its compatibility with the common market in coal and steel *several years after approval of the aid concerned*, and held it incompatible with that market. [22]

3. Trade protection measures

The Court of First Instance delivered several judgments on the anti-dumping rules (judgment in Case T-82/00 *Bic and Others* v *Council* [2001] ECR II-1241, and *Euroalliages* v *Commission*, cited above) and the anti-subsidy rules (*Mukand and Others* v *Council*, cited above).

In its judgment in *Euroalliages* v *Commission*, the Court of First Instance, which dismissed the action for annulment of a Commission decision terminating an anti-dumping proceeding, [23] interpreted the provisions of

21 The decision authorising that merger was annulled by the judgment in *RJB Mining* v *Commission*, cited above.

22 In the judgment, the Court of First Instance also defined the scope of the rules on State aid under the ECSC Treaty.

23 Commission Decision 1999/426/EC of 4 June 1999 terminating the anti-dumping proceeding concerning imports of ferro-silicon originating in Egypt and Poland (OJ 1999 L 166, p. 91).

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), governing the conditions under which anti-dumping measures can be maintained after expiry of the five year period following their introduction (Article 11(2)).

It stated that the rule that information relating to a period subsequent to the investigation period is not, normally, to be taken into account applies also to investigations relating to expiry reviews. In that regard, it pointed out that the exception to that rule, allowed by the Court in its judgment in Case T-161/94 *Sinochem Heilongjiang* v *Council* [1996] ECR II-695, concerns only the case in which data relating to a period after the investigation period disclose new developments which make the introduction or maintenance of anti-dumping duty manifestly inappropriate. That implies that factors arising after the investigation period cannot be taken into account in order for duties to be retained.

. By its judgment in *Mukand and Others* v *Council*, cited above, the Court of First Instance annulled Council Regulation (EC) No 2450/98 of 13 November 1998 imposing a definitive countervailing duty on imports of stainless steel bars originating in India and collecting definitively the provisional duty imposed (OJ 1998 L 304, p. 1), in so far as it concerned imports into the European Community of products manufactured by the four applicant companies.

Under Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community (OJ 1997 L 288, p. 1) and the Agreement on Subsidies and Countervailing Measures concluded within the World Trade Organisation in the context of the Uruguay Round of Negotiations (OJ 1994 L 336, p. 156), countervailing duties may be imposed only if the subsidised imports cause material injury to a Community industry and no account is taken of factors other than the imports in question in assessing whether there is such injury.

In this case, the Court of First Instance held that the assessment of the injury and of the causal link between the injury and the subsidised imports set out in the contested regulation was vitiated by a manifest error. It pointed out that the Commission and the Council disregarded a known factor, other than the subsidised imports — that is to say, a uniform, consistent industrial practice of Community producers, the objective effect of which was automatically to mirror, in the markets for those products, artificial price increases — which

might have been a concurrent cause of the injury sustained by the Community industry.

4. 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, [24] whether verbal, [25] three-dimensional [26] or figurative. [27] The decided cases concerned decisions of the

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

25 Judgments in Case T-135/99 *Taurus-Film* v *OHIM (Cine Action)* [2001] ECR II-379, Case T-136/99 *Taurus-Film* v *OHIM (Cine Comedy)* [2001] ECR II-397, Case T-193/99 *Wrigley* v *OHIM (DOUBLEMINT)* [2001] ECR II-417 (under appeal, Case C-191/01 P), Case T-331/99 *Mitsubishi HiTec Paper Bielefeld* v *OHIM (Giroform)* [2001] ECR II-433, Case T-24/00 *Sunrider* v *OHIM (VITALITE)* [2001] ECR II-449, Case T-87/00 *Bank für Arbeit und Wirtschaft* v *OHIM (EASYBANK)* [2001] ECR II-1259, Case T-359/99 *DKV* v *OHIM (EuroHealth)* [2001] ECR II-1645 and Joined Cases T-357/99 and T-358/99 *Telefon & Buch* v *OHIM (UNIVERSAL TELEFONBUCH and UNIVERSAL-KOMMUNIKATIONSVERZEICHNIS)* [2001] ECR II-1705 (under appeal, Case C-326/01 P), and judgments of 3 October 2001 in Case T-14/00 *Zapf Creation* v *OHIM (New Born Baby)* (under appeal, Case C-498/01 P), and of 11 December 2001 in Case T-138/00 *Erpo Möbelwerk* v *OHIM (DAS PRINZIP DER BEQUEMLICHKEIT)*, not yet published in the ECR.

26 Judgments of 19 September 2001 in the so-called 'tablets' cases, Case T-335/99 *Henkel* v *OHIM (rectangular red and white tablet)* (under appeal, Case C-456/01 P), Case T-336/99 *Henkell* v *OHIM (rectangular green and white tablet)* (under appeal, Case C-457/01 P), Case T-337/99 *Henkel* v *OHIM (round red and white tablet)*, Case T-117/00 *Procter & Gamble* v *OHIM (square white and pale green tablet)* (under appeal, Case C-468/01 P), Case T-118/00 *Procter & Gamble* v *OHIM (square white tablet with green and pale green speckles)* (under appeal, Case C-469/01 P), Case T-119/00 *Procter & Gamble* v *OHIM (square white tablet with yellow and blue speckles* (under appeal, Case C-470/01 P), Case T-120/00 *Procter & Gamble* v *OHIM (square white tablet with blue speckles)* (under appeal Case C-471/01 P), Case T-121/00 *Procter & Gamble* v *OHIM (square white tablet with green and blue speckles)* (under appeal, Case C-472/01 P), Case T-128/00 *Procter & Gamble* v *OHIM (square tablet with inlay)* (under appeal, Case C-473/01 P), Case T-129/00 *Procter & Gamble* v *OHIM (rectangular tablet with inlay)* (under appeal, Case C-474/01 P), not yet published in the ECR.

27 Judgment of 19 September 2001 in Case T-30/00 *Henkel* v *OHIM (image of a detergent product)*, not yet published in the ECR, one of the so-called 'tablets' cases.

Boards of Appeal of the Office for Harmonisation in the Internal Market ('OHIM') refusing to register the trade marks applied for. The applications were refused on the grounds of lack of distinctive character (Article 7(1)(b) of Regulation No 40/94) or of the descriptive nature (Article 7(1)(c)) of the trade marks whose registration was applied for. Those two *absolute grounds for refusal* can only be assessed in relation to the products and services concerned in respect of which registration was applied for.

These cases cannot be covered exhaustively but it is of note that the Court upheld decisions of Boards of Appeal of the OHIM in which they had refused registration as a Community trade mark, on the basis of the descriptive nature of the terms, 'Cine Action' in relation to services specifically and directly concerning the product 'action film' or its production or broadcasting, 'Cine Comedy' in relation to services specifically and directly concerning the product 'comedy in film form' or its production or broadcasting, 'Giroform' for a product consisting of a paper compound forming a duplication medium and 'UNIVERSALTELEFONBUCH' and 'UNIVERSALKOMMUNIKATIONS-VERZEICHNIS' for telephone or communications directories intended for universal use.

However, the Court of First Instance disagreed with the Boards of Appeal of OHIM in holding that no descriptive function could be ascribed to the term VITALITE, for food for babies or mineral and aerated waters, the term DOUBLEMINT, for certain mint-flavoured products, the term EASYBANK, for on-line banking services, the term EuroHealth, for services falling within the category of 'financial affairs' or the sign New Born Baby, for dolls to play with and accessories for such dolls in the form of playthings, and the term DAS PRINZIP DER BEQUEMLICHKEIT, for land vehicles and household and office furniture.

The 'tablets' cases gave the Court an opportunity, for the first time, to review the legality of decisions of the Boards of Appeal of OHIM finding that, in addition to one figurative trade mark (Case T-30/00), the three-dimensional trade marks applied for consisting of the shape and, in some cases, the arrangement of the colours or the design of laundry or dishwasher products were devoid of distinctive character.

In that regard, it held that it is clear from Article 4 of Regulation No 40/94 that both a product's shape and its colours fall among the signs which may constitute a Community trade mark, while pointing out that the fact that a category of signs is, in general, capable of constituting a trade mark does not

mean that signs belonging to that category necessarily have distinctive character in relation to a specific product or service.

It also held, in ten of the judgments in question, that Article 7(1)(b) of Regulation No 40/94 does not distinguish between the different categories of trade marks. The criteria for assessing the distinctive character of three-dimensional trade marks consisting of the shape of the product itself are therefore no different from those applicable to other categories of trade marks. It went on to hold that, nevertheless, when those criteria are applied, account must be taken of the fact that the perception of the relevant section of the public is not necessarily the same in relation to a three-dimensional mark consisting of the shape and the colours of the product itself as it is in relation to a word mark, a figurative mark or a three-dimensional mark not consisting of the shape of the product. Whilst the public is used to recognising the latter marks instantly as signs identifying the product, this is not necessarily so where the sign is indistinguishable from the appearance of the product itself.

Finally, in the judgment in *Henkel* v *OHIM (image of a detergent product)*, cited above, which concerned a figurative mark consisting of a faithful representation of the product itself, the Court held that an assessment of distinctive character cannot result in different outcomes for a three-dimensional mark consisting of the design of the product itself and for a figurative mark consisting of a faithful representation of the same product.

. It should be noted, at this point in the commentary, that the proceedings brought by Mrs Kik, supported by the Hellenic Republic, against OHIM, challenging the legality of the rules governing languages in Regulation No 40/94, ended in the dismissal of the action (judgment in Case T-120/99 *Kik* v *OHIM* [2001] ECR II-2235 (under appeal, case C-361/01 P). The Court, sitting with five judges, held that the obligation incumbent on the applicant for registration of a Community trade mark to indicate a 'second language' (German, English, Spanish, French and Italian) as a possible language of proceedings for opposition, revocation or invalidity proceedings, did not involve an infringement of the principle of non-discrimination.

. The last item of note under this heading is the judgment of 15 November 2001 in Case T-128/99 *Signal Communications* v *OHIM (TELEYE)*, not yet published in the ECR, which is unusual in that it concerns an aspect of the registration procedure and a claim for priority of a previously filed application. In this case, the Court of First Instance annulled the decision of the Board of Appeal of OHIM refusing a claim for correction of an application

for a Community trade mark on the ground that the correction sought was in no way abusive and did not entail substantial alteration of the trade mark.

5. Access to Council and Commission documents

The Court ruled on three occasions on the conditions governing public access to documents of the Council and the Commission (judgments in Case T-204/99 *Mattila* v *Council and Commission* [2001] ECR II-2265 (under appeal, Case C-353/01 P), of 10 October 2001 in Case T-111/00 *British American Tobacco International (Investments)* v *Commission* and of 11 December 2001 in Case T-191/99 *Petrie and Others* v *Commission*, not yet published in the ECR) as laid down in the legislation in force *before* the adoption of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43). [28] It must be remembered that, on 6 December 1993, the Council and Commission approved a Code of conduct concerning public access to Council and Commission documents (OJ 1993 L 340, p. 41). To implement the principles laid down by that code, the Council adopted, on 20 December 1993, Decision 93/731/EC on public access to Council documents (OJ 1993 L 340, p. 43). Similarly, on 8 February 1994, the Commission adopted Decision 94/90/ECSC, EC, Euratom on public access to Commission documents (OJ 1994 L 46, p. 58).

. By its judgment in *British American Tobacco International (Investments)* v *Commission*, cited above, the Court of First Instance annulled the Commission's decision partially to reject an application for access to certain minutes of the Committee on Excise Duties, chaired by the Commission and made up of representatives of the Member States. In that case the Court was required to rule on the question whether the Commission was entitled not to disclose the identity of the delegations which gave their views on the tax treatment of expanded tobacco at the meetings recorded in the minutes at issue, on the basis of the non-mandatory exception relating to the confidentiality of its proceedings.

In order to be able to rule in the case, the Court of First Instance ordered the Commission to produce the minutes in question so that it could consider their contents. In accordance with the third subparagraph of Article 67(3) of the

28 Regulation No 1049/2001 has been applicable since 3 December 2001.

Rules of Procedure, a provision invoked for the first time since its entry into force on 1 February 2001, the documents forwarded were not communicated to the applicant.

As regards the substance, the Court held that the deliberations of the Committee on Excise Duties should be regarded as being the deliberations of the Commission. However, the mere fact that the documents at issue relate to deliberations could not by itself justify application of the exception relating to confidentiality of proceedings. In each case, it is necessary to strike a balance between the interest of the citizen and that of the Commission with regard to the content of the document concerned.

The Court of First Instance held, in this case, that the minutes related to discussions which had been terminated by the time British American Tobacco International (Investments) made its request for access. Disclosure of the identities of the delegations referred to in those documents could no longer prejudice the proper conduct of the committee's proceedings, in particular, the free expression by the Member States of their respective positions regarding the tax treatment of expanded tobacco. Consequently, it held that the ground for refusal relied on could not cause the Commission's interest in protecting the confidentiality of the proceedings of the Committee on Excise Duties to prevail over the applicant's interest.

. Although the Council and Commission did not consider the possibility of granting partial access to the documents requested, pursuant to the rule laid down in the judgment in Case T-14/98 *Hautala* v *Council* [1999] ECR II-2489, upheld on appeal by the judgment of the Court of Justice of 6 December 2001 in Case C-353/99 P, not yet published in the ECR, the Court of First Instance, in its judgment in *Mattila* v *Council and Commission*, cited above, did not annul the decisions taken by those two institutions to refuse access to those documents. The Court of First Instance held as it did because it took the view that, given that the disclosure of parts of documents containing no real information would have been of no use to the applicant and given the nature of the documents in question, had those institutions considered the possibility, they would not in any event have agreed to partial access. Accordingly, the Court held that the fact that the defendant institutions failed to consider the question of granting partial access had no effect on the outcome of their examination in the particular circumstances of the case.

. Finally, in its judgment in *Petrie and Others* v *Commission*, cited above, the Court of First Instance again held that the Commission was entitled

to rely on the authorship rule in refusing to grant access to documents written by third parties. It was also held that the refusal to disclose letters before action and reasoned opinions sent to a State in the course of an infringement procedure was justified by the need to protect the public interest as regards inspections and investigations and court proceedings. As the contested decision included a statement of reasons and was well-founded, the action was dismissed.

6. Customs cases

Apart from the question of the tariff classification of certain equipment (Joined Cases T-133/98 and T-134/98 *Hewlett Packard France and Hewlett Packard Europe* v *Commission* [2001] ECR II-613), it was the Community legislation laying down the conditions for the repayment or remission of import duties [29] which was, once again, at the heart of several cases.

It must be observed in this connection that, under Article 13(1) of Regulation No 1430/79 and Article 905(1) of Regulation (EEC) No 2454/93, a person is entitled to remission of import duties if he can establish both a special situation and the absence of any deception or obvious negligence on his part.

. The judgment in Joined Cases T-186/97, T-187/97, T-190/97 to T-192/97, T-210/97, T-211/97, T-216/97 to T-218/97, T-279/97, T-280/97, T-293/97 and T-147/99 *Kaufring and Others* v *Commission*, the 'Turkish television' cases, [2001] ECR II-1337, found in favour of thirteen European importers who had contested Commission decisions that the applications for remission of import duties submitted to that institution by several Member States were not justified. Those applications were made after the Commission had instructed the Member States concerned to seek payment of the customs duties laid down by the Common Customs Tariff from the companies which imported the colour television sets manufactured in Turkey, in which the

29 In particular, Article 13(1) of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties (OJ 1979 L 175, p. 1), subsequently replaced by Article 239(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), as further defined *inter alia* by Article 905 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of the Customs Code (OJ 1993 L 253, p. 1).

components originating in third countries had been neither released for free circulation nor subject to the compensatory levy.

The Court of First Instance found against the Commission on two counts.

First of all, it considered of its own motion whether the Commission had observed the applicants' rights of defence during the administrative procedure leading to the adoption of the contested decisions. It concluded that it had not, holding that it was clear that none of the applicants was placed in a position, before the contested decisions were adopted, to take a stance and make known its views adequately on the evidence relied upon by the Commission in deciding that remission was not justified. It emphasised, in particular, that in view of the power of assessment enjoyed by the Commission when it adopts a decision pursuant to the general equitable provision contained in Article 13 of Regulation No 1430/79, it is all the more important that observance of the right to be heard be guaranteed in procedures instituted under that regulation. That conclusion is particularly apt where, in exercising its exclusive authority under Article 905 of Regulation No 2454/93, the Commission proposes not to follow the opinion of the national authority as to whether the conditions laid down by Article 13 have been met, and in particular as to whether any obvious negligence can be attributed to the person concerned.

Secondly, it analysed whether the Commission was entitled to take the view, in the contested decisions, that the remission of duties was not justified on the ground that the conditions laid down by Article 13(1) of Regulation No 1430/79 (existence of a special situation and absence of any obvious negligence or deception on the part of the person concerned) were not met. In that connection, it held that, in order to determine whether the circumstances of the case constitute a special situation within the meaning of that article, the Commission must assess all the relevant facts. That obligation implies that, in cases in which the persons liable have relied, in support of applications for remission, on the existence of serious deficiencies on the part of the contracting parties in implementing an agreement binding the Community, the Commission must base its decision as to whether those applications are justified on all the facts relating to the disputed imports of which it gained knowledge in the performance of its task of supervising and monitoring the implementation of that agreement. Similarly, it cannot disregard relevant information of which it has gained knowledge in the performance of its tasks and which, although not forming part of the administrative file at the stage of the national procedure, might have served to justify remission for the interested parties. Moreover, although the Commission enjoys a discretionary

power in applying Article 13, it is required to exercise that power by genuinely balancing, on the one hand, the Community interest in ensuring that the customs provisions are respected and, on the other, the interest of the importer acting in good faith in not suffering harm which goes beyond normal commercial risks. Consequently, when considering whether an application for remission is justified, it cannot take account only of the conduct of importers. It must also assess the impact on the resulting situation of its own conduct, which may itself have been wrongful.

On conclusion of its analysis, having taken account of all the documents relating to implementation of the provisions of the Association Agreement between the European Economic Community and the Republic of Turkey and the Additional Protocol as regards the importation of colour television sets from Turkey during the period in question (1991 to 1993 and early 1994) of which the Commission had knowledge at the time it took the contested decisions, the Court of First Instance held that *the serious deficiencies attributable to the Commission and the Turkish authorities had the effect of placing the applicants in a special position in relation to other traders carrying out the same activity*. Those deficiencies undoubtedly helped to bring about irregularities which led to customs duties being entered in the accounts post-clearance in respect of the applicants. It also held that in the circumstances of the case there was no obvious negligence or deception on the part of the applicants.

. By its judgment in Case T-330/99 *Spedition Wilhelm Rotermund* v *Commission* [2001] ECR II-1619, the Court of First Instance annulled a Commission decision that the remission of customs duties applied for was not justified in the absence of a special situation within the meaning of Article 905(1) of Regulation No 2454/93.

According to the Court of First Instance, since the factual information sent to the Commission by the national authorities and deriving from fraudulent activity by third parties was not questioned or supplemented, the Commission not having asked for additional information, and since that information derived from internal operations of the administration of a Member State which the applicant had no right to monitor, and which it could not influence in any way, the Commission could not merely make a finding that the applicant was not in a special situation since those circumstances were beyond the normal commercial risk it would normally incur. In those circumstances the Commission was not entitled to limit the scope of its assessment to the possibility of active complicity by a particular customs official and require the

applicant to supply, if necessary by producing a document from the competent Spanish authorities, formal and definitive proof of such complicity. By doing so the Commission failed to appreciate both its obligation to assess all the facts itself in order to determine whether they constituted a special situation, and the autonomous nature of the procedure laid down in Article 905 et seq. of Regulation No 2454/93.

7. Community funding

Under this heading discussion will be limited to the judgment in Case T-143/99 *Hortiplant* v *Commission* [2001] ECR II-1665 (under appeal, Case C-330/01 P), in which it was held that, in accordance with the obligations incumbent on applicants for and recipients of Community financial assistance, they are, in particular, required to supply the Commission with reliable information which is not likely to mislead, as otherwise the system of supervision and rules of evidence introduced in order to check whether the conditions for granting assistance have been met cannot operate correctly.

In that case, the Court of First Instance upheld the Commission decision withdrawing the EAGGF aid it had granted to Hortiplant under Regulation (EEC) No 4256/88. [30] It held *inter alia* that the production of invoices and the charging of costs which were not genuine, together with failure to comply with the obligation to provide part-financing, established in the case, constituted serious infringements of the conditions for granting the financial assistance in question and of the obligation to provide information and act in good faith, which is incumbent upon the recipient of such assistance and, consequently, had to be regarded as irregularities for the purposes of Article 24 of Regulation (EEC) No 4253/88. [31]

30 Council Regulation (EEC) No 4256/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the EAGGF Guidance Section (OJ 1988 L 374, p. 25).

31 Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1), as amended by Council Regulation (EEC) No 2082/93 (OJ 1993 L 193, p. 20).

8. Law governing the institutions

Rule 29 of the Rules of Procedure of the European Parliament provides that Members may form themselves into groups according to their political affinities. Following the European elections in June 1999 the 'Groupe technique des députés indépendants (TDI) — Groupe mixte' (Technical Group of Independent Members — Mixed Group), whose rules of constitution provided that the members had total political independence of one another, was set up. On 14 September 1999, the Parliament, taking the view that the conditions laid down for the constitution of a political group were not satisfied, adopted an interpretative note to Rule 29 of its Rules of Procedure, prohibiting the formation of the TDI group. [32]

By its judgment in *Martinez and Others* v *Parliament*, cited above, the actions brought by Members of the European Parliament, the Front national and la Lista Emma Bonino against that note were dismissed. [33] In holding thus, the Court of First Instance confirmed that the constitution of the TDI Group was not in conformity with Parliament's Rules of Procedure.

This demonstrates that the criterion relating to political affinities for the formation of political groups constitutes a mandatory requirement. In that connection, the Court of First Instance observed that the requirement of political affinity between the members of a group does not, however, preclude them in their day-to-day conduct from expressing different political opinions on any particular subject, in accordance with the principle of independence laid down in Article 4(1) of the 1976 Act [34] and Rule 2 of the Rules of Procedure. Accordingly, the fact that members of one and the same political group may vote differently must, under those circumstances, be regarded not

32 According to the interpretation adopted: 'The formation of a group which openly rejects any political character and all political affiliation between its Members is not acceptable within the meaning of this Rule.'

33 By order of 25 November 1999 in Case T-222/99 R *Martinez and de Gaulle* v *Parliament* [1999] ECR II-3397, the President of the Court of First Instance granted suspension of operation of the act; that order was commented on in the 1999 Annual Report.

34 Act of 20 September 1976 concerning the election of the representatives of the Assembly by direct universal suffrage (OJ 1976 L 278, p. 5).

as indicating a lack of political affinity amongst themselves but as illustrating the principle of a parliamentarian's independence.

In reply to the applicants' contentions, the Court of First Instance held, first, that the Parliament had competence to monitor, as it did in this case, compliance with Rule 29(1) by a group formation of which is declared by a number of Members.

Assessing the extent of the discretion which the Parliament must be allowed in exercising that competence, it held, second, that the concept of political affinity must be understood as having in each specific case the meaning which the Members forming themselves into a political group intend to give to it without necessarily openly so stating. It follows that Members declaring that they are organising themselves into a group under this provision are presumed to share political affinities, however minimal. However, that presumption cannot be regarded as irrebuttable. In that regard, under its supervisory competence the Parliament has the power to examine whether the requirement laid down in Rule 29(1) of the Rules of Procedure has been observed where the Members declaring the formation of a group openly exclude any political affinity between themselves, in patent non-compliance with the abovementioned requirement.

Third, it held that the assessment made by the Parliament as regards the failure by the TDI Group to meet the requirement as to political affinities was well-founded. Several matters, which find expression in the constitution rules of the TDI Group, show that the members of that group agreed to eliminate any risk of being perceived as sharing political affinities and refused to regard the group as a vehicle for articulating joint political action, restricting it solely to financial and administrative functions.

Furthermore, having upheld the admissibility of the objection of illegality of the combined provisions of Rule 29(1) and Rule 30 in that they allow within the Parliament only the formation of groups founded on political affinities and provide that the Members not belonging to a political group are to sit as non-attached Members under the conditions laid down by the Bureau of the Parliament, rather than authorising them to form a technical group or to constitute a mixed group, the Court of First Instance held that those provisions constituted *measures of internal organisation which are warranted by the special characteristics of the Parliament, the constraints under which it operates and the responsibilities and objectives assigned to it by the Treaty.*

The difference in treatment between members of a political group and those who are not members, in terms of the rights which the Rules of Procedure confer on a political group, does not constitute discrimination since it is justified by the fact that the former satisfy, unlike the latter, a requirement under the Rules of Procedure dictated by the pursuit of legitimate objectives.

Finally, having taken the view that the rules in question breach neither the principle of democracy nor that of freedom of association, the Court of First Instance pointed out that a comparative analysis of the parliamentary traditions of the Member States does not point to the conclusion that the formation of a political group whose members expressly state that it is entirely unpolitical would be possible in the majority of national parliaments.

9. Association of overseas countries and territories

On 8 February 2000, the Court of Justice, which had been asked for a ruling under Article 234 EC, confirmed 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 [35] (Case C-17/98 *Emesa Sugar* [2000] ECR I-675).

By its judgments of 6 December 2001 in Case T-43/98 *Emesa Sugar* v *Council* and in Case T-44/98 *Emesa Sugar* v *Commission* (not yet published in the ECR), the Court of First Instance ruled in the cases challenging the legality of Decision 97/803 — those cases had been suspended until the Court of Justice ruled on the validity of that act [36] — dismissing the actions.

After the Court of Justice had given its ruling, the parties were asked to submit their observations. The applicant submitted that the judgment was based on errors of fact. However, according to the Court of First Instance, none of the pleas raised by the applicant nor any of the arguments put forward in its observations, *inter alia* those concerning the appraisal by the Council of the need to limit sugar imports falling within the 'ACP/OCT cumulation of origin'

35 OJ 1997 L 329, p. 50.

36 Note, however, that most of the grounds relating to the assessment of the legality of Decision 97/803, on which the Court of First Instance bases its findings in Case T-44/98, are set out in connection with the claims for damages in Case T-43/98.

rule, as upheld by the Court of Justice, pointed to the illegality of the contested decision.

10. Staff cases

Among the many judicial decisions made in this field of litigation, six judgments in particular merit attention.

. The judgment in Case T-118/99 *Bonaiti Brighina* v *Commission* [2001] ECR-SC II-97 should be mentioned as it clarifies the question of the point in time from which the time-limit for bringing proceedings starts to run where the decision rejecting a complaint is sent to an official in a language which is neither his mother tongue nor that in which the complaint was made. The Court of First Instance held that the notification of such a decision in those circumstances is lawful provided that the person concerned can take proper cognisance of it. If, on the other hand, the addressee of the decision considers that he is unable to understand it, it is up to him to ask the institution, with all due diligence, to provide him with a translation either into the language used in the complaint or into his mother tongue. If such a request is made without delay, the time-limit only starts to run from the date on which that translation is notified to the official concerned, unless the institution can show, without any room for doubt on that point, that the official was able to take proper cognisance of both the operative part and the grounds of the decision rejecting his complaint in the language used in the initial notification.

. Again on the question of admissibility, a clearer definition was provided of the term 'act adversely affecting' within the meaning of Article 90(2) of the Staff Regulations of officials of the European Communities ('the Staff Regulations') in Joined Cases T-95/00 and T-96/00 *Zaur-Gora and Dubigh* v *Commission* (order of 3 April 2001 [2001] ECR-SC II-379) and Case T-243/99 *Buisson* v *Commission* (judgment of 20 June 2001 [2001] ECR-SC II-601), in that the Court of First Instance made clear that, where a rule which an institution has undertaken to respect and which is, therefore, binding on it — such as a provision of a notice of competition — gives candidates the right to apply for review of decisions not to admit them, it is the decision following review, and not the initial decision not to admit, which must be considered to be the act adversely affecting the person concerned.

. The victim of a hang-gliding accident, to whom the benefits of Article 73 of the Staff Regulations on insurance against the risk of occupational

disease and accident were not granted, disputed the legality of that decision. In his action, he called into question the legality of the provision which was the legal basis of the contested decision, namely Article 4(1)(b), third indent, of the rules on the insurance of officials of the European Communities against the risk of accident and of occupational disease, with the result that the Court of First Instance considered that an objection of illegality was before it.

According to that provision accidents due to 'practice of sports regarded as dangerous, such as boxing, karate, parachuting, speleology, underwater fishing and exploration with breathing equipment including containers for the supply of air or oxygen' are not covered by Article 73 of the Staff Regulations. By judgment of 20 September 2001 in Case T-171/00 *Spruyt* v *Commission*, not yet published in the ECR, the Court of First Instance held that, since that provision defines the concept of sports regarded as dangerous which are excluded from the risk cover provided for by Article 73 of the Staff Regulations by reference to an indicative list of sports considered to be dangerous, it breaches the principle of legal certainty and is, on that ground, illegal. The principle of legal certainty precludes a situation in which an official who plans to practise a sport not mentioned in the list in Article 4(1)(b), third indent, of the rules is obliged to assess, whether that sport, in terms of its possible similarity with one of those on that list, might be regarded as dangerous by the administration. Nor can that principle allow the administration, faced with a request for application of Article 73 of the Staff Regulations in the event of an accident suffered while practising a sport, a 'discretion' as to whether or not that sport belongs to the category of sports regarded as dangerous within the meaning of the rules.

