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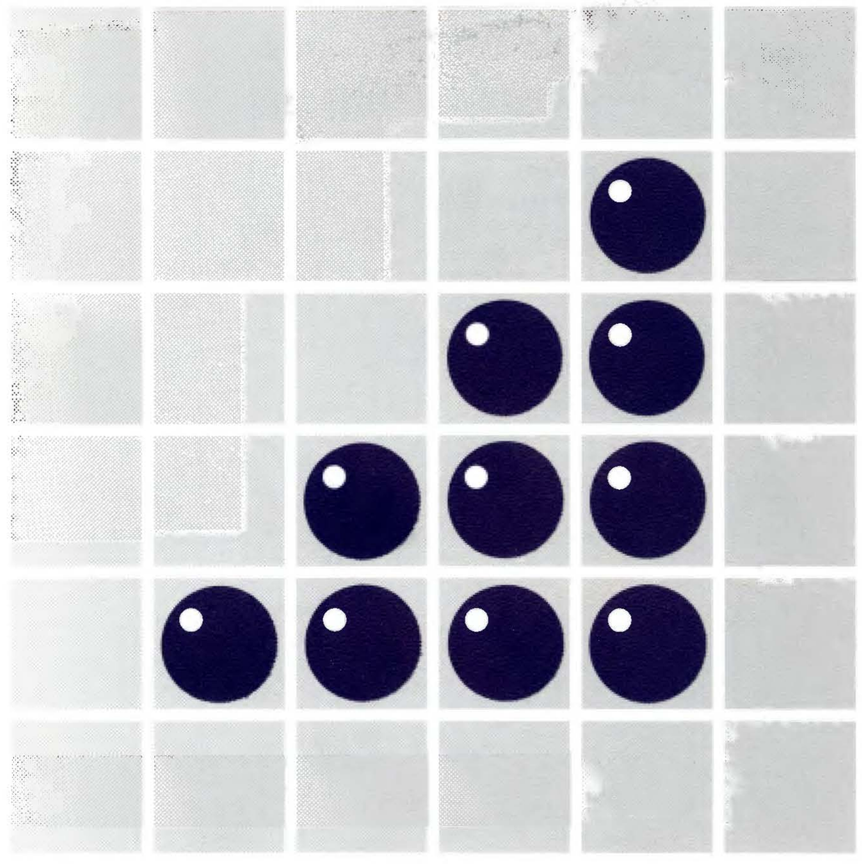
THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES



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I — A Community institutional system

The European Community, founded on the Treaties of Paris and Rome, is governed by a quadripartite institutional system — novel in its conception, unique in its assignment of powers, different from all previous national and international systems, a Community system in letter and in spirit.

The Commission, an independent body with executive powers and responsibility, has 14 members chosen for their all-round capability by agreement between the governments of the Member States. It is responsible for the functioning and development of the common market.

The Council — the political decision-making centre — is a collective body with a legislative function; it is representative of the Member States since its members are ministers delegated by the various governments, and it ensures that all the Community countries play their part in the decision-making process.

A Parliamentary Assembly, consisting of representatives of the peoples of Europe, designated indirectly for many years but finally elected by direct universal suffrage in 1979, exercises limited but growing supervisory powers.

But the founding fathers went further than simply setting up these institutions. They also laid the foundations of a Community based on a system of law, with a new, autonomous and uniform body of law separate from and transcending national law, binding in its entirety and directly applicable in all Member States.

Having done this, it was then necessary to enforce the law, to see that everyone did not interpret and apply it in his own way and to guarantee that this common body of law kept its Community character and remained identical for everyone, whatever the circumstances. The Court of Justice, based from the outset in Luxembourg, was to handle the task of ensuring that the law was observed in the interpretation and application of the Treaties.

What a challenge! And the Court had no choice but to take it up, especially as the very existence of Community law and hence the unconditional survival of a Community based on a system of law depended on its doing so.

II — Composition and organization of the Court

Eleven judges and five advocates-general

Since the accession of Greece to the European Community in January 1981, the Court has consisted of eleven judges.

In the words of the Treaties, the Court is 'assisted' by five advocates-general, who are appointed according to the same criteria as judges.

The judges are appointed by common accord of the governments of the Member States, a procedure which underlines the concept that the Court is just as much a Community institution as the Council, the Commission or the European Parliament. Members hold office for a renewable term of six years.

Every three years there is a partial replacement of the Court's membership. Six or five judges and two or three advocates-general are replaced alternately. This ensures continuity of the Court's decisions, especially as most of the judges have had their term of office renewed at least once and sometimes twice.

The Treaties require judges to be chosen 'from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognized competence'. There is no specific nationality requirement, but at the present time the Court has one judge from each Member State.

Since, however, the number of judges is not the same as the number of Member States, the 11th post of judge is assigned at the discretion of the governments.

The independence of the judges is guaranteed by their statute and is based on three fundamental rules of procedure: their deliberations are secret; judgments are reached by majority vote; judgments are signed by all the judges who have taken part in the proceedings (dissenting opinions are never published).

The judges select one of their number to be President for a renewable term of three years.

The President directs the work of the Court and, in keeping with the criteria laid down by the Court, assigns cases to the Chambers once the application has been received, appoints a judge-rapporteur for each case and sets the schedule for the various stages of the procedure and the dates of hearings. He also gives judgment in summary proceedings on applications for provisional measures, though the actual decision may be referred to the Court itself.

The advocates-general are appointed on the same terms and have to satisfy the same criteria with respect to independence and training as the judges. Nationality is immaterial. In practice, until recently the advocates-general were all nationals of the larger Community countries, but lately a post of advocate-general has gone to a national of one of the smaller Member States.

The First Advocate-General, appointed by the Court for one year, like Presidents of Chambers, assigns cases to individual advocates-general as soon as the Judge-Rapporteur has been appointed by the President. Unlike the judges the advocates-general are not attached to a particular Chamber.

According to the Treaties the function of the advocates-general is, 'acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases brought before the Court, in order to assist the Court in the performance of the tasks assigned to it'. These duties should not be confused with those of a public prosecutor or similar kind of functionary such as the advocate-general in a French court. The advocates-general do not represent the Communities and cannot initiate proceedings themselves.

At a separate hearing some weeks after the lawyers have addressed the Court he comments on the various aspects of the case, weighs up the provisions of Community law, compares the case in point with previous rulings and proposes a legal solution to the dispute. The advocate-general does not participate in the Court's deliberations.

Each judge and advocate-general is assisted by two law clerks — qualified lawyers who carry out research on questions both of procedure and of substantive law, study the cases and prepare procedural documents on cases pending before the Court. The judges and advocates-general are free to choose their own law clerks.

The Registrar

The judges and advocates-general jointly appoint the Registrar of the Court for a renewable term of six years. He acts as a kind of secretary-general to the Court, being responsible for the acceptance, transmission and custody of all documents and notifications. All pleadings are entered in his register and he is responsible for drawing up the minutes of each hearing. The Registrar is also responsible for Court administration: he is in charge of the budget and supervises the management and operation of each department, with the help of an assistant registrar and a director of administration.

Plenary sessions and Chambers

The Court normally sits in plenary session. It must do so when hearing cases brought before it by a Member State or by one of the Community institutions. Its deliberations are only valid if there is an odd number of judges, the quorum being seven.

However, the Treaties and its own rules of procedure allow it to set up Chambers within the Court: there are currently three Chambers composed of three judges and two Chambers composed of five judges. The Presidents of the Chambers are appointed annually by the Court.

'Justice': detail of the bas-relief by Giacomo Manzù in the Large Entrance Hall of the Court of Justice

The Court may refer to Chambers any request for a preliminary ruling as well as any actions brought by persons or firms where, in the words of the rules of procedure, the difficulty or the importance of the case or particular circumstances are not such as to require that the Court decide it in plenary session.

The decision to assign a case is taken by the Court at the end of the written procedure upon consideration of the preliminary report presented by the Judge-Rapporteur and after the

advocate-general has been heard. A case may not be assigned to a Chamber if a Member State or a Community institution, being a party to the proceedings, has requested that the case be decided in plenary session. The expression 'party to the proceedings' means any Member State or any institution which is a party to or an intervener in the proceedings or which has submitted written observations in any request for a preliminary ruling.

Actions brought by officials or other employees of the institutions against the institutions are assigned to the Chambers in rotation and irrespective of the nature of the case, except where cases are linked.

At any stage in the proceedings the Chamber may refer to the Court a case assigned to or devolving upon it.

Language service and documentation

The Court has its own language service, whose staff have to be fluent in several Community languages and have a legal background as the written pleadings, the opinions of the advocates-general and the Court's rulings must be properly translated into the eight procedural languages. A special department provides interpreters for hearings.

The Court has a library and documentation service covering national and Community legislation, case-law and legal literature, linked to an internal data-processing unit covering the Court's own case-law and Community legislation.

III — The Court's powers

The Court ensures the observance of Community law

Each of the Treaties establishing the European Communities uses the same broad terms to define the specific responsibilities of the Court of Justice, which is to 'ensure that in the interpretation and application of this Treaty the law is observed'.

The implication of this rather laconic formula is that the Court interprets and applies the whole corpus of Community law from the basic Treaties to the various implementing regulations, directives and decisions issued by the Council and the Commission. The power of the Court to interpret or rule on the validity of provisions of national law is limited: it is usually exercised only when, in an individual case concerning the failure of a Member State to fulfil an obligation, it rules on the conformity of national law with Community law. It may also occur, though this is very rare, that the Court is asked to apply and interpret national law in disputes involving contracts to which the Community is a party.

Although its jurisdiction is principally concerned with Community law, the Court is not cut off from national law since it draws its inspiration from the legal traditions that are common to the Member States and ensures respect both for the general principles of law and for fundamental human rights insofar as they have been incorporated into the Community legal order.

The supreme judicial authority

The Court is the Community's supreme judicial authority; there is no appeal against its rulings. And yet it is not the only body which enforces Community law.

National courts at all levels likewise have jurisdiction to apply and interpret Community law, which, to use words taken from a number of rulings, 'produce direct effects and create individual rights which national courts must protect'. Requests for preliminary rulings form the required link between the Court of Justice and the national courts, which may, and in some cases must, ask the Court to interpret Community law or to rule on the validity of acts by the Council and the Commission.

Recourse to the Court is simple, although there are a variety of ways in which it may be made. A distinction is made between direct actions, which involve disputes between parties, and requests for preliminary rulings, which take the form of questions put by national judges.

Direct actions

Direct actions may be divided into three categories: proceedings against a Member State for failure to fulfil an obligation, proceedings for annulment, of which there are various types, and proceedings to establish liability.

Proceedings for failure to fulfil an obligation

In the first place it is up to the Commission, as guardian of the Treaties and of the decisions taken by the institutions, to initiate proceedings for failure to fulfil an obligation. If it considers that any part of the administration of a Member State has not honoured a Community obligation, it asks the Member State to make its comments and then issues a reasoned opinion. If the State does not act on the opinion within the time allowed in the opinion, it may be taken to the Court.

