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COURT OF JUSTICE
OF THE EUROPEAN COMMUNITIES

ANNUAL REPORT
2008

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 2009

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Foreword

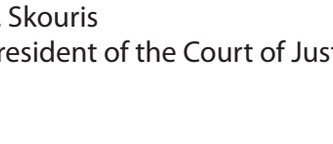
For the Court of Justice, 2008 was a symbolic year: it took possession of its new complex of buildings. The Court now has a centralised infrastructure commensurate with its own expansion, the continuously increasing volume of litigation before it, the introduction of new procedures and the recent enlargements of the European Union; an optimal situation even in the era of electronic communication.

The historical importance of the inauguration of the Court's new complex of buildings, an occasion marked by the presence of distinguished guests, should not push other events of the past year into the background. The implementation of the new urgent preliminary ruling procedure was equally important, enabling the Court to deal within a very short time frame with the first cases, falling within the scope of the area of freedom, security and justice, to which the procedure was applied.

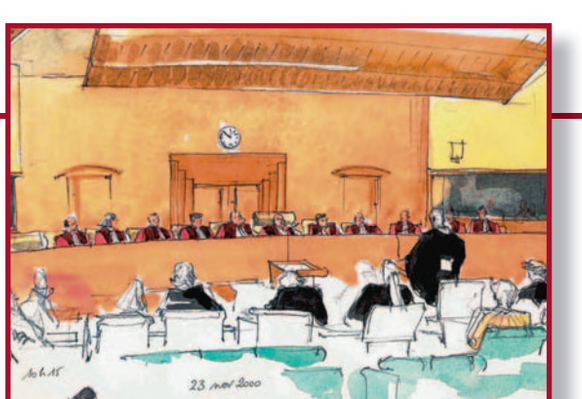
The past year will also be remembered for the efficiency and unflagging rate of the performance of the institution's judicial tasks. In this connection, the overall decrease in the duration of proceedings may be noted, the decrease being very significant especially in preliminary ruling proceedings, while the Court of First Instance had one of the most productive years in its history.

Finally, in the past year a total of 1 332 cases were brought before the three courts comprising the Court of Justice; the figure is the highest in the institution's history for the second year in succession and demonstrates the constant increase in the amount of Community litigation.

The Annual Report provides its readers with an account of changes affecting the three courts comprising the institution, namely the Court of Justice, the Court of First Instance and the Civil Service Tribunal, and of the most important aspects of their work. Separate statistics for each court supplement and illustrate the analysis of the past year's judicial activity.



V. Skouris
President of the Court of Justice



Chapter I

The Court of Justice of the European Communities

A — The Court of Justice in 2008: changes and proceedings

By Mr Vassilios Skouris, President of the Court of Justice

The structure of the Annual Report follows that of previous years. The first part gives an overview of the activity of the Court of Justice of the European Communities in 2008. It describes, first, how the institution evolved during that year, with the emphasis on the institutional changes affecting 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 finally, as each year, the main developments in the case-law, arranged by subject matter (Section 3).

1. The outstanding event for the Court of Justice in 2008 was the inauguration of the new buildings of the Court, 'the new *Palais*', which consolidates and extends the existing buildings. The new *Palais* is of an innovative architectural design and has been constructed in a way that respects and builds on the structure of the original *Palais*. It is made up of the original *Palais*, remodelled so as to accommodate the courtrooms, the *Anneau* ('Ring' in English), a two-storey building which is so called, despite its rectangular form, because it completely encircles the original *Palais*, and which houses the offices of the Members of the Court and staff working directly with them, two Towers intended for the translation service and the Gallery, a long luminous passage by way of an architectural link connecting not only the original and new buildings with each other but also the institution's various activities.

At the formal sitting for the inauguration of the new *Palais*, which took place on 4 December 2008 in the presence of Their Royal Highnesses the Grand Duke and Grand Duchess of Luxembourg, speeches were given by Ms Diana Wallis, Vice-President of the European Parliament, Ms Rachida Dati, Minister for Justice of the French Republic, Mr José Manuel Barroso, President of the European Commission, and Mr Jean-Claude Juncker, Prime Minister of the Grand Duchy of Luxembourg.

With regard to the provisions governing the institution's operation, the amendment of the Rules of Procedure of the Court of Justice on 8 July 2008 involved the insertion of Title IVa, which contains the provisions designed to introduce the procedure, provided for in Article 62 of the Statute of the Court of Justice, for review of decisions of the Court of First Instance on appeal. The most noteworthy element of these new provisions (Articles 123a to 123e) is the creation of a special chamber entrusted with the task of determining, upon a proposal of the First Advocate General, whether a decision of the Court of First Instance should be reviewed. This chamber is to be composed of the President of the Court of Justice and of four Presidents of five-judge chambers.

2. The statistics concerning the Court of Justice's judicial activity in 2008 reveal, first, a very significant reduction in the duration of preliminary ruling proceedings compared with preceding years and, second, a continuation of the upward trend in the volume of litigation.

The Court completed 495 cases in 2008 (net figures, that is to say, taking account of the joinder of cases). Of those cases, 333 were dealt with by judgments and 161 gave rise to orders. The number of judgments delivered and orders made is lower than in the previous year (379 judgments and 172 orders). It should nevertheless be noted that the number of preliminary ruling cases completed in 2008 (238 cases in net figures, 301 cases in gross figures) is markedly higher than in 2007 (218 cases in net figures, 235 in gross figures).

The Court had 592 new cases brought before it, a number which exceeds even the number in 2007, which had been the highest in the Court's history ([1]). The number of cases pending at the end of 2008 did not, however, increase substantially (767 cases, gross figures) beyond the number at the end of 2007 (741 cases, gross figures).

The duration of proceedings in 2008 showed a considerable change. In the case of references for a preliminary ruling, the average duration of proceedings was 16.8 months, as against 19.3 months in 2007 and 19.8 months in 2006. A comparative analysis covering the entire period for which the Court has reliable data shows that the average time taken to deal with references for a preliminary ruling reached its shortest in 2008. The average time taken to deal with direct actions and appeals was 16.9 months and 18.4 months respectively (18.2 months and 17.8 months in 2007).

In addition to the reforms in working methods that have been initiated in recent years, the improvement in the institution's efficiency in dealing with cases can also be explained by the wider use of the various procedural instruments at its disposal to expedite the handling of certain cases, in particular the urgent preliminary ruling procedure, priority treatment, the accelerated or expedited procedure, the simplified procedure and the possibility of giving judgment without an opinion of the Advocate General.

In 2008 use of the urgent preliminary ruling procedure was requested in six cases and the designated chamber considered that the conditions under Article 104b of the Rules of Procedure were met in three of them. These new provisions relating to the urgent preliminary ruling procedure enabled the Court in 2008 to complete those cases in an average period of 2.1 months.

Use of the expedited or accelerated procedure was requested eight times, but the conditions under the Rules of Procedure were met in only two cases, which were completed in an average period of 4.5 months. 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. Priority treatment, on the other hand, was granted in one case.

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 39 cases were brought to a close by orders made on the basis of that provision, double the number in 2007.

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

Finally, the Court made frequent use of the possibility offered by Article 20 of its Statute of determining cases without an opinion of the Advocate General where they do not raise any new point of law. About 41 % of the judgments delivered in 2008 were delivered without an opinion (compared with 43 % in 2007).

As regards the distribution of cases between the various formations of the Court, it may be noted that the Grand Chamber dealt with approximately 14 %, chambers of five judges with 58 %, and chambers of three judges with slightly over 26 %, of the cases brought to a close in 2008. Compared with the previous year, a slight increase may be noted in the proportion of cases dealt with by the Grand Chamber (11 % in 2007) and by five-judge chambers (55 % in 2007), while the number of cases dealt with by three-judge chambers declined (33 % in 2007).

Part C of this chapter should be consulted for more detailed information regarding the statistics for the 2008 judicial year.

Constitutional or institutional issues

As regards the fundamental principles underpinning Community integration, the principle of equality has, once again, featured largely in the case-law of the Court.

The three judgments highlighted below demonstrate the implications of this principle in different spheres.

In Case C-54/07 *Feryn* (judgment of 10 July 2008), the question arose whether the fact that an employer states publicly that it will not recruit employees of a certain ethnic or racial origin amounts to direct discrimination in respect of recruitment within the meaning of Article 2(2)(a) of Council Directive 2000/43 ([2]).

The Court held that it does, such statements being likely strongly to dissuade certain candidates from submitting their candidature and, accordingly, to hinder their access to the labour market. The existence of such direct discrimination is not dependent on the identification of a complainant who claims to have been the victim of discrimination.

The Court went on to rule on the issue of the proof of discrimination. It held that the public statements at issue are sufficient for a presumption of the existence of a recruitment policy which is directly discriminatory within the meaning of Article 8(1) of Directive 2000/43. It is then for the employer to prove that there was no breach of the principle of equal treatment, which it can do by showing that the undertaking's actual recruitment practice does not correspond to those statements. It is for the national court to verify that the facts alleged are established and to assess the sufficiency of the evidence submitted in support of the employer's contentions that it has not breached the principle of equal treatment.

([2]) Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ 2000 L 180, p. 22).

Finally, the Court held with regard to the sanctions appropriate for the employment discrimination at issue that Article 15 of Directive 2000/43 requires that rules on sanctions applicable to breaches of national provisions adopted in order to transpose that directive must be effective, proportionate and dissuasive, even where there is no identifiable victim.

Equal treatment from the point of view of the prohibition of age discrimination formed the subject matter of Case C-427/06 *Bartsch* (judgment of 23 September 2008). The Court held in that case that the application, which the courts of Member States must ensure, of the prohibition under Community law of discrimination on the ground of age is not mandatory where the allegedly discriminatory treatment contains no connecting link with Community law. No such link arises either from Article 13 EC, or, in the case of an occupational pension scheme excluding the right to a pension of a spouse more than 15 years younger than the deceased former employee, from Directive 2000/78 ([3]) before the time limit allowed to the Member State concerned for its transposition has expired.

In Case C-164/07 *Wood* (judgment of 5 June 2008), a question was referred to the Court for a preliminary ruling on the compatibility with Community law, in the light of the general principle of non-discrimination on grounds of nationality, of French legislation which has the effect of excluding from the grant of compensation awarded by the Fonds de garantie des victimes des actes de terrorisme et d'autres infractions (Guarantee Fund for the Victims of Acts of Terrorism and Other Crimes), on the sole ground of his nationality, a citizen of the European Community who is residing in France and is the father of a child having French nationality who died in consequence of a crime which was not committed on the territory of that State. The Court held that Community law precludes such legislation.

As regards the general principles of Community law and observance of those principles by national authorities when implementing Community law, Case C-455/06 *Heemskerk and Schaap* (judgment of 25 November 2008), concerning export refunds and the protection of cattle during transport, allowed the Court to adjudicate on the national rule of *reformatio in pejus*. The Court decided that Community law does not require national courts to apply, of their own motion, a provision of Community law where such application would lead them to deny the principle, enshrined in the relevant national law, of the prohibition of *reformatio in pejus*. Such an obligation would not only be contrary to the principles of respect for the rights of the defence, legal certainty and protection of legitimate expectations, which underlie the prohibition, but would expose an individual who brought an action against an act adversely affecting him to the risk that such an action would place him in a less favourable position than he would have been in, had he not brought that action.

There are a number of judgments of particular interest in relation to proceedings before the Community judicature. One of these concerns the very jurisdiction of the Community judicature.

In Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation* v *Council and Commission* (judgment of 3 September 2008), although the Court upheld the judgments of the Court of First Instance under appeal (in Case T-315/01 *Kadi* v *Council and Com-*

([3]) 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).

mission [2005] ECR II-3649 and Case T-306/01 *Yusuf and Al Barakaat International Foundation* v *Council and Commission* [2005] ECR II-3533) so far as concerns the Council's competence to adopt a regulation ordering the freezing of funds and other economic assets of the individuals and entities whose names appear in a list annexed to that regulation ([4]), which had been adopted in order to give effect in the European Community to resolutions of the United Nations Security Council, the Court considered that the Court of First Instance erred in law when it held that the Community judicature does not, in principle, have any jurisdiction to review the internal lawfulness of that regulation. According to the Court of Justice, the review of the validity of any Community measure in the light of fundamental rights must be considered to be the expression, in a community based on the rule of law, of a constitutional guarantee, stemming from the EC Treaty as an autonomous legal system, which cannot be prejudiced by an international agreement. The review of lawfulness ensured by the Community judicature applies to the Community act intended to give effect to the international agreement at issue, and not to the latter as such. The Community judicature must ensure the review, in principle the full review, of the lawfulness of all Community acts in the light of fundamental rights, which form an integral part of the general principles of Community law, including review of Community measures which, like the regulation in question, are designed to give effect to resolutions adopted by the Security Council.

Moreover, the Court found that, in the light of the actual circumstances surrounding the inclusion of Mr Kadi and Al Barakaat in the list of persons and entities covered by the freezing of funds, it had to be held that the rights of the defence, in particular the right to be heard, and the right to effective judicial review of those rights were patently not respected. In regard to that point, the Court observed that the effectiveness of judicial review means that the Community authority is bound to communicate to the persons or entities concerned the grounds on which the measure in question is founded, so far as possible, either when that measure is decided on or, at the very least, as swiftly as possible after that decision in order to enable those persons or entities to exercise, within the periods prescribed, their right to bring an action.

While the Court annulled the Council regulation insofar as it froze the funds of Mr Kadi and of Al Barakaat, it acknowledged that the annulment of the regulation with immediate effect would be capable of seriously and irreversibly prejudicing the effectiveness of the restrictive measures because, in the interval preceding its replacement, the person and the entity referred to might take steps seeking to prevent measures freezing funds from being applied to them again, and it could not be excluded that, on the merits of the case, the imposition of those measures on Mr Kadi and on Al Barakaat might for all that prove to be justified. Having regard to those considerations, the Court maintained the effects of the regulation for a period not exceeding three months running from the date of the judgment, to allow the Council to remedy the infringements found.

Another judgment of particular interest is that of 16 December 2008 in Case C-47/07 P *Masdar (UK)* v *Commission*, which deals with the procedures to be followed in order to obtain access to the Community judicature.

([4]) 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-Qaida network and the Taliban, and repealing Regulation (EC) No 467/2001 (OJ 2002 L 139, p. 9).

This case concerned unjust enrichment. The Court held that, according to the principles common to the laws of the Member States, a person who has suffered a loss which increases the wealth of another person without there being any legal basis for that enrichment has the right, as a general rule, to restitution from the person enriched, up to the amount of the loss. Legal redress for undue enrichment, as provided for in the majority of national legal systems, is not necessarily conditional upon unlawfulness or fault with regard to the defendant's conduct. On the other hand, it is essential that there be no valid legal basis for the enrichment. Given that unjust enrichment is a source of non-contractual obligation common to the legal systems of the Member States, the Community cannot be dispensed from the application to itself of the same principles where a natural or legal person alleges that the Community has been unjustly enriched to the detriment of that person.

The Court added that actions for unjust enrichment do not fall under the rules governing non-contractual liability in the strict sense, which, to be invoked, require a number of conditions to be satisfied, relating to the unlawfulness of the conduct imputed to the Community, the fact of the damage alleged and the existence of a causal link between that conduct and the damage complained of. They differ from actions brought under those rules in that they do not require proof of unlawful conduct — indeed, of any form of conduct at all — on the part of the defendant, but merely proof of enrichment of the defendant for which there is no valid legal basis and of impoverishment of the applicant which is linked to that enrichment. However, despite those characteristics, the possibility of bringing an action for unjust enrichment against the Community cannot be denied to a person solely on the ground that the EC Treaty does not make express provision for a means of pursuing that type of action. If Article 235 EC and the second paragraph of Article 288 EC were to be construed as excluding that possibility, the result would be contrary to the principle of effective judicial protection laid down in the case-law of the Court and confirmed in Article 47 of the Charter of Fundamental Rights of the European Union.

Joined Cases C-120/06 P and C-121/06 P *FIAMM and FIAMM Technologies* v *Council and Commission* (judgment of 9 September 2008) are worthy of particular note in relation precisely to that area of actions for non-contractual liability. They concern the problem of Community liability for a legislative measure. The Dispute Settlement Body (DSB) of the World Trade Organisation (WTO) ruled that the Community regime governing the import of bananas was incompatible with WTO agreements and authorised the United States of America to impose an increased customs duty on certain Community imports. Six companies established in the European Union sought compensation from the Commission and the Council for the damage suffered by them in consequence of the application of American retaliatory measures to their exports to the United States.

The Court observed that the Community does not incur liability on account of a legislative measure which involves choices of economic policy unless a sufficiently serious breach of a superior rule of law for the protection of individuals, and conferring rights on them, has occurred. It also noted that, while the principle of liability of the Community in the case of an unlawful act of the institutions constitutes an expression of the general principle familiar to the legal systems of the Member States that an unlawful act gives rise to an obligation to make good the damage caused, no such convergence of the legal systems of the Member States has been established as regards the existence of a principle of liability in the case of a lawful act of the public authorities, in particular where such an act is of a legislative nature. The Court concluded

that, as it currently stands, Community law does not lay down a regime under which the Community's liability for its legislative conduct can be put in issue in a situation where any failure of such conduct to comply with WTO agreements cannot be relied upon before the Community judicature. It added that a Community legislative measure whose application leads to restrictions of the right to property and the freedom to pursue a trade or profession could give rise to non-contractual liability on the part of the Community where it impairs the very substance of those rights in a disproportionate and intolerable manner, perhaps because no provision has been made for compensation calculated to avoid or remedy that impairment.

Other, more standard, judgments have added to the wealth of case-law of the Court on the admissibility of actions for annulment.

Thus, in Case C-125/06 P *Commission* v *Infront WM* (judgment of 13 March 2008), the Court held that, for the purposes of the conditions governing admissibility of an action for annulment, a Commission decision approving measures aimed at regulating the exercise of exclusive television broadcasting rights to events of major importance for society, which are taken by a Member State pursuant to Article 3a of Directive 89/552 ([5]), directly affects the legal situation of the holder of those rights. Since the restrictions imposed by those measures are linked to the circumstances in which broadcasters acquire the television broadcasting rights to designated events from the holder of the exclusive broadcasting rights, the effect of the measures adopted by that Member State and the decision approving them is to subject the rights held by a company which has acquired television broadcasting rights to new restrictions which did not exist when it acquired those rights and which render their exercise more difficult. Furthermore, the Court held, the prejudice to the legal situation of the holder of the rights is due only to the requirement to attain the result determined by those measures and by the Commission's decision, without national authorities having any discretion in the decision's implementation that could affect that situation.

As regards the condition that the applicant must be individually concerned, the Court held that, where the decision affects a group of persons who were identified or identifiable when that measure was adopted by reason of criteria specific to the members of the group, those persons might be individually concerned by that measure inasmuch as they form part of a limited class of traders. That can be the case particularly when the decision alters rights acquired by the individual prior to its adoption.

In Case C-521/06 P *Athinaïki Techniki* v *Commission* (judgment of 17 July 2008), the concept of 'act open to challenge' for the purposes of Article 230 EC required clarification.

An appeal was brought before the Court of Justice against an order of the Court of First Instance dismissing as inadmissible an action seeking annulment of a Commission decision, of which the appellant was made aware by letter, to take no further action on a complaint concerning alleged State aid granted in connection with a public contract. The Court held that, to determine whether an act in matters of State aid constitutes a decision within the meaning of

([5]) Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ 1989 L 298, p. 23), as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 (OJ 1997 L 202, p. 60).

Article 4 of Regulation No 659/1999 ([6]), it is necessary to ascertain whether, taking account of the substance of that act and the Commission's intention, that institution has, at the end of the preliminary examination stage, definitively established its position — by way of the act under consideration — on the measure under review and, therefore, whether it has decided that that measure constitutes aid or not and whether or not the measure raises doubts as regards its compatibility with the common market.

A letter by which the Commission informs a complainant seeking a finding of infringement of Articles 87 EC and 88 EC that, 'in the absence of additional information to justify continuing the investigation, the Commission has, for the purposes of administrative action, closed the file on the case ...', indicates that the Commission has actually closed the file for the purposes of administrative action. It is apparent from the substance of that act and from the intention of the Commission that it has thus decided to bring to an end the preliminary examination procedure initiated by the complainant. By that act, the Commission has stated that the review initiated did not enable it to establish the existence of State aid within the meaning of Article 87 EC and it has implicitly refused to initiate the formal investigation procedure provided for in Article 88(2) EC. In such a situation, the persons to whom the procedural guarantees under that provision apply may ensure that those guarantees are observed only if they are able to challenge that decision before the Community judicature in accordance with the fourth paragraph of Article 230 EC. That principle applies both when a decision is taken on the ground that the Commission considers that the aid is compatible with the common market, and when it takes the view that the existence of aid should be ruled out.

Such an act cannot be classified as preliminary or preparatory since it cannot be followed, in the context of the administrative procedure which has been initiated, by any other decision amenable to annulment proceedings. It is not relevant, in that regard, that the interested party may still provide the Commission with additional information which might oblige the Commission to review its position on the State measure at issue, since the lawfulness of a decision taken at the end of the preliminary examination stage is examined only on the basis of the information which the Commission had at its disposal at the time when it made the decision, that is to say, in this particular case, at the time when it closed the file for the purposes of administrative action. If an interested party provides additional information after the closing of the file, the Commission can be obliged to open, if appropriate, a new administrative procedure. By contrast, that information has no effect on the fact that the first preliminary examination procedure is already closed. It follows that, by its act, the Commission did adopt a definite position on the complainant's request. The Court concluded from this that, by preventing a complainant from submitting its comments in the context of a formal investigation procedure as referred to in Article 88(2) EC, such an act produces legal effects which are capable of affecting its interests and does, therefore, constitute an act open to challenge for the purposes of Article 230 EC.

The body of — more recent and, therefore, less standard — case-law on the consequences for a Member State of failing to take action following a judgment establishing that it has failed to fulfil its obligations has also expanded.

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

Thus, in Case C-121/07 *Commission* v *France* (judgment of 9 December 2008), the Court recalled that the importance of immediate and uniform application of Community law means that the process of compliance with a judgment establishing that a Member State has failed to fulfil its obligations must be initiated at once and completed as soon as possible. It then held that while, in the context of the procedure provided for in Article 228(2) EC, the imposition of a periodic penalty payment seems particularly suitable for the purpose of inducing a Member State to put an end as soon as possible to a breach of obligations which, in the absence of such a measure, would tend to persist, the imposition of a lump sum is based more on the assessment of the effects on public and private interests of the failure of the Member State concerned to comply with its obligations, in particular where the breach has persisted for a long period since the judgment initially establishing it was delivered.

It is for the Court, in each case, in the light of the circumstances of the case before it and the degree of persuasion and deterrence which appears to it to be required, to determine the financial penalties appropriate for making sure that the judgment which previously established the breach is complied with as swiftly as possible and preventing similar infringements of Community law from recurring.

The Court also pointed out that the fact that the payment of a lump sum had hitherto not been imposed in situations in which the original judgment was fully complied with before the procedure laid down in Article 228 EC was concluded could not prevent such an order being made in another case, should that be necessary in the light of the details of the individual case and the degree of persuasion and deterrence required.

Lastly, the Court took the view that, while guidelines in the Commission's communications may indeed help to ensure that the Commission acts in a manner that is transparent, foreseeable and consistent with legal certainty, the fact nevertheless remains that such rules cannot bind the Court in the exercise of the broad discretion conferred on it by Article 228(2) EC.

Still in the sphere of judicial proceedings, it will be recalled that 2008 was the year in which the Court introduced the new urgent preliminary ruling procedure, established with effect from 1 March 2008. Three cases gave rise to that procedure: Case C-296/08 PPU *Santesteban Goicoechea* (judgment of 12 August 2008); Case C-388/08 PPU *Leymann and Pustovarov* (judgment of 1 December 2008) concerning the interpretation of Framework Decision 2002/584 on the European arrest warrant and the surrender procedures between Member States ([7]); and Case C-195/08 PPU *Rinau* (judgment of 11 July 2008) in relation to Community rules on the return of a child who has been unlawfully retained in another Member State.

Rinau gave the Court an opportunity to explain the conditions required in order for the urgent preliminary ruling procedure to be applied. Thus the Court held that a request from a referring court for a reference for a preliminary ruling relating to the interpretation of Regulation No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation

([7]) Council Framework Decision 2002/584/JHA of 13 June 2002 (OJ 2002 L 190, p. 1).

No 1347/2000 ([8]), to be dealt with under the urgent procedure pursuant to Article 104b of the Rules of Procedure of the Court of Justice is justified if it is based on a need to act urgently. Such is the case where any delay would be very unfavourable to the relationship between the child and the parent with whom the child does not live and the damage to that relationship could be irreparable. According to the Court, that need is apparent both from recital 17 in the preamble to the regulation, which refers to the return without delay of a child who has been removed or retained, and from Article 11(3) of the regulation, which sets a deadline of six weeks for the court to which an application for return is made to issue its judgment. The Court of Justice made clear that the need to protect the child against any possible harm and the need to ensure a fair balance between the interests of the child and those of the parents are also capable of justifying recourse to the urgent preliminary ruling procedure.

So far as concerns the principles in accordance with which cases are referred to the Court for the purposes of obtaining a preliminary ruling, the Court had occasion in Case C-210/06 *Cartesio* (judgment of 16 December 2008) to address the issue of the power of a national appellate court to vary the decision of a lower court making a reference for a preliminary ruling. The Court held in that regard that, where rules of national law apply which relate to the right of appeal against a decision making a reference for a preliminary ruling, and under those rules the main proceedings remain pending before the referring court in their entirety, the order for reference alone being the subject of a limited appeal, the second paragraph of Article 234 EC is to be interpreted as meaning that the jurisdiction conferred by that provision of the Treaty on any national court or tribunal to make a reference to the Court for a preliminary ruling cannot be called into question by the application of those rules, where they permit the appellate court to vary the order for reference, to set aside the reference and to order the referring court to resume the domestic law proceedings. It is true that Article 234 EC does not preclude decisions which are made by a court or tribunal of a Member State against whose decisions there is a judicial remedy under national law and by which questions are referred to the Court for a preliminary ruling from remaining subject to the remedies normally available under national law. Nevertheless, the outcome of such an appeal cannot limit the jurisdiction conferred by Article 234 EC on that court to make a reference to the Court if it considers that a case pending before it raises questions on the interpretation of provisions of Community law necessitating a ruling by the Court.

The effects of Community law on national legal systems have also been clarified.

In Joined Cases C-37/06 and C-58/06 *Viamex Agrar Handel* [2008] ECR I-69, the Court held that, while it is true that a directive cannot of itself impose obligations on an individual, it cannot be precluded, in principle, that the provisions of a directive may be applicable by means of an express reference in a regulation to its provisions, provided that general principles of law and, in particular, the principle of legal certainty are observed.

In Case C-2/06 *Kempter* [2008] ECR I-411, the Court was called upon to determine the question whether the review and amendment of a final administrative decision in order to take account

([8]) 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).

of the interpretation of the relevant Community law carried out in the meantime by the Court of Justice is subject to the requirement that the party concerned relied on Community law when contesting the administrative decision before the national courts. The Court found that there was no such requirement.

Thus, it held that, while Community law does not require that administrative bodies be placed under an obligation, in principle, to reopen an administrative decision which has become final, specific circumstances may nevertheless be capable, by virtue of the principle of cooperation arising from Article 10 EC, of requiring such a body to review an administrative decision that has become final in order to take account of the interpretation of a relevant provision of Community law given subsequently by the Court. The condition — which is among those capable of providing the basis for such an obligation of review — that the judgment of the court of final instance by virtue of which the contested administrative decision became final was, in the light of a subsequent decision of the Court, based on a misinterpretation of Community law which was adopted without a question being referred to the Court for a preliminary ruling, cannot be interpreted as requiring the parties to have raised before the national court the point of Community law in question. It is sufficient in that regard if either the point of Community law the interpretation of which proved to be incorrect in light of a subsequent judgment of the Court was considered by the national court ruling at final instance or it could have been raised by the latter of its own motion. While Community law does not require national courts to raise of their own motion a plea alleging infringement of Community provisions where examination of that plea would oblige them to go beyond the ambit of the dispute as defined by the parties, they are obliged to raise of their own motion points of law based on binding Community rules where, under national law, they must or may do so in relation to a binding rule of national law.

While that possibility of applying for the review and withdrawal of a final administrative decision that is contrary to Community law is not subject to any limit in time, the Member States nevertheless remain free to set reasonable time limits for seeking remedies, in a manner consistent with the Community principles of effectiveness and equivalence.

Proceedings relating to public access to documents of the institutions show no signs of abating. In Joined Cases C-39/05 P and C-52/05 P *Sweden and Turco* v *Council* (judgment of 1 July 2008), the Court clarified the examination to be carried out by the Council before it responds to a request for disclosure of a document.

The Community regulation regarding public access to documents ([9]) provides that any citizen of the Union, and any person residing in a Member State, has a right of access to documents of the institutions. It lays down exceptions to that general principle, including where disclosure of a document would undermine the protection of court proceedings and legal advice, unless there is an overriding public interest in its disclosure.

As regards, specifically, the exception relating to legal advice, the institution which is asked to disclose a document must satisfy itself that the document does indeed relate to legal advice and, if so, it must decide which parts of it are actually concerned and may, therefore, be

([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).

covered by the exception. The fact that a document is headed 'legal advice/opinion' does not mean that it is automatically entitled to the protection of legal advice ensured by the regulation referred to. Over and above the way a document is described, it is thus for the institution to satisfy itself that that document does indeed concern such advice. Where that is the case, the Council must then examine whether disclosure of the parts of the document in question would undermine the protection of the legal advice. In that regard, the Court construes the exception relating to legal advice as aiming to protect an institution's interest in seeking frank, objective and comprehensive advice. The risk of that interest being undermined must, in order to be capable of being relied on, be reasonably foreseeable and not purely hypothetical.

To submit, in a general and abstract way, that there is a risk that disclosure of legal advice relating to legislative processes may give rise to doubts regarding the lawfulness of legislative acts does not suffice to establish that the protection of legal advice will be undermined for the purposes of that provision and cannot, accordingly, provide a basis for a refusal to disclose such advice. It is precisely openness in this regard that contributes to conferring greater legitimacy on the institutions in the eyes of European citizens and increasing their confidence in them by allowing divergences between various points of view to be openly debated.

Lastly, the Court stated that it is incumbent on the Council to ascertain whether there is no overriding public interest justifying disclosure. In that respect, it is for the Council to balance the particular interest to be protected by non-disclosure of the document concerned against, inter alia, the public interest in the document being made accessible in the light of the advantages stemming from increased openness, in that this enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system.

The Court observed that such considerations are of particular relevance where the Council is acting in its legislative capacity. Openness in that respect contributes to strengthening democracy by allowing citizens to scrutinise all the information which has formed the basis of a legislative act. The possibility for citizens to find out the considerations underpinning legislative action is a precondition for the effective exercise of their democratic rights.

The Court concluded that Regulation No 1049/2001 imposes, in principle, an obligation to disclose the opinions of the Council's legal service relating to a legislative process, while nevertheless admitting that disclosure of a specific legal opinion, given in the context of a legislative process, but being of a particularly sensitive nature or having a particularly wide scope that goes beyond the context of the legislative process in question, may be refused, on account of the protection of legal advice. In such a case, it is incumbent on the institution concerned, therefore, to give a detailed statement of reasons for such a refusal.

On those grounds, the Court set aside the judgment of the Court of First Instance insofar as it related to the refusal of access to the legal opinion at issue in that case.

By contrast, the Court broke new ground in its consideration, in Joined Cases C-200/07 and C-201/07 *Marra* (judgment of 21 October 2008), of the issue of the immunity enjoyed by Members of the European Parliament in certain circumstances and subject to certain conditions, and more specifically of the rules for applying the immunity of a Member of the European

Parliament against whom proceedings had been brought for distributing a leaflet containing insulting remarks.

The Court began by observing that Article 9 of the Protocol on the Privileges and Immunities of the European Communities ([10]) sets out the principle of immunity of Members of the European Parliament in respect of opinions expressed or votes cast by them in the performance of their duties. Such immunity must, to the extent that it seeks to protect the freedom of expression and independence of Members of the European Parliament, be considered to be an absolute immunity barring any judicial proceedings. Therefore, in an action brought against a Member of the European Parliament in respect of opinions he has expressed, the national court is obliged to dismiss the action brought against the Member concerned where it considers that that Member enjoys parliamentary immunity. The national court is bound to respect that immunity, as is the European Parliament. Since the latter cannot waive the immunity, it is for the national court to dismiss the action in question.

Next, the Court acknowledged that the national court has exclusive jurisdiction to determine whether the conditions for applying that immunity are met, and is not required to refer the issue to the European Parliament, which has no power in that regard. By contrast, if, following a request from the Member concerned, the European Parliament has adopted a decision to defend immunity, that constitutes an opinion that has no binding effect with regard to national judicial authorities.

Where the Member makes a request to the European Parliament for defence of immunity and the national court is informed thereof, it must, in accordance with the duty of sincere cooperation between the European institutions and the national authorities ([11]), stay the judicial proceedings and request the Parliament to issue its opinion as soon as possible. That cooperation is required in order to avoid any conflict in the interpretation and application of the provisions of the Protocol.

Finally, to bring this overview of case-law in the constitutional and institutional sphere to a close, reference is made to Case C-294/06 *Payir and Others* [2008] ECR I-203, in which the Court ruled on whether, under the EEC–Turkey Association Agreement, the status of 'worker' is to be accorded to Turkish nationals who enter the territory of a Member State as an au pair or as a student and belong to the labour force. Interpreting Article 6(1) of Decision No 1/80 of the EEC–Turkey Association Council of 19 September 1980 on the development of the Association, the Court held that the fact that a Turkish national was granted leave to enter the territory of a Member State as an au pair or as a student cannot deprive him of the status of 'worker' and prevent him from being regarded as 'duly registered as belonging to the labour force' of that Member State within the meaning of Article 6(1). Accordingly, that fact cannot prevent such a national from being able to rely on that provision for the purposes of obtaining renewed permission to work and a corollary right of residence.

([10]) Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 (OJ 2006 C 231 E, p. 318).

([11]) Enshrined in Article 10 EC.

European citizenship

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

Case C-353/06 *Grunkin and Paul* (judgment of 14 October 2008) concerned the recognition of the surname of a child of German nationality who was born and living in Denmark and registered at birth with a double-barrelled surname composed of the surnames of both the father and mother. The child's parents applied for the double-barrelled name to be entered in the family register held in Germany, and were refused on the ground that surnames of German citizens are governed by German law, which does not allow a child to bear a double-barrelled surname. The Court found that, although the rules governing a person's surname are matters coming within the competence of the Member States, the latter must nonetheless, when exercising that competence, comply with Community law. The Court explained that having to use a surname, in the Member State of which the person concerned is a national, that is different from that conferred and registered in the Member State of birth and residence is liable to hamper the free movement of citizens of the Union. A discrepancy in surnames in various German and Danish documents is liable to cause serious inconvenience for the person concerned at both professional and private levels. Since the restrictive German provisions had not been properly justified, the Court held that the right of European citizens to move and reside freely within the territory of the Member States precluded the legislation at issue.

Next, Case C-127/08 *Metock and Others* (judgment of 25 July 2008) and Case C-33/07 *Jipa* (judgment of 10 July 2008) concern the interpretation of Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States ([12]).

In *Metock and Others,* the Court held that Directive 2004/38 precludes legislation of a Member State which makes a national of a non-member country who is the spouse of a Union citizen residing in that Member State but not possessing its nationality subject to a condition that he must have previously been lawfully resident in another Member State before arriving in the host Member State, in order to benefit from the provisions of that directive. As regards family members of a Union citizen, no provision of the directive makes its application subject to that condition; the Court took the view that it was necessary to reconsider the conclusion reached in its judgment in *Akrich* ([13]), which made the ability to benefit from the rights to enter and reside provided for by Regulation No 1612/68 ([14]) subject to such a condition. The inability of a Union citizen to be accompanied or joined by his family in the host Member State would be such as to discourage him from exercising his right of entry into and residence in that Member State. The Court also stated that a non-Community spouse of a Union citizen who accompanies or joins that citizen may benefit from Directive 2004/38, irrespective of when and where

([12]) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ 2004 L 158, p. 77, and corrigendum, OJ 2004 L 229, p. 35).

([13]) Case C-109/01 *Akrich* [2003] ECR I-9607.

([14]) 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), amended by Directive 2004/38/EC.

their marriage took place and of how that spouse entered the host Member State, and that it is not necessary for the citizen to have already founded a family at the time when he moves in order for his family members who are nationals of non-member countries to be able to enjoy the rights conferred by that directive. Finally, the words 'family members [of Union citizens] who accompany … them' ([15]) must be interpreted as referring both to the family members of a Union citizen who entered the host Member State with him and to those who reside with him in that Member State, without it being necessary, in the latter case, to distinguish according to whether they entered that Member State before or after the Union citizen or before or after becoming his family members.

In *Jipa*, the question before the Court was whether Community law, and in particular Directive 2004/38, precludes national legislation that allows the right of a national of a Member State to travel to another Member State to be restricted, in particular on the ground that he has previously been expelled from the latter Member State on account of his 'illegal residence' there. The Court noted that such a national enjoys the status of a citizen of the Union and may therefore rely, including against his Member State of origin, on the right of free movement and residence within the territory of the Member States, which includes both the right to enter a Member State other than the one of origin and the right to leave the State of origin. However, the right of free movement may be subject to limitations and conditions envisaged by the Treaty, inter alia on the basis of requirements of public policy or public security which the Member States have power to determine. In the Community context, those requirements must, however, be interpreted strictly. The Court explained that such restrictions imply in particular that, in order to be justified, measures taken on grounds of public policy or public security must be based exclusively on the personal conduct of the individual concerned and not on considerations of general prevention. A measure restricting free movement must be adopted in the light of considerations pertaining to the protection of public policy or public security in the Member State imposing it; while the authorities of that Member State are not precluded from being able to take into account reasons advanced by another Member State to justify a decision to remove a Community national from the territory of the latter State, the restrictive measure cannot be based exclusively on those reasons. The Court concluded that Community law does not preclude the national legislation in question, provided that certain requirements are met. First, the personal conduct of that national must constitute a genuine, present and sufficiently serious threat to one of the fundamental interests of society. Second, the restrictive measure envisaged must be necessary and proportionate to the achievement of the objective it pursues.

In Case C-499/06 *Nerkowska* (judgment of 22 May 2008), the Court held that the right of every citizen of the Union to move and reside freely within the territory of the Member States is to be interpreted as precluding legislation of a Member State under which it refuses, generally and in all circumstances, to pay to its nationals a benefit granted to civilian victims of war or repression solely because they are not resident in the territory of that State throughout the period of payment of the benefit, but in the territory of another Member State. The Court noted that such a benefit falls within the competence of the Member States, but that they must exercise that competence in accordance with Community law, in particular with the right to freedom of movement of citizens of the Union. The requirement of residence in national territory in order for the benefit to be granted is a restriction on the exercise of that freedom. The Court

([15]) Article 3(1) of Directive 2004/38/EC.

considered that both the wish to ensure that there is a connection between the society of the Member State concerned and the recipient of a benefit and the necessity to verify that the recipient continues to satisfy the conditions for the grant of that benefit constitute objective considerations of public interest which are capable of justifying that restriction. However, the fact that a person is a national of the Member State granting the benefit concerned and, moreover, has lived in that State for more than 20 years may be sufficient to establish such a connection. In those circumstances, the requirement of residence throughout the period of payment of the benefit must be held to be disproportionate. Furthermore, there are other means of verifying that the recipient continues to satisfy the conditions for the grant of the benefit, which, although less restrictive, are just as effective.

Free movement of goods

In the field of the free movement of goods, the Court delivered a number of judgments concerning the compatibility with Community legislation of national provisions amounting to measures having equivalent effect to quantitative restrictions.

First of all, in Case C-244/06 *Dynamic Medien* [2008] ECR I-505, the Court turned its attention to German rules prohibiting the sale and transfer by mail order of image storage media which have not been examined and classified by a competent national authority or by a national voluntary self-regulatory body for the purposes of protecting young persons and which do not bear a label from that authority or body indicating the age from which those image storage media may be viewed. The Court held that such rules do not constitute a selling arrangement which is capable of hindering, directly or indirectly, actually or potentially intra-Community trade, but a measure having equivalent effect to quantitative restrictions within the meaning of Article 28 EC and are, in principle, incompatible with the obligations arising from that provision. According to the Court, such rules may, however, be justified by the objective of protecting children, insofar as the rules are proportionate to that objective, as will be the case where they do not preclude all forms of marketing of unchecked image storage media and it is permissible to import and sell such image storage media to adults, while ensuring that children do not have access to them. It could be otherwise only if it appears that the examining, classifying and labelling procedure established by those rules is not easily accessible or cannot be completed within a reasonable period or that the decision of refusal cannot be open to challenge before the courts.

Next, in Case C-141/07 *Commission* v *Germany* (judgment of 11 September 2008), the Court was faced with German legislation concerning the requirements which external pharmacies had to meet if they were to be eligible to supply medicinal products to hospitals situated in Germany, requirements which, in practice, necessitated a degree of geographical proximity between the pharmacy supplying the medicinal products and the hospital. The Court held that, while such provisions must be regarded as concerning selling arrangements, since they do not concern the characteristics of the medicinal products, but concern solely the arrangements permitting their sale, they are nevertheless liable to hinder intra-Community trade and, therefore, constitute a measure having equivalent effect to a quantitative restriction on imports prohibited, in principle, by Article 28 EC. According to the Court, they are justified, however, on grounds of the protection of public health. Such legislation can achieve the objective of ensuring that the supply of products to hospitals of the Member State concerned is reliable

and of good quality and, in fact, transposes to the system of external provision of supplies to hospitals requirements analogous to those which characterise the system of internal provision of supplies, namely the requirement that there be one pharmacist who is responsible for the supply of medicinal products and who is, moreover, generally and quickly available *in situ*. The legislation in question thus ensures that all the elements of the system for the supply of medicinal products to hospitals in the Member State concerned are equivalent and mutually compatible, and guarantees the unity and balance of that system.

Finally, Case C-205/07 *Gysbrechts and Santurel Inter* (judgment of 16 December 2008) concerned the compatibility of Belgian rules relating to distance-selling contracts with the EC Treaty. Those rules prohibited a seller from requiring a deposit or form of payment from the consumer or even, according to the Belgian authorities, a consumer's payment card number, before expiry of the mandatory period of seven working days for withdrawal. Having taken the view that such prohibitions constitute a measure having equivalent effect to a quantitative restriction on exports, the Court held that, while the prohibition on requiring an advance or payment from the consumer is justified by the need to protect the latter, the imposition on a supplier of a prohibition on requiring that a consumer provide his payment card number goes beyond what is necessary to ensure the effective exercise of the consumer's right to withdraw. The value of such a prohibition resides only in the fact that it eliminates the risk that the supplier collects the price before expiry of the period for withdrawal. If, however, that risk materialises, the supplier's action is, in itself, a contravention of the prohibition on requesting an advance or payment from the consumer, which is an appropriate and proportionate measure to attain the objective pursued. Therefore, Article 29 EC does not preclude the prohibition on a supplier, in cross-border distance selling, requiring an advance or any payment from a consumer before expiry of the withdrawal period, but does preclude a prohibition on requesting, before expiry of that period, the number of the consumer's payment card.

Agriculture

In Case C-132/05 *Commission* v *Germany* [2008] ECR I-957, the Court was required to determine whether a Member State fails to fulfil its obligations by refusing to proceed against the use, on its territory, of the name 'Parmesan' on the labelling of products which do not comply with the requirements of the specification for the protected designation of origin (PDO) 'Parmigiano Reggiano', thereby favouring the appropriation of the reputation of a genuine, Community-wide protected product ([16]).

Noting, first of all, that it is not only the exact form of registration of a PDO that enjoys protection under Community law, the Court found that, in view of the phonetic and visual similarity between the names in question and the similar appearance of the products, the use of the name 'Parmesan' must be regarded as an evocation of the PDO 'Parmigiano Reggiano'. If it is unable to show that the name 'Parmesan' has become generic, a State cannot rely on the exception provided for under Regulation No 2081/92.

([16]) 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).

Finally, regarding the State's obligation to proceed against conduct infringing the PDO, the Court stated that the mere right to rely on the provisions of a regulation before the national courts does not release the Member States from their duty to take the national measures which may be needed to ensure its full application, and found that the legal system in question in this case provided the instruments capable of guaranteeing the protection of the interests both of the producers and of the consumers. However, a Member State is under no obligation to take on its own initiative the measures necessary to penalise, on its territory, infringements of PDOs from another Member State. The inspection structures whose task it is to ensure compliance with the PDO are those of the Member State from which the PDO comes and do not therefore fall within the inspection authorities of the State in question.

Free movement of persons, services and capital

In relation to the freedom of establishment, Case C-210/06 *Cartesio* (judgment of 16 December 2008) gave the Court an opportunity to clarify its case-law concerning the right of companies to move their company seat within the Union. The question referred to the Court for a preliminary ruling concerned the compatibility with Articles 43 EC and 48 EC of Hungarian legislation under which a company incorporated under national law may not transfer its seat to another Member State whilst retaining its status as a company governed by the law of the Member State of incorporation. The Court replied that, as Community law now stands, those articles do not preclude such legislation. In accordance with Article 48 EC, in the absence of a uniform Community law definition of the companies which may enjoy the right of establishment on the basis of a single connecting factor determining the national law applicable to a company, the question whether Article 43 EC applies to a company which seeks to rely on the fundamental freedom enshrined in that article is a preliminary matter which, as Community law now stands, can only be resolved by the applicable national law. In consequence, according to the Court, the question whether the company is faced with a restriction on the freedom of establishment, within the meaning of Article 43 EC, can arise only if it has been established, in the light of the conditions laid down in Article 48 EC, that the company actually has a right to that freedom. Thus a Member State has the power to define both the connecting factor required of a company if it is to be regarded as incorporated under the law of that Member State and, as such, capable of enjoying the right of establishment, and that required if the company is to be able subsequently to maintain that status. That power includes the possibility for that Member State not to permit a company governed by its law to retain that status if the company intends to reorganise itself in another Member State by moving its seat to the territory of the latter, thereby breaking the connecting factor required under the national law of the Member State of incorporation.

Also in relation to the freedom of establishment, and equally noteworthy, Case C-414/06 *Lidl Belgium* (judgment of 15 May 2008) was initiated by a reference for a preliminary ruling concerning the compatibility with Article 43 EC of the German tax regime under which a resident company may not deduct losses relating to a non-resident permanent establishment belonging to it. The Court first made clear that the scope of application of Article 43 EC extends to the creation and the outright ownership by a natural or legal person established in a Member State of a permanent establishment not having a separate legal personality situated in another Member State, as well as to a company's activity in another Member State through a permanent establishment, as defined in a relevant double taxation convention, which constitutes, under

tax convention law, an autonomous entity. The Court went on to hold that Article 43 EC does not preclude a situation in which a company established in a Member State cannot deduct from its tax base losses relating to a permanent establishment belonging to it and situated in another Member State, to the extent that, by virtue of a double taxation convention, the income of that establishment is taxed in the latter Member State where those losses can be taken into account in the taxation of the income of that permanent establishment in future accounting periods. It is true that such a tax regime gives rise to a difference in tax treatment, by reason of which a resident company could be discouraged from carrying on its business through a permanent establishment situated in another Member State. Nevertheless, according to the Court, such a tax regime can be justified in the light of the need to safeguard the allocation of the power to tax between the Member States and the need to prevent the danger that the same losses will be taken into account twice which, taken together, pursue legitimate objectives compatible with the Treaty and thus constitute overriding reasons in the public interest, provided that the regime is proportionate to those objectives.