. The Court of First Instance held in its judgment of 27 June 2001 in Case T-214/00 *X* v *Commission* [2001] ECR-SC II-663 that a decision by an institution to deduct from the salary of an official, without his consent, a sum equivalent to the amount he owes to that institution by way of costs awarded to it in earlier proceedings *has no legal basis*. The option for an institution, in its relations with staff under the Staff Regulations, to obtain payment by set-off, is liable to seriously restrict the rights of officials of the institutions to dispose of their salaries freely. In the absence, in the body of the Staff Regulations, of any express provision, within the meaning of the first paragraph of Article 62, authorising it to do so, an institution may not, without the consent of the person concerned, retain, by way of set-off, a part of the remuneration of an official whose right to remuneration is enshrined in Article 62 of the Staff Regulations.

To conclude this brief survey of decided cases concerning staff of the institutions, mention must be made of the judgment of 6 March 2001 in Case T-192/99 *Dunnett and Others* v *EIB* [2001] ECR-SC II-313, which annulled the salary statements of the applicants, who were staff of the European Investment Bank, in so far as the system of special conversion rates for transfers in a currency other than the Belgian or Luxembourg franc up to a certain percentage of net monthly salary was not applied in them. In anticipation of the changeover to the Euro, the Management Committee of the EIB had decided, on 11 June 1998, to abolish the special conversion rates for all its staff from 1 January 1999. However, the Court of First Instance held that the staff representatives were not properly consulted in the procedure leading to the adoption of that decision. It pointed out *inter alia* that the EIB was obliged to consult staff representatives under a general principle of employment law common to the laws of the Member States according to which an employer can unilaterally withdraw a financial advantage which he has freely granted to his employees on a continuous basis only after consultation of those employees or their representatives. It made clear that such consultation must be such as to have an influence on the substance of the measure adopted, which implied that it must be 'timely' and 'bona fide'. In this case the Court of First Instance held that the Bank breached the general principle of employment law expressed in Article 24 of the agreement on representation of staff at the EIB in that it did not hold bona fide consultations with staff representatives.

II. Actions for damages

As regards the EC Treaty, almost all the judgments concluding proceedings for damages related to agriculture, whether problems connected with the rules on the importation of bananas [37] or fisheries products [38] in the Community,

[37] Judgments in Case T-1/99 *T. Port* v *Commission* [2001] ECR II-465 (under appeal, Case C-122/01 P), in Case T-18/99 *Cordis* v *Commission* [2001] ECR II-913, in Case T-30/99 *Bocchi Food Trade International* v *Commission* [2001] ECR II-943, in Case T-52/99 *T. Port* v *Commission* [2001] ECR II-981 (under appeal, Case C-213/01 P), in *Comafrica and Dole Fresh Fruit Europe* v *Commission*, cited above, in Case T-2/99 *T. Port* v *Council* [2001] ECR II-2093, and in Case T-3/99 *Banatrading* v *Council* [2001] ECR II-2123.

[38] Judgment of 23 October 2001 in Case T-155/99 *Dieckmann & Hansen* v *Commission*, not yet published in the ECR (under appeal, Case C-492/01 P).

milk quotas [39] or fisheries quotas. [40] In only one judgment was it held that the set of conditions which triggers the non-contractual liability of the Community for damage caused by the institutions was fulfilled (*Jasma* v *Council and Commission*). In another case, under Article 34 CS, a provision which applies where the damage alleged derives from a Commission decision which is annulled by the Court of Justice, the Court of First Instance ordered the Commission to repay a sum unduly paid (judgment of 10 October 2001 in Case T-171/99 *Corus UK* v *Commission*, not yet published in the ECR).

. By that judgment, the Commission was ordered to pay to Corus UK a sum of more than EUR 3 million with interest. Following a judgment of the Court of First Instance reducing the amount of the fine imposed on that company, the Commission had repaid Euro 12 million which was the difference between the amount paid and that set by the Court of First Instance, but had refused to pay interest on the sum repaid. The Court of First Instance held that, in so doing, the Commission failed to take a step necessary to comply with that judgment. In the case of a judgment annulling or reducing the fine imposed on an undertaking for infringement of the ECSC Treaty competition rules, there is an obligation incumbent on the Commission to repay all or, in some cases, part of the fine paid by the undertaking in question, in so far as that payment must be described as a sum unduly paid following the annulment decision. That obligation applies not only to the principal amount of the fine overpaid, but also to default interest on that amount. It stressed, in that connection, that a failure to reimburse such interest could result in the unjust enrichment of the Community, which would be contrary to the general principles of Community law. As the claim under Article 34 CS, which was brought after a reasonable time had passed, was well founded in principle, compensation to the applicant corresponding to the amount of interest that should have been reimbursed together with the principal sum was awarded to the applicant.

39 Judgments in Case T-533/93 *Bouma* v *Council and Commission* [20019 ECR II-203 (under appeal, Case C-162/01 P), in Case T-73/94 *Beusmans* v *Council and Commission* [2001] ECR II-223 (under appeal, Case C-163/01 P), in Case T-76/94 *Jansma* v *Council and Commission* [2001] ECR II-243 and in Case T-143/97 *Van den Berg* v *Council and Commission* [2001] ECR II-277 (under appeal, Case C-164/01 P).

40 Judgment of 6 December 2001 in Case T-196/99 *Area Cova and Others* v *Council and Commission*, not yet published in the ECR.

. It is settled case-law that the non-contractual liability of the Community under the second paragraph of Article 288 EC may be incurred only if a set of conditions relating to the illegality of the conduct of which the Community institutions are accused, the occurrence of actual damage and the existence of a causal link between the unlawful conduct and the harm alleged is fulfilled. As regards the liability of the Community for damage caused to individuals, the Court of Justice held in Case C-352/98 P *Bergaderm and Goupil* [2000] ECR I-5291 that the conduct alleged against the Commission must involve *a sufficiently serious breach of a rule of law intended to confer rights on individuals*. In the cases which it decided in 2001, the Court of First Instance had to assess whether those two aspects of illegality, that is to say, that the rule breached is intended to confer rights on individuals and that the breach is sufficiently serious, were proven.

For instance it was required to determine whether the rules allegedly breached were of the type intended to confer rights on individuals. The principle of proportionality and the principle of the protection of legitimate expectations are rules of that type (*Emesa Sugar* v *Council*, cited above). On the other hand, no rights are conferred on individuals by the Agreement establishing the WTO and its annexes (judgments in *Cordis* v *Commission*, *Bocchi Food Trade International* v *Commission* and *T. Port* v *Commission* (T-52/99), cited above), by Article 253 EC (*Emesa Sugar* v *Council*), or by the principle of relative stability — this principle, laid down by the fisheries legislation, is intended to ensure for each Member State a share of the Community's total allowable catches — (*Area Cova and Others* v *Council and Commission*, cited above).

As regards the question whether a breach of Community law is sufficiently serious, the Court of First Instance applied a test which turned on the question whether the Community institution concerned had manifestly and gravely disregarded the limits on the discretion available to the institution, bearing in mind that where the institution in question had only a considerably reduced or even no discretion, the mere infringement of Community law might be sufficient to establish the existence of a sufficiently serious breach.

In its judgment in *Comafrica and Dole Fresh Fruit Europe* v *Commission*, cited above, the Court of First Instance held that, where an institution has a considerably reduced discretion, a finding of an error which, in analogous circumstances, an administrative authority exercising ordinary care and diligence would not have committed, will support the conclusion that the conduct of the Community institution was unlawful in such a way as to render the Community liable under Article 288 EC. Given the facts of the case, it

held that the mistakes made by the Commission when it adopted the contested regulations [41] did not constitute mistakes which would not have been committed in similar circumstances by an administrative authority exercising ordinary care and diligence.

In its judgment in *Dieckmann & Hansen* v *Commission*, cited above, the Court of First Instance, first, recognised that the Commission has a wide discretion where it adopts measures implementing arrangements for the supervision of importations of fishery products, such as whether a third country is to be entered in or removed from the list of third countries authorised to export such products to the Community. It went on to hold that the institution did not overstep the bounds of its discretion in the present case when it reconsidered its assessment of Kazakhstan's ability to ensure that, so far as concerns caviar, health conditions at least equivalent to those provided for by Directive 91/493 [42] were met and when it decided to withdraw its decision to authorise imports of the aforementioned product into the Community. The Court observed *inter alia* that, by adopting the contested decision, the Commission fully observed its obligations to take account of requirements relating to the public interest such as the protection of consumers or the protection of the health and life of humans and animals, in its efforts to achieve objectives of the common agricultural policy and to accord to the protection of public health precedence over economic considerations.

. Finally, in its judgment in *Area Cova and Others* v *Council and Commission*, cited above, the Court of First Instance observed that in the event of the principle of no-fault liability of the Community being recognised in Community law, a precondition for such liability would be the cumulative satisfaction of three conditions, namely the reality of the damage allegedly suffered, the causal link between it and the act on the part of the Community institutions, and *the unusual and special nature of that damage*. In order to

41 The mistakes recorded related to possible discrepancies, when the reduction/adjustment coefficients were fixed, for determining the quantity of bananas to be allocated to each operator in categories A and B under the tariff quotas, between the figures communicated by the competent national authorities and those from the Statistical Office of the European Communities (Eurostat) or other data concerning the quantities of bananas marketed or imported into the Community during the corresponding reference periods.

42 Council Directive 91/493/EEC of 22 July 1991 laying down the health conditions for the production and the placing on the market of fishery products (OJ 1991 L 268, p. 15) for human consumption.

assess whether the damage in question, consisting in a reduction in the applicants' fishing opportunities, was unusual in character, the Court assessed whether it exceeded the limits of the economic risks inherent in the activities of the fishing industry and concluded that it did not.

III. Applications for interim relief

The judge hearing applications for interim relief heard applications for interim measures in almost all fields of litigation, particularly those relating to competition, [43] State aid, [44] anti-dumping measures, [45] Community funding [46]

43 Inter alia, orders of the President of the Court of First Instance of 17 January 2001 in Case T-342/00 R *Petrolessence and SG2R* v *Commission* [2001] ECR II-67, of 28 May in Case T-53/01 R *Poste Italiane* v *Commission* [2001] ECR II-1479, of 26 October 2001 in Case T-184/01 R *IMS Health* v *Commission* (under appeal, Case C-481/01 P(R)), of 15 November 2001 in Case T-151/01 R *Duales System Deutschland* v *Commission*, of 20 December 2001 in Case T-213/01 R *Österreichische Postsparkasse* v *Commission* and in Case T-214/01 R *Bank für Arbeit und Wirtschaft* v *Commission*, not yet published in the ECR.

44 Order of the President of the Court of First Instance of 19 December 2001 in Joined Cases T-195/01 R and T-201/01 R *Government of Gibraltar* v *Commission*, not yet published in the ECR.

45 Order of the President of the Court of First Instance of 1 August 2001 in Case T-132/01 R *Euroalliages and Others* v *Commission* [2001] ECR II-2307 (annulled by Order of the President of the Court of Justice of 14 December 2001 in Case C-404/01 P(R)), not yet published in the ECR).

46 Orders of the President of the Court of First Instance of 15 January 2001 in Case T-241/00 R *Le Canne* v *Commission* [2001] ECR II-37, of 18 October 2001 in Case T-196/01 R *Aristoteleio Panepistimio Thessalonikis* v *Commission*, of 22 October 2001 in Case T-141/01 R *Entorn* v *Commission* and of 7 December 2001 in Case T-192/01 R *Lior* v *Commission*, not yet published in the ECR.

and institutional law. [47] There were also several applications to cancel or vary an interim order, which were all dismissed. [48]

. The applications for interim measures which were dismissed were dismissed either on the ground that they were inadmissible, [49] or because they did not fulfil one or other of the conditions required for the measure requested to be granted, that is to say, urgency and a *prima facie* case. Amongst the decisions dismissing such applications, that adopted in *Poste Italiane* v *Commission* is of note as the judge hearing an application for interim relief had to assess whether the condition of urgency was fulfilled in a case concerning the opening up to competition of services previously the preserve, in this instance, of Poste Italiane. By decision of 21 December 2000, [50] the Commission ordered the Italian Republic to end the infringement of Article 82 EC in conjunction with Article 86(1) EC consisting in the exclusion of competition, to the advantage of Poste Italiane, with respect to the day- or time-certain delivery phase of hybrid electronic mail services.

As the damage alleged by Poste Italiane was of a financial nature, the judge hearing the application for interim relief pointed out that such damage cannot, save in exceptional circumstances, be regarded as irreparable or even as reparable with difficulty, since it may ultimately be the subject of financial compensation. In accordance with these principles, the suspension requested would be justified if it appeared that, without such a measure, the applicant would be in a situation which might jeopardise its very existence. However,

47 Orders of the President of the Court of First Instance of 15 January 2001 in Case T-236/00 R *Stauner and Others* v *Parliament and Commission* [2001] ECR II-15, and of 26 January 2001 in Case T-353/00 R *Le Pen* v *Parliament* [2001] ECR II-125.

48 Orders of the President of the Court of First Instance of 5 September 2001 in Case T-74/00 R *Artegodan* v *Commission* (under appeal, Case C-440/01 P(R)), of 12 September 2001 in Case T-132/01 R *Euroalliages and Others* v *Commission* and of 8 October 2001 in Case T-236/00 RII *Stauner and Others* v *Parliament and Commission*, not yet published in the ECR.

49 Inter alia, orders of the President of the Court of First Instance of 15 January 2001 in *Stauner and Others* v *Parliament and Commission*, cited above, and of 5 December 2001 in Case T-216/01 R *Reisebank* v *Commission* (under appeal, Case C-480/01 P(R)) and in Case T-219/01 R *Commerzbank* v *Commission*, not yet published in the ECR.

50 Commission Decision 2001/176/EC of 21 December 2000 concerning proceedings pursuant to Article 86 of the EC Treaty in relation to the provision of certain new postal services with a guaranteed day- or time-certain delivery in Italy (OJ 2001 L 63, p. 59).

it added that, since Poste Italiane, as provider of the universal service, is entrusted with a task of general economic interest, within the meaning of Article 86(2) EC, performance of which is essential, the suspension requested would also be justified if it were proved that exclusion from the reserved area of the day- or time-certain delivery phase of the hybrid electronic mail service would prevent the applicant from carrying out successfully the task entrusted to it until a ruling was given on the merits. Such proof would be furnished if it were shown, *in the light of the financial conditions in which the task of general economic interest has been performed successfully up to that point*, that the exclusive right concerned is absolutely necessary to the performance of that task by the holder of the right. Since the applicant failed to furnish such proof, and the balance of interests inclined in favour of maintaining the contested decision, the application could not be granted.

The case leading to the order in *Duales System Deutschland* v *Commission*, dismissing the application for suspension of operation, raised a problem of a different nature. By decision of 20 April 2001, [51] the Commission found that Der Grüne Punkt — Duales System Deutschland (DSD), the only company operating throughout Germany a 'collective' system for the recovery of used sales packaging from the final consumer or from near the consumer's home, abused its dominant position within the meaning of Article 82 EC by imposing on undertakings participating in its system unfair prices and contractual conditions where the use of the 'Der Grüne Punkt' logo, which should appear on all the packaging of the participating undertaking, did not signify that DSD in fact discharged the obligation to dispose of waste. It should be pointed out that the 'Der Grüne Punkt' trade mark is a collective trade mark duly registered with the German authorities.

In its order, the judge hearing the application for interim relief first outlined the essential issue in the case before him. He took the view, in that regard, that the principal question it raised was whether the licensing scheme imposed by the owner of the trade mark was justified by the need to preserve the specific subject-matter of that right or, to put it another way, whether, in the circumstances of the present case, the trade mark was used by DSD as a means of abusing its dominant position. The in-depth study needed to resolve those questions could not, however, be carried out by the judge hearing the application for interim measures in an examination of the merits, *prima facie*,

51 Commission Decision 2001/463/EC of 20 April 2001 relating to a proceeding pursuant to Article 82 of the EC Treaty (Case COMP D3/34493 DSD) (OJ 2001 L 166, p. 1).

of the action in the main proceedings. Going on to consider whether the immediate operation of the decision in question would cause serious and irreparable damage to the applicant, he held that no proof had been adduced that immediate operation would jeopardise DSD's system. In any event, the judge stressed that the balancing of the applicant's interest in obtaining the interim measure sought, the public interest in the operation of a Commission decision adopted under Article 82 EC and the interests of the intervening parties in the interim proceedings, which would be directly affected by the possible suspension of the contested decision, called for the dismissal of this application. He took the view, on that point, that in those very particular circumstances, the public interest in compliance with property rights in general and intellectual property rights in particular, as expressed in Articles 30 EC and 295 EC, cannot prevail over the Commission's interest in bringing an immediate end to the infringement of Article 82 EC which it considers it has established and, accordingly, in introducing favourable conditions for the entry of DSD's competitors into the market concerned.

. Three orders for suspension of operation of measures were made in 2001 (orders in *Le Pen* v *Parliament*, *Euroalliages and Others* v *Commission* and *IMS Health* v *Commission*, cited above).

By order in *Le Pen* v *Parliament*, operation of the decision taken by the President of the European Parliament in the form of a declaration dated 23 October 2000 was suspended inasmuch as that declaration constituted a decision of the European Parliament by which the Parliament took formal note of the termination of the term of office of Mr Le Pen as a member of the European Parliament. In his assessment of the condition that there must be a *prima facie* case, the judge hearing the application for interim relief took the view that one of the arguments put forward — according to which the role of the Parliament in a procedure terminating the term of office of one of its Members on the basis of Article 12(2) of the 1976 Act, cited above, is not a matter of a merely dependent power — was of a serious nature and could not, therefore, be dismissed *prima facie*.

In making the order in *Euroalliages and Others* v *Commission*, cited above, the judge hearing the application for interim relief ordered that imports of ferro-silicon originating in the People's Republic of China, Kazakhstan, Russia and Ukraine should be subject to registration without provision of security by importers. This case originated with Commission Decision 2001/230/EC terminating the anti-dumping proceeding concerning imports of ferro-silicon

originating in several countries, [52] suspension of the operation of which the applicants sought, primarily, as regards imports from certain of the countries in question. As the Commission did not question that there was a *prima facie* case, it was the condition relating to urgency which essentially fell to be considered. In that regard, the judge hearing the application recalled that damage of a pecuniary nature cannot, save in exceptional circumstances, be regarded as irreparable, or even as being reparable only with difficulty, if it can ultimately be the subject of financial compensation. Damage of a pecuniary nature, which would not disappear simply as a result of compliance by the institution concerned with the judgment in the main proceedings, constitutes economic loss which could be made good by the means of redress provided for in the Treaty, in particular in Articles 235 EC and 288 EC. On application of those principles, an interim measure is justified if it appears that, without that measure, the applicant would be in a situation that could imperil its existence before final judgment in the main action. In such a case the disappearance of the applicant before the decision on the substance of the case would make it impossible for that party to institute any judicial proceedings for compensation. In the present case the applicants had not succeeded in showing that the impairment of their economic viability was such that rationalisation measures would not be sufficient to enable them to continue producing ferro-silicon until final judgment in the main action. However, taking account of all the circumstances of the case, he observed *inter alia* that the injury suffered by the applicants would not disappear simply as a result of the Commission's compliance with a judgment annulling the contested decision and that, in that regard, reparation, at a later stage, of the damage sustained under Article 235 EC and the second paragraph of Article 288 EC, would, at the very least, be uncertain, given the difficulty of showing that the Commission had manifestly and gravely disregarded the limits on its discretion in assessing the Community interest. In the circumstances, the condition relating to urgency was held to be fulfilled. Finally, having balanced the interests involved, *inter alia* those of the importers, exporters and users, he limited the effects of the interim measure to the absolute minimum necessary to preserve the interests of the applicants until judgment in the main action.

However, by order of 14 December 2001 in Case C-404/01 P(R) *Commission* v *Euroalliages and Others*, cited above, the President of the Court of Justice

52 Commission Decision 2001/230/EC terminating the anti-dumping proceeding concerning imports of ferro-silicon originating in Brazil, the People's Republic of China, Kazakhstan, Russia, Ukraine and Venezuela (OJ 2001 L 84, p. 36).

did not uphold the finding of urgency made by the President of the Court of First Instance. He took the view that the irreparable nature of the damage could not be established given the uncertainty over the possibility of success of an action for damages. The case was referred back to the Court of First Instance.

This survey of the most significant judgments of 2001 concludes with the order in *IMS Health* v *Commission*, cited above, which suspended the operation of the *Commission decision imposing interim measures on* IMS Health (IMS). [53] By that decision, the Commission had instructed IMS, a company active in the field of compilation of data on sales and prescriptions of pharmaceutical products, to grant a licence for use of its '1 860 brick structure', a geographical analysis of the German market, which, according to the Commission, was a de facto industry standard on the relevant market. The Commission took the view that the refusal by IMS to grant such a licence constituted a *prima facie* abuse of a dominant position, prevented new competitors from entering or remaining on the market for sales data for pharmaceutical products and was liable to cause serious and irreparable harm to two competitors, NDC Health and AZYX.

Having expressed the view that the extent of its review of the condition relating to the need for a *prima facie* case did not vary according to whether the decision suspension of the operation of which was sought imposed interim measures or concluded an administrative procedure, the judge hearing the application for interim relief found that the case essentially raised the question whether the Commission was entitled to hold that IMS, the holder of a copyright on the 1 860 brick structure, abused its dominant position, within the meaning of Article 82 EC, where it invoked that copyright in refusing to license use by its competitors and whether the Commission could impose, by way of an interim measure, the issue of licences for use of copyright. Since the in-depth analysis required by such questions, which entailed an assessment of whether the 'exceptional circumstances' identified by the Court of Justice in *Magill* [54] and *Bronner* [55] were fulfilled in this case, could not be

53 Commission Decision of 3 July 2001 relating to a proceeding pursuant to Article 82 EC (Case COMP D3/38.044 — NDC Health/IMS Health: Interim measures).

54 Judgment of the Court of Justice in Joined Cases C-241/91 P and C-242/91 P *RTE and ITP* v *Commission* [1995] ECR I-743.

55 Judgment of the Court of Justice in Case C-7/97 *Bronner* [1998] ECR I-7791.

conducted in the course of interim proceedings, it was held that the condition relating to a *prima facie* case was fulfilled.

Similarly, it was held that the condition relating to urgency was fulfilled both because the licensing of use of the copyright could result in lasting and serious harm to the holder of that copyright and because the development of market conditions caused by the issue of those licences could no longer be altered by the annulment of the decision in question.

Finally, balancing the respective interests of the parties to the dispute, in particular those of the two competitors of IMS, the public interest in respect for property rights in general and intellectual property rights in particular, expressly cited in Articles 30 and 295 EC, was emphasised and it was pointed out that the mere fact that the applicant invoked and sought to protect its copyright over the 1 860 brick structure for economic reasons did not undermine its entitlement to rely on the exclusive right, guaranteed by national law to promote innovation.

B — Composition of the Court of First Instance

(Order of precedence as at 20 September 2001)

First row, from left to right:
Judge R. García-Valdecasas y Fernández; Judge M. Jaeger; Judge R.M. Moura Ramos; President B. Vesterdorf; Judge J.D. Cooke; Judge M. Vilaras; Judge K. Lenaerts.

Second row, from left to right:
Judge H. Legal; Judge A.W.H. Meij; Judge J. Pirrung; Judge P. Lindh; Judge V. Tiili; Judge J. Azizi; Judge P. Mengozzi; Judge N.J. Forwood; 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); Associate Professor, 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 from 18 September 1995 to 20 September 2001.

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 International Commission on Civil Status 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 (Section for International Civil Procedure Law, Section for Children's Law); Head of the Section for Private International Law in the Federal Ministry of Justice; Head of a Subdivision 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 (1974-1980); national expert with the Legal Service of the Commission of the European Communities, then Principal Administrator in Directorate General V (Employment, Industrial Relations, Social Affairs); Junior Officer, Junior Member and, since 1999, Member of the Greek Council of State; Associate Member of the Superior Special Court of Greece; Member of the Central Legislative Drafting Committee of Greece (1996-1998); 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.

Hubert Legal

Born 1954; Maître des Requêtes at the French Conseil d'État from 1991 onwards; graduate of the École normale supérieure de Saint-Cloud and of the École nationale d'administration; Associate Professor of English (1979-1985); rapporteur and subsequently Commissaire du Gouvernement in proceedings before the judicial sections of the Conseil d'État (1988-1993): legal adviser in the Permanent Representation of the French Republic to the United Nations in New York (1993-1997); Legal Secretary in the Chambers of Judge Puissochet at the Court of Justice (1997-2001); Judge at the Court of First Instance since 19 September 2001.

Hans Jung

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

2. Changes in the composition of the Court of First Instance in 2001

In 2001 the composition of the Court of First Instance changed as follows:

On 20 September, Judge André Potocki, having completed his term of office, left the Court of First Instance. He was replaced by Hubert Legal as Judge.

3. Order of precedence

from 1 January to 19 September 2001

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

from 20 September to 31 December 2001

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

H. JUNG, Registrar

4. Former Members of the Court of First Instance

Da CRUZ VILAÇA José Luis (1989-1995), President from 1989 to 1995
SAGGIO Antonio (1989-1998), President from 1995 to 1998
BARRINGTON Donal Patrick Michael (1989-1996)
EDWARD David Alexander Ogilvy (1989-1992)
KIRSCHNER Heinrich (1989-1997)
YERARIS Christos (1989-1992)
SCHINTGEN Romain Alphonse (1989-1996)
BRIËT Cornelis Paulus (1989-1998)
BIANCARELLI Jacques (1989-1995)
KALOGEROPOULOS Andreas (1992-1998)
BELLAMY Christopher William (1992-1999)
POTOCKI André (1995-2001)

- 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 2001

18 January	HE Raffaele Campanella, Ambassador Extraordinary and Plenipotentiary of Italy to the Grand Duchy of Luxembourg
25 January	HE Theofilos V. Theofilou, Ambassador Extraordinary and Plenipotentiary, Permanent Delegate of the Republic of Cyprus in Brussels
29 January	Ms Nicole Fontaine, President of the European Parliament
31 January	HE Ricardo Zalacain Jorge, Ambassador Extraordinary and Plenipotentiary of Spain to the Grand Duchy of Luxembourg
7 February	Ms Kathalijne Maria Buitenweg, rapporteur to the European Parliament for the 2001 budget
12 to 14 February	Delegation from the Court of Justice of the Economic and Monetary Community of Central Africa (CEMAC)
15 February	The Right Rev. Andrew McLellan, Moderator of the Church of Scotland
22 February	Delegation from the Association of Councils of State and Supreme Administrative Jurisdictions of the European Union, Mr P. Hallberg, President of the Supreme Administrative Court of Finland, Mr H.D. Tjeenk Willink, Vice-President of the Council of State of the Netherlands, and Mr Y. Kreins, Member of the Council of State of Belgium
8 March	HE Petar Stoyanov, President of the Republic of Bulgaria

9 March	Final of the European Law Moot Court Competition
14 March	Mr Michael Charles Wood, Legal Adviser at the Foreign and Commonwealth Office, United Kingdom
15 March	Delegation from the Supreme Court of the Czech Republic
19 March	HE Raffaele Campanella, Ambassador Extraordinary and Plenipotentiary of Italy to the Grand Duchy of Luxembourg
28 March	HE Horst Pakowski, Ambassador Extraordinary and Plenipotentiary of Germany to the Grand Duchy of Luxembourg
10 April	Mr Gerald J. Loftus, Chargé d'Affaires ad interim at the Embassy of the United States of America in the Grand Duchy of Luxembourg and Mr Robert Faucher, First Secretary in the Mission of the United States of America to the European Union in Brussels
3 May	Mr Willi Rothley and Mr Klaus-Heiner Lehne, Members of the European Parliament
10 May	Mr Arturo García Tizón, Abogado General del Estado (Principal Law Officer, Spain)
23 May	Mr Kurt Biedenkopf, Prime Minister of the *Land* of Saxony
29 May	Mr Clay Constantinou, former Ambassador of the United States of America to the Grand Duchy of Luxembourg and Dean of Seton Hall School of Diplomacy & International Relations
30 May	Delegation from the Consultative Council of the Balearic Islands

31 May	Mr Yueh-sheng Weng, President of the Judicial Yuan and Chairperson of the Council of Grand Justices (Taiwan)
18 and 19 June	Judges' Forum
25 June	Mr Wolfgang Thierse, President of the German Bundestag
25 June	HE Pierre Vimont, Ambassador Extraordinary and Plenipotentiary, Permanent Representative of France to the European Union in Brussels
26 June	Mr Helmut Schröer, Mayor of Trier
27 June	Delegation from constitutional and supreme courts in Latin America
27 June	HE Tudorel Postolache, Ambassador Extraordinary and Plenipotentiary of Romania to the Grand Duchy of Luxembourg
2 and 3 July	Delegation from the Supreme Arbitration Court of Russia
10 July	Mr Rocco Antonio Cangelosi, Director General for European Integration in the General Secretariat of the Ministry of Foreign Affairs of Italy, accompanied by HE Raffaele Campanella, Ambassador Extraordinary and Plenipotentiary of Italy to the Grand Duchy of Luxembourg
11 July	HE Constantinos Stefanopoulos, President of the Hellenic Republic
16 July	HE I. Wo Byczewski, Ambassador Extraordinary and Plenipotentiary, Head of the Mission of the Republic of Poland to the European Union

17 September	Mr Josef Pühringer, Prime Minister of Upper Austria
18 September	Mr Michel Petite, Director General of the Legal Service of the European Commission
24 and 25 September	Delegation of Danish judges
1 October	Delegation from the European Court of Human Rights in Strasbourg
3 October	HE Masahiro Ando, Ambassador Extraordinary and Plenipotentiary of Japan to the Grand Duchy of Luxembourg
4 October	Delegation from the Supreme Court of Estonia
8 and 9 October	Delegation from the Netherlands Administrative Court for Trade and Industry
18 October	Delegation from the Social Insurance Division of the Swiss Federal Court
13 November	Delegation of Scottish Law Officers: Mr Colin Boyd QC, Lord Advocate; Dr Lynda Clark QC MP, Advocate General for Scotland; and Mr Neil Davidson QC, Solicitor General for Scotland
15 November	HE Lazar Comanescu, Ambassador Extraordinary and Plenipotentiary, Head of the Mission of Romania to the European Communities
15 November	Ms Loyola de Palacio, Vice-President of the European Commission
15 November	Dr Hans-Georg Landfermann, President of the German Federal Patent Court
19 and 20 November	Judicial Study Visit

26 November	HE Dante Martinelli, Ambassador Extraordinary and Plenipotentiary of the Swiss Confederation in Brussels
27 November	Delegation from the First Public-Law Division of the Swiss Federal Court
29 November	Delegation from the Supreme Court of Bulgaria
10 and 11 December	Delegation from the Council of State of the Hellenic Republic

B — Study visits to the Court of Justice and the Court of First Instance in 2001

(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	154	42	—	46	368	38	—	648
DK	7	52	—	13	114	7	15	208
D	120	147	100	312	1297	259	40	2275
EL	58	—	—	4	108	—	—	170
E	24	131	—	15	611	60	—	841
F	83	252	38	132	638	63	—	1206
IRL	5	—	—	—	133	—	—	138
I	52	38	—	—	213	—	—	303
L	2	—	—	—	29	60	—	91
NL	8	—	34	11	25	—	—	78
A	16	52	13	—	214	—	—	295
P	8	18	—	—	9	—	—	35
FIN	8	66	—	7	34	68	—	183
S	89	68	—	—	19	—	—	176
UK	45	32	5	22	792	86	—	982
Third countries	69	222	—	153	795	13	—	1252
Mixed groups	—	71	—	—	1003	16	—	1090
TOTAL	748	1191	190	715	6402	670	55	9971

(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 2001 the figures were as follows: Belgium: 9; Denmark: 7; Germany: 21; Greece: 8; Spain: 24; France: 24; Ireland: 5; Italy: 22; Luxembourg: 2; Netherlands: 8; Austria: 8; Portugal: 8; Finland: 8; Sweden: 8; United Kingdom: 24.