After notifying the Commission, a Member State may also initiate this procedure. Again, the Commission asks the Member State against which the breach is alleged to present its comments and then issues a reasoned opinion. If the Commission does not produce the opinion within three months from the date of the request, the matter may be referred directly to the Court. For obvious reasons of courtesy and diplomacy the Member States have tended to prefer settling their disputes within the Council or turning to the Commission. It was not until 1978 that Member States brought cases for failure to fulfil an obligation. In one case, a Member State complained that another Member State was impeding the free movement of sheepmeat. This action was withdrawn when the Commission brought an action as a result of which the national regulations were declared to be contrary to the Treaty. In the second case, one Member State requested the Court to find that another had not complied with its Treaty obligations by taking certain restrictive measures concerning fisheries. The accusation was found proven and the Member State declared guilty by a judgment of the Court.

If the Court agrees that the case is well-founded, it declares that an obligation has not been fulfilled. All the authorities of the Member State concerned are required to take the necessary measures to comply with the Court's judgment in their respective areas of competence, but no penalties are available to enforce this.

If a State does not comply with the initial ruling, new proceedings may be brought for a declaration by the Court that the obligations arising from its first decision have not been complied with.

In general, the Member States do conform, sooner or later, to the Court's judgment. On two occasions, however, delay has ensued while the countries concerned tried to get Community rules introduced or changed by political means. If such behaviour became the norm, it would threaten the very foundations of the Community.

There have been almost 100 rulings on failure to fulfil an obligation and, despite the fact that the prospect of a preliminary investigation by the Commission has considerable deterrent effect in itself and most disputes are settled at this stage, the frequency of such cases is rising sharply. Almost all Member States have had actions of this type brought against them,

although some figure more frequently than others. The subjects of the actions range from customs duties and charges having equivalent effect to refusal to adopt the measures imposed by Community law in the fields of trade, health, social welfare, etc.

Proceedings for annulment

Proceedings for annulment are directed against binding Community acts, be they of a general nature (regulations and directives) or decisions addressed to individuals taken by the Council and the Commission. Because opinions and recommendations do not have binding force, proceedings may not be brought in respect of them. In the words of the Treaty, grounds for annulment include lack of power, infringement of an essential procedural requirement, infringement of the Treaties or of any rules of law relating to their application and misuse of powers.

The Member States and the Community institutions can seek the annulment of any act by an institution, including those which, like regulations and directives, are of general application. Private citizens and business firms, on the other hand, may initiate proceedings only against decisions which are specifically addressed to them or which, despite being in the form of regulations or decisions addressed to another person, concern them directly and individually. If the Court regards the action as well-founded, it declares the act in question void and of no effect, and the act then ceases to have any legal force as from the date when it originally took effect. Nevertheless, in the case of a regulation, the Court may confirm the validity of certain provisions.

Proceedings for annulment are a way of reviewing the legality under the Treaties of Community acts and of Commission decisions and regulations and of settling conflicts between the institutions over their respective powers under the Treaties.

In 1971 the Commission took annulment proceedings against the Council. The question was whether, at a particular date, power to negotiate and conclude the European Road Transport Agreement (ERTA) lay with the Community or with the Member States. The principle on which the case was brought was held to be well-founded and the Commission's view was accepted in general terms. But the Court held that in the particular case there were no grounds for annulment.

The European Parliament once considered taking its dispute with the Council over their respective budgetary powers to the Court. It eventually decided not to do so, because the Council came round to Parliament's way of thinking. In 1982 the Council in turn brought a similar type of case against Parliament but this was settled by a political compromise.

In 1981, the Grand Duchy of Luxembourg started proceedings for the annulment of a resolution of the European Parliament on the seat of the institutions of the European Community. Although the action was eventually dismissed as unfounded, it was at least declared admissible. On the basis of the ECSC Treaty, the Court declared itself competent to review acts of the Parliament in areas governed by the three Treaties simultaneously and indivisibly. On the substance of the case, the Court held that it was exclusively for the governments of the Member States to fix the seat, though provisional decisions on the places of work must respect

Parliament's right to decide how to organize its proceedings and must not prevent it from operating properly. Parliament, on the other hand, under its powers to decide how to organize itself, had the right to take the necessary steps to ensure that it could function properly and that there was nothing to disrupt its procedures. It must, however, respect the powers of the governments of the Member States to establish the seat of the institutions and the provisional decisions which apply in the meantime. Parliament furthermore had the right to hold all its plenary sessions in Strasbourg and to hold committee meetings and meetings of political groups in Brussels. It could maintain the infrastructure necessary to carry out the tasks conferred on it by the Treaties elsewhere than in Luxembourg, where its secretariat is. The Court held, however, that staff transfers must not exceed the minimum necessary, since any *de jure* or *de facto* decision to transfer in whole or in part the secretariat or departments of it would contravene the decision on the provisional location of certain institutions and departments of the Community, adopted by the governments of the Member States at the same time as the Merger Treaty.

Private individuals can also bring cases, although their scope to do so is limited. In an action against a decision addressed to them personally or a penalty imposed on them, they may plead the illegality of the regulation on which the offending decision was based. Similarly, in an action for non-contractual liability, they may claim that an act — even a regulation — is illegal if (i) they believe that the damage they have suffered arises from the application of that illegal act, and (ii) the Community can be held liable for the illegal act of the relevant institution.

To give but one example, the main producers of isoglucose, a liquid sweetener made from maize, brought an action for the annulment of the agricultural regulations reducing the production refunds on products used for manufacturing this sweetener. Their action was dismissed as inadmissible: the Court held that a regulation reducing or even abolishing a production refund for a full marketing year on a product manufactured from cereals was by its nature a measure having a general effect. It applied to situations defined in objective terms and its legal effects on persons were considered in a general and abstract manner. The firms then aked for a preliminary ruling. This time the Court accepted their submission to the extent that, although it considered the reduction in production refunds to be valid, it held a new tax on the production of isoglucose to be illegal. Some time later, they secured the annulment of another regulation concerning isoglucose, this time because the Council, by acting before Parliament had delivered its opinion, had infringed one of the essential Treaty provisions concerning the allocation of powers.

Failure to act

Proceedings for failure to act provide a means of penalizing inactivity on the part of the Council or the Commission. Should the Council or the Commission infringe the Treaty by failing to act, the Member States and the other institutions of the Community may bring an action before the Court of Justice to have the infringement established.

Such actions are admissible only if the institution in question has previously been called upon to act. If the institution hat not acted within two months of being invited to do so, an action may be brought within a further period of two months.

The institutions have considerable scope for taking proceedings for failure to act, but such cases can also be brought under identical conditions by private individuals or firms, who can accuse a Community institution of having failed to take a binding decision (i.e. one other than a recommendation or opinion) concerning them. Admissibility is subject to the same conditions as those which apply to actions for annulment — the act not taken must have been of direct and personal concern to the plaintiff.

Proceedings for failure to act are extremely rare. At the beginning of the 1970s, the Parliament contemplated bringing such an action against the Council for failure to take a decision on the direct election of the Parliament by universal suffrage. An opinion prepared by a panel of university professors, however, came to the conclusion that, even if the action were declared admissible, it was not certain that the Court would find against the Council since the Treaties did not set a precise date for direct elections. The decision taken by the Heads of State or Government at the 1974 Paris Summit finally resolved the problem. In January 1983 Parliament decided to bring proceedings of this type against the Council on the grounds that no action had been taken to establish a common transport policy.

Private individuals and firms have brought a number of such cases: the vast majority have been declared inadmissible and the others have failed.

Proceedings involving unlimited jurisdiction

Actions involving unlimited jurisdiction, a variant of actions for annulment, are forming an increasingly large part of the Court's work.

Many of them are cases relating to failure to comply with Community anti-trust law. The Court may be called upon to give a ruling on Commission decisions and the penalties which it has imposed on undertakings that engage in anti-competitive practices or abuse their dominant position on the European market. The Court may annul or modify these decisions, reduce or increase the penalties, make findings of fact and impose obligations on firms. Here too, the Court looks chiefly at the facts of the case. Thus, the Commission's decisions imposing heavy fines on virtually all the sugar producers in the Community, who were accused of sharing out the European markets of the six original Member States, were partly annulled on the grounds that they were not properly reasoned. The main argument for reversing part of the Commission's decision and reducing the fines was that the common organization of the market left very little scope for free competition anyway. In other cases, however, it has fully upheld the Commission's decisions.

Cases involving staff

As part of its unlimited jurisdiction, the Court rules on all disputes between the Community and its staff in accordance with the provisions of the Staff Regulations. In view of the increasing number of such cases and of the need to lighten the load on the Court, which also has to establish the facts, there are plans to establish an Administrative Tribunal (of first instance),

with the Court itself acting as a Court of Appeal dealing with points of law. Agreement on this proposal has not yet been reached at political level.

Actions to establish liability

The Community may incur civil liability for damage caused by its institutions or servants in the performance of their duties in accordance with the general principles common to the laws of the Member States. The Treaties confer on the Court of Justice the exclusive jurisdiction to order the Community to pay damages because of its actions or its legislative acts on the principle of non-contractual liability. In exercising its unlimited jurisdiction, the Court decides the basis on which liability is to be determined, whether the damage is due to Community action, the amount of damage caused and the sum to be paid in compensation. By contrast, the Community's contractual liability is subject to the general law of the Member States and to the jurisdiction of their courts.

Private persons have considerable scope for bringing actions for non-contractual liability. The common agricultural policy with its marketing regulations and systems of grants, refunds, levies and monetary compensatory amounts has given rise to voluminous litigation. So far the Court has been reluctant to find such cases, which usually challenge a Community regulation, admissible.

The powdered milk case is one of the better-known examples. To reduce the surplus of powdered milk, the Commission and the Council obliged the food industry to add powdered milk to animal feed in certain circumstances, mainly connected with the free movement of soya beans. A number of users felt that the Commission was imposing a disproportionate burden. They simultaneously began proceedings for damages both in the Court of Justice and in the appropriate national courts, which in their turn asked for a preliminary ruling on the legality of the system. The Court eventually ruled that the powdered milk regulations were invalid because the obligation to buy at a disproportionately high price spread the burden unfairly over the different sectors of agriculture and was not a proper way of reducing the surpluses. But there is a difference between being legally in the right and being entitled to compensation. In a second judgment, the Court held that, where the rules allow a considerable margin of discretion, as was necessarily so in the case of the common agricultural policy, the Community was only liable in damages where the relevant body had manifestly and seriously exceeded its powers. It did not consider this to be so in the powdered milk case.

In the isoglucose case, although the Court annulled the regulation imposing a tax on this liquid sweetener, it held that the Community had incurred no non-contractual liability. By contrast, in the quellmehl case the Court considered that, in the circumstances, the breach of Community law was sufficiently serious to warrant the award of damages.

Requests for preliminary rulings

The Court is, by its very nature, the supreme guardian of Community law. But it is not the only court that has the power to apply and interpret this body of law that is common to all the

Member States. Unlike most 'classical' forms of international treaty, there is a mass of provisions set out in the Treaties themselves and in secondary legislation (acts of Council and the Commission, and agreements entered into by the Community) that is directly and immediately applicable in the legal systems of all the Member States. These acts have a direct effect in that they can confer individual rights on nationals of Member States. Private individuals may invoke them in their national courts both in relation to other individuals and in relation to the national authorities. The courts in each Member State have thus become Community courts.

