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ANNUAL REPORT 2007

Synopsis of the work of the Court of Justice of the European Communities,
the Court of First Instance of the European Communities
and the European Union Civil Service Tribunal

Luxembourg, 2008

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Foreword

In 2007, the European Community completed the 50th year of its existence. To mark this, a series of events was organised by the Community institutions throughout the course of the year. The Court of Justice celebrated Europe's 50th anniversary by organising a symposium for the presidents of the supreme courts of the 27 Member States and its own current and former members. At this symposium, which testifies to the close working ties fostered by the Court of Justice with the national courts, the presidents of the supreme courts of the Member States were the principal speakers.

The year 2007 will doubtless also remain engraved on the memory as the year in which the Treaty of Lisbon was signed, an instrument which is designed to endow the European Union with more effective legislative and administrative structures enhancing its ability to meet the challenges of the beginning of the 21st century. So far as concerns the Court of Justice, the provisions relating to its jurisdiction in respect of the area of freedom, security and justice, currently scattered because they are divided between Title IV of the EC Treaty and Title VI of the Treaty on European Union, are brought together in one title of the future Treaty on the Functioning of the European Union. Most of the current restrictions on its jurisdiction in this field will disappear.

Cases falling within the scope of the area of freedom, security and justice constitute without any doubt a major challenge for the Court of Justice, both because of their sensitivity and because they must be dealt with particularly expeditiously. The adoption by the Council in 2007 of amendments to the Statute and to the Rules of Procedure in order to introduce an urgent preliminary ruling procedure for dealing with this type of case constitutes a decisive step enabling the Court to meet this challenge.

Also, 2007 has been marked by the partial renewal of the membership of the Court of First Instance and the departure of four of its members. The institution cannot but welcome the fact that, as in the case of the partial renewal of the membership of the Court of Justice in 2006, the governments of the Member States were concerned when appointing the judges to safeguard the stability of the institution, thereby enabling the Court of First Instance to continue smoothly in the performance of its task.

Finally, it is to be noted that in the past year 1 259 cases were brought before the three courts comprising the Court of Justice — the highest figure in the institution's history and demonstrating the increase in the amount of Community litigation.

This report contains a full record of changes affecting the institution and of its work in 2007. As in previous years, a substantial part of the report is devoted to succinct but exhaustive accounts of the main judicial activity of the Court of Justice, the Court of First Instance and the Civil Service Tribunal. The record of the judicial activity is supported by statistics.

V. Skouris
President of the Court of Justice

Chapter I

The Court of Justice of the European Communities

A — The Court of Justice in 2007: changes and proceedings

By Mr Vassilios Skouris, President of the Court of Justice

This part of the Annual Report gives an overview of the activity of the Court of Justice of the European Communities in 2007. It describes, first, how the institution evolved during that year, with the emphasis on the institutional changes that have affected the Court and developments relating to its internal organisation and working methods (Section 1). It includes, second, an analysis of the statistics in relation to developments in the Court's workload and the average duration of proceedings (Section 2). It presents, third, as each year, the main developments in the case-law, arranged by subject matter (Section 3).

1. The main development in 2007 for the Court as an institution was the completion of the legislative process for the establishment of an urgent preliminary ruling procedure enabling questions relating to the area of freedom, security and justice that are referred for a preliminary ruling to be dealt with expeditiously and appropriately.

Specifically, by decision of 20 December 2007, the Council adopted the amendments to the Statute and to the Rules of Procedure of the Court of Justice designed to establish an urgent preliminary ruling procedure. This is a new type of preliminary ruling procedure, created to deal with cases that are currently covered by Title IV of the EC Treaty (visas, asylum, immigration and other policies related to free movement of persons) and Title VI of the Treaty on European Union (provisions on police and judicial cooperation in criminal matters). After establishing that existing procedures, including the accelerated procedure under Article 104a of the Rules of Procedure, were not capable of ensuring that this category of cases would be dealt with sufficiently expeditiously, the Court proposed the creation of this new procedure in order to be able to decide such cases within a particularly short time and without delaying the handling of other cases pending before the Court.

The amendments to the Statute and the Rules of Procedure will enter into force in the first quarter of 2008. The principal features of the urgent preliminary ruling procedure are apparent from the differences between it and the ordinary and accelerated preliminary ruling procedures. First, the written procedure is limited to the parties to the main proceedings, the Member State from which the reference is made, the European Commission and the other institutions if a measure of theirs is at issue. The parties and all the interested persons referred to in Article 23 of the Statute will be able to participate in an oral procedure, when they can express a view on the written observations that have been lodged. Second, cases subject to the urgent preliminary ruling procedure will, as soon as they arrive at the Court, be assigned to a chamber of five judges that is specially designated for this purpose. Finally, the procedure in these cases will for the most part be conducted electronically, since the new provisions of the Rules of Procedure allow procedural documents to be lodged and served by fax or e-mail.

2. The statistics concerning the Court's judicial activity in 2007 reveal a distinct improvement compared with the preceding year. In particular, the reduction, for the fourth year in a row, of the duration of proceedings before the Court should be noted, as should the increase of approximately 10 % in the number of cases completed compared with 2006.

The Court completed 551 cases in 2007 compared with 503 in 2006 (net figures, that is to say, taking account of the joinder of cases). Of those cases, 379 were dealt with by judgments and 172 gave rise to orders. The number of judgments delivered and orders made in 2007 is appreciably higher than in 2006 (351 judgments and 151 orders).

The Court had 580 new cases brought before it, the highest number in its history ([1]), representing an increase in new cases of 8 % compared with 2006 and 22.3 % compared with 2005. The number of cases pending at the end of 2007 (741 cases, gross figure) did not, however, increase significantly beyond the number at the end of 2006 (731 cases, gross figure).

The statistics concerning judicial activity in 2007 also reflect the constant reduction in the duration of proceedings since 2004. So far as concerns references for a preliminary ruling, the average duration of proceedings was 19.3 months, as against 19.8 months in 2006 and 20.4 months in 2005. A comparative analysis shows that in 2007 (as was the case in 2006) the average time taken to deal with references for a preliminary ruling reached its shortest since 1995. The average time taken to deal with direct actions and appeals was 18.2 months and 17.8 months respectively (20 months and 17.8 months in 2006).

In the past year, the Court has made use to differing degrees of the various instruments at its disposal to expedite the handling of certain cases (priority treatment, the accelerated or expedited procedure, the simplified procedure, and the possibility of giving judgment without an opinion of the Advocate General). Eight requests were made to the Court for use of the expedited or accelerated procedure, but the cases did not display the exceptional circumstances (of urgency) required by the Rules of Procedure. Following a practice established in 2004, requests for the use of the expedited or accelerated procedure are granted or refused by reasoned order of the President of the Court. On the other hand, priority treatment was granted in five cases.

Also, the Court continued to use the simplified procedure laid down in Article 104(3) of the Rules of Procedure to answer certain questions referred to it for a preliminary ruling. A total of 18 cases were brought to a close by orders made on the basis of that provision.

Finally, the Court made significantly more frequent use of the possibility offered by Article 20 of the Statute of determining cases without an opinion of the Advocate General where they do not raise any new point of law. About 43 % of the judgments delivered in 2007 were delivered without an opinion (compared with 33 % in 2006).

As regards the distribution of cases between the various formations of the Court, it may be noted that the Grand Chamber dealt with approximately 11 %, chambers of five judges with roughly 55 %, and chambers of three judges with about 33 % of the cases brought to a close in 2007. The number of cases dealt with by the Grand Chamber was roughly the same as in the previous year, the number of cases dealt with by five-judge chambers declined slightly (63 % in 2006) and the number of cases dealt with by three-judge

([1]) With the exception of the 1 324 cases brought in 1979. However, that exceptionally high figure can be explained by the huge flood of actions for annulment with the same subject matter that were brought.

chambers increased (24 % in 2006). The distribution of cases between the various formations of the Court was in fact almost identical to that in 2005.

Part C of this chapter should be consulted for further information regarding the statistics for the 2007 judicial year.

3. This section presents the main developments in case-law, arranged by topic as follows: constitutional or institutional issues; European citizenship; free movement of goods; free movement of persons, services and capital; visas, asylum and immigration; competition rules; taxation; approximation and harmonisation of laws; trade marks; economic and monetary policy; social policy; environment; judicial cooperation in civil matters; police and judicial cooperation in criminal matters, and combating terrorism.

Quite frequently, however, a judgment which, on the basis of the main issue addressed by it, comes under a given topic also broaches questions of great interest concerning another topic.

Constitutional or institutional issues

Given the vast range of matters that fall within this topic, it is not surprising that the issues ruled upon in the judgments mentioned are very diverse.

Although dealt with in much previous case-law, determination of the appropriate legal basis for the adoption of Community legislation continues to be the subject of cases brought before the Court.

In Case C-440/05 *Commission* v *Council* (judgment of 23 October 2007), the Commission took the view that the Council framework decision to strengthen the criminal-law framework for the enforcement of the law against ship-source pollution ([2]), which had been adopted within the framework of police and judicial cooperation in criminal matters, was founded on an inappropriate legal basis. Supported by the European Parliament, it brought an action for annulment in which it submitted that the aim and the content of the framework decision were covered by the powers of the European Community regarding the common transport policy.

The Court pointed out, first, that, in a situation where the EC Treaty and the Treaty on European Union are both capable of applying, the latter provides that the EC Treaty prevails and, second, that it is the task of the Court to ensure that acts which, according to the Council, fall within the provisions relating to police and judicial cooperation in criminal matters do not encroach upon the powers of the Community. The Court then established that the purpose of the framework agreement was to enhance maritime safety and to improve protection of the marine environment against ship-source pollution.

([2]) Council Framework Decision 2005/667/JHA of 12 July 2005 to strengthen the criminal-law framework for the enforcement of the law against ship-source pollution (OJ 2005 L 255, p. 164). It supplements Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements (OJ 2005 L 255, p. 11).

Accordingly, the provisions of the framework agreement requiring Member States to apply criminal penalties to certain forms of conduct could have been validly adopted on the basis of the EC Treaty. The Court stated that, although it is true that, as a general rule, neither criminal law nor the rules of criminal procedure fall within the Community's competence, the fact remains that, when the application of effective, proportionate and dissuasive criminal penalties by the competent national authorities is an essential measure for combating serious environmental offences, the Community legislature may require the Member States to introduce such penalties in order to ensure that the rules which it lays down regarding protection of the environment are fully effective.

By contrast, the provisions of the framework agreement relating to the type and level of the applicable criminal penalties did not fall within the Community's sphere of competence. However, inasmuch as those provisions were inseparable from those concerning the criminal offences to which they related, the Court concluded that the Council framework decision encroached upon the Community's competence regarding maritime transport, in breach of the Treaty on European Union which gives priority to such competence. The framework decision, being indivisible, was therefore annulled in its entirety.

It is worth noting several cases that deal with the extent of the Court's jurisdiction to give preliminary rulings interpreting measures or determining their validity.

In its judgment of 11 September 2007 in Case C-431/05 *Merck Genéricos-Produtos Farmacêuticos*, the Court, asked by the Portuguese Supreme Court of Justice whether it has jurisdiction to interpret Article 33 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPs Agreement) ([3]), answered in the affirmative, stating that, since the TRIPs Agreement was concluded by the Community and its Member States by virtue of joint competence, the Court has jurisdiction to define the obligations which the Community thereby assumed and, for that purpose, to interpret the provisions of the TRIPs Agreement. The matter of the sharing of competence between the Community and its Member States calls for a uniform reply at Community level that the Court alone is capable of supplying. In relation more specifically to the case in point, the Court held that there is some Community interest in considering it as having jurisdiction to interpret Article 33 of the TRIPs Agreement — which relates to the minimum term of patent protection — in order to ascertain whether it is contrary to Community law for that provision to be given direct effect.

Continuing the line of case-law in *Dzodzi* ([4]) and *Leur-Bloem* ([5]) and, recently, in *Poseidon Chartering* ([6]), the Court held once again, in its judgment of 11 December 2007 in Case

([3]) Agreement on Trade-Related Aspects of Intellectual Property Rights, constituting Annex 1C to the Agreement establishing the World Trade Organisation, signed at Marrakesh on 15 April 1994 and approved by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1).

([4]) Joined Cases C-297/88 and C-197/89 [1990] ECR I-3763.

([5]) Case C-28/95 [1997] ECR I-4161.

([6]) Case C-3/04 [2006] ECR I-2505.

C-280/06 *Autorità Garante della Concorrenza e del Mercato*, that, in the particular case where it adjudicates on references for a preliminary ruling in which the rules of Community law whose interpretation is requested are applicable only because of a reference made to them by national law, that is to say where, in regulating purely internal situations, domestic legislation provides the same solutions as those adopted in Community law, it is clearly in the Community interest that, in order to avoid future differences of interpretation, provisions or concepts taken from Community law should be interpreted uniformly irrespective of the circumstances in which they are to apply, by means of judgments of the Court given on references for a preliminary ruling. The Court consequently supplied the interpretation sought by the national court.

The Court also held, in its judgment of 27 September 2007 in Case C-351/04 *Ikea Wholesale*, that, given their nature and structure, the WTO (World Trade Organisation) agreements are not in principle among the rules in the light of which the Court is to review the legality of measures adopted by the Community institutions. It is only where the Community has intended to implement a particular obligation assumed in the context of the WTO, or where the Community measure refers expressly to the precise provisions of the WTO agreements, that it is for the Court to review the legality of the Community measure in question in the light of the WTO rules.

In a very different field, the Court held, by judgment of 28 June 2007 in Case C-331/05 P *Internationaler Hilfsfonds* v *Commission*, that costs relating to proceedings before the European Ombudsman, which do not qualify as recoverable costs ([7]), also cannot be payable by the institution concerned on the basis of non-contractual liability of the Community, given that there is no causal link between the loss and the wrongful act in question as such costs are incurred at the free choice of the persons concerned.

The public's right of access to documents of the institutions also gave rise to litigation. In Case C-266/05 P *Sison* v *Council* [2007] ECR I-1233, the Court was called upon to adjudicate on several decisions refusing even partial access to a person who requested (i) access to the documents that had led the Council to include and maintain him on the list of persons whose funds and financial assets were to be frozen pursuant to Regulation No 2580/2001 ([8]) and (ii) disclosure of the identity of the States which had provided certain documents in that connection.

The Court recalled that the judicial review conducted by it is necessarily limited in the case of an area which involves political, economic and social choices on the part of the Community legislature, and in which the latter is called upon to undertake complex assessments.

That said, it held that the purpose of Regulation No 1049/2001 ([9]) is to give the general public a right of access to documents of the institutions and not to lay down rules designed

([7]) See Article 91(b) of the Rules of Procedure of the Court of First Instance.

([8]) Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 70).

([9]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

to protect the particular interest which a specific individual may have in gaining access to one of them and that, inasmuch as exceptions to the right of access that are justified by certain public and private interests are involved, the particular interest of an applicant in obtaining access to documents cannot be taken into account by the institution called upon to rule on the question of whether the disclosure to the public of those documents would undermine the interests for which the Community legislature sought protection and to refuse, if that is the case, the access requested.

The Court then observed that, even assuming that the appellant had a right to be informed in detail of the nature and cause of the accusation made against him, which led to his inclusion on the list at issue, and even if that right entailed access to documents held by the Council, such a right could not be exercised by having recourse to the mechanisms for public access to documents of the institutions.

In respect of documents whose content is extremely sensitive, the Court held that the originating authority is entitled to require secrecy as regards even the existence of a sensitive document and also has the power to prevent disclosure of its own identity in the event that the existence of that document should become known, a conclusion which cannot be considered disproportionate on the ground that it may give rise, for an applicant refused access, to additional difficulty, or indeed practical impossibility, in identifying the State of origin of that document.

With regard to citizens' access not to documents but to the rule of law, the Court was required in its judgment of 11 December 2007 in Case C-161/06 *Skoma Lux* to decide on the effect of Article 58 of the 2004 Act of Accession ([10]). Asked by a Czech court whether that Article 58 allows the provisions of a Community regulation which has not been published in the *Official Journal of the European Union* in the language of a Member State, although that language is an official language of the Union, to be enforced against individuals in that State, the Court held that that lack of publication renders the obligations contained in Community legislation unenforceable against individuals in that State, even though those persons could have learned of the legislation by other means. In so deciding, the Court was interpreting Community law and not assessing its validity.

In the field of the relationship between Community law and the Member States' national law, the Court clarified certain matters relating to the primacy and direct effect of Community law.

([10]) Act concerning the conditions of accession to the European Union of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003, L 236, p. 33).
Article 58 of the Act provides that:
'The texts of the acts of the institutions, and of the European Central Bank, adopted before accession and drawn up by the Council, the Commission or the European Central Bank in the Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Slovak and Slovenian languages shall, from the date of accession, be authentic under the same conditions as the texts drawn up in the present 11 languages. They shall be published in the *Official Journal of the European Union* if the texts in the present languages were so published.'

In its judgment of 18 July 2007 in Case C-119/05 *Lucchini*, the Court, applying the principles laid down in a line of cases starting with *Simmenthal* ([11]), found that Community law precludes the application of a provision of Italian law which seeks to lay down the principle of *res judicata* in so far as the application of that provision prevents the recovery of State aid which was granted in breach of Community law and which has been found to be incompatible with the common market in a decision of the Commission that has become final.

In its judgment of 7 June 2007 in Case C-80/06 *Carp*, the Court had to address the question of the horizontal direct effect of decisions. It found that Decision 1999/93 on the procedure for attesting the conformity of construction products pursuant to Article 20(2) of Directive 89/106 ([12]) is an act of general application which specifies the types of attestation of conformity procedures that are applicable and authorises the European Committee for Standardisation (CEN/Cenelec) to specify the content of those procedures in the relevant harmonised standards, which will then be transposed by the standardisation bodies of each Member State, but is binding only upon the Member States, which are the sole addressees of the decision. Consequently, an individual cannot rely on the decision in the context of legal proceedings against another individual concerning contractual liability.

Two judgments provided explanation regarding the approach to be adopted by national courts when faced with international agreements concluded by the Community.

In its judgment of 20 September 2007 in Case C-16/05 *Tum and Dari*, the Court was required to rule on the effect of the 'standstill' clause contained in Article 41(1) of the Additional Protocol to the EEC–Turkey Association Agreement ([13]), under which the contracting parties are prohibited from introducing any new restrictions on the freedom of establishment from the date of entry into force of that protocol. The case in point concerned two Turkish nationals who wished to establish themselves in the United Kingdom of Great Britain and Northern Ireland.

In the Court's view, this unequivocal provision has direct effect, and it does not operate in the same way as a substantive rule, rendering inapplicable the relevant substantive law concerning entry into the territory of a Member State that it replaces, but as a quasi-procedural rule, stipulating, *ratione temporis*, which are the provisions of a Member State's immigration legislation that must be referred to for the purposes of assessing the position of a Turkish national who wishes to exercise freedom of establishment. Accordingly, the 'standstill' clause does not call into question the competence, as a matter of principle, of the Member States to conduct their national immigration policy. The mere fact that, as from its entry into force, such a clause imposes on those States a duty not to act which has the effect of limiting, to some extent, their room for manoevre on such matters does not mean that the very substance of their sovereign competence in respect of aliens should be regarded as having been undermined.

([11]) Case 106/77 *Simmenthal* [1978] ECR 629.

([12]) Commission Decision 1999/93/EC of 25 January 1999 on the procedure for attesting the conformity of construction products pursuant to Article 20(2) of Council Directive 89/106/EEC as regards doors, windows, shutters, blinds, gates and related building hardware (OJ 1999 L 29, p. 51).

([13]) Additional Protocol signed on 23 November 1970 at Brussels and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972 (OJ 1977 L 361, p. 60).

The Court then interpreted the provision in question as prohibiting the introduction, as from the entry into force of the Additional Protocol to the EEC–Turkey Association Agreement with regard to the Member State concerned, of any new restrictions on the exercise of freedom of establishment, including those relating to the substantive and/or procedural conditions governing the first admission into the territory of that State, of Turkish nationals intending to establish themselves in business there on their own account.

In *Merck Genéricos-Produtos Farmacêuticos*, the Court was asked by the Portuguese Supreme Court of Justice whether national courts must, on their own initiative or at the request of one of the parties, apply Article 33 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPs Agreement) — which relates to the minimum term of patent protection — in proceedings pending before them.

After observing that it has jurisdiction to interpret the provisions of the TRIPs Agreement, the Court stated that, in this context, it is necessary to distinguish between fields in which the Community has not yet legislated and those in which it already has. As regards the former fields, which still fall within the competence of the Member States, the Court held that the protection of intellectual property rights and measures taken for that purpose by the judicial authorities do not fall within the scope of Community law, so that Community law neither requires nor forbids the legal order of a Member State to accord to individuals the right to rely directly on a rule laid down in the TRIPs Agreement or to oblige the courts to apply that rule of their own motion. In the case of the latter fields, on the other hand, Community law applies, which means that it is necessary, as far as may be possible, to supply an interpretation in keeping with the TRIPs Agreement, although no direct effect may be given to the provision of that agreement at issue.

In the case in point, the Court found that the Community has not yet exercised its powers in the sphere of patents, within which Article 33 of the TRIPs Agreement falls, or that, at the very least, at internal level, that exercise has not to date been of sufficient importance to lead to the conclusion that, as matters now stand, that sphere falls within the scope of Community law. It drew the conclusion that it is not currently contrary to Community law for Article 33 of the TRIPs Agreement to be directly applied by a national court subject to the conditions provided for by national law.

Finally, there are three noteworthy judgments concerning the effective judicial protection of rights derived from Community law that is to be enjoyed by individuals.

In Case C-432/05 *Unibet* [2007] ECR I-2271, the Court, after pointing out that the principle of effective judicial protection is a general principle of Community law, repeated the standard case-law that, in the absence of Community rules governing the matter, it is for each Member State, in accordance with its duty of cooperation, to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from Community law. This procedural autonomy, which is limited by the principles of equivalence and effectiveness, could be called into question only if it were apparent from the overall scheme of the national legal system in question that no legal remedy exists which makes it possible to ensure, even indirectly, respect for an individual's rights under Community law.

That having been said, the Court observed that the principle of effective judicial protection of an individual's rights under Community law does not require domestic law to provide a free-standing action for an examination of whether national provisions are compatible with Community law, provided that other effective legal remedies, which are no less favourable than those governing similar domestic actions, make it possible for such a question of compatibility to be determined as a preliminary issue, which is a matter for the national court to establish. In concrete terms, if an individual is forced to be subject to administrative or criminal proceedings and to any penalties that may result as the sole form of legal remedy for disputing the compatibility of the contested national provision with Community law, his judicial protection is not effectively secured.

Finally, the Court inferred from the principle of effective judicial protection that the Member States are obliged to provide for the possibility of interim relief being granted to an individual until the competent court has given a ruling on whether the national provisions at issue are compatible with Community law, where the grant of such relief is necessary to ensure the full effectiveness of the judgment to be given. However, this possibility does not have to exist where the individual's application is inadmissible under the law of the Member State concerned, provided that Community law does not call into question that inadmissibility. In the absence of relevant Community legislation, the grant of any interim relief is governed by the criteria in national law, subject to observance of the principles of equivalence and effectiveness referred to above.

In Case C-524/04 *Test Claimants in the Thin Cap Group Litigation* [2007] ECR I-2107, the Court pointed out that, where a Member State has levied charges in breach of the rules of Community law, individuals are entitled to reimbursement of the tax unduly levied and of the amounts paid which relate directly to that tax.

As regards other loss or damage which a person has sustained by reason of a breach of Community law for which a Member State is liable, the latter is under a duty to make reparation for the loss or damage caused in the circumstances set out in the Court's case-law and — subject to the principles of equivalence and effectiveness — on the basis of the rules of national law on liability.

Specifically, where it is established that the legislation of a Member State constitutes an obstacle to freedom of establishment prohibited by Article 43 EC, the national court may, in order to establish the recoverable losses, determine whether the injured parties have shown reasonable diligence in order to avoid those losses or to limit their extent and whether, in particular, they availed themselves in time of all legal remedies available to them. However, the application of the provisions relating to freedom of establishment would be rendered impossible or excessively difficult if claims for restitution or compensation based on infringement of those provisions were rejected or reduced solely because the companies concerned had not applied to the tax authorities to be allowed to pay interest on loans granted by a non-resident parent company without that interest being treated as a distribution when, in the circumstances at issue, national law, combined, where appropriate, with the relevant provisions of the double taxation conventions, provided for such treatment to apply.

The Court also pointed out that, in order to determine whether there has been a sufficiently serious breach of Community law, it is necessary to take account of all the factors which characterise the situation brought before the national court. In a field such as direct taxation, the national court must take into account the fact that the consequences arising from the freedoms of movement guaranteed by the Treaty have been only gradually made clear, in particular by the principles identified by the Court's case-law.

In Joined Cases C-222/05 to C-225/05 *van der Weerd and Others* (judgment of 7 June 2007), the Court was asked in particular whether, in judicial proceedings concerning the legality of an administrative measure, Community law required a national court to conduct an examination of its own motion of grounds which were outside the terms of the dispute but based on Directive 85/511 introducing Community measures for the control of foot-and-mouth disease ([14]).

The Court replied in the negative, holding that neither the principle of equivalence nor the principle of effectiveness enshrined in its case-law required the national court to raise of its own motion a plea alleging infringement of Community law.

As regards the principle of equivalence, the Court held, more specifically, that the provisions of the directive which were at issue laid down neither the conditions in which procedures relating to the control of foot-and-mouth disease could be initiated nor the authorities which had the power, within the framework of those procedures, to determine the extent of the rights and obligations of individuals. Those provisions could not therefore be considered equivalent to the national rules of public policy, which lay at the very basis of the national procedures since they defined the conditions in which those procedures could be initiated and the authorities which had the power, within the framework of those procedures, to determine the extent of the rights and obligations of individuals. So far as concerns the principle of effectiveness, the Court stated that, provided that the parties are given a genuine opportunity to raise a plea based on Community law before a national court, this principle does not preclude a provision of domestic law which prevents national courts from raising of their own motion an issue as to whether the provisions of Community law have been infringed, where examination of that issue would oblige them to abandon the passive role assigned to them by going beyond the ambit of the dispute defined by the parties themselves and relying on facts and circumstances other than those on which the party with an interest in application of the Community provisions has based his claim; this is so, irrespective of the importance of those provisions to the Community legal order.

European citizenship

In several cases the Court examined national provisions that can improperly limit the free movement of citizens of the Union.

([14]) Council Directive 85/511/EEC of 18 November 1985 introducing Community measures for the control of foot-and-mouth disease (OJ 1985 L 315, p. 11), as amended by Council Directive 90/423/EEC of 26 June 1990 (OJ 1990 L 224, p. 13).

With regard to education and training grants, in its judgment of 23 October 2007 in Joined Cases C-11/06 and C-12/06 *Morgan and Bucher* the Court proceeded on the basis that nationals of a Member State studying in another Member State enjoy the status of citizens of the Union under Article 17(1) EC and may therefore rely on the rights conferred on those having that status, inter alia against their Member State of origin.

The Court then held that while, in principle, a Member State is entitled, in order to prevent education or training grants to students wishing to study in other Member States from becoming an unreasonable burden, to grant such assistance only to students who have demonstrated a certain degree of social integration, it must nevertheless see to it that the detailed rules for the award of the grants do not create an unjustified restriction of the free movement of citizens and that they are consistent with and proportionate to the objectives of ensuring that courses are completed in a short period of time or of facilitating an appropriate choice of education or training course.

The Court drew the conclusion that Articles 17 and 18 EC preclude provisions under which the award of an education or training grant to a student who is studying in a Member State other than that of which he is a national is subject to the condition that those studies must be a continuation of studies pursued for at least one year in his Member State of origin, in that such provisions are liable to deter citizens of the Union from making use of their freedom, provided for in Article 18 EC, to move and reside within the territory of the Member States.

With regard to tax legislation, in its judgments of 11 September 2007 in Case C-76/05 *Schwarz and Gootjes-Schwarz* and C-318/05 *Commission* v *Germany*, the Court examined provisions of the German law on income tax according to which taxpayers are granted tax relief for their children's school fees paid to certain private schools, provided that the schools are established on German territory.

The Court held that Community law precluded the tax relief from being refused generally for school fees paid to schools in another Member State. In its reasoning, the Court distinguished two types of school financing. Only schools essentially financed by private funds could rely on the freedom to provide services. In the case of schools established in a Member State other than Germany which were not essentially financed from private funds, the freedom to provide services did not apply but the tax relief nonetheless could not be refused. The rights conferred on citizens of the European Union prevented such an exclusion: even a young child could make use of the rights of free movement and residence, and the provisions at issue placed at an unjustifiable disadvantage children who went to a school established in another Member State by comparison with those who had not availed themselves of their freedom of movement.

Free movement of goods

In the field of the free movement of goods, the Court was required to rule on the compatibility of various national rules with the Treaty.

First, the judgment of 5 June 2007 in Case C-170/04 *Rosengren and Others* resulted from a reference for a preliminary ruling relating to the compatibility with the EC Treaty of a

Swedish law prohibiting the importation by private individuals of alcoholic beverages, the sale of which is subject, in Sweden, to a monopoly established by the same law. The Court held this prohibition to be incompatible with Community law, having first established that the prohibition had to be assessed in the light of Article 28 EC, and not in the light of Article 31 EC on State monopolies of a commercial character, since it did not amount to a rule relating to the existence or operation of the monopoly, which concerned retail sale and not importation. In so holding, the Court found that the Swedish measure amounted to a quantitative restriction on imports within the meaning of Article 28 EC given, first, the possibility for the holder of the monopoly to refuse an order for the supply and therefore, if necessary, the importation of the beverages concerned and, second, the inconveniences of such a measure for consumers. The Court then found that the measure could not be justified, under Article 30 EC, on grounds of protection of the health and life of humans: the Swedish law was unsuitable for attaining the objective of limiting alcohol consumption generally, because of the marginal nature of its effects in that regard, and was not proportionate to the objective of protecting young persons against the harmful effects of such consumption, since the prohibition was applied irrespective of the age of the private individual wishing to obtain the beverages concerned.

Second, in Case C-319/05 *Commission* v *Germany* (judgment of 15 November 2007), the Court was faced once again, in an action for failure to fulfil obligations under the Treaty, with the question whether a substance should be classified as a medicinal product or as a foodstuff. The Federal Republic of Germany had classified as a medicinal product a garlic preparation in capsule form that was legally marketed as a food supplement in other Member States, and had consequently required prior marketing authorisation to be obtained for it. In accordance with its settled case-law the Court found that, in so doing, the Federal Republic of Germany had failed to fulfil its obligations under Articles 28 and 30 EC. After establishing that the product did not satisfy either the definition of medicinal product by presentation or the definition of medicinal product by function for the purposes of the relevant Community legislation ([15]), the Court held that the German measure created an obstacle to intra-Community trade. Furthermore, the measure could not be justified by reasons relating to the protection of public health, in accordance with Article 30 EC, since a provision of that type had to be based on a detailed assessment of the alleged health risk and a measure that restricted the free movement of goods less, such as suitable labelling warning consumers of the potential risks related to taking the product, could have met the objective of protecting health.

Finally, it is appropriate to mention the judgment of 20 September 2007 in Case C-297/05 *Commission* v *Netherlands*, which refines the Court's case-law concerning national rules applicable to the import of vehicles registered in another Member State. Asked to decide whether Netherlands legislation requiring such vehicles to undergo an identification check and a roadworthiness test prior to registration in the Netherlands was compatible with Community law, the Court held, first of all, that the vehicle identification check did not constitute a hindrance to the free movement of goods. It was unlikely to have any deterrent effect whatsoever on the import of a vehicle into the Netherlands or to make the import of vehicles less attractive, given the manner in which it was carried out and the fact

([15]) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67).

that it constituted a simple administrative formality which did not introduce any additional check and which was integral to the actual processing of the registration application and to the conduct of the associated procedure. Ruling, secondly, on whether the roadworthiness test relating to the general condition of vehicles at the time of their registration in the Netherlands was compatible with Articles 28 and 30 EC, the Court stated that a restrictive measure of that kind, when applied to vehicles more than three years old which had previously been registered in another Member State, was not proportionate to the legitimate objectives of road safety and the protection of the environment. The Court observed in this regard that less restrictive measures existed, such as recognition of the proof issued in another Member State showing that a vehicle registered in its territory had passed a roadworthiness test, and cooperation between the Netherlands customs authorities and their counterparts in other Member States concerning any data that might be missing.

Free movement of persons, services and capital

Case-law in this field was particularly abundant, making a well-ordered presentation difficult, in particular as the cases brought before the Court often concerned the exercise of several freedoms simultaneously. It has therefore been decided to divide the case-law into four areas, three of which reflect a sectoral approach, that is to say the free movement of workers, the right of establishment and the freedom to provide services, and the free movement of capital, while the fourth — namely the limitations imposed by those freedoms on the exercise by the Member States of their powers of taxation — involves a cross-sectoral approach.

With regard to the free movement of natural persons, that is to say of workers, the Court ruled, inter alia, on the right of residence of nationals of third countries who are members of the family of a Community national, in particular a Community migrant worker, and the social advantages which those family members may claim. It is also to be noted that the Court explained the concept of 'migrant worker' in its judgment of 18 July 2007 in Case C-212/05 *Hartmann*. Thus, a national of a Member State who, while maintaining his employment in that State, has transferred his residence to another Member State and has since then carried on his occupation as a frontier worker can claim the status of migrant worker for the purposes of Regulation No 1612/68 ([16]).

In relation to the right of residence of nationals of third countries who are members of the family of a Community national who has exercised the right to freedom of movement, Case C-1/05 *Jia* [2007] ECR I-1 and Case C-291/05 *Eind* (judgment of 11 December 2007) warrant particular attention.

In *Jia*, the dispute before the national court concerned the case of a Chinese national who was the mother-in-law of a German national and went to join her son in Sweden where her daughter-in-law was self-employed. When her visitor's visa expired she was refused a residence permit on the ground that she had not provided adequate proof that she was

([16]) Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475).

financially dependent on her son and his wife. The national court, referring to the judgment in Case C-109/01 *Akrich* [2003] ECR I-9607, essentially asked whether the lawful-residence condition that was adopted in that judgment also applied to the circumstances of the case in point. The Court stated in reply to this question that, having regard to the judgment in *Akrich*, Community law does not require Member States to make the grant of a residence permit to nationals of a third country, who are members of the family of a Community national who has exercised his or her right of free movement, subject to the condition that those family members have previously been residing lawfully in another Member State. However, such family members must be dependent on the Community national or his or her spouse in the sense that they need those persons' material support in order to meet their essential needs in their State of origin or the State from which they have come at the time when they apply to join them.

In *Eind*, the Court held that the right to family reunification under Article 10 of Regulation No 1612/68 does not entail for members of the families of migrant workers any autonomous right to free movement, since that provision benefits the migrant worker whose family includes a national of a third country. Accordingly, in the event of a Community worker returning to the Member State of which he is a national, Community law does not require the authorities of that State to grant a right of entry and residence to a third-country national who is a member of that worker's family because of the mere fact that, in the host Member State where that worker was gainfully employed, the third-country national held a valid residence permit issued on the basis of Article 10 of Regulation No 1612/68. However, when that worker returns to the Member State of which he is a national, after being gainfully employed in another Member State, a third-country national who is a member of his family has a right under Article 10(1)(a) of Regulation No 1612/68 as amended to reside in the Member State of which the worker is a national, even where that worker does not carry on any effective and genuine economic activities. The fact that a third-country national who is a member of a Community worker's family did not, before residing in the Member State where the worker was employed, have a right under national law to reside in the Member State of which the worker is a national has no bearing on the determination of the third-country national's right to reside in the latter State.

Community workers and members of their families who settle in a Member State can be entitled to the same social advantages as national workers. Thus, in *Hartmann* the Court held that Article 7(2) of Regulation No 1612/68 precludes the spouse of a migrant worker carrying on an occupation in one Member State, who does not work and is resident in another Member State, from being refused a social advantage with the characteristics of the German child-raising allowance on the ground that he did not have his permanent or ordinary residence in the former State. Such a residence condition must be regarded as indirectly discriminatory since it is intrinsically liable to affect migrant workers or their spouses, who reside with greater frequency in another Member State, more than national workers and there is a consequent risk that it will place the former at a particular disadvantage. On the other hand, in its judgment of 18 July 2007 in Case C-213/05 *Geven*, the Court stated that the same article does not preclude the exclusion, by the national legislation of a Member State, of a national of another Member State who resides in that other State and is in minor employment (fewer than 15 hours' work a week) in the former State from receipt of a social advantage such as a child-raising allowance on the ground that he does not have his permanent or ordinary residence in the former State. Likewise,

the Court held in its judgment of 11 September 2007 in Case C-287/05 *Hendrix* that Article 39 EC and Article 7 of Regulation No 1612/68 do not preclude national legislation which applies Articles 4(2a) and 10a of Regulation No 1408/71 ([17]), as amended, and provides that a special non-contributory benefit may be granted only to persons who are resident in the national territory. However, implementation of that legislation must not entail an infringement of the rights derived by a person from the free movement of workers which goes beyond what is required to achieve the legitimate objective pursued by the national legislation.

More specifically, in relation to social security the Court had to rule on the compatibility of certain provisions of Regulation No 1408/71 with freedom of movement for persons and with Article 42 EC in particular. Thus, in its judgment of 18 December 2007 in Joined Cases C-396/05, C-419/05 and C-450/05 *Habelt*, *Möser and Watcher*, concerning payment of an old-age pension to displaced persons of German nationality or origin, the Court declared incompatible with freedom of movement for persons the authorisation given to the Federal Republic of Germany to make the taking into account of contribution periods completed outside the Federal Republic subject to the condition that the recipient resides in Germany. To allow the competent Member State to rely on grounds of integration into the social environment of that Member State in order to impose a residence clause would run directly counter to the fundamental objective of the Union, which is to encourage the movement of persons within the Union and their integration into the society of other States. Accordingly, the refusal of the national authorities to take account, for the purposes of calculating old-age benefits, of the contributions made abroad by a worker makes manifestly more difficult or even prevents the exercise by those concerned of their right to freedom of movement within the Union and therefore constitutes an obstacle to that freedom.

With regard to freedom of establishment and freedom to provide services, the Court, first, clarified the scope of the Treaty provisions in relation to situations involving an extra-Community element and, second, dealt with various restrictions.

In *Test Claimants in the Thin Cap Group Litigation*, concerning the legislation of a Member State relating to the deduction by a resident company, for tax purposes, of interest paid on loan finance granted by a parent company or a company controlled by a parent company, the Court held that relations between a company resident in one Member State and a company which is resident in another Member State or a non-member country and which does not itself control the first company, but which are both controlled, directly or indirectly, by a common parent company resident in a non-member country, are not covered by Article 43 EC. Also, in its judgment of 24 May 2007 in Case C-157/05 *Holböck* the Court held the provisions of the chapter of the EC Treaty on freedom of establishment to be inapplicable to a situation where a shareholder receives dividends from a company established in a non-member country. That chapter does not include any provision extending its application to situations which involve the establishment in a non-member country of a Member State national or of a company incorporated under the legislation of a Member State.

([17]) Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416).

As regards restrictions, the first judgment to be mentioned was delivered in Case C-338/04 *Placanica* [2007] ECR I-1891 relating to the organisation of games of chance. The dispute before the national court concerned domestic legislation on the organisation of games of chance and the collection of bets that had been adopted in order to combat clandestine gaming and betting. Under the legislation, organisation of gaming and betting required, on pain of criminal penalties, prior grant of a licence and of a police authorisation. In addition, when awarding licences the competent national authorities excluded certain tenders, in particular from operators in the form of companies whose shares were quoted on the regulated markets. The Court held, directly following case-law laid down in Case C-243/01 *Gambelli and Others* [2003] ECR I-13031, that national legislation which prohibits, on pain of criminal penalties, the pursuit of the activities of collecting, taking, booking and forwarding offers of bets, in particular bets on sporting events, without a licence or a police authorisation issued by the Member State concerned constitutes a restriction on the freedom of establishment and the freedom to provide services, but that that restriction can be justified if, in limiting the number of operators active in the betting and gaming sector, it genuinely contributes to the objective of preventing the exploitation of activities in that sector for criminal or fraudulent purposes, a matter which the Court leaves to national courts to ascertain. The Court also held that national legislation which excludes from the betting and gaming sector operators in the form of companies whose shares are quoted on the regulated markets is likewise an obstacle to the freedom of establishment and the freedom to provide services, and stated that such an exclusion goes beyond what is necessary in order to achieve the objective of preventing operators active in the betting and gaming sector from being involved in criminal or fraudulent activities. Finally, those freedoms are also restricted by legislation which imposes a criminal penalty on persons for pursuing the organised activity of collecting bets without a licence or a police authorisation as required under the national legislation where those persons were unable to obtain licences or authorisations because that Member State, in breach of Community law, refused to grant licences or authorisations to such persons. Although in principle criminal legislation is a matter for which the Member States are responsible, Community law sets certain limits to their power, and such legislation may not restrict the fundamental freedoms guaranteed by Community law.

The next cases, namely *Schwarz and Gootjes-Schwarz*, *Commission* v *Germany* and Case C-444/05 *Stamatelaki* (judgment of 19 April 2007), concern payments for school fees or hospital treatment to an establishment in another Member State. *Schwarz and Gootjes-Schwarz* and *Commission* v *Germany* related to the tax relief granted to German taxpayers in respect of school fees paid for their children's attendance at private schools in Germany meeting certain conditions. This relief did not apply to fees paid to schools in other Member States. Before ruling on the compatibility of this legislation with Article 49 EC, the Court stated, first, that the concept of services extends to schools essentially financed by private funds. Since the aim of those establishments is to offer a service for remuneration, they can rely on the freedom to provide services. It is not necessary, however, for their financing to be provided by the pupils or their parents, as Article 50 EC does not require that the service be paid for by those for whom it is performed. On the other hand, schools which are not essentially financed by private funds, in particular schools forming part of a system of public education, are excluded from the definition of services, given that, by establishing and maintaining a system of public education, financed as a general rule by the public budget and not by pupils or their parents, the

State simply carries out its task in the social, cultural and educational fields towards its population. The Court stated, second, that where schools established outside Germany that are essentially financed by private funds wish to offer education to the children of German residents, the exclusion of those schools' fees from the benefit of the tax relief hinders their freedom to provide services and that, even though the freedom to provide services does not apply to schools established outside Germany which are not essentially financed from private funds, the tax relief nonetheless may not be refused in respect of those schools' fees. As has already been noted above, it is the freedom of movement of citizens of the Union which prevents such an exclusion. Accordingly, the Court held that Community law precludes the tax relief from being generally refused in respect of school fees paid to schools in other Member States. Finally, such legislation also impedes the freedom of establishment of employees and self-employed persons who have transferred their normal place of residence to, or who work in, Germany and whose children continue to attend a fee-paying school situated in another Member State. They do not enjoy the tax relief, whereas they would enjoy it if their children attended a school situated in Germany.

In *Stamatelaki*, the Court held that the freedom to provide services is impeded by national legislation which excludes all reimbursement by a national social security institution of the costs occasioned by treatment of persons insured with it in private hospitals in another Member State, except those relating to treatment provided to children under 14 years of age. Such a measure, whose absolute nature (except for the case of children under 14 years of age) is not appropriate to the objective pursued, cannot be justified by the risk of seriously undermining the financial balance of a social security system since measures which are less restrictive and more in keeping with the freedom to provide services could be adopted, such as a prior authorisation scheme which complies with the requirements imposed by Community law and, if appropriate, the determination of scales for reimbursement of the costs of treatment.

Finally, Case C-341/05 *Laval un Partneri* (judgment of 18 December 2007) and Case C-438/05 *The International Transport Workers' Federation and The Finnish Seamen's Union* (judgment of 11 December 2007), relating to collective action engaged in by trade union organisations against a provider of services established or wishing to establish itself in another Member State, deserve particularly close attention. While in *The International Transport Workers' Federation and The Finnish Seamen's Union* a Finnish maritime transport company wished to establish itself in Estonia so as to register one of its vessels there, in order to be more competitive, in *Laval un Partneri* a Latvian construction company wished to exercise its freedom to provide services in Sweden, in particular by the posting of Latvian workers to one of its Swedish subsidiaries. In both cases, the companies in question had to negotiate with trade unions in relation to the companies' signing of, and compliance with, the collective agreements applicable to their respective sectors. In the former case, the trade union, affiliated to a federation of trade unions based in the United Kingdom, sought application of the Finnish collective agreement to the crew of the vessel which would be flying the Estonian flag. In the latter case, the trade union demanded that the Latvian company should, by way of guarantee as to the rate of pay, sign the Swedish collective agreement and apply it to its posted workers. Since negotiations were unsuccessful in each case, the trade unions exercised their right of collective action, in particular by use of the right to strike, to compel the companies to sign and implement the collective

agreements. Accordingly, the national courts essentially asked the Court whether collective action constitutes a restriction within the meaning of Articles 43 and 49 EC. The Court held that, although the right to take collective action must be recognised as a fundamental right that forms an integral part of the general principles of Community law the observance of which the Court ensures, the exercise of that right may nonetheless be subject to certain restrictions. Furthermore, in accordance with settled case-law, the exercise of fundamental rights does not fall outside the scope of the provisions of the Treaty, and must be reconciled with the requirements relating to rights protected under the Treaty and be in accordance with the principle of proportionality. Accordingly, such collective action initiated by a trade union or a group of trade unions against an undertaking in order to induce that undertaking to enter into an agreement, the terms of which are liable to deter it from exercising the freedom of establishment or freedom to provide services, constitutes a restriction on those freedoms. However, the Court made it clear that a restriction of that kind may, in principle, be justified by an overriding reason of public interest, such as the protection of the workers of the host State against possible social dumping, provided that it is established that the restriction is suitable for ensuring the attainment of the legitimate objective pursued and does not go beyond what is necessary to achieve that objective.

On the other hand, the Court held in *Laval un Partneri* that national rules which fail to take into account, irrespective of their content, collective agreements to which undertakings that post workers to the host Member State are already bound in the Member State in which they are established give rise to discrimination against such undertakings, in so far as under those national rules they are treated in the same way as national undertakings which have not concluded a collective agreement.

Three judgments concerning the free movement of capital will be accorded particular attention, the first being the judgment of 23 October 2007 in Case C-112/05 *Commission* v *Germany*, relating to the law known as the 'Volkswagen law'. The Court held that, by maintaining in force the provisions of this law which, in derogation from the general law, cap the voting rights of any Volkswagen shareholder at 20 % of the share capital, require a majority of more than 80 % of the share capital in order for certain resolutions of the general assembly of shareholders to be passed and confer upon the State and a regional authority the right to appoint two representatives each to the company's supervisory board, the Federal Republic of Germany had failed to fulfil its obligations under Article 56(1) EC. The Court stated that the fact that the threshold for a majority was set at more than 80 % of the share capital afforded any shareholder holding 20 % of the share capital a blocking minority and enabled both public authorities to procure for themselves the ability to oppose important resolutions on the basis of a lower level of investment than would be required under the general law. Furthermore, by capping voting rights at 20 %, the legislation helped to give those authorities the opportunity to exercise considerable influence. Those provisions therefore limited the possibility for other shareholders to participate in the company, to establish or maintain lasting and direct economic links with it and to participate effectively in its management or control. By diminishing the interest in acquiring a stake in the company's capital, those measures were liable to deter direct investors from other Member States and thus constituted a restriction on the free movement of capital. The same was true of the right, enjoyed by the public authorities alone, to appoint two representatives to the supervisory board. By enabling those authorities to participate in a more significant manner in the activity of the supervisory

board, this measure in fact allowed them to exercise an influence which exceeded their levels of investment and was greater than their status as shareholders would normally allow.

Second, Case C-370/05 *Festersen* [2007] ECR I-1129 should be noted, in which the Court held that Article 56 EC precludes national legislation from laying down as a condition for acquiring an agricultural property the requirement that the acquirer take up his fixed residence on that property for a period of eight years, irrespective of particular circumstances relating to individual characteristics of the agricultural land concerned. According to the Court, it can be accepted that national legislation containing such a residence requirement seeks to avoid the acquisition of agricultural land for purely speculative reasons and is likely to facilitate the preferential appropriation of that land by persons who wish to farm it. Such legislation therefore does pursue a public interest objective in a Member State in which agricultural land is a limited natural resource. However, the Court held the residence requirement to be a measure going beyond what is necessary to attain such an objective. First, it is particularly restrictive in that it limits not only the free movement of capital but also the right of the acquirer to choose his place of residence freely, which is guaranteed by the European Convention on Human Rights and protected under Community law, thereby adversely affecting a fundamental right. Second, there is nothing to support the conclusion that measures less restrictive than that requirement could not be adopted to achieve the objective sought. Such an obligation, particularly when coupled with a condition that residence be maintained for a number of years, therefore goes beyond that which could be regarded as necessary having regard to the public interest objective pursued.

Finally, in *Holböck* the Court applied Article 57(1) EC which lays down, for restrictions existing on 31 December 1993 that relate to the movement of capital involving direct investment, an exception to the prohibition of restrictions on the movement of capital between Member States and non-member countries. The Court noted first of all that the concept of direct investments concerns investments of any kind undertaken by natural or legal persons which serve to establish or maintain lasting and direct links between the persons providing the capital and the undertakings to which that capital is made available in order to carry out an economic activity. As regards shareholdings in undertakings, the objective of establishing or maintaining lasting economic links presupposes that the shares held by the shareholder enable him to participate effectively in the management of the company or in its control. The Court then stated that Article 57(1) EC also applies to national measures which restrict payments of dividends deriving from investments. Consequently, the Court held that a restriction on capital movements, such as a less favourable tax treatment of foreign-sourced dividends, comes within the scope of Article 57(1) EC, inasmuch as it relates to holdings acquired with a view to establishing or maintaining lasting and direct economic links between the shareholder and the company concerned and which allow the shareholder to participate effectively in the management of the company or in its control. Article 57(1) EC must therefore be interpreted as meaning that Article 56 EC is without prejudice to the application by a Member State of legislation which existed on 31 December 1993 under which a shareholder in receipt of dividends from a company established in a non-member country, who holds two thirds of the share capital in that company, is taxed at a rate higher than that imposed on a shareholder in receipt of dividends from a resident company.

The Court had many opportunities to consider the powers of direct taxation retained by the Member States and the limits on the exercise of those powers. It ruled on various national fiscal measures concerning, first, the taxation of companies and their shareholders and, second, the taxation of individuals. Some of these measures were held compatible, and others incompatible, with Community law.

With regard to the taxation of companies, first, a number of national measures were held entirely incompatible with the fundamental freedoms in the Treaty. Thus, the Court held in its judgment of 25 October 2007 in Case C-464/05 *Geurts and Vogten* that, in the absence of valid justification, Article 43 EC precludes inheritance tax legislation of a Member State which excludes from the exemption from that tax available for family undertakings those undertakings which employ in the three years preceding the date of death of the deceased at least five workers in another Member State, whereas it grants such an exemption where the workers are employed in a region of the first Member State. The Court considered that the condition requiring the employment of workers in the territory of the Member State can be fulfilled more easily by a company already established there and, consequently, that the legislation in question introduces indirect discrimination between taxpayers on the basis of the place of employment of a certain number of workers in a certain period. The Court then pointed out that, while such treatment might be justified by reasons relating to the survival of small and medium-sized undertakings and the need to maintain the effectiveness of fiscal supervision, the treatment must also be appropriate for achieving those objectives and not go beyond what is necessary to attain them. The Court stated that domestic and foreign family undertakings are in a comparable situation so far as concerns the objective that they should continue to operate and, furthermore, that the effectiveness of fiscal supervision can be maintained by requesting taxpayers to provide the evidence necessary for enjoyment of the tax benefit, instead of categorically refusing to grant it to companies not employing at least five workers in the Member State in question. Consequently, as the legislation in question does not enable the objective pursued to be achieved and is not proportionate, it is contrary to Article 43 EC.

In its judgment of 11 October 2007 in Case C-451/05 *Elisa*, the Court held that Article 56 EC precludes legislation of a Member State which exempts companies established in that State from a tax on immovable property located in its territory, when, in respect of companies established in another Member State, it makes that exemption subject either to the existence of a bilateral convention on combating tax avoidance and tax evasion or to the existence of a requirement in a treaty containing a clause prohibiting discrimination on grounds of nationality to the effect that those companies cannot be more heavily taxed than resident companies. The Court considered that those additional conditions under the national legislation which non-resident companies must meet in order to be able to benefit from the tax exemption make investment in immovable property less attractive for those companies. The legislation therefore restricts the free movement of capital. The Court pointed out that, while the prevention of tax evasion is an overriding requirement of general interest capable of justifying a restriction on freedom of movement, the restriction must be appropriate to the objective pursued and must not go beyond what is necessary to attain that objective. Since the national legislation in the case in point did not allow non-resident companies to show that their objective was not that of tax evasion, the Court held that the Member State could have adopted less restrictive measures and that, consequently, the tax was not justified in light of the objective of combating tax evasion.

In Case C-292/04 *Meilicke and Others* [2007] ECR I-1835, the Court held that a Member State is not to limit the right to a tax credit to dividends of capital companies established in that State. Referring to its case-law clarifying the requirements arising from the principle of free movement of capital in relation to dividends received by residents from non-resident companies, and in particular to Case C-35/98 *Verkooijen* [2000] ECR I-4071 and Case C-319/02 *Manninen* [2004] ECR I-7477, the Court held that German tax legislation restricted the free movement of capital. It stated that the tax credit under the national legislation was designed to prevent the double taxation of companies' profits distributed in the form of dividends. It then observed that the legislation, by limiting the tax credit to dividends paid by companies established in Germany, disadvantaged persons who were fully taxable in Germany for income tax purposes and received dividends from companies established in other Member States. Such persons were not entitled to set off against their tax the corporation tax payable by those companies in their State of establishment. Furthermore, the legislation constituted for those companies an obstacle to the raising of capital in Germany. The Court rejected the argument that the legislation was justified by the need to safeguard the cohesion of the national tax system. It observed that it would be sufficient, and would not threaten the cohesion of the national tax system, to grant to a taxpayer holding shares in a company established in another Member State a tax credit calculated by reference to the corporation tax payable by that company in that latter Member State. Such a solution would constitute a measure less restrictive of the free movement of capital. Finally, the Court held that it was not appropriate to limit the temporal effects of its judgment, having first pointed out, in particular, that the requirements arising from the principle of free movement of capital in relation to dividends received by residents from non-resident companies had already been clarified in *Verkooijen* and that the temporal effects of that judgment had not been limited.

Also, certain measures were declared partly incompatible with the fundamental freedoms in the Treaty, or incompatible subject to a review of proportionality with regard to the legitimate objective pursued. In this connection, Case C-345/04 *Centro Equestro da Lezíria Grande* [2007] ECR I-1425 will be considered first. A company had given a number of artistic presentations in a Member State where it was not resident and had been taxed, by deduction at source, on the income received in that Member State. Since the company was not established in that Member State and was therefore subject to limited tax liability, it was entitled to a refund of the tax deducted, subject to the condition that the operating expenses or business costs having a direct economic connection to the taxed income were greater than half of that income. The Court held that Article 59 of the EC Treaty (now, after amendment, Article 49 EC) does not preclude such national legislation in so far as it makes repayment of corporation tax deducted at source on the income of a taxpayer with restricted tax liability subject to the condition that the operating expenses in respect of which a deduction is claimed for that purpose by that taxpayer have a direct economic connection to the income received from activities pursued in the Member State concerned, on condition that all the costs that are inextricably linked to that activity are considered to have such a direct connection, irrespective of the place and time at which those costs were incurred. By contrast, that article precludes such national legislation in so far as it makes repayment of that tax to the taxpayer subject to the condition that the operating expenses exceed half of the income.

Test Claimants in the Thin Cap Group Litigation concerned legislation of a Member State which restricts the ability of a resident company to deduct, for tax purposes, interest on loan finance granted by a direct or indirect parent company which is resident in another Member State or by a company which is resident in another Member State and is controlled by such a parent company, but does not impose that restriction on loan finance granted by a company which is also resident. After finding that the difference in treatment thereby introduced between resident subsidiaries which is based on the place where their parent company has its seat makes it less attractive for companies established in other Member States to exercise freedom of establishment, the Court pointed out that a national measure restricting freedom of establishment may nevertheless be justified where it specifically targets wholly artificial arrangements which do not reflect economic reality and are designed to circumvent a Member State's legislation. According to the Court, this type of conduct is such as to undermine the right of the Member States to exercise their tax jurisdiction in relation to the activities carried out in their territory and thus to jeopardise a balanced allocation between Member States of the power to impose taxes. The Court then held that, by preventing the practice of thin capitalisation, legislation of the kind in question is appropriate for attaining that objective, but it did not rule on whether the measure at issue is in fact proportionate, referring this matter to the national court. It stated, however, that the national legislation must be considered proportionate if, first, the taxpayer is able to produce, if appropriate and without being subject to undue administrative constraints, evidence as to the commercial justification for the transaction in question, thus enabling consideration of objective and verifiable elements for the purpose of identifying the existence of a purely artificial arrangement entered into for tax reasons alone and, second, the reclassification of interest as a distribution is limited to the proportion of the interest that exceeds what would have been agreed on an arm's-length basis.

