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ANNUAL REPORT 2010

Synopsis of the work of the Court of Justice,
the General Court and the Civil Service Tribunal

Luxembourg 2011

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Contents

Chapter III

The Civil Service Tribunal

Chapter IV

Meetings and visits

Foreword

For the Court of Justice of the European Union, 2010 was a year of consolidation of the reforms to the European Union's judicial system that were introduced by the Treaty of Lisbon. The procedure to implement the most important of those reforms, namely the accession of the European Union to the European Convention on Human Rights, was embarked upon in 2010. The Court of Justice has followed and will continue to follow this procedure closely as it progresses.

The past year will also be remembered for the unflagging tempo of the institution's judicial activity. It may be noted, in this connection, that a total of 1 406 cases were brought before the three courts comprising the Court of Justice; this figure is the highest in the institution's history and reflects the constant increase in the volume of European Union litigation. In addition, the overall decrease in the duration of proceedings is worthy of mention, a decrease that is very significant especially in preliminary ruling proceedings.

The past year also saw the departure of two members and the registrar of the Court of Justice and of four members of the General Court, partly as a result of the renewal of the General Court's membership. The new members of the Court of Justice and the General Court are the first to have been appointed under the new procedure introduced by the Treaty of Lisbon, that is to say, following an opinion of the panel provided for in Article 255 TFEU.

This report provides a full record of changes affecting the institution and of its work in 2010. As is the case every year, a substantial part of the report is devoted to succinct but exhaustive accounts of the main judicial activity of the Court of Justice, the General Court and the Civil Service Tribunal. Separate statistics for each court supplement and illustrate the analysis of the judicial activity during 2010.

V. Skouris
President of the Court of Justice

Chapter I

The Court of Justice

A — The Court of Justice in 2010: changes and activity

By Mr Vassilios Skouris, President of the Court of Justice

The first part of the Annual Report gives an overview of the activities of the Court of Justice of the European Union in 2010. It describes, first, how the institution evolved during the past year, with the emphasis on the institutional changes affecting the Court of Justice and developments relating to its internal organisation and working methods. It includes, second, an analysis of the statistics relating to changes in the Court of Justice's workload and in the average duration of proceedings. It presents, third, as each year, the main developments in the case-law, arranged by subject-matter.

1. Since the Treaty of Lisbon provides that the European Union is to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR), the procedure for bringing about its accession was begun in 2010. The first stage of that procedure was concluded and a negotiating mandate was given to the European Commission to pursue negotiations with the Council of Europe. The accession of the European Union to the ECHR will incontestably have effects upon the European Union's judicial system as a whole.

For this reason, the Court of Justice has followed that procedure closely as it progresses and, with a view to contributing to the efforts being made to bring to fruition the proposed accession, which raises complex legal questions, it submitted its initial reflections on a particular aspect linked to the way in which the European Union's judicial system functions, in a document published on 5 May 2010 ([1]). In this document, the Court concluded that, in order to observe the principle of subsidiarity which is inherent in the ECHR and at the same time to ensure the proper functioning of the judicial system of the European Union, a mechanism must be available which is capable of ensuring that the question of the validity of a European Union act can be brought effectively before the Court of Justice before the European Court of Human Rights rules on the compatibility of that act with the ECHR.

Finally, the amendments made to the Rules of Procedure of the Court of Justice on 23 March 2010 (OJ 2010 L 92, p. 2) are also worthy of mention. These amendments are intended to make the changes to the Rules of Procedure that became necessary following the entry into force of the Treaty of Lisbon.

2. The statistics concerning the Court's activity in 2010 show, overall, sustained productivity and a very significant improvement in efficiency as regards the duration of proceedings. The unprecedented increase in the number of cases brought in 2010, in particular the number of references for a preliminary ruling submitted to the Court, is also to be noted.

The Court completed 522 cases in 2010 (net figures, that is to say, taking account of the joinder of cases), a slight decrease compared with the previous year (543 cases completed in 2009). Of those cases, 370 were dealt with by judgments and 152 gave rise to orders.

In 2010, the Court had 631 new cases brought before it (without account being taken of the joinder of cases on the ground of similarity), which amounts to a very significant increase compared with 2009 (562 new cases) and constitutes the highest number of cases brought in the Court's history. The situation is identical as regards references for a preliminary ruling. In 2010 the number of references for a preliminary ruling submitted was, for the second year in succession, the

([1]) http://curia.europa.eu/jcms/upload/docs/application/pdf/2010-05/convention_en_2010-05-21_12-10-16_272.pdf

highest ever reached, and it exceeded the number in 2009 by 27.4% (385 cases in 2010 compared with 302 cases in 2009).

So far as concerns the duration of proceedings, the statistics prove very positive. In the case of references for a preliminary ruling, the average duration amounted to 16.1 months. A comparative analysis covering the entire period for which the Court has reliable statistical data shows that the average time taken to deal with references for a preliminary ruling reached its shortest in 2010. The average time taken to deal with direct actions and appeals was 16.7 months and 14.3 months respectively (compared with 17.1 months and 15.4 months in 2009).

In addition to the reforms in its working methods that have been undertaken in recent years, the improvement in the Court's efficiency in dealing with cases is also due to 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 2010, 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 five of them. Those cases were completed in an average period of 2.1 months.

Use of the expedited or accelerated procedure was requested 12 times in 2010, but the conditions under the Rules of Procedure were met in only four of those cases. 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. In addition, priority treatment was granted in 14 cases.

The Court also 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 24 cases were brought to a close by orders made on the basis of that provision.

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 50% of the judgments delivered in 2010 were delivered without an opinion (compared with 52% in 2009).

As regards the distribution of cases between the various formations of the Court, it may be noted that the Grand Chamber dealt with roughly 14%, chambers of five judges with 58%, and chambers of three judges with approximately 27%, of the cases brought to a close by judgments or by orders involving a judicial determination in 2010. Compared with the previous year, a considerable increase may be noted in the proportion of cases dealt with by the Grand Chamber (8% in 2009), while the proportion of cases dealt with by three-judge chambers decreased significantly (34% in 2009).

The section of this report devoted to statistics concerning the Court's judicial activity should be consulted for more detailed information regarding the statistics for 2010.

B — Case-law of the Court of Justice in 2010

This section of the Annual Report provides an overview of the case-law in 2010.

Constitutional or institutional issues

In 2010, significant additions were made to the case-law on fundamental rights.

In Joined Cases C-92/09 and C-93/09 *Volker und Markus Schecke and Eifert* (judgment of 9 November 2010), the Court had the opportunity to explain the requirements flowing from the right to the protection of personal data when it was called upon to review the validity of Regulations (EC) Nos 1290/2005 and 259/2008 ([1]) governing the financing of the common agricultural policy and requiring the publication of information on natural persons who receive aid from the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD). Those regulations required such information to be made available to the public, in particular through websites operated by the national offices. Asked to give a preliminary ruling concerning the relationship between the right, recognised by the Charter of Fundamental Rights of the European Union, to the protection of personal data and the obligation of transparency in relation to European funds, the Court stated that publication on a website of data naming the beneficiaries of the funds and indicating the precise amounts received by them constitutes, because the site is freely accessible to third parties, an interference with the right of the beneficiaries concerned to respect for their private life in general and to the protection of their personal data in particular. In order to be justified, such interference must be provided for by law, respect the essence of those rights and, pursuant to the principle of proportionality, be necessary and genuinely meet objectives of general interest recognised by the European Union, whilst derogations from and limitations on those rights must apply only in so far as is strictly necessary. In this context, the Court held that, whilst in a democratic society taxpayers have a right to be kept informed of the use of public funds, the Council and the Commission were nevertheless required to strike a proper balance between the various interests involved, and it was therefore necessary, before adopting the contested provisions, to ascertain whether publication of the data via a single website in a Member State went beyond what was necessary for achieving the legitimate aims pursued. The Court thus declared certain provisions of Regulation (EC) No 1290/2005, and Regulation (EC) No 259/2008 in its entirety, to be invalid, without prejudice to the effects of the publication of the lists of beneficiaries of EAGF and EAFRD aid carried out by the national authorities during the period prior to the date on which the judgment was delivered.

The Court delivered on 22 December 2010, in Case C-279/09 *DEB Deutsche Energiehandels- und Beratungsgesellschaft*, another important judgment in the field of fundamental rights, concerning the interpretation of the principle of effective judicial protection as enshrined in Article 47 of the Charter of Fundamental Rights of the European Union.

The main proceedings were brought by the German commercial company DEB against the German State and concerned an application for legal aid submitted by that company to the German courts. DEB wished to bring an action for damages against the German State in order to obtain

([1]) Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1), as amended by Council Regulation (EC) No 1437/2007 of 26 November 2007 (OJ 2007 L 322, p. 1), and Commission Regulation (EC) No 259/2008 of 18 March 2008 laying down detailed rules for the application of Regulation (EC) No 1290/2005 as regards the publication of information on the beneficiaries of funds deriving from the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD) (OJ 2008 L 76, p. 28).

compensation for the damage allegedly caused to it by that Member State's delay in the transposition of Directive 98/30/EC concerning common rules for the internal market in natural gas ([2]). It was refused legal aid, on the ground that the conditions laid down by German law for the grant of such aid to legal persons were not met. The court called upon to decide the appeal brought against that refusal submitted a reference for a preliminary ruling to the Court of Justice, in order to ascertain whether the principle of effectiveness of European Union law precludes, in the context of a procedure for pursuing a claim seeking to establish State liability under European Union law, a national rule under which the pursuit of a claim before the courts is subject to the making of an advance payment in respect of costs and which limits the grant of legal aid to a legal person that is unable to make that advance payment, by requiring compliance with very stringent conditions.

The Court stated that, in answering that question, account has to be taken of the Charter of Fundamental Rights of the European Union which, since the entry into force of the Treaty of Lisbon, has acquired the same legal value as the Treaties. More specifically, the Court referred to Article 47 of the Charter which provides for a right of effective access to justice for any persons wishing to assert the rights and freedoms that they are guaranteed by European Union law. The third paragraph of Article 47 states that 'legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice'. The Court held, first, that it is not impossible for the principle of effective judicial protection, as enshrined in Article 47 of the Charter, to be relied upon by legal persons to obtain dispensation from advance payment of the costs of proceedings and/or the assistance of a lawyer. Next, the Court explained, in light of the case-law of the European Court of Human Rights on Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms which enshrines the right of effective access to justice, that it is for the national court to ascertain, first, whether the conditions for granting legal aid constitute a limitation on the right of access to the courts which is liable to undermine the very core of that right, second, whether those conditions pursue a legitimate aim and, finally, whether there is a reasonable relationship of proportionality between the means employed and the legitimate aim which it is sought to achieve. The Court then detailed the factors that the national court may take into account, taking up the factors used in the case-law of the European Court of Human Rights, inter alia the importance of what is at stake, the complexity of the applicable law and procedure and, with regard more specifically to legal persons, their form and whether they are profit-making or non-profit-making as well as the financial capacity of the partners or shareholders.

The manner in which a national court must implement State liability where the State infringes its Community obligations continues to give rise to questions.

In Case C-118/08 *Trasportes Urbanos y Servicios Generales* (judgment of 26 January 2010), the referring court wished to ascertain the Court's position regarding application of a rule under which an action for damages against the State, alleging a breach of European Union law by national legislation, can succeed only if domestic remedies are exhausted, when such a rule is not applicable to an action for damages against the State alleging breach of the Constitution. After recalling the principles governing the Member States' obligation to make reparation in the event of breach of European Union law, an obligation which arises by virtue of the latter's primacy, the Court replied that European Union law precludes the application of such a rule. Relying on the principle of equivalence, it held that all the rules applicable to actions are to apply without distinction to an action alleging infringement of European Union law and to an action alleging infringement of national law: the purpose of the two actions for damages is similar since they seek compensation for the loss suffered as a result of conduct of the State. In light of the principle of equivalence, the sole

([2]) Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 (OJ 1998 L 204, p. 1).

difference, relating to the court having jurisdiction to find the breach of law, is not sufficient to establish a distinction between those two actions.

In Joined Cases C-188/10 and C-189/10 *Melki and Abdeli* (judgment of 22 June 2010), the Court had the opportunity to rule on whether the 'priority question on constitutionality', a procedural mechanism recently introduced in France, is compatible with European Union law. The Court recalled that, in order to ensure the primacy of European Union law, the functioning of the system of cooperation between it and national courts requires a national court to be free to refer to the Court for a preliminary ruling any question that it considers necessary, at whatever stage of the proceedings it considers appropriate, even at the end of an interlocutory procedure for the review of constitutionality. Accordingly, Article 267 TFEU does not preclude national legislation which establishes an interlocutory procedure for the review of the constitutionality of national laws, in so far as the other national courts or tribunals remain free to:

— make a reference to the Court at whatever stage of the proceedings they consider appropriate, even at the end of the interlocutory procedure for the review of constitutionality;

— adopt any measure necessary to ensure provisional judicial protection of the rights conferred under the European Union legal order; and

— disapply, at the end of such an interlocutory procedure, the national legislative provision at is sue if they consider it to be contrary to European Union law.

With regard to the issue, broached many times already, of the consequences attaching to an interpretation of European Union law that the Court provides when exercising its jurisdiction to give preliminary rulings, Case C-242/09 *Albron Catering* (judgment of 21 October 2010) provided the opportunity for the Court to recall that, when exercising the jurisdiction conferred upon it by Article 267 TFEU, it is only exceptionally that it may, in application of the general principle of legal certainty inherent in the legal order of the European Union, be moved to restrict for any person concerned the opportunity of relying on a provision which it has interpreted with a view to calling in question legal relationships established in good faith. Two essential criteria must be fulfilled before such a limitation can be imposed, namely that those concerned should have acted in good faith and that there should be a risk of serious difficulties. Accordingly, the Court held that, since it had not been presented with any concrete evidence capable of establishing a risk of serious difficulties in connection with massive litigation which might following the judgment — which relates to the interpretation of Directive 2001/23/EC ([3]) — be brought against undertakings which had carried out a transfer covered by the directive, it was not appropriate to limit in time the effects of the judgment.

With regard to the contribution made by the Court in defining the effects of agreements concluded by the European Union with non-member countries, Case C-386/08 *Brita* (judgment of 25 February 2010) may be noted, in which several important questions relating to the interpretation of international agreements, in particular the EC–Israel Association Agreement ([4]), were raised.

([3]) 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).

([4]) Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, signed in Brussels on 20 November 1995 (OJ 2000 L 147, p. 3).

The Court explained that the rules laid down in the Vienna Convention on the Law of Treaties ([5]) apply to an agreement concluded between a State and an international organisation, such as the EC–Israel Association Agreement, in so far as the rules are an expression of general customary international law. In particular, the provisions of the association agreement which define its territorial scope must be interpreted in accordance with the principle *pacta tertiis nec nocent nec prosunt*. In light of those principles, the Court held that the customs authorities of an importing Member State may refuse to grant the preferential treatment provided for under the EC–Israel Association Agreement to goods that originate in the West Bank. It follows from another association agreement, the EC–PLO Association Agreement ([6]), that if the products concerned can be regarded as products originating in the West Bank or Gaza Strip, the customs authorities of the West Bank and Gaza Strip have sole competence to issue a movement certificate. To interpret the EC–Israel Association Agreement as meaning that the Israeli customs authorities enjoy competence in respect of products originating in the West Bank would be tantamount to imposing on the Palestinian customs authorities an obligation to refrain from exercising the competence conferred upon them by virtue of the provisions of the EC–PLO agreement. Such an interpretation would have the effect of creating an obligation for a third party without its consent and would thus be contrary to the abovementioned principle of general international law, *pacta tertiis nec nocent nec prosunt*, consolidated by the Vienna Convention.

In addition, the Court stated that, for the purposes of the procedure laid down by the EC–Israel Association Agreement, the customs authorities of the importing State are not bound by the proof of origin submitted or by the reply given by the customs authorities of the exporting State where that reply does not contain sufficient information to enable the real origin of the products to be determined.

As in previous years, access to documents of the institutions generated litigation and three judgments are particularly worthy of note. In Case C-28/08 P *Commission* v *Bavarian Lager* (judgment of 29 June 2010), the Court considered the relationship between Regulation (EC) No 1049/2001 ([7]) and Regulation (EC) No 45/2001 ([8]).

Regulation (EC) No 1049/2001 lays down as a general rule that the public may have access to the documents of the institutions, but provides for exceptions, including where disclosure would undermine the protection of privacy and the integrity of the individual in accordance with European Union legislation regarding the protection of personal data. According to the Court, where a request based on Regulation (EC) No 1049/2001 seeks to obtain access to documents including personal data, the provisions of Regulation (EC) No 45/2001 become applicable in their entirety. By not taking account of this reference to the European Union legislation concerning the protection of personal data and by limiting the application of the exception to situations in which privacy or the integrity of the individual would be infringed for the purposes of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the case-law of

([5]) Vienna Convention on the Law of Treaties of 23 May 1969 (*United Nations Treaty Series*, Vol. 1155, p. 331).

([6]) Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestine Liberation Organisation (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, of the other part, signed in Brussels on 24 February 1997 (OJ 1997 L 187, p. 3).

([7]) 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).

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

the European Court of Human Rights, the Court of First Instance (now 'the General Court') gave Regulation (EC) No 1049/2001 a particular and restrictive interpretation which does not correspond to the equilibrium which the European Union legislature intended to establish between the two regulations in question.

On the substance, the Court held that the Commission rightly decided that the list of participants at a meeting held in the context of a procedure for failure to fulfil obligations contained personal data and that, in requiring, for persons who had not given their express consent, that the person requesting access establish the necessity of having those personal data transferred, the Commission complied with Article 8(b) of Regulation (EC) No 45/2001.

On the same day, the Court delivered another very important judgment on access to documents (judgment of 29 June 2010 in Case C-139/07 P *Commission* v *Technische Glaswerke Ilmenau*), this time concerning the relationship between Regulation (EC) No 1049/2001 and Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([9]). The Court held that, in order to justify refusal of access to a document the disclosure of which has been requested, it is not sufficient, in principle, for that document to fall within an activity mentioned in Article 4(2) of Regulation (EC) No 1049/2001. The institution concerned must also supply explanations as to how access to the document could specifically and effectively undermine the interest protected by an exception laid down in that article. The Court stated, however, that it is, in principle, open to the Community institution to base its decisions on general presumptions which apply to certain categories of documents.

As regards procedures for reviewing State aid, such presumptions may arise from Regulation (EC) No 659/1999 and from the case-law concerning the right to consult documents on the Commission's administrative file. Regulation (EC) No 659/1999 does not lay down any right of access to documents in the Commission's administrative file for interested parties, with the exception of the Member State responsible for granting the aid. If those interested parties were able to obtain access to the documents in the Commission's administrative file on the basis of Regulation (EC) No 1049/2001, the system for the review of State aid would be called into question. Account should be taken of the fact that, in the procedures for reviewing State aid, interested parties other than the Member State concerned do not have the right to consult the documents in the Commission's administrative file and the existence of a general presumption that disclosure of documents in the administrative file in principle undermines protection of the objectives of investigation activities should therefore be acknowledged. That general presumption does not exclude the right of interested parties to demonstrate that a given document disclosure of which has been requested is not covered by the presumption, or that there is a higher public interest justifying the disclosure of the document concerned by virtue of Article 4(2) of Regulation (EC) No 1049/2001.

A presumption mechanism of that kind was also at the heart of Joined Cases C-514/07 P, C-528/07 P and C-532/07 P *Sweden* v *API et Commission* (judgment of 21 September 2010), in which the Court considered the question of access to pleadings lodged before it by an institution in court proceedings. According to the Court, such pleadings display quite specific characteristics since they are inherently part of the judicial activities of the Court: they are drafted exclusively for the purposes of the court proceedings, in which they play the key role. Judicial activities are as such excluded from the scope, established by the European Union rules, of the right of access to documents. The protection of court proceedings implies, in particular, that compliance with

([9]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

the principles of equality of arms and the sound administration of justice must be ensured. If the content of the institution's pleadings were to be open to public debate, there would be a danger that the criticism levelled against them might influence the position defended by the institution. Such a situation could well upset the vital balance between the parties to a dispute before the courts of the European Union since only the institution concerned by an application for access to its documents, and not all the parties to the proceedings, would be bound by the obligation of disclosure. Furthermore, the exclusion of judicial activities from the scope of the right of access to documents is justified in the light of the need to ensure that, throughout the court proceedings, the exchange of argument by the parties and the deliberations take place in an atmosphere of total serenity. Disclosure of the pleadings would have the effect of exposing judicial activities to external pressure, albeit only in the perception of the public, and would disturb the serenity of the proceedings. Consequently, the Court held that there is a general presumption that disclosure of the pleadings lodged by one of the institutions in court proceedings would undermine the protection of those proceedings, for the purposes of the second indent of Article 4(2) of Regulation (EC) No 1049/2001, while those proceedings remain pending, but such a general presumption does not exclude the right of an interested party to demonstrate that a given document is not covered by the presumption.

On the other hand, where the judicial activities of the Court have come to an end, there are no longer grounds for presuming that disclosure of the pleadings would undermine those activities, and a specific examination of the documents to which access is requested is then necessary to establish whether their disclosure may be refused on the basis of the second indent of Article 4(2) of Regulation (EC) No 1049/2001.

European citizenship

In this constantly developing field, Case C-145/09 *Tsakouridis* (judgment of 23 November 2010) raised before the Court the difficult issue of the conditions for expulsion of a citizen of the Union who has a right of permanent residence under Article 28 of Directive 2004/38/EC on freedom of movement and residence ([10]). The Court stated first of all that an expulsion measure must be founded on an individual examination of the situation of the person concerned, taking into account considerations such as his age, his state of health, the centre of his personal, family or occupational interests, the duration of his absences from the host Member State and the extent of his links with the country of origin, whilst the decisive criterion for the grant of enhanced protection against an expulsion measure remains that of residence in the host Member State for the 10 years preceding such a measure. The Court further pointed out that an expulsion measure can be justified on 'imperative grounds of public security' or 'serious grounds of public policy or public security' within the meaning of Article 28 of Directive 2004/38/EC only if, having regard to the exceptional seriousness of the threat, such a measure is necessary for the protection of the interests it aims to secure, provided that that objective cannot be attained by less restrictive means, having regard to the length of residence of the Union citizen in the host Member State. Finally, the Court also noted that the fight against crime in connection with dealing in narcotics as part of an organised group, the offence of which the person concerned was convicted, is capable of being covered by the concept of 'imperative grounds of public security' or 'serious grounds of public policy or public security' within the meaning of Article 28 of the directive.

([10]) 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 amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda at OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34).

Staying with the issue of the rights of free movement and residence that are attached to European citizenship, Case C-73/08 *Bressol and Others* (judgment of 13 April 2010) should be noted, in which the Court considered whether national legislation limiting the number of students on university medical and paramedical courses who, whilst being citizens of the Union, are regarded as non-residents is compatible with European Union law. The Court stated first that, irrespective of any application of Article 24 of Directive 2004/38/EC to the situation of some of the students at issue in the main proceedings, national legislation which limits the number of students regarded as non-resident in the host Member State who may enrol for the first time at higher education establishments is contrary to Articles 18 and 21 of the Treaty, since the legislation results in unequal treatment between resident and non-resident students and, therefore, in discrimination based indirectly on nationality. Second, the Court observed that restrictive legislation of that kind can be justified by the objective of protecting public health only if the competent authorities conduct a detailed three-stage examination of the legislation in question: they must establish that there are genuine risks to the objective pursued, that the legislation is appropriate for attaining that objective and that the legislation is proportionate to that objective, and the entire analysis must be based on objective and detailed criteria and supported by figures. Finally, the Court stated that the national authorities would be unable to rely on Article 13 of the International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly on 16 December 1966, if the referring court were to hold that the legislation at issue in the main proceedings is not compatible with Articles 18 and 21 TFEU.

In Case C-162/09 *Lassal* (judgment of 7 October 2010), the Court devoted attention to Article 16 of Directive 2004/38/EC. More specifically, the reference for a preliminary ruling related to whether, for the purposes of acquisition of the right of permanent residence provided for in Article 16, a continuous period of five years' residence completed before 30 April 2006 — the date for transposition of that directive — in accordance with earlier instruments of European Union law must be taken into account and, if so, whether temporary absences which occurred before 30 April 2006, but after the continuous period of five years' legal residence, prevent a right of permanent residence within the meaning of the directive from being obtained. The Court answered the first part of the question in the affirmative, holding that, even though the possibility of obtaining a right of residence subject to compliance with the five-year period did not appear in the instruments of European Union law prior to Directive 2004/38/EC, refusal to take account of that continuous period of residence would entirely deprive the directive of its effectiveness and would give rise to a situation that is incompatible with the idea behind the directive of integration through length of residence. The Court held, second, that the objectives and the purpose of Directive 2004/38/EC, which is intended in particular to facilitate the exercise of the primary right to move and reside freely on the territory of the Member States, to promote social cohesion and to strengthen the feeling of Union citizenship by means of the right of residence, would be seriously compromised if that right of residence were refused to citizens of the Union who had legally resided in the host Member State for a continuous period of five years completed before 30 April 2006, on the sole ground that there had been temporary absence of less than two consecutive years subsequent to that period but before that date.

The account of the case-law relating to European citizenship will be concluded by Case C-135/08 *Rottmann* (judgment of 2 March 2010), in which the Court ruled on the conditions under which a European citizen who has acquired by means of deception nationality of a Member State by naturalisation may have that nationality withdrawn. According to the Court, European Union law, in particular Article 17 EC, does not preclude a Member State from withdrawing from a citizen of the Union nationality acquired by naturalisation when that nationality has been obtained by deception, since the decision withdrawing nationality corresponds to a reason in the public interest by reason of the deception which breaks the tie of nationality between the Member State and

its national. Nevertheless, the withdrawal decision must observe the principle of proportionality. Where, as in the case in point, the citizen who practised the deception has already lost his nationality of origin because of the naturalisation, the national courts have the task of examining the consequences that the withdrawal decision entails for the person concerned and for the members of his family and, in particular, of assessing whether the loss of the rights enjoyed by a Union citizen is justified having regard to the gravity of the offence committed by the person concerned, to the lapse of time between the naturalisation decision and the withdrawal decision and to whether it might be possible for that person to recover his nationality of origin. Loss of the nationality of origin and loss of the nationality of naturalisation are therefore not incompatible in principle with European Union law even though the decision withdrawing nationality results in the loss of citizenship of the European Union.

Free movement of goods

In Case C-108/09 *Ker-Optika* (judgment of 2 December 2010), the Court held that national legislation prohibiting the sale of contact lenses from other Member States via the Internet and their delivery to the consumer's home deprives traders from other Member States of a particularly effective means of selling those products and thus significantly impedes their access to the national market; it therefore constitutes an obstacle to the free movement of goods. The Court accepted that a Member State may impose a requirement that contact lenses are to be supplied by qualified staff, capable of providing the customer with information on the correct use and care of those products and on the risks linked to wearing them. Allowing contact lenses to be supplied only by opticians' shops which offer the services of a qualified optician secures the attainment of the objective of ensuring protection of consumers' health. The Court observed, however, that those services can also be supplied by ophthalmologists in places other than opticians' shops. Furthermore, those services are required, as a general rule, only when contact lenses are first supplied. At the time of subsequent supplies, it is sufficient that the customer advise the seller of the type of lenses which were provided when lenses were first supplied and of any change in his vision recorded by an ophthalmologist. The Court accordingly held that the objective of ensuring protection of the health of users of contact lenses can be achieved by measures less restrictive than those provided for under the national legislation at issue. Consequently, such a prohibition on selling contact lenses via the Internet is not proportionate to the objective of ensuring the protection of public health and is thus contrary to the rules governing the free movement of goods.

Free movement of persons, services and capital

In 2010 the Court again delivered a large number of judgments concerning freedom of establishment, the freedom to provide services, the free movement of capital and freedom of movement for workers. In the interests of clarity, the judgments chosen will be grouped together on the basis of the freedom with which they deal and then, where appropriate, of the fields of activity concerned.

With regard to freedom of establishment, Joined Cases C-570/07 and C-571/07 *Blanco Pérez and Chao Gómez* (judgment of 1 June 2010) should be mentioned, which involved Spanish legislation requiring prior administrative authorisation to be obtained for the opening of new pharmacies in a given area. More specifically, grant of such a licence was tied to conditions relating to population density and the minimum distance between pharmacies in the area concerned. The Court held that Article 49 TFEU does not preclude such legislation in principle. According to the Court, a Member State might see a risk that some parts of its territory will be left with too few pharmacies and that, as a consequence, the provision of medicinal products might well not be reliable and of good quality. Accordingly, that State may, in view of the risk, adopt legislation under which only one pharmacy may be set up in relation to a certain number of inhabitants, so

as to distribute pharmacies evenly throughout the national territory. The Court stated, however, that Article 49 TFEU precludes such legislation in so far as it prevents, in any geographical area which has special demographic features, the establishment of a sufficient number of pharmacies to ensure adequate pharmaceutical services, that being a matter for the national court to ascertain. In addition, the Court held that 49 TFEU, read in conjunction with Article 1(1) and (2) of Directive 85/432/EEC concerning the coordination of provisions laid down by law, regulation or administrative action in respect of certain activities in the field of pharmacy and Article 45(2) (e) and (g) of Directive 2005/36/EC on the recognition of professional qualifications, precludes criteria, provided for in national legislation, for the selection of licensees for new pharmacies under which, first, points for professional qualifications are to be increased by 20% in the case of professional experience within a specified part of the national territory and, second, in the event that several candidates score an equal number of points on the scale, licences are to be granted in accordance with an order of priority in which precedence is given to pharmacists who have pursued their professional activities within that part of the national territory, since such criteria can obviously be more easily met by national pharmacists.

The principle of freedom of establishment was also the subject of a number of tax judgments. These include, first, Case C-337/08 *X Holding* (judgment of 25 February 2010), in which the Court held that Articles 43 EC and 48 EC do not preclude legislation of a Member State which makes it possible for a parent company to form a single tax entity with its resident subsidiary, but which prevents the formation of such a single tax entity with a non-resident subsidiary, in that the profits of that non-resident subsidiary are not subject to the fiscal legislation of that Member State. According to the Court, such a tax scheme is justified in view of the need to safeguard the allocation of the power to impose taxes between the Member States. Since the parent company is at liberty to decide to form a tax entity with its subsidiary and, with equal liberty, to dissolve such an entity from one year to the next, the possibility of including a non-resident subsidiary in the single tax entity would be tantamount to granting the parent company the freedom to choose the tax scheme applicable to the losses of that subsidiary and the place where those losses are taken into account. In addition, the fact that a Member State decides to permit the temporary offsetting of losses incurred by a foreign permanent establishment at the place of the company's registered office does not mean that that possibility must also be extended to non-resident subsidiaries of a resident parent company. As permanent establishments situated in another Member State and non-resident subsidiaries are not in a comparable situation with regard to the allocation of the power of taxation, the Member State of origin is not obliged to apply the same tax scheme to non-resident subsidiaries as that which it applies to foreign permanent establishments.

Second, Case C-440/08 *Gielen* (judgment of 18 March 2010) is to be noted, concerning the grant, by the Netherlands' income tax legislation, of a deduction for self-employed persons having performed a certain number of hours' work as a business operator. That legislation provided, however, that hours worked by non-resident taxable persons for an establishment situated in another Member State were not taken into account for that purpose. According to the Court, Article 49 TFEU precludes such legislation, which is discriminatory towards non-resident taxable persons, even if those taxable persons may opt for the regime applicable to resident taxable persons in order to benefit from that tax advantage. With regard to the last point, the Court stated that the existence of indirect discrimination on grounds of nationality for the purposes of Article 49 TFEU is not called into question by the fact that an option to be treated as a resident taxable person is available to non-resident taxable persons, enabling them to choose between the discriminatory tax regime and that applicable to residents, since such a choice is not capable of remedying the discriminatory effects of the first of those two tax regimes. If such a choice were to be recognised as having that effect, the consequence would be to validate a tax regime which, in itself, remains contrary to Article 49 TFEU by reason of its discriminatory nature. In addition, the fact that a national scheme

which restricts the freedom of establishment is optional does not mean that it is not incompatible with European Union law.

A third tax judgment delivered by the Court, relating, this time, to the freedom to provide services, should also be mentioned. In Case C-97/09 *Schmelz* (judgment of 26 October 2010), the Court was led to review the compatibility with Article 49 EC of the special scheme for small undertakings provided for in Articles 24(3) and 28i of sixth Directive 77/388/EC ([11]) and in Article 283(1)(c) of Directive 2006/112/EC ([12]), which allow Member States to grant an exemption from value added tax, with loss of the right of deduction, to small undertakings established in their territory, but exclude that possibility for small undertakings established in other Member States. According to the Court, although that scheme constitutes a restriction on the freedom to provide services, at this stage in the evolution of the system of value added tax the objective which consists in guaranteeing the effectiveness of fiscal supervision in order to combat possible tax evasion, avoidance and abuse and the objective of the scheme for small undertakings, which is to support the competitiveness of such undertakings, nevertheless justify limiting the applicability of the exemption from value added tax to the activities of small undertakings established in the territory of the Member State in which the tax is due. In particular, effective supervision of activities pursued under the freedom to provide services of a small undertaking which is not established in that territory is not at all easy for the host Member State. Furthermore, the rules on administrative assistance laid down by Regulation (EC) No 1798/2003 on administrative cooperation in the field of value added tax and repealing Regulation (EEC) No 218/92 ([13]) and by Directive 77/799/EEC ([14]) are not capable of ensuring an exchange of useful data in relation to small undertakings pursuing their activities in the territory of a Member State which applies a value-added-tax exemption. Therefore, according to the Court, Article 49 EC does not preclude such a scheme.

In the case of the freedom to provide services, the Court delivered a large number of judgments in a wide variety of areas, including those of public health, the posting of workers and games of chance.

First, in Case C-512/08 *Commission* v *France* (judgment of 5 October 2010), the Court held that a Member State whose national legislation requires — except in special situations relating, in particular, to the insured person's state of health or to the urgency of the treatment needed — prior authorisation in order for the competent institution to be responsible for payment, in accordance with the rules governing cover in force in the Member State to which it belongs, for treatment planned in another Member State and involving the use of major medical equipment outside hospital infrastructures did not fail to fulfil its obligations under Article 49 EC. According to the Court, having regard to the dangers to the organisation of public health policy and to the financial balance of the social security system, such a requirement would appear, as European Union law now stands, to be a justified restriction. Those dangers are connected to the fact that, regardless of the setting, hospital or otherwise, in which it is intended to be installed and used, it must be possible for major medical equipment to be the subject of planning policy, with particular regard to quantity and geographical distribution, in order to help ensure throughout national territory a rationalised, stable, balanced and accessible supply of up-to-date treatment, and also to avoid,

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

([12]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

([13]) Council Regulation (EC) No 1798/2003 of 7 October 2003 (OJ 2003 L 264, p. 1).

([14]) Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation (OJ 1977 L 336, p. 15).

so far as possible, any waste of financial, technical and human resources. On the other hand, the Court held in Case C-173/09 *Elchinov* (judgment of 5 October 2010) that legislation of a Member State which is interpreted as excluding, in all cases, reimbursement in respect of hospital treatment given in another Member State without prior authorisation is not consistent with Article 49 EC and Article 22 of Regulation (EEC) No 1408/71, amended and updated by Regulation (EC) No 118/97, as amended by Regulation (EC) No 1992/2006 ([15]). Although European Union law does not preclude, in principle, a system of prior authorisation, as the judgment in *Commission* v *France* shows, it is nevertheless necessary that the conditions attached to the grant of such authorisation be justified. According to the Court, that was not so in the case of the legislation at issue, in that it deprived an insured person who, for reasons relating to his state of health or to the need to receive urgent treatment in a hospital, was prevented from applying for such authorisation or was not able to wait for the answer of the competent institution, of reimbursement from that institution in respect of such treatment, even though all other conditions for such reimbursement to be made were met. Reimbursement in respect of such treatment is not likely to compromise achievement of the objectives of hospital planning, nor seriously to undermine the financial balance of the social security system. Therefore, the Court concluded that the legislation constituted an unjustified restriction on the freedom to provide services.

Next, in relation to the posting of workers, Case C-515/08 *Santos Palhota and Others* (judgment of 7 October 2010) is to be noted, in which the Court held that Articles 56 TFEU and 57 TFEU preclude legislation of a Member State requiring an employer, established in another Member State and posting workers to its territory, to send a prior declaration of posting, in so far as the employer must be notified of a registration number for the declaration before the planned posting may take place and the national authorities of the host State have a period of five working days from receipt of the declaration to issue that notification. The Court took the view that a procedure of that kind must be regarded as an administrative authorisation procedure which may, in particular by reason of the period laid down for issuing the notification, impede the planned posting and, consequently, the provision of services by the employer of the workers who are to be posted, in particular where the services to be provided necessitate a certain speed of action. On the other hand, Articles 56 TFEU and 57 TFEU do not, according to the Court, preclude legislation of a Member State requiring an employer, established in another Member State and posting workers to the territory of the first Member State, to keep available to the national authorities of the latter, during the posting, copies of documents equivalent to the social or labour documents required under the law of the first Member State and also to send those copies to the authorities at the end of that period. Such measures are proportionate to the aim of protecting workers since they are appropriate for enabling the authorities to monitor compliance with the terms and conditions of employment of posted workers as set out in Article 3(1) of Directive 96/71/EC ([16]) and, therefore, to ensure that the latter are protected.

The Court also had the opportunity, in several cases, to consider the difficult issue of national monopolies over games of chance and sports betting and to set out the conditions which such monopolies must meet in order to be regarded as justified. First of all, in Case C-203/08 *Sporting Exchange* (judgment of 3 June 2010) and Case C-258/08 *Ladbrokes Betting & Gaming and Ladbrokes International* (judgment of 3 June 2010), the Court held that Article 49 EC does not preclude legislation of a Member State under which exclusive rights to organise and promote games of chance

([15]) Regulation (EC) No 1992/2006 of the European Parliament and of the Council of 18 December 2006 amending Council Regulation (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 (OJ 2006 L 392, p. 1).

([16]) 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).

are conferred on a single operator, and which prohibits any other operator, including an operator established in another Member State, from offering via the Internet services within the scope of that regime in the territory of the first Member State. According to the Court, since the Internet gaming industry has not been the subject of harmonisation within the European Union, a Member State is entitled to take the view that the mere fact that an operator lawfully offers services in that sector via the Internet in another Member State, in which it is established and where it is in principle already subject to statutory conditions and controls on the part of the competent authorities in that State, does not amount to a sufficient assurance that national consumers will be protected against the risks of fraud and crime, in the light of the difficulties liable to be encountered in such a context by the authorities of the Member State of establishment in assessing the professional qualities and integrity of operators. In addition, because of the lack of direct contact between consumer and operator, games of chance accessible via the Internet involve different and more substantial risks of fraud by operators against consumers compared with the traditional markets for such games. In the light of the specific features associated with the provision of games of chance via the Internet, the restriction may therefore be regarded as justified by the objective of combating fraud and crime. In *Ladbrokes Betting & Gaming and Ladbrokes International*, the Court added that national legislation which seeks to curb addiction to games of chance and to combat fraud, and which in fact contributes to the achievement of those objectives, can be regarded as limiting betting activities in a consistent and systematic manner even where the holder(s) of an exclusive licence are entitled to make what they are offering on the market attractive by introducing new games and by means of advertising. It is for the national court to determine whether unlawful gaming activities constitute a problem in the Member State concerned which might be solved by the expansion of authorised and regulated activities, and whether that expansion is on such a scale as to make it impossible to reconcile with the objective of curbing such addiction.

Next, in Case C-46/08 *Carmen Media Group* (judgment of 8 September 2010) and Joined Cases C-316/07, C-358/07 to C-360/07, C-409/07 and C-410/07 *Stoß and Others* (judgment of 8 September 2010), the Court addressed German legislation prohibiting any organisation or arrangement of public games of chance on the Internet. The Court held, following the line of case-law set out in *Sporting Exchange* and *Ladbrokes Betting & Gaming and Ladbrokes International*, that, in order to confine the desire to gamble and the exploitation of gambling within controlled channels, the Member States are free to establish public monopolies, as such a monopoly is capable of controlling the risks connected with the gambling sector more effectively than a system under which private operators are authorised to organise betting, subject to compliance by them with the applicable legislation. The Court stated in particular that the fact that some types of games of chance were subject to a public monopoly whilst others were subject to a system of authorisations issued to private operators could not, in itself, call the coherence of the German regime into question, since those games had different characteristics. Nevertheless, the Court observed that, having regard to the findings made by the German courts in these cases, the latter were entitled to take the view that the German legislation did not limit games of chance in a consistent and systematic manner. Those courts had found, first, that the holders of public monopolies engaged in intensive advertising campaigns in order to maximise profits from lotteries, thus straying from the objectives justifying the existence of the monopolies, and, second, that in the case of games of chance, such as casino games and automated games, which were not covered by the public monopoly but possessed a higher potential risk of addiction than the games of chance subject to that monopoly, the German authorities conducted or tolerated policies aimed at encouraging participation in those games. According to the Court, in such circumstances the preventive objective of that monopoly could no longer be effectively pursued and the monopoly could therefore no longer be justified.

In addition, the Court pointed out in *Stoß and Others* that the Member States enjoy a broad discretion when setting the level of protection against the dangers from games of chance. Thus, and in

the absence of any Community harmonisation in the matter, the Member States are not obliged to recognise authorisations issued by other Member States in this field. For the same reasons and given the risks presented by games of chance on the Internet compared with traditional games of chance, the Member States may also prohibit games of chance from being offered on the Internet. Nevertheless, the Court specified in *Carmen Media Group* that a system of authorisation, which derogates from the freedom to provide services, must be based on criteria which are objective, non-discriminatory and known in advance, in such a way as to circumscribe the exercise of the national authorities' discretion so that it is not used arbitrarily. Furthermore, any persons affected by a restrictive measure based on such a derogation must have an effective judicial remedy available to them.

Finally, in Case C-409/06 *Winner Wetten* (judgment of 8 September 2010), the Court held that, by reason of the primacy of directly applicable European Union law, such national legislation concerning a public monopoly on bets on sporting competitions which comprises restrictions that are incompatible with the freedom of establishment and the freedom to provide services, because those restrictions do not contribute to limiting betting activities in a consistent and systematic manner as required by the Court's case-law, cannot continue to apply during a transitional period.

As regards, last, the free movement of capital, Case C-171/08 *Commission* v *Portugal* (judgment of 8 July 2010) is particularly worthy of note. In this case, the Court had to determine whether the specific regime governing the 'golden' shares held by the Portuguese State in the privatised company Portugal Telecom was compatible with Article 56 EC. That regime entailed special rights relating to the election of a third of the total number of directors, the election of a given number of members of the executive committee chosen from the board of directors, the nomination of at least one of the directors elected to deal specifically with certain management questions, and the adoption of important decisions of the general meeting. The Court held that, in view of the influence, not justified by the size of the shareholding, that the special rights conferred over the management of the company, the Portuguese State had, by maintaining such rights, failed to fulfil its obligations under Article 56 EC. The Court recalled, in relation to the derogations permitted by Article 58 EC, that public security or, in the case in point, the need to ensure the security of the availability of the telecommunications network in case of crisis, war or terrorism, could be relied on only if there was a genuine and sufficiently serious threat to a fundamental interest of society. Finally, as regards the proportionality of the restriction at issue, the uncertainty created by the fact that neither national legislation nor the articles of association of the company concerned laid down any criteria determining when the special powers could be exercised constituted serious interference with the free movement of capital in that it conferred on the national authorities, as regards the use of such powers, a latitude so discretionary in nature that it could not be regarded as proportionate to the objectives pursued.