To avoid differing and even conflicting interpretations, the Treaties introduced a system of preliminary rulings, which are the real keystone to the whole system. Preliminary rulings can also be requested in order to test the validity of acts adopted by the institutions: this, like the system of proceedings for annulment, is part of the mechanism for ensuring that what the Community does is always lawful.

Where a national court from which appeals may be made (a court of first instance or even of appeal) finds there is a problem regarding the interpretation of the Treaties or of measures taken by the institutions, or some question arises as to the validity of these measures, it may apply to the Court in Luxembourg for a preliminary ruling if it considers that it needs to do so in order to come to its judgment.

When a problem or question of this type arises in a national court (Constitutional Court, Court of Cassation, Council of State, Supreme Court, House of Lords), against whose decisions there is no judicial remedy under national law, that court must refer the matter to the Court of Justice.

This system has resulted in valuable collaboration between the Court of Justice and national courts in ensuring the uniform application and interpretation of Community law.

In its recent judgment in the Cilfit case, the Court defined the extent and limits of the obligation on courts of final instance to request preliminary rulings. The Italian Court of Cassation had asked whether the fact that a question asked in a higher court did not give rise to any reasonable doubt released that court from its obligations to seek a preliminary ruling. The Court reiterated the purpose of the preliminary ruling and stated that national courts did not need to refer questions if:

(i) the question raised was irrelevant, as, for instance, if it could have no possible influence on the outcome of the dispute;

(ii) the Community rule had already been interpreted by the Court, whatever the circumstances leading to this ruling and without the matters in dispute necessarily being absolutely identical;

(iii) there was no reasonable doubt about how the question should be answered. Before reaching this conclusion, the national court had to be certain that courts in other Member States and the Court of Justice itself would agree and its conclusion had to take account of the characteristics of Community law and the special difficulties attached to its interpretation. It should also take into account the fact that Community legislation is drafted in several, equally authentic, language versions, that Community law has its own terminology and that legal concepts do not necessarily have the same meaning in Community law as they do in the various national legal systems. Finally, every provision of Community

law must be seen in its context and interpreted in the light of the whole corpus of Community law, its purpose and the state of its development at the date when the provision in question was to be applied.

Naturally, in all these cases, the national courts remain completely free to refer questions to the Court if they consider this necessary, and it is only through national procedures that a preliminary ruling can be obtained. Nevertheless, if a court of last instance refused to ask for a ruling, proceedings could be started against it for the failure of a government to fulfil an obligation.

Preliminary rulings may be applied for only by a national court or tribunal and not by the parties to the case. Even if they have made no reference to Community law, it is the exclusive prerogative of the national judge to decide whether to seek a preliminary ruling. The question must concern a matter within the jurisdiction of the Court of Justice, that is to say, it must deal with the interpretation or application of Community law. The Court is obliged to reply to any question raised within the limits of its own jurisdiction, but it is not allowed to influence the outcome of the principal action. Nor does it have any power to interpret national law beyond decisions, under the preliminary ruling procedures, as to whether or not they comply with Community law. Only the national judge may, if he considers it necessary, withdraw a question once it has been referred to the Court.

The procedure has steadily gained importance so that now it accounts for the largest number of cases before the Court. This demonstrates both the extension of the field covered by Community law and its penetration into the legal order of the Member States. There was only one reference in 1961; but the number almost doubled from 17 in 1969 to 32 in 1970, there were 40 in 1972, 61 in 1973, 69 in 1975, 123 in 1978 and 106 in 1979. Between 1958 and the end of December 1982, 913 cases were brought before the Court in the form of requests for preliminary rulings; the Court has given 756 rulings, 111 cases are pending and no ruling was given in 46 of them. The Court's preliminary rulings are only statements of the law; it does not rule on the outcome of the case.

Opinions vary on the authority enjoyed by preliminary rulings and particularly on whether they have general effect or are binding only on the parties concerned.

However, three points seem to have been accepted regarding references for interpretation:

(i) the interpretation given by the Court is binding on the judge who requested it, who refers the matter back to the Court if he considers that there is still a question to be answered;

(ii) the interpretation serves as a basis for applying the relevant law in any subsequent case and other courts may invoke it without further reference to the Court of Justice;

(iii) a judge may always ask the Court of Justice for a new interpretation.

As regards judgments given in response to requests for a preliminary ruling to assess validity, the general view is that if the Court declares a Community provision invalid the ruling is universally applicable: whoever enacted the provision (Council or Commission) must withdraw it or amend it in accordance with the Court's decision. But when the Court declares that its scrutiny has not come up with any factors which might deprive the relevant provision of its val-

idity, this declaration has only a limited application and does not constitute full confirmation that the measure is valid.

Although the process of securing uniform application and interpretation of Community law has been reasonably smooth on the whole, certain differences of opinion between the Court of Justice and national courts have emerged. The main points concern fundamental rights, the right to plead directives and the limit in time of the invalidities established. But this has not adversely affected either collaboration between the Court and national courts or the basis of the Community legal system.

Requests for the Court's opinion

Under the three basic Treaties the Court has the power to give opinions. But the Court is not merely consulted for its views: its opinion has precise legal consequences.

If there are doubts about whether an international agreement that the Community intends to conclude would be compatible with the provisions of the EEC Treaty, the Council, the Commission or a Member State may ask the Court of Justice for an opinion. If the Court's opinion is unfavourable, the Treaties must be revised before the agreement can come into force.

The Commission has made use of this procedure on a number of occasions, so enabling the Court to define the concept of an international agreement, rule on the scope of the common commercial policy and clarify the roles of the institutions in negotiating international agreements. It found that a draft agreement on the establishment of a European Laying-up Fund for Inland Waterway Vessels was incompatible with the EEC Treaty, but that the Community's responsibilities for commercial policy extended to the International Natural Rubber Agreement negotiated within the United Nations Conference on Trade and Development.

Similar provisions govern consideration of whether draft conventions or agreements negotiated by Member States, firms or private persons in the nuclear field are in conformity with the Treaties. In the only judgment given so far, the Court ruled that a convention on the physical protection of nuclear materials, installation and transport, could be validly concluded only if the Community was on an equal footing with the Member States in the areas for which each was responsible. In view of the allocation of powers between the Community and the Member States, the Community could only implement commitments entered into under this convention within the institutional system set up by the Euratom Treaty.

Further conventions

As a result of two conventions concluded by the Member States, the procedure for obtaining preliminary rulings has been extended, with some amendments, to the Convention on the Mutual Recognition of Companies and Bodies Corporate and to the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters. The second of these, also known as the Brussels Convention, has given rise to a flood of requests from national courts for preliminary rulings.

Arbitration

The Court may also exercise an arbitration function. When it does so, it acts pursuant to arbitration clauses in contracts under public or private law made by or on behalf of the Community. In such cases, its jurisdiction must be determined with due precision in the contract. Although such clauses are common in contracts entered into by the Commission, they have so far given rise to few cases.

IV — Court procedure

Court procedure is mixed and involves two separate, successive stages, one written and one oral.

However, a distinction must be made between direct actions and requests for preliminary rulings.

Direct actions

Direct actions are usually brought before the Court by written application sent to the Court Registrar by registered post. The application must contain the names of the parties, the subject-matter of the dispute, a brief statement of the grounds on which the application is based, the form of order sought by the applicant and an indication of any evidence in support, together with an address for service in the place where the Court has its seat and the name of a person who is authorized and has expressed willingness to accept service. To be admissible, applications must also be lodged within the limitation periods determined by the Treaties.

Once it has been received, the application is entered in the Court register. The Court Registrar has a notice of the action, setting out the applicant's claims, published in the *Official Journal*. The President appoints a Judge-Rapporteur, whose duty it is to follow closely the progress of the case. The application is then served on the opposing party, who has a month in which to lodge a statement of defence. The applicant has a right of reply (one month) and the defendant a right of rejoinder within a further month. The time-limits for producing these documents must be strictly adhered to unless specific authorization to the contrary is obtained from the President of the Court.

The Court, after considering the preliminary report presented by the Judge-Rapporteur and hearing the advocate-general, meets in the Deliberation Room to decide whether a preparatory enquiry is necessary. This would involve the appearance of the parties, requests for documents, oral testimony, etc.

It also decides whether the case should be referred to the Chamber to which it has been assigned. On completion of the preparatory enquiry, where this has been found necessary, or otherwise after the final pleading has been lodged, the President sets the date of the public hearing. In a report presented at the hearing, the Judge-Rapporteur summarizes the alleged facts and the submissions of the parties and of the interveners, if any.

The case is then argued by the parties at a public hearing before the judges. All points of view and all arguments may again be put before the Court. Some weeks later the advocate-general

makes his submission, analysing the facts and the legal aspects in detail and proposing his solution to the dispute. There the oral procedure ends.

The Court then prepares its decision on the basis of a draft by the Judge-Rapporteur. Judgment is delivered in open court. Generally, a year elapses between the lodging of an application and the Court's final decision. Although this time-lapse has grown longer over the years owing to the increasing number of cases, it is nevertheless still reasonable, especially when compared with the duration of proceedings before most courts in the Member States.

An application for revision of a judgment may be made within 10 years if a decisive fact which was unknown when the judgment was given is discovered.

Where the applicant has brought proceedings against a Community measure the President of the Court may, by a summary procedure, order the operation of the measure to be suspended or order any other necessary interim measures. The suspension order given by the President has only an interim effect and is without prejudice to the decision of the Court on the substance of the case.

Requests for preliminary rulings

A national court may put to the Court of Justice a question concerning the intepretation or validity of a Community provision. No particular form is prescribed for the submission of such a request, but it generally takes the form of a judicial decision (decree, judgment or order) in accordance with national legal procedure. Ideally it should contain a description of the case so far, a summary of the relevant facts, a statement of the legal problem confronting the national court and the exact text of the abstract question(s) which it wishes to ask the Court. Normally, it is accompanied by the background documents relating to the case. The questions are sent by the registrar of the national court to the Registrar of the Court in Luxembourg.

The Registrar has the application translated into all the Community languages and then notifies the parties concerned in the original case, the Member States, the Commission and, if the case concerns a Council act, the Council. He also has a notice published in the *Official Journal* indicating the parties concerned and the questions put to the Court. Those notified then have two months in which to submit observations. Whilst the Commission always takes advantage of this possibility, the Council does so only where an act of its own is at issue. The Member States' response varies, but on the whole they frequently avail themselves of the opportunity, especially when the issues raised are of major general interest to them.

A hearing is then held at which all those entitled to submit written observations may present their arguments orally. The subsequent procedure is exactly the same as for direct actions. The Registrar sends the Court's judgment to the national court concerned. On average 9 to 12 months elapse between the lodging of a request for a preliminary ruling and the Court's final decision.

General procedural matters

Who may address the Court of Justice?

Any lawyer qualified to practise before a court in one of the Member States and, where national legislation grants him that right, any professor of law is, *ipso facto*, entitled to address the Court.

The parties are free to choose a lawyer from any Member State. In the case of requests for a preliminary ruling, the lawyers who appear before the Court of Justice will, in fact, very often be those conducting the case before the national court.

The Member States and Community institutions are represented in Court by agents, generally members of their legal departments, who may be assisted by a legal adviser or an advocate, barrister or the like.

Languages

Although the language rules may appear rather clumsy, they do, in fact, make access to the Court as straightforward as possible. Proceedings are conducted in Danish, Dutch, English, French, German, Greek, Irish and Italian.