Finally, certain national measures, although treating comparable situations differently, were declared compatible with Community law because they were justified by overriding reasons in the public interest. Thus, the judgment of 18 July 2007 in Case C-231/05 *Oy AA*, which follows the line of case-law in *Test Claimants in the Thin Cap Group Litigation,* is worthy of note in that it upholds arguments in justification based on the risk of tax avoidance. The case concerned legislation of a Member State whereby a subsidiary established in that Member State could deduct from its taxable income an intra-group financial transfer in favour of its parent company only if the latter was established in that same Member State. After observing that such legislation introduces a difference in treatment between subsidiaries established in the same Member State according to whether or not their parent company has its corporate seat in that State, a difference which restricts the freedom of establishment, the Court held that the restriction was justified by the need to safeguard the balanced allocation of the power to tax between the Member States in combination with the need to prevent tax avoidance. Taken together, these considerations constitute legitimate objectives compatible with the EC Treaty and justified by overriding reasons in the public interest. According to the Court, to accept that an intra-group cross-border transfer could be deducted would allow groups of companies to choose freely the Member State in which the profits of the subsidiary are to be taxed, by removing them from the basis of assessment of the latter and, where that transfer is regarded as taxable income in the Member State of the parent company transferee, incorporating them in the basis of assessment of the parent company; this would

undermine the system of the allocation of the power to tax between Member States. Furthermore, the possibility of transferring the taxable income of a subsidiary to a parent company with its establishment in another Member State carries the risk that, by means of purely artificial arrangements, income transfers may be organised within a group of companies towards companies in Member States applying the lowest rates of taxation. Finally, the Court held that, even if such legislation is not specifically designed to exclude purely artificial arrangements from the tax advantage it confers, it may be regarded as proportionate to the above objectives, taken as a whole, since extending the tax advantage to cross-border situations would allow groups of companies to choose freely the Member State in which their profits are to be taxed, to the detriment of the right of the Member State where the subsidiary is located to tax profits generated by activities carried out on its territory.

In the field of taxation of individuals, a number of national measures were declared incompatible with the fundamental freedoms in the Treaty because they treated identical situations differently, without valid justification. Thus, in Case C-329/05 *Meindl* [2007] ECR I-1113 the Court ruled that a resident taxpayer cannot be refused, by the Member State of his residence, joint assessment of income tax with his spouse from whom he is not separated and who lives in another Member State on the ground that that spouse received in that Member State both more than 10 % of the household's income and more than a certain ceiling, where the income received by that spouse in the second Member State is not subject there to income tax. Such a taxpayer is treated differently although he is objectively in the same situation as a resident taxpayer whose spouse is resident in the same Member State and receives there only income not subject to tax. The Court also found that the State of residence of such a taxpayer is the only State which can take account of the taxpayer's personal and family circumstances, since he is not only resident in that State but, additionally, receives the entire taxable income of the household there. Thus, in the absence of justification, the fact that that taxpayer is not in any way entitled, in connection with joint assessment, to have his personal and family circumstances taken into account, but on the contrary is subject to the tax applicable to unmarried persons, despite being married, constitutes discrimination prohibited by the principle of freedom of establishment.

The judgment in Case C-383/05 *Talotta* [2007] ECR I-2555 provides a further example of a decision declaring a measure relating to income tax incompatible with the EC Treaty because it treats differently resident and non-resident taxpayers who are in objectively comparable situations. The legislation in question provided that, in the absence of evidence, the taxable non-employment income of a resident taxpayer was established by means of a comparison with that of other taxpayers, whereas that of a non-resident taxpayer was determined by reference to a minimum tax base. The Court held that such a difference in treatment constitutes indirect discrimination on grounds of nationality, contrary to the freedom of establishment, since, first, the income received by a resident taxpayer and by a non-resident taxpayer in the context of a self-employed activity in the territory of the Member State concerned are in the same category of income, that is to say, income arising from self-employed activity carried out in the territory of the Member State and, second, that treatment is liable to operate mainly to the detriment of nationals of other Member States, since non-residents are in the majority of cases foreign nationals. The fact that the use of minimum tax bases may often be favourable to non-resident

taxpayers is immaterial in this regard. The Court then explained that, while the need to ensure the effectiveness of fiscal supervision constitutes an overriding reason in the public interest, it cannot justify this indirect discrimination, since the same practical difficulties exist for the fiscal supervision of residents and there are other mechanisms enabling the exchange of tax-related information between Member States.

Finally, in Case C-150/04 *Commission* v *Denmark* [2007] ECR I-1169 the Court upheld an application for failure to fulfil obligations brought by the Commission against the Kingdom of Denmark, declaring that Articles 39 EC, 43 EC and 49 EC were infringed by legislation permitting taxpayers to deduct or exclude from their taxable income contributions paid to pension schemes in so far as the pension contract was concluded with an institution established on national territory, while excluding any tax advantage for contracts entered into with pension institutions established in other Member States. The Court found that such legislation was liable to deter the freedom of pension institutions in other Member States to provide assurance services and also the freedom of establishment and freedom of movement of workers who originated from or who had worked in another Member State and had already entered into a contract in respect of a pension scheme there. The Court rejected the arguments relating to the need to maintain effective fiscal supervision and to prevent tax avoidance, holding that less restrictive means of achieving those two objectives existed. Nor was a justification relating to the cohesion of the tax system upheld, in the absence of proof of a direct link requiring preservation between a tax advantage and a corresponding disadvantage. The factor liable adversely to affect that cohesion was to be found in the transfer of the residence of the taxpayer between the time of payment of contributions and that of payment of the corresponding benefits, and less in the fact that the pension institution concerned was in another Member State.

Visas, asylum and immigration

In Case C-77/05 *United Kingdom* v *Council* and Case C-137/05 *United Kingdom* v *Council* (judgments of 18 December 2007), the Court had to interpret the Schengen Protocol ([18]) in relation to the adoption of Regulations No 2007/2004 ([19]) and No 2252/2004 ([20]). The United Kingdom of Great Britain and Northern Ireland, which had been excluded by the Council from participating in the adoption of those regulations, sought their annulment, arguing that its exclusion infringed the Schengen Protocol.

The Court held that the Schengen Protocol had been applied correctly and that Article 5(1) of the protocol must be interpreted as meaning that the participation of a Member State in the adoption of a measure pursuant to that article is conceivable only to the extent that that State has been authorised by the Council to accept the area of the Schengen

([18]) Protocol integrating the Schengen *acquis* into the framework of the European Union, annexed to the EU Treaty and the EC Treaty by the Treaty of Amsterdam.

([19]) Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ 2004 L 349, p. 1).

([20]) Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States (OJ 2004 L 385, p. 1).

acquis which is the context of the measure or of which it is a development, which was not the position in the case in point. According to the Court's reasoning, the interpretation put forward by the United Kingdom would have the consequence of depriving Article 4 of the Schengen Protocol of all effectiveness, in that Ireland and the United Kingdom could then take part in all proposals and initiatives to build upon the Schengen *acquis* under Article 5(1) of the protocol even though they had not accepted the relevant provisions of that *acquis* or had not been authorised to take part in them.

Competition rules

In the sphere of competition there are three judgments to which particular attention will be paid. First to be noted is Case C-280/06 *Autorità garante della Concorrenza e del Mercato* (judgment of 11 December 2007), concerning the criteria for attribution of liability for infringement of the competition rules where one undertaking succeeds another and both are subject to the control of the same public authority. In that judgment, the Court first of all observed that when an entity infringes competition rules, it falls, according to the principle of personal responsibility, to that entity to answer for that infringement. When the entity having committed an infringement of the competition rules is subject to a legal or organisational change, this change does not necessarily create a new undertaking free of liability for the conduct of its predecessor that infringed the competition rules if, from an economic point of view, the two are identical. The Court made it clear that where two entities constitute one economic entity, the fact that the entity having committed the infringement still exists does not as such preclude the imposition of a penalty on the entity to which its economic activities were transferred. Last, the Court emphasised that applying penalties in this way is permissible, particularly where those entities have been subject to control by the same person and have, given the close economic and organisational links between them, carried out, in all material respects, the same commercial instructions. The Court therefore held that in the case of entities answering to the same public authority, where conduct amounting to one and the same infringement of the competition rules was adopted by one entity and subsequently continued until it ceased by another entity which succeeded the first, which has not ceased to exist, that second entity may be penalised for that infringement in its entirety if it is established that those two entities were subject to the control of the said authority.

Second, attention will be given to Case C-95/04 P *British Airways* v *Commission* [2007] ECR I-2331 in which the Court explained the system of bonuses and discounts granted by an undertaking in a dominant position. The Court held that, in determining whether, in the case of an undertaking in a dominant position, a system of discounts or bonuses which constitute neither quantity discounts or bonuses nor fidelity discounts or bonuses, constitutes an abuse, it is necessary to consider all the circumstances, particularly the criteria and rules governing the grant of those discounts or bonuses. It first has to be determined whether those discounts or bonuses can produce an exclusionary effect, that is to say, whether they are capable, firstly, of making market entry very difficult or impossible for competitors of the undertaking in a dominant position and, secondly, of making it more difficult or impossible for its co-contractors to choose between various sources of supply or commercial partners. It then needs to be examined whether there is an objective economic justification for the discounts and bonuses granted. In addition, the Court

specified the conditions for applying the prohibition of discrimination laid down in subparagraph (c) of the second paragraph of Article 82 EC to the bonuses and discounts granted by an undertaking in a dominant position, stressing that it must be found not only that the behaviour of that undertaking on a market is discriminatory, but also that it tends to distort the competitive relationship between the co-contractors.

Lastly, in Case C-202/06 P *Cementbouw Handel & Industrie* v *Commission* (judgment of 18 December 2007), the Court examined the effect of commitments proposed by the parties on the Commission's competence in relation to concentrations. The Court noted that Regulation No 4064/89 ([21]) on the control of concentrations is based on the principle of a clear division of powers between the national and Community supervisory authorities. That division reflects, in particular, a concern for legal certainty, which means that it must be possible to identify in a foreseeable manner the authority competent to examine a given concentration. For that reason, the Community legislature has laid down criteria that are both precise and objective allowing the determination of whether a concentration has the economic size necessary for it to have a 'Community dimension' and, accordingly, to fall within the exclusive competence of the Commission. In addition, the need for speed, which characterises the general scheme of Regulation No 4064/89 and which requires the Commission to comply with strict time limits for the adoption of the final decision, means that the Commission's competence cannot be challenged at any time or be in a state of constant flux. The Court held, therefore, that while the Commission loses its competence to examine a concentration where the undertakings concerned completely abandon the proposed concentration, the position is otherwise where the parties do no more than propose partial amendments. Proposals of that kind could not have the effect of requiring the Commission to re-examine its competence without allowing the undertakings concerned significantly to disturb the course of the proceedings and the effectiveness of the control which the legislature sought to put in place. The commitments proposed or adopted by undertakings are therefore so many matters which the Commission must take into account in its examination of the substantive question, that is to say, that of the compatibility or incompatibility of the concentration with the common market, but they cannot strip the Commission of its competence, since that is a matter which will have been determined in the first phase of the proceedings. It follows that the competence of the Commission to make findings in relation to a concentration must be established, as regards the whole of the proceedings, at a fixed time, which must necessarily be closely related to the notification of the concentration.

Taxation

In this sphere, three cases relating to value added tax ('VAT') call for particular attention.

In Case C-284/04 *T-Mobile Austria and Others* (judgment of 26 June 2007) and Case C-369/04 *Hutchison 3G and Others* (judgment of 26 June 2007), the Court had occasion to define the ambit of the term 'economic activities' within the meaning of Article 4(2) of the Sixth

([21]) Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ 1989 L 180, p. 1), as amended by Council Regulation (EC) No 1310/97 of 30 June 1997 (OJ 1997 L 180, p. 1).

Directive 77/388 ([22]). Those two cases concerned the allocation, by auction by the national regulatory authority responsible for spectrum assignment, of rights such as rights to use frequencies in the electromagnetic spectrum, with the aim of providing the public with mobile telecommunications services. The Court considered that the grant of such rights must be regarded as a necessary precondition for access to the mobile telecommunications market, and not as participation in that market by the competent national authority. Only the operators, who are the holders of the rights granted, operate on the market by exploiting the property in question for the purpose of obtaining income therefrom on a continuing basis, which the competent authorities do not. The fact that the grant of the frequency use rights at issue gives rise to the payment of fees cannot alter that reasoning. In consequence, such a grant does not constitute an economic activity within the meaning of Article 4(2) and does not, therefore, fall within the scope of Directive 77/388.

In Case C-73/06 *Planzer Luxembourg* (judgment of 28 June 2007), the Court considered the conditions and detailed rules for refund of VAT such as those laid down by the Eighth Directive 79/1072 ([23]) and by Thirteenth Directive 86/560 ([24]). This case arose from the refusal of the tax authorities of one Member State to refund to a taxable person having its registered office in another Member State the VAT paid by that person on goods acquired in the first Member State for its taxable transactions, on the ground that there were doubts concerning the actual place from which the business of the taxable person concerned was managed — in the Member State of its registered office or from the parent company established outside Community territory — even though the administration of the Member State of the taxable person's registered office had issued a certificate concerning that person's liability to VAT in that State. First of all, the Court confirmed that a certificate in accordance with the model in Annex B to the Eighth Directive does, as a rule, allow the presumption not only that the person concerned is subject to VAT in the Member State of issue, but also that he is established in that State in one way or another, which as a rule binds in fact and law the authorities of the Member State in which refund is sought. Nevertheless, where they have doubts as to the economic reality of the establishment whose address is given in the certificate issued, the authorities concerned may satisfy themselves of that reality by having recourse to the administrative measures made available for that purpose by Community legislation and, if necessary, refuse the refund applied for by the taxable person, without prejudice to any possible legal action by the latter. The Court then went on to state that a company's place of business for the purposes of Article 1(1) of the Thirteenth Directive is the place where the essential decisions concerning its general management are taken and where the functions of its central administration are exercised. Determination of that place is based on a series of factors, foremost amongst which are its registered office, the place of its central administration, the place where its directors meet and the place, usually identical, where the general policy

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

([23]) Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country (OJ 1979 L 331, p. 11).

([24]) Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in Community territory (OJ 1986 L 326, p. 40).

of that company is determined. Other factors, such as the place of residence of the main directors, the place where general meetings are held, the place where administrative and accounting documents are kept, and the place where the company's financial, and particularly banking, transactions mainly take place, may also need to be taken into account. So, a fictitious presence, such as that of a 'letter- box' or 'brass-plate' company, cannot be described as a place of business for the purposes of Article 1(1) of the Thirteenth Directive.

Approximation and harmonisation of laws

As in the past, this field has yielded copious decisions, certain among which call for particular mention.

In Case C-470/03 *AGM-COS.MET* (judgment of 17 April 2007), the question before the Court was whether the conduct of an official who, in public statements, warned against the unreliability of certain vehicle lifts, could be attributed to the State. The Court ruled that an official's statements which, by reason of their form and circumstances, give the persons to whom they are addressed the impression that they are official positions taken by the State, not personal opinions of the official, are attributable to the State. The decisive factor is whether the persons to whom those statements are addressed can reasonably suppose, in the given context, that they are positions taken by the official with the authority of his office. In this case, statements by an official describing machinery certified as conforming to Directive 98/37 ([25]) as contrary to the relevant harmonised standard and dangerous are capable of hindering, at least indirectly and potentially, the placing on the market of such machinery and cannot be justified either on the basis of the objective of protection of health or on the basis of the freedom of expression of officials. Article 4(1) of Directive 98/37 must be interpreted as meaning that, first, it confers rights on individuals and, second, it leaves the Member States no discretion in this case as regards machinery that complies with the directive or is presumed to do so. Failure to comply with that provision as a result of statements made by an official, assuming that they are attributable to the Member State, constitutes a sufficiently serious breach of Community law for the Member State to incur liability.

Case C-305/05 *Ordre des barreaux francophones et germanophone and Others* (judgment of 26 June 2007) raised the question whether the imposition on lawyers of obligations of information and of cooperation with the authorities responsible for combating money laundering, laid down in Article 6(1) of Directive 91/308 ([26]), when they act in certain transactions of a financial nature not linked to judicial proceedings, infringes the right to a fair trial.

The Court ruled that there was, in those circumstances, no breach of the right to a fair trial, recalling first that the obligations of information and cooperation apply to lawyers only in so far as they advise their client in the preparation or execution of certain transactions,

([25]) Directive 98/37/EC of the European Parliament and of the Council of 22 June 1998 on the approximation of the laws of the Member States relating to machinery (OJ 1998 L 207, p. 1).

([26]) Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (OJ 1991 L 166, p. 77).

essentially of a financial nature or concerning real estate, or when they act for and on behalf of their client in any financial or real estate transaction. As a general rule, the nature of such activities is such that they take place in a context with no link to judicial proceedings and, consequently, outside the scope of the right to a fair trial.

As soon as a lawyer is called upon for assistance in defending or representing a client before the courts, or for advice as to the manner of instituting or avoiding judicial proceedings, that lawyer is exempt from the obligations of information and cooperation, regardless of whether the information has been received or obtained before, during or after the proceedings. An exemption of that kind safeguards the client's right to a fair trial.

In Joined Cases C-439/05 P and C-454/05 P *Land Oberösterreich* v *Commission* (judgment of 13 September 2007), the Commission had rejected the Republic of Austria's request for derogation from harmonisation measures, notified to it on the basis of Article 95(5) EC, and concerning a draft law seeking a derogation from the provisions of Directive 2001/18 ([27]) by prohibiting genetically modified organisms in the *Land* Oberösterreich. In support of their appeal, when the Court of First Instance had dismissed the application for annulment of the Commission's decision, the appellants argued, first, infringement of the right to be heard and, second, infringement of Article 95(5) EC.

It is not apparent from the wording of that article that the Commission is required to hear the notifying Member State before it takes its decision to approve or reject the national provisions in question. The Community legislature merely laid down the conditions to be fulfilled in order to obtain a Commission decision, the period within which the Commission must issue its decision to approve or reject and possible extensions to that period.

The procedure is initiated not by a Community institution or a national body but by a Member State, the Commission's decision being taken only in response to that initiative. In its request, the Member State is at liberty to comment on the national provisions it asks to have adopted, as is quite clear from Article 95(5) EC, which requires the Member State to state the grounds on which its request is based.

Further, the Court stated that the introduction of provisions of national law derogating from a harmonisation measure must be based on new scientific evidence relating to the protection of the environment or of the working environment, made necessary by reason of a problem specific to the Member State concerned arising after the adoption of the harmonisation measure, and that the proposed provisions as well as the grounds for introducing them must be notified to the Commission.

In Case C-429/05 *Rampion and Godard* (judgment of 4 October 2007), concerning the protection of consumers in the sphere of consumer credit and the consumer's right to

([27]) Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC (OJ 2001 L 106, p. 1).

pursue remedies against the lender, the Court held that Directive 87/102 ([28]) applies both to credit designed to finance a single transaction and to a credit facility allowing the consumer to use the credit granted on a number of occasions. Moreover, the Court decided that on a proper construction of Articles 11 and 14 it is contrary to those provisions for the right to pursue remedies, provided for in Article 11(2) of that directive and which the consumer enjoys against the grantor of credit, to be made subject to the condition that the prior offer of credit should indicate the goods or services financed.

In Case C-457/05 *Schutzverband der Spirituosen-Industrie* (judgment of 4 October 2007), the Court held that, having regard to the general scheme and purpose of Directive 75/106 ([29]) and the principle of the free movement of goods guaranteed by Article 28 EC, it is contrary to that provision for a Member State to prohibit the marketing of pre-packages with a nominal volume of 0.071 litre, not included in the Community range but lawfully manufactured and marketed in another Member State, unless such a prohibition is justified by an overriding requirement, applies without distinction to national and imported products alike, is necessary in order to meet the requirement in question and is proportionate to the objective pursued, and that objective cannot be achieved by measures which are less restrictive of intra-Community trade.

Once again the several directives relating to the award of public procurement contracts have given rise to proceedings.

Case C-295/05 *Asociación Nacional de Empresas Forestale*s (judgment of 19 April 2007) dealt with the question whether a Member State might confer on a public undertaking a legal regime enabling it to carry out operations without being subject to Directives 92/50 ([30]), 93/36 ([31]) and 93/37 ([32]) on the award of public procurement contracts. The particular public undertaking in question enjoys a special status enabling it to carry out a large number of works at the direct demand of the administration, it being a technical service of the administration, so bypassing the award procedures laid down by law, and it has no choice, either as to the acceptance of a demand made by the competent authorities in question, or as to the tariff for its services. The Court ruled that those directives do not preclude a body of legal rules such as that governing that public undertaking which enable the latter, as a public undertaking acting as an instrument and technical service of several public authorities, to execute operations without being subject to the regime laid down by those directives, since, first, the public authorities concerned exercise over that undertaking a control similar to that which they exercise

([28]) Council Directive 87/102/EEC of 22 December 1986 on the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ 1987 L 42, p. 48).

([29]) Council Directive 75/106/EEC of 19 December 1974 on the approximation of the laws of the Member States relating to the making-up by volume of certain prepackaged liquids (OJ 1974 L 42, p. 1).

([30]) Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1).

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

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

over their own departments, and, second, such an undertaking carries out the essential part of its activities with those same authorities.

In Case C-503/04 *Commission* v *Germany* (judgment of 18 July 2007), concerning a contract for waste disposal concluded by the City of Brunswick without following the tendering procedure at Community level and in consequence of the Federal Republic of Germany's failure to comply with a judgment finding that failure to fulfil obligations pursuant to Article 226 EC, the Court ruled that, while the second subparagraph of Article 2(6) of Directive 89/665 ([33]) permits the Member States to preserve the effects of contracts concluded in breach of directives relating to the award of public contracts and thus protects the legitimate expectations of the parties thereto, its effect cannot be, unless the scope of the EC Treaty provisions establishing the internal market is to be reduced, that the contracting authority's conduct vis-à-vis third parties is to be regarded as in conformity with Community law following the conclusion of such contracts. Moreover, that provision relates, as is apparent from its wording, to the compensation which a person harmed by an infringement committed by a contracting authority may obtain from the latter and cannot be regarded also as regulating the relations between a Member State and the Community in the context of Articles 226 EC and 228 EC. Even if it were to be accepted that the principles of legal certainty and of the protection of legitimate expectations, the principle *pacta sunt servanda* and the right to property could be used against the contracting authority by the other party to the contract in the event of rescission, Member States cannot in any event rely thereon to justify the failure to comply with a judgment establishing a failure to fulfil obligations under Article 226 EC and thereby evade their own liability under Community law.

Case C-337/06 *Bayerischer Rundfunk and Others* (judgment of 13 December 2007) dealt with the question whether the German public broadcasting bodies are contracting authorities for the purposes of application of the Community rules on the award of public contracts. Article 1 of Directive 92/50 regards as contracting authorities, inter alia, bodies governed by public law and financed, for the most part, by the State. The Court ruled that there is 'financing, for the most part, by the State' when the activities of public broadcasting bodies such as those at issue in the main proceedings are financed for the most part by a fee payable by persons who possess a receiver, which is imposed, calculated and levied in accordance with the rights and powers of public authority. When the activities of those public broadcasting bodies are financed according to the procedures referred to above, the condition of 'financing … by the State' does not require there to be direct interference by the State or by other public authorities in the awarding, by such bodies, of a contract for the provision of cleaning services. The Court states that only the public contracts having the subject matter specified in Article 1 of the directive, that is to say, procurement contracts which fall within the essential function of broadcasting bodies, namely the creation and production of programmes, are excluded from the scope of that directive. On the other hand, the Community rules apply in full to public contracts for services which have no connection to the activities which form part of the performance of the public-service duties.

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

Trade marks

In this field the Court examined both the regulation establishing the Community trade mark ([34]) and the directive approximating national laws ([35]).

The judgment given in Case C-29/05 P *OHIM* v *Kaul* [2007] ECR I-2213 clarified the conditions in which account may be taken of new facts and evidence when they are submitted in support of an appeal in opposition proceedings. The Court more particularly held that the Board of Appeal of the Office for Harmonization in the Internal Market enjoys discretion for the purposes of deciding, subject to supplying reasons, whether or not to take into account, in order to make the decision which it is called upon to give, facts and evidence adduced by the opponent for the first time in the written pleading lodged in support of its appeal, with the result that, on the one hand, the Board is not necessarily bound to take into consideration such facts and evidence and, on the other, their being taken into consideration cannot automatically be excluded. Article 59 of Regulation No 40/94, which lays down the conditions for bringing an appeal before a Board of Appeal, cannot therefore be interpreted as starting a new period for the person bringing such an appeal in which to submit facts and evidence in support of its opposition.

In Case C-321/03 *Dyson* [2007] ECR I-687 the Court, considering what signs may constitute a trade mark, held that the subject matter of an application for registration of a trade mark, which covers all the conceivable shapes of a transparent bin or collection chamber forming part of the external surface of a vacuum cleaner, is not a 'sign' within the meaning of Article 2 of Directive 89/104 and is not therefore capable of constituting a trade mark within the meaning of that provision. The subject matter of such an application which is, in actual fact, a mere property of the product concerned is capable of taking on a multitude of different appearances and is thus not specific. Given the exclusivity inherent in trade mark rights, the holder of a trade mark relating to such a non-specific subject matter would obtain an unfair competitive advantage, contrary to the purpose pursued by Article 2 of the directive, since it would be entitled to prevent its competitors from marketing vacuum cleaners having any kind of transparent collecting bin on their external surface, irrespective of its shape.

In Case C-49/05 *Adam Opel* [2007] ECR I-1017, the Court observed that, by virtue of Article 5(1) of First Directive 89/104, a registered trade mark confers on its proprietor the exclusive right to prevent all third parties not having his consent from using in the course of trade any sign which is identical with the trade mark in relation to goods which are identical with those for which the trade mark is registered. That enables the trade mark proprietor to protect his specific interests, that is to say, to ensure that the trade mark may fulfil its essential functions, in particular that of guaranteeing to consumers the origin of the goods. Therefore, the affixing by a third party, without authorisation from the trade mark proprietor, of a sign identical to that trade mark on scale models of vehicles bearing that trade mark, in order faithfully to reproduce those vehicles, and the marketing of those scale models, cannot be prohibited unless it affects or is liable to affect the functions of

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

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

that trade mark as a mark registered in respect of toys. As regards the consequences to be drawn from the fact that, first, the Opel logo is also registered for motor vehicles and, second, the mark appears to have a reputation in Germany for that kind of product, the Court pointed out that the trade mark proprietor is entitled to prevent use which, without due cause, takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trade mark as a trade mark registered for motor vehicles.

A decision in the same line of thought was taken in Case C-17/06 *Céline* (judgment of 11 September 2007), with regard to the use of a company name, trade name or shop name identical to an earlier mark in connection with the marketing of goods which are identical to those in relation to which that mark was registered. The Court went on to hold that, by virtue of Article 6(1)(a) of Directive 89/104, the right conferred by the trade mark does not entitle the proprietor to prevent a third party from using his own name or address in the course of trade, provided always that that third party uses it in accordance with honest practices in industrial or commercial matters.

In Case C-246/05 *Häupl* (judgment of 14 June 2007), the Court found it necessary to interpret Articles 10(1) and 12(1) of First Directive 89/104. On being asked to ascertain on what date the registration procedure is to be regarded as completed, that date marking the start of the period of use, the Court ruled that that directive does not determine in an unambiguous manner the beginning of the period of protection, the wording therefore making it possible to adapt that period to the specific features of national procedures. As a result, the 'date of the completion of the registration procedure' within the meaning of Article 10(1) of the directive must be determined in each Member State in accordance with the procedural rules on registration in force in that State. Specifically, that provision defines the start of the period of five years during which the mark must begin to be put to genuine use, save where there exist proper reasons. In this respect, the Court held that, pursuant to Article 12(1) of the directive, obstacles having a direct relationship with a trade mark which make its use impossible or unreasonable and which are independent of the will of the proprietor of that mark constitute 'proper reasons for non-use' of the mark. It is for the national court or tribunal to assess the relevant facts in the main proceedings and to determine whether they render the use of that mark unreasonable.

Economic and monetary policy

In Case C-359/05 *Estager* [2007] ECR I-581, the Court ruled that it is contrary to Regulations No 1103/97 and No 974/98 on the introduction of the euro ([36]) for national legislation to raise the amount of a tax when effecting its conversion into euro, unless such an increase meets the requirements of legal certainty and transparency, thus enabling protection of the confidence of economic agents in the introduction of the euro. This means that the national legislation at issue must make it possible to distinguish clearly the decision of the authorities of the Member State to increase the amount of the tax from the process of conversion of that amount into euro.

([36]) Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro (OJ 1997 L 162, p. 1). Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro (OJ 1998 L 139, p. 1).

Social policy

Among the Court's judgments given in the field of social policy, some cases may be noted that deal with the implementation of the principle of equal treatment and the sphere of workers' rights and their protection.

In respect of the rules of Community law governing equal treatment for men and women as regards employment and working conditions, the Court first of all defined the legal status of pregnant workers in the context of questions referred for a preliminary ruling on the interpretation of certain provisions of Directives 76/207 ([37]) and 92/85 ([38]). So, in Case C-116/06 *Kiiski* (judgment of 20 September 2007), the Court stated that national provisions governing childcare leave which, in so far as they fail to take into account changes affecting the worker concerned as a result of pregnancy during the period of at least 14 weeks preceding and after childbirth, do not allow the person concerned to obtain at her request an alteration of the period of her childcare leave at the time when she claims her rights to maternity leave and thus deprive her of the rights attaching to that maternity leave, are contrary to those provisions of Community law. In Case C-460/06 *Paquay* (judgment of 11 October 2007) the Court held, moreover, that Directive 92/85 prohibits the notification of a decision to dismiss on the grounds of pregnancy and/or of the birth of a child during the period of protection set down in Article 10(1) of that directive and also the taking of preparatory steps for such a decision before the end of that period. Having established that such a decision is contrary both to Articles 2(1) and 5(1) of Directive 76/207, whenever it may be notified, and even if it is notified after the end of the period of protection set down in Article 10 of Directive 92/85, and to Article 10 of Directive 92/85, the Court concluded that the measure chosen by a Member State under Article 6 of Directive 76/207 to sanction the infringement of those provisions must be at least equivalent to the sanction set down in national law implementing Articles 10 and 12 of Directive 92/85.

The Court also developed its case-law relating to the implementation of the principle of equal treatment for men and women in the sphere of pension schemes. Concerning Community pensions, the Court held, in particular, that the use of factors which vary according to sex in order to calculate the number of additional years of pensionable service to be credited in the case of transfer into the Community scheme of pension rights acquired by an official in respect of activity before entering the service of the Communities amounts to discrimination on grounds of sex, not justified by the need to ensure sound financial management of the pension scheme (judgment of 11 September 2007 in Case C-227/04 P *Lindorfer* v *Council*). With regard to equal treatment for men and women in the field of social security, the Court considered that the adoption of rules intended to allow persons of a particular sex, originally discriminated against, to become eligible throughout their retirement for the pension scheme applicable to persons of the other sex on payment of adjustment contributions representing the difference between the contributions paid by

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

([38]) Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (OJ 1992 L 348, p. 1).

the persons originally discriminated against in the period during which the discrimination took place and the higher contributions paid by the other category of persons during the same period, together with interest to compensate for inflation, is not contrary to Directive 79/7 ([39]). In addition, that payment cannot be required to be made as a single sum, where that condition makes the adjustment concerned impossible or excessively difficult (judgment of 21 June 2007 in Joined Cases C-231/06 to C-233/06 *Jonkman*). The Court also observed that where a judgment given by the Court on an order for reference makes it apparent that a provision of national law is incompatible with Community law, the national authorities are bound to take the measures necessary to ensure that Community law is observed, by ensuring in particular that national law is changed so as to comply with Community law as soon as possible and that the rights which individuals derive from Community law are given full effect. Where discrimination infringing Community law has been found, for as long as measures reinstating equal treatment have not been adopted, the national court must set aside any discriminatory provision of national law, without having to request or await its prior removal by the legislature, and apply to members of the disadvantaged group the same arrangements as those enjoyed by the persons in the other category.

Furthermore, the principle of equal pay for male and female workers arose in a judgment (of 6 December 2007 in Case C-300/06 *Voß*) interpreting Article 141 EC as precluding national legislation which, on the one hand, defines overtime for both civil servants working full time and those employed part time as hours worked over and above their normal working hours, and which, on the other hand, remunerates those additional hours at a rate lower than the hourly rate applied to their normal working hours, so that part-time civil servants are less well paid than full-time civil servants in respect of hours which are worked over and above their normal working hours, but which are not sufficient to bring the number of hours worked overall above the level of normal working hours for full-time civil servants, inasmuch as that legislation affects a considerably higher proportion of female than male workers, and as such difference in treatment is not justified by objective factors wholly unrelated to discrimination on grounds of sex.

Equal treatment as regards employment and working conditions, from the aspect this time of the prohibition of discrimination on grounds of age, forms the subject matter of Case C-411/05 *Palacios de la Villa* (judgment of 16 October 2007), in which the central issue was the compatibility with Directive 2000/78 ([40]) of Spanish legislation accepting the validity of compulsory retirement clauses contained in collective agreements stipulating automatic termination of the employment relationship when the worker has reached retirement age, set at 65 by that national law, and has fulfilled the other conditions for the grant of a retirement pension under their contribution regime. The Court considered that such a national measure is not contrary to the prohibition of discrimination on grounds of age, implemented by that directive, provided that that measure is objectively and reasonably justified by a legitimate aim relating to employment policy and the labour

([39]) Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ 1979 L 6, p. 24).

([40]) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

market, and that the means put in place to achieve that aim of public interest do not appear to be inappropriate and unnecessary for the purpose. After holding that the public-interest objective of regulating the labour market for the purpose, in particular, of checking unemployment and encouraging employment must, as a rule, be treated as justifying a difference in treatment on grounds of age, the Court concluded that that measure was appropriate and necessary because it took account of the fact that the persons concerned are entitled to a retirement pension and because management and labour are free to make use, by way of collective agreements, and therefore flexibly, of the compulsory retirement mechanism.

Finally, a question referred for a preliminary ruling by a Spanish court concerning the granting of length-of-service allowances allowed the Court to declare that the concept of 'working conditions', mentioned in Clause 4(1) of the framework agreement on fixed-term work ([41]), the provisions of which, just as those of Directive 1999/70 ([42]) to which that framework agreement is annexed, can apply also to fixed-term employment contracts and relationships concluded with the public authorities and other public-sector bodies, may be the basis for a claim for the grant to a fixed-term worker of a length-of-service allowance reserved under national law solely to permanent staff (judgment of 13 September 2007 in Case C-307/05 *Del Cerro Alonso*). Furthermore, as the Court stated, it is contrary to that same provision to introduce a difference in treatment between fixed-term workers and permanent workers justified solely on the basis that it is provided for by a provision of statute or secondary legislation of a Member State or by a collective agreement concluded between the staff union representatives and the relevant employer.

The meaning of certain provisions of Community law concerning workers' rights and their protection was clarified by the Court in answer to various questions referred for a preliminary ruling. So, in Case C-458/05 *Jouini and Others* (judgment of 13 September 2007), the Court explained the notion of transfer of an undertaking as a result of a legal transfer within the meaning of Directive 2001/23 ([43]), and stated that the latter concerned cases in which some of the administrative personnel and some of the temporary workers are transferred to another temporary employment business in order to carry out the same activities in that business for the same clients and the assets affected by the transfer are sufficient in themselves to allow the services characterising the economic activity in question to be provided without recourse to other significant assets or to other parts of the business, which is a matter for the referring court to establish. Case C-278/05 *Robins and Others* [2007] ECR I-1053 shed light on various problems relating to the protection of employees in the event of the insolvency of their employer, raised by a court of the United Kingdom of Great Britain and Northern Ireland in a reference for a preliminary

([41]) Framework agreement on fixed-term work, concluded on 18 March 1999, which is set out in the Annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

([42]) Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

([43]) Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ 2001 L 82, p. 16).

ruling. Having regard to the considerable latitude enjoyed by the Member States in this sphere, it was held, in respect of Article 8 of Directive 80/987 ([44]), that where the employer is insolvent and the assets of the supplementary company or inter-company pension schemes are insufficient, accrued pension rights need not necessarily be funded by the Member States themselves or be funded in full. Nor did the Court fail to remark that, when such a provision of Community law has not been properly transposed into domestic law, the liability of the Member State concerned is contingent on a finding of manifest and grave disregard by that State for the limits set on its discretion.

Environment

In Case C-342/05 *Commission* v *Finland* (judgment of 14 June 2007) the Court had to consider whether, as the Commission maintained, by authorising wolf hunting the Republic of Finland had failed to fulfil its obligations under Directive 92/43/ ([45]). By virtue of Article 12(1) and of Annex IV(a) to that directive, wolves are one of the animal species in need of strict protection. However, Article 16 of the directive provides for exceptional arrangements derogating from those prohibitions. By virtue of the provisions of domestic law transposing that article, the Finnish authorities have every year issued wolf-hunting permits by way of derogation. The Court noted first of all that it is settled case-law that even if the applicable national legislation is in itself compatible with Community law, a failure to fulfil obligations may arise due to the existence of an administrative practice which infringes that law, provided that that practice is, to some degree, of a consistent and general nature. It then found that Article 16 of the directive, in so far as it provides for an exception, must be interpreted strictly and must impose on the authority taking the decision the burden of proving that the necessary conditions are present for each derogation. In those circumstances, the Member States are required to ensure that all action affecting the protected species is authorised only on the basis of decisions containing a clear and sufficient statement of reasons which refers to the reasons, conditions and requirements laid down in that article. The favourable conservation status of the populations of the species concerned in their natural range constitutes a necessary precondition for the grant of the derogations provided for. The grant of such derogations is possible by way of exception only where it is duly established that they are not such as to worsen the unfavourable conservation status of those populations or to prevent their restoration at a favourable conservation status, the objective referred to in Article 16 of that directive. It is possible that the killing of a limited number of wolves, even if some of them may cause serious damage, may affect that objective. The Court concluded that a Member State which authorises wolf hunting on a preventive basis without its being established that the hunting is such as to prevent serious damage has failed to fulfil its obligations under Directive 92/43.

([44]) Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer (OJ 1980 L 82, p. 16).

([45]) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7).

Judicial cooperation in civil matters

In the sphere of cooperation in civil and judicial matters attention is drawn first of all to the judgment of 27 November 2007 in Case C-435/06 *C*, interpreting for the first time the provisions of Regulation No 2201/2003 ([46]). The Court held that that regulation applies to a single decision ordering the immediate taking into care and placement of a child outside the original home in a foster family when that decision was adopted in the context of rules of public law relating to child protection. Such a decision falls within the scope of the regulation for it relates to 'parental responsibility' and forms part of the concept of 'civil matters', and that latter concept must be interpreted autonomously and may therefore extend to measures which, from the point of view of the legal system of a Member State, fall within the ambit of public law. In addition, the Court considered that harmonised national legislation on the recognition and enforcement of administrative decisions on the taking into care and placement of persons, adopted in the context of Nordic cooperation, may not be applied to a decision to take a child into care that falls within the scope of that regulation. In accordance with Article 59(1) of the regulation, the latter supersedes for the Member States conventions concluded between them and relating to matters governed by it. Cooperation between the Nordic States does not appear amongst the exceptions listed exhaustively in that regulation. The Court also indicated that that interpretation is not invalidated by the Joint Declaration on Nordic Cooperation, annexed to the Treaty concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded ([47]). According to that declaration, in fact, those States which are members of the Nordic Committee for Cooperation and members of the Union have undertaken to continue that cooperation, in compliance with Community law. That cooperation must therefore observe the principles of the Community legal order.

Next to be noted is Case C-386/05 *Color Drack* (judgment of 3 May 2007), in which the Court was led to interpret Article 5(1)(b) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. According to that provision, a defendant may be sued, in matters relating to a contract, in the courts for the place of performance of the obligation in question, it being made clear that, in the case of the sale of goods, that place is, unless otherwise agreed, the place in a Member State where, under the contract, the goods were or ought to have been delivered. The Court stated that that provision is applicable where there are several places of delivery within a single Member State and that, in such a case, the court having jurisdiction to hear all the claims based on the contract for the sale of goods is that for the principal place of delivery, which must be determined on the basis of economic criteria. In the absence of determining factors for establishing the principal

([46]) Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, as amended by Council Regulation (EC) No 2116/2004 of 2 December 2004 (OJ 2004 L 367, p. 1).

([47]) Joint Declaration No 28 on Nordic Cooperation, annexed to the Treaty concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded (OJ 1994 C 241, p. 21, and OJ 1995 L 1, p. 1).

place of delivery, the plaintiff may sue the defendant in the court for the place of delivery of his choice.

Police and judicial cooperation in criminal matters, and combating terrorism

In its judgment of 3 May 2007 in Case C-303/05 *Advocaten voor de Wereld*, the Court found no factor capable of affecting the validity of Council Framework Decision 2002/584/JHA ([48]). The framework decision is not intended to harmonise the substantive criminal law of the Member States: it provides for approximation of the laws and regulations of the Member States with regard to judicial cooperation in criminal matters and its purpose is to introduce a simplified system for the surrender, between national judicial authorities, of convicted persons or suspects for the purpose of enforcing judgments or conducting criminal proceedings. It was not adopted in a manner contrary to Article 34(2) EU, which lists and defines, in general terms, the different types of legal instruments which may be used in the pursuit of the objectives of the Union set out in Title VI of the Treaty on European Union, and cannot be construed as meaning that the approximation of the laws and regulations of the Member States by the adoption of a framework decision cannot relate to areas other than those mentioned in Article 31(1)(e) EU and, in particular, the matter of the European arrest warrant. Nor does Article 34(2) EU establish any order of priority between the different instruments listed. While it is true that the European arrest warrant could equally have been the subject of a convention, it is within the Council's discretion to give preference to the legal instrument of the framework decision in the case where, as here, the conditions governing the adoption of such a measure are satisfied. This conclusion is not invalidated by the fact that the framework decision was to replace from 1 January 2004, solely in relations between Member States, the corresponding provisions of the earlier conventions on extradition. Any other interpretation, unsupported by either Article 34(2) EU or any other provision of the Treaty on European Union, would risk depriving of its essential effectiveness the Council's recognised power to adopt framework decisions in fields previously governed by international conventions. Moreover, the fact that the framework decision dispenses with verification of the requirement of double criminality in respect of certain offences is in keeping with the principle of the legality of criminal offences and penalties and with the principle of equality and non-discrimination.

In Case C-467/05 *Dell'Orto* (judgment of 28 June 2007), the Court was called upon to rule on the concept of victim for the purposes of Council Framework Decision 2001/220/JHA ([49]). It ruled that, in criminal proceedings and, in particular, in enforcement proceedings following a judgment which resulted in a final criminal conviction, the concept of 'victim' for the purposes of that framework decision does not include legal persons who have suffered harm directly caused by acts or omissions violating the criminal law of a Member State, the legislature's object being to limit its scope exclusively to natural persons who are victims of

([48]) Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1).

([49]) Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings (OJ 2001 L 82, p. 1).

harm resulting from a criminal act. This interpretation cannot, according to the Court, be challenged on the ground that it is not in keeping with the provision of Directive 2004/80 ([50]) relating to compensation to crime victims, for even supposing that the provisions of a directive adopted on the basis of the EC Treaty were capable of having any effect on the interpretation of the provisions of a framework decision based on the Treaty on European Union and that the concept of victim for the purposes of the directive could be interpreted to include legal persons; the directive and the framework decision regulate different fields and are not linked in a manner calling for a uniform interpretation of the concept in question.

Several of the Court's judgments relate to the combating of terrorism.

In Case C-229/05 P *PKK and KNK* v *Council* [2007] ECR I-439, in the particular instance of Regulation No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, the Court stressed the requirements linked to the right of individuals to effective judicial protection.

In the context of the implementation of Resolution 1373 (2001) of the United Nations Security Council, the Council of the European Union decided in 2002 to include the Kurdistan Workers' Party (PKK) in a list of terrorist organisations, which led to the freezing of its funds. An action challenging that decision was brought by a first applicant on behalf of the PKK and by a second applicant on behalf of the Kurdistan National Congress (KNK). The Court of First Instance having rejected the action as inadmissible, the two applicants lodged an appeal before the Court of Justice.

The latter held, in particular, that in respect of the abovementioned regulation, it is especially important for judicial protection to be effective because the restrictive measures laid down by that regulation have serious consequences. Not only are all financial transactions and financial services thereby prevented in the case of a person, group or entity covered by the regulation, but also their reputation and political activity are damaged by the fact that they are classified as terrorists.

According to Article 2(3) of Regulation No 2580/2001 ([51]), read in conjunction with Article 1(4) to (6) of Common Position 2001/931/CFSP ([52]), a person, group or entity can be included in the list of persons, groups and entities to whom and to which that regulation applies only if there is certain reliable information, and the persons, groups or entities covered must be precisely identified. In addition, it is made clear that the names of persons, groups or entities can be kept on the list only if the Council reviews their situation periodically. All these matters must be open to judicial review.

The Court concluded therefrom that if the Community legislature takes the view that an entity retains an existence sufficient for it to be subject to the restrictive measures laid down

([50]) Council Directive 2004/80/EC of 29 April 2004 (OJ 2004 L 261, p. 15).

([51]) Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 70).

([52]) Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism (OJ 2001 L 344, p. 93).

by Regulation No 2580/2001, it must be accepted, on grounds of consistency and justice, that that entity continues to have an existence sufficient to contest those measures. The effect of any other conclusion would be that an organisation could be included in the list of terrorist organisations without being able to bring an action challenging its inclusion.

In consequence, the Court set aside the order of the Court of First Instance in so far as it dismissed the application of the appellant acting on behalf of the PKK.

In Case C-354/04 P *Gestoras Pro Amnistía and Others* v *Council* [2007] ECR I-1579 and C-355/04 P *Segi and Others* v *Council* [2007] ECR I-1657, the Court rejected the appeals brought by two organisations seeking damages for the harm allegedly sustained as a result of their inclusion in the list of persons, groups or entities involved in terrorist acts, annexed to a common position of the Council ([53]).

First, the Court observed that, in the framework of Title VI of the Treaty on European Union on police and judicial cooperation in criminal matters, the Community legislature has conferred no jurisdiction on the Court of Justice to entertain any action for damages whatsoever.

Nevertheless, the Court continued, applicants wishing to challenge before the courts the lawfulness of a common position are not deprived of all judicial protection. Article 35(1) EU, in that it does not enable national courts to refer a question to the Court for a preliminary ruling on a common position but only a question concerning decisions or framework decisions, treats as acts capable of being the subject of such a reference for a preliminary ruling all measures adopted by the Council and intended to produce legal effects in relation to third parties. Given that the preliminary ruling procedure is designed to guarantee observance of the law in the interpretation and application of the Treaty, the right to make a reference to the Court for a preliminary ruling must therefore exist in respect of all measures adopted by the Council, whatever their nature or form, which are intended to have legal effects in relation to third parties.

Therefore, a national court hearing a dispute which indirectly raises the issue of the validity or interpretation of a common position adopted on the basis of Title VI of the Treaty on European Union and having serious doubts whether that common position is really intended to produce legal effects in relation to third parties, could ask the Court to give a preliminary ruling. It would then fall to the Court to find, where appropriate, that the common position is intended to produce legal effects in relation to third parties, to accord it its true classification and to give a preliminary ruling.

Finally, the Court found that it is for the courts and tribunals of the Member States to interpret and apply national procedural rules governing the exercise of rights of action in a way that enables natural and legal persons to challenge before the courts the lawfulness of any decision or other national measure relating to the drawing up of an act of the European Union or to its application to them and to seek compensation for any loss suffered.

([53]) Council Common Position 2002/340/CFSP of 2 May 2002 updating Common Position 2001/931/CFSP on the application of specific measures to combat terrorism (OJ 2002 L 116, p. 75).

The Court concluded, therefore, that the appellants had not been deprived of effective judicial protection and that the orders of the Court of First Instance had not prejudiced their right to such protection.

In Case C-117/06 *Möllendorf and Möllendorf-Niehuus* (judgment of 11 October 2007) the Court essentially decided that a contract for the sale of immovable property must not be performed if Community law has, in the meantime, ordered the purchaser's economic resources to be frozen.

Hearing an action challenging the refusal of the Grundbuchamt (the authority responsible for keeping the land register) to make the final registration of a transfer of property, a necessary condition for the purchase of ownership of immovable property in German law, a German court asked the Court whether those provisions of Regulation No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban ([54]) forbid the registration of the transfer of ownership to a purchaser who has, after the conclusion of the contract of sale, been entered in the list of persons associated with Usama bin Laden, the Al-Qaeda network and the Taliban, annexed to that regulation.

The Court replied that they do, finding that in a situation in which both the contract for the sale of immovable property and the agreement on the transfer of ownership of that property have been concluded before the date on which the purchaser is included in the list in Annex I to that regulation, and in which the sale price has also been paid before that date, Article 2(3) of Regulation (No 881/2002 must be interpreted as prohibiting final registration, in performance of that contract, of the transfer of ownership in the land register after that date.

The Court held that that provision applies to any mode of making available an economic resource and therefore also to any act flowing from the execution of a contract imposing mutual obligations and which has been agreed in exchange for payment of pecuniary consideration. Further, Article 9 of that regulation must be understood as meaning that the measures laid down in the regulation, which include the freezing of economic resources, also prohibit the completion of acts which implement contracts concluded before the entry into force of that regulation.

([54]) Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ 2002 L 139, p. 9), as amended by Council Regulation (EC) No 561/2003 of 27 March 2003 (OJ 2003 L 82, p. 1).

B — Composition of the Court of Justice

(Order of precedence as at 7 October 2007)

First row, from left to right:

J. Klučka, President of Chamber; P. Kūris, President of Chamber; J. Kokott, First Advocate General; A. Rosas, President of Chamber; P. Jann, President of Chamber; V. Skouris, President of the Court; C. W. A. Timmermans, President of Chamber; K. Lenaerts, President of Chamber; R. Schintgen, President of Chamber; E. Juhász, President of Chamber.

Second row, from left to right:

G. Arestis, Judge; K. Schiemann, Judge; R. Silva de Lapuerta, Judge; A. Tizzano, Judge; D. Ruiz-Jarabo Colomer, Advocate General; J. N. Cunha Rodrigues, Judge; M. Poiares Maduro, Advocate General; J. Makarczyk, Judge; A. Borg Barthet, Judge.

Third row, from left to right:

P. Mengozzi, Advocate General; L. Bay Larsen, Judge; E. Levits, Judge; J. Malenovský, Judge; M. Ilešič, Judge; U. Lõhmus, Judge; A. Ó Caoimh, Judge; E. Sharpston, Advocate General; P. Lindh, Judge.

Fourth row, from left to right:

R. Grass, Registrar; A. Arabadjiev, Judge; T. von Danwitz, Judge; J. Mazák, Advocate General; Y. Bot, Advocate General; J.-C. Bonichot, Judge; V. Trstenjak, Advocate General; C. Toader, Judge.

1. Members of the Court of Justice

(in order of their entry into office)

Vassilios Skouris

Born 1948; graduated in law from the Free University, Berlin (1970); awarded doctorate in constitutional and administrative law at Hamburg University (1973); Assistant Professor at Hamburg University (1972–77); Professor of Public Law at Bielefeld University (1978); Professor of Public Law at the University of Thessaloniki (1982); Minister for Internal Affairs (in 1989 and 1996); Member of the Administrative Board of the University of Crete (1983–87); Director of the Centre for International and European Economic Law, Thessaloniki (1997–2005); President of the Greek Association for European Law (1992–94); Member of the Greek National Research Committee (1993–95); Member of the Higher Selection Board for Greek Civil Servants (1994–96); Member of the Academic Council of the Academy of European Law, Trier (from 1995); Member of the Administrative Board of the Greek National Judges' College (1995–96); Member of the Scientific Committee of the Ministry of Foreign Affairs (1997–99); President of the Greek Economic and Social Council in 1998; Judge at the Court of Justice since 8 June 1999; President of the Court of Justice since 7 October 2003.

Peter Jann

Born 1935; Doctor of Law of the University of Vienna (1957); appointed Judge and assigned to the Federal Ministry of Justice (1961); Judge in press matters at the Straf-Bezirksgericht, Vienna (1963–66); spokesman of the Federal Ministry of Justice (1966–70) and subsequently appointed to the international affairs department of that ministry; Adviser to the Justice Committee and spokesman at the Parliament (1973–78); appointed as Member of the Constitutional Court (1978); permanent Judge-Rapporteur at that court until the end of 1994; Judge at the Court of Justice since 19 January 1995.

Dámaso Ruiz-Jarabo Colomer

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

Romain Schintgen

Born 1939; university studies in the Faculties of Law and Economics at Montpellier and Paris; Doctor of Laws (1964); Lawyer (1964); Lawyer-advocate (1967); General Administrator at the Ministry of Labour and Social Security; Member (1978–89), then President (1988–89), of the Economic and Social Council; Director of the Société nationale de crédit et d'investissement and of the Société européenne des satellites (until 1989); Member (1993–95), then Chairman of the Board (1995–2004), of the International University Institute of Luxembourg; Lecturer at the University of Luxembourg; Government Representative on the European Social Fund Committee, the Advisory Committee on Freedom of Movement for Workers and the Administrative Board of the European Foundation for the Improvement of Living and Working Conditions (until 1989); Judge at the Court of First Instance from 25 September 1989 to 11 July 1996; Judge at the Court of Justice since 12 July 1996.

Antonio Tizzano

Born 1940; various teaching assignments at Italian universities; Legal Counsel to Italy's Permanent Representation to the European Communities (1984–92); Member of the Bar at the Court of Cassation and other higher courts; Member of the Italian delegation in international negotiations and at intergovernmental conferences including those on the Single European Act and the Maastricht Treaty; various editorial positions; Member of the Independent Group of Experts appointed to examine the finances of the European Commission (1999); Professor of European Law, Director of the Institute of International and European Law (University of Rome); Advocate General at the Court of Justice from 7 October 2000 to 3 May 2006; Judge at the Court of Justice since 4 May 2006.

José Narciso da Cunha Rodrigues

Born 1940; various offices within the judiciary (1964–77); Government assignments to carry out and coordinate studies on reform of the judicial system; Government Agent at the European Commission of Human Rights and the European Court of Human Rights (1980–84); Expert on the Human Rights Steering Committee of the Council of Europe (1980–85); Member of the Review Commission for the Criminal Code and the Code of Criminal Procedure; Attorney General (1984–2000); Member of the Supervisory Committee of the European Union Anti-Fraud Office (OLAF) (1999–2000); Judge at the Court of Justice since 7 October 2000.

Christiaan Willem Anton Timmermans

Born 1941; Legal Secretary at the Court of Justice of the European Communities (1966–69); official of the European Commission (1969–77); Doctor of Laws (University of Leiden); Professor of European Law at the University of Groningen (1977–89); Deputy Justice at Arnhem Court of Appeal; various editorial positions; Deputy Director-General at the Legal Service of the European Commission (1989–2000); Professor of European Law at the University of Amsterdam; Judge at the Court of Justice since 7 October 2000.

Allan Rosas

Born 1948; Doctor of Laws (1977) of the University of Turku (Finland); Professor of Law at the University of Turku (1978–81) and at the Åbo Akademi University (Turku/Åbo) (1981–96); Director of the latter's Institute for Human Rights (1985–95); various international and national academic positions of responsibility and memberships of learned societies; coordinated several international and national research projects and programmes, including in the fields of EU law, international law, humanitarian and human rights law, constitutional law and comparative public administration; represented the Finnish Government as member of, or adviser to, Finnish delegations at various international conferences and meetings; expert functions in relation to Finnish legal life, including in governmental law commissions and committees of the Finnish Parliament, as well as the UN, Unesco, Organisation for Security and Cooperation in Europe/Commission on Security and Cooperation in Europe and the Council of Europe; from 1995 Principal Legal Adviser at the Legal Service of the European Commission, in charge of external relations; from March 2001, Deputy Director-General of the European Commission Legal Service; Judge at the Court of Justice since 17 January 2002.

Rosario Silva de Lapuerta

Born 1954; Bachelor of Laws (Universidad Complutense, Madrid); Abogado del Estado in Malaga; Abogado del Estado at the Legal Service of the Ministry of Transport, Tourism and Communication and, subsequently, at the Legal Service of the Ministry of Foreign Affairs; Head Abogado del Estado of the State Legal Service for Cases before the Court of Justice of the European Communities and Deputy Director-General of the Community and International Legal Assistance Department (Ministry of Justice); Member of the Commission think tank on the future of the Community judicial system; Head of the Spanish delegation in the 'Friends of the Presidency' Group with regard to the reform of the Community judicial system in the Treaty of Nice and of the Council ad hoc working party on the Court of Justice; Professor of Community Law at the Diplomatic School, Madrid; Co-director of the journal *Noticias de la Unión Europea*; Judge at the Court of Justice since 7 October 2003.

Koen Lenaerts

Born 1954; lic. iuris, Ph.D. in Law (Katholieke Universiteit Leuven); Master of Laws, Master in Public Administration (Harvard University); Lecturer (1979–83), subsequently Professor of European Law, Katholieke Universiteit Leuven (since 1983); Legal Secretary at the Court of Justice (1984–85); Professor at the College of Europe, Bruges (1984–89); Member of the Brussels Bar (1986–89); Visiting Professor at the Harvard Law School (1989); Judge at the Court of First Instance of the European Communities from 25 September 1989 to 6 October 2003; Judge at the Court of Justice since 7 October 2003.

Juliane Kokott

Born 1957; Law studies (Universities of Bonn and Geneva); LL.M. (American University/Washington DC); Doctor of Laws (Heidelberg University, 1985; Harvard University, 1990); Visiting Professor at the University of California, Berkeley (1991); Professor of German and foreign public law, international law and European law at the Universities of Augsburg (1992), Heidelberg (1993) and Düsseldorf (1994); Deputy Judge for the Federal Government at the Court of Conciliation and Arbitration of the Organisation for Security and Cooperation in Europe; Deputy Chairperson of the Federal Government's Advisory Council on Global Change (WBGU, 1996); Professor of International Law, International Business Law and European Law at the University of St Gallen (1999); Director of the Institute for European and International Business Law at the University of St Gallen (2000); Deputy Director of the Master of Business Law programme at the University of St Gallen (2001); Advocate General at the Court of Justice since 7 October 2003.