So far as concerns the freedom to provide services, attention must be drawn to three cases in particular.

The first is Case C-380/05 *Centro Europa 7* [2008] ECR I-349, concerning an Italian operator in the television broadcasting sector to which broadcasting authorisation had been granted, but which was unable to broadcast without broadcasting radio frequencies allocated to it. The Court interpreted the Community law provisions ([17]) relating to the grant of the radio frequencies. It observed that the successive application of the transitional arrangements structured, under Italian legislation, in favour of the incumbent networks had the effect of preventing operators without broadcasting radio frequencies from accessing the market. The issuing of general authorisation to operate on the broadcasting services market only to the incumbent networks consolidated that restrictive effect. The consequence of this was to freeze the structures on the national market and to protect the position of those networks. The Court stated that a system which restricts the number of operators in the national territory is capable of being justified by general-interest objectives, but it must, in those circumstances, be structured on the basis of objective, transparent, non-discriminatory and proportionate criteria. That is not the case so far as concerns a system which allocates broadcasting radio frequencies exclusively, without restriction in time, to a limited number of incumbent operators, without taking account of the criteria referred to above. The Court concluded that national legislation the application of which makes it impossible for an operator holding rights to broadcast in the absence of broadcasting radio frequencies granted on the basis of those criteria is contrary to the principles of the Treaty concerning the freedom to provide services and to the principles laid down by the new common regulatory framework for electronic communications networks and services ([18]).

([17]) 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), Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (authorisation directive) (OJ 2002 L 108, p. 21) and Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services (OJ 2002 L 249, p. 21).

([18]) Known as 'the NCRF', this consists of the framework directive and four specific directives, including the authorisation directive, which are supplemented by Directive 2002/77/EEC.

The second is Case C-346/06 *Rüffert* (judgment of 3 April 2008), in which the Court turned its attention to the question whether the freedom to provide services precludes legislation of a Member State under which the contractor for a public works contract must agree in writing to pay its employees at least the wage provided for in the collective agreement in force and to impose that obligation on its transnational sub-contractors posting workers to that Member State, subject to payment of a contractual penalty in the event of non-compliance with that obligation. The Court held that, while a Member State may, pursuant to the provisions of Directive 96/71 concerning the posting of workers in the framework of the provision of services ([19]), impose minimum rates of pay on undertakings established in other Member States in the framework of the transnational provision of services, it is not entitled to impose on those undertakings a rate of pay — even if it exceeds the rate of pay applicable pursuant to law — provided for by a collective agreement which is in force at the place where the services concerned are performed and which has not been declared to be of general application, by requiring, by a measure of a legislative nature, the contracting authority to designate as contractors for public works contracts only contractors which, when submitting their tenders, agree in writing to pay their employees, in return for performance of the services concerned, at least the wage provided for in the collective agreement. Such legislation constitutes a restriction on the freedom to provide services laid down under Article 49 EC insofar as it may impose on service providers established in another Member State where minimum rates of pay are lower an additional economic burden that may prohibit, impede or render less attractive the provision of their services in the host Member State.

Finally, in Case C-319/06 *Commission* v *Luxembourg* (judgment of 19 June 2008), the Court held that the first indent of Article 3(10) of Directive 96/71 concerning the posting of workers in the framework of the provision of services constitutes a derogation from the principle that the matters with respect to which the host Member State may apply its legislation to undertakings which post workers to its territory are set out in an exhaustive list in the first subparagraph of Article 3(1). The possibility, under the first indent of Article 3(10), for the host Member State to apply to those undertakings, in a non-discriminatory manner, terms and conditions of employment on matters other than those referred to in the first subparagraph of Article 3(1) of the directive, provided that public policy provisions are involved, constitutes an exception to the system put in place by that directive as well as a derogation from the fundamental principle of freedom to provide services, and must be interpreted strictly. Consequently, the Court held that, by declaring, first, measures resulting, in particular, from collective agreements which have been declared universally applicable and, second, measures transposing Directive 96/71 which require the undertakings concerned (i) to post only staff linked to the undertaking by a written contract of employment or another document deemed analogous thereto under Directive 91/533 ([20]) and (ii) to comply with national rules on part-time and fixed-term work, to be mandatory provisions falling under national public policy, a Member State has failed to fulfil its obligations under the first indent of Article 3(10) of Directive 96/71. The Court also found that a Member State which, first, requires undertakings whose registered office is outside its national territory and which posts workers there to deposit, before the start of the posting, with an ad

([19]) Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ 1997 L 18, p. 1).

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

hoc agent residing in that State, the documents necessary for monitoring compliance with their obligations under national law and to leave them there for an indeterminate period after the provision of services has ceased and, second, sets out in rules of national law establishing a prior notification procedure when workers are posted conditions relating to access to the basic information necessary for monitoring purposes by the competent national authorities with insufficient clarity to ensure legal certainty for undertakings wishing to post workers to the territory of that Member State, has failed to fulfil its obligations under Article 49 EC.

With regard to the freedom of establishment and the freedom to provide services, Case C-347/06 *ASM Brescia* (judgment of 17 July 2008) relates to Italian legislation adopted in respect of the early cessation, at the end of a transitional period, of concessions for the distribution of natural gas granted without a competitive tendering procedure as envisaged by Directive 2003/55 concerning common rules for the internal market in natural gas and repealing Directive 98/30 ([21]). The questions referred to the Court for a preliminary ruling related, more specifically, to the compatibility of the extension, on certain conditions, of the length of the transitional period in question with Directive 98/30 and with Articles 43 EC, 49 EC and 86(1) EC. The Court held that neither Directive 2003/55 nor Articles 43 EC, 49 EC and 86(1) EC preclude such national legislation, provided that, as regards compatibility with the articles of the EC Treaty referred to, such an extension can be regarded as being necessary to enable the contracting parties to untie their contractual relations on acceptable terms both from the point of view of the requirements of the public service and from the economic point of view. Regarding that last point, the Court considered that, while the Italian legislation establishes a difference in treatment amounting to indirect discrimination on the basis of nationality, that difference in treatment may nevertheless be justified by the necessity of complying with the principle of legal certainty which requires, particularly, that rules of law be clear, precise and predictable in their effects. According to the Court, that principle not only permits but also requires that the termination of such a concession be coupled with a transitional period which enables the contracting parties to untie their contractual relations on acceptable terms both from the point of view of the requirements of the public service and from the economic point of view.

So far as concerns the free movement of capital, attention is drawn to Case C-43/07 *Arens-Sikken* (judgment of 11 September 2008) concerning national rules on the assessment of inheritance duties and transfer duties payable in respect of immovable property situated in a Member State, which, for the assessment of those duties, made no provision for the deductibility of overendowment debts resulting from a testamentary parental partition *inter vivos* where the person whose estate was being administered was residing, at the time of death, not in that State but in another Member State. The Court held that the Treaty provisions on the free movement of capital preclude such rules insofar as the rules apply a progressive rate of taxation and insofar as the combination of (i) the failure to take into account such debts and (ii) that progressive rate could result in a greater tax burden for heirs who are not in a position to rely on such deductibility. The Court thus rejected the argument that the difference in treatment established concerned situations which were not objectively comparable, since, except in relation to the deduction of debts, the legislation in question treated the inheritances of residents and non-residents in the same way for the purposes of taxing their inheritance. The Court also stated that, in the absence of a convention on the prevention of double taxation, the Member

([21]) Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC (OJ 2003 L 176, p. 57).

State in which the immovable property is situated cannot, in order to justify a restriction on the free movement of capital arising from its rules, rely on the existence of a possibility, beyond its control, of a tax credit being granted by the Member State in which the deceased was residing at the time of death, which could, wholly or partly, offset the loss incurred by that person's heirs as a result of the fact that, for the purposes of assessing transfer duties, no account is taken in the Member State in which that property is situated of overendowment debts resulting from a testamentary parental partition *inter vivos*.

In Case C-282/07 *Truck Center* (judgment of 22 December 2008), the Court responded to a request for interpretation of the Treaty provisions relating to the free movement of capital in the light of Belgian corporation tax legislation. Under that legislation, interest paid by a resident company to a recipient company resident in another Member State was subject to a retention at source (withholding tax), whereas interest paid to a resident recipient company was exempt from that retention. The Court held that the Treaty provisions relating to the freedom of establishment and the free movement of capital do not preclude such tax legislation. After recalling that, in relation to direct taxes, the situations of residents and non-residents are, as a rule, not comparable, the Court found that the difference in treatment at issue, consisting in the application of different taxation arrangements to those companies established in Belgium and to those established in another Member State, relates to situations which are not objectively comparable. According to the Court, the position of the Belgian State, the types of taxation of interest, which rest on separate legal bases, and the situations in which the companies receiving interest find themselves with regard to recovery of the tax differ according to whether the companies receiving the interest are resident or not. The Court also held that the difference in treatment resulting from the legislation at issue does not necessarily procure an advantage for resident recipient companies because, first, those companies are obliged to make advance payments of corporation tax and, second, the amount of withholding tax deducted from the interest paid to a non-resident company is significantly lower than the corporation tax charged on the income of resident companies which receive interest. In those circumstances, the difference in treatment thereby created does not constitute a restriction of the freedom of establishment or of the free movement of capital.

In relation to the free movement of workers, the Court ruled on the recognition of diplomas obtained following education and training provided within the framework of 'homologation agreements'.

In Case C-274/05 *Commission* v *Greece* (judgment of 23 October 2008), the Commission complained that the Hellenic Republic was failing to recognise diplomas awarded by the competent authorities of other Member States following education and training provided within the framework of agreements pursuant to which education and training provided by a private body in Greece is homologated by those authorities, and that it was entrusting to the Council Responsible for Recognising Professional Equivalence of Higher Education Qualifications power to verify whether the conditions necessary for the award of diplomas were fulfilled and the nature of the establishment in which the holder received his education and training. In the

light of the provisions of Directive 89/48 ([22]), as amended by Directive 2001/19 ([23]), the Court held, first, that it follows from the first subparagraph of Article 1(a) of that directive that the expression 'mainly in the Community' covers both education and training received entirely in the Member State which awarded the formal qualification in question and that received partly or wholly in another Member State. Second, although the method of recognition of higher education diplomas as laid down by that directive does not lead to automatic and unconditional recognition of the diplomas and professional qualifications concerned, particularly as regards the possibility provided for under Article 4 of the directive for the Member States to impose compensatory measures, the Court held that the choice of the type of compensatory measures is a matter for the applicant for recognition of the diploma, not only so far as concerns the professions which require knowledge of national law, but also in respect of all the other professions covered by various specific provisions. Third, the Court confirmed that, under Article 8(1) of the directive, it is for the authorities awarding diplomas alone to verify, in the light of the rules applicable in their professional education and training systems, whether the conditions necessary for their award are fulfilled and the nature of the establishment in which the holder received his education and training. By contrast, the host Member State cannot examine the basis on which the diplomas have been awarded. Finally, the Court held that, under Article 3 of the directive, the host Member State must allow, in the public sector, the reclassification in a higher grade of persons recruited at a level lower than that to which they would have been entitled if their diplomas had been recognised by the competent authority.

In addition, the Court developed its case-law in relation to social security for migrant workers in two cases concerning the interpretation of Regulation No 1408/71([24]). Case C-212/06 *Gouvernement de la Communauté française and Gouvernement wallon* (judgment of 1 April 2008) concerned a care insurance scheme implemented by the Flemish Government of the Kingdom of Belgium in the Dutch-speaking region and in the bilingual region of Brussels-Capital. That scheme provided, subject to certain conditions and up to a maximum amount, for an insurance fund to take responsibility for the paying of certain costs occasioned by a state of dependence for health reasons. Affiliation to the scheme was open only to persons resident in the two regions referred to and to persons working in the territory of those regions and residing in a Member State other than Belgium. Persons who, although working in the Dutch-speaking region or in the bilingual region of Brussels-Capital, were living in another part of Belgium were thus excluded from the scheme. After confirming that the benefits provided under a scheme such as the care insurance scheme in question fall within the scope *ratione materiae* of Regulation No 1408/71, the Court observed that Articles 39 EC and 43 EC militate against any national measure which, even though applicable without discrimination on grounds of nationality, is

([22]) Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16).

([23]) Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001 amending Council Directives 89/48/EEC and 92/51/EEC on the general system for the recognition of professional qualifications and Council Directives 77/452/EEC, 77/453/EEC, 78/686/EEC, 78/687/EEC, 78/1026/EEC, 78/1027/EEC, 80/154/EEC, 80/155/EEC, 85/384/EEC, 85/432/EEC, 85/433/EEC and 93/16/EEC concerning the professions of nurse responsible for general care, dental practitioner, veterinary surgeon, midwife, architect, pharmacist and doctor (OJ 2001 L 206, p. 1).

([24]) 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).

capable of hindering or rendering less attractive the exercise by Community nationals of the fundamental freedoms guaranteed by the Treaty. Therefore, on a proper construction of Articles 39 EC and 43 EC, legislation of a federated entity of a Member State, such as that governing a care insurance scheme, limiting affiliation to a social security scheme and entitlement to the benefits provided by that scheme to persons either residing in the territory coming within that entity's competence or pursuing an activity in that territory but residing in another Member State is contrary to those provisions, insofar as such limitation affects nationals of other Member States or nationals of the Member State concerned who have made use of their right to freedom of movement within the European Community.

Article 13(2)(a) of Regulation No 1408/71, as amended by Regulation No 647/2005 ([25]), provides that a person employed in the territory of one Member State is to be subject to the legislation of that State even if he resides in the territory of another Member State. In Case C-352/06 *Bosmann* (judgment of 20 May 2008), the Court considered the situation of a worker who found herself ineligible for child benefits in her Member State of residence because she took up employment in another Member State. The Court stated that Article 13(2)(a) must be interpreted in the light of Article 42 EC which aims to facilitate freedom of movement for workers and entails, in particular, that migrant workers must not lose their right to social security benefits or have the amount of those benefits reduced because they have exercised the right to freedom of movement conferred on them by the Treaty. The Court concluded from this that the Member State of residence cannot be deprived of the right to grant child benefit to those resident within its territory and that Article 13(2)(a) of the regulation does not preclude a migrant worker, who is subject to the social security scheme of the Member State of employment, from receiving, pursuant to the national legislation of the Member State of residence, child benefit in the latter State. It is for the national court to determine whether the circumstances of the case are relevant for the purposes of deciding whether the worker satisfies the requirements for the grant of such child benefit pursuant to the legislation of the Member State in question.

Transport

There are four particularly noteworthy cases relating to transport.

With regard to road transport, the Court stated in Joined Cases C-329/06 and C-343/06 *Wiedemann and Funk* (judgment of 28 May 2008), concerning a refusal to recognise driving licences obtained in the Czech Republic after the administrative withdrawal of the drivers' German driving licences for consumption of drugs or alcohol, that Directive 91/439 on driving licences ([26]) is to be interpreted as preventing one Member State from refusing to recognise in its territory the validity of a driving licence subsequently issued by another Member State, so long as the

([25]) Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulations (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 (OJ 2005 L 117, p. 1).

([26]) Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1), as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003 (OJ 2003 L 284, p. 1).

licence-holder has not satisfied the necessary conditions in that first Member State for the issue of a new licence following the withdrawal of a previous licence, including the examination of fitness to drive certifying that the grounds justifying the withdrawal are no longer in existence. However, it is not contrary to that directive for a Member State to refuse to recognise in its territory the right to drive stemming from a driving licence subsequently issued by another Member State if it is established, on the basis of entries appearing in the driving licence itself or of other incontestable information supplied by the Member State of issue, that when that licence was issued its holder, who had been the object, in the territory of the first Member State, of a measure withdrawing an earlier licence, was not normally resident in the territory of the Member State of issue. Moreover, it is contrary to that directive for a Member State temporarily to suspend the right to drive stemming from a driving licence issued by another Member State while the latter Member State investigates the procedure followed in the issuing of that licence.

With regard to air transport, the Court stated in Case C-173/07 *Emirates Airlines* (judgment of 10 July 2008), in the context of a dispute between a passenger and an airline company which refused to pay compensation to the passenger following the cancellation of a flight departing from Manila (Philippines), that a journey out and back cannot be regarded as a single 'flight' for the purposes of Regulation No 261/2004 establishing common rules on compensation and assistance to passengers ([27]). Consequently, Article 3(1)(a) of that regulation, which provides that the regulation applies to passengers departing from an airport located in the territory of a Member State to which the Treaty applies, is to be interpreted as not applying to the case of an outward and return journey in which passengers who have originally departed from an airport located in the territory of a Member State to which the Treaty applies travel back to that airport on a flight departing from an airport located in a non-member country. The fact that the outward and return flights are the subject of a single booking does not affect the interpretation of that provision.

Also in relation to air transport, in Case C-549/07 *Wallentin-Hermann* (judgment of 22 December 2008) the Court was required to interpret Article 5(3) of Regulation No 261/2004, which is concerned with the right of passengers to compensation if their flight is cancelled and the concept of 'extraordinary circumstances'. The Court decided that a technical problem in an aircraft which leads to the cancellation of a flight is not covered by the concept of 'extraordinary circumstances' within the meaning of that provision unless such a problem stems from events which, by their nature or origin, are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control. Even though a technical problem in an aircraft may fall within unexpected flight safety shortcomings, such circumstances cannot be characterised as extraordinary, while a technical problem caused by failure to maintain an aircraft must be regarded as inherent in the normal exercise of an air carrier's activity. The Court stated that the Montreal Convention is not decisive for the interpretation of that concept. Moreover, it added that the frequency of the technical problems experienced by an air carrier is not in itself a factor from which the presence or absence of 'extraordinary circumstances' within the meaning of Article 5(3) of Regulation No 261/2004 can be concluded. Finally, the Court held that the fact that an air carrier has complied with the minimum rules

([27]) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

on maintenance of an aircraft cannot in itself suffice to establish that that carrier has taken 'all reasonable measures' within the meaning of that provision and, therefore, to relieve the carrier of its obligation to pay compensation provided for by Articles 5(1)(c) and 7(1) of the regulation. Since not all extraordinary circumstances therefore confer exemption but simply those which could not have been avoided even if all reasonable measures had been taken, the onus is on the party seeking to rely on them to establish that they could not have been avoided by measures appropriate to the situation unless it had made intolerable sacrifices in the light of the capacities of its undertaking.

With regard to maritime transport, the Court stated in Case C-308/06 *The International Association of Independent Tanker Owners and Others* (judgment of 3 June 2008) that Article 4 of Directive 2005/35 on ship-source pollution ([28]), read in conjunction with Article 8 of that directive, which obliges Member States to punish ship-source discharges of polluting substances if committed 'with intent, recklessly or by serious negligence', without, however, defining those concepts, does not infringe the general principle of legal certainty insofar as it requires the Member States to punish ship-source discharges of polluting substances committed by 'serious negligence'. Those various concepts, in particular that of 'serious negligence', correspond to tests for the incurring of liability which are to apply to an indeterminate number of situations that it is impossible to envisage in advance and not to specific conduct capable of being set out in detail in a legislative measure of Community or of national law. Moreover, those concepts are fully integrated into, and used in, the Member States' respective legal systems. 'Serious negligence' within the meaning of Article 4 of Directive 2005/35 must be understood as entailing an unintentional act or omission by which the person responsible commits a patent breach of the duty of care which he should have and could have complied with in view of his attributes, knowledge, abilities and individual situation. Lastly, in accordance with Article 249 EC, Directive 2005/35 must be transposed by each of the Member States into national law. Thus, the actual definition of the infringements referred to in Article 4 of that directive and the applicable penalties are those which result from the rules laid down by the Member States.

Competition rules

With regard to competition rules applicable to undertakings, there are four judgments to which particular attention should be given.

As regards the concepts of undertaking and economic activity, the Court held in Case C-49/07 *MOTOE* (judgment of 1 July 2008) that a legal person whose activities consist in organising sports competitions and in entering, in that connection, into sponsorship, advertising and insurance contracts which are designed to exploit those competitions commercially and constitute a source of income for that entity must be classified as an undertaking for the purposes of Community competition law. That classification is not affected by the fact that such an undertaking does not seek to make a profit. Nor is it affected by the fact that it has the power to give its consent to applications for authorisation to organise events submitted to the authorities, since the participation of that entity in the decision-making process of the authorities must be distinguished from the economic activities it engages in, such as the organisation and com-

([28]) 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).

mercial exploitation of events. The Court also pointed out that the fact that an economic activity has a connection with sport does not hinder the application of the rules of the Treaty. Finally, in this judgment, the Court held that Articles 82 EC and 86 EC preclude a national rule which confers on a legal person which organises sporting events and enters, in that connection, into sponsorship, advertising and insurance contracts, the power to give consent to applications for authorisation to organise such competitions, without that power being made subject to restrictions, obligations and review.

In Case C-279/06 *CEPSA* (judgment of 11 September 2008), the Court considered the conditions for exempting exclusive supply contracts for petroleum products (see Case C-217/05 *Confederación Española de Empresarios de Estaciones de Servicio* [2006] ECR I-11987). Such a contract is capable of falling within the scope of Article 81(1) EC where a service-station operator assumes, in a non-negligible proportion, financial and commercial risks linked to the sale of petroleum products to third parties and where that contract contains clauses capable of infringing competition. If the operator does not assume such risks, only the obligations imposed on the operator in the context of services as an intermediary offered by the operator to the principal, such as the exclusivity and non-competition clauses, are capable of falling within the scope of Article 81(1) EC. As regards the conditions for exemption, the Court held that such a contract is capable of benefiting from a block exemption under Regulation No 1984/83 ([29]) if it complies with the maximum duration of 10 years and if the supplier grants the service-station operator, in return for exclusivity, substantial commercial advantages which contribute to an improvement in distribution, facilitate the establishment or modernisation of the service station and lower the distribution costs. The Court also specified the rules applicable to agreements concluded under Regulation No 1984/83 where the performance of the contract extends beyond the date on which that regulation expired. Moreover, with regard to contracts covered by Regulation No 2790/1999 ([30]), since the exemption provided for in Article 2 thereof was not to apply to vertical agreements which have as their object the restriction of the buyer's ability to determine his sale price, the Court held that it was for the referring court to examine whether it was genuinely possible for the reseller to lower that sale price. Finally, the Court stated that the automatic nullity provided for in Article 81(2) EC affects a contract in its entirety only if the clauses which are incompatible with Article 81(1) EC are not severable from the contract. Otherwise, the consequences of the nullity, in respect of all the other parts of the contract, are not a matter for Community law.

With regard to abuse of a dominant position, of particular note are Joined Cases C-468/06 to C-478/06 *Sot. Lelos kai Sia* (judgment of 16 September 2008), which followed on from Case C-53/03 *Syfait and Others* [2005] ECR-4609. The Court held that the refusal by a pharmaceuticals company occupying a dominant position on the market for certain medicinal products to satisfy 'ordinary' orders placed by wholesalers in order to prevent the latter from exporting those medical products from one Member State to other Member States constitutes an abuse of a dominant position. In order to arrive at that conclusion, the Court examined whether particular circumstances are present in the pharmaceuticals sector as a result of which the refusal

([29]) Commission Regulation (EEC) No 1984/83 of 22 June 1983 on the application of Article 85(3) of the Treaty to categories of exclusive purchasing agreements (OJ 1983 L 173, p. 5), as amended by Commission Regulation (EC) No 1582/97 of 30 July 1997 (OJ 1997 L 214, p. 27).

([30]) Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices (OJ 1999 L 336, p. 21).

does not constitute an abuse. It considered, first of all, that a pharmaceuticals company occupying a dominant position cannot rely on the fact that parallel exports of medicinal products from a Member State where the prices are low to other Member States in which the prices are higher will be of only minimal benefit to the final consumer. In fact, such exports constitute an alternative source of supply, which necessarily brings some benefits to the final consumer. The Court then stated that the fact that prices of medicinal products are subject to State regulation does not prevent the refusal being abusive either. It pointed out, however, that a company in a dominant position can take steps that are reasonable and in proportion to the need to protect its own commercial interests. Consequently, in order to appraise whether the refusal by a pharmaceuticals company occupying a dominant position to supply wholesalers involved in parallel exports constitutes a reasonable and proportionate measure in relation to the threat that those exports represent to its legitimate commercial interests, it must be ascertained whether the orders of the wholesalers are out of the ordinary in the light of both the previous business relations between the company and the wholesalers concerned and the size of the orders in relation to the requirements of the market in the Member State concerned. The Court stated that it is for the national court to ascertain whether the orders are 'ordinary' in the light of both those criteria.

Finally, worthy of particular note is Case C-413/06 P *Bertelsmann and Sony Corporation of America* v *Impala* (judgment of 10 July 2008), in which the Court set aside the judgment of the Court of First Instance in Case T-464/04 *Impala* v *Commission* [2006] ECR II-2289 and examined in considerable detail standards of proof and the scope of judicial review in relation to concentrations. First of all, the Court held that there is no general presumption that a notified concentration is compatible with the common market and that decisions approving concentrations are not subject to different standards of proof from those applicable to decisions prohibiting concentrations. Secondly, the Court pointed out that the Commission may, in its decision, depart from the provisional findings in the statement of objections. While the Court of First Instance may therefore verify the correctness, completeness and reliability of the factual material which underpinned the decision in the light of the statement of objections, it must not treat the conclusions set out in that statement as established. Thirdly, the Court stated that the notifying parties cannot be criticised for not putting forward certain information until their reply to the statement of objections and that such information is not subject to more demanding standards of proof than those imposed in relation to the arguments of third parties or other information provided by the notifying undertakings. Moreover, the Court held that when the Commission examines in its decision the arguments submitted in response to the statement of objections, it may depart from the provisional findings in that statement without making a request for information or undertaking any additional market investigations. Fourthly, the Court set out the legal criteria applying to a collective dominant position arising from tacit coordination and held that the assessment of those criteria, including the transparency of the market concerned, should not be undertaken in an isolated and abstract manner, but should be carried out using the mechanism of a hypothetical tacit coordination as a basis. Finally, the Court held that a Commission decision approving a concentration can be annulled on the basis that it is inadequately reasoned.

With regard to State aid, two judgments merit particular attention. One of these concerns the concept of State aid, in particular the condition that the measure be selective, and the other regards the problem of aid that is unlawful but compatible with the common market.

In Joined Cases C-428/06 to C-434/06 *Unión Trabajadores de La Rioja* (judgment of 11 September 2008), the Court was asked whether tax measures adopted by infra-State bodies providing for a rate of tax lower than the basic rate set in Spanish State legislation and for deductions from the amount of tax payable which do not exist in State tax legislation are to be considered State aid that is incompatible with the common market on the sole ground that they apply only in the territory of those bodies. The Court stated that it is for the national court, which alone has jurisdiction to identify the national law applicable and to interpret it, as well as to apply Community law to the cases before it, to determine, in accordance with the judgment in Case C-88/03 *Portugal* v *Commission* [2006] ECR I-7115, whether the infra-State bodies concerned, which in this case were the Historical Territories and the Autonomous Community of the Basque Country, enjoy institutional, procedural and economic autonomy, which, if so, would have the result that the laws adopted within the limits of the areas of competence granted to those infra-State bodies by the Spanish Constitution of 1978 and the other provisions of Spanish law are not of a selective nature within the meaning of the concept of State aid as referred to in Article 87(1) EC. The Court thus had the opportunity to state, in relation to the judgment in Case C-88/03, that such autonomy requires that infra-State bodies assume responsibility for the political and financial consequences of a tax reduction measure. That cannot be the case where such bodies are not responsible for the management of a budget, in other words, where they do not have control of both revenue and expenditure. Moreover, the financial consequences of a reduction of the national tax rate must not be offset by aid or subsidies from other regions or central government which have been declared or result only from the actual examination of the financial flows.

In Case C-199/06 *Centre d'exploitation du livre français* [2008] ECR I-469, the Court held that, while Community law requires the national court to order the measures appropriate to remedy effectively the consequences of unlawfulness, it does not impose an obligation, even in the absence of exceptional circumstances, of full recovery of unlawful aid. According to the Court, the last sentence of Article 88(3) EC is based on the preservative purpose of ensuring that only compatible aid will be implemented. In order to achieve that purpose, the implementation of planned aid is to be deferred until any doubt as to its compatibility is resolved by the Commission's final decision. When the Commission adopts a positive decision, it is then apparent that that purpose has not been frustrated by the premature payment of the aid. However, in that case, from the point of view of operators other than the recipient of such aid, the fact that the aid was unlawful when it was paid will have had the effect of, first, exposing them to the risk, in the event unrealised, of the implementation of incompatible aid, and, second, making them suffer, depending on the circumstances, earlier than they would have had to, in competition terms, the effects of compatible aid. From the aid recipient's point of view, the undue advantage will have consisted, first, in the non-payment of the interest which it would have paid on the amount of the compatible aid in question, had it had to borrow that amount on the market pending the Commission's decision, and, second, in the improvement of its competitive position as against the other operators in the market while the unlawfulness lasted. It is for that reason that the national court must, applying Community law, order the aid recipient to pay interest in respect of the period of unlawfulness. The Court stated in addition that, within the framework of its domestic law, the national court may, if appropriate, also order the recovery of the unlawful aid, without prejudice to the Member State's right to re-implement it subsequently. The national court may also be required to uphold claims for compensation for damage caused by reason of the unlawful nature of the aid.

Moreover, in this judgment, the Court stated that where the Community judicature annuls a Commission decision declaring compatible with the common market aid which, contrary to the prohibition laid down by the last sentence of Article 88(3) EC, had been implemented without awaiting the Commission's final decision, the presumption of the lawfulness of the acts of the Community institutions and the rule that annulment is retroactive apply in turn. Aid implemented after the Commission's positive decision is presumed lawful until the Community judicature decides to annul that decision and subsequently, on the latter decision, the aid is deemed, in accordance with the first paragraph of Article 231 EC, not to have been declared compatible by the annulled decision, with the result that its implementation must be regarded as unlawful. In that case, the rule arising from the first paragraph of Article 231 EC puts a stop, retroactively, to the application of the presumption of lawfulness. Accordingly, the obligation arising from the last sentence of Article 88(3) EC to remedy the consequences of the aid's unlawfulness extends also, for the purposes of calculating the sums to be paid by the recipient, and save for exceptional circumstances, to the period between the adoption of the Commission's positive decision and its annulment by the Community judicature.

Taxation

With regard to value added tax, Case C-288/07 *Isle of Wight Council and Others* (judgment of 16 September 2008) is worthy of mention. In that judgment, the Court clarified the scope of a number of expressions which appear in the second subparagraph of Article 4(5) of Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes ([31]). The Court found that the significant distortions of competition, to which the treatment as non-taxable persons of bodies governed by public law acting as public authorities would lead, must be evaluated by reference to the activity in question, as such, without such evaluation relating to any local market in particular. The Court also stated that the expression 'would lead to', for the purposes of that provision, is to be interpreted as encompassing not only actual competition, but also potential competition, provided that the possibility of a private operator entering the relevant market is real, and not purely hypothetical. The word 'significant' is, for the purposes of that provision, to be understood as meaning that the actual or potential distortions of competition must be more than negligible.

Approximation and harmonisation of laws

Once again, the case-law has proved to be particularly fertile in this area, in which the European Union is extremely active. Reference will be made first of all to a series of judgments which have supplemented the already abundant case-law on public procurement.

In Case C-213/07 *Michaniki* (judgment of 16 December 2008), the Court settled the question whether Member States have discretion to include in their national legislation further grounds for the exclusion of tenderers in addition to those provided for in the relevant Community

([31]) 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).

directives. The Court decided that the first paragraph of Article 24 of Directive 93/37 ([32]) must be interpreted as listing exhaustively the grounds based on objective considerations of professional quality which are capable of justifying the exclusion of a contractor from participation in a public works contract but as not precluding a Member State from providing for further exclusionary measures designed to ensure observance of the principles of equal treatment of tenderers and of transparency, provided that such measures do not go beyond what is necessary to achieve that objective. Since Member States enjoy a certain discretion, it follows that Community law does not preclude the adoption of national measures designed to avoid the risk of occurrence of practices capable of jeopardising transparency and distorting competition, a risk which could arise from the presence, amongst the tenderers, of a contractor active in the media sector or connected with a person involved in that sector, and thus to prevent or punish fraud and corruption. However, a national provision which establishes a system of general incompatibility between the sector of public works and that of the media has the consequence of excluding from the award of public contracts public works contractors who are also involved in the media sector on account of a connection as owner, main shareholder, partner or management executive, without affording them the possibility of showing that there is no real risk of that type. Accordingly, by excluding an entire category of public works contractors on the basis of such an irrebuttable presumption, such a provision goes beyond what is necessary to achieve the claimed objectives.

In Case C-324/07 *Coditel Brabant* (judgment of 13 November 2008), the Court decided that Articles 43 EC and 49 EC, the principles of equal treatment and of non-discrimination on grounds of nationality and the concomitant obligation of transparency do not preclude a public authority from awarding, without calling for competition, a public service concession to an inter-municipal cooperative society of which all the members are public authorities, where those public authorities exercise over that cooperative society control similar to that exercised over their own departments and where that society carries out the essential part of its activities with those public authorities. There must be a power of decisive influence over both the strategic objectives and significant decisions of the concessionaire. It follows that, in circumstances in which decisions regarding the activities of such an inter-municipal cooperative society owned exclusively by public authorities are taken by bodies, created under the statutes of that society, which are composed of representatives of the affiliated public authorities, the control exercised may be regarded as enabling those authorities to exercise over the cooperative society control similar to that exercised over their own departments.

Where a public authority joins an inter-municipal cooperative of which all the members are public authorities in order to transfer to that cooperative society the management of a public service, it is possible, in order for the control to be regarded as similar to that exercised by a public body over its own departments, for it to be exercised jointly, decisions being taken by a majority, as the case may be. The control exercised by a concession-granting public authority must be similar to that which the authority exercises over its own departments, but it need not be identical to it in every respect. The control exercised over the concessionaire must be effective, but it is not essential that it be exercised individually. It must therefore be recognised that, where a number of public authorities own a concessionaire to which they entrust the performance of one of their public service tasks, the control which those public authorities exercise over that entity may be exercised jointly. As regards collective decision-making bodies, the procedure which is used for adopting decisions — such as, inter alia, adoption by majority — is of no importance.

([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).

In Case C-412/04 *Commission* v *Italy* [2008] ECR I-619, the Court held that a Member State which makes mixed works, supply and service contracts and supply or service contracts which include ancillary works, if the works represent more than 50 % of the total value of the relevant contract, subject to the national rules on public works contracts, fails to fulfil its obligations under Directives 92/50 ([33]), 93/36 ([34]) and 93/37 ([35]). Where a contract contains both elements relating to a public works contract and elements relating to another type of contract, it is the main purpose of the contract that determines which Community directive on public procurement is to be applied. The assessment must be made in the light of the essential obligations which predominate and which, as such, characterise the transaction, as opposed to those which are only ancillary or supplementary in nature and are required by the very purpose of the contract; the value of the various matters covered by the contract is, in that regard, just one criterion among others to be taken into account for the purposes of the assessment. The Court also held that if an agreement concluded between a private person who is the owner of development land and the municipal authority satisfies the criteria for the definition of a 'public works contract' within the meaning of Article 1(a) of Directive 93/37, the estimated value which must in principle be taken into account in order to ascertain whether the threshold set by the directive is attained and whether, therefore, the award of the contract must comply with the rules on advertising laid down therein may be calculated solely by reference to the total value of the various works, by adding together the value of the various lots. The only permitted exceptions to the application of Directives 92/50 and 93/38 ([36]) are those which are exhaustively and expressly mentioned therein.

In another case involving the same parties (judgment of 8 April 2008 in Case C-337/05 *Commission* v *Italy*), the question to be determined was whether a Member State can award directly to an undertaking, without complying with the procedures provided for by Directive 93/36 ([37]), contracts for the purchase of helicopters to meet the requirements of several military and civilian corps. The Court found, first of all, that such a procedure cannot be justified by the existence of an 'in-house' relationship if a private undertaking has a shareholding, even a minority holding, in the capital of the company which produces the helicopters, in which the contracting authority in question is also a shareholder, as the undertaking's shareholding precludes the authority from exercising over that company a control similar to that which it exercises over its own departments.

Moreover, as regards reliance on the legitimate requirements of national interest foreseen in Article 296 EC and Article 2(1)(b) of Directive 93/36 on the ground that such helicopters are dual-use items, the Court pointed out that any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected

([33]) 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).

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

([35]) 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).

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

([37]) See footnote 34.

with the production of or trade in arms, munitions and war materials, provided, however, that such measures do not alter the conditions of competition in the common market regarding products which are not intended for specifically military purposes. Therefore, the purchase of equipment the use of which for military purposes is hardly certain must necessarily comply with the rules governing the award of public contracts. That applies to the supply of helicopters to military corps for the purpose of civilian use (and those rules must be complied with even where there is an obligation of confidentiality). Consequently, the negotiated procedure is exceptional in nature and may be applied only in cases which are set out in an exhaustive list. Since Directive 93/36 must be interpreted strictly in order to prevent it being deprived of its effectiveness, the Member States cannot provide for the use of the negotiated procedure in cases not provided for by that directive or add new conditions to the cases expressly provided for which make that procedure easier to use. Furthermore, the burden of proving the existence of exceptional circumstances justifying a derogation from those rules lies on the person seeking to rely on those circumstances.

Reference will next be made, in no particular order, to other cases which are of particular interest.

In Case C-452/06 *Synthon* (judgment of 16 October 2008), the Court was required to interpret Article 28 of Directive 2001/83 ([38]) and held that that provision precludes a Member State to which an application is made for mutual recognition of a marketing authorisation of a medicinal product for human use granted by another Member State under the abridged procedure provided for in Article 10(1)(a)(iii) of that directive from refusing that application on the ground that the medicinal product in question is not essentially similar to the reference product. The existence of a risk to public health constitutes the only ground that a Member State is entitled to rely on to object to the recognition of a marketing authorisation granted by another Member State. In addition, a Member State wishing to rely on such a ground is required to comply with a specifically prescribed procedure for provision of information, concerted action and arbitration. The Court added that, if a Member State was not called upon to make any legislative choices and had only considerably reduced, or even no, discretion, the mere infringement of Community law may be sufficient to establish the existence of a sufficiently serious breach of Community law. Accordingly, since Article 28 of Directive 2001/83 confers on a Member State in receipt of an application for mutual recognition only a very limited discretion in relation to the reasons for which it is entitled to refuse to recognise the marketing authorisation in question, the failure on the part of the Member State to recognise such an authorisation, on the ground that the relevant medicinal product either is not essentially similar to the reference product or belongs to a category of medicinal products for which the Member State concerned has a general policy which does not allow it to be considered as essentially similar, constitutes a sufficiently serious breach of Community law capable of rendering that Member State liable in damages.

([38]) 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).

In Joined Cases C-152/07 to C-154/07 *Arcor* (judgment of 17 July 2008), concerning the telecommunications sector, the Court held that Article 12(7) of Directive 97/33 ([39]) and Article 4c of Directive 90/388 ([40]) must be interpreted as precluding a national regulatory authority from requiring an operator of a network interconnected with a public network to pay to the market-dominant subscriber network operator a connection charge which is additional to an interconnection charge and is intended to compensate the latter operator for the deficit incurred as a result of providing the local loop. Article 12(7) of Directive 97/33 does not allow a national regulatory authority to approve a connection charge the rate of which is not cost-oriented, when it has the same characteristics as an interconnection charge and is levied as a supplement to such a charge. Furthermore, the effect of such a charge is only to protect the market-dominant subscriber network operator, enabling it to fund its own deficit from the subscribers of the other operators of interconnected networks. Such funding, which is separate from any funding of universal service obligations, is contrary to the principle of free competition. The provisions in question produce direct effect and can be relied on directly before a national court by individuals to challenge a decision of the national regulatory authority.

In Case C-426/05 *Tele2 Telecommunications* [2008] ECR I-685, concerning the electronic communications networks and services referred to in Directive 2002/21 ([41]), the Court gave a ruling on the terms user 'affected' or undertaking 'affected' for the purposes of Article 4(1) of that directive ([42]), and the term party 'affected' within the meaning of Article 16(3) of that directive ([43]). Those terms must be interpreted as covering not only an 'undertaking (formerly) having significant power on the relevant market' which is the subject of a decision of a national regulatory authority taken in the context of a market analysis procedure and is the addressee of that decision, but also users and undertakings in competition with such an undertaking which are not themselves addressees of that decision but the rights of which are adversely affected by it. In the context of such proceedings, a provision of national law which grants party status only to 'undertakings (formerly) having significant power on the relevant market' in respect of which specific regulatory obligations are imposed, amended or withdrawn is not, in principle, contrary to Article 4 of the directive. However, it is for the national court to ensure that national procedural law guarantees the safeguarding of the rights which those users and undertakings in competition derive from the Community legal order in a manner which is not less favourable than that in which comparable domestic rights are safeguarded and which does not prejudice the effectiveness of the legal protection of the parties concerned, which is guaranteed in Article 4 of the directive.

([39]) Directive 97/33/EC of the European Parliament and of the Council of 30 June 1997 on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of open network provision (ONP) (OJ 1997 L 199, p. 32), as amended by Directive 98/61/EC of the European Parliament and of the Council of 24 September 1998 (OJ 1998 L 268, p. 37).

([40]) Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services (OJ 1990 L 192, p. 10), as amended by Commission Directive 96/19/EC of 13 March 1996 (OJ 1996 L 74, p. 13).

([41]) 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).

([42]) Which grants any user or undertaking providing electronic communications networks and/or services a right to appeal against a decision taken by a national regulatory authority by which it is affected.

([43]) Which grants to such a person the right to be given an appropriate period of notice of a decision to withdraw sector-specific regulatory obligations.

In Case C-239/07 *Sabatauskas and Others* (judgment of 9 October 2008), concerning the internal market in electricity, the Court held that Article 20 of Directive 2003/54 ([44]) is to be interpreted as defining the Member States' obligations only in respect of the access and not the connection of third parties to the electricity transmission and distribution systems and as not laying down that the system of network access that the Member States are required to establish must allow an eligible customer to choose, at his discretion, the type of system to which he wishes to connect. That provision does not preclude national legislation which lays down that an eligible customer's equipment may be connected to a transmission system only where the distribution system operator refuses, on account of established technical or operating requirements, to connect to its system the equipment of the eligible customer which is on the territory included in its licence. It is, however, for the national courts to verify that the implementation and application of that access system is carried out in accordance with criteria which are objective and do not discriminate between the users of the transmission and distribution systems.

With regard to the protection of personal data, of particular note is Case C-524/06 *Huber* (judgment of 16 December 2008), concerning the German system for processing personal data relating to Union citizens who are not German nationals, under which the data relating to such foreign nationals is to be processed and stored in a special register containing a wider range of information than that relating to German nationals, which is kept in district registers. When asked whether such a system is compatible with Article 7(e) of Directive 95/46 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ([45]), the Court held that such a system, having as its object the provision of support to the national authorities responsible for the application of the legislation relating to the right of residence, does not satisfy the requirement of necessity laid down by that provision, interpreted in the light of the prohibition of any discrimination on grounds of nationality, unless it contains only the data which are necessary for the application by those authorities of that legislation and its centralised nature enables that legislation to be more effectively applied as regards the right of residence of Union citizens who are not nationals of that Member State. It is for the national courts to ascertain whether that is the case. The storage and processing of personal data containing individualised personal information in such a register for statistical purposes cannot, on any basis, be considered to be necessary within the meaning of Article 7(e) of Directive 95/46. Moreover, the Court considered that Article 12(1) EC precludes the putting in place by a Member State, for the purpose of fighting crime, of such a system for processing personal data that is specific to Union citizens who are not nationals of that Member State, since the situation of the nationals of a Member State, as regards the objective of fighting crime, is not different from that of Union citizens who are not nationals of that Member State and are resident in its territory.

In Case C-275/06 *Promusicae* [2008] ECR I-271, the Court held that Community law does not require the Member States to lay down an obligation to communicate personal data in order to ensure effective protection of copyright in the context of civil proceedings. In a situation in

([44]) Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC (OJ 2003 L 176, p. 37).

([45]) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).

which a non-profit-making organisation of producers and publishers of musical and audiovisual recordings brings proceedings seeking an order that a provider of Internet access services disclose to the organisation the identities and addresses of certain subscribers, so as to enable civil proceedings to be brought for infringement of copyright, neither the directives relating to the information society and the protection of intellectual property, especially copyright ([46]), nor those relating to the protection of personal data ([47]) require the Member States to lay down an obligation to communicate personal data in order to ensure effective protection of copyright in the context of civil proceedings. The agreement on trade-related aspects of intellectual property rights (TRIPs Agreement) does not contain provisions which require those directives to be interpreted as compelling the Member States to lay down such an obligation. However, the Court pointed out that Community law requires that, when transposing those directives, the Member States take care to rely on an interpretation of them which allows a fair balance to be struck between the various fundamental rights protected by the Community legal order. When implementing the measures transposing those directives, the authorities and courts of the Member States must not only interpret their national law in a manner consistent with those directives but also make sure that they do not rely on an interpretation of them which would be in conflict with fundamental rights or with the other general principles of Community law, such as the principle of proportionality.

In two cases, the Court was called upon to consider Directive 2000/35 on combating late payment in commercial transactions ([48]).

In Case C-306/06 *01051 Telecom* (judgment of 3 April 2008), involving a dispute concerning payment of default interest claimed following alleged late payment of invoices, the Court held that Article 3(1)(c)(ii) of that directive is to be interpreted as meaning that it requires, in order that a payment by bank transfer may avoid or put an end to the application of interest for late payment, that the sum due be credited to the account of the creditor within the period for payment.

In Case C-265/07 *Caffaro* (judgment of 11 September 2008), the Court held that that directive is to be interpreted as not precluding a national provision pursuant to which a creditor in possession of an enforceable title in respect of an unchallenged claim against a public authority as remuneration for a commercial transaction cannot proceed to forced execution against the public authority before a period of 120 days has elapsed since service of the enforceable title on the authority. As regards the recovery procedures for unchallenged claims, the directive

([46]) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market (OJ 2000 L 178, p. 1), Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10) and Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45).

([47]) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31) and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (OJ 2002 L 201, p. 37).

([48]) Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions (OJ 2000 L 200, p. 35).

harmonises only the period within which an enforceable title can be obtained, but does not govern forced execution procedures, which remain subject to the national law of the Member States.

With regard to consumer protection, there are again two judgments which merit consideration.

In Case C-412/06 *Hamilton* (judgment of 10 April 2008), the Court stated that Directive 85/577 to protect the consumer in respect of contracts negotiated away from business premises ([49]) must be interpreted as meaning that the national legislature is entitled to provide that the right of cancellation laid down in Article 5(1) of the directive, which provides that the consumer can renounce the effects of his undertaking by sending notice within a period of not less than seven days from the date on which the trader notified him of that right, may be exercised no later than one month from the date on which the contracting parties performed in full their obligations under a contract for long-term credit, where the consumer has been given defective notice concerning the exercise of that right.

In Case C-404/06 *Quelle* (judgment of 17 April 2008), a reference was made to the Court by the Bundesgerichtshof (Federal Court of Justice) concerning a dispute between a consumers' association and Quelle, which had, in accordance with German legislation, requested and obtained payment from a consumer for use of a defective appliance which was replaced with a new appliance. The Court considered that Directive 1999/44 on consumer goods ([50]) precludes national legislation under which a seller who has sold consumer goods which are not in conformity may require the consumer to pay compensation for the use of the defective goods until their replacement with new goods. The 'free of charge' aspect of the seller's obligation to bring goods into conformity is intended to protect consumers from the risk of financial burdens which might dissuade them from asserting their rights in the absence of such protection. Moreover, the 'free of charge' aspect of the seller's obligation is consistent with the purpose of that directive, which is to ensure a high level of consumer protection. The seller, who, in contrast with the consumer who has already paid the selling price, does not perform his contractual obligation correctly if he delivers goods which are not in conformity, must bear the consequences of that faulty performance. The seller's financial interests are nevertheless protected, on the one hand, by the two-year time limit and, on the other, by the fact that it may refuse to replace the goods where that remedy would be disproportionate in that it would impose unreasonable costs on the seller.