The choice of the language of the case lies with the plaintiff except that:

(i) where the defendant is a Member State or a natural or legal person who is a national of a Member State, the language of the case is the official language of that State; where there is more than one official language, the plaintiff may choose whichever suits him best;

(ii) where both parties so request, the Court may authorize the use of another official Community language;

(iii) where one party so requests and where the other party agrees, the Court may authorize the use of another language; this option is not open to the institutions.

Where a preliminary ruling has been requested, the language used is that of the national court which referred the case to the Court.

The Member States may use their own official language when intervening in a case before the Court or a request for a preliminary ruling.

The judges and advocates-general may speak at hearings in a language other than the language of the case.

The judgment is always delivered in the language of the case. Only documents in that language are authentic.

Costs

When giving judgment the Court of Justice must also rule on costs. The only costs which the parties concerned have to bear are lawyers' fees, since there is no charge for the actual proceedings before the Court.

An application for a preliminary ruling constitutes an interlocutory proceeding in an action pending before a national judge and it is therefore for the judge in the principal action, and not the Court, to decide on the question of costs.

Legal aid

Where one of the parties is unable to meet all or part of the costs incurred, he may request legal aid. The application must include supporting evidence. The Chamber to which the Judge-Rapporteur belongs then decides whether or not to grant legal aid in full or in part. It gives no reasons for its decision, and there is no appeal against it.

Interim measures and procedural disputes

The Court of Justice may order any necessary interim measures in cases which come before it. The President may issue an order by summary procedure; alternatively, the matter may be referred to the Court. Where the case concerns a decision by one of the institutions, the President may order that decision to be suspended temporarily. The order of the President of the Court has only an interim effect and is without prejudice to the Court's final decision on the substance of the case.

Any of the parties may apply for a decision on a preliminary objection or on any other procedural issue. Most applications concern questions of admissibility. The Court itself decides whether to consider the application separately or whether to reserve its decision for the final judgment.

The Member States and the institutions may intervene in cases before the Court. So also may any other person able to show a legitimate interest in the outcome of a case before the Court, except where the case is between Member States, between Community institutions or between Member States and institutions. The submissions made in the application to intervene may not have any other object than to support the submissions of one of the parties.

Interventions are not allowed in the case of requests for a preliminary ruling except where the national court has already granted a third party the right to intervene in the case in question.

V — Activities of the Court

The European Community has an economic purpose, even though its long-term aim is political. It is therefore hardly surprising that the Court's major achievements have been in the field of business law. But its activities go beyond purely economic matters and it has laid an extensive groundwork of case-law in the sphere of social welfare and agriculture.

Initially, the Court's main task was to secure the attainment of the Customs Union. This involved the removal of internal tariff barriers, and measures having equivalent effect, between the Member States and the introduction of common rules with regard to non-member countries. The gradual introduction of common rules on agriculture, transport, freedom of establishment, freedom to provide services and freedom of competition between undertakings led subsequently to an increasing number of actions. The Court also took a number of decisions on social affairs, affecting the direct interests of Community citizens in such fundamental areas as the freedom of movement for workers and social security rights of migrant workers.

Freedom of trade

The basic economic objective of the Community is to establish a common market, and the fundamental expression of this is the Customs Union. Under the terms of the Treaty of Rome it covers all trade in goods and involves the prohibition between Member States of customs duties and quantitative restrictions on imports and exports and the adoption of a common customs tariff in their relations with non-member countries.

The majority of governments, frequently under pressure from business circles, were reluctant to remove protective barriers and face competition from their partners. Their reaction was to maintain or introduce taxes, restrictions and sometimes even overt or disguised prohibitions on imports. When cases of this type came before the Court, it banned such measures, reminding the Member States thmat they were obliged to respect the objectives laid down in the Treaties. Notable cases where the Court ruled against Member States for failure to fulfil their Treaty obligations have concerned imports of pork, gingerbread, milk products and lead and zinc.

To prevent the prohibitions being circumvented, the authors of the Treaty also expressly prohibited measures having an effect equivalent to customs duties or quantitative restrictions; this means measures which, although not customs duties or quotas in substance, nevertheless had the same restrictive effect. Governments displayed remarkable powers of ingenuity and imagination. A profusion of special taxes sprang up: statistical duties on imported or exported

goods, taxes for administrative formalities on importation, charges for health inspections, taxes on packaging, taxes on the export of works of art. No matter what they were called or how they were applied the Court pounced on them whenever they had even the slightest discriminatory effect on products originating in the Member States or on goods that were in free circulation in the EEC because they had crossed the Community's borders. Notable instances were a tax on Italian works of art and an *ad valorem* tax of 0.33% on the import of unworked diamonds, the proceeds of which went towards a welfare fund for diamond workers to provide them with certain additional welfare benefits.

The Court has allowed exceptions only when the charges constitute payment for a service actually rendered to the exporter, the amount being commensurate with that service, or if the charge is part of a general internal system regularly applied according to uniform criteria to national products, imports and exports alike. A general system of charges may nevertheless amount to a tax having equivalent effect if the proceeds are used to sustain activities which specifically benefit the national product. Charges imposed uniformly by Community provisions are allowed only if the amount does not exceed the actual cost of the service.

In the *Cassis de Dijon* case the Court held that fixing a miminum alcoholic strength for alcoholic beverages was a prohibited measure of equivalent effect, if in one Member State it was applied to alcoholic beverages lawfully produced and marketed in another Member State. The German spirits monopoly law (Branntweinmonopolgesetz) fixed a minimum alcoholic strength for specific categories of liqueurs and other alcoholic beverages. A German firm which planned to import Cassis de Dijon was turned down by the Federal Monopoly Administration (Bundesmonopolverwaltung), on the grounds that the alcoholic strength was inadequate and that the product in question did not satisfy the conditions required for marketing in the Federal Republic. In its preliminary ruling the Court did not deny Member States the right to control the production and marketing of spirits within their own territory. But it emphasized that mandatory fixing of minimum strengths was neither an essential guarantee of the fairness of commercial transactions nor a purpose which is in the general interest such as to take precedence over the requirements of the free movement of goods.

Besides using such measures and taxes, the Member States tried to get round the liberalization provisions by means of discriminatory administrative measures. The Belgian Government, for example, imposed special administrative formalities on whisky importers to exclude all but direct imports from Scotland. However, since the majority of Scottish products exported to the Continent travel via France for the practical reason of centralized shipment, these formalities amounted to a quantitative restriction and the Court accordingly ruled against them.

Similarly the Court refused to allow Germany the right to reserve the designations *Sekt* and *Weinbrand* for home products, on the grounds that no Member State could be allowed to extend, by the artificial means of legislation, a generic term into a designation of origin in order to give domestic producers an advantage.

Certain Member States insist that margarine may only be marketed in cube-shaped containers. In a preliminary ruling the Court held that this constituted a measure having equivalent effect to a quantitative restriction. While it did not deny the need for measures to protect consumers from confusion as between butter and margarine, it felt that this objective could be attained more effectively by less restrictive means, such as strict labelling requirements.

In an action for infringement of the Treaty brought by the Commission when the Irish Government organized a 'Buy Irish' campaign, the Court ruled that the campaign contravened the rules on free movement of goods: it was evidence of a deliberate intention to persuade people to buy home-produced goods rather than imported goods, which was contrary to the interests of other Member States.

The Member States have also frequently used taxation — the expression *par excellence* of their sovereignty — as a means of restricting imports. The Treaty establishing the European Economic Community, while not aimed at taking away the Member States' right to levy taxes, does stipulate that internal taxes, whatever their nature, must be applied without discrimination to domestic products as well as to products from other Member States and must not be misused for purely protectionist ends. The same principle applies to preferential tax arrangements; any such specific arrangements must be extended without discrimination to products of other Member States and with no distinctions based on the grounds for them. A large number of actions have been brought against internal tax schemes, which have often been limited to particular industries or products; for example, there have been cases involving discriminatory taxation on spirits, discriminatory tax rebates for the engineering industry, excise duty on cocoa imports and a tax on imported timber.

Just as Community rules have allowed conditional exceptions from the principle of free movement in order to protect industrial and commercial property, they have not stood in the way of restrictions justified on grounds of public morality, public policy, public security, protection of life and health and protection of national treasures. But the judges have repeatedly stated, in accordance with the Treaty, that prohibitions and restrictions must never constitute vehicles for arbitrary discrimination or disguised restraints on trade between Member States.

Thus the Court has opened the way for parallel imports. A German gramophone record manufacturer sold his records in Germany at a controlled price which was higher than the price at which they were sold in other Community countries by licensed agents with exclusive distribution rights in their national territory. Another German company had managed to obtain a supply of records from one of these agents, which it reimported and was able to sell in Germany at an appreciably lower price than that imposed by the manufacturer. This the manufacturer held to be an infringement of German copyright law. The Court ruled that, copyright notwithstanding, it is not permissible to prohibit the sale in a Member State of products placed on the market in another Member State, even if the selling price in the first country is higher than in other countries.

Patent and trade-mark rights are also used to wall off markets. A classic example involved certain practices on the market for pharmaceutical products. The Court has always made it clear that restrictions on the free circulation of goods can be allowed only in exceptional circumstances and only insofar as they are necessary to safeguard rights which constitute the specific subject-matter of industrial and commercial property rights protected by the Treaty of Rome. This specific subject-matter is, in the Court's view, principally the guarantee that the holder, to reward his creative effort or to protect the reputation of his trade mark, has the sole right to exploit an invention for the purpose of manufacturing industrial products and putting them into circulation for the first time, either directly or by granting licences to third parties, as well as the right to oppose any infringement. This right, however, becomes void when the product is first marketed, the holder thereafter being unable to oppose parallel marketing. The Court

stressed that if the holder of a patent or trade mark were allowed to ban imports of protected products marketed in another Member State by him or with his consent, he would be able to partition off the national markets, so restricting trade between the Member States, although this is not a necessary means of achieving the essential object of the rights conferred by the patent or trade mark.

Moreover, the holder of an exclusive right may not plead that right if the resulting ban on imports and sales entails a restriction on competition within the EEC. Though this right, as a legal phenomenon, is not itself covered by the rules of the Treaty of Rome concerning agreements or concerted practices in restraint of competition, the excercise of this right may be caught by the prohibitions if it constitutes the purpose, the means or the consequence of a restrictive agreement, a concerted practice or abuse of a dominant position.

Mainly through preliminary rulings, the principle of exhaustion has been gradually (and logically) extended to authors' rights, model rights, rights in respect of slavish imitation and plant breeders' rights. According to a recent judgment this principle does not, however, apply in relations with associated and non-member countries.

Although 25 years have passed since the establishment of the EEC, a single common market is still far from fully attained. The Court still has to deal with a considerable number of restrictive and even protectionist measures.

Competition

The principle of free competition is fundamental to the Treaty of Rome, which was designed to guarantee all businessmen free access to the common market. The relevant rules are based on Articles 85 and 86 which, as is now well known, prohibit agreements, decisions and concerted practices by firms or groups of firms and any abuse of a dominant position likely to have a direct or indirect, immediate or potential impact on trade between Member States. There are many forms of anti-competitive conduct, and the Treaty, without attempting to give an exhaustive list, mentions some of them specifically — directly or indirectly fixing prices or other terms of business, limiting or controlling production, markets, technical development or investments, sharing markets or sources of supply, unfair trading conditions and tying clauses.