Luís Miguel Poiares Pessoa Maduro

Born 1967; degree in law (University of Lisbon, 1990); Assistant Lecturer (European University Institute, 1991); Doctor of Laws (European University Institute, Florence, 1996); Visiting Professor (London School of Economics; College of Europe, Natolin; Ortega y Gasset Institute, Madrid; Catholic University, Portugal; Institute of European Studies, Macao); Professor (Universidade Nova, Lisbon, 1997); Fulbright Visiting Research Fellow (Harvard University, 1998); co-director of the Academy of International Trade Law; co-editor (Hart Series on European Law and Integration, *European Law Journal*) and member of the editorial board of several law journals; Advocate General at the Court of Justice since 7 October 2003.

Konrad Hermann Theodor Schiemann

Born 1937; Law degrees at Cambridge University; Barrister 1964–80; Queen's Counsel 1980–86; Justice of the High Court of England and Wales 1986–95; Lord Justice of Appeal 1995–2003; Bencher from 1985 and Treasurer in 2003 of the Honourable Society of the Inner Temple; Judge at the Court of Justice since 8 January 2004.

Jerzy Makarczyk

Born 1938; Doctor of Laws (1966); Professor of Public International Law (1974); Senior Visiting Fellow at the University of Oxford (1985); Professor at the International Christian University, Tokyo (1988); author of several works on public international law, European Community law and human rights law; member of several learned societies in the field of international law, European law and human rights law; negotiator for the Polish Government for the withdrawal of Russian troops from Poland; Under-Secretary of State, then Secretary of State for Foreign Affairs (1989–92); Chairman of the Polish delegation to the General Assembly of the United Nations; Judge at the European Court of Human Rights (1992–2002); President of the Institut de droit international (2003); Adviser to the President of the Republic of Poland on foreign policy and human rights (2002–04); Judge at the Court of Justice since 11 May 2004.

Pranas Kūris

Born 1938; graduated in law from the University of Vilnius (1961); Doctorate in legal science, University of Moscow (1965); Doctor in legal science (Dr hab), University of Moscow (1973); Research Assistant at the Institut des hautes études internationales (Director: Professor C. Rousseau), University of Paris (1967–68); Member of the Lithuanian Academy of Sciences (1996); Doctor *honoris causa* of the Law University of Lithuania (2001); various teaching and administrative duties at the University of Vilnius (1961–90); Lecturer, Assistant Professor, Professor of Public International Law, Dean of the Faculty of Law; several governmental posts in the Lithuanian Diplomatic Service and Lithuanian Ministry of Justice; Minister for Justice (1990–91), Member of the State Council (1991), Ambassador of the Republic of Lithuania to Belgium, Luxembourg and the Netherlands (1992–94); Judge at the (former) European Court of Human Rights (June 1994 to November 1998); Judge at the Supreme Court of Lithuania and subsequently President of the Supreme Court (December 1994 to October 1998); Judge at the European Court of Human Rights (from November 1998); has participated in various international conferences; Member of the delegation of the Republic of Lithuania for negotiations with the USSR (1990–92); author of numerous publications (approximately 200); Judge at the Court of Justice since 11 May 2004.

Endre Juhász

Born 1944; graduated in law from the University of Szeged, Hungary (1967); Hungarian Bar Entrance Examinations (1970); postgraduate studies in comparative law, University of Strasbourg, France (1969, 1970, 1971, 1972); Official in the Legal Department of the Ministry of Foreign Trade (1966–74), Director for Legislative Matters (1973–74); First Commercial Secretary at the Hungarian Embassy, Brussels, responsible for European Community issues (1974–79); Director at the Ministry of Foreign Trade (1979–83); First Commercial Secretary, then Commercial Counsellor to the Hungarian Embassy in Washington DC, USA (1983–89); Director-General of the Ministry of Trade and Ministry of International Economic Relations (1989–91); chief negotiator for the Association Agreement between the Republic of Hungary and the European Communities and their Member States (1990–91); Secretary-General of the Ministry of International Economic Relations, Head of the Office of European Affairs (1992); State Secretary at the Ministry of International Economic Relations (1993–94); State Secretary, President of the Office of European Affairs, Ministry of Industry and Trade (1994); Ambassador Extraordinary and Plenipotentiary, Chief of Mission of the Republic of Hungary to the European Union (January 1995 to May 2003); chief negotiator for the accession of the Republic of Hungary to the European Union (July 1998 to April 2003); Minister without portfolio for the coordination of matters of European integration (from May 2003); Judge at the Court of Justice since 11 May 2004.

George Arestis

Born 1945; graduated in law from the University of Athens (1968); MA in Comparative Politics and Government, University of Kent at Canterbury (1970); practice as a lawyer in Cyprus (1972–82); appointed District Court Judge (1982); promoted to the post of President of the District Court (1995); Administrative President of the District Court of Nicosia (1997–2003); Judge at the Supreme Court of Cyprus (2003); Judge at the Court of Justice since 11 May 2004.

Anthony Borg Barthet UOM

Born 1947; Doctorate in Law at the Royal University of Malta in 1973; entered the Maltese Civil Service as Notary to the Government in 1975; Counsel for the Republic in 1978, Senior Counsel for the Republic in 1979, Assistant Attorney General in 1988 and appointed Attorney General by the President of Malta in 1989; part-time lecturer in civil law at the University of Malta (1985–89); Member of the Council of the University of Malta (1998–2004); Member of the Commission for the Administration of Justice (1994–2004); Member of the Board of Governors of the Malta Arbitration Centre (1998–2004); Judge at the Court of Justice since 11 May 2004.

Marko Ilešič

Born 1947; Doctor of Law (University of Ljubljana); specialism comparative law (Universities of Strasbourg and Coimbra); Member of the Bar; Judge at the Labour Court, Ljubljana (1975–86); President of the Sports Tribunal (1978–86); Arbitrator at the Arbitration Court of the Triglav Insurance Company (1990–98); Chairman of the Stock Exchange Appellate Chamber (from 1995); Arbitrator at the Stock Exchange Arbitration Court (from 1998); Arbitrator at the Chamber of Commerce of Yugoslavia (until 1991) and Slovenia (from 1991); Arbitrator at the International Chamber of Commerce in Paris; Judge on the Board of Appeals of UEFA (from 1988) and FIFA (from 2000); President of the Union of Slovenian Lawyers' Associations; Member of the International Law Association, of the International Maritime Committee and of several other international legal societies; Professor of Civil Law, Commercial Law and Private International Law; Dean of the Faculty of Law at the University of Ljubljana; author of numerous legal publications; Judge at the Court of Justice since 11 May 2004.

Jiří Malenovský

Born 1950; Doctor of Law from the Charles University in Prague (1975); senior faculty member (1974–90), Vice-Dean (1989–91) and Head of the Department of International and European Law (1990–92) at Masaryk University, Brno; Judge at the Constitutional Court of Czechoslovakia (1992); Envoy to the Council of Europe (1993–98); President of the Committee of Ministers' Deputies of the Council of Europe (1995); Senior Director at the Ministry of Foreign Affairs (1998–2000); President of the Czech and Slovak branch of the International Law Association (1999–2001); Judge at the Constitutional Court (2000–04); Member of the Legislative Council (1998–2000); Member of the Permanent Court of Arbitration at The Hague (from 2000); Professor of Public International Law at Masaryk University, Brno (2001); Judge at the Court of Justice since 11 May 2004.

Ján Klučka

Born 1951; Doctor of Law from the University of Bratislava (1974); Professor of International Law at Košice University (since 1975); Judge at the Constitutional Court (1993); Member of the Permanent Court of Arbitration at The Hague (1994); Member of the Venice Commission (1994); Chairman of the Slovakian Association of International Law (2002); Judge at the Court of Justice since 11 May 2004.

Uno Lõhmus

Born 1952; Doctor of Law in 1986; Member of the Bar (1977–98); Visiting Professor of Criminal Law at Tartu University; Judge at the European Court of Human Rights (1994–98); Chief Justice of the Supreme Court of Estonia (1998–2004); Member of the Legal Expertise Committee on the Constitution; consultant to the working group drafting the Criminal Code; member of the working group for the drafting of the Code of Criminal Procedure; author of several works on human rights and constitutional law; Judge at the Court of Justice since 11 May 2004.

Egils Levits

Born 1955; graduated in law and in political science from the University of Hamburg; research assistant at the Faculty of Law, University of Kiel; Adviser to the Latvian Parliament on questions of international law, constitutional law and legislative reform; Ambassador of the Republic of Latvia to Germany and Switzerland (1992–93), Austria, Switzerland and Hungary (1994–95); Vice Prime Minister and Minister for Justice, acting Minister for Foreign Affairs (1993–94); Conciliator at the Court of Conciliation and Arbitration within the Organisation for Security and Cooperation in Europe (from 1997); Member of the Permanent Court of Arbitration (from 2001); elected as Judge at the European Court of Human Rights in 1995, re-elected in 1998 and 2001; numerous publications in the spheres of constitutional and administrative law, law reform and European Community law; Judge at the Court of Justice since 11 May 2004.

Aindrias Ó Caoimh

Born 1950; Bachelor in Civil Law (National University of Ireland, University College Dublin, 1971); Barrister (King's Inns, 1972); Diploma in European Law (University College Dublin, 1977); Barrister (Bar of Ireland, 1972–99); Lecturer in European Law (King's Inns, Dublin); Senior Counsel (1994–99); Representative of the Government of Ireland on many occasions before the Court of Justice of the European Communities; Judge at the High Court (from 1999); Bencher of the Honourable Society of King's Inns (since 1999); Vice-President of the Irish Society of European Law; Member of the International Law Association (Irish Branch); son of Judge Andreas O'Keeffe (Aindrias Ó Caoimh), Member of the Court of Justice 1974–85; Judge at the Court of Justice since 13 October 2004.

Lars Bay Larsen

Born 1953; awarded degrees in political science (1976) and law (1983) at the University of Copenhagen; official at the Ministry of Justice (1983–85); Lecturer (1984–91), then Associate Professor (1991–96), in family law at the University of Copenhagen; Head of Section at the Advokatsamfund (Danish Bar Association) (1985–86); Head of Section (1986–91) at the Ministry of Justice; called to the Bar (1991); Head of Division (1991–95), Head of the Police Department (1995–99) and Head of the Law Department (2000–03) at the Ministry of Justice; Representative of the Kingdom of Denmark on the K-4 Committee (1995–2000), the Schengen Central Group (1996–98) and the Europol Management Board (1998–2000); Judge at the Højesteret (Supreme Court) (2003–06); Judge at the Court of Justice since 11 January 2006.

Eleanor Sharpston

Born 1955; studied economics, languages and law at King's College, Cambridge (1973–77); university teaching and research at Corpus Christi College, Oxford (1977–80); called to the Bar (Middle Temple, 1980); Barrister (1980–87 and 1990–2005); Legal Secretary in the Chambers of Advocate General, subsequently Judge, Sir Gordon Slynn (1987–90); Lecturer in EC and comparative law (Director of European Legal Studies) at University College London (1990–92); Lecturer in the Faculty of Law (1992–98), and subsequently Affiliated Lecturer (1998–2005), at the University of Cambridge; Fellow of King's College, Cambridge (since 1992); Senior Research Fellow at the Centre for European Legal Studies of the University of Cambridge (1998–2005); Queen's Counsel (1999); Bencher of Middle Temple (2005); Advocate General at the Court of Justice since 11 January 2006.

Paolo Mengozzi

Born 1938; Professor of International Law and holder of the Jean Monnet Chair of European Community Law at the University of Bologna; Doctor *honoris causa* of the Carlos III University, Madrid; Visiting Professor at the Johns Hopkins University (Bologna Center), the Universities of St Johns (New York), Georgetown, Paris II and Georgia (Athens) and the Institut universitaire international (Luxembourg); coordinator of the European Business Law Pallas Programme of the University of Nijmegen; member of the consultative committee of the Commission of the European Communities on public procurement; Under-Secretary of State for Trade and Industry during the Italian tenure of the Presidency of the Council; member of the working group of the European Community on the World Trade Organisation (WTO) and Director of the 1997 session of the research centre of The Hague Academy of International Law, devoted to the WTO; Judge at the Court of First Instance from 4 March 1998 to 3 May 2006; Advocate General at the Court of Justice since 4 May 2006.

Pernilla Lindh

Born 1945; law graduate of the University of Lund; Legal Secretary and Judge at the District Court, Trollhättan (1971–74); Legal Secretary at the Court of Appeal, Stockholm (1974–75); Judge at the District Court, Stockholm (1975); Adviser on legal and administrative matters to the President of the Court of Appeal, Stockholm (1975–78); Special Adviser at the Domstolverket (National Courts' Administration) (1977); Adviser in the office of the Chancellor of Justice (1979–80); Associate Judge at the Court of Appeal, Stockholm (1980–81); Legal Adviser at the Ministry of Trade (1981–82); Legal Adviser, and subsequently Director and Director-General for Legal Affairs, at the Ministry of Foreign Affairs (1982–95); title of Ambassador in 1992; Vice-President at the Swedish Market Court; responsible for legal and institutional issues at the time of the EEA negotiations (Deputy Chairperson, then Chairperson, of the EFTA Group) and at the time of the negotiations for the accession of the Kingdom of Sweden to the European Union; Judge at the Court of First Instance from 18 January 1995 to 6 October 2006; Judge at the Court of Justice since 7 October 2006.

Yves Bot

Born 1947; Graduate of the Faculty of Law, Rouen; Doctor of Laws (University of Paris II, Panthéon-Assas); Lecturer at the Faculty of Law, Le Mans; Deputy Public Prosecutor, then Senior Deputy Public Prosecutor, at the Public Prosecutor's Office, Le Mans (1974–82); Public Prosecutor at the Regional Court, Dieppe (1982–84); Deputy Public Prosecutor at the Regional Court, Strasbourg (1984–86); Public Prosecutor at the Regional Court, Bastia (1986–88); Advocate General at the Court of Appeal, Caen (1988–91); Public Prosecutor at the Regional Court, Le Mans (1991–93); Special Adviser to the Minister for Justice (1993–95); Public Prosecutor at the Regional Court, Nanterre (1995–2002); Public Prosecutor at the Regional Court, Paris (2002–04); Principal State Prosecutor at the Court of Appeal, Paris (2004–06); Advocate General at the Court of Justice since 7 October 2006.

Ján Mazák

Born 1954; Doctor of Laws (Pavol Jozef Šafárik University, Košice, 1978); Professor of Civil Law (1994) and of Community Law (2004); Head of the Community Law Institute at the Faculty of Law, Košice (2004); Judge at the Krajský súd (Regional Court), Košice (1980); Vice-President (1982) and President (1990) of the Mestský súd (City Court), Košice; Member of the Slovak Bar (1991); Legal Adviser at the Constitutional Court (1993–98); Deputy Minister for Justice (1998–2000); President of the Constitutional Court (2000–06); Member of the Venice Commission (2004); Advocate General at the Court of Justice since 7 October 2006.

Jean-Claude Bonichot

Born 1955; graduated in law at the University of Metz, degree from the Institut d'études politiques, Paris, former student at the École nationale d'administration; rapporteur (1982–85), commissaire du gouvernement (1985–87 and 1992–99), Judge (1999–2000), President of the Sixth Sub-Division of the Judicial Division (2000–06) at the Council of State; Legal Secretary at the Court of Justice (1987–91); Director of the Private Office of the Minister for Labour, Employment and Vocational Training, then Minister for the Civil Service and Modernisation of Administration (1991–92); Head of the Legal Mission of the Council of State at the National Health Insurance Fund for Employed Persons (2001–06); Lecturer at the University of Metz (1988–2000), then at the University of Paris I, Panthéon–Sorbonne (from 2000); author of numerous publications on administrative law, Community law and European human rights law; founder and chairman of the editorial committee of the *Bulletin de jurisprudence de droit de l'urbanisme*, co-founder and member of the editorial committee of the *Bulletin juridique des collectivités locales*; President of the Scientific Council of the Research Group on Institutions and Law governing Regional and Urban Planning and Habitats; Judge at the Court of Justice since 7 October 2006.

Thomas von Danwitz

Born 1962; studied at Bonn, Geneva and Paris; State examination in law (1986 and 1992); Doctor of Laws (University of Bonn, 1988); international diploma in public administration (École nationale d'administration, 1990); teaching authorisation (University of Bonn, 1996); Professor of German public law and European law (1996–2003); Dean of the Faculty of Law of the Ruhr University, Bochum (2000–01); Professor of German public law and European law (University of Cologne, 2003–06); Director of the Institute of Public Law and Administrative Science (2006); Visiting Professor at the Fletcher School of Law and Diplomacy (2000), François Rabelais University, Tours (2001–06), and the University of Paris I, Panthéon-Sorbonne (2005–06); Judge at the Court of Justice since 7 October 2006.

Verica Trstenjak

Born 1962; Judicial service examination (1987); Doctor of Laws of the University of Ljubljana (1995); Professor (since 1996) of theory of law and State (jurisprudence) and of private law; researcher; postgraduate study at the University of Zurich, the Institute of Comparative Law of the University of Vienna, the Max Planck Institute for Private International Law in Hamburg, the Free University of Amsterdam; Visiting Professor at the Universities of Vienna and Freiburg (Germany) and at the Bucerius School of Law in Hamburg; Head of the Legal Service (1994–96) and State Secretary in the Ministry of Science and Technology (1996–2000); Secretary-General of the Government (2000); Member of the Study Group on a European Civil Code since 2003; responsible for a Humboldt research project (Humboldt Foundation); publication of more than 100 legal articles and several books on European and private law; Prize of the Association of Slovene Lawyers 'Lawyer of the Year 2003'; Member of the editorial board of a number of legal periodicals; Secretary-General of the Association of Slovene Lawyers and member of a number of lawyers' associations, including the Gesellschaft für Rechtsvergleichung; Judge at the Court of First Instance from 7 July 2004 to 6 October 2006; Advocate General at the Court of Justice since 7 October 2006.

Alexander Arabadjiev

Born 1949; legal studies (St Kliment Ohridski University, Sofia); Judge at the District Court, Blagoevgrad (1975–83); Judge at the Regional Court, Blagoevgrad (1983–86); Judge at the Supreme Court (1986–91); Judge at the Constitutional Court (1991–2000); Member of the European Commission of Human Rights (1997–99); Member of the European Convention on the Future of Europe (2002–03); Member of the National Assembly (2001–06); Observer at the European Parliament; Judge at the Court of Justice since 12 January 2007.

Camelia Toader

Born 1963; Degree in Law (1986), Doctorate in Law (1997), University of Bucharest; Trainee judge at the Court of First Instance, Buftea (1986–88); Judge at the Court of First Instance, Sector 5, Bucharest (1988–92); Lecturer (1992–2005), then Professor (2005–06), in civil law and European contract law at the University of Bucharest; doctoral studies and research at the Max Planck Institute for Private International Law, Hamburg (between 1992 and 2004); Head of the European Integration Unit at the Ministry of Justice (1997–99); Judge at the High Court of Cassation and Justice (1999–2006); Visiting Professor at the Vienna University of Economics (2000); taught Community law at the National Institute for Magistrates (2003 and 2005–06); Member of the editorial board of several legal journals; Judge at the Court of Justice since 12 January 2007.

Roger Grass

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

2. Changes in the composition of the Court of Justice in 2007

Formal sitting on 12 January 2007

In consequence of the accession of the Republic of Bulgaria and of Romania to the European Union on 1 January 2007, the representatives of the Governments of the Member States of the European Union appointed Mr Alexander Arabadjiev, for the period from 12 January 2007 to 6 October 2012, and Ms Camelia Toader, for the period from 12 January 2007 to 6 October 2009, as Judges at the Court of Justice of the European Communities.

3. Order of precedence

from 1 January to 11 January 2007

V. SKOURIS, President of the Court
P. JANN, President of the First Chamber
C. W. A. TIMMERMANS, President of the Second Chamber
A. ROSAS, President of the Third Chamber
K. LENAERTS, President of the Fourth Chamber
R. SCHINTGEN, President of the Fifth Chamber
J. KOKOTT, First Advocate General
P. KŪRIS, President of the Sixth Chamber
E. JUHÁSZ, President of the Eighth Chamber
J. KLUČKA, President of the Seventh Chamber
D. RUIZ-JARABO COLOMER, Advocate General
A. TIZZANO, Judge
J. N. CUNHA RODRIGUES, Judge
R. SILVA de LAPUERTA, Judge
M. POIARES MADURO, Advocate General
K. SCHIEMANN, Judge
J. MAKARCZYK, Judge
G. ARESTIS, Judge
A. BORG BARTHET, Judge
M. ILEŠIČ, Judge
J. MALENOVSKÝ, Judge
U. LÕHMUS, Judge
E. LEVITS, Judge
A. Ó CAOIMH, Judge
L. BAY LARSEN, Judge
E. SHARPSTON, Advocate General
P. MENGOZZI, Advocate General
P. LINDH, Judge
Y. BOT, Advocate General
J. MAZÁK, Advocate General
J.-C. BONICHOT, Judge
T. von DANWITZ, Judge
V. TRSTENJAK, Advocate General

R. GRASS, Registrar

from 12 January to 12 February 2007

V. SKOURIS, President of the Court
P. JANN, President of the First Chamber
C. W. A. TIMMERMANS, President of the Second Chamber
A. ROSAS, President of the Third Chamber
K. LENAERTS, President of the Fourth Chamber
R. SCHINTGEN, President of the Fifth Chamber
J. KOKOTT, First Advocate General
P. KŪRIS, President of the Sixth Chamber
E. JUHÁSZ, President of the Eighth Chamber
J. KLUČKA, President of the Seventh Chamber
D. RUIZ-JARABO COLOMER, Advocate General
A. TIZZANO, Judge
J. N. CUNHA RODRIGUES, Judge
R. SILVA de LAPUERTA, Judge
M. POIARES MADURO, Advocate General
K. SCHIEMANN, Judge
J. MAKARCZYK, Judge
G. ARESTIS, Judge
A. BORG BARTHET, Judge
M. ILEŠIČ, Judge
J. MALENOVSKÝ, Judge
U. LÕHMUS, Judge
E. LEVITS, Judge
A. Ó CAOIMH, Judge
L. BAY LARSEN, Judge
E. SHARPSTON, Advocate General
P. MENGOZZI, Advocate General
P. LINDH, Judge
Y. BOT, Advocate General
J. MAZÁK, Advocate General
J.-C. BONICHOT, Judge
T. von DANWITZ, Judge
V. TRSTENJAK, Advocate General
A. ARABADJIEV, Judge
C. TOADER, Judge

R. GRASS, Registrar

from 13 February to 7 October 2007

V. SKOURIS, President of the Court
P. JANN, President of the First Chamber
C. W. A. TIMMERMANS, President of the Second Chamber
A. ROSAS, President of the Third Chamber
K. LENAERTS, President of the Fourth Chamber
J. KOKOTT, First Advocate General
R. SCHINTGEN, President of the Fifth Chamber
P. KŪRIS, President of the Sixth Chamber
E. JUHÁSZ, President of the Eighth Chamber
J. KLUČKA, President of the Seventh Chamber
D. RUIZ-JARABO COLOMER, Advocate General
A. TIZZANO, Judge
J. N. CUNHA RODRIGUES, Judge
R. SILVA de LAPUERTA, Judge
M. POIARES MADURO, Advocate General
K. SCHIEMANN, Judge
J. MAKARCZYK, Judge
G. ARESTIS, Judge
A. BORG BARTHET, Judge
M. ILEŠIČ, Judge
J. MALENOVSKÝ, Judge
U. LÕHMUS, Judge
E. LEVITS, Judge
A. Ó CAOIMH, Judge
L. BAY LARSEN, Judge
E. SHARPSTON, Advocate General
P. MENGOZZI, Advocate General
P. LINDH, Judge
Y. BOT, Advocate General
J. MAZÁK, Advocate General
J.-C. BONICHOT, Judge
T. von DANWITZ, Judge
V. TRSTENJAK, Advocate General
A. ARABADJIEV, Judge
C. TOADER, Judge

R. GRASS, Registrar

from 8 October to 31 December 2007

V. SKOURIS, President of the Court
P. JANN, President of the First Chamber
C. W. A. TIMMERMANS, President of the Second Chamber
A. ROSAS, President of the Third Chamber
K. LENAERTS, President of the Fourth Chamber
M. POIARES MADURO, First Advocate General
A. TIZZANO, President of the Fifth Chamber
G. ARESTIS, President of the Eighth Chamber
U. LÕHMUS, President of the Seventh Chamber
L. BAY LARSEN, President of the Sixth Chamber
D. RUIZ-JARABO COLOMER, Advocate General
R. SCHINTGEN, Judge
J. N. CUNHA RODRIGUES, Judge
R. SILVA de LAPUERTA, Judge
J. KOKOTT, Advocate General
K. SCHIEMANN, Judge
J. MAKARCZYK, Judge
P. KŪRIS, Judge
E. JUHÁSZ, Judge
A. BORG BARTHET, Judge
M. ILEŠIČ, Judge
J. MALENOVSKÝ, Judge
J. KLUČKA, Judge
E. LEVITS, Judge
A. Ó CAOIMH, Judge
E. SHARPSTON, Advocate General
P. MENGOZZI, Advocate General
P. LINDH, Judge
Y. BOT, Advocate General
J. MAZÁK, Advocate General
J.-C. BONICHOT, Judge
T. von DANWITZ, Judge
V. TRSTENJAK, Advocate General
A. ARABADJIEV, Judge
C. TOADER, Judge

R. GRASS, Registrar

4. Former Members of the Court of Justice

Massimo Pilotti, Judge (1952–58), President from 1952 to 1958
Petrus Josephus Servatius Serrarens, Judge (1952–58)
Otto Riese, Judge (1952–63)
Louis Delvaux, Judge (1952–67)
Jacques Rueff, Judge (1952–59 and 1960–62)
Charles Léon Hammes, Judge (1952–67), President from 1964 to 1967
Adrianus Van Kleffens, Judge (1952–58)
Maurice Lagrange, Advocate General (1952–64)
Karl Roemer, Advocate General (1953–73)
Rino Rossi, Judge (1958–64)
Andreas Matthias Donner, Judge (1958–79), President from 1958 to 1964
Nicola Catalano, Judge (1958–62)
Alberto Trabucchi, Judge (1962–72), then Advocate General (1973–76)
Robert Lecourt, Judge (1962–76), President from 1967 to 1976
Walter Strauss, Judge (1963–70)
Riccardo Monaco, Judge (1964–76)
Joseph Gand, Advocate General (1964–70)
Josse J. Mertens de Wilmars, Judge (1967–84), President from 1980 to 1984
Pierre Pescatore, Judge (1967–85)
Hans Kutscher, Judge (1970–80), President from 1976 to 1980
Alain Louis Dutheillet de Lamothe, Advocate General (1970–72)
Henri Mayras, Advocate General (1972–81)
Cearbhall O'Dalaigh, Judge (1973–74)
Max Sørensen, Judge (1973–79)
Alexander J. Mackenzie Stuart, Judge (1973–88), President from 1984 to 1988
Jean-Pierre Warner, Advocate General (1973–81)
Gerhard Reischl, Advocate General (1973–81)
Andreas O'Keeffe, Judge (1975–85)
Francesco Capotorti, Judge (1976), then Advocate General (1976–82)
Giacinto Bosco, Judge (1976–88)
Adolphe Touffait, Judge (1976–82)
Thymen Koopmans, Judge (1979–90)
Ole Due, Judge (1979–94), President from 1988 to 1994
Ulrich Everling, Judge (1980–88)
Alexandros Chloros, Judge (1981–82)
Sir Gordon Slynn, Advocate General (1981–88), then Judge (1988–92)
Simone Rozès, Advocate General (1981–84)
Pieter VerLoren van Themaat, Advocate General (1981–86)
Fernand Grévisse, Judge (1981–82 and 1988–94)
Kai Bahlmann, Judge (1982–88)
G. Federico Mancini, Advocate General (1982–88), then Judge (1988–99)
Yves Galmot, Judge (1982–88)
Constantinos Kakouris, Judge (1983–97)

Carl Otto Lenz, Advocate General (1984–97)
Marco Darmon, Advocate General (1984–94)
René Joliet, Judge (1984–95)
Thomas Francis O'Higgins, Judge (1985–91)
Fernand Schockweiler, Judge (1985–96)
Jean Mischo, Advocate General (1986–91 and 1997–2003)
José Carlos De Carvalho Moithinho de Almeida, Judge (1986–2000)
José Luis Da Cruz Vilaça, Advocate General (1986–88)
Gil Carlos Rodríguez Iglesias, Judge (1986–2003), President from 1994 to 2003
Manuel Diez de Velasco, Judge (1988–94)
Manfred Zuleeg, Judge (1988–94)
Walter Van Gerven, Advocate General (1988–94)
Francis Geoffrey Jacobs, Advocate General (1988–2006)
Giuseppe Tesauro, Advocate General (1988–98)
Paul Joan George Kapteyn, Judge (1990–2000)
Claus Christian Gulmann, Advocate General (1991–94), then Judge (1994–2006)
John L. Murray, Judge (1991–99)
David Alexander Ogilvy Edward, Judge (1992–2004)
Antonio Mario La Pergola, Judge (1994 and 1999–2006), Advocate General (1995–99)
Georges Cosmas, Advocate General (1994–2000)
Jean-Pierre Puissochet, Judge (1994–2006)
Philippe Léger, Advocate General (1994–2006)
Günter Hirsch, Judge (1994–2000)
Michael Bendik Elmer, Advocate General (1994–97)
Hans Ragnemalm, Judge (1995–2000)
Leif Sevón, Judge (1995–2002)
Nial Fennelly, Advocate General (1995–2000)
Melchior Wathelet, Judge (1995–2003)
Krateros Ioannou, Judge (1997–99)
Siegbert Alber, Advocate General (1997–2003)
Antonio Saggio, Advocate General (1998–2000)
Fidelma O'Kelly Macken, Judge (1999–2004)
Ninon Colneric, Judge (2000–06)
Stig Von Bahr, Judge (2000–06)
Leendert A. Geelhoed, Advocate General (2000–06)
Christine Stix–Hackl, Advocate General (2000–06)

Presidents

Massimo Pilotti (1952–58)
Andreas Matthias Donner (1958 –64)
Charles Léon Hammes (1964–67)
Robert Lecourt (1967–76)
Hans Kutscher (1976–80)
Josse J. Mertens de Wilmars (1980–84)
Alexander John Mackenzie Stuart (1984–88)

Ole Due (1988–94)
Gil Carlos Rodríguez Iglésias (1994–2003)

Registrars

Albert Van Houtte (1953–82)
Paul Heim (1982–88)
Jean-Guy Giraud (1988–94)

C – Statistics concerning the judicial activity of the Court of Justice

General activity of the Court of Justice

New cases

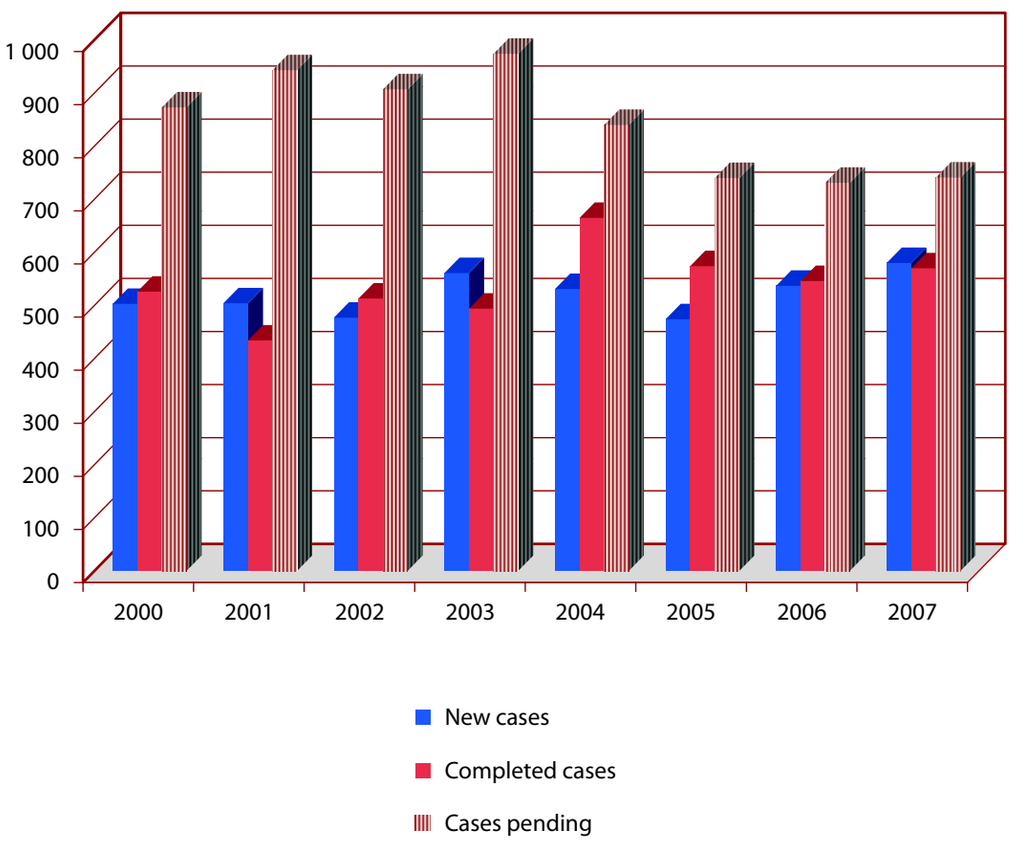
Completed cases

Cases pending as at 31 December

Miscellaneous

General trend in the work of the Court (1952–2007)

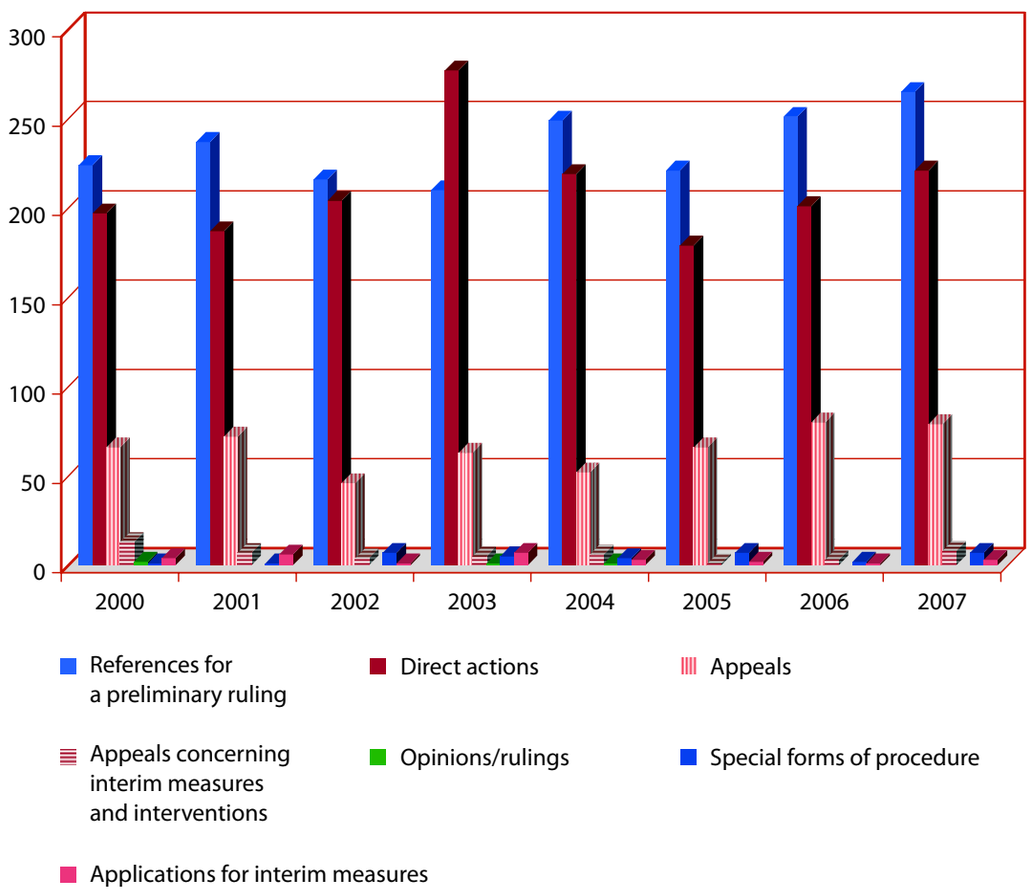
1. *General activity of the Court of Justice* — New cases, completed cases, cases pending (2000–07) ([1])



	2000	2001	2002	2003	2004	2005	2006	2007
New cases	503	504	477	561	531	474	537	580
Completed cases	526	434	513	494	665	574	546	570
Cases pending	873	943	907	974	840	740	731	741

([1]) The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

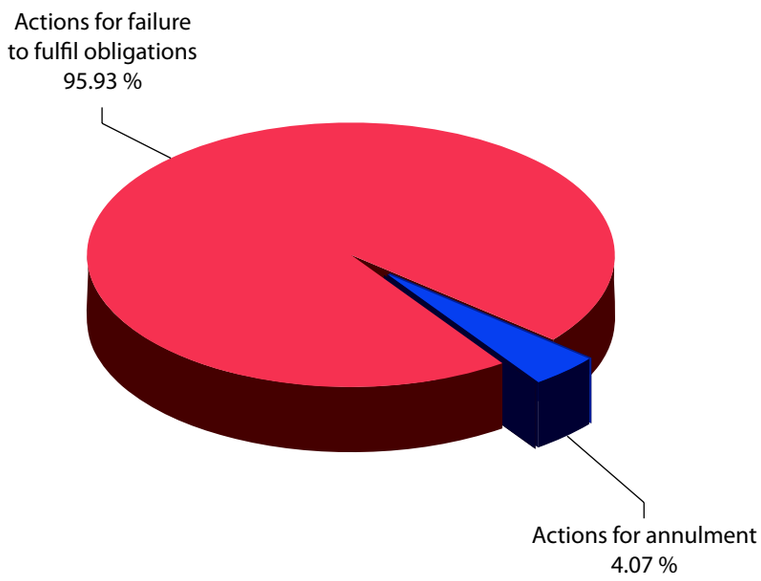
2. *New cases* — Nature of proceedings (2000–07) (1)



	2000	2001	2002	2003	2004	2005	2006	2007
References for a preliminary ruling	224	237	216	210	249	221	251	265
Direct actions	197	187	204	277	219	179	201	221
Appeals	66	72	46	63	52	66	80	79
Appeals concerning interim measures and interventions	13	7	4	5	6	1	3	8
Opinions/rulings	2			1	1			
Applications for interim measures	1	1	7	5	4	7	2	7
Total	**503**	**504**	**477**	**561**	**531**	**474**	**537**	**580**
Applications for interim measures	4	6	1	7	3	2	1	3

(1) The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

3. *New cases* — Direct actions — Type of action (2007) (1)



Actions for annulment	9
Actions for failure to act	
Actions for damages	
Actions for failure to fulfil obligations	212
Total	**221**

(1) The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

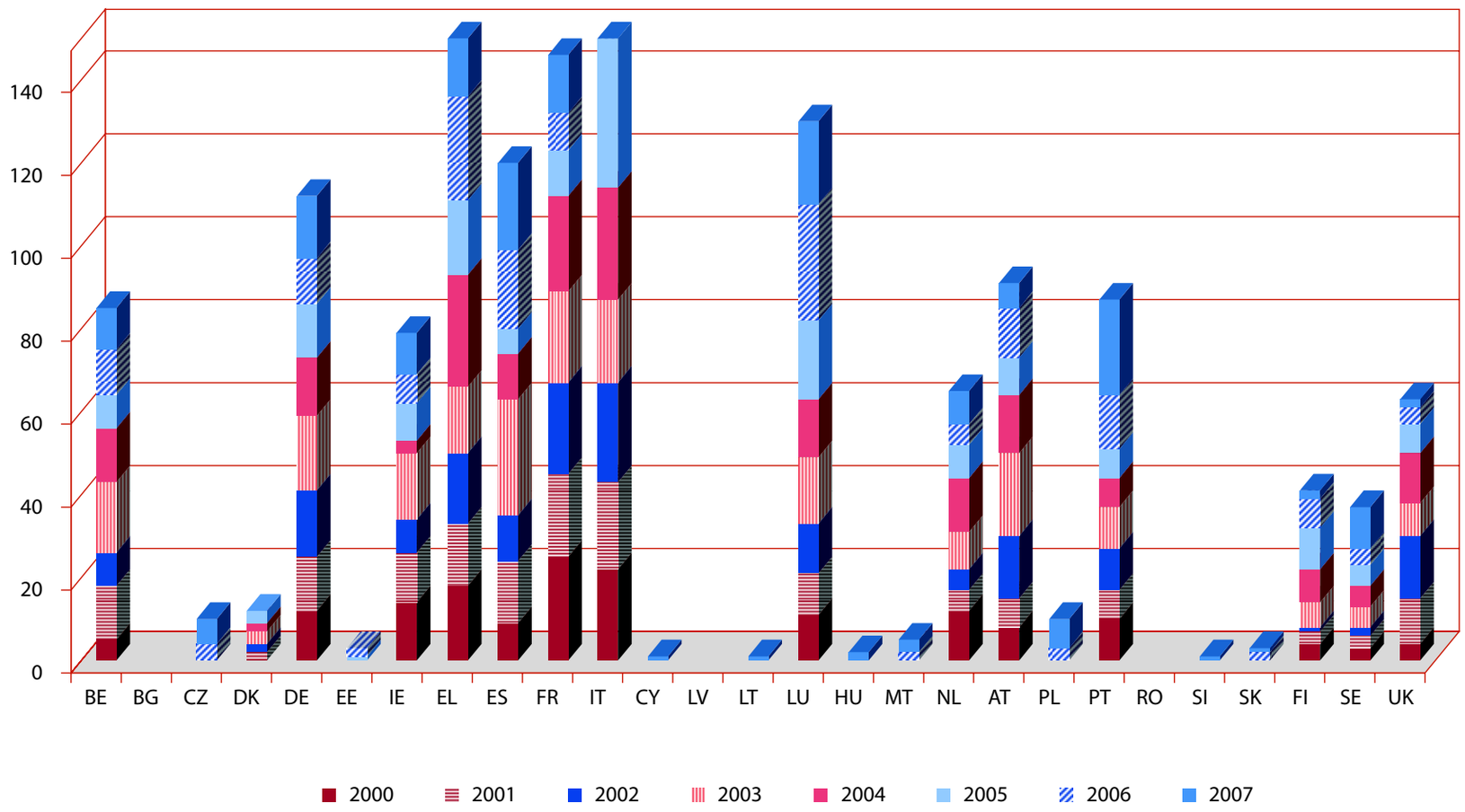
4. *New cases* (1) — Subject- matter of the action (2007) (2)

	Direct actions	References for a preliminary ruling	Appeals	Appeals concerning interim measures and interventions	Total	Special forms of procedure
Agriculture	6	26			32	
Approximation of laws	35	25			60	
Area of freedom, security and justice	22	8			30	
Brussels Convention		3			3	
Common Customs Tariff		7	1		8	
Community own resources	2				2	
Company law	5	8	1		14	
Competition	3	8	20		31	
Customs union		8	2		10	
Economic and monetary policy			1		1	
Energy	1	1			2	
Environment and consumers	38	15	5	2	60	
European citizenship		2			2	
External relations	4	4	2		10	
Fisheries policy	4	1			5	
Free movement of capital	1	6			7	
Free movement of goods	8	6	1		15	
Freedom of establishment	10	14			24	
Freedom of movement for persons	11	17			28	
Freedom to provide services	2	3	1		6	
Industrial policy	19	6			25	
Intellectual property	11	3	14		28	
Justice and home affairs		1			1	
Law governing the institutions	8	1	8	5	22	
Principles of Community law	1	2			3	
Privileges and immunities		2			2	
Regional policy			3		3	
Research, information, education and statistics	1				1	
Social policy	10	32			42	
Social security for migrant workers		2			2	
Staff Regulations			1		1	
State aid	3	4	10	1	18	
Taxation	6	42			48	
Transport	10	5			15	
EC Treaty	221	262	70	8	561	
EU Treaty						
CS Treaty		1			1	
EA Treaty	1		1		2	
Procedure						7
Staff Regulations			9		9	
Others			9		9	7
Overall total	**222**	**263**	**80**	**8**	**573**	**7**

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

(2) The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

5. *New cases* — Actions for failure of a Member State to fulfil its obligations (2000–07) [1]



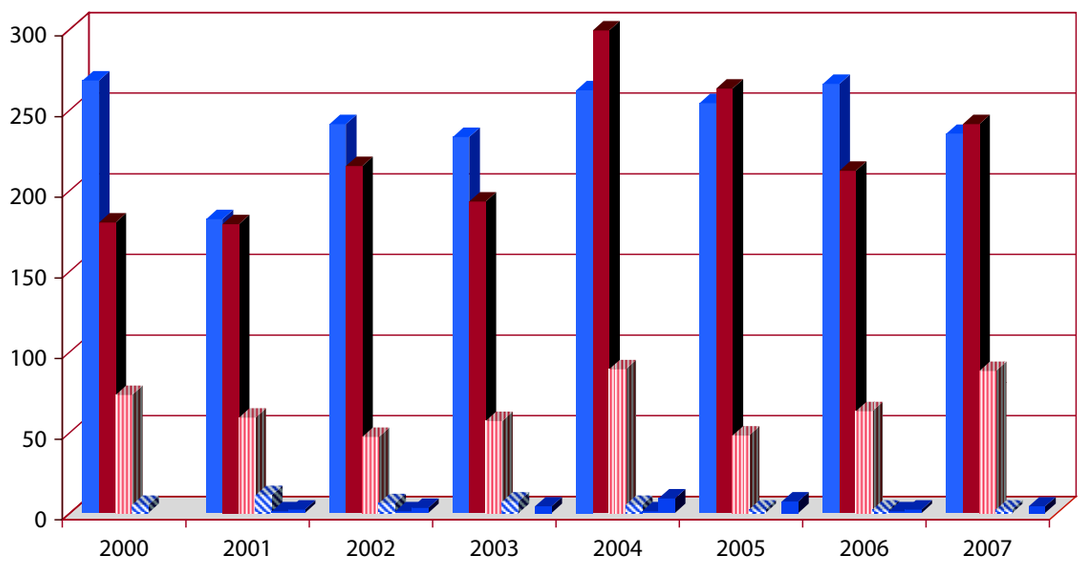
	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	Total
2000	5				12		14	18	9	25	22				11			12	8		10				4	3	4	157
2001	13			2	13		12	15	15	20	21				10			5	7		7				3	3	11	157
2002	8			2	16		8	17	11	22	24				12			5	15		10				1	2	15	168
2003	17			3	18		16	16	28	22	20				16			9	20		10				6	5	8	214
2004	13			2	14		3	27	11	23	27				14			13	14		7				8	5	12	193 ([2])
2005	8			3	13	1	9	18	6	11	36				19			8	9		7				10	5	7	170
2006	11		4		11	2	7	25	19	9	25				28		2	5	12	3	13			2	7	4	4	193
2007	10		6		15		10	26	21	14	23	1		1	20	2	3	8	6	7	23		1	1	2	10	2	212

([1]) The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

The actions covered are actions under Articles 93, 169, 170, 171 and 225 of the EC Treaty (now Articles 88 EC, 226 EC, 227 EC, 228 EC and 298 EC), Articles 141 EA, 142 EA and 143 EA and Article 88 CS.

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

6. *Completed cases* — Nature of proceedings (2000–07) ([1]) ([2])

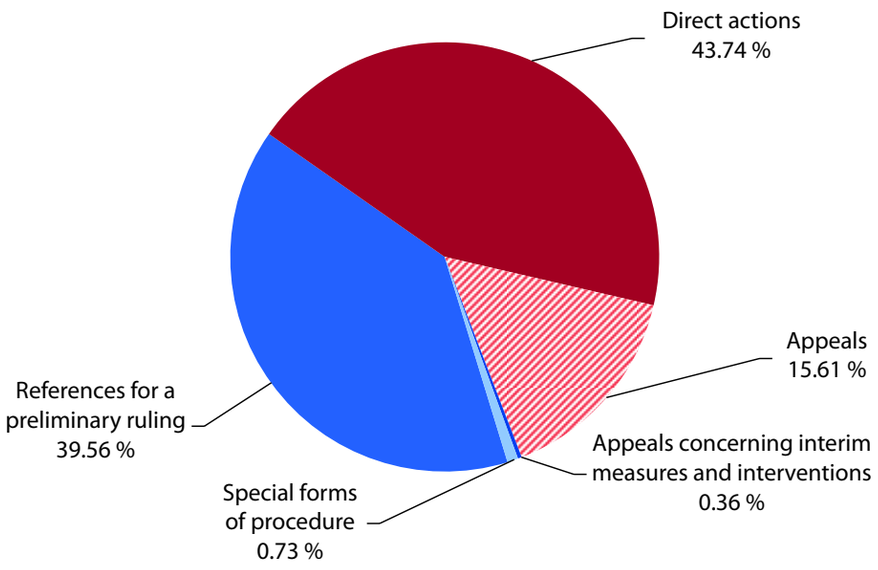


	2000	2001	2002	2003	2004	2005	2006	2007
References for a preliminary ruling	268	182	241	233	262	254	266	235
Direct actions	180	179	215	193	299	263	212	241
Appeals	73	59	47	57	89	48	63	88
Appeals concerning interim measures and interventions	5	11	6	7	5	2	2	2
Opinions/rulings		1	1		1		1	
Special forms of procedure		2	3	4	9	7	2	4
Total	**526**	**434**	**513**	**494**	**665**	**574**	**546**	**570**

([1]) The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

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

7. *Completed cases* — Judgments, orders, opinions (2007) (1)



	Judgments	Non-interlocutory orders (2)	Interlocutory orders (3)	Other orders (4)	Opinions of the Court	Total
References for a preliminary ruling	175	22		21		218
Direct actions	153	1		87		241
Appeals	50	32		4		86
Appeals concerning interim measures and interventions			2			2
Opinions/rulings						
Special forms of procedure	1	2		1		4
Total	**379**	**57**	**2**	**113**	**0**	**551**

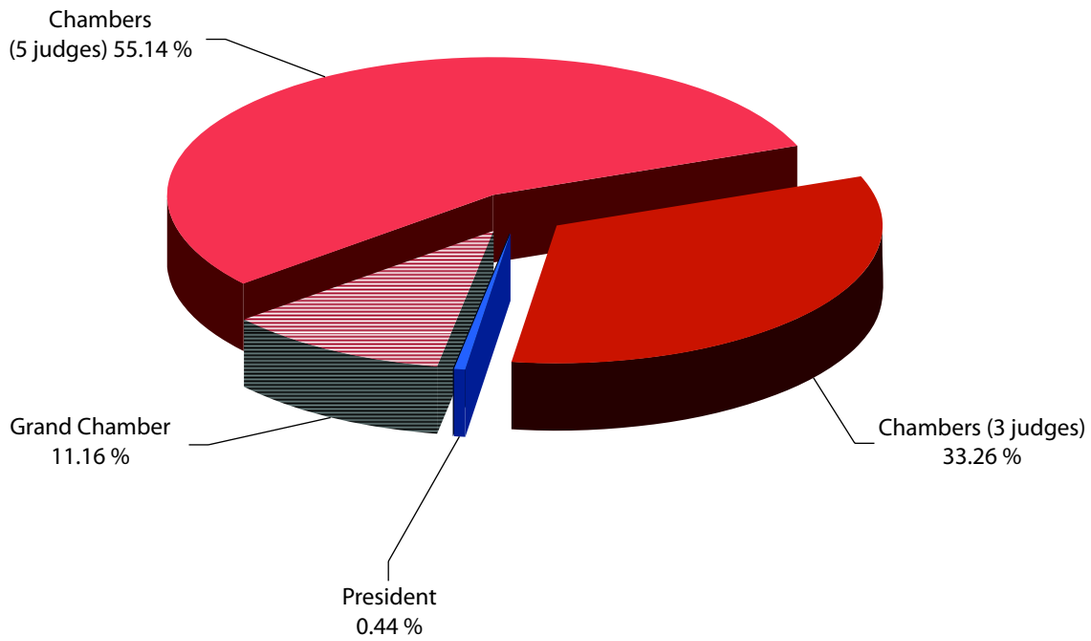
(1) The figures given (net figures) represent the number of cases after joinder on the ground of similarity (a set of joined cases = one case).

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

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

(4) Orders terminating the case by removal from the register, declaring that there is no need to give a decision or referral to the Court of First Instance.

8. *Completed cases* — Bench hearing action (2000–07) ([1])



	2000			2001			2002			2003			2004			2005			2006			2007		
	Judgments/opinions	**Orders [2]**	**Total**	**Judgments/opinions**	**Orders [2]**	**Total**	**Judgments/opinions**	**Orders [2]**	**Total**	**Judgments/opinions**	**Orders [2]**	**Total**	**Judgments/opinions**	**Orders [2]**	**Total**	**Judgments/opinions**	**Orders [2]**	**Total**	**Judgments/opinions**	**Orders [2]**	**Total**	**Judgments/opinions**	**Orders [2]**	**Total**
Full Court	31	6	37	33	2	35	27	4	31	48	2	50	21		21	1		1	2		2			
Small plenary [3]	91		91	24		24	52		52	35		35	1		1									
Grand Chamber													31	1	32	59		59	55		55	51		51
Chambers (5 judges)	162	3	165	155	13	168	177	10	187	200	8	208	257	18	275	245	5	250	265	13	278	242	10	252
Chambers (3 judges)	50	40	90	59	42	101	60	27	87	51	27	78	113	61	174	103	51	154	67	41	108	104	48	152
President		4	4		11	11		3	3		7	7		6	6		2	2		1	1		2	2
Total	**334**	**53**	**387**	**271**	**68**	**339**	**316**	**44**	**360**	**334**	**44**	**378**	**423**	**86**	**509**	**408**	**58**	**466**	**389**	**55**	**444**	**397**	**60**	**457**

(1) The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

(2) Orders terminating proceedings by judicial determination (other than those removing a case from the register, declaring that there is no need to give a decision or referring a case to the Court of First Instance).

(3) Composition of the Court which existed before the entry into force of the Treaty of Nice.

9. *Completed cases* — Subject matter of the action (2000–07) [1]

	2000	2001	2002	2003	2004	2005	2006	2007
Accession of new States			1	2	2	1		1
Agriculture	14	35	36	37	60	63	30	23
Approximation of laws		15	23	34	33	41	19	22
Arbitration clause	1							
Area of freedom, security and justice					2	5	9	17
Association of the Overseas Countries and Territories	1				1	2		
Brussels Convention		1	7	4	7	8	4	2
Commercial policy	15	7	1	4		4	1	1
Common Customs Tariff		7	7		4	7	7	10
Common foreign and security policy								4
Community own resources		1	1	1		2	6	3
Company law	4	8	6	17	16	24	10	16
Competition	20	16	13	13	29	17	30	17
Customs union		3	3	8	12	9	9	12
Economic and monetary policy					2			1
Energy			1		1	3	6	4
Environment and consumers	4	30	38	48	67	44	40	50
European citizenship	1	2		1	1	2	4	2
External relations	4	9	7	8	9	8	11	9
Fisheries policy		4	10	2	6	11	7	6
Free movement of capital		2	24	3	4	5	4	13
Free movement of goods	5	8	7	19	17	11	8	14
Freedom of establishment		5	8	13	14	5	21	19
Freedom of movement for persons	4	6	10	11	17	17	20	19
Freedom to provide services	1	13	13	15	23	11	17	23
Industrial policy		3	4	4	11	11		11
Intellectual property	7	1	1	4	20	5	19	21
Justice and home affairs				3			2	
Law governing the institutions	19	8	2	12	13	16	15	6
Principles of Community law		1	4	8	4	2	1	4
Privileges and immunities				1		1	1	1
Regional policy	4	1	1			5		7
Research, information, education and statistics	1							
Social policy	17	29	13	20	44	29	29	26
Social security for migrant workers		11	12	5	6	10	7	7
State aid	17	9	15	21	21	23	23	9
Taxation		37	22	26	28	34	55	44
Transport	2	11	25	6	11	16	9	6
EC Treaty	141	283	315	350	485	452	424	430
EU Treaty						3	3	4
CS Treaty	3	4	4	15	1	3		1
EA Treaty			3	2	2	1	4	1
Privileges and immunities		1		1	1			
Procedure		1	2	3	8	1	2	3
Staff Regulations	97	16	11	7	12	6	9	17
Others	97	18	13	11	21	7	11	20
Overall total	**241**	**305**	**335**	**378**	**509**	**466**	**442**	**456**

(1) The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

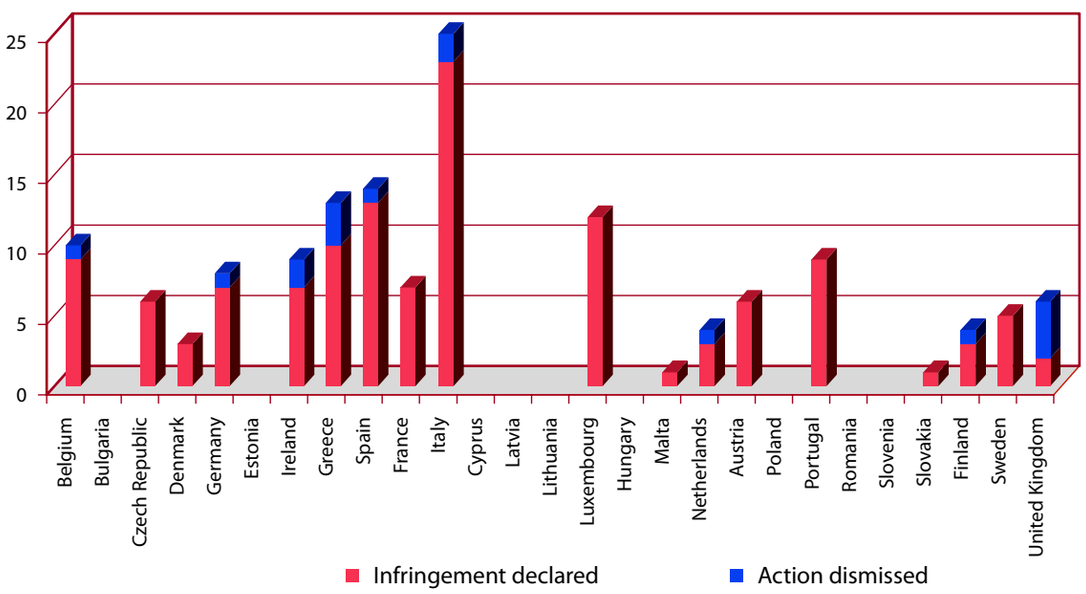
10. *Completed cases* — Subject matter of the action (2007) (1)

	Judgments/ opinions	Orders (2)	Total
Accession of new States	1		1
Agriculture	22	1	23
Approximation of laws	21	1	22
Area of freedom, security and justice	17		17
Brussels Convention	2		2
Commercial policy	1		1
Common Customs Tariff	9	1	10
Common foreign and security policy	4		4
Community own resources	1	2	3
Company law	13	3	16
Competition	13	4	17
Customs union	10	2	12
Economic and monetary policy	1		1
Energy	4		4
Environment and consumers	47	3	50
European citizenship	2		2
External relations	8	1	9
Fisheries policy	6		6
Free movement of capital	10	3	13
Free movement of goods	13	1	14
Freedom of establishment	17	2	19
Freedom of movement for persons	15	4	19
Freedom to provide services	21	2	23
Industrial policy	11		11
Intellectual property	13	8	21
Law governing the institutions	3	3	6
Principles of Community law	3	1	4
Privileges and immunities	1		1
Regional policy	6	1	7
Social policy	25	1	26
Social security for migrant workers	5	2	7
State aid	7	2	9
Taxation	42	2	44
Transport	6		6
EC Treaty	380	50	430
EU Treaty	4		4
CS Treaty	1		1
EA Treaty	1		1
Procedure	1	2	3
Staff Regulations	10	7	17
Others	11	9	20
Overall total	**397**	**59**	**456**

(1) The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

(2) Orders terminating proceedings by judicial determination (other than those removing a case from the register, declaring that there is no need to give a decision or referring a case to the Court of First Instance).