With regard to the freedom to provide services, the case-law was also developed in the specific sector of public procurement. Following on from the well-known judgments in Case C-438/05 *International Transport Workers' Federation and Finnish Seamen's Union*, '*Viking Line*' [2007] ECR I-10779 and in Case C-341/05 *Laval un Partneri* [2007] ECR I-11767, Case C-271/08 *Commission* v *Germany* (judgment of 15 July 2010) posed the question of how to reconcile the right to bargain collectively and the principles of freedom of establishment and of the freedom to provide services, in relation to public procurement. In this case, the Commission sought a declaration that the Federal Republic of Germany had failed to fulfil its obligations flowing from Directives 92/50/EEC ([17])

([17]) 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).

and 2004/18/EC ([18]), in the context of the award of service contracts that concerned occupational old-age pensions and implemented a collective agreement negotiated between management and labour. The Commission considered that, by awarding such contracts directly, without a call for tenders at European Union level, to bodies and undertakings referred to in paragraph 6 of the collective agreement on the conversion, for local authority employees, of earnings into pension savings, the Member State had failed to fulfil its obligations under those directives and had offended against the principles of freedom of establishment and the freedom to provide services. The Federal Republic of Germany contended that the contracts at issue had been awarded in the particular context of implementation of a collective labour agreement.

The Court held in this judgment that the fact that the right to bargain collectively is a fundamental right, and the social objective of a collective agreement on the conversion, for local authority employees, of earnings into pension savings, cannot, in themselves, mean that local authority employers are automatically excluded from the obligation to comply with the requirements stemming from Directives 92/50/EEC and 2004/18/EC on public procurement, which implement freedom of establishment and the freedom to provide services in the field of public procurement. Exercise of the fundamental right to bargain collectively must therefore be reconciled with the requirements stemming from the freedoms protected by the Treaty on the Functioning of the European Union Treaty and be in accordance with the principle of proportionality. After examining, point by point, the various considerations that could justify excluding the contract awards at issue from the European Union provisions on public procurement, such as the workers' participation in selecting the body to implement the salary conversion measure, the elements of solidarity underlying the tenders of the bodies and undertakings referred to in the collective agreement in question, and the experience and financial soundness of those bodies and undertakings, the Court concluded that compliance with the abovementioned public procurement directives was not, in the case in point, irreconcilable with the social objective pursued by that collective agreement. Finally, the Court established that the conditions for classification as a 'public contract' that are laid down by those directives were met in the case in point. First, it stated that even if the local authority employers gave effect, in the field of occupational old-age pensions, to a choice predetermined by a collective agreement, they were nevertheless contracting authorities since they were represented when the collective agreement implemented in the case in point was negotiated. Second, it held that the group insurance contracts entailed a direct economic interest for the employers which concluded them, so that they were contracts for pecuniary interest. Consequently, the Court concluded that the Federal Republic of Germany had failed to fulfil the obligation, imposed by the European Union public procurement directives, requiring the contract awards at issue, made pursuant to a collective agreement, to be preceded by a call for tenders.

The interpretation of Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts was at issue in another important decision of the Court, in Case C-226/09 *Commission* v *Ireland* (judgment of 18 November 2010). Here, the problem arose from the fact that, whilst the contracting authority was not obliged to specify in the contract notice the relative weighting given by it to each of the award criteria, it nevertheless did specify their weighting, after the closing date set for the submission of tenders. The Commission brought an action for failure to fulfil obligations against the Member State responsible for the award of the contract, alleging that it had infringed the principle of equal treatment and the obligation of transparency.

([18]) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114).

The Court established first of all that, while the requirement to state the relative weighting for each of the award criteria for a contract falling within the ambit of Annex II A to Directive 2004/18/EC meets the requirement of ensuring compliance with the principle of equal treatment and the consequent obligation of transparency, it cannot legitimately be considered that, in the absence of specific provisions for contracts covered by Annex II B, it is necessary to go so far as to require that a contracting authority which nevertheless decides to indicate the relative weighting for the criteria must so indicate before the closing date set for the submission of tenders. According to the Court, by attributing weightings to the criteria, the contracting authority simply set out the terms on which the tenders submitted were to be evaluated. On the other hand, the Court held that the alteration that was made to the weighting of the criteria for award of the contract at issue after the initial review of the tenders submitted infringed the principle of equal treatment and the consequent obligation of transparency. That alteration was contrary to the Court's case-law according to which those fundamental principles of European Union law imply an obligation on the part of contracting authorities to interpret the award criteria in the same way throughout the procedure.

As regards freedom of movement for workers, Case C-325/08 *Olympique Lyonnais* (judgment of 16 March 2010), relating to whether rules applicable in the field of professional football were compatible with Article 45 TFEU, should be noted. Under those rules, a *joueur espoir* (a trainee between the ages of 16 and 22) could be ordered to pay damages if, at the end of his training period, he signed a professional contract not with the club which provided his training but with a club in another Member State. In its judgment, the Court first of all verified that the rules at issue did indeed fall within the scope of Article 45 TFEU. The case concerned the Professional Football Charter of the French Football Federation. According to the Court, that document had the status of a collective agreement aimed at regulating gainful employment and, as such, was covered by European Union law. Next, the Court found that the rules under examination were likely to discourage a *joueur espoir* from exercising his right of free movement. Consequently, they were a restriction on freedom of movement for workers. However, as the Court has already held in *Bosman* ([19]), in view of the considerable social importance of sporting activities and in particular football in the European Union, the objective of encouraging the recruitment and training of young players must be accepted as legitimate. The Court accordingly concluded that Article 45 TFEU does not preclude a scheme which, in order to attain such an objective, guarantees compensation to the club which provided the training if, at the end of his training period, a young player signs a professional contract with a club in another Member State, provided that the scheme is suitable to ensure the attainment of that objective and does not go beyond what is necessary to attain it. On the other hand, a scheme such as the one that was at issue is not necessary to ensure the attainment of that objective, since the amount of damages that the *joueur espoir* may be ordered to pay is unrelated to the actual costs of the training.

Remaining in the field of workers, the Court delivered on the same day two judgments (Cases C-310/08 *Ibrahim* and C-480/08 *Teixeira*, judgments of 23 February 2010) relating to the interpretation of Article 12 of Regulation (EEC) No 1612/68 on freedom of movement for workers ([20]), more specifically to its relationship with Directive 2004/38/EC on freedom of movement of citizens of the Union ([21]). In these two cases, the national authorities refused to grant the claimants housing assistance for them and their children, on the ground that the claimants did not have a right of residence in the United Kingdom pursuant to European Union law. One of the claimants was sepa-

([19]) Case C-415/93 *Bosman* [1995] ECR I-4921.

([20]) 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).

([21]) See footnote 10.

rated from her husband who, after working in the United Kingdom, had finally left the country, and the other, also separated from her husband, had herself lost the status of worker. However, since their children were in education in the United Kingdom, the claimants pleaded Article 12 of Regulation (EEC) No 1612/68, as interpreted by the Court in *Baumbast and R* ([22]). Confirming its case-law, the Court observed that Article 12 of the regulation means that the child of a migrant worker can, in connection with his right of access to education in the host Member State, have an independent right of residence and, for that purpose, it requires only that the child has lived with at least one of his parents in a Member State while that parent resided there as a worker. The fact that the parents of the child have meanwhile divorced and the fact that only one parent is a citizen of the Union and that that parent has ceased to be a migrant worker in the host Member State are irrelevant in this regard. Thus, according to the Court, Article 12 of the regulation must be applied independently of the provisions of European Union law which expressly govern the conditions of exercise of the right to reside in another Member State, an independence which was not called into question by the entry into force of the new directive on freedom of movement of European citizens. Drawing the appropriate conclusions from that independence, the Court then found that the right of residence of the parent who is the primary carer of a migrant worker's child in education is not subject to the condition requiring that that parent have sufficient resources not to become a burden on the social assistance system of the host Member State. Finally, in the second case (*Teixeira*), the Court also explained that whilst, as a general rule, the right of residence of the parent who is the primary carer for a child of a migrant worker ends, where that child is in education in the host Member State, when the child reaches the age of majority, it may be otherwise if the child continues to need the presence and care of that parent in order to be able to pursue and complete his education. It is then for the national court to assess whether that is actually the case.

Approximation of laws

Since it is not possible to set out all the case-law developments in this area which, reflecting the ever increasing range of the European Union legislature's activity, displays the greatest diversity, it has been decided to place emphasis on two sectors, namely on commercial practices in general, paying particular attention to consumer protection, and on telecommunications, whilst a few other decisions of evident interest are also mentioned.

As regards unfair business-to-consumer commercial practices, Directive 2005/29/EC ([23]) was interpreted twice in 2010. This directive harmonises fully the rules relating to unfair business-to-consumer commercial practices and contains, in Annex I, an exhaustive list of 31 commercial practices which, in accordance with Article 5(5), are to be regarded as unfair in all circumstances. As recital 17 in the preamble to the directive expressly states, those commercial practices alone can be deemed to be unfair without a case-by-case assessment against the provisions of Articles 5 to 9 of the directive.

In the first case to be covered, namely Case C-540/08 *Mediaprint Zeitungs- und Zeitschriftenverlag* (judgment of 9 November 2010), the Court consequently ruled that the directive must be interpreted as precluding a national provision which lays down a general prohibition on sales with bonuses and is not only designed to protect consumers but also pursues other objectives. Practices consisting in offering consumers bonuses associated with the purchase of products or services do not appear

([22]) Case C-413/99 *Baumbast and R* [2002] ECR I-7091.

([23]) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (OJ 2005 L 149, p. 22).

in Annex I to the directive and they therefore cannot be prohibited in all circumstances, but only following a specific assessment allowing the unfairness of those practices to be established. Thus, the possibility of participating in a prize competition, linked to the purchase of a newspaper, does not constitute an unfair commercial practice within the meaning of Article 5(2) of the directive simply on the ground that, for at least some of the consumers concerned, that possibility of participating in a competition represents the factor which determines them to buy that newspaper.

Second, in Case C-304/08 *Plus Warenhandelsgesellschaft* (judgment of 14 January 2010), the Court held that Directive 2005/29/EC also precludes national legislation which provides for a prohibition in principle, without taking account of the specific circumstances of individual cases, of commercial practices under which the participation of consumers in a prize competition or lottery is made conditional on the purchase of goods or the use of services. The Court observed first that promotional campaigns which enable consumers to take part free of charge in a lottery subject to their purchasing a certain quantity of goods or services constitute commercial acts that clearly form part of an operator's commercial strategy and relate directly to the promotion of the operator's sales. They therefore do indeed constitute commercial practices within the meaning of the directive and, consequently, come within its scope. The Court then pointed out that the directive, which harmonises the rules fully, provides expressly that Member States may not adopt stricter rules than those provided for by it, even in order to achieve a higher level of consumer protection. Since the practice at issue in this case is likewise not referred to in Annex I, it cannot be prohibited without it being determined, having regard to the facts of each particular instance, whether it is 'unfair' in the light of the criteria laid down by the directive. Those criteria include whether the practice materially distorts, or is likely materially to distort, the economic behaviour of the average consumer with regard to the product.

In 2010 the Court was also required on two occasions to interpret Directive 93/13/EEC ([24]) on unfair terms in consumer contracts.

In the first case, namely Case C-484/08 *Caja de Ahorros y Monte de Piedad de Madrid* (judgment of 3 June 2010), the Court recalled that the system of protection introduced by Directive 93/13/EEC is based on the idea that the consumer is in a weak position vis-à-vis the seller or supplier, as regards both his bargaining power and his level of knowledge. This leads to the consumer agreeing to terms drawn up in advance by the seller or supplier without being able to influence the content of those terms. The directive carried out only a partial and minimum harmonisation of national legislation concerning unfair terms, while recognising that Member States have the option of affording consumers a higher level of protection than that for which the directive provides. The Court thus pointed out that the Member States may retain or adopt, in the entire area covered by the directive, rules more stringent than those laid down by the directive itself, provided that they are designed to ensure a greater degree of consumer protection. Consequently, the Court concluded that the directive does not preclude national legislation which authorises a judicial review as to the unfairness of contractual terms which relate to the definition of the main subject-matter of the contract or to the adequacy of the price and remuneration, on the one hand, as against the services or goods to be supplied in exchange, on the other hand, even in the case where those terms are drafted in plain, intelligible language.

Second, in Case C-137/08 *VB Pénzügyi Lízing* (judgment of 9 November 2010), the Court was required to expand upon the judgment in Case C-243/08 *Pannon GSM* [2009] ECR I-4713 (see *Annual Report 2009*). It stated that Article 267 TFEU must be interpreted as meaning that the jurisdiction of the Court of Justice of the European Union extends to the interpretation of the concept of 'unfair

([24]) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

term' used in Article 3(1) of Directive 93/13/EEC and in the annex thereto, and to the criteria which the national court may or must apply when examining a contractual term in the light of the provisions of that directive, whilst it is for the national court to determine, in the light of those criteria, whether a particular contractual term is actually unfair in the circumstances of the case. The unfairness of a contractual term is to be assessed taking into account the nature of the goods or services for which the contract was concluded and by referring, as at the time of conclusion of the contract, to all the circumstances attending the conclusion of it, among which are the fact that a term which is contained in a contract concluded between a consumer and a seller or supplier and which confers exclusive jurisdiction on the court in the territorial jurisdiction of which the seller or supplier has his principal place of business has been included without being individually negotiated. The Court also ruled that the national court must investigate of its own motion whether a term conferring exclusive territorial jurisdiction in a contract concluded between a seller or supplier and a consumer, which is the subject of a dispute before it, falls within the scope of Directive 93/13/EEC and, if it does, assess of its own motion whether such a term is unfair. In order to safeguard the effectiveness of the consumer protection intended by the European Union legislature in a situation characterised by the imbalance between the consumer and the seller or supplier, which may be corrected only by positive action unconnected with the actual parties to the contract, the national court must, in all cases and whatever the rules of its domestic law, determine whether or not the contested term was individually negotiated between a seller or supplier and a consumer.

In relation, now, to protection of the consumer in respect of contracts negotiated away from business premises, the Court ruled in Case C-215/08 *E. Friz* (judgment of 15 April 2010) that Directive 85/577/EEC ([25]) applies to a contract, concluded between a trader and a consumer during a doorstep-selling visit to the latter's home, concerning the consumer's entry to a closed-end real property fund established in the form of a partnership when the principal purpose of joining is not to become a member of that partnership, but is a means of capital investment. The Court stated that Article 5(2) of Directive 85/577/EEC does not preclude a national law according to which, in the event of cancellation of membership of such a real property fund, entered into following a doorstep-selling visit by a trader to a consumer's home, the consumer has a claim against the partnership, to his severance balance, calculated on the basis of the value of his interest at the date of his retirement from membership of the fund, and may therefore get back less than the value of his capital contribution or have to participate in the losses of the fund. It explained that, while there is no doubt that the aim of the directive is to protect consumers, that does not imply that that protection is absolute. Both the general structure of the directive and the wording of several of its provisions indicate that such protection is subject to certain limits. As regards the consequences of the exercise of the right of renunciation in particular, notification of the cancellation has the effect, both for the consumer and for the trader, of the restoration of the *status quo ante*. However, the fact remains that there is nothing in the directive to preclude the consumer, in certain specific cases, from having obligations to the trader and, depending on the circumstances, from having to bear certain consequences resulting from the exercise of his right of cancellation.

On a related issue, the Court held in Case C-511/08 *Heinrich Heine* (judgment of 15 April 2010), concerning the protection of consumers in respect of distance contracts, that Article 6(1), first subparagraph, second sentence, and Article 6(2) of Directive 97/7/EC ([26]) must be interpreted as precluding national legislation which allows the supplier under a distance contract to charge the costs

([25]) 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).

([26]) Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ 1997 L 144, p. 19).

of delivering the goods to the consumer where the latter exercises his right of withdrawal. The directive's provisions on the legal consequences of withdrawal clearly have as their purpose not to discourage consumers from exercising their right of withdrawal. It would therefore be contrary to that objective to interpret those provisions as authorising the Member States to allow delivery costs to be charged to consumers in the event of withdrawal. Moreover, charging consumers the delivery costs, in addition to the direct costs for returning the goods, would compromise a balanced sharing of the risks between parties to distance contracts, by making consumers liable to bear all of the costs related to transporting the goods.

Lastly in relation to commercial practices, Case C-159/09 *Lidl* (judgment of 18 November 2010), which arose from an advertising campaign launched by a supermarket, is to be noted. The supermarket had placed in a local newspaper an advertisement that compared till receipts listing products, in the main foodstuffs, respectively purchased from two supermarket chains and showing different total costs, a method contested by the competitor referred to. The Court stated first that the directive concerning misleading and comparative advertising ([27]) is to be interpreted as meaning that the fact alone that food products differ in terms of the extent to which consumers would like to eat them and the pleasure to be derived from consuming them, according to the conditions and place of production, their ingredients and who produced them, cannot preclude the possibility that the comparison of such products may meet the requirement that the products compared meet the same needs or are intended for the same purpose, and hence display a sufficient degree of interchangeability ([28]). To decide that, unless they are identical, two food products cannot be regarded as comparable would effectively rule out any real possibility of comparative advertising regarding a particularly important category of consumer goods. The Court added that advertising relating to a comparison of the prices of food products marketed by two competing retail store chains may be misleading ([29]), in particular, if it is found, in the light of all the relevant circumstances of the specific case, in particular the information contained in or omitted from the advertisement, that the decision to buy on the part of a significant number of consumers to whom the advertisement is addressed may be made in the mistaken belief that the selection of goods made by the advertiser is representative of the general level of his prices as compared with those charged by his competitor and that such consumers will therefore make savings of the kind claimed by the advertisement by regularly buying their everyday consumer goods from the advertiser rather than the competitor, or in the mistaken belief that all of the advertiser's products are cheaper than those of his competitor. Such advertising may also be misleading if it is found that, for the purposes of a comparison based solely on price, food products were selected which, nevertheless, have different features capable of significantly affecting the average consumer's choice, without such differences being apparent from the advertising concerned. Finally, the Court held that the condition of verifiability ([30]) requires, in the case of an advertisement which compares the prices of two selections of goods, that it must be possible to identify the goods on the basis of information contained in the advertisement, thus enabling the persons to whom the advertisement is addressed to satisfy themselves that they have been correctly informed with regard to the purchases of basic consumables which they are prompted to make.

([27]) 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), as amended by Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997 so as to include comparative advertising (OJ 1997 L 290, p. 18).

([28]) Article 3a(1)(b) of Directive 84/450/EEC concerning misleading and comparative advertising, as amended by Directive 97/55/EC.

([29]) Article 3a(1)(a) of Directive 84/450/EEC concerning misleading and comparative advertising, as amended by Directive 97/55/EC.

([30]) Article 3a(1)(c) of Directive 84/450/EEC concerning misleading and comparative advertising, as amended by Directive 97/55/EC.

Case-law relating to the telecommunications sector was particularly plentiful in 2010. First of all, Case C-99/09 *Polska Telefonia Cyfrowa* (judgment of 1 July 2010) gave the Court the opportunity to interpret Article 30(2) of Directive 2002/22/EC (the Universal Service Directive) ([31]) in relation to the costs of the mobile telephone number portability that enables a telephone subscriber to retain the same number when changing operator. According to the Court, that provision is to be interpreted as obliging the national regulatory authority to take account of the costs incurred by mobile telephone network operators in implementing the number portability service when it assesses whether the direct charge to subscribers for the use of that service is a disincentive. However, the authority retains the power to fix the maximum amount of that charge levied by operators at a level below the costs incurred by them, when a charge calculated only on the basis of those costs is liable to dissuade users from making use of the portability facility.

Still with regard to telecommunications, Joined Cases C-317/08, C-318/08, C-319/08 and C-320/08 *Alassini and Others* (judgment of 18 March 2010) will be noted, in which the Court replied to a question referred to it for a preliminary ruling regarding the interpretation of the principle of effective judicial protection in relation to national legislation under which an attempt to achieve an out-of-court settlement is a mandatory condition for the admissibility before the courts of actions in certain disputes between providers and end-users under the Universal Service Directive ([32]). According to the Court, Article 34(1) of that directive assigns Member States the objective of establishing out-of-court procedures for dealing with disputes involving consumers that relate to matters covered by that directive. National legislation which has put in place an out-of-court settlement procedure and has made it mandatory to have recourse to that procedure before any action is brought before a court is not such as to compromise the objective in the general interest pursued by the directive and is even designed to strengthen the directive's effectiveness, by reason of the quicker and less expensive settlement of disputes and the lightening of the courts' workload which are achieved by that legislation. The Court thus stated that the additional step for access to the courts, in the form of a prior settlement procedure made mandatory by the legislation in question, is not contrary to the principles of equivalence, effectiveness and effective judicial protection, provided that it does not result in a decision which is binding on the parties, that it does not cause a delay to the conducting of legal proceedings or costs for consumers that are too high, that electronic means are not the only means by which the settlement procedure may be accessed and that interim measures are possible in exceptional urgent cases.

Next, in Case C-58/08 *Vodafone and Others* (judgment of 8 June 2010), the Court had to rule on the validity of Regulation (EC) No 717/2007 on roaming on public mobile telephone networks ([33]), in the context of proceedings between several operators of public mobile telephone networks and the national authorities concerning the validity of national provisions for the implementation of that regulation. The Court, to which three questions had been referred for a preliminary ruling, noted first of all that the regulation, adopted on the basis of Article 95 EC, introduces a common approach so that users of terrestrial public mobile telephone networks do not pay excessive prices for Community-wide roaming services and so that operators in the various Member States can operate within a single coherent regulatory framework based on objectively established criteria, thereby contributing to the smooth functioning of the internal market in order to achieve a high level of consumer protection and maintain competition among operators. Then the Court — which

([31]) Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ 2002 L 108, p. 51).

([32]) See the preceding footnote.

([33]) Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC (OJ 2007 L 171, p. 32).

had been asked whether the principles of proportionality and subsidiarity were complied with because the regulation imposes not only a ceiling for average wholesale charges per minute, but also for retail charges, and imposes an obligation to provide information to roaming customers — held that, in the light of the broad discretion which the Community legislature has in the area at issue, the latter could legitimately take the view, having regard to objective criteria and an exhaustive economic study, that regulation of the wholesale market alone would not achieve the same result as regulation which covered at the same time the wholesale and the retail markets, a fact which rendered the latter regulation necessary, and that the obligation to provide information reinforces the effectiveness of imposing ceilings for the charges. The Court then continued that appraisal by stating that there was no breach of the principle of subsidiarity, given the interdependence of wholesale and retail charges and the effects of the common approach laid down in the regulation, the objective of which could best be achieved at Community level.

Finally, in Case C-222/08 *Commission* v *Belgium* (judgment of 6 October 2010), in the context of Treaty infringement proceedings brought by the Commission concerning the Kingdom of Belgium's partial transposition of Articles 12(1) and 13(1) and Annex IV, Part A, of the Universal Service Directive ([34]), the Court held first that, since the directive lays down only the rules for calculating the net costs of the provision of universal service where the national authorities have considered that such provision may represent an unfair burden, the Member State in question had not failed to fulfil its obligations by laying down itself the conditions for determining whether or not that burden is unfair. Second, the Court stated that, in linking the mechanisms for the recovery of net costs which an undertaking may incur by the provision of universal service to the existence of an unfair burden on that undertaking, the Community legislature wished to exclude the automatic conferral of a right to compensation for any net cost of universal service provision, since it took the view that the net cost of that service does not necessarily represent an unfair burden for all the undertakings concerned. In those circumstances, the unfair burden which must be found to exist by the national regulatory authority before any compensation is paid can only be a burden which, for each undertaking concerned, is excessive in view of the undertaking's ability to bear it, account being taken of the undertaking's own characteristics (equipment, economic and financial situation, market share and so forth). Furthermore, the Court held that the relevant Member State, which is bound by the directive to establish the mechanisms necessary to compensate undertakings suffering an unfair burden, fails to fulfil its obligations if it makes a general finding on the basis of the calculation of the net costs of the erstwhile sole provider of universal service that all undertakings now responsible for the provision of universal service are in fact subject to an unfair burden on account of that provision, without carrying out a specific assessment both of the net cost of the service for each operator concerned and of all the characteristics particular to each operator. Finally, the Court indicated that a Member State also fails to fulfil its obligations under the directive where it fails to take into consideration, in the calculation of the net cost of provision of the social component of universal service, the market benefits, including intangible benefits, accruing to the undertakings responsible.

Whilst a homogeneous body of case-law can thus be seen to be developing in two particularly sensitive sectors, case-law in the area of approximation of laws is far from limited to those sectors, as is attested by a number of cases.

Case C-428/08 *Monsanto Technology* (judgment of 6 July 2010) raised, for the first time, the question of the scope of a European patent relating to a DNA sequence. Monsanto, which has held since 1996 a European patent relating to a DNA sequence which, once introduced into the DNA of a soy plant, makes that plant resistant to a certain herbicide, sought to oppose imports into

([34]) See footnote 31.

a Member State of soy meal produced from such genetically modified soy in Argentina, where there is no patent protection for Monsanto's invention. The national court before which proceedings were brought asked the Court of Justice whether the mere presence of the DNA sequence protected by a European patent is sufficient to constitute an infringement of Monsanto's patent when the meal is marketed in the European Union. According to the Court, Directive 98/44/EC ([35]) makes the protection conferred by a European patent subject to the condition that the genetic information contained in the patented product or constituting that product is currently performing its function in the material in which it is contained. The Court observed in this regard that the function of Monsanto's invention is performed when the genetic information protects the soy plant in which it is incorporated against the effect of the herbicide. This function of the protected DNA sequence can no longer be performed when it is in a residual state in the soy meal, which is a dead material obtained after the soy has undergone several treatment processes. Consequently, the protection under the European patent is not available when the genetic information has ceased to perform the function it had in the initial plant from which it is derived. Nor can such protection be granted on the ground that the genetic information contained in the soy meal could possibly perform its function again in another plant, as it would be necessary that the DNA sequence actually be introduced in that other plant in order for protection under a European patent to be conferred in relation to that plant. In those circumstances, Monsanto cannot rely on Directive 98/44/EC to prohibit the marketing of soy meal originating from Argentina which contains its biotechnological invention in a residual state. Lastly, the Court stated that the directive precludes a national rule from granting absolute protection to a patented DNA sequence as such, regardless of whether it performs its function in the material containing it. The provisions of the directive providing for a requirement of actual performance of that function constitute exhaustive harmonisation of the matter in the European Union.

In Case C-62/09 *Association of the British Pharmaceutical Industry* (judgment of 22 April 2010), the Court was required to interpret Directive 2001/83/EC ([36]). Whilst, in principle, that directive prohibits pecuniary advantages or benefits in kind from being supplied, offered or promised to doctors or pharmacists when medicinal products are being promoted to them, the Court held that the directive does not preclude financial incentive schemes implemented by the national public health authorities in order to reduce their public health expenditure and designed to encourage, for the purpose of treating certain conditions, the prescription by doctors of specific named medicinal products containing an active substance which is different from the active substance of the medicinal product which was previously prescribed or which might have been prescribed but for such an incentive scheme. In general terms, the health policy defined by a Member State and the public expenditure devoted to it do not pursue any profit-making or commercial aim. Since a financial incentive scheme forms part of such a policy, it cannot be regarded as falling within the commercial promotion of medicinal products. The Court nevertheless observed that the public authorities are required to make available to professionals in the pharmaceutical industry information showing that the scheme in question is based on objective criteria and that there is no discrimination between national medicinal products and those from other Member States. Furthermore, those authorities must make such a scheme public and make available to those professionals the evaluations establishing the therapeutic equivalence of the active substances available belonging to the same therapeutic class covered by the scheme.

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

([36]) 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), as amended by Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 (OJ 2004 L 136, p. 34).

In Case C-518/07 *Commission* v *Germany* (judgment of 9 March 2010), relating to the processing of personal data, the Court held that the guarantee of the independence of national supervisory authorities, which is provided for by Directive 95/46/EC ([37]), is intended to ensure the effectiveness and reliability of the supervision of compliance with the provisions on protection of individuals with regard to the processing of personal data, and it must be interpreted in the light of that aim. It was established not to grant a special status to those authorities themselves as well as their agents, but in order to strengthen the protection of individuals and bodies affected by their decisions, and the supervisory authorities must therefore act objectively and impartially when carrying out their duties. Consequently, the supervisory authorities responsible for supervising the processing of personal data outside the public sector must enjoy an independence allowing them to perform their duties free from external influence. That independence precludes not only any influence exercised by the supervised bodies, but also any directions or any other external influence, whether direct or indirect, which could call into question the performance by those authorities of their task consisting of establishing a fair balance between the protection of the right to private life and the free movement of personal data. The mere risk that the scrutinising authorities could exercise a political influence over the decisions of the competent supervisory authorities is enough to hinder the independent performance of their tasks. First, there could be 'prior compliance' on the part of those authorities in the light of the scrutinising authority's decision-making practice. Second, for the purposes of the role adopted by the supervisory authorities as guardians of the right to private life, it is necessary that their decisions, and therefore the authorities themselves, remain above any suspicion of partiality. State scrutiny exercised over the national supervisory authorities is thus not consistent with the requirement of independence.

In Case C-467/08 *Padawan* (judgment of 21 October 2010) concerning the field of copyright and related rights, the Court provided explanation of the concept of fair compensation for private copying and of the criteria applicable to, and limits of, such compensation. Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society ([38]) allows the private copying exception introduced into domestic law by certain Member States, provided that the holders of the reproduction right receive fair compensation. In this judgment, the Court stated, first of all, that the concept of 'fair compensation' referred to in Article 5(2)(b) of Directive 2001/29/EC is an autonomous concept of European Union law which must be interpreted uniformly in all the Member States that have introduced a private copying exception. It then explained that the 'fair balance' between the persons concerned means that fair compensation must be calculated on the basis of the criterion of the harm caused to authors of protected works by the introduction of the private copying exception. The Court also indicated that the 'private copying levy' is imposed directly not on private users of the reproduction equipment, devices and media, but on persons who have such equipment, devices and media, inasmuch as those persons are easier to identify and are able to pass on to private users the actual burden of financing the fair compensation. Finally, the Court ruled that a link is necessary between the application of the levy intended to finance fair compensation with respect to equipment and the deemed use of the equipment for the purposes of private copying. Consequently, the indiscriminate application of the private copying levy, in particular with respect to digital reproduction equipment, devices and media not made available to private users and clearly reserved for uses other than private copying, is incompatible with Directive 2001/29/EC. On the other hand, where the equipment at issue has been made available to natural persons for private purposes it is unnecessary to show that

([37]) Second subparagraph of Article 28(1) of 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).

([38]) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 (OJ 2001 L 167, p. 10).

they have in fact made private copies with the help of that equipment and have therefore actually caused harm to the author of the protected work. Those natural persons are rightly presumed to benefit fully from the making available of that equipment, that is to say that they are deemed to take full advantage of the functions associated with that equipment, including copying.

In C-233/08 *Kyrian* (judgment of 14 January 2010), the order for reference related, first, to whether, in the light of Article 12(3) of Directive 76/308/EEC on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures ([39]), as amended by Directive 2001/44/EC ([40]), the courts of the Member State in which the requested authority is situated have jurisdiction to review the enforceability of an instrument, issued in another Member State, permitting enforcement of a claim. The Court explained, in this judgment, that the courts of the requested Member State do not, in principle, have jurisdiction to review the enforceability of an instrument permitting enforcement, except in order to review whether the instrument is consistent with the public policy of that State. On the other hand, the Court held that, inasmuch as the notification constitutes an 'enforcement measure' referred to in Article 12(3) of Directive 76/308/EEC, the court of the requested Member State has jurisdiction to review whether that measure was correctly effected in accordance with the laws and regulations of that Member State. Second, the Court had to rule on whether, in order to be properly given, the notification of the instrument permitting enforcement of a claim must be addressed to the debtor in an official language of the Member State in which the requested authority is situated. Directive 76/308/EEC is silent on this point. According to the Court, however, in the light of the purpose of the directive, which is to ensure the effective notification of all instruments and decisions, it must be held that, in order for the addressee of an instrument permitting enforcement to be placed in a position to enforce his rights, he must receive the notification of that instrument in an official language of the requested Member State. The Court also ruled that, in order to ensure compliance with that right, it is for the national court to apply national law while taking care to ensure the full effectiveness of European Union law.

Competition

There have been interesting developments in the case-law in relation both to State aid and to the competition rules applicable to undertakings.

With regard to State aid, in Case C-399/08 P *Commission* v *Deutsche Post* (judgment of 2 September 2010), the Court considered the method used by the Commission to conclude that there was an advantage constituting State aid in favour of a private undertaking responsible for a service of general economic interest ('SGEI'). While the Commission had taken the view that the public resources received by the undertaking concerned as compensation for the provision of an SGEI were greater than the additional costs generated by that service and that that overcompensation constituted State aid incompatible with the common market, the General Court annulled that decision on the ground that the Commission had not shown sufficiently that there was an advantage for the purposes of Article 87(1) EC and was not entitled to assume that an advantage had been conferred on the undertaking by public funds without first ascertaining whether those funds actually exceeded all the additional costs associated with the provision of an SGEI that were borne by that undertaking. The Court of Justice confirmed the General Court's analysis in rejecting the Commission's plea alleging breach of Articles 87(1) EC and 86(2) EC. The Court of Justice observed at the outset that, in order for financial compensation awarded to an undertaking responsible for an SGEI to be able to escape classification as State aid, specific conditions must be fulfilled,

([39]) Council Directive 76/308/EEC of 15 March 1976 (OJ 1976 L 73, p. 18).

([40]) Council Directive 2001/44/EC of 15 June 2001 (OJ 2001 L 175, p. 17).

requiring in particular that such compensation should not exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations (conditions laid down in Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* [2003] ECR I-7747, paragraphs 74 and 75), and it concluded from this that, when examining the validity of the financing of such a service in the light of the law on State aid, the Commission is required to check whether that condition has been satisfied. The Court of Justice went on to find that the General Court had relied upon deficiencies in that respect in the method used by the Commission and had, therefore, correctly concluded that the Commission's analysis was defective without, however, reversing the burden of proof or substituting its own method of analysis for the Commission's. The restrictive nature of the conditions under which compensation for an SGEI is capable of escaping classification as State aid does not, therefore, exempt the Commission from being put to strict proof when it takes the view that those conditions have not been observed.

In Case C-290/07 P *Commission* v *Scott* (judgment of 2 September 2010), an appeal was brought before the Court of Justice against a judgment of the General Court annulling a Commission decision declaring that State aid granted by the French authorities to an American company which had arisen from the sale of land on terms that did not reflect the reality of the market was incompatible, and it was necessary for the Court of Justice to clarify the limits of the General Court's review jurisdiction where the identification of State aid raises serious valuation difficulties. The Commission complained that the General Court had exceeded the limits of its review in identifying errors of method and calculation characteristic of a breach of the obligation to conduct in a diligent manner the formal investigation procedure provided for in Article 88(2) of the EC Treaty. The Court of Justice upheld that plea, recalling, first, the principles laid down in Case C-12/03 P *Commission* v *Tetra Laval* [2005] ECR I-987, paragraph 39, from which it follows that the courts of the European Union must establish not only whether the evidence relied on is factually accurate, reliable and consistent but also whether that evidence contains all the information which must be taken into account in order to assess a complex situation and whether it is capable of substantiating the conclusions drawn from it. That reminder is coupled with an important limitation, according to which, when conducting such a review, the courts of the European Union must not substitute their own economic assessment for that of the Commission. Second, the Court of Justice pointed out that the Commission had to apply the private investor test to determine whether the price paid by the presumed recipient of aid corresponded to the selling price which a private investor, operating in normal competitive conditions, would be likely to have fixed. The Court held that, in this instance, the General Court had not identified the manifest errors of assessment on the part of the Commission which could have justified annulment of the decision as to the incompatibility of the aid, thus exceeding its review jurisdiction. Finally, according to the Court of Justice, the General Court could not criticise the Commission for having overlooked certain information which could have been useful, since that information had been provided only after the formal investigation procedure and the Commission was not obliged to reopen the procedure after obtaining that new information.

In Case C-322/09 P *NDSHT* v *Commission* (judgment of 18 November 2010), the Court of Justice was called upon to define the concept of an act open to challenge, the act being that of a Community institution. An appeal had been lodged by which the appellant sought to have set aside a judgment of the General Court declaring inadmissible an action for annulment of a decision contained in Commission letters to the company NDSHT, relating to a complaint concerning allegedly unlawful State aid granted by the City of Stockholm to a competitor company. The appellant, NDSHT, claimed that the General Court had erred in law in considering that the letters at issue, in which the Commission had decided not to pursue NDSHT's complaint, were an informal communication that was not open to challenge for the purposes of Article 230 EC. Under the procedure in force, where the Commission finds, following examination of a complaint, that an investigation has revealed no grounds

for concluding that there is State aid within the meaning of Article 87 EC, it refuses by implication to initiate the procedure provided for by Article 88(2) EC. According to the Court of Justice, the act in question could not be described as a mere informal communication or provisional measure in so far as it expressed the Commission's definitive decision to terminate its preliminary examination and thus its refusal to initiate the formal investigation procedure, thereby resulting in significant consequences for the appellant. In that context, the Court of Justice confirmed that the appellant was an undertaking in competition with the company benefiting from the measures complained of and, as such, an interested party for the purposes of Article 88(2) EC, and it attributed to the General Court an error of law in respect of its finding that the act at issue did not have the characteristics of a decision under Article 4 of Regulation (EC) No 659/1999 that was open to challenge although, irrespective of status or form, it produced binding legal effects such as to affect the appellant's interests. The Court of Justice therefore set aside the judgment concerned, dismissed the objection of inadmissibility alleging that the act at issue was not open to challenge in an action for annulment and referred the case back to the General Court for judgment on its merits.

As regards the rules on competition applicable to undertakings, two judgments are particularly noteworthy, the first relating to the application of the competition rules to groups of companies, the second relating to the scope of the principle of legal professional privilege.

By its judgment of 1 July 2010 in Case C-407/08 P *Knauf Gips* v *Commission*, the Court held that, in the case of a group of companies at the apex of which were a number of legal persons, the Commission made no error of assessment in considering one of those companies to be solely responsible for the actions of the companies in that group which, as a whole, constituted an economic unit. The fact that there is no single legal person at the apex of a group is no obstacle to a company being held liable for the actions of that group. The legal structure particular to a group of companies, which is characterised by the absence of a single legal person at the apex of that group, is not decisive where that structure does not reflect the effective functioning and actual organisation of the group. In particular, the Court held that the lack of subordinating legal links between two companies at the apex of the group did not cast any doubt on the conclusion that one of those two companies had to be held liable for the activities of the group, since, in reality, the second company did not determine its conduct on the relevant market independently.

The judgment in *Knauf Gips* v *Commission* also clarifies the rights of undertakings during the administrative procedure and in the exercise of rights of appeal. The Court of Justice stated in its judgment that there is no requirement under the law of the European Union that the addressee of a statement of objections must challenge its various matters of fact or law during the administrative procedure, if it is not to be barred from doing so later at the stage of judicial proceedings, since such a restriction is contrary to the fundamental principles of the rule of law and of respect for the rights of the defence.

In Case C-550/07 P *Akzo Nobel Chemicals and Akcros Chemicals* v *Commission* (judgment of 14 September 2010) a question also arose concerning the rights of undertakings during Commission investigations. The Commission had carried out inspections and seized numerous documents, including copies of e-mails exchanged between the general manager and Akzo Nobel's competition law coordinator, a lawyer enrolled as an Advocaat of the Netherlands Bar and employed by Akzo Nobel. In that context, the Court of Justice was called upon to clarify whether the communications of in-house lawyers employed by an undertaking are protected by legal professional privilege in the same way as those of external lawyers. It held that neither the evolution of the legal situation within the Member States of the European Union nor the adoption of Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of

the Treaty ([41]) supported the notion of a change in the case-law ([42]) resulting in in-house lawyers being covered by legal professional privilege. The Court recalled that that protection is subject to two cumulative conditions. First, the exchange with the lawyer must be connected to the client's rights of defence and, second, the exchange must be with an independent lawyer, that is to say, a lawyer who is not bound to the client by a relationship of employment. The requirement of independence means the absence of any employment relationship between the lawyer and his client, so that legal professional privilege does not cover exchanges within a company or group with in-house lawyers. An in-house lawyer, despite his enrolment with a bar or law society and the professional ethical obligations to which he is, as a result, subject, does not enjoy the same degree of independence from his employer as a lawyer working in an external law firm does in relation to his client. Consequently, an in-house lawyer is less able to deal effectively with any conflicts between his professional obligations and the aims of his client. Owing to the in-house lawyer's economic dependence and the close ties with his employer, he does not enjoy a level of professional independence comparable to that of an external lawyer.

Taxation

In three cases (judgments of 4 March 2010 in Cases C-197/08, C-198/08 and C-221/08), the Court was called upon to rule on actions for failure to fulfil obligations brought by the Commission against the French Republic, the Republic of Austria and Ireland in relation to the fixing of minimum prices for the retail sale of certain types of manufactured tobacco (cigarettes and other tobacco products in the case of France, cigarettes and fine-cut tobacco in the case of Austria and cigarettes in the case of Ireland). The Commission had brought these cases before the Court because it took the view that the national legislation at issue was contrary to Directive 95/59/EC ([43]), which imposes certain rules on customs duties which affect the consumption of those products, in that the national legislation undermined the freedom of manufacturers and importers to determine the maximum retail selling price of their products, and thus free competition.

The Court held that a system of minimum prices cannot be regarded as compatible with that directive unless it is structured in such a way as to ensure, in any event, that the competitive advantage which could result for some producers and importers of those products from lower cost prices is not impaired. It ruled that the Member States which imposed minimum retail selling prices for cigarettes were failing to fulfil their obligations under Article 9(1) of Directive 95/59/EC, since that system did not make it possible to ensure, in any event, that the minimum price imposed did not impair the competitive advantage which could result for some producers and importers of tobacco products from lower cost prices. According to the Court, such a system, which furthermore fixed the minimum price by reference to the average price on the market for each category of cigarette, was likely to eliminate price differences between competing products and to cause prices to converge around the price of the most expensive product. That system therefore undermined the freedom of producers and importers to determine their maximum retail selling price, guaranteed by the second subparagraph of Article 9(1) of Directive 95/59/EC.

([41]) Council Regulation (EC) No 1/2003 of 16 December 2002 (OJ 2003 L 1, p. 1).