Agreements and concerted practices do not qualify for exemption unless they help to improve the production or distribution of products or to promote technical or economic progress, while allowing consumers a fair share of the benefit. Nor must they impose on the firms involved restrictions that are not indispensable to the attainment of these objectives or enable them to eliminate competition for a substantial proportion of the products in question.

The advantages must be evident and general; individual advantages to the firms involved will not suffice. No similar exemptions exist for dominant positions: the Treaty does not forbid dominant positions as such, but only their abuse.

On the basis of rules laid down by the Council, the Commission enforces these principles, investigates infringements and, by means of decisions addressed directly to the firms con-

cerned, orders them to be stopped, imposing fines where necessary. The firms concerned may then appeal against the decision to the Court. National courts have also rapidly become familiar with Community competition law and they, too, refer cases to Luxembourg.

The rules of competition apply to a wide range of activities and there have been numerous cases, involving both the big multinationals and small businesses. The Court has given judgment in cases covering a wide range of industrial and commercial activities — radios, dyestuffs, quinine, cement, metal containers, sugar, beer, bananas, cigarettes, perfumes, lighters, household appliances, vitamins, medicines and cars.

Generally speaking, when the Commission imposes penalties on firms they waste no time in taking the matter to the Court. The outcome of such action has varied enormously. Some of the Commission's decisions have been upheld, in others minor changes have been made and in yet others the decision has been annulled or the fines reduced. But this is not to say that firms can count on the Court's clemency. Whilst it adjusts the Commission's errors of assessment, the Court has been just as vigorous in its general approach to the rules of competition.

When a major electronics company tried to block or at least hold up the Commission's investigations into its commercial practices at the enquiry stage, the Court held its action to be inadmissible. The Court ruled that, given their nature and the legal effects they produce, neither the initiation of an administrative procedure nor a statement of objections could be considered as being decisions within the meaning of the Treaty which may be challenged in an action for a declaration that they are void; they constituted no more than procedural measures adopted preparatory to the decision which represents their culmination.

The Commission's powers of investigation have their limits. The Court upheld a zinc producer's claim that the confidentiality of correspondence between companies and their legal advisers was protected as long as the correspondence fell within the framework of the rights of the defence and was conducted with a lawyer who was not an employee of his client. If a company under investigation refuses to disclose this specific correspondence, it must nevertheless provide the Commission's authorized officers, without necessarily revealing the contents, with particulars which can prove that it satisfies the conditions on which legal protection depends. It is for the Court to settle disputes as to how the protection is to be applied.

The Court has confirmed the Commission's authority to order interim measures in connection with the preservation of free competition, and in particular to ensure that decisions ordering firms to stop infringements are effectively implemented. But it has stipulated that such measures can be taken only in urgent cases. They must also be of a temporary and conservatory nature and be confined to what the situation requires. Finally, the decision ordering interim measures must be in a form which can be attacked before the Court of Justice.

On numerous occasions the Court has clarified the territorial aspects of the rules of competition, a good example being the dyestuffs case. Nine dyestuffs manufacturers appealed against a Commission decision imposing fines on them for concerted pricing. Three of them had their head offices outside the Community and argued that the Commission could not impose fines for infringements committed outside the Community. The Court established that the firms had fixed prices and other terms of sale and imposed them on their subsidiaries; it accordingly upheld the Commission's measures even in respect of the firms not located on Community territory, since the effects of the concerted practice were felt within the common market.

In another case firms argued that a purely national agreement operating in the territory of only one Member State could not affect trade between Member States so that one of the essential tests of the Community competition rules was not satisfied. The Court, however, held that 'an agreement extending over the whole of the territory of a Member State by its very nature has the effect of reinforcing the compartmentalization of markets on a national basis, thereby holding up the economic interpretation which the Treaty is designed to bring about and protecting domestic production'.

Can national rules on competition conflict with Community rules? Seven German firms raised the price of aniline on a number of occasions at the same time. They were fined by the competent German authorities and also ran the risk of being fined by the Commission. The Court endorsed the Commission's view. In keeping with the aims of the Treaty it ruled that application of national competition rules could only be permitted if they did not prejudice uniform application of the rules of the Treaty throughout the common market. In theory therefore two parallel proceedings could be in progress at the same time. To avoid any duplication of penalties for the same offence the fine in the first case has to be taken into consideration when determining the fine in the second case.

In a judgment on a case involving the banana market the Court defined a dominant position as 'a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by giving it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers'. Abuse was then defined in another case as behaviour by a dominant firm 'which is such as to influence the structure of a market where, as a result of the very presence of the firm in question, the degree of competition was weakened and which, through recourse to methods different from those governing normal competition, has the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition'.

In a case concerning abuse of a dominant position on the metal containers market the Court pointed to the logical link between Article 85 on restrictive practices and Article 86 on abuse of a dominant position. It stressed that the rules of competition form a coherent system, with no loopholes. Moreover, it ruled that the prohibition on abuse of a dominant position also applies when a firm acquires such a degree of dominance as a result of takeovers or mergers that competition is substantially fettered.

A refusal to supply can also constitute abuse of a dominant position. In a case referred by an Italian court the Court held that a dominant firm on the raw materials market which, with the object of reserving such raw materials for manufacturing its own derivatives, refused to supply a customer, itself a manufacturer of these derivatives, thereby eliminating all competition on the part of this customer, was abusing its dominant position.

Restrictive practices and the abuse of a dominant position can also apply to patents, trade marks and the like. The Court ruled that an association enjoying a *de facto* monopoly in a certain Member State for the management of copyrights, which demanded global assignment of all copyrights, without making any distinction between specific categories of rights, extending for a certain period after the member concerned had withdrawn, was abusing its dominant position. In giving judgment on an Italian case, the Court ruled that the grant of the exclusive

right to transmit television signals does not in itself constitute an infringement of the Treaty. Discrimination by undertakings enjoying such exclusive rights against nationals of Member States by reason of their nationality is, however, incompatible with Community law.

In a judgment concerning imports of cosmetics, the Court confirmed that trade-mark rights as such are not covered by Articles 85 and 86 of the Treaty, but continue to protect the advantages inherent in their specific subject-matter. It also ruled that the exercise of industrial and commercial property rights may still be modified by the restrictions imposed by the rules of competition, particularly when it is apt to lead to a partitioning of markets and thus to impair the free movement of goods.

Like private firms, public enterprises, meaning those companies on which the public authorities may directly or indirectly exert a dominant influence through ownership, financial holdings or the rules governing them, and, within certain limits, companies responsible for running services of general economic interest are also covered by the competition rules. Dismissing the application by three Member States for annulment of the directive on the transparency of financial relations between the Member States and the public undertakings, the Court confirmed the Commission's right to adopt the necessary directives and to ask the Member States for specific information concerning public funds released to public companies and their actual use.

But the Commission's powers do not stop at information. By means of a procedure laid down in the Treaty it has the authority to appraise public aid schemes and, if need be, insist that the State concerned terminate or adjust any aid scheme which is incompatible with the common market, adversely affects trade between the Member States and distorts competition. Here again, the Commission has had the full support of the Court, particularly in cases where the Member States refused to act on the decisions within the time allowed.

The Court has enormous scope in applying the rules of free competition to the market place. By means of its decisions, it has succeeded in imposing and enforcing these rules in the interests of the consumer, the small retailer — who is at the mercy of restrictive practices and agreements — and of businesses themselves, looking for security in the law and for protection from predatory competition. The Court has not hesitated to impose penalties for abuses when necessary, but has shown tolerance when the consumer was not affected and competing goods were available.

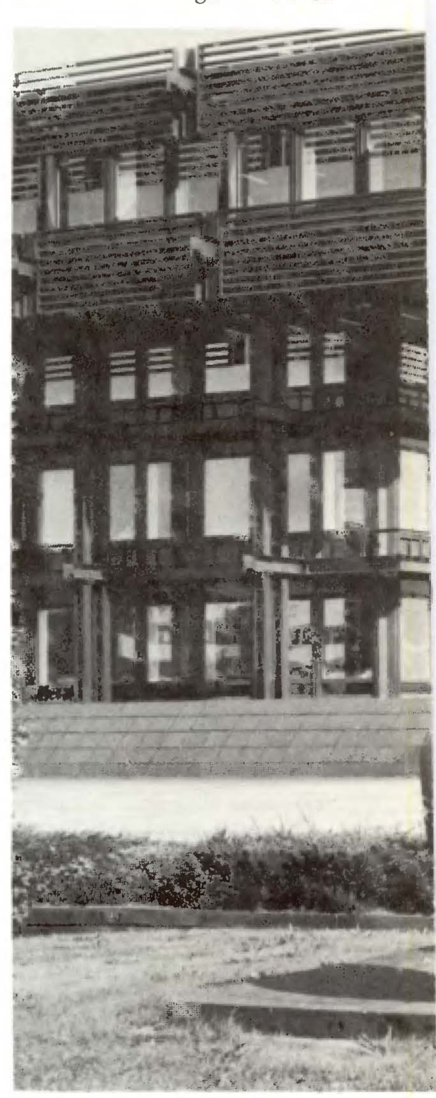
The rules of competition are now recognized throughout the Community thanks to a threefold approach: preventive and repressive action by the Commission, the direct effect of the Treaty and its uniform application by national courts and the Court of Justice.

A social Community

The objective of the Communities is not simply an economic one; of course national frontiers are to be abolished, but a form of human integration is also aimed at. As the preamble to the Treaty of Rome puts it, the Member States are 'determined to lay the foundations of an ever closer union among the peoples of Europe' and have affirmed 'as the essential objective of

their efforts the constant improvement of the living and working conditions of their peoples'. The chapters on free movement of persons codify in general terms the rights of workers, persons providing services and those seeking establishment on the principle of equal treatment for nationals of all Member States. Detailed rules for achieving this have been laid down in Council regulations and directives, although they have not always met the deadlines laid down by the Treaties.

There is an abundance of Court of Justice cases in matters relating to Community social law, more than in the competition field and as many as in agriculture. There is a regular flow of cases from all the Member States.



Italian workers are actually those who most frequently benefit from developments here, as they are far and away the largest class of plaintiff in cases referred to the Court. After all, Italy has provided the majority of Europe's migrant workers.

One of the first points the Luxembourg judges had to clarify was the actual definition of a 'worker'. If the Member States were to be left to decide unilaterally what was meant in the Treaty by the term 'worker' the concept might well lose all substance.

The Court felt that a very broad definition was needed, and a series of judgments has therefore defined workers as those who, however they are described, benefit from a national system of social security. The concept covers not only employed persons in the strict sense of the word but all those with equivalent status. It is not restricted to migrant workers or those who are required by their jobs to travel.

The Treaty of Rome entitles workers and members of their families to accept offers of employment actually made, to move freely within the territory of Member States for this purpose, to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of national workers and to remain in the territory of a Member State after having been employed there. The only restrictions on this right, which has direct effect, are those justified on grounds of public policy, public security or public health. It does not apply to employment in the public service.