2 Other than those accompanying student groups.

Study visits to the Court of Justice and the Court of First Instance in 2001

(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	6	3	—	1	13	2	—	25
DK	2	1	—	1	4	1	1	10
D	6	8	2	10	42	9	1	78
EL	6	—	—	1	5	—	—	12
E	2	8	—	1	21	2	—	34
F	8	11	1	8	22	5	—	55
IRL	2	—	—	—	4	—	—	6
I	3	2	—	—	6	—	—	11
L	2	—	—	—	2	1	—	5
NL	2	—	1	1	1	—	—	5
A	3	1	1	—	8	—	—	13
P	2	1	—	—	1	—	—	4
FIN	2	4	—	1	1	5	—	13
S	6	4	—	—	1	—	—	11
UK	4	1	1	3	23	2	—	34
Third countries	6	10	—	13	30	1	—	60
Mixed groups	—	1	—	—	28	1	—	30
TOTAL	62	55	6	40	212	29	2	406

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

2 Other than those accompanying student groups.

C — Formal sitting in 2001

19 September	Formal sitting on the occasion of the partial renewal of the membership of the Court of First Instance, the departure from office of Mr André Potocki, Judge at the Court of First Instance, and the entry into office of Mr Hubert Legal as Judge at the Court of First Instance

D — Visits and participation in official functions in 2001

15 January	Visit of a delegation from the Court of Justice, including the President, to the European Court of Human Rights in Strasbourg
25 January	Attendance of a delegation from the Court of Justice at the formal sitting of the European Court of Human Rights in Strasbourg
1 and 2 February	Official visit of a delegation from the Court of Justice, including the President, to the German Federal Constitutional Court in Karlsruhe
19 February	Meeting of the President of the Court of Justice with Mr Romano Prodi, President of the European Commission, in Brussels
7 and 8 May	At the invitation of His Majesty the King of Spain and His Royal Highness the Grand Duke Henri of Luxembourg, participation of the President of the Court of Justice in the functions on the occasion of the State visit to Spain of his Royal Highness the Grand Duke Henri of Luxembourg
28 May	Participation of a delegation from the Court of Justice at the General Assembly of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union in Helsinki
10 and 12 June	Participation of the President of the Court of Justice at the 'European Law Conference' organised by the Swedish Parliament and Government in Stockholm
from 13 to 15 September	Participation of a delegation from the Court of Justice, including the President, at the 1st European Lawyers' Conference in Nuremberg

27 and 28 September	Participation of a delegation from the Court of Justice at the symposium for European judges in the field of trade marks at the seat of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) in Alicante
28 September	Attendance of a delegation from the Court of Justice, including the President, at the celebration of the 50th anniversary of the German Federal Constitutional Court in Karlsruhe
1 October	Attendance of a delegation from the Court of Justice at the ceremony for the opening of the judicial year in London
12 and 13 October	Participation of the President of the Court of Justice at a symposium on the Court of Justice of the European Communities, celebrating the 10th anniversary of the Maison de Rhénanie-Palatinat (German cultural centre in Burgundy), and at the inaugural session of the first Eastern European course of the Paris Institute of Political Studies in Dijon
25 October	Participation of the President of the Court of Justice in a panel discussion on '15 years of case-law of the Court of Justice of the European Communities', at a symposium organised by the Spanish Ministries of Foreign Affairs and Justice on the occasion of the 15th anniversary of the State Legal Service for cases before the Court of Justice of the European Communities, in Madrid
16 November	Participation of the President of the Court of Justice at the 'Walter-Hallstein-Symposium', on the occasion of the 100th anniversary of the birth of Walter Hallstein, organised by the Walter Hallstein-Institut of Humboldt University Berlin and Johann Wolfgang Goethe University in Frankfurt

Chapter IV

Tables and statistics

A - Proceedings of the Court of Justice

1. Synopsis of the judgments delivered by the Court of Justice in 2001

Case	Date	Parties	Subject-matter
AGRICULTURE			
C-247/98	11 January 2001	Hellenic Republic v Commission of the European Communities	EAGGF — Clearance of accounts — 1994 financial year
C-403/98	11 January 2001	Azienda Agricola Monte Arcosu Srl v Regione Autonoma della Sardegna, Organismo Comprensoriale n. 24 della Sardegna, Ente Regionale per l'Assistenza Tecnica in Agricola (ERSAT)	Agriculture — Farmer practising farming as his main occupation — Concept — Private limited company

Case	Date	Parties	Subject-matter
C-333/99	1 February 2001	Commission of the European Communities v French Republic	Failure of a Member State to fulfil obligations — Community system for the conservation and management of fishery resources — Control of fishing and related activities — Inspection of fishing vessels and monitoring of landings (Article 5(2) of Regulation (EEC) No 170/83 and Article 1(1) of Regulation (EEC) No 2241/87) — Temporary prohibition of fishing activities (Article 11(2) of Regulation No 2241/87) — Penal or administrative action against those responsible for infringing the Community rules on conservation and monitoring (Article 5(2) of Regulation No 170/83 and Article 1(2) of Regulation No 2241/87)
C-278/98	6 March 2001	Kingdom of the Netherlands v Commission of the European Communities	EAGGF — Clearance of accounts — 1994 — Cereals, beef and veal
C-316/99	8 March 2001	Commission of the European Communities v Federal Republic of Germany	Failure by a Member State to fulfil its obligations — Directive 96/43/EC — Failure to transpose within the prescribed period
C-176/00	8 March 2001	Commission of the European Communities v Hellenic Republic	Failure by a Member State to fulfil its obligations — Failure to transpose Directives 96/24/EC and 96/25/EC

Case	Date	Parties	Subject-matter
C-41/99 P	31 May 2001	Sadam Zuccherifici, divisione della SECI - Società Esercizi Commerciali Industriali SpA, Sadam Castiglionese SpA, Sadam Abruzzo SpA, Zuccherificio del Molise SpA, Società Fondiaria Industriale Romagnola SpA (SFIR) v Council of the European Union	Appeal — Sugar — Regulation (EC) No 2613/97 — Aid to beet sugar producers — Abolition — Marketing year 2001/02 — Action for annulment — Natural or legal persons — Inadmissible
C-100/99	5 July 2001	Italian Republic v Council of the European Union, Commission of the European Communities	Common agricultural policy — Agrimonetary system for the euro — Transitional measures for the introduction of the euro
C-189/01	12 July 2001	H. Jippes, Afdeling Groningen van de Nederlandse Vereniging tot Bescherming van Dieren, Afdeling Assen en omstreken van de Nederlandse Vereniging tot Bescherming van Dieren v Minister van Landbouw, Natuurbeheer en Visserij	Agriculture — Control of foot-and-mouth disease — Prohibition of vaccination — Principle of proportionality — Taking animal welfare into account
C-365/99	12 July 2001	Portuguese Republic v Commission of the European Communities	Agriculture — Animal health — Emergency measures to combat bovine spongiform encephalopathy — Mad cow disease
C-374/99	13 September 2001	Kingdom of Spain v Commission of the European Communities	EAGGF — Clearance of accounts — 1995 financial year — Aid for consumption of olive oil — Premiums for sheep and goats

Case	Date	Parties	Subject-matter
C-375/99	13 September 2001	Kingdom of Spain v Commission of the European Communities	EAGGF — Clearance of accounts — Expenditure for 1996 and 1997 — Public storage of bovine meat
C-263/98	20 September 2001	Kingdom of Belgium v Commission of the European Communities	EAGGF — Clearance of accounts — 1994 — Cereals, beef and veal
C-442/99 P	27 September 2001	Cordis Obst und Gemüse Großhandel GmbH v Commission of the European Communities, French Republic	Appeal — Common organisation of the market — Bananas — Imports from ACP States and third countries — Request for import licences — Transitional measures — Regulation (EEC) No 404/93 — Principle of equal treatment
C-403/99	4 October 2001	Italian Republic v Commission of the European Communities	Common agricultural policy — Agrimonetary system for the euro — Transitional measures for the introduction of the euro
Cases C-80/99, C-81/99 and C-82/99	9 October 2001	Ernst-Otto Flemmer, Renate Christoffel v Council of the European Union, Commission of the European Communities Marike Leitensdorfer v Bundesanstalt für Landwirtschaft und Ernährung	Non-contractual liability — Milk producers — Non-marketing undertaking — Exclusion from milk quota scheme — Compensation — Substitution — Flat-rate compensation by contract — Regulation (EEC) No 2187/93 — Relevant jurisdiction — Applicable law
C-457/99	11 October 2001	Commission of the European Communities v Hellenic Republic	Failure by a Member State to fulfil its obligations — Directive 95/69/EC — Animal nutrition — Non-implementation

Case	Date	Parties	Subject-matter
C-228/99	8 November 2001	Silos e Mangimi Martini SpA v Ministero delle Finanze	Agriculture — Common organisation of the markets — Export refunds — Withdrawal — Interpretation and validity of Regulations (EC) No 1521/95 and No 1576/95 — Failure to state reasons
C-277/98	13 November 2001	French Republic v Commission of the European Communities	EAGGF — Clearance of accounts — 1994 — Supplementary levy on milk — Disputes between those liable to the levy and the competent national authorities — Proceedings before national courts — Negative corrections applied to Member States for supplementary levies not yet recovered
C-147/99	22 November 2001	Italian Republic v Commission of the European Communities	EAGGF — Clearance of accounts — Ineligible durum wheat — Quantities missing from the stockpile — Withdrawal of approval of undertakings packaging olive oil — Inadequate management and checks of premiums for sheep and goats
C-146/99	27 November 2001	Italian Republic v Commission of the European Communities	EAGGF — Clearance of accounts — Tomatoes — Minimum price for producers
C-148/00	6 December 2001	Commission of the European Communities v Italian Republic	Failure of a Member State to fulfil its obligations — Failure to transpose Directive 98/51/EC
C-166/00	6 December 2001	Commission of the European Communities v Hellenic Republic	Failure by a Member State to fulfil its obligations — Failure to transpose Directives 97/41/EC, 98/51/EC and 98/67/EC

Case	Date	Parties	Subject-matter
C-373/99	6 December 2001	Hellenic Republic v Commission of the European Communities	EAGGF — Clearance of accounts — 1995 financial year — Fruit and vegetables — Arable crops
C-269/99	6 December 2001	Carl Kühne GmbH & Co. KG, Rich. Hengstenberg GmbH & Co., Ernst Nowka GmbH & Co. KG v Jütro Konservenfabrik GmbH & Co. KG	Agricultural products and foodstuffs — Geographical indications and designations of origin — Simplified registration procedure — Protection of the designation 'Spreewälder Gurken'
C-1/00	13 December 2001	Commission of the European Communities v French Republic	Failure of a Member State to fulfil its obligations — Refusal to end the ban on British beef and veal
C-93/00	13 December 2001	European Parliament v Council of the European Union	Regulation (EC) No 2772/1999 — Beef labelling system — Competence of the Council
C-131/00	13 December 2001	Lisa Nilsson v Länsstyrelsen i Norrbottens län	Common agricultural policy — Regulation (EEC) No 3508/92 — Regulation (EEC) No 3887/92 — Integrated administration and control system for certain Community aid schemes — Detailed rules for application — Register of animals not kept up to date by farmer — Penalties
C-317/99	13 December 2001	Kloosterboer Rotterdam BV v Minister van Landbouw, Natuurbeheer en Visserij	Reference for a preliminary ruling — Additional duties on importation — Validity of Article 3 of Regulation (EC) No 1484/95

Case	Date	Parties	Subject-matter

APPROXIMATION OF LAWS

C-370/99	11 January 2001	Commission of the European Communities v Ireland	Failure of a Member State to fulfil its obligations — Directive 96/9/EC — Failure to implement within the prescribed period
C-151/00	18 January 2001	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Directive 97/66/EC — Processing of personal data and protection of privacy in the telecommunications sector — Non-transposition
C-219/99	14 February 2001	Commission of the European Communities v French Republic	Failure of a Member State to fulfil its obligations — Failure not contested — Directive 95/16/EC
C-278/99	8 March 2001	Georgius van der Burg	Technical standards and regulations — Non-approved transmitting equipment — Advertising
C-100/00	5 April 2001	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil its obligations — Undisputed failure — Directive 73/23/EEC — Electric water heaters — Conditions not prescribed by the directive
C-306/98	3 May 2001	The Queen v Minister of Agriculture, Fisheries and Food, Secretary of State for the Environment, ex parte: Monsanto plc	Directive 91/414/EEC — Plant protection products — Authorisation for placing on the market — Assessment of an application for authorisation — Transitional period

Case	Date	Parties	Subject-matter
C-28/99	3 May 2001	Jean Verdonck, Ronald Everaert, Édith de Baedts	Directive 89/592/EEC — National rules on insider dealing — Power of Member States to adopt more stringent provisions — Definition of national provisions applied generally
C-203/99	10 May 2001	Henning Veedfald v Århus Amtskommune	Approximation of laws — Directive 85/374/EEC — Liability for defective products — Exemption from liability — Conditions
C-258/99	10 May 2001	BASF AG v Bureau voor de Industriële Eigendom (BIE)	Regulation (EC) No 1610/96 — Plant protection products — Supplementary protection certificate
C-169/99	13 September 2001	Hans Schwarzkopf GmbH & Co. KG v Zentrale zur Bekämpfung unlauteren Wettbewerbs eV	Article 6(1)(d), last sentence, of Directive 76/768/EEC, as amended by Directive 93/35/EEC — Prescribed labelling impossible for practical reasons — Justification for putting abbreviated forms of compulsory warnings on the containers and packaging of cosmetic products — Information provided in nine languages in the interests of greater flexibility in the marketing of cosmetic products

Case	Date	Parties	Subject-matter
C-517/99	4 October 2001	Merz & Krell GmbH & Co.	Trade marks — Approximation of laws — Article 3(1)(d) of First Directive 89/104/EEC — Grounds for refusal or invalidity — Trade marks which consist exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade — Need for signs or indications to have become customary to designate the goods or services in respect of which registration of the mark is sought — No need for the signs or indications to be directly descriptive of the properties or characteristics of the goods or services in respect of which registration of the mark is sought
C-450/00	4 October 2001	Commission of the European Communities v Grand Duchy of Luxembourg	Failure by a Member State to fulfil its obligations — Failure to transpose Directive 95/46/EC

Case	Date	Parties	Subject-matter
C-377/98	9 October 2001	Kingdom of the Netherlands v European Parliament, Council of the European Union	Annulment — Directive 98/44/EC — Legal protection of biotechnological inventions — Legal basis — Article 100a of the EC Treaty (now, after amendment, Article 95 EC), Article 235 of the EC Treaty (now Article 308 EC) or Articles 130 and 130f of the EC Treaty (now Articles 157 EC and 163 EC) — Subsidiarity — Legal certainty — Obligations of Member States under international law — Fundamental rights — Human dignity — Principle of collegiality for draft legislation of the Commission
C-112/99	25 October 2001	Toshiba Europe GmbH v Katun Germany GmbH	Comparative advertising — Marketing of spare parts and consumable items — References made by a supplier of non-original spare parts and consumable items to the product numbers specific to the original spare parts and consumable items — Directive 84/450/EEC and Directive 97/55/EC

Case	Date	Parties	Subject-matter
Cases C-414/99, C-415/99 and C-416/99	20 November 2001	Zino Davidoff SA v A & G Imports Ltd Levi Strauss & Co., Levi Strauss (UK) Ltd v Tesco Stores Ltd, Tesco plc Levi Strauss & Co., Levi Strauss (UK) Ltd v Costco Wholesale UK Ltd	Trade marks — Directive 89/104/EEC — Article 7(1) — Exhaustion of the rights conferred by a trade mark — Goods placed on the market outside the EEA — Imported into the EEA — Consent of the trade mark proprietor — Whether consent required to be express or implied — Law governing the contract — Presumption of consent — Non-applicability

CITIZENSHIP OF THE UNION

C-192/99	20 February 2001	The Queen v Secretary of State for the Home Department, ex parte: Manjit Kaur	Citizenship of the Union — Nationality of a Member State — Declarations by the United Kingdom concerning the definition of the term national — British Overseas Citizen

Case	Date	Parties	Subject-matter

COMMERCIAL POLICY

C-239/99	15 February 2001	Nachi Europe GmbH v Hauptzollamt Krefeld	Common commercial policy — Anti-dumping measures — Article 1(2) of Regulation (EEC) No 2849/92 — Modification of the definitive anti-dumping duty on imports of ball bearings with a greatest external diameter exceeding 30 mm originating in Japan — Reference for a preliminary ruling on whether that regulation is valid — Failure by the plaintiff in the main proceedings to bring an action seeking annulment of the regulation
Cases C-76/98 P and C-77/98 P	3 May 2001	Ajinomoto Co., Inc. The NutraSweet Company v Council of the European Union Commission of the European Communities	Appeal — Dumping — Normal value — Existence of a patent in the exporter's domestic market — Effect on the lawfulness of the regulation imposing a definitive anti-dumping duty of an allegedly illegal element of the regulation imposing a provisional anti-dumping duty
C-110/97	22 November 2001	Kingdom of the Netherlands v Council of the European Union	Arrangements for association of overseas countries and territories — Imports of rice originating in the overseas countries and territories — Safeguard measures — Regulation (EC) No 304/97 — Action for annulment

Case	Date	Parties	Subject-matter
C-301/97	22 November 2001	Kingdom of the Netherlands v Council of the European Union	Arrangements for association of overseas countries and territories — Imports of rice originating in the overseas countries and territories — Safeguard measures — Regulation (EC) No 1036/97 — Action for annulment
C-451/98	22 November 2001	Antillean Rice Mills NV v Council of the European Union	Arrangements for association of overseas countries and territories — Imports of rice originating in the overseas countries and territories — Safeguard measures — Regulation (EC) No 304/97 — Action for annulment — Inadmissibility
C-452/98	22 November 2001	Nederlandse Antillen v Council of the European Union	Arrangements for association of overseas countries and territories — Imports of rice originating in the overseas countries and territories — Safeguard measures — Regulation (EC) No 1036/97 — Action for annulment — Inadmissibility

Case	Date	Parties	Subject-matter

COMMUNITY OWN RESOURCES

C-253/99	27 September 2001	Bacardi GmbH v Hauptzollamt Bremerhaven	Community Customs Code and implementing regulation — Repayment of import duties — Favourable tariff treatment — Post-clearance production of certificate of authenticity — Alteration of the tariff classification stated in the customs declaration — Concept of special situation

COMPANY LAW

C-237/99	1 February 2001	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Directive 93/37/EEC — Public works contracts — Concept of contracting authority
C-97/00	8 March 2001	Commission of the European Communities v French Republic	Failure of a Member State to fulfil its obligations — Failure to transpose Directive 97/52/EC
Cases C-223/99 and C-260/99	10 May 2001	Agorà Srl v Ente Autonomo Fiera Internazionale di Milano Excelsior Snc di Pedrotti Bruna & C. v Ente Autonomo Fiera Internazionale di Milano, Ciftat Soc. coop. arl	Public service contracts — Definition of contracting authorities — Body governed by public law

Case	Date	Parties	Subject-matter
C-439/00	21 June 2001	Commission of the European Communities v French Republic	Failure by Member State to fulfil its obligations — Directive 98/4/EC — Failure to transpose within the prescribed period
C-399/98	12 July 2001	Ordine degli Architetti delle Province di Milano e Lodi, Piero De Amicis, Consiglio Nazionale degli Architetti, Leopoldo Freyrie v Comune di Milano	Public works contracts — Directive 93/37/EEC — National legislation under which the holder of a building permit or approved development plan may execute infrastructure works directly, by way of set-off against a contribution — National legislation permitting the public authorities to negotiate directly with an individual the terms of administrative measures concerning him
C-19/00	18 October 2001	SIAC Construction Ltd v County Council of the County of Mayo	Public works contracts — Award to the most economically advantageous tender — Award criteria
Cases C-285/99 and C-286/99	27 November 2001	Impresa Lombardini SpA - Impresa Generale di Costruzioni v ANAS - Ente Nazionale per le Strade, Società Italiana per Condotte d'Acqua SpA Impresa Ing. Mantovani SpA v ANAS - Ente Nazionale per le Strade, Ditta Paolo Bregoli	Directive 93/37/EEC — Public works contracts — Award of contracts — Abnormally low tenders — Detailed rules for explanation and rejection applied in a Member State — Obligations of the awarding authority under Community law

Case	Date	Parties	Subject-matter

COMPETITION

C-163/99	29 March 2001	Portuguese Republic v Commission of the European Communities	Exclusive rights — Airport administration — Landing charges — Article 90(3) of the EC Treaty (now Article 86(3) EC)
C-449/98 P	17 May 2001	International Express Carriers Conference (IECC) v Commission of the European Communities	Appeal — Decision rejecting complaint — Competition — Postal services — Remail
C-450/98	17 May 2001	International Express Carriers Conference (IECC) v Commission of the European Communities	Appeal — Decisions rejecting complaints — Abuse of a dominant position — Postal services — Remail
C-340/99	17 May 2001	TNT Traco SpA v Poste Italiane SpA, formerly Ente Poste Italiane, and Others	Articles 86 and 90 of the EC Treaty (now Articles 82 EC and 86 EC) — Postal services — National legislation making the supply of express mail services by undertakings other than the one responsible for operating the universal service subject to payment of the postal dues normally applicable to the universal service — Allocation of the proceeds of those dues to the undertaking with the exclusive right to operate the universal service

Case	Date	Parties	Subject-matter
Cases C-302/99 P and C-308/99 P	12 July 2001	Commission of the European Communities, French Republic v Télévision française 1 SA (TF1)	Appeal — Inoperative plea — Challenge to the grounds of a judgment that has no effect on the operative part of the judgment — Liability for costs
C-453/99	20 September 2001	Courage Ltd v Bernard Crehan Bernard Crehan v Courage Ltd and Others	Article 85 of the EC Treaty (now Article 81 EC) — Beer tie — Leasing of public houses — Restrictive agreement — Right to damages of a party to the contract
Cases C-396/99 and C-397/99	16 October 2001	Commission of the European Communities v Hellenic Republic	Failure by a Member State to fulfil its obligations — Directives 90/388/EEC and 96/2/EC — Market for telecommunications services — Mobile and personal communications
C-429/99	16 October 2001	Commission of the European Communities v Portuguese Republic	Telecommunications — Directives 90/388/EEC and 96/19/EC — Voice telephony — Call-back services — Portugal Telecom
C-475/99	25 October 2001	Firma Ambulanz Glöckner v Landkreis Südwestpfalz	Articles 85, 86 and 90 of the EC Treaty (now Articles 81 EC, 82 EC and 86 EC) — Transport of sick or injured persons by ambulance — Special or exclusive rights — Restriction of competition — Public interest task — Justification — Effect on trade between Member States

Case	Date	Parties	Subject-matter
C-221/99	29 November 2001	Giuseppe Conte v Stefania Rossi	Architects' fees — Summary procedure for the recovery of debts — Opinion of the professional association — Articles 5 and 85 of the EC Treaty (now Articles 10 EC and 81 EC)
C-146/00	6 December 2001	Commission of the European Communities v French Republic	Telecommunications — Financing of a universal service — Contribution from new market entrants

ECSC

Cases C-280/99 P, C-281/99 P and C-282/99 P	21 June 2001	Moccia Irme SpA, Ferriera Lamifer SpA, Ferriera Acciaieria Casilina SpA v Commission of the European Communities	Appeal — Aid to the steel industry — Restructuring of the iron and steel sector
C-390/98	20 September 2001	H.J. Banks & Co. Ltd v The Coal Authority, Secretary of State for Trade and Industry	ECSC Treaty — Licences to extract raw coal — Discrimination between producers — Special charges — State aid — Article 4(b) and (c) of the Treaty — Decision No 3632/93/ECSC — Code on aid to the coal industry — Direct effect — Respective powers of the Commission and the national courts

Case	Date	Parties	Subject-matter
C-276/99	25 October 2001	Federal Republic of Germany v Commission of the European Communities	ECSC — State aid granted to iron and steel undertakings — Application for the recovery of aid contrary to Community law — Obligations of the Member States — Failure to fulfil obligations — Procedure initiated when the failure has exhausted its effects

ENVIRONMENT AND CONSUMERS

C-266/00	8 March 2001	Commission of the European Communities v Grand Duchy of Luxembourg	Failure by a Member State to fulfil its obligations — Directive 91/676/EEC
C-266/99	8 March 2001	Commission of the European Communities v French Republic	Failure of a Member State to fulfil its obligations — Quality of surface water intended for the abstraction of drinking water — Directive 75/440/EEC — Conditions of drinking water abstraction in Brittany
C-147/00	15 March 2001	Commission of the European Communities v French Republic	Failure of a Member State to fulfil its obligations — Quality of bathing water — Inadequate implementation of Directive 76/160/EEC
C-144/99	10 May 2001	Commission of the European Communities v Kingdom of the Netherlands	Failure by a Member State to fulfil its obligations — Directive 93/13/EEC — Unfair terms in consumer contracts — Incomplete transposition of the directive into national law

Case	Date	Parties	Subject-matter
C-152/98	10 May 2001	Commission of the European Communities v Kingdom of the Netherlands	Failure of a Member State to fulfil its obligations — Directive 76/464/EEC — Water pollution — Failure to transpose
C-159/99	17 May 2001	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil its obligations — Directive 79/409/EEC — Conservation of wild birds — Admissibility
C-230/00	14 June 2001	Commission of the European Communities v Kingdom of Belgium	Failure by a Member State to fulfil its obligations — Failure to implement Directives 75/442/EEC, 76/464/EEC, 80/68/EEC, 84/360/EEC and 85/337/EEC — Pollution and nuisance — Waste — Dangerous substances — Pollution of the aquatic environment — Air pollution
C-368/00	14 June 2001	Commission of the European Communities v Kingdom of Sweden	Failure by a Member State to fulfil its obligations — Quality of bathing water — Inadequate implementation of Directive 76/160/EEC
C-67/99	11 September 2001	Commission of the European Communities v Ireland	Failure by a Member State to fulfil its obligations — Directive 92/43/EEC — Conservation of natural habitats — Conservation of wild fauna and flora — Article 4(1) — List of sites — Site information
C-71/99	11 September 2001	Commission of the European Communities v Federal Republic of Germany	Failure by a Member State to fulfil its obligations — Directive 92/43/EEC — Conservation of natural habitats — Conservation of wild fauna and flora — Article 4(1) — List of sites — Site information

Case	Date	Parties	Subject-matter
C-220/99	11 September 2001	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 — Conservation of wild fauna and flora — Article 4(1) — List of sites — Site information
C-417/99	13 September 2001	Commission of the European Communities v Kingdom of Spain	Failure by a Member State to fulfil its obligations — Directive 96/62/EC — Ambient air quality assessment and management — Failure to designate the competent authorities and bodies responsible for implementing the directive
C-354/99	18 October 2001	Commission of the European Communities v Ireland	Failure to fulfil obligations — Directive 86/609/EEC — Incomplete implementation
C-510/99	23 October 2001	Xavier Tridon v Fédération Rhône-Alpes de protection de la nature (Frapna), section Isère	Wild fauna and flora — Endangered species — Application in the Community of the Washington Convention
C-127/99	8 November 2001	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil its obligations — Inadequate implementation of Directive 91/676/EEC — Protection of waters against pollution caused by nitrates from agricultural sources
C-427/00	13 November 2001	Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland	Failure by a Member State to fulfil its obligations — Quality of bathing water — Inadequate compliance with Directive 76/160/EEC