11. *Completed cases* — Judgments concerning failure of a Member State to fulfil its obligations: outcome (2007) ([1])

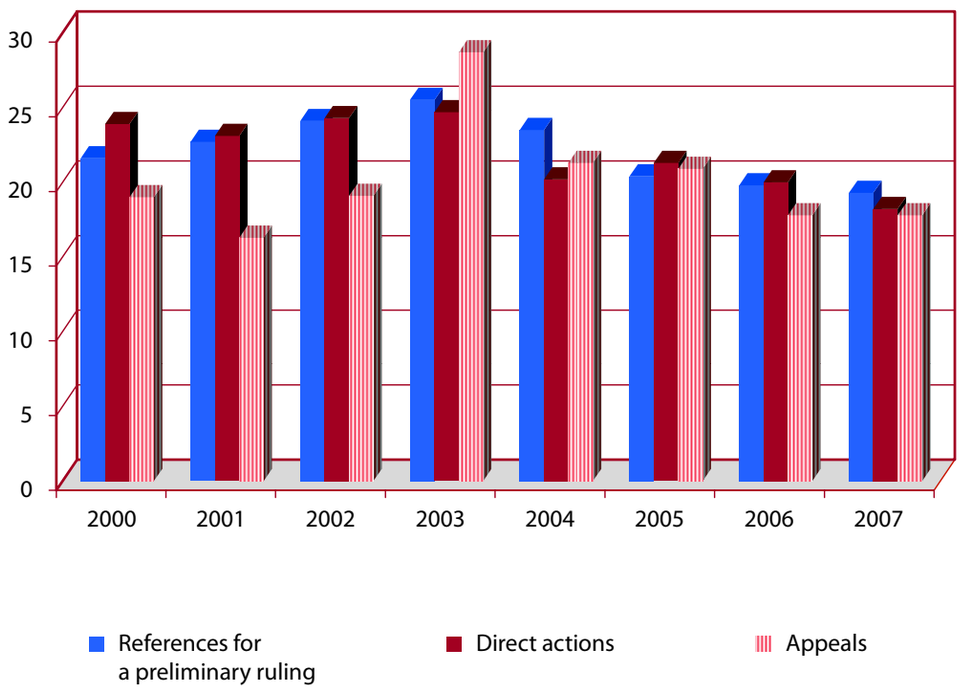


	Infringement declared	Action dismissed	Total
Belgium	9	1	10
Bulgaria			
Czech Republic	6		6
Denmark	3		3
Germany	7	1	8
Estonia			
Ireland	7	2	9
Greece	10	3	13
Spain	13	1	14
France	7		7
Italy	23	2	25
Cyprus			
Latvia			
Lithuania			
Luxembourg	12		12
Hungary			
Malta	1		1
Netherlands	3	1	4
Austria	6		6
Poland			
Portugal	9		9
Romania			
Slovenia			
Slovakia	1		1
Finland	3	1	4
Sweden	5		5
United Kingdom	2	4	6
Total	**127**	**16**	**143**

([1]) The figures given (net figures) represent the number of cases after joinder on the ground of similarity (a set of joined cases = one case).

12. *Completed cases* — Duration of proceedings (2000–07) ([1])

(decisions by way of judgments and orders) ([2])



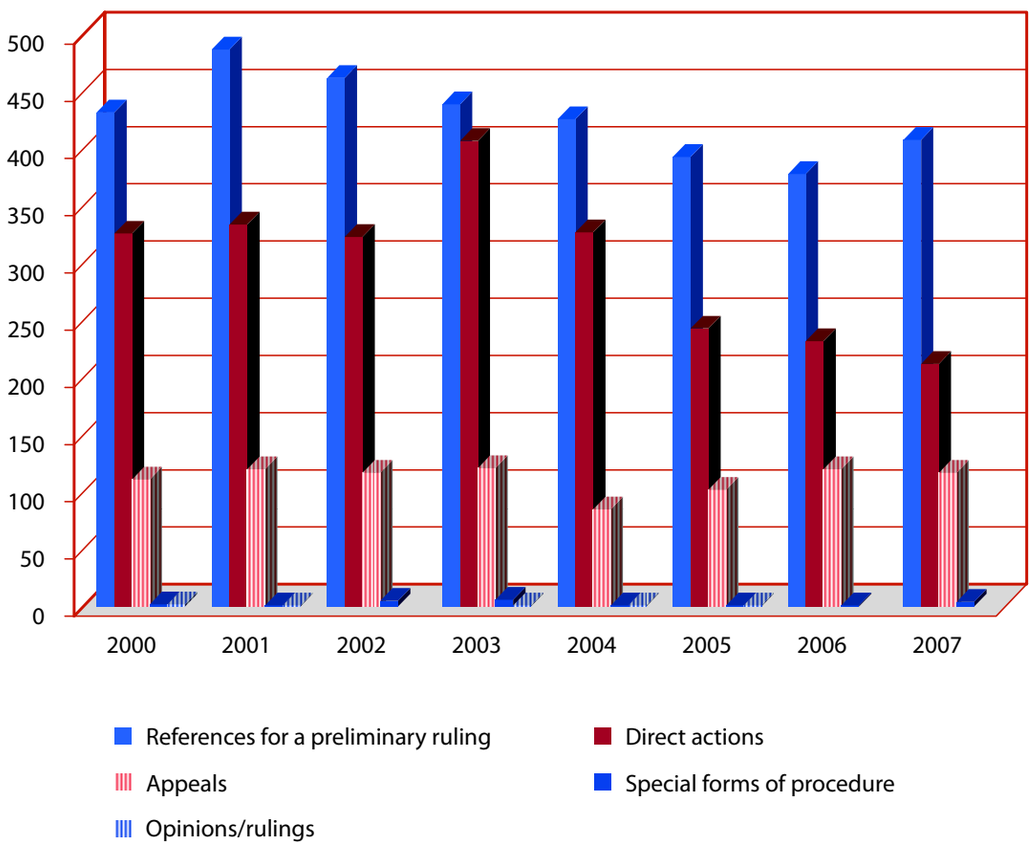
	2000	2001	2002	2003	2004	2005	2006	2007
References for a preliminary ruling	21.6	22.7	24.1	25.5	23.5	20.4	19.8	19.3
Direct actions	23.9	23.1	24.3	24.7	20.2	21.3	20	18.2
Appeals	19	16.3	19.1	28.7	21.3	20.9	17.8	17.8

([1]) The following types of cases are excluded from the calculation of the duration of proceedings: cases involving an interlocutory judgment or a measure of inquiry; opinions and rulings on agreements; special forms of procedure (namely taxation of costs, legal aid, application to set a judgment aside, third-party proceedings, interpretation of a judgment, revision of a judgment, rectification of a judgment, attachment procedure, cases concerning immunity); cases terminated by an order removing the case from the register, declaring that there is no need to give a decision or referring or transferring the case to the Court of First Instance; proceedings for interim measures and appeals concerning interim measures and interventions.

The duration of proceedings is expressed in months and tenths of months.

([2]) Other than orders terminating a case by removal from the register, declaring that there is no need to give a decision or referral to the Court of First Instance.

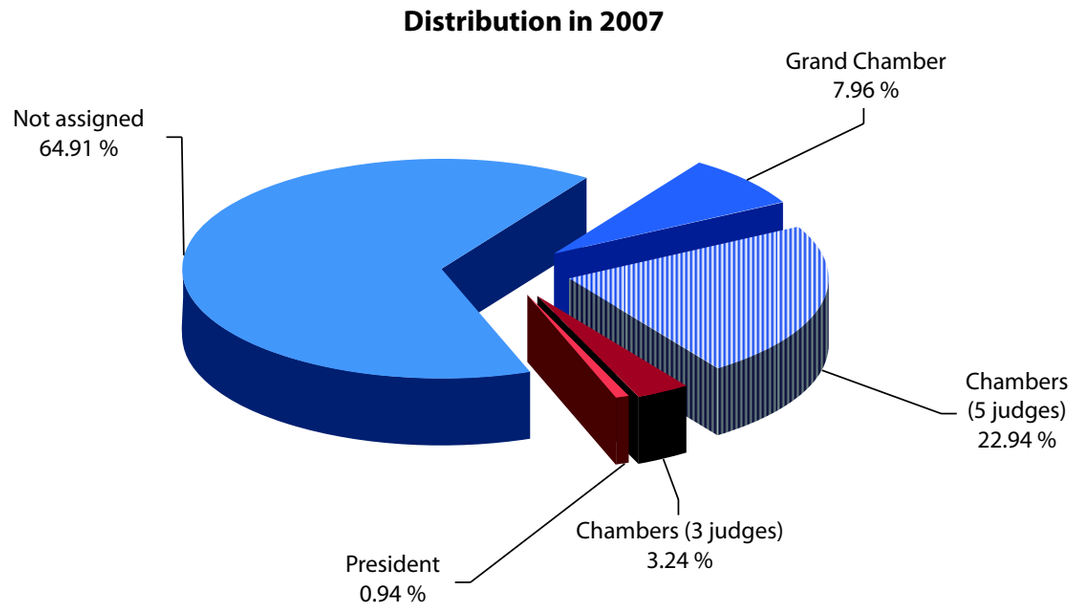
13. *Cases pending as at 31 December* — Nature of proceedings (2000–07) [1]



	2000	2001	2002	2003	2004	2005	2006	2007
References for a preliminary ruling	432	487	462	439	426	393	378	408
Direct actions	326	334	323	407	327	243	232	212
Appeals	111	120	117	121	85	102	120	117
Special forms of procedure	2	1	5	6	1	1	1	4
Opinions/rulings	2	1		1	1	1		
Total	**873**	**943**	**907**	**974**	**840**	**740**	**731**	**741**

(1) The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

14. *Cases pending as at 31 December* — Bench hearing action (2007) ([1])



	2000	2001	2002	2003	2004	2005	2006	2007
Not assigned	634	602	546	690	547	437	490	481
Full Court	34	31	47	21	2	2		
Small plenary ([2])	26	66	36	1				
Grand Chamber				24	56	60	44	59
Chambers (5 judges)	129	199	234	195	177	212	171	170
Chambers (3 judges)	42	42	42	42	57	29	26	24
President	8	3	2	1	1			7
Total	**873**	**943**	**907**	**974**	**840**	**740**	**731**	**741**

([1]) The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

([2]) Composition of the Court which existed before the entry into force of the Treaty of Nice.

15. *Miscellaneous* — Expedited and accelerated procedures (2000–07) ([1])

	2000		2001		2002		2003		2004		2005		2006		2007		Total
	Granted	Not granted	Granted	Not granted	Granted	Not granted	Granted	Not granted	Granted	Not granted	Granted	Not granted	Granted	Not granted	Granted	Not granted	
Direct actions						1		3	1	2						1	8
References for a preliminary ruling		1	1	5		1		3		10		5		5		6	37
Appeals				2			1	1								1	5
Opinions of the Court										1							1
Total		**1**	**1**	**7**		**2**	**1**	**7**	**1**	**13**		**5**		**5**		**8**	**51**

([1]) A case before the Court of Justice may be dealt with under such a procedure pursuant to the provisions of Articles 62a and 104a of the Rules of Procedure, as amended with effect from 1 July 2000.

16. *Miscellaneous* — Proceedings for interim measures (2007) (1)

	New applications for interim measures	New appeals concerning interim measures and interventions	Outcome		
			Dismissed	Granted	Removed from the register or no need to give a decision
State aid		1	1		
Environment and consumers	2	1	1		2
Total EC Treaty	2	2	2		2
Others					
Overall total	**2**	**2**	**2**		**2**

(1) The figures given (net figures) represent the number of cases after joinder on the ground of similarity (a set of joined cases = one case).

17. *General trend in the work of the Court (1952–2007)* — New cases and judgments

Year	New cases [1]						Judgments [2]
	Direct actions [3]	References for a preliminary ruling	Appeals	Appeals concerning interim measures and interventions	Total	Applications for interim measures	
1953	4				4		
1954	10				10		2
1955	9				9	2	4
1956	11				11	2	6
1957	19				19	2	4
1958	43				43		10
1959	47				47	5	13
1960	23				23	2	18
1961	25	1			26	1	11
1962	30	5			35	2	20
1963	99	6			105	7	17
1964	49	6			55	4	31
1965	55	7			62	4	52
1966	30	1			31	2	24
1967	14	23			37		24
1968	24	9			33	1	27
1969	60	17			77	2	30
1970	47	32			79		64
1971	59	37			96	1	60
1972	42	40			82	2	61
1973	131	61			192	6	80
1974	63	39			102	8	63
1975	62	69			131	5	78
1976	52	75			127	6	88
1977	74	84			158	6	100
1978	147	123			270	7	97
1979	1 218	106			1 324	6	138
1980	180	99			279	14	132
1981	214	108			322	17	128
1982	217	129			346	16	185
1983	199	98			297	11	151
1984	183	129			312	17	165

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Year	New cases [1]						Judgments [2]
	Direct actions [3]	References for a preliminary ruling	Appeals	Appeals concerning interim measures and interventions	Total	Applications for interim measures	
1985	294	139			433	23	211
1986	238	91			329	23	174
1987	251	144			395	21	208
1988	193	179			372	17	238
1989	244	139			383	19	188
1990 [4]	221	141	15	1	378	12	193
1991	142	186	13	1	342	9	204
1992	253	162	24	1	440	5	210
1993	265	204	17		486	13	203
1994	128	203	12	1	344	4	188
1995	109	251	46	2	408	3	172
1996	132	256	25	3	416	4	193
1997	169	239	30	5	443	1	242
1998	147	264	66	4	481	2	254
1999	214	255	68	4	541	4	235
2000	199	224	66	13	502	4	273
2001	187	237	72	7	503	6	244
2002	204	216	46	4	470	1	269
2003	278	210	63	5	556	7	308
2004	220	249	52	6	527	3	375
2005	179	221	66	1	467	2	362
2006	201	251	80	3	535	1	351
2007	221	265	79	8	573	3	379
Total	**8 129**	**6 030**	**840**	**69**	**15 068**	**345**	**7 557**

([1]) Gross figures; special forms of procedure are not included.

([2]) Net figures.

([3]) Including opinions of the Court.

([4]) The Court of First Instance began operating in 1989.

18. *General trend in the work of the Court (1952–2007)* — New references for a preliminary ruling (by Member State per year) ([1])

	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	Benelux ([2])	Total
1961																		1											1
1962																		5											5
1963															1			5											6
1964											2							4											6
1965					4					2								1											7
1966																		1											1
1967	5				11					3					1			3											23
1968	1				4					1	1							2											9
1969	4				11					1					1														17
1970	4				21					2	2							3											32
1971	1				18					6	5				1			6											37
1972	5				20					1	4							10											40
1973	8				37					4	5				1			6											61
1974	5				15					6	5							7									1		39
1975	7			1	26					15	14				1			4									1		69
1976	11				28		1			8	12							14									1		75
1977	16			1	30		2			14	7							9									5		84
1978	7			3	46		1			12	11							38									5		123
1979	13			1	33		2			18	19				1			11									8		106
1980	14			2	24		3			14	19							17									6		99
1981	12			1	41					17	11				4			17									5		108
1982	10			1	36					39	18							21									4		129
1983	9			4	36		2			15	7							19									6		98

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	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	Benelux (2)	Total
1984	13			2	38		1			34	10							22									9		129
1985	13				40		2			45	11				6			14									8		139
1986	13			4	18		4	2	1	19	5				1			16									8		91
1987	15			5	32		2	17	1	36	5				3			19									9		144
1988	30			4	34				1	38	28				2			26									16		179
1989	13			2	47		1	2	2	28	10				1			18			1						14		139
1990	17			5	34		4	2	6	21	25				4			9			2						12		141
1991	19			2	54		2	3	5	29	36				2			17			3						14		186
1992	16			3	62			1	5	15	22				1			18			1						18		162
1993	22			7	57		1	5	7	22	24				1			43			3						12		204
1994	19			4	44		2		13	36	46				1			13			1						24		203
1995	14			8	51		3	10	10	43	58				2			19	2		5					6	20		251
1996	30			4	66			4	6	24	70				2			10	6		6				3	4	21		256
1997	19			7	46		1	2	9	10	50				3			24	35		2				6	7	18		239
1998	12			7	49		3	5	55	16	39				2			21	16		7				2	6	24		264
1999	13			3	49		2	3	4	17	43				4			23	56		7				4	5	22		255
2000	15			3	47		2	3	5	12	50							12	31		8				5	4	26	1	224
2001	10			5	53		1	4	4	15	40				2			14	57		4				3	4	21		237
2002	18			8	59			7	3	8	37				4			12	31		3				7	5	14		216
2003	18			3	43		2	4	8	9	45				4			28	15		1				4	4	22		210
2004	24			4	50		1	18	8	21	48				1	2		28	12		1				4	5	22		249
2005	21		1	4	51		2	11	10	17	18				2	3		36	15	1	2				4	11	12		221
2006	17		3	3	77		1	14	17	24	34			1	1	4		20	12	2	3			1	5	2	10		251
2007	22	1	2	5	59	2	2	8	14	26	43			1		2		19	20	7	3	1		1	5	6	16		265
Total	**555**	**1**	**6**	**116**	**1 601**	**2**	**50**	**125**	**194**	**743**	**939**			**2**	**60**	**11**		**685**	**308**	**10**	**63**	**1**		**2**	**52**	**69**	**434**	**1**	**6 030**

(1) Article 177 of the EC Treaty (now Article 234 EC), Article 35 (1) EU, Article 41 CS, Article 150 EA, 1971 Protocol.

(2) Case C-265/00 *Campina Melkunie*.

19. *General trend in the work of the Court (1952–2007)* — New references for a preliminary ruling (by Member State and by court or tribunal)

			Total
Belgium	Cour de cassation	69	
	Cour d'arbitrage	5	
	Conseil d'État	42	
	Other courts or tribunals	439	555
Bulgaria	Софийски ґрадски съд Търґовско отделение	1	
	Other courts or tribunals		1
Czech Republic	Nejvyššího soudu		
	Nejvyšší správní soud		
	Ústavní soud		
	Other courts or tribunals	6	6
Denmark	Højesteret	21	
	Other courts or tribunals	95	116
Germany	Bundesgerichtshof	110	
	Bundesverwaltungsgericht	79	
	Bundesfinanzhof	242	
	Bundesarbeitsgericht	17	
	Bundessozialgericht	72	
	Staatsgerichtshof des Landes Hessen	1	
	Other courts or tribunals	1080	1.601
Estonia	Riigikohus	1	
	Other courts or tribunals	1	2
Ireland	Supreme Court	17	
	High Court	15	
	Other courts or tribunals	18	50
Greece	Άρειος Πάγος	9	
	Συμβούλιο της Επικρατείας	28	
	Other courts or tribunals	88	125
Spain	Tribunal Supremo	20	
	Audiencia Nacional	1	
	Juzgado Central de lo Penal	7	
	Other courts or tribunals	166	194
France	Cour de cassation	76	
	Conseil d'État	40	
	Other courts or tribunals	627	743

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			Total
Italy	Corte suprema di Cassazione	94	
	Consiglio di Stato	60	
	Other courts or tribunals	785	939
Cyprus	Ανώτατο Δικαστήριο		
	Other courts or tribunals		
Latvia	Augstākā tiesa		
	Satversmes tiesa		
	Other courts or tribunals		
Lithuania	Konstitucinis Teismas	1	
	Lietuvos Aukščiausiasis Teismas		
	Lietuvos vyriausiasis administracinis Teismas	1	
	Other courts or tribunals		2
Lithuania	Cour supérieure de justice	10	
	Conseil d'État	13	
	Cour administrative	7	
	Other courts or tribunals	30	60
Hungary	Legfelsőbb Bíróság	1	
	Szegedi Ítélötáblá	1	
	Other courts or tribunals	9	11
Malta	Constitutional Court		
	Qorti ta' l- Appel		
	Other courts or tribunals		
Netherlands	Raad van State	54	
	Hoge Raad der Nederlanden	157	
	Centrale Raad van Beroep	46	
	College van Beroep voor het Bedrijfsleven	134	
	Tariefcommissie	34	
	Other courts or tribunals	260	685
Austria	Verfassungsgerichtshof	4	
	Oberster Gerichtshof	64	
	Oberster Patent- und Markensenat	3	
	Bundesvergabeamt	24	
	Verwaltungsgerichtshof	52	
	Vergabekontrollsenat	4	
	Other courts or tribunals	157	308

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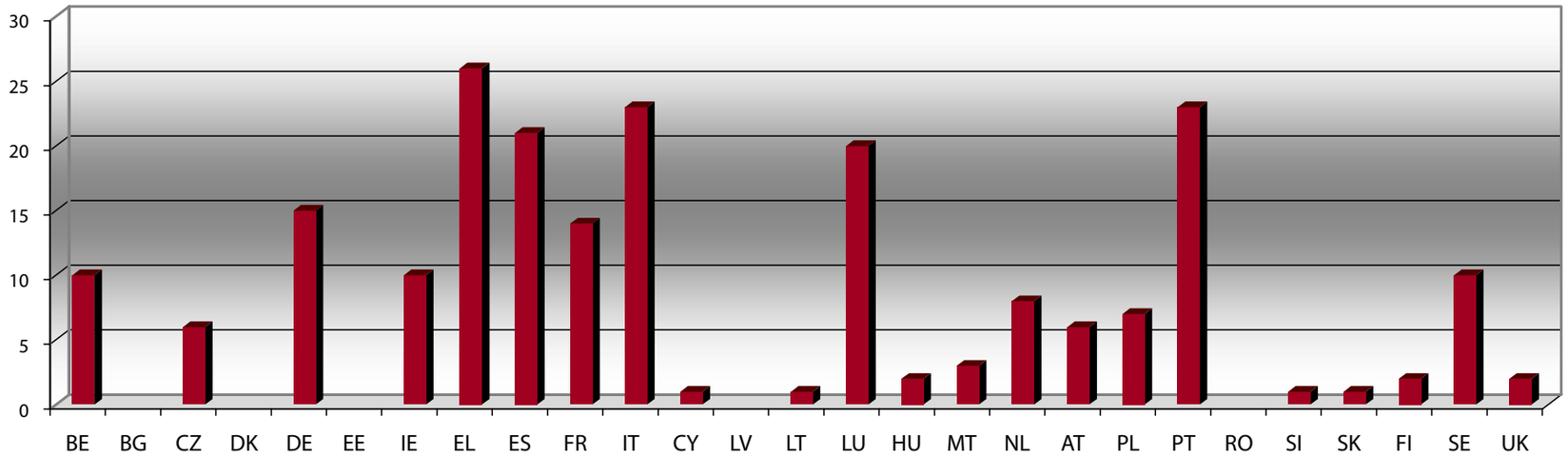
			Total
Poland	Sąd Najwyższy		
	Naczelny Sąd Administracyjny		
	Trybunał Konstytucyjny		
	Other courts or tribunals	10	10
Portugal	Supremo Tribunal de Justiça	1	
	Supremo Tribunal Administrativo	36	
	Other courts or tribunals	26	63
Romania	Tribunal Dâmbovița	1	
	Other courts or tribunals		1
Slovenia	Vrhovno sodišče		
	Ustavno sodišče		
	Other courts or tribunals		
Slovakia	Ústavný Súd		
	Najvyšší súd	1	
	Other courts or tribunals	1	2
Finland	Korkein hallinto-oikeus	22	
	Korkein oikeus	8	
	Other courts or tribunals	22	52
Sweden	Högsta Domstolen	10	
	Marknadsdomstolen	4	
	Regeringsrätten	20	
	Other courts or tribunals	35	69
United Kingdom	House of Lords	36	
	Court of Appeal	42	
	Other courts or tribunals	356	434
Benelux	Cour de justice/Gerechtshof ([1])	1	1
Total			6 030

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

20. *General trend in the work of the Court (1952–2007)* — New actions for failure of a Member State to fulfil its obligations ([1])

2007



	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	Total
2007	10		6		15		10	26	21	14	23	1		1	20	2	3	8	6	7	23		1	1	2	10	2	**212**
1952–2007	323		10	34	243	3	176	334	187	366	582	1		1	230	2	5	125	104	10	141		1	3	42	39	110	**3 072**

The cases brought against Spain include an action under Article 170 of the EC Treaty (now Article 227 EC), brought by Belgium.

The cases brought against France include an action under Article 170 of the EC Treaty (now Article 227 EC), brought by Ireland.

The cases brought against the United Kingdom include three actions under Article 170 of the EC Treaty (now Article 227 EC), one brought by France and two by Spain.

([1]) The actions covered are actions under Articles 93, 169, 170, 171 and 225 of the EC Treaty (now Articles 88 EC, 226 EC, 227 EC, 228 EC and 298 EC), Articles 141 EA, 142 EA and 143 EA and Article 88 CS.

Chapter II

The Court of First Instance of the European Communities

A — Proceedings of the Court of First Instance in 2007

By Mr Marc Jaeger, President of the Court of First Instance

For the Court of First Instance of the European Communities, 2007 was a year of change and transition. Two new Judges, Mr T. Tchipev and Mr V. Ciucă, entered into office at the beginning of the year following the accession of the Republic of Bulgaria and Romania to the European Union. In September 2007 Mr B. Vesterdorf, a Member of the Court of First Instance since it was created in 1989 and its President for more than 10 years, left office and was replaced as Judge by Mr S. Frimodt Nielsen. At the same time, Mr R. García-Valdecasas y Fernández — likewise a Member of the Court since it was set up — Mr J. Pirrung and Mr H. Legal, whose terms of office reached their end, were replaced as Judges by Mr S. Soldevila Fragoso, Mr A. Dittrich and Mr L. Truchot. Finally, the Court in its fresh composition elected Mr M. Jaeger as its new President.

Also, the Court gave its first decisions in its capacity as the judicial body having jurisdiction in respect of appeals against decisions by judicial panels created pursuant to the first subparagraph of Article 220 EC and Article 225a EC, provisions which were inserted by the Treaty of Nice. Despite its name, the Court of First Instance thus has jurisdiction to hear and determine appeals brought against decisions of the European Union Civil Service Tribunal, in accordance with the rules laid down in Articles 9 to 13 of the Annex to the Statute of the Court of Justice. This new type of case has, for the time being, been allocated to an ad hoc chamber, the Appeal Chamber, composed of the President of the Court and, under a system of rotation, four Presidents of Chambers.

The past year was marked by the delivery of two judgments by the Grand Chamber of the Court, in *Microsoft* v *Commission* (1) and *API* v *Commission* (2). These cases, in particular the former, required the 13 Members of this Chamber to assess complex and difficult economic and legal issues.

With regard to statistics, 522 cases were brought in the course of the year, a significant increase compared with 2006 (432). On the other hand, the number of cases decided went down (397 as against 436 in 2006). It should nevertheless be noted that the number of cases decided by a judgment increased (247 as against 227 in 2006), as did the number of applications for interim measures brought to a conclusion (41 as against 24 in 2006). Apart from the substantial resources devoted to dealing with *Microsoft* v *Commission* and the absence — in contrast to preceding years — of large groups of identical or connected cases, the reduction in the number of cases decided is due, more generally, to the ever-increasing complexity and diversity of actions brought before the Court of First Instance. The fact remains, however, that, because of the imbalance between cases brought and cases decided, the number of cases pending increased, giving rise to the risk that the duration of proceedings will increase.

(1) Judgment of 17 September 2007 in Case T-201/04.

(2) Judgment of 12 September 2007 in Case T-36/04.

Conscious of this situation, the Court of First Instance embarked upon detailed consideration of its operation and working methods in order to improve its efficiency. In this context, it has already been considered necessary to alter the way in which the Court is organised, in particular so as to derive greater advantage from the increase in the number of its Members. Thus, since 25 September 2007 the Court has comprised eight Chambers, of three Judges or, where the importance of the case so justifies, five Judges (extended composition).

The following account of the Court's judicial activity is intended to provide a, necessarily selective, overview of the rich case-law and of the complex issues which the Court was called upon to resolve.

I. Proceedings concerning the legality of measures

Admissibility of actions brought under Articles 230 EC and 232 EC

1. Measures against which an action may be brought

Measures against which an action may be brought under Article 230 EC are those producing binding legal effects of such a kind as to affect the applicant's interests by significantly altering his legal position ([3]).

In *Akzo Nobel Chemicals and Akcros Chemicals* v *Commission* ([4]), the Court held that, where an undertaking relies on legal professional privilege for the purpose of opposing the seizure of a document, the decision whereby the Commission rejects that request produces legal effect for that undertaking and therefore constitutes a measure against which an action may be brought. That decision withholds from the undertaking concerned the protection provided by Community law and is definitive in nature and independent of any final decision that might make a finding of infringement of the competition rules. Furthermore, the Court held that where the Commission, without taking a formal decision, seizes a document which the undertaking concerned claims is confidential, that physical act necessarily entails a tacit decision that must be open to challenge by an action for annulment.

On the other hand, in its order in *Vodafone España and Vodafone Group* v *Commission* ([5]), the Court dismissed as inadmissible the application lodged against the letter of observations sent by the Commission, under Article 7(3) of Directive 2002/21 ([6]) to the Spanish regulatory authority following the latter's notification of proposed measures concerning undertakings with a joint dominant position on the Spanish mobile communications market. The Court

([3]) Case 60/81 *IBM* v *Commission* [1981] ECR 2639.

([4]) Judgment of 17 September 2007 in Joined Cases T-125/03 and T-253/03.

([5]) Order of 12 December 2007 in Case T-109/06.

([6]) Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ 2002 L 108, p. 33).

rejected any analogy with the procedures applicable in relation to State aid and the control of concentrations. It held that the letter formed part of a consultation procedure and not of a system of authorisation, since the Commission's failure to initiate the stage involving a thorough examination of the measure concerned could not be assimilated to approval of the notified measure.

In *Netherlands* v *Commission* ([7]), the Netherlands Government had requested the Commission, on the basis of Article 95(4) EC, to adopt a position on the question of the scope of a directive. In that regard, the Court considered that a Member State cannot on the basis of Article 95(4) EC request the Commission to take a decision on the extent of harmonisation under a Community directive and/or on the compatibility of national legislation with such a directive. Since, according to that same provision, it is solely for the Member State concerned to take the decision to notify in order to obtain an authorisation by way of derogation and since, furthermore, no provision of the directive confers on the Commission the power to decide on its interpretation, a position adopted by the Commission on the scope of the harmonisation measure at issue constitutes a mere opinion, which is not binding upon the competent national authorities and cannot form the subject matter of an action.

In its order in *Commune de Champagne and Others* v *Council and Commission* ([8]), the Court declared inadmissible the action whereby a number of natural and legal persons sought annulment of the Council decision approving the international agreement between the European Community and the Swiss Confederation on trade in agricultural products. The Court emphasised that a unilateral act of the Community cannot create rights and obligations outside the Community territory defined in Article 299 EC. Only the international agreement, which is not amenable to appeal, is capable of producing legal effects on Swiss territory, in accordance with the specific rules of that State and once it has been ratified according to the procedures applicable in that State. Thus, the contested decision had no legal effect on Swiss territory and was therefore not capable of altering the legal position of the applicants on that territory.

Last, in *Italy* v *Commission* ([9]) the Italian Republic sought annulment of a letter from the Commission requiring production of certain information as a precondition for entitlement to submit certain requests for payment which Italy had made in the context of Community Structural Funds. The Court held that the Italian Republic's argument that the letter in issue imposed a penalty on it because the payments requested were not made until the relevant information had been received amounted, in substance, to a complaint of prolonged failure to act on the part of the Commission. If that failure to act was unlawful, on the ground that it was contrary to the provisions governing Structural Funds, the Italian Republic ought, in order to challenge it, to have brought an action for failure to act under Article 232 EC and not an action for annulment.

([7]) Judgment of 8 November 2007 in Case T-234/04.

([8]) Order of 3 July 2007 in Case T-212/02.

([9]) Judgment of 12 December 2007 in Case T-308/05.

2. Standing to bring proceedings — Individual concern

According to settled case-law, natural or legal persons other than those to whom a decision is addressed may claim to be individually concerned only if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of those factors distinguishes them individually just as in the case of the person addressed ([10]).

In its order in *Galileo Lebensmittel* v *Commission* ([11]) the Court held that, for the purpose of recognising standing to bring proceedings, the fact that the applicant belonged to a restricted group must be combined with a specific duty on the part of the Commission to protect that group. More specifically, the decisive factor in identifying the persons individually concerned by a measure of general application consists in the specific protection to which they are entitled under Community law.

The case of *Regione Autonoma Friuli-Venezia Giulia* ([12]), where the applicant sought annulment of a provision of a regulation which limited the right to use the name 'Tocai friulano', provided the opportunity for the Court to shed light on the circumstances in which an applicant could base his standing to bring proceedings on the principles laid down by the Court of Justice in its judgment in *Codorníu* v *Council* ([13]). The Court of First Instance held that in this case the applicant, unlike the undertaking Codorníu, was not prevented by a measure of general application from using an intellectual property right which it had registered and used in the traditional matter for a long period before the measure in question was adopted. The name 'Tocai friulano' is not a geographical indication as such forming part of intellectual property rights and enjoying protection on that basis.

The Court also stated that the general interest which a region, as the competent entity for economic and social matters on its territory, might have in securing a favourable outcome for the economic prosperity of that territory is not sufficient for it to be regarded as being individually concerned. Furthermore, the legislative and regulatory prerogatives that may be held by a legal person governed by the public law of a Member State other than the State are not of such a kind as to confer that person an individual interest in seeking annulment of a provision of Community law which has no effect on the extent of its powers, since, in principle, the person holding such prerogatives does not exercise them in his own interest.

Last, in *Alrosa* v *Commission* ([14]) the applicant sought annulment of the decision whereby the Commission had made binding the commitments given by De Beers, an undertaking in a dominant position, to limit and then cease its purchases of rough diamonds from the

([10]) Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, at 107.

([11]) Order of 28 August 2007 in Case T-46/06 (on appeal, Case C-483/07 P).

([12]) Order of 12 March 2007 in Case T-417/04 *Regione Autonoma Friuli-Venezia Giulia* v *Commission*.

([13]) Case C-309/89 [1994] ECR I-1853.

([14]) Judgment of 11 July 2007 in Case T-170/06.

applicant. The Court examined of its own motion the admissibility of the action and held that the applicant was individually concerned by that decision, in so far as the decision had been adopted at the conclusion of proceedings in which the applicant had participated to a decisive extent, had been aimed at bringing to an end the long-standing trading relationship between the applicant and De Beers and had been liable to have an appreciable effect on the applicant's competitive position on the market for the supply and production of rough diamonds.

3. Interest in bringing proceedings

In *Pergan Hilfsstoffe für industrielle Prozesse* v *Commission* ([15]) the applicant challenged the decision of the Commission's hearing officer rejecting its request for confidential treatment for certain passages in a Commission decision ('the peroxides decision'), which contained references to the applicant's role in a number of cartels on certain markets for organic peroxides. However, as the proceedings against the applicant were time-barred, the Commission had made no reference in the operative part of the 'peroxides decision' to its participation in the infringement. The Court rejected the Commission's plea that the applicant, which had not challenged the peroxides decision, had no interest in bringing an action against the decision of the hearing officer. It held, on the contrary, that the annulment of that decision was capable of conferring an advantage on the applicant in that the Commission should take account of the applicant's legitimate interest in the information at issue not being disclosed. Furthermore, the mere fact that the information had already been published did not deprive the applicant of an interest in bringing an action, since its continued disclosure on the Commission's Internet site continued to harm the applicant's reputation, which is a vested and present interest.

In *Ufex and Others* v *Commission* ([16]) the applicants challenged the Commission decision rejecting their complaint. Their interest in bringing an action was challenged on the ground that, according to the interveners in support of the Commission, even if the contested measure were annulled, the Commission would be unable to establish the infringement complained of, since the excessive duration of the entire administrative procedure would have constituted a breach of the interveners' rights. In that regard, the Court held that the interest in bringing an action of an applicant who had brought an action for annulment of a Commission decision rejecting the complaint whereby it denounced conduct capable of constituting an abuse of a dominant position could be denied only in exceptional circumstances, notably where it could be established beyond doubt that the Commission was not in a position to adopt a decision making a finding of infringement attributable to the dominant undertaking in question.

([15]) Judgment of 12 October 2007 in Case T-474/04.

([16]) Judgment of 12 September 2007 in Case T-60/05.

4. Admissibility in matters of State aid

(a) Concept of interested party

A number of decisions adopted in 2007 gave the Court the opportunity to explain the application of the case-law ([17]) to the effect that a 'party concerned' within the meaning of Article 88(2) EC has capacity to bring an action for annulment of a decision adopted at the conclusion of the stage of the preliminary examination of aid referred to in Article 88(3) EC in order to protect its procedural rights.

By its order in *SID* v *Commission* ([18]) the Court held that a seafarers' union which had lodged a complaint in respect of certain tax measures applicable to seafarers employed on board vessels on the Danish international register was not a party concerned. Neither the seafarers' union nor its members were competitors of the beneficiaries of the measures in issue. Although bodies representing the employees of the undertakings in receipt of aid might, as parties concerned, submit comments to the Commission on considerations of a social nature, the fact remained that in this case any social aspects derived from the establishment of the register in question and not from the fiscal measures in issue, which alone were examined by the Commission with a view to assessing their compatibility with the common market. The social aspects relating to that register therefore had only an indirect link with the contested decision.

In *Fachvereinigung Mineralfaserindustrie* v *Commission* ([19]) the Court, after finding that the members of the applicant were parties concerned with standing to act in defence of their procedural rights and that the applicant effectively raised a plea alleging that the Commission ought to have initiated the formal investigation procedure provided for in Article 88(2) EC because it was facing serious problems as regards the compatibility of the aid with the common market, declared the action admissible and added that although the further substantive arguments raised were inadmissible as such, the arguments developed must nonetheless be examined for the purpose of determining whether the Commission was actually facing serious problems.

The same problem formed the subject matter in an action for failure to act under Article 232 EC, of *Asklepios Kliniken* ([20]), where a German company specialising in hospital management had brought an action for a declaration that the Commission had unlawfully failed to adopt a position on the complaint denouncing the existence of the State aid alleged to have been granted by the German authorities to hospitals in the public sector. The Court recalled that Articles 230 EC and 232 EC prescribe one and the same remedy. Consequently, just as the fourth paragraph of Article 230 EC allows individuals to bring an action for annulment against a Community measure which is of direct and individual concern to them, the third paragraph of Article 232 EC also entitles

([17]) Case C-78/03 P *Commission* v *Aktionsgemeinschaft Recht und Eigentum* [2005] ECR I-10737.

([18]) Order of 23 April 2007 in Case T-30/03 (on appeal, Case C-319/07 P).

([19]) Judgment of 20 September 2007 in Case T-375/03.

([20]) Judgment of 11 July 2007 in Case T-167/04 *Asklepios Kliniken* v *Commission*.

them to bring an action for failure to act against an institution which has failed to adopt a measure which would have concerned them in the same way ([21]).

(b) Aid regimes

In *Salvat père & fils and Others* v *Commission* ([22]) the Commission had adopted a decision characterising as State aid incompatible with the common market certain measures taken by the French authorities to finance a sectoral aid scheme for wine-growers producing low-quality wine. The Commission had thus ordered the French Republic to recover the unlawfully paid aid from the recipients.

Relying on the case-law of the Court of Justice that the actual recipient of individual aid granted under a general aid scheme and recovery of which is ordered by the Commission is individually concerned by that decision ([23]), the Court observed that the fact that the contested decision does not identify the undertakings that benefit from the aid in question, applies to situations determined objectively and has legal effects with respect to a category of persons envisaged generally and in the abstract does not mean that the action is inadmissible. The Court pointed out, on the contrary, that the amounts granted differed according to the undertakings and were therefore differentiated according to the individual characteristics of each of them, and found that one of the applicants was the actual beneficiary of individual aid granted under the sectoral aid scheme in question, recovery of which the Commission had ordered. Consequently, that applicant was directly and individually concerned by that part of the contested decision.

5. Proceedings relating to greenhouse gas emissions

In 2007 there was a new type of proceedings in the form of actions brought by individuals against measures taken by the Commission and addressed to Member States in the context of the greenhouse gas emissions allowance trading scheme established by Directive 2003/87 ([24]). That directive created a system of allowance trading in order to promote the reduction of such emissions, which must be subject to the allocation of allowances authorising the operator holding such an allowance to emit a certain quantity of greenhouse gases; those allowances are allocated in accordance with national allocation plans ('NAPs') notified to the Commission.

None of the applications against the Commission's decisions brought by the undertakings which had been allocated allowances was considered admissible, on different grounds according to the type of decision contested.

([21]) Case 15/70 *Chevalley* v *Commission* [1970] ECR 975 and Case T-395/04 *Air One* v *Commission* [2006] ECR II-1343.

([22]) Judgment of 20 September 2007 in Case T-136/05. On that point, see also judgment of 12 September 2007 in Joined Cases T-239/04 and T-323/04 *Italy and Brandt Italia* v *Commission*.

([23]) Joined Cases C-15/98 and C-105/99 *Italy and Sardegna Lines* v *Commission* [2000] ECR I-8855.

([24]) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32).

(a) Decisions not to raise objections to the notified NAP

In its order in *EnBW Energies Baden-Württemberg* v *Commission* ([25]) the Court gave a textual, contextual and teleological interpretation of Directive 2003/87 and held that that directive confers on the Commission only a limited power of rejection and allows it even to waive the use of that power, since, inter alia, where the Commission does not raise express objections within the time-limit laid down in the directive, the notified NAP becomes definitive and can be implemented by the Member State. The Court concluded that, where the decision includes an explicit acceptance of certain aspects of a NAP, it cannot be regarded as even implicit authorisation of the NAP in its entirety, so that the applicant does not have an *interest in bringing proceedings* against the other aspects of the NAP ([26]).

On the basis of similar reasoning, the Court held, in its order in *US Steel Košice* v *Commission* ([27]), that the Commission decision not to raise any objections to the Slovak NAP did not have the effect of granting a rights-creating authorisation because, by their nature, the Slovak measures notified in that context did not require such authorisation. In those circumstances, the contested decision could not produce binding legal effects such as to affect the applicant's interests and therefore did not constitute a measure against which an action could be brought.

Last, by order in *Cemex UK Cement* v *Commission* ([28]) the Court held that an action for annulment of the Commission decision raising no objections to the allocation to the applicant by the NAP of an individual allowance which it considered insufficient and contrary to the directive was inadmissible on the ground that the applicant was not individually concerned, as only the United Kingdom was responsible for the implementation of the NAP and for the allocation of specific allowances to individual installations.

(b) Decisions finding the NAP incompatible

In its order in *Fels-Werke and Others* v *Commission* ([29]) the Court considered that the applicants were not individually concerned by the Commission decision declaring incompatible an allocation method introduced during the preceding NAP that was favourable to new installations. That decision affected the applicants in the same way as

([25]) Order of 30 April 2007 in Case T-387/04.

([26]) The same German NAP for the period 2005–07 formed the subject matter of the judgment of 7 November 2007 in Case T-374/04 *Germany* v *Commission*. By that judgment, the Commission's decision was annulled on the ground of an error of law in so far as it had declared incompatible with Directive 2003/87 the possibility for ex post facto adjustments provided for in the NAP which allowed the German authorities to reduce the number of allowances allocated to a given installation and to transfer the allowances withdrawn to a reserve when the operator replaced an old installation by a new installation with a lower production capacity. The Court held that no provision of Directive 2003/87 prohibits a subsequent amendment of the number of allowances allocated individually, as the Member State has a margin of discretion when it makes downward corrections.

([27]) Order of 1 October 2007 in Case T-489/04.

([28]) Order of 6 November 2007 in Case T-13/07.

([29]) Order of 11 September 2007 in Case T-28/07 (on appeal, Case C-503/07 P).

all other operators of installations in the same situation. The mere existence of the right arising under the German scheme relating to the previous allocation period, which was potentially called in question by the decision, was not capable of differentiating the holder of the right when the same right was granted, in application of a general and abstract rule, to a multitude of operators determined objectively.

The case of *US Steel Košice* v *Commission* ([30]) was an action for annulment of a Commission decision declaring certain aspects of the Slovak NAP for the period 2008–12 incompatible with Directive 2003/87 ([31]) and requiring a reduction in the total quantity of allowances provided for. The Court considered that neither Directive 2003/87 nor the contested decision resulted in an automatic reallocation of the total number of allowances between individual installations which would be reflected by specific percentages of allowances allocated to the applicant and to other installations. Thus the applicant was not directly concerned by the contested decision, since any reduction in its individual allowance would be the consequence of the Slovak Government's exercise of its discretion and that Government was not required to reduce the applicant's individual allowances but only not to exceed the limits of the total quantity of allowances to be allocated.

Last, in its order in *Drax Power and Others* v *Commission* ([32]) the Court held that the Commission decision rejecting the proposal of the United Kingdom of Great Britain and Northern Ireland to amend its provisional NAP with a view to increasing the total definitive quantity of allowances to be allocated did not directly affect the applicant.

Competition rules applicable to undertakings

1. Points raised on the scope of Article 81 EC

(a) Application of Article 81(3) EC

On an action contesting the legality of an exemption decision adopted under Regulation No 17 ([33]), which imposed burdens on the beneficiary of the exemption, the Court held in *Duales System Deutschland* v *Commission* ([34]) that a commitment put forward during the administrative procedure to address the concerns voiced by the Commission has the effect of clarifying the content of the agreements notified for the purposes of obtaining negative clearance or an exemption under Article 81 EC, by showing the Commission the way in

([30]) Order of 1 October 2007 in Case T-27/07 (on appeal, Case C-6/08 P).

([31]) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32).

([32]) Order of 25 June 2007 in Case T-130/06.

([33]) Council Regulation No 17 of 6 February 1962: First Regulation implementing Articles [81 EC] and [82 EC] (OJ, English Special Edition 1959-62, p. 87).

([34]) Judgment of 24 May 2007 in Case T-289/01.

which that undertaking intends to act in the future. Accordingly, the Commission is entitled to adopt its decision in the light of that commitment and it is not the task of the Court to examine the legality in the light of a right which the undertaking had waived during the administrative procedure.

The Court found, moreover, that in a case where installations/facilities belonging to the contractual partners of an undertaking which represents the essential part of demand form a bottleneck for its competitors, the Commission may impose on that undertaking, as a burden constituting a condition of an exemption, shared use of the facilities between that undertaking and its competitors, since, in the absence of such use, those competitors would be deprived of any real opportunity of entering and remaining on the relevant market.

(b) Single infringement

In *BASF and UCB* v *Commission* ([35]) the Court held that the concept of 'single objective' that characterises a single and continuous infringement cannot be determined by a general reference to the distortion of competition in the relevant product market, since an impact on competition constitutes a consubstantial element of any conduct covered by Article 81 EC. Such a definition is likely to deprive the concept of a single and continuous infringement of a part of its meaning, since it would have the consequence that different types of conduct which relate to a particular economic sector and are prohibited by Article 81 EC would have to be systematically characterised as constituent elements of a single infringement.

As regards the cartels at issue, the Court found that the global arrangements and the European arrangements were not applied at the same time, pursued different objectives and were implemented by dissimilar methods and that the Commission had not demonstrated that the European producers intended to adhere to the global arrangements in order subsequently to divide the European Economic Area market. Accordingly, the global arrangements and the European arrangements constituted two separate infringements. Since the infringement consisting in participation in the global market was time-barred, the Court annulled the contested decision in so far as it imposed a fine on the applicants on account of their participation in that cartel.

(c) Fines

It follows from *Prym and Prym Consumer* v *Commission* ([36]) that the obligation to define the relevant market in a decision adopted pursuant to Article 81 EC applies to the Commission only when, in such a definition, it is not possible to determine whether the cartel is capable of affecting trade between Member States and has an anti-competitive object or effect. Where the agreement has as its object the division of the product markets and the geographic market the Commission is under no obligation to define the market for the purposes of the application of Article 81 EC. Nonetheless, where the

([35]) Judgments of 12 December 2007 in Case T-101/05 BASF and *UCB* v *Commission* and Case T-111/05 UCB v Commission.

([36]) Judgment of 12 September 2007 in Case T-30/05 (on appeal, Case C-534/07 P).

operative part of a decision does not merely make a finding of infringement, but also imposes a fine, the findings of fact relating to the relevant market are relevant. According to the guidelines on setting fines ([37]), the assessment of the gravity of the infringement must take account of its actual impact on the market, where this can be measured, and also of the effective actual economic capacity of offenders to cause significant damage to other operators. The assessment of those factors requires a determination of the size of the markets and of the market shares held by the undertakings concerned.

However, as the infringement had as its object the sharing of the product markets and the geographic market, which is characterised as 'very serious' by the guidelines, the Court considered that the absence of reasoning relating to market definition could not, in this case, lead to the cancellation or reduction of the fine, it being noted that the Commission had chosen the minimum starting amount provided for in the guidelines for such an infringement.

In *Bolloré and Others* v *Commission* ([38]) the Court exercised its unlimited jurisdiction in two aspects. In the first place, observing that whilst the fact that an undertaking has not taken part in all aspects of an anti-competitive scheme is not material to the establishment of the existence of the infringement, such a factor must be taken into consideration when the gravity of the infringement is assessed and if and when the fine is determined, the Court reduced by 15 % the final amount of the fine imposed on one of the undertakings, on the ground that the Commission had failed to demonstrate that that undertaking's non-participatation in the market-sharing practices had not been taken into account in respect of all the parameters which led to the determination of the final amount of the fine imposed on it. In the second place, when reducing the fine for cooperation, the Court considered that even if, unlike the undertaking AWA, the undertaking Mougeot had provided documents dating back to the material time and if, on certain points, its statements were more detailed, the information given by AWA related to a longer period and covered a wider geographical area, and held that the cooperation provided by those two undertakings was of similar quality. Consequently, the Court granted AWA the same reduction as had been given to Mougeot.

Likewise, in *BASF and UCB* v *Commission* the Court, after finding that the infringement consisting in the applicants' participation in the global arrangements was time-barred, recalculated the amount of the fines which the Commission had imposed on them. In BASF's case, the Court stated that where an undertaking makes available to the Commission information concerning actions for which it could not have been required to pay a fine, that does not amount to cooperation falling within the scope of the 1996 Leniency Notice ([39]). Since the main evidence provided by BASF by way of cooperation related to the global arrangements, and since the infringement relating to those arrangements had been held to be time-barred, the Court considered that BASF could no longer benefit from the reduction of 10 % which it had been granted under that head.

([37]) Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty (OJ 1998 C 9, p. 3).

([38]) Judgment of 26 April 2007 in Joined Cases T-109/02, T-118/02, T-122/02, T-125/02, T-126/02, T-128/02, T-129/02, T-132/02 and T-136/02 *Bolloré and Others* v *Commission* (on appeal, Case C-322/07 P).

([39]) Commission Notice of 18 July 1996 on the non-imposition or reduction of fines in cartel cases (OJ 1996 C 207, p. 4).

As the Court had considered that, owing to the nature of the infringement, the starting amount of the fine relating to the European arrangements must remain the same as that fixed for all the arrangements, the fact that BASF had obtained a declaration that one of the two types of conduct in which it was found to have engaged could not attract a penalty because it was time-barred did not have the efect of reducing the amount of its fine. In effect, in spite of the reduction obtained by virtue of that time-bar, the final amount arrived at the the Court was EUR 35.024 million, or EUR 54 000 more than the amount of the fine imposed on BASF by the Commission.

In *Coats Holdings and Coats* v *Commission* ([40]) the Court considered that the applicant's role was essentially limited to facilitating the entry into force of the framework agreement of the cartel As its role was therefore closer to that of a mediator than to that of a full member of the cartel, the Court considered it appropriate to reduce the amount of the fine by 20 % in order to take account of those attenuating circumstances.

(d) Imputability of the unlawful conduct

In *Akzo Nobel and Others* v *Commission* ([41]) the Court emphasised that it was not because of a relationship between the parent company in instigating the infringement or, a fortiori, because the parent company was involved in the infringement, but because they constituted a single undertaking for the purposes of Article 81 EC that the Commission was able to address the decision imposing fines to the parent company of a group of companies.

In the specific case of a parent company holding all of the capital of a subsidiary which has committed an infringement, there is a simple presumption that the parent company exercises decisive influence over the conduct of its subsidiary. It is for the parent company to rebut that presumption by placing before the Court any evidence relating to the organisational, economic and legal links between its subsidiary and itself in order to demonstrate that they do not constitute a single economic entity.

2. Points raised on the scope of Article 82 EC

(a) *Microsoft* v *Commission*

The Court's activity this year was marked by the case giving rise to the judgment in *Microsoft* v *Commission* ([42]), delivered by the Grand Chamber, which dismissed the essential part of the action for annulment of the Commission's decision ([43]).

([40]) Judgment of 12 September 2007 in Case T-36/05 (on appeal, Case C-468/07 P).

([41]) Judgment of 12 December 2007 in Case T-112/05.

([42]) Judgment of 17 September 2007 in Case T-201/04.

([43]) Commission Decision 2007/53/EC of 24 May 2004 relating to a proceeding under Article 82 [EC] and Article 54 of the EEA Agreement against Microsoft Corporation (Case COMP/C-3/37.792 — Microsoft) (OJ 2007 L 32, p. 23).

In addition to imposing a fine of more that EUR 497 million, the Commission ordered Microsoft to bring the abuses found to an end, first, by disclosing the necessary interoperability information to the undertakings wishing to develop and distribute workgroup server operating systems and, second, by offering for sale a version of the Windows PC operating system without Windows Media Player. In order to assist the Commission in its task of monitoring compliance with those remedies, the decision provided for a monitoring mechanism which included the appointment of an independent monitoring trustee.

The Court rejected all of the applicant's claims concerning the abuses of a dominant position found by the Commission and also the remedies and the fine imposed, but, on the contrary, annulled the provisions of the decision relating to the monitoring trustee.

As regards, in the first place, the abuse consisting in the refusal to provide the interoperability information, the Court rejected all the arguments whereby Microsoft sought to challenge the concept and the degree of interoperability taken into account by the Commission and also the coherence of the remedy imposed. The Court then considered the question of intellectual property rights or business secrets covering Microsoft's communications protocols or the specifications for those protocols. Referring to the case-law of the Court of Justice ([44]), the Court observed that it is only in exceptional circumstances that the exercise of the exclusive right by the holder of the property right could give rise to such an abuse, namely when, first, the refusal relates to a product or service indispensable to the exercise of a particular activity on a neighbouring market; second, the refusal is of such a kind as to exclude any effective competition on that neighbouring market; third, the refusal prevents the appearance of a new product for which there is potential consumer demand; and, last, the refusal is not objectively justified.

In considering whether those circumstances were present in this case, the Court held that the Commission had not made a manifest error by considering, first, that, in order to be able to compete viably with Windows workgroup server operating systems, competing operating systems had to be able to interoperate with the Windows domain architecture on an equal footing with those Windows systems; second, that market developments showed a risk that competition would be eliminated on the workgroup server operating systems market; and, third, that Microsoft's refusal limited technical development to the prejudice of consumers within the meaning of Article 82(b) EC and that, accordingly, the circumstance relating to the appearance of a new product was present in this case. Last, the Court observed that Microsoft had neither demonstrated the existence of any objective justification whatsoever for its refusal to disclose the interoperability information in issue, nor sufficiently established that the disclosure of that information would have a significant negative impact on its incentives to innovate.