([42]) Case 155/79 *AM & S Europe* v *Commission* [1982] ECR 1575.

([43]) Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco (OJ 1995 L 291, p. 40), as amended by Council Directive 2002/10/EC of 12 February 2002 (OJ 2002 L 46, p. 26).

The Member States had attempted to justify their legislation by invoking the Framework Convention of the World Health Organisation (WHO) ([44]). The Court held that that convention cannot affect the compatibility or otherwise of such a system with Article 9(1) of Directive 95/59/EC since the convention imposes no actual obligation on the contracting parties with regard to price policies for tobacco products, and merely describes possible approaches by which to take account of national health objectives concerning tobacco control. Article 6(2) of the convention provides only that the contracting parties are to adopt or maintain measures which 'may include' implementing tax policies and, 'where appropriate', price policies, concerning tobacco products. The Member States had also relied on the provisions of Article 30 EC in order to justify an infringement of Article 9(1) of Directive 95/59/EC with reference to the objective of protection of health and life of humans. The Court held that Article 30 EC cannot be understood as authorising measures other than the quantitative restrictions on imports and exports and the measures having equivalent effect envisaged by Articles 28 EC and 29 EC.

Finally, the Court considered that Directive 95/59/EC does not prevent the Member States from taking measures to combat smoking, which forms part of the objective of protecting public health, and recalled that fiscal legislation is an important and effective instrument for discouraging consumption of tobacco products and, therefore, for the protection of public health, given that the objective of ensuring that a high price level is fixed for those products may adequately be attained by increased taxation of those products, the excise duty increases sooner or later being reflected in an increase in the retail price, without undermining the freedom to determine prices. The Court added that the prohibition against fixing minimum prices does not prevent the Member States from prohibiting the sale of manufactured tobacco at a loss in so far as this does not undermine the freedom of producers and importers to fix the maximum retail selling price of their products. Those economic players will thus not be able to absorb the impact of taxes on those prices by selling their products at a price below the sum of the cost price and all taxes.

Trade marks

In Case C-398/08 P *Audi* v *OHIM* (judgment of 21 January 2010), the Court held that an advertising slogan can be regarded, in certain circumstances, as a distinctive sign and can constitute on that basis a valid trade mark in accordance with the provisions of Article 7(1)(b) of Regulation (EC) No 40/94 ([45]). It therefore annulled the decision refusing registration of the trade mark in question consisting of the slogan *Vorsprung durch Technik* (meaning, inter alia, advance or advantage through technology). The fact that a mark is made up of a promotional formula which could be used by other undertakings is not sufficient for that mark to be devoid of any distinctive character. Such a mark can therefore be perceived by the relevant public both as a promotional formula and as an indication of the commercial origin of goods and/or services, which is the function of the mark. The Court went on to list certain criteria applicable to advertising slogans: an expression which can have a number of meanings, constitute a play on words or be perceived as imaginative, surprising and unexpected and, in that way, be easily remembered. Although the presence of such characteristics is not necessary, it is nevertheless likely to endow the sign in question with distinctive character. In the Court's view, even if the advertising slogans are made up of an objective message, the trade marks formed from that slogan are not, by virtue of that fact alone, devoid of distinctive character in so far as they are not descriptive. Thus, according to the Court, in order for an advertising slogan submitted as a trade mark to have distinctive character, it must possess

([44]) WHO Framework Convention on Tobacco Control approved by the Community by Council Decision 2004/513/EC of 2 June 2004 (OJ 2004 L 213, p. 8).

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

a certain originality or resonance, require at least some interpretation by the relevant public, or set off a cognitive process in the minds of that public. The Court therefore held that, however simple the slogan in question may be, it cannot be categorised as ordinary to the point of excluding, from the outset and without any further analysis, the possibility that the mark comprising that slogan is capable of indicating to the consumer the commercial origin of the goods or services covered by its registration.

In Joined Cases C-236/08 to C-238/08 *Google France SARL and Google Inc.* v *Louis Vuitton Malletier SA*, *Google France SARL* v *Viaticum SA* and *Luteciel SARL and Google France SARL* v *Centre national de recherche en relations humaines (CNRRH) SARL and Others* (judgment of 23 March 2010), the Court, on a reference for a preliminary ruling from the French Cour de cassation (Court of Cassation), ruled on the respective liability of providers of referencing services and advertisers in the event of use of 'AdWords'. The Court thus had to interpret the provisions of Regulation (EC) No 40/94 ([46]) and Directive 89/104/EEC ([47]) in order to clarify the concept of use of a mark for the purposes of Article 9(1) of Regulation (EC) No 40/94 and Article 5(1) and (2) of Directive 89/104/EEC. Google operates an Internet search engine based on the use of keywords and offers a paid referencing service called 'AdWords'. That service enables any economic operator, by means of the reservation of one or more keywords, to obtain the placing — in the event of a correspondence between one or more of those words and that/those entered as a request in the search engine by an Internet user — of an advertising link to its site, accompanied by an advertising message. The entry by Internet users of terms constituting trade marks into Google's search engine triggers the display, under the heading 'sponsored links', of links to sites offering imitations of the products of Louis Vuitton Malletier and to the sites of competitors of Viaticum and of the Centre national de recherche en relations humaines, respectively. Those companies, proprietors of the trade marks used as 'AdWords', therefore brought proceedings against Google with a view to obtaining a declaration that Google had infringed their trade marks.

The Cour de cassation, ruling at last instance in the proceedings brought against Google by the trade mark proprietors, asked the Court of Justice about the lawfulness of the use, as keywords in an Internet referencing service, of signs which correspond to trade marks, without consent having been given by the proprietors of those trade marks. The advertisers use those signs in respect of their goods or services. That is not, however, the case as regards the referencing service provider when it permits advertisers to select, as keywords, signs identical with trade marks, stores those signs and displays its clients' advertisements on the basis thereof.

The Court stated that the use, by a third party, of a sign identical with, or similar to, the proprietor's trade mark implies, at the very least, that that third party uses the sign in its own commercial communication. According to the Court, a referencing service provider allows advertisers to use signs which are identical with, or similar to, trade marks held by third parties, without itself using those signs. While a trade mark proprietor may not be able to rely on his marks as against the referencing service provider, which does not use them itself, he can nonetheless rely on them as against advertisers who, by means of the keyword corresponding to the marks, have advertisements placed by Google which do not enable Internet users, or enable them only with difficulty, to identify the undertaking from which the goods or services covered by the advertisements originate. The Internet user may err as to the origin of the goods or services in question. The function of the mark — to guarantee to consumers the origin of the goods or services ('function of indicating [the] origin' of

([46]) See the preceding footnote.

([47]) 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).

the mark) — is then adversely affected. The Court stated that it is for the national court to assess, on a case-by-case basis, whether the facts of the dispute before it indicate such adverse effects, or a risk thereof, on the function of indicating origin. With regard to the use by Internet advertisers of a sign corresponding to another person's trade mark as a keyword for the purposes of displaying advertising messages, the Court considered that that use is liable to have certain repercussions on the advertising use of the mark by its proprietor and on the latter's commercial strategy. Nevertheless, those repercussions of use by third parties of a sign identical with the trade mark do not of themselves constitute an adverse effect on the 'advertising function' of the trade mark.

The Court was also asked about the liability of an operator such as Google for its customers' data which are stored on its server. Questions of liability are governed by national law. However, European Union law lays down limitations of the liability of intermediary providers of information society services ([48]). In relation to whether an Internet referencing service, such as 'AdWords', constitutes an information society service consisting in the storage of information supplied by the advertiser and whether, therefore, the referencing service provider's liability is limited, the Court observed that the referring court had to examine whether the role played by the service provider was neutral, in the sense that its conduct was merely technical, automatic and passive, pointing to a lack of knowledge or control of the data which it stored. Furthermore, according to the Court, if it transpires that an Internet referencing service provider has not played an active role, it cannot be held liable for the data which it has stored at the request of an advertiser, unless, having obtained knowledge of the unlawful nature of those data or of that advertiser's activities, it failed to act expeditiously to remove or to disable access to those data.

Social policy

The Court has considered various aspects of social policy as reflected in the numerous directives introduced in this area.

In Case C-242/09 *Albron Catering* (judgment of 21 October 2010), the Court had to clarify the meaning of 'transferor' in Directive 2001/23/EC 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 ([49]). According to recital 3 in the preamble thereto, the directive is intended 'to provide for the protection of employees in the event of a change of employer'. To that effect, Article 3(1) provides that '[t]he transferor's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer shall, by reason of such transfer, be transferred to the transferee'. The question put to the Court in this case was whether, in the case of a transfer, within the meaning of Directive 2001/23/EC, of an undertaking belonging to a group to an undertaking outside that group, it is possible to regard as a 'transferor', within the meaning of Article 2(1)(a) of that directive, the group company to which the employees were assigned on a permanent basis without, however, being linked to the latter by a contract of employment, given that there exists within that group an undertaking with which the employees concerned were linked by such a contract of employment. The Court answered in the affirmative. The requirement under Article 3(1) of Directive 2001/23/EC that there be either an em-

([48]) 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 ('Directive on electronic commerce') (OJ 2000 L 178, p. 1).

([49]) 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).

ployment contract or, in the alternative and thus as an equivalent, an employment relationship at the date of the transfer suggests that, in the mind of the European Union legislature, a contractual link with the transferor is not required in all circumstances for employees to be able to benefit from the protection conferred by that directive.

In Case C-104/09 *Roca Álvarez* (judgment of 30 September 2010), the Court held that a national measure which provides that female workers who are mothers and whose status is that of an employed person are entitled, in various ways, to take leave during the first nine months following the child's birth, whereas male workers who are fathers with that same status are not entitled to the same leave unless the child's mother is also an employed person, is contrary to European Union law and, in particular, to Article 2(1), (3) and (4) and Article 5 of Directive 76/207/EEC ([50]). The Court noted that, since that leave can be taken by the employed father or the employed mother without distinction, meaning that feeding and devoting time to the child can be carried out just as well by the father as by the mother, it appears to be accorded to workers in their capacity as parents of the child. It cannot therefore be regarded as ensuring the protection of the biological condition of the woman following pregnancy or the protection of the special relationship between a mother and her child. Moreover, according to the Court, to refuse entitlement to such leave to fathers whose status is that of an employed person, on the sole ground that the child's mother does not have that status, could have as its effect that a woman who is self-employed would have to limit her self-employed activity and bear the burden resulting from the birth of her child alone, without the child's father being able to ease that burden. Consequently, the Court held that such a measure cannot be considered to be a measure eliminating or reducing existing inequalities in society within the meaning of Article 2(4) of Directive 76/207/EEC, nor a measure seeking to achieve substantive as opposed to formal equality by reducing the real inequalities that can arise in society and thus, in accordance with Article 157(4) TFEU, to prevent or compensate for disadvantages in the professional careers of the relevant persons.

In Case C-232/09 *Danosa* (judgment of 11 November 2010), the Court was asked, first, whether a person who provides services to a capital company, while being a member of its board of directors, must be regarded as a worker within the meaning of Directive 92/85/EEC 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 ([51]). The Court answered in the affirmative, provided that the activity of the person concerned is carried out, for some time, under the direction or supervision of another body of that company and if, in return for those activities, the board member receives remuneration. It also stated that the *sui generis* nature of the employment relationship under national law is of no consequence as regards whether or not a person is a worker for the purposes of European Union law. Next, the Court had to ascertain whether national legislation under which a member of the board of directors of a capital company may be dismissed without any account being taken of the fact that she is pregnant is in conformity with the prohibition of dismissal laid down in Article 10 of Directive 92/85/EEC. According to the Court, if the person concerned is a 'pregnant worker' within the meaning of that directive, the legislation must be considered incompatible with the directive. The Court added that if the applicant were not a 'pregnant worker' within the meaning of that directive, the applicant could potentially rely on

([50]) 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).

([51]) 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 (10th individual directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1992 L 348, p. 1).

Directive 76/207/EEC, as amended by Directive 2002/73/EC ([52]). By virtue of the principle of non-discrimination and, in particular, the provisions of Directive 76/207/EEC, protection against dismissal must be afforded to women not only during maternity leave, but also throughout the period of the pregnancy. Consequently, according to the Court, even if the board member concerned is not a 'pregnant worker', the fact remains that her removal on account of pregnancy or essentially on account of pregnancy can affect only women and therefore constitutes direct discrimination on grounds of sex, contrary to Article 2(1) and (7) and Article 3(1)(c) of Directive 76/207/EEC.

Cases C-194/08 *Gassmayr* and C-471/08 *Parviainen* (judgments of 1 July 2010) also resulted in rulings by the Court on the interpretation of Directive 92/85/EEC, cited above ([53]). Specifically, the Court was called upon to rule on issues relating to the calculation of the income which must be paid to workers during their pregnancy or maternity leave when they are temporarily transferred to another job or granted leave from work. According to the Court, Article 11(1) of Directive 92/85/EEC does not preclude national legislation which provides that a pregnant worker temporarily granted leave from work on account of her pregnancy is entitled to pay equivalent to the average earnings she received during a reference period prior to the beginning of her pregnancy with the exception of the on-call duty allowance. A pregnant worker who, in accordance with Article 5(2) of Directive 92/85/EEC, has been temporarily transferred on account of her pregnancy to a job in which she performs tasks other than those she performed prior to that transfer is not entitled to the pay she received on average prior to that transfer. The Member States and, where appropriate, management and labour are not required pursuant to Article 11(1) of Directive 92/85/EEC to maintain, during the temporary transfer, the pay components or supplementary allowances which are dependent on the performance by the worker concerned of specific functions in particular circumstances and which are intended essentially to compensate for the disadvantages related to that performance. By contrast, the Court held that, in addition to the maintenance of her basic salary, a pregnant worker granted leave from work or who is prohibited from working is entitled, pursuant to Article 11(1), to pay components or supplementary allowances relating to her professional status, such as allowances relating to her seniority, her length of service and her professional qualifications.

Furthermore, in Case C-149/10 *Chatzi* (judgment of 16 September 2010), the Court clarified the scope of clause 2.1 of the framework agreement on parental leave annexed to Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC ([54]). First, the Court held that that provision cannot be interpreted as conferring an individual right to parental leave on the child, on account of both the wording and the purpose of the framework agreement. Second, the Court rejected the interpretation of clause 2.1 of the framework agreement on parental leave that the birth of twins confers entitlement to a number of periods of parental leave equal to the number of children born. Nonetheless, the Court stated that, read in the light of the principle of equal treatment, this clause obliges the national legislature to establish a parental leave regime which, according to the situation obtaining in the Member State concerned, ensures that the parents of twins receive treatment that takes due account of their particular needs. It then

([52]) 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) and Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Directive 76/207/EEC (OJ 2002 L 269, p. 15).

([53]) See footnote 51.

([54]) Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC (OJ 1996 L 145, p. 4), as amended by Council Directive 97/75/EC of 15 December 1997 amending and extending, to the United Kingdom, Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC (OJ 1998 L 10, p. 24).

left it to national courts to determine whether the national rules meet that requirement and, if necessary, to interpret them, so far as possible, in conformity with European Union law.

A number of cases have served to enable the Court to reaffirm the existence of the principle of non-discrimination on grounds of age, and to clarify further the scope of that principle.

In Case C-499/08 *Andersen* (judgment of 12 October 2010), the Court had the opportunity to rule on the interpretation of Articles 2 and 6(1) of Directive 2000/78/EC ([55]) establishing a general framework for equal treatment in employment and occupation. According to the Court, those provisions preclude national legislation pursuant to which workers who are eligible to draw an old-age pension from their employer under a pension scheme which they have joined before attaining the age of 50 years cannot, on that ground alone, claim a severance allowance aimed at assisting workers with more than 12 years of service in the undertaking in finding new employment. The Court found that the legislation at issue operated a difference of treatment based directly on age which deprived certain workers of their right to the severance allowance on the sole ground that they were entitled to draw an old-age pension. The Court went on to consider the possible justification for that difference of treatment, under the conditions laid down by Directive 2000/78/EC. It held that while the legislation is proportionate in the light of legitimate employment policy and labour market objectives, it goes beyond what is necessary to attain those aims. It excludes from entitlement to the allowance not only all workers who are actually going to receive an old-age pension from their employer but also all those who are eligible for such a pension but who wish to continue with their career. The legislation is therefore not justified and, accordingly, is incompatible with Directive 2000/78/EC.

In Case C-555/07 *Kücükdevici* (judgment of 19 January 2010), the Court held that the principle of non-discrimination on grounds of age as given expression by Directive 2000/78/EC must be interpreted as precluding national legislation which provides that periods of employment completed by an employee before reaching the age of 25 are not taken into account in calculating the notice period for dismissal. The Court also observed that a directive cannot of itself impose obligations on an individual and cannot therefore be relied on as such against an individual. However, it noted that Directive 2000/78/EC merely gives expression to the principle of equal treatment in employment and occupation, and that the principle of non-discrimination on grounds of age is a general principle of European Union law. Consequently, it concluded that it is for the national court, hearing a dispute involving the principle of non-discrimination on grounds of age as given expression in Directive 2000/78/EC, to provide, within the limits of its jurisdiction, the legal protection which individuals derive from European Union law and to ensure the full effectiveness of that law, disapplying if need be any provision of national legislation contrary to that principle.

Finally, in Cases C-229/08 *Wolf* and C-341/08 *Petersen* (judgments of 12 January 2010) and in Case C-45/09 *Rosenbladt* (judgment of 12 October 2010), the Court ruled on the scope to be attributed to the principle of non-discrimination on grounds of age, in terms of Directive 2000/78/EC. In the first case, the Court held that, although national legislation which sets the maximum age for recruitment to intermediate career posts in the fire service at 30 years introduces a difference of treatment on grounds of age for the purposes of Article 2(2)(a) of Directive 2000/78/EC, such legislation may be regarded as appropriate to the objective of ensuring the operational capacity and proper functioning of the professional fire service, which constitutes a legitimate objective within the meaning of Article 4(1) of that directive. Furthermore, that legislation appears not to go beyond what is necessary to achieve that objective, since the possession of especially high physical

([55]) 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).

capacities may, for the purposes of Article 4(1) of the directive, be regarded as a genuine and determining occupational requirement for carrying on the occupation of a person in the intermediate career of the fire service, and the need to possess full physical capacity to carry on that occupation is related to the age of the persons in that career.

In the second case, the Court held that Article 2(5) of Directive 2000/78/EC precludes a national measure setting a maximum age for practising as a panel dentist, in this case 68 years, if its sole aim is ostensibly to protect the health of patients against the decline in performance of those dentists after that age and that age-limit does not apply to non-panel dentists. By contrast, Article 6(1) of that directive does not preclude such a measure where its aim is to share out employment opportunities among the generations in the profession of panel dentist, if, taking into account the situation in the labour market concerned, the measure is appropriate and necessary for achieving that aim. In the third case, the Court held that Article 6(1) of Directive 2000/78/EC does not preclude a national provision under which clauses on automatic termination of employment contracts on the ground that the employee has reached the age of retirement are considered to be valid, in so far as, first, that provision is objectively and reasonably justified by a legitimate aim relating to employment policy and the labour market and, second, the means of achieving that aim are appropriate and necessary.

Environment

In Case C-297/08 *Commission* v *Italy* (judgment of 4 March 2010), the Court had to consider whether, as the Commission claimed, the Italian Republic had failed to fulfil its obligations under Directive 2006/12/EC ([56]). The allegations against Italy related to the disposal of waste by the region of Campania only.

With regard to facilities for the recovery or disposal of urban waste, the Court observed that, for the purposes of establishing an integrated and adequate network of waste disposal installations, the Member States enjoy a measure of discretion as to the territorial basis which they consider appropriate for achieving national self-sufficiency. It may be appropriate for certain categories of waste, owing to their specific characteristics, to be treated at one or more dedicated national installations or even in cooperation with other Member States. By contrast, in the case of non-hazardous urban waste — which does not require specialised installations — the Member States must organise a disposal network as close as possible to the places where the waste is produced, although that does not alter the fact that it is also possible to establish interregional or even cross-border cooperation, where that is consistent with the principle of proximity. The opposition of inhabitants, the non-performance of contractual obligations or even the existence of criminal activity do not constitute cases of *force majeure* that might justify either the failure to fulfil obligations under that directive or the failure actually to construct the infrastructure on time.

With regard to danger to human health and harm to the environment, the Court observed that, whilst the directive lays down the objectives of preservation of the environment and protection of human health, it does not specify the actual content of the measures to be taken and leaves a certain margin of discretion to the Member States. It follows that, in principle, it cannot be inferred directly from the fact that a situation is not in conformity with the objectives laid down in Article 4(1) of Directive 2006/12/EC that the Member State concerned has necessarily failed to fulfil its obligations under that provision, that is to say, to take the requisite measures to ensure that waste is disposed of without endangering human health and without harming the environment. However,

([56]) Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (OJ 2006 L 114, p. 9).

if that situation persists and, in particular, if it leads to a significant deterioration in the environment over a protracted period without any action being taken by the competent authorities, this may be an indication that Member States have exceeded the discretion conferred on them by that provision. Consequently, by failing to establish an integrated and adequate network of waste recovery and disposal installations close to the place where that waste is produced, and by failing to adopt all the measures necessary to ensure that human health is not endangered or the environment harmed in the region of Campania, the Italian Republic failed to fulfil its obligations in two respects.

In the two judgments of 9 March 2010 in Case C-378/08 *ERG and Others* and Joined Cases C-379/08 and C-380/08 *ERG and Others*, respectively, the Court was able to consider the interpretation of Directive 2004/35/EC on environmental liability ([57]).

In Case C-378/08, the Court held that that environmental liability directive does not preclude national legislation which allows the competent authority to operate on the presumption that there is a causal link between operators and the pollution found on account of the fact that the operators' installations are located close to the polluted area. However, in accordance with the 'polluter pays' principle, in order for such a causal link to be presumed, that authority must have plausible evidence capable of justifying its presumption, such as the fact that the operator's installation is located close to the pollution found and that there is a correlation between the pollutants identified and the substances used by the operator in connection with his activities. Furthermore, the competent authority is not required to establish fault on the part of operators whose activities are held to be responsible for the environmental damage. On the other hand, that authority must carry out a prior investigation into the origin of the pollution found, and it has a discretion as to the procedures, means to be employed and length of such an investigation.

In Joined Cases C-379/08 and C-380/08, the Court held that the competent authority is permitted to alter substantially the measures for remedying environmental damage which were chosen at the conclusion of a procedure carried out on a consultative basis with the operators concerned and which have already been implemented or begun to be put into effect. However, in order to adopt such a decision, that authority must:

— give the operators the opportunity to be heard, except where the urgency of the environmental situation requires immediate action on the part of the competent authority;

— invite, amongst others, the persons on whose land those measures are to be carried out to submit their observations and take them into account; and

— state in its decision the grounds on which its choice is based, and, where appropriate, the grounds which justify the fact that there was no need for a detailed examination or that it was not possible to carry out such an examination due, for example, to the urgency of the environmental situation.

Also, the Court held that the directive on environmental liability did not preclude national legislation which permitted the competent authority to make the exercise by operators of the right to use their land subject to the condition that they carry out the environmental recovery works required, even though that land was not affected by those works because it had already been decontaminated or had never been polluted. However, such a measure had to be justified by the

([57]) Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ 2004 L 143, p. 56).

objective of preventing a deterioration of the environmental situation or, pursuant to the precautionary principle, by the objective of preventing the occurrence or resurgence of further environmental damage on the land belonging to the operators which was adjacent to the whole shoreline at which the remedial measures were directed.

Visas, asylum and immigration

A number of judgments relating to this constantly developing area deserve particular attention. In Joined Cases C-188/10 and C-189/10 *Melki and Abdeli* (judgment of 22 June 2010), the Court stated that Article 67(2) TFEU and Articles 20 and 21 of Regulation (EC) No 562/2006 ([58]) preclude national legislation which grants to the police authorities of the Member State in question the power to check, solely within an area of 20 kilometres from the land border of that State with States party to the Convention implementing the Schengen Agreement, the identity of any person, irrespective of his behaviour and of specific circumstances giving rise to a risk of breach of public order, in order to ascertain whether the obligations laid down by law to hold, carry and produce papers and documents are fulfilled, where that legislation does not provide the necessary framework for that power to guarantee that its practical exercise cannot have an effect equivalent to border checks.

In Case C-578/08 *Chakroun* (judgment of 4 March 2010), the Court had an opportunity to clarify its case-law concerning family reunification.

It held, first of all, that the phrase 'recourse to the social assistance system' in Article 7(1)(c) of Directive 2003/86/EC ([59]) must be interpreted as precluding a Member State from adopting rules in respect of family reunification which result in such reunification being refused to a sponsor who has proved that he has stable and regular resources which are sufficient to maintain himself and the members of his family, but who, given the level of his resources, will nevertheless be entitled to claim special assistance in order to meet exceptional, individually determined, essential living costs, tax refunds granted by local authorities on the basis of his income, or income-support measures in the context of local-authority minimum-income policies.

Second, the Court held that Directive 2003/86/EC, in particular Article 2(d) thereof, must be interpreted as precluding national legislation which, in applying the income requirement set out in Article 7(1)(c) of that directive, draws a distinction according to whether the family relationship arose before or after the sponsor entered the territory of the host Member State.

In Case C-31/09 *Bolbol* (judgment of 17 June 2010), the Court interpreted the first sentence of Article 12(1)(a) of Directive 2004/83/EC ([60]). It is a specific feature of this directive that it sets out, in the context of the European Union, the obligations arising under the Geneva Convention ([61]). The Court recalled that the particular convention rules applicable to displaced Palestinians relate only to persons who are at present receiving protection or assistance from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). Consequently, only

([58]) Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2006 L 105, p. 1).

([59]) Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).

([60]) Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12).

([61]) Geneva Convention of 28 July 1951 Relating to the Status of Refugees (*United Nations Treaty Series*, Vol. 189, p. 150, No 2545 (1954)).

those persons who have actually availed themselves of the assistance provided by UNRWA come within those particular rules. By contrast, persons who are or have been eligible to receive protection or assistance from that agency are still covered by the general provisions of the convention. Thus, their applications for refugee status must be examined individually and can be granted only if there has been persecution for reasons of race, religion, nationality or political persecution. As regards proof that assistance has actually been received from UNRWA, the Court stated that, while registration with UNRWA is sufficient proof, the beneficiary must be permitted to adduce evidence of that assistance by other means.

In Joined Cases C-57/09 and C-101/09 *B and D* (judgment of 9 November 2010), the Court clarified the rules for the application of the clauses excluding a person from refugee status laid down in Article 12(2)(b) and (c) of Directive 2004/83/EC ([62]). It was faced with an applicant for refugee status, on the one hand, and a recognised refugee, on the other, both of whom had been members of organisations included in the European Union list of persons, groups and entities involved in acts of terrorism drawn up in the context of combating terrorism in accordance with a resolution of the United Nations Security Council.

The Court began by considering whether it constitutes a 'serious non-political *crime*' or an '*act contrary to the purposes and principles of the United Nations*' within the meaning of Directive 2004/83/EC if the person concerned was a member of an organisation which is included in the list and actively supported the armed struggle pursued by that organisation, possibly in a prominent position. The Court stated that the exclusion from refugee status of a person who has been a member of an organisation which uses terrorist methods is conditional on an individual assessment of the specific facts, making it possible for the competent authority to determine whether there are serious reasons for considering that that person has, in the context of his activities within that organisation, committed a serious non-political crime or has been guilty of acts contrary to the purposes and principles of the United Nations, or that he has instigated such a crime or such acts, or participated in them in some other way, within the meaning of the directive.

It follows, first, that the mere fact that the person concerned was a member of such an organisation cannot automatically mean that that person must be excluded from refugee status. Second, the Court observed that participation alone in the activities of a terrorist group is not such as to trigger the automatic application of the exclusion clauses laid down in the directive, since the directive presupposes a full investigation into all the circumstances of each individual case.

The Court went on to find that exclusion from refugee status pursuant to one of the exclusion clauses concerned is not conditional on the person concerned representing a present danger to the host Member State. The exclusion clauses are intended as a penalty only for acts committed in the past. Within the scheme of the directive, there are other provisions enabling the competent authorities to adopt the necessary measures if a person represents a present danger.

Finally, the Court interpreted Directive 2004/83/EC as meaning that Member States may grant a right of asylum under their national law to a person who is excluded from refugee status pursuant to one of the exclusion clauses under that directive, provided that that other kind of protection does not entail a risk of confusion with refugee status within the meaning of the directive.

In Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08 *Salahadin Abdulla and Others* (judgment of 2 March 2010), the Court considered the conditions governing the cessation of refugee

([62]) See footnote 60.

status in connection with a change of the circumstances that had warranted its recognition, as provided for in Article 11(1)(e) of Directive 2004/83/EC.

The Court held that refugee status ceases to exist when, following a change of circumstances of a significant and non-temporary nature in the third country concerned, the circumstances which justified the fear of persecution no longer exist and the person has no other reason to fear persecution. In order to conclude that a refugee's fear of persecution is no longer justified, the competent authorities must verify that the third country's actor or actors of protection, referred to in Article 7(1) of Directive 2004/83/EC, have taken reasonable steps to prevent the persecution. They must therefore operate, inter alia, an effective legal system for the detection, prosecution and punishment of acts constituting persecution. The competent authorities must also ensure that the national concerned will have access to such protection if he ceases to have refugee status.

Next, the Court examined the situation where the circumstances which resulted in the granting of refugee status have ceased to exist, and clarified the circumstances in which the competent authorities must verify, if necessary, whether there are no other circumstances which could justify the person concerned reasonably fearing persecution. In the context of that analysis, the Court noted, inter alia, that both at the stage of the granting of refugee status and at the stage of the examination of the question of whether that status should be maintained, the assessment relates to the same question of whether or not the established circumstances constitute such a threat of persecution that the person concerned may reasonably fear, in the light of his individual situation, that he will in fact be subjected to acts of persecution. Consequently, the Court concluded that the standard of probability used to assess the risk of persecution is the same as that applied when refugee status was granted.

Judicial cooperation in civil matters and private international law

The 'Communitarisation' of judicial cooperation in civil matters has been accompanied, as was to be expected, by a strengthening of the role of the Community courts.

In the course of 2010, the Court of Justice delivered a number of important judgments concerning the interpretation of the special provisions applicable to contracts laid down by Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ([63]).

Reference must be made, first of all, to Case C-381/08 *Car Trim* (judgment of 25 February 2010), in which the Court was required to rule on the interpretation of Article 5(1)(b) of Regulation (EC) No 44/2001, which contains two independent definitions — the first in matters relating to a contract for the sale of goods and the second in matters relating to a contract for the provision of services — in order to facilitate the application of the rule of special jurisdiction in matters relating to a contract laid down in Article 5(1) of Regulation (EC) No 44/2001, a rule which designates the courts for the place of performance of the obligation in question. In matters relating to a contract for the sale of goods, the first indent of Article 5(1)(b) of the regulation defines the place of performance of that obligation as being the place of delivery of the goods, as provided for in the contract. In matters relating to a contract for the provision of services, the second indent of Article 5(1)(b) of the regulation refers to the place of provision of the services, as provided for in the contract. The question referred to the Court for a preliminary ruling in this case related, first, to the definition of the criteria for distinguishing between 'sale of goods' and 'provision of services' within the mean-

([63]) Council Regulation (EC) No 44/2001 of 22 December 2000 (OJ 2001 L 12, p. 1).

ing of Article 5(1)(b) of the regulation and, second, to the determination of the place of performance of the delivery obligation in the case of contracts involving carriage of goods, particularly if no provision has been made for this in the contract.

With regard to the first part of the question, the Court answered that Article 5(1)(b) of Regulation (EC) No 44/2001 must be interpreted as meaning that where the purpose of contracts is the supply of goods to be manufactured or produced and, even though the purchaser has specified certain requirements with regard to the provision, fabrication and delivery of the components to be produced, the purchaser has not supplied the materials and the supplier is responsible for the quality of the goods and their compliance with the contract, those contracts must be classified as a 'sale of goods' within the meaning of the first indent of Article 5(1)(b) of that regulation. In response to the second part of the question referred — concerning the determination of the place of performance of the contract in the case of contracts involving carriage of goods — the Court answered that, in accordance with the first indent of Article 5(1)(b) of Regulation (EC) No 44/2001, in the case of a sale involving carriage of goods, the place where, under the contract, the goods sold were delivered or should have been delivered must be determined on the basis of the provisions of the contract. It went on to clarify that where it is impossible to determine the place of delivery on that basis, without reference to the substantive law applicable to the contract, that place is the place where the physical transfer of the goods took place, as a result of which the purchaser obtained, or should have obtained, actual power of disposal over those goods at their final destination. The Court considers not only that that outcome meets the objectives of predictability and proximity, but also that it is consistent with the principal aim of a contract for the sale of goods, which is the transfer of those goods from the seller to the purchaser, an operation which is not fully completed until the arrival of those goods at their final destination.

Equally worthy of note are Joined Cases C-585/08 and C-144/09 *Pammer and Hotel. Alpenhof* (judgment of 7 December 2010), which also concern the application of Regulation (EC) No 44/2001 in matters relating to contracts. This judgment contains the Court's ruling on the interpretation of Article 15 of the regulation in relation to consumer contracts. More particularly, the question referred for a preliminary ruling that was common to both cases concerned the definition of the concept of 'activity directed' to the Member State in which the consumer is domiciled, as referred to in Article 15(1)(c) of Regulation (EC) No 44/2001. That concept, which is intended to allow the application of the regulation's special provisions protecting consumers to contracts concluded via the Internet, is not defined in the regulation. A joint declaration by the Council and the Commission on Article 15 of Regulation (EC) No 44/2001 states that 'the mere fact that an Internet site is accessible is not sufficient for Article 15 to be applicable, although a factor will be that this Internet site solicits the conclusion of distance contracts and that a contract has actually been concluded at a distance, by whatever means'. The declaration also states that factors such as the language or currency used on a website are not sufficient evidence.

In order to clarify the terms of that regulation, the Court provided a general definition of the concept of 'directed activity' in the context of electronic commerce and then a non-exhaustive list of evidence from which it may be concluded that the trader's activity is directed to the Member State of the consumer's domicile. In the first place, the Court confirmed that the concept of 'directed activity' must be interpreted independently, and established that a trader directs his activity, via the Internet, to the Member State of the defendant's domicile if, before the conclusion of any contract with the consumer, it is apparent from the websites and the trader's overall activity that the trader was envisaging doing business with consumers domiciled in one or more Member States, including the Member State of that consumer's domicile, in the sense that he was minded to conclude a contract with them. In the second place, the Court specified, non-exhaustively, the matters to be verified by the national court constituting a clear expression of the trader's intention to solicit

the custom of consumers established in a Member State other than his own, namely the international nature of the activity, mention of itineraries from other Member States for going to the place where the trader is established, use of a language or a currency other than the language or currency generally used in the Member State in which the trader is established with the possibility of making and confirming the reservation in that other language, mention of telephone numbers with an international code, outlay of expenditure on an Internet referencing service in order to facilitate access to the trader's site or that of his intermediary by consumers domiciled in other Member States, use of a top-level domain name other than that of the Member State in which the trader is established, and mention of an international clientele composed of customers domiciled in various Member States. Finally, in the third place, the Court confirmed in this judgment the insufficiency of matters such as the accessibility of the trader's website in the Member State of the consumer's domicile, mention of an e-mail address or other contact details, or the use of the language or currency generally used in the Member State of the trader's establishment.

Furthermore, in *Pammer*, the Court also determined that a voyage by freighter can be classified as 'package travel' for the purposes of Article 15(3) of Regulation (EC) No 44/2001 if it fulfils the necessary conditions for a 'package' within the meaning of Article 2(1) of Directive 90/314/EEC ([64]), according to which the voyage must involve, at an inclusive price, not only transport but also accommodation, and must last more than 24 hours. It will be noted that, with a view to ensuring consistency in the European Union's international private law, the Court decided to interpret Article 15(3) of Regulation (EC) No 44/2001 in the light of the corresponding provision in Regulation (EC) No 593/2008 on the law applicable to contractual obligations, which expressly refers to the concept of 'package travel' within the meaning of Directive 90/314/EEC.

The interpretation of Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 ([65]), has given rise to three judgments worthy of note. These judgments concern applications relating to the return of a child where that child has been wrongfully removed from the country of the child's habitual residence. It will also be noted that two of those judgments were delivered in the context of the urgent preliminary ruling procedure under Article 104b of the Court's Rules of Procedure. That procedure has applied since 1 March 2008 to references concerning the area of freedom, security and justice, enabling the Court to deal within a considerably reduced timescale with the most sensitive issues, such as those which can arise, for example, in certain situations where a person has been deprived of his liberty, where the answer to the question raised is decisive as to the assessment of the legal situation of the person in custody or deprived of his liberty or, in matters of parental responsibility or the custody of children, where the identity of the court having jurisdiction under European Union law depends on the answer to the question referred for a preliminary ruling.

In Case C-211/10 *Povse* (judgment of 1 July 2010), the referring Austrian court put a series of questions to the Court of Justice for a preliminary ruling, in the context of the urgent procedure referred to above, relating to the interpretation of the provisions concerning the custody and return of a child contained in Regulation (EC) No 2201/2003. The main proceedings were between the parents of a child who had been unlawfully removed by her mother from the family home in Italy to Austria. The complexity of the case arose from the fact that two sets of proceedings, one before the Italian courts and the other before the Austrian courts, had been conducted in parallel with different outcomes. The first question referred for a preliminary ruling related to whether a provisional

([64]) Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ 1990 L 158, p. 59).

([65]) Council Regulation (EC) No 2201/2003 of 27 November 2003 (OJ 2003 L 338, p. 1).

measure, such as that handed down by the Italian court revoking the prohibition on the mother leaving Italy with the child and provisionally awarding custody to both parents, while authorising the child to reside in Austria pending final judgment, is a 'judgment on custody that does not entail the return of the child' within the meaning of Article 10(b)(iv) of Regulation (EC) No 2201/2003. The effect of such a decision by the court of the Member State where the child was previously habitually resident is to transfer jurisdiction from that court to the courts of the Member State to which the child was taken. The Court of Justice held that a provisional judgment does not constitute a 'judgment on custody that does not entail the return of the child' within the meaning of Article 10(b)(iv) of that regulation, and cannot be the basis of a transfer of jurisdiction to the courts of the Member State to which the child has been unlawfully removed. That conclusion follows from the structure of the regulation and is also in the interests of the child. The converse solution might deter the court which has jurisdiction in the Member State where the child was previously resident from adopting the provisional measures required in the interests of the child. Second, the Court of Justice was asked to rule on the interpretation of Article 11(8) of Regulation (EC) No 2201/2003. According to that provision, a decision of non-return pursuant to Article 13 of the 1980 Hague Convention, such as that issued in this instance by the Austrian courts on the application of the father, cannot preclude the enforcement of any subsequent judgment which requires the return of the child issued by a court having jurisdiction under Regulation (EC) No 2201/2003, such as that which the father obtained from the Italian courts in the main proceedings after the delivery of the Austrian decision of non-return. The question put to the Court of Justice was whether, in order to be enforceable, the decision ordering the return of the child had to be based on a final judgment of the same court relating to rights of custody of the child. The Court answered in the negative, holding that such an interpretation is scarcely compatible with the objective of Article 11 of that regulation and the priority given to the jurisdiction of the court of origin. Third, the Court stated that the second subparagraph of Article 47(2) of Regulation (EC) No 2201/2003 must be interpreted as meaning that a judgment delivered subsequently by a court in the Member State of enforcement which awards provisional custody rights and is deemed to be enforceable under the law of that State cannot preclude enforcement of a certified judgment delivered previously by the court which has jurisdiction in the Member State of origin and ordering the return of the child. As to whether a certified judgment is irreconcilable, within the meaning of the second subparagraph of Article 47(2) of the regulation, with a subsequent enforceable judgment, that question must be addressed only in relation to any judgments subsequently handed down by the courts with jurisdiction in the Member State of origin. Finally, fourth, the Court held that enforcement of a certified judgment cannot be refused in the Member State of enforcement because, as a result of a subsequent change of circumstances, it might be seriously detrimental to the best interests of the child. Such a change constitutes an issue of substance which must be resolved by the court with jurisdiction in the Member State of origin.

The issue of rights of custody and wrongful removal of a child in the context of the application of Regulation (EC) No 2201/2003 was also at the heart of Case C-400/10 *McB.* (judgment of 5 October 2010), which was also dealt with under the urgent preliminary ruling procedure. This case highlights the differences between the national laws of the Member States in relation to the rights of custody of a father who is not married to the child's mother. In certain national legal systems, the natural father of a child does not, by operation of law, have rights of custody; the acquisition of those rights is dependent on his obtaining a judgment from a national court with jurisdiction awarding him such rights. That is the case under Irish law which was applicable to the substance of the dispute. It follows from this that, in the absence of a decision awarding him custody of the child, the father cannot establish that the child's removal was wrongful within the meaning of Article 2(11) of Regulation (EC) No 2201/2003 in order to apply for the return of the child in its country of habitual residence. The question referred to the Court for a preliminary ruling in *McB.* related to whether the law of a Member State which makes the grant of rights of

custody to the father of a child who is not married to the mother subject to his obtaining a judicial decision is compatible with Regulation (EC) No 2201/2003, interpreted in accordance with Article 7 of the Charter of Fundamental Rights of the European Union relating to respect for private and family life.

The Court emphasised, first of all, that while 'rights of custody' is defined autonomously by the regulation in question, it follows from Article 2(11)(a) of that regulation that the question of who has such rights is governed by the national law applicable, which is defined as being the law of the Member State where the child was habitually resident immediately before its removal or retention. Next, the Court held that the fact that, unlike the mother, the natural father is not a person who automatically possesses rights of custody in respect of his child within the meaning of Article 2 of Regulation (EC) No 2201/2003 does not affect the essence of his right to private and family life set out in Article 7 of the Charter of Fundamental Rights of the European Union, provided that his right to apply for rights of custody to the national court with jurisdiction is safeguarded.