However, the Court has stated explicitly on several occasions that the justifications for restrictive measures on grounds of public policy, public security or public health must be considered in the light of Community rules, the principle of non-discrimination and defence requirements. Any restriction on free movement must be based exclusively on the personal conduct of the person concerned, with no exclusions on the basis of whole categories. If a threat to

public policy is to be invoked, there must not only be that disturbance of the public peace that any violation of the law entails but also a genuine and sufficiently serious threat to a fundamental interest of society. In the event of an expulsion order the person concerned, save in cases of urgency, must have been able to exhaust the available remedies.

In one case the judges stressed that the right to enter another Member State and stay there was conferred directly on anyone covered by Community law, whether or not a residence permit was issued by the host country. The fact that such persons neglect to carry out the formalities relating to residence by foreigners does not constitute a *per se* threat to public policy nor jus-

The Court of Justice of the European Communities (Centre européen, Luxembourg)

tify expulsion or temporary detention pending expulsion, though it may be subject to a penalty commensurate with the gravity of the offence.

In another case the Court took the logic of the system so far as to find that the national authorities were not longer required or entitled to grant permits to workers of other Member States who wished to enter their territories, as the worker was entitled to enter without prior authorization. Once allowed in, the person concerned could not be treated any differently from the national worker as regards conditions of employment.

Though Member States have a legitimate interest in reserving posts in public services for their own nationals, this right is not unqualified. Ruling in a case where the Commission had brought proceedings against a Member State for failure to honour its obligations, the Court held that this reservation was confined to posts related to the exercise of power conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities. It accordingly decided that nationals of other Member States must be allowed access to the jobs, among others, of loader, driver, plate-layer, shunter, handler, railway cleaner, carpenter, gardener, electrician, plumber and hospital and children's nurse in municipal services.

It expressly excluded the posts of technical office manager, general supervisor, supervisor of public works, stocktaker, architect and nightwatchman.

The principle of non-discrimination applies not only to conditions governing free movement and residence, but also to all social and tax advantages. In its rulings the Court has clarified the implementing provisions. Thus, a retired person is entitled to take advantage of pension rights acquired in one Member State after taking up residence in another Member State. A pension may not be adjusted if the beneficiary is resident on the territory of a Member State other than the one in which the paying institution is situated. In other rulings the Court stressed that migrant workers' children must be allowed to have a general education and vocational training and are entitled to the same benefits as the children of nationals of the country of residence, such as interest-free loans, scholarships and grants and assisted rehabilitation for the handicapped. In yet another ruling the widow of a migrant worker was held to be eligible for a reduced-fare railway card for large families previously restricted to nationals.

The Court also decided that the Community rules should prevail over the various national provisions concerning the calculation of social security benefits, which rival each other in complexity. It has endorsed the principle of aggregation and apportionment in numerous rulings. All periods of employment completed in the various Member States should be taken into account for the purpose of acquiring and retaining the right to benefit. When various periods of employment are aggregated in order to acquire entitlement to benefit in a given Member State, this benefit should be calculated in proportion to the period in question as compared with the aggregate of the periods spent in employment.

Although the chapter on social provisions in the Treaty of Rome is rather vague, it does, nonetheless, contain one specific provision — the principle of equal pay for men and women, pay meaning the basic or minimum regular wage or salary and any other benefits paid directly or indirectly, in cash or in kind, by the employer. Since the Council did not issue the necessary implementing provisions, it was the Court which ultimately gave women their rights. A

Belgian air-hostess had brought an action in a Belgian court for damages on the grounds that male and female air crew received unequal pay. In a ruling which has since attracted great attention, the Court held that Article 119 of the Treaty of Rome did not simply lay down an abstract principle but actually endowed those subject to it with rights which national courts were obliged to safeguard, without Community or national measures being needed to apply them.

It stressed that it was the duty of these courts to ensure protection of the right to equal pay, notably in cases of discrimination directly resulting from legal provisions or collective agreements and in cases where men and women doing the same work in the same private or public undertaking or service are paid at different rates. According to the Court equal pay should have been fully guaranteed by the original Member States with effect from January 1962 — the beginning of the second stage of the transition period — and by the new Member States from January 1973, when the Act of Accession came into force. To avoid a flood of applications for retroactive compensation and the economic upheaval that this would entail, it ruled that, with the exception of cases commenced prior to the judgment, the direct effect of Article 119 could be invoked only in cases of unequal treatment arising after the decision.

Once this barrier had been lifted, other cases were not slow to follow, and the Court had plenty of opportunities to spell out the implications of that case. It stated that the principle of identical work was not confined to situations in which men and women perform the same work for the same employer at the same time. It also applied in cases where a woman was known to be getting less pay than a man who had previously held the same job.

The judges also stated that the fact that part-time work was paid at a lower hourly rate than full-time work did not in itself constitute prohibited discrimination, if the rates were applied equally to men and women. By contrast, if it is established that a considerably smaller percentage of women than of men perform the minimum number of weekly working hours required in order to be able to claim the full-time hourly rate of pay, the inequality in pay will be contrary to Article 119 of the Treaty where, regard being had to the difficulties encountered by women in arranging to work that minimum number of hours per week, the pay policy of the undertaking in question cannot be explained by factors other than discrimination based on sex.

It was the Court, too, which made a breakthrough as regards freedom to provide services and the right of establishment. Under the Treaty of Rome all restrictions should have been abolished by the end of the transitional period, but the Council did not implement the programme imposed on it within the prescribed time-limits.

Reluctance to act here was overcome by a judgment given in clear and precise terms and from the mid-1970s quicker progress was made in implementing the Treaty.

A legal adviser, who was a free attorney in the Netherlands, was refused authorization to defend a client because he had transferred his residence to Belgium. When the case was referred to it the Court stated that restrictions on freedom to provide services should have been abolished at the end of the transitional period, which was the absolute time-limit for the entry into force of all the rules provided for by the Treaty; the provisions of the Treaty had become absolute by then. It ruled that, at least as far as the specific requirement of nationality or resi-

dence was concerned, the Treaty contained a definite obligation to attain a specified result and that the Member States could not delay or compromise the attainment of that result simply through the absence of the necessary directives. The Court argued that the relevant articles have direct effect and may accordingly be invoked before national courts, at least in so far as they are designed to eliminate any discrimination against the person providing services on grounds of nationality or of residence in a Member State other than the one in which the service is to be provided.

But, in view of the special nature of the services provided, the Court allows Member States to require any person established on the territory of the State in which the service is to be provided to comply in the general interest with objectively necessary occupational rules governing the organization of the profession and qualifications, ethics, supervision and liability.

The refusal to allow a Dutch advocate to engage in his profession in Belgium provided the Court with an ideal case with which to enforce the principle of freedom of establishment. The person in question was born in Belgium of Dutch parents, had studied in Belgium and had obtained the qualifications needed for access to the bar, but had retained his Dutch nationality. He was not allowed to register on the grounds that under Belgian law the profession was open only to Belgian nationals.

The Court stated that the rule requiring Member States to treat nationals of other Member States in the same way as their own nationals was one of the basic legal provisions of the Community. It stressed that as the rule referred to a series of legal provisions actually applied by the country of establishment to its own nationals it could by its very nature be invoked directly by nationals of all the Member States. The achievement of free movement before the end of the transitional period should have been facilitated, though not conditioned, by the implementation of a programme of gradual measures. Since the Council had failed to take the necessary measures before the appointed time, the directives would have become superfluous as regards the implementation of the rule governing national treatment, since the latter was sanctioned — and enjoyed direct effect — by the Treaty itself.

At the same time the Court pointed out that, in accordance with the Treaty, restrictions on freedom of establishment should be limited to those activities which, in themselves, involved direct and specific involvement in the exercise of official authority. According to the Court, in an occupation such as the legal profession, the activities of giving legal advice and assistance or representing and defending parties to court cases cannot be described in this way even though the performance of these activities entails fulfilling obligations or exercising exclusive rights determined by law.

The Court's judgments have made a vital contribution to social integration by ensuring that the principle of equal treatment has direct effect not only in the acts of government authorities but also in collective agreements, for they have placed a strict interpretation upon the public policy exception, submitted restrictions to the principle of proportionality and confirmed the protection given to the fundamental rights of the individual.

The agricultural common market

The agricultural common market is undoubtedly the area in which the Community has made its greatest strides towards integration. The Treaty of Rome drew the basic outlines of the market, and over the years the Council, acting on Commission proposals, has gradually completed the picture by setting up the various mechanisms which now ensure that European farmers obtain remunerative prices for their products on a single market where all but a few of the products are regulated by their own special set of measures. A protective import levy imposed as a safeguard against imports entering the Community from non-member countries at low prices and an export refund system helps Community farmers find buyers for their produce on the world market by aligning their prices on world market prices.

The complexity of the market, the technical refinement of the system, the monetary difficulties and the subsequent introduction of monetary compensatory amounts, along with clever operators making use of the inevitable loopholes in the system, have fostered much litigation. In this respect the common agricultural policy is top of the list by far. Consequently, it soon became apparent that integration in this sector rested with the national courts and the Court of Justice.

Oddly enough, it is not the farmers who have brought most of the agricultural cases before the Court, but traders. Apart from the Italian farmer (a woman as it happens) who had to go before the Court in order to obtain payment of the premiums to which she was entitled for slaughtering her cows, or the German farmer who attempted (in vain) to have the co-responsibility levy which had been introduced as a means of curbing milk production declared contrary to the Treaty, most of the legal proceedings at the European Court have been brought as a result of commercial transactions or of disputes concerning levies, refunds, denaturing premiums or monetary compensatory amounts. Thus it is mainly traders who have kept the Court busy.

It is also worth noting that the number of cases handled by the courts varies considerably, as it always has done from one Member State to another. In Germany and Italy in particular, those concerned have not been slow to bring their cases before the national courts. Yet the largest agricultural nation in the Community (France) has produced the smallest number of cases. The Commission has brought only a very few cases against Member States for failure to meet their obligations. They have involved such matters as the taxation of milk products, the premiums for slaughtering dairy cows, the premiums for grubbing-up fruit trees, the implementation of the directives on forest materials, the taxes on potable spirits, the establishment of the viticultural land register and the payment of export refunds.

A mass of case-law has confirmed the basic principles of the common agricultural policy, particularly the unity of the market, Community preference, liability for unlawful acts and the obligation to make due reparation, as well as the legislative autonomy of the common organizations of the market and the uniformity of the legal system.

The rules laid down for establishing the common market apply to agricultural products whenever no exception is provided for. The Court has always taken a narrow view of exceptions. It has disallowed them wherever general rules clashed with principles held to be essential in implementing the common agricultural policy. It has ruled out the existence of priorities and has concentrated on conciliating all parties.

The judges in Luxembourg endeavour in their decisions to uphold the objectives, guidelines and methods of the common agricultural policy as defined in the Treaty.

Again and again they have made it perfectly clear that once the Community has adopted legislation setting up a common organization of a particular market the Member States are under an obligation to refrain from taking any measures that might derogate from it or run counter to it. National measures or practices likely to interfere with import or export trends or to affect the free formation of prices on the market are accordingly to be regarded as incompatible with the common organization of the market, which aims at ensuring freedom of trade within the Community by eliminating not only barriers to trade but also any arrangements likely to distort intra-Community trade. Whenever a Member State or its regional or other authorities go beyond the intervention provided for in the Community rules there is a potential obstacle to smooth operation of the common organization of the market.