As regards, in the second place, the abuse associated with the tying of the Windows PC operating system and Windows Media Player, the Court considered that the Commission's analysis of the constituent elements of the tying was consistent with

([44]) Case 238/87 *Volvo* [1988] ECR 6211; Joined Cases C-241/91 P and C-242/91 P *RTE and ITP* v *Commission*, *'Magill'*, [1995] ECR I-743; Case C-7/97 *Bronner* [1998] ECR I-7791; and Case C-418/01 *IMS Health* [2004] ECR I-5039.

both Article 82 EC and the case-law ([45]); the Court recalled that those elements are as follows: first, the tying product and the tied product are two separate products; second, the undertaking concerned has a dominant position on the market for the tying product; third, the undertaking does not give consumers the choice of obtaining the tying product without the tied product; and, fourth, the practice in question restricts competition.

As regards, in the third place, the monitoring mechanism consisting in the designation of an independent trustee, the Court held that the decision had no legal basis in Regulation No 17 ([46]) and exceeded the Commission's powers of investigation and enforcement. The Court considered that by establishing such a mechanism, which conferred on the trustee, without limitation in time, the powers of access, independently of the Commission, to Microsoft's assistance, information, documents, premises and staff, and to the source codes of its relevant products, and which entitled the trustee also to act on his own initiative and upon application by third parties, the Commission had gone beyond the situation in which it designates its own external expert to advise it during an investigation and had delegated powers which it alone could exercise. The Commission had also exceeded its powers by making Microsoft responsible for the costs associated with the trustee, when no provision of Regulation No 17 empowered it to require undertakings to bear the costs which the Commission itself incurred in monitoring the execution of remedies.

As for the fine, the Court observed, in particular, that the obligation to state reasons did not involve either indicating the figures relating to the amount of fines or distinguishing, in fixing the starting amount of the fine, between the different abuses found.

(b) Decisions rejecting complaints

In *Ufex and Others* v *Commission* the Court observed that, while the Commission, in the exercise of its discretion, may decide not to follow up a complaint for lack of Community interest ([47]), it cannot do so on the sole basis that such practices have ceased, without having ascertained that anti-competitive effects are not ongoing and that, where appropriate, the gravity of the alleged effects on competition or their ongoing effects were not such as to confer a Community interest on that complaint. Even where no anti-competitive effects persist, the Commission is still required to take the duration and the gravity of the alleged infringements into account.

Furthermore, as regards the examination of a complaint falling within the shared competence of the Commission and the national authorities, the Court made clear that

([45]) See, inter alia, Case T-30/89 *Hilti* v *Commission* [1991] ECR II-1439 and Case T-83/91 *Tetra Pak* v *Commission* [1994] ECR II-755.

([46]) Cited above.

([47]) On the concept of Community interest, see also judgments of 3 July 2007 in Case T-458/04 *Au lys de France* v *Commission* and of 12 July 2007 in Case T-229/05 *AEPI* v *Commission* (on appeal, Case C-425/07 P).

neither a subjective attitude on the part of the national authorities or the national courts to the effect that the Commission is better placed to deal with the matter nor the fact that the Commission cooperated with a national authority is capable of creating exclusive competence on the part of the Commission or of anticipating the Commission's decision as to the existence of a Community interest. Nor is the Commission under any obligation to give priority to a case where a national court has stayed proceedings pending a decision on the Commission's part.

(c) Application of Article 82 EC to cross-subsidies

In *Ufex and Others* v *Commission* the Court held that the grant by an undertaking in a dominant position of cross-subsidies originating in the sector in which it has a statutory monopoly to the activity of its subsidiary, which is open to competition, does not as such constitute an abuse of a dominant position, irrespective of the policies pursued in the reserved sector and in the sector open to competition. In effect, the mere fact that an exclusive right is granted to an undertaking in order to guarantee that it provides a service of general economic interest does not preclude that undertaking from earning profits from the activities reserved to it or from extending its activities into non-reserved areas. However, the acquisition of a holding, and by analogy the grant of cross-subsidies, may raise problems in the light of the Community competition rules where the funds used by the undertaking holding the monopoly derived from excessive or discriminatory prices or from other unfair practices in its reserved market. Consequently, under-invoicing by an undertaking in a dominant position for the provision of services to its subsidiary does not necessarily constitute a barrier for competitors where the subsidiary uses those subsidies in order to derive significant profits or to pay high dividends. The same apples concerning the fact that the subsidiary aligns its prices to those of its competitors and derives very significant profits, provided that such conduct has no impact on the customer's choice of supplier.

(d) Abuse of a dominant position

The Court held in *Duales System Deutschland* v *Commission (Der Grüne Punkt)* ([48]) that the conduct of an undertaking which manages a system for the collection and recycling of packaging extending over the whole territory, which consists in requiring undertakings which use its system to pay a fee for all the packaging marketed in Germany and bearing its logo, where those undertakings demonstrate that they did not use that system for part or all of that packaging, constitutes an abuse of a dominant position. However, that does not preclude the possibility of that undertaking, where it is shown that the packaging bearing its logo has been collected and recycled by another system, levying an appropriate fee solely for the use of the trade mark. The placing of the logo corresponds to a service in that it informs the consumer that the system is available.

([48]) Judgment of 24 May 2007 in Case T-151/01 (on appeal, Case C-385/07 P).

(e) Predatory pricing

Relying on *AKZO* v *Commission* ([49]), the Court recalled in *France Télécom* v *Commission* ([50]) that there are two different methods of analysis when it is necessary to ascertain whether an undertaking has charged predatory prices. Prices lower than the average variable costs charged by an undertaking holding a dominant position are regarded as abusive in themselves, because the only interest that the undertaking may have in charging such prices is to eliminate its competitors, whereas prices lower than average total costs but above the average variable costs are abusive when they are fixed in the context of a plan designed to eliminate a competitor. That intention to eliminate must be established on the basis of solid and consistent indicia, although there is no requirement to demonstrate the actual effects of the practices in question.

In that regard, the receipts and costs subsequent to the infringement cannot be taken into account for the purpose of evaluating the rate of cover of the costs during the period under consideration. In effect, Article 82 EC is aimed at the position held, on the common market, by the undertaking concerned at the time when it committed the infringement. However, it is not necessary to establish, by way of additional proof, that the undertaking concerned had a genuine prospect of recovering its losses.

The Court further held that it cannot be asserted that the right of a dominant undertaking to align its prices on those of its competitors is absolute, in particular where this right would in effect justify the use of predatory pricing prohibited under the Treaty. Although an undertaking in a dominant position cannot be deprived of the right to protect its own commercial interests if they are attacked and must be allowed, in so far as is reasonable, to react accordingly, such behaviour cannot be countenanced if its actual purpose is to strengthen this dominant position and abuse it.

(f) Commitments given by the undertaking in a dominant position

In *Alrosa* v *Commission* the Court ruled for the first time on the legality of a decision making binding the commitments offered by an undertaking in a dominant position and on the effects of that decision on third parties.

The Court held that the effect of such a decision is to bring to an end the proceedings to establish and penalise an infringement of the competition rules. Accordingly, it cannot be considered to be a mere acceptance on the Commission's part of a proposal that has been freely put forward by a negotiating partner, but constitutes a binding measure which puts an end to an infringement, as regards which the Commission exercises all the prerogatives conferred on it by Articles 81 EC and 82 EC, with the only distinctive feature being that the submission of offers of commitments by the undertakings concerned means that the Commission is not required to prove the infringement. By making a particular type of conduct of an operator in relation to third parties binding, a

([49]) Case C-62/86 [1991] ECR I-3359.

([50]) Judgment of 30 January 2007 in Case T-340/03 (on appeal, Case C-202/07 P).

decision adopted under Article 9 of Regulation No 1/2003 ([51]) may indirectly have legal effects *erga omnes* which the undertaking concerned would not have been in a position to create on its own. According to the Court, the Commission is thus their sole author, since it makes binding the commitments offered by the undertaking concerned and assumes sole responsibility for them. Although the Commission has a margin of discretion in the choice offered to it by Regulation No 1/2003 and may make the commitments proposed by the undertakings concerned binding through the adoption of a decision under Article 9 of that regulation or may follow the procedure laid down in Article 7(1), which requires that an infringement be established, it must nonetheless observe the principle of proportionality.

In this case, the Court concluded that, in the case of a Commission decision requiring that an end be put to a long-standing commercial relationship between two undertakings party to an agreement that might constitute an abuse of a dominant position, the close connection between the two sets of proceedings initiated by the Commission, on the basis of Articles 81 EC and 82 EC, and also the fact that the decision expressly mentions the undertaking that is a party to the contract without being addressed to it should have led to that undertaking being accorded, as regards the proceedings taken as a whole, the rights given to an 'undertaking concerned' within the meaning of Regulation No 1/2003, although, strictly speaking, it did not fall to be so classified in the proceedings relating to Article 82 EC. Consequently, that undertaking had a right to be heard on the individual commitments which the Commission envisaged making binding and was entitled to have the opportunity to exercise that right in full.

3. Points raised on the scope of the control of concentrations

In *Sun Chemical Group and Others* v *Commission* ([52]) the Court emphasised that the guidelines on the assessment of horizontal mergers ([53]) do not require an examination in every case of all the factors which they mention, since the Commission enjoys a discretion enabling it to take account or not to take account of certain factors and is not required to provide specific reasons concerning the assessment of a number of aspects of the concentration which seem to it manifestly irrelevant or insignificant or plainly of secondary importance for the assessment of the concentration.

In the exercise of its review, the Court is not limited merely to establishing whether or not the Commission took into account elements mentioned in the guidelines as relevant to the assessment of the impact of a concentration, but must also consider whether any possible omissions on the part of the Commission are capable of calling into question its finding.

([51]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 [EC] and 82 [EC] (OJ 2003 L 1, p. 1).

([52]) Judgment of 9 July 2007 in Case T-282/06.

([53]) Guidelines on the assessment of horizontal mergers under the Council regulation on the control of concentrations between undertakings (OJ 2004 C 31, p. 5).

Furthermore, when examining the Commission's analysis relating to the existence of excess capacity on the market, the Court concluded that it is not necessary, in order for the customers of an entity resulting from a concentration to be in a position to discourage any anti-competitive conduct on the entity's part, that they should be able to transfer all their orders to other suppliers. In fact, the possibility for them to transfer a substantial part of their requirements to other suppliers may be regarded as a threat liable to cause sufficient losses to deter that entity from pursuing such a strategy.

4. Proceedings for the elimination of anti-competitive practices

(a) Allocation of powers

Regulation No 1/2003 seeks in particular to give the national competition authorities a greater role in the application of the competition rules and, to that end, establishes a network of public authorities which apply those rules in close cooperation. In that regard, the Court, in the judgments in *France Télécom* v *Commission* cited above, makes clear that Regulation No 1/2003 nonetheless maintains the Commission's preponderant role in seeking out infringements. Although Article 11(1) of that regulation lays down a general rule to the effect that the Commission and the national authorities are required to cooperate closely, it does not require the Commission to refrain from making an inspection in a case which is being dealt with by a national competition authority in parallel. Nor can it be inferred from that provision that where a national competition authority has begun an investigation into particular facts the Commission is immediately prevented from taking action in the case or taking a preliminary interest therein. On the contrary, it follows from the requirement of collaboration between the Commission and the national authorities that the national authorities may, at least in the preliminary stages such as investigations, work in parallel.

Furthermore, Article 11(6) of Regulation No 1/2003 provides, subject only to consulting the national authority concerned, that the Commission retains the option of initiating proceedings with a view to adopting a decision even where that authority is already dealing with the case. A fortiori, Regulation No 1/2003 cannot be interpreted as prohibiting, in such a case, the Commission from deciding to carry out an inspection, a step that is merely preliminary to dealing with the substance of the case and does not have the effect of formally initiating proceedings.

(b) Confidentiality of communications between lawyers and clients

In *Akzo Nobel Chemicals and Akcros Chemicals* v *Commission* the Court ruled on the scope of the principle, asserted by the Court of Justice in *AM & S* v *Commission* ([54]), that the Commission must exercise the powers of investigation conferred on it in order to uncover infringements of competition law while respecting, subject to certain conditions, the confidentiality of communications between lawyers and their clients.

([54]) Case 155/79 [1982] ECR 1575.

As regards the procedure to be followed during an inspection, the Court held that an undertaking is entitled to refuse to allow the Commission officials to take even a cursory look at documents for which it claims confidentiality, provided that the undertaking considers that such a cursory look is impossible without revealing the content of the documents and that it gives appropriate reasons. If the Commission considers that the material presented by the undertaking is not of such a nature as to prove that the documents in question are confidential, its officials may place a copy of the document in a sealed envelope and then remove it with a view to a subsequent resolution of the dispute. The Court considered that this procedure enables risk of a breach of the principle of protection of confidentiality of communications between lawyers and clients to be avoided while at the same time enabling the Commission to retain a certain control over the documents and avoiding the risk that the documents will subsequently disappear or be manipulated.

As regards the types of documents protected, the Court established that an undertaking's internal documents, even if they were not exchanged with a lawyer or were not created for the purpose of being sent to a lawyer, may nonetheless be covered by legal professional privilege, provided that they were drawn up exclusively for the purpose of seeking legal advice from a lawyer in the exercise of the rights of the defence. On the other hand, the mere fact that a document has been discussed with a lawyer is not sufficient to give it such protection. The Court added that the fact that a document was drawn up in connection with a competition law compliance programme is not sufficient in itself for that document to be protected. The scope of such programmes is often such that they encompass duties and cover information going beyond the exercise of the rights of the defence.

In addition, the Court asserted that, even though it is true that specific recognition of the role of in-house lawyers and the protection of the confidentiality of communications with such lawyers is relatively more common today than when the judgment in *AM & S* was delivered, it is nonetheless impossible to identify tendencies which are uniform or have clearly majority support in that regard in the laws of the Member States. The choice made by the Court of Justice in that judgment not to include among protected communications those between undertakings and lawyers bound by a relationship of employment to those undertakings must be maintained.

(c) Principle of proportionality

The judgment in *CB* v *Commission* ([55]) is informative as to the conditions in which the Commission may, by decision, order inspections to which the undertakings or associations of undertakings concerned are required, under Article 14(3) of Regulation No 17 (and in future under Article 20(4) of Regulation No 1/2003), to submit.

The applicant, an economic interest group governed by French law set up by the main French credit establishments in order to achieve interoperability between their bank

([55]) Judgment of 12 July 2007 in Case T-266/03.

card payment systems, claimed that the decision ordering an inspection which was binding on it infringed the principle of proportionality since such an inspection did not constitute the necessary and appropriate means of obtaining the information sought by the Commission. The Court rejected that plea, observing that the choice to be made by the Commission between the various means of obtaining information available to it does not depend on circumstances such as the particular gravity of the situation, extreme urgency or the need for absolute discretion, but on the need for an appropriate investigation, having regard to the particular characteristics of each case. The Court observed that the purpose of the contested decision adopted in this case was to obtain information on the presumed intention of certain large French banks to exclude potential entrants from the French market for the issue of bank payment cards and also the exchange of confidential business information that the Commission considered it would be able to find at the applicant's premises. In the light of the nature of the information sought and the role played by those banks in the structure of the group, the Court held that the Commission's choice did not infringe the principle of proportionality, since it was difficult to imagine how the Commission could have come into possession of that information other than by means of a decision ordering an inspection.

(d) Publication of Commission decisions and the presumption of innocence

In *Pergan Hilfsstoffe für industrielle Prozesse* v *Commission* the Court developed the principles laid down in *Bank Austria Creditanstalt* v *Commission* ([56]) concerning the Commission's power to publish its decisions and respect for professional secrecy, and stated that those concepts must be interpreted in the light of the principle of the presumption of innocence.

In reliance on that principle, the applicant claimed that publication of the 'peroxides decision' was unlawful, since it contained findings relating to alleged offending conduct on its part. In that regard, the Court observed that, even though, according to *Bank Austria Creditanstalt* v *Commission*, the interest of an undertaking in the non-disclosure of the anti-competitive conduct of which it is accused by the Commission does not merit any particular protection, the application of that case-law presupposes that the infringement found is mentioned in the operative part of the decision, which is an essential requirement if the undertaking is to be able to mount a legal challenge against the decision. As the 'peroxides decision' did not satisfy that condition in the applicant's case, the Court held that the findings with respect to the applicant were not established in law and could not be disclosed. Such a situation is contrary to the principle of the presumption of innocence and infringes the principle of professional secrecy which requires that respect for the reputation and dignity of the applicant be ensured.

([56]) Case T-198/03 [2006] ECR II-1429.

State aid

1. Substantive rules

(a) Constituent elements of State aid

The problem of the classification of measures as State aid formed the subject matter of a number of judgments delivered by the Court of First Instance in 2007. These include, in particular, the judgment in *Olympiaki Aeroporia Ypiresies* v *Commission* ([57]), in which the Court annulled in part a Commission decision ordering, inter alia, recovery of State aid consisting in the Hellenic Republic's toleration of non-payment of value added tax ('VAT') on fuel and spare parts for aeroplanes. The Court considered that the Commission had failed to examine whether such a default in payment conferred a real economic advantage permitting it to be classified as State aid. As VAT is in principle neutral as regards the competitive situation, in that it may be either immediately deducted as input tax or recovered within a short time, the only advantage from which the applicant could have benefited would have consisted in a cash-flow advantage arising from the temporary disbursement of the input tax. The Court observed that, in this case, the failure to pay the VAT did not suffice, in principle, to support the assumption that the applicant had benefited from an advantage for the purposes of Article 87 EC.

In *Bouygues and Bouygues Télécom* v *Commission* ([58]) the Court upheld the Commission's decision in which it found that there was no State aid owing to the absence of a selective advantage granted to certain operators by a national measure reducing the fees payable by them for UMTS (Universal Mobile Telecommunications System) licences for the purpose of aligning the terms on which all those licences were awarded. The resulting loss incurred by State resources was not sufficient to prove the existence of State aid because it was inevitable on account of the general scheme of the system, as the Community framework for telecommunications services is based on equal treatment of operators in the award of licences and the determination of fees. The Court emphasised, moreover, that the potential advantage deriving from the fact that licences were awarded to the first operators at an earlier date did not confer a benefit on those operators owing to the delay in launching the UMTS network.

(b) Obligation to state reasons

In *Ireland and Others* v *Commission* ([59]) the Court annulled the Commission's decision concerning the exemption from customs duty of mineral oil used as fuel for the production of aluminium in certain areas of Ireland, France and Italy, raising of its own motion a failure to state reasons concerning the non-classification of that measure as 'existing aid' fixed by

([57]) Judgment of 12 September 2007 in Case T-68/03.

([58]) Judgment of 4 July 2007 in Case T-475/04 (on appeal, Case C-431/07 P).

([59]) Judgment of 12 December 2007 in Joined Cases T-50/06, T-56/06, T-60/06, T-62/06 and T-69/06.

Regulation No 659/99 ([60]). According to Article 1(b)(v) of that regulation, aid is deemed to be existing aid where it can be established that at the time it was put into effect it did not constitute aid but that it subsequently became aid owing to the evolution of the common market even without having been altered by the Member State concerned. The Court observed that, in accordance with the Community provisions governing excise duties, the exemptions in question had been authorised and extended by a number of decisions of the Council adopted on a proposal from the Commission. In those circumstances, the Court held that when the Commission omitted to consider the aid in issue to be existing aid under the abovementioned provision of Regulation No 659/1999, it was not entitled merely to assert that that provision was not applicable in this case.

The judgment in *Salvat père et fils and Others* v *Commission* refines the Court's case-law on the requirement to state reasons for the Commission decisions adopted with respect to various measures which it regards as constituting State aid in application of Article 87 EC. In that judgment, the Court held that the fact that a Commission decision has carried out a global examination of the conditions for the application of Article 87 EC cannot be regarded as in itself contrary to the obligation to state reasons, particularly when the measures concerned formed part of the same action plan.

In *Département du Loiret* v *Commission* ([61]) the Court found, on the other hand, that the statement of reasons for a Commission decision declaring incompatible with the common market State aid unlawfully paid to an undertaking in the form of the conveyance of developed land at a preferential price was insufficient. The Court observed that that decision did not contain the necessary information on the method used to calculate the aid to be recovered, in particular as regards the application of a rate of compound interest intended to arrive at the present-day value of initial subsidy.

(c) Recovery

Under the case-law brought together and enshrined in Article 13(1) of Regulation No 659/1999, the Commission is authorised to adopt a decision on the basis of the information available to it when dealing with a Member State which fails to comply with its duty of cooperation and fails to provide it with the information which it has requested for the purpose of examining the compatibility of aid with the common market. In *MTU Friedrichshafen* v *Commission* ([62]) the Court held that, while Article 13(1) of Regulation No 659/1999 allows the Commission, after it has observed the procedural requirements laid down therein, to take a decision finding that the aid is incompatible on the basis of the information available and, if appropriate, order the Member State to recover the aid from the beneficiary, it does not allow the Commission to impose on a particular undertaking an obligation to repay, even jointly and severally, a fixed part of the amount

([60]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [88 CE] (OJ 1999 L 83, p. 1).

([61]) Judgment of 29 March 2007 in Case T-369/00 (on appeal, Case C-295/07 P).

([62]) Judgment of 12 September 2007 in Case T-196/02 (on appeal, Case C-520/07 P).

of the aid declared to be incompatible and paid unlawfully where the transfer of State resources from which that undertaking is alleged to have benefited is hypothetical.

The Court recalled in *Scott* v *Commission* ([63]) that the objective of recovery of unlawful aid is not to impose a penalty not provided for by Community law but to ensure that its recipient forfeits the advantage which it had enjoyed over its competitors on the market and to restore the situation existing prior to the payment of the aid. The Commission cannot therefore either, out of sympathy with the beneficiary, order recovery of an amount which is less than the value of the aid received or, in order to mark its disapproval of the serious character of the illegality, order recovery of an amount in excess of that value.

(d) Temporal application of the legal framework

In *Freistaat Sachsen* v *Commission* ([64]) the Court heard an action for annulment of a Commission decision on an aid scheme established by the authorities of the *Land* of Saxony for small and medium-sized undertakings. The Court accepted the applicant's argument that the Commission should have examined the aid scheme concerned on the basis of the provisions in force at the time of notification and not on the basis of those which entered into force after that time. The Court also observed that the initial notification of the aid, made before the entry into force of the later rules, was complete and emphasised that the application of a new rule on the compatibility of the State aid to aid notified before its entry into force is permissible only if it clearly follows from the terms, objectives or general scheme of the new rules that they are intended to apply retroactively and, if necessary, if the legitimate expectations of those concerned are duly respected.

2. Procedural rules

In *Scott* v *Commission* the Court stated that, although the procedure for review of State aid governed by Article 88 EC accords no special role to the recipient of the aid and the latter does not have the status of a party to that procedure, the Commission may, under its obligation to conduct a diligent and impartial examination of the case, be required, in certain circumstances, to take into account the observations submitted by the recipient of aid after the expiry of the time granted to the interested parties by the decision to initiate the formal examination procedure.

In that judgment, the Court also referred to its case-law to the effect that the legality of a Commission decision concerning State aid must be assessed in the light of the information available to the Commission when the decision was adopted, so that the applicant cannot rely on factual arguments which were not known to the Commission and which were not notified to it during that formal examination procedure. The Court stated that it does not follow from that case-law that proof submitted by the recipient of aid in an action for annulment may not be taken into account in order to appreciate the legality of the decision

([63]) Judgment of 29 March 2007 in Case T-366/00 (on appeal, Case C-290/07 P).

([64]) Judgment of 3 May 2007 in Case T-357/02 (on appeal, Case C-334/07 P).

where that proof had been properly submitted to the Commission during the administrative procedure prior to the adoption of the contested decision if the Commission had excluded it for reasons which cannot be justified.

In *Tirrenia di Navigazione and Others* v *Commission* ([65]) the applicants sought annulment of the Commission's decision to initiate the formal investigation procedure concerning State aid granted to Italian navigation undertakings. As the main substantive points had already been settled by the Court of Justice in a related case ([66]), the Court of First Instance observed that it must ascertain whether the solution reached by the Court of Justice could be transposed to the present case, since the arguments put forward by the applicants differed from those to which the Court of Justice had already responded and since the applicants before the Court of First Instance had not had the opportunity to express their views before the Court of Justice, as there was no provision for intervention before that Court by individuals in such a case.

Relying on the case-law of the Court of Justice concerning the scope of the prohibition on ruling *ultra petita* ([67]), moreover, the Court held that, in the event that the defendant institution should fail to raise a legal consideration, invocation of which would have established the legality of the contested decision, it is for the Community judicature to take such a legal consideration into account in order to preclude the annulment of a lawful act. Consequently, the Court relied of its own motion on the consideration that interested third parties cannot secure annulment of the decision on the basis of matters which were not raised before the Commission by the national authorities at the preliminary investigation procedure stage and dismissed the action.

Expiry of the ECSC Treaty

A number of judgments ([68]) delivered in 2007 clarified the consequences of the expiry of the ECSC Treaty for the power of the Commission to make findings of infringement of the competition rules in the sectors previously governed by that Treaty.

The Court observed that the succession of the legal framework of the EC Treaty to that of the ECSC Treaty is part of the unity and continuity of the Community legal order and its objectives, which requires that the European Community ensures compliance with the rights and obligations which arose under the ECSC Treaty. Thus, the pursuit of the aim of undistorted competition in the sectors which initially fell within the common market in coal and steel is not suspended by the fact that the ECSC Treaty has expired, since that objective is also pursued in the context of the EC Treaty. In other words, the sectors which

([65]) Judgment of 20 June 2007 in Case T-246/99.

([66]) Case C-400/99 *Italy* v *Commission* [2001] ECR I-7303 and [2005] ECR I-3657.

([67]) Order of 13 June 2006 in Case C-172/05 P *Mancini* v *Commission*.

([68]) Judgments of 12 September 2007 in Case T-25/04 *González y Díez* v *Commission* and of 25 October 2007 in Joined Cases T-27/03, T-46/03, T-58/03, T-79/03, T-80/03, T-97/03 and T-98/03 *SP and Others* v *Commission*. The points dealt with in the latter judgment also form the subject matter of the judgments of the same date in Case T-45/03 *Feralpi Siderurgica* v *Commission* and Case T-94/03 *Ferriere Nord* v *Commission*.

previously came under the ECSC Treaty — a *lex specialis* — automatically came, as from 24 July 2002, within the scope of the EC Treaty — the *lex generalis*.

The Court made clear, however, that within each Treaty framework, the institutions are competent to exercise only those powers which that Treaty conferred on them. By contrast, the principles governing the succession of legal rules may lead to the application of substantive provisions which are no longer in force at the time of the adoption of a measure by a Community institution.

It was in application of those principles that the Court, in *SP and Others* v *Commission*, annulled the decision which the Commission had adopted, after the expiry of the ECSC Treaty, on the basis of Article 65(4) and (5) CS and not the corresponding provisions of Regulation No 17 ([69]), to establish an infringement of Article 65(1) CS by a number of Italian manufacturers of reinforcing bars and imposing a fine on the undertakings concerned.

On the other hand, in *González y Diéz* v *Commission* the Court held that the Commission had been entitled, after the expiry of the ECSC Treaty, to adopt a decision relating to State aid granted in spheres coming within the scope of that Treaty in reliance on Article 88(2) EC with respect to situations which had come into existence before the expiry of the ECSC Treaty. However, as regards the substantive rules, the Court concluded that the Commission was not entitled to examine the aid in issue under a regulation adopted within the framework of the EC Treaty.

Community trade mark

Decisions given in the context of Regulation No 40/94 ([70]) again accounted in 2007 for a large number (128) of the cases disposed of, and now amount to 32 % of the total.

1. Absolute grounds for refusal of registration

The Court annulled decisions of the Boards of Appeal in three of the total of 68 judgments disposing of cases concerning absolute grounds for refusal of registration ([71]). In the first judgment, *Kustom Musical Amplification* v *OHIM (Shape of a guitar)*, the Court held that there had been an infringement of the right to be heard and the duty to state reasons because the websites which enabled the Office for Harmonization in the Internal Market ('OHIM') to find that the mark applied for should be rejected could not be accessed from the links that OHIM had sent to the trade mark applicant before adopting its decision.

([69]) Cited above.

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

([71]) Judgments of 7 February 2007 in Case T-317/05 *Kustom Musical Amplification v OHIM (Shape of a guitar)*; of 13 June 2007 in Case T-441/05 *IVG Immobilien* v *OHIM (I)*; and of 10 October 2007 in Case T-460/05 *Bang & Olufsen* v *OHIM (Shape of a loudspeaker)*.

In *IVG Immobilien* v *OHIM (I)*, the Court criticised the inadequacy of the analysis which led OHIM to refuse registration, in respect of several financial and property services, of a figurative sign formed by the letter 'I'. The Court held, in particular, that instead of relying on the finding that the sign at issue was ordinary, OHIM ought to have addressed the question of whether that sign was in fact capable of distinguishing, in the minds of the target public, the services supplied by the trade mark applicant from those of its competitors.

Lastly, in *Bang & Olufsen* v *OHIM (Shape of a loudspeaker)*, the Court held that, in view, especially, of the particularly careful examination which consumers undertake when buying goods of a durable and technological nature, the shape of a loudspeaker can be registered as a three-dimensional trade mark, regard being had also to the aesthetic result of the whole. It further stated that, even if the existence of specific or original characteristics does not constitute an essential condition for registration, the fact remains that their presence may confer the required degree of distinctiveness on a trade mark which would not otherwise have it.

By contrast, in *Neumann* v *OHIM (Shape of a microphone head grill)* ([72]), the Court upheld OHIM's refusal to register the shape of a microphone head grill as a Community trade mark. Although the average consumer of the relevant products is likely to be attentive to their different technical or aesthetic details, that does not automatically imply that he may perceive them as having the role of a trade mark. Further, no distinctive character can arise from the fact that competing undertakings have been forced to give up producing or marketing products with an analogous shape.

2. Relative grounds for refusal of registration

(a) Complementary nature of the goods

In *El Corte Inglés* v *OHIM — Bolaños Sabri (PiraÑAM diseño original Juan Bolaños)* ([73]), the Court annulled the decision of OHIM which had found that there is no similarity between clothing, footwear and hats, on the one hand, and leather goods such as handbags, purses and wallets, on the other. The assessment of whether those goods are complementary must take account of the fact that they may have a common aesthetic function and contribute jointly to the external image of consumers. The perception of the connections between the goods at issue must therefore be assessed in the light of any requirement of coordination of the various components of that external image when the goods are designed and purchased. That perception may lead consumers to believe that the same undertaking is responsible for the production of those goods.

On this same point, it was held in two other judgments that the degree of complementarity between wine glasses, carafes and decanters, on the one hand, and wine, on the other, is not sufficient for a finding of similarity between the goods at issue and that the obvious

([72]) Judgment of 12 September 2007 in Case T-358/04.

([73]) Judgment of 11 July 2007 in Case T-443/05.

difference between perfumery goods and leather goods cannot be called into question by considerations connected with their possible aesthetic complementarity ([74]).

(b) Opposition based on signs other than earlier trade marks

Article 8(4) of Regulation No 40/94 allows for opposition proceedings to be brought against the registration of a Community trade mark on the basis of a sign other than an earlier trade mark. In the dispute between the Czech company Budějovický Budvar and the American company Anheuser-Busch concerning the Community trade marks BUDWEISER and BUD, the Court clarified the scope of the rights conferred by that provision ([75]). It was held that Budějovický Budvar, which had previously registered appellations of origin for beer in France under the Lisbon Agreement for the Protection of Appellations of Origin, could not rely on that agreement in order to oppose Anheuser-Busch's applications in relation to identical or similar goods. Although French law extends the protection provided for in the Lisbon Agreement to cases in which the goods are not similar, it nonetheless requires that use by third parties of the signs at issue be likely to misappropriate or weaken the reputation, in France, of the appellations of origin in question, which Budějovický Budvar had failed to demonstrate.

(c) Reputation of the earlier trade mark

According to Article 8(5) of Regulation No 40/94, the proprietor of an earlier trade mark with a reputation is entitled to file an opposition against an application for registration of a similar or identical mark even if that mark relates only to goods or services different from those by covered by the earlier trade mark.

In *Sigla* v *OHIM — Elleni Holding (VIPS)* ([76]), it was necessary to establish whether the reputation of the word mark VIPS, covering in particular a fast food chain, could prevent the registration of that same mark inter alia for computer programming services intended for hotels or restaurants. The Court stated that the risk that the mark applied for would take unfair advantage of the repute or the distinctive character of the earlier trade mark continues to exist where the consumer, without necessarily confusing the commercial origin of the product or service in question, is attracted by the mark applied for itself and will buy the product or service covered by it on the ground that it bears that mark, which is identical or similar to an earlier mark with a reputation. That assessment is therefore

([74]) Judgment of 11 July 2007 in Case T-263/03 *Mülhens v OHIM — Conceria Toska (TOSKA)*. The same analysis can be found in the judgments of 11 July 2007 in Case T-28/04 *Mülhens v OHIM — Cara (TOSKA LEATHER)* and in Case T-150/04 *Mülhens* v *OHIM — Minoronzoni (TOSCA BLU)*.

([75]) Judgments of 12 June 2007 in Joined Cases T-57/04 and T-71/04 *Budějovický Budvar and Anheuser-Busch* v *OHIM (AB GENUINE Budweiser KING OF BEERS)*; in Joined Cases T-53/04 to T-56/04, T-58/04 and T-59/04 *Budějovický Budvar* v *OHIM — Anheuser-Busch (BUDWEISER)*; and in Joined Cases T-60/04 to T-64/04 *Budějovický Budvar* v *OHIM — Anheuser-Busch (BUD)*.

([76]) Judgment of 22 March 2007 in Case T-215/03.

different from the assessment of a likelihood of confusion as regards the commercial origin of the goods or services at issue. Since the necessary conditions were not fulfilled, the Court rejected the opponent's plea.

By contrast, in *Aktieselskabet af 21. November 2001* v *OHIM — TDK Kabushiki Kaisha (TDK)* ([77]), the Court held that the fact that the earlier mark TDK, designating apparatus for recording sound or images, had an enhanced distinctive character because of its reputation enabled its proprietor to oppose successfully the registration of the same mark for sports clothing. Since the earlier mark was used for sponsorship activities, particularly in the sporting field, there was a future risk, which was not hypothetical, that the mark applied for could take unfair advantage of the reputation of the earlier mark. Furthermore, the judgment in *Antartica* v *OHIM — Nasdaq Stock Market (nasdaq)* ([78]) stated that evidence of that risk may be established, in particular, on the basis of logical deductions resulting from an analysis of the probabilities and by taking account of the usual practices in the relevant commercial sector as well as all the other circumstances of the case.

3. Invalidity proceedings

Under Article 51 et seq. of Regulation No 40/94, it is possible to make applications to OHIM for declarations of invalidity in respect of Community trade marks which have already been registered. In two of the three actions in this area examined during 2007, the Court delivered a judgment annulling a decision of the Boards of Appeal ([79]) and it recalled, in one of those judgments (*La Perla* v *OHIM — Worldgem Brands (NIMEI LA PERLA MODERN CLASSIC)*), that the application of Article 8(5) of Regulation No 40/94 does not require the existence of a likelihood of confusion.

In the second judgment annulling a decision of a Board of Appeal (*Consorzio per la tutela del formaggio Grana Padano* v *OHIM — Biraghi (GRANA BIRAGHI)*), the question arose whether the protection that Regulation No 2081/92 ([80]) confers on the protected designation of origin ('PDO') 'grana padano' justified the annulment of the trade mark GRANA BIRAGHI. Having noted that the application of Regulation No 40/94 must not affect the protection granted to PDOs, the Court held that OHIM is bound to refuse, or to declare invalid, any mark which uses a registered name in respect of products not covered by the registration or which misuses, imitates or evokes a PDO. To that end, OHIM must carry out a detailed analysis and verify whether the mark applied for contains only a generic constituent part of a PDO. That verification must be based on legal, economic, technical, historical, cultural and social evidence, on the relevant national and Community legislation and on the perception which the average consumer has of

([77]) Judgment of 6 February 2007 in Case T-477/04 (on appeal, Case C-197/07 P).

([78]) Judgment of 10 May 2007 in Case T-47/06 (on appeal, Case C-320/07 P).

([79]) Judgments of 16 May 2007 in Case T-137/05 *La Perla* v *OHIM — Worldgem Brands (NIMEI LA PERLA MODERN CLASSIC)* and of 12 September 2007 in Case T-291/03 *Consorzio per la tutela del formaggio Grana Padano* v *OHIM — Biraghi (GRANA BIRAGHI).*

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

the name (possibly identified through surveys). In this case, the Court held that the Board of Appeal had erred in finding that the name 'grana' was generic and that the existence of the PDO 'grana padano' did not preclude the registration of the mark GRANA BIRAGHI.

4. Formal and procedural issues

(a) Procedure before the Opposition Division

The Court held that an opposition which confined itself to stating that it was based on a likelihood of confusion complied with the formal requirements, that statement being sufficient for OHIM and the trade mark applicant to know on what ground the opposition was based ([81]). It also stated that the date of reception by OHIM of an incomplete fax of a notice of opposition is taken into account for the purposes of assessing whether the period for filing an opposition has been observed where the opponent, on its own initiative, diligently transmits a complete version of that notice to OHIM ([82]).

As regards the examination of the substance of oppositions, the Court stated that an Opposition Division must carry out that examination even where the introductory notice stating the grounds on which the opposition is based contains merely the reference 'Likelihood of confusion' and the explanation of grounds of the opposition cannot be taken into account, since it was submitted in a language other than the language of the opposition. The fact that the explanation of grounds was not translated does not lead to the rejection of the opposition as unfounded. However, the examination must take account only of the information contained in the trade mark application, in the registration of the earlier mark and in the part of the notice of opposition drafted in the language of the opposition ([83]). Moreover, the Court stated that the Opposition Division is not required to set a period for the party concerned to remedy that irregularity. That division is therefore entitled to refuse to take into account evidence which the opponent did not submit in due time in the appropriate language ([84]).

(b) Continuity in terms of functions

In 2007 the Court annulled three decisions of Boards of Appeal which refused to take into account facts and evidence that the parties had not submitted in due time before the

([81]) Judgment of 16 January 2007 in Case T-53/05 *Calavo Growers* v *OHIM — Calvo Sanz (Calvo)*.

([82]) Judgment of 15 May 2007 in Joined Cases T-239/05, T-240/05 to T-247/05, T-255/05, T-274/05 and T-280/05 *Black & Decker* v *OHIM — Atlas Copco (Three-dimensional representation of a yellow and black electric power tool and Others)*.

([83]) Judgment in Calvo, see footnote 81.

([84]) Judgment of 11 July 2007 in Case T-192/04 *Flex Equipos de Descanso* v *OHIM — Leggett & Platt (LURA-FLEX)*.

Opposition Division ([85]). Following the recent case-law of the Court of Justice ([86]), the Court held that, whilst it is true that a party does not have an unconditional right to have examined by the Board of Appeal facts and evidence which it presents late, the fact remains that, unless otherwise specified, the Board of Appeal has a discretion as to whether or not such information must be taken into account in the decision which it is called upon to give. Accordingly, any decision in this respect must be properly reasoned and must assess, first, whether the material which has been produced late is, on the face of it, likely to be relevant to the outcome of the opposition and, second, whether the stage of the proceedings at which that late submission takes place and the circumstances surrounding it do not argue against such matters being taken into account. Furthermore, in another case ([87]), the Court, having held that the applicable provisions did not leave the Board of Appeal any discretion, confirmed that the board had been right to refuse to take account of the evidence of the genuine use of the earlier mark that the opponent had produced late before the Opposition Division.

As regards the obligation to state reasons, the Court stated that, where a Board of Appeal has confirmed the decision of the Opposition Division in its entirety, that decision and the reasoning on which it is based form part of the context in which the Board of Appeal adopted its decision ([88]).

In addition, the Court stated that, where a Board of Appeal considers that the relative ground for refusal adopted by the Opposition Division is unfounded, it is required to adjudicate on any other grounds put forward before that division, even if the latter rejected those grounds or did not examine them ([89]).

Furthermore, the Court considered that the fact that the party who seeks the annulment of a decision of the Board of Appeal upholding an opposition against the registration of the mark applied for did not dispute, before the Board of Appeal, the similarity of the conflicting marks could not in any way divest OHIM of the power to adjudicate on whether those marks were similar or identical. Likewise, therefore, that fact cannot deprive that party of the right to challenge, in the factual and legal context of the dispute before the Board of Appeal, the findings of that body on this point ([90]).

([85]) Judgments in *LURA-FLEX*, see footnote 84; of 4 October 2007 in Case T-481/04 *Advance Magazine Publishers* v *OHIM — Capela & Irmãos (VOGUE)*; and of 6 November 2007 in Case T-407/05 *SAEME* v *OHIM — Racke (REVIAN's)*.

([86]) Case C-29/05 P *OHIM* v *Kaul* [2007] ECR I-2213.

([87]) Judgment of 12 December 2007 in Case T-86/05 *K & L Ruppert Stiftung* v *OHIM — Lopes de Almeida Cunha and Others (CORPO livre)*.

([88]) Judgment of 21 November 2007 in Case T-111/06 *Wesergold Getränkeindustrie* v *OHIM — Lidl Stiftung (VITAL FIT)*.

([89]) Judgment in *VIPS*, see footnote 76.

([90]) Judgment of 18 October 2007 in Case T-425/03 *AMS* v *OHIM — American Medical Systems (AMS Advanced Medical Services)* (on appeal, Case C-565/07 P).

(c) Relationship between absolute grounds for refusal and relative grounds for refusal

In *Ekabe International* v *OHIM — Ebro Puleva (OMEGA3)* ([91]), the Court held that, if, in the context of opposition proceedings, OHIM concludes that the dominant element common to both marks is devoid of distinctive character, it must reopen the procedure for the examination of the mark applied for and find that such an absolute ground for refusal precludes the registration of that mark. In this instance, the action was accordingly dismissed on the ground that the applicant had no interest in the annulment of a decision rejecting its application for registration on the basis of a relative ground for refusal when that annulment could result only in the adoption by OHIM of another decision rejecting the application for registration, on the basis this time of an absolute ground for refusal.

(d) Option of restricting the list of goods referred to in the trade mark application

The case-law according to which an applicant is entitled to restrict the list of goods referred to in his trade mark application, provided that that restriction may be interpreted as meaning that the applicant no longer seeks the annulment of the decision refusing registration to the extent that that decision covers the goods which the applicant has henceforth excluded ([92]), was developed in 2007, the Court refusing, in two instances, to take account of the restrictions put forward. First, the restriction of a trade mark application initially covering microphones to only 'studio microphones and their parts' was held to be capable of changing the subject matter of the proceedings, given that the relevant public had changed in relation to that taken into account by the Board of Appeal ([93]). Second, a restriction which does not involve the withdrawal of one or more goods from the list, but the alteration of the intended purposes of all the goods on that list, was deemed to be capable of affecting the examination of the Community trade mark carried out by OHIM ([94]).

Access to documents

In the three judgments delivered in 2007 concerning Regulation No 1049/2001 ([95]), the Court explained the scope of certain exceptions to the principle of transparency provided for in that regulation in order to protect, first, the public interest in the context of international relations and the financial, monetary or economic policy of the Community; second, the privacy and integrity of the individual; third, court proceedings and, fourth, the purpose of investigations.

([91]) Judgment of 18 October 2007 in Case T-28/05.

([92]) Judgment in Case T-194/01 *Unilever* v *OHIM (Ovoid tablet)* [2003] ECR II-383, paragraph 13.

([93]) Judgment in *Shape of a microphone head grill*, see footnote 72.

([94]) Judgment of 20 November 2007 in Case T-458/05 *Tegometall International* v *OHIM — Wuppermann (TEK)*.

([95]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43). Judgments of 25 April 2007 in Case T-264/02 WWF *European Policy Programme* v *Council*; of 12 September 2007 in Case T-36/04 *API* v *Commission* (on appeal, Case C-514/07 P); and of 8 November 2007 in Case T-194/04 *Bavarian Lager* v *Commission*.

As regards the first of those exceptions, provided for in the third and fourth indents of Article 4(1)(a) of Regulation No 1049/2001, the judgment in *WWF European Policy Programme* v *Council* established that the Council was entitled to refuse the applicant access to an interinstitutional note concerning questions relating to the Ministerial Conference which the World Trade Organisation had held in Cancun in September 2003. It was held that disclosure of that note would have entailed a reasonably foreseeable and not purely hypothetical risk of affecting the room for negotiation of the Community and its Member States.

In *Bavarian Lager* v *Commission* the Court defined the scope of the exception to the right of access to documents designed to protect privacy and the integrity of the individual (Article 4(1)(b) of Regulation No 1049/2001). The Court clarified the relationship between Regulation No 1049/2001, which is designed to ensure the greatest possible transparency of the decision-making process of the public authorities, and Regulation No 45/2001 ([96]), which is designed to ensure the protection of the private life of individuals in the handling of personal data. On the question of whether the Commission was entitled not to communicate to an undertaking a minute containing the names of the participants in a meeting held some years earlier in the context of proceedings for failure to fulfil obligations, the Court acknowledged that the disclosure of those personal data is indeed 'processing of data' within the meaning of Regulation No 45/2001, but added that that processing is lawful, as it is imposed by the requirement to respect the legal obligation to disclose established by Regulation No 1049/2001.

Furthermore, as Regulation No 1049/2001 provides that a person requesting access to a document is not required to justify his request, the Court held that the need to prove the necessity of the disclosure of the data required by Regulation No 45/2001 does not apply. The protection of personal data is nonetheless guaranteed by the fact that Regulation No 1049/2001 provides that access to a document may be refused where its disclosure would undermine the protection of the privacy and the integrity of the individuals concerned. After observing that there was no reason in principle to exclude professional or business activities from the concept of 'private life', the Court asserted that disclosure of the names of the participants in a meeting held by the Commission did not affect the private life of the persons in question, as the position which they had expressed at the meeting was that of the bodies which they represented and not their own. In those circumstances, disclosure of the names of the participants did not require the prior consent of the persons concerned.

As regards the exception to the principle of transparency designed to protect court proceedings (second indent of Article 4(2) of Regulation No 1049/2001), the judgment in *API* v *Commission* developed the case-law on the right of access to the procedural documents which the institutions lodge with the Community Courts.

On an action by the Association de la presse internationale against the Commission's decision refusing access to certain documents relating to a number of cases which had

([96]) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1).

been heard before the Court of Justice or the Court of First Instance, the latter Court observed that the Commission was required to carry out a concrete examination of the content of each document to which access was requested. It was therefore not entitled to consider, in the abstract, that all the pleadings lodged in the cases to which it was a party were automatically and globally covered by the exception in issue. The possibility of not carrying out an examination of the content of the documents requested is permissible only where it is clear that the exception relied on applies to their entire content. In that regard, the Court observed that, as the Commission must be in a position to defend itself against all external pressure, it may, up to the time of the hearing, refuse to disclose its pleadings without first being required to carry out a concrete assessment of the content of those pleadings. Once the hearing has been held, on the other hand, the Commission is under an obligation to carry out a concrete assessment of each document requested.

As regards refusal of access to the pleadings in a case which has already been closed, the Court considered that the exception regarding the protection of court proceedings cannot be relied upon, in so far as the content of pleadings might well have already been reproduced in the report for the hearing, debated at a hearing and reproduced in the judgment.

The Court also ruled on the scope of the exception to the principle of transparency designed to protect the purpose of investigations (third indent of Article 4(2) of Regulation No 1049/2001), and held that that exception did not authorise the Commission to refuse public access to the documents relating to proceedings to fulfil obligations up to the time when the Member State concerned complies with the judgment finding that it has infringed Community law.

Further information concerning the same exception was provided in *Bavarian Lager* v *Commission*. The Court held that, even if the need to preserve the anonymity of persons providing the Commission with information on possible infringements of Community law constitutes a legitimate objective capable of justifying the refusal to grant complete, or even partial, access to certain documents, the Commission is not entitled to rule in the abstract on the effect which disclosure of the data requested might have on its investigative activity. On the contrary, it must show that the purpose of those activities would have been actually and specifically jeopardised by the disclosure of a document requested several years after the closure of the proceedings for failure to fulfil obligations in the context of which it was prepared.

Common agricultural policy

By its judgment in *Hungary* v *Commission* ([97]), delivered in accordance with the accelerated procedure, the Court annulled Regulation No 1572/2006 ([98]) introducing a new quality

([97]) Judgment of 15 November 2007 in Case T-310/06.

([98]) Commission Regulation (EC) No 1572/2006 of 18 October 2006 amending Regulation (EC) No 824/2000 establishing procedures for the taking-over of cereals by intervention agencies and laying down methods of analysis for determining the quality of cereals (OJ 2006 L 290, p. 29).

criterion, namely the specific weight criterion, which had to be satisfied by maize in order to be eligible for intervention with the competent national agencies, which buy, at a fixed price, the maize offered to them and harvested in the Community, provided that the offers comply with specific conditions, notably as regards their quality and quantity. The introduction of the specific weight criterion was justified, according to that regulation, in light of the new situation of the intervention scheme together in particular with the long-term storage of certain cereals and its effects on product quality.

The Court observed, in the first place, that by introducing a new criterion relating to the specific weight of maize 12 days before the regulation became applicable, that is to say, at a time when the producers had already sown the seeds and when they could no longer influence the specific weight of the crop, the contested provisions had produced effects on the investments made by the producers concerned in that they had made fundamental changes to the conditions for offering maize for intervention. As the new specific weight criterion had not been notified to the farmers concerned in good time, the Commission had breached their legitimate expectations.

In the second place, moreover, the Court noted that, according to the actual words of the regulation, the upgrading of the pre-existing quality criteria was necessary for the purpose of making intervention products less fragile in terms of deterioration and subsequent use. On the other hand, the regulation did not state clearly and expressly to what extent the introduction of the criterion of specific weight for maize was also intended to upgrade the quality criteria for maize. The Court observed that the Commission's argument that the specific weight was of relevance in evaluating the quality of maize in so far as it had an impact on the nutritional value of maize was not only unsupported by any evidence but was contradicted by the material provided to the Court by the Commission itself, and, observing that it is not for the Court to assume the role of the parties in adducing evidence, held that it could not but declare that there had been a manifest error of assessment.

II. Actions for damages

Jurisdiction of the Court

The Court made three orders ([99]) in 2007 further explaining the scope of its jurisdiction in actions for damages.

The fact that the combined provisions of Articles 235 EC and 288 EC give the Community judicature exclusive jurisdiction to hear actions seeking compensation for damage attributable to the Community does not mean that Community judicature is absolved from scrutinising the true nature of actions brought before them on the sole ground that the alleged wrongdoing is attributable to the Community institutions. Thus, in its order in *Sinara Handel* v *Council and Commission* the Court considered that it has no jurisdiction to

([99]) Orders of 5 February 2007 in Case T-91/05 *Sinara Handel* v *Council and Commission* and in *Commune de Champagne and Others* v *Council and Commission*, and of 5 September 2007 in Case T-295/05 *Document Security Systems* v *ECB*.

hear a claim for compensation for loss of profit corresponding to the amount of anti-dumping duties, net of tax, paid during the period in question. That damage must, in reality, be regarded as arising exclusively from the payment of the sum owed in respect of the anti-dumping duties imposed, with the result that the action is, in fact, a claim for repayment of the duties. However, the national courts alone have jurisdiction to deal with such a claim.

In the order in *Document Security Systems* v *ECB* the Court found it appropriate to provide further detail of its jurisdiction to adjudicate on the liability of the Community where the alleged fault consisted in a breach of a rule of national law.

The applicant, which claimed to be the proprietor of a European patent, validated in nine Member States, relating to security features designed to protect banknotes against counterfeiting, contended that the European Central Bank ('the ECB') had infringed the rights conferred by the patent. The applicant requested the Court to declare that the ECB had infringed the rights conferred by the patent and order it to pay damages and interest for its infringement of those rights. The Court observed that, according to the Convention on the Grant of European Patents, the European patent is to have the same legal effect as a national patent in each State and that any infringement of a European patent is to be dealt with by national law. The Court inferred that the applicant's action amounted to a claim that the ECB had infringed nine national patents, which was a matter not for the Community judicature but for the national authorities.

While the claim for damages did admittedly come within the jurisdiction of the Court, the application was nonetheless dismissed as lacking any foundation in law, since the infringement in question had not been established by the national courts. The Court further observed that the limitation period applicable to the action could begin to run only when the national courts had ascertained the existence of a patent infringement.

Last, in its order in *Commune de Champagne and Others* v *Council and Commission* the Court stated that the sole cause of the allegedly harmful effects produced by an international agreement between the Community and the Swiss Confederation in respect of applicants in Switzerland was the fact that the Swiss Confederation, in deciding in its absolute discretion to sign and ratify the agreement, had agreed to be bound by it and had undertaken to take the steps necessary to ensure the performance of the obligations arising from it. It followed that any damage which the applicants might suffer in the territory of Switzerland as a result of the steps taken by the Swiss authorities in implementation of the agreement could not be regarded as attributable to the Community and that the Court therefore did not have jurisdiction to hear and determine an action for compensation for that damage.

Substantive conditions

According to established case-law in relation to the liability of the Community for damage caused to an individual by a breach of Community law for which a Community institution or organ is responsible, a right to reparation is conferred where three conditions are met: the rule of law infringed must be intended to confer rights on individuals; the breach must

be sufficiently serious; and there must be a direct causal link between the breach of the obligation resting on the author of the act and the damage sustained by the injured partes ([100]).

1. Concept of a rule conferring rights on individuals

In *Cytimo* v *Commission* ([101]) the Court held that on the occasion of negotiations for a contract between the Community public authority and a tenderer in a public tendering procedure, the principle of respect for the principle of good faith and the prohibition of misuse of rights are rules which confer rights on individuals. Furthermore, while it follows from the first paragraph of Article 101 of Regulation No 1605/2002 ([102]) that the awarding authority has a wide discretion to decline to conclude the contract and, accordingly, to discontinue the pre-contractual negotiations, the Commission had nonetheless committed a sufficiently serious breach of the principle of good faith and had misused the right conferred on it by that regulation to decline to award the public contract by pursuing for a period of two months pre-contractual negotiations which it knew were bound to fail. The Court thus considered that by failing to advise the applicant immediately of its decision not to award the contract the Commission had caused it to lose a serious opportunity to lease the property to a third party for a period of two months.

As regards the rules infringed by the Commission in the context of the economic analyses which it carries out for the purpose of the control of concentrations, the Court held in *Schneider Electric* v *Commission* ([103]) that while certain principles and certain rules with which the competitive analysis is required to comply are indeed in the nature of rules intended to confer rights on individuals, not all the norms which the Commission is required to respect in its economic assessments can be automatically held to have such a nature. The Court nonetheless did not rule in this case on the nature of the rule which was alleged to have been infringed, but merely found that that infringement could not in itself give rise to the damage alleged to have been sustained.

As regards the infringement of the right of the defence in that the Commission had not informed the applicant in the statement of objections that unless it submitted certain corrective measures it had no prospect of obtaining a decision declaring the transaction compatible, the Court, recalling the essential role of the statement of objections, considered that it was necessary to take into account both the importance of the financial interests involved and the industrial implications of a concentration having a Community dimension and also of the considerable scope of the investigatory powers which the Commission has at its disposal when regulating competition. The Court concluded that the applicant was alleging infringement of a rule intended to confer rights on individuals.

([100]) Joined Cases C-46/93 and C-48/93 *Brasserie du pêcheur* and *Factortame* [1996] ECR I-1029.

([101]) Judgment of 8 May 2007 in Case T-271/04.

([102]) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1).

([103]) Judgment of 11 July 2007 in Case T-351/03.

In *Fédération des industries condimentaires de France and Others* v *Commission* ([104]), on the other hand, the Court considered that, as norms attributing powers, Articles 211 EC and 133 EC are institutional in nature and therefore are not rules of law conferring rights on individuals.

2. Sufficiently serious breach

The concept of a sufficiently serious breach of a rule conferring rights on individuals was significantly developed in the field of the control of concentrations in *Schneider Electric* v *Commission*.

As the Court, in an initial judgment ([105]), had annulled the Commission decision declaring the concentration between Schneider and Legrand incompatible with the common market, Schneider brought an action for damages, seeking compensation for the harm sustained on account of the illegalities vitiating that decision.

The Court acknowledged that an inhibiting effect on the Commission, contrary to the general Community interest, might arise if the concept of a serious breach were construed as comprising all errors or mistakes which, even if of some gravity, are not by their nature or extent alien to the normal conduct of an institution with the task of overseeing the application of the competition rules, which are complex and subject to a considerable degree of discretion. The Court proceeded to balance the interests involved and stated that a sufficiently serious breach could not be constituted by failure to fulfil a legal obligation which can be explained by the objective constraints to which the institution and its officials are subject. On the other hand, there may be such a breach in the case of conduct which takes the form of an act manifestly contrary to the rule of law and seriously detrimental to the interests of third parties and which cannot be justified or accounted for by the particular constraints to which the staff of the institution, operating normally, is objectively subject.

As regards the defects in the economic analysis, the Court emphasised that it is necessary to take into account the fact that such an analysis generally involves, as regards both the facts and the reasoning employed, complex intellectual propositions into which certain inadequacies may creep, in view of the time constraints to which the institution is subject. Accordingly, the gravity of a documentary or logical inadequacy does not always constitute a sufficient circumstance to give rise to Community liability.

As regards the breach of the rights of the defence, the Court held that there had been a manifest and serious infringement in so far as the Commission had omitted, in the statement of objections, a reference to a matter that was essential in its consequences and in the operative part of the incompatibility decision. That breach of the rights of the defence was neither justified nor accounted for by the particular constraints to which the Commission staff were objectively subject.

([104]) Judgment of 11 July 2007 in Case T-90/03.

([105]) Case T-310/01 *Schneider Electric* v *Commission* [2002] ECR II-4071.