Case	Date	Parties	Subject-matter
Cases C-541/99 and C-542/99	22 November 2001	Cape Snc v Idealservice Srl Idealservice MN RE Sas v OMAI Srl	Article 2(b) of Directive 93/13/EEC — Meaning of consumer — Undertaking concluding a standard contract with another undertaking to acquire merchandise or services solely for the benefit of its employees
C-376/00	11 December 2001	Commission of the European Communities v Italian Republic	Failure of a Member State to fulfil obligations — Directives 75/439/EEC and 75/442/EEC — National reports on implementation — Failure to forward to the Commission
C-324/99	13 December 2001	DaimlerChrysler AG v Land Baden-Württemberg	Environment — Waste — Regulation (EEC) No 259/93 on shipments of waste — Conditions justifying prohibitions or restrictions on the export of waste — National legislation imposing the obligation to offer waste to an approved body
C-481/99	13 December 2001	Georg Heininger and Helga Heininger v Bayerische Hypo- und Vereinsbank AG	Consumer protection — Doorstep selling — Right of cancellation — Agreement to grant credit secured by charge on immovable property

Case	Date	Parties	Subject-matter

EXTERNAL RELATIONS

C-36/98	30 January 2001	Kingdom of Spain v Council of the European Union	Legal basis — Environment — Council decision approving the Convention on cooperation for the protection and sustainable use of the river Danube — Article 130s(1) and (2) of the EC Treaty (now, after amendment, Article 175(1) and (2) EC) — Concept of management of water resources
C-33/99	20 March 2001	Hassan Fahmi, M. Esmoris Cerdeiro-Pinedo Amado v Bestuur van de Sociale Verzekeringsbank	Article 41 of the EEC-Morocco Cooperation Agreement — Article 3 of Regulation (EEC) No 1408/71 — Social security — Article 7 of Regulation (EEC) No 1612/68 — Articles 48 and 52 of the EC Treaty (now, after amendment, Articles 39 EC and 43 EC) — Freedom of movement for persons — Non-discrimination — Recipients of an invalidity pension no longer residing in the competent Member State — Amendment of the legislation on study finance

Case	Date	Parties	Subject-matter
C-89/99	13 September 2001	Schieving-Nijstad vof and Others v Robert Groeneveld	Agreement establishing the World Trade Organisation — Article 50(6) of the TRIPs Agreement — Interpretation — Direct effect — Application to proceedings pending at the time of entry into force in the State concerned — Conditions regarding the time-limit for bringing substantive proceedings — Calculation of that time-limit
C-63/99	27 September 2001	The Queen v Secretary of State for the Home Department, ex parte: Wieslaw Gloszczuk and Elzbieta Gloszczuk	External relations — Association Agreement between the Communities and Poland — Freedom of establishment — Leave to enter obtained fraudulently
C-235/99	27 September 2001	The Queen v Secretary of State for the Home Department, ex parte: Eleanora Ivanova Kondova	External relations — Association Agreement between the Communities and Bulgaria — Freedom of establishment — Leave to enter fraudulently obtained — Obligation on a Member State to pay compensation for damage caused to an individual invoking a right of establishment which is directly effective under the Association Agreement
C-257/99	27 September 2001	The Queen v Secretary of State for the Home Department, ex parte: Julius Barkoci and Marcel Malik	External relations — Association Agreement between the Communities and the Czech Republic — Freedom of establishment — Czech nationals wishing to establish themselves in a Member State as self-employed workers

Case	Date	Parties	Subject-matter
C-268/99	20 November 2001	Aldona Malgorzata Jany and Others v Staatssecretaris van Justitie	External relations — Association agreements between the Communities and Poland and between the Communities and the Czech Republic — Freedom of establishment — Economic activities — Whether or not they include the activity of prostitution

FISHERIES POLICY

C-120/99	25 October 2001	Italian Republic v Council of the European Union	Common agricultural policy — Fisheries — Bluefin tuna — Regulation (EC) No 49/1999 — Statement of reasons — Total allowable catches (TACs) — Allocation of TACs among Member States — Principle of relative stability — Determination of basic data — Complex economic situation — Discretion — International Convention for the Conservation of Atlantic Tunas — Accession of the Community — Impact on the allocation of TACs to Member States — Principle of non-discrimination

Case	Date	Parties	Subject-matter
FREE MOVEMENT OF CAPITAL			
C-464/98	11 January 2001	Westdeutsche Landesbank Girozentrale v Friedrich Stefan	National rules prohibiting the registration of mortgages in foreign currencies — Breach of that prohibition before Community law entered into force in Austria — Interpretation of Article 73b of the EC Treaty (now Article 56 EC) — Whether Community law can operate to remedy the registration
C-178/99	14 June 2001	Doris Salzmann	Reference for a preliminary ruling — Registration of real property transactions in the land register — Administrative not judicial proceeding — Lack of jurisdiction of the Court
FREE MOVEMENT OF GOODS			
C-1/99	11 January 2001	Kofisa Italia Srl v Ministero delle Finanze, Servizio della Riscossione dei Tributi - Concessione Provincia di Genova - San Paolo Riscossioni Genova SpA	Reference for a preliminary ruling — Jurisdiction of the Court — National legislation adopting Community provisions — Community Customs Code — Appeal — Mandatory nature of the two stages of the appeal — Suspension of implementation of a decision of the customs authorities

Case	Date	Parties	Subject-matter
C-226/99	11 January 2001	Siples Srl v Ministro delle Finanze, Servizio della Riscossione dei Tributi - Concessione Provincia di Genova - San Paolo Riscossioni Genova SpA	Common Customs Code — Appeals — Suspension of implementation of a decision of the customs authorities
C-66/99	1 February 2001	D. Wandel GmbH v Hauptzollamt Bremen	Community Customs Code and implementing regulation — Incurrence of a customs debt on importation — Relevant time — Concept of removal from customs supervision of goods liable to import duty — Production of certificates of origin — Effect
C-230/99	15 February 2001	Commission of the European Communities v French Republic	Failure of a Member State to fulfil its obligations — Infringement of Article 30 of the EC Treaty (now, after amendment, Article 28 EC) — National legislation concerning rubber materials and rubber articles entering into contact with foodstuffs, food products and beverages — Mutual recognition — No proper letter of formal notice — Action inadmissible
C-187/99	22 February 2001	Fazenda Pública v Fábrica de Queijo Eru Portuguesa L[da]	Inward processing relief arrangements — Regulation (EEC) No 1999/85 — Rate of yield of the processing operation — Authorisation issued by the competent customs authority — Power of that authority unilaterally to alter the rate of yield

Case	Date	Parties	Subject-matter
C-405/98	8 March 2001	Konsumentombudsmanne n (KO) v Gourmet International Products AB (GIP)	Free movement of goods — Articles 30 and 36 of the EC Treaty (now, after amendment, Articles 28 EC and 30 EC) — Freedom to provide services — Articles 56 and 59 of the EC Treaty (now, after amendment, Articles 46 EC and 49 EC) — Swedish legislation on the advertising of alcoholic beverages — Selling arrangements — Measure having an effect equivalent to a quantitative restriction — Justification in the interest of the protection of health
C-201/99	5 April 2001	Deutsche Nichimen GmbH v Hauptzollamt Düsseldorf	Common Customs Tariff — Tariff headings — Classification in the Combined Nomenclature — Satellite television receivers
C-123/00	5 April 2001	Christina Bellamy v English Shop Wholesale SA	Free movement of goods — Measures having an effect equivalent to a quantitative restriction — Marketing of bread — Advertising of foodstuffs
C-190/00	3 May 2001	Édouard Balguerie and Others, Société Balguerie and Others	Regulation (EEC) No 4142/87 — Conditions under which certain goods are eligible on import for a favourable tariff arrangement by reason of their end-use — Regulations (EEC) No 1517/91, No 1431/92 and No 1421/93 — Suspension of autonomous Common Customs Tariff duties — Dates

Case	Date	Parties	Subject-matter
C-288/99	10 May 2001	VauDe Sport GmbH & Co. KG v Oberfinanzdirektion Koblenz	Common customs tariff — Tariff headings — Classification in the Combined Nomenclature — Child carrier
C-463/98	10 May 2001	Cabletron Systems Ltd v The Revenue Commissioners	Common customs tariff — Tariff headings — Tariff classification of equipment used in local area networks — Classification in the Combined Nomenclature — Validity of Regulations (EC) No 1638/94 and No 1165/95
C-119/99	17 May 2001	Hewlett Packard BV v Directeur général des douanes et droits indirects	Common Customs Tariff — Combined nomenclature — Classification of a multi-function machine combining the functions of printer, photocopier, facsimile machine and computer scanner — Principal function — Validity of Regulation (EC) No 2184/97
C-479/99	7 June 2001	CBA Computer Handels- und Beteiligungs GmbH, formerly VOBIS Microcomputer AG v Hauptzollamt Aachen	Common Customs Tariff — Tariff headings — Tariff classification of computer sound cards — Classification in the Combined Nomenclature — Validity of Regulations (EC) No 1153/97 and No 2086/97
C-84/00	14 June 2001	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Article 30 of the EC Treaty (now, after amendment, Article 28 EC) — Free movement of articles of precious metal — Rules on acceptable standards of fineness

Case	Date	Parties	Subject-matter
C-30/99	21 June 2001	Commission of the European Communities v Ireland	Free movement of goods — Precious metals — Compulsory hallmark
C-398/98	25 October 2001	Commission of the European Communities v Hellenic Republic	Failure by a Member State to fulfil its obligations — Article 30 of the EC Treaty (now, after amendment, Article 28 EC) — Obligation to maintain minimum stocks of petroleum products

FREEDOM OF ESTABLISHMENT

C-493/99	25 October 2001	Commission of the European Communities v Federal Republic of Germany	Failure by a Member State to fulfil its obligations — Articles 52 and 59 of the EC Treaty (now, after amendment, Articles 43 EC and 49 EC) — National legislation on the contracting out of labour in the construction industry — Exclusion of undertakings not party to a collective agreement for that industry and not having an establishment in the Member State in which services are to be provided — Proportionality

FREEDOM OF MOVEMENT FOR PERSONS

C-162/99	18 January 2001	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil its obligations — Freedom of movement for workers — Freedom of establishment — Dentists — Residence conditions

Case	Date	Parties	Subject-matter
C-108/96	1 February 2001	Dennis Mac Quen, Derek Pouton, Carla Godts, Youssef Antoun v Grandvision Belgium SA	Interpretation of Article 5 of the EC Treaty (now Article 10 EC) and of Articles 30, 52 and 59 of the EC Treaty (now, after amendment, Articles 28 EC, 43 EC and 49 EC) — National legislation prohibiting opticians from carrying out certain optical examinations — National legislation restricting the marketing of equipment for carrying out certain optical examinations which are reserved exclusively for ophthalmologists
Cases C-52/99 and C-53/99	22 February 2001	Office national des pensions (ONP) v Gioconda Camarotto, Giuseppina Vignone	Council Regulation (EEC) No 1408/71, as amended by Regulation (EEC) No 1248/92 — Social security — Insurance relating to old age and death — Calculation of benefits — Changes to the rules governing calculation of benefits
C-215/99	8 March 2001	Friedrich Jauch v Pensionsversicherungs-anstalt der Arbeiter	Social security for migrant workers — Austrian scheme of insurance against the risk of reliance on care — Classification of benefits and lawfulness of the residence condition from the point of view of Regulation (EEC) No 1408/71

Case	Date	Parties	Subject-matter
Cases C-397/98 and C-410/98	8 March 2001	Metallgesellschaft Ltd and Others, Hoechst AG, Hoechst (UK) Ltd v Commissioners of Inland Revenue, HM Attorney General	Freedom of establishment — Free movement of capital — Advance payment of corporation tax on profits distributed by a subsidiary to its parent company — Parent company having its seat in another Member State — Breach of Community law — Action for restitution or action for damages — Interest
C-68/99	8 March 2001	Commission of the European Communities v Federal Republic of Germany	Failure to fulfil obligations — Freedom of establishment — Freedom to provide services — Social security — Regulation (EEC) No 1408/71 — Funding of the social insurance scheme for self-employed artists and journalists — Contribution collected from undertakings which market the work of artists and journalists, calculated on the basis of the remuneration paid to the authors — Account taken of remuneration paid to artists and journalists subject to the social security legislation of another Member State
C-444/98	15 March 2001	R. J. de Laat v Bestuur van het Landelijk instituut sociale verzekeringen	Social security for migrant workers — Regulation (EEC) No 1408/71 — Frontier worker — Partially unemployed — Meaning

Case	Date	Parties	Subject-matter
C-85/99	15 March 2001	Vincent Offermanns and Esther Offermanns	Regulation (EEC) No 1408/71 — Definition of family benefits — National legislation providing for payment of advances on maintenance payments due by a worker to his minor child — Condition concerning the child's nationality
C-347/98	3 May 2001	Commission of the European Communities v Kingdom of Belgium	Failure by a Member State to fulfil its obligations — Social security — Regulation (EEC) No 1408/71 — Article 13(2)(f) — Legislation of a Member State providing for social security contributions to be levied on occupational disease benefits payable to persons who do not reside in that State and are no longer subject to its social security scheme
C-285/00	10 May 2001	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Failure to transpose Directive 89/48/EEC within the prescribed period — Recognition of diplomas giving access to the profession of psychologist

Case	Date	Parties	Subject-matter
C-389/99	10 May 2001	Sulo Rundgren	Social security — Insurance contributions payable by pensioners who settled in a Member State before the entry into force in that State of Regulations (EEC) No 1408/71 and No 1612/68 — Right of the State of residence to charge contributions on old-age and invalidity benefits paid by another Member State — Effect of an agreement by virtue of which the Nordic countries reciprocally waive all reimbursement of sickness and maternity benefits
C-263/99	29 May 2001	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil its obligations — Freedom of establishment — Freedom to provide services — Activity of transport consultant
C-43/99	31 May 2001	Ghislain Leclere, Alina Deaconescu v Caisse nationale des prestations familiales	Regulations (EEC) No 1408/71 and No 1612/68 — Luxembourg maternity, childbirth and child-raising allowances — Residence condition — Rights of a person receiving a pension but not resident in the Member State responsible for the pension — Family allowances and family benefits — Concept of worker and social advantage

Case	Date	Parties	Subject-matter
C-212/99	26 June 2001	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil its obligations — Free movement of workers — Principle of non-discrimination — Former foreign-language assistants — Recognition of acquired rights
C-118/00	28 June 2001	Gervais Larsy v Institut national d'assurances sociales pour travailleurs indépendants (Inasti)	Regulations (EEC) No 1408/71 and No 1248/92 — Retirement pensions — Anti-overlapping rules — Unenforceability pursuant to a judgment of the Court of Justice — Limitation of effects — Serious breach of Community law
C-368/98	12 July 2001	Abdon Vanbraekel and Others v Alliance nationale des mutualités chrétiennes (ANMC)	Social security — Sickness insurance — Articles 22 and 36 of Regulation (EEC) No 1408/71 — Freedom to provide services — Article 59 of the EC Treaty (now, after amendment, Article 49 EC) — Hospital treatment costs incurred in another Member State — Refusal of authorisation subsequently declared unfounded

FREEDOM TO PROVIDE SERVICES

C-448/99	18 January 2001	Commission of the European Communities v Grand Duchy of Luxembourg	Failure by a Member State to fulfil obligations — Directive 97/13/EC

Case	Date	Parties	Subject-matter
C-165/98	15 March 2001	André Mazzoleni v Inter Surveillance Assistance SARL	Freedom to provide services — Temporary deployment of workers for performance of a contract — Directive 96/71/EC — Guaranteed minimum wage
C-283/99	31 May 2001	Commission of the European Communities v Italian Republic	Failure of a Member State to fulfil obligations — Free movement of workers — Freedom of establishment — Freedom to provide services — Private security activities — Private security firms and private sworn security guards — Nationality condition
C-191/99	14 June 2001	Kvaerner plc v Staatssecretaris van Financiën	Non-life insurance — Directive 88/357/EEC — Definition of establishment and the State where the risk is situated
C-207/00	14 June 2001	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil its obligations — Failure to implement Directive 97/36/EC amending Directive 89/552/EEC — Coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities

Case	Date	Parties	Subject-matter
C-119/00	21 June 2001	Commission of the European Communities v Grand Duchy of Luxembourg	Failure by a Member State to fulfil its obligations — Failure to implement Directive 97/36/EC amending Directive 89/552/EEC — Coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities
C-297/00	3 July 2001	Commission of the European Communities v Grand Duchy of Luxembourg	Failure by a Member State to fulfil its obligations — Directive 98/35/EC — Training of seafarers — Failure to implement within the prescribed period
C-157/99	12 July 2001	B.S.M. Geraets-Smits v Stichting Ziekenfonds VGZ H.T.M. Peerbooms v Stichting CZ Groep Zorgverzekeringen	Freedom to provide services — Articles 59 of the EC Treaty (now, after amendment, Article 49 EC) and 60 of the EC Treaty (now Article 50 EC) — Sickness insurance — System providing benefits in kind — System of agreements — Hospital treatment costs incurred in another Member State — Prior authorisation — Criteria — Justification
C-254/00	11 October 2001	Commission of the European Communities v Kingdom of the Netherlands	Failure by a Member State to fulfil obligations — Failure to implement Directive 95/47/EC within the prescribed period — Use of standards for the transmission of television signals

Case	Date	Parties	Subject-matter
Cases C-49/98, C-50/98, C-52/98, C-53/98, C-54/98, C-68/98, C-69/98, C-70/98 and C-71/98	25 October 2001	Finalarte Sociedade de Construção Ld.ª v Urlaubs- und Lohnausgleichskasse der Bauwirtschaft Urlaubs- und Lohnausgleichskasse der Bauwirtschaft v Amilcar Oliveira Rocha Urlaubs- und Lohnausgleichskasse der Bauwirtschaft v Tudor Stone Ltd Urlaubs- und Lohnausgleichskasse der Bauwirtschaft v Tecnamb-Tecnologia do Ambiente Ld.ª Urlaubs- und Lohnausgleichskasse der Bauwirtschaft v Turiprata Construções Civil Ld.ª Urlaubs- und Lohnausgleichskasse der Bauwirtschaft v Duarte dos Santos Sousa Urlaubs- und Lohnausgleichskasse der Bauwirtschaft v Santos & Kewitz Construções Ld.ª Portugaia Construções Ld.ª v Urlaubs- und Lohnausgleichskasse der Bauwirtschaft Engil Sociedade de Construção Civil SA v Urlaubs- und Lohnausgleichskasse der Bauwirtschaft	Freedom to provide services — Temporary deployment of workers for the purposes of performing a contract — Paid leave and holiday pay

Case	Date	Parties	Subject-matter
C-202/99	29 November 2001	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil its obligations — Directive 78/687/EEC — Maintenance of a second system of training leading to entry to the profession of dentist — Maintenance of the possibility of dual registration in the register of doctors and in that of dentists for doctors mentioned in Article 19 of Directive 78/686/EEC
C-17/00	29 November 2001	François De Coster v Collègue des bourgmestre et échevins de Watermael-boitsfort	Reference for a preliminary ruling — Definition of a national court or tribunal — Freedom to provide services — Municipal tax on satellite dishes — Restriction on the freedom to receive television programmes by satellite

INDUSTRIAL POLICY

C-460/00	25 October 2001	Commission of the European Communities v Hellenic Republic	Failure by a Member State to fulfil its obligations — Directive 96/48/EC — Interoperability of the trans-European high-speed rail system
C-372/00	13 December 2001	Commission of the European Communities v Ireland	Failure by a Member State to fulfil its obligations — Directive 96/48/EC — Interoperability of the trans-European high-speed rail system
C-79/00	13 December 2001	Telefónica de España SA v Administración General del Estado	Directive 97/33/EC — Telecommunications — Interconnection of networks — Obligations imposed on network providers

Case	Date	Parties	Subject-matter
INTELLECTUAL PROPERTY			
C-383/99 P	20 September 2001	Procter & Gamble Company v Office for Harmonisation in the Internal Market (Trade Marks and Designs)	Appeal — Admissibility — Community trade mark — Regulation (EC) No 40/94 — Absolute ground for refusal to register — Distinctive character — Marks consisting exclusively of descriptive signs or indications — BABY-DRY
LAW GOVERNING THE INSTITUTIONS			
C-40/98	16 January 2001	Commission of the European Communities v Tecnologie Vetroresina SpA (TVR)	Arbitration clause — Non-performance of contract
C-41/98	16 January 2001	Commission of the European Communities v Tecnologie Vetroresina SpA (TVR)	Arbitration clause — Non-performance of contract
C-315/99 P	10 July 2001	Ismeri Europa Srl v Court of Auditors of the European Communities	Appeal — MED programmes — Special Report No 1/96 of the Court of Auditors — Right to a hearing — Naming of third parties — Necessity and proportionality
C-172/97 OP	2 October 2001	SIVU du plan d'eau de la Vallée du Lot, otherwise known as SIVU du pays d'accueil de la Vallée du Lot v Commission of the European Communities	Arbitration clause — Non-performance of a contract — Proceedings to have a judgment by default set aside

Case	Date	Parties	Subject-matter
C-77/99	11 October 2001	Commission of the European Communities v Oder-Plan Architektur GmbH, NCC Deutsche Bau GmbH, Esbensen Consulting Engineers	Arbitration clause — Financial support for the energy sector — Thermie Programme — Non-performance of a contract — Termination — Right to repayment of an advance
C-59/99	13 November 2001	Commission of the European Communities v Manuel Pereira Roldão & Filhos Ld.ª, Instituto Superior Técnico, King, Taudevin & Gregson (Holdings) Ltd	Arbitration clause — Reimbursement of advance payments made under a contract terminated by the Commission for non-performance
C-353/99 P	6 December 2001	Council of the European Union v Heidi Hautala	Appeal — Public right of access to Council documents — Council Decision 93/731/EC — Exceptions to access to documents — Protection of the public interest concerning international relations — Partial access

Case	Date	Parties	Subject-matter
PRINCIPLES OF COMMUNITY LAW			
C-184/99	20 September 2001	Rudy Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve	Articles 6, 8 and 8a of the EC Treaty (now, after amendment, Articles 12 EC, 17 EC and 18 EC) — Council Directive 93/96/EEC — Right of residence for students — National legislation which guarantees a minimum subsistence allowance only for nationals, persons covered by Regulation (EEC) No 1612/68 and stateless persons and refugees — Foreign student who has met his own living expenses during the first years of his studies
PROCEDURE			
C-472/99	6 December 2001	Clean Car Autoservice GmbH v Stadt Wien, Republik Österreich	Article 234 EC — Costs of the parties to the main proceedings — Article 104(5) of the Rules of Procedure of the Court
SOCIAL POLICY			
C-413/98	25 January 2001	Directora-Geral do Departamento para os Assuntos do Fundo Social Europeu (DAFSE) v Frota Azul-Transportes e Turismo Ld.[a]	European Social Fund — Certification of facts and accounts — Powers of certification — Limits

Case	Date	Parties	Subject-matter
C-172/99	25 January 2001	Oy Liikenne Ab v Pekka Liskojärvi, Pentti Juntunen	Directive 77/187/EEC — Safeguarding of employees' rights in the event of transfers of undertakings — Directive 92/50/EEC — Public service contracts — Non-maritime public transport services
C-350/99	8 February 2001	Wolfgang Lange v Georg Schünemann GmbH	Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship — Length of normal daily or weekly work — Rules on overtime — Rules of evidence
C-62/99	29 March 2001	Betriebsrat der bofrost* Josef H. Boquoi Deutschland West GmbH & Co. KG v Bofrost* Josef H. Boquoi Deutschland West GmbH & Co. KG	Reference for a preliminary ruling — Article 11(1) and (2) of Directive 94/45/EC — Information to be made available by undertakings on request — Information intended to establish the existence of a controlling undertaking within a Community-scale group of undertakings
C-473/99	14 June 2001	Commission of the European Communities v Republic of Austria	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 — Failure to implement within the prescribed period

Case	Date	Parties	Subject-matter
C-173/99	26 June 2001	The Queen v Secretary of State for Trade and Industry, ex parte: Broadcasting, Entertainment, Cinematographic and Theatre Union (BECTU)	Social policy — Protection of the health and safety of workers — Directive 93/104/EC — Entitlement to paid annual leave — Condition imposed by national legislation — Completion of a qualifying period of employment with the same employer
C-381/99	26 June 2001	Susanna Brunnhofer v Bank der österreichischen Postsparkasse AG	Equal pay for men and women — Conditions of application — Difference in pay — Definition of the same work and work of equal value — Classification, under a collective agreement, in the same job category — Burden of proof — Objective justification for unequal pay — Effectiveness of a specific employee's work
C-133/00	4 October 2001	J.R. Bowden, J.L. Chapman, J.J. Doyle v Tuffnells Parcels Express Ltd	Organisation of working time — Directive 93/104/EC — Article 1(3) — Scope — Road transport
C-438/99	4 October 2001	Maria Luisa Jiménez Melgar v Ayuntamiento de Los Barrios	Protection of pregnant women — Directive 92/85/EEC — Article 10 — Direct effect and scope — Dismissal — Fixed-term contract of employment
C-109/00	4 October 2001	Tele Danmark A/S v Handels- og Kontorfunktionærernes Forbund i Danmark (HK)	Equal treatment for men and women — Article 5(1) of Directive 76/207/EEC — Article 10 of Directive 92/85/EEC — Dismissal of a pregnant worker — Fixed-term employment contract

Case	Date	Parties	Subject-matter
C-379/99	9 October 2001	Pensionskasse für die Angestellten der Barmer Ersatzkasse VVaG v Hans Menauer	Equal pay for men and women — Occupational pensions — Pension funds entrusted with carrying out the employer's obligation as regards payment of a supplementary pension — Survivor's pension
C-110/00	11 October 2001	Commission of the European Communities v Republic of Austria	Failure by a Member State to fulfil its obligations — Directive 97/59/EC
C-111/00	11 October 2001	Commission of the European Communities v Republic of Austria	Failure by a Member State to fulfil its obligations — Directive 97/65/EC
C-441/99	18 October 2001	Riksskatteverket v Soghra Gharehveran	Directive 80/987/EEC — Approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer — Scope of the exclusion relating to Sweden provided for in point G of Section I of the Annex to the Directive — Designation of the State as liable to pay guaranteed wage claims — Effect on Directive 80/987
C-49/00	15 November 2001	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil its obligations — Incomplete transposition of Directive 89/391/EEC — Safety and health of workers

Case	Date	Parties	Subject-matter
C-424/99	27 November 2001	Commission of the European Communities v Republic of Austria	Failure by a Member State to fulfil obligations — Directive 89/105/EEC — Positive list for the purposes of Article 6 of Directive 89/105 — Time-limit for examination of an application for inclusion of a medicinal product on the list — Obligation to provide for a judicial remedy in the event of refusal
C-366/99	29 November 2001	Joseph Griesmar v Ministre de l'Économie, des Finances et de l'Industrie, Ministre de la Fonction Publique, de la Réforme de l'État et de la Décentralisation	Social policy — Equal treatment for men and women — Applicability of Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC) or Directive 79/7/EEC — French civil and military retirement pension scheme — Service credit for children awarded to female civil servants — Whether permissible in the light of Article 6(3) of the Agreement on Social Policy or the provisions of Directive 79/7/EEC

Case	Date	Parties	Subject-matter
C-206/00	13 December 2001	Henri Mouflin v Recteur de l'académie de Reims	Reference for a preliminary ruling — Social policy — Equal treatment for men and women — Applicability of Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC) or Directive 79/7/EEC — French civil and military retirement pension scheme — Entitlement to a retirement pension with immediate effect for women only

SOCIAL SECURITY FOR MIGRANT WORKERS

Cases C-95/99, C-96/99, C-97/99, C-98/99 and C-180/99	11 October 2001	Mervett Khalil, Issa Chaaban, Hassan Osseili v Bundesanstalt für Arbeit Mohamad Nasser v Landeshauptstadt Stuttgart Meriem Addou v Land Nordrhein-Westfalen	Social security — Article 51 of the EEC Treaty (later Article 51 of the EC Treaty and now, after amendment, Article 42 EC) — Article 2(1) of Regulation (EEC) No 1408/71 — Stateless persons — Refugees
C-212/00	16 October 2001	Salvatore Stallone v Office national de l'emploi (ONEM)	Social security for migrant workers — Regulation (EEC) No 1408/71 — Unemployment benefit — Condition of living together with the dependent members of the family

Case	Date	Parties	Subject-matter
C-189/00	25 October 2001	Urszula Ruhr v Bundesanstalt für Arbeit	Regulation (EEC) No 1408/71 — Nationals of non-Member countries — Members of a worker's family — Rights acquired directly and rights derived through others — Unemployment benefit

STAFF REGULATIONS OF OFFICIALS

C-389/98 P	11 January 2001	Hans Gevaert v Commission of the European Communities	Appeals — Officials — Request for review of classification in grade — Action — Expiry of time-limits — New fact — Equal treatment
C-459/98 P	11 January 2001	Isabel Martínez del Peral Cagigal v Commission of the European Communities	Appeal — Officials — Application for review of classification in grade — Action — Expiry of time-limits — New fact — Equal treatment
C-273/99 P	6 March 2001	Bernard Connolly v Commission of the European Communities	Appeal — Officials — Disciplinary proceedings — Suspension — Statement of reasons — Alleged misconduct — Articles 11, 12 and 17 of the Staff Regulations — Equal treatment
C-274/99 P	6 March 2001	Bernard Connolly v Commission of the European Communities	Appeal — Officials — Disciplinary proceedings — Articles 11, 12 and 17 of the Staff Regulations — Freedom of expression — Duty of loyalty — Conduct reflecting on an official's position

Case	Date	Parties	Subject-matter
Cases C-122/99 P and C-125/99 P	31 May 2001	D, Kingdom of Sweden v Council of the European Union	Appeal — Official — Household allowance — Married official — Registered partnership under Swedish law
C-449/99 P	2 October 2001	European Investment Bank v Michel Hautem	Appeal — Members of the staff of the European Investment Bank — Dismissal — Interpretation of the Staff Regulations of the European Investment Bank — Plea alleging mistaken characterisation of the legal nature of the facts and an error in the statement of reasons — Alleged infringement of the rules applicable to relations between the European Investment Bank and its staff
C-270/99 P	27 November 2001	Z v European Parliament	Appeal — Officials — Disciplinary proceedings — Failure to comply with the time-limits laid down in Article 7 of Annex IX to the Staff Regulations of Officials of the European Communities
C-340/00 P	13 December 2001	Commission of the European Communities v Michael Cwik	Appeal — Officials — Article 17, second paragraph, of the Staff Regulations — Freedom of expression — Limits — Statement of reasons
C-446/00 P	13 December 2001	Pascual Juan Cubero Vermurie v Commission of the European Communities	Appeal — Officials — Promotions — Mobility