([49]) Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJ 1985 L 372, p. 31).

([50]) Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ 1999 L 171, p. 12).

Trade marks

With regard to the case-law on trade marks, two cases dealing with the possibility under Articles 5(1)(b) and 6(1)(b) of Directive 89/104 ([51]) for the proprietor of a trade mark to prevent the use of a sign that is similar to his mark merit particular attention.

In Case C-533/06 *O_2 Holdings and O_2 (UK)* (judgment of 12 June 2008), O_2, the proprietor of two United Kingdom trade marks consisting of a static picture of bubbles, used that image to promote its services both as a static and a moving image. In an advertisement comparing its services with those of O_2, Hutchison 3G used moving black-and-white bubble imagery. In infringement proceedings brought by O_2, which were dismissed by the High Court at first instance, the Court of Appeal asked, in essence, whether the proprietor of a trade mark is entitled to prevent the use of a sign which is identical with, or similar to, his mark in a comparative advertisement. Pointing out, first of all, the conditions laid down in Article 3a of Directive 84/450 ([52]), as amended by Directive 97/55 ([53]), under which the proprietor of a trade mark is permitted to prevent such use, the Court ruled that Article 5(1)(b) of Directive 89/104 is to be interpreted as meaning that the proprietor of a registered trade mark is not entitled to prevent the use by a third party, in a comparative advertisement, of a sign similar to that mark in relation to goods or services identical with, or similar to, those for which that mark was registered where such use does not give rise to a likelihood of confusion on the part of the public, and that is so irrespective of whether the comparative advertisement satisfies all the conditions under which such advertising is permitted.

In Case C-102/07 *adidas and adidas Benelux* (judgment of 10 April 2008), adidas AG, the proprietor of figurative trade marks composed of three vertical, parallel stripes of equal width which are featured on the sides of sports and leisure garments in a colour which contrasts with the basic colour of those garments, objected to the companies Marca Mode, C & A, H & M and Vendex using a similar sign composed of two stripes. Those companies relied on the requirement of availability to use those stripes without adidas' permission. Following a reference from the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), the Court found that the requirement of availability cannot in any circumstances constitute an independent restriction of the effects of the trade mark in addition to those expressly provided for in Article 6(1)(b) of Directive 89/104. However, the proprietor of a mark cannot prevent the fair use by third parties of descriptive indications. In order for a third party to be able to plead the limitations of the effects of a trade mark in that trade marks directive and rely on the requirement of availability, the indication used by it must relate to one of the characteristics of the goods.

([51]) 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).

([52]) Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (OJ 1984 L 250, p. 17).

([53]) Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising (OJ 1997 L 290, p. 18).

Social policy

Among the Court's judgments given in the field of social policy, attention should be focused on a number of cases that deal with the implementation of the principle of equal treatment and with provisions designed to protect workers, as well as a case dealing with institutional issues which are of particular interest.

First of all, the Court developed its case-law on the interpretation of Directive 2007/78 on equal treatment in employment and occupation ([54]) in the context of two references for preliminary rulings. In Case C-303/06 *Coleman* (judgment of 17 July 2008), the Court stated that the principle of equal treatment enshrined in that directive applies not to a particular category of person but by reference to the grounds of discrimination mentioned in Article 1 thereof and the prohibition of direct discrimination is not therefore limited only to people who are themselves disabled. Accordingly, where an employer treats an employee who is not himself disabled less favourably than another employee in a comparable situation and it is established that the less favourable treatment of that employee is based on the disability of his child, whose care is provided primarily by that employee, such treatment is contrary to the prohibition of direct discrimination laid down by Article 2 of that directive. Any other interpretation is liable to deprive the directive of an important element of its effectiveness and to reduce the protection which it is intended to guarantee. The same reasoning applies with regard to harassment, since it is deemed to be a form of discrimination within the meaning of the directive. The prohibition of harassment cannot therefore be limited only to persons who are themselves disabled but extends to persons who are subject to conduct amounting to harassment related to the disability of their child.

In Case C-267/06 *Maruko* (judgment of 1 April 2008), the Court held that a survivor's benefit granted under an occupational pension scheme managed by a pension fund for a particular category of workers falls within the scope of Directive 2000/78. Such a benefit must be classified as 'pay' within the meaning of Article 141 EC on account of the fact, in particular, that it is derived from the employment relationship of the deceased person. Moreover, Articles 1 and 2 of that directive preclude legislation under which, after the death of his life partner, the surviving partner does not receive a survivor's benefit equivalent to that granted to a surviving spouse, even though, under national law, life partnership places persons of the same sex in a situation comparable to that of spouses so far as concerns that survivor's benefit. According to the Court, the refusal to grant life partners a survivor's benefit constitutes direct discrimination on grounds of sexual orientation. It is for the national court to determine whether a surviving life partner is in a situation comparable to that of a spouse who is entitled to the survivor's benefit provided for under the occupational pension scheme managed by the pension fund concerned.

The Court also developed its case-law in the field of protection of pregnant women and equal treatment of men and women in Case C-506/06 *Mayr* [2008] ECR I-1017, concerning a woman who had undergone *in vitro* fertilisation treatment. The judgment stated that Directive

([54]) 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).

92/85 ([55]), which provides, inter alia, for the protection of female workers against dismissal, must be interpreted as not extending to a female worker who is undergoing *in vitro* fertilisation treatment where, on the date she is given notice of her dismissal, her ova have already been fertilised by her partner's sperm cells, so that *in vitro* fertilised ova exist, but they have not yet been transferred into her uterus. The protection established by Article 10 of Directive 92/85 cannot, for reasons connected with the principle of legal certainty, given the period of time for which fertilised ova may potentially be conserved, be extended to such a worker. On the other hand, the Court stated that Directive 76/207 on the implementation of the principle of equal treatment for men and women ([56]) precludes the dismissal of a female worker who is at an advanced stage of *in vitro* fertilisation treatment, that is, between the follicular puncture and the immediate transfer of the *in vitro* fertilised ova into her uterus, where it is established that the dismissal is essentially based on the fact that the woman has undergone such treatment. Since such medical treatment directly affects only women, the dismissal of a female worker essentially because she is undergoing that important stage of *in vitro* fertilisation treatment constitutes direct discrimination on grounds of sex.

Case C-396/07 *Juuri* (judgment of 27 November 2008) enabled the Court to clarify the effect of Articles 3 and 4 of Directive 2001/23 concerning employees' rights in the event of transfers of undertakings ([57]). Article 4(2) of that directive provides that, where a contract of employment is terminated as a result of a substantial change in working conditions due to a transfer of the undertaking, the employer is to be regarded as responsible for the termination. The Court held that, in the absence of any failure on the part of the transferee employer to fulfil its obligations under that directive, the Member States are not required by that provision to guarantee the employee a right to financial compensation, for which the transferee employer is liable, in accordance with the same conditions as the right upon which an employee can rely where the contract of employment or the employment relationship is unlawfully terminated by his employer. However, in such a case, the national court is required, in a case within its jurisdiction, to ensure that, at the very least, the transferee employer bears the consequences that the applicable national law attaches to termination by an employer of the contract of employment or the employment relationship, such as the payment of the salary and other benefits relating to the notice period. Moreover, the Court stated that Article 3(3) of Directive 2001/23, which provides that, following the transfer, the transferee is to continue to observe the terms and conditions agreed in a collective agreement until the date of termination or expiry of the collective agreement, does not require the transferee to ensure that the working conditions are observed after that date, even though that date coincides with the date on which the undertaking was transferred.

([55]) 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).

([56]) 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).

([57]) 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).

In Case C-268/06 *Impact* (judgment of 15 April 2008), the Court was required to consider the issue of the Member States' procedural autonomy and the direct effect of Community legislation on fixed-term employment in the public sector.

The Court held that Community law, in particular the principle of effectiveness, requires that a specialised court which is called upon, under the, albeit optional, jurisdiction conferred on it by the legislation transposing Directive 1999/70 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, to hear and determine a claim based on an infringement of that legislation must also have jurisdiction to hear and determine an applicant's claims arising directly from the directive itself in respect of the period between the deadline for transposing the directive and the date on which the transposing legislation entered into force, if it is established that the obligation on that applicant to bring, at the same time, a separate claim based directly on the directive before an ordinary court would involve procedural disadvantages liable to render excessively difficult the exercise of the rights conferred on him by Community law. Clause 4(1) of that framework agreement, which prohibits any difference in treatment of fixed-term workers in respect of employment conditions which is not objectively justified, is unconditional and sufficiently precise for individuals to be able to rely upon it before a national court; that is not the case as regards Clause 5(1), which assigns to the Member States the general objective of preventing the abusive use of successive fixed-term employment contracts or relationships, while leaving to them the choice as to how to achieve it.

An authority of a Member State acting in its capacity as a public employer may not adopt measures which consist in the renewal of fixed-term contracts for an unusually long term in the period between the deadline for transposing Directive 1999/70 and the date on which the transposing legislation entered into force. In such circumstances, insofar as the applicable national law contains a rule that precludes the retrospective application of legislation unless there is a clear and unambiguous indication to the contrary, a national court hearing a claim based on an infringement of a provision of national legislation transposing Directive 1999/70 is required, under Community law, to give that provision retrospective effect to the date by which that directive should have been transposed only if that national legislation includes an indication of that nature capable of giving that provision retrospective effect.

Environment

In Case C-188/07 *Commune de Mesquer* (judgment of 24 June 2008), following the sinking off the French Atlantic coast of the *Erika*, a vessel chartered by Total International Ltd, the commune de Mesquer (Municipality of Mesquer) brought proceedings in reliance upon the waste framework directive ([58]) against companies in the Total group for recovery of the costs incurred on cleaning and anti-pollution measures along its coast. Requested by the French Court of Cassation to interpret that directive, the Court of Justice ruled that heavy fuel oil transported by a ship does not constitute 'waste' where it is exploited or marketed on economically advantageous terms and is capable of actually being used as a fuel without requiring prior processing.

([58]) Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Commission Decision 96/350/EC of 24 May 1996 adapting Annexes IIA and IIB to Council Directive 75/442/EEC on waste (OJ 1996 L 135, p. 32).

However, such hydrocarbons spilled following a shipwreck, mixed with water and sediment and drifting along the coast of a Member State until being washed up on that coast, are to be regarded as substances which the holder did not intend to produce and which he discards, albeit involuntarily, while they are being transported, so that they must be classified as waste within the meaning of the waste framework directive. Also, for the purpose of determining who had to bear the cost of the Municipality of Mesquer's disposal of the waste, the Court held, first, that the owner of a ship carrying hydrocarbons, being in possession of them immediately before they become waste, may be regarded as having produced the waste and on that basis be categorised as a 'holder' within the meaning of that directive and, second, that the seller of the hydrocarbons and charterer of the ship carrying them has 'produced' waste if the national court finds that that seller–charterer contributed to the risk that the pollution caused by the shipwreck would occur, in particular if he failed to take measures to prevent such an incident, such as measures concerning the choice of ship. Finally, the Court held that if the cost of disposing of the waste is not borne or cannot be borne by the International Oil Pollution Compensation Fund and, in accordance with the limitations and/or exemptions of liability laid down, the national law of a Member State, including the law derived from international agreements, prevents that cost from being borne by the shipowner and the charterer, even though they are regarded as holders, such a national law then has to make provision for the cost of disposing of the waste to be borne by the producer of the product from which the waste thus spread came. By virtue of the 'polluter pays' principle, however, such a producer cannot be liable to bear that cost unless he has contributed by his conduct to the risk that the pollution caused by the shipwreck will occur.

The scope of Directive 85/337 ([59]), as amended by Directive 97/11 ([60]), was clarified in two cases relating to its interpretation.

While in Case C-142/07 *Ecologistas en Acción-CODA* (judgment of 25 July 2008) the association Ecologistas en Acción-CODA challenged the assessment carried out by the city council of Madrid of the environmental effects of projects for refurbishment and improvement of the Madrid urban ring road on the basis that Directive 85/337 as amended had been infringed, in Case C-2/07 *Abraham and Others* [2008] ECR I-1197 individuals who lived near Liège–Bierset Airport complained of noise pollution resulting from the restructuring of that former military airport in an action before the Belgian Court of Cassation concerning liability. In both cases the question arose as to whether the concept of projects as referred to in that directive could encompass projects for the modification, refurbishment, improvement and extension of the infrastructure in question. In *Ecologistas en Acción-CODA*, the Court ruled that the directive as amended must be interpreted providing for environmental impact assessment of refurbishment and improvement projects for urban roads, either where they are projects covered by point 7(b) or (c) of Annex I to the directive — that is to say, inter alia, the 'construction of motorways and express roads' — or where they are projects covered by point 10(e) of Annex II or the first indent of point 13 of Annex II, which are likely, by virtue of their nature, size or location and, if appropriate, having regard to their interaction with other projects, to have significant effects on the environment. The Court stated that a project for refurbishment of a road which would be

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

([60]) Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ 1977 L 73, p. 5).

equivalent, because of its size and the manner in which it is carried out, to construction may be regarded as a construction project for the purposes of Annex I and that it would be contrary to the very purpose of the directive as amended to allow any urban road project to fall outside its scope solely on the ground that the directive does not expressly mention among the projects listed in Annexes I and II those concerning that kind of road. In *Abraham and Others*, the Court ruled that point 12 of Annex II, read in conjunction with point 7 of Annex I, to Directive 85/337, in their original version, also encompasses works to modify the infrastructure of an existing airport, without extension of the runway, where they may be regarded, in particular because of their nature, extent and characteristics, as a modification of the airport itself. It explained that it would be contrary to the very objective of that directive to exclude works to improve or extend the infrastructure of an existing airport from the scope of Annex II on the ground that Annex I covers the 'construction of airports' and not 'airports' as such.

In Case C-237/07 *Janecek* (judgment of 25 July 2008), the Court ruled that Article 7(3) of Directive 96/62 on ambient air quality assessment and management ([61]), as amended by Regulation No 1882/2003 ([62]), must be interpreted as meaning that, where there is a risk that the limit values or alert thresholds may be exceeded, persons directly concerned must be in a position to require the competent national authorities to draw up an action plan, even though, under national law, those persons may have other courses of action available to them for requiring those authorities to take measures to combat atmospheric pollution. The Member States are obliged, subject to judicial review by the national courts, to take such measures — in the context of an action plan and in the short term — as are capable of reducing to a minimum the risk that the limit values or alert thresholds may be exceeded and of ensuring a gradual return to a level below those values or thresholds, taking into account the factual circumstances and all opposing interests.

Judicial cooperation in civil matters

In the field of judicial cooperation in civil matters, Case C-195/08 PPU *Rinau* (judgment of 11 July 2008) is to be noted in particular. This was the first case decided by the Court under the urgent preliminary ruling procedure, which entered into force on 1 March 2008. Application had been made to the Supreme Court of Lithuania for non-recognition in Lithuania of a decision made by a German court awarding custody of a child to her father, who was resident in Germany, and ordering the mother, who was resident in Lithuania, to return the child to the father. The Supreme Court was uncertain to what extent the enforceability of the German court's decision requiring the child's return, conferred on that decision by the certificate issued pursuant to Regulation No 2201/2003 concerning jurisdiction and the recognition and enforcement

([61]) Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management (OJ 1996 L 296, p. 55).

([62]) Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty (OJ 2003 L 284, p. 1).

of judgments in matrimonial matters and the matters of parental responsibility ([63]), could be called into question on the ground that the Lithuanian courts had finally ordered that the child be returned to Germany. The Court of Justice held that, once a decision that a child not be returned has been taken and brought to the attention of the court of origin, it is irrelevant, for the purposes of issuing the certificate provided for in Article 42 of Regulation No 2201/2003, that that decision has been suspended, overturned, set aside or, in any event, has not become res judicata or has been replaced by a decision ordering return, insofar as the return of the child has not actually taken place. Since no doubt had been expressed as regards the authenticity of that certificate and since it was drawn up in accordance with the standard form set out in Annex IV to the regulation, opposition to the recognition of the decision ordering return was not permitted and it was for the requested court only to declare the enforceability of the certified decision and to allow the immediate return of the child. According to the Court, if the position were otherwise, there would be a risk that Regulation No 2201/2003 would be deprived of its useful effect, since the objective of the return of the child would remain subject to the condition that the redress procedures allowed under the domestic law of the Member State in which the child is wrongfully retained have been exhausted.

Police and judicial cooperation in criminal matters, and combating terrorism

In Case C-66/08 *Kozłowski* (judgment of 17 July 2008), relating to the execution of a European arrest warrant, the Court interpreted Article 4(6) of Framework Decision 2002/584 ([64]), which permits the executing judicial authority to refuse to execute such a warrant where the requested person 'is staying in, or is a national or a resident of, the executing Member State' and that State undertakes to execute the sentence in accordance with its domestic law. The Court held that a requested person is 'resident' in the executing Member State when he has established his actual place of residence there. He is 'staying' there when, following a stable period of presence in the executing Member State, he has acquired connections with that State which are of a similar degree to those resulting from residence; it is for the executing judicial authority to determine whether there are such connections by making an overall assessment of various objective factors characterising the situation of that person, including, in particular, the length, nature and conditions of his presence and his family and economic connections. Since the objective of the framework decision is to put in place a system of surrender, as between judicial authorities, of convicted persons or suspects for the purpose of enforcing judgments or of criminal proceedings, based on the principle of mutual recognition — a surrender which the executing judicial authority can oppose only on one of the grounds for refusal provided for by the framework decision — the terms 'staying' and 'resident', which determine the scope of the framework decision, must be defined uniformly as they concern autonomous concepts of Union law. Therefore, in their national law transposing the framework decision, the Member States are not entitled to give those terms a broader meaning than that which derives from such a uniform interpretation.

([63]) 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).

([64]) 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).

Common foreign and security policy

In Case C-91/05 *Commission* v *Council* (judgment of 20 May 2008), the Court annulled Decision 2004/833 ([65]) implementing Joint Action 2002/589 ([66]) with a view to a European Union contribution to the Economic Community of West African States in the framework of a moratorium on small arms and light weapons. That Council decision had been adopted on the basis of the Treaty on European Union, under the common foreign and security policy (CFSP), rather than on the basis of the EC Treaty, under development cooperation policy. The Court stated that, while the objectives of development cooperation policy should not be limited to measures directly related to the campaign against poverty, it is nonetheless necessary, if a measure is to fall within that policy, that it contributes to the pursuit of the policy's economic and social development objectives. Certain measures aiming to prevent fragility in developing countries, including those adopted in the framework of the moratorium, can contribute to the pursuit of these objectives. A concrete measure aiming to combat the proliferation of small arms and light weapons may be adopted by the Community under its development cooperation policy only if the measure, by virtue both of its aim and of its content, falls within the scope of the competences conferred by the EC Treaty on the Community in that field. The Court recalled the case-law stating that where a measure simultaneously pursues a number of objectives or has several components, without one being incidental to the other, and various legal bases of the EC Treaty are applicable, the measure will have to be founded, exceptionally, on the various corresponding legal bases. The Court held, however, that under Article 47 of the Treaty on European Union such a solution is impossible with regard to a measure which, like Decision 2004/833, pursues a number of objectives or which has several components falling, respectively, within development cooperation policy and within the CFSP, and where one of those components is not incidental to the other. Since Article 47 of the Treaty on European Union precludes the Union from adopting, on the basis of that Treaty, a measure which could properly be adopted on the basis of the EC Treaty, the Union cannot have recourse to a legal basis falling within the CFSP in order to adopt provisions which also fall within a competence conferred by the EC Treaty on the Community. The Court concluded that the Council infringed Article 47 of the Treaty on European Union by adopting Decision 2004/833 on the basis of the CFSP, since that decision also fell within development cooperation policy.

([65]) Council Decision 2004/833/CFSP of 2 December 2004 implementing Joint Action 2002/589/CFSP with a view to a European Union contribution to Ecowas in the framework of the Moratorium on Small Arms and Light Weapons (OJ 2004 L 359, p. 65).

([66]) Council Joint Action 2002/589/CFSP of 12 July 2002 on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons (OJ 2002 L 191, p. 1).

B — Composition of the Court of Justice

(Order of precedence as at 6 October 2008)

First row, from left to right:

L. Bay Larsen, President of Chamber; G. Arestis, President of Chamber; M. Poiares Maduro, 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; A. Tizzano, President of Chamber; U. Lõhmus, President of Chamber.

Second row, from left to right:

E. Juhász, Judge; J. Makarczyk, Judge; J. Kokott, Advocate General; J. N. Cunha Rodrigues, Judge; D. Ruiz-Jarabo Colomer, Advocate General; R. Silva de Lapuerta, Judge; K. Schiemann, Judge; P. Kūris, Judge; A. Borg Barthet, Judge.

Third row, from left to right:

P. Lindh, Judge; E. Sharpston, Advocate General; E. Levits, Judge; J. Malenovský, Judge; M. Ilešič, Judge; J. Klučka, Judge; A. Ó Caoimh, Judge; P. Mengozzi, Advocate General.

Fourth row, from left to right:

J.-J. Kasel, Judge; 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; R. Grass, Registrar.

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 of 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; Member of 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 from 12 July 1996 to 14 January 2008.

Antonio Tizzano

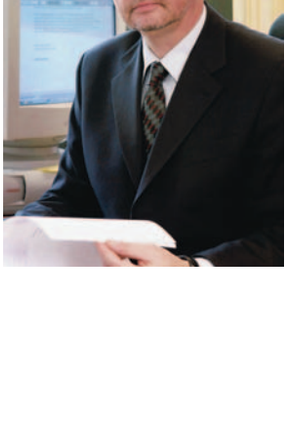
Born 1940; Professor of European Union Law at La Sapienza University, Rome; Professor at the Istituto Universitario Orientale, Naples (1969–79), Federico II University, Naples (1979–92), the University of Catania (1969–77) and the University of Mogadishu (1967–72); Member of the Bar at the Italian Court of Cassation; Legal Adviser to the Permanent Representation of the Italian Republic to the European Communities (1984–92); member of the Italian delegation at the negotiations for the accession of the Kingdom of Spain and the Portuguese Republic to the European Communities, for the Single European Act and for the Treaty on European Union; author of numerous publications, including commentaries on the European Treaties and collections of European Union legal texts; founder and director since 1996 of the journal *Il Diritto dell'Unione Europea*; member of the managing or editorial board of a number of legal journals; rapporteur at numerous international congresses; conferences and courses at various international institutions, including The Hague Academy of International Law (1987); member of the independent group of experts appointed to examine the finances of the Commission of the European Communities (1999); 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; Principal State Counsel (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

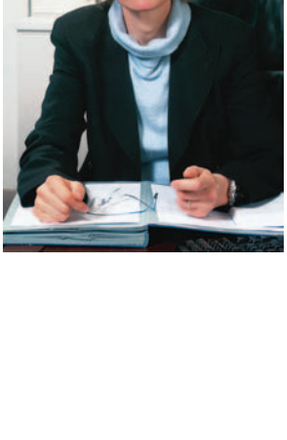
Born 1948; Doctor of Laws (1977) of the University of Turku (Finland); Professor of Law at the University of Turku (1978–81) and at the Åbo Akademi University (Turku/Åbo) (1981–96); Director of the latter's Institute for Human Rights (1985–95); various international and national academic positions of 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, OSCE (CSCE) 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); LLM (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 (OSCE); 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 at 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 in 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 OSCE (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

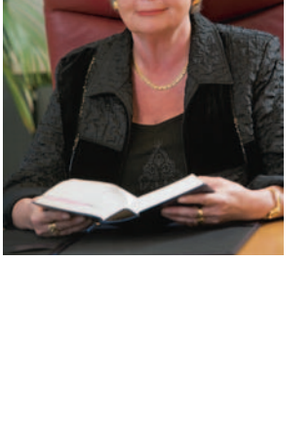
Born 1953; awarded degrees in political science (1976) and law (1983) at the University of Copenhagen; Official at the Ministry of Justice (1983–85); Lecturer (1984–91), then Associate Professor (1991–96), in family law at the University of Copenhagen; Head of Section at the Advokatsamfund (Danish Bar 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 Program of the University of Nijmegen; member of the consultative committee of the Commission of the European Communities on public procurement; Under-Secretary of State for Trade and Industry during the Italian tenure of the Presidency of the Council; member of the working group of the European Community on the World Trade Organisation (WTO) and director of the 1997 session of the 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

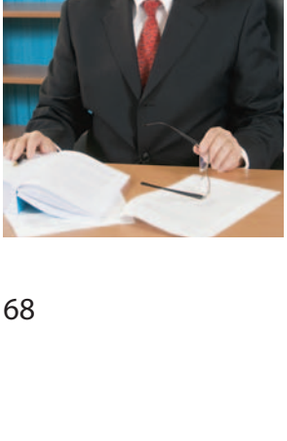
Born 1955; graduated in law at the University of Metz, degree from the Institut d'études politiques, Paris, former student at the École nationale d'administration; rapporteur (1982–85), commissaire du gouvernement (1985–87 and 1992–99), Judge (1999–2000), President of the Sixth Sub-Division of the Judicial 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.

Jean-Jacques Kasel

Born 1946; Doctor of Laws; special degree in administrative law (Université libre de Bruxelles, 1970); graduated from the Institut d'études politiques, Paris (Ecofin, 1972); trainee lawyer; Legal Adviser of the Banque de Paris et des Pays-Bas (1972–73); Attaché, then Legation Secretary at the Ministry of Foreign Affairs (1973–76); Chairman of the working groups of the Council of Ministers (1976); First Embassy Secretary, Deputy Permanent Representative to the OECD (Paris, 1976–79); Head of the Office of the Vice-President of the Government (1979–80); Chairman, European Political Cooperation (1980); Adviser, then Deputy Head of the Cabinet, of the President of the Commission of the European Communities (1981); Director, Budget and Staff Matters, at the General Secretariat of the Council of Ministers (1981–84); Special Adviser at the Permanent Representation to the European Communities (1984–85); Chairman of the Budgetary Committee; Minister Plenipotentiary, Director of Political and Cultural Affairs (1986–91); Diplomatic Adviser of the Prime Minister (1986–91); Ambassador to Greece (1989–91, non-resident); Chairman of the Policy Committee (1991); Ambassador, Permanent Representative to the European Communities (1991–98); Chairman of Coreper (first half of 1997); Ambassador (Brussels, 1998–2002); Permanent Representative to NATO (1998–2002); Marshal of the Court and Head of the Office of HRH the Grand Duke (2002–07); Judge at the Court of Justice since 15 January 2008.

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. Change in the composition of the Court of Justice in 2008

Formal sitting on 14 January 2008

By decision of the representatives of the Governments of the Member States of the European Communities of 3 December 2007, Mr Jean-Jacques Kasel was appointed Judge of the Court of Justice of the European Communities until 6 October 2009.

Mr Jean-Jacques Kasel succeeded Mr Romain Schintgen who had carried out the duties of Judge at the Court of First Instance from 25 September 1989 until 11 July 1996 and those of Judge at the Court of Justice from 12 July 1996.

3. Order of precedence

from 1 January to 14 January 2008

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

from 15 January to 6 October 2008

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
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
J.-J. KASEL, Judge

R. GRASS, Registrar

from 7 October to 31 December 2008

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

1. New cases, completed cases, cases pending (2004–08)

New cases

2. Nature of proceedings (2004–08)
3. Direct actions — Type of action (2008)
4. Subject matter of the action (2008)
5. Actions for failure of a Member State to fulfil its obligations (2004–08)

Completed cases

6. Nature of proceedings (2004–08)
7. Judgments, orders, opinions (2008)
8. Bench hearing action (2004–08)
9. Subject matter of the action (2004–08)
10. Subject matter of the action (2008)
11. Judgments concerning failure of a Member State to fulfil its obligations: outcome (2008)
12. Duration of proceedings (2004–08)

Cases pending as at 31 December

13. Nature of proceedings (2004–08)
14. Bench hearing action (2008)

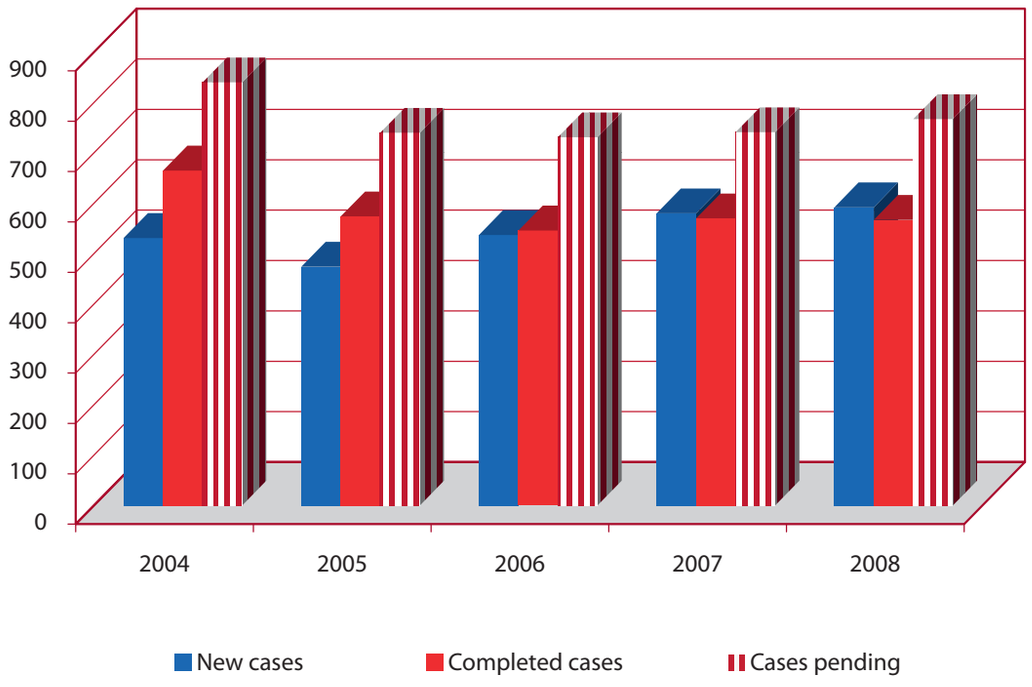
Miscellaneous

15. Expedited and accelerated procedures (2004–08)
16. Urgent preliminary ruling procedure (2008)
17. Proceedings for interim measures (2008)

General trend in the work of the Court (1952–2008)

18. New cases and judgments
19. New references for a preliminary ruling (by Member State per year)
20. New references for a preliminary ruling (by Member State and by court or tribunal)
21. New actions for failure of a Member State to fulfil its obligations

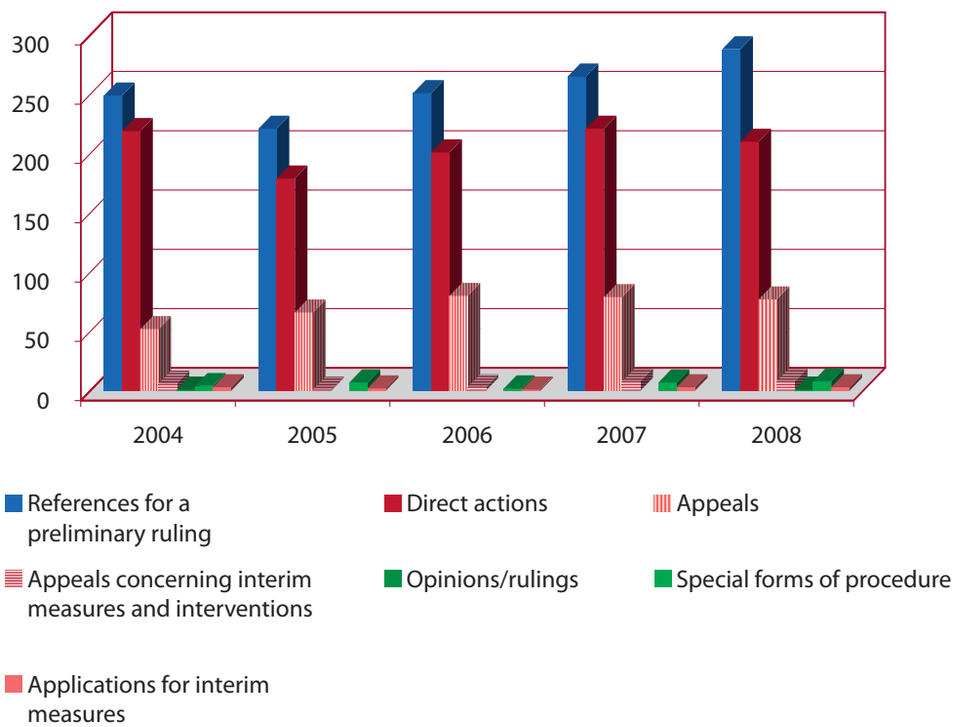
1. *General activity of the Court of Justice* — New cases, completed cases, cases pending (2004–08) ([1])



	2004	2005	2006	2007	2008
New cases	531	474	537	580	592
Completed cases	665	574	546	570	567
Cases pending	840	740	731	741	767

([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 (2004–08) (1) (2)

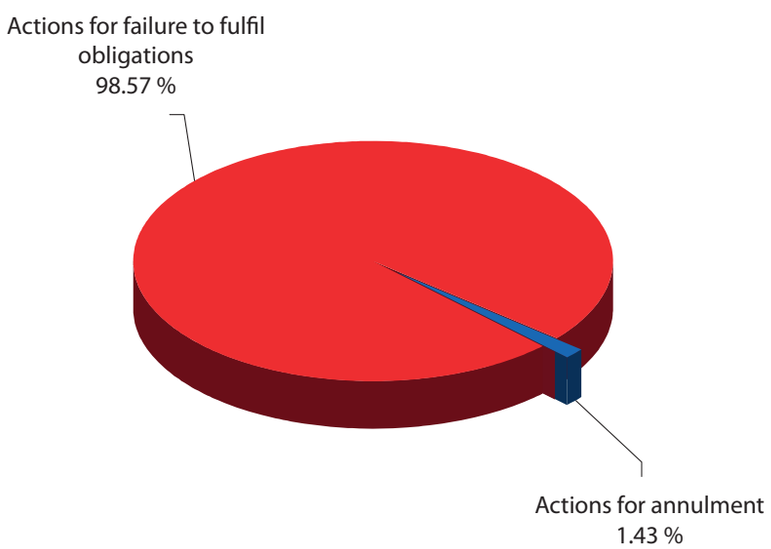


	2004	2005	2006	2007	2008
References for a preliminary ruling	249	221	251	265	288
Direct actions	219	179	201	221	210
Appeals	52	66	80	79	77
Appeals concerning interim measures and interventions	6	1	3	8	8
Opinions/rulings	1				1
Special forms of procedure	4	7	2	7	8
Total	**531**	**474**	**537**	**580**	**592**
Applications for interim measures	3	2	1	3	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).

(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); examination of a proposal by the First Advocate General to review a decision of the Court of First Instance (Article 62 of the Statute of the Court of Justice); attachment procedure (Protocol on Privileges and Immunities); cases concerning immunity (Protocol on Privileges and Immunities).

3. *New cases* — Direct actions — Type of action (2008) [1]



Actions for annulment	3
Actions for failure to act	
Actions for failure to fulfil obligations	207
Total	**210**

[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).

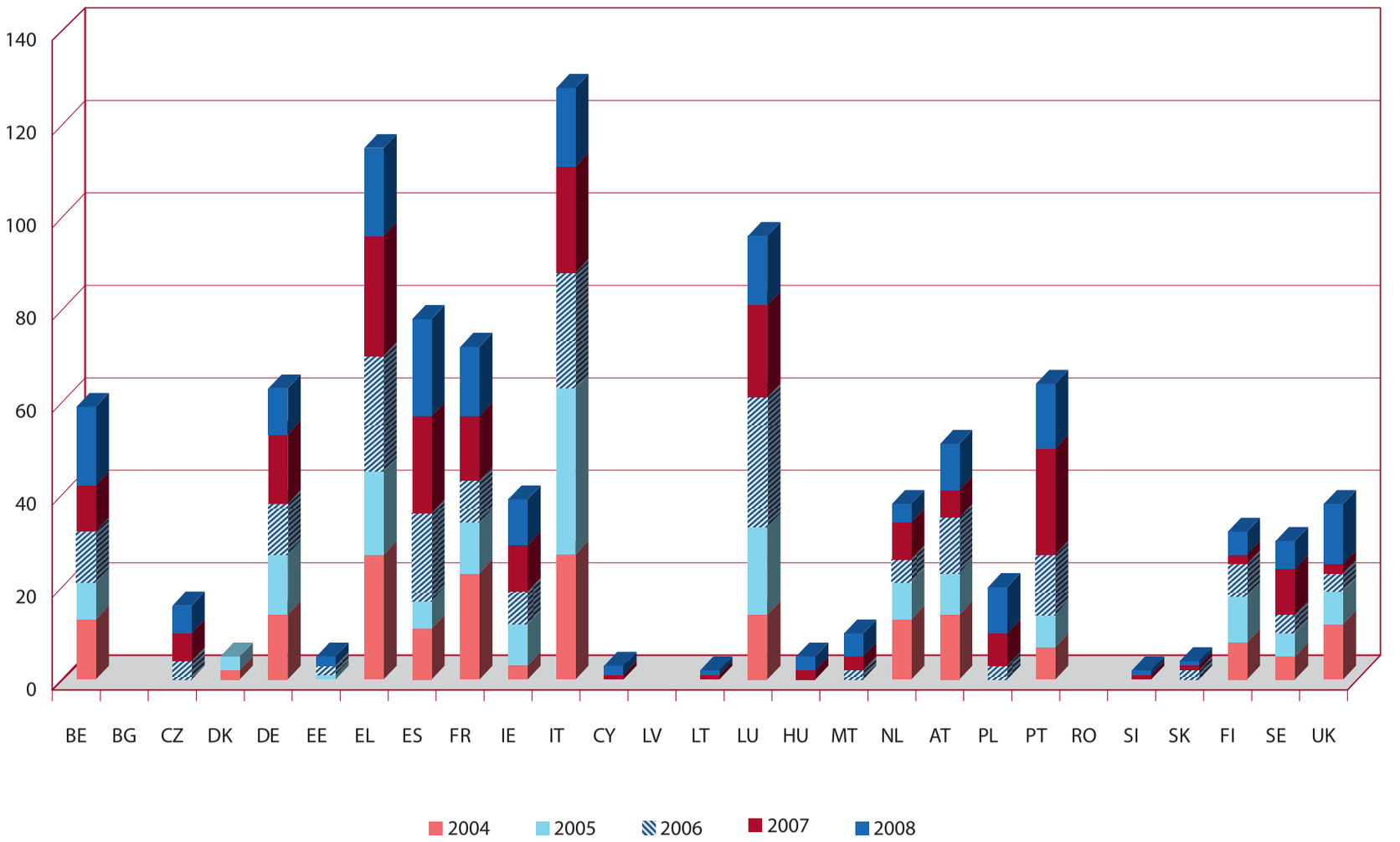
4. *New cases* (1) — Subject matter of the action (2008) (2)

	Direct actions	References for a preliminary ruling	Appeals	Appeals concerning interim measures and interventions	Total	Special forms of procedure
Agriculture	4	11			15	
Approximation of laws	15	10			25	
Area of freedom, security and justice	12	26			38	
Commercial policy		3	2		5	
Common Customs Tariff		12			12	
Common foreign and security policy		1	1		2	
Community own resources	3				3	
Company law	9	9	1		19	
Competition		3	7		10	
Customs union		8	1		9	
Economic and monetary policy	1				1	
Energy	4				4	
Environment and consumers	49	34	5	6	94	
European citizenship		6			6	
External relations	2	7			9	1
Fisheries policy	2	1			3	
Free movement of capital	3	9			12	
Free movement of goods	2	8			10	
Freedom of establishment	26	7			33	
Freedom of movement for persons	28	14			42	
Freedom to provide services	12	20			32	
Industrial policy	3	5			8	
Intellectual property	1	12	23		36	
Law governing the institutions	3	1	21	2	27	1
Principles of Community law		3	1		4	
Regional policy			2		2	
Rome Convention		1			1	
Social policy	5	26			31	
Social security for migrant workers		2			2	
State aid	1	6	4		11	
Taxation	14	35			49	
Transport	12	4			16	
EC Treaty	209	284	68	8	569	2
EU Treaty	1	4			5	
Procedure						7
Staff Regulations			9		9	
Others			9		9	7
OVERALL TOTAL	**210**	**288**	**77**	**8**	**583**	**9**

(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 (2004–08) ([1]) ([2])

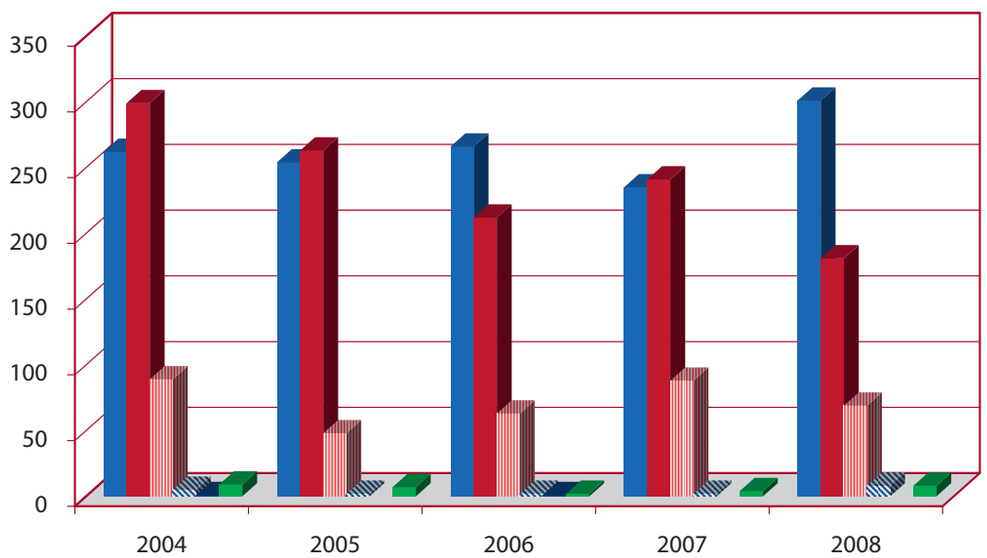


	BE	BG	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	Total
2004	13			2	14		27	11	23	3	27				14			13	14		7				8	5	12	193 ([2])
2005	8			3	13	1	18	6	11	9	36				19			8	9		7				10	5	7	170
2006	11		4		11	2	25	19	9	7	25				28		2	5	12	3	13			2	7	4	4	193
2007	10		6		15		26	21	14	10	23	1		1	20	2	3	8	6	7	23		1	1	2	10	2	212
2008	17		6		10	2	19	21	15	10	17	2		1	15	3	5	4	10	10	14		1	1	5	6	13	207

([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).

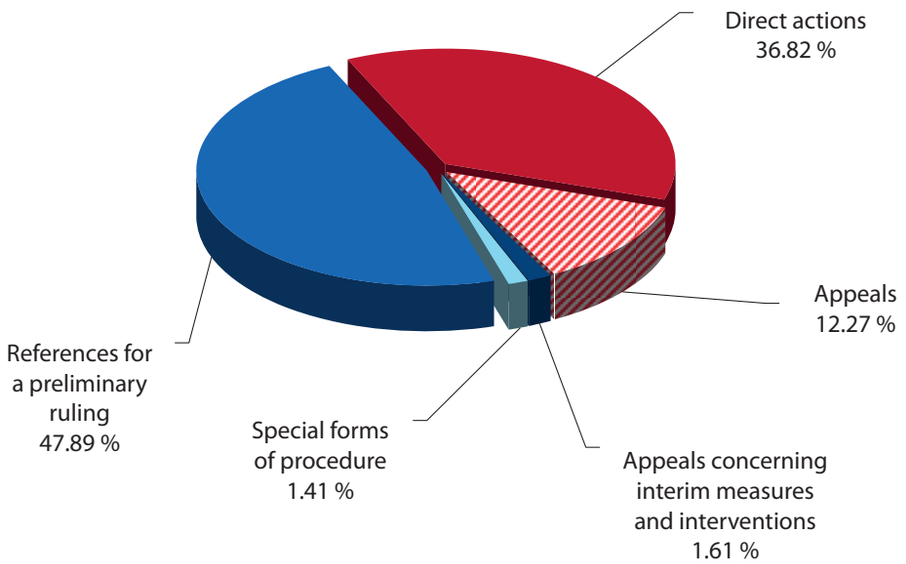
6. *Completed cases* — Nature of proceedings (2004–08) ([1])



	2004	2005	2006	2007	2008
References for a preliminary ruling	262	254	266	235	301
Direct actions	299	263	212	241	181
Appeals	89	48	63	88	69
Appeals concerning interim measures and interventions	5	2	2	2	8
Opinions/rulings	1		1		
Special forms of procedure	9	7	2	4	8
Total	**665**	**574**	**546**	**570**	**567**

([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).

7. *Completed cases* — Judgments, orders, opinions (2008) (1)



	Judgments	Non-interlocutory orders (2)	Interlocutory orders (3)	Other orders (4)	Opinions of the Court	Total
References for a preliminary ruling	186	30		22		238
Direct actions	108	2		70		180
Appeals	39	20		2		61
Appeals concerning interim measures and interventions			7	1		8
Special forms of procedure		5		2		7
Total	**333**	**57**	**7**	**97**		**494**

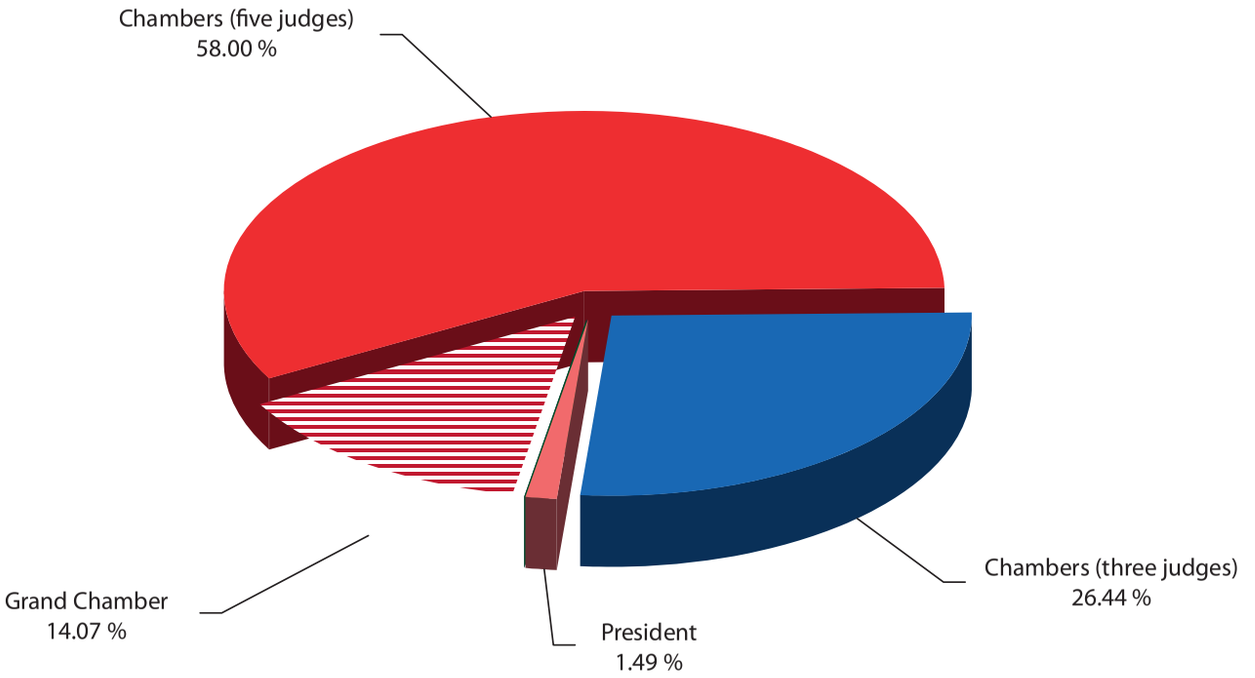
(1) The figures given (net figures) represent the number of cases after joinder on the ground of similarity (a set of joined cases = one case).