Finally, in Case C-256/09 *Purrucker* (judgment of 15 July 2010), the Court of Justice was called upon to rule on the applicability of the provisions of Regulation (EC) No 2201/2003 relating to the recognition and enforcement of judgments given by the court of another Member State to provisional measures adopted in relation to rights of custody on the basis of Article 20 of the regulation. In the first place, the Court recalled the distinction between the rules under Articles 8 to 14 of the regulation, which establish jurisdiction as to the substance of the matter, and the rule under Article 20(1) of the regulation, under which a court of a Member State may adopt provisional, including protective, measures, even if its jurisdiction as to the substance is not established, subject to the threefold condition that the measures adopted are urgent, are taken in respect of persons and assets in the Member State where that court is situated and are provisional. In the second place, the Court held that the system of recognition and enforcement provided for in Article 21 et seq. of Regulation (EC) No 2201/2003 is not applicable to provisional measures adopted on the basis of Article 20 of that regulation. The Court stated that it was not the intention of the European Union legislature that there should be such applicability, as is clear both from the legislative history and from equivalent provisions in earlier instruments, such as Regulation (EC) No 1347/2000 and the Brussels II Convention. Furthermore, the Court accepted that the application in all other Member States, including the State which has substantive jurisdiction, of the system of recognition and enforcement provided for by Regulation (EC) No 2201/2003 in regard to provisional measures would create a risk of circumvention of the rules of jurisdiction laid down by that regulation and of forum shopping. That situation would be contrary to the objectives pursued by the regulation and, in particular, to the objective of making sure that the best interests of the child are taken into consideration by ensuring that decisions concerning the child are taken by the court geographically close to his habitual residence, that court being regarded by the European Union legislature as the court best placed to assess the measures to be taken in the interests of the child. Finally, in the third place, the Court ruled on the need to allow the defendant in the urgent procedure to bring an appeal against the judgment ordering provisional measures. The Court considered that, in view of the importance of the provisional measures — whether they are adopted by a court which has substantive jurisdiction or not — which may be ordered in matters of parental responsibility, it is vital that a person affected by such a procedure, even if that person has been heard by the court which adopted the provisional measures, be able to take steps to bring an appeal against the judgment ordering those measures. It is essential that that person be able to have the substantive jurisdiction which that court attributed to itself, or — if it is not evident from the judgment that that court had, or had attributed to itself, substantive jurisdiction on the basis of that regulation — compliance with the conditions set out in Article 20 of the

regulation, reviewed by a court which is different from the court which adopted the measures and which is capable of ruling promptly.

Police and judicial cooperation in criminal matters

The instrument that epitomises police and judicial cooperation in criminal matters, the European arrest warrant, continues to generate case-law.

In Case C-261/09 *Mantello* (judgment of 16 November 2010), the Court interpreted Article 3(2) of Framework Decision 2002/584/JHA ([66]), which allows the judicial authority of the Member State of execution to refuse to execute a European arrest warrant if the executing judicial authority is informed that the requested person has been 'finally judged by a Member State in respect of the same acts'. Asked, first of all, about the interpretation of 'same acts', the Court held that, for the purposes of the issue and execution of a European arrest warrant, the concept of the 'same acts' in Article 3(2) of Framework Decision 2002/584/JHA is an autonomous concept of European Union law. That concept of the 'same acts' also appears, moreover, in Article 54 of the Convention implementing the Schengen Agreement and has, in that context, been interpreted as referring only to the nature of the acts, encompassing a set of concrete circumstances which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected. In view of the shared objective of Article 54 of that convention and of Article 3(2) of the framework decision, which is to ensure that a person is not prosecuted or tried more than once in respect of the same acts, the interpretation of that concept given in the context of the Convention implementing the Schengen Agreement is therefore equally valid for the purposes of Framework Decision 2002/584/JHA.

Next, the Court stated that a requested person is considered to have been finally judged in respect of the same acts where, following criminal proceedings, further prosecution is definitively barred or the accused is finally acquitted. Whether a person has been 'finally' judged is determined by the law of the Member State in which judgment was delivered. Consequently, a decision which, under the law of the Member State which instituted the criminal proceedings, does not definitively bar further prosecution at national level in respect of certain acts does not constitute a procedural obstacle to the possible opening or continuation of criminal proceedings in respect of the same acts in one of the Member States of the European Union. When, in response to a request for information from the executing judicial authority, the authority which issued the arrest warrant has expressly stated, on the basis of its national law, that the earlier judgment delivered in its legal order is not a final judgment covering the acts referred to in the arrest warrant, the executing judicial authority cannot, in principle, refuse execution of the European arrest warrant.

Foreign and security policy

In the context of the common foreign and security policy, the Court, on a reference from the Oberlandesgericht Düsseldorf (Düsseldorf Higher Regional Court), clarified the scope of the specific restrictive measures directed against certain persons and entities with a view to combating terrorism (judgment of 29 June 2010 in Case C-550/09 *E and F*), and provided its interpretation of Articles 2 and 3 of Regulation (EC) No 2580/2001 ([67]).

([66]) 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).

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

In order to implement certain United Nations Organisation resolutions, the Council adopted Common Position 2001/931/CFSP ([68]) and Regulation (EC) No 2580/2001, which order the freezing of funds as against persons and entities included on a list established and regularly updated by decisions of the Council. Regulation (EC) No 2580/2001, moreover, prohibits funds from being made available, directly or indirectly, to persons or entities included on that list.

Until June 2007, decisions were adopted without any notice to the persons or entities on the list of the specific reasons for their inclusion on that list. Following a judgment of the General Court ([69]) in which the listing of a group was held to be illegal on the grounds, in particular, that the Council had failed to state reasons for that listing and substantive review by the courts of the European Union was therefore impossible, the Council changed its listing procedure. On the adoption of a new decision updating the list ([70]), which entered into force on 29 June 2007, the Council therefore provided the persons and groups concerned with a statement of reasons justifying their inclusion on the list. The General Court, in subsequent judgments, held the listing of a number of other entities to be illegal on the same grounds as those set out in its judgment in Case T-228/02. On 2 May 2002, the organisation Devrimci Halk Kurtulus Partisi-Cephesi (DHKP-C) was included on the list in question. The Council has since adopted various decisions updating that list. DHKP-C has always remained on it.

The case in which the Court was requested to rule concerned two German nationals against whom criminal proceedings had been brought in Germany. Mr E. and Mr F. were accused of being members of DHKP-C between 30 August 2002 and 5 November 2008. They had been placed in pre-trial detention for membership of a terrorist group and criminal proceedings had been brought against them. Since it had doubts concerning the legality of DHKP-C's inclusion on the list, the referring court asked the Court of Justice whether, in the context of the General Court's judgments annulling the listing of certain persons and entities owing to infringement of basic procedural guarantees, DHKP-C's listing must also be regarded as illegal for the period prior to 29 June 2007, notwithstanding the fact that DHKP-C had not sought annulment of that listing.

At the outset, the Court observed that the case before the national court could lead to criminal penalties entailing custodial sentences. In that context, it noted that the European Union is based on the rule of law and the acts of its institutions are subject to review by the Court of their compatibility with the Treaty on the Functioning of the European Union and the general principles of law. In proceedings before the national courts, every party has the right to plead the illegality of the provisions contained in legislative acts of the European Union which serve as the basis for a decision or act of national law relied upon against him and to prompt the national court to put that question to the Court by means of a reference for a preliminary ruling if the party in question had no right of direct action by which it could challenge those provisions before the General Court.

Regarding the legality of the Council's decisions prior to June 2007, the Court noted that none of those decisions was accompanied by a statement of reasons relating to the legal conditions for the application to DHKP-C of the regulation or an explanation of the actual and specific reasons for which the Council considered that the inclusion of DHKP-C on the list was justified, or remained

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

([69]) Case T-228/02 *Organisation des Modjahedines du peuple d'Iran* v *Council* [2006] ECR II-4665.

([70]) Council Decision 2007/445/EC of 28 June 2007 implementing Article 2(3) of Regulation (EC) No 2580/2001 and repealing Decisions 2006/379/EC and 2006/1008/EC (OJ 2007 L 169, p. 58).

so. The accused were therefore denied the information necessary to enable them to verify whether the inclusion of DHKP-C on the list during the period prior to 29 June 2007 was well founded, and to satisfy themselves, in particular, as to the accuracy and relevance of the evidence on which that listing was based, despite the fact that it was one of the grounds of the indictment drawn up against them. The lack of a statement of reasons which vitiated the listing was also liable to frustrate the attempts of the courts to carry out an adequate review of the substantive legality of that listing. The possibility of an adequate review by the courts is indispensable if a fair balance between the requirements of the fight against international terrorism, on the one hand, and the protection of fundamental liberties and rights, on the other, is to be ensured.

As to whether the decision of June 2007 legitimated DHKP-C's inclusion on the list *ex-post facto*, the Court held that that decision could not, in any circumstances, be relied upon as a basis for a criminal conviction in respect of acts relating to the period prior to its entry into force. Such an interpretation would infringe the principle of the non-retroactivity of provisions which may form the basis for a criminal conviction. In those circumstances, the Court held that it was for the national court to decline to apply, in the proceedings before it, the decisions of the Council adopted before June 2007, which consequently could not form any part of the basis for criminal proceedings against Mr E. or Mr F. in respect of the period prior to 29 June 2007.

Finally, the Court provided a wide interpretation of the prohibition laid down by Article 2(1)(b) of Regulation (EC) No 2580/2001 on making funds available for the benefit of persons or entities included on the list. According to the Court, that prohibition encompasses all the acts necessary if a person, a group or an entity on the list provided for in Article 2(3) of Regulation (EC) No 2580/2001 is effectively to obtain full power of disposal in respect of the funds, other financial assets and economic resources concerned. According to the Court, that meaning is independent of the existence or absence of a relationship between the perpetrator of the act of 'making available' and the beneficiary.

In Case C-340/08 *M and Others* (judgment of 29 April 2010), the Court addressed the question whether social security and social assistance benefits — such as living allowance, child benefit, housing benefit — granted to the spouses of presumed terrorists included on the list of Regulation (EC) No 881/2002 ([71]) are covered by the freezing of funds under that regulation.

The Court held that, given that there are certain divergences between the various language versions of that regulation and of the United Nations Security Council resolution which it is designed to implement, the regulation must be construed in terms of its purpose, which is to combat international terrorism. The objective of the freezing of funds is to stop the persons concerned having access to economic or financial resources, whatever their nature, that they could use to support their terrorist activities. In particular, that objective has to be understood as meaning that the freezing of funds applies only to those assets that can be turned into funds, goods or services capable of being used to support terrorist activities. The Court observed that it had not been argued that the spouses concerned handed over those funds to their husbands instead of allocating them to their basic household expenses, and it was not disputed that the funds in question were in fact used by the spouses to meet the essential needs of the households to which the persons included on the list belonged. It was hard to imagine how those funds could be turned into means that

([71]) 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 Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ 2002 L 139, p. 9).

could be used to support terrorist activities, since benefits were fixed at a level intended to meet only the strictly vital needs of the persons concerned. Therefore, the Court concluded that the benefit that a listed person might indirectly derive from the social payments made to his spouse does not compromise the objective pursued by that regulation. In consequence, Regulation (EC) No 881/2002 does not apply to the grant of social security or social assistance benefits to the spouses of persons included on the freezing of funds list.

C — Composition of the Court of Justice

(order of precedence as at 7 October 2010)

First row, from left to right:

A. Arabadjiev, President of Chamber; Y. Bot, First Advocate General; K. Lenaerts, President of Chamber; A. Tizzano, President of Chamber; V. Skouris, President of the Court; J. N. Cunha Rodrigues, President of Chamber; J.-C. Bonichot, President of Chamber; K. Schiemann, President of Chamber; J.-J. Kasel, President of Chamber.

Second row, from left to right:

M. Ilešič, Judge; G. Arestis, Judge; J. Kokott, Advocate General; A. Rosas, Judge; D. Šváby, President of Chamber; R. Silva de Lapuerta, Judge; E. Juhász, Judge; A. Borg Barthet, Judge; J. Malenovský, Judge.

Third row, from left to right:

J. Mazák, Advocate General; P. Mengozzi, Advocate General; L. Bay Larsen, Judge; E. Levits, Judge; U. Lõhmus, Judge; A. Ó Caoimh, Judge; E. Sharpston, Advocate General; P. Lindh, Judge; T. von Danwitz, Judge.

Fourth row, from left to right:

E. Jarašiūnas, Judge; P. Cruz Villalón, Advocate General; M. Berger, Judge; C. Toader, Judge; V. Trstenjak, Advocate General; M. Safjan, Judge; N. Jääskinen, Advocate General; A. Prechal, Judge; A. Calot Escobar, 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 for Internal Affairs (in 1989 and 1996); member of the Administrative Board of the University of Crete (1983–87); Director of the Centre for International and European Economic Law, Thessaloniki (1997–2005); President of the Greek Association for European Law (1992–94); member of the Greek National Research Committee (1993–95); member of the Higher Selection Board for Greek Civil Servants (1994–96); member of the Academic Council of the Academy of European Law, Trier (from 1995); member of the Administrative Board of the Greek National Judges' College (1995–96); member of the Scientific Committee of the Ministry of Foreign Affairs (1997–99); President of the Greek Economic and Social Council in 1998; Judge at the Court of Justice since 8 June 1999; President of the Court of Justice since 7 October 2003.

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 from 7 October 2000 to 10 June 2010.

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); LL.M. (American University/Washington DC); Doctor of Laws (Heidelberg University, 1985; Harvard University, 1990); Visiting Professor at the University of California, Berkeley (1991); Professor of German and Foreign Public Law, International Law and European Law at the Universities of Augsburg (1992), Heidelberg (1993) and Düsseldorf (1994); Deputy Judge for the Federal Government at the Court of Conciliation and Arbitration of the Organisation for Security and Cooperation in Europe (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.

Konrad Hermann Theodor Schiemann

Born 1937; law degrees from 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.

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 from 11 May 2004 to 6 October 2010.

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); District Court Judge (1982); 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 U.O.M.

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); judicial service examination; Professor of Civil, Commercial and Private International Law; Vice-Dean (1995–2001) and Dean (2001–04) of the Faculty of Law at the University of Ljubljana; author of numerous legal publications; Honorary Judge and President of Chamber at the Labour Court, Ljubljana (1975–86); President of the Sports Tribunal of Slovenia (1978–86); President of the Arbitration Chamber of the Ljubljana Stock Exchange; 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 and FIFA; President of the Union of Slovene Lawyers' Associations (1993–2005); member of the International Law Association, of the International Maritime Committee and of several other international legal societies; 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.

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 Programme of the University of Nijmegen; member of the Consultative Committee of the Commission of the European Communities on Public Procurement; Under-Secretary of State for Trade and Industry during the Italian tenure of the Presidency of the Council; member of the Working Group of the European Community on the World Trade Organisation (WTO) and Director of the 1997 session of the research centre of The Hague Academy of International Law, devoted to the WTO; Judge at the Court of First Instance from 4 March 1998 to 3 May 2006; Advocate General at the Court of Justice since 4 May 2006.

Pernilla Lindh

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

Yves Bot

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

Ján Mazák

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

Jean-Claude Bonichot

Born 1955; graduated in law at the University of Metz, degree from the Institut d'études politiques, Paris, former student at the École nationale d'administration; Rapporteur (1982–85), Commissaire du gouvernement (1985–87 and 1992–99), Judge (1999–2000), President of the Sixth Sub-Division of the Judicial Division (2000–06), at the Council of State; Legal Secretary at the Court of Justice (1987–91); Director of the Private Office of the Minister for Labour, Employment and Vocational Training, then Director of the Private Office of the Minister of State 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); Doctor *honoris causa* of François Rabelais University, Tours (2010); 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; 'Lawyer of the Year 2003' prize of the Association of Slovene Lawyers; 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; law degree (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); called to the Bucharest Bar (1992); Lecturer (1992–2005), then, from 2005, Professor 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 (1999–2007); 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; from 2010 associate member of the International Academy of Comparative Law and honorary researcher at the Centre for European Legal Studies of the Legal Research Institute of the Romanian Academy; 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.

Marek Safjan

Born 1949; Doctor of Law (University of Warsaw, 1980); habilitated Doctor in Legal Science (University of Warsaw, 1990); Professor of Law (1998); Director of the Civil Law Institute of the University of Warsaw (1992–96); Vice-Rector of the University of Warsaw (1994–97); Secretary-General of the Polish Section of the Henri Capitant Association of Friends of French Legal Culture (1994–98); representative of the Republic of Poland on the Bioethics Committee of the Council of Europe (1991–97); Chairman of the Scientific Council of the Institute of Justice (1998); Judge (1997–98), then President (1998–2006), of the Constitutional Court; member (since 1994) and Vice-President (since 2010) of the International Academy of Comparative Law; member of the International Association of Law, Ethics and Science (since 1995); member of the Helsinki Committee in Poland; member of the Polish Academy of Arts and Sciences; Pro Merito Medal conferred by the Secretary-General of the Council of Europe (2007); author of a very large number of publications in the fields of civil law, medical law and European law; Judge at the Court of Justice since 7 October 2009.

Daniel Šváby

Born 1951; Doctor of Laws (University of Bratislava); Judge at the 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 from 12 May 2004 to 6 October 2009; Judge at the Court of Justice since 7 October 2009.

Maria Berger

Born 1956; studied law and economics (1975–79), Doctor of Law; Assistant Lecturer and Lecturer at the Institute of Public Law and Political Sciences of the University of Innsbruck (1979–84); Administrator at the Federal Ministry of Science and Research, ultimately Deputy Head of Unit (1984–88); official responsible for questions relating to the European Union at the Federal Chancellery (1988–89); Head of the European Integration Section of the Federal Chancellery (preparation for the Republic of Austria's accession to the European Union) (1989–92); Director at the EFTA Surveillance Authority, in Geneva and Brussels (1993–94); Vice-President of Danube University, Krems (1995–96); member of the European Parliament (November 1996 to January 2007 and December 2008 to July 2009) and member of the Committee on Legal Affairs; substitute member of the European Convention on the Future of Europe (February 2002 to July 2003); Councillor of the Municipality of Perg (September 1997 to September 2009); Federal Minister for Justice (January 2007 to December 2008); Judge at the Court of Justice since 7 October 2009.

Niilo Jääskinen

Born 1958; law degree (1980), postgraduate law degree (1982), Doctorate (2008) at the University of Helsinki; Lecturer at the University of Helsinki (1980–86); Legal Secretary and acting Judge at the District Court, Rovaniemi (1983–84); Legal Adviser (1987–89), and subsequently Head of the European Law Section (1990–95), at the Ministry of Justice; Legal Adviser at the Ministry of Foreign Affairs (1989–90); Adviser, and Clerk for European Affairs, of the Grand Committee of the Finnish Parliament (1995–2000); acting Judge (July 2000 to December 2002), then Judge (January 2003 to September 2009), at the Supreme Administrative Court; responsible for legal and institutional questions during the negotiations for the accession of the Republic of Finland to the European Union; Advocate General at the Court of Justice since 7 October 2009.

Pedro Cruz Villalón

Born 1946; law degree (1963–68) and awarded Doctorate (1975) at the University of Seville; postgraduate studies at the University of Freiburg im Breisgau (1969–71); Assistant Professor of Political Law at the University of Seville (1978–86); Professor of Constitutional Law at the University of Seville (1986–92); Legal Secretary at the Constitutional Court (1986–87); Judge at the Constitutional Court (1992–98); President of the Constitutional Court (1998–2001); Fellow of the Wissenschaftskolleg zu Berlin (2001–02); Professor of Constitutional Law at the Autonomous University of Madrid (2002–09); elected member of the Council of State (2004–09); author of numerous publications; Advocate General at the Court of Justice since 14 December 2009.

Alexandra (Sacha) Prechal

Born 1959; studied law (University of Groningen, 1977–83); Doctor of Laws (University of Amsterdam, 1995); Law Lecturer in the Law Faculty of the University of Maastricht (1983–87); Legal Secretary at the Court of Justice of the European Communities (1987–91); Lecturer at the Europa Institute of the Law Faculty of the University of Amsterdam (1991–95); Professor of European Law in the Law Faculty of the University of Tilburg (1995–2003); Professor of European Law in the Law Faculty of the University of Utrecht and board member of the Europa Institute of the University of Utrecht (from 2003); member of the editorial board of several national and international legal journals; author of numerous publications; member of the Royal Netherlands Academy of Arts and Sciences; Judge at the Court of Justice since 10 June 2010.

Egidijus Jarašiūnas

Born 1952; law degree at the University of Vilnius (1974–79); Doctor of Legal Science of the Law University of Lithuania (1999); member of the Lithuanian Bar (1979–90); member of the Supreme Council (Parliament) of the Republic of Lithuania (1990–92), then member of the Seimas (Parliament) of the Republic of Lithuania and member of the Seimas' State and Law Committee (1992–96); Judge at the Constitutional Court of the Republic of Lithuania (1996–2005), then Adviser to the President of the Lithuanian Constitutional Court (from 2006); Lecturer in the Constitutional Law Department of the Law Faculty of Mykolas Romeris University (1997–2000), then Associate Professor (2000–04) and Professor (from 2004) in that department, and finally Head of Department (2005–07); Dean of the Law Faculty of Mykolas Romeris University (2007–10); member of the Venice Commission (2006–10); signatory of the act of 11 March 1990 re-establishing Lithuania's independence; author of numerous legal publications; Judge at the Court of Justice since 6 October 2010.

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 of the Court of Justice from 10 February 1994 to 6 October 2010.

Alfredo Calot Escobar

Born 1961; law degree at the University of Valencia (1979–84); Business Analyst at the Council of the Chambers of Commerce of the Autonomous Community of Valencia (1986); Lawyer-linguist at the Court of Justice (1986–90); Lawyer-reviser at the Court of Justice (1990–93); Administrator in the Press and Information Service of the Court of Justice (1993–95); Administrator in the Secretariat of the Institutional Affairs Committee of the European Parliament (1995–96); Aide to the Registrar of the Court of Justice (1996–99); Legal Secretary at the Court of Justice (1999–2000); Head of the Spanish Translation Division at the Court of Justice (2000–01); Director, then Director-General, of Translation at the Court of Justice (2001–10); Registrar of the Court of Justice since 7 October 2010.

2. Change in the composition of the Court of Justice in 2010

Formal sitting on 10 June 2010

Following the resignation of Mr Christian Timmermans, by decision of 2 June 2010 the Representatives of the Governments of the Member States of the European Union appointed Ms Alexandra Prechal as a Judge at the Court of Justice of the European Union for the remainder of Mr Timmermans' term of office, that is to say, for the period from 10 June 2010 to 6 October 2012.

Formal sitting on 6 October 2010

Following the resignation of Mr Pranas Kūris, by decision of 29 September 2010 the Representatives of the Governments of the Member States of the European Union appointed Mr Egidijus Jarašiūnas as a Judge at the Court of Justice of the European Union for the remainder of Mr Kūris's term of office, that is to say, for the period from 6 October 2010 to 6 October 2012.

Following the resignation of Mr Roger Grass, who had performed the duties of Registrar of the Court of Justice since 10 February 1994, Mr Alfredo Calot Escobar was on 14 September 2010 elected Registrar of the Court of Justice of the European Union by the Judges and the Advocates General for a term of office of six years, that is to say, for the period from 7 October 2010 to 6 October 2016.

3. Order of precedence

from 1 January 2010 to 10 June 2010

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

R. GRASS, Registrar

from 11 June 2010 to 6 October 2010

V. SKOURIS, President of the Court
A. TIZZANO, President of the First Chamber
J. N. CUNHA RODRIGUES, President of the Second Chamber
K. LENAERTS, President of the Third Chamber
J.-C. BONICHOT, President of the Fourth Chamber
P. MENGOZZI, First Advocate General
R. SILVA de LAPUERTA, President of the Seventh Chamber
E. LEVITS, President of the Fifth Chamber
P. LINDH, President of the Sixth Chamber
C. TOADER, President of the Eighth Chamber
A. ROSAS, Judge
J. KOKOTT, Advocate General
K. SCHIEMANN, Judge
P. KŪRIS, Judge
E. JUHÁSZ, Judge
G. ARESTIS, Judge
A. BORG BARTHET, Judge
M. ILEŠIČ, Judge
J. MALENOVSKÝ, Judge
U. LÕHMUS, Judge
A. Ó CAOIMH, Judge
L. BAY LARSEN, Judge
E. SHARPSTON, Advocate General
Y. BOT, Advocate General
J. MAZÁK, Advocate General
T. von DANWITZ, Judge
V. TRSTENJAK, Advocate General
A. ARABADJIEV, Judge
J.-J. KASEL, Judge
M. SAFJAN, Judge
D. ŠVÁBY, Judge
M. BERGER, Judge
N. JÄÄSKINEN, Advocate General
P. CRUZ VILLALÓN, Advocate General
A. PRECHAL, Judge

R. GRASS, Registrar

from 7 October 2010 to 31 December 2010

V. SKOURIS, President of the Court
A. TIZZANO, President of the First Chamber
J.N. CUNHA RODRIGUES, President of the Second Chamber
K. LENAERTS, President of the Third Chamber
J.-C. BONICHOT, President of the Fourth Chamber
Y. BOT, First Advocate General
K. SCHIEMANN, President of the Eighth Chamber
A. ARABADJIEV, President of the Sixth Chamber
J.-J. KASEL, President of the Fifth Chamber
D. ŠVÁBY, President of the Seventh Chamber
A. ROSAS, Judge
R. SILVA de LAPUERTA, Judge
J. KOKOTT, Advocate General
E. JUHÁSZ, Judge
G. ARESTIS, Judge
A. BORG BARTHET, Judge
M. ILEŠIČ, Judge
J. MALENOVSKÝ, Judge
U. LÕHMUS, Judge
E. LEVITS, Judge
A. Ó CAOIMH, Judge
L. BAY LARSEN, Judge
E. SHARPSTON, Advocate General
P. MENGOZZI, Advocate General
P. LINDH, Judge
J. MAZÁK, Advocate General
T. von DANWITZ, Judge
V. TRSTENJAK, Advocate General
C. TOADER, Judge
M. SAFJAN, Judge
M. BERGER, Judge
N. JÄÄSKINEN, Advocate General
P. CRUZ VILLALÓN, Advocate General
A. PRECHAL, Judge
E. JARAŠIŪNAS, Judge

A. CALOT ESCOBAR, Registrar

4. Former members of the Court of Justice

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

René Joliet, Judge (1984–95)
Carl Otto Lenz, Advocate General (1984–97)
Thomas Francis O'Higgins, Judge (1985–91)
Fernand Schockweiler, Judge (1985–96)
José Luís Da Cruz Vilaça, Advocate General (1986–88)
José Carlos De Carvalho Moitinho de Almeida, Judge (1986–2000)
Jean Mischo, Advocate General (1986–91 and 1997–2003)
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)
Giuseppe Tesauro, Advocate General (1988–98)
Francis Geoffrey Jacobs, Advocate General (1988–2006)
Paul Joan George Kapteyn, Judge (1990–2000)
John L. Murray, Judge (1991–99)
Claus Christian Gulmann, Advocate General (1991–94), then Judge (1994–2006)
David Alexander Ogilvy Edward, Judge (1992–2004)
Michael Bendik Elmer, Advocate General (1994–97)
Günter Hirsch, Judge (1994–2000)
Georges Cosmas, Advocate General (1994–2000)
Antonio Mario La Pergola, Judge (1994 and 1999–2006), Advocate General (1995–99)
Jean-Pierre Puissochet, Judge (1994–2006)
Philippe Léger, Advocate General (1994–2006)
Hans Ragnemalm, Judge (1995–2000)
Nial Fennelly, Advocate General (1995–2000)
Leif Sevón, Judge (1995–2002)
Melchior Wathelet, Judge (1995–2003)
Peter Jann, Judge (1995–2009)
Dámaso Ruiz-Jarabo Colomer, Advocate General (1995–2009)
Romain Schintgen, Judge (1996–2008)
Krateros Ioannou, Judge (1997–99)
Siegbert Alber, Advocate General (1997–2003)
Antonio Saggio, Advocate General (1998–2000)
Fidelma O'Kelly Macken, Judge (1999–2004)
Stig Von Bahr, Judge (2000–06)
Ninon Colneric, Judge (2000–06)
Leendert A. Geelhoed, Advocate General (2000–06)
Christine Stix-Hackl, Advocate General (2000–06)
Christiaan Willem Anton Timmermans, Judge (2000–10)
Luís Miguel Poiares Pessoa Maduro, Advocate General (2003–09)
Jerzy Makarczyk, Judge (2004–09)
Ján Klučka, Judge (2004–09)
Pranas Kūris, Judge (2004–10)

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)
Roger Grass (1994–2010)

D — Statistics concerning the judicial activity of the Court of Justice

General activity of the Court of Justice

1. New cases, completed cases, cases pending (2006–10)

New cases

2. Nature of proceedings (2006–10)
3. Subject-matter of the action (2010)
4. Actions for failure of a Member State to fulfil its obligations (2006–10)

Completed cases

5. Nature of proceedings (2006–10)
6. Judgments, orders, opinions (2010)
7. Bench hearing action (2006–10)
8. Cases completed by judgments, by opinions or by orders involving a judicial determination (2006–10)
9. Subject-matter of the action (2006–10)
10. Subject-matter of the action (2010)
11. Judgments concerning failure of a Member State to fulfil its obligations: outcome (2006–10)
12. Duration of proceedings (judgments and orders involving a judicial determination) (2006–10)

Cases pending as at 31 December

13. Nature of proceedings (2006–10)
14. Bench hearing action (2006–10)

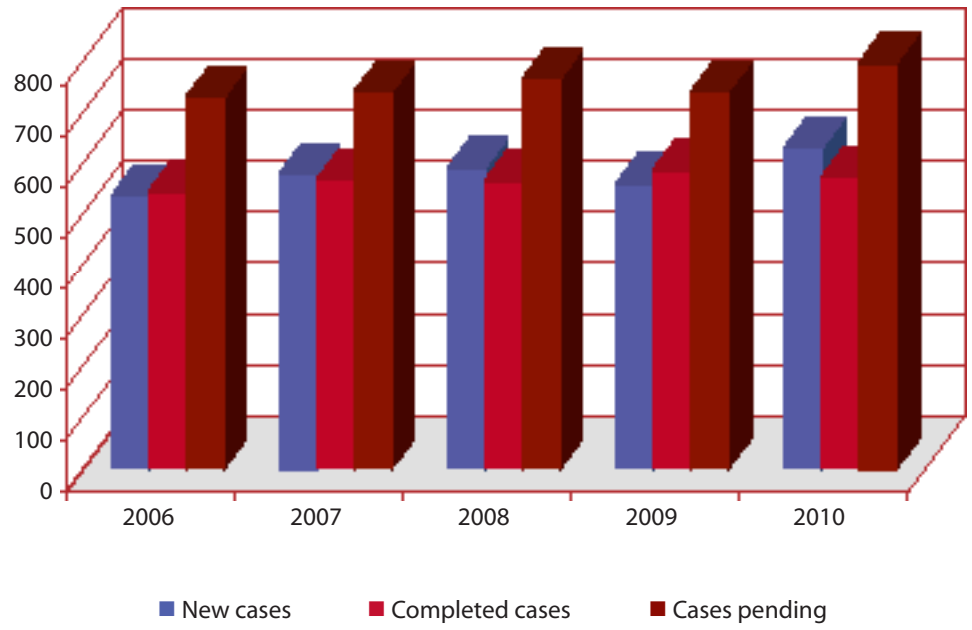
Miscellaneous

15. Expedited and accelerated procedures (2006–10)
16. Urgent preliminary ruling procedures (2008–10)
17. Proceedings for interim measures (2010)

General trend in the work of the Court (1952–2010)

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

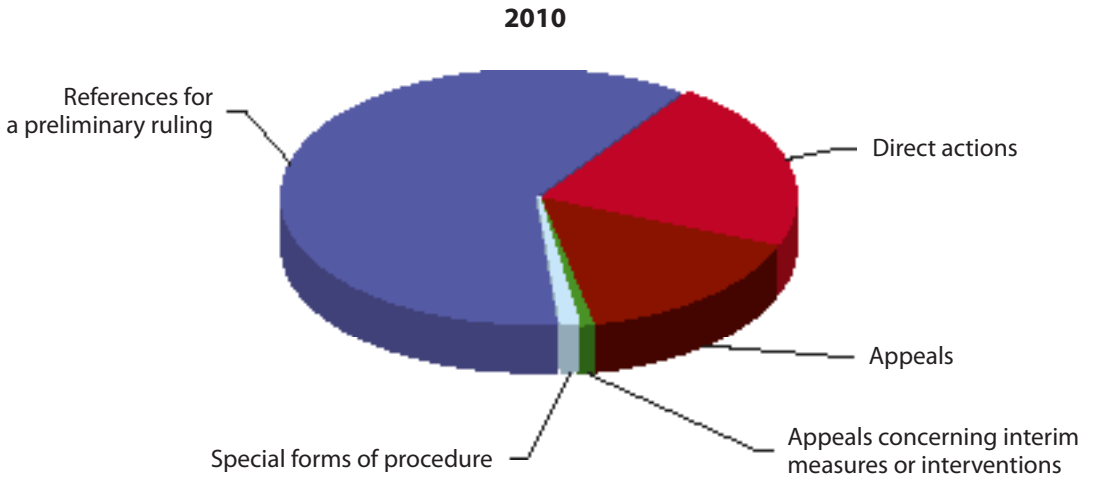
1. *General activity of the Court of Justice*
New cases, completed cases, cases pending (2006–10) (1)



	2006	2007	2008	2009	2010
New cases	537	581	593	562	631
Completed cases	546	570	567	588	574
Cases pending	731	742	768	742	799

(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 (2006–10) ([1])



	2006	2007	2008	2009	2010
References for a preliminary ruling	251	265	288	302	385
Direct actions	201	222	210	143	136
Appeals	80	79	78	105	97
Appeals concerning interim measures or interventions	3	8	8	2	6
Opinions of the Court			1	1	
Special forms of procedure ([2])	2	7	8	9	7
Total	**537**	**581**	**593**	**562**	**631**
Applications for interim measures	1	3	3	2	2

([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).

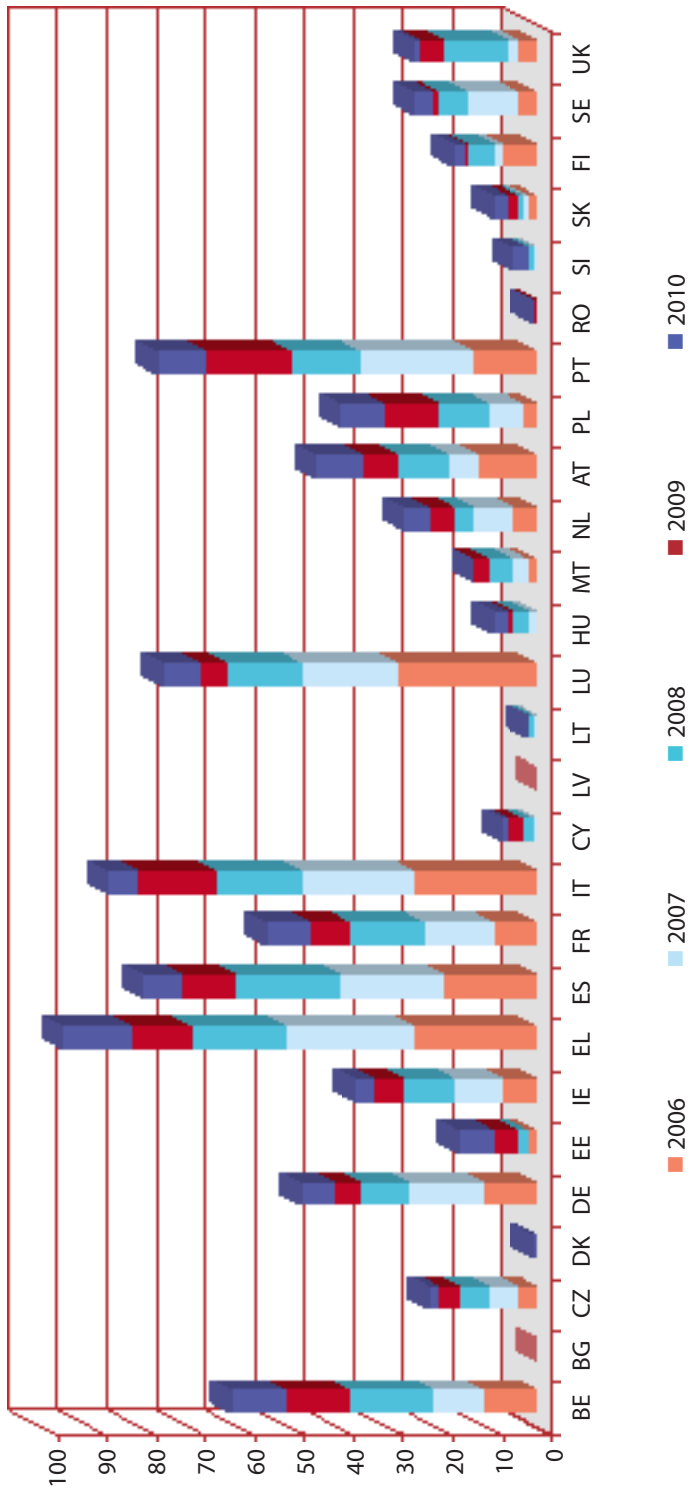
([2]) The following are considered to be 'special forms of procedure': rectification (Article 66 of the Rules of Procedure); taxation of costs (Article 74 of the Rules of Procedure); legal aid (Article 76 of the Rules of Procedure); application to set aside a judgment given by default (Article 94 of the Rules of Procedure); third-party proceedings (Article 97 of the Rules of Procedure); revision (Article 98 of the Rules of Procedure); interpretation of a judgment (Article 102 of the Rules of Procedure); examination of a proposal by the First Advocate General to review a decision of the General Court (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* — Subject-matter of the action (2010) (1)

	Direct actions	References for a preliminary ruling	Appeals	Appeals concerning interim measures or interventions	Total	Special forms of procedure
Access to documents			4		4	
External action by the European Union		5	1		6	
Agriculture	5	20			25	
State aid	4	4	15	1	24	
Citizenship of the Union		2			2	
Competition		5	13	2	20	
Financial provisions (budget, financial framework, own resources, combatting fraud and so forth)	1	5			6	
Company law	12	1			13	
Law governing the institutions	2	1	17	2	22	2
Education, vocational training, youth and sport			1		1	
Energy		7			7	
Registration, evaluation, authorisation and restriction of chemicals (REACH Regulation)	1				1	
Environment	34	26		1	61	
Area of freedom, security and justice	5	38			43	
Taxation	5	57			62	
Freedom of establishment	1	5			6	
Free movement of capital	4	3			7	
Free movement of goods		5			5	
Freedom of movement for persons	2	10	1		13	
Freedom to provide services	13	38			51	
Public procurement	6	5	4		15	
Commercial policy		1	3		4	
Economic and monetary policy			1		1	
Common foreign and security policy	1		6		7	
Industrial policy	6	6			12	
Social policy	5	40			45	
Principles of European Union law	1	11			12	
Intellectual and industrial property		19	30		49	
Consumer protection	1	9			10	
Approximation of laws	10	16			26	
Public health	1	3			4	
Social security for migrant workers	2	7			9	
Transport	13	11	1		25	
Customs union and Common Customs Tariff		21			21	
TFEU	**135**	**381**	**97**	**6**	**619**	**2**
Privileges and immunities		4			4	
Procedure						5
Staff Regulations	1				1	
Others	**1**	**4**			**5**	**5**
OVERALL TOTAL	**136**	**385**	**97**	**6**	**624**	**7**

(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).

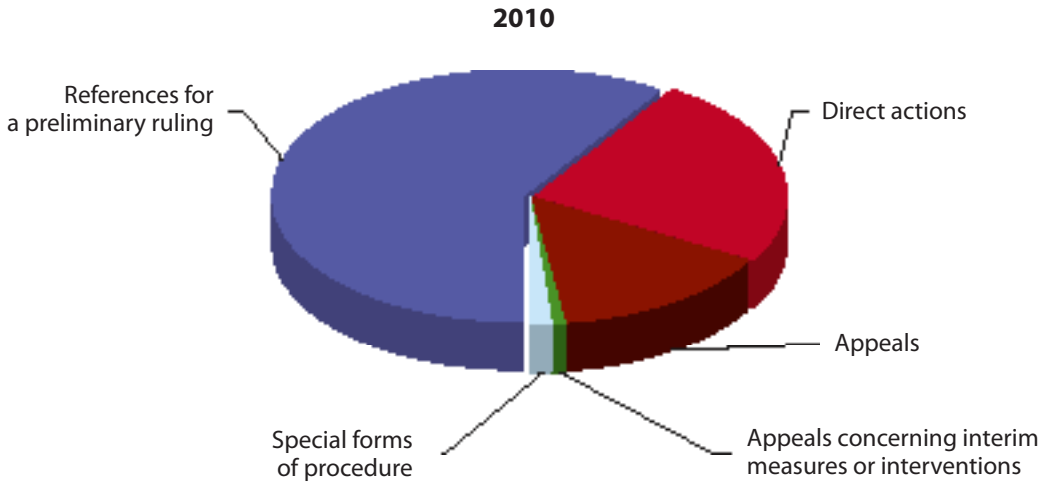
4. *New cases* — Actions for failure of a Member State to fulfil its obligations (2006–10) (1)



	2006	2007	2008	2009	2010
Belgium	11	10	17	13	11
Bulgaria					
Czech Republic	4	6	6	4	2
Denmark					1
Germany	11	15	10	5	7
Estonia	2		2	5	7
Ireland	7	10	10	6	4
Greece	25	26	19	12	14
Spain	19	21	21	11	8
France	9	14	15	8	9
Italy	25	23	17	16	6
Cyprus		1	2	3	1
Latvia					
Lithuania		1	1		
Luxembourg	28	20	15	5	8
Hungary		2	3	1	3
Malta	2	3	5	3	
Netherlands	5	8	4	5	5
Austria	12	6	10	7	10
Poland	3	7	10	11	9
Portugal	13	23	14	17	10
Romania				1	
Slovenia		1	1		3
Slovakia	2	1	1	2	3
Finland	7	2	5	1	2
Sweden	4	10	6	1	4
United Kingdom	4	2	13	5	1
Total	**193**	**212**	**207**	**142**	**128**

(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).

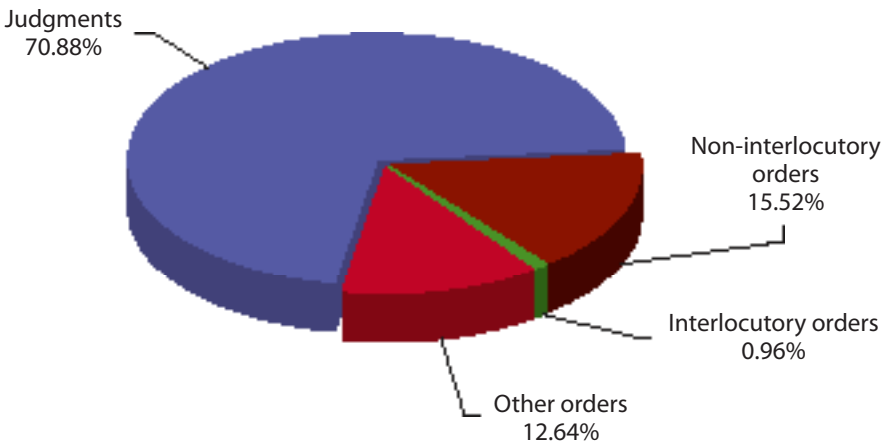
5. *Completed cases* — Nature of proceedings (2006–10) [1]



	2006	2007	2008	2009	2010
References for a preliminary ruling	266	235	301	259	339
Direct actions	212	241	181	215	139
Appeals	63	88	69	97	84
Appeals concerning interim measures or interventions	2	2	8	7	4
Opinions of the Court	1			1	
Special forms of procedure	2	4	8	9	8
Total	**546**	**570**	**567**	**588**	**574**

(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).