Case	Date	Parties	Subject-matter

STATE AID

C-99/98	15 February 2001	Republic of Austria v Commission of the European Communities	Action for annulment — Plan to grant State aid in the field of power semiconductors — Notification of the Commission — Content of the notification and of supplementary questions put by the Commission — Nature and duration of the investigation — Commission's right of objection — Article 93(3) of the EC Treaty (now Article 88(3) EC)
C-379/98	13 March 2001	PreussenElektra AG v Schleswag AG	Electricity — Renewable sources of energy — National legislation requiring electricity supply undertakings to purchase electricity at minimum prices and apportioning the resulting costs between those undertakings and upstream network operators — State aid — Compatibility with the free movement of goods
C-17/99	22 March 2001	French Republic v Commission of the European Communities	State aid — Rescue and restructuring aid — Procedure for the examination of State aid — Failure to order a Member State to disclose the requisite information

Case	Date	Parties	Subject-matter
C-261/99	22 March 2001	Commission of the European Communities v French Republic	Failure of a Member State to fulfil obligations — State aid incompatible with the common market — Recovery — No absolute impossibility of implementation
C-204/97	3 May 2001	Portuguese Republic v Commission of the European Communities	State aid — Aid for producers of liqueur wines and eaux-de-vie — Aid granted by the French Republic in the context of an increase in internal taxation
C-378/98	3 July 2001	Commission of the European Communities v Kingdom of Belgium	Failure by a Member State to fulfil its obligations — State aid — Article 93(2), second subparagraph, of the EC Treaty (now Article 88(2), second subparagraph, EC) — Obligation to recover aid granted under the Maribel bis and Maribel ter schemes — Impossible to put into effect
C-400/99	9 October 2001	Italian Republic v Commission of the European Communities	Action for annulment — State aid — Aid to a maritime transport undertaking — Public service contract — Existing aid or new aid — Initiation of the procedure under Article 88(2) EC — Obligation to suspend — No need to adjudicate or inadmissibility
C-143/99	8 November 2001	Adria-Wien Pipeline GmbH, Wietersdorfer & Peggauer Zementwerke GmbH v Finanzlandesdirektion für Kärnten	Tax on energy — Rebate granted only to undertakings manufacturing goods — State aid

Case	Date	Parties	Subject-matter
C-53/00	22 November 2001	Ferring SA v Agence centrale des organismes de sécurité sociale (ACOSS)	State aid — Tax benefit granted to certain undertakings — Wholesale distributors

TAXATION

C-76/99	11 January 2001	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Sixth VAT Directive — Article 13(A)(1)(b) — Closely related activities — Concept
C-113/99	18 January 2001	Herta Schmid v Finanzlandesdirektion für Wien, Niederösterreich und Burgenland	Directive 69/335/EEC — Indirect taxes on the raising of capital — Minimum tax on capital companies
C-83/99	18 January 2001	Commission of the European Communities v Kingdom of Spain	Failure of a Member State to fulfil its obligations — Article 12(3)(a) of the Sixth VAT Directive — Application of a reduced rate to motorway tolls
C-150/99	18 January 2001	Svenska staten v Stockholm Lindöpark AB Stockholm Lindöpark AB v Svenska staten	Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Sixth Directive — Exemptions — Letting of immovable property — Practice of sport or physical education
C-429/97	25 January 2001	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — VAT — Eighth Directive — Refund of VAT paid in another Member State — Sixth Directive — Place of supply — Services relating to the collection, sorting, transport and disposal of waste

Case	Date	Parties	Subject-matter
C-393/98	22 February 2001	Ministério Público, António Gomes Valente v Fazenda Pública	Internal taxation — Special tax on motor vehicles — Second-hand vehicles
C-408/98	22 February 2001	Abbey National plc v Commissioners of Customs & Excise	VAT — Articles 5(8) and 17(2)(a) and (5) of the Sixth VAT Directive — Transfer of a totality of assets — Deduction of input tax on services used by the transferor for the purposes of the transfer — Goods and services used for the purposes of the taxable person's taxable transactions
C-240/99	8 March 2001	Försäkringsaktiebolaget Skandia (publ)	Sixth VAT Directive — Exemptions — Insurance and reinsurance transactions
C-415/98	8 March 2001	Lazlo Bakcsi v Finanzamt Fürstenfeldbruck	VAT — Articles 2(1), 5(6) and 11.A(1)(a) of the Sixth VAT Directive — Mixed-use goods — Incorporation into the private or business assets of a taxable person — Sale of a business asset — Second-hand item purchased from a private individual
C-276/98	8 March 2001	Commission of the European Communities v Portuguese Republic	Failure of Member State to fulfil its obligations — Sixth VAT Directive — Articles 12 and 28(2) — Reduced rate
C-265/99	15 March 2001	Commission of the European Communities v French Republic	Failure by a Member State to fulfil obligations — Article 95 of the EC Treaty (now, after amendment, Article 90 EC) — Tax on motor vehicles

Case	Date	Parties	Subject-matter
C-108/00	15 March 2001	Syndicat des producteurs indépendants (SPI) v Ministère de l'Économie, des Finances et de l'Industrie	Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Second indent of Article 9(2)(e) of the Sixth VAT Directive — Determination of relevant place for tax purposes — Advertising services — Inclusion of services provided through the intermediary of a third party
C-404/99	29 March 2001	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Sixth VAT Directive — Taxable amount — Exclusion — Service charges
C-325/99	5 April 2001	G. van de Water v Staatssecretaris van Financiën	Tax provisions — Harmonisation of laws — Excise duties — Directive 92/12/EEC — Chargeability of duty — Release for consumption of products subject to excise duty — Notion — Mere holding of a product subject to excise duty
C-481/98	3 May 2001	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Sixth VAT Directive — Articles 12(3)(a) and 28(2)(a) — Reduced rate

Case	Date	Parties	Subject-matter
C-34/99	15 May 2001	Commissioners of Customs & Excise v Primback Ltd	Value added tax — Sixth Directive 77/388/EEC — Taxable amount — Retail credit sales of goods — Credit granted by a person other than the seller and at no cost to the customer — Payment by finance company to the seller of less than the price of the goods
Cases C-322/99 and C-323/99	17 May 2001	Finanzamt Burgdorf v Hans-Georg Fischer Finanzamt Düsseldorf-Mettmann v Klaus Brandenstein	Sixth VAT Directive — Articles 5(6) and 11A(1)(b) — Allocation of business goods for private purposes — Taxation if the goods or the component parts thereof gave rise to entitlement to deduct input VAT — Meaning of component parts of the goods allocated
C-86/99	29 May 2001	Freemans plc v Commissioners of Customs & Excise	Sixth VAT Directive — Taxable amount — Discount accounted for at the time of the supply — Price reduction after the supply takes place
C-345/99	14 June 2001	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Article 17(2) and (6) of the Sixth VAT Directive — Deductibility of tax on the acquisition of vehicles used to carry out taxable transactions — Limitation to vehicles used exclusively for driving instruction

Case	Date	Parties	Subject-matter
C-40/00	14 June 2001	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Article 17(2) and (6) of the Sixth VAT Directive — Reintroduction, after the date of entry into force of the Directive, of a total abolition of the right to deduct VAT charged on diesel used as fuel for vehicles and machines on the purchase of which no VAT is deductible
C-206/99	21 June 2001	SONAE - Tecnologia de Informação SA v Direcção-Geral dos Registos e Notariado	Raising of capital — Directive 69/335/EEC — Duties paid by way of fees or dues — Charge for entry in the commercial register
C-380/99	3 July 2001	Bertelsmann AG v Finanzamt Wiedenbrück	Sixth VAT Directive — Article 11A(1)(a) — Taxable amount — Delivery costs of bonuses in kind
C-262/99	12 July 2001	Paraskevas Louloudakis v Elliniko Dimosio (Greek State)	Directive 83/182/EEC — Means of transport temporarily imported — Tax exemptions — Normal residence in a Member State — Fine for improperly importing exempt from tax — Principle of proportionality — Good faith

Case	Date	Parties	Subject-matter
C-16/00	27 September 2001	Cibo Participations SA v Directeur régional des impôts du Nord-Pas-de-Calais	Sixth VAT Directive — Economic activity — Involvement of a holding company in the management of its subsidiaries — Deduction of VAT charged on services purchased by a holding company in the context of the acquisition of a shareholding in a subsidiary — Receipt of dividends by a holding company
C-294/99	4 October 2001	Athinaiki Zithopoiia AE v Elliniko Dimosio (Greek State)	Taxation of company profits — Parent companies and subsidiaries — Directive 90/435/EEC — Concept of withholding tax
C-326/99	4 October 2001	Stichting 'Goed Wonen' v Staatssecretaris van Financiën	Sixth VAT Directive — Power of a Member State to treat certain rights in rem in immovable property as tangible property capable of supply — Restriction of the exercise of that power to cases where the price of the right in rem is at least equal to the economic value of the property concerned — Letting and leasing of immovable property — Exemptions
C-409/98	9 October 2001	Commissioners of Customs & Excise v Mirror Group plc	Sixth VAT Directive — Exemption for the leasing or letting of immovable property — Meaning — Undertaking to become a tenant

Case	Date	Parties	Subject-matter
C-108/99	9 October 2001	Commissioners of Customs & Excise v Cantor Fitzgerald International	Sixth VAT Directive — Exemption for the leasing or letting of immovable property — Meaning — Supply of services — Third party taking over a lease for consideration
C-267/99	11 October 2001	Christiane Urbing-Adam v Administration de l'enregistrement et des domaines	Sixth VAT directive — Concept of liberal profession — Managing agent of buildings in co-ownership
C-78/00	25 October 2001	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil its obligations — Articles 17 and 18 of the Sixth VAT Directive — Issue of Government bonds to refund excess VAT — Category of taxable persons whose tax position is in credit
C-338/98	8 November 2001	Commission of the European Communities v Kingdom of the Netherlands	Failure of a Member State to fulfil its obligations — Articles 17(2)(a) and 18(1)(a) of the Sixth VAT Directive — National legislation allowing an employer to deduct, as input tax, a certain percentage of an allowance paid to an employee for business use of a private vehicle
C-184/00	22 November 2001	Office des produits wallons ASBL v Belgian State	Sixth VAT Directive — Article 11A(1)(a) — Taxable amount — Subsidies directly linked to the price

Case	Date	Parties	Subject-matter
C-235/00	13 December 2001	Commissioners of Customs & Excise v CSC Financial Services Ltd	Sixth VAT Directive — Article 13B(d)(5) — Exempt transactions — Transactions in securities — Negotiation — Provision of a call centre service

TRANSPORT

C-361/98	18 January 2001	Italian Republic v Commission of the European Communities	Council Regulation (EEC) No 2408/92 — Application for annulment of Commission Decision 98/710/EC — Distribution of air traffic between the airports of Milan — 'Malpensa 2000'
C-297/99	18 January 2001	Skills Motor Coaches Ltd, B.J. Farmer, C.J. Burley, B. Denman	Social legislation relating to road transport — Tachograph record sheets — Obligation to record periods of work, breaks in work and rest periods
C-205/99	20 February 2001	Asociación Profesional de Empresas Navieras de Líneas Regulares (Analir) and Others v Administración General del Estado	Freedom to provide services — Maritime cabotage — Conditions for the grant and continuation of prior administrative authorisation — Concurrent application of the methods of imposing public service obligations and of concluding public service contracts
C-83/00	15 March 2001	Commission of the European Communities v Kingdom of the Netherlands	Failure by a Member State to fulfil its obligations — Failure to transpose Directive 97/24/EC — Components and characteristics of two or three-wheel motor vehicles

Case	Date	Parties	Subject-matter
C-494/99	5 April 2001	Commission of the European Communities v Hellenic Republic	Failure by a Member State to fulfil its obligations — Failure to transpose Directive 94/56/EC
C-444/99	10 May 2001	Commission of the European Communities v Italian Republic	Failure by a Member State to fulfil its obligations — Directive 92/106/EEC — Failure to transpose within the prescribed period
C-70/99	26 June 2001	Commission of the European Communities v Portuguese Republic	Failure of a Member State to fulfil its obligations — Air travel within the Community — Different rates of airport tax for national and intra-Community flights — Freedom to provide services — Regulation (EEC) No 2408/92
C-447/99	4 July 2001	Commission of the European Communities v Italian Republic	Failure of a Member State to fulfil its obligations — Article 59 of the EC Treaty (now, after amendment, Article 49 EC) — Regulation (EEC) No 2408/92 — Access for Community air carriers to intra-Community air routes — Departure tax
C-370/00	20 September 2001	Commission of the European Communities v Ireland	Failure by a Member State to fulfil its obligations — Failure to incorporate Directives 96/49/EC and 96/87/EC into national law

Case	Date	Parties	Subject-matter
C-468/00	20 September 2001	Commission of the European Communities v French Republic	Failure by a Member State to fulfil its obligations — Directive 96/50/EC — Carriage of goods and passengers in the Community — Harmonisation of the conditions for obtaining national boatmasters' certificates for inland waterways — Non-implementation within the prescribed period
C-107/01	13 December 2001	Commission of the European Communities v Grand Duchy of Luxembourg	Failure by a Member State to fulfil its obligations — Directive 98/76/EC — Failure to transpose within the prescribed period

2. Synopsis of the other decisions of the Court of Justice which appeared in the 'Proceedings' in 2001

Case	Date	Parties	Subject-matter
C-111/99 P	25 January 2001	Lech-Stahlwerke GmbH v Commission of the European Communities	Appeal — ECSC — State aid to steel undertakings — Appeal manifestly inadmissible and unfounded
Cases C-300/99 P and C-388/99 P	1 February 2001	Area Cova SA and Others, Xunta de Galicia v Council of the European Union and Others	Appeal — Fisheries — Measures for the conservation of resources — Community catch quota for Greenland halibut — Appeal in part clearly inadmissible and in part clearly unfounded
C-301/99 P	1 February 2001	Area Cova SA and Others v Council of the European Union and Others	Appeal — Fisheries — Measures for the conservation of resources — Community catch quota for Greenland halibut — Appeal in part clearly inamissible and in part cleartly unfounded
C-445/00 R	23 February 2001	Republic of Austria v Council of the European Union	Proceedings for interim relief — System of ecopoints for goods vehicles in transit through Austria — Regulation (EC) No 2012/2000 — Suspension of operation — Urgency

Case	Date	Parties	Subject-matter
Cases C-279/99 C-293/99, C-296/99, C-330/99 and C-336/99	15 March 2001	Petrolvilla & Bortolotti SpA v Direzione delle Entrate per la Provincia di Trento Energy Service Srl v Direzione delle Entrate per la Provincia di Trento Pavarini Components SpA v Direzione delle Entrate per la Provincia di Trento Hôtel Bellavista di Litterini Valter e Nadia Snc, Cattoni Hôtel Plaza di Cattoni Gian Carlo e C. Snc, Villa Luti Srl v Ufficio Imposte Dirette di Tione di Trento, Centro di Servizio delle Imposte Dirette e Indirette di Trento Tumedei SpA v Centro di Servizio delle Imposte Dirette e Indirette di Trento	Article 104(3) of the Rules of Procedure — Answers that can clearly be deduced from the case-law
C-518/99	5 April 2001	Richard Gaillard v Alaya Chekili	Article 104(3) of the Rules of Procedure — Brussels Convention — Article 16(1) — Exclusive jurisdiction in proceedings which have as their object rights in rem in immovable property — Scope — Action for rescission of a contract of sale of immovable property and for damages

Case	Date	Parties	Subject-matter
C-307/99	2 May 2001	OGT Fruchthandelsgesellschaft mbH v Hauptzollamt Hamburg-St. Annen	Article 104(3) of the Rules of Procedure — Bananas — Common organisation of the market — GATT — Direct effect — First paragraph of Article 234 of the EC Treaty (now, after amendment, first paragraph of Article 307 EC)
C-345/00 P	10 May 2001	Fédération nationale d'agriculture biologique des régions de France (FNAB), Syndicat européen des transformateurs et distributeurs de produits de l'agriculture biologique (Setrab), Est Distribution Biogam SARL v Council of the European Union	Appeal — Regulation (EC) No 1804/1999 — Prohibition of using indications suggesting an organic method of production in the labelling and advertising of products not obtained by that production method — Temporary derogation for existing trade-marks — Application for annulment — Inadmissible — Appeal manifestly unfounded
C-1/00 SA	29 May 2001	Cotecna Inspection SA v Commission of the European Communities	Application for authorisation to serve garnishee order on the Commission of the European Communities
C-330/00 P	21 June 2001	Alsace International Car Services SARL (AICS) v European Parliament	Appeal — Public service contract — Chauffeur-driven transport of passengers for the European Parliament at Strasbourg — Tenders — Compliance with national law — Rejection of a bid — Appeal manifestly inadmissible in part and manifestly unfounded in part.

Case	Date	Parties	Subject-matter
C-351/99 P	28 June 2001	Eridania SpA, Industria Saccarifera Italiana Agroindustriale SpA (ISI), Sadam Zuccherifici, divisione della SECI - Società Esercizi Commerciali Industriali SpA, Sadam Castiglionese SpA, Sadam Abruzzo SpA, Zuccherificio del Molise SpA, Società Fondiaria Industriale Romagnola SpA (SFIR) v Council of the European Union, Commission of the European Communities, Ponteco Zuccheri SpA	Appeal — Common organisation of the markets in sugar — Storage costs system — Authorisation for the granting of national aid — Withdrawal — Marketing year 1995/1996 — Action by sugar producers — Measures concerning them directly and individually — Provision fixing the amount of repayment to equalise sugar storage costs — Inadmissibility
C-352/99 P	28 June 2001	Eridania SpA, Industria Saccarifera Italiana Agroindustriale SpA (ISI), Sadam Zuccherifici, divisione della SECI - Società Esercizi Commerciali Industriali SpA, Sadam Castiglionese SpA, Sadam Abruzzo SpA, Zuccherificio del Molise SpA, Società Fondiaria Industriale Romagnola SpA (SFIR) v Council of the European Union, Commission of the European Communities Ponteco Zuccheri SpA	Appeal — Common organisation of the markets in sugar — Price system — Regionalisation — Classification of Italy — Marketing year 1995/1996 — Action by sugar producers — Measure concerning them directly and individually — Provision fixing the derived intervention price of white sugar for all areas of Italy — Inadmissibility

Case	Date	Parties	Subject-matter
C-241/99	3 July 2001	Confederación Intersindical Galega (CIG) v Servicio Galego de Saúde (Sergas)	Article 104(3) of the Rules of Procedure — Social policy — Protection of the health and safety of workers — Directives 89/391/EEC and 93/104/EC — Scope — Primary care services personnel — Average period of work — Inclusion of time on call
C-341/00 P	5 July 2001	Conseil national des professions de l'automobile (CNPA), Fédération nationale des distributeurs, loueurs et réparateurs de matériels de bâtiments-travaux publics et de manutention (DLR), Auto Contrôle 31 SA, Yam 31 SARL, Roux SA, Marc Foucher-Creteau, Verdier distribution SARL v Commission of the European Communities	Appeal — Regulation (EC) No 2790/1999 — Appeal clearly unfounded and clearly inadmissible
C-497/99 P	10 July 2001	Irish Sugar plc v Commission of the European Communities	Appeal — Article 86 of the EC Treaty (now Article 82 EC) — Sugar — Collective dominant position — Abuse — Appeal partly clearly inadmissible and partly clearly unfounded
C-86/00	10 July 2001	HSB-Wohnbau GmbH	Reference for a preliminary ruling — Entry in the commercial register of the transfer of a company's registered office — Lack of jurisdiction of the Court

Case	Date	Parties	Subject-matter
C-1/01 P	20 September 2001	Asia Motor France SA, André-François Bach, Monin automobiles v Commission of the European Communities	Competition — Decision rejecting complaints — Appeal in part manifestly inadmissible and in part manifestly unfounded
C-30/00	11 October 2001	William Hinton & Sons L^{da} v Fazenda Pública	Article 104(3) of the Rules of Procedure — Post-clearance recovery of import duties — Entry in the accounts of the import duties to be collected — Expiry of the time-limit for taking action for recovery — Article 254 of the Act of Accession of Spain and Portugal — Obligation incumbent on the Portuguese Republic to proceed, at its own costs, to eliminate certain stocks of product
C-241/00 P	18 October 2001	Kiss Glass Co. Ltd v Commission of the European Communities, Pilkington United Kingdom Ltd	Appeal — Competition — Dominant position — Market in float glass — Rights of the complainant — Appeal manifestly unfounded
C-281/00 P	23 October 2001	Una Film 'City Revue' GmbH v European Parliament, Council of the European Union	Directive 98/43/EC relating to the advertising and sponsorship of tobacco products — Appeal — No need to adjudicate — Burden of costs
C-313/00 P	23 October 2001	Zino Davidoff et Davidoff & Cie v European Parliament, Council of the European Union	Directive 98/43/EC relating to the advertising and sponsorship of tobacco products — Appeal — No need to adjudicate — Burden of costs

Case	Date	Parties	Subject-matter
C-430/00 P	13 November 2001	Anton Dürbeck GmbH v Commission of the European Communities	Appeal — Common organisation of the markets — Bananas — imports from ACP States and third countries — Application for additional import licences — Instance of undue strictness — Transitional measures — Article 30 of Regulation (EEC) No 404/93 — Limitation of damage — Action for annulment
C-208/99	27 November 2001	Portuguese Republic v Commission of the European Communities	EAGGF, Orientation Section — Commission decision abolishing financial assistance granted under Article 8 of Regulation (EEC) No 4256/88 — Action for partial annulment directed against the designation of a Member State as addressee of the decision — Manifest inadmissibility
2/00	6 December 2001	Opinion delivered under Article 300 EC	Cartagena Protocol — Conclusion — Legal basis — Articles 133 EC, 174(4) EC and 175(1) EC — Living modified organisms — Environmental protection — Common commercial policy

3. Statistics of judicial activity of the Court of Justice [1]

General activity of the Court

Cases completed

Length of proceedings

[1] 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.

New cases

Cases pending as at 31 December 2001

General trend in the work of the Court up to 31 December 2001

General activity of the Court

Table 1: **General activity in 2001** *

Completed cases	398	(434)
New cases		(504)
Cases pending	839	(943)

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

Cases completed

Table 2: **Nature of proceedings**

References for a preliminary ruling	153	(182)
Direct actions	178	(179)
Appeals	53	(59)
Appeals concerning interim measures and interventions	11	(11)
Opinions	1	(1)
Special forms of procedure [1]	2	(2)
Total	398	(434)

[1] 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 a judgment aside (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	113	17	1	23	—	154
Direct actions	111	1	2	66	—	180
Appeals	19	30	2	4	—	55
Appeals concerning interim measures and interventions	—	—	11	—	—	11
Subtotal	243	48	16	93	—	400
Opinions	—	—	—	—	1	1
Special forms of procedure	1	1	—	—	—	2
Subtotal	1	1	—	—	1	3
TOTAL	244	49	16	93	1	403

1 Net figures.

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

3 Orders made following an application on the basis of Article 185 or 186 of the EC Treaty (now Articles 242 EC and 243 EC), Article 187 of the EC Treaty (now Article 244 EC) or the corresponding provisions of the EAEC and ECSC Treaties, or following an appeal against an order concerning interim measures or intervention.

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

Table 4: **Means by which terminated**

Means by which terminated	Direct actions		References for a preliminary ruling		Appeals		Appeals concerning interim measures and interventions	Special forms of procedure		Total	
Judgments											
Action founded	79	(80)								79	(80)
Action partially founded	4	(4)						1	(1)	5	(5)
Action partially inadmissible and founded	1	(1)								1	(1)
Action unfounded	23	(23)			15	(20)				38	(43)
Appeal manifestly inadmissible and unfounded					1	(1)				1	(1)
Set aside and not referred back					2	(2)				2	(2)
Partially set aside and not referred back					1	(1)				1	(1)
Inadmissible	3	(3)								3	(3)
Preliminary ruling			113	(135)						113	(135)
Interlocutory judgment	1									1	
Total judgments	111	(111)	113	(135)	19	(24)		1	(1)	244	(271)

(cont.)

(cont.)

Means by which terminated	Direct actions		References for a preliminary ruling		Appeals		Appeals concerning interim measures and interventions		Special forms of procedure		Total	
Orders												
Action unfounded									1	(1)	1	(1)
Manifest lack of jurisdiction			1	(1)							1	(1)
Manifest lack of jurisdiction and manifest inadmissibility			2	(2)							2	(2)
Inadmissibility	1	(1)									1	(1)
Manifest inadmissibility			2	(2)							2	(2)
Appeal manifestly inadmissible					10	(10)					10	(10)
Appeal partially manifestly inadmissible and unfounded					1	(1)					1	(1)
Appeal manifestly inadmissible and unfounded					13	(14)					13	(14)
Appeal unfounded							1	(1)			1	(1)
Appeal manifestly unfounded					6	(6)	1	(1)			7	(7)
Set aside and referred back							1	(1)			1	(1)
Set aside and not referred back							8	(8)			8	(8)
Subtotal	1	(1)	5	(5)	30	(31)	11	(11)	1	(1)	48	(49)
Removal from the register	66	(67)	23	(23)	2	(2)					91	(92)
No need to adjudicate					2	(2)					2	(2)
Art. 104(3) of the Rules of Procedure			12	(19)							12	(19)
Subtotal	66	(67)	35	(42)	4	(4)					105	(113)
Total orders	67	(68)	40	(47)	34	(35)	11	(11)	1	(1)	153	(162)
Opinions											1	(1)
TOTAL	178	(179)	153	(182)	53	(59)	11	(11)	2	(2)	398	(434)

Table 5: **Bench hearing case**

Bench hearing case	Judgments		Orders [1]		Total	
Full Court	27	(33)	2	(2)	29	(35)
Small plenum	21	(24)	—	—	21	(24)
Chambers (3 judges)	58	(59)	34	(42)	92	(101)
Chambers (5 judges)	138	(155)	13	(13)	151	(168)
President	—	—	11	(11)	11	(11)
Total	244	(271)	60	(68)	304	(339)

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

Table 6: **Basis of the action**

Basis of the action	Judgments/Opinions		Orders [1]		Total	
Article 226 EC	80	(81)	—	—	80	(81)
Article 230 EC	25	(25)	1	(1)	26	(26)
Article 234 EC	112	(134)	16	(23)	128	(157)
Article 238 EC	4	(4)	—	—	4	(4)
Article 300 EC	1	(1)	—	—	1	(1)
Article 1 of the 1971 Protocol	—	—	1	(1)	1	(1)
Article 49 of the EC Statute	9	(11)	29	(30)	38	(41)
Article 50 of the EC Statute	—	—	11	(11)	11	(11)
Total EC Treaty	231	(256)	58	(66)	289	(322)
Article 33 CS	1	(1)	—	—	1	(1)
Article 41 CS	1	(1)	—	—	1	(1)
Article 49 of the CS Statute	1	(3)	1	(1)	2	(4)
Total CS Treaty	3	(5)	1	(1)	4	(6)
Article 91 of the Rules of Procedure	1	—	—	—	1	—
Article 94 of the Rules of Procedure	1	(1)	—	—	1	(1)
Protocol on privileges and immunities	—	—	1	(1)	1	(1)
Staff Regulations	9	(10)	—	—	9	(10)
OVERALL TOTAL	245	(272)	60	(68)	305	(340)

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

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

Subject-matter of the action	Judgments/Opinions		Orders [1]		Total	
Agriculture	28	(30)	7	(7)	35	(37)
Approximation of laws	15	(17)	—	—	15	(17)
Brussels Convention	—	—	1	(1)	1	(1)
Commercial policy	6	(7)	1	(1)	7	(8)
Common Customs Tariff	7	(7)	—	—	7	(7)
Community own resources	1	(1)	—	—	1	(1)
Company law	7	(9)	1	(1)	8	(10)
Competition	11	(13)	5	(5)	16	(18)
Customs Union	3	(3)	—	—	3	(3)
Environment and consumers	20	(21)	10	(10)	30	(31)
European citizenship	1	(1)	1	(1)	2	(2)
External relations	8	(8)	1	(1)	9	(9)
Fisheries policy	2	(2)	2	(3)	4	(5)
Free movement of persons	6	(6)	—	—	6	(6)
Free movement of capital	2	(2)	—	—	2	(2)
Free movement of goods	6	(6)	2	(2)	8	(8)
Freedom to provide services	12	(20)	1	(4)	13	(24)
Freedom of establishment	3	(4)	2	(2)	5	(6)
Industrial policy	3	(3)	—	—	3	(3)
Intellectual property	1	(1)	—	—	1	(1)
Law governing the institutions	7	(7)	1	(1)	8	(8)
Principles of Community law	1	(1)	—	—	1	(1)
Regional policy	—	—	1	(1)	1	(1)
Social policy	18	(18)	11	(11)	29	(29)
Social security for migrant workers	11	(16)	—	—	11	(16)
State aid	9	(8)	—	—	9	(8)
Taxation	33	(34)	4	(8)	37	(42)
Transport	11	(11)	—	—	11	(11)
EC Treaty	232	(256)	51	(59)	283	(315)
CS Treaty	3	(5)	1	(1)	4	(6)
Privileges and immunities	—	—	1	(1)	1	(1)
Procedure	1	(1)	—	—	1	(1)
Staff Regulations	9	(10)	7	(7)	16	(17)
Others	10	(11)	8	(8)	18	(19)
OVERALL TOTAL	245	(272)	60	(68)	305	(340)

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

Table 7a: **Decisions in proceedings for interim measures: outcome**

Subject-matter	Number of applications for interim measures	Number of appeals concerning interim measures and interventions	Outcome	
			Dismissed/Contested decision upheld	Granted/Contested decision set aside
Accession of new States	1	—	—	1
Commercial policy	—	1	—	1
Competition	—	1	1	—
Environment and consumers	—	8	—	8
Freedom of establishment	1	1	2	—
Law governing the institutions	1	—	1	—
Social policy	1	—	1	—
Total EC Treaty	4	11	5	10
CS Treaty	1	—	1	—
EA Treaty	—	—	—	—
OVERALL TOTAL	5	11	6	10

Length of proceedings [1]

Table 8: **Nature of proceedings** [2]
(Decisions by way of judgments and orders[3])

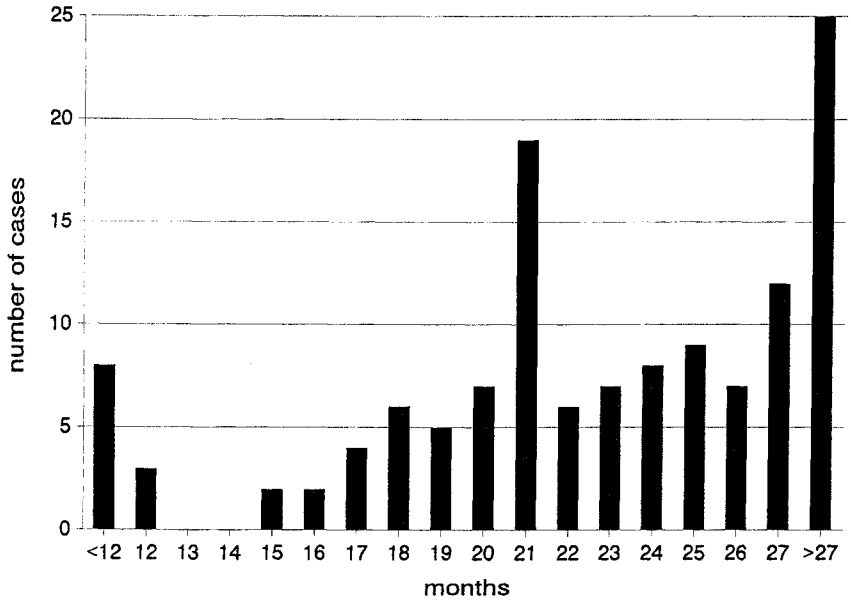
References for a preliminary ruling	22.7
Direct actions	23.1
Appeals	16.3

1 The following types of cases are excluded from the calculation of the length of proceedings: cases involving an interlocutory judgment or a measure of inquiry; opinions and rulings on agreements; special forms of procedure (namely taxation of costs, legal aid, application to set a judgment aside, third party proceedings, interpretation of a judgment, revision of a judgment, rectification of a judgment, attachment procedure, cases concerning immunity); cases terminated by an order removing the case from the register, declaring that it will not proceed to judgment or referring or transferring it to the Court of First Instance; proceedings for interim measures and appeals concerning interim measures and interventions.