(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, declaration that there is no need to give a decision or referral to the Court of First Instance.

8. *Completed cases* — Bench hearing action (2004–08) ([1])



	2004			2005			2006			2007			2008		
	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	21		21	1		1	2		2						
Small plenary (3)	1		1												
Grand Chamber	31	1	32	59		59	55		55	51		51	66		66
Chambers (five judges)	257	18	275	245	5	250	265	13	278	242	10	252	259	13	272
Chambers (three judges)	113	61	174	103	51	154	67	41	108	104	48	152	65	59	124
President		6	6		2	2		1	1		2	2		7	7
Total	**423**	**86**	**509**	**408**	**58**	**466**	**389**	**55**	**444**	**397**	**60**	**457**	**390**	**79**	**469**

(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 (2004–08) [1]

	2004	2005	2006	2007	2008
Accession of new States	2	1		1	
Agriculture	60	63	30	23	54
Approximation of laws	33	41	19	22	21
Area of freedom, security and justice	2	5	9	17	5
Association of the Overseas Countries and Territories	1	2			
Brussels Convention	7	8	4	2	1
Commercial policy		4	1	1	1
Common Customs Tariff	4	7	7	10	5
Common foreign and security policy				4	2
Community own resources		2	6	3	
Company law	16	24	10	16	17
Competition	29	17	30	17	23
Customs union	12	9	9	12	8
Economic and monetary policy	2			1	1
Energy	1	3	6	4	4
Environment and consumers	67	44	40	50	43
European citizenship	1	2	4	2	6
External relations	9	8	11	9	8
Fisheries policy	6	11	7	6	6
Free movement of capital	4	5	4	13	9
Free movement of goods	17	11	8	14	12
Freedom of establishment	14	5	21	19	29
Freedom of movement for persons	17	17	20	19	27
Freedom to provide services	23	11	17	23	8
Industrial policy	11	11		11	12
Intellectual property	20	5	19	21	22
Justice and home affairs			2		1
Law governing the institutions	13	16	15	6	16
Principles of Community law	4	2	1	4	4
Privileges and immunities		1	1	1	2
Regional policy		5		7	1
Research, information, education and statistics					
Social policy	44	29	29	26	25
Social security for migrant workers	6	10	7	7	5
State aid	21	23	23	9	26
Taxation	28	34	55	44	38
Transport	11	16	9	6	4
EC Treaty	485	452	424	430	446
EU Treaty		3	3	4	6
CS Treaty	1	3		1	2
EA Treaty	2	1	4	1	
Privileges and immunities	1				
Procedure	8	1	2	3	5
Staff Regulations	12	6	9	17	11
Others	21	7	11	20	16
OVERALL TOTAL	**509**	**466**	**442**	**456**	**470**

(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).

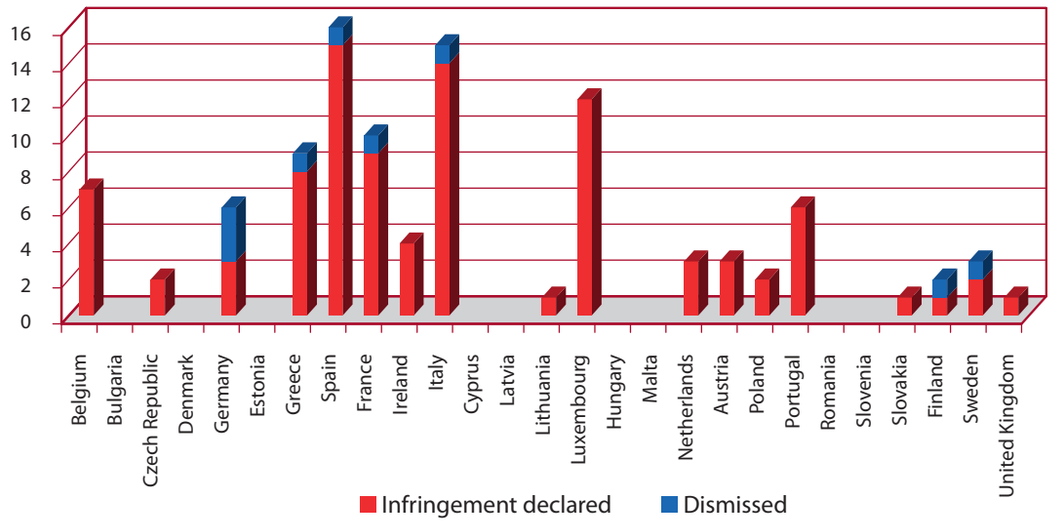
10. *Completed cases* — Subject matter of the action (2008) ([1])

	Judgments/ opinions	Orders ([2])	Total
Agriculture	40	14	54
Approximation of laws	21		21
Area of freedom, security and justice	5		5
Brussels Convention	1		1
Commercial policy	1		1
Common Customs Tariff	4	1	5
Common foreign and security policy	2		2
Company law	16	1	17
Competition	21	2	23
Customs union	7	1	8
Economic and monetary policy		1	1
Energy	4		4
Environment and consumers	38	5	43
European citizenship	6		6
External relations	7	1	8
Fisheries policy	5	1	6
Free movement of capital	9		9
Free movement of goods	11	1	12
Freedom of establishment	24	5	29
Freedom of movement for persons	23	4	27
Freedom to provide services	7	1	8
Industrial policy	12		12
Intellectual property	14	8	22
Justice and home affairs	1		1
Law governing the institutions	7	9	16
Principles of Community law	4		4
Privileges and immunities	2		2
Regional policy		1	1
Social policy	18	7	25
Social security for migrant workers	5		5
State aid	23	3	26
Taxation	32	6	38
Transport	4		4
EC Treaty	374	72	446
EU Treaty	6		6
CS Treaty	2		2
Procedure		5	5
Staff Regulations	9	2	11
Others	9	7	16
OVERALL TOTAL	**391**	**79**	**470**

([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).

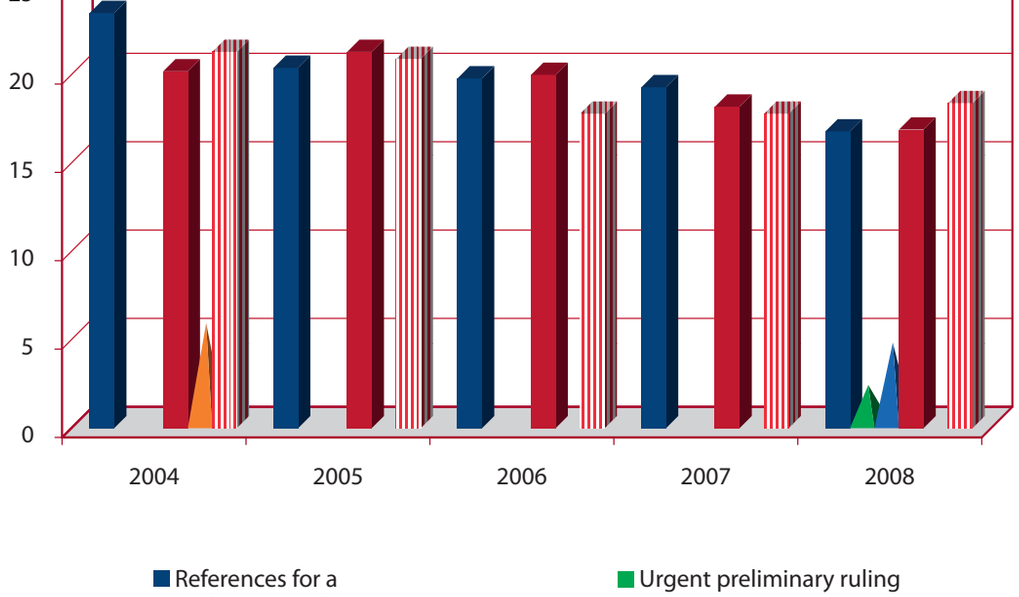
11. *Completed cases* — Judgments concerning failure of a Member State to fulfil its obligations: outcome (2008) (1)



	Infringement declared	Dismissed	Total
Belgium	7		7
Bulgaria			
Czech Republic	2		2
Denmark			
Germany	3	3	6
Estonia			
Greece	8	1	9
Spain	15	1	16
France	9	1	10
Ireland	4		4
Italy	14	1	15
Cyprus			
Latvia			
Lithuania	1		1
Luxembourg	12		12
Hungary			
Malta			
Netherlands	3		3
Austria	3		3
Poland	2		2
Portugal	6		6
Romania			
Slovenia			
Slovakia	1		1
Finland	1	1	2
Sweden	2	1	3
United Kingdom	1		1
Total	**94**	**9**	**103**

(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 (2004–08) [1] (decisions by way of judgments and orders) [2]

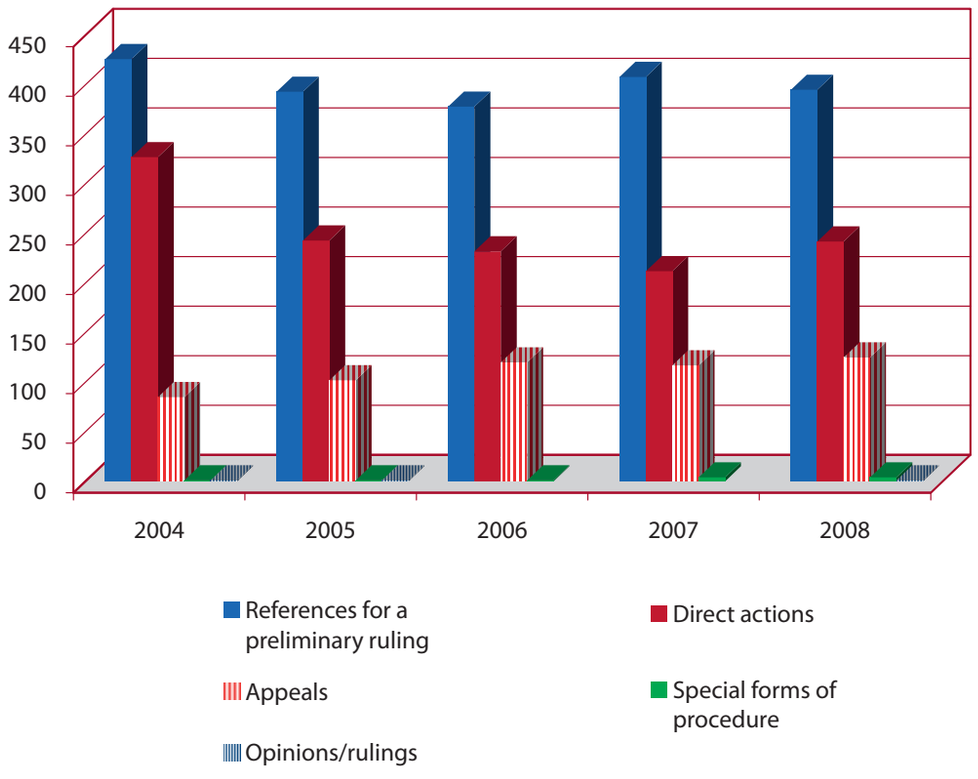


	2004	2005	2006	2007	2008
References for a preliminary ruling	23.5	20.4	19.8	19.3	16.8
Urgent preliminary ruling procedures					2.1
Accelerated preliminary ruling procedures					4.5
Direct actions	20.2	21.3	20	18.2	16.9
Direct actions — Accelerated procedures	5.6				
Appeals	21.3	20.9	17.8	17.8	18.4

(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, declaration 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 (2004–08) ([1])

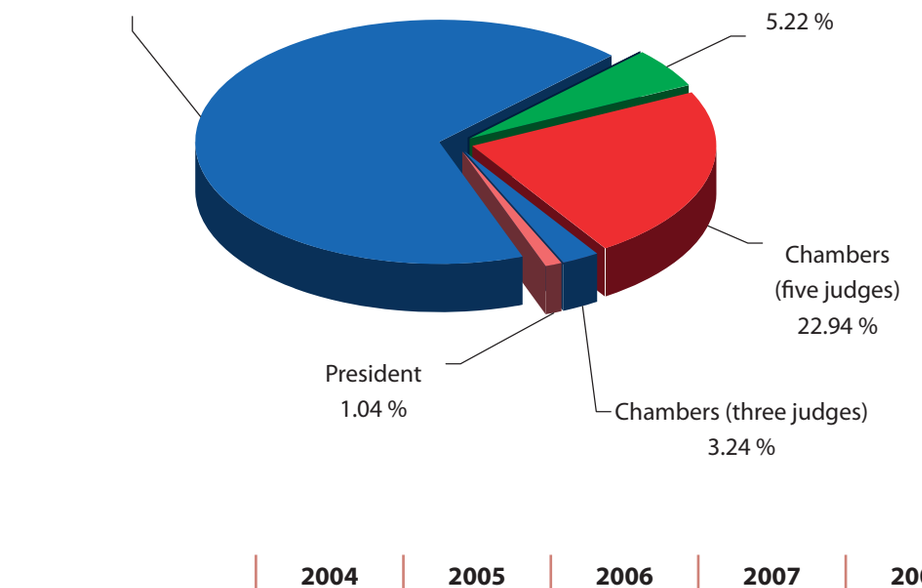


	2004	2005	2006	2007	2008
References for a preliminary ruling	426	393	378	408	395
Direct actions	327	243	232	212	242
Appeals	85	102	120	117	125
Special forms of procedure	1	1	1	4	4
Opinions/rulings	1	1			1
Total	**840**	**740**	**731**	**741**	**767**

([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 *(2008)* (1)

Distribution in 2008



	2004	2005	2006	2007	2008
Not assigned	547	437	490	481	523
Full Court	2	2			
Small plenary (2)					
Grand Chamber	56	60	44	59	40
Chambers (five judges)	177	212	171	170	177
Chambers (three judges)	57	29	26	24	19
President	1			7	8
Total	**840**	**740**	**731**	**741**	**767**

(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 (2004–08) ([1])

	2004		2005		2006		2007		2008		Total
	Granted	Not granted	Granted	Not granted	Granted	Not granted	Granted	Not granted	Granted	Not granted	
Direct actions	1	2						1			4
References for a preliminary ruling		10		5		5		6	2	6	34
Appeals								1			1
Opinions of the Court		1									1
Total	**1**	**13**		**5**		**5**		**8**	**2**	**6**	**40**

([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* — Urgent preliminary ruling procedure (2008)

	2008		Total
	Granted	Not granted	
Urgent preliminary ruling procedure	3	3	**6**

17. *Miscellaneous* — Proceedings for interim measures (2008) (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
Law governing the institutions			2		
Environment and consumers	1	6		1	1
Total EC Treaty	3	8	2	1	1
OVERALL TOTAL	**3**	**8**	**2**	**1**	**1**

(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).

18. *General trend in the work of the Court (1952–2008)* — New cases and judgments

Year	New cases [1]						Judgments [2]
	Direct actions [3]	References for a preliminary ruling	Appeals	Appeals concerning interim measures and inter-ventions	Total	Application 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
1985	294	139			433	23	211

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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	Application for interim measures	
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
2008	211	288	77	8	584	3	333
Total	**8 340**	**6 318**	**917**	**77**	**15 652**	**348**	**7 890**

(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.

19. *General trend in the work of the Court (1952–2008)* — New references for a preliminary ruling (by Member State per year) (1)

	BE	BG	CZ	DK	DE	EE	EL	ES	FR	IE	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				8	1	12							14									1		75
1977	16			1	30				14	2	7							9									5		84
1978	7			3	46				12	1	11							38									5		123
1979	13			1	33				18	2	19				1			11									8		106
1980	14			2	24				14	3	19							17									6		99
1981	12			1	41				17		11				4			17									5		108
1982	10			1	36				39		18							21									4		129
1983	9			4	36				15	2	7							19									6		98

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	BE	BG	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	Benelux (2)	Total
1984	13			2	38				34	1	10							22									9		129
1985	13				40				45	2	11				6			14									8		139
1986	13			4	18		2	1	19	4	5				1			16									8		91
1987	15			5	32		17	1	36	2	5				3			19									9		144
1988	30			4	34			1	38		28				2			26									16		179
1989	13			2	47		2	2	28	1	10				1			18			1						14		139
1990	17			5	34		2	6	21	4	25				4			9			2						12		141
1991	19			2	54		3	5	29	2	36				2			17			3						14		186
1992	16			3	62		1	5	15		22				1			18			1						18		162
1993	22			7	57		5	7	22	1	24				1			43			3						12		204
1994	19			4	44			13	36	2	46				1			13			1						24		203
1995	14			8	51		10	10	43	3	58				2			19	2		5					6	20		251
1996	30			4	66		4	6	24		70				2			10	6		6				3	4	21		256
1997	19			7	46		2	9	10	1	50				3			24	35		2				6	7	18		239
1998	12			7	49		5	55	16	3	39				2			21	16		7				2	6	24		264
1999	13			3	49		3	4	17	2	43				4			23	56		7				4	5	22		255
2000	15			3	47		3	5	12	2	50							12	31		8				5	4	26	1	224
2001	10			5	53		4	4	15	1	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		4	8	9	2	45				4			28	15		1				4	4	22		210
2004	24			4	50		18	8	21	1	48				1	2		28	12		1				4	5	22		249
2005	21		1	4	51		11	10	17	2	18				2	3		36	15	1	2				4	11	12		221
2006	17		3	3	77		14	17	24	1	34			1	1	4		20	12	2	3			1	5	2	10		251
2007	22	1	2	5	59	2	8	14	26	2	43			1		2		19	20	7	3	1		1	5	6	16		265
2008	24		1	6	71	2	9	17	12	1	39	1	3	3	4	6		34	25	4	1				4	7	14		288
Total	**579**	**1**	**7**	**122**	**1 672**	**4**	**134**	**211**	**755**	**51**	**978**	**1**	**3**	**5**	**64**	**17**		**719**	**333**	**14**	**64**	**1**		**2**	**56**	**76**	**448**	**1**	**6 318**

(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*.

20. *General trend in the work of the Court (1952–2008)* — New references for a preliminary ruling (by Member State and by court or tribunal)

			Total
Belgium	Cour constitutionnelle	71	
	Cour de cassation	12	
	Conseil d'État	43	
	Other courts or tribunals	453	579
Bulgaria	Софийски ґрадски съд Търґовско отделение	1	
	Other courts or tribunals		1
Czech Republic	Nejvyššího soudu		
	Nejvyšší správní soud	1	
	Ústavní soud		
	Other courts or tribunals	6	7
Denmark	Højesteret	22	
	Other courts or tribunals	100	122
Germany	Bundesgerichtshof	120	
	Bundesverwaltungsgericht	88	
	Bundesfinanzhof	250	
	Bundesarbeitsgericht	17	
	Bundessozialgericht	73	
	Staatsgerichtshof des Landes Hessen	1	
	Other courts or tribunals	1 123	1 672
Estonia	Riigikohus	1	
	Other courts or tribunals	3	4
Greece	Άρειος Πάγος	9	
	Συμβούλιο της Επικρατείας	31	
	Other courts or tribunals	94	134
Spain	Tribunal Supremo	22	
	Audiencia Nacional	1	
	Juzgado Central de lo Penal	7	
	Other courts or tribunals	181	211
France	Cour de cassation	83	
	Conseil d'État	42	
	Other courts or tribunals	630	755
Ireland	Supreme Court	17	
	High Court	15	
	Other courts or tribunals	19	51

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			Total
Italy	Corte suprema di Cassazione	101	
	Corte Costituzionale	1	
	Consiglio di Stato	62	
	Other courts or tribunals	814	978
Cyprus	Ανώτατο Δικαστήριο	1	
	Other courts or tribunals		1
Latvia	Augstākā tiesa	2	
	Satversmes tiesa		
	Other courts or tribunals	1	3
Lithuania	Konstitucinis Teismas	1	
	Lietuvos Aukščiausiasis Teismas	1	
	Lietuvos vyriausiasis administracinis Teismas	2	
	Other courts or tribunals	1	5
Luxembourg	Cour supérieure de justice	10	
	Cour de cassation	2	
	Conseil d'État	13	
	Cour administrative	7	
	Other courts or tribunals	32	64
Hungary	Legfelsőbb Bíróság	1	
	Fővárosi Ítélőtábla	1	
	Szegedi Ítélőtábla	1	
	Other courts or tribunals	14	17
Malta	Constitutional Court		
	Qorti ta' l- Appel		
	Other courts or tribunals		
Netherlands	Raad van State	59	
	Hoge Raad der Nederlanden	177	
	Centrale Raad van Beroep	46	
	College van Beroep voor het Bedrijfsleven	137	
	Tariefcommissie	34	
	Other courts or tribunals	266	719
Austria	Verfassungsgerichtshof	4	
	Oberster Gerichtshof	71	
	Oberster Patent- und Markensenat	3	
	Bundesvergabeamt	24	
	Verwaltungsgerichtshof	57	
	Vergabekontrollsenat	4	
	Other courts or tribunals	170	333

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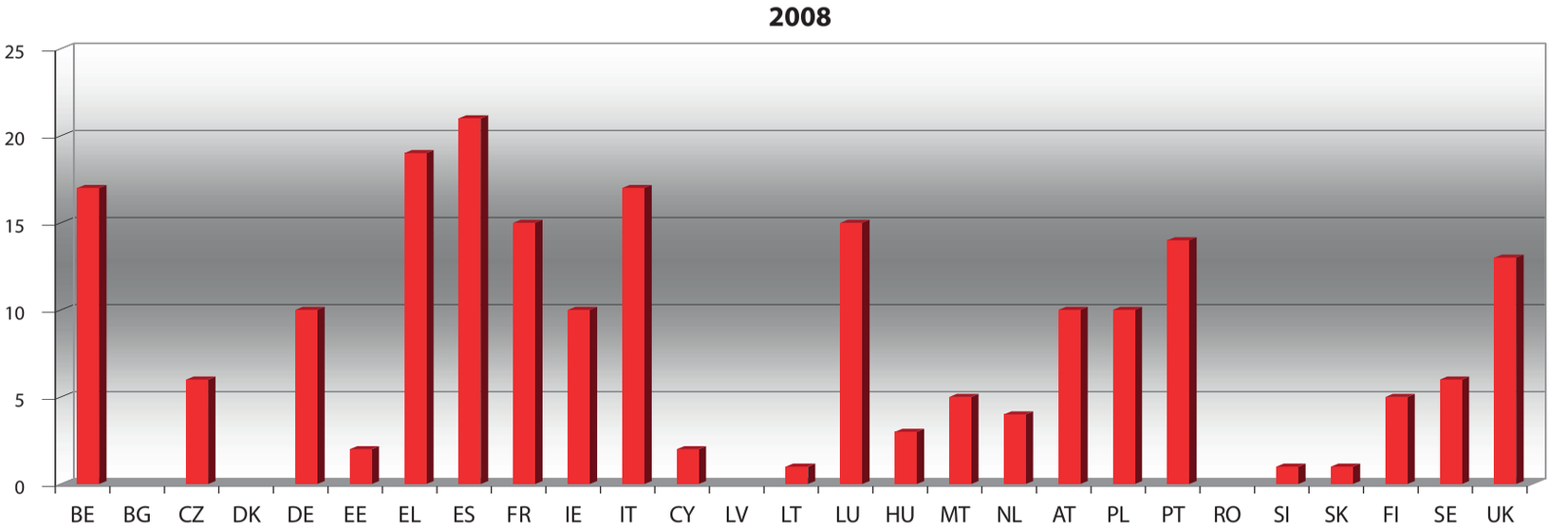
			Total
Poland	Sąd Najwyższy		
	Naczelny Sąd Administracyjny	3	
	Trybunał Konstytucyjny		
	Other courts or tribunals	11	14
Portugal	Supremo Tribunal de Justiça	1	
	Supremo Tribunal Administrativo	36	
	Other courts or tribunals	27	64
Romania	Tribunal Dâmbovița	1	
	Other courts or tribunals		1
Slovenia	Vrhovno sodišče		
	Ustavno sodišče		
	Other courts or tribunals		
Slovakia	Ústavný Súd	1	
	Najvyšší súd		
	Other courts or tribunals	1	2
Finland	Korkein hallinto-oikeus	23	
	Korkein oikeus	10	
	Other courts or tribunals	23	56
Sweden	Högsta Domstolen	12	
	Marknadsdomstolen	4	
	Regeringsrätten	21	
	Other courts or tribunals	39	76
United Kingdom	House of Lords	38	
	Court of Appeal	45	
	Other courts or tribunals	365	448
Benelux	Cour de justice/Gerechtshof ([1])	1	1
Total			**6 318**

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

21. *General trend in the work of the Court (1952–2008) — New actions for failure of a Member State to fulfil its obligations* [1]



	BE	BG	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	Total
2008	17		6		10	2	19	21	15	10	17	2		1	15	3	5	4	10	10	14		1	1	5	6	13	**207**
1952–2008	340		16	34	253	5	353	208	381	186	599	3		2	245	5	10	129	114	20	155		2	4	47	45	122	**3 278**

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 2008

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

Following the numerous changes in 2007 that resulted both from the partial renewal of the membership of the Court of First Instance and from accessions, the Court's composition remained more stable in 2008. The year was, however, marked by the departure of Mr John D. Cooke, a Judge at the Court for nearly 13 years, and his replacement by Mr Kevin O'Higgins.

By contrast, there were significant changes in the Court's methods and the results achieved by it.

Faced with a constant increase in its caseload and, as a corollary, in the backlog of cases, the Court reformed its working methods, its organisation and its operation. The various stages in the handling of cases, together with the process of preparing and drafting decisions, were the subject of detailed analysis, with a view to improving the Court's efficiency while ensuring that the quality of its decisions would not be adversely affected. A set of statistical and management tools was also developed. Additionally, the Rules of Procedure were amended in order to enable the Court to rule on actions concerning intellectual property without an oral procedure unless one of the parties submits an application setting out the reasons for which he wishes to be heard.

The body of measures adopted, and the permanent quest for efficiency generally, made it possible to reap in full the rewards of the considerable volume of work carried out by the Court's Members and staff. Thus, 605 cases were decided in the past year, a 52 % increase compared with the year before, while the number of hearings held in 2008 doubled (341 as against 172 in 2007). The average duration of proceedings decreased appreciably (24.5 months compared with 27.7 months in 2007), although progress still remains to be made.

The Court will have to continue its efforts in this regard during 2009 and intends to derive greater benefit from the full deployment of the reforms that have been introduced. While 2008 was exceptional in terms of cases decided, it was in terms of new cases too (432 in 2006, 522 in 2007 and 629 in 2008). The number of cases pending rose slightly (1 178 compared with 1 154 in 2007). There is thus a risk that the duration of proceedings will increase. It will be necessary, in light of the trend in the number of cases, to give further consideration to the ways and means, in particular of a structural nature, that will enable the Court, in the interests of litigants, to continue to deal with cases to a high standard, while reducing the duration of proceedings.

The cases brought before the Court demonstrate, in 2008 once more, the ever increasing variety of both the legal questions raised and the subjects dealt with (competition, State aid, the environment, regional policy, commercial policy, common foreign and security policy, law governing the institutions, intellectual property, public procurement and so forth). It is also apparent that the upward trend, already recorded the previous year, in the number of applications for interim measures was very much confirmed, 58 such applications being lodged and 57 being brought to a conclusion. A summary of the main

developments in case-law is set out in the following pages. It covers in turn proceedings concerning the legality of measures (I), actions for damages (II), appeals (III) and applications for interim measures (IV).

I. Proceedings concerning the legality of measures

Admissibility of actions brought under Article 230 EC

1. Body enacting the measure

Article 230 EC provides that the Community judicature is to review the legality of acts adopted jointly by the European Parliament and the Council, of acts of the Council, of the Commission and of the European Central Bank (ECB), and of acts of the European Parliament intended to produce legal effects vis-à-vis third parties. Thus, Community agencies are not formally included among the bodies against whose measures an action may be brought before the Community judicature.

The important issue of those bodies' capacity to be sued was tackled by the Court of First Instance in Case T-411/06 *Sogelma* v *EAR* (judgment of 8 October 2008), an action for annulment of decisions of the European Agency for Reconstruction ('EAR') in the realm of public procurement, taken under a Community action programme. The Court of First Instance considered that the fact that the EAR is not one of the institutions listed in Article 230 EC and that the regulation creating that agency does not provide that the Community judicature has jurisdiction to hear actions directed against decisions other than those concerning requests for access to documents does not prevent it from reviewing, by virtue of Article 230 EC, the lawfulness of those measures taken by that agency.

Acting on the basis of the judgment of the Court of Justice of 23 April 1986 in Case 294/83 *Les Verts* v *Parliament* ([1]), which affirmed the Parliament's capacity to be sued, the Court of First Instance laid down the general principle that any act of a Community body intended to produce legal effects vis-à-vis third parties must be open to judicial review. Thus, decisions adopted on that basis cannot cease to be acts open to challenge solely because the Commission has delegated decision-making powers to the EAR, for otherwise there would be a legal vacuum. Last, the Court of First Instance emphasised that the EAR is a Community body endowed with legal personality and has the power to implement programmes of Community assistance, and that the Commission played no part in the decision-making process. Proceedings may therefore be instituted before the Court of First Instance against the EAR in person, as the body which enacted the contested measure.

([1]) Case 294/83 [1986] ECR 1339.

2. 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 ([2]).

In Case T-185/05 *Italy* v *Commission* (judgment of 20 November 2008), the Italian Republic sought annulment of the Commission's decision that external publications of the vacancy notices for senior management posts in the *Official Journal of the European Union* were until 1 January 2007 to be made in English, French and German.

The Court of First Instance recalled that a measure adopted by an institution reflecting only its intention to follow a particular line of conduct in a particular field is not an act open to challenge. Nonetheless, given that an institution may not refrain from applying internal rules governing recruitment which it has itself laid down, and which form part of the legal framework which it must strictly observe in the exercise of its discretion, such rules must be regarded as producing binding legal effects. A privileged applicant, such as a Member State, can immediately challenge the legality of those rules by an action for annulment, without having to wait for them to be applied in a particular case. Finding that the decision relating to the languages of publication is drafted in clear and unequivocal terms, and fixes definitively an aspect of recruitment procedures in binding form, the Court held that the action was admissible.

In Case T-141/05 *Internationaler Hilfsfonds* v *Commission* (judgment of 5 June 2008, not published, under appeal), the Court held that, in an action for annulment directed against a letter informing the applicant that the Commission had no intention of making available to it any documents other than those already sent to it at the time of an earlier decision, in accordance with the case-law ([3]), the conclusions reached by the European Ombudsman concerning the applicant's complaint made against that decision were not a new factor capable of distinguishing the contested measure from that decision. The fact that the Ombudsman had concluded that the institution concerned had committed an act of maladministration did not permit that conclusion to be challenged. Such an argument would be tantamount to accepting that an applicant who had not brought an action within the period prescribed against the original decision could, just by referring the matter to the Ombudsman, and insofar as the latter found an instance of maladministration, succeed in circumventing the time limits.

([2]) Judgment in Case 60/81 *IBM* v *Commission* [1981] ECR 2639, paragraph 9.

([3]) Order of the Court of First Instance of 15 October 2003 in Case T-372/02 [2003] ECR II-4389, paragraph 40.

3. Standing to bring proceedings

(a) 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 ([4]).

The Court of First Instance provided some clarification of the *locus standi* of infra-State bodies in Case T-37/04 *Região autónoma dos Açores* v *Council* (judgment of 1 July 2008, not published, under appeal). The applicant claimed to be individually concerned by Council Regulation No 1054/2003 ([5]), on the grounds, first, that as an outermost region of the Union, it enjoyed specific protection, especially in the environmental and economic spheres, under Article 299(2) EC, with which the contested regulation was in conflict and, second, that that regulation affected its legislative and executive powers in the sphere of fisheries.

The Court observed, first of all, that the general interest that a region may have in obtaining an outcome conducive to its prosperity cannot, of itself, be sufficient for that region to be regarded as concerned within the meaning of the fourth paragraph of Article 230 EC. It is clear from the case-law that the system established by the Treaties reserves to the Member States, and not to regional authorities, the right to protect the common interest in their territories. Next, the Court considered that, even if Article 299(2) EC could be interpreted not only as permitting the Council to provide for derogations specific to the outermost regions but also as prohibiting it from adopting measures which would exacerbate the disadvantages suffered by those regions, the protection provided by that article was not sufficient to give the applicant standing to bring proceedings, in accordance with the judgment in Case C-452/98 *Nederlandse Antillen* v *Council* [2001] ECR I-8973. In addition, the Court emphasised that, on any view, the applicant had not raised arguments enabling it to be held that the contested provisions would entail harmful effects for the fish stocks and for the marine environment in the Azores and, consequently, for the survival of the fishing sector in the region.

Furthermore, in reply to the applicant's argument relating to the preservation of its powers, the Court noted that, although the Community judicature has indeed accepted the right of regional authorities to challenge Community acts which either prevent them from adopting measures which they may legitimately adopt if there is no Community intervention or require them to withdraw those measures and to take certain action ([6]), the contested provisions of the regulation under challenge do not concern legislative or regulatory measures adopted by the applicant and their lawfulness is in no way called into question or compromised.

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

([5]) Council Regulation (EC) No 1954/2003 of 4 November 2003 on the management of the fishing effort relating to certain Community fishing areas and resources and modifying Regulation (EEC) No 2847/93 and repealing Regulations (EC) No 685/95 and (EC) No 2027/95 (OJ 2003 L 289, p. 1).

([6]) Joined Cases T-366/03 and T-235/04 *Land Oberösterreich and Austria* v *Commission* [2005] ECR II-4005, paragraph 28.

Lastly, examining the argument that the Aarhus Convention provides that the parties thereto are to ensure that members of the public have access to administrative or judicial procedures to challenge acts of public authorities which contravene national law on the environment, the Court stated that the Community legislature had adopted, in order to facilitate access to the Community judicature in environmental matters, Regulation No 1367/2006 ([7]). Title IV of that regulation lays down a procedure on completion of which certain non-governmental organisations may bring an action for annulment before the Community judicature pursuant to Article 230 EC. However, the conditions laid down in Title IV manifestly not having been satisfied in the circumstances, it is not for the Court to substitute itself for the legislature and to accept, on the basis of the Aarhus Convention, the admissibility of an action which does not meet the conditions laid down in Article 230 EC.

In Case T-30/07 *Denka International* v *Commission* (order of 27 June 2008, not published), the Court of First Instance noted that the fact that a person is involved in the procedure leading to the adoption of a Community measure is capable of distinguishing that person individually in relation to the measure in question only when the applicable Community legislation grants him certain procedural guarantees. Given that neither the process of enacting acts of general application nor the nature of those acts themselves requires the participation of the persons affected, their interests being supposed to be represented by the political bodies called upon to adopt those measures, it would be contrary to the letter and spirit of Article 230 EC to allow any individual, once he has participated in the preparation of a measure of a legislative nature, then to bring an action challenging that measure. Neither the contested directive nor that on which it is based provides any procedural guarantees for undertakings manufacturing or distributing active substances. Finally, the applicant argued that it was the proprietor of a trade mark registered for the active substance concerned whose use was affected by the contested directive, which distinguished it from any other person, in accordance with *Codorníu* v *Council* ([8]). The Court noted, however, that that protection for a trade mark was not such as to distinguish the applicant from all other manufacturers and distributors, who might also rely on the existence of a trade mark in their favour. It is not the object of the directive to reserve a specific intellectual property right to certain traders, so that any effect on the applicant's intellectual property rights is simply the consequence of the fact, not particular to the applicant, that it manufactures active substances.

Case T-82/06 *Apple Computer International* v *Commission* (order of the Court of First Instance of 19 February 2008, not published) gave rise to clarification of the admissibility of actions directed against tariff classification regulations. According to the case-law, such measures are, in spite of the apparent specificity of the descriptions which they contain, of general application. They concern all products of the type described and take effect in relation to all customs authorities in the Community and all importers ([9]).

([7]) Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13).

([8]) C-309/89 *Codorníu* v *Council* [1994] ECR I-1853, paragraphs 21 and 22.

([9]) Case 40/84 *Casteels* v *Commission* [1985] ECR 667, paragraph 11.

The Court considered that the circumstances that the classification in the Combined Nomenclature was triggered by an application from the applicant for a binding tariff information, that no other similar product was demonstrated to the Nomenclature Committee and that, on the basis of the demonstration of the operation of the product in question, a draft tariff classification regulation referring to the monitors concerned was circulated to the Member States cannot distinguish the applicant individually in such a way as to render the action admissible. The fact that a person is involved in the procedure leading to the adoption of a Community measure is capable of distinguishing that person individually in relation to that measure only if the applicable Community legislation grants him certain procedural guarantees.

Although similar circumstances were taken into account to declare the action in *Sony Computer Entertainment Europe* v *Commission* ('*Sony*') ([10]) admissible, they could not have been the decisive factor. It was only in the light of the exceptional circumstances of that case that the applicant was, in that case, held to be individually concerned. Similarly, the Court stated that, while that judgment makes it clear that the fact that the applicant is the sole authorised importer of the product concerned constitutes a relevant factor, it is not sufficient, in itself, to establish that the applicant is individually concerned. Last, because the rather general description in the contested regulation of the goods concerned as well as the absence of any visual or textual factor clearly referring to a specific economic operator excluded any individual effect, the Court concluded that there were no grounds for considering that the exceptional circumstances, within the meaning of *Sony*, giving rise to *locus standi* for the applicant, existed in the instant case ([11]).

(b) Direct concern

According to settled case-law, in order to be of direct concern to an individual within the meaning of the fourth paragraph of Article 230 EC, the contested Community measure must directly affect the applicant's legal situation and its implementation must be purely automatic and result from Community rules alone without the application of other intermediate rules ([12]).

The Court of First Instance held in Joined Cases T 383/06 and T 71/07 *Icuna.com* v *Parliament* (order of 14 May 2008) that a decision of the Parliament annulling a tendering procedure for the award of a public contract directly affects the legal situation of a tendering undertaking where, as regards the annulment of that tendering procedure in its entirety, the decision results in the annulment of an earlier decision rejecting its tender, but also that of a decision annulling a decision awarding that undertaking the contract, and that of a decision awarding it the contract.

([10]) T-243/01 *Sony Computer Entertainment Europe* v *Commission* [2003] ECR II-4189.

([11]) Mention is also to be made of Case T-227/06 *RSA Security Ireland* v *Commission* (order of 3 December 2008, paragraph 87), in which the Court held that the applicant had not established the existence of exceptional circumstances within the meaning of *Sony*, observing that the existence of a photograph of the product on which the Sony games station logo was clearly visible, had carried significant importance in the assessment of the admissibility of the action.

([12]) Case C 386/96 P *Dreyfus* v *Commission* [1998] ECR I 2309, paragraph 43.

Competition rules applicable to undertakings

1. General

(a) Res judicata

In Case T-276/04 *Compagnie maritime belge* v *Commission* (judgment of 1 July 2008), the Court held that where, because of a procedural defect, the Community judicature has annulled in part a Commission decision finding an infringement of the competition rules and imposing a fine, the Commission is entitled to adopt a new decision aimed at correcting the procedural defects identified by the Community judicature and to impose a new fine on the basis of the parts of the first decision that were not annulled. In addition, after all rights of appeal have been exhausted or expiry of the time limits prescribed in that connection, the parts of the first Commission decision which were not annulled acquire res judicata so that, in an action for annulment of the new decision, the undertaking penalised cannot challenge whether the infringement did in fact take place, since that infringement was definitively established in the first decision.

(b) Reasonable time

In that same judgment, the Court, recalling that Regulation No 2988/74 ([13]) established a complete system of rules covering in detail the periods within which the Commission is entitled, without undermining the fundamental requirement of legal certainty, to impose fines, held that there is no room for consideration of the Commission's duty to exercise its power to impose fines within a reasonable period. That conclusion cannot be challenged by reliance on an alleged breach of the rights of the defence since, so long as the limitation period laid down in that regulation has not expired, any undertaking which is the subject of an investigation under Regulation No 17 ([14]) remains uncertain as to the outcome of the procedure and as to whether sanctions or fines will be imposed. Thus, the prolongation of that uncertainty is inherent in proceedings implementing Regulation No 17 and does not in itself constitute a breach of the rights of the defence. As regards the application of the competition rules, a failure to act within a reasonable time can constitute a ground for annulment only in the case of a decision finding infringements where it has been proved that that infringement affected the ability of the undertakings concerned to defend themselves.

([13]) Regulation (EEC) No 2988/74 of the Council of 26 November 1974 concerning limitation periods in proceedings and the enforcement of sanctions under the rules of the European Economic Community relating to transport and competition (OJ 1974 L 319, p. 1).

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

2. Points raised on the scope of Article 81 EC

(a) Application of Article 81(1) EC

In Case T-99/04 *AC-Treuhand* v *Commission* (judgment of 8 July 2008), the Court held that the fact that an undertaking is not active on the market on which the restriction of competition materialises does not rule out its liability in respect of participation in the implementation of a cartel. In this instance, the applicant, a consultancy firm, had provided various services to three producers of organic peroxides and had played an essential role in the cartel between those producers by organising meetings and covering up evidence of the infringement.

(b) Rights of the defence and right to a fair hearing

In that same judgment, the Court held that, when the first investigation measure is taken in respect of an undertaking, such as a request for information, the Commission is required to inform that undertaking of the putative infringements concerned by the investigation and of the fact that the Commission might have to impute to that undertaking unlawful conduct. In this instance, however, the Court held that the Commission's omission in this respect could not lead to the annulment of the contested decision, since that irregularity did not adversely affect the efficiency of the applicant's defence.

(c) Fines

In Case T-410/03 *Hoechst* v *Commission* (judgment of 18 June 2008), the Court applied its unlimited jurisdiction in two respects. First, it held that the Commission had failed to have regard to the principles of sound administration and equal treatment. Although the Commission had clearly displayed its intention not to disclose to the cooperating undertakings, in particular to Hoechst, the fact that other undertakings had taken steps to obtain immunity from a fine, at the same it assured another undertaking that 'fair warning' would be given to it if another company looked like overtaking it in relation to cooperation. In this instance, in light of the importance of the observance by the Commission of the principles of sound administration and equal treatment, the Court reduced the amount of the fine imposed on Hoechst by 10 %.

Second, the Court held that the Commission erred in applying the aggravating circumstance of leader of the cartel against Hoechst, without however characterising sufficiently clearly and precisely in the statement of objections the facts alleged against it. Moreover, certain facts identified by the Commission did not make it possible to conclude with sufficient precision that the objection of leader would be found as against Hoechst. The Court concluded from this that Hoechst was not in a position to defend itself properly.

In Case T-53/03 *BPB* v *Commission* (judgment of 8 July 2008), the Court held that the reduction of the fine granted by the Commission in respect of BPB's cooperation was not sufficient since BPB had been the first participant in the anti-competitive practice to send,

following a request for information, but going beyond what the Commission requested, additional information confirming the existence of the cartel. Consequently, that information was able to strengthen substantially the Commission's arguments concerning the existence of an overall plan and thus made it possible to increase substantially the amount of the fines in respect of the gravity of the infringement. The Court therefore granted BPB an additional reduction of 10 % of the amount of its fine.

In Case T-69/04 *Schunk and Schunk Kohlenstoff-Technik* v *Commission* (judgment of 8 October 2008) and Case T-73/04 *Carbone Lorraine* v *Commission* (judgment of 8 October 2008, under appeal), the Court recalled that, in the case of a price cartel, the Commission may legitimately infer that the infringement had effects from the fact that the cartel members took measures to apply the agreed prices. In order to conclude that there has been an impact on the market, it is sufficient that the agreed prices have served as a basis for determining individual transaction prices, thereby limiting customers' room for negotiation. On the other hand, the Court held that the Commission cannot be required, where the implementation of a cartel has been established, systematically to demonstrate that the agreements in fact enabled the undertakings concerned to achieve a higher level of transaction prices than that which would have prevailed in the absence of a cartel. Such proof would require considerable resources, given that it would necessitate making hypothetical calculations based on economic models whose accuracy it would be difficult for the Court to verify and whose infallibility is in no way proved. In order to assess the gravity of the infringement, the decisive point is whether the cartel members did all they could to give concrete effect to their intentions. What then happened at the level of the market prices actually obtained was liable to be influenced by other factors outside the control of the members of the cartel. They cannot therefore benefit from external factors which counteracted their own efforts by turning them into factors justifying a reduction of the fine.

In addition, the Court found that, even though, in the application, Schunk disputed for the first time before it facts which had been raised against it in the statement of objections and on which the finding of an infringement of Article 81 EC was based, there were no grounds for cancelling the minimum reduction of 10 % allowed to Schunk on the basis of the leniency notice ([15]), as the Commission requested. The Court observed that the challenges at issue were rejected pursuant to the case-law under which facts which an undertaking has expressly acknowledged during the administrative procedure are to be regarded as established, that undertaking being barred from putting forward pleas disputing those facts in proceedings before the Court.

(d) Concept of group and setting of the 10 % ceiling on the amount of the fine

In Case T-52/03 *Knauf Gips* v *Commission* (judgment of 8 July 2008, not published), the Court stated that, when calculating the 10 % ceiling on the amount of the fine, referred to in Article 15(2) of Regulation No 17, the Commission may take into account the turnover of all the entities which make up an economic unit within the meaning of competition law. In particular, the Court decided that, although it is true that the mere fact that the share

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

capital of separate commercial companies is held by the same person or the same family is insufficient, in itself, to establish that those companies are a single economic unit with the result that the actions of one company can be attributed to the other and that one can be held liable to pay the fine for the other, it is possible to reach the conclusion that an economic unit exists on the basis of a series of elements. The Court also recalled in particular that the term 'undertaking' must be understood as designating an economic unit for the purpose of the subject matter of the agreement in question even if in law that economic unit consists of several persons, natural or legal.

(e) Imputability of the unlawful conduct

During 2008, the Court inter alia applied its case-law on the imputability of the unlawful conduct in *Knauf Gips* v *Commission*. It recalled in this respect that it is possible to impute to a company all of the acts of a group if that company has been identified as the legal person at the head of that group with responsibility for its coordination.

3. Points raised on the scope of Article 82 EC

In Case T-271/03 *Deutsche Telekom* v *Commission* (judgment of 10 April 2008, under appeal), the Court ruled on the legality of a Commission decision punishing an abuse by Deutsche Telekom of its dominant position on the basis of its charging competitors prices for access to the network ('wholesale services') that were higher than Deutsche Telekom's prices for retail access to the local network. That pricing, in the form of a 'margin squeeze', forced competitors to charge their end-users prices higher than the prices Deutsche Telekom charged its own end-users. The Commission had therefore imposed a fine of EUR 12.6 million on Deutsche Telekom.

The Court observed that the Commission was correct to find that whilst Deutsche Telekom had observed the price cap imposed by the German regulatory authority for telecommunications and post ('the RegTP') it had sufficient discretion, from the beginning of 1998 to the end of 2001 and from 2002 until the date of adoption of the decision, to end or reduce the margin squeeze. The Court also stated that the fact that Deutsche Telekom's charges had to be approved by the RegTP did not absolve it from responsibility under competition law. As an undertaking in a dominant position, Deutsche Telekom was obliged to submit applications for adjustment of its charges at a time when those charges had the effect of impairing genuine undistorted competition on the common market.

As regards the method used by the Commission to establish the margin squeeze, the Court observed that the abusive nature of Deutsche Telekom's conduct was connected with the spread between its prices for wholesale access and its retail prices. The Commission was not therefore required to demonstrate that the retail prices were, as such, abusive.