6. *Completed cases* — Judgments, orders, opinions (2010) (1)



	Judgments	Non-interlocutory orders (2)	Interlocutory orders (3)	Other orders (4)	Opinions of the Court	Total
References for a preliminary ruling	239	33		21		293
Direct actions	97			42		139
Appeals	34	43	1	3		81
Appeals concerning interim measures or interventions			4			4
Opinions of the Court						
Special forms of procedure		5				5
Total	**370**	**81**	**5**	**66**		**522**

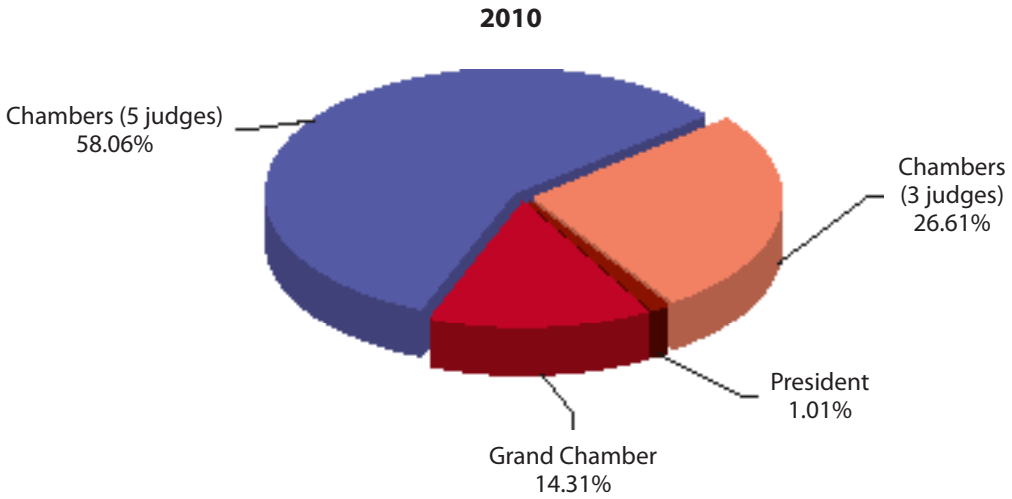
(1) The figures given (net figures) represent the number of cases after joinder on the ground of similarity (a set of joined cases = one case).

(2) Orders terminating proceedings 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 General Court.

(3) Orders made following an application on the basis of Articles 278 TFEU and 279 TFEU (former Articles 242 EC and 243 EC), Article 280 TFEU (former Article 244 EC) or the corresponding provisions of the EAEC Treaty, or following an appeal against an order concerning interim measures or intervention.

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

7. *Completed cases* — Bench hearing action (2006–10) (1)

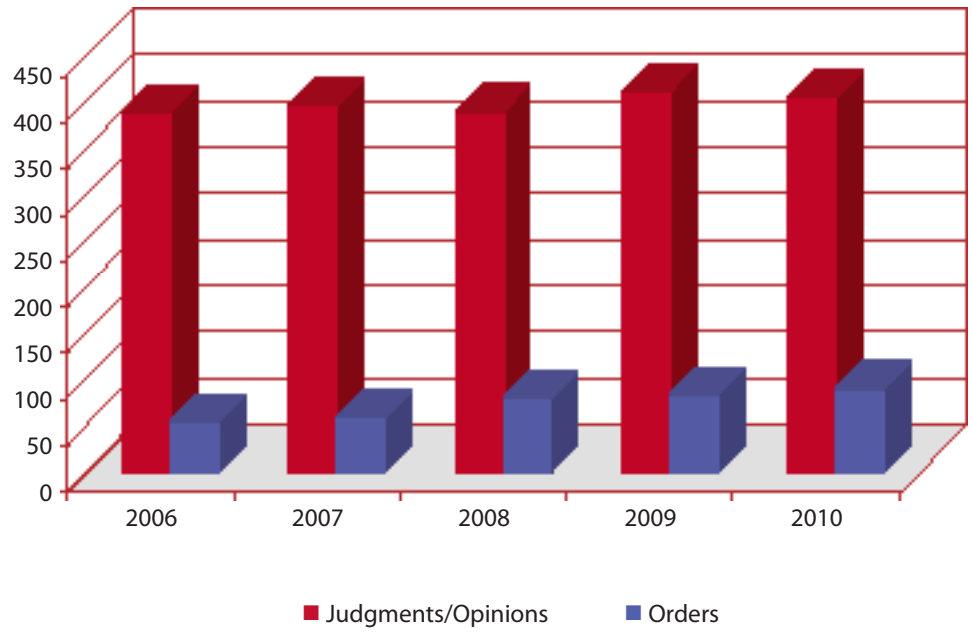


	2006			2007			2008			2009			2010		
	Judgments/ Opinions	Orders (2)	Total	Judgments/ Opinions	Orders (2)	Total	Judgments/ Opinions	Orders (2)	Total	Judgments/ Opinions	Orders (2)	Total	Judgments/ Opinions	Orders (2)	Total
Full Court	2		2												
Grand Chamber	55		55	51		51	66		66	41		41	70	1	71
Chambers (5 judges)	265	13	278	241	8	249	259	13	272	275	8	283	280	8	288
Chambers (3 judges)	67	41	108	105	49	154	65	59	124	96	70	166	56	76	132
President		1	1		2	2		7	7		5	5		5	5
Total	**389**	**55**	**444**	**397**	**59**	**456**	**390**	**79**	**469**	**412**	**83**	**495**	**406**	**90**	**496**

(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 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 General Court.

8. *Cases completed by judgments, by opinions or by orders involving a judicial determination* (2006–10) (1) (2)



	2006	2007	2008	2009	2010
Judgments/Opinions	389	397	390	412	406
Orders	55	59	79	83	90
Total	**444**	**456**	**469**	**495**	**496**

(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 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 General Court.

9. *Cases completed by judgments, by opinions or by orders involving a judicial determination* — Subject-matter of the action (2006–10) (1)

	2006	2007	2008	2009	2010
Accession of new States		1		1	
Agriculture	30	23	54	18	15
Approximation of laws	19	21	21	32	15
Area of freedom, security and justice	9	17	4	26	24
Brussels Convention	4	2	1	2	
Budget of the Communities					1
Citizenship of the Union	4	2	7	3	6
Commercial policy	1	1	1	5	2
Common Customs Tariff (3)	7	10	5	13	7
Common fisheries policy	7	6	6	4	2
Common foreign and security policy		4	2	2	2
Community own resources	6	3		10	5
Company law	9	16	17	17	17
Competition	30	17	23	28	13
Consumer protection (2)					3
Customs union and Common Customs Tariff (3)	9	12	8	5	15
Economic and monetary policy		1	1	1	1
Energy	6	4	4	4	2
Environment (2)					9
Environment and consumers (2)	40	50	43	60	48
External action by the European Union	11	9	8	8	10
Financial provisions (budget, financial framework, own resources, combatting fraud and so forth)					1
Free movement of capital	4	13	9	7	6
Free movement of goods	8	14	12	13	6
Freedom of establishment	21	19	29	13	17
Freedom of movement for persons	20	19	27	19	17
Freedom to provide services	17	24	8	17	30
Industrial policy		11	12	6	9
Intellectual and industrial property	20	21	22	31	38
Justice and home affairs	2		1		
Law governing the institutions	15	6	15	29	26
Principles of European Union law	1	4	4	4	4
Privileges and immunities	1	1	2		
Regional policy	2	7	1	3	2
Research, information, education and statistics					1
Rome Convention				1	
Social policy	29	26	25	33	36
Social security for migrant workers	7	7	5	3	6
State aid	23	9	26	10	16
Taxation	55	44	38	44	66
Transport	9	6	4	9	4
EC Treaty	426	430	445	481	482
EU Treaty	3	4	6	1	4
CS Treaty		1	2		
EA Treaty	4	1			
Procedure	2	3	5	5	6
Staff Regulations	9	17	11	8	4
Others	11	20	16	13	10
OVERALL TOTAL	**444**	**456**	**469**	**495**	**496**

(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 heading 'Environment and consumers' has been divided into two separate headings for cases brought after 1 December 2009.

(3) The headings 'Common Customs Tariff' and 'Customs union' have been brought together under a single heading for cases brought after 1 December 2009.

10. *Cases completed by judgments, by opinions or by orders involving a judicial determination* — Subject-matter of the action (2010) (1)

	Judgments/ Opinions	Orders (2)	Total
Agriculture	14	1	15
Approximation of laws	15		15
Area of freedom, security and justice	23	1	24
Budget of the Communities	1		1
Commercial policy	2		2
Common Customs Tariff (4)	7		7
Common fisheries policy	1	1	2
Common foreign and security policy	2		2
Community own resources	5		5
Company law	17		17
Competition	8	5	13
Consumer protection (3)	1	2	3
Customs union and Common Customs Tariff (4)	12	3	15
Economic and monetary policy		1	1
Energy	2		2
Environment (3)	9		9
Environment and consumers (3)	44	4	48
European citizenship	6		6
External action by the European Union	10		10
Financial provisions (budget, financial framework, own resources, combatting fraud and so forth)	1		1
Free movement of capital	5	1	6
Free movement of goods	5	1	6
Freedom of establishment	14	3	17
Freedom of movement for persons	16	1	17
Freedom to provide services	26	4	30
Industrial policy	8	1	9
Intellectual property	19	19	38
Law governing the institutions	11	15	26
Principles of European Union law	2	2	4
Regional policy	1	1	2
Research, information, education and statistics	1		1
Social policy	31	5	36
Social security for migrant workers	4	2	6
State aid	14	2	16
Taxation	58	8	66
Transport	4		4
EC Treaty	399	83	482
EU Treaty	4		4
Procedure		6	6
Staff Regulations	3	1	4
Others	3	7	10
OVERALL TOTAL	**406**	**90**	**496**

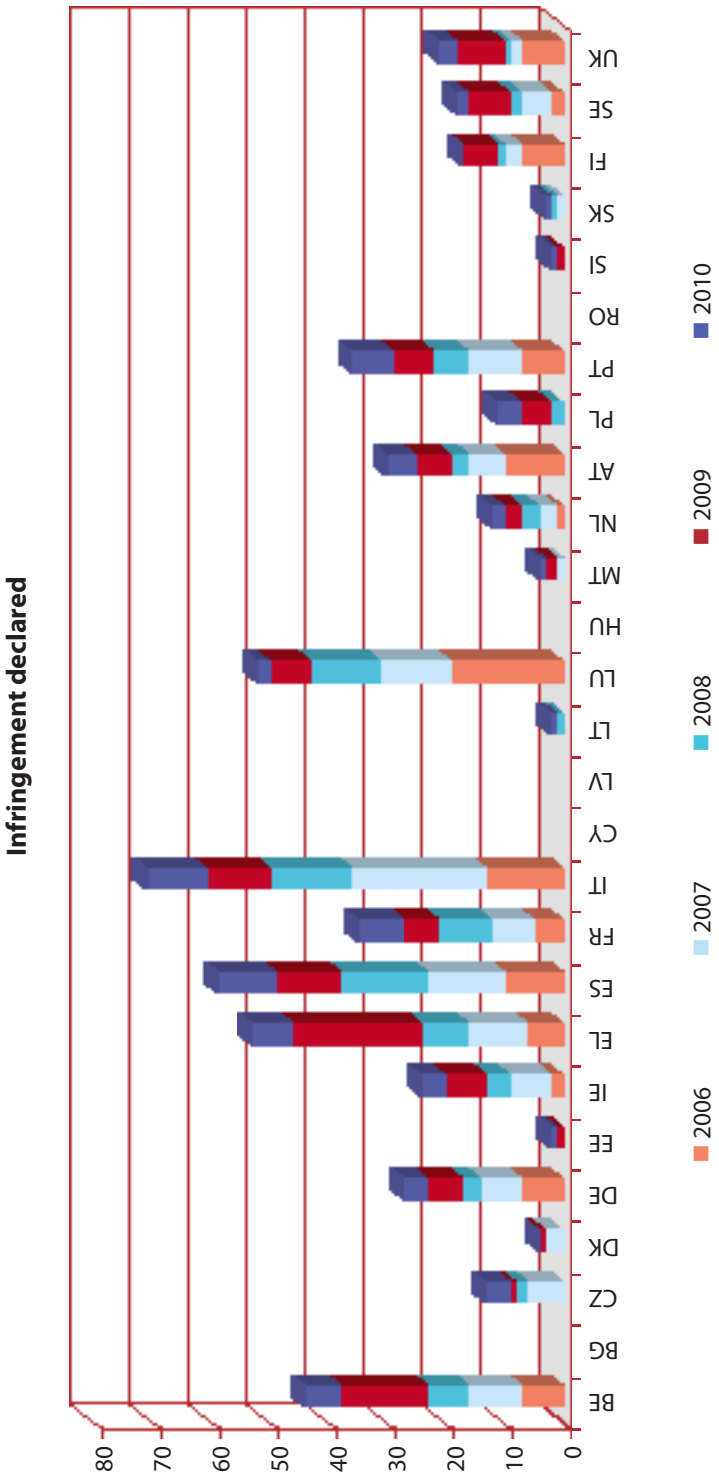
(1) The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

(2) Orders terminating proceedings 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 General Court.

(3) The heading 'Environment and consumers' has been divided into two separate headings for cases brought after 1 December 2009.

(4) The headings 'Common Customs Tariff' and 'Customs union' have been brought together under a single heading for cases brought after 1 December 2009.

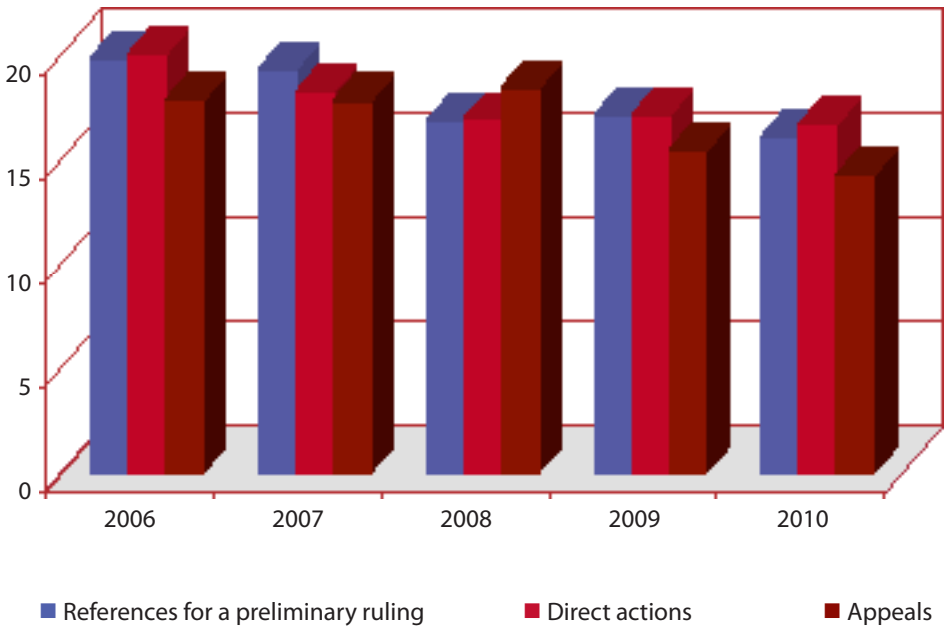
11. *Completed cases* — Judgments concerning failure of a Member State to fulfil its obligations: outcome (2006–10) [1]



	2006		2007		2008		2009		2010	
	Infringement declared	**Dismissed**	**Infringement declared**	**Dismissed**	**Infringement declared**	**Dismissed**	**Infringement declared**	**Dismissed**	**Infringement declared**	**Dismissed**
Belgium	7		9	1	7		15	1	6	1
Bulgaria										
Czech Republic			6		2		1		4	
Denmark			3				1			
Germany	7		7	1	3	3	6	2	4	2
Estonia							1		1	
Ireland	2	1	7	2	4		7		4	
Greece	6		10	3	8	1	22		7	
Spain	10	1	13	1	15	1	11		10	2
France	5		7		9	1	6		8	2
Italy	13	1	23	2	14	1	11	4	10	
Cyprus										
Latvia										
Lithuania					1				1	
Luxembourg	19		12		12		7		2	
Hungary										
Malta			1				2		1	1
Netherlands	1	1	3	1	3		3		2	1
Austria	10		6		3		6		5	
Poland					2		5		4	1
Portugal	7		9		6		7	1	7	1
Romania										
Slovenia							1		1	
Slovakia			1		1				1	
Finland	7		3	1	1	1	6	1		
Sweden	2	1	5		2	1	7		2	
United Kingdom	7	3	2	4	1		8	1	3	1
Total	**103**	**8**	**127**	**16**	**94**	**9**	**133**	**10**	**83**	**12**

(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).

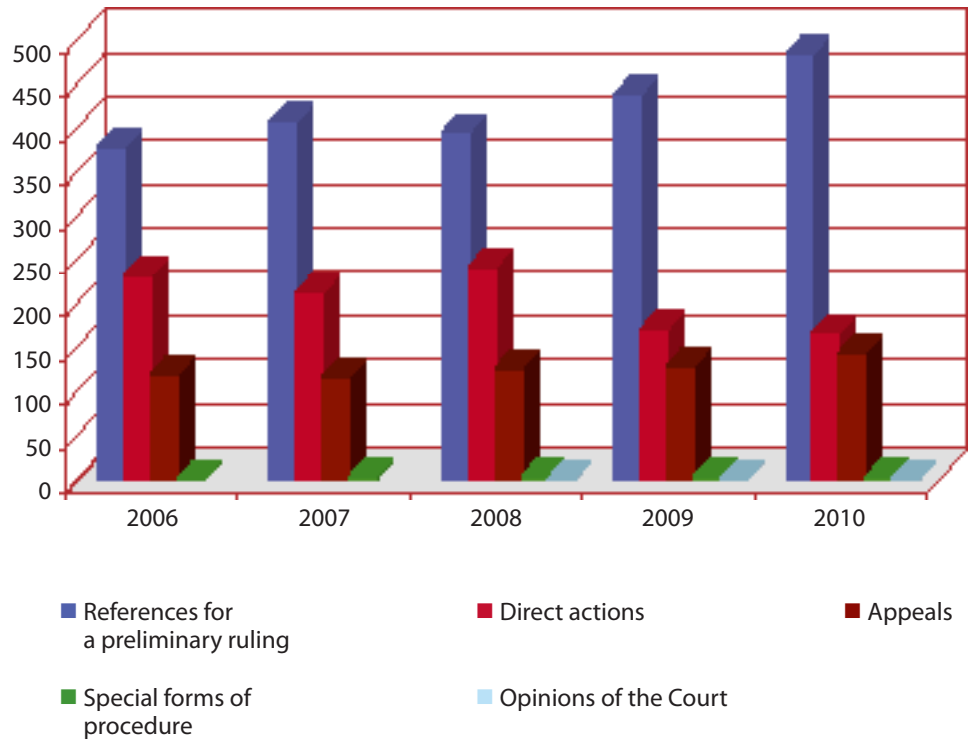
12. *Completed cases* — Duration of proceedings (2006–10) [1]
(judgments and orders involving a judicial determination)



	2006	2007	2008	2009	2010
References for a preliminary ruling	19.8	19.3	16.8	17.1	16.1
Urgent preliminary ruling procedure			2.1	2.5	2.1
Direct actions	20	18.2	16.9	17.1	16.7
Appeals	17.8	17.8	18.4	15.4	14.3

[1] The duration of proceedings is expressed in months and tenths of months.
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; special forms of procedure (namely taxation of costs, legal aid, application to set aside, third-party proceedings, interpretation, revision, rectification, attachment procedure); cases terminated by an order removing the case from the register, declaring that there is no need to give a decision or referring the case to the General Court; proceedings for interim measures and appeals concerning interim measures and interventions.

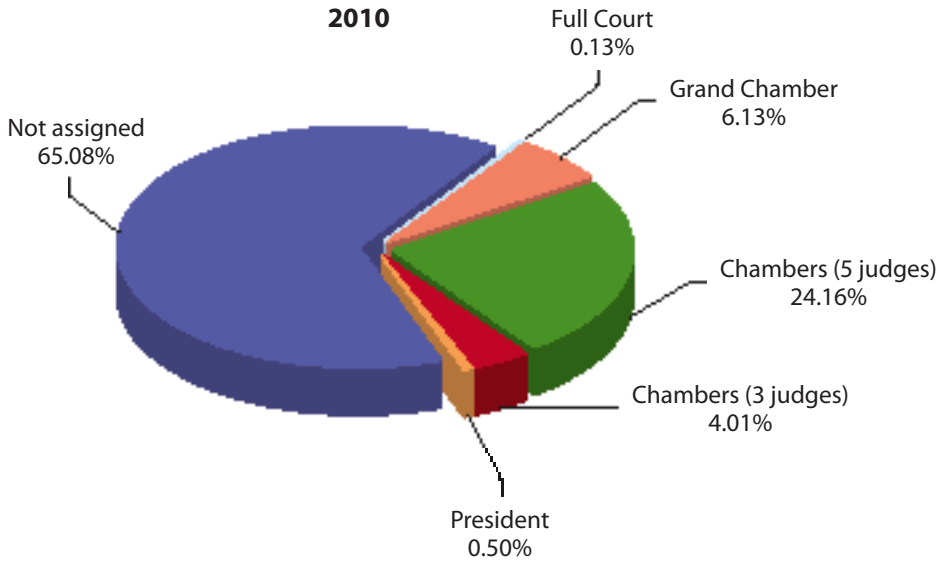
13. *Cases pending as at 31 December* — Nature of proceedings (2006–10) (1)



	2006	2007	2008	2009	2010
References for a preliminary ruling	378	408	395	438	484
Direct actions	232	213	242	170	167
Appeals	120	117	126	129	144
Special forms of procedure	1	4	4	4	3
Opinions of the Court			1	1	1
Total	**731**	**742**	**768**	**742**	**799**

(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 (2006–10) [1]



	2006	2007	2008	2009	2010
Not assigned	489	481	524	490	520
Full Court					1
Grand Chamber	44	59	40	65	49
Chambers (5 judges)	171	170	177	169	193
Chambers (3 judges)	26	24	19	15	32
President	1	8	8	3	4
Total	**731**	**742**	**768**	**742**	**799**

[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).

15. *Miscellaneous* — Expedited and accelerated procedures (2006–10) (1)

	2006		2007		2008		2009		2010	
	Granted	Not granted	Granted	Not granted	Granted	Not granted	Granted	Not granted	Granted	Not granted
Direct actions				1						1
References for a preliminary ruling		5		5	2	6	1	3	4	7
Appeals				1				1		
Special forms of procedure								1		
Total		**5**		**7**	**2**	**6**	**1**	**5**	**4**	**8**

16. *Miscellaneous* — Urgent preliminary ruling procedure (2008–10) (2)

	2008		2009		2010	
	Granted	Not granted	Granted	Not granted	Granted	Not granted
Agriculture		1				
Police and judicial cooperation in criminal matters	2	1		1		
Area of freedom, security and justice	1	1	2		5	1
Total	**3**	**3**	**2**	**1**	**5**	**1**

(1) Since 1 July 2000, it has been possible to deal with a case under an expedited or accelerated procedure pursuant to the provisions of Articles 62a and 104a of the Rules of Procedure.

(2) Since 1 March 2008, pursuant to the provisions of Article 104b of the Rules of Procedure, an urgent preliminary ruling procedure has been available for cases falling within the area of freedom, security and justice.

17. *Miscellaneous* — Proceedings for interim measures (2010) [1]

	New applications for interim measures	Appeals concerning interim measures or interventions	Outcome		
			Not granted	Granted	Removed from the register or no need to give a decision
Access to documents	1				
State aid		1			
Competition		2	3		
Law governing the institutions		2	1		
Environment		1			
Commercial policy	1				
Intellectual and industrial property	1		1		
OVERALL TOTAL	**3**	**6**	**5**		

(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* (1952–2010) — New cases and judgments

Year	New cases (1)							Judgments/ Opinions (2)
	Direct actions	References for a preliminary ruling	Appeals	Appeals concerning interim measures or interventions	Requests for an opinion	Total	Applications for interim measures	
1953	4					4		
1954	10					10		2
1955	9					9	2	4
1956	11					11	2	6
1957	19					19	2	4
1958	43					43		10
1959	46				1	47	5	13
1960	22				1	23	2	18
1961	24	1			1	26	1	11
1962	30	5				35	2	20
1963	99	6				105	7	17
1964	49	6				55	4	31
1965	55	7				62	4	52
1966	30	1				31	2	24
1967	14	23				37		24
1968	24	9				33	1	27
1969	60	17				77	2	30
1970	47	32				79		64
1971	59	37				96	1	60
1972	42	40				82	2	61
1973	131	61				192	6	80
1974	63	39				102	8	63
1975	61	69			1	131	5	78
1976	51	75			1	127	6	88
1977	74	84				158	6	100
1978	146	123			1	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
1986	238	91				329	23	174
1987	251	144				395	21	208
1988	193	179				372	17	238
1989	244	139				383	19	188

>>>

Year	New cases [1]							Judgments/ Opinions [2]
	Direct actions	References for a preliminary ruling	Appeals	Appeals concerning interim measures or interventions	Requests for an opinion	Total	Applications for interim measures	
1990	221	141	15	1		378	12	193
1991	140	186	13	1	2	342	9	204
1992	251	162	24	1	2	440	5	210
1993	265	204	17			486	13	203
1994	125	203	12	1	3	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	197	224	66	13	2	502	4	273
2001	187	237	72	7		503	6	244
2002	204	216	46	4		470	1	269
2003	277	210	63	5	1	556	7	308
2004	219	249	52	6	1	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	210	288	77	8	1	584	3	333
2009	143	302	104	2	1	552	1	377
2010	136	385	97	6		624	2	370
Total	**8 601**	**7 005**	**1 118**	**85**	**19**	**16 828**	**351**	**8 637**

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

(2) Net figures.

19. *General trend in the work of the Court* (1952–2010) — New references for a preliminary ruling (by Member State per year) (1)

	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	Others (1)	Total
1961																		1											1
1962																		5											5
1963															1			5											6
1964											2							4											6
1965					4					2								1											7
1966																		1											1
1967	5				11					3					1			3											23
1968	1				4					1	1							2											9
1969	4				11					1					1														17
1970	4				21					2	2							3											32
1971	1				18					6	5				1			6											37
1972	5				20					1	4							10											40
1973	8				37					4	5				1			6											61
1974	5				15					6	5							7									1		39
1975	7			1	26					15	14				1			4									1		69
1976	11				28		1			8	12							14									1		75
1977	16			1	30		2			14	7							9									5		84
1978	7			3	46		1			12	11							38									5		123
1979	13			1	33		2			18	19				1			11									8		106
1980	14			2	24		3			14	19							17									6		99
1981	12			1	41					17	11				4			17									5		108
1982	10			1	36					39	18							21									4		129
1983	9			4	36		2			15	7							19									6		98
1984	13			2	38		1			34	10							22									9		129
1985	13				40		2			45	11				6			14									8		139

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	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	Others [1]	Total
1986	13			4	18		4	2	1	19	5				1			16									8		91
1987	15			5	32		2	17	1	36	5				3			19									9		144
1988	30			4	34				1	38	28				2			26									16		179
1989	13			2	47		1	2	2	28	10				1			18			1						14		139
1990	17			5	34		4	2	6	21	25				4			9			2						12		141
1991	19			2	54		2	3	5	29	36				2			17			3						14		186
1992	16			3	62			1	5	15	22				1			18			1						18		162
1993	22			7	57		1	5	7	22	24				1			43			3						12		204
1994	19			4	44		2		13	36	46				1			13			1						24		203
1995	14			8	51		3	10	10	43	58				2			19	2		5					6	20		251
1996	30			4	66			4	6	24	70				2			10	6		6				3	4	21		256
1997	19			7	46		1	2	9	10	50				3			24	35		2				6	7	18		239
1998	12			7	49		3	5	55	16	39				2			21	16		7				2	6	24		264
1999	13			3	49		2	3	4	17	43				4			23	56		7				4	5	22		255
2000	15			3	47		2	3	5	12	50							12	31		8				5	4	26	1	224
2001	10			5	53		1	4	4	15	40				2			14	57		4				3	4	21		237
2002	18			8	59			7	3	8	37				4			12	31		3				7	5	14		216
2003	18			3	43		2	4	8	9	45				4			28	15		1				4	4	22		210
2004	24			4	50		1	18	8	21	48				1	2		28	12		1				4	5	22		249
2005	21		1	4	51		2	11	10	17	18				2	3		36	15	1	2				4	11	12		221
2006	17		3	3	77		1	14	17	24	34			1	1	4		20	12	2	3			1	5	2	10		251
2007	22	1	2	5	59	2	2	8	14	26	43			1		2		19	20	7	3	1		1	5	6	16		265
2008	24		1	6	71	2	1	9	17	12	39	1	3	3	4	6		34	25	4	1				4	7	14		288
2009	35	8	5	3	59	2		11	11	28	29	1	4	3		10	1	24	15	10	3	1	2	1	2	5	28	1	302
2010	37	9	3	10	71		4	6	22	33	49		3	2	9	6		24	15	8	10	17	1	5	6	6	29		385
Total	**651**	**18**	**15**	**135**	**1 802**	**6**	**55**	**151**	**244**	**816**	**1 056**	**2**	**10**	**10**	**73**	**33**	**1**	**767**	**363**	**32**	**77**	**19**	**3**	**8**	**64**	**87**	**505**	**2**	**7 005**

(1) Case C-265/00 Campina Melkunie (Cour de justice Benelux/Benelux Gerechtshof).
Case C-196/09 Miles and Others (Complaints Board of the European Schools).

20. *General trend in the work of the Court* (1952–2010) — New references for a preliminary ruling (by Member State and by court or tribunal)

			Total
Belgium	Cour constitutionnelle	17	
	Cour de cassation	77	
	Conseil d'État	62	
	Other courts or tribunals	495	651
Bulgaria	Софийски ґрадски съд Търґовско отделение	1	
	Other courts or tribunals	17	18
Czech Republic	Nejvyšší soud	1	
	Nejvyšší správní soud	5	
	Ústavní soud		
	Other courts or tribunals	9	15
Denmark	Højesteret	29	
	Other courts or tribunals	106	135
Germany	Bundesgerichtshof	130	
	Bundesverwaltungsgericht	100	
	Bundesfinanzhof	272	
	Bundesarbeitsgericht	23	
	Bundessozialgericht	74	
	Staatsgerichtshof des Landes Hessen	1	
	Other courts or tribunals	1 202	1 802
Estonia	Riigikohus	1	
	Other courts or tribunals	5	6
Ireland	Supreme Court	18	
	High Court	15	
	Other courts or tribunals	22	55
Greece	Άρειος Πάγος	10	
	Συμβούλιο της Επικρατείας	44	
	Other courts or tribunals	97	151
Spain	Tribunal Supremo	35	
	Audiencia Nacional	1	
	Juzgado Central de lo Penal	7	
	Other courts or tribunals	201	244
France	Cour de cassation	93	
	Conseil d'État	63	
	Other courts or tribunals	660	816
Italy	Corte suprema di Cassazione	108	
	Corte Costituzionale	1	
	Consiglio di Stato	64	
	Other courts or tribunals	883	1 056
Cyprus	Ανώτατο Δικαστήριο	2	
	Other courts or tribunals		2

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			Total
Latvia	Augstākā tiesa	9	
	Satversmes tiesa		
	Other courts or tribunals	1	10
Lithuania	Lietuvos Respublikos Konstitucinis Teismas	1	
	Lietuvos Aukščiausiasis Teismas	3	
	Lietuvos vyriausiasis administracinis Teismas	3	
	Other courts or tribunals	3	10
Luxembourg	Cour supérieure de justice	10	
	Cour de cassation	8	
	Conseil d'État	13	
	Cour administrative	7	
	Other courts or tribunals	35	73
Hungary	Legfelsőbb Bíróság	3	
	Fővárosi Ítélőtábla	2	
	Szegedi Ítélötáblá	1	
	Other courts or tribunals	27	33
Malta	Constitutional Court		
	Qorti ta' l- Appel		
	Other courts or tribunals	1	1
Netherlands	Raad van State	74	
	Hoge Raad der Nederlanden	194	
	Centrale Raad van Beroep	49	
	College van Beroep voor het Bedrijfsleven	139	
	Tariefcommissie	34	
	Other courts or tribunals	277	767
Austria	Verfassungsgerichtshof	4	
	Oberster Gerichtshof	78	
	Oberster Patent- und Markensenat	3	
	Bundesvergabeamt	24	
	Verwaltungsgerichtshof	61	
	Vergabekontrollsenat	4	
	Other courts or tribunals	189	363
Poland	Sąd Najwyższy	5	
	Naczelny Sąd Administracyjny	12	
	Trybunał Konstytucyjny		
	Other courts or tribunals	15	32
Portugal	Supremo Tribunal de Justiça	2	
	Supremo Tribunal Administrativo	40	
	Other courts or tribunals	35	77
Romania	Tribunal Dâmbovița	2	
	Other courts or tribunals	17	19

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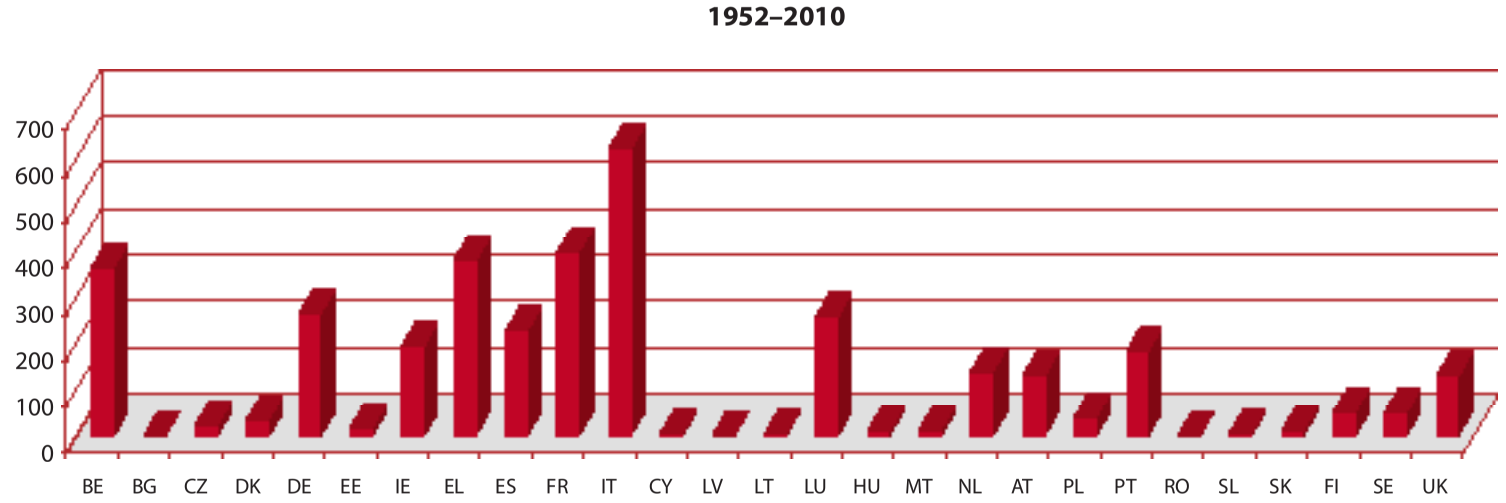
			Total
Slovenia	Vrhovno sodišče		
	Ustavno sodišče		
	Other courts or tribunals	3	3
Slovakia	Ústavný Súd		
	Najvyšší súd	5	
	Other courts or tribunals	3	8
Finland	Korkein hallinto-oikeus	29	
	Korkein oikeus	11	
	Other courts or tribunals	24	64
Sweden	Högsta Domstolen	14	
	Marknadsdomstolen	5	
	Regeringsrätten	24	
	Other courts or tribunals	44	87
United Kingdom	House of Lords	40	
	Court of Appeal	64	
	Other courts or tribunals	401	505
Others	Cour de justice Benelux/Benelux Gerechtshof ([1])	1	1
	Complaints Board of the European Schools ([2])	1	1
Total			**7 005**

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

([2]) Case C-196/09 Miles and Others.

21. *General trend in the work of the Court* (1952–2010) — New actions for failure of a Member State to fulfil its obligations



	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	Total
1952–2010	364		22	35	265	17	196	379	227	398	621	7		2	258	9	13	139	131	40	182	1	5	9	50	50	129	**3 549**

Chapter II

The General Court

A — Proceedings of the General Court in 2010

By Mr Marc Jaeger, President of the General Court

For the General Court, 2010 was a year that entailed a partial renewal of its membership affecting 14 Judges. Whilst 11 of those Judges had their term of office renewed, the General Court had cause to regret the departure of three members totalling between them more than 27 years' experience at the Court: Mr A. W. H. Meij and Mr M. Vilaras, Judges at the Court since 1998, and Mr V. M. Ciucă, Judge at the Court since 2007, who were replaced by Mr M. Van der Woude, Mr D. Gratsias and Mr A. Popescu respectively. The Court was also affected by the resignation on 29 June 2010 of Mr T. Tchipev, a Judge at the Court since 2007. In January 2011, no candidate had yet been proposed to replace him.

Those circumstances had a significant effect on the timetabling of cases (the eight ordinary formations of the Court each included at least one member whose term of office was coming to an end in 2010) and exceptional organisation was required in order to prevent judicial activity from being adversely affected.

In addition, this was the first time that the panel provided for in Article 255 TFEU was called upon — in exercise of the responsibility entrusted to it by the Treaty of Lisbon — to give an opinion, prior to the decision of the governments of the Member States, on candidates' suitability to perform the duties of Judge. Whilst this procedure, which is intended to guarantee both independence and competence of members of the Court of Justice and the General Court, can only be welcomed, it nevertheless delayed the carrying out of the partial renewal. It is important that in the future all the participants in the appointment process manage to prevent such delays together with the serious obstacles to the proper administration of justice to which they give rise. The General Court's statistics for 2010 cannot be analysed without taking account of these factors beyond its control that do not assist its efforts to deal with changes in the nature of proceedings, whose increase in number, diversity and complexity is unparalleled.

From a statistical point of view, 2010 was marked by several trends. The first is the large increase in the number of new cases brought, rising from 568 (in 2009) to 636 (in 2010), a level never reached before ([1]). The second trend is maintenance of the number of cases completed at appreciably above 500 (527 cases completed), notwithstanding the unfavourable circumstances referred to above. This was nevertheless not sufficient to contain the increase in pending cases, which reached 1 300 as at 31 December 2010. The third trend concerns the duration of proceedings, a fundamental criterion for evaluating the Court's work. As a result of the emphasis placed on dealing with cases quickly, the duration of proceedings was reduced significantly, by an average of 2.5 months (from 27.2 months in 2009 to 24.7 months in 2010). The reduction is even more appreciable as regards cases decided by judgment in the areas that since the Court's creation have been at the heart of its caseload (that is to say, the areas other than appeals and intellectual property), for which a reduction of more than seven months in the duration of proceedings was recorded.

The reforms to be pursued and the substantial efforts made by the Court should enable those figures to be improved to a certain extent. However, that cannot be at the expense of the quality of judicial review, quality that guarantees the effectiveness of judicial protection which is a cornerstone of a European Union governed by the rule of law.

([1]) Except when there have been large groups of identical or similar cases.

The following account is intended to provide an overview of the Court's diverse, and sometimes complex, field of activity when it exercises its jurisdiction over 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 for annulment

1. Measures against which an action may be brought

Measures against which an action for annulment may be brought under Article 263 TFEU are those producing binding legal effects of such a kind as to affect the applicant's interests by bringing about a distinct change in his legal position ([2]).

In Case T-258/06 *Germany* v *Commission* (judgment of 20 May 2010, not yet published), the Court examined the circumstances in which a Commission communication published in the C Series of the Official Journal may be considered a challengeable measure.

In the case in point, the Federal Republic of Germany sought the annulment of a communication ([3]) the aim of which is to make known the Commission's general approach as regards the application, in cases where the award of a contract is not subject, or not subject in full, to the public procurement directives ([4]), of the set of basic rules for the award of public contracts, which flow directly from the rules and principles of the Treaty and, in particular, from the principles of non-discrimination and transparency.

In order to establish whether that communication, claimed by the Commission to be purely interpretative in nature, was open to challenge, the Court sought to determine whether, having regard to its content, it is designed to produce legal effects which are new as compared with those entailed by the application of the fundamental principles of the Treaty. It therefore had to be determined whether the communication merely fleshes out the provisions applicable to contracts which are not subject, or not subject in full, to the public procurement directives, and concerning the free movement of goods, the freedom of establishment, the freedom to provide services, the principles of non-discrimination and equal treatment, the principle of proportionality and the rules on transparency and mutual recognition, or whether it lays down obligations which are specific or new as compared with those provisions, principles and rules. The mere fact that an interpretative communication does not — by its form, its nature or its wording — purport to be a measure intended to produce legal effects is not enough to support the conclusion that it does not produce binding legal effects. Nor is the fact that that measure has or has not been published relevant in this regard.

After carrying out a detailed examination of the content of the communication, the Court concluded that the communication does not contain new rules for the award of public contracts which

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

([3]) Commission interpretative communication on the Community law applicable to contract awards not or not fully subject to the provisions of the public procurement directives (OJ 2006 C 179, p. 2).

([4]) Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ 2004 L 134, p. 1) and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114).

go beyond the obligations under the law as it currently stands; in those circumstances, the communication did not produce binding legal effects liable to affect the legal situation of the Federal Republic of Germany.

2. Temporal application of Article 263 TFEU

Under the fourth paragraph of Article 230 EC, the admissibility of actions brought by individuals against acts of which they are not the addressees is subject to the twofold condition that the applicants be directly and individually concerned by the contested act. According to the 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 ([5]).

When the Treaty of Lisbon entered into force on 1 December 2009, the conditions governing the admissibility of actions for annulment were amended. According to the fourth paragraph of Article 263 TFEU, any natural or legal person may institute proceedings against an act which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.

Before even broaching the substantive interpretation of those provisions, the Court was called upon in 2010 to decide the issue of their temporal application. Given the importance of this question, it was the Grand Chamber of the Court that ruled on this occasion.

The two cases at issue, Case T-532/08 *Norilsk Nickel Harjavalta and Umicore* v *Commission* and Case T-539/08 *Etimine and Etiproducts* v *Commission* (orders of 7 September 2010, not yet published), concerned applications for annulment of Directive 2008/58/EC ([6]) and Regulation (EC) No 790/2009 ([7]), which have the effect of amending the classification of certain nickel carbonate compounds and borates.

Since the actions were brought on 5 December 2008, the Commission raised a plea of inadmissibility, submitting that the contested measures were not of individual concern to the applicants within the meaning of Article 230 EC. As the Treaty of Lisbon had entered into force in the meantime, the applicants contended that, under the new provisions in the fourth paragraph of Article 263 TFEU, that condition governing admissibility could no longer apply with regard to the contested measures. The question thus arose whether the fourth paragraph of Article 263 TFEU was applicable, *ratione temporis*, to the actions in question and, more generally, to all actions that were pending when the Treaty of Lisbon entered into force.