3. Causal link and contributory damage

The Court stated in *Schneider Electric* v *Commission* that the method used to analyse the causal link must be based on a comparison between the situation arising for the third party concerned from the wrongful measure and the situation which would have arisen if the institution's conduct had been in conformity with the legal rule. Where the unlawful circumstance is associated with a decision whose effect is to withhold authorisation, it cannot be presumed that, in the absence of the defect identified, the applicant would necessarily have been granted the authorisation.

In this case, the Court observed that, although it did not have a vested right to recognition of the compatibility of the transaction, the applicant might nonetheless have had a meaningful chance of securing a favourable decision, since it could not be ruled out that, as a result of its divestiture proposals, it might have been in a position to require the Commission to find, on penalty of committing an error of assessment by not doing so, that the transaction was compatible with the common market. The Court considered, however, that the assessment of the changes to the economic parameters which would necessarily have accompanied any compatibility decision was too uncertain to be a basis for a useful comparison with the situation resulting from the incompatibility decision. Accordingly, the materialisation of opportunity is linked to parameters that were too uncertain to be the subject of any convincing quantification, so that there was no sufficiently close causal link between the unlawful act committed and the loss of any opportunity of obtaining a decision finding that the concentration was compatible.

On the other hand, the Court considered that there was such a link between the wrongful act committed and two types of damage, namely: first, the costs incurred by the undertaking in participating in the resumed investigation of the transaction after the judgment annulling the decision and, second, the reduction of the transfer price which the applicant had to grant to the purchaser of the assets in Legrand in order to secure an agreement that the date on which the disposal was to take effect would be deferred for such time as might be necessary to ensure that the proceedings pending before the Community judicature would not become devoid of purpose before reaching their conclusion. On the latter aspect, the Court stated that it was because the incompatibility decision was vitiated by two irregularities which the applicant could perceive as manifest irregularities that the applicant found itself constrained to defer the effective completion of the sale of Legrand and to offer to sell to the purchaser at a lower price than it would have obtained in the event of a firm sale in the absence of an incompatibility decision which, from the outset, appeared to be tainted by two manifest irregularities.

Last, this judgment illustrates the impact of the applicant's conduct on the determination of remediable damage, in accordance with the case-law to the effect that where an applicant has contributed to its own loss it cannot claim compensation for the part of the loss for which it is responsible ([106]). On that basis, the Court, noting that in view of the extent of the merger carried out and of the appreciable increase in economic strength which it entailed for the only two main players present on the relevant market, the applicant

([106]) Case 145/83 *Adams* v *Commission* [1985] ECR 3539.

could not have been unaware that the merger at the very least entailed the risk of creating or strengthening a dominant position in a substantial part of the common market and that, accordingly, it would be prohibited by the Commission, ordered the Commission to make good only two thirds of the loss suffered by the applicant as a result of the reduction in the price of the transfer of Legrand.

III. Appeals

The Civil Service Tribunal commenced its judicial activities on 12 December 2005 and thus far 37 appeals have been lodged with the Court of First Instance, including 27 in 2007. During that year it closed seven of those cases ([107]), one by a judgment setting aside the decision under appeal.

In that judgment, delivered in *Parliament* v *Eistrup*, the Court set aside the order ([108]) whereby the Civil Service Tribunal had dismissed the objection of inadmissibility raised by Parliament on the ground that the application initiating the proceedings bore, instead of the signature in writing of the lawyer instructed by the applicant, only a stamp reproducing that signature. The Court held that, as the law on Community judicial procedures currently stands, the signature placed in writing by the lawyer on the original of the application initiating the proceedings is the only way of ensuring that responsibility for the preparation and the content of that document is assumed by a person authorised to represent the applicant before the Community courts ([109]).

IV. Applications for interim relief

The Court received 34 applications for interim relief in 2007, representing a significant increase over the number of applications (25) submitted in 2006. In 2006 41 cases were disposed of, as against 24 in 2006, and applications for interim relief were granted on four occasions, namely in the orders in *IMS* v *Commission, Du Pont de Nemours (France) and Others* v *Commission, France* v *Commission* and *Donnici* v *Parliament* ([110]).

([107]) Judgments of 23 May 2007 in Case T-223/06 P *Parliament* v *Eistrup*; of 5 July 2007 in Case T-247/06 P *Sanchez Ferriz* v *Commission*; and of 12 September 2007 in Case T-20/07 P *Commission* v *Chatziioannidou*; orders of 12 June 2007 in Case T-69/07 P *Commission* v *André*; of 9 July 2007 in Case T-415/06 P *De Smedt* v *Commission*; of 12 July 2007 in Case T-252/06 P *Beau* v *Commission*; and of 14 December 2007 in Case T-311/07 P *Nijs* v *Court of Auditors*.

([108]) Order of the Civil Service Tribunal of 13 July 2006 in Case F-102/05 *Eistrup* v *Parliament*.

([109]) On that point, see also the order of 17 January 2007 in Case T-129/06 *Diy-Mar Insaat Sanayi ve Ticaret and Akar* v *Commission*.

([110]) Orders of the President of the Court of First Instance of 7 June 2007 in Case T-346/06 R *IMS* v *Commission* and of 19 July 2007 in Case T-31/07 R *Du Pont de Nemours (France) and Others* v *Commission* and orders of the Court of First Instance of 28 September 2007 in Case T-257/07 R *France* v *Commission* (on appeal, Case C-512/07 P (R)) and of 15 November 2007 in Case T-215/07 R *Donnici* v *Parliament* (on appeal, Case C-512/07 P (R)). Furthermore, by order of 30 March 2007 in Case T-366/00 R *Scott* v *Commission* the President had made an *ex parte* order granting an application for stay of execution of a decision ordering recovery of State aid before declaring, by order of 30 March 2007, that there was no longer any need to adjudicate in the case because the Court of First Instance had on 29 March 2007 annulled the decision contested in the main proceedings.

In *IMS* v *Commission* the applicant sought a stay of execution of the favourable opinion which the Commission had delivered on a decree which the French authorities had notified to it pursuant to Directive 98/37 ([111]) and which prohibited the use of certain machines.

The President agreed that there was a prima facie case and observed, in particular, that as the French decree had been annulled by the Council of State and the competent authorities had failed to adopt other measures to the same end, the machine parts produced by the applicant must be regarded as prima facie satisfying the provisions of Directive 98/37. As regards urgency, the President considered that implementation of the contested opinion could jeopardise the existence of the applicant, a small undertaking heavily indebted to the banks whose production was limited and specialised. The President emphasised that there was all the more reason to recognise urgency because the prima facie case was particularly serious. In balancing the various interests involved, the President considered that as the Commission had taken more than five years to deliver its opinion, the stay of execution of that decision was not prejudicial to the health and safety of workers.

The case of *Donnici* v *Parliament* concerned an application for suspension of the decision of Parliament invalidating the mandate as Member of the European Parliament of Mr Donnici in favour of Mr Occhetto, contrary to the decision of the Consiglio di Stato, which, at last instance, had upheld Mr Donnici's mandate.

The judge hearing the application accepted that there was a prima facie case, since the applicant's argument to the effect that Parliament lacked the power to adopt the contested decision was serious and could not be rejected without a more thorough examination, which was a matter solely for the court dealing with the merits of the case. As regards urgency, it was apparent to the judge hearing the application that, if the contested measure were to be annulled by the court dealing with the merits of the action, the harm sustained by the applicant if execution of the measure were not suspended would be irreparable, since it would be impossible to fulfil his mandate as a Member of the European Parliament. As regards the balance of interests, it was also necessary to have regard to Mr Occhetto's interest in having the contested decision executed, which entailed upholding his mandate. In that situation of equality between the applicant's and Mr Occhetto's interests, the judge hearing the application considered that the decisive factor was, on the one hand, the interest of the Italian Republic in having its election legislation respected by Parliament and, on the other, the solid and serious nature of the pleas relied on to establish the prima facie case. Consequently, the judge granted the stay of execution sought.

In the light of the advance in scientific knowledge in the sphere, the Commission amended the Community rules relating to transmittable spongiform encephalopathies (TSEs) by adopting, in 2007, certain provisions which introduced an element of flexibility into the applicable health control measures. In *France* v *Commission* the applicant sought

([111]) Directive 98/37/EC of the European Parliament and of the Council of 22 June 1998 on the approximation of the laws of the Member States relating to machinery (OJ 1998 L 207, p. 1).

suspension of those provisions on the ground that they infringed the precautionary principle.

As regards the requirement of a prima facie case, the judge hearing the application considered that it was satisfied in that there was real scientific uncertainty as to the reliability of the tests provided for in the new provisions. The urgency requirement was also considered to be satisfied, in so far as the contested provisions might increase the risk of animals infected by a TSE being released for human consumption. As regards the balancing of the interests involved, the judge observed that the requirements linked with the protection of public health must be considered to outweigh the economic considerations and, consequently, ordered the suspension of execution sought.

In the order in *Du Pont de Nemours (France) and Others* v *Commission*, concerning the control of plant protection products under Directive 91/414, ([112]) the President was called upon to adjudicate on five applications for suspension of decisions whereby the Commission had limited or reduced marketing authorisation for certain products. The application for interim measures relating to restriction on the use of flusilazole was granted.

As regards a prima facie case, it was held that the pleas alleging breach of Directive 91/414 and breach of the precautionary principle were not at first sight wholly unfounded. The condition relating to urgency was also considered to be fulfilled. After considering that there was a serious risk that the applicant would suffer an irreversible loss of market share, which might admittedly be subject to subsequent financial compensation, the President nonetheless considered that, in the circumstances of the case, the gravity of the loss could not be based solely on the accounting value of the business which generated the market shares and on the loss of such value to the whole group of undertakings, but must take account of the fact that the applicants had been present on the market for more than 20 years, that they had benefited from authorisations to put flusilazole on the market for many uses in a number of Member States and that their products enjoyed a reputation on the market that might be significantly damaged by a ban on flusilazole. After then weighing up the various interests at issue, having regard, in particular, to the fact that the applicants merely requested that a situation be preserved that had existed for a number of years and that farmers had an interest in being able to obtain the only product that was effective against certain diseases, the President granted the suspension sought.

On the other hand, in the orders in *Cheminova and Others* v *Commission* ([113]), *FMC Chemical and Others* v *Commission* ([114]) and *Dow AgroSciences and Others* v *Commission* ([115]), the four applications for suspension of decisions prohibiting the marketing of certain substances

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

([113]) Order of the President of 4 December 2007 in Case T-326/07 R.

([114]) Orders of the President of 11 December 2007 in Cases T-349/07 R and T-350/07 R.

([115]) Order of the President of 17 December 2007 in Case T-367/07 R.

were rejected for lack of urgency, on the ground that the loss which those decisions might cause for the applicants was not sufficiently serious, since it represented less than 1 % of their turnover. In that regard, the President added that, in reality, that percentage was even lower, since there was no need to take into consideration the loss claimed by the applicants for interim relief which, moreover, did not have standing to bring the main action for annulment, namely the undertakings marketing the product, which were not individually concerned by the contested decision.

B — Composition of the Court of First Instance

(Order of precedence as at 20 September 2007)

First row, from left to right:

J. D. Cooke, Judge; O. Czúcz, President of Chamber; N. J. Forwood, President of Chamber; A. W. H. Meij, President of Chamber; V. Tiili, President of Chamber; M. Jaeger, President of the Court; J. Azizi, President of Chamber; M. Vilaras, President of Chamber; M. E. Martins Ribeiro, President of Chamber; I. Pelikánová, President of Chamber.

Second row, from left to right:

S. Papasavvas, Judge; K. Jürimäe, Judge; D. Šváby, Judge; E. Cremona, Judge; F. Dehousse, Judge; I. Wiszniewska-Białecka, Judge; V. Vadapalas, Judge; I. Labucka, Judge; E. Moavero Milanesi, Judge.

Third row, from left to right:

S. Frimodt Nielsen, Judge; S. Soldevila Fragoso, Judge; V. Ciucă, Judge; M. Prek, Judge; N. Wahl, Judge; T. Tchipev, Judge; A. Dittrich, Judge; L. Truchot, Judge; E. Coulon, Registrar.

1. Members of the Court of First Instance

(in order of their entry into office)

Marc Jaeger

Born 1954; lawyer; attaché de justice, delegated to the Public Attorney's Office; Judge, Vice-President of the Luxembourg District Court; teacher at the Centre Universitaire de Luxembourg (Luxembourg University Centre); member of the judiciary on secondment, Legal Secretary at the Court of Justice from 1986; Judge at the Court of First Instance since 11 July 1996; President of the Court of First Instance since 17 September 2007.

Bo Vesterdorf

Born 1945; Lawyer-linguist at the Court of Justice; Administrator in the Ministry of Justice; Examining Magistrate; Legal Attaché in the Permanent Representation of Denmark to the European Communities; Temporary Judge at the Østre Landsret (Court of Appeal); Head of the Constitutional and Administrative Law Division in the Ministry of Justice; Director of a department in the Ministry of Justice; University Lecturer; Member of the Steering Committee on Human Rights at the Council of Europe (CDDH), and subsequently Member of the Bureau of the CDDH; in 2004 Member of the 'Ad hoc committee on judicial training' at the Academy of European Law, Trier (Germany); Judge at the Court of First Instance from 25 September 1989; President of the Court of First Instance from 4 March 1998 to 17 September 2007.

Rafael García-Valdecasas y Fernández

Born 1946; Abogado del Estado (at Jaén and Granada); Registrar to the Economic and Administrative Court of Jaén and, subsequently, of Cordoba; Member of the Bar (Jaén and Granada); Head of the Spanish State Legal Service for Cases before the Court of Justice of the European Communities; Head of the Spanish delegation in the working group created at the Council of the European Communities with a view to establishing the Court of First Instance of the European Communities; Judge at the Court of First Instance from 25 September 1989 to 17 September 2007.

Virpi Tiili

Born 1942; Doctor of Laws of the University of Helsinki; Assistant Lecturer in civil and commercial law at the University of Helsinki; Director of Legal Affairs and Commercial Policy at the Central Chamber of Commerce of Finland; Director-General of the Office for Consumer Protection, Finland; member of a number of committees and advisory bodies, inter alia Chairperson of the Supervisory Commission for the Marketing of Medicinal Products (1988–90), Member of the Advisory Council on Consumer Affairs (1990–94), Member of the Competition Council (1991–94) and member of the editorial board of the *Nordic Intellectual Property Law Review* (1982–90); Judge at the Court of First Instance since 18 January 1995.

Josef Azizi

Born 1948; Doctor of Laws and Bachelor of Sociology and Economics at the University of Vienna; Lecturer and Senior Lecturer at the Vienna School of Economics and the Faculty of Law of the University of Vienna; Ministerialrat and Head of Department at the Federal Chancellery; Member of the Steering Committee on Legal Cooperation of the Council of Europe (CDCJ); Representative *ad litem* before the Verfassungsgerichtshof (Constitutional Court) in proceedings for review of the constitutionality of federal laws; Coordinator responsible for the adaptation of Austrian federal law to Community law; Judge at the Court of First Instance since 18 January 1995.

John D. Cooke

Born 1944; called to the Bar of Ireland 1966; admitted also to the Bars of England and Wales, of Northern Ireland and of New South Wales; Practising barrister 1966–96; admitted to the Inner Bar in Ireland (Senior Counsel) 1980 and New South Wales 1991; President of the Council of the Bars and Law Societies of the European Community (CCBE) 1985–86; Visiting Fellow, Faculty of Law, University College Dublin; Fellow of the Chartered Institute of Arbitrators; President of the Royal Zoological Society of Ireland 1987–90; Bencher of the Honorable Society of Kings Inns, Dublin; Honorary Bencher of Lincoln's Inn, London; Judge at the Court of First Instance since 10 January 1996.

Jörg Pirrung

Born 1940; academic assistant at the University of Marburg; Doctor of Laws (University of Marburg); adviser, subsequently head of the section for private international law and, finally, head of a subdivision for civil law in the German Federal Ministry of Justice; Member of the Governing Council of Unidroit (1993–98); Chairman of the commission of the Hague Conference on Private International Law to draw up the Convention concerning the protection of children (1996); Honorary Professor at the University of Trier (private international law, international procedural law, European law); Member of the Scientific Advisory Board of the Max Planck Institute for Foreign Private and Private International Law in Hamburg since 2002; Judge at the Court of First Instance from 11 June 1997 to 17 September 2007.

Arjen W. H. Meij

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

Mihalis Vilaras

Born 1950; lawyer (1974–80); national expert with the Legal Service of the Commission of the European Communities, then Principal Administrator in Directorate General V (Employment, Industrial Relations, Social Affairs); Junior Officer, Junior Member and, since 1999, Member of the Greek Council of State; Associate Member of the Superior Special Court of Greece; Member of the Central Legislative Drafting Committee of Greece (1996–98); Director of the Legal Service in the General Secretariat of the Greek Government; Judge at the Court of First Instance since 17 September 1998.

Nicholas James Forwood

Born 1948; Cambridge University BA 1969, MA 1973 (Mechanical Sciences and Law); called to the English Bar in 1970, thereafter practising in London (1971–99) and also in Brussels (1979–99); called to the Irish Bar in 1981; appointed Queen's Counsel 1987; Bencher of the Middle Temple 1998; representative of the Bar of England and Wales at the Council of the Bars and Law Societies of the EU (CCBE) and Chairman of the CCBE's Permanent Delegation to the European Court of Justice (1995–99); Governing Board member of the World Trade Law Association and European Maritime Law Organisation (1993–2002); Judge at the Court of First Instance since 15 December 1999.

Hubert Legal

Born 1954; Member of the French Conseil d'État; graduate of the École normale supérieure de Saint-Cloud and of the École nationale d'administration; Associate Professor of English (1979–85); rapporteur and subsequently Commissaire du Gouvernement in proceedings before the judicial sections of the Conseil d'État (1988–93): Legal Adviser in the Permanent Representation of the French Republic to the United Nations in New York (1993–97); Legal Secretary in the Chambers of Judge Puissochet at the Court of Justice (1997–2001); Judge at the Court of First Instance from 19 September 2001 to 17 September 2007.

Maria Eugénia Martins de Nazaré Ribeiro

Born 1956; studied in Lisbon, Brussels and Strasbourg; Member of the Bar in Portugal and Brussels; independent researcher at the Institut d'études européennes de l'université libre de Bruxelles (Institute of European Studies, Free University of Brussels); Legal Secretary to the Portuguese Judge at the Court of Justice, Mr Moitinho de Almeida (1986–2000), then to the President of the Court of First Instance, Mr Vesterdorf (2000–03); Judge at the Court of First Instance since 31 March 2003.

Franklin Dehousse

Born 1959; Law degree (University of Liege, 1981); research fellow (Fonds national de la recherche scientifique, 1985–89); legal adviser to the Chamber of Representatives (1981–90); Doctor in Laws (University of Strasbourg, 1990); Professor (Universities of Liege and Strasbourg; College of Europe; Institut royal supérieur de Défense; Université Montesquieu, Bordeaux; Collège Michel Servet of the Universities of Paris; Faculties of Notre-Dame de la Paix, Namur); Special Representative of the Minister for Foreign Affairs (1995–99); Director of European Studies of the Royal Institute of International Relations (1998–2003); assesseur at the Council of State (2001–03); consultant to the European Commission (1990–2003); member of the Internet Observatory (2001–03); Judge at the Court of First Instance since 7 October 2003.

Ena Cremona

Born 1936; Bachelors Degree (BA) in languages, Royal University of Malta (1955); Doctor of Laws (LLD) of the Royal University of Malta (1958); practising at the Malta Bar from 1959; Legal Adviser to the National Council of Women (1964–79); Member of the Public Service Commission (1987–89); Board Member at Lombard Bank (Malta) Ltd, representing the Government shareholding (1987–93); Member of the Electoral Commission since 1993; examiner for doctoral theses in the Faculty of Laws of the Royal University of Malta; Member of the European Commission against Racism and Intolerance (ECRI) (2003–04); Judge at the Court of First Instance since 12 May 2004.

Ottó Czúcz

Born 1946; Doctor of Laws of the University of Szeged (1971); administrator at the Ministry of Labour (1971–74); lecturer (1974–89), Dean of the Faculty of Law (1989–90), Vice-Rector (1992–97) at the University of Szeged; Lawyer; Member of the Presidium of the National Retirement Insurance Scheme; Vice-President of the European Institute of Social Security (1998–2002); Member of the scientific council of the International Social Security Association (1998–2004); Judge at the Constitutional Court (1998–2004); Judge at the Court of First Instance since 12 May 2004.

Irena Wiszniewska-Białecka

Born 1947; Magister Juris, University of Warsaw (1965–69); researcher (assistant lecturer, associate professor, professor) at the Institute of Legal Sciences of the Polish Academy of Sciences (1969–2004); assistant researcher at the Max Planck Institute for Foreign and International Patent, Copyright and Competition Law, Munich (award from the Alexander von Humboldt Foundation, 1985–86); Lawyer (1992–2000); Judge at the Supreme Administrative Court (2001–04); Judge at the Court of First Instance since 12 May 2004.

Irena Pelikánová

Born 1949; Doctor of Laws, assistant in economic law (before 1989), Dr Sc, Professor of business law (since 1993) at the Faculty of Law, Charles University, Prague; Member of the Executive of the Securities Commission (1999–2002); Lawyer; Member of the Legislative Council of the Government of the Czech Republic (1998–2004); Judge at the Court of First Instance since 12 May 2004.

Daniel Šváby

Born 1951; Doctor of Laws (University of Bratislava); Judge at District Court, Bratislava; Judge, Appeal Court, responsible for civil law cases, and Vice-President, Appeal Court, Bratislava; member of the civil and family law section at the Ministry of Justice Law Institute; acting Judge responsible for commercial law cases at the Supreme Court; Member of the European Commission of Human Rights (Strasbourg); Judge at the Constitutional Court (2000–04); Judge at the Court of First Instance since 12 May 2004.

Vilenas Vadapalas

Born 1954; Doctor of Laws (University of Moscow); Doctor habil. in law (University of Warsaw); taught, at the University of Vilnius, international law (from 1981), human rights law (from 1991) and Community law (from 2000); Adviser to the Lithuanian Government on foreign relations (1991–93); Member of the coordinating group of the delegation negotiating accession to the European Union; Director-General of the Government's European Law Department (1997–2004); Professor of European law at the University of Vilnius, holder of the Jean Monnet Chair; President of the Lithuanian European Union Studies Association; Rapporteur of the Parliamentary working group on constitutional reform relating to Lithuanian accession; Member of the International Commission of Jurists (April 2003); Judge at the Court of First Instance since 12 May 2004.

Küllike Jürimäe

Born 1962; degree in law, University of Tartu (1981–86); Assistant to the Public Prosecutor, Tallinn (1986–91); diploma, Estonian School of Diplomacy (1991–92); Legal Adviser (1991–93) and General Counsel at the Chamber of Commerce and Industry (1992–93); Judge, Tallinn Court of Appeal (1993–2004); European Masters in human rights and democratisation, Universities of Padua and Nottingham (2002–03); Judge at the Court of First Instance since 12 May 2004.

Ingrida Labucka

Born 1963; diploma in law, University of Latvia (1986); investigator at the Interior Ministry for the Kirov Region and the City of Riga (1986–89); Judge, Riga District Court (1990–94); lawyer (1994–98 and July 1999 to May 2000); Minister for Justice (November 1998 to July 1999 and May 2000 to October 2002); Member of the International Court of Arbitration in The Hague (2001–04); Member of Parliament (2002–04); Judge at the Court of First Instance since 12 May 2004.

Savvas S. Papasavvas

Born 1969; studies at the University of Athens (graduated in 1991); DEA in public law, University of Paris II (1992), and PhD in law, University of Aix-Marseille III (1995); admitted to the Cyprus Bar, Member of the Nicosia Bar since 1993; Lecturer, University of Cyprus (1997–2002), Lecturer in constitutional law since September 2002; Researcher, European Public Law Centre (2001–02); Judge at the Court of First Instance since 12 May 2004.

Enzo Moavero Milanesi

Born 1954; Doctor of Laws (La Sapienza University, Rome); studies in Community law (College of Europe, Bruges); Member of the Bar, legal practice (1978–83); Lecturer in Community law at the Universities of La Sapienza (Rome) (1993–96), Luiss (Rome) (1993–96 and 2002–06) and Bocconi (Milan) (1996–2000); adviser on Community matters to the Italian Prime Minister (1993–95); official at the European Commission: legal adviser and subsequently Head of Cabinet of the Vice-President (1989–92), Head of Cabinet of the Commissioner responsible for the internal market (1995–1999) and competition (1999), Director, Directorate-General for Competition (2000–02), Deputy Secretary-General of the European Commission (2002–05), Director-General of the Bureau of European Policy Advisers (2006); Judge at the Court of First Instance since 3 May 2006.

Nils Wahl

Born 1961; Master of Laws, University of Stockholm (1987); Doctor of Laws, University of Stockholm (1995); Associate Professor (docent) and holder of the Jean Monnet Chair of European Law (1995); Professor of European Law, University of Stockholm (2001); Assistant lawyer in private practice (1987–89); Managing Director for an educational foundation (1993–2004); Chairman of the Nätverket för europarättslig forskning (Swedish Network for European Legal Research) (2001–06); Member of the Rådet för konkurrensfrågor (Council for Competition Law Matters) (2001–06); Assigned Judge at the Hovrätten över Skåne och Blekinge (Court of Appeal for Skåne and Blekinge) (2005); Judge at the Court of First Instance since 7 October 2006.

Miro Prek

Born 1965; degree in law (1989); called to the Bar (1994); performed various tasks and functions in public authorities, principally in the Government Office for Legislation (Under-Secretary of State and Deputy Director, Head of the Department for European and Comparative Law) and in the Office for European Affairs (Under-Secretary of State); Member of the negotiating team for the association agreement (1994–96) and for accession to the European Union (1998–2003), responsible for legal affairs; lawyer; responsible for projects regarding adaptation to European legislation, and to achieve European integration, principally in the Western Balkans; Head of Division at the Court of Justice of the European Communities (2004–06); Judge at the Court of First Instance since 7 October 2006.

Teodor Tchipev

Born 1940; degree in law at St Kliment Ohridski University, Sofia (1961); doctorate in law (1977); lawyer (1963–64); Legal Adviser, State Automobile Enterprise for International Transport (1964–73); Research Fellow at the Institute of Law, Bulgarian Academy of Sciences (1973–88); Associate Professor of civil procedure at the Faculty of Law of St Kliment Ohridski University, Sofia (1988–91); Arbitrator at the Court of Arbitration of the Chamber of Trade and Industry (1988–2006); Judge at the Constitutional Court (1991–94); Associate Professor at Paissi Hilendarski University, Plovdiv (February 2001 to 2006); Minister for Justice (1994–95); Associate Professor of civil procedure at the New Bulgarian University, Sofia (1995–2006); Judge at the Court of First Instance since 12 January 2007.

Valeriu M. Ciucă

Born 1960; degree in law (1984), doctorate in law (1997), Alexandru Ioan Cuza University, Iaşi; Judge at the Court of First Instance, Suceava (1984–89); Military judge at the Military Court, Iaşi (1989–90); Professor at Alexandru Ioan Cuza University, Iaşi (1990–2006); stipended student specialising in private law at the University of Rennes (1991–92); Assistant Professor at Petre Andrei University, Iaşi (1999–2002); Lecturer at the Université du Littoral Côte d'Opale, Dunkirk (Research Unit on Industry and Innovation) (2006); Judge at the Court of First Instance since 12 January 2007.

Alfred Dittrich

Born 1950; studied law at the University of Erlangen–Nuremberg (1970–75); Articled Law Clerk in the Nuremberg Higher Regional Court district (1975–78); Adviser at the Federal Ministry of Economic Affairs (1978–82); Counsellor at the Permanent Representation of the Federal Republic of Germany to the European Communities (1982); Adviser at the Federal Ministry of Economic Affairs, responsible for Community law and competition issues (1983–92); Head of the EU Law Section at the Federal Ministry of Justice (1992–2007); Head of the German delegation on the Council Working Party on the Court of Justice; Agent of the Federal Government in a large number of cases before the Court of Justice of the European Communities; Judge at the Court of First Instance since 17 September 2007.

Santiago Soldevila Fragoso

Born 1960; graduated in law from the Autonomous University of Barcelona (1983); Judge in Catalonia, the Canary Islands and Madrid (1985–92); Judge in the Chamber for Contentious Administrative Proceedings of the High Court of Justice of the Canary Islands at Santa Cruz de Tenerife (1992 and 1993); Legal Adviser at the Constitutional Court (1993–98); Judge in the Sixth Section of the Chamber for Contentious Administrative Proceedings of the National High Court (Madrid, 1998 to August 2007); Judge at the Court of First Instance since 17 September 2007.

Laurent Truchot

Born 1962; graduate of the Institut d'études politiques, Paris (1984); former student of the École nationale de la magistrature (National School for the Judiciary) (1986–88); Judge at the Regional Court, Marseilles (January 1988 to January 1990); Law Officer in the Directorate for Civil Affairs and the Legal Professions at the Ministry of Justice (January 1990 to June 1992); Deputy Section Head, then Section Head, in the Directorate–General for Competition, Consumption and the Combating of Fraud in the Ministry for Economic Affairs, Finance and Industry (June 1992 to September 1994); Technical Adviser to the Minister for Justice (September 1994 to May 1995); Judge at the Regional Court, Nîmes (May 1995 to May 1996); Legal Secretary at the Court of Justice in the Chambers of Advocate General Léger (May 1996 to December 2001); Auxiliary Judge at the Court of Cassation (December 2001 to August 2007); Judge at the Court of First Instance since 17 September 2007.

Sten Frimodt Nielsen

Born 1963; graduated in law from Copenhagen University (1988); civil servant in the Ministry of Foreign Affairs (1988–91); tutor in international and European law at Copenhagen University (1988–91); Embassy Secretary at the Permanent Mission of Denmark to the United Nations in New York (1991–94); civil servant in the Legal Service of the Ministry of Foreign Affairs (1994–95); external lecturer at Copenhagen University (1995); Adviser, then Senior Adviser, in the Prime Minister's Office (1995–98); Minister Counsellor at the Permanent Representation of Denmark to the European Union (1998–2001); Special Adviser for legal issues in the Prime Minister's Office (2001–02); Head of Department and Legal Counsel in the Prime Minister's Office (March 2002 to July 2004); Assistant Secretary of State and Legal Counsel in the Prime Minister's Office (August 2004 to August 2007); Judge at the Court of First Instance since 17 September 2007.

Emmanuel Coulon

Born 1968; law studies (Université Panthéon-Assas, Paris); management studies (Université Paris Dauphine); College of Europe (1992); entrance examination for the Centre regional de formation à la profession d'avocat (Regional training centre for the Bar), Paris; certificate of admission to the Brussels Bar; practice as an avocat in Brussels; successful candidate in an open competition for the Commission of the European Communities; Legal Secretary at the Court of First Instance of the European Communities (Chambers of the Presidents Mr Saggio (1996–1998) and Mr Vesterdorf (1998–2002)); Head of Chambers of the President of the Court of First Instance (2003–05); Registrar of the Court of First Instance since 6 October 2005.

2. Changes in the composition of the Court of First Instance in 2007

Formal sitting on 12 January 2007

In consequence of the accession of the Republic of Bulgaria and Romania to the European Union on 1 January 2007, the representatives of the Governments of the Member States of the European Union appointed Mr Teodor Tchipev, for the period from 12 January 2007 to 31 August 2007, and Mr Valeriu Ciucă, for the period from 12 January 2007 to 31 August 2010, as Judges at the Court of First Instance of the European Communities.

Formal sitting on 17 September 2007

The representatives of the Governments of the Member States renewed, for the period from 1 September 2007 to 31 August 2013, the terms of office as Judges at the Court of First Instance of Mr John D. Cooke, Mr Nicholas James Forwood, Ms Ena Cremona, Ms Irena Pelikánová, Mr Vilenas Vadapalas, Ms Ingrida Labucka, Mr Enzo Moavero Milanesi, Nr Nils Wahl, Mr Miro Prek and Mr Teodor Tchipev.

Mr Alfred Dittrich, Mr Santiago Soldevila Fragoso and Mr Laurent Truchot were appointed as Judges for the period from 1 September 2007 to 31 August 2013, replacing Mr Jörg Pirrung, Mr Rafael García-Valdecasas y Fernández and Mr Hubert Legal respectively, while Mr Sten Frimodt Nielsen was appointed as a Judge for the period from 17 September 2007 to 31 August 2010, replacing Mr Bo Vesterdorf.

Following the partial replacement of the membership of the Court of First Instance, Mr Marc Jaeger, a Judge at the Court since 11 July 1996, was elected President of the Court of First Instance of the European Communities for the period from 17 September 2007 to 31 August 2010.

Under Article 7 of the Rules of Procedure of the Court of First Instance, 'the Judges shall, immediately after the partial replacement provided for in Article 224 of the EC Treaty and Article 140 of the EAEC Treaty, elect one of their number as President of the Court of First Instance for a term of three years'.

3. Order of precedence

from 1 January to 11 January 2007

B. VESTERDORF, President of the Court of First Instance
M. JAEGER, President of Chamber
J. PIRRUNG, President of Chamber
M. VILARAS, President of Chamber
H. LEGAL, President of Chamber
J. D. COOKE, President of Chamber
R. GARCÍA-VALDECASAS, Judge
V. TIILI, Judge
J. AZIZI, Judge
A. W. H. MEIJ, Judge
N. J. FORWOOD, Judge
M. E. MARTINS RIBEIRO, Judge
F. DEHOUSSE, Judge
E. CREMONA, Judge
O. CZÚCZ, Judge
I. WISZNIEWSKA-BIAŁECKA, Judge
I. PELIKÁNOVÁ, Judge
D. ŠVÁBY, Judge
V. VADAPALAS, Judge
K. JÜRIMÄE, Judge
I. LABUCKA, Judge
S. PAPASAVVAS, Judge
E. MOAVERO MILANESI, Judge
N. WAHL, Judge
M. PREK, Judge

E. COULON, Registrar

from 12 January to 17 September 2007

B. VESTERDORF, President of the Court of First Instance
M. JAEGER, President of Chamber
J. PIRRUNG, President of Chamber
M. VILARAS, President of Chamber
H. LEGAL, President of Chamber
J. D. COOKE, President of Chamber
R. GARCÍA-VALDECASAS, Judge
V. TIILI, Judge
J. AZIZI, Judge
A. W. H. MEIJ, Judge
N. J. FORWOOD, Judge
M. E. MARTINS RIBEIRO, Judge
F. DEHOUSSE, Judge
E. CREMONA, Judge
O. CZÚCZ, Judge
I. WISZNIEWSKA-BIAŁECKA, Judge
I. PELIKÁNOVÁ, Judge
D. ŠVÁBY, Judge
V. VADAPALAS, Judge
K. JÜRIMÄE, Judge
I. LABUCKA, Judge
S. PAPASAVVAS, Judge
E. MOAVERO MILANESI, Judge
N. WAHL, Judge
M. PREK, Judge
T. TCHIPEV, Judge
V. CIUCĂ, Judge

E. COULON, Registrar

from 20 September to 31 December 2007

M. JAEGER, President of the Court of First Instance
V. TIILI, President of Chamber
J. AZIZI, President of Chamber
A. W. H. MEIJ, President of Chamber
M. VILARAS, President of Chamber
N. J. FORWOOD, President of Chamber
M. E. MARTINS RIBEIRO, President of Chamber
O. CZÚCZ, President of Chamber
I. PELIKÁNOVÁ, President of Chamber
J. D. COOKE, Judge
F. DEHOUSSE, Judge
E. CREMONA, Judge
I. WISZNIEWSKA-BIAŁECKA, Judge
D. ŠVÁBY, Judge
V. VADAPALAS, Judge
K. JÜRIMÄE, Judge
I. LABUCKA, Judge
S. PAPASAVVAS, Judge
E. MOAVERO MILANESI, Judge
N. WAHL, Judge
M. PREK, Judge
T. TCHIPEV, Judge
V. CIUCĂ, Judge
A. DITTRICH, Judge
S. SOLDEVILA FRAGOSO, Judge
L. TRUCHOT, Judge
S. FRIMODT NIELSEN, Judge

E. COULON, Registrar

4. Former Members of the Court of First Instance

José Luís da Cruz Vilaça (1989–95), President from 1989 to 1995
Donal Patrick Michael Barrington (1989–96)
Antonio Saggio (1989–98), President from 1995 to 1998
David Alexander Ogilvy Edward (1989–92)
Heinrich Kirschner (1989–97)
Christos Yeraris (1989–92)
Romain Alphonse Schintgen (1989–96)
Cornelis Paulus Briët (1989–98)
Jacques Biancarelli (1989–95)
Koen Lenaerts (1989–2003)
Christopher William Bellamy (1992–99)
Andreas Kalogeropoulos (1992–98)
Pernilla Lindh (1995–2006)
André Potocki (1995–2001)
Rui Manuel Gens de Moura Ramos (1995–2003)
Paolo Mengozzi (1998–2006)
Verica Trstenjak (2004–06)

Presidents

José Luis da Cruz Vilaça (1989–95)
Antonio Saggio (1995–98)

Registrar

Hans Jung (1989–2005)

C — Statistics concerning the judicial activity of the Court of First Instance

General activity of the Court of First Instance

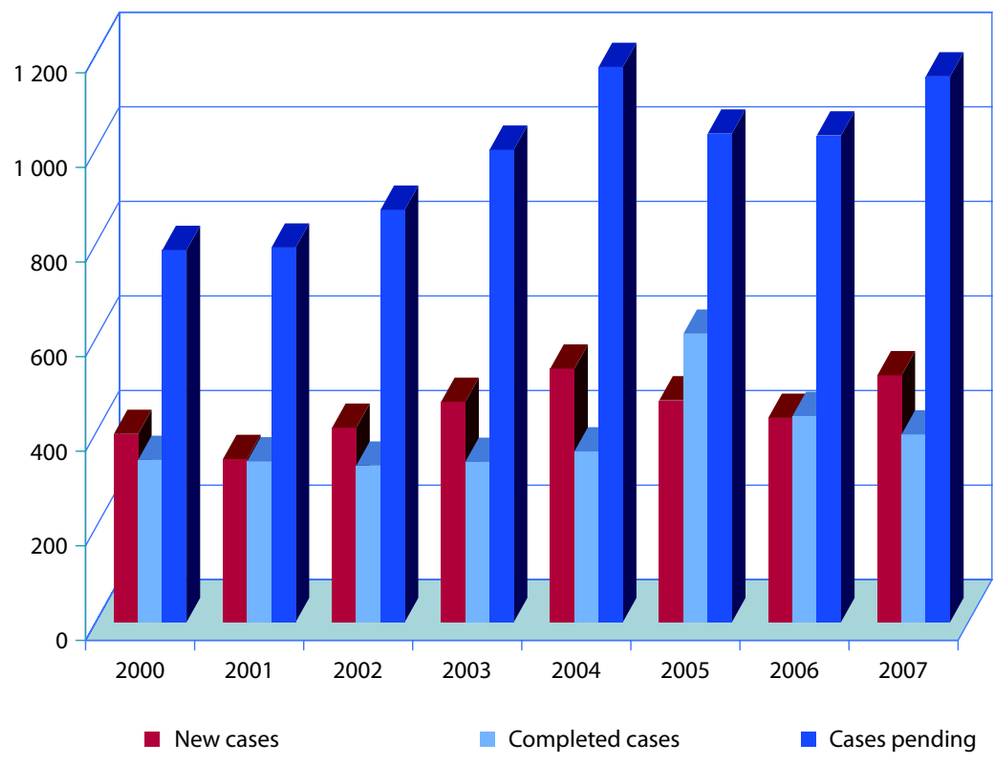
New cases

Completed cases

Cases pending as at 31 December

Miscellaneous

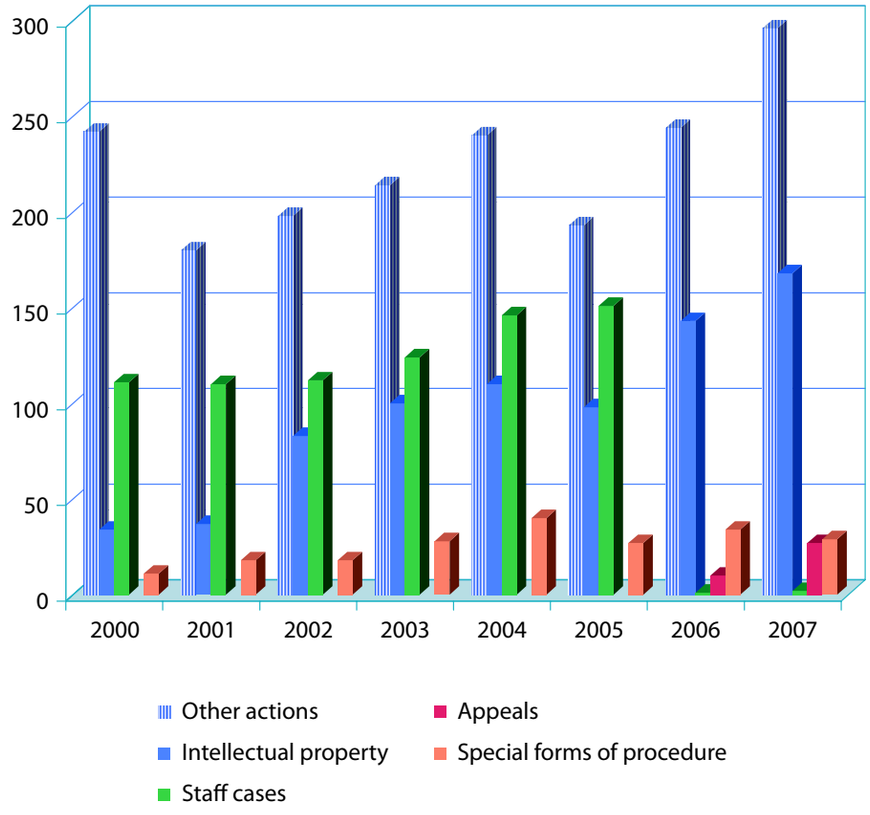
1. *General activity of the Court of First Instance* — New cases, completed cases, cases pending (2000–07) ([1])



	2000	2001	2002	2003	2004	2005	2006	2007
New cases	398	345	411	466	536	469	432	522
Completed cases	343	340	331	339	361	610	436	397
Cases pending	787	792	872	999	1 174	1 033	1 029	1 154

([1]) Unless otherwise indicated, this table and the following tables take account of special forms of procedure. The following are considered to be 'special forms of procedure': application to set a judgment aside (Article 41 of the Statute of the Court of Justice; Article 122 of the Rules of Procedure of the Court of First Instance); third-party proceedings (Article 42 of the Statute of the Court of Justice; Article 123 of the Rules of Procedure); revision of a judgment (Article 44 of the Statute of the Court of Justice; Article 125 of the Rules of Procedure); interpretation of a judgment (Article 43 of the Statute of the Court of Justice; Article 129 of the Rules of Procedure); taxation of costs (Article 92 of the Rules of Procedure); legal aid (Article 96 of the Rules of Procedure), and rectification of a judgment (Article 84 of the Rules of Procedure).

2. *New cases* — Nature of proceedings (2000–07) (1)

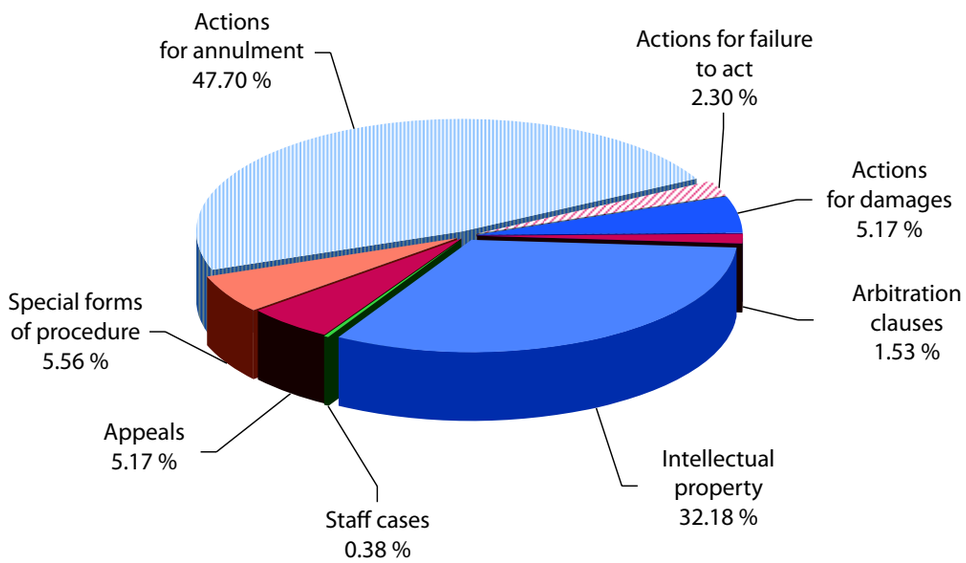


	2000	2001	2002	2003	2004	2005	2006	2007
Other actions	242	180	198	214	240	193	244	296
Intellectual property	34	37	83	100	110	98	143	168
Staff cases	111	110	112	124	146	151	1	2
Appeals							10	27
Special forms of procedure	11	18	18	28	40	27	34	29
Total	**398**	**345**	**411**	**466**	**536**	**469**	**432**	**522**

(1) The entry 'other actions' in this and the following tables refers to all direct actions other than actions brought by officials of the European Communities and intellectual property cases.

3. *New cases* — Type of action (2000–07)

Distribution in 2007

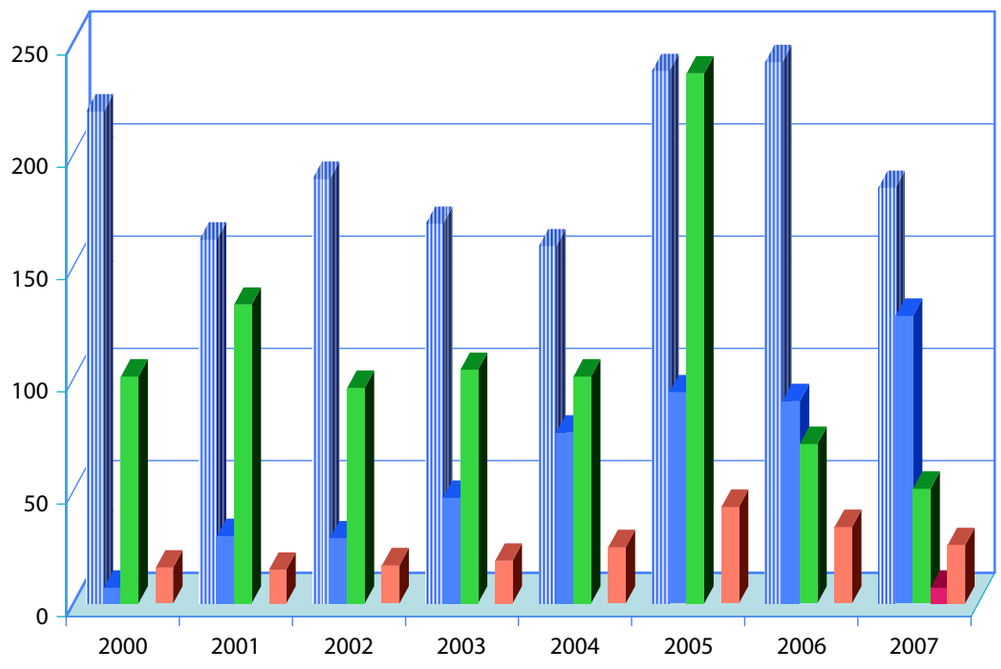


	2000	2001	2002	2003	2004	2005	2006	2007
Actions for annulment	219	134	172	174	199	160	223	249
Actions for failure to act	6	17	12	13	15	9	4	12
Actions for damages	17	21	12	24	18	16	8	27
Arbitration clauses		8	2	3	8	8	9	8
Intellectual property	34	37	83	100	110	98	143	168
Staff cases	111	110	112	124	146	151	1	2
Appeals							10	27
Special forms of procedure	11	18	18	28	40	27	34	29
Total	**398**	**345**	**411**	**466**	**536**	**469**	**432**	**522**

4. *New cases* — Subject matter of the action (2000–07)

	2000	2001	2002	2003	2004	2005	2006	2007
Accession of new States				1	1			
Agriculture	18	17	9	11	25	21	18	34
Approximation of laws		2	1	3	1			1
Arbitration clause		2	1			2	3	1
Association of the Overseas Countries and Territories	6	6		1				
Budget of the Communities								2
Commercial policy	8	4	5	6	12	5	18	9
Common Customs Tariff	1	2			1		2	1
Common foreign and security policy	1	3	6	2	4		5	12
Community own resources						2		
Company law	4	6	3	3	6	12	11	10
Competition	36	36	61	43	36	40	81	62
Culture	2	1					3	1
Customs union	14	2	6	5	11	2		4
Economic and monetary policy						1	2	
Energy		2		2			1	
Environment and consumers	14	2	8	14	30	18	21	41
European citizenship	2							
External relations	8	14	8	10	3	2	2	1
Fisheries policy	5	6	3	25	3	2		5
Free movement of goods	2	1			1			1
Freedom of establishment	7	1			1			
Freedom of movement for persons	1	3	2	7	1	2	4	4
Freedom to provide services							1	
Intellectual property	34	37	83	101	110	98	145	168
Justice and home affairs		1	1			1		3
Law governing the institutions	24	16	17	26	33	28	15	28
Regional policy		1	6	7	10	12	16	18
Research, information, education and statistics	1	3	1	3	6	9	5	10
Social policy	7	1	3	2	5	9	3	5
State aid	80	42	51	25	46	25	28	37
Taxation			1	5			1	2
Transport		2	1	1	3		1	4
Total EC Treaty	**275**	**213**	**277**	**303**	**349**	**291**	**386**	**464**
Total CS Treaty	**1**	**4**	**2**	**11**				
Total EA Treaty			**2**		**1**		**1**	
Staff Regulations	111	110	112	124	146	151	11	29
Special forms of procedure	11	18	18	28	40	27	34	29
Overall total	**398**	**345**	**411**	**466**	**536**	**469**	**432**	**522**

5. *Completed cases* — Nature of proceedings (2000–07)



	2000	2001	2002	2003	2004	2005	2006	2007
Other actions	219	162	189	169	159	237	241	185
Intellectual property	7	30	29	47	76	94	90	128
Staff cases	101	133	96	104	101	236	71	51
Appeals								7
Special forms of procedure	16	15	17	19	25	43	34	26
Total	**343**	**340**	**331**	**339**	**361**	**610**	**436**	**397**

6. *Completed cases* — Subject matter of the action (2007)

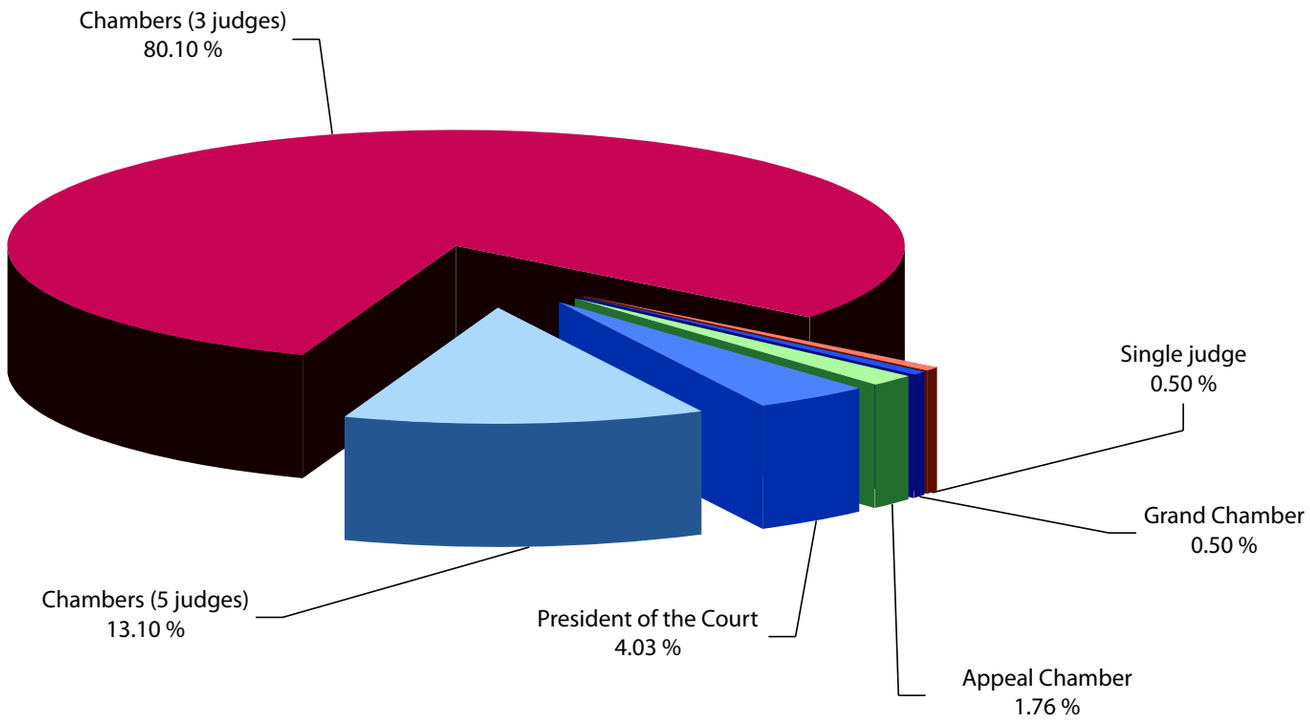
	Judgments	Orders	Total
Agriculture	5	6	11
Approximation of laws	1		1
Arbitration clause		1	1
Budget of the Communities		1	1
Commercial policy	1	3	4
Common Customs Tariff		1	1
Common foreign and security policy	3		3
Company law	2	4	6
Competition	30	8	38
Customs union	1	1	2
Economic and monetary policy		1	1
Energy		1	1
Environment and consumers	5	10	15
External relations	2	2	4
Fisheries policy	2	2	4
Freedom of movement for persons		4	4
Freedom to provide services		1	1
Intellectual property	99	30	129
Justice and home affairs		2	2
Law governing the institutions	7	10	17
Regional policy	3	3	6
Research, information, education and statistics	7	3	10
Social policy	2	1	3
State aid	22	14	36
Transport		1	1
Total EC Treaty	**192**	**110**	**302**
Total CS Treaty	**10**		**10**
Total EA Treaty	**1**		**1**
Staff Regulations	44	14	58
Special forms of procedure		26	26
Overall total	**247**	**150**	**397**

7. *Completed cases* — Subject matter of the action (2000–07) (judgments and orders)

	2000	2001	2002	2003	2004	2005	2006	2007
Accession of new States				1			1	
Agriculture	14	47	28	21	15	34	25	11
Approximation of laws			2	1	3			1
Arbitration clause	2			1	2	1		1
Association of the Overseas Countries and Territories	1	2	6	4		4	2	
Budget of the Communities								1
Commercial policy	17	5	6	6	1	7	13	4
Common Customs Tariff		3		2				1
Common foreign and security policy		3			2	5	4	3
Community own resources							2	
Company law	4	4	4	2	2	6	6	6
Competition	61	21	40	38	26	35	42	38
Culture			2	1				
Customs union	5	15	18	3	3	7	2	2
Economic and monetary policy							1	1
Energy							3	1
Environment and consumers	7		12	9	4	19	19	15
European citizenship	1	1						
External relations	6	2	6	11	7	11	5	4
Fisheries policy	1	7	2	2	6	2	24	4
Free movement of goods			2		1	1		
Freedom of establishment	3	4	2			1		
Freedom of movement for persons	1	2		8	2	1	4	4
Freedom to provide services	1							1
Intellectual property	7	30	29	47	76	94	91	129
Justice and home affairs			1	1		1		2
Law governing the institutions	31	19	15	20	16	35	14	17
Regional policy	5		1		4	4	7	6
Research, information, education and statistics	1		2	4		1	3	10
Social policy	18	2	2	1	4	6	5	3
State aid	35	12	31	26	54	53	54	36
Taxation				5	1		1	
Transport	2		2	2	1	1	2	1
Total EC Treaty	**223**	**179**	**213**	**216**	**230**	**329**	**330**	**302**
Total CS Treaty	**3**	**10**	**4**		**5**	**1**	**1**	**10**
Total EA Treaty		**1**	**1**			**1**		**1**
Staff Regulations	101	135	96	104	101	236	71	58
Special forms of procedure	16	15	17	19	25	43	34	26
Overall total	**343**	**340**	**331**	**339**	**361**	**610**	**436**	**397**

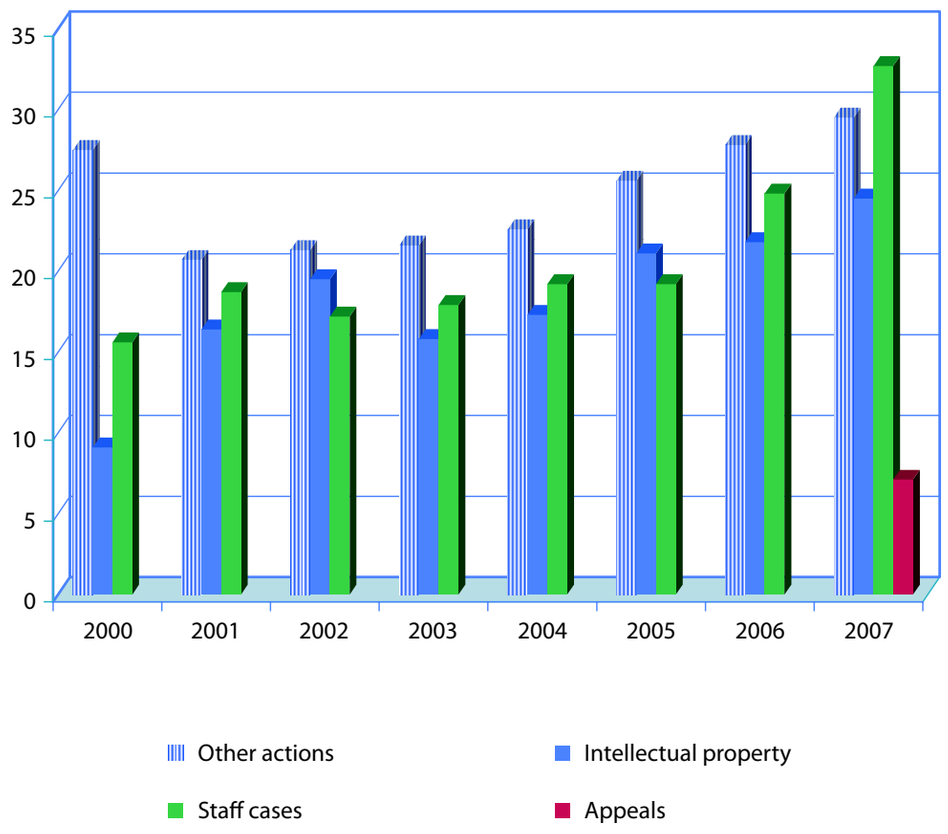
8. *Completed cases* — Bench hearing action (2000–07)

Distribution in 2007



	2000			2001			2002			2003			2004			2005			2006			2007		
	Judgments	**Orders**	**Total**	**Judgments**	**Orders**	**Total**	**Judgments**	**Orders**	**Total**	**Judgments**	**Orders**	**Total**	**Judgments**	**Orders**	**Total**	**Judgments**	**Orders**	**Total**	**Judgments**	**Orders**	**Total**	**Judgments**	**Orders**	**Total**
Grand Chamber																6		6				2		2
Appeal Chamber																						3	4	7
President of the Court		3	3		6	6		4	4		8	8		7	7		25	25		19	19		16	16
Chambers (5 judges)	84	28	112	17	25	42	48	16	64	18	21	39	18	46	64	28	34	62	22	33	55	44	8	52
Chambers (3 judges)	96	117	213	135	145	280	144	113	257	146	131	277	141	135	276	181	329	510	198	157	355	196	122	318
Single judge	11	4	15	10	2	12	5	1	6	14	1	15	13	1	14	7		7	7		7	2		2
Total	**191**	**152**	**343**	**162**	**178**	**340**	**197**	**134**	**331**	**178**	**161**	**339**	**172**	**189**	**361**	**222**	**388**	**610**	**227**	**209**	**436**	**247**	**150**	**397**

9. *Completed cases* — Duration of proceedings in months (2000–07) [1] (judgments and orders)



	2000	2001	2002	2003	2004	2005	2006	2007
Other actions	27.5	20.7	21.3	21.6	22.6	25.6	27.8	29.5
Intellectual property	9.1	16.4	19.5	15.8	17.3	21.1	21.8	24.5
Staff cases	15.6	18.7	17.2	17.9	19.2	19.2	24.8	32.7
Appeals								7.1

[1] The calculation of the average duration of proceedings does not take account of: cases ruled upon by interlocutory judgment; special forms of procedure; cases referred by the Court of Justice following the amendment of the division of jurisdiction between it and the Court of First Instance; cases referred by the Court of First Instance after the Civil Service Tribunal began operating.