Only very rarely has the Court annulled a Council or Commission regulation. Such a decision can only be justified if the institution concerned has seriously overstepped its powers. Typical instances are the milk-powder case, the case involving production refunds for grits made from maize (quellmehl) and the isoglucose case.

Implementation of the technical measures associated with the agricultural common market has led to major legal disputes concerning export refunds, levies, denaturing premiums, threshold prices, intervention prices and so on.

One of the prerequisites for smooth operation of a system laying down common prices for agricultural produce as part of a market organization based on a standard unit of account is that the relationship between the various national currencies must remain stable. However, serious disturbances on the currency markets forced the Council to seek a remedy so as to uphold the common price system, and this was how monetary compensatory amounts came to be introduced. Numerous judgments by the Court have confirmed that compensatory amounts are lawful in view of the exceptional circumstances faced by the common agricultural policy. But the Court has nevertheless awakened all concerned to the fact that although monetary compensatory amounts compensate for exchange-rate fluctuations, they also carry the risk of market fragmentation and trade disruption. At the same time it has also tried to curb the tendency to extend the coverage of monetary compensatory amounts to include certain derived products.

Of course, there is no guarantee that the product declared to the import authorities necessarily matches up to the definition laid down for that product. Yet the designation is vital for the purposes of identifying products and determining which levies or refunds they qualify for.

The Court has had to look into the marketing of a wide variety of products ranging from the 'parson's nose' in the case of turkeys to farmyard poultry, from frozen caribou meat to brandied cherries or from crushed maize seeds to Thai meal derived from tapioca residues. It has never shirked the often highly-technical problems that come before it, for its verdict is essential to ensuring uniform application of the Common Customs Tariff and of the levy and refund arrangements as well as to preventing deflections of trade.

Of course, fraudulent changes of description are not unusual. Mayonnaise is sometimes redesignated 'resolidified butter' for re-export purposes in order to obtain the appropriate

refund. In the same way 'solid caramel' may turn out upon analysis to be made up largely of butter. One dealer engaged in exporting sausages from Germany to Yugoslavia applied for an export subsidy, but then analysis of the product revealed that the sausages consisted of fats and low-grade meat offals. Since the products no longer satisfied the Community definition of 'sausages', the application for export subsidies had to be turned down.

The common fisheries policy, a source of much political controversy, has generated substantial litigation, whilst the Member States, unable to establish once and for all a body of Community rules, have repeatedly taken unilateral measures. The Court has nevertheless made things plain. It has said loud and clear that since the end of the transitional period of the Act of Accession on 1 January 1979, the power to take measures for the conservation of fish stocks has lain exclusively and permanently with the Community. Since that date the Member States have no longer been entitled to exercise their own authority in the matter of conservation in waters under their jurisdiction. The Council's failure to act did not give the Member States *carte blanche* to act unilaterally. The Court held that protection of the common interest required the Member States not only to consult the Commission and in good faith seek its approval, but also to refrain from laying down national conservation measures in the face of objections, reservations or conditions that the Commission might make. Moreover, the Community's fishermen must be allowed equal access to fishing grounds under the jurisdiction of the Member States.

VI — Direct applicability and primacy of Community law over national rules

The principles of direct applicability of Community law in the Member States and the primacy of Community rules over conflicting national rules are the twin pillars supporting the European Economic Community, a Community with a legal base. After the Treaties were ratified the Court had to decide a number of cases which involved settling a series of fundamental questions — is European law directly applicable as such to the nationals of the Community? Can they invoke Community law direct and have that law applied by judges in their own country? Are judges under an obligation to apply Community regulations, directives or decisions regardless of their own country's legislation? Do the Community rules laid down in the Treaties and ratified by the Member States take precedence over national laws?

The Court was fully aware of what was at stake and lost no time in following the rationale of the Community to its logical conclusion and in deciding in favour of a real Community.

The van Gend en Loos case raised the question of the direct applicability of Community law. In September 1960, the Dutch company van Gend en Loos, which had imported an aqueous emulsion of ureaformaldehyde from Germany for use in the manufacture of glue, received a claim from the Dutch customs authorities for duty at a rate higher than the rate current for the product at the time when the Treaty of Rome entered into force.

As a result of an agreement concluded between the Benelux countries in July 1958, aqueous emulsions had been transferred from a category of products taxed at 3% to another category taxed at 8%. The glue manufacturer protested to the national authorities on the grounds that the Treaty prohibited the common market countries from increasing the customs duties that they applied as between themselves on 1 January 1958, when the Treaty entered into force. The argument was dismissed and the industrialist appealed to an administrative court, which suspended proceedings and asked the Court of Justice whether the provisions of the Treaty of Rome, which, in normal circumstances, are addressed only to Member States, could vest rights in individuals.

The German, Belgian and Dutch Governments submitted their observations to the Court. In their view, only Member States or the Commission could bring alleged infringements of the Treaty before the Court. The Treaty, they maintained, conferred rights and imposed obligations only on the signatory States and certainly not on private individuals who must remain subject to their national law.

Since the principle of direct, immediate applicability is not explicitly mentioned anywhere in the Treaty, the Court sought to define that principle as an integral part of the concept of the common market and of the basic consequences of membership thereof.

With exemplary clarity the court stated in its grounds of judgment that: 'The objective of the EEC Treaty . . . is to establish a common market, the functioning of which is of direct concern to interested parties in the Community.' This 'implies that this Treaty is more than an agreement which merely creates mutual obligations between the contracting States . . . This view is confirmed by the preamble to the Treaty which refers not only to Governments but to peoples. It is also confirmed more specifically by the establishment of institutions endowed with sovereign rights, the exercise of which affects Member States and also their citizens', the conclusion being that 'the Community constitutes a new legal order of international law for the benefit of which the States have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member States but also their nationals. Independently of the legislation of Member States, Community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage. These rights arise not only where they are expressly granted by the Treaty, but also by reason of obligations which the Treaty imposes in a clearly defined way upon individuals as well as upon the Member States and upon the institutions of the Community'. Subsequent events have done nothing to call into question the principles laid down by the Court. The national courts have not relented in their application of the principle.

The Court pursued the idea of a new legal order even further in its later affirmation of the primacy of Community law. Several months after the judgment establishing the direct applicability of Community law, a Milan judge brought before the Court a request for interpretation of the Treaty in a case calling for clarification of the situation in the event of a conflict between Community law and national law.

Mr Flaminio Costa, a shareholder in Edison Volta, considered that he had suffered injury through the nationalization of the facilities for the production and distribution of electricity in this country. He refused to pay a bill for a few hundred lira presented by the new nationalized company, ENEL. Summoned before a court in Milan, he submitted in his defence that the nationalization law was contrary to the Treaty of Rome: the judge in the case therefore approached the Court of Justice. In the meantime, the Italian constitutional court had intervened in connection with the law establishing ENEL. In its view, the situation was straightforward: as the Rome Treaty had been ratified by an ordinary law, the provisions of a later conflicting law would have to take precedence over those of the Treaty.

In Luxembourg, the judges took a different view. In its judgment the Court pointed out that: 'By creating a Community of unlimited duration, having its own institutions, its own personality, its own legal capacity of representation on the international plane and, more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the States to the Community, the Member States have limited their sovereign rights, albeit within limited fields, and have thus created a body of law which binds both their nationals and themselves.

The integration into the laws of each Member State of provisions which derive from the Community, and more generally the terms and the spirit of the Treaty, make it impossible for the States, as a corollary, to accord precedence to a unilateral and subsequent measure over a legal system accepted by them on a basis of reciprocity.'

The judges went on to say that: 'The executive force of Community law cannot vary from one State to another in deference to subsequent domestic laws, without jeopardizing the attain-

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ment of the objectives of the Treaty set out in Article 5 (2) and giving rise to the discrimination prohibited by Article 7. The obligations undertaken under the Treaty establishing the Community would not be unconditional, but merely contingent, if they could be called in question by subsequent legislative acts of the signatories . . ..'

'The precedence of Community law is confirmed by Article 189, whereby a regulation "shall be binding" and "directly applicable in all Member States". This provision, which is subject to no reservation, would be quite meaningless if a State could unilaterally nullify its effects by means of a legislation measure which could prevail over Community law.' The judges concluded that: 'It follows from all these observations that the law stemming from the Treaty, an independent source of law, could not, because of its special and agricultural nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question.

The transfer by the States from their domestic legal system to the Community legal system of the rights and obligations arising under the Treaty carries with it a permanent limitation of their sovereign rights, against which a subsequent unilateral act incompatible with the concept of the Community cannot prevail.'

The Court clarified this concept in the Simmenthal case, another *locus classicus*. Community provisions, it held, 'are a direct source of rights and duties for all those affected thereby,

whether Member States or individuals, who are parties to legal relationships under Community law. This consequence also concerns any national court whose task it is as an organ of a Member State to protect, in a case within its jurisdiction, the rights conferred upon individuals by Community law. Furthermore, in accordance with the principle of the precedence of Community law, the relationships between provisions of the Treaty and directly applicable measures of the institutions on the one hand and the national law of the Member States on the other is such that those provisions and measures not only by their entry into force render automatically inapplicable any conflicting provision of current national law but — in so far as they are an integral part of, and take precedence in, the legal order applicable in the territory of each of the Member States — also preclude the valid adoption of new national legislative measures to the extent to which they would be incompatible with Community provisions.' According to the Court, it follows that 'a national court which is called upon, within the limits of its jurisdiction, to apply provisions of Community law is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation, even if adopted subsequently, and it is not necessary for the court to request or even await the prior setting aside of such provisions by legislative or other constitutional means.'

A German vine-grower, Mrs Liselotte Hauer, gave the Court another opportunity to rule in the same context on the need to ensure the protection of fundamental rights conferred by the Community legal order.

She had applied for authorization to plant vines on land which she owned. The authorization was refused on the grounds that the new planting of vines was temporarily prohibited by a Community regulation. She appealed against that decision to the competent Administrative Court (Verwaltungsgericht), arguing that the Community provisions infringed her rights as owner of the property and her right to pursue her business activities freely.

Wishing to ensure the substantive unity and effectivenes of Community law, the Court of Justice declared that the question of an infringement of fundamentel rights by a measure taken by the Community institutions could only be judged in the light of Community law itself. Accordingly, it was for the Court alone to define the nature of the guarantees afforded.

Although fully aware of the risk of conflicting with national constitutional law, the Court nevertheless emphasized that 'fundamental rights form an integral part of the general principles of the law, the observance of which it ensures'. In safeguarding those rights, it was 'bound to draw inspiration from constitutional traditions common to the Member States, so that measures which are incompatible with the fundamental rights recognized by the constitution of those States are unacceptable in the Community'. It also took account of international treaties for the protection of human rights on which the Member States had collaborated or of which they were signatories. It follows that the protection accorded under Community law for fundamental human rights could not be any less complete than that required by the constitution of any of the Member States.