The Commission was also correct to analyse the abusive nature of the pricing practices solely on the basis of Deutsche Telekom's charges and costs, disregarding the particular situation of competitors on the market. In that connection, the Court observed that, if the

lawfulness of the pricing practices of a dominant undertaking depended on the particular situation of competing undertakings, and particularly their cost structure — information which is generally not known to the dominant undertaking — the latter would not be in a position to assess the lawfulness of its own activities.

Lastly, the Court recalled that the prerogatives of the national authorities under Community telecommunications law do not affect the Commission's powers to find infringements of competition law. The Commission's decision cannot therefore be criticised for entailing double regulation of Deutsche Telekom's pricing practices by punishing the company for not using its discretion to end the margin squeeze.

State aid

1. Admissibility

The case-law this year has further clarified in particular the concepts of, first, a person individually concerned by a Commission decision relating to an aid scheme, second, an act producing binding legal effects and, third, a legal interest in bringing proceedings.

In Joined Cases T-254/00, T-270/00 and T-277/00 *Hotel Cipriani and Others* v *Commission* (judgment of 28 November 2008), the Court declared admissible the actions brought by certain beneficiaries of reductions of, and/or exemptions from, social security contributions granted to firms established on the island territory of Venice and Chioggia against a Commission decision which considered those measures to be an aid scheme which was incompatible with the common market and required that the Italian Republic recover from the beneficiaries the aid paid. Although a decision concerning an aid scheme is of general application, the fact of belonging to a closed class of actual beneficiaries of that aid scheme, who are fully identifiable and particularly affected by the obligation to pay back the State aid, is sufficient to differentiate each of them from all other persons. If, as the Commission submitted, the *locus standi* of an actual beneficiary of an aid scheme were conditional upon an examination of its individual situation in the Commission decision declaring the scheme at issue incompatible, *locus standi* would depend on whether or not that institution chose to carry out such an individual examination in the light of the information communicated to it during the administrative procedure. That approach would be a source of legal uncertainty inasmuch as the Commission's knowledge of specific individual situations is frequently a matter of chance.

Concerning the concept of an act producing binding legal effects, the Court, in Case T-233/04 *Netherlands* v *Commission* (judgment of 10 April 2008, under appeal), relating to a Commission decision which classified the emission trading scheme for nitrogen oxides notified by the Kingdom of the Netherlands as State aid compatible with the common market, ruled that that Member State, which had asked the Commission to declare that that scheme did not constitute aid, had standing to challenge the decision in question. As a privileged applicant, it did not have to establish a legal interest in bringing proceedings, but only that the contested decision produced legal effects. That was the case here, since the classification of that scheme as State aid, first, had the effect of enabling the

Commission to examine the compatibility of the measure in question with the common market and also triggered the application of the procedure for existing State aid schemes and, second, was able to have an impact on the grant of new aid as a result of the rules on overlapping aid from different sources laid down inter alia in the Community guidelines on State aid for environmental protection ([16]).

As regards a legal interest in bringing proceedings, the Court stated, in Case T-301/01 *Alitalia* v *Commission* (judgment of 9 July 2008), that Alitalia, an undertaking which had received a capital injection classified by the Commission as State aid compatible with the common market subject to compliance with certain conditions, retained a personal interest in the annulment of that decision, even after it had received all of that aid following another Commission decision. Since the contested decision formed the legal basis of the decision authorising the payment of the final instalment of the aid, the second decision would have had no legal basis if the Court had annulled the contested decision on the ground that it classified the measure at issue as State aid. Further, in that same judgment, the Court held that, although the contested decision had been taken subject to compliance with certain conditions that the Italian authorities had undertaken to comply with, Alitalia had standing to raise a plea against those conditions since they were attributable to the Commission, which has exclusive power to find that aid is incompatible with the common market.

Concerning the legal interest in bringing proceedings of a beneficiary of aid declared by the Commission to be partially compatible with the common market, the Court held, in Joined Cases T-309/04, T-317/04, T-329/04 and T-336/04 *TV 2/Danmark and Others* v *Commission* (judgment of 22 October 2008), that the way in which the Commission examined the compatibility of the aid at issue precluded examining the admissibility of the action by dividing the contested decision into two parts, the first classifying the contested measures as State aid which was partly incompatible with the common market and the second classifying those measures as State aid which was partly compatible. The Commission examined whether, taken as a whole, the State funding measures at issue represented a sum exceeding the net cost of a service of general economic interest.

The Court further observed that the interest in bringing proceedings can result from a genuine 'risk' that the applicants' legal position will be affected by legal proceedings or where the 'risk' of legal proceedings was vested and present at the date on which the action was brought before the Court. TV 2 is the subject of legal proceedings at the national level brought by a competitor seeking compensation for the damage that it had suffered because the State aid received by TV 2 enabled that company to apply a low-price strategy to sales of its advertising space. The Court, whilst noting that TV 2 brought its action before it before the competitor commenced those proceedings, found that the vested and present nature of the risk of legal proceedings at the date on which TV2 initiated proceedings is demonstrated by the fact that it materialised in the form of the legal proceedings pending before the national court.

([16]) OJ 2001 C 37, p. 3.

2. Substantive rules

(a) Granting of an economic advantage

In Case T-442/03 *SIC* v *Commission* (judgment of 26 June 2008), concerning an application for the annulment of a Commission decision declaring inter alia that certain measures adopted by the Portuguese Republic with regard to Radiotelevisão Portuguesa ('the RTP'), a company entrusted with providing the Portuguese public television service, did not constitute State aid and that the other measures were compatible with the common market, the applicant claimed inter alia that, at the time of a bond issue, the RTP had received an implicit State guarantee, which explained how it was able to place that issue on the market despite its poor financial position. Having established, first, that the RTP was a limited liability company whose debts the Portuguese Republic, which held a 100 % stake, was not subject to an unlimited obligation to repay and, second, that the prospectus for the bond issue in question provided for no guarantee on the part of the State, the Court held that the fact that the market agreed to subscribe to the 1994 bond issue because it considered that the State would guarantee de facto its repayment did not permit a finding that there was State aid. Only objective findings leading to the conclusion that the State legally had to repay that issue in the event of default by the RTP would permit a finding of the existence of a State guarantee.

In *Hotel Cipriani and Others* v *Commission*, the undertakings which were beneficiaries of social security exemptions submitted that those exemptions did not confer on them any economic advantage because they compensated the additional costs created by the structural disadvantages in the lagoon area in which they were established. The Court held that the undertakings had failed to demonstrate that there was a direct connection between the additional costs actually incurred and the amount of the aid received. The mere fact that undertakings located in the lagoon area incur costs higher than on the mainland does not permit the inference to be drawn that the scheme does not confer any advantage on them and does not introduce any discrimination against their competitors in Italy or in other Member States.

(b) Selective nature of aid

In *Netherlands* v *Commission*, the Court established that the emission trading scheme for nitrogen oxides (NO_x) adopted by the Kingdom of the Netherlands does not constitute State aid. First, all industrial facilities in the Netherlands with an installed total thermal capacity exceeding a given threshold, without any geographic or sectoral connotation, are subject to the NO_x emission ceiling laid down by the measure in question and can benefit from the advantage offered by the tradability of emission allowances for which it provides. Aimed at the undertakings which are the biggest polluters, the system at issue uses an objective criterion which is in conformity with the objective of the protection of the environment. Second, only the undertakings covered by that scheme must comply, on pain of fine, with an emission standard or strict 'performance standard rate'. Therefore, the legal and factual situation of the undertakings subject to that NO_x emission ceiling cannot be regarded as comparable to that of undertakings to which that ceiling does not apply.

In any case, even if the measure in question differentiates between undertakings and is, therefore, in principle selective, that differentiation would arise from the nature or overall structure of the scheme of which it is part and would not therefore fulfil the condition of selectivity. Indeed, ecological considerations justify distinguishing undertakings which emit large quantities of NO_x from other undertakings.

On the other hand, in *SIC* v *Commission*, the Court held that the Commission had not established to the requisite legal standard that certain advantages from which the RTP benefited (exemption from notarial charges, registration charges and the costs of publication relating to that undertaking's transformation into a public limited company by way of legislation) did not fulfil the condition of selectivity on the ground that they were justified by the nature or the general logic of the system of which they were a part. First, the Commission did not examine whether the recourse to a legislative instrument which entailed the exemption from notarial charges had not been chosen with the aim of enabling public undertakings to escape those charges, but was merely part of the logic of the Portuguese legal system. Second, the Commission ought to have established whether it was consistent with the logic of the Portuguese legal system for the RTP's transformation into a public limited company to occur not in the normal way laid down for private companies, in other words, by a notarial deed (with all the consequences that entails under the general law concerning registration requirements and publication), but by legislation.

Joined Cases T-211/04 and T-215/04 *Government of Gibraltar and United Kingdom* v *Commission* (judgment of 18 December 2008) enabled the Court to clarify further the condition of selectivity.

In August 2002, the United Kingdom notified the Commission of the Government of Gibraltar's envisaged reform of corporate tax, which included the establishment of three taxes: a registration fee, a payroll tax and a business property occupation tax ('the BPOT'), on the basis that liability to the latter two taxes would be capped at 15 % of profits. The Commission considered that that reform was regionally selective since it provided that companies located in Gibraltar would be taxed at a lower rate than those located in the United Kingdom. It also found that three aspects of the tax reform were materially selective: first, the requirement that a company must make a profit before it becomes liable to payroll tax and BPOT, since that requirement favours companies which make no profit; second, the cap limiting liability to payroll tax and BPOT to 15 % of profits, since that cap favours companies which, for the tax year in question, have profits that are low in relation to their number of employees and occupation of business property; and, third, the payroll tax and BPOT, since those two taxes inherently favour companies which have no real physical presence in Gibraltar.

Applying the conditions set out in the case-law relating to aid granted by infra-State bodies ([17]), the Court held that the reference framework for assessing whether the tax reform at issue was regionally selective corresponded exclusively to the territory of Gibraltar and that, consequently, no comparison could be made with the system applicable to the United Kingdom.

([17]) Case C-88/03 *Portugal* v *Commission* [2006] ECR I-7115, paragraph 67.

With regard to material selectivity, the Court noted that classification of a tax measure as selective requires a three-stage analysis. The Commission must begin by identifying and examining the 'normal' regime under the tax system applicable in the geographical area constituting the relevant reference framework. It is in relation to this 'normal' tax regime that the Commission must, secondly, determine whether any advantage granted by the tax measure at issue may be selective. If the Commission demonstrates the existence of derogations from the 'normal' tax regime resulting in a differentiation between undertakings, the Member State concerned may adduce evidence that that differentiation is justified by the nature and general scheme of its tax system. In that eventuality, the Commission must determine, in a third stage, that that is indeed the case. In that connection, the Court added that, if the Commission fails to carry out the first two abovementioned stages, it cannot embark upon the third stage, as otherwise it will go beyond the limits of its review. Such an approach would be liable, first, to enable the Commission to assume the role of the Member State with regard to determination of that State's tax system and of the 'normal' regime under it and, second, thus to make it impossible for the Member State to justify the differentiations in question on the basis of the nature and of the general scheme of the tax system notified.

Noting that the Commission neither began by identifying the 'normal' regime under the notified tax system nor challenged the Gibraltar authorities' description of that regime, the Court held that that institution was unable to establish that certain of the elements of the notified tax system constituted derogations, and were therefore prima facie selective, vis-à-vis the 'normal' regime. The Court held that it was likewise impossible for the Commission to assess correctly whether any differentiations between undertakings were capable of being justified by the nature or the general scheme of the tax system notified.

(c) Private investor in a market economy test

In Case T-196/04 *Ryanair* v *Commission* (judgment of 17 December 2008), the Court annulled the decision by which the Commission examined separately two agreements concluded by the airline Ryanair with, respectively, the Walloon Region, the owner of Charleroi Airport, and Brussels South Charleroi Airport ('the BSCA'), a public sector company controlled by the Walloon Region which manages and operates that airport. According to the contested decision, those two agreements included State aid which was incompatible with the common market. The Commission found inter alia that the Walloon Region had concluded the first agreement with Ryanair as a public authority and that, consequently, its role in that agreement could not be examined pursuant to the principle of the private investor in a market economy. The Court noted, first, that since BSCA is an entity economically dependent on the Walloon Region, the Commission ought to have regarded them as one single entity. It then found that, by concluding its agreement with Ryanair, the Walloon Region carried out an economic activity. The mere fact that that activity was carried out in the public sector did not mean that it was categorised as the exercise of public authority powers. Furthermore, the mere fact that the Walloon Region has regulatory powers in relation to fixing airport charges does not mean that a scheme reducing those charges ought not to be examined by reference to the private investor principle.

(d) Application *ratione temporis* of the derogations to the prohibition of State aid

In Case T-348/04 *SIDE* v *Commission* (judgment of 15 April 2008), the Commission had applied the derogation relating to measures to promote culture and heritage conservation, provided for in Article 87(3)(d) EC, a provision which entered into force on 1 November 1993, to aid granted by France before that date. Having recalled that the substantive rules of Community law do not, in principle, apply to situations existing before their entry into force, and made clear that that conclusion applies irrespective of whether those rules might produce favourable or unfavourable effects for the persons concerned, the Court held, first, that all new State aid is necessarily incompatible with the common market if it was capable of distorting competition during the period in which it was paid and if it was not covered by any derogation and, second, that once it has produced its effect, the aid in question becomes definitively compatible or incompatible with the common market. Accordingly, since the analysis as to whether aid is compatible with the common market does not only require an assessment of whether, at the time when the relevant decision was adopted, the Community interest demanded that the aid be repaid, the Commission must also ascertain whether the aid in question was likely to distort competition during the period in which it was paid. On the basis of those considerations, the Court concluded that the Commission had erred in law by applying the abovementioned derogation to the period before 1 November 1993.

(e) Services of general economic interest

Case T-289/03 *BUPA and Others* v *Commission* (judgment of 12 February 2008) afforded the Court the opportunity to develop its case-law relating to the question whether or not the compensation received by an undertaking in return for a service of general economic interest ('SGEI') that it carries out constitutes State aid. The dispute concerned the organisation of the private medical insurance ('PMI') system in Ireland, which had undergone a process of liberalisation between 1994 and 1996, in the context of which the Voluntary Health Insurance Board (VHI) had been placed in competition with other operators, including the applicant. In the framework of that liberalisation, the establishment of a 'Risk Equalisation Scheme' ('RES') managed by the Health Insurance Authority ('the HIA') had been provided for. The RES is essentially a mechanism which provides for payment of a charge to the HIA by PMI insurers with a lower risk profile than the average market risk profile and for a corresponding payment by the HIA to PMI insurers whose risk profile is higher than the average profile. The mechanism specifies the various thresholds for triggering RES payments. The Commission, which received a complaint from BUPA and notification of the RES from Ireland, had decided that the payments under the RES constituted compensation for the SGEI obligations, namely obligations designed to ensure that all persons living in Ireland would receive a minimum level of PMI services at the same price, independently of their health status, age or sex ('the PMI obligations') ([18]).

([18]) Decision C(2003) 1322 final of 13 May 2003 (State Aid N 46/2003 — Ireland).

The Court held that, even though, at the time of the Commission's analysis, the Court of Justice's judgment of 24 July 2003 in *Altmark Trans and Regierungspräsidium Magdeburg* ([19]) ('*Altmark*') had not yet been delivered, it was in the light of the four conditions set out in that judgment ('the *Altmark* conditions') that it was appropriate to assess the legality of the contested decision. First, the Court of Justice did not place any temporal limitation on the scope of its findings in *Altmark*, and, second, the Court of Justice's interpretation of a provision of Community law is limited to clarifying and defining the meaning and scope of that provision as it ought to have been understood and applied, including by the Community institutions, from the time of its entry into force. The Court stated that, in this instance, the *Altmark* conditions, which moreover have a scope which to a large extent overlaps with that of the criteria of Article 86(2) EC, must be applied in accordance with the spirit and the purpose which prevailed when they were laid down, but in a manner adapted to the particular facts of this case.

In the context of the first *Altmark* condition, according to which the undertaking receiving the compensation must actually have clearly-defined public service obligations to discharge, the Court observed that Community law offers neither a clear and precise regulatory definition of the concept of an SGEI mission nor an established legal concept definitively fixing the conditions that must be satisfied before a Member State can properly invoke the existence and protection of an SGEI mission. Thus, Member States have a wide discretion to define what they regard as SGEIs and that definition can be questioned by the Commission only in the event of manifest error. That wide discretion does not, however, mean that a Member State is relieved of the obligation to ensure that the SGEI mission which it invokes satisfies certain minimum criteria (notably, the presence of an act of the public authority entrusting the operators in question with the mission and the universal and compulsory nature of that mission) common to any SGEI mission within the meaning of the EC Treaty, and to demonstrate that those criteria are indeed satisfied in the particular case. The lack of proof by the Member State that those criteria are satisfied may constitute a manifest error of assessment, in which case the Commission is required to make a finding to that effect. Furthermore, the Member State must indicate the reasons why it considers that the service in question, because of its specific nature, deserves to be characterised as an SGEI. In the absence of such reasons, even a marginal review by the Community institutions would not be possible. The Court stated, moreover, that the attribution of an SGEI mission does not necessarily presuppose that the operator entrusted with that mission will be given an exclusive or special right to carry it out, and that that attribution may also consist in an obligation imposed on a large number of, or indeed on all, the operators active on the same market. On the other hand, the essential conditions for establishing the existence of an SGEI mission are its universal and compulsory nature: whilst the first implies that the service-provider is obliged to contract, on consistent conditions, without being able to reject the other contracting party, the second does not mean that the service in question must necessarily be supplied to the whole population of a Member State, provided that it is offered at uniform and non-discriminatory rates and on similar quality conditions for all customers. By applying those criteria in this case, the Court held that the RES satisfies the first *Altmark* condition.

([19]) C-280/00 ECR I-7747.

As regards the second *Altmark* condition, providing that the parameters on the basis of which the compensation for carrying out the SGEI mission is calculated must be established in advance in an objective and transparent manner, the Court found that it was also satisfied in this instance. Any power that the Irish authorities may have in calculating the RES payments would not in itself be incompatible with the existence of objective and transparent parameters. Furthermore, the complexity of the economic and mathematical formulae which govern the calculations to be carried out does not by itself affect the precise and clearly-determined nature of the relevant parameters.

In the context of the examination of the third *Altmark* condition, according to which the compensation must be necessary and proportionate by reference to the costs incurred in discharging the SGEI mission, the Court observed that the RES payments do not aim to compensate any costs or additional costs associated with a specific supply of certain PMI services, but only to equalise the additional burdens which are supposed to result where a PMI insurer has a negative risk profile differential by comparison with the average market risk profile. That does not, however, entail infringement of the condition at issue. Since the compensation system referred to in this instance is radically different, in particular, from that examined in *Altmark*, it cannot strictly fulfil the third *Altmark* condition, which requires that it be possible to determine the costs occasioned by the performance of an SGEI obligation. However, the quantification of the additional costs by means of a comparison between the actual risk profile of a PMI insurer and an average market risk profile in light of the amounts paid by all PMI insurers subject to the RES is consistent with the purpose and the spirit of that condition, since the compensation is calculated on the basis of objective elements which are specific, clearly identifiable and capable of being controlled.

As regards the fourth *Altmark* condition, requiring that the costs borne in respect of the performance of the SGEI mission correspond to those of an efficient undertaking, the Court held that the Commission was entitled in this case to consider that there was no need to draw a comparison between the potential recipients of the RES payments and an efficient operator. Account must be taken of the fact that that condition is not applicable strictly to the RES system on account of the two following specificities: the neutrality of the compensation system constituted by the RES by reference to the receipts and profits of the PMI insurers, and the particular nature of the additional costs linked with a negative risk profile on the part of those insurers ([20]).

Other judgments have afforded the Court the opportunity in 2008 to supplement the analysis applicable to the compensation relating to the carrying out of an SGEI mission.

In Case T-266/02 *Deutsche Post* v *Commission* (judgment of 1 July 2008, under appeal), the Court stated, first, that where State resources were granted as compensation for additional costs associated with the provision of an SGEI in compliance with the *Altmark* conditions, the Commission, if it is not to render Article 86(2) EC entirely ineffective, cannot classify as State aid the public resources granted, as long as their total amount remains below the additional costs generated by carrying out the SGEI mission. Thus, if the Commission fails

([20]) In *Hotel Cipriani and Others* v *Commission*, the Court confirmed that, as regards decisions taken by the Commission prior to *Altmark*, it is appropriate to determine whether the overall approach followed is compatible with the substance of the *Altmark* conditions.

to check whether the amount of the compensation exceeds the additional costs associated with an SGEI, it does not show to the requisite legal standard that that compensation confers an advantage for the purposes of Article 87(1) EC and is therefore capable of constituting State aid. Moreover, where the Commission carried out no examination or assessment in this respect, it is not for the Community judicature to carry out in the stead of that institution an examination it never carried out, by substituting the conclusions at which it then arrives.

In *SIC* v *Commission*, the Court declared that the Portuguese Republic was not required to organise competitive tendering prior to the award of the television SGEI to the RTP. The specific nature of public service broadcasting, in particular its connection with the democratic, social and cultural needs of each society, explains and justifies the fact that a Member State is not required to have recourse to competitive tendering for the award of broadcasting SGEIs, at least where it decides to ensure that public service itself through a public company, as in this case.

The Court observed that the Member States have the power to define broadcasting SGEIs in such a way as to include broadcasting a wide range of programmes, whilst authorising the operator in charge of the SGEI to carry on commercial activities, such as the sale of advertising space. If that were not the case, the very definition of the broadcasting SGEI would be dependent on its method of financing, whilst an SGEI, *ex hypothesi*, is defined in relation to the general interest which it is designed to satisfy and not in relation to the means which will ensure its provision.

As regards the monitoring of the RTP's compliance with its public service remit, the Court stated that only the Member State was able to assess the public service broadcaster's compliance with the quality standards defined in its remit. The Commission must confine itself to finding that there is an independent monitoring mechanism at the national level, which was the case in this instance. So far as concerns whether the funding was proportionate to the public service costs, the Court held that, by not asking the Portuguese Republic to send certain RTP audit reports, the Commission infringed its obligation to investigate. The Commission cannot omit to require the disclosure of information which appears likely to confirm or to refute other information which is relevant for the examination of the measure at issue, but whose reliability cannot be considered to be sufficiently established.

The Court also stated, in *TV 2/Danmark and Others* v *Commission,* that the broadcasting SGEI does not necessarily have to be limited to the broadcasting of non-profitable programming. The claim that TV 2, which has been entrusted with the (TV 2) SGEI, would inevitably be led to subsidise its commercial activity through the State funds received for the public service, was considered by the Court to refer at the very most to a risk which it was for the Member States to prevent and, where necessary, for the Commission to penalise. Further, regarding the latitude left to TV 2 by the Danish authorities as regards its actual programming choices, the Court held that it is not unusual for a public service broadcaster to enjoy editorial independence from political authority in the choice of its programmes, provided that it satisfies the qualitative requirements.

(f) Aid designed to make good damage caused by exceptional occurrences

According to Article 87(2)(b) EC, aid granted to make good the damage caused by exceptional occurrences must be declared compatible with the common market.

Following the terrorist attacks of 11 September 2001, the Commission adopted, on 10 October 2001, a communication ([21]) in which it considered that that provision could authorise compensation, inter alia, for the costs caused by the closure of American airspace from 11 to 14 September 2001. In Case T-268/06 *Olympiaki Aeroporia Ypiresies* v *Commission* (judgment of 25 June 2008), the Court annulled in part the Commission's decision declaring incompatible with the common market the part of the aid granted by the Hellenic Republic to make good the losses due to the cancellation of flights scheduled outside the period referred to by that communication. The Court held that, although Article 87(2)(b) EC makes it possible to compensate only for damage caused directly by exceptional occurrences, the existence of a direct connection can be recognised even where the loss arises, as in this instance, shortly after the abovementioned period.

3. Procedural rules

Lastly, the 2008 case-law afforded the opportunity to clarify the obligations incumbent on the Commission when it adopts a second decision relating to State aid which has been the subject of a decision annulled by the Court. In *Alitalia* v *Commission*, the Court held that there was no obligation on the Commission to reopen in such a case the formal investigation procedure, since the illegalities censured by the Court did not go back as far as the opening of the procedure. In addition, the Commission was not required to make available again to the third parties concerned, whose right to submit their comments had been ensured, in the first decision, by the publication of a notice in the Official Journal of its decision to open a formal investigation procedure, that same possibility when adopting the second decision.

Community trade mark

Decisions relating to the application of Regulation No 40/94 ([22]) continued to represent in 2008 a significant number (171) of the cases disposed of by the Court of First of Instance, although they accounted for a lower percentage of the total number of cases in comparison with 2007.

([21]) COM(2001) 574 final.

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

1. Absolute grounds for refusal of registration

For the first time, in Case T-270/06 *Lego Juris* v *OHIM — Mega Brands (Lego brick)* (judgment of 12 November 2008), concerning invalidity proceedings, the Court ruled on the scope of the absolute ground for refusal provided for in Article 7(1)(e)(ii) of Regulation No 40/94, according to which signs which consist exclusively of the shape of goods which is necessary to obtain a technical result are not to be registered. The Court held that that provision precludes registration of any shape consisting exclusively, in its essential characteristics, of the shape of the goods which is technically causal of, and sufficient to obtain, the intended technical result, even if that result can be achieved by other shapes using the same or another technical solution. Those characteristics are to be determined objectively, on the basis of the graphic representation of the shape concerned and any descriptions filed at the time of the trade mark application, and not on the basis of the perception of the target consumer.

In another case involving invalidity proceedings, the Court, in Case T-405/05 *Powerserv Personalservice* v *OHIM — Manpower (MANPOWER)* (judgment of 15 October 2008, under appeal), defined the geographical area over which the relevant public might perceive as descriptive the sign constituted by the English word 'manpower'. In that connection, it held that that may even be the case in non-English-speaking Member States, provided that, first, that English word has been received into the language of the country in question and can be used there to replace whatever word or phrase in that language means 'workforce' or 'labour', or that, second, in the context of the goods and services protected by the mark MANPOWER, English is used — albeit only as an alternative to the national language — to address the members of the relevant public. In accordance with those criteria, the Court held that the Board of Appeal was right to find that the sign at issue is descriptive in Germany and Austria, whereas it was wrong to find that that is also the case in the Netherlands, Sweden and Denmark. Other developments concerning the role of knowledge of languages by the relevant public appear in Case T-435/07 *New Look* v *OHIM (NEW LOOK)* (judgment of 26 November 2008, not published), in which the Court held that, since a basic understanding of English on the part of the general public in the Scandinavian countries, the Netherlands and Finland must be regarded as a well-known fact, the Board of Appeal was entitled to take the view that the sign NEW LOOK, a banal expression which is part of everyday English and does not present any linguistic difficulty, is devoid of any distinctive character in those countries.

Another significant contribution made by the case-law in 2008 in this field concerns the scope of the reference that Article 7(1)(h) of Regulation No 40/94 makes to the absolute grounds for refusal referred to in Article 6 *ter* of the Paris Convention ([23]). In Case T-215/06 *American Clothing Associates* v *OHIM (Representation of a maple leaf)* (judgment of 28 February 2008, under appeal), which arose from the action brought by an undertaking which had been refused by the Office for Harmonization in the Internal Market (Trade Marks and Designs) ('OHIM') registration of a sign consisting, inter alia, of a maple leaf, on the ground that the latter appears on the Canadian flag, the Court held that, because of the distinction

([23]) Paris Convention for the Protection of Industrial Property of 20 March 1883, as revised and amended (*United Nations Treaty Series*, Vol. 828, No 11847, p. 108).

that that convention establishes between 'trade marks' and 'service marks', its Article 6 *ter* (a), which requires, inter alia, that flags and other State emblems be refused registration, does not apply to 'service marks'. If the Community legislature had intended to extend that prohibition to marks in respect of services, it would not merely have referred to Article 6 *ter* of the Paris Convention, but would have mentioned that prohibition in the wording of Article 7 of Regulation No 40/94. Moreover, the Court established that, unlike what is provided for in respect of the assessment of the distinctive character of a complex mark, when applying Article 6 *ter* of the Paris Convention, regard must be had to each of the elements of that mark and it is sufficient that one of them is a State emblem or an imitation thereof to preclude registration of the mark concerned, irrespective of its overall perception. Lastly, the application of Article 6 *ter*(1)(a) of the Paris Convention is not subject to the condition that there be a possibility of error on the part of the public concerned as regards the origin of the goods designated by the mark applied for or as regards the existence of a connection between the proprietor of that mark and the State whose emblem appears in that mark.

In Case T-302/06 *Hartmann* v *OHIM (E)* (judgment of 9 July 2008, not published), the Court made a significant clarification to the case-law according to which OHIM may base its analysis on facts arising from practical experience generally acquired from the marketing of general consumer goods, without being obliged to give examples of such practical experience. The Court held that, since the goods covered by the mark applied for had been defined by the departments of OHIM as not being intended for general consumption, but for a specialist public, it was not acceptable that those departments based their analysis on specific facts which might be known by anyone.

A series of judgments has enabled the Court to clarify the connection which must exist between a trade mark and the goods or services covered in order for it to be considered descriptive, in particular Case T-181/07 *Eurocopter* v *OHIM (STEADYCONTROL)* (judgment of 2 April 2008, not published), Case T-248/05 *HUP Uslugi Polska* v *OHIM — Manpower (I.T.@MANPOWER)* (judgment of 24 September 2008, not published, under appeal), Case T-230/06 *REWE-Zentral* v *OHIM (Port Louis)* (judgment of 15 October 2008, not published), Case T-325/07 *CFCMCEE* v *OHIM (SURFCARD)* (judgment of 25 November 2008, not published) and Case T-67/07 *Ford Motor* v *OHIM (FUN)* (judgment of 2 December 2008). In particular, in that last judgment, the Court held that the connection between the meaning of the word 'fun', on the one hand, and land motor vehicles and parts and fittings thereof, on the other, is not sufficiently direct and specific to make it possible to refuse registration of the mark applied for, contrary to what the Board of Appeal decided.

Lastly, in Case T-341/06 *Compagnie générale de diététique* v *OHIM (GARUM)* (judgment of 12 March 2008, not published), the Court stated that the analysis of the distinctive character of a sign must refer to a specific and current market experience or, at the very least, to a very probable and sufficiently recent market experience. On the other hand, an alleged or hypothetical evolution, without any connection to specific and verifiable elements, cannot, in principle, suffice.

2. Relative grounds for refusal

The dispute between the Czech company Budějovický Budvar and the United States company Anheuser-Busch, as in 2007, led the Court, in Joined Cases T-225/06, T-255/06, T-257/06 and T-309/06 *Budějovický Budvar* v *OHIM — Anheuser-Busch (BUD)* (judgment of 16 December 2008), to interpret Article 8(4) of Regulation No 40/94, which makes it possible to file a notice of opposition against registration of a Community trade mark by invoking an earlier sign other than a mark. First of all, the Court observed that OHIM must take into account earlier rights which are protected in the Member States, without calling in question their classification. Thus, as long as the protection afforded in Austria and France to the appellation of origin 'bud' is valid under the national law of those States, OHIM must take account of the effects of that protection. The Court then held that OHIM, instead of applying Article 43 of Regulation No 40/94 by analogy and requiring Budějovický Budvar to demonstrate 'genuine' use of the appellations 'bud', ought to have determined whether the signs concerned were used in the context of a commercial activity with a view to economic advantage, and not as a private matter, whatever the territory concerned by that use. The Court considered that the Czech company succeeded in proving that the appellations at issue are used in the course of trade. The Court also held that OHIM erred by not taking into account all the relevant elements of fact and law in determining whether the national laws concerned enable Budějovický Budvar to prohibit use of a subsequent mark.

One of the other main contributions of the case-law in 2008 in this field concerns the question of the similarity of the goods and/or the services covered by the earlier mark and the mark applied for for the purpose of assessing whether there is a likelihood of confusion. In Case T-175/06 *Coca-Cola* v *OHIM — San Polo (MEZZOPANE)* (judgment of 18 June 2008), first, the Court found that there is little similarity between wine and beer. Although wine and beer may, to a certain extent, satisfy the same need — enjoyment of a drink during a meal or as an aperitif — the relevant consumer perceives them as two distinct products. Moreover, there is nothing to support the conclusion that a purchaser of one of those products would be led to purchase the other and that they would thus be complementary. On the contrary, account being taken of price differences, wine and beer are, to a certain extent, competing goods.

In Case T-161/07 *Group Lottuss* v *OHIM — Ugly (COYOTE UGLY)* (judgment of 4 November 2008, not published), the Court held that there is considerable complementarity between 'beers', on the one hand, and 'cocktail lounge services' and 'entertainment services, services for discos, night clubs', on the other. Beer is consumed to quench thirst or for enjoyment, whilst those services cover the activity of preparing and serving alcoholic beverages in places where people go to enjoy themselves. The Court held that OHIM was therefore right to find that those goods and services are similar to a low degree. That is not the case in respect of the similarity between beers and 'cultural activities', since those activities display a much lower degree of complementarity with beer than the services referred to above.

Complementarity between goods and services was also the subject of two other judgments, which were delivered in cases involving invalidity proceedings. In Case T-116/06 *Oakley* v *OHIM — Venticinque (O STORE)* (judgment of 24 September 2008), the Court established that the relationship between the services provided in connection with the retail

trade of certain items of clothing and the items of clothing themselves is close in the sense that the goods are important or even indispensable to the provision of those services. Such services are provided at the time of sale of those goods and retail trade includes all activity carried out by the trader for the purpose of encouraging the conclusion of a sales transaction. By contrast, that relationship does not exist where the sales services covered by a mark concern accessories and the other mark covers items of clothing and leather goods.

In Case T-242/07 *Weiler* v *OHIM — IQNet Association — The International Certification Network (Q2WEB)* (judgment of 12 November 2008, not published), when stating the reasons for its finding that the goods and services covered by the mark Q2WEB can all be used and/or provided together or consecutively in order to provide consumers with the services in question covered by the mark QWEB Certified Site, the Court pointed out that providers of telecommunication services, in particular telecommunications services through the Internet, such as those covered by the mark QWEB Certified Site, generally supply software to their clients and a maintenance and update service for that software, which is therefore, by definition, important for the use of the telecommunications service provided, and that such software and services form part of the goods and services covered by the mark Q2WEB.

The 2008 case-law has also made a contribution to the conceptual comparison between opposing signs in *inter partes* proceedings. When the Court had to adjudicate on the similarity between the word signs EL TIEMPO and TELETIEMPO, it held, in Case T-233/06 *Casa Editorial el Tiempo* v *OHIM — Instituto Nacional de Meteorología (EL TIEMPO)* (judgment of 22 April 2008, not published), that nothing in the wording of the description of the goods and services in question permits the inference that the word 'tiempo' will necessarily be interpreted in its chronological sense in respect of the mark applied for and in its meteorological sense in respect of the earlier marks.

Further, it is apparent from Case T-212/07 *Harman International Industries* v *OHIM — Becker (Barbara Becker)* (judgment of 2 December 2008), in which the Court held that, where a word mark consists of two components, one of which is the single component comprising another word mark, it is not necessary that the common component of the conflicting marks is the dominant component in the overall impression created by the composite mark to find a likelihood of confusion. If such a condition were imposed, even though the common component has an independent distinctive role in the composite mark, the owner of the earlier mark would be deprived of the exclusive right conferred by that mark.

Lastly, the Court clarified what is the average consumer's level of attention when he or she purchases an inexpensive item of furniture. Since that consumer acts on the basis of a number of functional and aesthetic considerations, in order to ensure that that furniture is in keeping with other furniture already in his or her possession, the Court held, in Case T-112/06 *Inter-IKEA/OHIM — Waibel (idea)* (judgment of 16 January 2008, not published), that while the actual act of purchase may be completed quickly in the case of certain items of furniture, the process of comparison and reflection before the choice is made requires, by definition, a high level of attention.

3. Formal and procedural issues

(a) Evidence of genuine use of the earlier mark

In Case T-325/06 *Boston Scientific* v *OHIM — Terumo (CAPIO)* (judgment of 10 September 2008, not published), the Court held that the evidential value of the figures contained in the list of sales of the goods covered by the earlier mark, provided to OHIM by the proprietor of that mark, could be determined by means other than an affidavit or statement as referred to in Article 76(1) of Regulation No 40/94 and in Rule 22 of Regulation No 2868/95 ([24]). The fact that certain elements of the invoices corresponding to those sales appear in the list is testimony to its consistency and veracity. Further, the fact that an invoice was drawn up shows that the earlier mark was used publicly and externally and not solely within the undertaking which owns the earlier trade mark or within a distribution network owned or controlled by that undertaking.

In Case T-100/06 *Rajani* v *OHIM — Artoz-Papier (ATOZ)* (judgment of 26 November 2008, not published), the Court examined the question of the date to be taken into consideration for calculating the beginning of the five-year period during which an earlier mark cannot be made subject to the requirement of evidence of genuine use, where that mark has been the subject of an application for international registration with the World Intellectual Property Organisation (WIPO) which was filed on a certain date, but the mark was granted protection in a Member State at a later date. Having established that the question is a matter for the national law concerned, the Court held that, if, pursuant to that law, protection for an internationally registered trade mark is provisionally refused but subsequently granted, the registration is regarded as having taken place on the date of receipt by WIPO of the final notification that protection has been granted.

(b) Continuity in terms of functions

The Court applied the principles laid down in the judgment of the Court of Justice of 13 March 2007 in *OHIM* v *Kaul* ([25]), when stating, in Case T-420/03 *El Corte Inglés* v *OHIM — Abril Sánchez et Ricote Saugar (BOOMERANG^{TV})* (judgment of 17 June 2008), that, although the Board of Appeal is not required to take into consideration the facts and evidence produced for the first time before it, it is, however, necessary to determine whether, by its refusal, it did not infringe Article 74(2) of Regulation No 40/94 by considering itself to have no discretion. The Court held that the nature of the facts and evidence in question is only one of the factors which OHIM may take into account when exercising the discretion which it must exercise. Since the Board of Appeal relied on the fact that the applicant had the opportunity to produce the documents at issue before the Opposition Division, it implicitly took the view that the circumstances of the case precluded their being taken into account. Thus, the Board of Appeal did not hold on principle that the documents produced by the applicant for the first time before it were inadmissible, but gave grounds for its decision on that issue.

([24]) Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Regulation (EC) No 40/94 (OJ 1995 L 303, p. 1).

([25]) Case C-29/05 P [2007] ECR I-2213.

(c) Interest in bringing proceedings in relation to invalidity proceedings

In Case T-160/07 *Lancôme* v *OHIM — CMS Hasche Sigle (COLOR EDITION)* (judgment of 8 July 2008, under appeal), the Court held that it is apparent from the scheme of Article 55(1) of Regulation No 40/94 that the legislature intended to permit any natural or legal person and any group or body having the capacity to sue or be sued to bring applications for a declaration of invalidity based on absolute grounds for invalidity, and that it is not necessary to demonstrate the existence of an interest in bringing proceedings, whereas, with regard to applications for a declaration of invalidity based on relative grounds for invalidity, it expressly restricted the group of potential applicants for a declaration of invalidity to proprietors of marks or of earlier rights and to licensees.

(d) Obligations of the Boards of Appeal

Relying on its settled case-law concerning the obligation to provide a statement of reasons ([26]), the Court stated, in Case T-304/06 *Reber* v *OHIM — Chocoladefabriken Lindt & Sprüngli (Mozart)* (judgment of 9 July 2008), that the Board of Appeal is not, as a general rule, required to provide in its decision a specific answer to each argument regarding the existence in other similar cases of decisions of its own at various stages in the procedure, or those of national courts which go in a particular direction, if the reasons for the decision which it adopts in a specific case show, at the very least implicitly but clearly and unequivocally, why those other decisions were not relevant or were not taken into consideration in its assessment.

In *COYOTE UGLY*, the Court held that, although the Board of Appeal is entitled, when it identifies a similarity, even if only partial, between the goods and services at issue in opposition proceedings, to separate of its own motion the services covered by the mark applied for by stating precisely the sub-categories compatible with the earlier mark, it is not required to do so.

Plant variety rights

Regulation No 2100/94 ([27]) on Community plant variety rights allows for the grant of industrial property rights which are valid throughout the Community in respect of plant varieties. The implementation and application of this Community regime are carried out by the Community Plant Variety Office ('the CPVO'), a decentralised Community agency which has its headquarters in Angers (France), and which has been operational since 27 April 1995. Within the CPVO, a Board of Appeal responsible for deciding on appeals against certain types of decisions taken by the CPVO has been established. In accordance with Article 73 of that regulation, an appeal to the Community judicature lies from decisions of the Board of Appeal of the CPVO.

([26]) Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland and Others* v *Commission* [2004] ECR I-123, and Case C-3/06 P *Groupe Danone* v *Commission* [2007] ECR I-1331.

([27]) Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ 1994 L 227, p. 1).

During 2008, the Court delivered two initial judgments relating to decisions adopted by the Board of Appeal of the CPVO. Having had the opportunity to rule principally on admissibility in Case T-95/06 *Federación de Cooperativas Agrarias de la Comunidad Valenciana* v *CPVO — Nador Cott Protection (Nadorcott)* (judgment of 31 January 2008) the Court defined the scope of the review which it exercises in this area in Case T-187/06 *Schräder* v *CPVO (SUMCOL 01)* (judgment of 19 November 2008). In that connection, it observed that, when the Community judicature rules on decisions taken by a Community administrative authority on the basis of complex technical assessments, it exercises in principle limited review and does not substitute its assessment of the facts for the assessment made by that authority. However, that does not mean it must decline to review the administration's interpretation of technical data. That approach may be transposed to cases in which the administrative decision is the result of complex appraisals in scientific domains, such as botany or genetics. In this instance, the appraisal of the distinctive character of a plant variety in the light of the criteria laid down in Article 7(1) of Regulation No 2100/94 was of a scientific and technical complexity such as to justify a limit to the scope of review by the courts. Those criteria require that it be ascertained whether the candidate variety is clearly distinguishable by reference to the expression of the characteristics that results from a particular genotype or combination of genotypes, from any other variety. On the other hand, appraisal of whether there exists another variety which is a matter of common knowledge in accordance with the criteria laid down in Article 7(2) of that regulation does not require expertise or special technical knowledge and is not of a complexity such as to justify a limit to the scope of review by the courts. Those criteria merely require it to be ascertained, for example, whether, on the date of application for a plant variety right in respect of the candidate variety, another variety had been the object of a right or was entered in an official register of plant varieties.

Access to documents

In Case T-403/05 *MyTravel* v *Commission* (judgment of 9 September 2008, under appeal), the Court of First Instance clarified the extent of the right of access provided for by Regulation No 1048/2001 ([28]) to certain documents appearing in the Commission's file, in connection with the assessment of the compatibility of a concentration with the common market, and to documents drafted by the Commission's staff following the annulment of one of its decisions by the Court.

That judgment relates to the operation concentrating the undertakings Airtours and First Choice, declared incompatible with the common market by the Commission. That decision having been annulled by the Court in Case T-342/99 *Airtours* v *Commission* [2002] ECR II-2585, the Commission set up a working group comprising officials of its Directorate-General (DG) for Competition and the legal service in order to consider whether it was appropriate to bring an appeal against that judgment and to assess the implications of that judgment on the procedures for the control of concentrations or in other areas. MyTravel, the successor in title to Airtours, made a request to the Commission for access to two kinds

([28]) 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).

of documents: on the one hand, the working documents and the report drawn up by the working group and, on the other, the documents in the *Airtours/First Choice* file on which that report was based. The Commission refused access to most of those documents on the basis of the exceptions provided for by Regulation No 1049/2001.

With regard, first, to the exception relating to protection of the decision-making process, the Court observed that the report fell within the purely administrative, and not legislative, functions of the Commission. The interest of the public in obtaining access to a document in accordance with the principle of transparency does not carry the same weight in the case of a document drawn up in an administrative procedure intended to apply the rules of competition law as in the case of a document relating to a legislative procedure. Noting that disclosure of the report to the public would carry the risk of revealing possibly critical opinions of Commission officials and of enabling a comparison of the content of the report with the decision ultimately taken by the Commission, the Court concluded that the Commission was fully entitled to refuse access on the ground that disclosure of the report to the public would seriously undermine the right of one of its Members to the frankly expressed and complete views of its own services. Furthermore, the Court considered that, so far as the internal documents relating to the Airtours–First Choice concentration were concerned, the Commission had correctly taken the view that disclosure of those documents would reduce the ability of its services to express their points of view and would seriously undermine its decision-making process in the field of the control of concentrations, for those documents might indicate opinions of the Commission services, which would perhaps no longer appear in the final version of the decision. Such disclosure would encourage self-censorship and damage full and free communication between staff. In addition, the risk is reasonably foreseeable, for it is probable that those documents could be used to influence the position of the Commission's staff, which has to be free and independent from all external pressures.

With regard, secondly, to the exception relating to protection of court proceedings and legal advice, which the applicant argued did not apply to the notes in reply drafted by the legal service for the attention of the Competition DG in connection with the preparation of the Airtours decision, the Court stated that disclosure of the notes in question could lead the legal service to display reticence and caution in the future in order not to affect the Commission's decision-making capacity in areas in which it was involved in its administrative capacity. It added that disclosure of that advice would risk putting the Commission in the difficult position in which its legal service might find itself required to defend a position before the Court which was not its position during the internal procedure. Such a conflict could have a considerable effect on both the freedom of the legal service to express its views and its ability effectively to defend before the Community judicature, on an equal footing with the other legal representatives of the various parties to legal proceedings, the Commission's definitive position.

With regard, thirdly, to the exception relating to protection of inspections, investigations and audits, the Court, having found that, for one of the documents requested, the Commission's decision contained only vague and general considerations that did not make it possible to understand how those inspections, investigations and audits could have been threatened, annulled the decision insofar as it refused access to that document.

In Case T-144/05 *Muñiz* v *Commission* (judgment of 18 December 2008, not published), the Court of First Instance also tackled the issue of the application of the exception relating to protection of the decision-making process, in connection with a request for access to preparatory documents submitted by a working group to the Nomenclature Committee, which plays a part in the legislative process for the adoption of measures classifying goods, when classification of particular goods is likely to give rise to difficulty. The Court considered that, while the protection of the decision-making process from external pressure may constitute a legitimate ground for restricting access to documents, the reality of such pressure must be established with certainty, and it must be shown that there was a foreseeable risk that the classification decision would be substantially affected. In addition, although account must be taken of the Commission's desire that staff and experts should continue to be able to express their opinions freely, it must nonetheless be determined whether those concerns are objectively justified. The Court found that such was not the case in the circumstances, the Commission not having corroborated its contentions with any evidence, and annulled the contested decision.

The exception relating to protection of commercial interests was the subject of consideration in Case T-380/04 *Terezakis* v *Commission* (judgment of 30 January 2008, not published). The Commission had, in particular, refused to grant the applicant access to a contract concluded between Athens International Airport and the Hochtief consortium, relating to the construction of the new Athens airport at Spata, on the ground that to disclose the contract would cause serious harm to the commercial interests of the parties to the contract. The Court stated that, by its nature, such a document was likely to contain confidential information concerning both the companies in question and their business relations and that, as a general rule, precise information relating to the cost structure of an undertaking constitutes business secrets, the disclosure of which to third parties is likely to undermine its commercial interests. Although certain passages contained information about the contracting parties and their business relations, the examination carried out by the Commission did not make it possible to determine specifically whether the exception relied on actually applied to all the information contained in the contract. Given that it seemed not to be impossible for the Commission to give reasons justifying the need for confidentiality in respect of the whole of the main contract without disclosing its content and, thereby, depriving the exception of its very purpose, and that it was not for the Court to substitute its assessment for that of the Commission, the court annulled the contested decision insofar as it refused access, even partially, to the contract.