The duration of proceedings is expressed in months and tenths of months.

10. *Cases pending as at 31 December* — Nature of proceedings (2000–07)

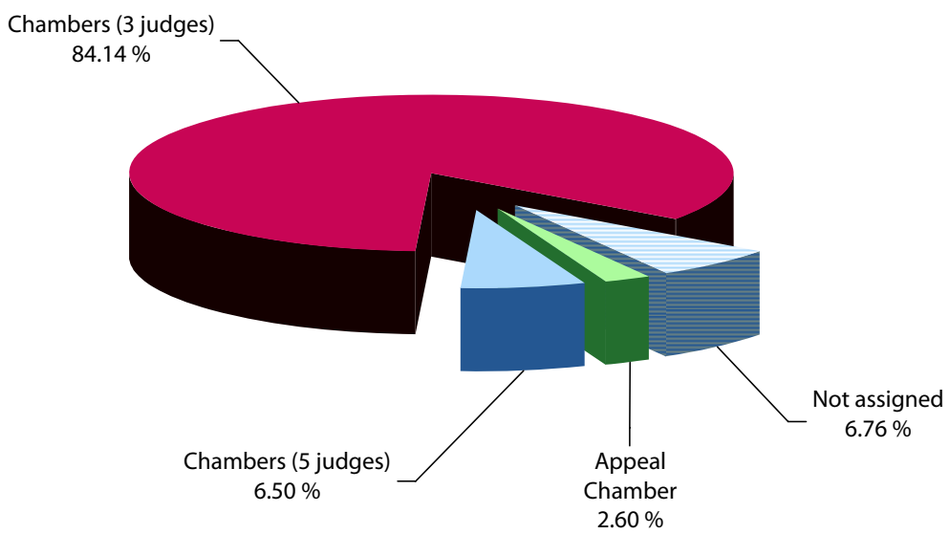
	2000	2001	2002	2003	2004	2005	2006	2007
Other actions	561	579	588	633	714	670	673	784
Intellectual property	44	51	105	158	192	196	249	289
Staff cases	179	156	172	192	237	152	82	33
Appeals							10	30
Special forms of procedure	3	6	7	16	31	15	15	18
Total	**787**	**792**	**872**	**999**	**1 174**	**1 033**	**1 029**	**1 154**

11. *Cases pending as at 31 December* — Subject matter of the action (2000–07)

	2000	2001	2002	2003	2004	2005	2006	2007
Accession of new States					1	1		
Agriculture	144	114	95	85	95	82	74	97
Approximation of laws		2	1	3	1	1	1	1
Arbitration clause		2	3	2		1	3	3
Association of the Overseas Countries and Territories	11	15	9	6	6	2		
Budget of the Communities								1
Commercial policy	16	15	14	14	25	23	28	33
Common Customs Tariff	3	2	2		1	1	3	3
Common foreign and security policy	3	3	9	11	13	8	9	18
Community own resources						2		
Company law	4	6	5	6	10	16	23	27
Competition	78	93	114	119	129	134	173	197
Culture	2	3	1				3	4
Customs union	33	20	8	10	18	13	11	13
Economic and monetary policy						1	2	1
Energy		2	2	4	4	4	2	1
Environment and consumers	15	17	13	18	44	43	44	70
European citizenship	1							
External relations	9	21	23	22	18	9	6	3
Fisheries policy	8	7	8	31	28	28	4	5
Free movement of goods	2	3	1	1	1			1
Freedom of establishment	5	2			1			
Freedom of movement for persons		1	3	2	1	2	3	3
Freedom to provide services							1	
Intellectual property	44	51	105	159	193	197	251	290
Justice and home affairs		1	1					1
Law governing the institutions	27	24	26	32	49	42	43	54
Regional policy		1	6	13	19	27	36	48
Research, information, education and statistics	1	4	3	2	8	16	18	18
Social policy	4	3	4	5	6	9	7	9
State aid	177	207	227	226	218	190	164	165
Taxation			1	1				2
Transport	1	3	2	1	3	2	1	4
Total EC Treaty	**588**	**622**	**686**	**773**	**892**	**854**	**910**	**1 072**
Total CS Treaty	**14**	**8**	**6**	**17**	**12**	**11**	**10**	
Total EA Treaty	**1**		**1**	**1**	**2**	**1**	**2**	**1**
Staff Regulations	181	156	172	192	237	152	92	63
Special forms of procedure	3	6	7	16	31	15	15	18
Overall total	**787**	**792**	**872**	**999**	**1 174**	**1 033**	**1 029**	**1 154**

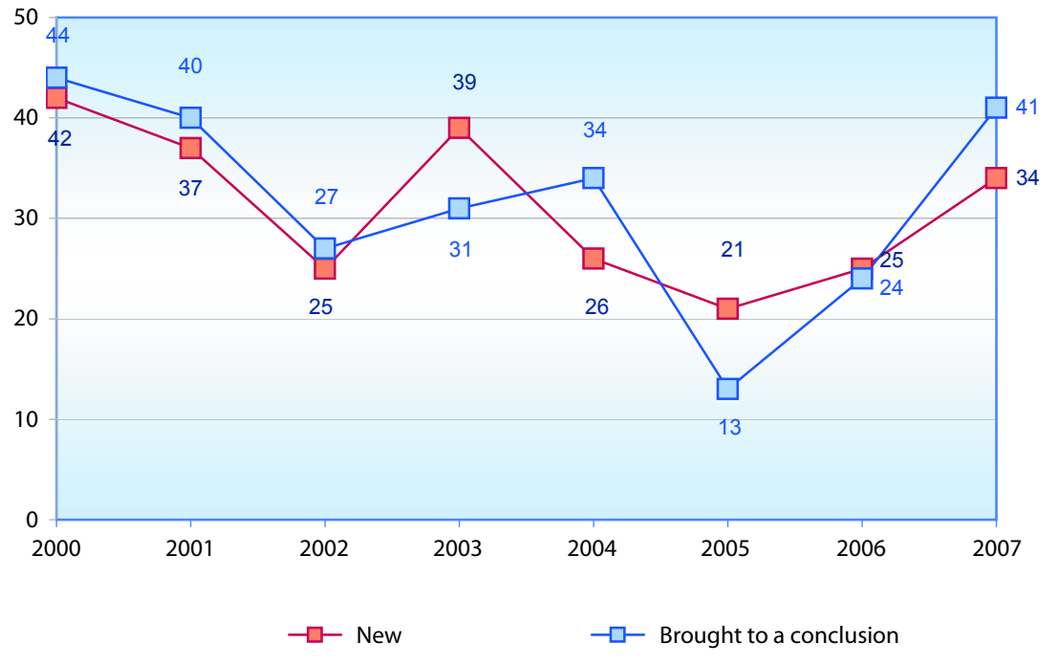
12. *Cases pending as at 31 December* — Bench hearing action (2000–07) (1)

Distribution in 2007



	2000	2001	2002	2003	2004	2005	2006	2007
Grand Chamber					6	1	2	
Appeal Chamber							10	30
President of the Court							1	
Chambers (5 judges)	247	264	276	251	187	146	117	75
Chambers (3 judges)	512	479	532	691	914	846	825	971
Single judge	5	3	8	6	1	4	2	
Not assigned	23	46	56	51	66	36	72	78
Total	**787**	**792**	**872**	**999**	**1 174**	**1 033**	**1 029**	**1 154**

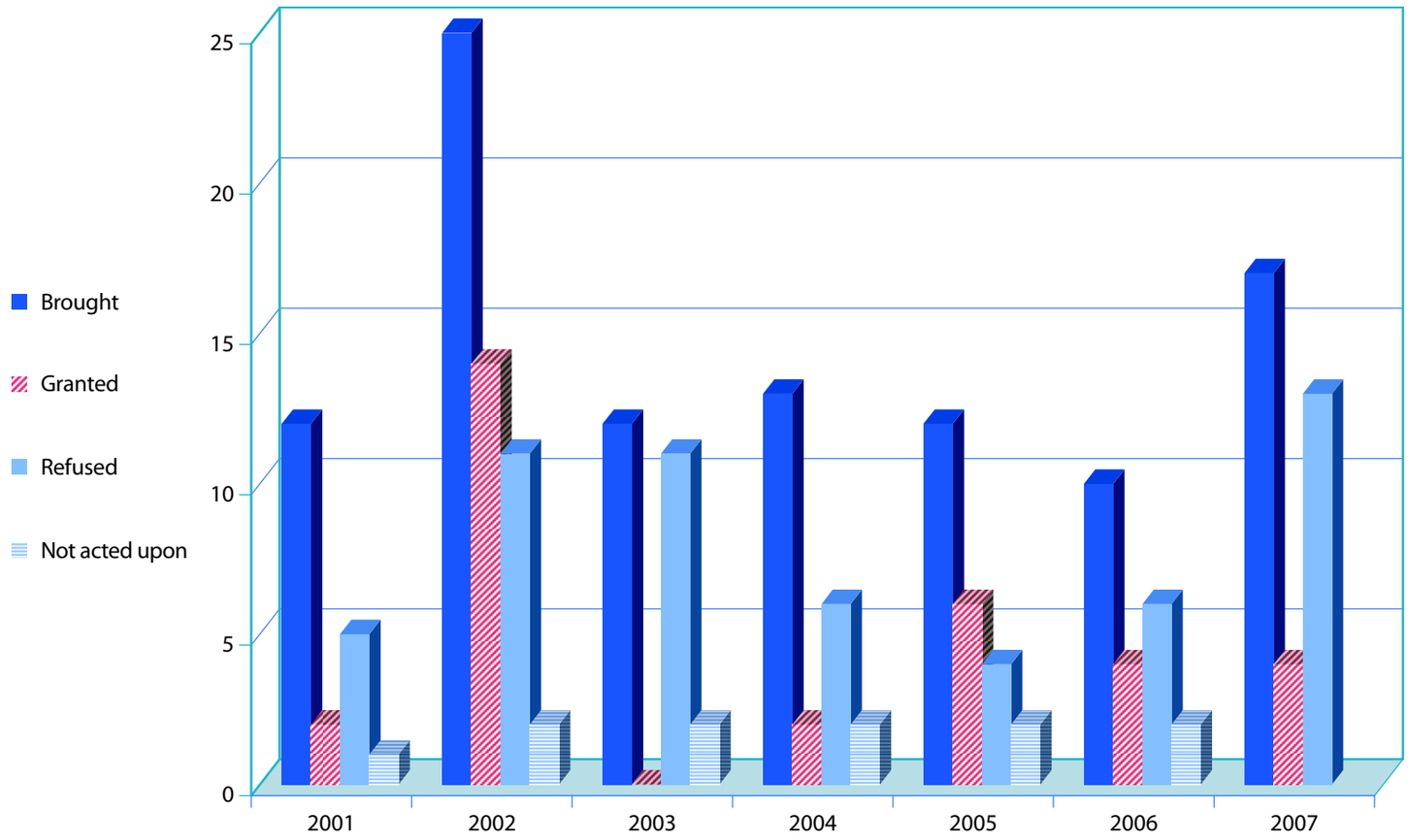
13. *Miscellaneous* — Proceedings for interim measures (2000–07)



Distribution in 2007

	New applications for interim measures	Applications for interim measures brought to a conclusion	Outcome		
			Dismissed	Granted	Removal from the register/no need to adjudicate
Agriculture	2	3	2	1	
State aid	3	3	2		1
Competition	3	2	2		
Culture	1	1			1
Law governing the institutions	5	5	4	1	
Environment and consumers	13	19	17	2	
Fisheries policy	1	1			1
Regional policy	2	2	2		
Social policy	1	2	2		
Intellectual property	1				
Research, information, education and statistics	2	3	2		1
Total EC Treaty	**34**	**41**	**33**	**4**	**4**
Overall total	**34**	**41**	**33**	**4**	**4**

14. *Miscellaneous* — Expedited procedures (2001–07)

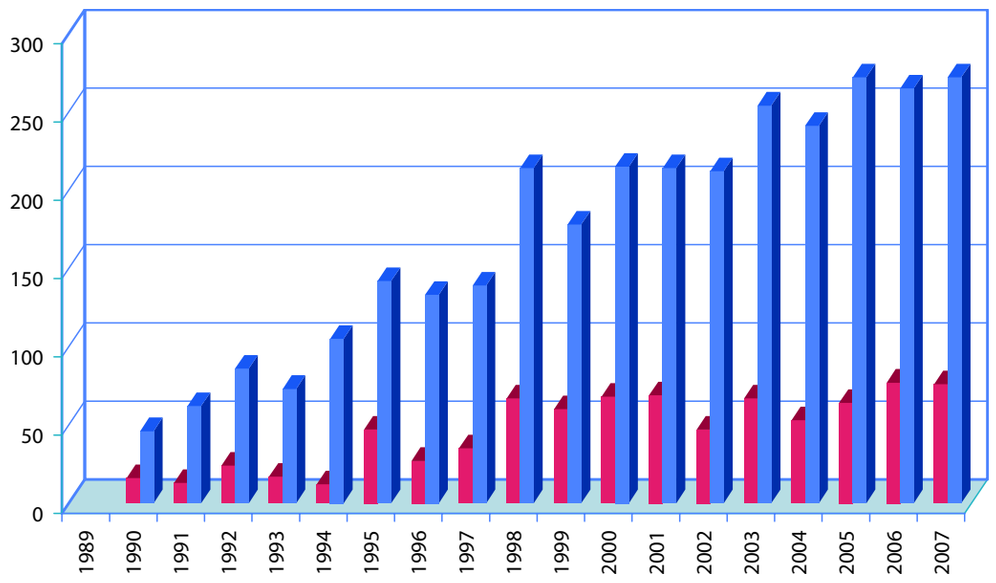


	2001				2002				2003				2004				2005				2006				2007			
		Outcome				Outcome				Outcome				Outcome				Outcome				Outcome				Outcome		
	Brought	Granted	Refused	Not acted upon	**Brought**	Granted	Refused	Not acted upon	**Brought**	Granted	Refused	Not acted upon	**Brought**	Granted	Refused	Not acted upon	**Brought**	Granted	Refused	Not acted upon	**Brought**	Granted	Refused	Not acted upon	**Brought**	Granted	Refused	Not acted upon
Agriculture					1				1		2						2				2	1	3					
Commercial policy	1		1		1		1																		2	1		
Common foreign and security policy	1						1																		3	2	1	
Community own resources																	2							2				
Company law													4	1	2		3	2	1	1					1			
Competition	1				15	13	2	1	1		1		3				2	3	2		4	2	2		1		1	
Environment and consumers									1		1		1		1		2	1		1	3	1	1		7	1	7	
External relations					1	1			1		1																	
Fisheries policy													1	1														
Freedom of movement for persons													1			1												
Law governing the institutions	3		1	1	2		3		5		4		1		2		1		1						1		1	
Research, information, education and statistics					1							1													1		1	
Staff Regulations	3		3		2		1	1					1		1													
State aid	3	2			2		3		3		2	1									1				1		2	
Transport													1			1												
Total	**12**	2	5	1	**25**	14	11	2	**12**	0	11	2	**13**	2	6	2	**12**	6	4	2	**10**	4	6	2	**17**	4	13	0

The Court of First Instance may decide pursuant to Article 76a of the Rules of Procedure to deal with a case before it under an expedited procedure. That provision has been applicable since 1 February 2001.

The category 'Not acted upon' covers the following instances: withdrawal of the application for expedition, discontinuance of the action and cases in which the action is disposed of by way of order before the application for expedition has been ruled upon.

15. *Miscellaneous* — Appeals against decisions of the Court of First Instance to the Court of Justice (1989–2007)



	Number of decisions against which appeals were brought	Total number of decisions open to challenge (1)	Percentage of decisions against which appeals were brought (%)
1989			
1990	16	46	35
1991	13	62	21
1992	24	86	28
1993	17	73	23
1994	12	105	11
1995	47	142	33
1996	27	133	20
1997	35	139	25
1998	67	214	31
1999	60	178	34
2000	68	215	32
2001	69	214	32
2002	47	212	22
2003	67	254	26
2004	53	241	22
2005	64	272	24
2006	77	265	29
2007	76	272	28

(1) Total number of decisions open to challenge — judgments, and orders relating to admissibility, concerning interim measures, declaring that there was no need to give a decision or refusing leave to intervene — in respect of which the period for bringing an appeal expired or against which an appeal was brought.

16. *Miscellaneous* — Distribution of appeals before the Court of Justice according to the nature of the proceedings (1989–2007)

	1990			1991			1992			1993			1994			1995			1996			1997			1998		
	Appeals	Decisions open to challenge	Appeals as a percentage	Appeals	Decisions open to challenge	Appeals as a percentage	Appeals	Decisions open to challenge	Appeals as a percentage	Appeals	Decisions open to challenge	Appeals as a percentage	Appeals	Decisions open to challenge	Appeals as a percentage	Appeals	Decisions open to challenge	Appeals as a percentage	Appeals	Decisions open to challenge	Appeals as a percentage	Appeals	Decisions open to challenge	Appeals as a percentage	Appeals	Decisions open to challenge	Appeals as a percentage
Other actions	2	8	25 %	5	16	31 %	15	31	48 %	6	17	35 %	7	44	16 %	38	91	42 %	15	59	25 %	22	86	26 %	48	120	40 %
Intellectual property																											
Staff cases	14	38	37 %	8	46	17 %	8	54	15 %	10	55	18 %	5	61	8 %	9	51	18 %	12	74	16 %	13	53	25 %	18	93	19 %
Sub-total	16	46	35 %	13	62	21 %	23	85	27 %	16	72	22 %	12	105	11 %	47	142	33 %	27	133	20 %	35	139	25 %	66	213	31 %
Special forms of procedure							1	1	100 %	1	1	100 %													1	1	100 %
Total	16	46	35 %	13	62	21 %	24	86	28 %	17	73	23 %	12	105	11 %	47	142	33 %	27	133	20 %	35	139	25 %	67	214	31 %

	1999			2000			2001			2002			2003			2004			2005			2006			2007		
	Appeals	Decisions open to challenge	Appeals as a percentage	Appeals	Decisions open to challenge	Appeals as a percentage	Appeals	Decisions open to challenge	Appeals as a percentage	Appeals	Decisions open to challenge	Appeals as a percentage	Appeals	Decisions open to challenge	Appeals as a percentage	Appeals	Decisions open to challenge	Appeals as a percentage	Appeals	Decisions open to challenge	Appeals as a percentage	Appeals	Decisions open to challenge	Appeals as a percentage	Appeals	Decisions open to challenge	Appeals as a percentage
Other actions	45	118	38 %	58	132	44 %	40	115	35 %	32	134	24 %	51	134	38 %	41	114	36 %	37	120	31 %	46	146	32 %	52	163	32 %
Intellectual property	1	1	100 %	1	7	14 %	13	25	52 %	6	20	30 %	7	33	21 %	7	45	16 %	16	71	23 %	18	59	31 %	14	63	22 %
Staff cases	14	59	24 %	8	75	11 %	15	73	21 %	9	58	16 %	9	87	10 %	5	82	6 %	11	81	14 %	13	60	22 %	10	46	22 %
Sub-total	60	178	34 %	67	214	31 %	68	213	32 %	47	212	22 %	67	254	26 %	53	241	22 %	64	272	24 %	77	265	29 %	76	272	28 %
Special forms of procedure				1	1	100 %	1	1	100 %																		
Total	60	178	34 %	68	215	32 %	69	214	32 %	47	212	22 %	67	254	26 %	53	241	22 %	64	272	24 %	77	265	29 %	76	272	28 %

17. *Miscellaneous* — Results of appeals before the Court of Justice (2007)

(judgments and orders)

	Appeal dismissed	Decision totally or partially set aside and no referral back	Decision totally or partially set aside and referral back	Removal from the register/ no need to adjudicate	Total
Agriculture	2				2
Common foreign and security policy	2		1		3
Community own resources	2				2
Company law	2				2
Competition	13	1		1	15
Customs union	3				3
Environment and consumers	5	1			6
External relations	2				2
Fisheries policy	1				1
Freedom to provide services	1				1
Intellectual property	15	1	2	2	20
Law governing the institutions	4	1			5
Regional policy	2	2			4
Staff Regulations	13	1	3		17
State aid	5	1		1	7
Total	**72**	**8**	**6**	**4**	**90**

18. *Miscellaneous* — General trend (1989–2007)

New cases, completed cases, cases pending

	New cases (1)	Completed cases (2)	Cases pending as at 31 December
1989	169	1	168
1990	59	82	145
1991	95	67	173
1992	123	125	171
1993	596	106	661
1994	409	442	628
1995	253	265	616
1996	229	186	659
1997	644	186	1 117
1998	238	348	1 007
1999	384	659	732
2000	398	343	787
2001	345	340	792
2002	411	331	872
2003	466	339	999
2004	536	361	1 174
2005	469	610	1 033
2006	432	436	1 029
2007	522	397	1 154
Total	**6 778**	**5 624**	

(1) 1989: the Court of Justice referred 153 cases to the newly created Court of First Instance. 1993: the Court of Justice referred 451 cases as a result of the first extension of the jurisdiction of the Court of First Instance.

1994: the Court of Justice referred 14 cases as a result of the second extension of the jurisdiction of the Court of First Instance.

2004–05: the Court of Justice referred 25 cases as a result of the third extension of the jurisdiction of the Court of First Instance.

(2) 2005–06: the Court of First Instance referred 118 cases to the newly created Civil Service Tribunal.

Chapter III

The European Union Civil Service Tribunal

A — Proceedings of the Civil Service Tribunal in 2007

By Mr Paul Mahoney, President of the Civil Service Tribunal

1. The year 2007 saw the entry into force of the Rules of Procedure of the European Union Civil Service Tribunal. The rules were published in the *Official Journal of the European Union* on 29 August 2007 ([1]) and, pursuant to Article 121 thereof, entered into force on the first day of the third month following the date of their publication, that is to say, on 1 November 2007. On the same day, the Instructions to the Registrar of the European Union Civil Service Tribunal ([2]) came into force ([3]).

2. While the first year of the Tribunal's work was largely devoted to the establishment of its internal and external procedures, and in particular to the drafting of its Rules of Procedure, the figures for 2007 already reflect regular judicial activity.

In 2007, the Tribunal brought 150 cases to a close, and 157 new actions were lodged. There were thus almost equal numbers of cases lodged and cases brought to a close.

The number of actions brought this year (157) is slightly higher than last year's, which was 148.

The number of pending cases (235) remains relatively high, as a result, in particular, of the fact that the number of cases brought to a close during the first year of operation of the Tribunal (50) does not reflect its true capacity in terms of judgments. In addition, a large number of pending cases have been stayed pending 'pilot' judgments of the Court of First Instance ([4]) or decisions of the Court of Justice on appeal ([5]).

Some 44 % of cases were brought to a close by judgment and 56 % by order. The average duration of proceedings in cases brought to a close in 2007 is 16.9 months for judgments and 10.3 months for orders.

In 2007, appeals to the Court of First Instance were brought against 25 decisions of the Tribunal, which represents 32 % of the decisions subject to appeal delivered by the Tribunal and 19 % of the total number of cases brought to a close, apart from those unilaterally discontinued by one of the parties.

([1]) OJ 2007 L 225, p. 1.

([2]) OJ 2007 L 249, p. 3.

([3]) In order to brief the institutions, on the one hand, and the trade union and professional organisations, on the other, regarding the new procedural instruments applicable to it, the Tribunal held two meetings with their representatives on 23 November and 7 December 2007, following on from the meetings begun in 2006.

([4]) About 20 cases have been stayed pending the decision of the Court of First Instance in Case T-47/05 *Angé Serrano and Others* v *Parliament*.

([5]) About 50 cases have been stayed pending the decision of the Court of Justice in Case C-443/07 P *Centeno Mediavilla and Others* v *Commission*.

3. The account given below will first describe the main innovations brought in by the Tribunal's Rules of Procedure (I). Next, an outline will be given of the most interesting new case-law of the year, looking in turn at proceedings concerning the legality of measures and actions for damages (II), applications for interim relief (III), and applications for legal aid (IV). Finally a preliminary assessment of the practice of amicable settlement will be made (V).

I. *Main innovations in the Rules of Procedure*

The Tribunal's intention was to preserve a uniform approach and practice for the three Community courts. However, certain innovations were introduced, in response to the decisions made by the Council, inter alia in Article 7 of the Annex to the Statute of the Court of Justice, added to that Statute by Council Decision 2004/752/EC, Euratom, of 2 November 2004, establishing the Civil Service Tribunal of the European Union (OJ L 333, p. 7), or in order to take account of the specific character of both the Tribunal and the litigation coming before it.

The chief innovations in the Rules of Procedure are based on three main ideas: the simplification of the procedure; the investigation, at every stage of the procedure, of the possibility of an amicable settlement of the dispute; responsibility for costs according to the rule that the 'loser pays'. In addition, a number of other new concepts warrant mention.

Simplification of the procedure

The written procedure is, as a rule, limited to a single exchange of written pleadings unless the Tribunal decides that a second exchange is necessary. The second exchange of pleadings may take place either of the Tribunal's own motion or on a reasoned application by the applicant. Where there has been a second exchange of pleadings, the Tribunal may, with the agreement of the parties, decide to proceed to judgment without a hearing.

The fact that there is generally only one exchange of pleadings explains why the Rules of Procedure of the Tribunal are stricter regarding the statement of the pleas in law and arguments in the application, since that statement cannot be 'brief' contrary to what is required, generally, by the first paragraph of Article 21 of the Statute of the Court of Justice. That provision cannot deprive of all effective meaning the equal-ranking Article 7(3) of the Annex to that Statute, which lays down the principle of a single exchange of pleadings.

Moreover, the existence of only one exchange of pleadings explains the reduction of the time limit for lodging an application for leave to intervene: that limit is now four weeks from the date of publication in the *Official Journal of the European Union* of the notice concerning the application.

It is also the reason for the decision not to introduce an expedited procedure, a feature of which, in the Rules of Procedure of the Court of First Instance, is that, in addition to the fact that the case is given priority, the written stage of the procedure is limited to a single exchange of pleadings.

It was with the intention of expediting the written procedure that the Tribunal laid down the provision that any plea of inadmissibility by separate document, which, in practice, where a decision is reserved for the final judgment, may be liable to prolong the procedure, must be lodged within a month of service of the application, rather than within the two months allowed for the lodging of the defence.

Finally, the Tribunal, in an endeavour to ensure the proper conduct of the pre-litigation procedure and be in a position to detect as early as possible any possible problems over admissibility, introduced a provision according to which the production, where appropriate, of the complaint and the decision responding to it is now the responsibility of the applicant.

Amicable settlement

The Rules of Procedure of the Tribunal devote a chapter to amicable settlement, separate from that concerning measures of organisation of the procedure, thus suggesting that this procedure is distinct from normal judicial procedure.

The decision to seek an amicable settlement is a matter for the formation of the court which may instruct the judge-rapporteur to seek such a settlement.

Particular provisions govern the question of discontinuance following an agreement between the parties, whether before the Tribunal or out of court. In the first case, the terms of the agreement may be recorded in minutes which constitute an official record. The case is then removed from the register by reasoned order of the President of the formation of the court in which, on application by the principal parties, the terms of the agreement are recorded. In both cases, an order is made as to costs in accordance with the agreement between the parties or, failing such agreement, at the discretion of the Tribunal.

Finally, the rules provide that no opinion expressed, suggestion made, proposal put forward, concession made or document drawn up for the purposes of the amicable settlement may be relied on as evidence by the Tribunal or the parties in the contentious proceedings. If an attempt at amicable settlement is to have the greatest possible chance of succeeding, it is necessary to guarantee the parties freedom of speech in order to facilitate negotiations between them, without allowing the opinions expressed or the concessions made to be used against them in the event of failure.

Costs

Previously, under Article 88 of the Rules of Procedure of the Court of First Instance, in proceedings between the Communities and their servants an unsuccessful party had to bear only his own costs and not those of the institution, except where he unreasonably or vexatiously caused it to incur costs or where the circumstances were exceptional.

Article 7(5) of the Annex to the Statute of the Court of Justice provides that, subject to the specific provisions of the Rules of Procedure, the unsuccessful party is to be ordered to pay

the costs if they have been applied for in the successful party's pleadings. In that connection, Article 87(2) of the Rules of Procedure provides that, if equity so requires, the Tribunal may decide that an unsuccessful party is to pay only part of the costs or even that he is not to be ordered to pay any.

Article 94(a) of the Rules of Procedure of the Tribunal provides that where a party has caused the Tribunal to incur avoidable costs, in particular where the action is an abuse of process, that party may be ordered to pay them but the amount of that refund may not exceed EUR 2 000. This allows the Tribunal, in exceptional cases, to make an applicant who unreasonably burdens the court, for example by repeated actions on insubstantial grounds, pay part of the costs which it causes the court to incur. This option is consistent with the Council's intention, given specific form by the application of the 'loser pays' rule to all unsuccessful parties before the Tribunal, to limit the number of unjustified actions in the interests of the sound administration of justice.

Other noteworthy innovations

The concern for continuity in the operation of the court, the conduct of the procedure and the preparation of cases did not stand in the way of a certain number of innovations, in particular as regards:

- staying proceedings — the sound administration of justice may now justify a stay of proceedings, once the parties have been heard;
- related cases — the excessively strict requirement that cases have 'the same subject matter' in order to be joined has been abolished;
- clarification of the arrangements for measures of organisation of the procedure and measures of inquiry respectively — the former are addressed to the parties, or more specifically to their representatives, and the latter relate either to third parties or to the parties themselves;
- referral of a case from a chamber of three judges to the full court or a chamber of five judges — this no longer requires that the parties be consulted as the right of the parties to a fair hearing is already ensured by the transfer of the case to a court made up of a higher number of judges;
- intervention — the Rules of Procedure introduce the possibility of the President of the formation of the court inviting a third party with an interest in the resolution of the dispute to intervene;
- orders, the arrangements for which are clarified under the same heading as that for judgments.

II. *Proceedings concerning the legality of measures and actions for damages*

Procedural aspects

1. Dismissal by order

The Tribunal had occasion to interpret Article 111 of the Rules of Procedure of the Court of First Instance, applicable to the Tribunal *mutatis mutandis*, according to which, where it is clear that that Court has no jurisdiction to take cognisance of an action or where the action is manifestly inadmissible or manifestly lacking any foundation in law, it may, by reasoned order, and without taking further steps in the proceedings, give a decision on the action.

The Tribunal held, inter alia, that this provision should apply not only to those cases where the breach of the rules on admissibility is so obvious and blatant that no serious argument can be put forward in favour of admissibility, but also to those cases where, on reading the court file, the formation of the court is entirely convinced of the inadmissibility of the application, in particular because it breaches the requirements established by settled case-law, and takes the view that the holding of a hearing would not be liable to furnish any new evidence whatsoever in that regard (orders of 27 March 2007 in Case F-87/06 *Manté* v *Council*; of 20 April 2007 in Case F-13/07 *L* v *EMEA*; and of 20 June 2007 in Case F-51/06 *Tesoka* v *FEACVT*).

In addition, the Tribunal made clear that the final situation covered by that provision includes all actions manifestly bound to fail for reasons connected with the substance of the case (order of 26 September 2007 in Case F-129/06 *Salvador Roldán* v *Commission*).

In the above cases, the Tribunal pointed out that the dismissal of the action by reasoned order not only contributes to the economy of the procedure but also spares the parties the costs involved in holding a hearing.

2. Request

In its judgment of 17 April in Joined Cases F-44/06 and F-94/06 *C and F* v *Commission*, the Tribunal established the procedural implications of Article 233 EC and the case-law according to which, where a judgment annuls a measure, the administration is under a duty to act and take the measures to implement a final judgment without any requirement being imposed on the official to that end. The Tribunal held that where compensation is sought for an unreasonable delay in implementation of or the absence of any measures to implement a judgment, the lawfulness of the pre-litigation procedure cannot be made subject to the submission of a request by the official under Article 90(1) of the Staff Regulations of Officials of the European Communities ('Staff Regulations').

3. Act adversely affecting an official

In its order of 24 May 2007 in Joined Cases F-27/06 and F-75/06 *Lofaro* v *Commission* the Tribunal made clear that an end of probation report which the administration used as a basis for dismissing a member of staff constitutes only a preparatory measure for the decision to dismiss and, therefore, does not adversely affect the person concerned within the meaning of Article 90(2) of the Staff Regulations.

4. Time limits

The case-law to the effect that the adoption of a new rule constitutes a new substantial fact, which also affects officials not falling within its field of application if that rule entails unjustified inequalities of treatment between the latter and the persons benefiting from the new rule, was applied in Case F-92/05 *Genette* v *Commission* (judgment of 16 January 2007) as regards the combined effects of the new Staff Regulations and the 2003 Belgian law amending the conditions for the transfer of pension rights acquired in Belgium to the Community scheme.

In its judgment of 1 February 2007 in Case F-125/05 *Tsarnavas* v *Commission* the Tribunal recalled the case-law according to which officials or other members of staff must submit their financial claims to the institution within a reasonable time after the point in time when they became aware of the situation they complain of. The reasonableness of a period is to be appraised in the light of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the parties. Account should also be taken of the point of comparison offered by the period of limitation of five years laid down by Article 46 of the Statute of the Court of Justice in matters arising from non-contractual liability.

According to the order of 25 April 2007 in Case F-59/06 *Kerstens* v *Commission*, where the record of consultations of the Sysper 2 system shows that an applicant has opened the file containing the act of which he was notified electronically, the applicant must be considered to have had effective knowledge of the content of that act, which causes the time limit for lodging a complaint against it to begin to run.

Merits

In this report it is impossible to give an exhaustive account of the case-law of the Tribunal for 2007. Mention will therefore be made only of the year's most significant new developments, as regards, first, the general principles of Community civil service law and, second, the interpretation of the main new provisions of the Staff Regulations, which will be considered in the order of the headings of those regulations.

1. General principles of Community civil service law

(a) Duty to have regard for the welfare of officials

In Case F-23/05 *Giraudy* v *Commission* (judgment of 2 May 2007), the Tribunal had to deal with questions relating to the reconciliation of the serenity and proper conduct of an investigation of the European Anti-Fraud Office ('OLAF'), the right of the public to be informed and the protection of the presumption of innocence, of the integrity and of the professional reputation of an official reassigned in the interest of the service. In this case, the Tribunal ordered the Commission to pay compensation for the non-material harm suffered by the applicant, consisting in damage to his honour and professional reputation, because of breaches of the duty to have regard for his welfare in circumstances where he was reassigned following the opening of an investigation by OLAF. The Tribunal found that the Commission did not strike a proper balance between the interests of the applicant and those of the institution in giving extensive publicity, on the opening of OLAF's investigation, to the reassignment of the applicant, thus suggesting that he was personally implicated in the possible irregularities in question, without any publicity being given, by the Commission itself, to the final report by OLAF, which exonerated the applicant as regards the allegations which led to the opening of the investigation. The position taken by the Commission's spokesman, expressing his sympathy and that of the institution for the applicant, was not comparable, either in the manner or impact of its presentation, to the publicity which had been given to the applicant's reassignment on the opening of the investigation. The Tribunal held that, by not reducing to the strict minimum the damage done to the applicant by the opening of the investigation, the Commission infringed its duty to have regard for the welfare of its officials and servants and committed a wrongful act in the performance of its duties which was such as to give rise to its liability.

(b) Duty to provide assistance

In Cases F-115/05 *Vienne and Others* v *Parliament* (judgment of 16 January 2007) and F-3/06 *Frankin and Others* v *Commission* (judgment of 16 January 2007), the Tribunal had before it actions for annulment of decisions of the Parliament and the Commission rejecting requests for assistance made under Article 24 of the Staff Regulations by some 650 officials and members of the temporary staff, who, before the entry into force of the new Belgian legislation, had already arranged for their pension rights acquired with Belgian pension providers to be taken into account in the Community scheme, and asked the Parliament and the Commission for assistance in securing a recalculation under the rules of the new law of their pension rights acquired in Belgium. In its judgment in *Vienne and Others* v *Parliament*, the Tribunal made clear that the obligation to provide assistance is not subject to the condition that the acts constituting the reason for the request for assistance should be declared unlawful beforehand by a decision in legal proceedings. Such a condition would run counter to the very purpose of the request for assistance in those cases, which often occur, where the request is made precisely in order to obtain, in judicial proceedings with the support of the institution, a declaration that such acts are unlawful. However, those acts must still be 'reasonably capable of being construed as prejudicial to the rights of officials'. Since the applicants were not in a position to provide 'at least some evidence

that they were victims of discrimination because of the acts of third parties', the Parliament was entitled to take the view that they had suffered no prejudice to their rights under the Staff Regulations such as to warrant the assistance of the institution.

(c) Protection of legitimate expectations

By its judgment of 1 March 2007 in Case F-84/05 *Neirinck* v *Commission* the Tribunal held that the fact that a head of a department had meetings with a candidate for a post as a member of the temporary staff to discuss the possibility of employing that person in his team and had expressed a wish to employ that person does not demonstrate the existence of a promise to recruit. Accordingly, the Tribunal held that the candidate for the post could not claim that the administration had created a legitimate expectation in his mind that he would be recruited.

2. Careers of officials

(a) Recruitment

(i) New career structure

In its judgment of 28 June 2007 in Case F-21/06 *Da Silva* v *Commission* the Tribunal annulled a decision grading the applicant, who had been appointed Director following a recruitment procedure under Article 29(2) of the Staff Regulations and classified in the same grade as he had held previously, but in a lower step. According to the Tribunal, since such an appointment constitutes an advance in an official's career, it cannot result in his demotion in grade or step and, consequently, in a decrease in his salary, without there being a breach of the principle that every official has the right to reasonable career prospects within his institution.

In its judgment of 5 July 2007 in Case F-93/06 *Dethomas* v *Commission*, the Tribunal, having noted that Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 (OJ 2004 L 124, p. 1) contains no transitional provision affecting the validity of the third paragraph of Article 32 of the Staff Regulations as of 1 May 2004, held that, following the entry into force of those regulations, in the absence of any transitional provision, that article remained fully applicable to the grading in step of any member of the temporary staff who is appointed an official in the grade he previously held.

Also of interest is the judgment of 8 November 2007 in Case F-125/06 *Deffaa* v *Commission*, which illustrates the technical difficulties of interpreting the new provisions of the Staff Regulations as regards the relationship between the second paragraph of Article 44 of the Staff Regulations and Article 7(4) of Annex XIII to those regulations, concerning a 'management premium' which is granted where the duties of head of unit, director or director-general are performed.

(ii) Competitions

The Tribunal had to rule in a number of cases concerning competitions, including, in particular, Case F-121/05 *De Meerleer* v *Commission* (judgment of 14 June 2007). The Tribunal made clear in that judgment that the power of a competition selection board to re-examine its decisions is not comparable to the power of review of the appointing authority in the context of a complaint or of the Community courts in court proceedings, and that, therefore, an applicant has a separate and real interest in having his request for re-examination considered by the selection board, even if he has been able to lodge a complaint and bring an action before the court against that initial decision of the selection board. Also in that judgment, the Tribunal considered whether the candidates were able to have effective knowledge of the initial decision of the selection board through the system for consultation of their electronic EPSO file, so as to be able to submit a request for re-examination of the decision of the selection board within the period prescribed.

(iii) Medical examination

In its judgment of 13 December 2007 in Case F-95/05 *N* v *Commission*, the Tribunal made clear that candidates for recruitment in a non-member country cannot be deprived of the proper procedure for a medical examination as laid down in Article 33 of the Staff Regulations.

(b) Status under the Staff Regulations

In its judgment of 13 December 2007 in Joined Cases F-51/05 and F-18/06 *Duyster* v *Commission*, concerning the establishment of the conditions for parental leave, the Tribunal referred to Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC (OJ 1996 L 145, p. 4) in order to interpret Article 42a of the Staff Regulations. On the basis of the case-law of the Court, the Tribunal made clear that, where the appointing authority makes a decision on a request for annulment or interruption of parental leave, its discretion is reduced where the person granted parental leave establishes that events occurring after the grant of leave incontestably make it impossible for him to care for the child under the conditions originally foreseen. This may be the case, in particular, where the official suffers from a disease the gravity or characteristics of which prevent such care. In this case, as those conditions were not established, the action was dismissed.

(c) Reports — Promotion

This year again the litigation concerning the reporting procedure and promotion was fairly plentiful.

In its judgment of 22 November 2007 in Case F-67/05 *Michail* v *Commission*, the Tribunal, having observed that the applicant, although in active employment within the meaning of Article 36 of the Staff Regulations, was not given, during the reference period, any task which could be the subject of an appraisal, held that the Commission was wrong to

have given him a merit mark and, on that ground, annulled the career development report of the person concerned.

In its judgment of 13 December 2007 in Case F-42/06 *Sundholm* v *Commission*, the Tribunal annulled the career development report of an official on the ground that the Commission did not, in the period covered by the report, allocate to the person concerned any objectives or criteria for appraisal and failed, when assessing his merits, to take that fact into consideration.

In its judgments of 22 November 2007 in Case F-109/06 *Dittert* v *Commission* and in Case F-110/06 *Carpi Badia* v *Commission*, the Tribunal annulled the refusal to promote the applicants as the promotion procedure was vitiated by a procedural defect. Because of a computer problem, the applicants' names had been omitted from the list which the director-general used for the award of priority points in the directorate-general, with the result that no points were awarded to them.

3. Working conditions

In its judgment of 16 January 2007 in Case F-119/05 *Gesner* v *OHIM*, the Tribunal annulled the rejection by the authority empowered to conclude contracts of a request by a member of the temporary staff for the appointment of an Invalidity Committee in order to be covered by the provisions on the risk of invalidity, on the ground that the authority was wrong to argue that the applicant's sick leave did not total at least 12 months over a three-year period as required by Article 59(4) of the Staff Regulations. The Tribunal stated that that provision has as its aim not to establish a condition of a prior period of sick leave which officials and other servants who request the appointment of an Invalidity Committee must observe, but to determine the conditions for the exercise of the discretion available to the appointing authority or the authority empowered to conclude contracts where the latter, in the absence of a request by the official or member of the temporary staff, examine of their own motion whether it is appropriate to open such a procedure.

In its judgment of 22 May 2007 in Case F-99/06 *López Teruel* v *OHIM*, the Tribunal set out in detail the new medical arbitration procedure described in the fifth to eighth subparagraphs of Article 59(1) of the Staff Regulations, under which an official on sick leave may dispute the results of the medical examination arranged by the institution where the finding of that examination is that his absence is unjustified.

4. Emoluments and social benefits of officials

(a) Remuneration and repayment of expenses

In its judgment of 16 January 2007 in Case F-126/05 *Borbély* v *Commission*, the Tribunal rejected the Commission's argument that, since the amendment of Article 5(1) of Annex VII to the Staff Regulations in the reform of 2004, residence within the meaning of that provision could no longer be regarded as equivalent to the official's centre of interests, as

defined in settled case-law. The term 'residence' must therefore always be construed as referring to the centre of interests of the official or servant concerned.

In Case F-43/05 *Chassagne* v *Commission* (judgment of 23 January 2007), the Tribunal dismissed a plea of the illegality of Article 8 of Annex VII to the new Staff Regulations. The Tribunal made clear that the lump sum payment of travel expenses from the place of employment to the official's place of origin did not disregard the purpose of that article, which is to allow an official to travel, at least once a year, to his place of origin, in order to preserve family, social and cultural ties, or exceed the limits of the wide discretion of the Community legislature in that regard.

(b) Social security

In *Roodhuijzen* v *Commission* (judgment of 27 November 2007 in Case F-122/06), the Tribunal decided that a cohabitation agreement entered into in the Netherlands before a notary between an official and his partner entitled the latter to be covered, pursuant to Article 72 of the Staff Regulations and Article 12 of the Joint Rules, by the Sickness Insurance Scheme of the European Communities.

(c) Pensions

(i) Rate of contribution

In Case F-105/05 *Wils* v *Parliament* (judgment of 11 July 2007), the Tribunal, sitting in full court, dismissed an action which challenged, by means of a plea of illegality, the new arrangements for the calculation of the rate of contribution of officials to the pension scheme laid down by Annex XII to the Staff Regulations. The Tribunal first dismissed the plea that the Annex was adopted in breach of the tripartite consultation procedure for staff relations set up by the Council Decision of 23 June 1981. The Tribunal went on to hold that the decision of the legislature to define, in Article 10(2) of Annex XII to the Staff Regulations, the actuarial rate as the average of the real average interest rates for the 12 years preceding the current year was not such as to affect the validity of the actuarial method defined by Annex XII to the Staff Regulations or to compromise the objective of actuarial balance of the Community pension scheme, and that the period of 12 years chosen is neither manifestly erroneous nor manifestly inappropriate. Accordingly, even though it was apparent from the court file that the reference period for the calculation of the actuarial rate had been the subject of political negotiations and had therefore been fixed at 12 years to take account of budgetary considerations, the applicant could not claim that the choice of that period was vitiated by a misuse of powers. Finally, the applicant submitted that Annex XII to the Staff Regulations had breached the expectations which officials legitimately had of observance of the rule in Article 83(2) of both the old and the new Staff Regulations limiting the contribution of officials to one third of the financing of the pension scheme. According to the applicant, Annex XII to the Staff Regulations took no account of the surplus of contributions made by officials up to 30 April 2004. The Tribunal held that it was not in a position to assess whether the applicant's allegations on that point were well founded since, in the absence of any actuarial study of the Community

pension scheme before 1998, the amount of the contribution by officials required to ensure the actuarial balance of the scheme was not known before that date.

(ii) Transfer of pension rights

In *Genette* v *Commission,* presented by the Commission as a 'pilot' case, the Tribunal ruled on a matter affecting those officials, of whom there were many, who had transferred pension rights previously acquired with pension providers in Belgium to the Community scheme. The applicant sought the recalculation of rights already transferred to take account of the more favourable arrangements for transfer introduced by a Belgian law of 2003. The Commission had refused to withdraw its decisions relating to the applicant's pension rights transferred to the Community scheme on the ground that such withdrawal would be illegal in the absence of provisions of Community law expressly authorising it. The Tribunal held that that ground was vitiated by an error of law. The Tribunal took the view that the general conditions identified by the case-law of the Court for the withdrawal of an individual decision creating rights did not preclude the withdrawal of such a decision, even if lawful, provided that the withdrawal was requested by the beneficiary of that decision and that its withdrawal did not harm the rights of third parties.

In two cases, Cases F-76/06 and F-77/06 *Tsirimokos* v *Parliament* and *Colovea* v *Parliament* (judgments of 13 November 2007), the Tribunal made clear that it follows from both a literal and a systematic interpretation of Article 4(b) of Annex IVa to the Staff Regulations that the years of service obtained following a transfer of pension rights to the pension scheme are not covered by that article. Consequently, the Tribunal dismissed the applications made by the applicants for the annulment of the decisions refusing to take account, in the calculation of the salary paid for their part-time work in preparation for retirement, of the years of service obtained following a transfer of pension rights acquired in national schemes.

(iii) Correction coefficients

In its judgment of 19 June 2007 in Case F-54/06 *Davis and Others* v *Council*, the Tribunal took the view that the new pensions system, abolishing correction coefficients in respect of pension rights acquired as of 1 May 2004 and amending pension rights acquired before that date, so that correction coefficients are now calculated according to the cost of living in the Member State of residence of the pensioner rather than according to the cost of living in the capital of the Member State of the place of employment of the official, does not breach the principles of equal treatment and non-discrimination or the principles of freedom of movement and freedom of establishment.

5. Disciplinary measures

In its judgment of 8 November 2007 in Case F-40/05 *Andreasen* v *Commission*, the Tribunal applied the new Staff Regulations as regards, in particular, the verification of the seriousness of the events resulting in the removal of an official from his post. Article 10 of Annex IX to the Staff Regulations provides that the disciplinary penalties imposed are to be commensurate with the seriousness of the misconduct, and sets out the criteria of which

the appointing authority must take account in particular in determining the penalty. Within that legal framework, the Tribunal assessed the arguments of the applicant concerning the alleged violation of the principle of the proportionality of the penalty. The Tribunal also ruled on the temporal application of the provisions of Annex IX to the Staff Regulations concerning the establishment and organisation of the Disciplinary Board which entered into force during the course of the disciplinary procedure.

6. Conditions of employment of other servants of the European Communities

In its judgment of 4 October 2007 in Case F-32/06 *de la Cruz and Others* v *European Agency for Safety and Health at Work*, the Tribunal upheld the claim of applicants, former members of the local staff, contesting their classification as members of the contract staff in function group II, in the light of the tasks they actually performed.

Costs

The Tribunal has repeatedly applied Article 87(3) of the Rules of Procedure of the Court of First Instance, applicable *mutatis mutandis*, to rule either, under the first subparagraph of that provision, that costs should be shared between the parties where the circumstances are exceptional (judgment of 7 November 2007 in Case F-57/06 *Hinderyckx* v *Council* and order of 14 December 2007 in Case F-131/06 *Steinmetz* v *Commission*) or, under the second subparagraph, to order a successful party to pay part of the costs incurred by the opposite party which it considers to have been unreasonably or vexatiously caused (judgments of 9 October 2007 in Case F-85/06 *Bellantone* v *Court of Auditors*, and in *Duyster* v *Commission*), and even where an action was held to be manifestly inadmissible (order of 27 March 2007 in Case F-87/06 *Manté* v *Council*).

III. *Applications for interim measures*

Four applications for interim measures were brought in 2007, which were rejected because of the lack of urgency of the measures sought, which are required by settled case-law to be taken and produce their effects before a decision is reached in the main action, in order to avoid serious and irreparable harm to the applicant's interests (orders of the President of the Tribunal of 1 February 2007 in Case F-142/06 R *Bligny* v *Commission*, of 13 March 2007 in Case F-1/07 R *Chassagne* v *Commission*, of 10 September 2007 in Case F-83/07 R *Zangerl-Posselt* v *Commission* and of 21 November 2007 in Case F-98/07 R *Petrilli* v *Commission*).

In *Chassagne* v *Commission* and *Petrilli* v *Commission*, the President of the Tribunal recalled the settled case-law of the Court of Justice and Court of First Instance according to which purely financial damage cannot, in principle, be regarded as irreparable, or even difficult to repair, because financial compensation can be made for it subsequently.

In *Bligny* v *Commission* and *Zangerl-Posselt* v *Commission*, the President of the Tribunal recalled the settled case-law of the Court of Justice and the Court of First Instance according

to which continuing with the tests in an open competition is not liable to cause irreparable damage to a candidate who has been disadvantaged by an irregularity in the competition. Where, in an open competition for the purpose of constituting a reserve for future recruitment, a test is annulled, an applicant's rights will be adequately protected if the board and the appointing authority reconsider their decisions and seek a just solution in his case.

IV. *Applications for legal aid*

Seventeen orders ruling on applications for legal aid were made in 2007. Only three applications could be granted, the remainder being rejected either because the proposed action was manifestly inadmissible or manifestly unfounded or because the applicant was not or did not prove that he was, because of his financial situation, wholly or partly unable to meet the costs involved in legal assistance and representation by a lawyer in proceedings.

V. *Preliminary assessment of the practice of amicable settlement*

The Tribunal has endeavoured, in its judicial practice, to answer the legislature's appeal for the facilitation, at every stage of the procedure, of the amicable settlement of disputes. Thus, on the basis of Article 7(4) of the Annex to the Statute of the Court of Justice and of Article 64(2)(d) of the Rules of Procedure of the Court of First Instance, applicable *mutatis mutandis* to the Tribunal pending the entry into force of its own Rules of Procedure, the Tribunal made several attempts at amicable settlement. Fourteen cases were able to be brought to a close following an amicable setlement, seven of them following intervention by the Tribunal, most often at an informal meeting organised by the judge-rapporteur or at the hearing. Clearly the trend in these figures over time will be affected by the efforts which the Tribunal will make in the search for an amicable settlement of disputes and the degree of openness shown by the parties' representatives in that regard.

Even though it is neither possible nor desirable to draw up an exhaustive list of the circumstances which will foster an amicable settlement of differences, the Tribunal has identified a number of categories of dispute which would be suitable for amicable settlement.

These are primarily actions whose real solution cannot be found in a legal ruling as such, which would not put an end to the dispute or the conflict giving rise to the proceedings, which is often of a personal nature. In this type of case, priority must be given to the search for a fairer or more human solution than a legal analysis would yield. That obviously requires that the dispute should raise no question of general interest for other officials. In the same vein, cases where publicity would not be fully justified and where a judgment would not make any clear contribution to the law (for example in cases of psychological or sexual harassment, or of reassignment of an official because of a conflict between that official and his superiors) might also be suitable for an amicable settlement. Duplicate cases, following a 'pilot' judgment, which could be given the same solution as in that judgment, could also be included here.

It must be said that the administration often has a wide discretion in performing the tasks entrusted to it and that judicial review of internal legality in that context is often marginal. Although, in a given dispute, the lawfulness of a measure adopted by the appointing authority in the exercise of its wide discretion cannot be called into question in a review of misuse of powers by the court, it is possible that the appointing authority could have achieved the objective pursued by adopting a different, but equally lawful, measure from that challenged before the court, which could have prevented the dispute in question. This situation represents particularly fertile ground for amicable settlement.

B — Composition of the Civil Service Tribunal

(Order of precedence as at 1 January 2007)

From left to right:

H. Tagaras, Judge; I. Boruta, Judge; H. Kreppel, President of Chamber; P. Mahoney, President of the Tribunal; S. Van Raepenbusch, President of Chamber; H. Kanninen, Judge; S. Gervasoni, Judge; W. Hakenberg, Registrar.

1. Members of the Civil Service Tribunal

((in order of their entry into office)

Paul J. Mahoney

Born 1946; law studies (Master of Arts, Oxford University, 1967; Master of Laws, University College London, 1969); Lecturer, University College London (1967–73); Barrister (London, 1972–74); Administrator/Principal Administrator, European Court of Human Rights (1974–90); Visiting Professor at the University of Saskatchewan, Saskatoon, Canada (1988); Head of Personnel, Council of Europe (1990–93); Head of Division (1993–95), Deputy Registrar (1995–2001), Registrar of the European Court of Human Rights (2001 to September 2005); President of the Civil Service Tribunal since 6 October 2005.

Horstpeter Kreppel

Born 1945; university studies in Berlin, Munich, Frankfurt-am-Main (1966–72); first state examination in law (1972); court trainee in Frankfurt-am-Main (1972–73 and 1974–75); College of Europe, Bruges (1973–74); second state examination in law (Frankfurt-am-Main, 1976); Specialist Adviser in the Federal Labour Office and lawyer (1976); Presiding Judge at the Labour Court (Land Hesse, 1977–93); Lecturer at the Technical College for Social Work, Frankfurt-am-Main, and at the Technical College for Administration, Wiesbaden (1979–90); National Expert to the Legal Service of the European Commission (1993–96 and 2001–05); Social Affairs Attaché at the Embassy of the Federal Republic of Germany in Madrid (1996–2001); Presiding Judge at the Labour Court of Frankfurt-am-Main (February to September 2005); Judge at the Civil Service Tribunal since 6 October 2005.