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.

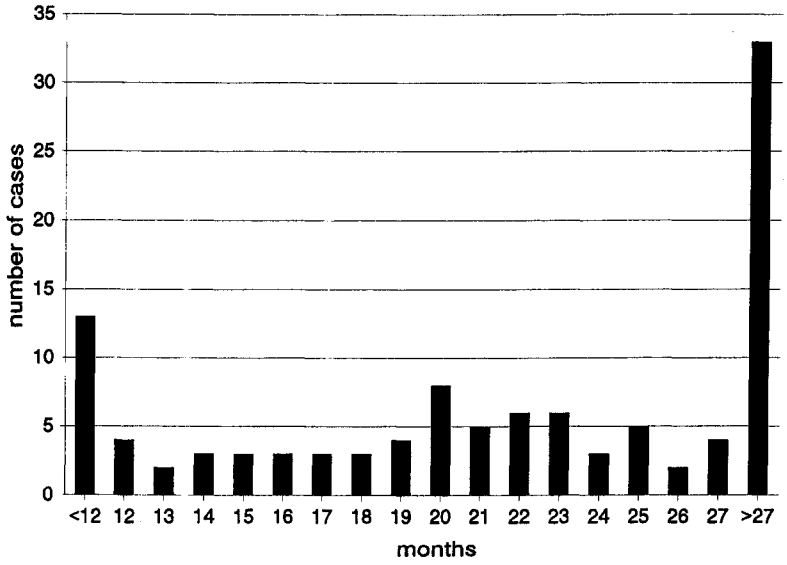
Figure I: **Duration of proceedings on references for a preliminary ruling (judgments and orders [1])**



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	8	3	0	0	2	2	4	6	5	7	19	6	7	8	9	7	12	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.

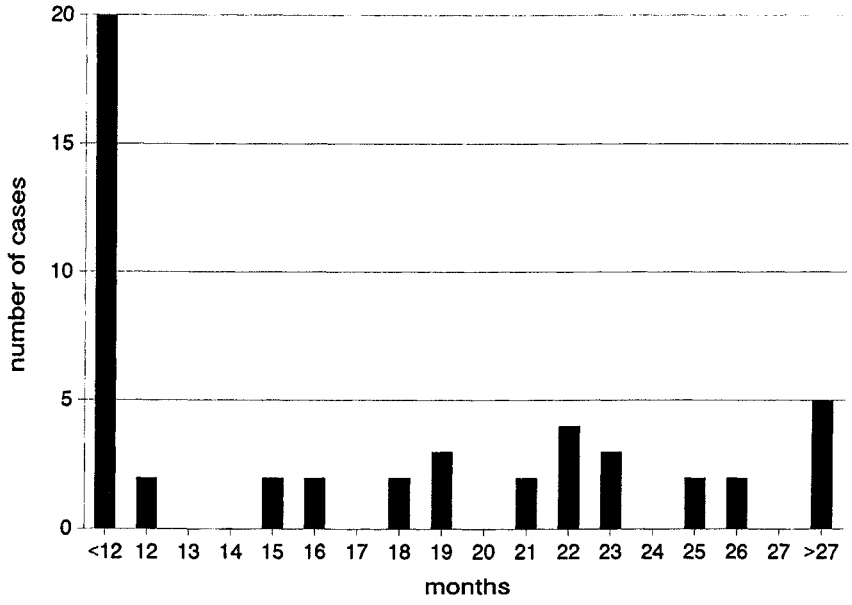
Figure II: **Duration of proceedings in direct actions (judgments and orders [1])**



Cases/ Months	<12	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	> 27
Direct actions	13	4	2	3	3	3	3	3	4	8	5	6	6	3	5	2	4	33

[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	2	0	0	2	2	0	2	3	0	2	4	3	0	2	2	0	5

[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	237
Direct actions	187
Appeals	72
Appeals concerning interim measures and interventions	7
Opinions/Rulings	—
Special forms of procedure	1
Total	504

[1] Gross figures.

Table 10: **Type of action**

References for a preliminary ruling	237
Direct actions	187
of which:	
— for annulment of measures	28
— for failure to act	—
— for damages	—
— for failure to fulfil obligations	157
— on arbitration clauses	2
— others	—
Appeals	72
Appeals concerning interim measures and interventions	7
Opinions/Rulings	—
Total	503
Special forms of procedure	1
of which:	
— Legal aid	—
— Taxation of costs	1
— Revision of a judgment/order	—
— Application for an attachment procedure	—
— Third party proceedings	—
— Interpretation of a judgment	—
— Application to set a judgment aside	—
Total	1
Applications for interim measures	5

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

Subject-matter of the action	Direct actions	References for a preliminary ruling	Appeals	Appeals concerning interim measures and interventions	Total	Special forms of procedure
Accession of new States	1	—	—	—	1	—
Agriculture	24	19	8	—	51	—
Approximation of laws	18	45	—	—	63	—
Brussels Convention	—	6	—	—	6	—
Commercial policy	3	—	1	1	5	—
Company law	9	15	—	—	24	—
Competition	5	15	6	4	30	—
Customs Union	2	7	—	—	9	—
Energy	1	—	—	—	1	—
Environment and consumers	49	5	—	1	55	—
External relations	2	4	2	—	8	—
Fisheries policy	2	—	2	—	4	—
Free movement of capital	—	6	—	—	6	—
Free movement of goods	4	7	—	—	11	—
Freedom of establishment	3	11	—	1	15	—
Freedom of movement for persons	3	10	—	—	13	—
Freedom to provide services	9	14	—	—	23	—
Industrial policy	4	—	—	—	4	—
Intellectual property	—	2	13	—	15	—
Justice and home affairs	1	2	—	—	3	—
Law governing the institutions	5	—	8	—	13	—
Principles of Community law	1	2	1	—	4	—
Privileges and immunities	—	1	—	—	1	—
Social security for migrant workers	1	2	—	—	3	—
Social policy	5	24	3	—	32	—
State aid	5	5	5	—	15	—
Taxation	8	28	—	—	36	—
Transport	15	6	1	—	22	—
EC Treaty	180	236	50	7	473	—
CS Treaty	—	—	6	—	6	—
EA Treaty	7	—	1	—	8	—
Procedure	—	—	—	—	—	1
Staff Regulations	—	1	15	—	16	—
Others	—	1	15	—	16	1
OVERALL TOTAL	187	237	72	7	503	1

[1] Taking no account of applications for interim measures (5).

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

Brought against	2001	From 1953 to 2001
Belgium	13	256
Denmark	2	24
Germany	13	156
Greece	15	205
Spain	15	91 [2]
France	20	265 [3]
Ireland	12	123
Italy	21	427
Luxembourg	10	121
Netherlands	5	77
Austria	7	28
Portugal	7	71
Finland	3	8
Sweden	3	8
United Kingdom	11	62 [4]
Total	157	1 922

[1] Articles 169, 170, 171 and 225 of the EC Treaty (now Articles 226 EC, 227 EC, 228 EC and 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	2001
Article 213 EC	—
Article 226 EC	147
Article 227 EC	—
Article 228 EC	3
Article 230 EC	28
Article 232 EC	—
Article 234 EC	231
Article 235 EC	—
Article 237 EC	—
Article 238 EC	2
Article 298 EC	—
Article 300 EC	—
Article 1 of the 1971 Protocol	6
Article 49 of the EC Statute	50
Article 50 of the EC Statute	7
Total EC Treaty	474
Article 33 CS	—
Article 49 CS	6
Total CS Treaty	6
Article 141 EA	7
Article 50 of the EA Statute	1
Total EA Treaty	8
Total	488
Article 74 of the Rules of Procedure	1
Staff Regulations	15
Others	16
OVERALL TOTAL	504

Cases pending as at 31 December 2001

Table 14: **Nature of proceedings**

References for a preliminary ruling	400	(487)
Direct actions	326	(334)
Appeals	111	(120)
Special forms of procedure	1	(1)
Opinions/Rulings	1	(1)
Total	839	(943)

Table 15: **Bench hearing case**

Bench hearing case	Direct actions		References for a preliminary ruling		Appeals		Other procedures [1]		Total	
Grand plenum	231	(232)	261	(318)	75	(82)	1	(1)	568	(633)
Small plenum	9	(14)	36	(39)	12	(13)			57	(66)
Subtotal	240	(246)	297	(357)	87	(95)	1	(1)	625	(699)
President of the Court					3	(3)			3	(3)
Subtotal					3	(3)			3	(3)
First Chamber	3	(3)	3	(3)	1	(1)			7	(7)
Second Chamber	11	(11)	6	(7)	1	(1)			18	(19)
Third Chamber	4	(4)	2	(2)	1	(1)	1	(1)	8	(8)
Fourth Chamber	5	(5)	3	(3)					8	(8)
Fifth Chamber	30	(31)	42	(45)	11	(11)			83	(87)
Sixth Chamber	33	(34)	47	(70)	7	(8)			87	(112)
Subtotal	86	(88)	103	(130)	21	(22)	1	(1)	211	(241)
TOTAL	326	(334)	400	(487)	111	(120)	2	(2)	839	(943)

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

Table 16: **New cases and judgments**

Year	New cases [1]						Judgments [2]
	Direct actions [3]	References for a preliminary ruling	Appeals	Appeals concerning interim measures and interventions	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	15	1	379	12	193

(Cont.)

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.

(cont.)

Year	New cases [1]						Judgments [2]
	Direct actions [3]	References for a preliminary ruling	Appeals	Appeals concerning interim measures and interventions	Total	Applications for interim measures	
1991	142	186	13	1	342	9	204
1992	253	162	24	1	440	4	210
1993	265	204	17	—	486	13	203
1994	128	203	12	1	344	4	188
1995	109	251	46	2	408	3	172
1996	132	256	25	3	416	4	193
1997	169	239	30	5	443	1	242
1998	147	264	66	4	481	2	254
1999	214	255	68	4	541	4	235
2000	199	224	66	13	502	4	273
2001	187	237	72	7	503	5	244
Total	6 823 [4]	4 618	454	42	11 937	326	5 513

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	BENE-LUX	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] Article 177 of the EC Treaty (now Article 234 EC), Article 41 CS, Article 150 EA, 1971 Protocol.

(cont.)

Year	B	DK	D	EL	E	F	IRL	I	L	NL	A	P	FIN	S	UK	BENE-LUX	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
2001	10	5	53	4	4	15	1	40	2	14	57	4	3	4	21		237
Total	435	89	1262	63	134	638	42	714	48	542	203	50	23	36	338	1	4618

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

Table 18: **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	363
Total	**435**
Denmark	
Højesteret	16
Other courts or tribunals	73
Total	**89**
Germany	
Bundesgerichtshof	82
Bundesarbeitsgericht	4
Bundesverwaltungsgericht	51
Bundesfinanzhof	185
Bundessozialgericht	65
Staatsgerichtshof	1
Other courts or tribunals	874
Total	**1 262**
Greece	
Court of Cassation	3
Council of State	8
Other courts or tribunals	52
Total	**63**
Spain	
Tribunal Supremo	7
Audiencia Nacional	1
Juzgado Central de lo Penal	7
Other courts or tribunals	119
Total	**134**
France	
Cour de cassation	63
Conseil d'État	23
Other courts or tribunals	552
Total	**638**
Ireland	
Supreme Court	12
High Court	15
Other courts or tribunals	15
Total	**42**
Italy	
Corte suprema di Cassazione	72
Consiglio di Stato	39
Other courts or tribunals	603
Total	**714**
Luxembourg	
Cour supérieure de justice	10
Conseil d'État	13
Cour administrative	1
Other courts or tribunals	24
Total	**48**
Netherlands	
Raad van State	41
Hoge Raad der Nederlanden	108
Centrale Raad van Beroep	42
College van Beroep voor het Bedrijfsleven	100
Tariefcommissie	34
Other courts or tribunals	217
Total	**542**
Austria	
Verfassungsgerichtshof	3
Oberster Gerichtshof	36
Bundesvergabeamt	17
Verwaltungsgerichtshof	32
Vergabekontrollsenat	3
Other courts or tribunals	112
Total	**203**
Portugal	
Supremo Tribunal Administrativo	28
Other courts or tribunals	22
Total	**50**
Finland	
Korkein hallinto-oikeus	6
Korkein oikeus	1
Högsta förvaltningsdomstolen	*1*
Other courts or tribunals	15
Total	**23**
Sweden	
Högsta Domstolen	2
Marknadsdomstolen	3
Regeringsrätten	10
Other courts or tribunals	21
Total	**36**
United Kingdom	
House of Lords	27
Court of Appeal	23
Other courts or tribunals	288
Total	**338**
BENELUX	
Court of Justice	1[1]
Total	**1**
OVERALL TOTAL	**4 618**

[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 2001

Case	Date	Parties	Subject-matter
AGRICULTURE			
T-533/93	31 January 2001	Edouard Bouma 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 a non-marketing undertaking — Non-resumption of production on expiry of the undertaking
T-73/94	31 January 2001	Bernard Beusmans 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 a non-marketing undertaking — Non-resumption of production on expiry of the undertaking — Withdrawal of the provisional reference quantity
T-76/94	31 January 2001	Rendert Jansma 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 a non-marketing undertaking — Sale of the SLOM holding — Limitation period

Case	Date	Parties	Subject-matter
T-143/97	31 January 2001	Gerhardus van den Berg 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 a non-marketing undertaking — Transfer of the quota to another holding
T-1/99	1 February 2001	T. Port GmbH & Co. KG v Commission of the European Communities	Bananas — Common organisation of the markets — Regulation (EC) No 478/95 — Export licence scheme — Action for damages — Proof of damage and causal link
T-186/98	7 February 2001	Compañía Internacional de Pesca y Derivados (Inpesca) SA v Commission of the European Communities	Fisheries — Community financial aid for the construction of fishing vessels — Regulation (EEC) No 4028/86 — Request for reconsideration — Substantial new facts — Action for annulment and damages — Inadmissible
Cases T-38/99 to T-50/99	7 February 2001	Sociedade Agrícola dos Arinhos, Ld.ª and Others v Commission of the European Communities	Action for annulment — Commission Decision 98/653/EC — Emergency measures on the ground of the occurrence of bovine spongiform encephalopathy in Portugal — Natural or legal persons — Act of direct and individual concern to them — Admissibility

Case	Date	Parties	Subject-matter
T-18/99	20 March 2001	Cordis Obst und Gemüse Großhandel GmbH v Commission of the European Communities	Bananas — Imports from ACP States and third countries — Calculation of annual quantity allocated — Action for damages — Admissibility — Possibility of relying on WTO rules — Misuse of powers — General principles of Community law
T-30/99	20 March 2001	Bocchi Food Trade International GmbH v Commission of the European Communities	Bananas — Imports from ACP States and third countries — Calculation of annual quantity allocated — Action for damages — Admissibility — Possibility of relying on WTO rules — Misuse of powers — General principles of Community law
T-52/99	20 March 2001	T. Port GmbH & Co. KG v Commission of the European Communities	Bananas — Imports from ACP States and third countries — Calculation of annual quantity allocated — Action for damages — Admissibility — Possibility of relying on WTO rules — Misuse of powers — General principles of Community law
T-143/99	14 June 2001	Hortiplant SAT v Commission of the European Communities	EAGGF — Cancellation of financial assistance — Article 24 of Regulation (EEC) No 4253/88
Cases T-198/95, T-171/96, T-230/97, T-174/98 and T-225/99	12 July 2001	Comafrica SpA, Dole Fresh Fruit Europe Ltd & Co. v Commission of the European Communities	Common organisation of the markets — Bananas — Action for annulment — Admissibility — Legality of reduction and adjustment coefficients — Action for damages

Case	Date	Parties	Subject-matter
T-2/99	12 July 2001	T. Port GmbH & Co. KG v Council of the European Union	Bananas — Imports from ACP States and third countries — Regulation (EEC) No 404/93 — Possibility of relying on WTO rules — First paragraph of Article 234 of the EC Treaty (now, after amendment, first paragraph of Article 307 EC) — Action for damages
T-3/99	12 July 2001	Banatrading GmbH v Council of the European Union	Bananas — Imports from ACP States and third countries — Regulation (EEC) No 404/93 — Possibility of relying on WTO rules — First paragraph of Article 234 of the EC Treaty (now, after amendment, first paragraph of Article 307 EC) — Action for damages

ASSOCIATION OF THE OVERSEAS COUNTRIES AND TERRITORIES

T-43/98	6 December 2001	Emesa Sugar (Free Zone) NV v Council of the European Union	Association of the overseas countries and territories — Decision 97/803/EC — Imports of sugar — Action for annulment — Action for damages — Admissibility — Irreversibility of experience acquired — Principle of proportionality — Legal certainty

Case	Date	Parties	Subject-matter
T-44/98	6 December 2001	Emesa Sugar (Free Zone) NV v Commission of the European Communities	Association of the overseas countries and territories — Imports of sugar — Refusal to grant import licence — Action for annulment — Plea of illegality — Decision 97/803/EC — Irreversibility of experience acquired — Principle of proportionality — Legal certainty — Regulation (EC) No 2553/97

COMMERCIAL POLICY

T-82/00	5 April 2001	BIC SA, Flamagas SA, Swedish Match SA v Council of the European Union	Anti-dumping — Pocket lighters originating in Japan — Regulation repealing anti-dumping duties — Obligation to state reasons — Action for annulment
T-188/99	20 June 2001	Euroalliages v Commission of the European Communities	Dumping — Decision terminating an expiry review — Action for annulment
T-58/99	19 September 2001	Mukand Ltd, Isibars Ltd, Ferro Alloys Corporation Ltd, Viraj Impoexpo Ltd v Council of the European Union	Anti-subsidy proceedings — Regulation (EC) No 2450/98 — Stainless steel bright bars — Injury — Causal link

Case	Date	Parties	Subject-matter
COMPETITION			
Cases T-197/97 and T-198/97	31 January 2001	Weyl Beef Products BV, Exportslachterij Chris Hogeslag BV, Groninger Vleeshandel BV v Commission of the European Communities	Article 85(1) of the EC Treaty (now Article 81(1) EC) — Action for annulment — Rejection of a complaint — Community interest — Relationship between Article 85 and Article 92 of the EC Treaty (now, after amendment, Article 87 EC)
T-26/99	14 February 2001	Trabisco SA v Commission of the European Communities	Competition — Distribution of motor vehicles — Rejection of complaint — Action for annulment
T-62/99	14 February 2001	Société de distribution de mécaniques et d'automobiles (Sodiman) v Commission of the European Communities	Competition — Distribution of motor vehicles — Rejection of complaint — Action for annulment
T-115/99	14 February 2001	Système européen promotion (SEP) SARL v Commission of the European Communities	Competition — Distribution of motor vehicles — Rejection of compaint — Action for annulment
T-112/98	20 February 2001	Mannesmannröhren-Werke AG v Commission of the European Communities	Action for annulment — Competition — Decision to request information — Periodic penalty payments — Right to refuse to provide answers that imply admission of an infringement — Convention for the Protection of Human Rights and Fundamental Freedoms

Case	Date	Parties	Subject-matter
T-206/99	21 March 2001	Métropole télévision SA v Commission of the European Communities	Competition — Rejection of a complaint — Compliance with a judgment of the Court of First Instance annulling an exemption decision of the Commission — Duty to state reasons — Obligations in relation to the investigation of complaints
T-144/99	28 March 2001	Institute of Professional Representatives before the European Patent Office v Commission of the European Communities	Competition — Article 85 of the EC Treaty (now Article 81 EC) — Professional code of conduct — Ban on comparative advertising — Supply of services
T-25/99	5 July 2001	Colin Arthur Roberts, Valerie Ann Roberts v Commission of the European Communities	Competition — Beer supply agreements — Complaint — Article 85(1) of the EC Treaty (now Article 81(1) EC)
Cases T-202/98, T-204/98 and T-207/98	12 July 2001	Tate & Lyle plc, British Sugar plc, Napier Brown & Co. Ltd v Commission of the European Communities	Competition — Sugar market — Infringement of Article 85 of the EC Treaty (now Article 81 EC) — Fines
T-112/99	18 September 2001	Métropole télévision (M6), Suez-Lyonnaise des eaux, France Télécom, Télévision française 1 SA (TF1) v Commission of the European Communities	Actions for annulment — Competition — Pay television — Joint venture — Article 85 of the EC Treaty (now Article 81 EC) — Article 85(1) of the Treaty — Negative clearance — Ancillary restrictions — Rule of reason — Article 85(3) of the Treaty — Exemption decision — Duration

Case	Date	Parties	Subject-matter
T-139/98	22 November 2001	Amministrazione Autonoma dei Monopoli di Stato (AAMS) v Commission of the European Communities	Competition — Article 86 of the EC Treaty (now Article 82 EC) — Abuse of a dominant position — Italian cigarette sector — Distribution agreement — Abusive contract terms — Abusive conduct — Reduction of fine

ECSC

T-156/98	31 January 2001	RJB Mining v Commission of the European Communities	ECSC Treaty — Concentration between undertakings — Admissibility — State aid
T-89/98	7 February 2001	National Association of Licensed Opencast Operators (NALOO) v Commission of the European Communities	ECSC — UK market for electricity generating coal — Rejection of a complaint alleging discriminatory pricing and abusive royalties — Powers of the Commission — Duty to state reasons
T-16/98	5 April 2001	Wirtschaftsvereinigung Stahl, AG der Dillinger Hüttenwerke, EKO Stahl GmbH, Krupp Thyssen Nirosta GmbH, Thyssen Krupp Stahl GmbH, Salzgitter AG (formerly Preussag Stahl AG), Stahlwerke Bremen GmbH, Thyssen Stahl AG v Commission of the European Communities	Competition — ECSC — Information exchange agreement — Notification — Commission decision departing from the content of the agreement — Statement of reasons

Case	Date	Parties	Subject-matter
T-6/99	5 June 2001	ESF Elbe-Stahlwerke Feralpi GmbH v Commission of the European Communities	ECSC Treaty — State aid — Investment aid — Operating aid — Scope of ECSC Treaty — Principle of protection of legitimate expectations
Cases T-12/99 and T-63/99	12 July 2001	UK Coal plc v Commission of the European Communities	ECSC Treaty — Decision No 3632/93/ECSC — Operating aid and aid for the reduction of activity — Authorisation *ex post facto* of aid already paid — Improvement of the viability of recipient undertakings — Degression of aid — Bonus paid to underground mineworkers (*Bergmannsprämie*) — Amendment of a modernisation, rationalisation and restructuring plan — Taking account of a concentration between undertakings — Statement of reasons
T-171/99	10 October 2001	Corus UK Ltd v Commission of the European Communities	Action for damages — Recovery of undue payments — Harm suffered by reason of a partially annulled decision

Case	Date	Parties	Subject-matter
Cases T-45/98 and T-47/98	13 December 2001	Krupp Thyssen Stainless GmbH, Acciai Speciali Terni SpA v Commission of the European Communities	ECSC Treaty — Competition — Agreements, decisions and concerted practices — Alloy surcharge — Price fixing — Rights of the defence — Duration of the infringement — Fine — Guidelines on the method of setting fines — Cooperation during the administrative procedure — Principle of equal treatment
T-48/98	13 December 2001	Compañia española para la fabricación de aceros inoxidables SA (Acerinox) v Commission of the European Communities	ECSC Treaty — Competition — Agreements, decisions and concerted practices — Alloy surcharge — Price fixing — Burden of proof — Duration of the infringement — Fine — Guidelines on the method of setting fines — Cooperation during the administrative procedure — Principle of equal treatment

EXTERNAL RELATIONS

T-26/00	19 September 2001	Lecureur SA v Commission of the European Communities	Commission Regulation No 2519/97 — Food aid — Arbitration clause — Contractual nature of the dispute — Non-conformity of the goods delivered — Thefts from warehouses — Transfer of the burden of risk — Deductions from payments

Case	Date	Parties	Subject-matter

FISHERIES POLICY

T-155/99	23 October 2001	Dieckmann & Hansen GmbH v Commission of the European Communities	Common agricultural policy — Decision 1999/244/EC amending Decision 97/296/EC drawing up the list of third countries from which the import of fishery products is authorised for human consumption — Non-contractual liability of the Community

Case	Date	Parties	Subject-matter
T-196/99	6 December 2001	Area Cova, SA, Armadora José Pereira, SA, Armadores Pesqueros de Aldán, SA, Centropesca, SA, Chymar, SA, Eloymar, SA, Exfaumar, SA, Farpespan, SL, Freiremar, SA, Hermanos Gandón, SA, Heroya, SA, Hiopesca, SA, José Pereira e Hijos, SA, Juana Oya Pérez, Manuel Nores González, Moradiña, SA, Navales Cerdeiras, SL, Nugago Pesca, SA, Pesquera Austral, SA, Pescaberbés, SA, Pesquerías Bígaro Narval, SA, Pesquera Cíes, SA, Pesca Herculina, SA, Pesquera Inter, SA, Pesquerías Marinenses, SA, Pesquerías Tara, SA, Pesquera Vaqueiro, SA, Sotelo Dios, SA v Council of the European Union, Commission of the European Communities	Action for damages — Non-contractual liability — Fisheries — Conservation of marine resources — Convention on Future Multilateral Cooperation in the North-west Atlantic Fisheries — Greenland halibut — Catch quota allocated to the Community fleet

Case	Date	Parties	Subject-matter
T-46/00	11 December 2001	Kvitsjøen AS v Commission of the European Communities	Fisheries — Measures for the conservation and management of fishery resources applicable to vessels flying the flag of Norway — Withdrawal of a licence and special fishing permit — *Audi alteram partem* principle — Principle of proportionality

FREE MOVEMENT OF GOODS

Cases T-133/98 and T-134/98	13 February 2001	Hewlett Packard France, Hewlett Packcard Europe BV v Commission of the European Communities	Action for annulment — Common Customs Tariff — Tariff headings — Tariff classification of certain hardware for use in local area computer networks — Classification in the Combined Nomenclature
Cases T-186/97, T-187/97, T-190/97, T-191/97, T-192/97, T-210/97, T-211/97, T-216/97, T-217/97, T-218/97, T-279/97, T-280/97, T-293/97, and T-147/99	10 May 2001	Kaufring AG, Crown Europe GmbH, Profex Electronic Verwaltungsgesellschaf t mbH, Horten AG, Dr. Seufert GmbH, Grundig AG, Hertie Waren- und Kaufhaus GmbH, Lema SA, Masco SA, DFDS Transport BV, Wilson Holland BV, Elta GmbH, Miller NV v Commission of the European Communities	Action for annulment — Importation of television sets from Turkey — EEC-Turkey Association Agreement — Article 3(1) of the Additional Protocol — Compensatory levy — Article 13(1) of Regulation (EEC) No 1430/79 — Remission of import duty not justified — Rights of the defence

Case	Date	Parties	Subject-matter
T-330/99	7 June 2001	Spedition Wilhelm Rotermund GmbH v Commission of the European Communities	Community Customs Code — Remission of import duties — Special situation — Fraud in connection with an external Community transit operation