In Case T-42/05 *Williams* v *Commission* (judgment of 10 September 2008, not published), the question arose whether the decision partially refusing access to certain documents identified therein may be interpreted as entailing an implied refusal of access to certain other kinds of documents, such as memoranda and e-mails exchanged at the time of the preparatory work for Directive 2001/18 ([29]) on GMOs, which were not identified, but for which also access was sought. For that purpose, the Court proceeded in three stages. First, it found that the Commission held a significant number of preparatory documents other than those identified in the contested decision and that, in the absence of any statement

([29]) 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).

by the Commission to that effect, there was no reason to suppose that the documents in question did not exist. Next, the Court ascertained whether the request for access was sufficiently precise to enable the Commission to understand that it related to such documents. Examining the circumstances of the case, the Court considered that it was, and concluded that the fact that the Commission did not identify in the contested decision all the internal documents relating to the background to the adoption of Directive 2001/18 amounted, in accordance with Article 8 of Regulation No 1049/2001, to an implied refusal of access, actionable before the Court. Lastly, the Court examined whether the fact that the contested decision did not contemplate disclosing those documents could be justified in the particular circumstances of the case, inter alia on the basis that the request for access was very wide-ranging and imprecise. Recalling that the possibility, for the institution, of weighing the interest in public access to the documents against the burden of work so caused was applicable only in exceptional cases, limited to situations in which concrete individual examination of the documents would entail an unreasonable amount of administrative work for that institution, and finding that the Commission had not formally relied on that exception, the Court considered that the Commission had not justified its implied refusal to grant access to the documents not identified in the contested decision. The implied refusal of access by definition constituted an absolute failure to state reasons which the Commission could not remedy by means of the arguments put before the Community judicature, and justified the annulment of the contested decision on that head.

Common foreign and security policy — Fight against terrorism

The year 2008 saw the Court give more rulings in the sphere of the fight against terrorism in two judgments, in Cases T-256/07 *People's Mojahedin Organization of Iran* v *Council* (judgment of 23 October 2008, under appeal) and T-284/08 *People's Mojahedin Organization of Iran* v *Council* (judgment of 4 December 2008), the same applicant having been successful in part in 2006 ([30]). In the first judgment, the Court stated that the Council, when required to determine whether freezing of the funds of a person, group or entity is or remains justified, must first of all evaluate the danger that, for want of such a measure, those funds might be used to fund or prepare acts of terrorism. With regard to the part played by the Court, the broad discretion that the Council must be recognised to enjoy does not mean that the Court is not to review the interpretation made by the Council of the relevant facts. The Community judicature must not only establish whether the evidence relied on is factually accurate, reliable and consistent, but must also ascertain whether that evidence contains all the relevant information to be taken into account in order to assess the situation and whether it is capable of substantiating the conclusions drawn from it. However, when conducting such a review, it must not substitute its own assessment of what is appropriate for that of the Council. Moreover, the Court emphasised that, where a Community institution enjoys broad discretion, the review of observance of certain procedural guarantees is of fundamental importance. The Court held that a review determining whether the Council had reasonable grounds for continuing to freeze the applicant's funds fell beyond all question within the bounds of the judicial review that the Community judicature may carry out inasmuch as it corresponds, in essence, to the review of a manifest error of assessment.

([30]) Case T-228/02 *Organisation des Mojahedines du peuple d'Iran* v *Council* [2006] ECR II-4665 (see Annual Report 2006).

Having carried out such a review, the Court annulled one of the contested decisions on the ground that the Council had failed to explain sufficiently the reasons why it had not taken into consideration the decision of a United Kingdom judicial authority, the Proscribed Organisations Appeal Commission ('the POAC'), ordering the removal of the applicant from the list of terrorist organisations in the United Kingdom. The Court recalled that it is imperative, for the purpose of adopting Community measures freezing funds, that the Council should check that there exists a decision taken by a competent national judicial authority and check the action taken at national level in response to that decision. By its decision, the POAC had in particular described as unreasonable the Home Secretary's determination that the applicant was still an organisation involved in terrorism.

In the second of those two judgments, given in an expedited procedure the very day after the hearing, the Court of First Instance, stressing that it is necessary for a fair balance to be struck between the need to combat international terrorism and the protection of fundamental rights, ruled that because the restrictions imposed by the Council on the rights of the parties concerned to a fair hearing must be offset by a strict judicial review which is independent and impartial, the Community courts must be able to review the lawfulness and merits of the measures to freeze funds without its being possible to raise objections that the evidence and information used by the Council is secret or confidential. The Court annulled the contested decision on the ground, inter alia, that the Council is not entitled to base its funds-freezing decision on information or material in the file communicated by a Member State, if that Member State is not willing to authorise its communication to the Community judicature.

Privileges and immunities

In Case T-345/05 *Mote* v *Parliament* (judgment of 15 October 2008), the Court of First Instance ruled on a decision of the Parliament waiving the parliamentary immunity of one of its Members. Criminal proceedings had been brought against Mr Mote, a British citizen, on the ground that he had obtained State benefits on the basis of false declarations. Following his election to the European Parliament, Mr Mote applied for the criminal proceedings pending against him to be stayed, relying on the privileges and immunities he enjoyed in his capacity as a Member of the European Parliament. The prosecution was stayed by the competent national court, which held that the bail condition under which Mr Mote had been placed constituted an obstacle to the free movement of Members of Parliament and thus infringed Article 8 of the Protocol on the Privileges and Immunities of the European Communities ([31]). The United Kingdom having brought the matter before the Parliament, the latter decided in plenary assembly to waive Mr Mote's immunity, whereupon Mr Mote applied to the Court of First Instance for annulment of that decision.

In its judgment, the Court held that is apparent from the last paragraph of Article 10 of the Protocol on the Privileges and Immunities of the European Communities, according to which immunity cannot prevent the European Parliament from exercising its right to waive the immunity of one of its Members, that the Parliament is competent to decide on an ap-

([31]) Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 annexed to the Treaty establishing a single Council and a single Commission (OJ 1967 152, p. 13).

plication for waiver of the immunity of a Member. By contrast, there is no rule establishing the Parliament as the competent authority for deciding whether the privilege provided for by Article 8 of the Protocol applies. The field of application of Articles 8 and 10 of the Protocol is not the same, the objective of Article 10 being to safeguard the independence of Members by ensuring that pressure, in the form of threats of arrest or legal proceedings, is not brought to bear on them during the sessions of the Parliament, and the function of Article 8 being to protect Members against restrictions on their freedom of movement, other than judicial restrictions. Observing that Mr Mote had not alleged any restrictions other than judicial, the Court concluded that the Parliament had not erred in law in deciding to waive Mr Mote's immunity without ruling on the privilege granted to him in his capacity as a Member of the Parliament.

II. Actions for damages

This year the chief contributions to the case-law in this sphere deal with the conditions in which the Community may incur liability by reason, first, of the dissemination by a Community institution or body of information relating to individuals and, second, of errors committed by the Commission in the economic analysis underlying a decision declaring a concentration incompatible with the common market.

Relation to national proceedings

In Case T-48/05 *Franchet and Byk* v *Commission* (judgment of 8 July 2008), the Court of First Instance interpreted Regulation No 1073/1999 ([32]), which governs the inspections, checks and actions undertaken by agents of the European Anti-Fraud Office (OLAF), a body responsible, in particular, for carrying out internal administrative investigations within the institutions intended to investigate serious facts which may constitute a breach of obligations by officials and servants of the Communities likely to lead to disciplinary and, in appropriate cases, criminal proceedings. That regulation provides that those investigations must be conducted in accordance with the Treaty, in particular with full respect for human rights and fundamental freedoms, and in observance of the right of persons involved to express their views on the facts concerning them. In the case in point, several Eurostat internal audits having revealed possible irregularities in its financial management, OLAF initiated a number of investigations concerning, in particular, the contracts concluded by Eurostat with various companies. In 2002 and 2003 OLAF forwarded to the Luxembourg and French judicial authorities files relating to the investigations of those irregularities and implicating Mr Franchet and Mr Byk, the former Director-General and the former Director, respectively, of Eurostat. They brought an action for damages before the Court, claiming that errors had been made by both OLAF and the Commission in the course of those investigations.

([32]) Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by OLAF (OJ 1999 L 136, p. 1).

The Court rejected the Commission's argument that the action for damages was in part premature because national proceedings were still pending. In connection with the proceedings before the Court, the question was not whether or not the facts alleged had been established, but rather to evaluate the way in which OLAF conducted and completed an investigation which referred to Mr Franchet and Mr Byk by name and publicly attributed to them liability for the irregularities established well before a final decision, and also of the way in which the Commission conducted itself in the context of that investigation. Nor, if the applicants were to be found not guilty by the national judicial authorities, would such a finding necessarily make good any damage that they would then have sustained. Accordingly, since the alleged damage relied on before the Court was distinct from the damage that might be confirmed by a finding of not guilty by the national judicial authority, the applicants' claims for compensation could not be rejected as premature.

Sufficiently serious breach of a rule of law conferring rights on individuals

As regards the substance, in *Franchet and Byk* v *Commission* the Court first held that OLAF ought to have informed Mr Franchet and Mr Byk in advance of the forwarding to the Luxembourg and French judicial authorities of the files concerning them and that the rule of law laying down that obligation conferred rights on individuals. Although OLAF had discretion in cases necessitating the maintenance of absolute secrecy for the purposes of the investigation, that was not the case with regard to the procedures for adoption of the decision to defer informing the officials concerned. Thus, failure to observe that obligation to inform in advance amounted to a sufficiently serious breach.

Secondly, the Court found that, in contravention of Regulation No 1073/1999, OLAF's Supervisory Committee had not been consulted before the information concerning the applicants was forwarded to the national authorities. Given that it is the task of that committee to protect the rights of persons who are the subject of OLAF investigations and that the obligation to consult the committee is unconditional, OLAF had, therefore, committed a sufficiently serious breach of a rule of law conferring rights on individuals.

Thirdly, the Court held that the fact that OLAF had publicly named the applicants — including by leaks in the press — as guilty of a number of criminal offences constituted a breach of the principles of the presumption of innocence, of confidentiality and of sound administration. As regards the leaks, it considered that in the absence of any evidence adduced by the Commission seeking to show that they could have had any other origin, OLAF must be held responsible. Those principles confer rights on individuals and their breach by OLAF was sufficiently serious, given that it is for OLAF to ensure that such leaks do not take place and that the administration has no discretion as regards observance of that obligation.

Last, the Court examined whether the Commission acted unlawfully when it disclosed various items of information in the context of the investigations in question, in particular by a press release clearly linking the applicants' names with the allegations concerning the Eurostat case. While bearing in mind that the institutions cannot be prevented from informing the public about investigations in progress, the Court considered that, in the instant case, the Commission could not be regarded as having done so with all necessary

discretion and reserve and striking a proper balance between the interests of Mr Franchet and Mr Byk and those of the institution. The Commission having no latitude with regard to observance of the principle of the presumption of innocence, it had committed sufficiently serious breaches of that principle.

The question of the naming of an official in documents relating to a case of maladministration circulated by a Community institution or body was also examined by the Court of First Instance in Case T-412/05 *M* v *European Ombudsman* (judgment of 24 September 2008, not published). The applicant, an official of the Commission, sought compensation for the damage he claimed to have suffered by reason of his being named in a decision of the European Ombudsman relating to a complaint of maladministration on the part of the department of the Commission to which he was assigned and concerning, inter alia, the building of a sewage treatment plant with adverse effects on the environment.

The Court held that only Community institutions and bodies, and not individuals, can be the subject of an investigation by the Ombudsman. Applying by analogy the case-law following from Case T-277/97 *Ismeri Europa* v *Court of Auditors* ([33]), it noted nevertheless that, prompted by the concern to ensure that his duties are properly carried out, the Ombudsman may exceptionally make a full report on the facts established and give the names of persons involved. Particular circumstances, which may be connected to the seriousness of the facts or the risk of confusion capable of damaging the interests of third parties, may allow the Ombudsman in his decisions to give the names of persons who in principle are not subject to his supervision, subject to the condition that such persons must have the right to be heard. In the case in point, the Court found, first, that naming the applicant was neither essential to the attaining of the objective pursued by complaining of an instance of maladministration nor necessary in order to prevent the risk of confusion with other individual officials who were clear of all liability in the situation complained of and, second, that the Ombudsman had not heard the applicant before taking his decision.

The Court concluded that the breach committed by the Ombudsman was sufficiently serious for the Community to incur non-contractual liability for, even though the Ombudsman enjoys very broad discretion as regards the merits of complaints and the action to be taken in response to them, the same is not true when determining whether there are good grounds for departing, in a particular case, from the rule of confidentiality.

The other especially important problem examined by the Court of First Instance this year in that sphere is whether it is possible for the Community to incur liability by reason of errors committed by the Commission in declaring a concentration notified to it incompatible with the common market. Case T-212/03 *MyTravel* v *Commission* (judgment of 9 September 2008) originated in the action brought by the British travel agent My Travel, formerly known as Airtours, when the Commission refused to allow it to acquire all the capital in one of its competitors in the United Kingdom. Challenging the Commission's analysis, Airtours had initiated proceedings before the Court, *Airtours* v *Commission*, in which it obtained annulment of the contested decision on the ground that the Commission had not sufficiently established the adverse effects of the concentration.

([33]) T-277/97 [1999] ECR p. II-1825. Judgment confirmed on appeal by the Court of Justice in Case C-315/99 P *Ismeri Europa* v *Court of Auditors* [2001] ECR I-5281.

In response to that judgment, MyTravel brought an action for damages to make good the loss it claimed to have suffered by reason of instances of unlawfulness vitiating the procedure followed by the Commission in deciding whether or not to approve.

Adopting an approach similar to that followed in Case T-351/03 *Schneider Electric* v *Commission* ([34]), the Court held that the possibility could not be ruled out in principle that manifest and grave defects affecting the Commission's economic analysis underlying a decision declaring a concentration incompatible with the common market could constitute breaches sufficiently serious to give rise to non-contractual liability on the part of the Community. It stated, however, that it must, in its analysis of the action for damages, of necessity take into account the contingencies and the difficulties inherent in the control of concentrations in general and complex oligopolistic structures in particular. Such an exercise is by its nature more demanding than that which is required in examining an action for annulment, where the Court need only, within the limits of the pleas in law put forward by the applicant, examine the lawfulness of the contested decision in order to satisfy itself that the Commission has correctly appraised the different elements which enable it to declare the notified concentration incompatible with the common market. Accordingly, mere errors of assessment and failure to put forward relevant evidence in the context of *Airtours* v *Commission* could not of themselves be sufficient to give rise to a manifest and grave infringement of the limits imposed on the Commission's discretion in the control of concentrations and in the presence of a complex oligopoly situation. Despite its mistakes, the Commission was in possession of evidence in the administrative file that could reasonably support its findings. The instances of unlawfulness found by the Court in *Airtours* v *Commission* do not mean that the Commission committed a manifest and grave infringement of its discretion in the control of concentrations, provided that — as in the present case — it was capable of explaining the reasons for which it could reasonably form the view that its assessment was well founded. Furthermore, although the reasoning set out by the Commission in respect of market transparency did not convince the Court, inasmuch as that reasoning was not sufficiently supported by evidence or was badly explained, the fact remained that the Commission made its decision following a careful examination of the information provided in the administrative procedure.

Last, the Court found that the commitments submitted by Airtours in order to correct problems relating to the potential adverse effects of the concentration on competition identified by the Commission had indeed been examined by the latter and did not clearly deal with its objections.

On the basis of those considerations, the Court held that the Commission had not committed a sufficiently serious breach of a rule of law conferring rights on individuals.

([34]) T-351/03 *Schneider Electric* v *Commission* ECR II-2237, under appeal.

III. Appeals

During 2008, 37 appeals were brought before the Court of First Instance against decisions of the Civil Service Tribunal. In total, 21 of those cases were closed by the Appeal Chamber, composed of five judges, that is to say, the President of the Court of First Instance and four Presidents of Chambers in rotation. In six judgments, the Court set aside in part the decisions under appeal, three of those cases being referred back to the Civil Service Tribunal ([35]).

One of the decisions given in this area in 2008 (in Case T-414/08 *Combescot* v *Commission*, judgment of 5 March 2008) was the subject of a proposal for review put forward by the First Advocate General on the basis of the second subparagraph of Article 225(2) EC and of Article 62 of the Statute of the Court of Justice. However, the proposal was not followed ([36]).

As regards organisation, the Court decided that for cases lodged between 1 October 2008 and 30 September 2009 the Appeal Chamber is to be composed of three judges only, that is to say, the President of the Court and, in rotation, two Presidents of Chambers, it being possible to refer the case to an extended formation of five judges (decision of 8 July 2008, OJ 2008 C 197, p. 17).

IV. Applications for interim relief

This year 58 applications for interim relief were brought before the Court of First Instance, representing a significant increase over the number of applications made in 2007 (34), which itself was much higher than the number in the previous year. In 2008, 57 applications for interim relief were disposed of, as against 41 in 2007. Just one application for a stay of execution was granted in the order of the President of the Court in Case T-257/07 R II *France* v *Commission* (order of 30 October 2008, not published).

With regard to the case giving rise to the order in *France* v *Commission*, it is to be borne in mind that the judge hearing the application for interim measures had already, by order of 28 September 2007 in Case T-207/07 R *France* v *Commission* [2007] ECR II-4153, suspended, in view of the seriousness of the claim alleging breach of the precautionary principle, the operation of the rules relaxing the health measures applicable to transmissible spongiform encephalopathies which the Commission had adopted in 2007 on the basis of evolving scientific knowledge. No appeal was brought before the President of the Court of Justice against the order of 28 September 2007. In contrast, the Commission repealed those relaxation rules and adopted new legislation the enacting terms of which were almost identical to those of the rules repealed. Only the statement of reasons for the new legislation was

([35]) Case T-262/06 P *Commission* v *D* (judgment of 1 July 2008), Case T-253/06 P *Chassagne* v *Commission* (judgment of 19 September 2008) and Case T3/07 P *Neophytou* v *Commission* (judgment of 13 October 2008). On the other hand, the Court gave final judgment in Case T-250/06 P *Ott and Others* v *Commission* (judgment of 22 May 2008), Case T-56/07 P *Commission* v *Economidis* (judgment of 8 July 2008), and Joined Cases T-90/07 P and T-99/07 P *Belgium and Commission* v *Genette* (judgment of 18 December 2008).

([36]) Decision of the Court of Justice in Case C-216/08 *RX* (16 April 2008, not published).

different, in that it supplied scientific and technical explanations intended to supplement those of the old rules. In those circumstances, the French Republic lodged a fresh application seeking suspension of operation of the new legislation ([37]).

The President of the Court of First Instance considered that, having regard to the fact that the new legislation was almost identical to the old rules, it could, when examining the condition relating to a prima facie case, confine itself to ascertaining whether the new statement of reasons contained any matters capable of justifying any assessment other than that made in the order of 28 September 2007 concerning the old rules. That selective examination prompted the President to conclude that there were no such matters as regards risk evaluation and management, as carried out in respect of the new statement of reasons. The President held, therefore, that the French Republic's claims that the new legislation constituted a breach of the precautionary principle did not appear, prima facie, to be irrelevant and warranted thorough examination by the court adjudicating on the substance. So far as the condition of urgency was concerned, the President concluded that there existed a grave danger of serious and irreparable harm to the health of persons if the suspension of operation were not to be granted. As regards the weighing of the conflicting interests, he stressed that the requirements involved in the protection of public health must, in the circumstances of the case, be recognised to outweigh the considerations put forward to justify relaxation of the relevant health measures applicable.

The other applications for interim measures were all dismissed, most of them for want of urgency, the applicants having failed to establish the imminence of serious irreparable harm. Attention must be drawn to three groups of cases in particular ([38]).

The first group concerns eight applications for interim measures made by the Republic of Cyprus, seeking to obtain suspension of operation of notices of calls to tender issued by the Commission and intended to encourage economic development in the northern part of the island of Cyprus. The Republic of Cyprus maintained that, in those notices, the Commission treated the Turkish Cypriot community as though it were an autonomous state entity and as though recognition were given to the 'Turkish Republic of Northern Cyprus'. It considered that the notices constituted a grave danger to its sovereignty, its independence, its territorial integrity and its unity.

([37]) In the case in the main proceedings (T-257/07), the French Republic was given leave to extend its claims and pleas in law to the new rules.

([38]) A fourth group concerns 19 applications for interim measures introduced by Italian undertakings established in the Venice region that had received State aid incompatible with the common market. In the order of the President of the Court of First Instance in Joined Cases T-234/00 R, T-235/00 R and T-283/00 R *Fondazione Opera S. Maria della Carità and Others* v *Commission* (order of 8 July 2008, not published) three of those applications were dismissed as inadmissible, the applicants having done no more than set out their actions in the main proceedings and the amendment to the Italian legislation in the context of the interim application, but yet without explaining the facts and law that might enable the judge hearing the application for interim measures to examine the conditions of *fumus boni juris* and urgency. The 16 other applications were discontinued.

In three orders *Cyprus* v *Commission* ([39]), the President of the Court of First Instance, having noted that the Republic of Cyprus is the only State body of that island recognised internationally and that the northern part of the island forms part of its territory and falls within its sovereignty alone, acknowledged that the Republic of Cyprus's arguments might appear relevant enough to constitute a prima facie case. He concluded, nevertheless, that there had been no manifest serious infringement of international or Community law, so that the harm alleged could not be regarded as serious. The notices at issue had no intrinsically political purpose and, in particular, were not intended to tackle the problem of the possible reunification of the island of Cyprus. They were texts of a technical nature designed to supply tenderers with useful information enabling them to decide whether to take part in the tendering procedure and to prepare their tender files. According to the President, the harm alleged, exclusively non-pecuniary, appeared not to be irreparable either, given that any annulment of the notices challenged at the end of the main proceedings would constitute sufficient compensation.

The second group of cases concern the fund-freezing measures adopted by the Council in respect of the Iranian bank Bank Melli Iran ('BMI') and its London subsidiary Melli Bank in connection with the regime of sanctions set up in order to put pressure on the Islamic Republic of Iran to end aspects of its nuclear programme.

That application was dismissed by order of the President of the Court of First Instance in Case T-246/08 R *Melli Bank* v *Council* (order of 27 August 2008, not published). With regard to the alleged financial damage, the President held that, in the absence of specific information in the application for interim measures concerning BMI's financial situation, he was unable to examine whether the inability of the applicant, as a company belonging to the BMI group, to carry out banking operations would cause it, having regard to the total turnover of that group, a loss which could be classified as serious financial damage. He added that it appeared realistic to expect that the applicant had available to it the minimum funds necessary to ensure its survival until judgment should be given in the main action and that the BMI group would be able to bear, during that period, the financial damage caused to its London subsidiary. With regard to the alleged damage to the applicant's reputation, assuming it to be established, the President considered that it would already have been caused by the contested decision. In his view, the purpose of proceedings for interim relief is not to ensure reparation for damage already suffered but rather to ensure the full effectiveness of the ruling to be given in the main case. On any view, annulment of the contested decision when the main action is decided would constitute sufficient reparation for the non-material damage allegedly sustained.

([39]) Joined Cases T-54/08 R, T-87/08 R, T-88/08 R and T-91/08 R to T-93/08 R *Cyprus* v *Commission* (order of 8 April 2008, not published), Case T-119/08 R *Cyprus* v *Commission* (order of 11 April 2008, not published, and Case T-122/08 R *Cyprus* v *Commission* (order of 11 April 2008, not published). Following the dismissal of the eight applications for interim relief, the Republic of Cyprus discontinued all its actions in the main proceedings.

On 17 September 2008 Melli Bank brought a second action for annulment of the same decision ([40]). The application for interim measures, coupled to that second action, was dismissed by order of the President of the Court of First Instance in Case T-332/08 R *Melli Bank* v *Council* (order of 17 September 2008, not published) for the same reasons as those explaining the rejection of the first application. Finally, the order of 15 October 2008 in Case T-390/08 R *Melli Bank* v *Council* (not published) dismissed on the same grounds the application for interim measures coupled with the action brought by BMI, the applicant's parent company, seeking annulment of the same decision.

The third group of cases is linked to the decision by which the Commission, without imposing any fines, ordered 24 copyright management companies established in the European Economic Area ('the EEA') and members of CISAC (Confédération Internationale des Sociétés d'Auteurs et Compositeurs — International Confederation of Societies of Authors and Composers) to, inter alia, review the reciprocal representation agreements that they had all concluded bilaterally with a view to the management of public performance rights held by the authors (composers and writers) in their musical works ([41]). According to the Commission, this network of bilateral agreements was based on a concerted practice contrary to Article 81 of the EC Treaty and Article 53 of the EEA Agreement. The CISAC and 20 management companies brought actions for annulment of that decision. Nine management companies — the German, Italian, French, Polish, Finnish, Hungarian, Danish, Greek and Norwegian — coupled to their actions applications for suspension of operation of the contested decision.

The President of the Court of First Instance, by orders of 14 November 2008 in Case T-398/08 R *Stowarzyszenie Autorów, ZAiKS* v *Commission* (not published), Case T-401/08 R *Säveltäjäin Tekijänoikeustoimisto Teosto* v *Commission* (not published), Case T-410/08 R *GEMA* v *Commission* (not published), Case T-411/08 R *Artisjus* v *Commission* (not published), Case T-422/08 R *Sacem* v *Commission* (not published), of 20 November 2008 in Case T-433/08 R *SIAE* v *Commission* (not published), and of 5 December 2008 in Case T-425/08 R *KODA* v *Commission* (not published), and the judge hearing an application for interim measures (Mr Papasavvas), in Case T-392/08 *AEPI* v *Commission* (order of 19 November 2008, not published), rejected eight of the applications for want of urgency, for the applicants had not established serious irreparable harm was imminent if the contested decision were to be put into immediate effect. In those orders, it was observed in particular that the contested decision, far from dealing with the field of what are known as 'offline' activities of the applicants (concerts, radio, discothèques, bars, etc.), concerned what is known as the 'online' use of copyright (by Internet, satellite and cable retransmission), which had not been shown by any of the applicants to form a considerable portion of their revenue. Furthermore, according to those orders, in the contested decision the Commission did not prohibit the system of reciprocal representation agreements as such or prevent the applicants from practising certain territorial delimitations but merely criticised the coordinated nature of the approach followed to that end by all the management companies. Lastly, inasmuch as the applicants feared that the contested decision might, because it gave rise to legal uncertainty concerning the validity and content

([40]) With regard to those two actions, the conditions for *lis alibi pendens* had not been satisfied, the second having been introduced within the period prescribed by the fifth paragraph of Article 230 EC and based on pleas in law independent of those raised in the first action.

([41]) Commission Decision C (2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC).

of future reciprocal representation agreements, expose them to the risk of being penalised by the Commission for breach of their duty to review, it was considered that the risk invoked was of a purely hypothetical nature and that it was for the Commission, if ever it should intend to impose a penalty on them, to establish that the applicants' conduct in the future amounted to infringement, the applicants being in no way prevented from bringing proceedings before the Community judicature for a declaration that the penalties imposed were unlawful, pleading the ambiguity of the obligation to review imposed in the contested decision.

Lastly, mention must be made of the order of the President of the Court of First Instance in Case T-411/07 R *Aer Lingus Group* v *Commission* (order of 18 March 2008), on account of the important clarifications it contains as to the admissibility of applications for interim measures. It was stated that the judge hearing an application for interim measures may not, as a rule, adopt an interim measure which would constitute an interference with the exercise of the powers of another institution. An application for interim measures seeking to have the Commission required to apply Article 8(4) and (5) of Regulation No 139/2004 ([42]) in a particular manner, by adopting certain measures against the other party to a prohibited concentration, must in consequence be rejected. Were it to be decided in the judgment in the main application that the Commission has power to order the measures set out in Article 8(4) and (5) of Regulation No 139/2004, it would be for the Commission, should it consider it necessary in the context of the powers of control accorded to it in the field of concentrations, to take the necessary measures to comply with the judgment, in accordance with Article 233 EC.

Moreover, it was emphasised that the broad wording is obviously intended to grant sufficient powers to the judge hearing an application to prescribe any measure which he deems necessary to guarantee the full effectiveness of the definitive future decision, in order to ensure that there is no lacuna in the legal protection provided by the Court of Justice. It cannot be ruled out that the judge hearing the application may impose orders directly on third parties, if necessary, having due regard, on the one hand, to the procedural rights, and in particular the right to be heard, of the addressee of the interim measures and of parties directly affected by those measures and, on the other, to the strength of the prima facie case and to the imminence of serious and irreparable harm. Even where a third party has not had an opportunity to be heard in the context of proceedings for interim measures, it cannot be excluded that interim measures might be imposed on that party, in exceptional circumstances and bearing in mind the temporary nature of such measures, if it appears that, without such measures, the applicant would be exposed to a situation liable to endanger its very existence. The judge hearing the application carries out such assessments when weighing up the various interests at stake.

([42]) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ 2004 L 24, p. 1).

B — Composition of the Court of First Instance

(Order of precedence as at 31 December 2008)

First row, from left to right:

F. Dehousse, 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:

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

Third row, from left to right:

K. O'Higgins, Judge; L. Truchot, Judge; A. Dittrich, Judge; T. Tchipev, Judge; M. Prek, Judge; V. Ciucă, Judge; S. Soldevila Fragoso, Judge; S. Frimodt Nielsen, Judge; E. Coulon, Registrar.

1. Members of the Court of First Instance

(in order of their entry into office)

Marc Jaeger

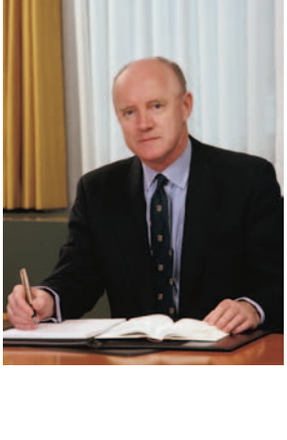
Born 1954; lawyer; attaché de justice, delegated to the Public Attorney's Office; Judge, Vice-President of the Luxembourg District Court; teacher at the Centre Universitaire de Luxembourg (Luxembourg University Centre); member of the judiciary on secondment, Legal Secretary at the Court of Justice from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

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 Master of Sociology and Economics of the University of Vienna; Lecturer and senior lecturer at the Vienna School of Economics, the Faculty of Law of the University of Vienna and various other universities; Honorary Professor at 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 King's Inns, Dublin; Honorary Bencher of Lincoln's Inn, London; Judge at the Court of First Instance from 10 January 1996 to 15 September 2008.

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.

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 (1995–99) 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 of 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 (1985); from 1992 judge specialising in contentious administrative proceedings, assigned to the High Court of Justice of the Canary Islands at Santa Cruz de Tenerife (1992 and 1993), and to the National High Court (Madrid, May 1998 to August 2007), where he decided judicial proceedings in the field of tax (VAT), actions brought against general legislative provisions of the Ministry of the Economy and against its decisions on State aid or the government's financial liability, and actions brought against all agreements of the central economic regulators in the spheres of banking, the stock market, energy, insurance and competition; Legal Adviser at the Constitutional Court (1993–98); Judge at the Court of First Instance since 17 September 2007.

Laurent Truchot

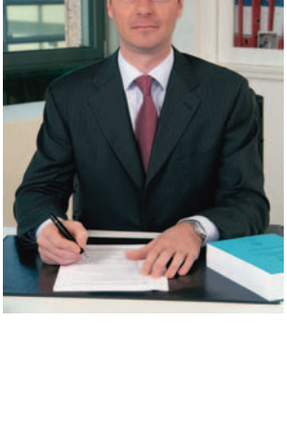
Born 1962; graduate of the Institut d'études politiques, Paris (1984); former student of the École nationale de la magistrature (National School for the Judiciary) (1986–88); Judge at the Regional Court, Marseilles (January 1988 to January 1990); Law Officer in the Directorate for Civil Affairs and the 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 at the Ministry of 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.

Kevin O'Higgins

Born 1946; educated at Crescent College Limerick, Clongowes Wood College, University College Dublin (BA degree and Diploma in European Law) and the King's Inns; called to the Bar of Ireland in 1968; Barrister (1968–82); Senior Counsel (Inner Bar of Ireland, 1982–86); Judge of the Circuit Court (1986–97); Judge of the High Court of Ireland (1997–2008); Bencher of King's Inns; Irish Representative on the Consultative Council of European Judges (2000–08); Judge at the Court of First Instance since 15 September 2008.



Emmanuel Coulon

Born 1968; law studies (Université Panthéon-Assas, Paris); management studies (Université Paris Dauphine); College of Europe (1992); entrance examination for the Centre régional de formation à la profession d'avocat (Regional training centre for the Bar), Paris; certificate of admission to the Brussels Bar; practice as a lawyer 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. Change in the composition of the Court of First Instance in 2008

Formal sitting on 15 September 2008

By decision of the representatives of the Governments of the Member States of the European Communities of 22 July 2008, Mr Kevin O'Higgins was appointed Judge of the Court of First Instance of the European Communities until 31 August 2013.

Mr Kevin O'Higgins succeeded Mr John D. Cooke who had carried out the duties of Judge at the Court of First Instance since 10 January 1996.

3. Order of precedence

from 1 January to 14 September 2008

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

M. E. COULON, Registrar

from 15 September to 31 December 2008

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
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
K. O'HIGGINS, Judge

M. E. COULON, Registrar

4. Former Members of the Court of First Instance

José Luis 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)
Jörg Pirrung (1997–2007)
Rafael García–Valdecasas y Fernández (1989–2007)
Hubert Legal (2001–07)

Presidents

José Luis Da Cruz Vilaça (1989–95)
Antonio Saggio (1995–98)
Bo Vesterdorf (1998–2007)

Registrar

Jung Hans (1989–2005)

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

General activity of the Court of First Instance

1. New cases, completed cases, cases pending (2004–08)

New cases

2. Nature of proceedings (2004–08)
3. Type of action (2004–08)
4. Subject matter of the action (2004–08)

Completed cases

5. Nature of proceedings (2004–08)
6. Subject matter of the action (2008)
7. Subject matter of the action (2004–08) (judgments and orders)
8. Bench hearing action (2004–08)
9. Duration of proceedings in months (2004–08) (judgments and orders)

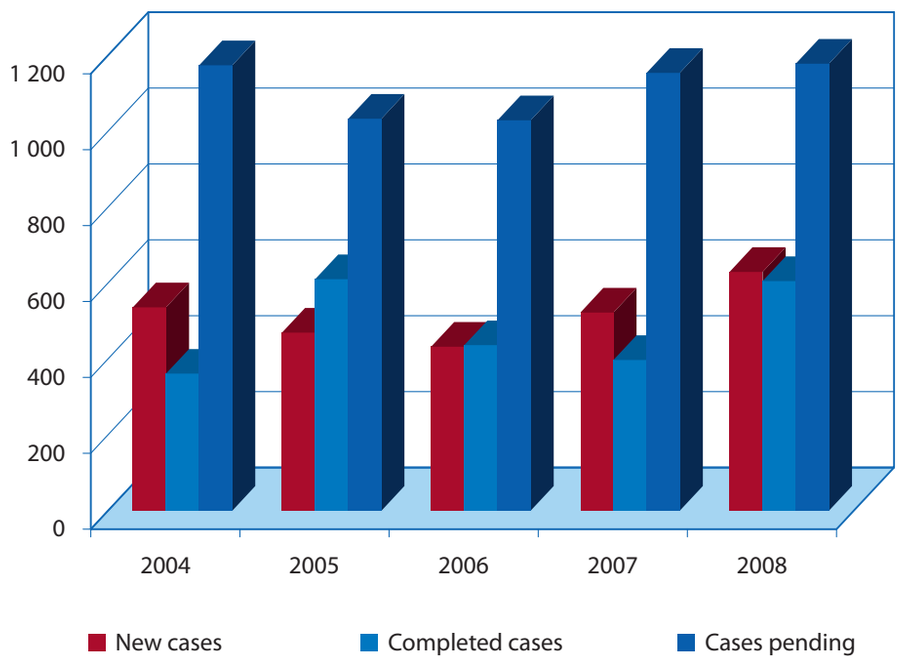
Cases pending as at 31 December

10. Nature of proceedings (2004–08)
11. Subject matter of the action (2004–08)
12. Bench hearing action (2004–08)

Miscellaneous

13. Proceedings for interim measures (2004–08)
14. Expedited procedures (2004–08)
15. Appeals against decisions of the Court of First Instance to the Court of Justice (1989–2008)
16. Distribution of appeals before the Court of Justice according to the nature of the proceedings (2004–08)
17. Results of appeals before the Court of Justice (2008) (judgments and orders)
18. Results of appeals before the Court of Justice (2004–08) (judgments and orders)
19. General trend (1989–2008) (new cases, completed cases, cases pending)

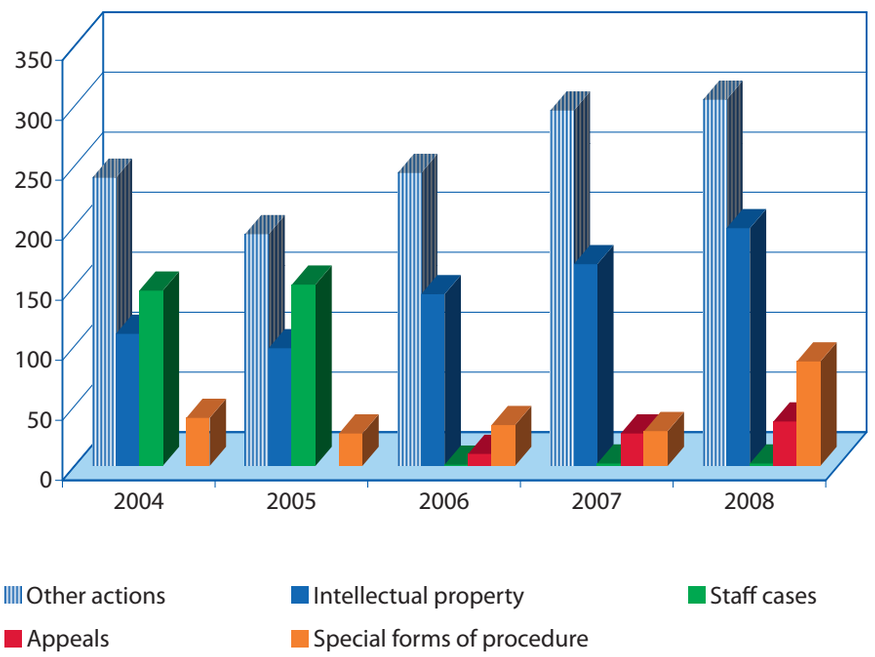
1. *General activity of the Court of First Instance* — New cases, completed cases, cases pending (2004–08) [1]



	2004	2005	2006	2007	2008
New cases	536	469	432	522	629
Completed cases	361	610	436	397	605
Cases pending	1 174	1 033	1 029	1 154	1 178

[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 (2004–08) [1]

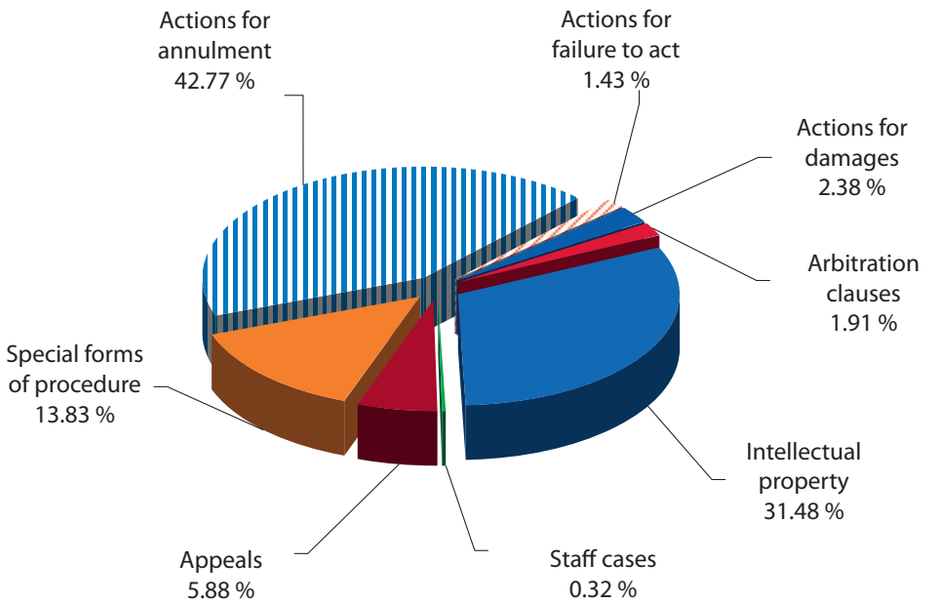


	2004	2005	2006	2007	2008
Other actions	240	193	244	296	305
Intellectual property	110	98	143	168	198
Staff cases	146	151	1	2	2
Appeals			10	27	37
Special forms of procedure	40	27	34	29	87
Total	**536**	**469**	**432**	**522**	**629**

[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 (2004–08)

Distribution in 2008

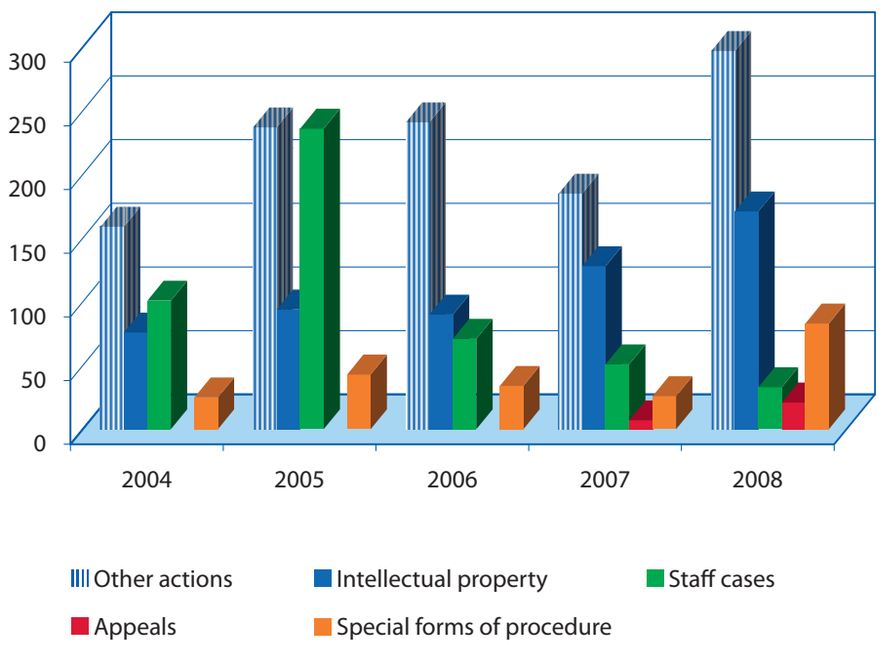


	2004	2005	2006	2007	2008
Actions for annulment	199	160	223	249	269
Actions for failure to act	15	9	4	12	9
Actions for damages	18	16	8	27	15
Arbitration clauses	8	8	9	8	12
Intellectual property	110	98	143	168	198
Staff cases	146	151	1	2	2
Appeals			10	27	37
Special forms of procedure	40	27	34	29	87
Total	**536**	**469**	**432**	**522**	**629**

4. *New cases* — Subject matter of the action (2004–08)

	2004	2005	2006	2007	2008
Accession of new States	1				
Agriculture	25	21	18	34	14
Approximation of laws	1			1	
Arbitration clause		2	3	1	12
Budget of the Communities				2	
Commercial policy	12	5	18	9	10
Common Customs Tariff	1		2	1	
Common foreign and security policy	4		5	12	6
Community own resources		2			
Company law	6	12	11	10	30
Competition	36	40	81	62	71
Culture			3	1	2
Customs union	11	2		4	1
Economic and monetary policy		1	2		
Energy			1		
Environment and consumers	30	18	21	41	14
External relations	3	2	2	1	2
Fisheries policy	3	2		5	23
Free movement of goods	1			1	1
Freedom of establishment	1				1
Freedom of movement for persons	1	2	4	4	1
Freedom to provide services			1		3
Intellectual property	110	98	145	168	198
Justice and home affairs		1		3	3
Law governing the institutions	33	28	15	28	43
Regional policy	10	12	16	18	7
Research, information, education and statistics	6	9	5	10	1
Social policy	5	9	3	5	3
State aid	46	25	28	37	55
Taxation			1	2	
Transport	3		1	4	1
Total EC Treaty	**349**	**291**	**386**	**464**	**502**
Total CS Treaty					**1**
Total EA Treaty	**1**		**1**		
Staff Regulations	146	151	11	29	39
Special forms of procedure	40	27	34	29	87
OVERALL TOTAL	**536**	**469**	**432**	**522**	**629**

5. *Completed cases* — Nature of proceedings (2004–08)



	2004	2005	2006	2007	2008
Other actions	159	237	241	185	297
Intellectual property	76	94	90	128	171
Staff cases	101	236	71	51	33
Appeals				7	21
Special forms of procedure	25	43	34	26	83
Total	**361**	**610**	**436**	**397**	**605**

6. *Completed cases* — Subject matter of the action (2008)

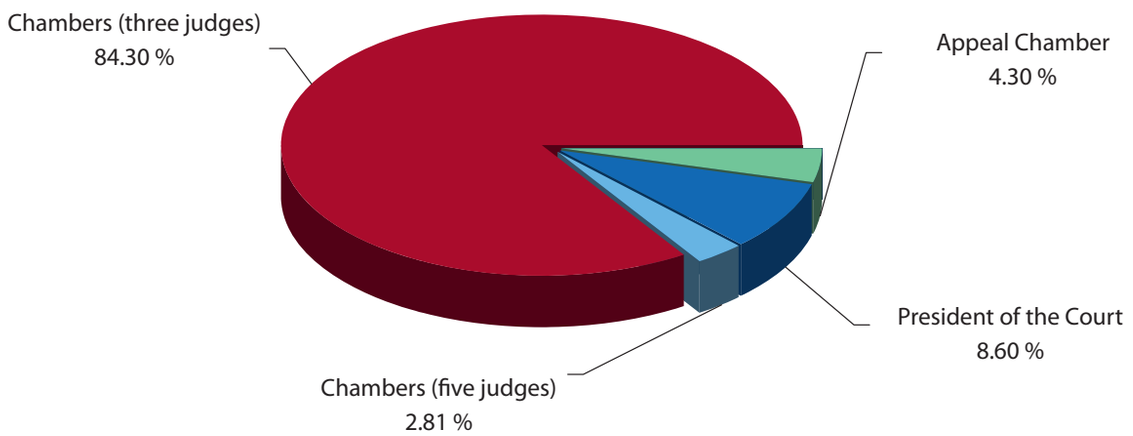
	Judgments	Orders	Total
Agriculture	17	21	38
Approximation of laws		1	1
Arbitration clause	1	2	3
Commercial policy	6	6	12
Common Customs Tariff		3	3
Common foreign and security policy	4	2	6
Company law	10	14	24
Competition	14	17	31
Culture	1	1	2
Customs union	2	1	3
Economic and monetary policy		1	1
Environment and consumers	1	27	28
External relations	1	1	2
Fisheries policy	1	3	4
Free movement of goods		2	2
Freedom of establishment		1	1
Freedom of movement for persons		2	2
Intellectual property	121	50	171
Justice and home affairs		1	1
Law governing the institutions	11	25	36
Regional policy	7	35	42
Research, information, education and statistics	3	7	10
Social policy	3		3
State aid	23	14	37
Taxation		2	2
Transport		3	3
Total EC Treaty	**226**	**242**	**468**
Staff Regulations	33	21	54
Special forms of procedure		83	83
OVERALL TOTAL	**259**	**346**	**605**