Noting that no transitional provision is laid down in the FEU Treaty in this regard, the Court stated that it is settled case-law, first, that in accordance with the maxim *tempus regit actum* the question

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

([6]) Commission Directive 2008/58/EC of 21 August 2008 amending, for the purpose of its adaptation to technical progress, for the 30th time, Council Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ 2008 L 246, p. 1).

([7]) Commission Regulation (EC) No 790/2009 of 10 August 2009 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures (OJ 2009 L 235, p. 1).

of the admissibility of an application must be resolved on the basis of the rules in force at the date on which it was submitted and, second, that the conditions of admissibility of an action are judged at the time of bringing the action, that is, the lodging of the application, a defect in which can be rectified only before the expiry of the period for bringing proceedings. The contrary view would lead to the danger of arbitrariness in the administration of justice, since the admissibility of an application would then depend on the — uncertain — date of delivery of the decision of the Court putting an end to the proceedings.

That conclusion is not affected by the argument that Article 263 TFEU forms part of the procedural rules in respect of which the case-law has held that, unlike substantive rules, they are generally taken to apply to all proceedings pending at the time when they enter into force. Even if it were considered that jurisdictional questions are within the field of procedural rules, the Court held that, for the purposes of determining the applicable provisions by reference to which the admissibility of an action for the annulment of a European Union act must be assessed, the maxim *tempus regit actum* must be applied.

3. Legal interest in bringing proceedings

The Court explained various aspects, as addressed below, of the concept of a legal interest in bringing proceedings, a condition governing the admissibility of actions for annulment.

First, an action for annulment brought by a natural or legal person is admissible only in so far as that person has an interest in the annulment of the contested measure. In order for such an interest to be present, the annulment of the measure must of itself be capable of having legal consequences or, in accordance with a different form of words, the action must be liable, if successful, to procure an advantage for the party who has brought it ([8]). The interest in bringing proceedings must continue until the final decision, failing which there will be no need to adjudicate ([9]).

In Joined Cases T-355/04 and T-446/04 *Co-Frutta* v *Commission* [2010] ECR II-1 ([10]), the Court explained how the question of a legal interest in bringing proceedings is to be assessed where, following an application for access to Commission documents, the person concerned brings two actions in turn, one for annulment of the implied decision of the Commission rejecting the access application and the other for annulment of the express decision of the Commission taken after the initial implied decision.

In the case in point, Co-Frutta, an undertaking governed by Italian law that engaged in the ripening of bananas, had applied to the Commission's Directorate-General for Agriculture (Agriculture DG) for access to Commission documents relating to banana importers registered in the European Community. Following a negative response from the Director-General of the Agriculture DG, the applicant addressed a confirmatory application to the Secretary-General of the Commission, to which it received an implied negative response on expiry of the 15-day time-limit prescribed by Regulation (EC) No 1049/2001 ([11]). The applicant contested the legality of those two decisions before the Court (the subject of Case T-355/04).

([8]) See Case T-310/00 *MCI* v *Commission* [2004] ECR II-3253, paragraph 44 and the case-law cited.

([9]) Case C-362/05 P *Wunenburger* v *Commission* [2007] ECR I-4333, paragraph 42.

([10]) See also the judgment of 10 December 2010 in Joined Cases T-494/08 to T-500/08 and T-509/08 *Ryanair* v *Commission*, not yet published.

([11]) 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).

Two months later, the Secretary-General of the Commission adopted an express decision in which he confirmed his implied decision for the most part whilst, however, granting access to some of the documents requested. The applicant brought a fresh action against that decision (the subject of Case T-446/04).

The Court held that, because of the adoption of the subsequent express decision whose annulment it also sought, the applicant had lost its interest in bringing proceedings against the implied decision and that there was no longer any need to adjudicate on the action brought in Case T-355/04. By adopting the express decision, the Commission had, in fact, withdrawn the implied decision adopted previously. The Court also found that annulment of the implied decision on grounds of a procedural defect could do no more than give rise to another decision identical in substance to the express decision. Moreover, consideration of the action against the implied decision could not be justified either by the objective of preventing its alleged unlawfulness from recurring in the future or by that of facilitating a potential action for damages, since it was possible to attain both those objectives through consideration of the action challenging the express decision, the sole action held admissible.

Second, in Case T-121/08 *PC-Ware Information Technologies* v *Commission* (judgment of 11 May 2008, not yet published), the Court applied the case-law according to which, whilst the interest in bringing proceedings is assessed by having regard in particular to the direct advantage that annulment of the measure in question would procure to the applicant, the action brought by the applicant is also admissible where the annulment sought would have the effect of preventing future repetition of the alleged illegality ([12]). It thus held that an action brought by an unsuccessful candidate in a public procurement procedure against the Commission's decision rejecting its tender was admissible although the contract had already been partially performed. The Court held that in the case of a framework contract, such as the one at issue creating a single point of purchase for the acquisition of software products and licences from the supplier Microsoft, that was likely to serve as a model for similar future procurement contracts, there was an interest in preventing the unlawfulness alleged by the applicant from recurring in the future.

Third, in Joined Cases T-425/04, T-444/04, T-450/04 and T-456/04 *France and Others* v *Commission* (not yet published, under appeal), the Court noted the particular situation provided for by the Treaty in the case of Member States as regards demonstration of a legal interest in bringing proceedings, and it distinguished this concept from the concept of a challengeable measure.

Thus, the Court pointed out that the Treaty draws a clear distinction between the right of the institutions and Member States to bring an action for annulment and that of natural and legal persons; all Member States are given the right to contest the legality of decisions of the Commission by means of an action for annulment without having to establish any legal interest in bringing proceedings. A Member State need not therefore prove that an act of the Commission which it is contesting produces legal effects with regard to that Member State in order for its action to be admissible. Furthermore, the concept of a legal interest in bringing proceedings must not be confused with the concept of a challengeable act, pursuant to which an act must be intended to produce legal effects capable of adversely affecting the interests of those concerned in order for it to be capable of being the subject of an action for annulment, a matter which must be determined by looking to its substance. In the case in point, since the contested decision constituted such a challengeable act producing binding legal effects, the French Republic, solely in its capacity

([12]) Case T-102/96 *Gencor* v *Commission* [1999] ECR II-753, paragraph 41.

as a Member State, was entitled to bring an action for annulment without being required to show a legal interest in bringing proceedings in that regard.

Competition rules applicable to undertakings

1. General

(a) Concept of an association of undertakings

In Case T-23/09 *CNOP and CCG* v *Commission* (judgment of 26 October 2010, not yet published), the Court adopted a less restrictive approach towards classification of an association of undertakings in the context of Commission inspection decisions. Article 20(4) of Regulation (EC) No 1/2003 ([13]) states that the Commission may conduct all necessary inspections of undertakings and associations of undertakings. In the case which gave rise to that judgment, the Conseil national de l'Ordre des pharmaciens (CNOP) and the Conseil central de la section G (CCG) de l'Ordre national des pharmaciens (ONP), the addressees of the contested decision together with the ONP, contested the Commission's classification of them as undertakings or associations of undertakings, and consequently, that the Commission was able to carry out inspections at their premises. The Court stated, first of all, that it is necessary to take into account the specific nature of inspection decisions. In particular, in view of the fact that such decisions are adopted at the start of an inquiry, there can be no question at that stage of assessing definitively whether the acts or decisions of the addressee entities or other entities can be regarded as agreements between undertakings, as decisions by associations of undertakings or as concerted practices contrary to Article 81(1) EC (now Article 101(1) TFEU) or else as practices referred to in Article 82 EC (now Article 102 TFEU). It is not a matter at that stage of carrying out an assessment of specific conduct, since the very purpose of the inspection is to obtain evidence relating to alleged conduct. The Court then went on to observe that the Commission found that the ONP and the applicants are organisations which bring together and represent a number of professionals who may be described as undertakings within the meaning of Article 81 EC. The question whether or not, in the exercise of their specific powers, the applicants escaped the application of Article 81 EC was clearly premature and would have to be determined in the final decision. The Court therefore concluded that the Commission was entitled to consider that, at the stage when the contested decision was adopted, the ONP and the applicants were associations of undertakings within the meaning of Article 20(4) of Regulation (EC) No 1/2003.

(b) Market definition

Case T-427/08 *CEAHR* v *Commission* (judgment of 15 December 2010, not yet published) afforded the Court an opportunity to recall the method for defining the relevant market in the case of aftermarkets. In that judgment, the Court observed that, in the contested decision, the Commission stated that the spare parts market for primary products of a particular brand might not be a separate relevant market in two situations: first, if it is possible for a consumer to switch to spare parts manufactured by another producer; second, if it is possible for the consumer to switch to another primary product in order to avoid a price increase on the market for spare parts. The Court stated, however, in this respect that the Commission must show that in the event of a moderate and permanent increase in the price of secondary products, a sufficient number of consumers would switch to other primary or secondary products, in order to render such an increase unprofitable. The Court added that the demonstration of the existence of a purely theoretical possibility

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

of consumers switching to another primary product is not a sufficient demonstration for the purposes of the definition of the relevant market, since that definition is based on the concept that effective competition exists. The Court held that, by finding that the primary and secondary products were part of the same market in the case in point, without even having shown that a moderate increase in the price of the products of a manufacturer on the secondary market would cause a shift in demand to products of other manufacturers on the primary market, the Commission committed a manifest error of assessment.

(c) Inspections

Obligation to state reasons

In *CNOP and CCG* v *Commission*, the Court clarified the extent of the Commission's obligation to state reasons in the context of an inspection decision. The Court noted, first of all, that the contested decision did not contain any specific arguments relating to the reasons why a professional body such as that in question and its organs should be regarded as associations of undertakings. However, the Court then observed that, in view of the stage of the administrative procedure at which inspection decisions are taken, the Commission does not at that time have precise information enabling it to analyse whether the lines of conduct or acts covered can be categorised as decisions by undertakings or associations of undertakings within the meaning of Article 81 EC. The Court pointed out that it is precisely by taking account of the specific nature of inspection decisions that the case-law concerning the statement of reasons has made clear the types of information which must be contained in an inspection decision in order to enable the addressees to assert their rights of defence at that stage of the administrative procedure. To impose a more onerous obligation to state reasons on the Commission would not take due account of the preliminary nature of the inspection. The Court therefore held that the Commission was not required to set out in the contested decision the specific legal analysis on the basis of which it categorised the addressees as associations of undertakings, beyond the explanations contained in that regard in that decision.

Burden of proof

In Case T-141/08 *E.ON Energie* v *Commission* (judgment of 15 December 2010, not yet published), the Court upheld the fine of EUR 38 million imposed on E.ON Energie AG for having broken a seal affixed by the Commission on a room of that undertaking during an inspection. This first case involving application of Article 23(1)(e) of Regulation (EC) No 1/2003 led the Court to examine more specifically the issue of the burden of proof in this type of situation.

In that connection, the Court recalled the principle that, concerning the burden of proof of an infringement in competition law, where the Commission acts on the basis of direct evidence which is in principle sufficient to demonstrate the existence of the infringement, it is not sufficient for the undertaking concerned to raise the possibility that a circumstance arose which may affect the probative value of that evidence in order for the Commission to bear the burden of proving that that circumstance could not have affected the probative value of that evidence. On the contrary, it is for the undertaking concerned to prove to the requisite legal standard, on the one hand, the existence of the circumstance which it alleges and, on the other, that that circumstance calls in question the probative value of the evidence relied on by the Commission, except in cases where such evidence cannot be provided by the undertaking concerned due to the conduct of the Commission itself. Moreover, although the onus is on the Commission to prove the breach of seal, it is not, on the other hand, its responsibility to demonstrate that the room which had been sealed was actually entered or that the documents stored there were tampered with. In any event, the Court held in the case in point that it was for the applicant to take the necessary measures to prevent

any tampering with the seal at issue, *a fortiori* since the applicant had been clearly informed of the significance of the seal at issue and of the consequences of a breach of seal.

Fines

In *E.ON Energie* v *Commission*, the applicant also claimed that the fine imposed of EUR 38 million was disproportionate. The Court noted, however, in its judgment, that the Commission took into consideration the fact that the breach of seal in question was the first case to which Article 23(1)(e) of Regulation (EC) No 1/2003 had applied, while pointing out that, quite apart from that circumstance, first, the applicant had at its disposal extensive legal expertise in antitrust law, second, the amendment of Regulation (EC) No 1/2003 dated from more than three years prior to the inspections in which the applicant had been involved, third, the applicant had been informed of the consequences of a breach of seal and, fourth, other seals had already been affixed in the buildings of other companies of the applicant's group a few weeks previously. Furthermore, the Court pointed out that the mere fact that the seal is broken nullifies its safeguarding effect and is therefore sufficient to constitute the infringement. Lastly, the Court held that a fine of EUR 38 million, which corresponded to approximately 0.14% of the applicant's turnover, cannot be regarded as disproportionate to the infringement, in the light of the particularly serious nature of a breach of seal, the size of the applicant and the need to ensure that the fine has a sufficiently deterrent effect, in order that it cannot pay for an undertaking to break a seal affixed by the Commission in the context of inspections.

2. Points raised on the scope of Article 81 EC (now Article 101 TFEU)

(a) Continuous infringement

In Case T-18/05 *IMI and Others* v *Commission* (judgment of 19 May 2010, not yet published) the Court's examination related inter alia to whether or not the applicants' participation in the infringement was uninterrupted. The Court stated, in this respect, that, although the period separating two manifestations of infringing conduct is a relevant criterion in order to establish the continuous nature of an infringement, the fact remains that the question whether or not that period is long enough to constitute an interruption of the infringement cannot be examined in the abstract but needs to be assessed in the context of the functioning of the cartel in question. In the case in point, the Court observed that the period during which there were no contacts or manifestations of collusion on the part of the applicants exceeded by more than one year the intervals at which the undertakings which were members of the cartel habitually manifested their respective intentions to restrict competition. The Court concluded that, by taking the view that the applicants had participated uninterruptedly in the cartel during the period in dispute, the Commission erred in law, and the Court amended the amount of the fine imposed on the applicants in order to take account of their sequential participation in the cartel, reducing the increase in the amount of the fine in respect of the duration of the infringement from 110 to 100%.

(b) Calculation of the amount of the fine

The actions against the Commission's decisions imposing fines in respect of the 'industrial thread', 'plumbing tubes' and 'Spanish tobacco' cartels have enabled the Court to clarify and illustrate a number of elements used in the calculation of the amount of fines.

Starting amount

In Case T-452/05 *BST* v *Commission* (judgment of 28 April 2010, not yet published), as regards the effective economic capacity of undertakings which infringe the competition rules to cause

damage to competition, the Court observed that although, depending on the circumstances, vertical integration and the extent of the product range may be relevant factors in the assessment of the influence which an undertaking may exercise on the market, and provide a further indication of that influence in addition to market shares and turnover in the relevant market, it was necessary to hold that, in the case in point, the applicant's arguments concerning the vertical integration of the other undertakings concerned did not show that those undertakings enjoyed any particular and significant competitive advantages on the relevant market.

Differential treatment

In Case T-21/05 *Chalkor* v *Commission* (judgment of 19 May 2010, not yet published, under appeal) and in *IMI and Others* v *Commission*, the Commission had concluded that there was no need to treat offenders who had participated only in one of the branches of the cartel (the 'plumbing tunes' cartel) differently from those who had also participated in another branch of that cartel, since the cooperation within that second branch had not been significantly closer than that which existed within the first branch. The Court held, however, in its judgments, that an undertaking whose liability is established in relation to several branches of a cartel contributes more to the effectiveness and the seriousness of the cartel than an offender involved in only one branch of it and therefore commits a more serious infringement. That assessment necessarily has to be made at the stage when a specific starting amount is set, since the taking into account of attenuating circumstances only allows the basic amount of the fine to be adjusted by reference to the arrangements for the offender's implementation of the cartel. Consequently, the Court reduced the starting amount of the fine by 10% for each of the applicants in those cases.

Upper limit of 10% of turnover

In Joined Cases T-456/05 and T-457/05 *Gütermann and Zwicky* v *Commission* (judgment of 28 April 2010, not yet published), the Court observed that, at least in situations where there is no indication that an undertaking has ceased its commercial activities or has diverted its turnover in order to avoid the imposition of a heavy fine, the Commission is obliged to fix the maximum limit of the fine by reference to the most recent turnover corresponding to a complete year of economic activity. In the case in point, the Court observed that there were serious grounds — such as a nil turnover over several years, the lack of employees or the lack of solid evidence that it was making use of its real estate or had investment projects for that purpose — for supposing that Zwicky & Co. AG did not continue to carry on a normal economic activity within the meaning of the case-law. Consequently, the Court held that, for the purposes of determining the upper limit of 10% of turnover not to be exceeded when calculating the amount of the fine provided for in Article 23(2) of Regulation (EC) No 1/2003, the Commission should have referred to the last turnover for Zwicky & Co. arising from real economic activities on its part, and not to that of the undertaking which took over Zwicky & Co. after the latter had ceased its activities.

Aggravating circumstances

In Case T-29/05 *Deltafina* v *Commission* (judgment of 8 September 2010, not yet published, under appeal), the Commission found that the applicant had acted as the leader of the cartel and, first, therefore increased the basic amount of the fine by 50% for aggravating circumstances and, second, took account of that role in reducing the amount of the fine by only 10% for cooperation. In its judgment, the Court held that the Commission had erred in this respect. The Court noted, first of all, that, in order to be characterised as a leader, the undertaking in question must have represented a significant driving force in the cartel and borne individual and specific liability for the operation of the cartel. However, the Court noted that, in the case in point, while the evidence

relied on by the Commission demonstrated that the applicant played an active and direct role in the tobacco processors' cartel, it did not, however, suffice to establish that that company represented such a driving force in that cartel or even that its role was more important than that of any of the Spanish processors. The Court pointed out, in particular, that there was nothing in the file to show that Deltafina SpA took any initiatives to create the cartel or that it was instrumental in securing the participation of the Spanish processors, or, moreover, that it assumed responsibility for activities usually associated with acting the part of leader of a cartel, such as chairing meetings or centralising and distributing certain data. Accordingly, in the exercise of its unlimited jurisdiction, the Court reduced the fine imposed on Deltafina from EUR 11.88 million to EUR 6.12 million.

(c) Imputability of the infringement — Joint and several liability for payment of fine

In Case T-40/06 *Trioplast Industrier* v *Commission* (judgment of 13 September 2010, not yet published), the Court provided some clarification as regards the rules applicable to the joint and several liability of successive parent companies for the payment of the fine imposed on their subsidiary.

First of all, the Court stated that the approach of ascribing to a parent company the same starting amount as that attributed to a subsidiary participating directly in a cartel, without dividing up that starting amount in any way even where there are several successive parent companies, is not in and of itself inappropriate. Indeed, the objective pursued by the Commission is to make it possible to ascribe to a parent company the same starting amount as it would ascribe to it if it had been directly involved in the cartel, which is quite in line with the objectives of competition policy.

The Court went on to observe that, where an infringement is committed by a subsidiary which has belonged to various successive economic units during the course of the infringement, it cannot be said to be necessarily inappropriate for the combined value of the amounts ascribed to the parent companies to be greater than the amount, or combined amounts, ascribed to the subsidiary.

However, the Court held that the contested decision was wrong to confer on the Commission an unfettered discretion to recover the fine from one or other of the legal persons concerned according to their ability to pay. That discretion means that the amount actually recovered from the applicant will depend on the amounts recovered from the former parent companies, and vice versa, although those companies have never formed a common economic unit and are not therefore joint and severally liable. The Court added that the principle that penalties should fit the individual offence requires that the amount actually paid by the applicant does not exceed its share of its joint and several liability, a share that corresponds to the proportion of the fine imposed on the applicant relative to the cumulative total of the limits up to which the successive parent companies are jointly and severally liable for payment of the fine imposed on the subsidiary. In the case in point, the Court held that the decision was inconsistent with the obligation which rests upon the Commission to enable the applicant to know for certain the exact amount which it must pay in respect of the period for which it is held jointly and severally liable with its subsidiary for the infringement. Consequently, the Court partially annulled that decision and set the amount ascribed to Trioplast Industrier at EUR 2.73 million, that amount being the basis on which the Commission will have to determine the applicant's share in the joint and several liability of the successive parent companies for payment of the fine imposed on their subsidiary.

3. Points raised on the scope of Article 82 EC (now Article 102 TFEU)

In Case T-321/05 *AstraZeneca* v *Commission* (judgment of 1 July 2010, not yet published, under appeal) the Court ruled on the lawfulness of a Commission decision finding that the applicant had infringed Article 82 EC, first, by making misleading representations to national patent offices and,

second, by deregistering marketing authorisations for a pharmaceutical product whose patent was due to expire.

As regards the first abuse, the Court held that the submission to the public authorities of misleading information liable to lead them into error and therefore to make possible the grant of an exclusive right to which an undertaking is not entitled, or to which it is entitled for a shorter period, constitutes a practice falling outside the scope of competition on the merits which may be particularly restrictive of competition.

The misleading nature of representations made to public authorities must be assessed on the basis of objective factors, and proof of the deliberate nature of the conduct and of the bad faith of the undertaking in a dominant position is not required for the purposes of identifying an abuse of a dominant position. However, the fact that the concept of abuse of a dominant position is an objective concept and implies no intention to cause harm does not lead to the conclusion that the intention to resort to practices falling outside the scope of competition on the merits is in all events irrelevant, even if the finding of abuse should primarily be based on an objective finding that the conduct in question actually took place.

As regards the second abuse, namely the deregistration of marketing authorisations for a pharmaceutical product whose patent was due to expire, the Court held that, whilst the fact that an undertaking is in a dominant position cannot deprive it of its entitlement to protect its own commercial interests when they are attacked, it cannot use regulatory procedures in such a way as to prevent or make more difficult the entry of competitors on the market, in the absence of grounds relating to the defence of the legitimate interests of an undertaking engaged in competition on the merits or in the absence of objective justification. The preparation by an undertaking, even in a dominant position, of a strategy whose object it is to minimise erosion of its sales and to enable it to deal with competition from generic products is legitimate and is part of the normal competitive process, provided that the conduct envisaged does not depart from practices coming within the scope of competition on the merits.

After the expiry of the period of exclusivity for the use of data relating to the results of pharmacological and toxicological tests and clinical trials, conduct designed to prevent manufacturers of generic products from making use of their right to benefit from that information produced for the purposes of marketing the original product is not based in any way on the legitimate protection of an investment which comes within the scope of competition on the merits. The fact that the dominant undertaking's competitors could have obtained marketing authorisations by means of alternative procedures does not suffice to make the deregistration of marketing authorisations non-abusive, since that conduct serves to exclude from the market, at least temporarily, competing manufacturers of generic products.

In Case T-155/06 *Tomra Systems and Others* v *Commission* (judgment of 9 September 2010, not yet published, under appeal), the Court examined whether the Commission must, in order to prove the foreclosure of competitors from the market as a whole, determine the minimum viability threshold necessary to operate on the relevant market and then determine whether the non-contestable portion of the market (that is to say, the part of demand tied by the practices in question) is sufficiently large to be capable of having an exclusionary effect vis-à-vis competitors. The Court held that foreclosure by a dominant undertaking of a substantial part of the market cannot be justified by showing that the contestable part of the market is still sufficient to accommodate a limited number of competitors. First, customers on the foreclosed part of the market should have the opportunity to benefit from whatever degree of competition is possible on the market and competitors should be able to compete on the merits for the entire market and not just for a part of it.

Second, it is not the role of the dominant undertaking to dictate how many viable competitors will be allowed to compete for the remaining contestable portion of demand.

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

(a) Concept of a challengeable act

Case T-58/09 *Schemaventotto* v *Commission* (order of 2 September 2010, not yet published) enabled the Court to clarify further the application of Article 21 of Regulation (EC) No 139/2004 ([14]). In that case, the proposed concentration between Abertis Infrastructures SA and Autostrade SpA, authorised initially by the Commission, was abandoned by those companies in the light, in particular, of difficulties posed by legislative changes in Italy. Those changes had been the subject of a preliminary assessment by the Commission finding that there had been an infringement of Article 21 of Regulation (EC) No 139/2004. In the light of proposed legislative amendments, the Commission nonetheless communicated to the Italian authorities, on 13 August 2008, its decision to terminate the procedure under Article 21 of Regulation (EC) No 139/2004. By letter of 4 September 2008 the Commission informed the applicant of that decision, which was the subject-matter of the action before the Court.

First, the Court held in that order that, by the letter, the Commission only gave notice of its decision to discontinue the procedure in the *Abertis* v *Autostrade* case in relation to possible infringements identified in the preliminary assessment, and that that decision did not approve the new national legislative provisions.

Second, the Court examined whether that measure constituted a challengeable act, namely whether it produced legal effects which were binding on, and capable of affecting the interests of, the applicant by bringing about a distinct change in his legal position. In that connection, the Court observed that the procedure laid down in Article 21(4) of Regulation (EC) No 139/2004 relates to the monitoring of specific concentration transactions by the Commission under that regulation. Consequently, the Commission must adopt a decision addressed to the Member State concerned, consisting either in the recognition of the interest at issue in view of its compatibility with the general principles and other provisions of European Union law or in the non-recognition of the interest by reason of its incompatibility with those principles and provisions. Thus, as the proposed concentration was abandoned, the Commission was no longer competent in the case in point to terminate the procedure initiated pursuant to Article 21(4) of that regulation by a decision concerning the recognition of a public interest protected by the national measures at issue.

That conclusion cannot be called into question by the fact that the procedure laid down in Article 21(4) of Regulation (EC) No 139/2004 has not only an objective function, but also a subjective function, namely, to protect the interests of the undertakings concerned relating to the proposed concentration from the viewpoint of ensuring the legal certainty and the speed of that procedure. The subjective function ceased to be relevant because the proposed concentration was abandoned.

The Commission could therefore only take the formal decision to take no further action in the procedure in question. Since that decision had no other effect, it could not therefore constitute a challengeable act.

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

In Case T-279/04 *Éditions Jacob* v *Commission* (judgment of 13 September 2010, not published, under appeal), the Commission raised an objection of inadmissibility against the applicant's action brought against the decision authorising, subject to the sale of assets, the purchase of Vivendi Universal Publishing SA by Lagardère SCA. The Commission took the view that an earlier decision by which it had decided to initiate an in-depth control of the proposed concentration had had the effect of classifying, implicitly but necessarily, the prior acquisition of the target assets by Natexis Banques Populaires SA as an acquisition of securities in an undertaking with a view to reselling them. The contested decision was therefore just a purely confirmatory decision. The Court rejected the Commission's interpretation, and observed that the decision to initiate the phase of in-depth control does not constitute an act which may be the subject of an action, but a preparatory step whose sole aim is to initiate enquiries intended to identify the matters which will allow the Commission to rule, by means of a final decision at the end of that procedure, on the compatibility of that transaction with the common market. The Court added that the initiation of the phase of in-depth control has the sole purpose of making a preliminary finding on the existence of serious doubts raised as to the compatibility of the notified transaction.

(b) Concept of concentration

In Case T-411/07 *Aer Lingus Group* v *Commission* (judgment of 6 July 2010, not yet published), the applicant, relying on national legislative provisions, sought the extension of the concept of concentration, as defined in European Union law, to cases in which, where control has not been obtained, a shareholding by an undertaking in the capital of another undertaking does not, as such, confer the power of exercising decisive influence on the other undertaking. Ryanair Holdings plc had launched a public bid for the entire share capital of Aer Lingus Group plc, but had had to abandon its plans on account of the Commission's decision declaring the concentration incompatible with the common market. Following that decision, however, Aer Lingus Group had requested the Commission to require Ryanair Holdings to divest itself also of its minority shareholding already held in the capital of Aer Lingus Group. The Commission rejected that request and Aer Lingus Group brought an action against that decision.

In its judgment, the Court observed that the power to require the disposal of all the shares acquired by an undertaking in another undertaking exists only to restore the situation prevailing prior to the implementation of the concentration. Accordingly, if control has not been acquired, and the concentration has not therefore been implemented, the Commission does not have the power to dissolve that 'concentration'. The Court also stated that, generally, Regulation (EC) No 139/2004 does not seek to protect companies from commercial disputes between them and their shareholders or to remove all uncertainty in relation to the approval of important decisions by those shareholders, since such disputes fall within the jurisdiction of the national courts. Similarly, the bounds of the powers invested in the Commission for the purposes of merger control would be exceeded if it were accepted that the Commission may order the divestment of a minority shareholding in a competitor undertaking on the sole ground that it represents a theoretical economic risk when there is a duopoly, or a disadvantage for the attractiveness of the shares of one of the undertakings making up that duopoly.

In *Éditions Jacob* v *Commission,* the applicant disputed the legal classification of the acquisition by Natexis Banques Populaires of the target assets as an acquisition of securities in an undertaking with a view to reselling them falling within Article 3(5)(a) of Regulation (EEC) No 4064/89 ([15]). The

([15]) Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (corrected version, OJ 1990 L 257, p. 13).

applicant claimed that that 'holding' transaction was, in fact, a concentration within the meaning of Article 3(1)(b) of that regulation, since it had enabled Lagardère to acquire either sole control of the target assets, through the intermediary of Natexis Banques Populaires, or joint control of them, together with Natexis Banques Populaires, and, therefore, to have the possibility of exercising a decisive influence over the activity associated with the target assets.

The Court held that the allegations of sole control could not be upheld. It was apparent from the wording of the sale contract that Lagardère did not have either a property right over, or a right to use, the target assets before the Commission adopted the conditional authorisation decision, or any rights enabling it to exercise a decisive influence over the organs of the companies controlling the target assets. As regards joint control, the Court observed that, even on the assumption that the holding of the target assets did enable Lagardère to exercise jointly with Natexis Banques Populaires a decisive influence over the activity associated with the target assets as of completion of the holding transaction, the concentration which would result from this would in any event constitute a concentration distinct from the concentration notified by Lagardère. The error allegedly made by the Commission in classifying the holding of the target assets as 'an acquisition of securities with a view to reselling them' and not as an acquisition of sole or joint control had no effect, in any event, on the legality of the decision declaring compatible with the common market, subject to the sale of assets, the purchase of Vivendi Universal Publishing by Lagardère.

(c) Efficiency gain — Verifiability

In *Ryanair* v *Commission*, the Court observed, first of all, that the Commission took the view that it is apparent from both Regulation (EC) No 139/2004 and the guidelines on the assessment of horizontal mergers ([16]) that, to counteract the negative effects of a merger on consumers, the resulting efficiency gains need to be verifiable, likely to benefit consumers and could not have been achieved to a similar extent by means that are less anti-competitive than the proposed concentration. As regards the first condition, the Court stated that, contrary to the view taken by the Commission in the contested decision, pursuant to the guidelines, the condition relating to the verifiability of efficiencies does not require the notifying party to provide data capable of being independently verified by a third party or documents, dated pre-merger, which serve to objectively and independently assess the scope for efficiency gains generated by the acquisition. The Commission was not therefore entitled to reject the data submitted by Ryanair Holdings on that basis. The Court added that business life does not always allow such documents to be produced in due time and the documents used by an undertaking to initiate a public bid, whether they come from that undertaking or from its advisers, are by nature likely to be of some relevance as regards substantiating efficiency claims.

(d) Commitments

Trustee

In Case T-452/04 *Éditions Jacob* v *Commission* (judgment of 13 September 2010, not published, under appeal), the Court was called upon to rule on the legality of the decision relating to the approval of Wendel Investissement as purchaser of the assets sold in accordance with the Commission's decision of 7 January 2004 authorising, subject to the sale of assets, the purchase of Vivendi Universal Publishing by Lagardère. One of the pleas raised alleged that the approval of Wendel Investissement had been based on the report of a trustee who was not independent. In this respect,

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

the Court observed, first, that the trustee was appointed even though he was a member of the executive board of the company holding the target assets and, second, that he carried out his duties as a trustee simultaneously with the duties of a member of the board of that company holding the target assets. Accordingly, he was dependant on that company, to an extent that questions might be raised as to the neutrality he should exhibit in carrying out his duties as trustee. In so far as in his capacity as trustee he drew up the report assessing Wendel Investissement as a prospective purchaser of the assets sold, which had a decisive influence on the approval decision adopted by the Commission, the Court held that the illegality established justified the annulment of the decision approving Wendel Investissement as purchaser.

State aid

Cases concerning State aid accounted for a significant part of the Court's activity in 2010, 50 cases having been disposed of. It is possible only to give an overview of the Court's decisions, concerning (i) questions of admissibility, (ii) questions of substance, and (iii) procedural questions.

1. Admissibility

The case-law in 2010 brought further clarification with respect to the assessment of standing to bring proceedings, in the case of actions challenging a Commission decision declaring aid incompatible with the common market.

First, in Case T-193/06 *TF1* v *Commission* (judgment of 13 September 2010, not yet published), the applicant sought annulment of a Commission decision relating to support measures for the cinema and audiovisual industry in France, by which the Commission decided not to raise any objections to the measures at issue on the conclusion of the preliminary examination stage laid down under Article 88(3) EC.

Contending that the contested decision was formally addressed to the French Republic, the Commission disputed the admissibility of the action brought by the applicant, and maintained that the applicant was not individually concerned by that decision.

The Court observed that the preliminary examination stage is intended merely to allow the Commission to form a *prima facie* opinion on the partial or complete conformity of the aid. It is only in connection with the examination stage under Article 88(2) EC that the Commission is required to give the parties concerned notice to submit their comments. Thus, where, without initiating the formal investigation procedure under Article 88(2) EC, the Commission finds that the aid is compatible with the common market, the persons intended to benefit from those procedural guarantees, inter alia competitors of the aid recipients, do have standing to bring an action seeking to have their procedural rights safeguarded. By contrast, if an applicant calls into question the merits of the decision appraising the aid as such, the mere fact that it may be regarded as 'concerned' within the meaning of Article 88(2) EC cannot suffice for the action to be declared admissible.

In the case in point, the Court first of all examined the nature of the applicant's pleas before concluding that none of those pleas for annulment sought to establish the existence of serious difficulties raised by the support measures at issue in the light of their classification as State aid or their compatibility with the common market, difficulties which would have obliged the Commission to initiate the formal procedure. The applicant did not call into question the Commission's refusal to initiate the formal investigation procedure referred to in Article 88(2) EC and it did not plead infringement of procedural rights stemming from that provision, but rather sought exclusively the annulment of the decision on the substance, as it confirmed at the hearing in response to a question put by the Court.

Accordingly, the action did not seek to safeguard the procedural rights of the applicant, which therefore had to show that it had a particular status within the meaning of the case-law resulting from *Plaumann* v *Commission* ([17]), inter alia on the ground that its market position was substantially affected by the measures covered by the decision, since the effect on its competitive position had to be examined in relation to the beneficiaries of the aid measures at issue, namely operators with a production activity in the cinematographic and audiovisual fields. In the case in point, since the compulsory investment percentage applied to the turnover was the same for all competitors, the fact that the applicant's investment obligations exceeded the expenses of the other competitors, in view of its high turnover, was not such as to confer on it a particular status and, therefore, did not distinguish it individually just as in the case of the person addressed within the meaning of *Plaumann* v *Commission*.

Second, in Joined Cases T-415/05, T-416/05 and T-423/05 *Greece and Others* v *Commission* (judgment of 13 September 2010, not yet published), the Court held that, as long as the applicants were recognised as having, even after being placed in liquidation, a legal interest in seeking the annulment of the contested decision, the intervener retained a corresponding interest in intervening in support of the Commission to argue for the legality of that decision, if only for the purposes of making claims for compensation, followed by possible actions, based on the unlawful grant of aid which caused it injury.

Third, and lastly, in Joined Cases T-231/06 and T-237/06 *Netherlands and NOS* v *Commission* (judgment of 16 December 2010, not yet published), the Court recalled that the administrative procedure in State aid matters is only initiated against the Member State concerned. Undertakings that receive aid are only considered to be interested parties in this procedure. It follows that, far from enjoying the same rights of defence as those which individuals against whom a procedure has been instituted are recognised as having, interested parties have only the right to be involved in the administrative procedure to the extent appropriate in the light of the circumstances of the case.

2. Substantive rules

(a) Individual aid granted under a general aid scheme approved by the Commission

In Joined Cases T-102/07 and T-120/07 *Freistaat Sachsen and Others* v *Commission* (judgment of 3 March 2010, not yet published), the Court held that, when the Commission has before it a specific grant of aid alleged to have been made in pursuance of a previously authorised scheme, it cannot at the outset examine it directly in relation to the EC Treaty. Prior to the initiation of any procedure, it must first examine whether the aid is covered by the general scheme and satisfies the conditions laid down in the decision approving it. If it did not do so, the Commission could, whenever it examined an individual aid measure, go back on its decision approving the aid scheme, which had already involved an examination in the light of Article 87 EC. Aid which constitutes the strict and foreseeable application of the conditions laid down in the decision approving the general aid scheme is thus considered to be existing aid which does not need to be notified to the Commission or examined in the light of Article 87 EC.

The Court also stated that a Commission decision ruling on whether an aid measure is consistent with the relevant scheme falls within the scope of the Commission's obligation to ensure the application of Articles 87 EC and 88 EC. Consequently, the Commission's examination of the consistency of an aid measure with that scheme does not constitute a step that exceeds its powers. Therefore,

([17]) Case 25/62 [1963] ECR 95.

the Commission's assessment cannot be limited by the assessment of the national authorities that granted the aid.

(b) Granting of an economic advantage

In Joined Cases T-425/04, T-444/04, T-450/04 and T-456/04 *France and Others* v *Commission* (judgment of 21 May 2010, not yet published), the Court held that public declarations made by national authorities result in an appreciable advantage for a company inasmuch as they enable the financial markets to recover confidence. They also make it possible, easier and cheaper for a company to gain access to new loans necessary in order finance its short-term debts and ultimately help to stabilise a company's very fragile financial situation. Those declarations decisively influence the reaction of rating agencies. Any positive influence on a company's rating, if only as a result of public declarations which are likely to create or strengthen investor confidence, produces an immediate impact on the level of costs which the company must incur in order to refinance itself on the capital markets.

The Court also stated that the requirement of the connection between the advantage identified and the commitment of State resources presupposes, in principle, that that advantage is closely linked to a corresponding charge included in the State budget or to the creation, on the basis of legally binding obligations entered into by the State, of a sufficiently real economic risk to that budget. In order that declarations may be treated in the same way as a State guarantee or interpreted as disclosing an irrevocable commitment to provide specific financial assistance, such as repayment of short-term debts, they must consist in a concrete, unconditional and irrevocable commitment of public resources and set out explicitly either the exact sums to be invested, or the specific debts to be guaranteed, or, at the very least, a predefined financial framework, such as a credit line up to a certain amount, as well as the conditions for granting the proposed assistance. The mere fact that a Member State has used its particular reputation with the financial markets cannot suffice to demonstrate that its resources were exposed to a risk such as can be considered to constitute a transfer of State resources within the meaning of Article 87(1) EC, which is sufficiently linked to the advantage conferred by its declarations.

In Case T-177/07 *Mediaset* v *Commission* (judgment of 15 June 2010, not yet published, under appeal), the Court recalled that the case-law has acknowledged that an advantage granted directly to certain natural or legal persons who are not necessarily undertakings may constitute an indirect advantage, hence State aid, for other natural or legal persons who are undertakings. The argument that a subsidy granted to consumers cannot be categorised as State aid to traders providing consumer goods or services must therefore be rejected.

(c) Services of general economic interest

In Joined Cases T-568/08 and T-573/08 *M6 and TF1* v *Commission* (judgment of 1 July 2010, not yet published, under appeal), the Court held that the view that fulfilment of the fourth condition of the conditions set out in paragraphs 88 to 93 of *Altmark Trans and Regierungspräsidium Magdeburg* ([18]) is a requirement for application of the derogation provided for in Article 86(2) EC is based on confusion between the conditions which establish the classification as State aid within the meaning of Article 87(1) EC and those which are used to assess the compatibility of aid pursuant to Article 86(2) EC. The sole purpose of the conditions laid down in *Altmark Trans and Regierungspräsidium Magdeburg* is the classification of the measure in question as State aid, for the purposes of

([18]) Case C-280/00 [2003] ECR I-7747.

establishing the existence of an obligation to notify the measure to the Commission in the case of new aid or to cooperate with the Commission in the case of existing aid.

The Court also stated that the question of whether an undertaking responsible for a broadcasting service of general economic interest could fulfil its public service obligations at lower cost is irrelevant for assessing the compatibility of the State funding of that service in the light of the Community State aid rules. What Article 86(2) EC seeks to prevent, though the assessment of the proportionality of the aid, is that the operator responsible for the service of general economic interest benefits from funding which exceeds the net costs of the public service.

In *Netherlands and NOS* v *Commission*, the Court stated that Member States have wide discretion to define what they regard as services of general economic interest. Hence, the definition of such services by a Member State can be questioned by the Commission only in the event of manifest error. As regards the definition of public service in the broadcasting sector, although it is true that it is not for the Commission to decide whether a programme is to be provided as a service of general economic interest, nor to question the nature or the quality of a certain product, it must, as guardian of the Treaty, be able to intervene in the event of manifest error.

(d) Private investor in a market economy test

In Case T-163/05 *Bundesverband deutscher Banken* v *Commission* (judgment of 3 March 2010, not yet published), the Court rejected the argument that the exercise of ascertaining whether the transaction took place under normal conditions of a market economy must necessarily be made by reference to the single investor or to the single undertaking benefiting from the investment, when it is the interaction between the various economic operators which is precisely the feature of a market economy. Thus, the Commission can examine whether an undertaking would have been able to procure funds entailing the same advantages from other investors and, if necessary, under what conditions. Nor, furthermore, does that exercise require the constraints connected with the nature of the asset transferred to be disregarded altogether.

Furthermore, the Court held that the fact that one aspect of the transaction entails an increase in the risk run by an investor does not justify an increase in the remuneration unless that aspect constitutes an advantage for the bank or the bank is not in a position to refuse the funds proposed. By contrast, if the increase in risk for the investor stems from a decision which he has taken for his own reasons, without being influenced by the bank's wishes or requirements, the bank will refuse to pay a remuneration premium and will obtain funds from other investors.

In *Greece and Others* v *Commission*, after recalling that it follows from Article 87(1) EC that the concept of aid is an objective one, the test being whether a State measure confers an economic advantage on the recipient undertaking that it would not have obtained under normal market conditions, the Court held that the fact that the transaction is reasonable for the public authorities or public undertaking granting the aid does not dispense with the obligation to apply the private investor test.

(e) Obligation to recover aid

In *Greece and Others* v *Commission*, the Court addressed the issue of the recovery of aid in the event of financial continuity between two undertakings. Where such continuity exists, the new undertaking may be regarded as the effective recipient of the aid benefiting the sector of activity in question which had been granted to the former undertaking before those activities were taken over by the new undertaking. By contrast, in the absence, after the hiving-off, of economic unity

between the two undertakings, the aid granted to the former undertaking after the hiving-off cannot be recovered from the new undertaking on the sole ground that that undertaking obtained an indirect benefit from it. That fact cannot itself lead to the conclusion that the new undertaking is the effective recipient of the aid granted to the former undertaking.