INTELLECTUAL PROPERTY

T-135/99	31 January 2001	Taurus-Film GmbH & Co. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	Community trade mark — Term CINE ACTION — Absolute grounds for refusal — Article 7(1)(c) of Regulation (EC) No 40/94
T-136/99	31 January 2001	Taurus-Film GmbH & Co. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	Community trade mark — Term CINE COMEDY — Absolute grounds for refusal — Article 7(1)(c) of Regulation (EC) No 40/94
T-193/99	31 January 2001	Wm. Wrigley Jr. Company v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	Community trade mark — Term DOUBLEMINT — Absolute ground for refusal — Article 7(1)(c) of Regulation (EC) No 40/94
T-24/00	31 January 2001	The Sunrider Corporation v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	Community trade mark — Term VITALITE — Absolute ground for refusal — Article 7(1)(c) of Regulation (EC) No 40/94

Case	Date	Parties	Subject-matter
T-331/99	31 January 2001	Mitsubishi HiTec Paper Bielefeld GmbH, formerly Stora Carbonless Paper GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	Community trade mark — Word mark Giroform — Absolute grounds for refusal — Article 7(1)(b) and (c) of Regulation (EC) No 40/94 — Descriptive character
T-87/00	5 April 2001	Bank für Arbeit und Wirtschaft AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	Community trade mark — Term EASYBANK — Absolute grounds for refusal — Article 7(1)(b) and (c) of Regulation (EC) No 40/94
T-359/99	7 June 2001	Deutsche Krankenversicherung AG (DKV) v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	Community trade mark — Word mark EuroHealth — Absolute grounds for refusal — Descriptive character — Distinctive character — Article (7)(1)(b) and (c) of Regulation (EC) No 40/94
Cases T-357/99 and T-358/99	14 June 2001	Telefon & Buch VerlagsgmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	Community trade mark — Word marks UNIVERSALTELEFONBUCH and UNIVERSALKOMMUNIKATIONSVERZEICHNIS — Absolute grounds for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 40/94

Case	Date	Parties	Subject-matter
T-146/00	20 June 2001	Stefan Ruf, Martin Stier v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	Community trade mark — Payment of the application fee after expiry of the time-limit of one month from filing of the application for registration — Lapse of the right to be accorded as a filing date the date when the application was lodged — Conditions for *restitutio in integrum*
T-120/99	12 July 2001	Christina Kik v Office for the Harmonisation of the Internal Market (Trade Marks and Designs) (OHIM)	Article 115 of Regulation (EC) No 40/94 — Rules governing languages at the Office for Harmonisation in the Internal Market (Trade Marks and Designs) — Plea of illegality — Principle of non-discrimination
T-335/99	19 September 2001	Henkel KGaA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	Community trade mark — Shape of a product for washing machines or dishwashers — Three-dimensional mark — Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94
T-336/99	19 September 2001	Henkel KGaA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	Community trade mark — Shape of a product for washing machines or dishwashers — Three-dimensional mark — Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94

Case	Date	Parties	Subject-matter
T-337/99	19 September 2001	Henkel KGaA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	Community trade mark — Shape of a product for washing machines or dishwashers — Three-dimensional mark — Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94
T-30/00	19 September 2001	Henkel KGaA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	Community trade mark — Tablet for washing machines or dishwashers — Figurative mark — Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94
T-117/00	19 September 2001	Procter & Gamble Company v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	Community trade mark — Shape of a product for washing machines or dishwashers — Three-dimensional mark — Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94
T-118/00	19 September 2001	Procter & Gamble Company v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	Community trade mark — Shape of a product for washing machines or dishwashers — Three-dimensional mark — Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94
T-119/00	19 September 2001	Procter & Gamble Company v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	Community trade mark — Shape of a product for washing machines or dishwashers — Three-dimensional mark — Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94

Case	Date	Parties	Subject-matter
T-120/00	19 September 2001	Procter & Gamble Company v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	Community trade mark — Shape of a product for washing machines or dishwashers — Three-dimensional mark — Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94
T-121/00	19 September 2001	Procter & Gamble Company v Office for Harmonisation in the Internal Markets (Trade Marks and Designs) (OHIM)	Community trade mark — Shape of a product for washing machines or dishwashers — Three-dimensional mark — Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94
T-128/00	19 September 2001	Procter & Gamble Company v Office for Harmonisation in the Internal Markets (Trade Marks and Designs) (OHIM)	Community trade mark — Shape of a product for washing machines or dishwashers — Three-dimensional mark — Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94
T-129/00	19 September 2001	Procter & Gamble Company v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	Community trade mark — Shape of a product for washing machines or dishwashers — Three-dimensional mark — Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94
T-140/00	3 October 2001	Zapf Creation AG v Office for Harmonistation in the Internal Market (Trade Marks and Designs) (OHIM)	Community trade mark — New Born Baby — Absolute grounds for refusal — Article 7(1)(b) and (c) of Regulation (EC) No 40/94

Case	Date	Parties	Subject-matter
T-128/99	15 November 2001	Signal Communications Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	Community trade mark — Word mark TELEYE — Application accompanied by a claim of priority on the basis of the earlier mark TELEEYE — Request for correction — Substantial alteration of the mark
T-138/00	11 December 2001	Erpo Möbelwerk GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	Community trade mark — DAS PRINZIP DER BEQUEMLICHKEIT — Absolute grounds for refusal — Article 7(1)(b) and (c) of Regulation (EC) No 40/94

LAW GOVERNING THE INSTITUTIONS

T-68/99	16 May 2001	Toditec NV v Commission of the European Communities	Arbitration clause — Non-performance of contract — Counterclaim
T-204/99	12 July 2001	Olli Mattila v Council of the European Union, Commission of the European Communities	Access to documents — Decisions 93/731/EC and 94/90/ECSC, EC, Euratom — Exception relating to the protection of the public interest in the field of international relations — Partial access

Case	Date	Parties	Subject-matter
Cases T-222/99, T-327/99 and T-329/99	2 October 2001	Jean-Claude Martinez, Charles de Gaulle, Front National, Emma Bonino, Marco Pannella, Marco Cappato, Gianfranco Dell'Alba, Benedetto Della Vedova, Olivier Dupuis, Maurizio Turco, Lista Emma Bonino v European Parliament	Actions for annulment — Act of the European Parliament concerning a provision of its Rules of Procedure -Statement of formation of a group under Rule 29 of the Rules of Procedure of the European Parliament — Admissibility — Objection of illegality — Equal treatment — Observance of fundamental rights — Principles of democracy and proportionality — Freedom of association — Protection of legitimate expectations — Parliamentary traditions of the Member States — Breach of essential procedural requirements — Misuse of procedure
T-111/00	10 October 2001	British American Tobacco International (Investments) v Commission of the European Communities	Decision 94/90/ECSC, EC, Euratom — Public access to Commission documents — Minutes of the Committee on Excise Duties — Partial access — Exception — Identities of national delegations — Protection of an institution's interest in the confidentiality of its proceedings

Case	Date	Parties	Subject-matter
T-191/99	11 December 2001	David Petrie, Victoria Jane Primhak, David Verzoni, Associazione lettori di lingua straniera in Italia incorporating Committee for the Defence of Foreign Lecturers (ALSI/CDFL) v Commission of the European Communities	Transparency — Public access to documents — Commission Decision 94/90/ECSC, EC, Euratom — Proceedings for failure to fulfil obligations — Formal notice — Reasoned opinion — Exception relating to protection of the public interest — Inspections and investigations — Court proceedings — Authorship rule — Direct effect of Article 255 EC

SOCIAL POLICY

T-331/94	6 March 2001	IPK-München GmbH v Commission of the European Communities	Financial assistance for an ecological tourism project — Interference by the Commission — Delay in carrying out the project — Reduction of assistance

STAFF REGULATIONS OF OFFICIALS

Cases T-97/99 and T-99/99	16 January 2001	Michael Chamier, Eoghan O'Hannrachain v European Parliament	Officials — Grade A 1 post — Article 29(2) of the Staff Regulations — Vacancy notice — Manifest error of assessment — Misuse of powers
T-14/99	17 January 2001	Marie-Jeanne Kraus v Commission of the European Communities	Officials — Household allowance — Refund of sums paid but not due — Patent irregularity of payment

Case	Date	Parties	Subject-matter
T-189/99	17 January 2001	Ioannis Gerochristos v Commission of the European Communities	Competition COM/A/12/98 — Action for annulment — Preselection tests — Retroactive annulment of certain multiple choice questions — Principle of equal treatment of candidates — Duty to state reasons
T-65/00	18 January 2001	Angeliki Ioannou v Council of the European Union	Officials — Refusal to recruit — Physical unfitness — Opinion of the medical committee — Judicial review — Comprehensible link between the medical findings and the conclusion of unfitness
T-118/99	7 February 2001	Beatrice Bonaiti Brighina v Commission of the European Communities	Officials — Competition — Rules on the use of languages — Admissibility — Non-admission to oral tests — Access to documents
T-183/98	8 February 2001	Jean-François Ferrandi v Commission of the European Communities	Officials — Transfer of pension rights — Weighting of old-age pension — Cover against risk of illness — Invalidity pension — Res judicata
T-2/00	13 February 2001	N v Commission of the European Communities	Officials — Social security — Accident insurance — Article 73 of the Staff Regulations — Concept of accident — Infection by HIV
T-166/00	13 February 2001	Peter Hirschfeldt v European Environment Agency	Officials — Internal competition — Annulment — Transfer — Promotion — Article 8 of the Staff Regulations

Case	Date	Parties	Subject-matter
T-144/00	22 February 2001	Daniela Tirelli v European Parliament	Officials — Passage to higher category — Secretarial allowance — Article 46 of the Staff Regulations — Interinstitutional transfer — Inadmissibility
Cases T-7/98, T-208/98 and T-109/99	23 February 2001	Carlo De Nicola v European Investment Bank	European Investment Bank — Staff — Action for annulment — Admissibility — Time-limit for bringing proceedings — Merits — Annual assessment report — Promotion — Comparative examination of merits — Principle of equal treatment — Misuse of powers — Moral harassment — Resignation — Conditions of validity — Form — Capacity — Refusal of administration to accept withdrawal of the resignation — Request for removal of documents from file — Action for damages
T-77/99	6 March 2001	Girish Ojha v Commission of the European Communities	Officials — Import of personal belongings free of duty — Action for compensation — Service-related fault — Material and non-material damage
T-192/99	6 March 2001	Roderick Dunnett, Thomas Hackett, Mateo Turró Calvet v European Investment Bank	General principle of labour law common to the Member States — Bona fide consultation of staff representatives — Abolition of a financial advantage

Case	Date	Parties	Subject-matter
T-100/00	6 March 2001	Franco Campoli v Commission of the European Communities	Officials — Transfer/Reassignment — Reasons — Misuse of powers — Interests of the service
T-116/00	13 March 2001	Benthe Hørbye-Möller v Commission of the European Communities	Officials— Promotion — Examination of comparative merits — Action for annulment
T-159/98	24 April 2001	Ivan Torre, Donatella Ineichen, Alessandro Cavallaro, v Commission of the European Communities	Officials — Competition — Irregularity in the conduct of the tests such as to distort the results — Locus standi
T-37/99	24 April 2001	Ugo Miranda v Commission of the European Communities	Officials — Resettlement allowance — Meaning of residence
Cases T-167/99 and T-174/99	2 May 2001	Carla Giulietti, Ana Caprile, Fabrizio Dell'Olio, Konrad Fuhrmann, Olivier Radelet v Commission of the European Communities	Officials — Competitions — Actions for annulment — Preselection procedure — Conduct of tests — Principle of equal treatment — Obligation to state reasons — Principle of legitimate expectations — Principle of good management — Consequences for the subsequent conduct of the competition
T-104/00	2 May 2001	Giovanni Cubeta v Commission of the European Communities	Officials — Posting to a new place of work — Installation allowance — Daily subsistence — Conditions for granting
T-60/00	3 May 2001	Paraskevi Liaskou v Council of the European Union	Officials — Remuneration — Expatriation allowance — Article 4(1)(a) of Annex VII to the Staff Regulations

Case	Date	Parties	Subject-matter
T-99/00	3 May 2001	Ignacio Samper v European Parliament	Officials — Drawing-up of career record — Examination of the comparative merits — Criteria — Principle of equal treatment
T-182/99	8 May 2001	Georges Caravelis v European Parliament	Officials — Refusal of promotion — Consideration of comparative merits — Action for annulment and compensation
T-348/00	30 May 2001	Artin Barth v Commission of the European Communities	Officals — Household allowance — Recovery of sum not due
T-230/99	14 June 2001	Hans McAuley v Council of the European Union	Officials — Appointment by way of promotion — Annulment — Comparative examination of merits — Manifest error of assessement
T-243/99	20 June 2001	Marie-Laurence Buisson v Commission of the European Communities	Officials — Open competition — Refusal to admit to the written tests — Admissibility — Act adversely affecting a candidate — Time-limit — Legitimate expectation — Compensation
Cases T-164/99, T-37/00 and T-38/00	27 June 2001	Alain Leroy, Yannick Chevalier-Delanoue, Virginia Joaquim Matos v Council of the European Union	Decision 1999/307/EC — Integration of the Schengen Secretariat into the General Secretariat of the Council — Action for annulment
T-166/99	27 June 2001	Luis Fernando Andres de Dios, Maria Soledad García Retortillo, Suzanne Kitlas, Jacques Verraes v Council of the European Union	Decision 1999/307/EC — Integration of the Schengen Secretariat into the General Secretariat of the Council — Action for annulment — Admissibility

Case	Date	Parties	Subject-matter
T-214/00	27 June 2001	X v Commission of the European Communities	Officials — Official ordered to pay the costs of a previous case — Creditor institution withholding remuneration by way of set-off
Cases T-24/98 and T-241/99	3 July 2001	E v Commission of the European Communities	Officials — Temporary agent — Disciplinary rules — Suspension — Disciplinary measure — Termination of contract without notice — Period set by the third paragraph of Article 7 of Annex IX to the Staff Regulations — Disregarded — Consequences — Action for annulment and compensation — No need to adjudicate
T-131/00	12 July 2001	Robert Charles Schochaert v Council of the European Union	Officials — Promotion denied — Statement of reasons — Examination of comparative merits — Action for annulment
T-351/99	20 July 2001	Christian Brumter v Commission of the European Communities	Officials — Notice of vacancy — Appointment — Duty to provide reasons — Examination of the candidates' comparative merits — Discretion enjoyed by the appointing authority — Staff report — Request for transfer
T-160/99	13 September 2001	Gunnar Svantesson, Lena Hellsten, Monica Hägg v Council	Officials — Internal competition — Composition of the selection board

Case	Date	Parties	Subject-matter
T-152/00	19 September 2001	E v Commission of the European Communities	Officials — Rejection of candidature — Infringement of the terms of a vacancy notice — Manifest errors of assessment — Discrimination — Misuse of powers
T-171/00	20 September 2001	Peter Spruyt v Commission of the European Communities	Officials — Cover for risk of accident and occupational disease — Eligibility for the benefits provided for by Article 73 of the Staff Regulations — Hang-gliding accident
T-95/01	20 September 2001	Gérald Coget, Pierre Hugé, Emmanuel Gabolde v Court of Auditors of the European Communities	Officials — Post of Secretary General — Invitation to submit candidatures — High-level experience — Institution's broad discretion — Calling for interview
T-344/99	20 September 2001	Lucía Recalde Langarica v Commission of the European Communities	Officials — Expatriation allowance — Article 4(1)(a) of the Staff Regulations — Article 26 of the Staff Regulations — The principle *audi alteram partem*
T-333/99	18 October 2001	X v European Central Bank	Officials — Servants of the European Central Bank — Jurisdiction of the Court of First Instance — Legality of conditions of employment — Rights of the defence — Dismissal — Harassment — Misuse of the internet

Case	Date	Parties	Subject-matter
T-142/00	15 November 2001	Michel Van Huffel v Commission of the European Communities	Officials — Access to internal competitions — Contracts with undertakings — Notice of competition — Condition for admission requiring applicants to be members of the regular staff
T-349/00	15 November 2001	Giorgio Lebedef v Commission of the European Communities	Officials — Framework agreement concluded between the Commission and the trade union and staff associations in 1974 — Revision or amendment — Consultation procedure — Introduction of new rules — Admissibility
T-194/99	15 November 2001	Cristiano Sebastiani v Commission of the European Communities	Officials — Promotion — Staff report — None — Consideration of comparative merits
T-125/00	4 December 2001	Joaquín López Madruga v Commission of the European Communities	Officials — Transfer of part of renumeration in currency of a Member State other than the country of the seat of the institution — Article 17(2)(a) and (b) of Annex VIII to the Staff Regulations — Combined application

STATE AID

T-73/98	15 March 2001	Société chimique Prayon-Rupel SA v Commission of the European Communities	State aid — Failure to open the procedure under Article 93(2) of the EC Treaty (now Article 88(2) EC) — Serious difficulty

Case	Date	Parties	Subject-matter
T-69/96	21 March 2001	Hamburger Hafen- und Lagerhaus Aktiengesellschaft, Zentralverband der Deutschen Seehafenbetriebe eV, Unternehmensverband Hafen Hamburg v Commission of the European Communities	State aid — Aid for investment in equipment in the combined transport sector — Article 93 of the EC Treaty (now Article 88 EC) — Action for annulment — Admissibility
T-288/97	4 April 2001	Regione autonoma Friuli-Venezia Giulia v Commission of the European Communities	Carriage of goods by road — State aid — Action for annulment — Effect on trade between Member States and distortion of competition — Conditions for derogation from the prohibition laid down by Article 92(1) of the EC Treaty (now, after amendment, Article 87(1) EC) — New aid or existing aid — Principle of protection of legitimate expectations — Principle of proportionality — Statement of reasons
T-187/99	7 June 2001	Agrana Zucker und Stärke AG v Commission of the European Communities	Action for annulment — State aid — Aid incompatible with the common market — Time-limit for investigation — Act of Accession — Declaration No 31 — Statement of reasons

Case	Date	Parties	Subject-matter
T-9/98	22 November 2001	Mitteldeutsche Erdoel-Raffinerie GmbH v Commission of the European Communities	State aid — Extension of the period for completion of investment projects qualifying for a premium — General aid scheme — Action for annulment — Admissibility — Act of direct and individual concern to the applicant — Interest in bringing proceedings — Additional aid — Investment aid or operating aid — Principle of proportionality

2. Synopsis of the other decisions of the Court of First Instance which appeared in the 'Proceedings' in 2001

Case	Date	Parties	Subject-matter
T-53/01 R	28 May 2001	Poste Italiane SpA v Commission of the European Communities	Proceedings for interim relief — Article 86 EC, read in conjunction with Article 82 EC — Article 86(2) EC — Postal services — Urgency — Balancing of interests
T-151/01 R	15 November 2001	Der Grüne Punkt - Duales System Deutschland AG v Commission of the European Communities	Proceedings for interim relief — Abuse of dominant position — Article 82 EC — Trade mark — Prima facie case — Urgency — Balancing of interests

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

Summary of the activity of the Court of First Instance

New cases

Cases dealt with

Cases pending

Miscellaneous

Summary of the activity of the Court of First Instance

Table 1: **General activity of the Court of First Instance in 1999, 2000 and 2001** [1]

	1999		2000		2001	
New cases	313	(384)	336	(398)	345	(345)
Cases dealt with	267	(659)	318	(344)	275	(340)
Cases pending	501	(732)	519	(786)	589	(792)

Table 1a: **General activity of the Court of First Instance in 1999, 2000 and 2001** [2]

	1999		2000		2001	
New cases		(384)		(398)		(345)
Cases dealt with	322	(659)	258	(344)	230	(340)
Cases pending	663	(732)	661	(786)	685	(792)

1 In this table, the figures in brackets include large groups of identical or connected cases (milk quotas, customs agents, service-stations, aid in the region of Venice, regrading).

2 In this table and those on the following pages, the figures in brackets represent the total number of cases, *without* account being taken of the joinder of cases; for the figures without brackets, each series of joined cases is counted as one case.

Table 2: **Nature of proceedings** [1] [2]

Nature of proceedings	1999	2000	2001
Other actions	254	242	180
Intellectual property	18	34	37
Staff cases	84	111	110
Special forms of procedure	28	11	18
Total	384 [3]	398 [4]	345

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 a judgment aside (Article 38 of the EC Statute; Article 122 of the Rules of Procedure of the Court of First Instance); third party proceedings (Article 39 of the EC Statute; Article 123 of the Rules of Procedure); revision of a judgment (Article 41 of the EC Statute; Article 125 of the Rules of Procedure); interpretation of a judgment (Article 40 of the EC Statute; Article 129 of the Rules of Procedure); taxation of costs (Article 92 of the Rules of Procedure); legal aid (Article 94 of the Rules of Procedure); rectification of a judgment (Article 84 of the Rules of Procedure).

3 Of which 71 cases concerned State aid in the Netherlands relating to service-stations.

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

Table 3: **Type of action**

Type of action	1999	2000	2001
Action for annulment	220	220	134
Action for failure to act	15	6	17
Action for damages	19	17	21
Arbitration clause	1	—	8
Intellectual property	18	34	37
Staff cases	83	110	110
Total	356 [1]	387 [2]	327
Special forms of procedure			
Legal aid	7	6	9
Taxation of costs	6	3	8
Application to set a judgment aside	—	1	—
Rectification of a judgment	15	1	—
Revision of a judgment	—	—	1
Total	28	11	18
OVERALL TOTAL	384	398	345

1 Of which 71 cases concerned State aid in the Netherlands relating to service-stations.

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

Table 4: **Basis of the action**

Basis of the action	1999	2000	2001
Article 63 of Regulation (EC) No 40/94	18	34	37
Article 230 EC [1]	215	219	132
Article 232 EC	14	6	15
Article 235 EC	17	17	21
Article 238 EC	1	—	8
Total EC Treaty	265	276	213
Article 33 of the CS Treaty	5	1	2
Article 35 of the CS Treaty	1	—	2
Article 40 of the CS Treaty	1	—	—
Total CS Treaty	7	1	4
Article 151 of the EA Treaty	1	—	—
Total EA Treaty	1	—	—
Staff Regulations	83	110	110
Total	356	387	327
Article 84 of the Rules of Procedure	15	1	—
Article 92 of the Rules of Procedure	6	3	8
Article 94 of the Rules of Procedure	7	6	9
Article 122 of the Rules of Procedure	—	1	—
Article 125 of the Rules of Procedure	—	—	1
Total special forms of procedure	28	11	18
OVERALL TOTAL	384	398	345

[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** [1]

Subject-matter of the action	1999	2000	2001
Agriculture	42	23	17
Approximation of laws	—	—	2
Arbitration clause	—	—	2
Association of the Overseas Countries and Territories	4	6	6
Commercial policy	5	8	4
Common Customs Tariff	—	—	2
Company law	2	4	6
Competition	34	36	39
Culture	—	2	1
Customs Union	—	—	2
Energy	—	—	2
Environment and consumers	5	14	2
European citizenship	—	2	—
External relations	1	8	14
Fisheries policy	—	—	6
Foreign and security policy	2	1	3
Free movement of goods	10	17	1
Freedom to provide services	1	—	—
Freedom of establishment	—	—	1
Freedom of movement for persons	2	8	3
Intellectual property	18	34	37
Justice and home affairs	—	—	1
Law governing the institutions	19	29	12
Regional policy	2	—	1
Research, information, education and statistics	1	1	3
Social policy	12	7	1
Staff Regulations	—	—	1
State aid	100	80	42
Transport	2	—	2
Total EC Treaty	262	280	213
Competition	—	—	—
Iron and steel	1	—	2
State aid	6	1	2
Total CS Treaty	7	1	4
Law governing the institutions	1	—	—
Total EA Treaty	1	—	—
Staff Regulations	86	106	110
OVERALL TOTAL	356	387	327

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

Cases dealt with

Table 6: **Nature of proceedings** [1]

Nature of proceedings	1999		2000		2001	
Other actions	227	(544) [2]	136	(219) [3]	112	(162) [4]
Intellectual property	2	(2)	7	(7)	29	(30)
Staff cases	79	(88)	98	(101)	75	(133) [5]
Special forms of procedure	14	(25)	17	(17)	14	(15)
Total	322	(659)	258	(344)	230	(340)

1 In this table and those on the following pages, the figures in brackets represent the total number of cases, without account being taken of the joinder of cases; for the figures without brackets, each series of joined cases is counted as one case.

2 Of which 102 were milk quota cases and 284 concerned customs agents.

3 Of which 8 were milk quota cases and 13 concerned customs agents.

4 Of which 14 were milk quota cases.

5 Of which 51 concerned the regrading of officials on their appointment.

Table 7: **Results of cases**

Result of case	Other actions		Intellectual property		Staff cases		Special forms of procedure		Total	
Judgments										
Action inadmissible	5	(21)	—	—	1	(1)	—	—	6	(22)
Action unfounded	28	(34)	13	(14)	19	(22)	—	—	60	(70)
Action partially founded	9	(10)	6	(6)	8	(12)	—	—	23	(28)
Action founded	13	(27)	5	(5)	9	(9)	—	—	27	(41)
No need to give a decision	—	—	—	—	1	(1)	—	—	1	(1)
Total judgments	55	(92)	24	(25)	38	(45)	—	—	117	(162)
Orders										
Removal from the register	20	(31)	3	(3)	19	(69)	—	—	42	(103)
Action inadmissible	19	(21)	1	(1)	11	(11)	—	—	31	(33)
No need to give a decision	5	(5)	1	(1)	3	(3)	—	—	9	(9)
Action founded	—	—	—	—	—	—	—	—	—	—
Action partially founded	—	—	—	—	—	—	5	(6)	5	(6)
Action unfounded	5	(5)	—	—	1	(1)	9	(9)	15	(15)
Action manifestly unfounded	2	(2)	—	—	3	(4)	—	—	5	(6)
Disclaimer of jurisdiction	—	—	—	—	—	—	—	—	—	—
Lack of jurisdiction	6	(6)	—	—	—	—	—	—	6	(6)
Total orders	57	(70)	37	(88)	5	(5)	14	(15)	113	(178)
Total	112	(162)	75	(133)	29	(30)	14	(15)	230	(340)

Table 8: **Basis of the action**

Basis of the action	Judgments		Orders		Total	
Article 63 of Regulation (EC) No 40/94	24	(25)	5	(5)	29	(30)
Article 230 EC	39	(74)	41	(43)	80	(117)
Article 232 EC	—	—	7	(7)	7	(7)
Article 235 EC	7	(7)	8	(19)	15	(26)
Article 238 EC	1	(1)	—	—	1	(1)
Total EC Treaty	71	(107)	61	(74)	132	(181)
Article 33 of the CS Treaty	7	(9)	—	—	7	(9)
Article 40 of the CS Treaty	1	(1)	—	—	1	(1)
Total CS Treaty	8	(10)	—	—	8	(10)
Article 151 of the EA Treaty			1	(1)	1	(1)
Total EA Treaty	—	—	1	(1)	1	(1)
Staff Regulations	38	(45)	37	(88)	75	(133)
Total	117	(162)	99	(163)	216	(325)
Article 92 of the Rules of Procedure	—	—	5	(6)	5	(6)
Article 94 of the Rules of Procedure	—	—	9	(9)	9	(9)
Total special forms of procedure	—	—	14	(15)	14	(15)
OVERALL TOTAL	117	(162)	113	(178)	230	(340)

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

Subject-matter of the action	Judgments		Orders		Total	
Agriculture	10	(26)	9	(21)	19	(47)
Association of the Overseas Countries and Territories	2	(2)	—	—	2	(2)
Commercial policy	3	(3)	2	(2)	5	(5)
Common Customs Tariff	1	(2)	1	(1)	2	(3)
Company law	—	—	4	(4)	4	(4)
Competition	12	(15)	7	(7)	19	(22)
Customs Union	2	(15)	—	—	2	(15)
European citizenship	—	—	1	(1)	1	(1)
External relations	1	(1)	1	(1)	2	(2)
Fisheries policy	4	(4)	2	(3)	6	(7)
Foreign and security policy	—	—	3	(3)	3	(3)
Freedom of movement for persons	—	—	2	(2)	2	(2)
Freedom of establishment	—	—	4	(4)	4	(4)
Intellectual property	24	(25)	5	(5)	29	(30)
Law governing the institutions	5	(7)	12	(12)	17	(19)
Social policy	1	(1)	1	(1)	2	(2)
Staff Regulations	1	(1)	—	—	1	(1)
State aid	4	(4)	7	(7)	11	(11)
Total EC Treaty	70	(106)	61	(74)	131	(180)
Competition	5	(6)	—	—	5	(6)
Iron and steel	1	(1)	—	—	1	(1)
State aid	2	(3)	—	—	2	(3)
Total CS Treaty	8	(10)	—	—	8	(10)
Law governing the institutions	—	—	1	(1)	1	(1)
Total EA Treaty	—	—	1	(1)	1	(1)
Staff Regulations	39	(46)	37	(88)	76	(134)
OVERALL TOTAL	117	(162)	99	(163)	216	(325)

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

Table 10: **Bench hearing case (judgments and orders)**

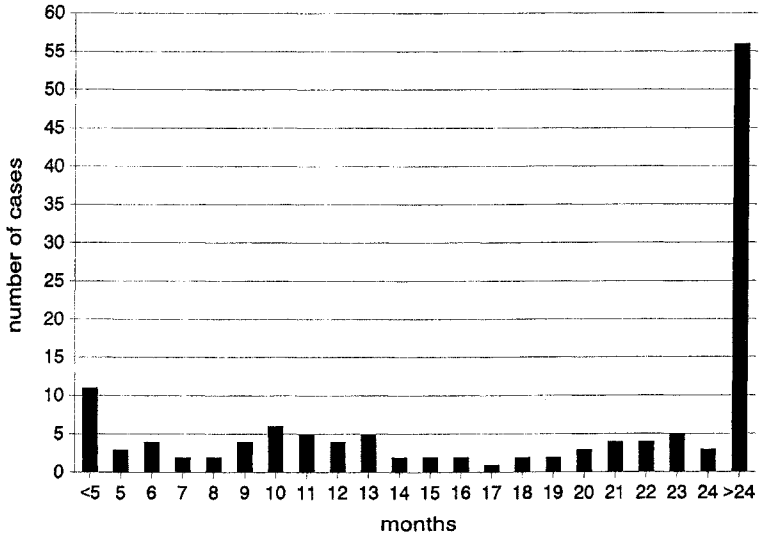
Bench hearing case	Total
Chambers (3 judges)	280
Chambers (5 judges)	42
Single judge	12
Cases not assigned	6
Total	340

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

	Judgments/Orders
Other actions	20.7
Intellectual property	16.4
Staff cases	18.7

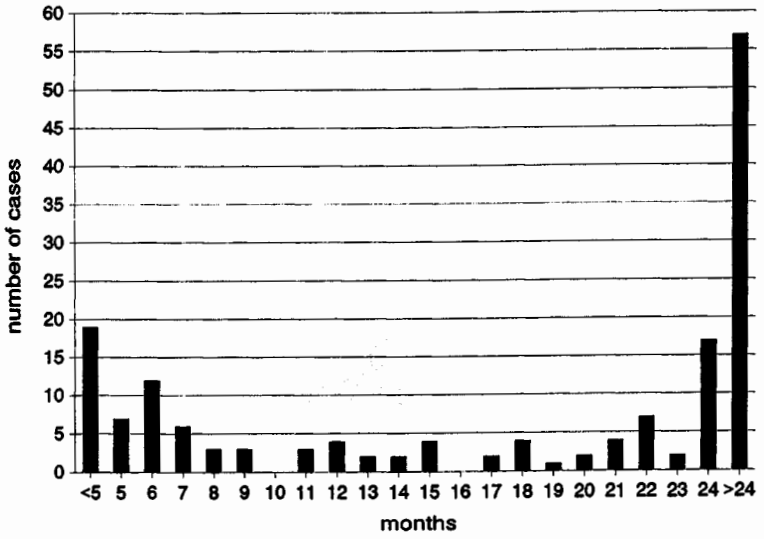
[1] In this table, the length of proceedings is expressed in months and tenths of months.