7. *Completed cases* — Subject matter of the action (2004–08)
(judgments and orders)

	2004	2005	2006	2007	2008
Accession of new States			1		
Agriculture	15	34	25	11	38
Approximation of laws	3			1	1
Arbitration clause	2	1		1	3
Association of the Overseas Countries and Territories		4	2		
Budget of the Communities				1	
Commercial policy	1	7	13	4	12
Common Customs Tariff				1	3
Common foreign and security policy	2	5	4	3	6
Community own resources			2		
Company law	2	6	6	6	24
Competition	26	35	42	38	31
Culture					2
Customs union	3	7	2	2	3
Economic and monetary policy			1	1	1
Energy			3	1	
Environment and consumers	4	19	19	15	28
External relations	7	11	5	4	2
Fisheries policy	6	2	24	4	4
Free movement of goods	1	1			2
Freedom of establishment		1			1
Freedom of movement for persons	2	1	4	4	2
Freedom to provide services				1	
Intellectual property	76	94	91	129	171
Justice and home affairs		1		2	1
Law governing the institutions	16	35	14	17	36
Regional policy	4	4	7	6	42
Research, information, education and statistics		1	3	10	10
Social policy	4	6	5	3	3
State aid	54	53	54	36	37
Taxation	1		1		2
Transport	1	1	2	1	3
Total EC Treaty	**230**	**329**	**330**	**302**	**468**
Total CS Treaty	**5**	**1**	**1**	**10**	
Total EA Treaty		**1**		**1**	
Staff Regulations	101	236	71	58	54
Special forms of procedure	25	43	34	26	83
OVERALL TOTAL	**361**	**610**	**436**	**397**	**605**

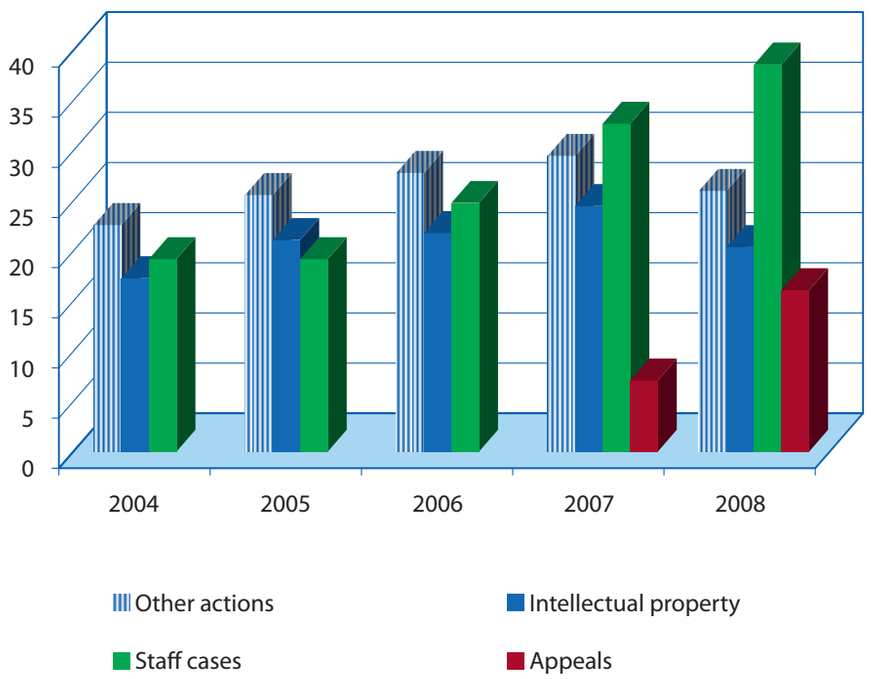
8. *Completed cases* — Bench hearing action (2004–08)

Distribution in 2008



	2004			2005			2006			2007			2008		
	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	16	10	26
President of the Court		7	7		25	25		19	19		16	16		52	52
Chambers (five judges)	18	46	64	28	34	62	22	33	55	44	8	52	15	2	17
Chambers (three judges)	141	135	276	181	329	510	198	157	355	196	122	318	228	282	510
Single judge	13	1	14	7		7	7		7	2		2			
Total	**172**	**189**	**361**	**222**	**388**	**610**	**227**	**209**	**436**	**247**	**150**	**397**	**259**	**346**	**605**

9. *Completed cases* — Duration of proceedings in months (2004–08) [1] *(judgments and orders)*

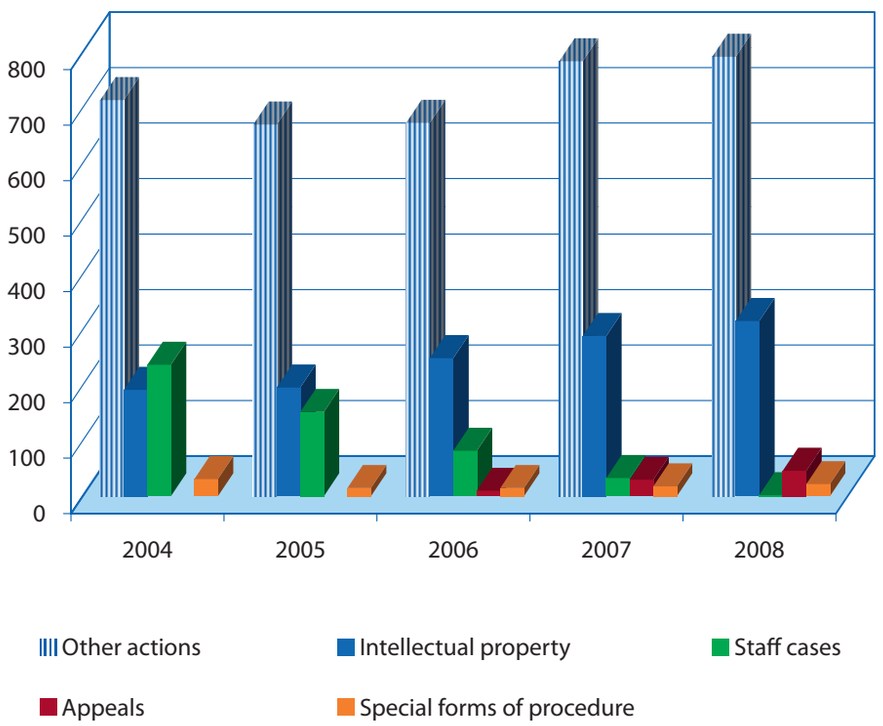


	2004	2005	2006	2007	2008
Other actions	22.6	25.6	27.8	29.5	26.0
Intellectual property	17.3	21.1	21.8	24.5	20.4
Staff cases	19.2	19.2	24.8	32.7	38.6
Appeals				7.1	16.1

[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 (2004–08)



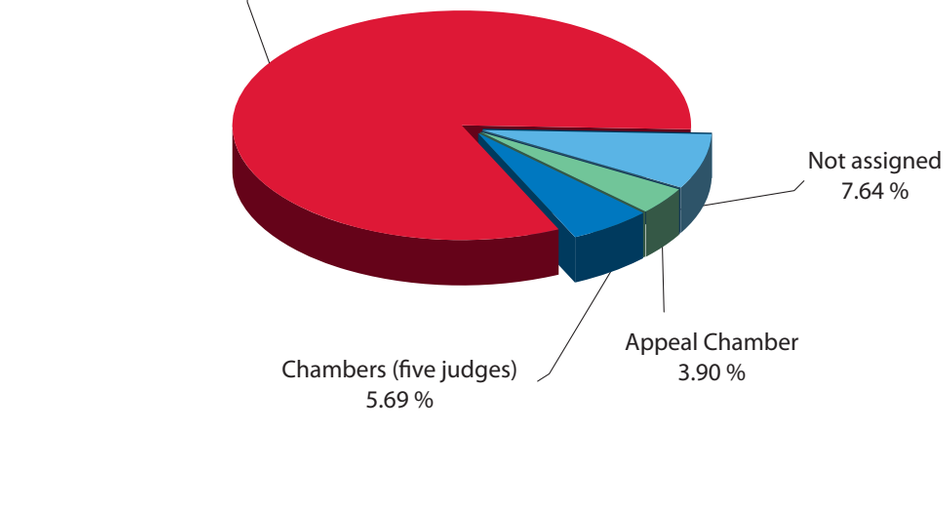
	2004	2005	2006	2007	2008
Other actions	714	670	673	784	792
Intellectual property	192	196	249	289	316
Staff cases	237	152	82	33	2
Appeals			10	30	46
Special forms of procedure	31	15	15	18	22
Total	**1 174**	**1 033**	**1 029**	**1 154**	**1 178**

11. *Cases pending as at 31 December* — Subject matter of the action (2004–08)

	2004	2005	2006	2007	2008
Accession of new States	1	1			
Agriculture	95	82	74	97	73
Approximation of laws	1	1	1	1	
Arbitration clause		1	3	3	12
Association of the Overseas Countries and Territories	6	2			
Budget of the Communities				1	1
Commercial policy	25	23	28	33	31
Common Customs Tariff	1	1	3	3	
Common foreign and security policy	13	8	9	18	18
Community own resources		2			
Company law	10	16	23	27	33
Competition	129	134	173	197	236
Culture			3	4	4
Customs union	18	13	11	13	11
Economic and monetary policy		1	2	1	
Energy	4	4	2	1	1
Environment and consumers	44	43	44	70	56
External relations	18	9	6	3	3
Fisheries policy	28	28	4	5	24
Free movement of goods	1			1	
Freedom of establishment	1				
Freedom of movement for persons	1	2	3	3	2
Freedom to provide services			1		3
Intellectual property	193	197	251	290	317
Justice and home affairs				1	3
Law governing the institutions	49	42	43	54	61
Regional policy	19	27	36	48	13
Research, information, education and statistics	8	16	18	18	9
Social policy	6	9	7	9	9
State aid	218	190	164	165	184
Taxation				2	
Transport	3	2	1	4	2
Total EC Treaty	**892**	**854**	**910**	**1072**	**1106**
Total CS Treaty	**12**	**11**	**10**		**1**
Total EA Treaty	**2**	**1**	**2**	**1**	**1**
Staff Regulations	237	152	92	63	48
Special forms of procedure	31	15	15	18	22
OVERALL TOTAL	**1174**	**1033**	**1029**	**1154**	**1178**

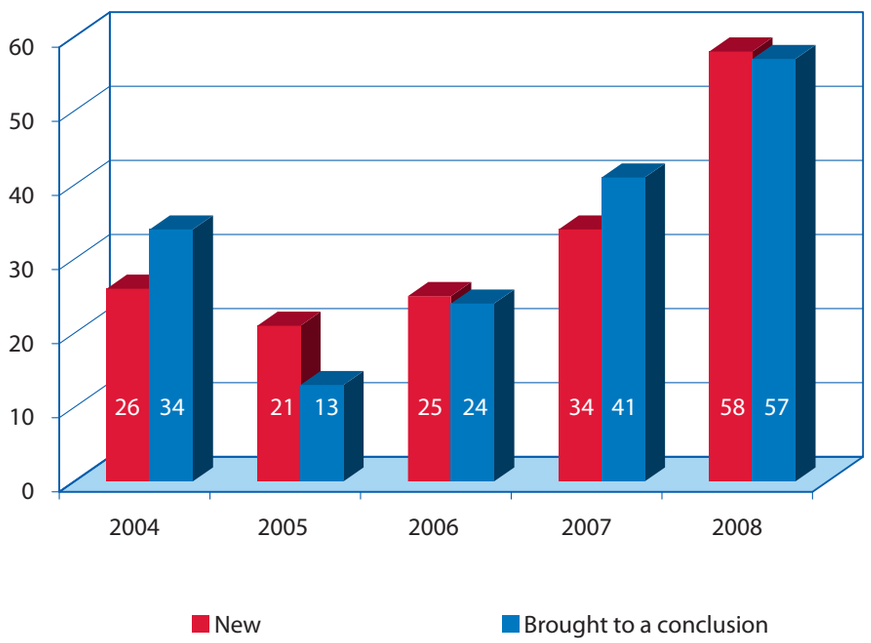
12. *Cases pending as at 31 December* — Bench hearing action (2004–08)

Distribution in 2008



	2004	2005	2006	2007	2008
Grand Chamber	6	1	2		
Appeal Chamber			10	30	46
President of the Court			1		
Chambers (five judges)	187	146	117	75	67
Chambers (three judges)	914	846	825	971	975
Single judge	1	4	2		
Not assigned	66	36	72	78	90
Total	**1 174**	**1 033**	**1 029**	**1 154**	**1 178**

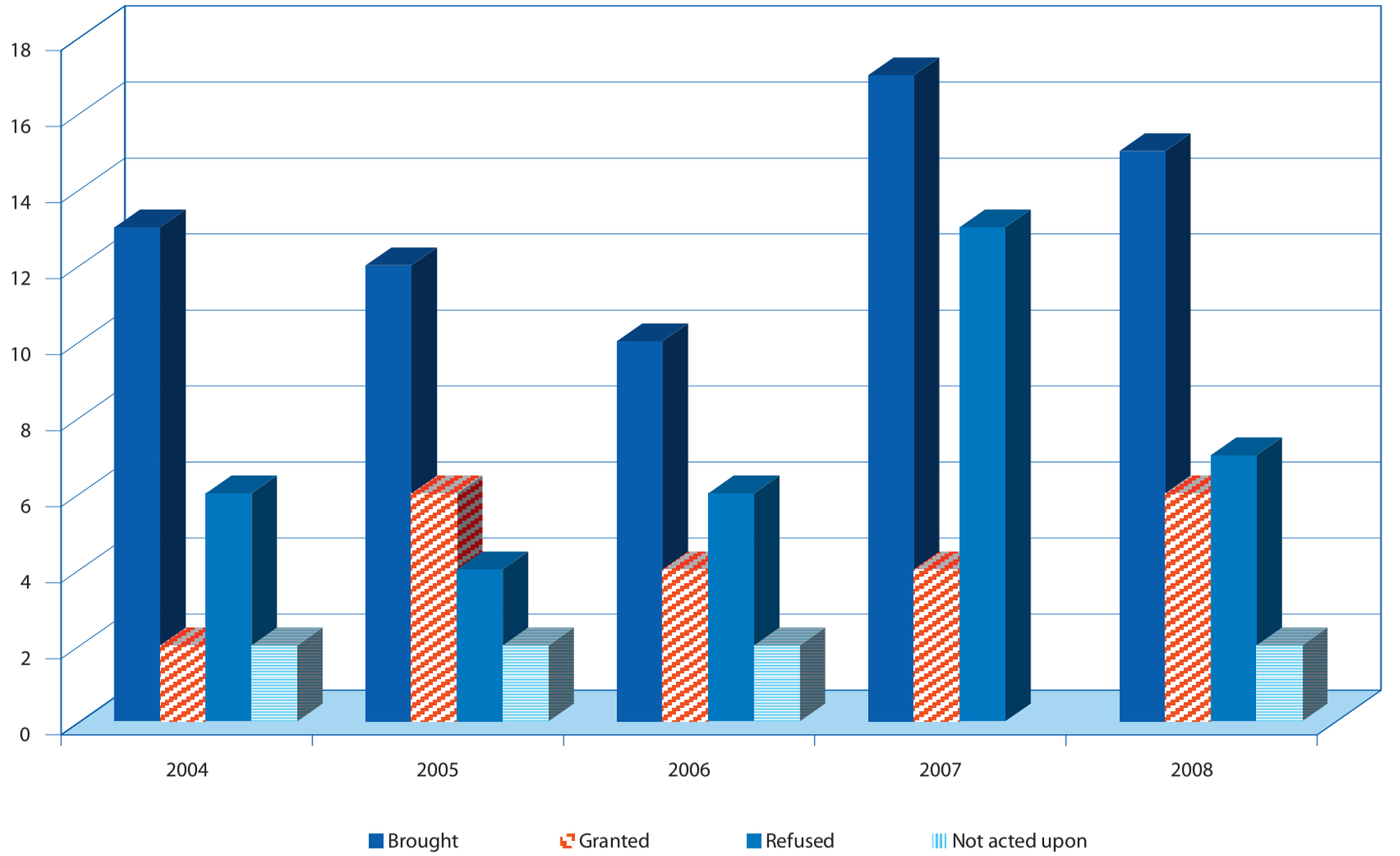
13. *Miscellaneous* — Proceedings for interim measures (2004–08)



Distribution in 2008

	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	1	1		1	
State aid	22	22	6		16
Competition	13	10	10		
Company law	13	12	12		
Law governing the institutions	1	2	1		1
Environment and consumers	1	2	2		
Fisheries policy	1	1			1
Common foreign and security policy	3	3	3		
Social policy	2	2	2		
Intellectual property		1	1		
Transport	1	1	1		
Total EC Treaty	**58**	**57**	**38**	**1**	**18**
OVERALL TOTAL	**58**	**57**	**38**	**1**	**18**

14. *Miscellaneous* — Expedited procedures (2004–08)

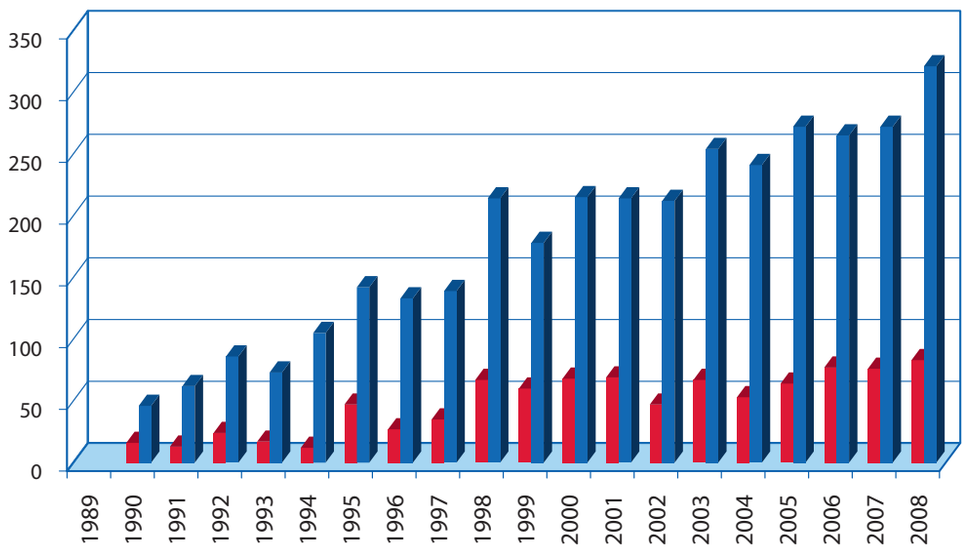


	2004				2005				2006				2007				2008			
	Brought	Outcome			Brought	Outcome			Brought	Outcome			Brought	Outcome			Brought	Outcome		
		Granted	Refused	Not acted upon		Granted	Refused	Not acted upon		Granted	Refused	Not acted upon		Granted	Refused	Not acted upon		Granted	Refused	Not acted upon
Agriculture					2				2	1	3						1			
State aid									1				1		2		1		1	
Arbitration clause																	1			1
Competition	3				2	3	2		4	2	2		1		1		1		1	
Company law	4	1	2		3	2	1	1					1				3	1	3	
Law governing the institutions	1		2		1		1						1		1		3		2	1
Environment and consumers	1		1		2	1		1	3	1	1		7	1	7					
Freedom of movement for persons	1			1																
Commercial policy													2	1				1		
Fisheries policy	1	1																		
Common foreign and security policy													3	2	1		4	4		
Research, information, education and statistics													1		1					
Community own resources					2							2								
Staff Regulations	1		1														1			
Transport	1			1																
Total	**13**	2	6	2	**12**	6	4	2	**10**	4	6	2	**17**	4	13	0	**15**	6	7	2

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 (1989–2008)



	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 %
2008	83	321	26 %

(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.

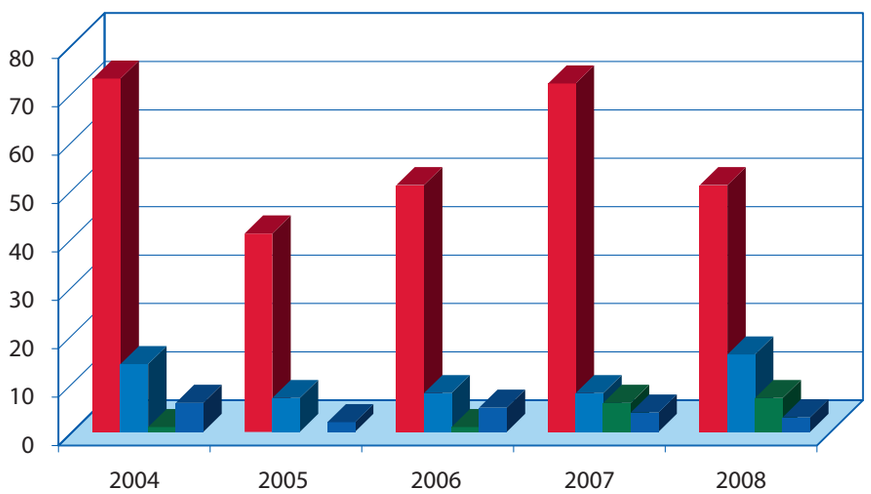
16. *Miscellaneous* — Distribution of appeals before the Court of Justice according to the nature of the proceedings (2004–08)

	2004			2005			2006			2007			2008		
	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	41	114	36 %	37	120	31 %	46	146	32 %	52	163	32 %	51	190	27 %
Intellectual property	7	45	16 %	16	71	23 %	18	59	31 %	14	63	22 %	23	100	23 %
Staff cases	5	82	6 %	11	81	14 %	13	60	22 %	10	46	22 %	9	31	29 %
Total	53	241	22 %	64	272	24 %	77	265	29 %	76	272	28 %	83	321	26 %

17. *Miscellaneous* — Results of appeals before the Court of Justice (2008) *(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	1	1			2
State aid	5	2	5		12
Competition	4		1		5
Law governing the institutions	7	2	1		10
Environment and consumers	4	1		1	6
Free movement of capital		1			1
Freedom of movement for persons	1				1
Fisheries policy		3			3
Economic and monetary policy	1				1
Common foreign and security policy		1			1
Regional policy	1				1
Intellectual property	13	2		2	17
External relations	4				4
Staff Regulations	8	2			10
Common Customs Tariff	1				1
Customs union	1	1			2
Total	**51**	**16**	**7**	**3**	**77**

18. *Miscellaneous* — Results of appeals before the Court of Justice (2004–08) *(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

	2004	2005	2006	2007	2008
Appeal dismissed	73	41	51	72	51
Decision totally or partially set aside and no referral back	14	7	8	8	16
Decision totally or partially set aside and referral back	1		1	6	7
Removal from the register/ no need to adjudicate	6	2	5	4	3
Total	**94**	**50**	**65**	**90**	**77**

19. *Miscellaneous* — General trend (1989–2008) *(new cases, completed cases, cases pending)*

	New cases [1]	Completed cases [2]	Cases pending on 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
2008	629	605	1 178
Total	**7 407**	**6 229**	

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 2008

By Mr Paul Mahoney, President of the Civil Service Tribunal

1. The year 2008 saw the first triennial partial renewal of the Tribunal. By way of derogation from the first sentence of the second paragraph of Article 2 of the Annex to the Statute of the Court of Justice, the duties of three Judges of the Tribunal came to an end upon expiry of the first three years of their term of office, that is to say, on 30 September 2008. By decision of 27 June 2008 the Council of the European Union reappointed the three Judges concerned to their duties. On 24 September 2008, Mr P. Mahoney was re-elected President of the Tribunal and Mr H. Kanninen and Mr S. Gervasoni were appointed President of the Second and First Chambers respectively.

2. Since 1998, the number of actions brought each year in staff cases has grown constantly (apart from a levelling off in 2001 and 2002). In 2008, at 111 new applications, the number of actions brought dropped markedly compared with the previous year (157 in 2007), for the first time in 10 years. It would of course be premature to see in this a reversal of the trend of growth in Community staff case litigation seen in recent years, but the rule that the unsuccessful party is to pay the costs, which came into force with the Rules of Procedure of the Tribunal on 1 November 2007, might have played a part in the development observed.

In 2008, the Tribunal brought 129 cases to a close. The balance between completed cases and those brought was thus positive, with the result that, for the first time since the creation of the Tribunal, the number of pending cases has dropped slightly (217 in 2008 compared with 235 in 2007).

In 2008, 53 % of cases were brought to a close by judgment and 47 % by order. The average duration of proceedings was 19.7 months for judgments and 14 months for orders, which represents a slight increase in the average duration of a case compared with the previous year. Appeals to the Court of First Instance were brought against 37 decisions of the Tribunal, which represents 37 % of the decisions subject to appeal delivered by the Tribunal and 35 % of the total number of cases brought to a close, apart from those unilaterally discontinued by one of the parties. Seven decisions of the Tribunal were set aside by the Court of First Instance.

3. During this year the Tribunal has continued to endeavour to answer the legislature's appeal for the facilitation, at every stage of the procedure, of the amicable settlement of disputes. Thus, seven cases were able to be brought to a close following an amicable settlement at the instigation of the Tribunal, most often at an informal meeting organised by the judge-rapporteur or during a hearing ([1]).

([1]) For an example of an amicable settlement reached on the day of the hearing at the instigation of the Tribunal, see the order of 4 September 2008 in Case F-81/06 *Duyster* v *Commission*: in recognition of the inconvenience caused to the applicant by certain events which were the subject of the proceedings, the defendant undertook to pay her a lump sum of EUR 2 000 and to sign, place on her personal file and send to her a letter prepared for her.

4. Finally, in 2008, the Tribunal added to its array of procedural tools with the entry into force on 1 May 2008 of the practice directions to parties. These contain, inter alia, a compulsory form for the submission of any application for legal aid and a guide for legal aid applicants.

5. The account given below will describe the most interesting new case-law of the year, looking in turn at proceedings concerning the legality of measures and actions for damages (I), applications for interim relief (II), and applications for legal aid (III).

I. Proceedings concerning the legality of measures and actions for damages

This section will examine the most important decisions on procedural matters, on the merits and on costs.

Procedural aspects

1. Jurisdiction of the Tribunal

In Case F-88/07 *Domínguez González* v *Commission* (order of 12 November 2008), the Tribunal had to deal with a dispute arising from the performance of an employment contract subject to Belgian law containing a clause attributing jurisdiction to the courts of Brussels which was for the provision of technical assistance in the context of humanitarian aid to third countries. The Tribunal, having ascertained that the contract was made subject to national law rather than to the Conditions of Employment of Other Servants of the European Communities ('Conditions of Employment') for reasons relating to a legitimate interest of the defendant and did not constitute a misuse of procedure, held that it had no jurisdiction to hear the dispute arising from the performance of the contract.

2. Conditions for admissibility

In Case F-4/07 *Skoulidi* v *Commission* (judgment of 21 February 2008) the Tribunal made clear, first, that, where there is an act adversely affecting an official, the conduct of the institution in connection with that act cannot give rise to a claim for damages, the pre-litigation procedure for which starts with a request under Article 90(1) of the Staff Regulations of Officials of the European Communities ('the Staff Regulations') unless the conduct in question can be dissociated from the act adversely affecting the official, and second, and most importantly, that an official may, in an action which is purely for damages, seek reparation for the damage caused by an act adversely affecting him without seeking the annulment of that act, provided that the pre-litigation procedure is initiated by a complaint, as provided for by Article 90(2) of the Staff Regulations, against that act, and the three-month time limit set by that provision must be respected whether the applicant seeks reparation of material or, as here, non-material damage.

In its judgments of 23 April 2008 in Case F-103/05 *Pickering* v *Commission* and Case F-112/05 *Bain and Others* v *Commission*, the Tribunal made clear that, although salary statements are generally considered to be acts adversely affecting officials in so far as they demonstrate that the pecuniary rights of an official have been adversely affected, in fact the real act adversely affecting the official is the decision taken by the appointing authority to reduce or cancel a payment which the official had hitherto received and which appeared in his salary statements.

In its judgment of 11 December 2008 in Case F-58/07 *Collote* v *Commission*, the Tribunal held that, in a case where two successive complaints lodged within the time limit for complaints are the subject of two successive decisions by the appointing authority, if the second complaint includes matters not covered in the first complaint, the decision rejecting the second complaint should be considered to be a new decision, adopted after reconsideration of the decision to reject the first complaint in the light of the second complaint. Accordingly, the time allowed for bringing an action starts to run from the date of service of the reply to the second complaint.

3. Procedural issues

(a) Objection of inadmissibility

In *Domínguez González* v *Commission*, following objections of inadmissibility and lack of competence raised by the defendant, the Tribunal, for the first time, ruled on its competence by order following a hearing, on the basis of the second subparagraph of Article 78(2) of the Rules of Procedure, which provides that, unless the Tribunal decides otherwise, the remainder of the proceedings is to be oral.

(b) Request for removal of documents

In its judgment of 8 May 2008 in Case F-6/07 *Suvikas* v *Council*, the Tribunal ordered documents drawn up by a member of an advisory selection committee, outside of the selection procedure, to be removed from the case-file, as those documents were obtained by the applicant through the intermediary of a third party who had himself obtained them unlawfully.

4. Actions for annulment: plea of breach of the scope of the law raised by the Tribunal of its own motion

In its judgment of 21 February 2008 in Case F-31/07* *Putterie-De-Beukelaer* v *Commission* (under appeal to the Court of First Instance), the Tribunal classified a plea of breach of the scope of the law as a public policy plea. The Tribunal held that it would be neglecting its function as the arbiter of legality if, even in the absence of a challenge by the parties in this regard, it failed to make a finding that the contested decision before the Tribunal had been adopted on the basis of a rule that was not applicable to the case in point and if, as a consequence, it was led to adjudicate on the dispute before it by itself applying such a rule.

* The judgments marked with an asterisk have been translated into all the official languages of the European Union.

Merits

An analysis will be made here of the year's most significant new developments in the case-law, as regards general principles and, then, in the order of the headings of the Staff Regulations, as regards the rights and obligations of officials, the career of officials and the emoluments and social security benefits of officials and, finally, the interpretation of the Conditions of Employment.

1. General principles

(a) Withdrawal of an unlawful administrative measure

In its judgment of 11 September 2008 in Case F-51/07* *Bui Van* v *Commission* (under appeal to the Court of First Instance), the Tribunal, addressing the question of the lawfulness of the withdrawal of an unlawful administrative measure, held that the withdrawal of such a measure must take place within a reasonable period and that the reasonableness of that period is to be appraised in the light of the circumstances specific to each case such as the importance of the case for the person concerned, its complexity and the conduct of the parties involved, whether the measure in question confers subjective rights and the balance of interests. It must be considered, as a general rule, that a period for withdrawal corresponding to the three-month period for bringing proceedings laid down in Article 91(3) of the Staff Regulations is reasonable. Since that period applies to the administration itself, it is appropriate to take, as the starting point, the date on which the administration adopted the measure which it intends to withdraw.

Moreover, the Tribunal has held that the decision to withdraw the unlawful measure must observe the rights of the defence of the official concerned. In this case, the Tribunal considered that the fact that the applicant was not afforded the opportunity to submit his observations before the adoption of the contested decision was not such as to influence the content of that decision, inasmuch as the observations submitted by the applicant to the Tribunal contain no information over and above that already available to the Commission. The Tribunal held, on the other hand, that in disregarding the applicant's right to be heard the Commission committed a wrongful act in the performance of public duties which gave rise to its liability.

(b) Compliance with a judgment of the Community court

In its judgment of 24 June 2008 in Case F-15/05* *Andres and Others* v *ECB*, the Tribunal, sitting as a full court, held that when compliance with a judgment annulling a measure poses special difficulties, the institution concerned may take any decision which is such as to compensate fairly for the disadvantage resulting for the persons concerned from the annulled decision. In that context, the administration may establish a dialogue with those persons with a view to seeking to reach an agreement offering them fair compensation for the illegality of which they were victims. As regards compliance with a judgment declaring unlawful the procedure for adjusting the salaries of staff of the European Central Bank for a given year by reason of the failure to consult the Staff Committee in a regular and appro-

priate manner, a reasonable and fair solution is achieved by the adoption of a compromise consisting in, first, the widening of the consultation to include subsequent years in which it had also not taken place and the taking into account of certain corrected data where it benefited staff, and, second, extending the benefit of the salary increases resulting from the consultation to all the staff, and not merely to the applicants, even if specific difficulties prevented retroactive effect being given to the increases.

(c) Principle of proportionality

In its judgment of 9 September 2008 in Case F-135/07 *Smadja* v *Commission* (under appeal to the Court of First Instance), the Tribunal recalled that the retroactive effect of an administrative measure may be a necessary means of guaranteeing respect for a fundamental principle such as the principle of proportionality. In this case, by failing, without good reason, to backdate the decision appointing the applicant, adopted after the entry into force of the new Staff Regulations, to the date of the adoption of the initial decision to appoint, adopted under the old Staff Regulations and annulled by judgment of the Court of First Instance, so as to guarantee the applicant the higher grading she held at the date of delivery of that judgment, or by refusing to attach to the contested decision any other measure which would have been liable to reconcile the interest of the service with the legitimate interests of the applicant, the Commission failed to respect the interest of the service and its duty to have regard for the welfare of its servants.

(d) Principle of good administration

In its judgment of 11 July 2008 in Case F-89/07 *Kuchta* v *ECB* concerning the lawfulness of an individual decision adjusting the salary of a member of the staff of the ECB, the Tribunal recalled that the rules of good administration in staff management require, inter alia, that the distribution of powers within any Community body or institution should be clearly defined and properly publicised. The Tribunal annulled the contested decision, having found that it had not been able to determine its author or the authority which had been empowered by the Executive Board of the ECB to take such a decision.

2. Rights and obligations of officials

In its judgment of 9 December 2008 in Case F-52/05* *Q* v *Commission*, the Tribunal interpreted for the first time Article 12a(3) of the Staff Regulations which defines psychological harassment as any improper conduct that takes place over a period, is repetitive or systematic and involves physical behaviour, spoken or written language, gestures or other acts that are intentional and that may undermine the personality, dignity or physical or psychological integrity of any person. The Tribunal held that it is not a requirement, for a finding of psychological harassment within the meaning of that provision, that such physical behaviour, spoken or written language, gestures or other acts were committed with the intention of undermining the personality, dignity or physical or psychological integrity of the person concerned. It is sufficient that such reprehensible conduct led objectively to such consequences.

3. Careers of officials

(a) Recruitment

The Tribunal had occasion to clarify the scope of several rules applicable to competitions.

In its judgment of 22 May 2008 in Case F-145/06* *Pascual-García* v *Commission*, the Tribunal made clear that the fact that research work might have further developed the applicant's training and subsequently enabled him to obtain the qualification of doctor does not, as such, prevent it from being classified as professional experience within the meaning of the notice of competition.

In its judgment of 11 September 2008 in Case F-127/07* *Coto Moreno* v *Commission*, the Tribunal held that a selection board's assessment of candidates' knowledge and ability is not open to review by the Tribunal. This does not apply as regards consistency between the numerical mark and the selection board's assessments expressed in words. Such consistency, which furnishes a guarantee of equal treatment of candidates, is one of the rules governing the proceedings of the selection board, compliance with which must be verified as part of judicial review. Moreover, consistency between the numerical mark and the assessment expressed in words may be reviewed by the Community judicature independently of review of the selection board's assessment of the candidates' performance, the latter being a review which the Tribunal declines to exercise, provided the review of consistency is limited to verifying the absence of manifest inconsistency.

In its judgment of 14 October 2008 in Case F-74/07* *Meierhofer* v *Commission*, the Tribunal made clear, as regards the obligation to state reasons for a decision of a selection board relating to an oral test, that the communication to the candidate of only a single individual eliminatory mark does not always constitute a sufficient statement of reasons, irrespective of the particular circumstances of the case in question. In this case, the Tribunal observed that the defendant's refusal to comply with certain measures of organisation of the procedure meant that the Tribunal could not exercise fully its power of review.

(b) Reports

In its judgment of 6 March 2008 in Case F-46/06 *Skareby* v *Commission* (under appeal to the Court of First Instance), the Tribunal recalled that it is clear from the fourth subparagraph of Article 8(5) of the general provisions for implementing Article 43 of the Staff Regulations adopted by the Commission that the administration is required to establish objectives and appraisal criteria for a jobholder. According to that provision, the formal dialogue held between the reporting officer and the jobholder at the start of each appraisal exercise must cover not only the appraisal of that jobholder's performance during the reference period but also the setting of objectives for the year following the reporting period. Those objectives constitute the reference basis for the appraisal of performance.

(c) Promotion

By four judgments of 31 January 2008 in Case F-97/05 *Buendía Sierra* v *Commission*, Case F-98/05 *Di Bucci* v *Commission*, Case F-99/05 *Wilms* v *Commission* and Case F-104/05 *Valero Jordana* v *Commission*, the Tribunal held that, in the absence of provisions derogating from the principle of the immediate applicability of the new rules in Regulation No 723/2004 of 22 March 2004 amending the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities, Article 45(1) of the Staff Regulations, as amended by that regulation, was immediately applicable on the entry into force of that regulation. Consequently, the Commission could not lawfully apply, in November 2004, the provisions of Article 45(1) of the old Staff Regulations which were repealed by that regulation, to adopt the decision fixing the total number of merit points of an official on conclusion of the 2004 promotion exercise and the decision not to promote him in that exercise.

By four judgments of 11 December 2008 in Case F-58/07 *Collotte* v *Commission*, Case F-66/07 *Dubus and Leveque* v *Commission*, Case F-92/07 *Evraets* v *Commission* and Case F-93/07 *Acosta Iborra and Others* v *Commission*, the Tribunal held that Article 45(2) of the Staff Regulations, concerning the obligation on an official to demonstrate his ability to work in a third language before his first promotion, could not be applied before the entry into force of the common rules for implementation laid down by Article 45(2).

(d) New career structure

(i) Multiplication factor

The judgment of 4 September 2008 in Case F-22/07 *Lafili* v *Commission* (under appeal to the Court of First Instance), concerned, inter alia, the interpretation of the fourth sentence of Article 7(7) of Annex XIII to the Staff Regulations concerning the possible effects on the remuneration of officials recruited before 1 May 2004 of the change in the designation of grades. This, fairly technical, judgment favours an interpretation consistent with the principle of the immediate application of new rules, in this case the reform of the Staff Regulations. It was held, in particular, that 'transitional measures should, by their very nature, be intended to facilitate the transition from old rules to new rules, while safeguarding acquired rights, without at the same time maintaining for the benefit of one category of officials the effects of the old rules in situations arising in the future, such as advancement in step under the new career structure'. Moreover, 'in the case of provisions which are ambiguously expressed and susceptible of more than one interpretation, such as those applicable here, preference must be given to the interpretation which allows such difference in treatment of officials to be avoided'.

(ii) Attestation procedure

In its judgment in *Putterie-De-Beukelaer* v *Commission*, the Tribunal held that the appraisal and attestation procedures, defined by the general provisions for implementing Article 43 of the Staff Regulations adopted by the Commission and the Decision of 7 April 2004 laying down the rules for implementing the attestation procedure respectively, are separate

and are based on entirely different rules. In that regard, although the countersigning officer is competent to adopt the career development report, subject to the report not being amended by the appeal assessor, it is for the appointing authority to rule, at each stage in the attestation procedure, on the candidatures for attestation. In particular, it is the responsibility of that authority, hence an authority other than the countersigning officer of the appraisal procedure, to assess, on the basis of the available career development reports, the experience and merit of candidates for attestation.

In its judgment of 21 February 2008 in Case F-19/06 *Semeraro* v *Commission*, the Tribunal made clear that point 1.1 of the Commission decision of 11 May 2005 on the criteria for the 2005 attestation procedure, according to which, in order to be included on the list of officials admitted to the attestation procedure, those officials had to have had their potential recognised in their annual career development report, exceeds the limits of the authority by virtue of which, for the purposes of drawing up the list of officials admitted to the attestation procedure, the appointing authority is to decide the value of the criteria and the weighting applied to them after consulting the joint attestation committee.

4. Emoluments and social security benefits of officials

In its judgment of 2 December 2008 in Case F-131/07 *Baniel-Kubinova and Others* v *Parliament*, the Tribunal held that members of the temporary and/or auxiliary staff who had received the daily subsistence allowance and, subsequently, the installation allowance in part or in full (on the basis of declarations of the transfer of their habitual residence to their place of employment) cannot then, at the time of their engagement as probationary officials in that same place of employment, claim the daily subsistence allowance again. The daily subsistence allowance is reserved for officials and other staff who are obliged to change their place of residence in order to comply with Article 20 of the Staff Regulations, a condition which the applicants did not fulfil as they had already changed their place of residence, as they had declared in order to receive the installation allowance.

5. Conditions of Employment of Other Servants of the European Communities

(a) Classification in grade of a member of the contract staff

In its judgment of 11 December 2008 in Case F-136/06 *Reali* v *Commission*, the Tribunal made clear that Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration does not have the effect of limiting the discretion which an institution enjoys when comparing the respective value of diplomas or the level of qualification attested by the authorisation to practise a profession within the framework of its recruitment policy. Under the system established by that directive, diplomas are compared for the purposes of access to certain regulated activities in the various Member States. Such an assessment cannot be confused with the assessment of the respective academic value of the qualifications obtained in different Member States for the purpose of determining the grade attaching to a post in an institution of the European Communities.

(b) Commission decision of 28 April 2004 on the maximum duration for the recourse to non-permanent staff in the Commission services

In its judgment of 26 June 2008 in Case F-54/07 *Joseph* v *Commission*, the Tribunal made clear, as regards the Commission decision of 28 April 2004 on the maximum duration for the recourse to non-permanent staff in the Commission services, that, by imposing, in Article 85(1) of the Conditions of Employment, a maximum period of five years both for the conclusion and the renewal of the contracts of contract staff, the legislature did not prohibit the institutions from concluding or renewing that type of contract under Article 3 of those conditions for a shorter period, provided that the minimum duration laid down in Article 85(1) of those conditions (six or nine months as the case may be) is respected. However, an institution cannot, without breaching that provision, restrict generally and impersonally, as here by means of general implementing provisions or an internal decision of general application, the maximum possible period of employment of contract staff as determined by the legislature itself.

Costs

1. Cases brought before the entry into force of the Rules of Procedure of the Tribunal

The Tribunal has on several occasions applied Article 87(3) of the Rules of Procedure of the Court of First Instance, applicable *mutatis mutandis* to the Civil Service Tribunal pursuant to Article 3(4) of Council Decision 2004/752/EC, Euratom of 2 November 2004 establishing the European Union Civil Service Tribunal (OJ L 333, p. 7), until the entry into force of its Rules of Procedure. For instance, in its judgment of 24 June 2008 in Case F-84/07 *Islamaj* v *Commission*, the Tribunal decided to order that the costs be shared between the parties as the circumstances were exceptional, whereas in its judgments in *Bui Van* v *Commission* and *Lafili* v *Commission*, the Tribunal ordered that the costs be shared between the parties who were unsuccessful on one or more heads.

It should also be observed that, in a case in which the Tribunal held that there was no need to adjudicate on the dispute, a situation in which costs are at the discretion of the Court pursuant to Article 87(6) of the Rules of Procedure of the Court of First Instance, applicable *mutatis mutandis,* the defendant was ordered to pay all the costs incurred by the applicant (order of 1 February 2008 in Case F-77/07 *Labate* v *Commission*). The Tribunal took into account, first, the fact that the Commission did not reply to the complaint lodged by the applicant and, second, the fact that, by withdrawing the contested decision, the Commission had implicitly acknowledged that the procedure for the adoption of that decision was open to criticism, which led directly to the case being brought before the Community court.

2. Cases brought after the entry into force of the Rules of Procedure of the Tribunal

One of the significant innovations brought about by the entry into force of the Rules of Procedure of the Tribunal on 1 November 2007 concerns the arrangements relating to costs. Under Article 87(1) 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. Under Article 87(2) of those rules, 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.

In its judgment of 4 December 2008 in Case F-6/08 *Blais* v *ECB*, the Tribunal applied for the first time the provision concerning equity laid down by Article 87(2) of the Rules of Procedure, deciding that it was appropriate, although the applicant was unsuccessful, to order her to pay, in addition to her own costs, only half of the costs incurred by the defendant. The Tribunal took the view that it would be unfair to order the applicant to pay all the costs of the defendant having regard, first, to the fact that the proceedings may be considered to have been occasioned in part by the conduct of the defendant, second, to the financial importance of the proceedings for the applicant, third, to the fact that the arguments of the applicant were not without merit, fourth, to the personal situation of the applicant and, finally, to the fact that the amount of the costs that the applicant might be ordered to bear was higher than in most disputes before the Tribunal, because the defendant had chosen to be represented not only by its own agents but also by a lawyer.

In the order of 10 July 2008 in Case F-141/07 *Maniscalco* v *Commission*, it was determined that an application for an appropriate order as to costs cannot be regarded as a request that the unsuccessful party be ordered to pay the costs.

Finally, it is of note that, in its order of 25 November 2008 in Case F-53/07 *Iordanova* v *Commission*, the Tribunal applied Article 98(4) of the Rules of Procedure under which, where the recipient of the aid is unsuccessful, the Tribunal may, in ruling as to costs in the decision closing the proceedings, if equity so requires, order that one or more parties should bear their own costs or that those costs should be borne, in whole or in part, by the cashier of the Tribunal by way of legal aid.

II. 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 30 January 2008 in Case F-64/07 R *S* v *Parliament*, of 25 April 2008 in Case F-19/08 R *Bennett and Others* v *OHIM*, of 3 July 2008 in Case F-52/08 R *Plasa* v *Commission* and of 17 December 2008 in Case F-80/08 R *Wenig* v *Commission*).

In the order in *Wenig* v *Commission*, it was recalled, in particular, that the measures applied for must be provisional, in that they must not prejudge the decision on the substance. Account must be taken, when weighing up the competing interests, of the irreversible nature of any suspension of operation of the contested decision, and the application must be granted only if the urgency of the measure sought appears undeniable

III. Applications for legal aid

Since the entry into force on 1 May 2008 of the practice directions to parties, any application for legal aid must be made on the compulsory form which contains a guide for applicants.

Seven orders ruling on applications for legal aid were made in 2008. With the exception of the application in Case F-142/07 AJ *Kaminska* v *Committee of the Regions*, in which the application for legal aid was granted, the applications were rejected 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.

In the orders rejecting the applications for legal aid, it was recalled, inter alia, that the second subparagraph of Article 95(2) of the Rules of Procedure specifies that the financial situation of the applicant is to be assessed, taking into account objective factors such as income, capital and the family situation. It was also recalled that, according to the first subparagraph of Article 96(2) of those rules, the application for legal aid must be accompanied by all information and supporting documents making it possible to assess the applicant's financial situation, such as a certificate issued by the competent national authority attesting to his financial situation.

B — Composition of the Civil Service Tribunal

(Order of precedence as at 31 December 2008)

From left to right:

H. Tagaras, Judge; H. Kreppel, Judge; H. Kanninen, President of Chamber; P. Mahoney, President of the Tribunal; S. Gervasoni, President of Chamber; I. Boruta, Judge; S. Van Raepenbusch, Judge; W. Hakenberg, Registrar.