As regards apportionment of the recovery obligation between recipients of aid, the Court observed that, in a decision finding that aid is incompatible and requiring its recovery, the Commission is not required to state to what extent each recipient undertaking has benefited from the amount of the aid in question. It is for the Member State concerned to determine the amount which must be repaid by each of those undertakings in its recovery of the aid, in cooperation with the Commission, in accordance with Article 10 EC.

Moreover, the criteria laid down in the case-law for identifying the effective recipient of aid are objective. Financial continuity can be established on the basis of various objective elements, such as the absence of payment in consideration for the transferred assets, or of a price consistent with market conditions, or the objective fact that the effect of the transfer is to circumvent the obligation to repay the aid at issue.

The finding that there has been financial continuity between two undertakings cannot lead to the presumption that, having regard to the persistence of the financial difficulties of those two companies after the hiving-off, the new measures in favour of the new undertaking, examined in the contested decision, constitute the logical continuation of the earlier aid and, therefore, also come within the category of State aid. It is in any case for the Courts of the European Union to ascertain whether, having regard to the relevant factors, those measures can reasonably be severed from the earlier aid measures.

3. Procedural rules

(a) Formal investigation procedure

In Case T-36/06 *Bundesverband deutscher Banken* v *Commission* (judgment of 3 March 2010, not yet published), the Court held that the question whether the Commission misapplied the private investor test is not to be confused with the question whether there are serious difficulties which require the formal investigation procedure to be initiated. Furthermore, the fact that the Commission did not respond to certain complaints raised by the applicant in connection with a parallel case does not imply that the Commission was not in a position to take a decision on the measure in question on the basis of the information available to it or that it was, therefore, required to initiate the formal investigation procedure in order to complete its enquiry. Where the Commission has initiated the formal investigation procedure in respect of similar transactions and, on that occasion, there has been some discussion about the importance of certain characteristics common to all the transactions, it may be concluded that the Commission has the information allowing it to assess the relevance of those characteristics.

(b) Obligation to state reasons

In *Freistaat Sachsen and Others* v *Commission*, the Court annulled, because of an inadequate statement of reasons, a Commission decision finding the existence of State aid incompatible with the common market, which contained no reference, in its calculation of the amount of aid to the firms in difficulty, to the practice of the financial markets on accumulation of risks (firm in difficulty, absence of collateral, etc.), since the premiums as fixed by the Commission and the specific situation of the undertakings at issue did not appear clearly, creating the impression that the premiums

may have been randomly chosen whereas the Commission notice on the method for setting the reference and discount rates ([19]) does not mention anywhere that risks can be cumulative. The Commission should have explained why it resorted to additional premiums and how it chose their amounts by way of an analysis of market practice in order to allow those companies to question whether the premiums were appropriate and the Court to review their legality.

Furthermore, in *Mediaset* v *Commission*, the Court stated, with regard to the categorisation of a measure as aid, the obligation to state reasons requires that the reasons which led the Commission to consider that the measure concerned falls within the scope of Article 87(1) EC be stated. As regards the existence of a distortion of competition in the common market, while the Commission must at the very least refer to the circumstances in which aid was granted in the statement of the reasons for its decision where those circumstances show that the aid is such as to affect trade between Member States and to distort or threaten to distort competition, it is not required to carry out an economic analysis of the actual situation on the relevant markets, of the market share of the undertakings in receipt of the aid, of the position of competing undertakings or of trade flows between Member States. Furthermore, in the case of aid granted illegally, the Commission is not required to demonstrate the actual effect which that aid has had on competition and on trade between Member States. If that were the case, such a requirement would ultimately give Member States which grant unlawful aid an advantage over those which notify the aid at the planning stage. In particular, the Commission merely needs to establish that the aid in question is of such a kind as to affect trade between Member States and distorts or threatens to distort competition. It does not have to define the market in question.

Community trade mark

Decisions relating to the application of Regulations (EC) Nos 40/94 ([20]) and 207/2009 ([21]) continued to represent in 2010 a significant number of the cases disposed of by the Court (180 cases, that is to say 34% of the total number of cases disposed of in 2010).

1. Absolute grounds for refusal

Article 7(1)(b) of Regulations (EC) Nos 40/94 and 207/2009 prohibits the registration as a Community trade mark of signs which are devoid of any distinctive character; that distinctive character must be assessed by reference to the goods or services for which registration has been sought and to the relevant public's perception of those signs.

In Case T-547/08 *X Technology Swiss* v *OHIM (Orange colouring of the toe of a sock)* (judgment of 15 June 2010, not yet published, under appeal), the Court dismissed the action brought against the decision of the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), according to which an orange colouration in the form of a hood covering the toe of hosiery articles is, for the average consumer, a sign which is devoid of any distinctive character. First, the Court held that the Board of Appeal did not err in applying the case-law on three-dimensional marks to the mark applied for, which was classified by the applicant as a 'positional mark'. The Court stated that the classification of a 'positional mark' as a figurative or three-dimensional mark, or as a specific category of marks, is irrelevant for the purpose of assessing its distinctive character, the decisive factor governing the applicability of that case-law being the fact

([19]) Commission Notice 97/C 273/03 on the method for setting the reference and discount rates (OJ 1997 C 273, p. 3).

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

([21]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

that a sign is indistinguishable from the appearance of the product designated. Second, the Court held that when a sign is not capable of identifying the commercial origin of the goods, it cannot be registered as a trade mark, notwithstanding the fact that it relates to goods which are subject to fashion trends and that, consequently, numerous similar signs exist or are constantly being created within the industrial sector concerned. Lastly, the Court clarified the fact that the risk that a feature of the presentation of a product or a service may be copied by a competitor does not affect the interpretation of Article 7(1)(b) of Regulation (EC) No 40/94, since a trader who uses, in the course of trade, a sign which does not meet the requirement laid down in that provision may, where relevant, be able to establish that the sign has become distinctive in consequence of the use which has been made of it within the meaning of Article 7(3) of Regulation (EC) No 40/94, or seek other legal means which may be open to it, such as the law on designs or proceedings alleging unfair competition.

Furthermore, in Case T-404/09 *Deutsche Bahn* v *OHIM (Horizontal combination of the colours grey and red)* and Case T-405/09 *Deutsche Bahn* v *OHIM (Vertical combination of the colours grey and red)* (judgments of 12 November 2010, not published) the Court returned to the issue of the distinctive character of a combination of colours. In those two judgments, the Court confirmed the restrictive approach to applications for registration as a mark with a combination of colours and found that, for the public concerned, the combination of colours was not perceptibly different from the colours commonly used for the services in question and was therefore devoid of any distinctive character.

2. Relative grounds for refusal

In Case T-255/08 *Montero Padilla* v *OHIM — Padilla Requena (JOSE PADILLA)* (judgment of 22 June 2010, not yet published), the Court further clarified the grounds on which an opposition may be based. The applicant had requested, in essence, that the Court should review the legality of the decision of the Board of Appeal of OHIM in the light of Article 9 of Regulation (EC) No 40/94 relating to the scope of the right conferred by a Community trade mark. The Court stated that the grounds on which opposition may be based, as laid down in Article 42(1) of Regulation (EC) No 40/94, are solely the relative grounds for refusal in Article 8 of that regulation, since Article 9 of that regulation defines the scope of the right conferred by a Community trade mark and, therefore, the effects of its registration, but does not concern the conditions for registration. Consequently, Article 9 of Regulation (EC) No 40/94 does not form part of the legal framework to be taken into consideration by OHIM when it examines an application for registration or a notice of opposition. The Court further held that it follows from the wording of Article 8(5) of Regulation (EC) No 40/94, which uses the expression 'for which the earlier trade mark is registered', that this provision applies to earlier trade marks within the meaning of Article 8(2) of that regulation only in so far as they have been registered. Consequently, Article 8(5) of Regulation (EC) No 40/94 protects, in relation to goods or services which are not similar, only those well-known marks within the meaning of Article 6bis of the Paris Convention ([22]) for which proof of registration has been provided. Lastly, the Court stated that copyright cannot constitute a 'sign used in the course of trade' within the meaning of Article 8(4) of Regulation (EC) No 40/94, as is apparent from the scheme of Article 52 of that regulation. Article 52(1)(c) provides that a Community trade mark is to be declared invalid where there is an earlier right as referred to in Article 8(4) of Regulation (EC) No 40/94 and the conditions set out in that paragraph are fulfilled. Article 52(2)(c) provides that a Community trade mark is also to be declared invalid where the use of such trade mark may be prohibited pursuant to any 'other'

([22]) Paris Convention for the Protection of Industrial Property of 20 March 1883, as revised and amended.

earlier right and in particular a copyright. It follows that copyright is not one of the earlier rights as referred to in Article 8(4) of Regulation (EC) No 40/94.

3. Relationship between absolute grounds for refusal and relative grounds for refusal

In *JOSE PADILLA*, the Court stated that it follows from the wording of Article 42(1), and from the scheme of Articles 42 and 43 of that regulation, that the absolute grounds for refusal in Article 7 of that regulation do not fall to be examined in opposition proceedings. The grounds on which opposition may be based, as laid down in Article 42(1) of Regulation (EC) No 40/94, are solely the relative grounds for refusal in Article 8 of the regulation.

4. Procedural issues

In Case T-225/09 *Claro* v *OHIM — Telefónica (Claro)* (judgment of 28 April 2010, not published, under appeal), the Court dismissed the action brought against the decision of the Board of Appeal of OHIM, by which the Board of Appeal found an appeal inadmissible on the ground that no written statement setting out the grounds had been lodged within the period laid down in Article 59 of Regulation (EC) No 40/94. The applicant had claimed that the submission of a written statement served no useful purpose on account, first, of the fact that it was disputing in its entirety the decision of the Opposition Division upholding the opposition on the basis of the relative ground for refusal referred to in Article 8(1)(b) of Regulation (EC) No 40/94 and, second, of the continuity of functions between the departments of OHIM, which are required to base their decisions by reference to the procedure before the lower adjudicating body. The Court stated that the submission of a written statement setting out the grounds of appeal did serve a useful purpose, since it is for the party which has brought an appeal before a Board of Appeal to set out the grounds on which that appeal is based. By contrast, it is not the task of the Board of Appeal to determine, by deductions, the grounds on which the appeal that it is hearing is based. Furthermore, as regards continuity of functions, the Court again applied the principles established by the Court of Justice in *OHIM* v *Kaul* ([23]), stating that it follows from Article 62(1) of Regulation (EC) No 40/94 that, through the effect of the appeal brought before it, the Board of Appeal is called upon to carry out a new, full examination of the merits of the opposition, in terms of both law and fact. However, such an examination presupposes that the appeal before the Board of Appeal is admissible, since, if it is inadmissible, the Board of Appeal must dismiss it without examining the substance.

Next, in Case T-487/08 *Kureha* v *OHIM — Sanofi-Aventis (KREMEZIN)* (judgment of 16 June 2010, not published), the Court adjudicated on the probative value of a publication of the World Intellectual Property Organisation (WIPO) submitted late with a view to proving the existence of the earlier mark. The Court held that no provision of Regulations (EC) Nos 40/94 or 2868/95 ([24]) precludes the various levels of OHIM from considering that publication by WIPO of international registration meets the requirements of Rule 19(2) of Regulation (EC) No 2868/95. Consequently, a possible challenge to the probative value of a WIPO publication of international registration is governed by Rule 20(2) and (4) of Regulation (EC) No 2868/95, since those two provisions govern the exchange of observations and evidence between the parties through OHIM, whereas Rule 19 of that regulation concerns only communication between OHIM and the opposing party. Furthermore, the Court held that it is apparent from a combined reading of the applicable provisions of Regulations (EC) Nos 40/94 and 2868/95 that, in the context of the application of Rule 20 of Regulation (EC) No 2868/95, OHIM may, first, invite the parties to file observations as often as it deems necessary

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

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

and, second, take into account, if it considers it to be appropriate, evidence communicated to it by the parties out of time.

Furthermore, Case T-292/08 *Inditex* v *OHIM — Marín Díaz de Cerio (OFTEN)* (judgment of 13 September 2010, not yet published) afforded the Court an opportunity to clarify whether the issues of the proof of genuine use of an earlier mark and of the similarity of the goods at issue, which have not been raised before a Board of Appeal of OHIM, form part of the context of the dispute before that department if they have been raised before an Opposition Division. As regards the issue of genuine use, the Court held that it is specific and preliminary in character, since it leads to a determination whether, for the purposes of the examination of the opposition, the earlier trade mark can be deemed to be registered in respect of the goods or services in question. Consequently, that issue does not fall within the context of the examination of the opposition proper if the plea alleging that the proof of genuine use was insufficient was not part of the subject-matter of the dispute before the Board of Appeal, which was limited to an examination of the existence of a likelihood of confusion. On the other hand, opposition based on the existence of a likelihood of confusion requires OHIM to adjudicate on both whether the goods and services covered by the marks in question are identical or similar and whether those marks themselves are identical or similar in view of the interdependence of the factors taken into account in the global assessment of the likelihood of confusion.

Lastly, in Case T-303/08 *Tresplain Investment* v *OHIM — Hoo Hing (Golden Elephant Brand)* (judgment of 9 December 2010, not yet published), the Court recalled that pleas which have not been raised by the applicant before the departments of OHIM are not admissible before the Court. However, according to settled case-law, OHIM may be called upon to take account of the national law of a Member State in which the earlier mark, on which the application for a declaration of invalidity is based, is protected, on account of the fact that restricting the factual basis of the examination by OHIM does not preclude it from taking into consideration, in addition to the facts which have been expressly put forward by the parties, facts which are well known, where those facts are necessary in order for OHIM to assess the applicability of the ground for invalidity in question and, in particular, the probative value of the documents lodged. In the case in point, the applicant claimed that the Board of Appeal of OHIM ought, in its examination as to whether there was misrepresentation, to have taken account of the fact that the intervener had adduced no evidence of any instance of confusion. If the applicant claims that the laws of a Member State (in this instance the United Kingdom) require, in the event of coexistence of two trade marks on the market, that evidence of specific instances of confusion be adduced in the context of an action for passing-off at national level, such an argument is admissible even if the applicant has not advanced it before OHIM, provided that it is apparent from the documents in the case that the marks have coexisted. Furthermore, the Court held that the fact that the intervener became aware of the legal position only in the course of the procedure, in so far as, at the time when the intervener lodged its response, the Court had not yet dismissed the separate action brought by that party as inadmissible, cannot constitute a new matter of law or of fact within the meaning of Article 48(2) of the Rules of Procedure of the Court.

5. Community designs

During 2010, the Court was called upon to apply Regulation (EC) No 6/2002 ([25]) for the first time.

In Case T-9/07 *Grupo Promer Mon Graphic* v *OHIM — PepsiCo (Representation of a circular promotional item)* (judgment of 18 March 2010, not yet published, under appeal), the Court stated that the grounds on which a Community design may be declared invalid listed in Article 25(1) of Regula-

([25]) Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ 2002 L 3, p. 1).

tion (EC) No 6/2002 must be regarded as exhaustive and do not include the bad faith of the proprietor of a contested Community design. The Court also defined certain fundamental concepts of Regulation (EC) No 6/2002. As regards the concept of 'conflict', the Court observed that Article 25(1)(d) of Regulation (EC) No 6/2002 must be interpreted as meaning that a Community design is in conflict with a prior design when, taking into consideration the freedom of the designer in developing the Community design, that design does not produce on the informed user a different overall impression from that produced by the prior design relied on. Moreover, the Court clarified the scope of the concepts of 'the degree of freedom of the designer in developing his design', of 'informed user' and of 'overall impression'. As regards a designer's degree of freedom in developing his design, the Court held that it must be established, inter alia, by the constraints of the features imposed by the technical function of the product or an element thereof, or by statutory requirements applicable to the product. As regards the informed user, the Court stated that he is neither a manufacturer nor a seller of the products in which the designs at issue are intended to be incorporated or to which they are intended to be applied, although he is particularly observant and has some awareness of the state of the prior art, that is to say the previous designs relating to the product in question that had been disclosed on the date of filing of the contested design, or, as the case may be, on the date of priority claimed. Lastly, the Court stated that, in the specific assessment of the overall impression of the designs at issue, the designer's degree of freedom in developing the contested design must be taken into account. Thus, in so far as similarities between the designs at issue relate to common features, those similarities will have only minor importance in the overall impression produced by those designs on the informed user. Consequently, the more the designer's freedom in developing the contested design is restricted, the more likely minor differences between the designs at issue will be sufficient to produce a different overall impression on the informed user.

Next, in Case T-148/08 *Beifa Group* v *OHIM — Schwan-Stabilo Schwanhaüßer (Instrument for writing)* (judgment of 12 May 2010, not yet published), the Court brought further clarification to the interpretation of Article 25(1)(e) of Regulation (EC) No 6/2002, which provides that a Community design may be declared invalid only if a distinctive sign is used in a subsequent design, and Community law or the law of the Member State governing that sign confers on the right holder of the sign the right to prohibit such use. According to the Court, that article also covers the situation of similarity between signs and not only that of identity, so that the Board of Appeal did not err in law by interpreting the provision in question as meaning that the proprietor of a distinctive sign may rely on that provision for the purposes of applying for a declaration of invalidity in respect of a subsequent Community design, where use is made in that design of a sign similar to its own. The Court also examined the issue of the procedure for requesting proof of genuine use, to be followed by the proprietor of the Community design in respect of which an application for a declaration of invalidity has been brought in the absence of specific provisions in that regard in Regulation (EC) No 6/2002. The Court observed that that request must be submitted to OHIM expressly and in due time. On the other hand, a request for proof of genuine use of the earlier sign relied on in support of an application for a declaration that a Community design is invalid cannot be made for the first time before the Board of Appeal.

Lastly, in Case T-153/08 *Shenzhen Taiden* v *OHIM — Bosch Security Systems (Communications Equipment)* (judgment of 22 June 2010, not yet published), the Court stated that, as is apparent from recital 14 in the preamble to Regulation (EC) No 6/2002, in the assessment as to whether a design has individual character, within the meaning of Article 6 of that regulation, account should be taken of the nature of the product to which the design is applied or in which it is incorporated, and in particular the industrial sector to which it belongs. In addition, the Court clarified the concept of 'informed user', noting that the status of 'user' implies that the person concerned uses the product in which the design is incorporated in accordance with the purpose for which that product is intended and that the qualifier 'informed' suggests that the user, without being a designer or a technical

expert, knows the various designs which exist in the sector concerned, possesses a certain degree of knowledge with regard to the features which those designs normally include, and, as a result of his interest in the products concerned, shows a relatively high degree of attention when he uses them. However, that factor does not imply that the informed user is able to distinguish, beyond the experience gained by using the product concerned, the aspects of the appearance of the product which are dictated by the product's technical function from those which are arbitrary.

Environment

1. System for greenhouse gas emission allowance trading

Since 2007 the Court has found a fresh, unceasing source of cases in the system for greenhouse gas emission allowance trading, introduced by Directive 2003/87/EC ([26]).

This year mention is made of Case T-16/04 *Arcelor* v *Parliament and Council* (judgment of 2 March 2010, not yet published). In the context of an action for damages seeking compensation for the damage allegedly suffered by the applicant in consequence of the adoption of that directive, the Court held that the Community legislature enjoys broad discretion when exercising its powers in the field of environmental issues under Article 174 EC and Article 175 EC. The exercise of that discretionary power implies first, the need for the Community legislature to anticipate and evaluate ecological, scientific, technical and economic changes of a complex and uncertain nature and, second, the weighing up and arbitration by that legislature of the various objectives, principles and interests set out in Article 174 EC. That is reflected in Directive 2003/87/EC in the establishment of a series of objectives and sub-objectives which are in part contradictory.

Furthermore, the Court noted that the Community institutions must, in the same way as the Member States, respect the fundamental freedoms, such as freedom of establishment, which serve to attain one of the essential objectives of the Union, inter alia, that of the completion of the internal market. It does not follow that the Community legislature is required to regulate the area at issue in such a way that the Community legislation, particularly where that legislation takes the form of a directive, must provide an exhaustive, definitive solution to certain problems raised from the perspective of completing the internal market or effect a complete harmonisation of national legislation in order to exclude any conceivable barriers to intra-Community trade. When the Community legislature is called on to restructure or establish a complex scheme, such as the allowance trading scheme, it is entitled to have recourse to a step-by-step approach and to carry out only a progressive harmonisation of the national legislation at issue.

The Court stressed that, by virtue of the principle of subsidiarity, European Union legislation in the sphere of environmental protection does not seek to effect complete harmonisation, the Member States being free to adopt more stringent protective measures, subject only to the conditions that those be compatible with the EC Treaty and be notified to the Commission. The mere fact that the Community legislature left open a particular question falling within the scope of Directive 2003/87/EC and of a fundamental freedom does not in itself justify that omission's being classified as contrary to the rules of the Treaty. In addition, the implementation of Directive 2003/87/EC being subject to review by the national courts, it is incumbent upon those courts, if they should

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

encounter difficulties relating to the interpretation or validity of that directive, to refer a question to the Court of Justice for a preliminary ruling.

Last, the applicant claimed that Directive 2003/87/EC infringes the principle of legal certainty, because there is no provision governing the extent of the financial consequences which may result from both a possible insufficiency of allowances allocated to an installation and the price of those allowances, that price being determined exclusively by the market forces which came into being following the establishment of the allowance trading scheme. The Court found that regulation of the prices of allowances might thwart the main objective of Directive 2003/87/EC, which is to reduce greenhouse gas emissions through an efficient allowance trading scheme in which the cost of emissions and investments made to reduce such emissions is essentially determined by market forces. In the event of an insufficiency of allowances, the incentive for operators to reduce, or not to reduce, their greenhouse gas emissions will depend on a complex economic decision taken in the light of the price of emission allowances available on the exchange market and of the costs of possible measures to reduce emissions which may aim either to reduce production or to invest in more efficient methods of production in terms of energy output. In such a scheme, the increase in the cost of emissions cannot be regulated in advance by the legislature without reducing, or even completely removing, the economic incentives which constitute its very basis and thereby adversely affecting the effectiveness of the allowance trading scheme.

The fact that it is not possible to predict how the exchange market will develop constitutes an element inherent in and inseparable from the economic mechanism characterising the allowance trading scheme subject to the classic rules of supply and demand and cannot be contrary to the principle of legal certainty.

2. Air transport — External relations

In Case T–319/05 *Swiss Confederation* v *Commission* (judgment of 9 September 2010, not yet published, under appeal), the Court adjudicated in a dispute concerning the Agreement between the European Community and the Swiss Confederation on Air Transport ([27]) and German measures relating to the approaches to Zurich airport (Switzerland).

Given the proximity to the German border, most flights landing in Zurich and most take-offs in the early morning and late evening must use German airspace. From 1984 to 2001 the use of that airspace was the subject of a bilateral agreement, and then of negotiations, between the Swiss Confederation and the Federal Republic of Germany. In 2003 the German federal aviation authorities adopted national air traffic regulations. Those were designed, essentially, to prevent, in normal weather conditions, overflight at low altitude over the German territory close to the Swiss border between 21.00 hours and 7.00 hours on weekdays and between 20.00 hours and 9.00 hours at weekends and on public holidays, with a view to reducing the noise to which the local population was exposed.

On the basis of the Agreement between the European Community and the Swiss Federation on Air Transport (applying, for the purpose of the agreement, Regulation (EEC) No 2408/92) ([28]), the Swiss Confederation made a complaint to the Commission, requesting the latter to take a decision to the effect that the Federal Republic of Germany should cease to apply the measures introduced by the

([27]) Agreement between the European Community and the Swiss Confederation on Air Transport, signed at Luxembourg on 21 June 1999 (OJ 2002 L 114, p. 73).

([28]) Council regulation on access for Community air carriers to intra-Community air routes (OJ 1992 L 240, p. 8).

domestic regulations. That complaint being rejected, the Swiss Confederation brought an action claiming, in particular, breach of the principles of equal treatment, proportionality and freedom to provide services in the air transport sector.

The Court found, first of all, that the Commission did not err in law in considering that the German measures did not impose conditions on, limit or refuse the exercise of traffic rights. The German measures in no way involve, even conditionally or in part, any prohibition whatsoever of passage through German airspace for flights leaving or arriving at Zurich airport, but merely alter the path of the flights concerned, after take-off from or before landing at Zurich airport.

Furthermore, so far as concerns breach of the principle of equal treatment to the detriment of Swiss air carriers using Zurich airport as a hub, the Court emphasised that the finding that a measure leads to the same result as discrimination on grounds of nationality is not sufficient to conclude that it is incompatible with Article 3 of the agreement in question, and that it is to be ascertained whether that measure is not justified by objective considerations and whether it is not proportionate to the objective pursued. Closeness to a tourist destination which is, as such, particularly vulnerable to noise emissions constitutes an objective circumstance justifying the adoption of those measures with regard solely to Zurich airport. In addition, the Court considered that the German measures at issue were justified by objective considerations and were proportionate to the objective pursued, namely, the reduction of noise pollution by aircraft at night and during the weekend, in a part of German territory bordering Switzerland, and that the Federal Republic of Germany had no other means at its disposal to obtain the desired reduction in noise pollution. In particular, compliance with a noise quota could be very difficult to check, and its infringement impossible to penalise, unlike the obligations connected with the fixing of minimum flight altitudes.

Lastly, when considering whether there had been any breach of freedom to provide services in the air transport sector, the Court emphasised that the objective of reducing noise pollution constitutes a specific aspect of environmental protection, which is one of the overriding reasons related to the general interest capable of justifying restrictions on the fundamental freedoms guaranteed by the EC Treaty, including, in particular, freedom to provide services, and that the measures at issue are proportionate to that objective.

Common foreign and security policy

In 2010 the Court delivered five judgments concerning restrictive measures taken against persons in connection with the common foreign and security policy. In particular, in two judgments of 9 and 30 September 2010, the Court was prompted to develop its already extensive case-law on the combating of terrorism.

First, concerning the extent of judicial review of fund-freezing measures adopted in order to give effect to resolutions of the United Nations Security Council, the judgment in Case T-85/09 *Kadi* v *Commission* (judgment of 30 September 2010, not yet published, under appeal) draws the appropriate conclusions from the judgment of the Court of Justice in Joined Cases *Kadi and Al Barakaat International Foundation* v *Council and Commission* ([29]), setting aside the judgment of the Court of First Instance in T-315/01 *Kadi* v *Council and Commission* ([30]). In that judgment, the Court of Justice overturned the decision of the Court of First Instance and held that the [European Union] judica-

([29]) Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation* v *Council and Commission* [2008] ECR I-6351.

([30]) T-315/01 *Kadi* v *Council and Commission* [2005] ECR II-3649.

ture has full jurisdiction to review the lawfulness of measures adopted by the Community which give effect to resolutions of the United Nations Security Council. Deciding the case, the Court of Justice then annulled the fund-freezing regulation on the grounds that it had been adopted in breach of the fundamental rights of the person concerned, but maintained its effects in force for a period not to exceed three months, in order to allow for the remedying of the infringements found by the Court of Justice.

Following the judgment of the Court of Justice, the Commission informed the applicant of its intention to maintain his inclusion in Regulation (EC) No 881/2002 ([31]), on the basis of a summary of reasons provided by the Sanctions Committee of the Security Council for the inclusion of the applicant in the list of persons to whom the freezing of funds was to be applied, and invited him to submit his observations in that connection. On 28 November 2008 the Commission adopted a new regulation maintaining the freezing of the applicant's funds ([32]).

Hearing the action brought by the applicant for annulment of that regulation, the Court considered that, in the light of the judgment of the Court of Justice in *Kadi and Al Barakaat International Foundation* v *Council and Commission*, its task was to ensure in the circumstances of the case a full and rigorous review of the lawfulness of the regulation, without affording the latter any immunity from jurisdiction on the ground that it is intended to give effect to resolutions adopted by the Security Council of the United Nations. That must remain the case, at the very least, so long as the re-examination procedure operated by the Sanctions Committee clearly fails to offer guarantees of effective judicial protection. That review must concern, indirectly, the substantive assessments of the Sanctions Committee itself and the evidence underlying them. That is all the more justified given that the measures at issue have a marked and long-lasting effect on the fundamental rights of the applicant, who for nearly 10 years now has been subject to measures freezing all his funds indefinitely. In the scale of a human life, 10 years in fact represent a substantial period of time and the classification of the measures in question as preventative or punitive, protective or confiscatory, civil or criminal seems now to be an open question.

In the context of that full review, and transposing the criteria used by the European Court of Human Rights in its judgment in *A. and Others* v *United Kingdom* ([33]), the Court considered that the applicant's rights of defence had been 'observed' only in the most formal and superficial sense. The Commission failed to take due account of the applicant's comments and did not grant him even the most minimal access to the evidence against him, and no balance was struck between his interests and the need to protect the confidential nature of the information in question. In those circumstances, the few pieces of information and the imprecise allegations in the summary of reasons appear clearly insufficient to enable the applicant to launch an effective challenge to the allegations against him.

The Court held that the contested regulation had been adopted in breach of the applicant's rights of defence. Furthermore, given the lack of any proper access to the information and evidence used against him, the applicant has also been unable to defend his rights with regard to that evidence in satisfactory conditions before the [Union] judicature, with the result that it must be held that his right to effective judicial review had also been infringed. Lastly, the Court found that, given

([31]) Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban (OJ 2002 L 139, p. 9).

([32]) Regulation (EC) No 1190/2008 amending for the 101st time Regulation (EC) No 881/2002 (OJ 2008 L 322, p. 25).

([33]) Judgment of 19 February 2009 (not yet published in the *Reports of Judgments and Decisions*).

the general application and the duration of the fund-freezing measures, the regulation also constituted an unjustified restriction of his right to property.

Second, concerning national decisions that may form the basis of a fund-freezing measure adopted by the Council, in its judgment of 9 September 2010 in Case T-348/07 *Al-Aqsa* v *Council* (judgment of 9 September 2010, not yet published), the Court clarified the conditions in which an order of the court hearing an application for interim measures in the context of an action seeking the suspension, by way of interlocutory order, of operation of a national fund-freezing measure (the *Sanctieregeling*), constitutes a 'decision' taken by a competent authority, within the meaning of Article 1(4) of Common Position 2001/931/CFSP ([34]) and of Article 2(3) of Regulation (EC) No 2580/2001 ([35]).

Here the Court noted that the order of the court hearing the application for interim measures did not, any more than the *Sanctieregeling*, constitute, in the proper sense, a decision 'instigat[ing] investigations or prosecution for a terrorist act', nor did it lead to the 'conviction' of the applicant, within the strictly criminal meaning of the term. Nonetheless, in the light of its content, effect and context, the order of the court hearing the application for interim measures, taken together with the *Sanctieregeling*, did indeed constitute a 'decision' taken by a competent authority, within the meaning of the abovementioned provisions of Common Position 2001/931/CFSP and of Regulation (EC) No 2580/2001, which do not require the national 'decision' to be taken in criminal proceedings *stricto sensu*.

Moreover, a national decision to 'instigat[e] … investigations or prosecut[e]' must, if the Council is to be able validly to invoke it, form part of national proceedings seeking, directly and chiefly, the imposition on the person concerned of measures of a preventative or punitive nature, in connection with the combating of terrorism. The Court considered that, unlike a decision of a national judicial authority ruling only incidentally and indirectly on the possible involvement of the person concerned in such activity, the order of the court hearing the application for interim measures relied upon by the Council in the present case formed a sufficiently direct part of national proceedings seeking chiefly to impose an economic sanction on the person concerned, namely, the freezing of its funds under the *Sanctieregeling* itself, as a result of that person's involvement in terrorist activity.

The question also arose whether the order of the court hearing the application for interim measures could provide a basis for the Council's decision when the *Sanctieregeling* had been repealed by the national authorities after the dismissal of the application for interim measures. The Court held that it could not. By that order, the court hearing the application for interim measures simply refused to suspend the effects of the *Sanctieregeling* by way of an interim ruling. The *Sanctieregeling* definitively ceased to have any legal effects as a result of its repeal. The same must necessarily apply, in consequence, to the legal effects attaching to the order of the court hearing the application for interim measures, all the more so because that order contained only an interim ruling, without prejudice to a subsequent substantive ruling at the end of the proceedings. It was not, moreover, compatible with the general scheme of Regulation (EC) No 2580/2001, a feature of which is the precedence that matters of national procedure must have in the Council's assessment, for the *Sanctieregeling*, which no longer has any effects within the Netherlands legal order, to

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

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

continue to have effect indirectly and indefinitely within the Community legal order, by means of the order of the court hearing the application for interim measures. The Council had overstepped the bounds of its discretion by continuing to include the applicant indefinitely in the list at issue, when periodically reviewing the latter's situation, solely on the ground that the decision of the court hearing the application for interim measures had not been challenged, in the Netherlands legal order, by the judicial body hearing an appeal in interlocutory proceedings or by the judicial body adjudicating on the substance, when the administrative decision whose effects that court had been asked to suspend had in the meantime been repealed by the body which issued it.

Access to documents of the institutions

The procedure for access to Commission documents, governed in particular by Articles 6 to 8 of Regulation (EC) No 1049/2001, comprises two stages. First, the applicant must send the Commission an initial application for access to documents. Second, in the event of a total or partial refusal, the applicant may make a confirmatory application to the Secretary-General of the Commission. Only the measure adopted by the Secretary-General is capable of producing legal effects such as to affect the interests of the applicant and, therefore, of being the subject of an action for annulment.

In Joined Cases T–355/04 and T–446/04 *Co-Frutta* v *Commission* [2010] ECR II-1 ([36]), the Court found it necessary to describe the consequences of the expiry of the period of 15 working days — which may be extended — within which the institution must reply to the confirmatory application. According to the Court, that period, laid down in Article 8(1) and (2) of Regulation (EC) No 1049/2001, is mandatory. However, the expiry of that period does not have the effect of depriving the institution of the power to adopt a decision. No legal principle makes the administration lose its power to respond to an application, even outside the time-limits laid down for that purpose. The mechanism of an implied refusal decision was established in order to counter the risk that the administration would choose not to reply to an application for access to documents and escape review by the courts, not to render unlawful every late decision. On the other hand, the administration is required, in principle, to provide, even late, a reasoned response to every application by a citizen. That approach is consistent with the function of the mechanism of the implied refusal decision, which is to enable citizens to challenge inaction on the part of the administration with a view to obtaining a reasoned response.

Likewise, an institution which has received a request for access to a document originating from a Member State must, once that request has been notified by the institution to the Member State, immediately commence, together with that Member State, a genuine dialogue concerning the possible application of the exceptions laid down in Article 4(1) to (3) of Regulation (EC) No 1049/2001. On that occasion, they must pay attention to the need to enable the institution to adopt a position within the time-limits laid down in Articles 7 and 8 of that regulation, which require it to decide on the request for access. Nonetheless, failure to comply with the time-limits laid down in Article 8 of Regulation (EC) No 1049/2001 does not automatically lead to annulment of the decision adopted after the deadline. Annulment of a decision solely because of failure to comply with the time-limits laid down in Regulation (EC) No 1049/2001 would merely cause the administrative procedure for access to documents to be reopened. In any event, compensation for any loss resulting from the lateness of the Commission's response may be sought through an action for damages.

([36]) See also the judgment of 10 December 2010 in Joined Cases T-494/08 to T-500/08 and T-509/08 *Ryanair* v *Commission*, not yet published.

Furthermore, in Joined Cases T–494/08 to T–500/08 and T–509/08 *Ryanair* v *Commission*, (judgment of 10 December 2010, not yet published), the Court drew the appropriate conclusions from the judgment of the Court of Justice in Case C-139/07 P *Commission* v *Technische Glaswerke Ilmenau* ([37]).

The Court recalled that, in accordance with that judgment, for the purposes of interpreting the exception laid down in the third indent of Article 4(2) of Regulation (EC) No 1049/2001, concerning protection of the objectives of investigation activities, it is appropriate to take account of the fact that interested parties other than the Member State concerned in the procedures for reviewing State aid do not have the right to consult the documents in the Commission's administrative file, and, therefore, to acknowledge the existence of a general presumption that disclosure of documents in the administrative file in principle undermines protection of the objectives of investigation activities.

Thus, the Commission may, pursuant to the third indent of Article 4(2) of Regulation (EC) No 1049/2001, refuse access to all the documents relating to the procedure for the review of State aid, and may do so without first making a concrete, individual examination of those documents. That general presumption does not exclude the right of those interested parties to demonstrate that a given document whose disclosure has been requested is not covered by that presumption, or the possibility that there is a higher public interest justifying the disclosure of the document concerned by virtue of Article 4(2) of Regulation (EC) No 1049/2001.

The applicant having put forward no argument to the effect that the documents at issue were not covered by the general presumption, the Court dismissed the action.

A similar problem was dealt with by the Court in Case T-237/05 *Éditions Jacob* v *Commission* (judgment of 9 June 2010, not yet published). In the circumstances of the case, however, the documents to which access was sought related to a procedure concerning a concentration between undertakings which had been closed by the date on which the request for access was made. In that context, the Court held that the exception relating to protection of the objectives of inspection, investigation and audit activities applies only if disclosure of the documents in question may endanger the completion of those activities. Admittedly, the various acts performed during the investigation may remain covered by that exception as long as the investigations or inspections continue, even if the particular investigation or inspection giving rise to the report to which access is sought has been completed. Nevertheless, to concede, as claimed by the Commission, that the documents sought in this case remained covered by that exception until the decisions closing the procedure became final, that is to say, until such time as the General Court and, possibly, the Court of Justice, should have dismissed the actions brought against those decisions or, in the event of annulment, until one or more new decisions should have been adopted by the Commission, would make access to those documents dependent on an uncertain, future and possibly distant event. It followed that, when the decision to refuse access was adopted, the documents sought no longer fell within the scope of the exception relating to protection of the objectives of investigation activities. Even if they had fallen within the ambit of that exception, it was in no way apparent from the statement of reasons for the contested decision that the Commission had carried out any specific, individual examination of those documents.

In addition, the Court stated that the duty of professional secrecy under Article 17 of Regulation (EC) No 139/2004 and Article 287 EC is not so extensive that it can justify any general, abstract refusal of access to documents sent in the context of the notification of a concentration. Assessing

([37]) Judgment of 29 June 2010, not yet published.

whether or not information is confidential requires the legitimate interests opposing its disclosure to be weighed against the public interest which is that activities of the Community institutions should be conducted in the greatest observance possible of the principle of openness. By carrying out a specific, individual examination of the documents sought, the Commission is thus in a position to ensure the practical effect of the provisions applicable in the field of concentrations in a manner fully consistent with Regulation (EC) No 1049/2001. The Court added, in particular, that in the field of concentrations, correspondence between the Commission and interested parties is not to be regarded as obviously covered by the exception relating to the protection of commercial interests and that the Commission must check whether that exception does apply, by means of a proper, specific examination of each document.

Status of the Members of the European Parliament

1. Privileges and immunities

Case T-42/06 *Gollnisch* v *Parliament* (judgment of 19 March 2010, not yet published) arose out of certain statements made at a press conference by Mr Gollnisch, at that time a Member of the European Parliament, which were capable of amounting to a criminal offence. Following the opening of an investigation into denial of crimes against humanity, and at the request of Mr Romagnoli, another Member of the European Parliament, the President of the Parliament referred to the Committee on Legal Affairs a request for defence of the applicant's parliamentary immunity, pursuant to Rule 6(3) of the Parliament's Rules of Procedure ([38]). After considering that request and following the proposal to this effect by the Committee, the Parliament rejected the request for immunity by decision of 13 December 2005, on the grounds that, in accordance with Article 9 of the Protocol on the Privileges and Immunities of the European Communities ([39]), the immunity of Members of the Parliament concerned opinions expressed or votes cast by them in the performance of their duties, which was not the case in that instance.

Hearing an application for compensation for the damage allegedly suffered by Mr Gollnisch as a result of that decision, the Court held that, while the privileges and immunities conferred by the protocol have a functional character, inasmuch as they are intended to prevent any interference with the functioning and independence of the Communities, the fact remains that the protocol creates an individual right for the persons concerned, observance of which is ensured by the system of legal remedies established by the Treaty.

Furthermore, referring to point (a) of the first paragraph of Article 10 of the protocol, Mr Romagnoli had stated that the parliamentary immunity enjoyed by Mr Gollnisch was that provided for by the French Constitution, which provides that the assembly to which a member belongs may require a prosecution to be suspended. Under that article of the Protocol on Privileges and Immunities, during the sessions of the Parliament, its Members enjoy, in the territory of their own State, the immunities accorded to members of their parliament. It followed that the Parliament was dealing with a request for suspension of the prosecution of Mr Gollnisch in France, and not with a request for defence of immunity on the basis of Article 9 of the Protocol on Privileges and Immunities. Although the Parliament has a broad discretion as to the direction it wishes to give to a decision following a request such as that made in this case, the fact remained that the question whether the decision must be taken on the basis of Article 9 or on that of point (a) of the first paragraph of Article 10 of the Protocol on Privileges and Immunities did not fall within the ambit of the Parliament's

([38]) OJ 2005 L 44, p. 1.

([39]) Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 (OJ 1967, 152, p. 13).

discretion. The Court thus found that the Parliament had not adopted a decision on a possible suspension of prosecution, whereas Article 10 of the Protocol on Privileges and Immunities refers to national laws to determine the extent and implications of the immunity enjoyed by Members in their national territory and Article 26(3) of the French Constitution provides for suspension of criminal proceedings during their Parliamentary mandate. In the circumstances of this case, the applicant might, therefore, in his action for damages, rely on the unlawfulness of the Parliament's refusal to take a decision on the basis of point (a) of the first paragraph of Article 10 of the Protocol on Privileges and Immunities.

The claim for compensation for the loss caused by the damage to his reputation was, however, dismissed, on the grounds that there was no direct, causal link between that loss and the unlawfulness established. Having regard to the wide discretion enjoyed by the Parliament, if the latter had relied on point (a) of the first paragraph of Article 10 of the Protocol on Privileges and Immunities, it could properly have adopted either a decision to request suspension of the prosecution or a decision not to request suspension of the prosecution. Thus, the illegality vitiating the contested decision could not be the direct and determining cause of the damage to his reputation claimed by the applicant.

2. Expenses and allowances

In Case T-276/07 *Martin* v *Parliament* (judgment of 16 December 2010, not published), the Court heard an application for annulment of the decision of the Secretary-General of the European Parliament declaring unjustified the payment to Mr Martin, a Member of the Parliament, of the sum of EUR 163 381.54 by way of secretarial allowance and informing him that steps would be taken for its recovery.

In the interest of transparency, the Parliament adopted the Rules governing the payment of expenses and allowances to Members [of the European Parliament] ('the Rules'), Article 14 of which provides that the Members of the Parliament are to submit an application for the assistance allowance including, in particular, the assistant's name, address, nationality, country and place and date of birth, and also the assistant's signature confirming that the information is correct. The Court found that as time passed those requirements had been reinforced, in particular, by the obligation to enclose with the application a copy of the contract between the Member of Parliament and his assistant, and to make notification of any changes made in respect of the application. Likewise, the Court observed that every Member of the Parliament, on commencement of his term of office, was to receive a copy of the Rules and to acknowledge receipt thereof in writing. Lastly, the Member of the Parliament formally undertook to pay the secretarial allowance to the assistant, appointed by name, from the start of his activities, the list of declared Parliamentary assistants being, moreover, accessible to the public.