Irena Boruta

Born 1950; law graduate of the University of Wrocław (1972), Doctorate in Law (Łódź, 1982); lawyer at the Bar of the Republic of Poland (since 1977); visiting researcher (University of Paris X, 1987 to 1988; University of Nantes, 1993–94); expert of 'Solidarność' (1995–2000); Professor of labour law and European social law at the University of Łódź (1997–98 and 2001–05), Associate Professor at Warsaw School of Economics (2002), Professor of labour law and social security law at Cardinal Stefan Wyszynski University, Warsaw (2000–05); Deputy Minister for Labour and Social Affairs (1998–2001); member of the negotiation team for the accession of the Republic of Poland to the European Union (1998–2001); representative of the Polish Government to the International Labour Organisation (1998–2001); author of a number of works on labour law and European social law; Judge at the Civil Service Tribunal since 6 October 2005.

Heikki Kanninen

Born 1952, graduate of the Helsinki School of Economics and of the Faculty of Law of the University of Helsinki; Legal Secretary at the Supreme Administrative Court of Finland; General Secretary to the Committee for Reform of Legal Protection in Public Administration; Principal Administrator at the Supreme Administrative Court; General Secretary to the Committee for Reform of Administrative Litigation, Counsellor in the legislative department of the Ministry of Justice; Assistant Registrar to the EFTA Court; Legal Secretary at the Court of Justice of the European Communities; Judge at the Supreme Administrative Court (1998–2005); Member of the Asylum Board; Vice-President of the Committee on the Development of the Finnish Courts; Judge at the Civil Service Tribunal since 6 October 2005.

Haris Tagaras

Born 1955; graduate in law (University of Thessaloniki, 1977); special diploma in European law (Institute for European Studies, Free University of Brussels, 1980); Doctorate in Law (University of Thessaloniki, 1984); Lawyer-linguist at the Council of the European Communities (1980–82); researcher at the Thessaloniki Centre for International and European Economic Law (1982–84); Administrator at the Court of Justice of the European Communities and at the Commission of the European Communities (1986–90); Professor of Community law, international private law and human rights at Athens Panteion University (since 1990); external consultant for European matters at the Ministry of Justice and member of the Permanent Committee of the Lugano Convention (1991–2004); Member of the Greek Competition Commission (1999–2005); Member of the national Postal and Telecommunications Commission (2000–02); Member of the Thessaloniki Bar, lawyer to the Court of Cassation; founder member of the Union of European Lawyers (UAE); associate member of the International Academy of Comparative Law; Judge at the Civil Service Tribunal since 6 October 2005.

Sean Van Raepenbusch

Born 1956; graduate in law (Free University of Brussels, 1979); special diploma in international law (Brussels, 1980); Doctor of Laws (1989); Head of the Legal Service of the Société anonyme du canal et des installations maritimes (Canals and Maritime Installations Company), Brussels (1979–84); official of the Commission of the European Communities (Directorate-General for Social Affairs, 1984–88); Member of the Legal Service of the Commission of the European Communities (1988–94); Legal Secretary at the Court of Justice of the European Communities (1994–2005); Lecturer at the University of Charleroi (international and European social law, 1989–91), at the University of Mons-Hainaut (European law, 1991–97), at the University of Liège (European civil service law, 1989–91; institutional law of the European Union, 1995–2005; European social law, 2004–05); numerous publications on the subject of European social law and constitutional law of the European Union; Judge at the Civil Service Tribunal since 6 October 2005.

Stéphane Gervasoni

Born 1967; graduate of the Institute for Political Studies of Grenoble (1988) and the École nationale d'administration (1993); Member of the Conseil d'État (contentious proceedings, 1993–97; social affairs, 1996–97; maître des requêtes since 1996); maître de conférences at the Institut d'études politiques, Paris (1993–95); commissaire du gouvernement attached to the special pensions appeal commission (1994–96); legal adviser to the Ministry of the Civil Service and to the City of Paris (1995–97); Secretary General of the Prefecture of the Department of the Yonne, Sub-Prefect of the district of Auxerre (1997–99); General Secretary to the Prefecture of the Département of Savoie, Sub-Prefect of the district of Chambéry (1999–2001); Legal Secretary at the Court of Justice of the European Communities (September 2001 to September 2005); titular member of the NATO appeals commission (since 2001); Judge at the Civil Service Tribunal since 6 October 2005.

Waltraud Hakenberg

Born 1955; studied law in Regensburg and Geneva (1974–79); first state examination (1979); postgraduate studies in Community law at the College of Europe, Bruges (1979–80); trainee lawyer in Regensburg (1980–83); Doctor of Laws (1982); second state examination (1983); lawyer in Munich and Paris (1983–89); official at the Court of Justice of the European Communities (1990–2005); Legal Secretary at the Court of Justice of the European Communities (in the Chambers of Judge Jann, 1995–2005); teaching at a number of universities in Germany, Austria, Switzerland and Russia; Honorary Professor at Saarland University (since 1999); member of various legal committees, associations and boards; numerous publications on Community law and Community procedural law; Registrar of the Civil Service Tribunal since 30 November 2005.

2. Order of precedence

from 1 January 2007 to 31 December 2007

P. MAHONEY, President of the Tribunal
H. KREPPEL, President of Chamber
S. VAN RAEPENBUSCH, President of Chamber
I. BORUTA, Judge
H. KANNINEN, Judge
H. TAGARAS, Judge
S. GERVASONI, Judge
W. HAKENBERG, Registrar

C — Statistics concerning the judicial activity of the Civil Service Tribunal

General activity of the Civil Service Tribunal

1. New cases, completed cases, cases pending (2005–07)

New cases

2. Percentage of the number of cases per principal defendant institution (2006–07)
3. Language of the case (2006–07)

Completed cases

4. Judgments and orders — Bench hearing action (2007)
5. Outcome (2007)
6. Proceedings for interim measures: outcome (2007)
7. Duration of proceedings (2007)

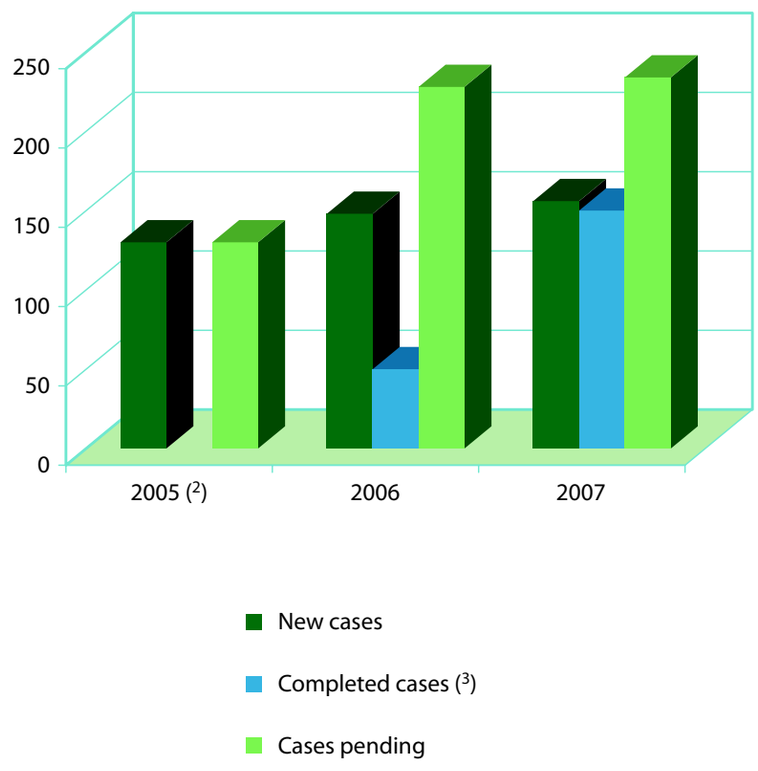
Cases pending as at 31 December

8. Bench hearing action (2007)
9. Number of applicants (2007)

Miscellaneous

10. Decisions of the Tribunal on appeal to the Court of First Instance (2006–07)
11. Results of appeals to the Court of First Instance (2006–07)

1. *General activity of the Civil Service Tribunal* — New cases, completed cases, cases pending (2005–07) ([1])



	2005 ([2])	**2006**	**2007**
New cases	130	148	156
Completed cases ([3])	0	50	150
Cases pending	130	228	234 ([4])

([1]) The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

([2]) 2005: the Court of First Instance referred 117 cases to the newly created Civil Service Tribunal.

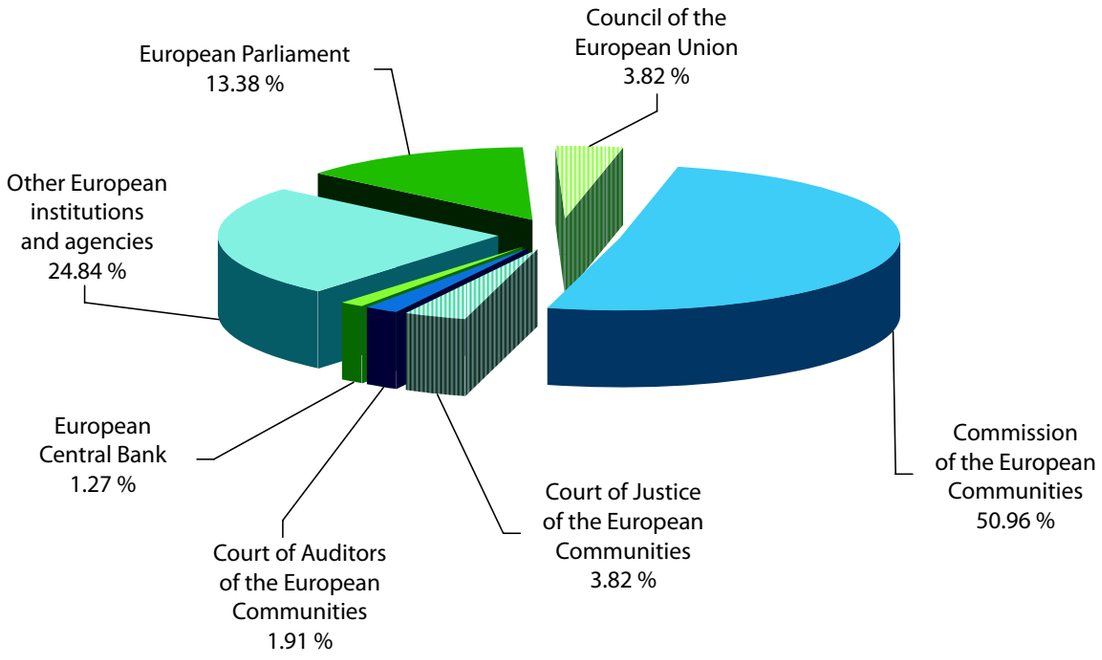
2006: the Court of First Instance referred one more case to the Civil Service Tribunal.

([3]) Unless otherwise indicated, this table and the following tables take account, for 2007, of all forms of procedure except applications for interim measures. If applications for interim measures are included: 52 cases in 2006 (plus one interim judgment), 154 cases in 2007 and 206 cases in total.

([4]) Including 77 suspended cases.

2. *New cases* — Percentage of the number of cases per principal defendant institution (2006–07)

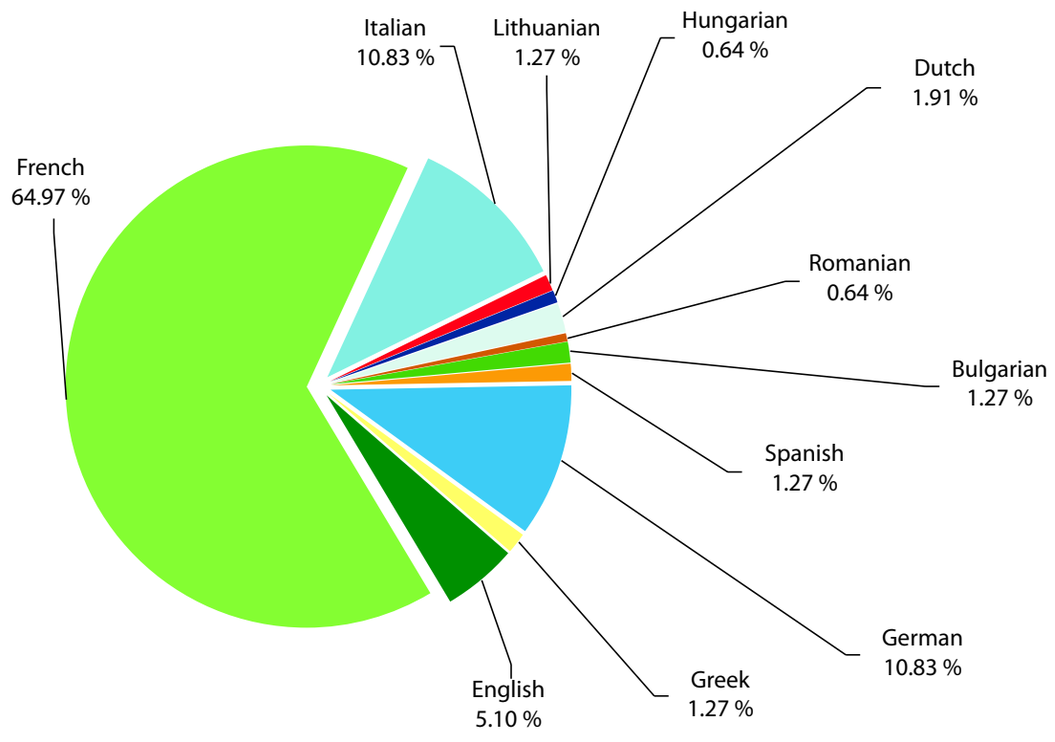
Percentage of number of new cases (2007)



	2006 (%)	2007 (%)
European Parliament	7.14	13.38
Council of the European Union	6.07	3.82
Commission of the European Communities	75.00	50.96
Court of Justice of the European Communities	3.57	3.82
Court of Auditors of the European Communities	1.79	1.91
European Central Bank	1.07	1.27
Other European institutions and agencies	5.36	24.84
Total	**100.00**	**100.00**

3. *New cases* — Language of the case (2006–07)

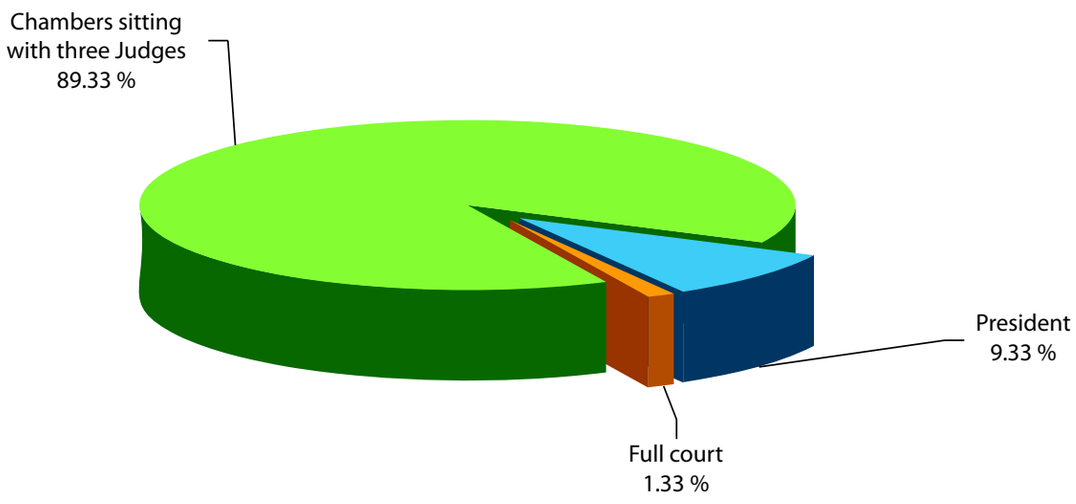
Distribution in 2007



Language of the case	2006	2007
Bulgarian	–	2
Spanish	1	2
German	2	17
Greek	3	2
English	8	8
French	113	102
Italian	10	17
Lithuanian	–	2
Hungarian	2	1
Dutch	7	3
Romanian	–	1
Slovenian	1	–
Finnish	1	–
Total	**148**	**157**

NB: The language of the case is determined by the language in which the proceedings were brought and not the applicant's mother tongue or nationality.

4. *Completed cases* — Judgments and orders — Bench hearing action (2007)



	Judgments	Orders terminating proceedings ([1])	Other orders	Total
Full court	1	1	0	2
Chambers sitting with three Judges	65	48	21	134
President	0	12	2	14
Total	**66**	**61**	**23**	**150**

([1]) Orders terminating proceedings by judicial determination, including those removing a case from the register following an amicable settlement reached between the parties as a result of action by the Civil Service Tribunal (other than orders terminating proceedings by removal from the register for other reasons).

5. *Completed cases* — Outcome (2007)

	Judgments		Orders				Total
	Annulment of the decision	Dismissal of the action	Orders (actions inadmissible or manifestly inadmissible or unfounded)	Amicable settlements following action by the Tribunal	Removal from the register for other reasons	Other	
Appraisal/promotion	6	13	4		12		35
Assignment/reassignment to a post	1	1	2	1	2		7
Competitions		3	6		1		10
Disciplinary proceedings		1					1
Pensions and invalidity allowances	3	6	4		1	1	15
Recruitment/appointment/classification in grade	7	4	6		5		22
Remuneration and allowances	2	6	6	2	2		18
Social security/occupational disease/accidents	4		4	2		2	12
Termination of an agent's contract		3	3	1		1	8
Working conditions/leave	1	2	2				5
Fields OTHER than staff cases	2	1		1			4
Total	**26**	**40**	**37**	**7**	**23**	**4**	**137** ([1])

([1]) To this figure must be added 13 cases completed in the field of legal aid and four orders in proceedings for interim measures.

6. *Completed cases* — Proceedings for interim measures: outcome (2007)

Number of applications for interim measures	Outcome	
	Granted/contested decision set aside	Dismissed/ contested decision upheld
4		4

7. *Completed cases* — Duration of proceedings (2007)

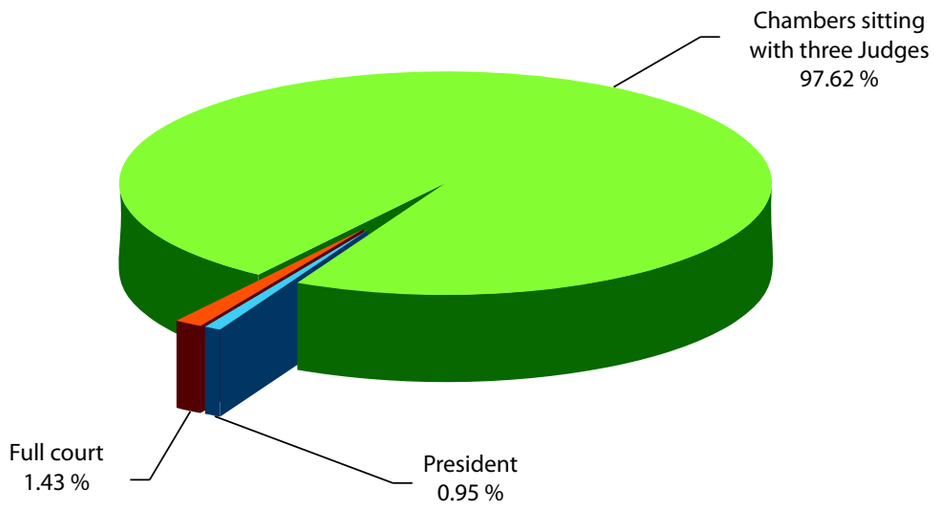
Judgments		Average duration	Overall average
New cases before the Civil Service Tribunal	48	14.7	16.9
New cases before the Court of First Instance ([1])	18	22.7	
Total	**66**		
Orders			
New cases before the Civil Service Tribunal	72	7.6	10.3
New cases before the Court of First Instance ([1])	12	25.1	
Total	**84**		
Overall total	**150**		**13.2**

The duration of proceedings is expressed in months and tenths of months.

([1]) 2005: the Court of First Instance referred 117 cases to the newly created Civil Service Tribunal.

2006: the Court of First Instance referred one more case to the Civil Service Tribunal.

8. *Cases pending as at 31 December* — Bench hearing action (2007)



	2007
Full court	3
Chambers sitting with three Judges	205
President	2
Total	**210** [1]

[1] To this figure must be added 25 unassigned cases.

9. *Cases pending as at 31 December* — Number of applicants (2007)

New cases with the greatest number of applicants in a single case

Number of applicants per case (1)	Fields (2)
309	Staff Regulations — Pension — Application of the weighting calculated on the basis of the average cost of living in the country of residence
181	Staff Regulations — Contract staff — Duration of contracts, renewal and/or extension for a definite or indefinite period
143	Staff Regulations — Appointments — Candidates placed on a reserve list before the new Staff Regulations entered into force
76	Staff Regulations — Appointments — Reclassification of contracts for a definite period as a single contract for an indefinite period
59	Staff Regulations — Promotion — Promotion year 2005 — Additional grades provided for by the new Staff Regulations
29	Staff Regulations — Appointments — Candidates placed on a reserve list before the new Staff Regulations entered into force
21	Staff Regulations — Contract staff — Review of classification and remuneration
20	Staff Regulations — Pension — Pension statements — Weighting now calculated on the basis of the average cost of living in the country of residence rather than in relation to the capital of that country
19	Staff Regulations — Appointments — Classification in grade — Multiplier and cancellation of promotion points
15	Staff Regulations — Appointments — Candidates placed on a reserve list before the new Staff Regulations entered into force

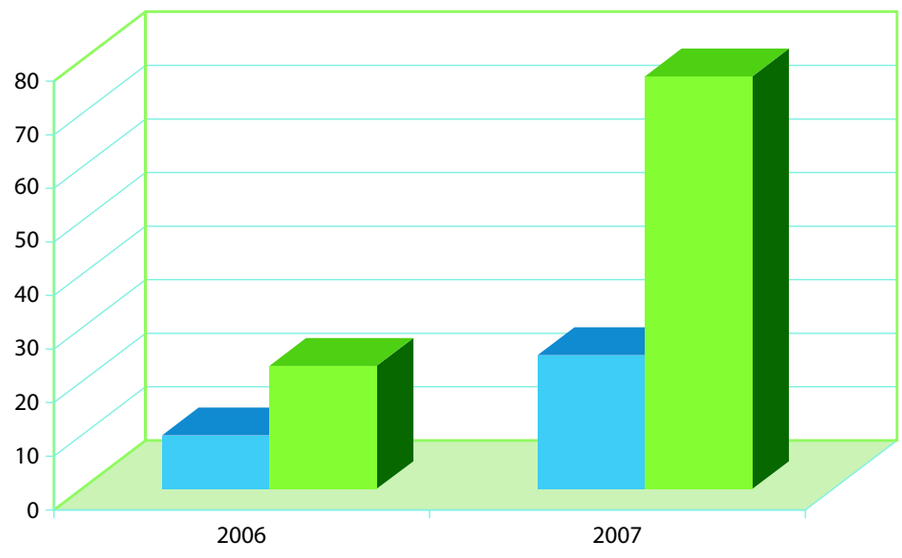
Total number of applicants for all pending cases

Total applicants	Total pending cases
1 267	235

(1) Those applicants who have brought more than one action have been counted in respect of each action brought.

(2) The term 'Staff Regulations' below means the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities.

10. *Miscellaneous* — Decisions of the Tribunal on appeal to the Court of First Instance (2006–07)



	Number of decisions against which appeals were brought (1)	Total number of decisions open to challenge (2)	Percentage of decisions against which appeals were brought (3)
2006	10	23	43 %
2007	25	77	32 %

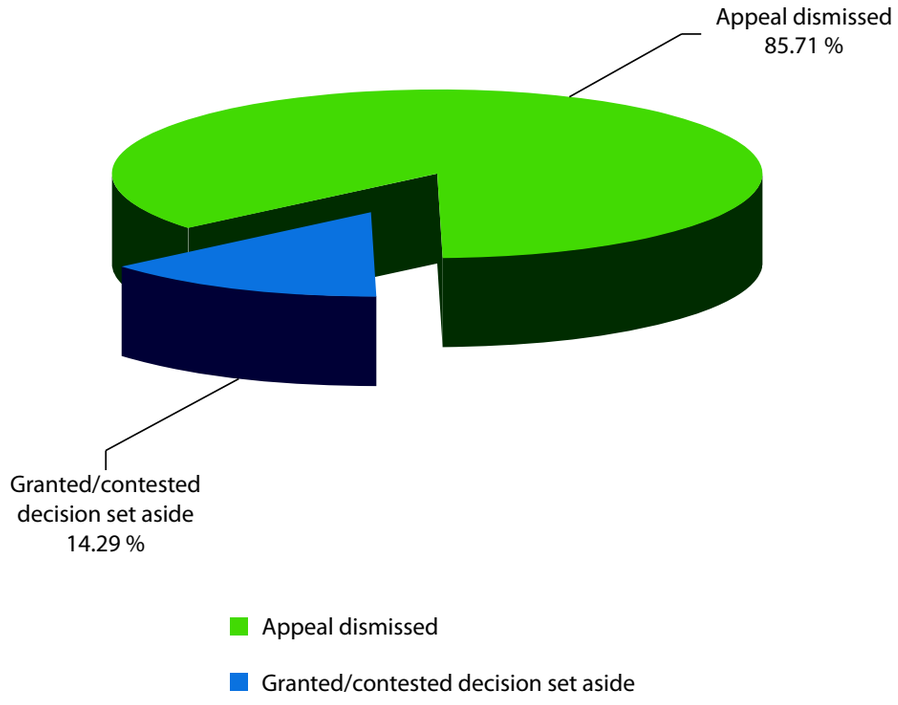
(1) The decisions in Cases F-92/05 and F-17/05 were each the subject of two appeals.

(2) Total number of decisions open to challenge — judgments and orders relating to inadmissibility, concerning interim measures, declaring that there was no need to adjudicate or refusing leave to intervene — in respect of which the period for bringing an appeal expired or against which an appeal was brought.

(3) In 2007, the percentage of decisions against which appeals were brought was 19 % of the total number of cases completed, not including cases which were discontinued unilaterally by one of the parties. In 2006 that percentage was 21 %.

11. *Miscellaneous* — Results of appeals to the Court of First Instance (2006–07)

Distribution in 2007



	Appeal dismissed	Granted/contested decision set aside	Removal from the register/no need to adjudicate	Total
2006	0	0	0	**0**
2007	6	1	0	**7**

Chapter IV

Meetings and visits

A — Official visits and events at the Court of Justice, the Court of First Instance and the Civil Service Tribunal

Court of Justice

1 February	HE B. Faure, Ambassador Extraordinary and Plenipotentiary of the Republic of the Seychelles to the European Union
5 February	HE R. Prodi, President of the Council of Ministers of the Italian Republic
8 February	Professor Köck and Professor Karollus
23 February	Deutsch–Belgisch–Luxemburgische Parlamentariergruppe of the German Bundestag
26–27 February	Delegation from the French Conseil d'État
1 March	Ms O. I. Navarrete Barrero, President of the Court of Justice of the Andean Community
5 March	HE M. Foucher, Ambassador
5–6 March	Delegation from the Constitutional Court of the Republic of Slovenia
8 March	HE M. Burke, Ambassador of Ireland to Luxembourg
14–15 March	Delegation from the Federal Supreme Court of Switzerland
26–27 March	Symposium on the occasion of the 50th anniversary of the signature of the Treaties of Rome
19 April	HE R. Cachia Caruana, Permanent Representative of the Republic of Malta to the European Union
23 April	HE B. Reka, Ambassador Extraordinary and Plenipotentiary, Head of Mission of the former Yugoslav Republic of Macedonia to the European Union
23 April	Mr I. Kalfin, Minister for Foreign Affairs of the Republic of Bulgaria
23–25 April	Delegation from the Judicial Council of the Slovak Republic
14–15 May	Delegation of senior judges from the Kingdom of Denmark
15–16 May	Delegation from the Supreme Court of the Kingdom of Spain (Chamber for Administrative Litigation)
5 June	Mr V. Hoff, Minister for Federal and European Affairs of the *Land* of Hesse
5 June	Information day for the new Members of the Court of First Instance

18 June	Meeting of Agents of the Member States
18 June	Mr V. Itälä, Rapporteur for the 2008 budget at the European Parliament
19 June	Mr L. Fernandes, Agent of the Portuguese Government
25 June	Delegation from the Council of Bars and Law Societies of Europe (CCBE)
27 June	Mr K. G. Balakrishnan, Chief Justice of the Republic of India
2–3 July	Delegation from the Commonwealth Secretariat
10–11 September	Delegation of German judges, professors and lawyers specialising in Community law
27 September	Mr V. Lamanda, First President of the French Court of Cassation
27 September	Mr A. A. Ivanov, President of the Supreme Economic Court of the Russian Federation, and Ms T. Andreeva, Vice-President of the Supreme Economic Court of the Russian Federation, accompanied by HE E. Malayan, Ambassador of the Russian Federation to Luxembourg
1–2 October	Delegation from the Constitutional Court of the Republic of Hungary
9 October	HE R. Bettarini, Ambassador of the Italian Republic to Luxembourg
9–10 October	Delegation from the Supreme Court of the Czech Republic
16 October	Mr M. Lobo Antunes, State Secretary for European Affairs of the Portuguese Republic
18 October	Ms D. Wallis, Member of the European Parliament
25 October	HE C.-H. d'Aragon, Ambassador of the French Republic to Luxembourg
5–7 November	Delegation from the Constitutional Court of the Republic of Lithuania
12 November	Lecture by Mr F. Frattini, Vice-President of the European Commission
22 November	Ms B. Wagener, Ambassador, Ministry of Foreign Affairs of the Federal Republic of Germany
3 December	European Union Forum of Judges for the Environment
11–12 December	Delegation from the Appellate Body of the World Trade Organisation

Court of First Instance

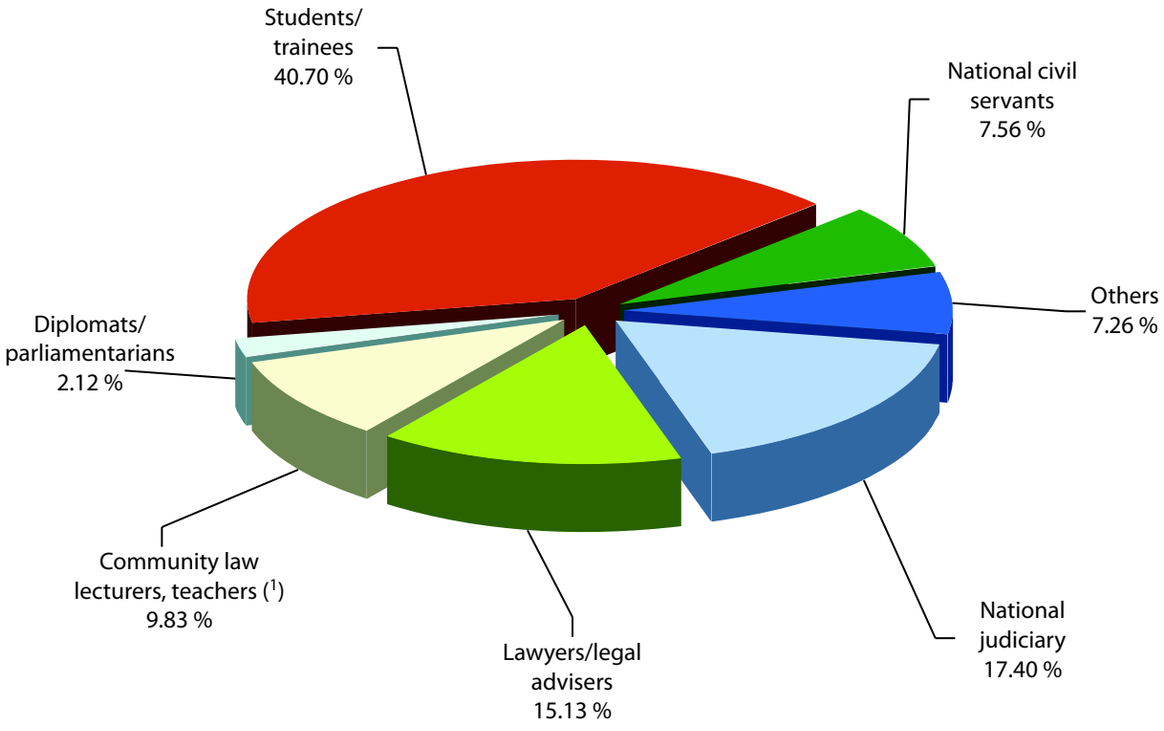
22 October	Dr D. Žalimas, Professor of Law at the University of Vilnius, and Dr S. Žalimienė, Assistant Director in the Department of European Law of the Lithuanian Ministry of Justice
23 November	Mr Allar Jõks, Legal Chancellor of the Republic of Estonia
26–27 November	Mr L. Burián, Mr M. Maczonkai, Mr K. Ligeti and Mr C. Nagy, Hungarian Professors
12 December	Delegation from the Appellate Body of the World Trade Organisation

Civil Service Tribunal

11 June	Mr C. Pennera, Jurisconsult of the European Parliament
27 June	Ms M. Lanners, President of the Administrative Court of the Grand Duchy of Luxembourg, and Mr G. Ravarani, President of the Administrative Tribunal of the Grand Duchy of Luxembourg
18–19 October	Inter-Agency Legal Network

B — *Study visits (2007)*

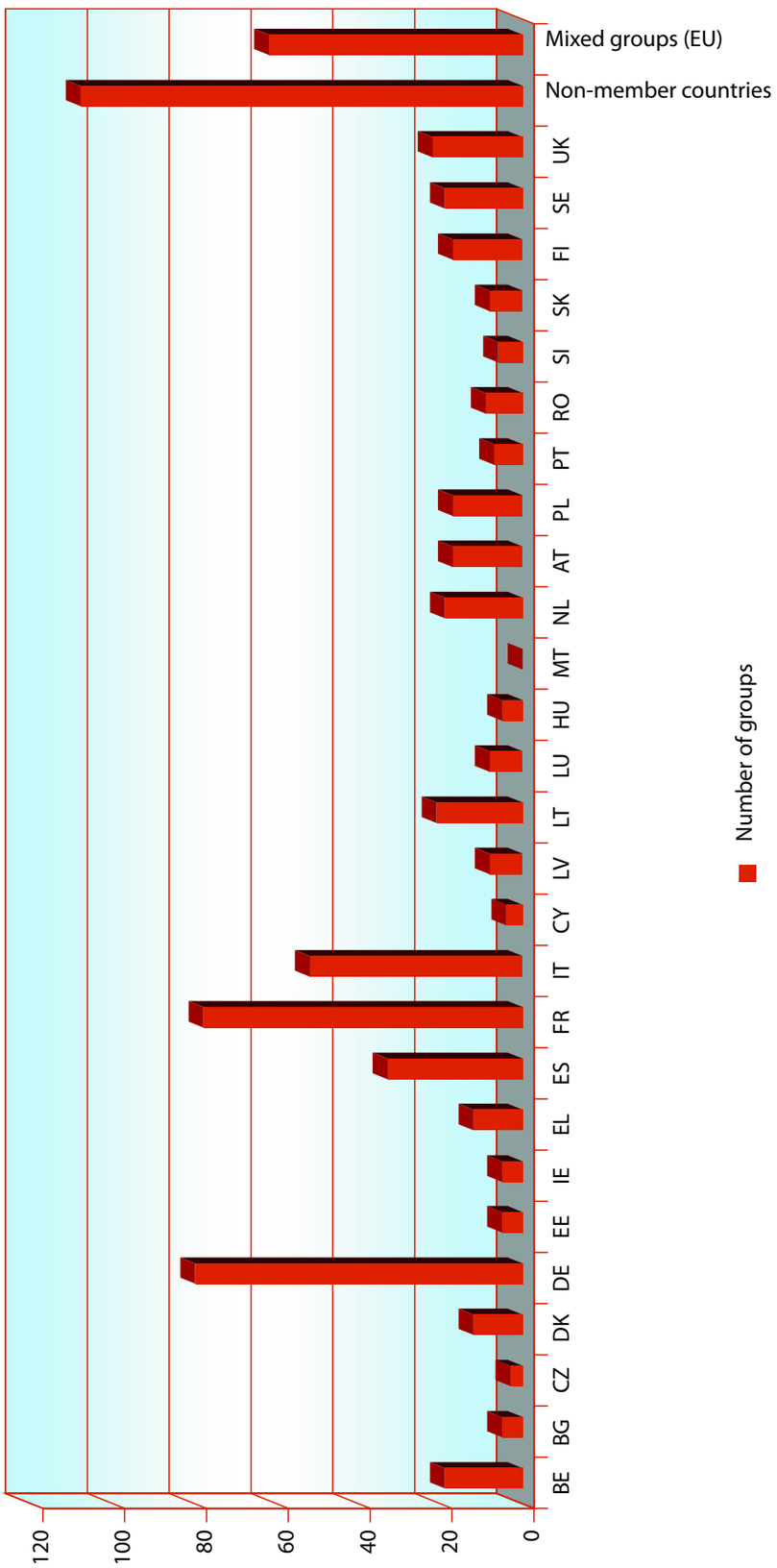
Distribution by type of group (1)



	National judiciary	Lawyers/legal advisers	Law lecturers (1)	Diplomats/ parliamentarians	Students/trainees	National civil servants	Others	Total
Number of groups	115	100	65	14	269	50	48	661

(1) Other than those accompanying student groups.

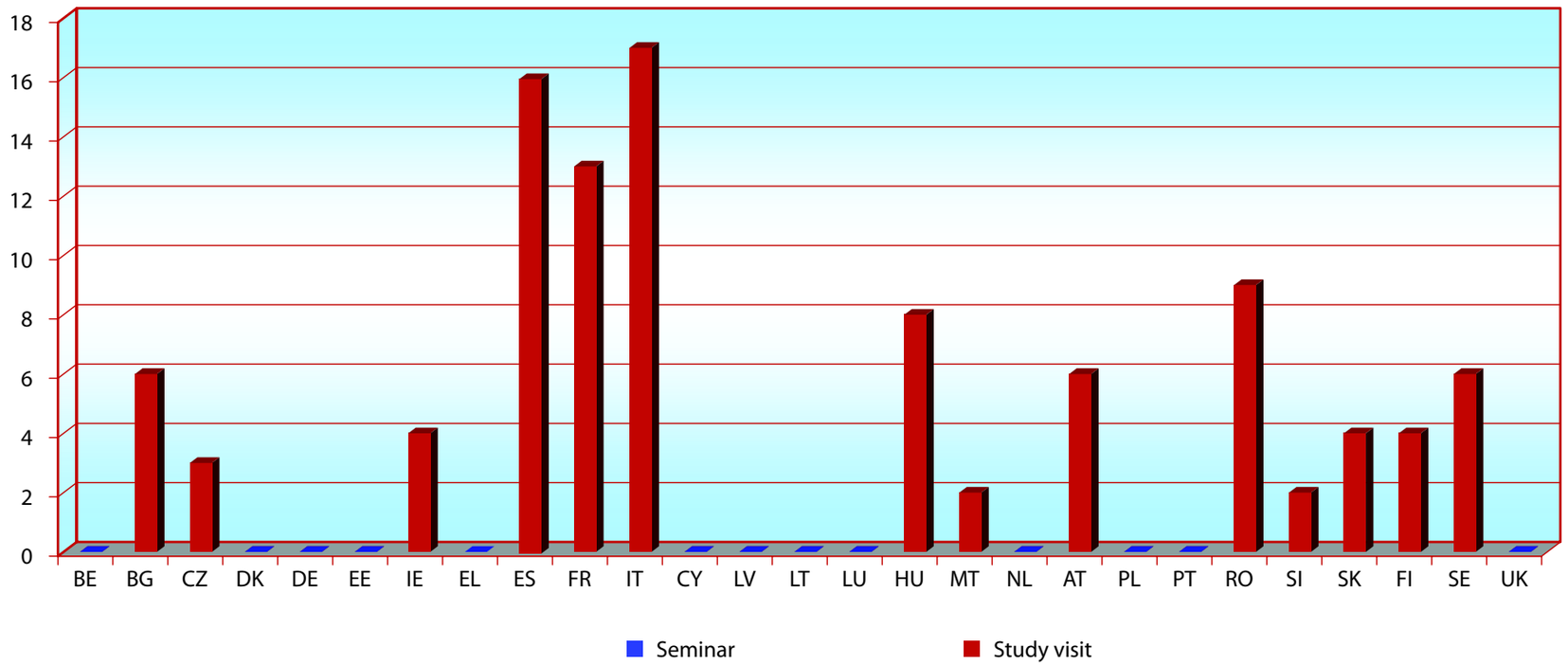
***Study visits* — Distribution by Member State (2007) (1)**



	Number of visitors								Number of groups
	National judiciary	Lawyers/ legal advisers	Law lecturers (1)	Diplomats/ parliamentarians	Students/ trainees	National civil servants	Others	Total	
BE	80	12	7	36	393	25	9	**562**	**19**
BG	20			1	48	18		**87**	**5**
CZ				7	26		26	**59**	**3**
DK	10	9			215	50		**284**	**12**
DE	385	272	4		800	59	749	**2 269**	**80**
EE	2	20		11				**33**	**5**
IE	16				58			**74**	**5**
EL	9		5		132	42	18	**206**	**12**
ES	62	188	10		279	37	69	**645**	**33**
FR	194	176		31	984	29	105	**1 519**	**78**
IT	1	40	31	13	409		2	**496**	**52**
CY	6	4			10			**20**	**4**
LV	6	9				8		**23**	**8**
LT	91		15	25	20		11	**162**	**21**
LU			4		91	29	96	**220**	**8**
HU			8		111			**119**	**5**
MT								**0**	**0**
NL	12	144			311	23		**490**	**19**
AT	50	13			337	53	11	**464**	**17**
PL	28	127	2		16	38		**211**	**17**
PT			7					**7**	**7**
RO	29	10				10	42	**91**	**9**
SI		60			44	4		**108**	**6**
SK	8	68		8	26			**110**	**8**
FI	87	32	46		61	5	28	**259**	**17**
SE	286	9		39		27	22	**383**	**19**
UK	99	70	2		156	28		**355**	**22**
Non-member countries	206	149	16	42	1 641	107	18	**2 179**	**108**
Mixed groups (EU)	32	613			1 010	519		**2 174**	**62**
Total	**1 719**	**2 025**	**157**	**213**	**7 178**	**1 111**	**1 206**	**13 609**	**661**

(1) Other than those accompanying student groups.

Study visits — National judiciary (2007)



	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	Total
Seminar																												0
Study visit		6	3				4		16	13	17					8	2		6			9	2	4	4	6		100

C — Formal sittings

12 January	Formal sitting on the occasion of the entry into office of new Judges at the Court of Justice and at the Court of First Instance following the enlargement of the European Union
22 January	Formal sitting for the giving of a solemn undertaking by the new Members of the European Commission following the enlargement of the European Union
5 February	Formal sitting for the giving of a solemn undertaking by the new Members of the European Court of Auditors following the enlargement of the European Union
17 September	Formal sitting on the occasion of the partial replacement of the Members of the Court of First Instance

D — Visits and participation in official functions

Court of Justice

3 January	Representation of the Court at the New Year's reception organised by the Belgian Court of Cassation, in Brussels
10 January	Attendance of a delegation from the Court at the New Year's reception organised by Their Royal Highnesses at the Grand Ducal Palace, in Luxembourg
18 January	Attendance of the President at a meeting organised by Ms B. Zypries, Minister for Justice of the Federal Republic of Germany, in Berlin
19 January	Attendance of a delegation from the Court at the formal sitting of the European Court of Human Rights, in Strasbourg
29 January	Attendance of the President at a meeting organised by Mr Guy Canivet, First President of the French Court of Cassation, and inauguration of the 'Droit européen 2007' cycle, in Paris
29 January	Representation of the Court at the Rechtspolitischer Neujahrsempfang at the Ministry of Justice, in Berlin
13 February	Representation of the Court at the formal session for the entry into office of Mr H.-G. Pöttering as President of the European Parliament, in Strasbourg
17–25 February	Official visit of a delegation from the Court to the United States of America
28 February	Representation of the Court at the official ceremony organised by the Konrad Adenauer Foundation on the occasion of the 50th anniversary of the Treaties of Rome, in Berlin
8–9 March	Representation of the Court at the conference organised by the International Bar Association and the European Commission on the topic 'Cartel enforcement and antitrust damage actions in Europe', in Brussels
15–16 March	Representation of the Court at the colloquium organised by the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union on the topic 'La justice administrative en Europe,' in Paris
25–28 April	Representation of the Court at the international seminar organised on the occasion of the 45th anniversary of the Constitutional Court of the Republic of Turkey, in Ankara and Istanbul

13–14 May	Representation of the Court at a meeting of the Board and of the General Assembly of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union, in Warsaw
17–18 May	Official visit of a delegation from the Court to Ireland
1 June	Representation of the Court, at the invitation of the President of the Italian Republic, at the ceremony organised on the occasion of the National Day, in Rome
7–8 June	Representation of the Court at the General Assembly of the European Network of Councils for the Judiciary, in Brussels
25–26 June	Representation of the Court at the symposium organised by the German Federal Patent Court in conjunction with the Ministry of Justice, on the topic 'Die Zukunft der Patentgerichtsbarkeit in Europa', in Munich
11–15 July	Official visit of a delegation from the Court to the Supreme Court of Justice of Portugal
19 July	Representation of the Court at the Meeting of Presidents of International Courts and Tribunals
24 July	Attendance of the President at the reception given by the President of the Hellenic Republic, on the occasion of the 33rd anniversary of the restoration of the Republic, in Athens
5–7 September	Representation of the Court at the conference organised by the Supreme Court of the Republic of Estonia, on the occasion of the 15th anniversary of the adoption of the Constitution of the Republic of Estonia, in Tallinn
18 September	Attendance of the President and presentation, at the invitation of Mr A. Costa, Minister for Justice of Portugal, of proposals on the urgent preliminary ruling procedure to the Members of the Justice and Home Affairs Council, at the Council of Ministers, in Brussels
27–28 September	Attendance of a delegation from the Court at the Fifth European Trade Mark and Design Judges' Symposium, in Alicante
30 September	Representation of the Court at a dinner given by Lord Hunt (Parliamentary Under-Secretary, Ministry of Justice), in London
1 October	Representation of the Court at the Meeting of Regional and International Courts of the World, in Managua
1 October	Representation of the Court, at the invitation of the Lord Chancellor, at the ceremony for the Opening of the Legal Year, in London

8 October	Representation of the Court at the seminar organised by the Committee on Civil Liberties, Justice and Home Affairs on the topic 'Judges and legislators in a multi-level protection of fundamental rights in Europe'
15 October	Attendance of the President at the celebration of the 175th anniversary of the Belgian Court of Cassation, in Brussels
18–19 October	Representation of the Court at the fourth conference of the European Commercial Judges Forum, organised by the Supreme Court and by the Council for the Judiciary of the Kingdom of the Netherlands, in The Hague
25–26 October	Representation of the Court at the conference celebrating 50 years of Community legislation on sex equality organised by the European Commission, in Brussels
29–30 October	Official visit of a delegation from the Court to Hungary
8–9 November	Representation of the Court at the Fifth Annual Meeting of the Chief Justices of Mercosur, in Brasilia
9 November	Official visit of a delegation from the Court to the European Court of Human Rights, in Strasbourg
12 November	Representation of the Court at the meeting of the Board of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union, in Brussels
22–24 November	Representation of the Court at the Ninth Congress of the International Association of Supreme Administrative Jurisdictions, in Bangkok
23 November	Representation of the Court at the meeting of the working group on references for a preliminary ruling set up by the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union, at the Belgian Council of State, in Brussels
3 December	Attendance of a delegation from the Court at the meeting of the Presidents of the International Courts, organised by the International Court of Justice, in The Hague
3 December	Representation of the Court at the meeting of the working group on references for a preliminary ruling set up by the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union, at the Belgian Council of State, in Brussels
7 December	Representation of the Court at the hearing to mark the retirement of the President of the Centrale Raad van Beroep and participation in a colloquium organised for that occasion on 'La responsabilité de l'État en cas d'infraction au droit communautaire', in Utrecht

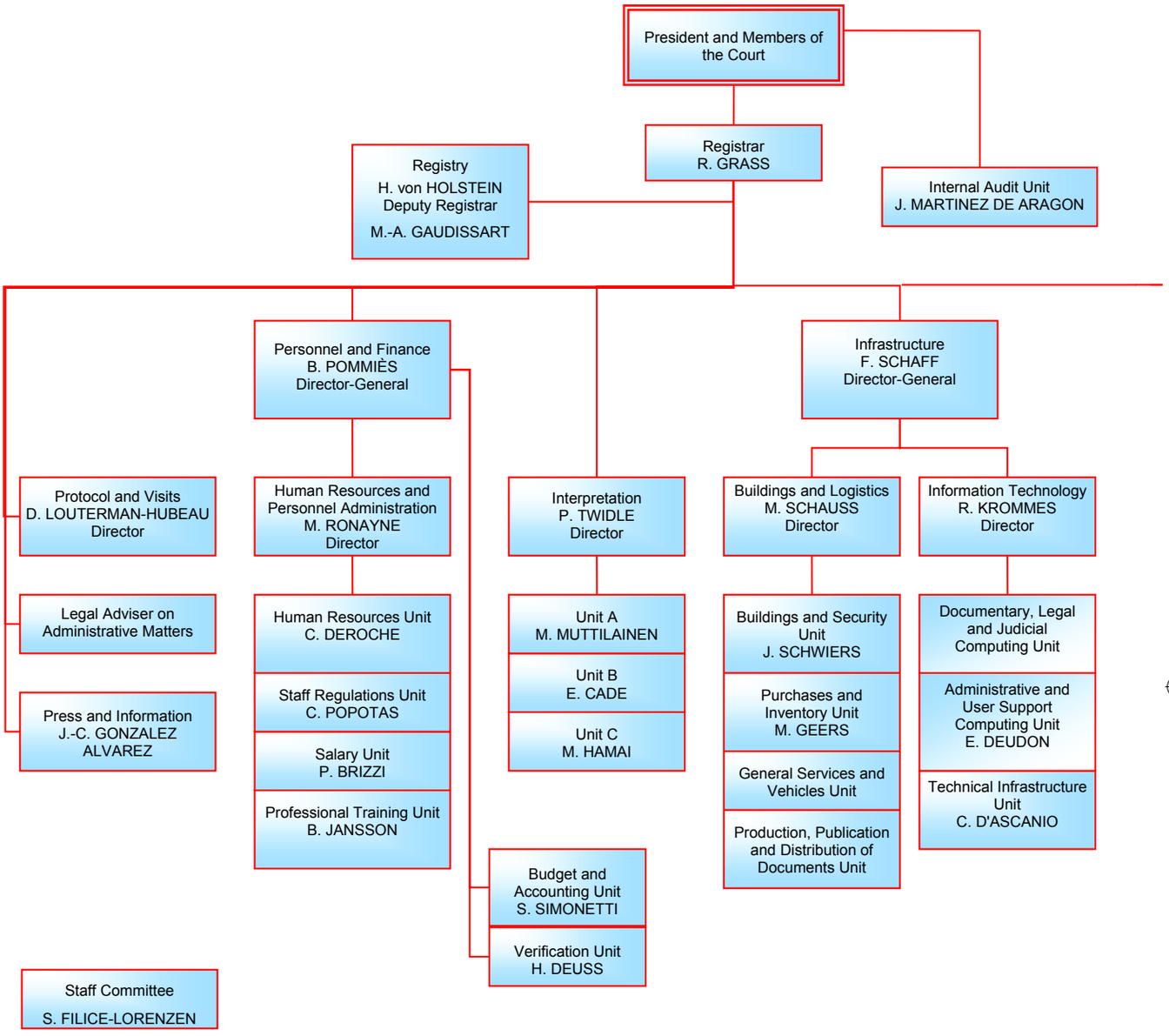
Court of First Instance

17 January	Attendance of the President of the Court at a meeting with a select committee of the House of Lords in London with regard to the creation of a European competition court
5 February	Attendance of, and speech by, the President of the Court at a conference on 'Where next for EU merger control?' organised in Brussels
21 February	Visit of the President of the Court to the Ministry of Justice in Copenhagen
15 March	Attendance of, and speech by, the President of the Court at the 20th anniversary of the French Competition Council, in Paris
17 April	Attendance of, and speech by, the President of the Court at the conference 'Forum for EU–US legal-economic affairs', organised in Brussels
24 May	Attendance of, and speech by, the President of the Court at the conference 'International forum on European competition law', organised by the Studienvereinigung Kartellrecht in Brussels
18 July	Attendance of the President of the Court at a round table discussion on 'EU–US comparative law' in Brussels
30 August	Official funeral service for Mr Gaston Thorn, Honorary Minister of State of the Grand Duchy of Luxembourg; representation of the Court by Judge Jaeger
19 October	Attendance of, and speech by, the President of the Court at the conference 'Fifty years protecting the principle of legality in Community law', organised by the University of Vilnius

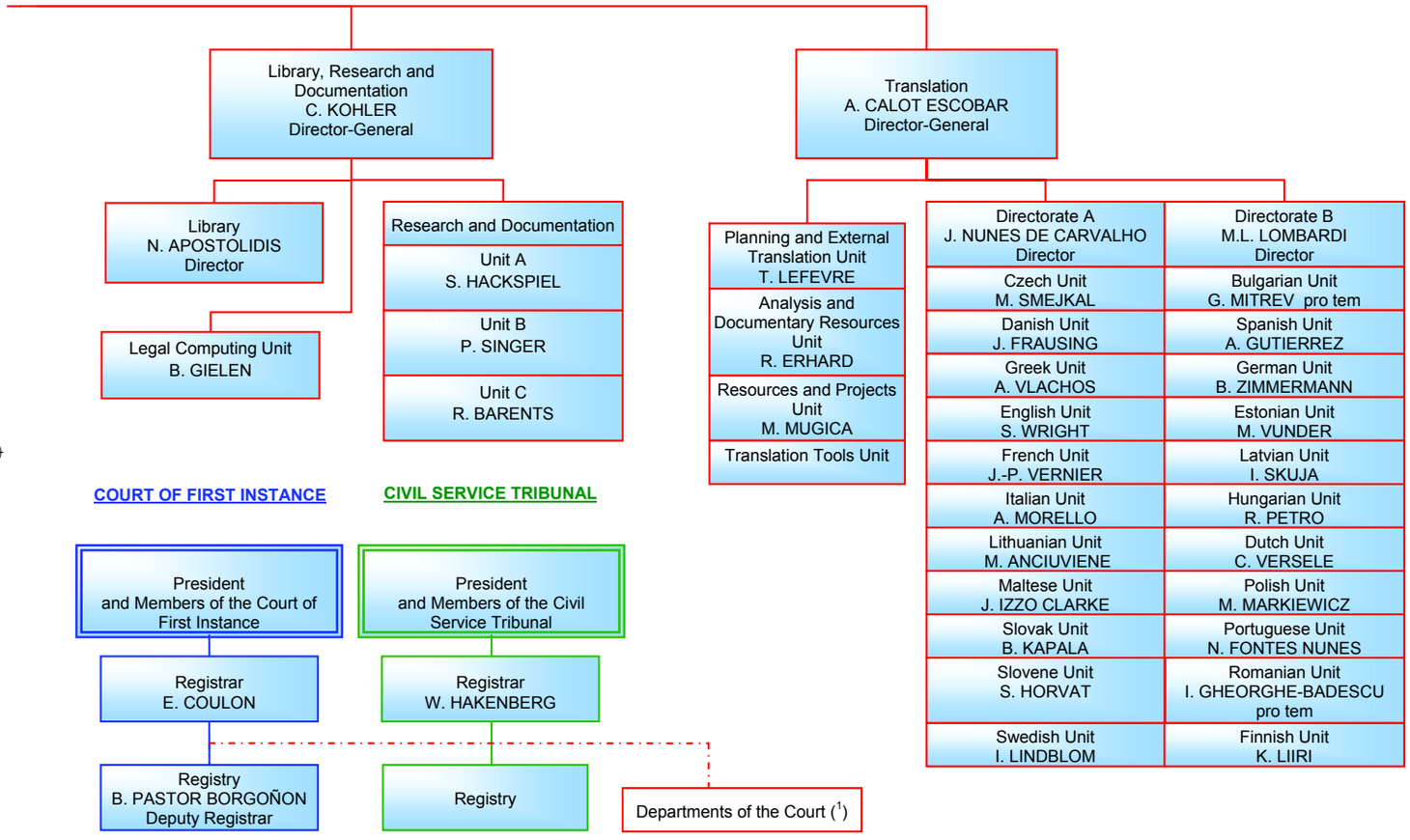
Civil Service Tribunal

6–8 June	Meeting between the Members and a delegation of Members of the German Federal Administrative Court, in Leipzig, on civil service litigation
18 June	Attendance of President Mahoney and Judge Van Raepenbusch at the colloquium on 'L'incidence des modifications du statut des fonctionnaires et agents de l'Union européenne sur le contentieux communautaire de la fonction publique', organised by the European Legal Studies Department of the College of Europe in Bruges in collaboration with Professor G. Vandersanden and Mr L. Levi (CMS DeBacker)

Abridged organisational chart



December 2007



(1) Pursuant to Article 52 of the Statute of the Court of Justice and Article 6 of the Annex thereto, officials and other servants are to render their services to the Court of First Instance and to the Civil Service Tribunal to enable them to function.

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Internet:	www.curia.europa.eu

Court of Justice of the European Communities

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