1. Members of the Civil Service Tribunal

(in order of their entry into office)

Paul J. Mahoney

Born in 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 in 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 Commission of the European Communities (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 in 1950; law graduate of the University of Wrocław (1972), doctorate in law (Łodz, 1982); lawyer at the Bar of the Republic of Poland (since 1977); visiting researcher (University of Paris X, 1987–88; University of Nantes, 1993–94); expert of 'Solidarność' (1995–2000); Professor of labour law and European social law at the University of Łodz (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 (2002–05); 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

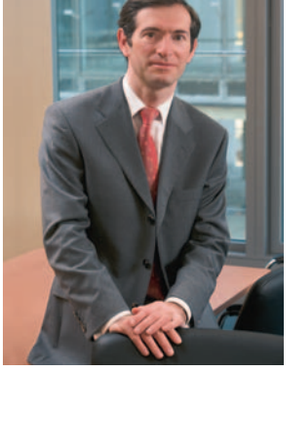
Born in 1952, graduate of the Helsinki School of Economics and of the faculty of law of the University of Helsinki; legal secretary at the Supreme Administrative Court of Finland; general secretary to the committee for reform of legal protection in public administration; principal administrator at the 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 in 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 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.

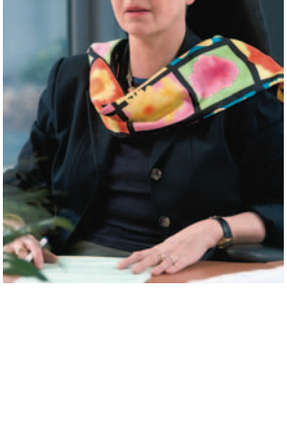
Sean Van Raepenbusch

Born in 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 Hainault (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 in 1967; graduate of the Institute for Political Studies of Grenoble (1988) and the École nationale d'administration (1993); member of the Conseil d'État (Rapporteur in the contentious proceedings division, 1993–97, and in the social affairs division, 1996–97); maître des requêtes, 1996–98); councillor of State (since 2008); 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 Département 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 (2001–05); Judge at the Civil Service Tribunal since 6 October 2005.



Waltraud Hakenberg

Born in 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 for 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 to 30 September 2008

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

from 1 October to 31 December 2008

P. MAHONEY, President of the Tribunal
H. KANNINEN, President of Chamber
S. GERVASONI, President of Chamber
H. KREPPEL, Judge
I. BORUTA, Judge
H. TAGARAS, Judge
S. VAN RAEPENBUSCH, 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 (2005–08)

New cases

2. Percentage of the number of cases per principal defendant institution (2006–08)
3. Language of the case (2006–08)

Completed cases

4. Judgments and orders — Bench hearing action (2008)
5. Outcome (2008)
6. Interim measures adopted — Outcome (2006–08)
7. Duration of proceedings in months (2008)

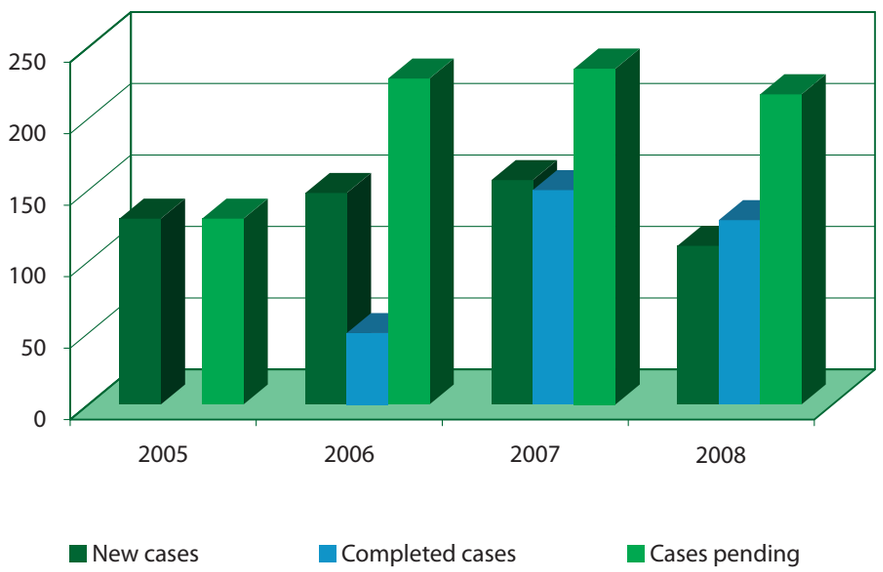
Cases pending as at 31 December

8. Bench hearing action (2006–08)
9. Number of applicants (2008)

Miscellaneous

10. Decisions of the Tribunal on appeal to the Court of First Instance (2006–08)
11. Results of appeals to the Court of First Instance (2006–08)

1. *General activity of the Civil Service Tribunal —* New cases, completed cases, cases pending (2005–08)



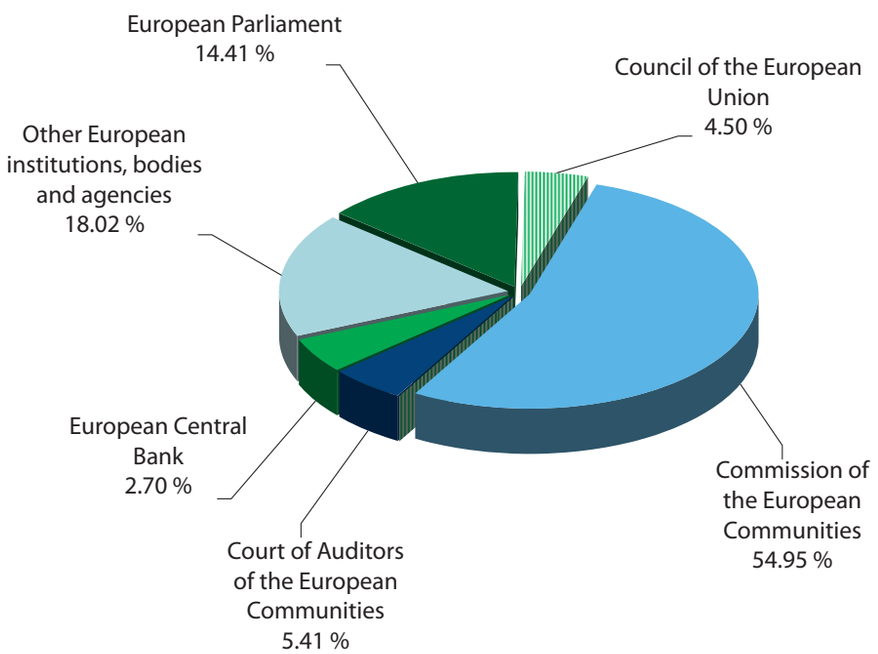
	2005	2006	2007	2008
New cases	130	148	157	111
Completed cases	—	50	150	129
Cases pending	130	228	235	217 ([1])

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

([1]) Including nine cases in which proceedings were stayed.

2. *New cases* — Percentage of the number of cases per principal defendant institution (2006–08)

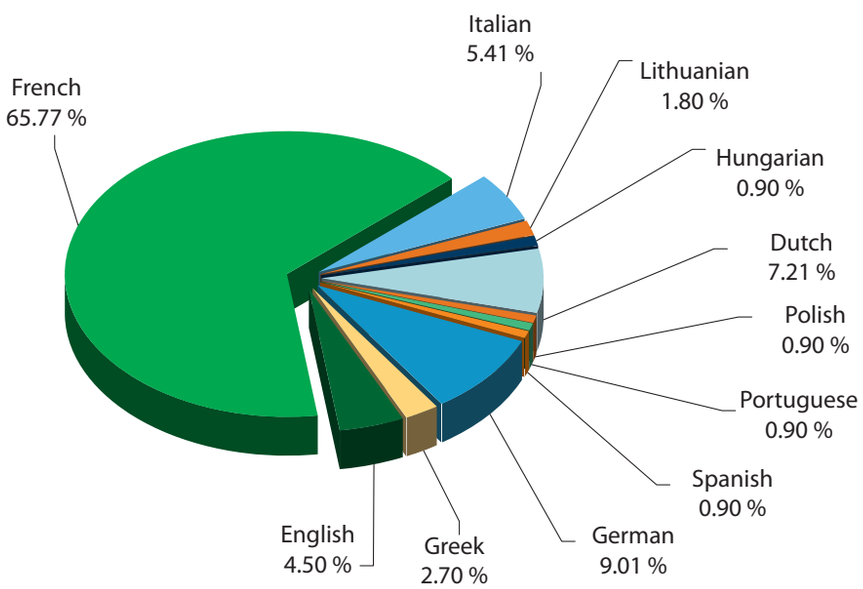
Percentage of number of new cases (2008)



	2006	2007	2008
European Parliament	7.14 %	13.38 %	14.41 %
Council of the European Union	6.07 %	3.82 %	4.50 %
Commission of the European Communities	75.00 %	50.96 %	54.95 %
Court of Justice	3.57 %	3.82 %	—
Court of Auditors of the European Communities	1.79 %	1.91 %	5.41 %
European Central Bank	1.07 %	1.27 %	2.70 %
Other European institutions, bodies and agencies	5.36 %	24.84 %	18.02 %
Total	**100 %**	**100 %**	**100 %**

3. *New cases* — Language of the case (2006–08)

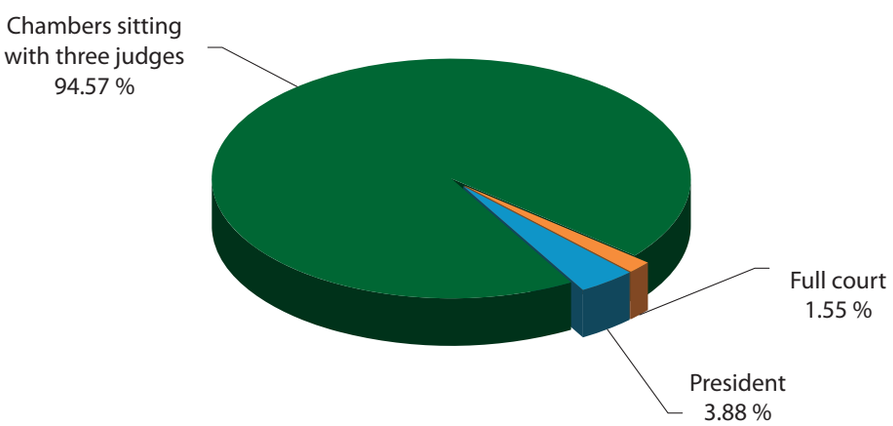
Distribution in 2008



Language of the case	2006	2007	2008
Bulgarian	—	2	—
Spanish	1	2	1
German	2	17	10
Greek	3	2	3
English	8	8	5
French	113	102	73
Italian	10	17	6
Lithuanian	—	2	2
Hungarian	2	1	1
Dutch	7	3	8
Polish	—	—	1
Portuguese	—	—	1
Romanian	—	1	—
Slovene	1	—	—
Finnish	1	—	—
Total	**148**	**157**	**111**

The language of the case corresponds to the language in which the proceedings were brought and not to the applicant's mother tongue or nationality.

4. *Completed cases* — Judgments and orders — Bench hearing action (2008)



	Judgments	Orders terminating proceedings (1)	Cases brought to a close in other ways	Total
Full court	2	—	—	2
President	—	5	—	5
Chambers sitting with three judges	66	55	1	122
Single judge	—	—	—	—
Total	**68**	**60**	**1**	**129**

(1) Including seven cases brought to a close by amicable settlement.

5. *Completed cases* — Outcome (2008)

	Judgments			Orders					
	Actions upheld in full	**Actions upheld in part**	**Actions dismissed in full**	**Actions/ applications [manifestly] inadmissible or unfounded**	**Amicable settlements following intervention by the Tribunal**	**Removal from the register on other grounds, no need to adjudicate or referral back**	**Applications upheld (special forms of procedure)**	**Cases brought to a close in other ways**	**Total**
Assignment/reassignment to a post	—	—	2	2	—	1	—	—	5
Competitions	1	2	4	2	—	—	—	—	9
Working conditions/leave	—	2	2	1	1	—	—	—	6
Appraisal/promotion	7	8	12	4	2	5	—	1	39
Pensions and invalidity allowances	—	—	2	3	—	6	—	—	11
Disciplinary proceedings	—	—	1	2	—	—	—	—	3
Recruitment/appointment/ classification in grade	1	6	4	5	—	2	—	—	18
Remuneration and allowances	—	—	8	2	4	3	—	—	17
Termination of an agent's contract	—	—	3	1	—	1	—	—	5
Social security/occupational disease/accidents	1	1	1	1	—	2	—	—	6
Other	—	—	—	8	—	1	1	—	10
Total	**10**	**19**	**39**	**31**	**7**	**21**	**1**	**1**	**129**

6. *Completed cases* — Interim measures adopted — Outcome (2006–08)

Number of applications for interim measures granted		Outcome	
		Granted in full or in part	Dismissal
2006	**2**	–	2
2007	**4**	–	4
2008	**4**	–	4
Total	**10**	**–**	**10**

7. *Completed cases* — Duration of proceedings in months (2008)

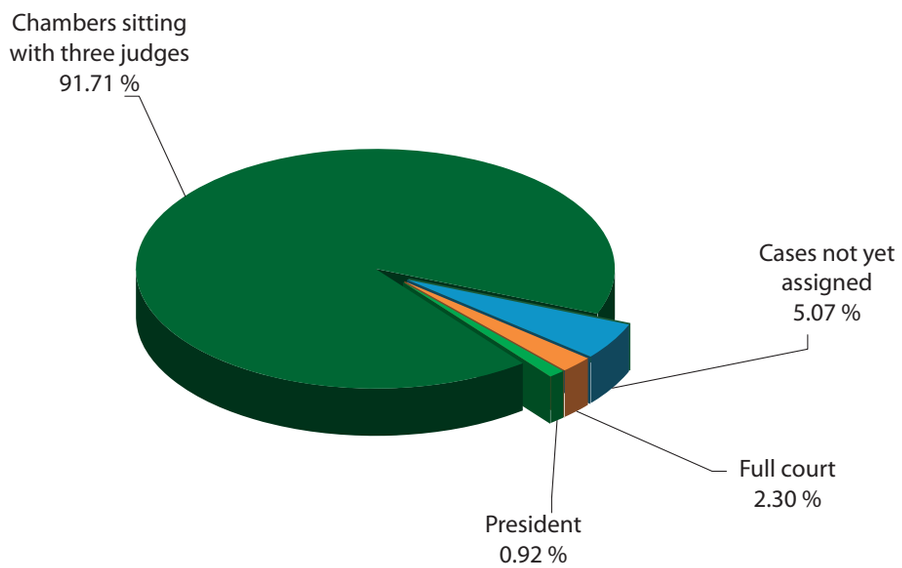
Judgments		Average duration	Overall average
New cases before the Civil Service Tribunal		16.9	19.7
Cases initially brought before the Court of First Instance [1]		32.6	
Total	**68**		
Orders			
New cases before the Civil Service Tribunal		11.3	14.0
Cases initially brought before the Court of First Instance [1]		38.3	
Total	**61**		
OVERALL TOTAL	**129**		**17.0**

The durations are expressed in months and tenths of months.

[1] When the Civil Service Tribunal commenced work, the Court of First Instance transferred 118 cases to it.

8. *Cases pending as at 31 December* — Bench hearing action (2006–08)

Distribution in 2008



	2006	2007	2008
Full court	6	3	5
President	4	2	2
Chambers sitting with three judges	207	205	199
Single judge	—	—	—
Cases not yet assigned	11	25	11
Total	**228**	**235**	**217**

9. *Cases pending as at 31 December* — Number of applicants (2008)

The 10 pending cases with the greatest number of applicants in a single case

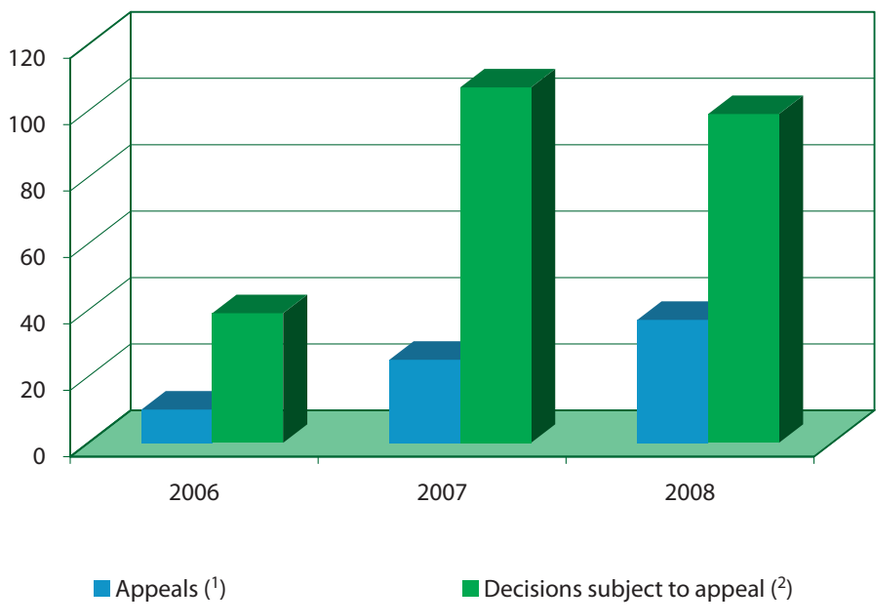
Number of applicants per case	Fields
181	Staff Regulations — Recruitment — Members of the contract staff — Duration of contracts, renewal and/or extension for a definite or indefinite period
143	Staff Regulations — Appointments — Candidates placed on a reserve list before the new Staff Regulations entered into force
108	EIB — Pension — Annual adjustment
80	Staff Regulations — Members of the auxiliary session staff of the Parliament — Interim workers — Reclassification as members of the contract staff with contracts of indefinite duration
76	Staff Regulations — Appointments — Reclassification of contracts of fixed duration as a single contract of indefinite duration
59	Staff Regulations — Promotion — Promotion year 2005 — Additional grades provided for by the new Staff Regulations
47	Staff Regulations — Members of the contract staff — Recruitment — Selection procedure CAST27/RELEX — Non-inclusion on the reserve list
29	Staff Regulations — Contract staff — Review of classification and remuneration
27	Staff Regulations — Staff of the crèche and childcare services — Remuneration
21	Staff Regulations — Remuneration — Allowance for shiftwork — Allowance for workers regularly required to remain on standby duty — Articles 56a and 56b of the Staff Regulations

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.

Total number of applicants for all pending cases

	Total applicants	Total pending cases
2006	1 652	228
2007	1 267	235
2008	1 161	217

10. *Miscellaneous* — Decisions of the Tribunal on appeal to the Court of First Instance (2006–08)



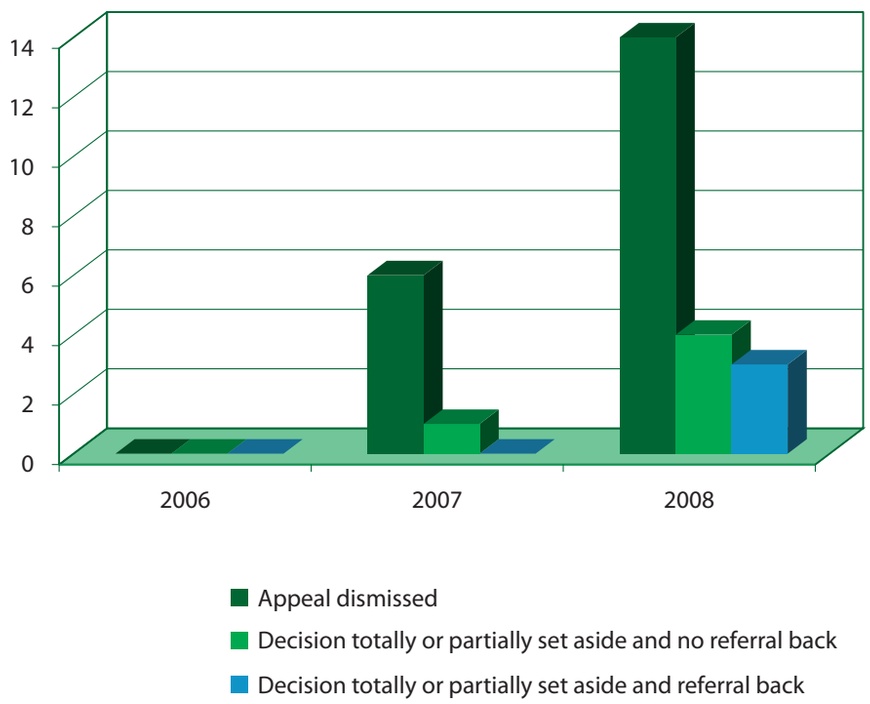
	Appeals (1)	**Decisions subject to appeal** (2)	**Percentage of appeals** (3)	***Percentage of appeals leaving the amicable settlement procedure out of the reckoning***
2006	10	39	25.64 %	22.22 %
2007	25	107	23.36 %	21.93 %
2008	37	99	37.37 %	34.91 %

(1) Decisions appealed against by several parties are taken into account only once. In 2007, two decisions were each the subject of two appeals.

(2) Judgments, orders declaring the action inadmissible, clearly inadmissible or clearly unfounded, orders for interim measures, orders that there is no need to adjudicate and orders refusing leave to intervene, made or adopted during the reference year.

(3) For a given year this percentage may not correspond to the decisions subject to appeal given in the reference year, since the period allowed for appeals may span two years.

11. *Miscellaneous* — Results of appeals to the Court of First Instance (2006–08)



	2006	2007	2008
Appeal dismissed	—	6	14
Decision totally or partially set aside and no referral back	—	1	4
Decision totally or partially set aside and referral back	—	—	3
Total	—	**7**	**21**

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

24 January	Mr M. A. Moratinos, Minister for Foreign Affairs of the Kingdom of Spain
25 January	Mr F. Fillon, Prime Minister of the French Republic
13 February	Delegation from the Corte centroamericana de Justicia
1 April	Delegation from the Court of the Future Network, Australia
9 April	Mr A. Krautscheid, Minister for Federal and European Affairs and the Media of the *Land* of Nordrhein-Westfalen
14–15 April	Delegation of Netherlands judges — Gerechtscoördinatoren
17 April	HE Mr E. Duckwitz, Permanent Representative of the Federal Republic of Germany to the European Union
17 April	HE Mr K. Darroch, Permanent Representative of the United Kingdom to the European Union
17 April	Ms B. Ask, Minister for Justice of the Kingdom of Sweden
18 April	HE Mr H. D. Schweisgut, Permanent Representative of the Republic of Austria to the European Union
21–28 April	Delegation from the Court of Justice of the Central African Economic and Monetary Community (CAEMC), the Court of Justice of the West African Economic and Monetary Union (WAEMU) and the Court of Justice of the Economic Community of West African States (Ecowas)
28 April	HE Ms M. Vicenová, Permanent Representative of the Czech Republic to the European Union
14 May	HE Mr P. Guex, Ambassador of the Swiss Confederation to the Grand Duchy of Luxembourg and HE Mr J. De Watteville, Ambassador, Head of the Swiss Mission to the European Union
5 June	Mr J. Pospíšil, Minister for Justice of the Czech Republic
9–10 June	Member States Judges' Forum (Belgium, Bulgaria, Denmark, Germany, Estonia, Greece, Cyprus, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, United Kingdom)
9–27 June	Exhibition 'Sous le regard de Dame Justice' by P. Heinisch, painter and caricaturist

16 June	Mr J. Lewandowski, Rapporteur of the Committee on Budgets of the European Parliament
17 June	Agents of the French Republic, the Czech Republic and the Kingdom of Sweden representing those Member States before the Court of Justice
23–27 June	Delegation from the Court of Justice of the Central African Economic and Monetary Community (CAEMC), the Court of Justice of the West African Economic and Monetary Union (WAEMU) and the Court of Justice of the Economic Community of West African States (Ecowas)
8 July	Mr V. Hoff, Minister for Federal and European Affairs of the *Land* of Hesse
8–9 September	Delegation from the Supreme Court of the Kingdom of Spain
9–12 September	Delegation from the High Court of Cassation and Justice of Romania
15–16 September	Delegation from the Consejo General del Poder Judicial of the Kingdom of Spain
17 September	Delegation from the Danish Parliament
7 October	Photographic exhibition commemorating the 50th anniversary of the installation of the 'single' Court of Justice of the European Communities
9 October	Mr F. MacGregor, President of the Court of Appeal of the Seychelles
13 October	Delegation from the Committee on Legal Affairs of the European Parliament
14 October	Delegation from the Supreme Court of China
20–21 October	'Luxemburger Expertenforum'
23 October	HE Mr F. Nelli Feroci, Ambassador, Permanent Representative of the Italian Republic to the European Union
31 October	Ms M. Kiviniemi, Finnish Minister for Public Administration and Local Government
6 November	Mr M. Sarrazin and Mr J. Montag, Members of the Bundestag
20 November	Mr G. Holzinger, President of the Constitutional Court of the Republic of Austria
24 November	Delegation from the European Court of Human Rights

5 December	Mr C. Wiseler, Minister for Public Works of the Grand Duchy of Luxembourg, and Mr D. Perrault, architect
10–11 December	Delegation of judges and experts in taxation law of the Member States and candidate States for accession to the European Union

Court of First Instance

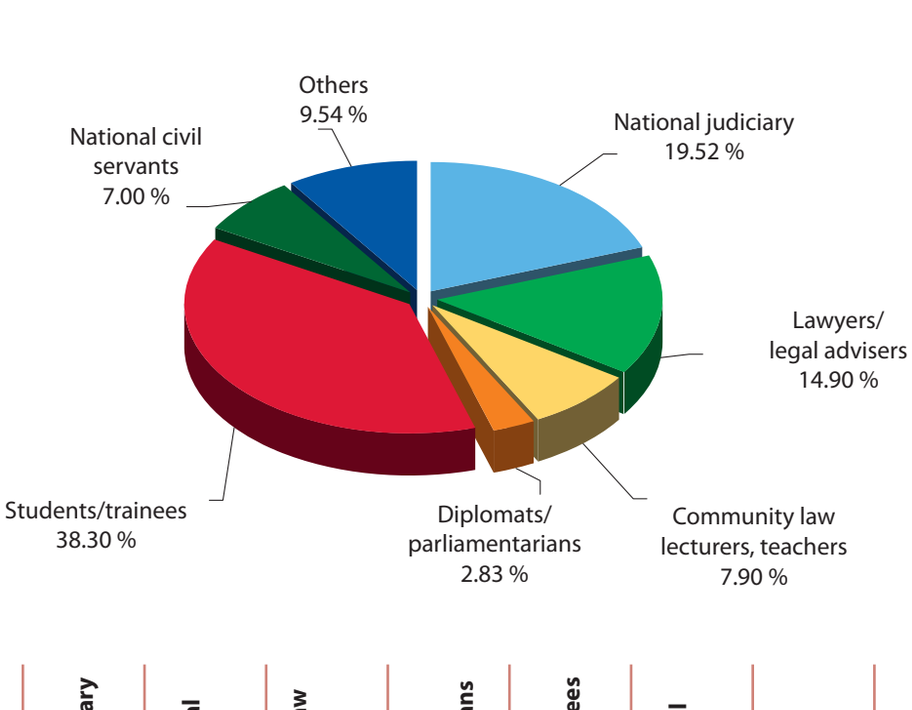
22 April	HE Mr P. Guex, Ambassador of the Swiss Confederation to the Grand Duchy of Luxembourg
17 June	Working visit of Agents of the French, Czech and Swedish Governments, accompanied by Legal Advisers to the Council of the European Union
9 July	Mr N. Diamandouros, European Ombudsman
13 October	Delegation from the Committee on Legal Affairs of the European Parliament
12 December	Agents of the Ministry of State of the Grand Duchy of Luxembourg

Civil Service Tribunal

22 April	Visit of Ms M. De Sola Domingo, Principal Adviser in the Mediation Service of the Commission
24 April	Visit of Mr P. Hustinx and Mr J. Bayo Delgado, European Data Protection Supervisor and Assistant European Data Protection Supervisor respectively
13 October	Visit of a delegation from the Committee on Legal Affairs of the European Parliament
21 November	Visit of Mr N. Diamandouros, European Ombudsman

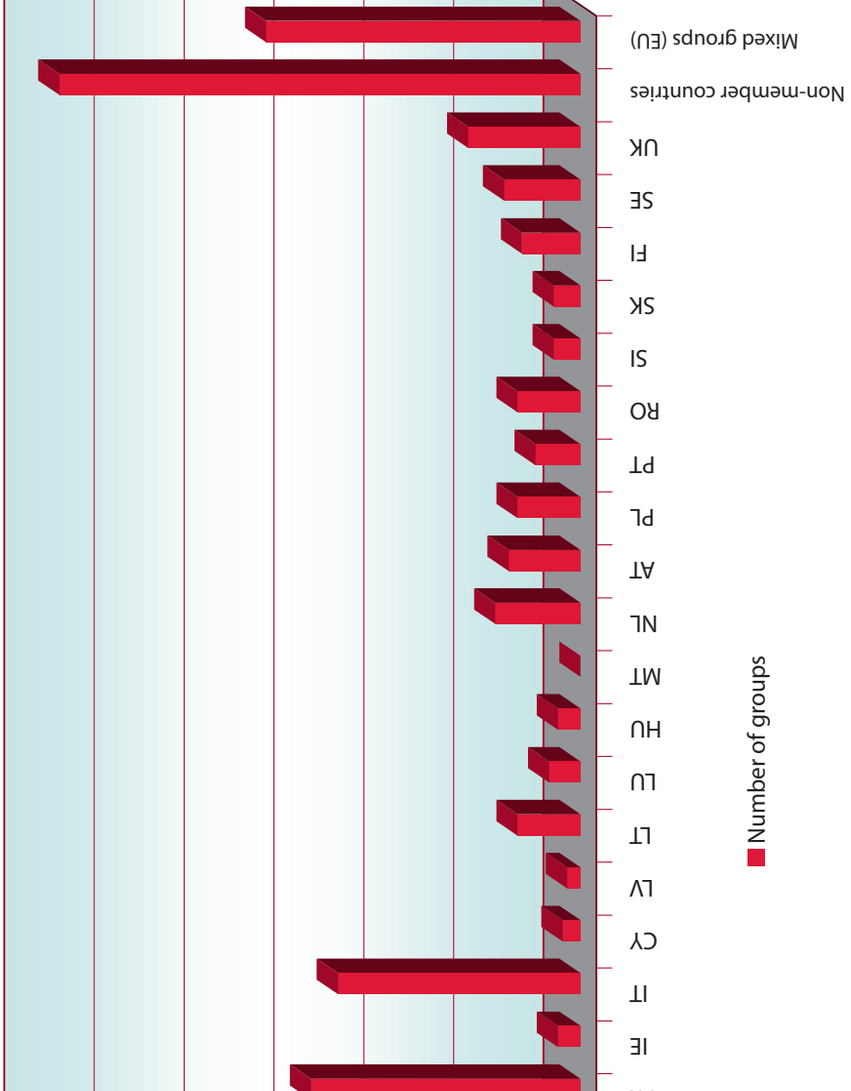
B — Study visits (2008)

1. Distribution by type of group



	National judiciary	Lawyers/legal advisers	Community law lecturers, teachers	Diplomats/ parliamentarians	Students/trainees	National civil servants	Others	Total
Number of groups	131	100	53	19	257	47	64	671

2. Distribution by Member State (2008)

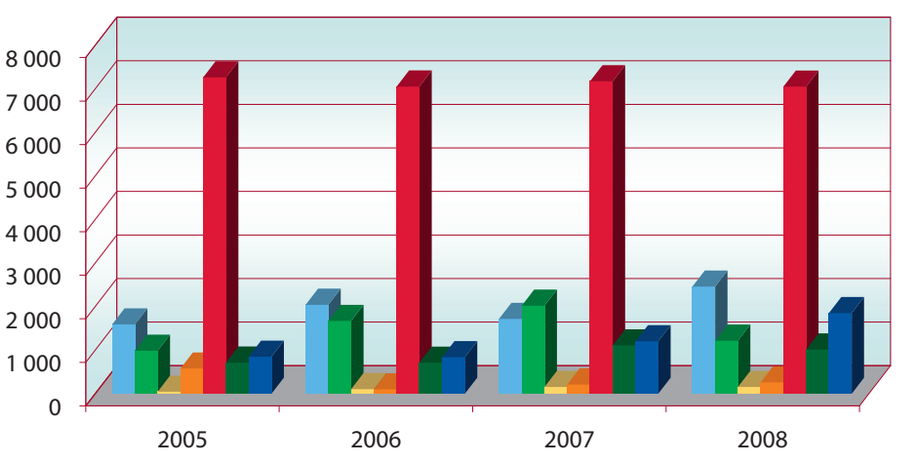


	Number of visitors								Number of groups
	National judiciary	Lawyers/ legal advisers	Community law lecturers, teachers	Diplomats/par-liamentarians	Students/ trainees	National civil servants	Others	Total	
BE		53	1		400		20	**474**	**19**
BG	34	13			42			**89**	**5**
CZ		46	14		24			**84**	**14**
DK	8	10	43	31	98	27	90	**307**	**18**
DE	375	265	29	70	1 113	163	828	**2 843**	**102**
EE				27				**27**	**2**
EL	121		6		150			**277**	**11**
ES	294	33			36	18	103	**484**	**22**
FR	230	46	7		1 118	143	297	**1 841**	**60**
IE	10				74			**84**	**5**
IT		55	3		534			**592**	**54**
CY	4		8		16			**28**	**4**
LV					23	40		**63**	**3**
LT			9		15			**24**	**14**
LU		55			161	14		**230**	**7**
HU			8		80	8		**96**	**5**
MT								**0**	**0**
NL	86	52		50	271		42	**501**	**19**
AT	18	76	4		190		38	**326**	**16**
PL	68	73	4		84	105		**334**	**14**
PT	3		6		20			**29**	**10**
RO	60		2			3		**65**	**14**
SI	3	10				7		**20**	**6**
SK	78				34			**112**	**6**
FI		30		39	52	11	27	**159**	**13**
SE	188	17		6	61		97	**369**	**17**
UK	100	37			335		16	**488**	**25**
Non-member countries	215	57	12	39	1 320	50	82	**1 775**	**116**
Mixed groups (EU)	568	291			802	427	214	**2 302**	**70**
Total	**2 463**	**1 219**	**156**	**262**	**7 053**	**1 016**	**1 854**	**14 023**	**671**

3. National judiciary (2008)

	BE	BG	DK	DE	EE	EL	CY	LV	LT	LU	NL	PL	PT	UK	Total
Study visit	8	6	3	16	2	8	2	2	4	2	7	15	8	8	91

4. Trend in number and type of visitors (2005–08)



Number of visitors

	National judiciary	Lawyers/legal advisers	Community law lecturers, teachers	Diplomats/ parliamentarians	Students/ trainees	National civil servants	Others	Total
2005	1 595	989	48	581	7 267	716	853	12 049
2006	2 044	1 673	108	101	7 056	714	840	12 536
2007	1 719	2 025	157	213	7 178	1 111	1 206	13 609
2008	2 463	1 219	156	262	7 053	1 016	1 854	14 023

C — Formal sittings

14 January	Formal sitting on the occasion of the departure of Judge Schintgen
28 January	Formal sitting on the occasion of the partial replacement of the Members of the European Court of Auditors
23 May	Formal sitting for the giving of a solemn undertaking by Ms A. Vassiliou, new Member of the European Commission
30 June	Formal sitting for the giving of memorial eulogies
7 July	Formal sitting for the giving of a solemn undertaking by Mr A. Tajani, new Member of the European Commission
15 September	Formal sitting on the occasion of the departure of Judge Cooke and of the entry into office of Mr K. O'Higgins as a Judge at the Court of First Instance
4 December	Formal sitting on the occasion of the inauguration of the new *Palais*

D — Visits and participation in official functions

Court of Justice

11 January	Representation of the Court at the formal sitting of the Court of Cassation, in Paris
12 January	Representation of the Court at the ceremony organised by Mr L. Gonzi, Prime Minister of Malta, on the occasion of the entry of Malta into the euro area, in Valetta
16 January	Representation of the Court at the Rechtspolitischer Neujahrsempfang at the Ministry of Justice, in Berlin
18–19 January	Participation of a delegation from the Court at the third colloquium of the Presidents of the Austrian, German and Swiss Constitutional Courts, the President of the European Court of Human Rights and the President of the Court of Justice of the European Communities, in Vienna
22–23 January	Representation of the Court at the general training seminar on trade marks and designs for judges of the national courts of the 27 Member States of the European Union, in Alicante
25 January	Participation of a delegation from the Court at the formal sitting of the European Court of Human Rights, in Strasbourg
25 January	Representation of the Court at the ceremony inaugurating the judicial year of the Supreme Court of Cassation, in Rome
25 January	Representation of the Court at the formal sitting of the European Court of Human Rights and at the seminar on 'The role of consensus in the system of the European Convention on Human Rights', in Strasbourg
29 January	Representation of the Court at the formal ceremony for the opening of the judicial year of the Supreme Court of Portugal, in Lisbon
31 January	Representation of the Court at the formal session in honour of Mr G. Hirsch, President of the Federal Court of Justice, and on the occasion of the entry into office of his successor, at the invitation of Ms B. Zypries, Minister for Justice of the Federal Republic of Germany, in Karlsruhe
24 February	Representation of the Court at the ceremony organised by the President of the Republic of Estonia, Mr Toomas Hendrik Ilves, on the occasion of the 90th anniversary of the Republic of Estonia, in Tallinn
12 March	Representation of the Court at the celebration of the 50th anniversary of the European Parliament, in Strasbourg

12 March	Representation of the Court at the Annual General Assembly of the Constitutional Court of the Republic of Poland, in Warsaw
9 April	Representation of the Court on the occasion of the 25th anniversary of the Constitutional Court of Portugal, in Lisbon
7 May	Representation of the Court at the formal reception given at the Hofburg by the President of the Republic of Austria on the occasion of the departure from office of Mr Korinek, President of the Austrian Constitutional Court, in Vienna
16–17 May	Representation of the Court at the Second International Constitutional Colloquium, organised by the Constitutional Court of Andorra, on the topic 'International law and national constitutions in the jurisprudence of constitutional courts', in Andorra la Vella
28–31 May	Participation of a delegation from the Court at the FIDE Congress, in Linz
1 June	Representation of the Court at the ceremony organised on the occasion of the Italian National Day, in Rome
9 June	Representation of the Court at the opening of the exhibition of the architect Mr D Perrault, at the Centre Pompidou, in Paris
9–10 June	Representation of the Court at the colloquium on 'Ways and means of strengthening the implementation at national level of the European Convention for the Protection of Human Rights and Fundamental Freedoms', in Stockholm
15–16 June	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, and at the colloquium organised by that association, in Warsaw
30 June	Representation of the Court at the third colloquium of the Network of the Presidents of the Supreme Judicial Courts of the Member States of the European Union, in Ljubljana
3 July	Participation of the President of the Court in a meeting with Mr J.-C. Piris, Director-General, Legal Adviser to the Council of the European Union, and Mr H.-G. Pöttering, President of the European Parliament, in Brussels
2–3 September	Participation of a delegation from the Court at the celebration of the 90th anniversary of the Supreme Administrative Court of Finland, in Helsinki
8–9 September	Representation of the Court at the seminar organised by the Supreme Court of Spain and the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union on the topic 'Convergence of the supreme administrative courts of

	the European Union in the application of Community law', in Santander
10–11 September	Representation of the Court at the formal sitting organised on the occasion of the 15th anniversary of the establishment of the Constitutional Court of the Czech Republic, in Brno
16 September	Representation of the Court at the ceremonies organised on the occasion of the 175th anniversary of the Portuguese Supreme Court, in Lisbon
22 September	Representation of the Court at a meeting of a delegation from the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union with Commissioner Barrot to discuss the activities of the association and their financing, in Brussels
24 September	Participation of the President of the Court at a dinner in honour of the Ecumenical Patriarch Bartholomew, at the invitation of Mr V. Kaskarelis, Ambassador, Permanent Representative of the Hellenic Republic to the European Union, in Brussels
29 September	Representation of the Court at the ceremony opening the judicial year of the Supreme Court, presided over by His Majesty the King of Spain, in Madrid
30 September–1 October	Representation of the Court at the Opening of the Legal Year, in London
1 October	Representation of the Court at the Verfassungstag (formal commemoration of the establishment of the Austrian Constitutional Court), in the presence of the President of the Republic of Austria, in Vienna
3 October	Representation of the Court at the ceremonies organised as part of the 'Tag der Deutschen Einheit', in Hamburg
7–8 October	Representation of the Court at the annual conference of the European Union Forum of Judges for the Environment, in Paris
9–10 October	Representation of the Court at the meeting of the heads of the Appeal Courts of the capitals of the European Union, in Paris
13 October	Representation of the Court on the occasion of the 10th anniversary of the entry into force of Protocol No 11 to the European Convention on Human Rights, at the European Court of Human Rights, in Strasbourg
13 October	Representation of the Court at the '10th Anniversary Meeting of the European Judicial Network', in Madeira

16–17 October	Representation of the Court at the conference of the Presidents of the Supreme Courts and the Principal State Counsel of the Member States of the European Union, in Vienna
25–28 October	Participation of a delegation from the Court in an official visit to the Supreme Court of Cassation of the Republic of Bulgaria, in Sofia
31 October	Representation of the Court at the formal sitting of the Court of Cassation of the Netherlands on the occasion of the retirement of its President, Mr W. J. M. Davids, in The Hague
2–3 November	Representation of the Court at the colloquium organised on the occasion of the 50th anniversary of the Constitutional Council, in Paris
17 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 Member States, in Brussels
6 December	Representation of the Court at the annual reception organised on the occasion of the National Day, at the invitation of the President of the Republic of Finland, in Helsinki
18 December	Representation of the Court at the ceremony organised on the occasion of 'Constitutionality Day', in Ljubljana

Court of First Instance

11 January	Representation of the Court at the formal sitting of the Court of Cassation, in Paris
15 January	Representation of the Court at the conference organised on the occasion of the 50th anniversary of the Bundeskartellamt, in Bonn
25 January	Representation of the Court on the occasion of the formal sitting of the European Court of Human Rights, in Strasbourg
15–18 May	Participation of the President and Members of the Court at a meeting organised by the Attorney General and high dignitaries of the Republic of Cyprus and speech on the jurisdiction of the Court of First Instance in matters of Community competition law, in Nicosia
28–31 May	Representation of the Court at the 23rd FIDE Congress, in Linz
2–5 June	Representation of the Court at the 14th Congress of the Conference of European Constitutional Courts, in Vilnius
25 June	Participation of the President at the reception given by the French Prime Minister, Mr F. Fillon, on the occasion of the 60th anniversary of the Secretariat General for European Affairs, in Paris
2 September	Representation of the Court at the ceremony organised on the occasion of the 90th anniversary of the Supreme Administrative Court of Finland, in Helsinki

29 September	Representation of the Court at the formal sitting opening the judicial year, presided over by His Majesty the King of Spain, in Madrid
1 October	Representation of the Court at the ceremony for the Opening of the Legal Year, in London
3 October	Representation of the Court at the ceremony for the 90th anniversary of the protection of industrial property in Poland, in Warsaw
6–7 October	Representation of the Court at the international conference on the topic 'International courts and tribunals — The challenges ahead', as part of the Swedish presidency of the Committee of Ministers of the Council of Europe, in cooperation with the Committee of Legal Advisers on Public International Law of the Council of Europe, in London
20–21 October	Participation of the President and of Members of the Court at the Luxemburger Expertenforum zur Entwicklung des Gemeinschaftsrechts, in Luxembourg
24 October	Participation of the President at the conference 'EU litigation — Using EU law as a litigation tool' organised by IBC Legal Conferences and speech on the topic 'Efficient administration of justice in a changing environment — What lawyers and judges can do', in Brussels
25 October–2 November	Representation of the Court at the autumn session of the United Nations Administrative Tribunal, in New York
25 November	Representation of the Court at the round-table discussion 'Europe without frontiers', organised on the occasion of the state visit of the President of the Republic of Finland, Ms T. Halonen, in Luxembourg
5 December	Participation and speech of the President and of Members of the Court at the Autumn Conference on European State Aid Law 2008, in Luxembourg.

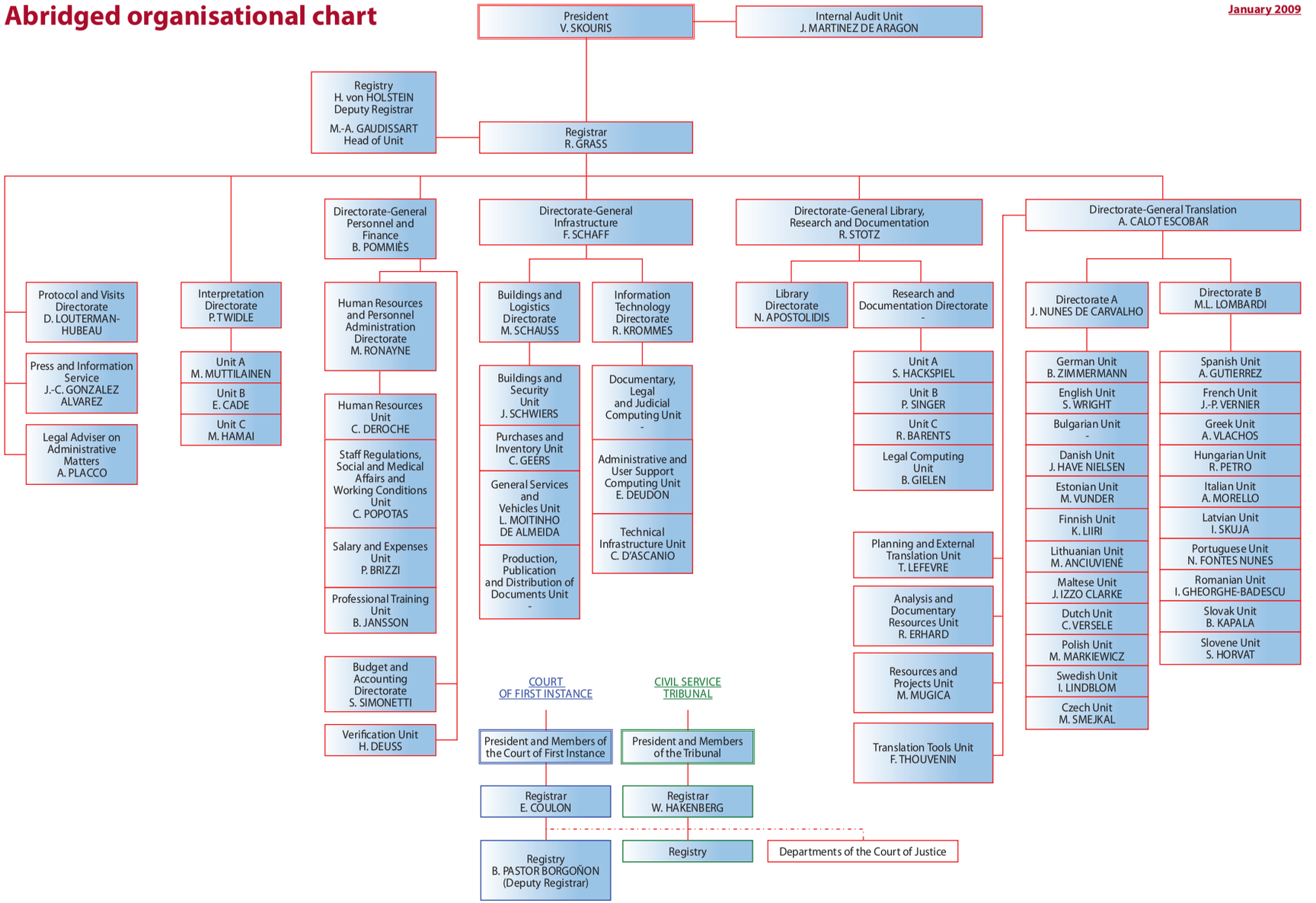
Civil Service Tribunal

28 February	Meeting between its Members and the Members of the EFTA Court
6–8 March	Visit to the Belgian Council of State
15–18 May	Visit to the Supreme Administrative Court of Finland

Abridged organisational chart

Abridged organisational chart

January 2009



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Court of Justice of the European Communities

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