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



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	11	3	4	2	2	4	6	5	4	5	2	2	2	1	2	2	3	4	4	5	3	56

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



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	19	7	12	6	3	3	0	3	4	2	2	4	0	2	4	1	2	4	7	2	17	57

Cases pending
(as at 31 December each year)

Table 12: **Nature of proceedings**

Nature of proceedings	1999		2000		2001	
Other actions	471	(538) [1]	445	(561) [2]	485	(579) [3]
Intellectual property	17	(17)	44	(44)	51	(51)
Staff cases	167	(169)	170	(179)	143	(156)
Special forms of procedure	8	(8)	2	(2)	6	(6)
Total	663	(732)	661	(786)	685	(792)

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

2 Of which 80 were milk quota cases, 74 were cases concerning State aid in the Netherlands relating to service-stations and 59 were cases concerning State aid in the region of Venice.

3 Of which 67 were milk quota cases, 74 were cases concerning State aid in the Netherlands relating to service-stations and 59 were cases concerning State aid in the region of Venice.

Table 13: **Basis of the action**

Basis of the action	1999		2000		2001	
Article 63 of Regulation (EC) No 40/94	17	(17)	44	(44)	51	(51)
Article 230 EC	360	(383)	360	(436)	385	(451)
Article 232 EC	14	(14)	4	(4)	12	(12)
Article 235 EC	80	(123)	68	(107)	74	(102)
Article 238 EC	1	(2)	1	(1)	8	(8)
Total EC Treaty	472	(539)	477	(592)	530	(624)
Article 33 of the CS Treaty	14	(14)	12	(13)	6	(6)
Article 35 of the CS Treaty	1	(1)	—	—	2	(2)
Article 40 of the CS Treaty	1	(1)	1	(1)	—	—
Total CS Treaty	16	(16)	13	(14)	8	(8)
Article 151 of the EA Treaty	1	(1)	1	(1)	—	—
Total EA Treaty	1	(1)	1	(1)	—	—
Staff Regulations	166	(168)	168	(177)	141	(154)
Total	655	(724)	659	(784)	679	(786)
Article 84 of the Rules of Procedure	2	(2)	—	—	—	—
Article 92 of the Rules of Procedure	5	(5)	—	—	3	(3)
Article 94 of the Rules of Procedure	1	(1)	1	(1)	1	(1)
Article 122 of the Rules of Procedure	—	—	1	(1)	1	(1)
Article 125 of the Rules of Procedure	—	—	—	—	1	(1)
Total special forms of procedure	8	(8)	2	(2)	6	(6)
OVERALL TOTAL	663	(732)	661	(786)	685	(792)

Table 14: **Subject-matter of the action**

Subject-matter of the action	1999		2000		2001	
Agriculture	86	(140)	89	(144)	83	(114)
Approximation of laws	—	—	—	—	2	(2)
Arbitration clause	1	(2)	—	—	2	(2)
Association of the Overseas Countries and Territories	6	(6)	11	(11)	15	(15)
Commercial policy	24	(25)	16	(16)	15	(15)
Common Customs Tariff	2	(2)	2	(3)	2	(2)
Company law	4	(4)	4	(4)	6	(6)
Competition	101	(104)	74	(79)	92	(96)
Culture	—	—	2	(2)	3	(3)
Customs Union	24	(24)	20	(33)	20	(20)
Energy	—	—	—	—	2	(2)
Environment and consumers	8	(8)	15	(15)	10	(17)
European citizenship	—	—	1	(1)	—	—
External relations	7	(7)	9	(9)	21	(21)
Fisheries policy	4	(4)	8	(8)	7	(7)
Foreign and security policy	2	(2)	3	(3)	3	(3)
Free movement of goods	—	—	2	(2)	3	(3)
Freedom of movement for persons	—	—	—	—	1	(1)
Freeedom of establishment	1	(1)	5	(5)	2	(2)
Intellectual property	17	(17)	44	(44)	51	(51)
Justice and home affairs	—	—	—	—	1	(1)
Law governing the institutions	33	(34)	27	(27)	18	(20)
Regional policy	4	(5)	—	—	1	(1)
Research, information, education and statistics	1	(1)	1	(1)	4	(4)
Social policy	15	(15)	4	(4)	3	(3)
Staff Regulations	—	—	2	(2)	2	(2)
State aid	114	(131)	135	(176)	157	(207)
Transport	3	(3)	1	(1)	3	(3)
Total EC Treaty	458	(536)	475	(590)	529	(623)
Competition	6	(6)	6	(6)	—	—
Iron and steel	1	(1)	1	(1)	2	(2)
State aid	9	(9)	6	(7)	6	(6)
Total CS Treaty	16	(16)	13	(14)	8	(8)
Law governing the institutions	1	(1)	1	(1)	—	—
Total EA Treaty	1	(1)	1	(1)	—	—
Staff Regulations	169	(171)	170	(179)	142	(155)
Total	644	(724)	659	(784)	679	(786)

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	*(105)*
1995	253	427	(616)	197	(265)	98	(128)	47	*(142)*
1996	229	476	(659)	172	(186)	107	(118)	27	*(133)*
1997	644	640	(1117)	179	(186)	95	(99)	35	*(139)*
1998	238	569	(1007)	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)*
2001	345	685	(792)	230	(340)	120	(162)	69	*(213)*
Total	3942			2392	(3151)	1049	(1304)	455	*(1600)*

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 brought against the order of inquiry of 14 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 (judgments and orders)**

	Unfounded	Appeal manifestly unfounded	Appeal manifestly inadmissible	Appeal manifestly inadmissible and unfounded	Appeal partially manifestly inadmissible and unfounded	Set aside and referred back	Set aside and not referred back	Partially set aside and referred back	Partially set aside and not referred back	Removal from the register	No need to adjudicate	TOTAL
Agriculture	2	1	–	3	–	–	–	–	–	1	–	7
Commercial policy	2	–	–	–	–	1	–	–	–	–	–	3
Company law	–	–	–	1	–	–	–	–	–	–	–	1
Competition	5	1	–	2	1	–	–	–	–	1	–	10
Environment and consumers	–	–	–	–	–	–	8	–	–	–	2	10
Fisheries policy	–	–	3	–	–	–	–	–	–	–	–	3
Freedom of establishment	–	1	–	–	–	–	–	–	–	–	–	1
Intellectual property	–	–	–	–	–	–	–	–	–	–	–	1
Laws governing the institutions	2	–	1	–	–	–	–	–	–	–	–	3
Regional policy	–	–	1	–	–	–	–	–	–	–	–	1
Social policy	–	–	8	1	–	–	–	–	–	–	–	9
Staff Regulations	7	4	1	3	–	–	2	–	–	–	–	17
State aid	3	–	–	1	–	–	–	–	–	–	–	4
Total	21	7	10	15	1	1	10	–	1	2	2	70

Table 17: **Decisions in proceedings for interim measures: [1] outcome**

Subject-matter of the action	Number of applications for interim measures	Outcome	
		Refused	Granted
Agriculture	6	6	0
Association of the Overseas Countries and Territories	1	1	0
Commercial policy	2	1	1
Competition	8	7	1
Energy	1	1	0
Environment and consumers	2	2	0
Freedom of establishment	6	6	0
Law governing the institutions	3	2	1
State aid	3	3	0
Total EC Treaty	32	29	3
Staff Regulations	7	7	0
OVERALL TOTAL	39	36	3

[1] Applications for interim measures brought to a conclusion by removal from the register are not counted in this table.

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, however, continues 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.(d) 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. Opinions of the Advocates General 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, 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 in 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 providing a synopsis of the work of the Court of Justice and the Court of First Instance, both in their judicial capacity and with regard to their other activities (meetings and study courses for members of the judiciary, visits, seminars and so forth). It contains detailed analyses of the most noteworthy case-law in the year gone by of both the Court of Justice and the Court of First Instance, written by their Presidents. It also contains much statistical information and the complete annual tables of the case-law of the Court of Justice and the Court of First Instance.

(c) Diary

A multilingual weekly list of the judicial activity of the Court of Justice and the Court of First Instance, announcing the hearings and delivery of Opinions and judgments taking place in the week in question; it also gives an overview of the subsequent week. There is a brief description of the subject-matter of each case. The diary 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.

Court of Justice and Court of First Instance	
Introduction to the institution	**Research and Documentation**
Press and Information	**Library**
Case-law	**Texts relating to the institution**

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

3.1 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 law.

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 ('Nachschlagewerk der Rechtsprechung zum Gemeinschaftsrecht 1977—1990') 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 of Justice for a preliminary ruling. The A-Z Index gives details of the publication of the Courts' decisions 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 all the legal literature relating to the judgments of the Court of Justice and of the Court of First Instance.

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 periodic publication in French assembling 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'. [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.

[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.

Price: EUR 40, excluding VAT.

(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 web sites

EUROPA: portal site of the European Union
http://europa.eu.int

Europa is the access point for all the information made available on the internet by the institutions and bodies of the European Union, including the Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions, the European Central Bank and the European Investment Bank.

Europa provides a vast array of information on European integration, particularly concerning the European Union's objectives, policies and institutional system. Europa is designed to be user-friendly in line with the European Union institutions' commitment to openness.

EUR-Lex: Community law accessible to all
http://europa.eu.int/eur-lex

The portal EUR-Lex offers integrated access free of charge to Community legislation and case-law. It also provides links to PreLex, the European Commission's database concerning interinstitutional procedures, to OEIL, the

European Parliament's legislative observatory, and to other legislative sites of the European Union institutions and of the Member States.

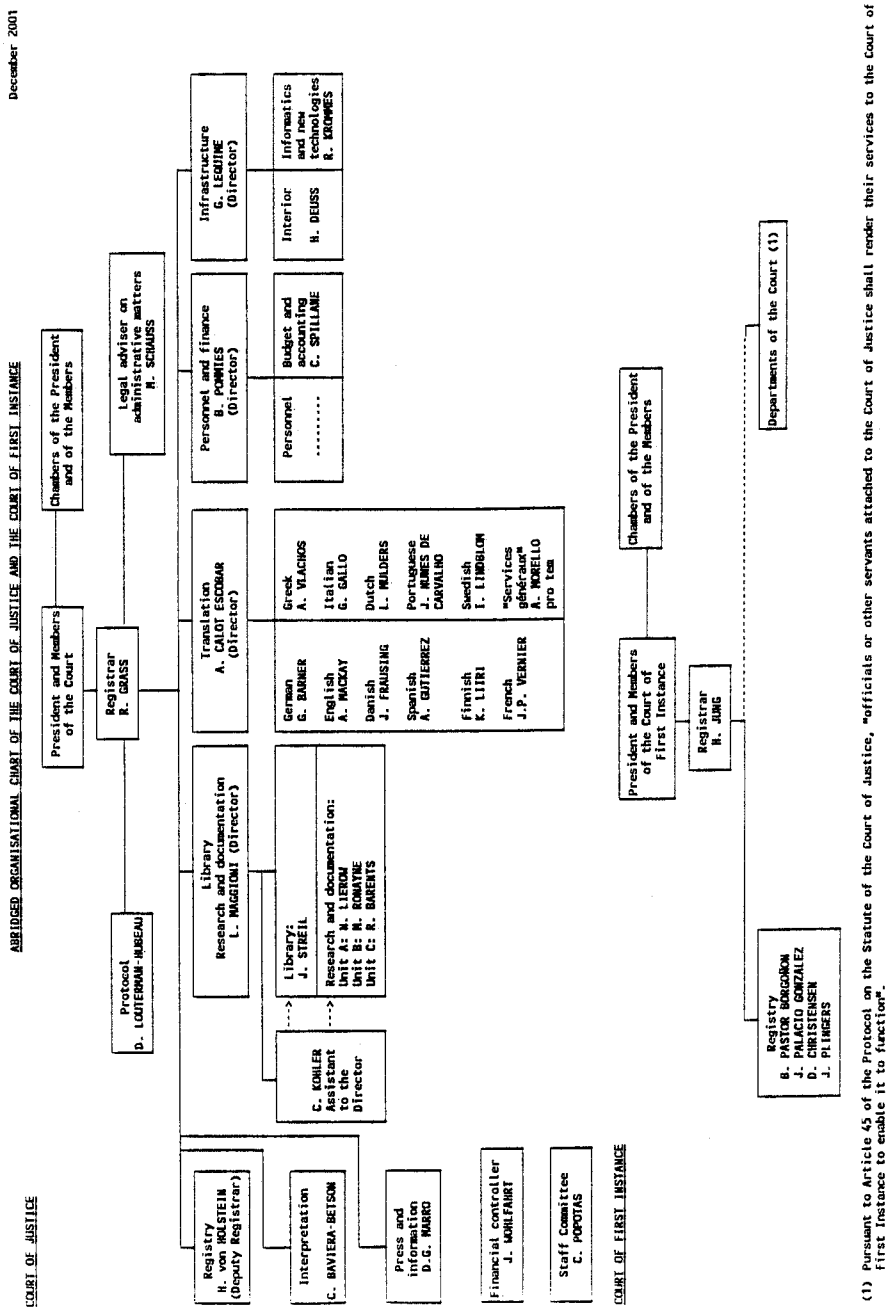
Designed to meet the needs of both professional and non-professional users, it offers harmonised search functions for all types of documents: the Official Journal, the Treaties, legislation in preparation, legislation, case-law, parliamentary questions and documents of public interest. The portal aims to present legislation in a coherent and user-friendly manner and also includes explanatory documents describing the legislative process in the European Union and the key players in that process.

CELEX: Community law database
http://europa.eu.int/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 institutions, covers legislation, case-law, preparatory acts and parliamentary questions, together with national measures implementing directives.

CELEX is a fee-paying service which, compared with EUR-Lex, offers subscribers numerous value-added services, such as advanced search options, access to analytical data, on-line help and the assistance of a help-desk, file export facilities, a profile-based alert system and so forth. For further information on subscription options, see the heading 'subscribe' on the Celex homepage.

B — Abridged Organisational Chart of the Court of Justice and the Court of First Instance



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

The Court of Justice may be contacted at:

COURT OF JUSTICE
OF THE EUROPEAN COMMUNITIES
L-2925 Luxembourg
Telephone: (+352) 4303-1
Telex (Registry): 2510 CURIA LU
Telegraphic address: CURIA
Fax (Court):(+352) 4303-2600
Fax (Press and Information Division): (+352) 4303-2500
Fax (Internal Services Division - Publications Section): (+352) 4303-2650

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

Court of Justice of the European Communities

Annual report 2001 — Synopsis of the work of the Court of Justice and the Court of First Instance of the European Communities

Luxembourg: Office for Official Publications of the European Communities

2002 — 335 pp. — 17.6 x 25 cm

ISSN 1680-8304

Venta • Salg • Verkauf • Πωλήσεις • Sales • Vente • Vendita • Verkoop • Venda • Myynti • Försäljning
http://eur-op.eu.int/general/en/s-ad.htm

BELGIQUE/BELGIË

Jean De Lannoy
Avenue du Roi 202/Koningslaan 202
B-1190 Bruxelles/Brussel
Tél. (32-2) 538 43 08
Fax (32-2) 538 08 41
E-mail: jean.de.lannoy@infoboard.be
URL: http://www.jean-de-lannoy.be

La librairie européenne/
De Europese Boekhandel
Rue de la Loi 244/Wetstraat 244
B-1040 Bruxelles/Brussel
Tél. (32-2) 295 26 39
Fax (32-2) 735 08 60
E-mail: mail@libeurop.be
URL: http://www.libeurop.be

Moniteur belge/Belgisch Staatsblad
Rue de Louvain 40-42/Leuvenseweg 40-42
B-1000 Bruxelles/Brussel
Tél. (32-2) 552 22 11
Fax (32-2) 511 01 84
E-mail: eusales@just.fgov.be

DANMARK

J. H. Schultz Information A/S
Herstedvang 12
DK-2620 Albertslund
Tlf. (45) 43 63 23 00
Fax (45) 43 63 19 69
E-mail: schultz@schultz.dk
URL: http://www.schultz.dk

DEUTSCHLAND

Bundesanzeiger Verlag GmbH
Vertriebsabteilung
Amsterdamer Straße 192
D-50735 Köln
Tel. (49-221) 97 66 80
Fax (49-221) 97 66 82 78
E-Mail: vertrieb@bundesanzeiger.de
URL: http://www.bundesanzeiger.de

ΕΛΛΑΔΑ/GREECE

G. C. Eleftheroudakis SA
International Bookstore
Panepistimiou 17
GR-10564 Athina
Tel. (30-1) 331 41 80/1/2/3/4/5
Fax (30-1) 325 84 99
E-mail: elebooks@netor.gr
URL: elebooks@hellasnet.gr

ESPAÑA

Boletín Oficial del Estado
Trafalgar, 27
E-28071 Madrid
Tel. (34) 915 38 21 11 (libros)
913 84 17 15 (suscripción)
Fax (34) 915 38 21 21 (libros),
913 84 17 14 (suscripción)
E-mail: clientes@com.boe.es
URL: http://www.boe.es

Mundi Prensa Libros, SA
Castelló, 37
E-28001 Madrid
Tel. (34) 914 36 37 00
Fax (34) 915 75 39 98
E-mail: libreria@mundiprensa.es
URL: http://www.mundiprensa.com

FRANCE

Journal officiel
Service des publications des CE
26, rue Desaix
F-75727 Paris Cedex 15
Tél. (33) 140 58 77 31
Fax (33) 140 58 77 00
E-mail: europublications@journal-officiel.gouv.fr
URL: http://www.journal-officiel.gouv.fr

IRELAND

Alan Hanna's Bookshop
270 Lower Rathmines Road
Dublin 6
Tel. (353-1) 496 73 98
Fax (353-1) 496 02 28
E-mail: hannas@iol.ie

ITALIA

Licosa SpA
Via Duca di Calabria, 1/1
Casella postale 552
I-50125 Firenze
Tel. (39) 055 64 83 1
Fax (39) 055 64 12 57
E-mail: licosa@licosa.com
URL: http://www.licosa.com

LUXEMBOURG

Messageries du livre SARL
5, rue Raiffeisen
L-2411 Luxembourg
Tél. (352) 40 10 20
Fax (352) 49 06 61
E-mail: mail@mdl.lu
URL: http://www.mdl.lu

NEDERLAND

SDU Servicecentrum Uitgevers
Christoffel Plantijnstraat 2
Postbus 20014
2500 EA Den Haag
Tel. (31-70) 378 98 80
Fax (31-70) 378 97 83
E-mail: sdu@sdu.nl
URL: http://www.sdu.nl

PORTUGAL

Distribuidora de Livros Bertrand Ld.ª
Grupo Bertrand, SA
Rua das Terras dos Vales, 4-A
Apartado 60037
P-2700 Amadora
Tel. (351) 214 95 87 87
Fax (351) 214 96 02 55
E-mail: dlb@ip.pt

Imprensa Nacional-Casa da Moeda, SA
Sector de Publicações Oficiais
Rua da Escola Politécnica, 135
P-1250-100 Lisboa Codex
Tel. (351) 213 94 57 00
Fax (351) 213 94 57 50
E-mail: spoce@incm.pt
URL: http://www.incm.pt

SUOMI/FINLAND

Akateeminen Kirjakauppa/
Akademiska Bokhandeln
Keskuskatu 1/Centralgatan 1
PL/PB 128
FIN-00101 Helsinki/Helsingfors
P./tfn (358-9) 121 44 18
F./fax (358-9) 121 44 35
Sähköposti: sps@akateeminen.com
URL: http://www.akateeminen.com

SVERIGE

BTJ AB
Traktorvägen 11-13
S-221 82 Lund
Tfl. (46-46) 18 00 00
Fax (46-46) 30 79 47
E-post: btjeu-pub@btj.se
URL: http://www.btj.se

UNITED KINGDOM

The Stationery Office Ltd
Customer Services
PO Box 29
Norwich NR3 1GN
Tel. (44) 870 60 05-522
Fax (44) 870 60 05-533
E-mail: book.orders@theso.co.uk
URL: http://www.itsofficial.net

ÍSLAND

Bokabud Larusar Blöndal
Skólavördustig, 2
IS-101 Reykjavik
Tel. (354) 552 55 40
Fax (354) 552 55 60
E-mail: bokabud@simnet.is

SCHWEIZ/SUISSE/SVIZZERA

Euro Info Center Schweiz
c/o OSEC Business Network Switzerland
Stampfenbachstraße 85
PF 492
CH-8035 Zürich
Tel. (41-1) 365 53 15
Fax (41-1) 365 54 11
E-mail: eics@osec.ch
URL: http://www.osec.ch/eics

BÁLGARIJA

Europress Euromedia Ltd
59, blvd Vitosha
BG-1000 Sofia
Tel. (359-2) 980 37 66
Fax (359-2) 980 42 30
E-mail: Milena@mbox.cit.bg
URL: http://www.europress.bg

CYPRUS

Cyprus Chamber of Commerce and Industry
PO Box 21455
CY-1509 Nicosia
Tel. (357-2) 88 97 52
Fax (357-2) 66 10 44
E-mail: demetrap@ccci.org.cy

EESTI

Eesti Kaubandus-Tööstuskoda
(Estonian Chamber of Commerce and Industry)
Toom-Kooli 17
EE-10130 Tallinn
Tel. (372) 646 02 44
Fax (372) 646 02 45
E-mail: einfo@koda.ee
URL: http://www.koda.ee

HRVATSKA

Mediatrade Ltd
Pavla Hatza 1
HR-10000 Zagreb
Tel. (385-1) 481 94 11
Fax (385-1) 481 94 11

MAGYARORSZÁG

Euro Info Service
Szt. István krt.12
III emelet 1/A
PO Box 1039
H-1137 Budapest
Tel. (36-1) 329 21 70
Fax (36-1) 349 20 53
E-mail: euroinfo@euroinfo.hu
URL: http://www.euroinfo.hu

MALTA

Miller Distributors Ltd
Malta International Airport
PO Box 25
Luqa LQA 05
Tel. (356) 66 44 88
Fax (356) 67 67 99
E-mail: gwirth@usa.net

NORGE

Swets Blackwell AS
Hans Nielsen Hauges gt. 39
Boks 4901 Nydalen
N-0423 Oslo
Tel. (47) 23 40 00 00
Fax (47) 23 40 00 01
E-mail: info@no.swetsblackwell.com
URL: http://www.swetsblackwell.com.no

POLSKA

Ars Polona
Krakowskie Przedmiescie 7
Skr. pocztowa 1001
PL-00-950 Warszawa
Tel. (48-22) 826 12 01
Fax (48-22) 826 62 40
E-mail: books119@arspolona.com.pl

ROMÂNIA

Euromedia
Str.Dionisie Lupu nr. 65, sector 1
RO-70184 Bucuresti
Tel. (40-1) 315 44 03
Fax (40-1) 312 96 46
E-mail: euromedia@mailcity.com

SLOVAKIA

Centrum VTI SR
Nám. Slobody, 19
SK-81223 Bratislava
Tel. (421-7) 54 41 83 64
Fax (421-7) 54 41 83 64
E-mail: europ@tbb1.sltk.stuba.sk
URL: http://www.sltk.stuba.sk

SLOVENIJA

GV Založba
Dunajska cesta 5
SLO-1000 Ljubljana
Tel. (386) 613 09 1804
Fax (386) 613 09 1805
E-mail: europ@gvestnik.si
URL: http://www.gvzalozba.si

TÜRKIYE

Dünya Infotel AS
100, Yil Mahallessi 34440
TR-80050 Bagcilar-Istanbul
Tel. (90-212) 629 46 89
Fax (90-212) 629 46 27
E-mail: aktuel.info@dunya.com

ARGENTINA

World Publications SA
Av. Cordoba 1877
C1120 AAA Buenos Aires
Tel. (54-11) 48 15 81 56
Fax (54-11) 48 15 81 56
E-mail: wpbooks@infovia.com.ar
URL: http://www.wpbooks.com.ar

AUSTRALIA

Hunter Publications
PO Box 404
Abbotsford, Victoria 3067
Tel. (61-3) 94 17 53 61
Fax (61-3) 94 19 71 54
E-mail: jpdavies@ozemail.com.au

BRESIL

Livraria Camões
Rua Bittencourt da Silva, 12 C
CEP
20043-900 Rio de Janeiro
Tel. (55-21) 262 47 76
Fax (55-21) 262 47 76
E-mail: livraria.camoes@incm.com.br
URL: http://www.incm.com.br

CANADA

Les éditions La Liberté Inc.
3020, chemin Sainte-Foy
Sainte-Foy, Québec G1X 3V6
Tel. (1-418) 658 37 63
Fax (1-800) 567 54 49
E-mail: liberte@mediom.qc.ca

Renouf Publishing Co. Ltd
5369 Chemin Canotek Road, Unit 1
Ottawa, Ontario K1J 9J3
Tel. (1-613) 745 26 65
Fax (1-613) 745 76 60
E-mail: order.dept@renoufbooks.com
URL: http://www.renoufbooks.com

EGYPT

The Middle East Observer
41 Sherif Street
Cairo
Tel. (20-2) 392 69 19
Fax (20-2) 393 97 32
E-mail: inquiry@meobserver.com
URL: http://www.meobserver.com.eg

MALAYSIA

EBIC Malaysia
Suite 45.02, Level 45
Plaza MBf (Letter Box 45)
8 Jalan Yap Kwan Seng
50450 Kuala Lumpur
Tel. (60-3) 21 62 92 98
Fax (60-3) 21 62 61 98
E-mail: ebic@tm.net.my

MÉXICO

Mundi Prensa México, SA de CV
Río Pánuco, 141
Colonia Cuauhtémoc
MX-06500 México, DF
Tel. (52-5) 533 56 58
Fax (52-5) 514 67 99
E-mail: 101545.2361@compuserve.com

SOUTH AFRICA

Eurochamber of Commerce in South Africa
PO Box 781738
2146 Sandton
Tel. (27-11) 884 39 52
Fax (27-11) 883 55 73
E-mail: info@eurochamber.co.za

SOUTH KOREA

The European Union Chamber of
Commerce in Korea
5th Fl, The Shilla Hotel
202, Jangchung-dong 2 Ga, Chung-ku
Seoul 100-392
Tel. (82-2) 22 53-5631/4
Fax (82-2) 22 53-5635/6
E-mail: eucck@eucck.org
URL: http://www.eucck.org

SRI LANKA

EBIC Sri Lanka
Trans Asia Hotel
115 Sir Chittampalam
A. Gardiner Mawatha
Colombo 2
Tel. (94-1) 074 71 50 78
Fax (94-1) 44 87 79
E-mail: ebicsl@sinet.lk

T'AI-WAN

Tycoon Information Inc
PO Box 81-466
105 Taipei
Tel. (886-2) 87 12 88 86
Fax (886-2) 87 12 47 47
E-mail: euitupe@ms21.hinet.net

UNITED STATES OF AMERICA

Bernan Associates
4611-F Assembly Drive
Lanham MD 20706-4391
Tel. (1-800) 274 44 47 (toll free telephone)
Fax (1-800) 865 34 50 (toll free fax)
E-mail: query@bernan.com
URL: http://www.bernan.com

ANDERE LÄNDER
OTHER COUNTRIES
AUTRES PAYS

Bitte wenden Sie sich an ein Büro Ihrer Wahl/Please contact the sales office of your choice/Veuillez vous adresser au bureau de vente de votre choix

Office for Official Publications of the European Communities
2, rue Mercier
L-2985 Luxembourg
Tel. (352) 29 29-42455
Fax (352) 29 29-42758
E-mail: info-info-opoce@cec.eu.int
URL: publications.eu.int

2/2002