The Court nevertheless drew attention to the fact that, under the constitutional rules and practices of the Member States, there were certain fundamental rights — in this case the right to property and the freedom to pursue trade or professional activities — which, far from constituting unfettered prerogatives, must be regulated in the light of their social function, always

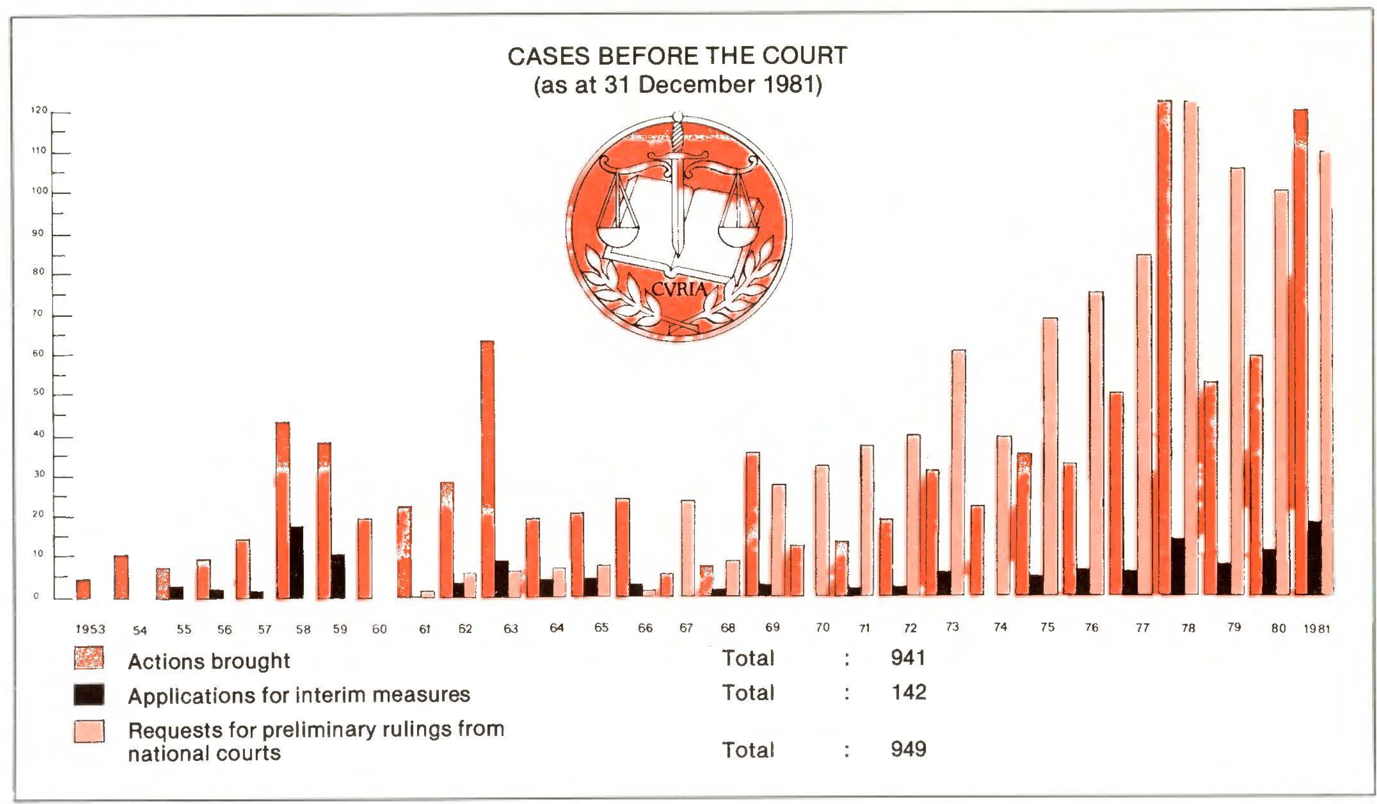
provided that any restrictive action does not derogate from the real substance of the right in question.

Thus the principle of 'direct applicability' was supplemented by the principle of the 'primacy' of Community law over conflicting national rules, even where the latter are of later date or of a constitutional nature. These decisions by the judges of the Court of Justice undoubtedly constitute the keystone of the Community system.

Over the years cooperation between the Court of Justice, which is responsible for interpreting Community law, and the national courts, which are responsible for its application, has ensured uniform, authoritative interpretation of Community law. It has not, however, been possible to iron out all the differences, in particular in the lower courts. Nevertheless the obligation placed upon the courts of final appeal to refer matters to the Court of Justice has helped correct any mistakes made during various cases. Today the authority of Community law is beyond doubt. Community law has become reality. Without it the efficient operation and perhaps even the very existence of the Community would be at risk.

But what view do those who work in the courtroom have of the Community? Robert Lecourt, former President of the Court of Justice, once observed that the Community was a legal union. The authority of Community law was beyond doubt since Community law was binding. But Community law was law with a specific objective. The end was the living force behind the law. The law had created the common market and was now its guardian. Furthermore, the law was there to protect individuals in a multinational federation uniting 10 States with 270 million people under one and the same law. Finally, it was the means of legal integration, the effects of which would filter through gradually to the innermost core of daily life. Consequently, the basic characteristics of Community law — its authority, direct applicability, uniformity, primacy and irreversibility — constitute the binding force which holds the Community together.

Annexes



CASES BEFORE THE COURT
(as at 31 December 1981)
CVRIA
120
110
100
90
80
70
60
50
40
30
20
10
0
1953
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
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70
71
72
73
74
75
76
77
78
79
80
1981
Actions brought
Total : 941
Applications for interim measures
Total : 142
Requests for preliminary rulings from national courts
Total : 949

Source of requests for preliminary rulings
Situation at 31 December 1981

Member State	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	Grand total
Belgium	—	—	—	—	—	—	5	1	4	4	1	5	8	5	7	11	16	7	13	14	12	113
Denmark	—	—	—	—	—	—	—	—	—	—	—	—	—	—	1	—	1	3	1	2	1	9
FR of Germany	—	—	—	—	4	—	11	4	11	21	18	20	37	15	26	28	30	46	33	24	41	369
Greece	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
France	—	—	—	—	2	—	3	1	1	2	6	1	4	6	15	8	14	12	18	14	17	124
Ireland	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	1	2	1	2	3	—	9
Italy	—	—	—	2	—	—	—	1	—	2	5	4	5	5	14	12	7	11	19	19	12	118
Luxembourg	—	—	1	—	—	—	1	—	1	—	1	—	1	—	1	—	—	—	1	—	4	11
Netherlands	1	5	5	4	1	1	3	2	—	3	6	10	6	7	4	14	9	38	11	17	17	164
United Kingdom	—	—	—	—	—	—	—	—	—	—	—	—	—	1	1	1	5	5	8	6	5	32
Total	1	5	6	6	7	1	23	9	17	32	37	40	61	39	69	75	84	123	106	99	109	949

Cases brought since 1953 analysed by subject-matter [1]

Situation at 31 December 1981

(the Court of Justice took up its duties under the ECSC Treaty in 1953 and under the EEC and EAEC Treaties in 1958)

Type of case	Direct actions											
	ECSC				EEC							EAEC
	Scrap equalization	Transport	Competition	Other[2]	Free movement of goods and customs union	Right of establishment, freedom to supply services	Tax cases	Competition	Social security and free movement of workers	Agricultural policy	Other	
Cases brought	167	35	27	108	58	4	23	135	5	165	209	4
Cases not resulting in a judgment	25	6	10	28	14	1	3	9	2	25	46	1
Cases decided	142	29	17	54	32	1	18	116	3	127	93	3
Cases pending	—	—	—	26	12	2	2	10	—	14	70	—

[1] Cases concerning several subjects are classified under the most important heading.

[2] Levies, investment declarations, tax charges, miners' bonuses.

[3] Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (the 'Brussels Convention').

Cases concerning Community staff law	Requests for preliminary rulings										
	Free movement of goods and customs union	Right of establishment, freedom to supply services	Tax cases	Competition	Social security and freedom of movement of workers	Agricultural policy	Transport	Conventions, Article 220[3]	Privileges and immunities	Other	Total
1 894	221	26	45	48	200	272	16	33	8	80	3 784
120	9	2	1	4	10	10	3	2	1	2	334
491	181	19	39	43	173	228	13	27	6	61	1 916
1 283	31	5	5	1	17	34	—	4	1	17	1 534

Cases brought since 1958 analysed by type (EEC Treaty)[1]

Situation at 31 December 1981

(the Court of Justice took up its duties under the EEC Treaty in 1958)

Type of case	Proceedings brought under												Protocols, Conventions, Art. 220	Grand total [2]
	Arts 169 and 93	Art. 170	Article 173				Art. 175	Article 177			Art. 181	Art. 215		
			By governments	By individuals	By Community institutions	Total		Validity	Interpretation	Total				
Cases brought	165	2	35	4	224	263	21	126	787	913	3	163	33	1 563
Cases not resulting in a judgment	41	1	6	—	23	29	3	4	42	46	—	25	2	147
Cases decided	79	1	24	3	174	201	17	113	643	756	—	105	27	1 186
In favour of applicant [3]	71	1	5	1	47	53	—				—	—		125
Dismissed on the substance [4]	8	—	18	2	88	108	2				—	92		210
Dismissed as inadmissible	—	—	1	—	39	40	15				—	13		68
Cases pending	45	—	5	1	27	33	1	9	102	111	3	33	4	230

[1] Excluding proceedings by staff and cases concerning the interpretation of the Protocol on Privileges and Immunities and of the Staff Regulations.

[2] Totals may be smaller than the sum of individual items because some cases are based on more than one Treaty article.

[3] In respect of at least one of the applicant's main claims.

[4] This also covers proceedings rejected partly as inadmissible and partly on the substance.

Cases brought since 1953 under the ECSC Treaty[1] and since 1958 under the EAEC Treaty [1]

Situation at 31 December 1981

(the Court of Justice took up its duties under the ECSC Treaty in 1953 and under the EAEC Treaty in 1958)

Type of case	Number of proceedings instituted								Total	
	By governments		By Community institutions		By individuals (undertakings)		Article 150 EAEC			
	ECSC	EAEC	ECSC	EAEC	ECSC	EAEC	Questions of validity	Questions of interpretation	ECSC	EAEC
Cases brought	21		1	2	314	2	—	3	336	7
Cases not resulting in a judgment	8		—	1	61	—	—	—	69	1
Cases decided	12		—	1	229	2	—	3	241	6
In favour of applicant [2]	5		—	1	43	1			48	2
Dismissed on the substance [3]	7		—	—	136	1			143	1
Dismissed as inadmissible	—		—	—	50	—			50	—
Cases pending	1		1	—	24	—	—	—	26	—

[1] Excluding proceedings by staff and cases concerning the interpretation of the Protocol on Privileges and Immunities and of the Staff Regulations.

[2] In respect of at least one of the applicant's main claims.

[3] This also covers proceedings rejected partly as inadmissible and partly on the substance.

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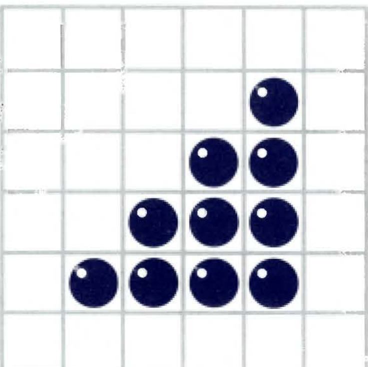

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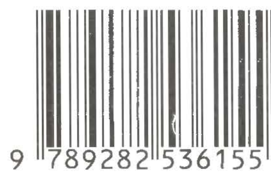

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