From all the foregoing, the Court inferred that the conditions laid down in Article 14 of the Rules, especially as regards the information to be included in the application for the allowance, submitted by the Member of the Parliament, concerning the assistant(s) employed by him, are substantive in nature. In the circumstances of the case, the Court noted that the applicant had not declared to the Parliament certain final recipients of payments and that the Parliament had not been notified of the termination of certain contracts. In addition, not only had the applicant failed to reimburse the sums unused at the end of the year but also he had used the sums paid for certain assistants in order to pay other persons. In those circumstances, the applicant had infringed the Rules and might not, therefore, in his action for annulment, plead an unconditional right to use the sums received.

Furthermore, the Court emphasised that Article 71(3) of the Financial Regulation (EC, Euratom) No 1605/2002 ([40]) imposes on the Parliament an unconditional duty to recover amounts wrongly paid. That duty is also imposed on the Secretary-General by Article 27(3) of the Rules.

II. Actions for damages

1. Whether the dispute is of a contractual or non-contractual nature

In Case T-19/07 *Systran and Systran Luxembourg* v *Commission* (judgment of 16 December 2010, not yet published), the Court recalled that its jurisdiction to hear and determine disputes relating to compensation for damage varies, depending on the contractual or non-contractual nature of the liability in question. Thus, in respect of contractual liability, the Court has jurisdiction only if there is an arbitration clause for the purpose of Article 238 EC. If there is no such clause, the Court may not, on the basis of Article 235 EC, adjudicate, in actual fact, on an action for damages of a contractual origin. To do so would extend its jurisdiction beyond the limits placed by Article 240 EC on the disputes of which it may take cognisance, for that article gives national courts jurisdiction over the disputes to which the Community is a party. In contrast, in the sphere of non-contractual liability, the Court of Justice has jurisdiction without any need for the parties to the proceedings to express their agreement beforehand. The Court of Justice's jurisdiction arises directly out of Article 235 EC and the second paragraph of Article 288 EC.

In order to establish whether it has jurisdiction under Article 235 EC, the General Court must consider, in the light of the various relevant matters in the documents before it, whether the obligations on which the claim for damages put forward by the applicants is based are, objectively and generally, contractual or non-contractual in origin. Those matters may be deduced, in particular, from an examination of the claims of the parties, from the event giving rise to the damage for which compensation is claimed and from the content of the contractual or non-contractual provisions relied on to settle the question at issue. In this context, jurisdiction is conferred on the Court in derogation from the ordinary rules of law and must, therefore, be construed narrowly, with the result that the Court may hear and determine only claims arising from the contract or claims directly connected with the obligations stemming therefrom.

So, in the instant case, the Court must examine the content of the various contracts concluded between the Systran group and the Commission. Such analysis forms part of the determination of jurisdiction, lack of which constitutes an absolute bar to proceeding with an action, and it cannot have the effect of altering the nature of the case by giving it a contractual basis.

Carrying out a thorough examination of the arguments raised by the parties, the Court concluded that the dispute in question was non-contractual in nature. The issue was to assess the allegedly wrongful, damaging nature of the Commission's conduct in disclosing to a third party information protected by an intellectual property right or know-how without the holder's express authorisation, in the light of the general principles common to the laws of the Member States applicable in that sphere and not of contractual terms.

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

2. Causal link

In Joined Cases T-252/07, T-271/07 and T-272/07 *Sungro and Others* v *Council and Commission* [2010] ECR II-55, the Court dismissed the actions for damages brought by the applicants, seeking compensation for loss allegedly caused by a scheme of State aid for the cotton sector annulled by the Court of Justice in Case C-310/04 S*pain v Council* [2006] ECR I-7285. In this respect, it relied on the consideration that, in order to determine the harm attributable to a wrongful act of a Community institution, account must be taken of the effects of the failure which caused liability to be incurred and not of those of the measure of which it forms part, provided that the institution could or should have adopted a measure having the same effect without breaching any rule of law. In other words, the analysis of the causal link may not start from the incorrect premise that, in the absence of unlawful conduct, the institution would have refrained from acting or would have adopted a contrary measure, which could also amount to unlawful conduct on its part, but must be based on a comparison between the situation arising, for the third party concerned, from the wrongful act and the situation which would have arisen for that third party if the institution's conduct had been in conformity with the law.

3. Sufficiently serious breach of a rule of law intended to confer rights on individuals

For the Union to incur non-contractual liability, it is necessary for the applicant to establish a sufficiently serious breach of a rule of law intended to confer rights on individuals ([41]).

In the context of an action for compensation for damage allegedly caused to the applicant by a Commission decision ordering, on the basis of Article 15a of second Directive 75/319/EEC ([42]), the withdrawal of marketing authorisations for medicinal products for human use containing amfepramone, the Court, in Case T-429/05 *Artegodan* v *Commission* (judgment of 3 March 2010, not yet published, under appeal), recalled that the requirement of a sufficiently serious breach is intended to prevent any hindering of the exercise of the institution's general-interest powers by the risk of having to bear the losses alleged by the undertakings concerned.

It also stated that, when the institution in question has only considerably reduced, or even no, discretion, there is no automatic link between that institution's lack of discretion and classifying the infringement as a sufficiently serious breach of Community law. The extent of the discretion enjoyed by the authorities concerned is, admittedly, determinative, but it is not an exclusive yardstick. It is for the Community courts to take account of the complexity of the situation to be resolved, difficulties in applying or interpreting provisions, the degree of clarity and precision of the rule infringed and whether the error committed was inexcusable. It follows that only the finding of an irregularity which, in comparable circumstances, would not have been committed by normally prudent and diligent authorities makes it possible for the Union to incur liability.

In the instant case, the Court noted that, in the context of application of Directive 65/65/EEC ([43]), the authority competent to adopt a decision withdrawing or suspending marketing authorisation is bound to observe the general principle of the supremacy of protection of public health, specifically enunciated in the substantive provisions of that directive. That principle requires, in the

([41]) Case C-352/98 P *Bergaderm and Goupil* v *Commission* [2000] ECR I-5291, paragraphs 42 and 43.

([42]) Second Council Directive 75/319/EEC of 20 May 1975 on the approximation of provisions laid down by law, regulation or administrative action relating to proprietary medicinal products (OJ 1975 L 147, p. 13).

([43]) Council Directive 65/65/EEC of 26 January 1965 on the approximation of provisions laid down by law, regulation or administrative action relating to proprietary medicinal products (OJ, English Special Edition 1965–66, p. 20).

first place, account to be taken exclusively of considerations relating to the protection of public health, in the second place, re-evaluation of the benefit/risk balance of a medicinal product when new data give rise to doubts as to its efficacy or safety and, in the third place, application of rules of evidence in accordance with the precautionary principle. In the circumstances of the case, the applicant could not, therefore, in the context of its action for damages, plead infringement of Article 11 of Directive 65/65/EEC. Difficulties linked to the systematic interpretation of the conditions for the withdrawal or suspension of marketing authorisation might, in the light of the whole Community system of prior authorisation of medicinal products, reasonably explain, there being no similar precedent, the Commission's error in law. In addition, the Court stressed that, for want of any identification, in the applicable guidelines, of changes in the decisive scientific criterion for marketing authorisation of medicinal products for human use containing amfepramone, the Commission had to adopt its decision on the basis of a complex examination of successive preparatory scientific reports written during the examination procedure leading to the final opinion on amfepramone, and on the basis of the guidelines mentioned in that final opinion. In those circumstances, the Court considered that the breach of Community law was not sufficiently serious.

It is also to be noted that, with regard to the condition that the alleged breach must be of a rule of law intended to confer rights on individuals, the Court held that it is not the purpose of the relevant provisions of Directive 75/319/EEC defining the respective spheres of competence of the Commission and of the Member States to confer rights on individuals. Those provisions are specifically designed to arrange the division of powers between national authorities and the Commission so far as concerns the mutual recognition of national marketing authorisations. In the circumstances, the applicant could not, therefore, in its action for damages, plead the fact that the Commission's decision lacked a basis in law, by reason of the Community's lack of competence, and that for that reason in particular the applicant had obtained its annulment.

4. Infringement of copyright and of know-how

Case T-19/07 *Systran and Systran Luxembourg* v *Commission* (judgment of 16 December 2010, not yet published) indicated some innovating developments concerning actions for compensation and observance of copyright and know-how, and settled a complicated dispute between the company Systran and the Commission, arising from a call for tenders relating to the maintenance and linguistic enhancement of the Commission's machine translation system.

Between 22 December 1997 and 15 March 2002, the company Systran Luxembourg adapted, under the name EC-Systran Unix, its Systran-Unix machine translation software to the Commission's specific needs in that sphere. On 4 October 2003 the Commission issued a call for tenders relating to the maintenance and linguistic enhancement of its machine translation system.

Following that call for tenders, Systran — Systran Luxembourg's parent company — made contact with the Commission in order to inform the latter that the planned work appeared likely to infringe its intellectual property rights. After several contacts between Systran and the Commission, the latter took the view that Systran had not produced 'probative documents' capable of establishing the rights that Systran might claim in respect of its EC-Systran Unix machine translation system. The Commission thus considered that the Systran group had no right to object to the work carried out by the company that had been successful in the call for tenders and it therefore awarded the contract that was the subject-matter of that call.

Taking the view that the Commission had unlawfully disclosed their know-how to a third party and had committed an act of infringement when the successful tenderer carried out unauthorised developments of the EC-Systran Unix version, Systran and Systran Luxembourg brought an action

for damages against the Commission. The Court considered that, by giving itself the right to carry out work necessarily entailing alteration of elements of the EC-Systran Unix version of the Systran software, without first obtaining the consent of the Systran group, the Commission had acted unlawfully, infringing the general principles common to the laws of the Member States applicable to copyright and know-how. That wrongful act, which is a sufficiently serious breach of the copyright and know-how held by Systran in the EC-Systran Unix version of the Systran software, is such as to give rise to non-contractual liability on the part of the Commission.

The Commission's wrongful act having been established, the Court found that the loss alleged, namely, in essence, commercial damage caused by the loss of potential customers and the complicating of discussions with Systran's current customers, and financial damage caused by Systran's becoming less attractive in economic terms to investors and by depreciation of its intangible assets, were the direct result of the Commission's infringement of Systran's copyrights and know-how.

The Court fixed the compensation for the losses sustained by Systran at the sum of EUR 12 001 000 damages and interest, including the amount of the fees that would have been payable if the Commission had sought permission to use Systran's intellectual property rights in order to carry out the work specified in the call for tenders, for the effect that the Commission's conduct could have had on Systran's turnover and compensation for non-material damage. In addition, it is to be noted that, exceptionally, the Court stated that the publication of a press release was also a form of non-pecuniary compensation for the non-material damage caused by the harm done to Systran's reputation as a result of the Commission's unlawful conduct.

III. Appeals

During the course of the year 2010, 24 appeals were brought against decisions of the Civil Service Tribunal and 37 cases were brought to a close by the Appeal Chamber of the General Court. Two of those cases merit particular attention.

First, in Case T-160/08 P *Commission* v *Putterie-De-Beukelaer* (judgment of 8 July 2010, not yet published), the Court held that the incompetence of the author of an act adversely affecting the applicant is a ground involving a question of public policy which the Union judicature must examine, if necessary of its own motion, and that failure to comply with the procedural rules relating to the adoption of an act adversely affecting an individual constitutes a breach of essential procedural requirements, which the Union judicature may examine, even of its own motion. Thus, refusal to examine an internal appeal, provided for in the procedural rules applicable to the adoption of an act adversely affecting an individual, constitutes a breach of essential procedural requirements and may therefore be raised by the Civil Service Tribunal of its own motion.

Second, attention is drawn to the fact that for the first time a case was referred back to the Court by the Court of Justice after review of a judgment given on appeal. In Case T-12/08 P-RENV-RX *M* v *EMA* (judgment of 8 July 2010, not yet published), the Court held that the appeal court may, in certain circumstances, rule on the substance of an action, even though the proceedings at first instance were confined to a plea of inadmissibility which that court upheld. That may be so where, first, the setting aside of the judgment or order under appeal necessarily brings about a definitive resolution of the substance of the action in question or, second, the examination of the substance of the application for annulment is based on arguments exchanged by the parties in the appeal proceedings following reasoning adopted by the court at first instance. If no such special circumstances exist, the state of the proceedings does not permit the Court to give final judgment in the matter for the purposes of Article 61 of the Statute of the Court of Justice of the European Union

and Article 13(1) of Annex I to the Statute. The appeal court cannot, therefore, do other than refer the case back to the court of first instance for the latter to rule on the claims that are the substance of the action. So, the Court in its turn referred the case back to the Civil Service Tribunal.

IV. Applications for interim relief

In 2010, 41 applications for interim measures were brought before the President of the General Court, an appreciable increase compared with the number of applications (24) made in 2009. In 2010 the judge hearing such applications disposed of 38 cases, as against 20 in 2009.

In Cases T–95/09 R II and T-95/09 R III *United Phosphorus* v *Commission* (orders of 15 January and 25 November 2010, not published), the President of the Court allowed two applications for extension of suspension of the operation of a decision (prohibiting the marketing of an active plant protection substance). In Case T-95/09 R *United Phosphorus* v *Commission* (order of 28 April 2009, not published), the President of the Court had already recognised urgency, considering conclusive the fact that, following the adoption of that decision, the applicant had instituted a newly created accelerated, administrative procedure in which its chances of success appeared greater than they had been in the procedure leading to the prohibition decision, and that that accelerated assessment procedure was likely to be concluded only a few months after the date imposed for the withdrawal from the market of the active substance at issue. He deduced therefrom that it would be unreasonable to allow the prohibition of the marketing of a substance in respect of which it was not improbable that its marketing would be authorised only a few months later. In consequence, after recognising the existence of a *prima facie* case, and finding that the balance of interests tipped in favour of the applicant, the President of the Court had suspended operation of the prohibition decision until 7 May 2010.

The applicant then obtained, by order of 15 January 2010, extension of the suspension granted until 30 November 2010, on the grounds that it had been confirmed that the accelerated procedure would not be concluded before 7 May 2010 and that there was no change in the circumstances justifying the original grant of suspension of operation. Early in November 2010, the applicant made a new application for extension, relying on the fact that the accelerated assessment procedure was to end in success for the applicant. The Commission had, in fact, launched the procedure to authorise the substance in question, and a directive authorising the substance was to enter into force on 1 January 2011. In those circumstances, by order of 25 November 2010 the President of the Court extended until 31 December 2011 suspension of the operation of the prohibition decision, in so far as it refused to authorise the substance in question. With regard to plant protection products containing that substance, he recalled that the prohibition decision obliged the Member States to withdraw the authorisations for such products and that the suspension granted by the earlier orders applied to the withdrawal of authorisation of those products also. Even after the entry into force of authorisation of the substance in question, the applicant would have to make fresh applications to the national authorities for authorisation of its plant protection products containing that substance, those products having had to be withdrawn from the market before the national authorisations were granted. In this connection, the President of the Court found that the new authorising directive did not contain any provision repealing the prohibition decision, with the result that the latter ordered the withdrawal of product authorisations currently held by the applicant, unless the suspension of operation previously granted were to be extended. In addition, there was no provision in the new directive taking account of the suspension granted in the orders of 28 April 2009 and 15 January 2010, for the purpose of preventing a gap in the marketing of those plant protection products and of providing for a reasonable transitional period between the prohibition decision and implementation of the new directive. The President of the Court

extended, therefore, until 31 December 2011 the suspension previously granted, as regards the withdrawal of authorisations of plant protection products containing the active substance at issue, emphasising that such a measure took into consideration the innocuousness of that substance, as finally revealed at the end of the accelerated assessment procedure.

So far as concerns applications for interim measures based on the applicant's alleged inability to pay fines imposed by the Commission for contravention of the rules on competition, in Case T-410/09 R *Almamet* v *Commission* (order of 7 May 2010, not published), the President of the Court reaffirmed the case-law in accordance with which the applicant must produce specific particulars, supported by detailed certified documents giving a true and comprehensive picture of its financial situation, enabling the judge hearing the application to assess the precise consequences that the party would, in all probability, have to bear if the interim measures sought were not granted. Following that case-law, the President considered it insufficient for the applicant to plead the purely oral refusal of the bank it had approached with a view to obtaining a bank guarantee. He added that, although the case-law on taking the group into consideration has often been applied with regard to the majority shareholder, the underlying reasoning does not make it impossible for it to retain, in an appropriate case, all its relevance with regard to minority shareholders, for the interests of certain minority shareholders, having regard to the structure of the shareholders, may just as much warrant account's being taken of their financial resources. In the case in point, the shareholdings in the applicant company consisting of two principal shareholders, holding respectively 50% and 30% of its capital, that company ought to have given the judge hearing the application for interim measures precise information concerning the minority member with a 30% holding ([44]).

Moreover, the first application for interim measures made in the context of Regulation (EC) No 1907/2006 ([45]) raised the question of a causal link between the damage alleged and the measure whose suspension was sought. In Case T-1/10 R *SNF* v *ECHA* (order of 26 March 2010, not published), the President of the Court dismissed the claim for suspension of operation of the inclusion of a chemical substance in the 'list of substances of very high concern', on the grounds that Regulation (EC) No 1907/2006 contains no provision that would have the legal effect of prohibiting or restricting the manufacture, marketing or use of a chemical merely because the latter was included in that list. So far as concerns the fear that the list in question might be perceived by the industry and by consumers as a 'blacklist' of substances to be avoided, it was considered that, given that inclusion of substances in the list at issue did not lead automatically to their progressive replacement by suitable alternative substances, negative reactions of the applicant's customers could not be regarded as conclusions that an economic operator could reasonably have drawn from the mere identification of the substance as being of very high concern. The President of the Court held that, assuming that those negative reactions were explained by a change of policy by the economic operators in question, based on increased awareness with regard to dangerous substances, it would

([44]) Another case may be mentioned in this connection — covered by confidentiality, having regard to the risk of precipitating the applicant's bankruptcy, were its precarious financial situation to be revealed — concerning a request to be released from the obligation, imposed by the Commission, to provide a bank guarantee as a condition for the fine imposed by the decision's not being recovered immediately. The applicant having already put in hand a plan of staggered payments to the Commission, the President of the Court adopted a suspending order, pursuant to Article 105(2) of the Rules of Procedure, followed by a hearing, in order to encourage the parties to reach a judicial agreement. The parties' efforts having in fact borne fruit, the application for interim measures was removed from the register.

([45]) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the registration, evaluation, authorisation and restriction of chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1).

be an independent choice made by those economic operators that constituted the decisive cause of the damage pleaded.

As regards tendering procedures, it is appropriate to mention Case T-299/10 R *Babcock Noell* v *European Joint Undertaking for ITER and the Development of Fusion Energy* (order of 31 August 2010, not published), a case concerning the international project to build and operate an international thermonuclear experimental reactor (ITER), intended to demonstrate the scientific and technical feasibility of fusion energy. In connection with that project a European Joint Undertaking for ITER was set up, whose task it is to contribute to the rapid realisation of fusion energy. To that end, the joint undertaking conducts procurement procedures relating to the supply of assets, the performance of works or the provision of services. In respect of a call for tenders launched for the purpose of awarding a contract for the supply of ITER toroidal field coils winding packs, the applicant, a company active in the field of nuclear technology, submitted a bid for that contract, which was rejected on the grounds that it did not comply with the tender specifications. The applicant brought an action for annulment of that rejection decision and of the decision awarding the contract to another undertaking, together with an application for interim measures which was dismissed, none of the conditions for the grant of the provisional measures sought having been satisfied in the case in point.

So far as the condition relating to urgency was concerned, the alleged damage to the applicant's reputation was not accepted by the judge hearing the application, for participation in a public tendering procedure involves risks for all the participants and the rejection of a tenderer's bid under the tender rules is not in itself in any way prejudicial. In the case of the unlawful rejection of an undertaking's bid, there is even less reason to believe that the undertaking would be liable to suffer serious and irreparable harm to its reputation, its exclusion being unconnected with its competence and because the annulling judgment would, in principle, enable any harm to its reputation to be made good. In addition, as regards the weighing up of interests, the judge hearing the application stated that the applicant's interest in being able to refer to the contract at issue for advertising purposes must yield to the general interest of the European Union, including that of its citizens, in prompt completion of the ITER project, the political and economic importance of which is evident, on account of the fact that that project is designed to harness fusion as a potentially limitless, safe, sustainable, environmentally responsible and economically competitive source of energy, from which the European Union could derive significant benefit ([46]).

Last, emphasis must be placed on the legal, economic, social and cultural effect of the orders that the President of the Court found it necessary to make in Cases T-18/10 R, T-18/10 R II, T-18/10 R II INTP and T-18/10 R II *Inuit Tapiriit Kanatami and Others* v *Parliament and Council* (orders of 30 April, 19 August, 19 October and 25 October, respectively, not published, under appeal). Those orders arose from Regulation (EC) No 1007/2009 ([47]) which, in the interest of animal welfare and for the purpose of establishing harmonised rules on the marketing of seal products, prohibited, from 20 August 2010, the placing of seal products on the market except those resulting from hunts traditionally conducted by Inuit communities and contributing to their subsistence. This exception was justified by the fundamental economic and social interests of Inuit communities engaged in the hunting of seals, the hunt being an integral part of the culture and identity of those

([46]) As regards public procurement, mention may be made of the unpublished orders dismissing applications for interim measures in Case T-415/10 R *Nexans France* v *European Joint Undertaking for ITER and the Development of Fusion Energy* (order of 15 October 2010); Case T-6/10 R *Sviluppo Globale* v *Commission* (order of 26 March 2010); Case T-514/09 R *De Post* v *Commission* (order of 5 February 2010); and Case T-443/09 R *Agriconsulting Europe* v *Commission* (order of 20 January 2010).

([47]) Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products (OJ 2009 L 286, p. 36).

communities. Authorisation for those Inuit communities was to be put into effect by means of an implementing regulation to be adopted by the Commission.

In January 2010, several seal hunters and trappers, seal-product processors and companies active in marketing such products or using them for medical purposes brought an action for annulment of Regulation (EC) No 1007/2009 and, in February 2010, made an application for suspension of operation of that regulation. By order of 30 April 2010, the President of the Court dismissed that application. After finding that it could not be excluded that the main action was admissible and that the pleas in law supporting the claim for annulment appeared to be relevant and serious enough to constitute a *prima facie* case, he nonetheless decided that there was no urgency, noting, in particular, that the Commission had not yet adopted the implementing regulation intended to give effect to the authorisation in favour of the Inuit communities.

In July 2010, the applicants made a fresh application for interim measures, based on a new fact, namely: the publication of the Commission draft implementing regulation. They argued that the future implementing regulation, which was to enter into force on 20 August 2010, was completely inappropriate in that it would render the authorisation in favour of the Inuit meaningless. By order of 19 August 2010, the President of the Court allowed that new application, pursuant to Article 105(2) of the Rules of Procedure, and suspended the operation of Regulation (EC) No 1007/2009 in that it restricted, so far as concerned the applicants, the placing on the market of seal products, until the order bringing the proceedings for interim measures to an end should be adopted.

By order of 25 October 2010, the President of the Court closed the proceedings for interim measures and dismissed, for want of urgency, the new application made in July 2010. First of all, the applicants not including any entity governed by public law, they could not plead the general economic, social and cultural interests of the Inuit; rather, it was for each of them to show that Regulation (EC) No 1007/2009 could cause him, individually, serious and irreparable harm if the application for interim relief were dismissed. Such evidence was not, however, adduced by the applicants. The seal hunters, seal trappers and processors of seal products did not specify the income they received from hunting or other activities or their personal fortunes, or produce attestations from a competent authority stating their right to social assistance, unemployment benefit or other form of allowance, whereas a report, produced by the applicants themselves, set out the subsidy schemes in Greenland and Canada, their countries of origin, to support seal hunting. The commercial companies active in that sector did not produce any figures enabling an assessment of the seriousness of the damage alleged, having regard to the size and turnover of each individual company.

Last, so far as concerns the Commission's implementing regulation, the applicants failed to show that it would be impossible to create the traceability system required by the regulation that would make it possible to identify seal products derived from hunting by the Inuit. On the contrary, the report they had themselves produced referred to traceability systems already actually in use in Greenland (use of a label with a bar-code and the words 'Traditional hunt conducted by Inuit communities for subsistence purposes'). The applicants failed to set out the reasons why it would be impossible to adapt those Greenland traceability systems to the requirements of the implementing regulation.

B — Composition of the General Court

(order of precedence as at 18 November 2010)

First row, from left to right:

A. Dittrich, President of Chamber; S. Papasavvas, President of Chamber; O. Czúcz, President of Chamber; J. Azizi, President of Chamber; M. Jaeger, President of the Court; N. J. Forwood, President of Chamber; I. Pelikánová, President of Chamber; E. Moavero Milanesi, President of Chamber; L. Truchot, President of Chamber.

Second row, from left to right:

N. Wahl, Judge; K. Jürimäe, Judge; I. Wiszniewska-Białecka, Judge; F. Dehousse, Judge; M. E. Martins Ribeiro, Judge; E. Cremona, Judge; V. Vadapalas, Judge; I. Labucka, Judge; M. Prek, Judge.

Third row, from left to right:

D. Gratsias, Judge; J. Schwarcz, Judge; K. O'Higgins, Judge; S. Soldevila Fragoso, Judge; V. M. Ciucă, Judge; S. Frimodt Nielsen, Judge; H. Kanninen, Judge; M. Van der Woude, Judge; E. Coulon, Registrar.

1. Members of the General Court

(in order of their entry into office)

Marc Jaeger
Born 1954; law degree from the Robert Schuman University of Strasbourg; studied at the College of Europe; admitted to the Luxembourg Bar (1981); attaché de justice delegated to the office of the Public Attorney of Luxembourg (1983); Judge at the Luxembourg District Court (1984); Legal Secretary at the Court of Justice of the European Communities (1986–96); President of the Institut Universitaire International Luxembourg (IUIL); Judge at the General Court since 11 July 1996; President of the General Court since 17 September 2007.

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 General Court since 18 January 1995.

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 at 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 General Court from 17 September 1998 to 13 September 2010.

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 General Court from 17 September 1998 to 25 October 2010.

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 General Court 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 General Court 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 of 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 General Court since 7 October 2003.

Ena Cremona

Born 1936; Bachelor's 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 General Court 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; Judge at the Constitutional Court (1998–2004); Judge at the General Court 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 General Court 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 General Court 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 General Court since 12 May 2004.

Küllike Jürimäe

Born 1962; law degree, 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 General Court 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 General Court since 12 May 2004.

Savvas S. Papasavvas

Born 1969; studies at the University of Athens (graduated in 1991); DEA (Diploma of Advanced Studies) 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 General Court since 12 May 2004.

Enzo Moavero Milanesi

Born 1954; Doctor of Laws (La Sapienza University, Rome); specialised 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 (BEPA) at the European Commission (2006); Judge at the General Court 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 General Court since 7 October 2006.

Miro Prek

Born 1965; law degree (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 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 General Court since 7 October 2006.

Teodor Tchipev

Born 1940; law degree, 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 Paisiy 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 General Court from 12 January 2007 to 29 June 2010.

Valeriu M. Ciucă

Born 1960; law degree (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 General Court from 12 January 2007 to 26 November 2010.

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 General Court 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 General Court 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 General Court 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 General Court 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 General Court since 15 September 2008.

Heikki Kanninen

Born 1952; graduate of the Helsinki School of Economics and of the Faculty of Law of the University of Helsinki; Legal Secretary at the Supreme Administrative Court of Finland; General Secretary to the Committee for Reform of Legal Protection in Public Administration; Principal Administrator at the Supreme Administrative Court; General Secretary to the Committee for Reform of Administrative Litigation, Counsellor in the Legislative Drafting Department of the Ministry of Justice; Assistant Registrar at 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 Appeal Board; Vice-Chairman of the Committee on the Development of the Finnish Courts; Judge at the Civil Service Tribunal from 6 October 2005 to 6 October 2009; Judge at the General Court since 7 October 2009.

Juraj Schwarcz

Born 1952; Doctor of Law (Comenius University, Bratislava, 1979); company lawyer (1975–90); Registrar responsible for the commercial register at the City Court, Košice (1991); Judge at the City Court, Košice (January to October 1992); Judge and President of Chamber at the Regional Court, Košice (November 1992 to 2009); temporary Judge at the Supreme Court of the Slovak Republic, Commercial Law Division (October 2004 to September 2005); Head of the Commercial Law Division at the Regional Court, Košice (October 2005 to September 2009); external member of the Commercial and Business Law Department at Pavol Josef Šafárik University, Košice (1997–2009); external member of the teaching staff of the Judicial Academy (2005–09); Judge at the General Court since 7 October 2009.

Marc van der Woude

Born 1960; law degree (University of Groningen, 1983); studies at the College of Europe (1983–84); Assistant Lecturer at the College of Europe (1984–86); Lecturer at Leiden University (1986–87); Rapporteur in the Directorate-General for Competition of the Commission of the European Communities (1987–89); Legal Secretary at the Court of Justice of the European Communities (1989–92); Policy Coordinator in the Directorate-General for Competition of the Commission of the European Communities (1992–93); member of the Legal Service of the Commission of the European Communities (1993–95); member of the Brussels Bar from 1995; Professor at Erasmus University Rotterdam from 2000; author of numerous publications; Judge at the General Court since 13 September 2010.

Dimitrios Gratsias

Born 1957; graduated in law from the University of Athens (1980); awarded DEA (Diploma of Advanced Studies) in public law by the University of Paris I, Panthéon-Sorbonne (1981); awarded Diploma by the University Centre for Community and European Studies (University of Paris I) (1982); junior officer of the Council of State (1985–92); junior member of the Council of State (1992–2005); Legal Secretary at the Court of Justice of the European Communities (1994–96); supplementary member of the Superior Special Court of Greece (1998 and 1999); member of the Council of State (2005); member of the Special Court for Actions against Judges (2006); member of the Supreme Council for Administrative Justice (2008); Inspector of Administrative Courts (2009–10); Judge at the General Court since 25 October 2010.

Andrei Popescu

Born 1948; graduated in law from the University of Bucharest (1971); postgraduate studies in international labour law and European social law, University of Geneva (1973–74); Doctor of Laws of the University of Bucharest (1980); trainee Assistant Lecturer (1971–73), Assistant Lecturer with tenure (1974–85) and then Lecturer in Labour Law at the University of Bucharest (1985–90); Principal Researcher at the National Research Institute for Labour and Social Protection (1990–91); Deputy Director-General (1991–92), then Director (1992–96) at the Ministry of Labour and Social Protection; Senior Lecturer (1997), then Professor at the National School of Political Science and Public Administration, Bucharest (2000); State Secretary at the Ministry of European Integration (2001–05); Head of Department at the Legislative Council of Romania (1996–2001 and 2005–09); Agent of the Romanian Government before the Courts of the European Union (2009–10); Judge at the General Court since 26 November 2010.

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 (Chambers of the Presidents Mr Saggio (1996–98) and Mr Vesterdorf (1998–2002)); Head of Chambers of the President of the Court of First Instance (2003–05); Registrar of the General Court since 6 October 2005.

2. Change in the composition of the General Court in 2010

Formal sitting on 13 September 2010

By decisions of 23 June 2010 and 8 July 2010, the Representatives of the Governments of the Member States renewed, for the period from 1 September 2010 to 31 August 2016, the terms of office as Judges at the General Court of Mr Marc Jaeger, Mr Josef Azizi, Ms Eugénia Martins de Nazaré Ribeiro, Mr Ottó Czúcz, Ms Irena Wiszniewska-Białecka, Mr Franklin Dehousse, Ms Küllike Jürimäe, Mr Savvas S. Papasavvas, Mr Sten Frimodt Nielsen, Mr Heikki Kanninen and Mr Juraj Schwarcz.

To replace Mr Arjen W. H. Meij, the Representatives of the Governments of the Member States, by decision of 8 July 2010, appointed Mr Marc van der Woude as a Judge at the General Court for the period from 1 September 2010 to 31 August 2016.

Formal sitting on 25 October 2010

By decision of 21 October 2010, the Representatives of the Governments of the Member States appointed Mr Dimitrios Gratsias as a Judge at the General Court for the period from 25 October 2010 to 31 August 2016, replacing Mr Mihalis Vilaras.

Formal sitting on 26 November 2010

By decision of 18 November 2010, the Representatives of the Governments of the Member States appointed Mr Andrei Popescu as a Judge at the General Court for the period from 26 November 2010 to 31 August 2016, replacing Mr Valeriu M. Ciucă.

3. Order of precedence

from 1 January 2010 to 14 September 2010

M. JAEGER, President of the Court
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. WISZNIEWSKA-BIAŁECKA, President of Chamber
I. PELIKÁNOVÁ, President of Chamber
F. DEHOUSSE, Judge
E. CREMONA, 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. M. CIUCĂ, Judge
A. DITTRICH, Judge
S. SOLDEVILA FRAGOSO, Judge
L. TRUCHOT, Judge
S. FRIMODT NIELSEN, Judge
K. O'HIGGINS, Judge
H. KANNINEN, Judge
J. SCHWARCZ, Judge

E. COULON, Registrar

from 15 September 2010 to 24 October 2010

M. JAEGER, President of the Court
J. AZIZI, President of Chamber
N. J. FORWOOD, President of Chamber
O. CZÚCZ, President of Chamber
I. PELIKÁNOVÁ, President of Chamber
S. PAPASAVVAS, President of Chamber
E. MOAVERO MILANESI, President of Chamber
A. DITTRICH, President of Chamber
L. TRUCHOT, President of Chamber
M. VILARAS, Judge
M. E. MARTINS RIBEIRO, Judge
F. DEHOUSSE, Judge
E. CREMONA, Judge
I. WISZNIEWSKA-BIAŁECKA, Judge
V. VADAPALAS, Judge
K. JÜRIMÄE, Judge
I. LABUCKA, Judge
N. WAHL, Judge
M. PREK, Judge
V.M. CIUCĂ, Judge
S. SOLDEVILA FRAGOSO, Judge
S. FRIMODT NIELSEN, Judge
K. O'HIGGINS, Judge
H. KANNINEN, Judge
J. SCHWARCZ, Judge
M. VAN DER WOUDE, Judge

E. COULON, Registrar

from 25 October 2010 to 25 November 2010

M. JAEGER, President of the Court
J. AZIZI, President of Chamber
N. J. FORWOOD, President of Chamber
O. CZÚCZ, President of Chamber
I. PELIKÁNOVÁ, President of Chamber
S. PAPASAVVAS, President of Chamber
E. MOAVERO MILANESI, President of Chamber
A. DITTRICH, President of Chamber
L. TRUCHOT, President of Chamber
M. E. MARTINS RIBEIRO, Judge
F. DEHOUSSE, Judge
E. CREMONA, Judge
I. WISZNIEWSKA-BIAŁECKA, Judge
V. VADAPALAS, Judge
K. JÜRIMÄE, Judge
I. LABUCKA, Judge
N. WAHL, Judge
M. PREK, Judge
V. M. CIUCĂ, Judge
S. SOLDEVILA FRAGOSO, Judge
S. FRIMODT NIELSEN, Judge
K. O'HIGGINS, Judge
H. KANNINEN, Judge
J. SCHWARCZ, Judge
M. VAN DER WOUDE, Judge
D. GRATSIAS, Judge

E. COULON, Registrar

from 26 November 2010 to 31 December 2010

M. JAEGER, President of the Court
J. AZIZI, President of Chamber
N. J. FORWOOD, President of Chamber
O. CZÚCZ, President of Chamber
I. PELIKÁNOVÁ, President of Chamber
S. PAPASAVVAS, President of Chamber
E. MOAVERO MILANESI, President of Chamber
A. DITTRICH, President of Chamber
L. TRUCHOT, President of Chamber
M. E. MARTINS RIBEIRO, Judge
F. DEHOUSSE, Judge
E. CREMONA, Judge
I. WISZNIEWSKA-BIAŁECKA, Judge
V. VADAPALAS, Judge
K. JÜRIMÄE, Judge
I. LABUCKA, Judge
N. WAHL, Judge
M. PREK, Judge
S. SOLDEVILA FRAGOSO, Judge
S. FRIMODT NIELSEN, Judge
K. O'HIGGINS, Judge
H. KANNINEN, Judge
J. SCHWARCZ, Judge
M. VAN DER WOUDE, Judge
D. GRATSIAS, Judge
A. POPESCU, Judge

E. COULON, Registrar

4. Former members of the General Court

David Alexander Ogilvy Edward (1989–92)
Christos Yeraris (1989–92)
José Luis Da Cruz Vilaça (1989–95), President from 1989 to 1995
Jacques Biancarelli (1989–95)
Donal Patrick Michael Barrington (1989–96)
Romain Alphonse Schintgen (1989–96)
Heinrich Kirschner (1989–97)
Antonio Saggio (1989–98), President from 1995 to 1998
Cornelis Paulus Briët (1989–98)
Koen Lenaerts (1989–2003)
Bo Vesterdorf (1989–2007), President from 1998 to 2007
Rafael García-Valdecasas y Fernández (1989–2007)
Andreas Kalogeropoulos (1992–98)
Christopher William Bellamy (1992–99)
André Potocki (1995–2001)
Rui Manuel Gens de Moura Ramos (1995–2003)
Pernilla Lindh (1995–2006)
Virpi Tiili (1995–2009)
John D. Cooke (1996–2008)
Jörg Pirrung (1997–2007)
Paolo Mengozzi (1998–2006)
Arjen W.H. Meij (1998–2010)
Mihalis Vilaras (1998–2010)
Hubert Legal (2001–07)
Verica Trstenjak (2004–06)
Daniel Šváby (2004–09)
Teodor Tchipev (2007–10)
Valeriu M. Ciucă (2007–10)

Presidents

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

Registrar

Hans Jung (1989–2005)

C — Statistics concerning the judicial activity of the General Court

General activity of the General Court

1. New cases, completed cases, cases pending (2006–10)

New cases

2. Nature of proceedings (2006–10)
3. Type of action (2006–10)
4. Subject-matter of the action (2006–10)

Completed cases

5. Nature of proceedings (2006–10)
6. Subject-matter of the action (2010)
7. Subject-matter of the action (2006–10) (judgments and orders)
8. Bench hearing action (2006–10)
9. Duration of proceedings in months (2006–10) (judgments and orders)

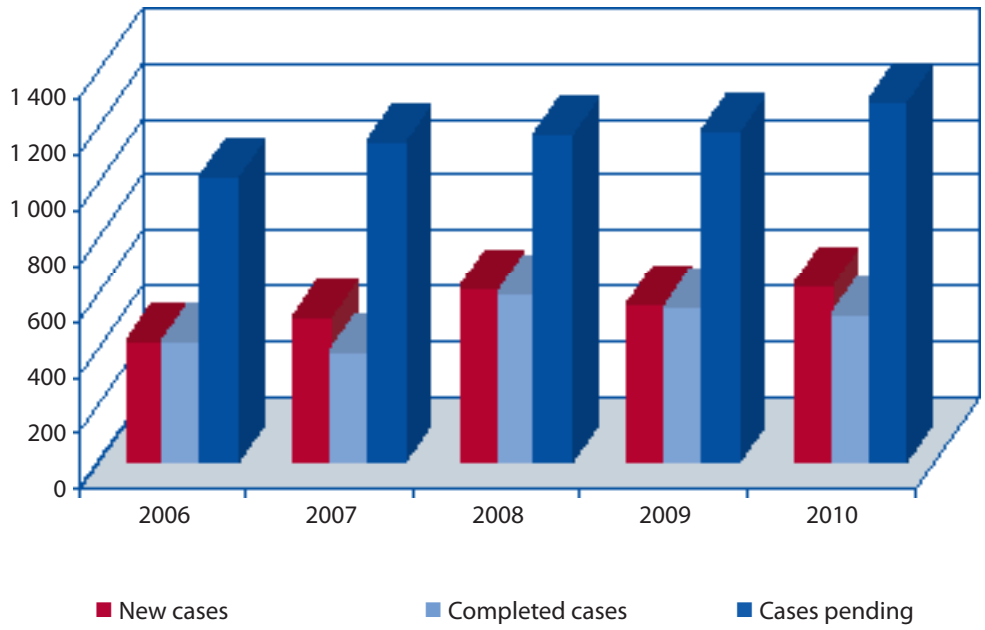
Cases pending as at 31 December

10. Nature of proceedings (2006–10)
11. Subject-matter of the action (2006–10)
12. Bench hearing action (2006–10)

Miscellaneous

13. Proceedings for interim measures (2006–10)
14. Expedited procedures (2006–10)
15. Appeals against decisions of the General Court to the Court of Justice (1989–2010)
16. Distribution of appeals before the Court of Justice according to the nature of the proceedings (2006–10)
17. Results of appeals before the Court of Justice (2010) (judgments and orders)
18. Results of appeals before the Court of Justice (2006–10) (judgments and orders)
19. General trend (1989–2010) (new cases, completed cases, cases pending)

1. *General activity of the General Court* — New cases, completed cases, cases pending (2006–10) (1)

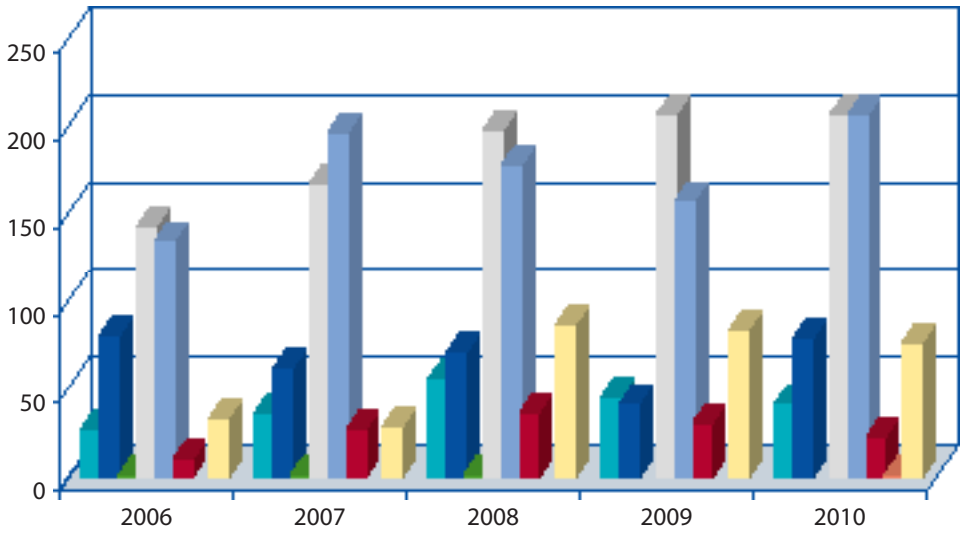


	2006	2007	2008	2009	2010
New cases	432	522	629	568	636
Completed cases	436	397	605	555	527
Cases pending	1 029	1 154	1 178	1 191	1 300

(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 General Court); 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).

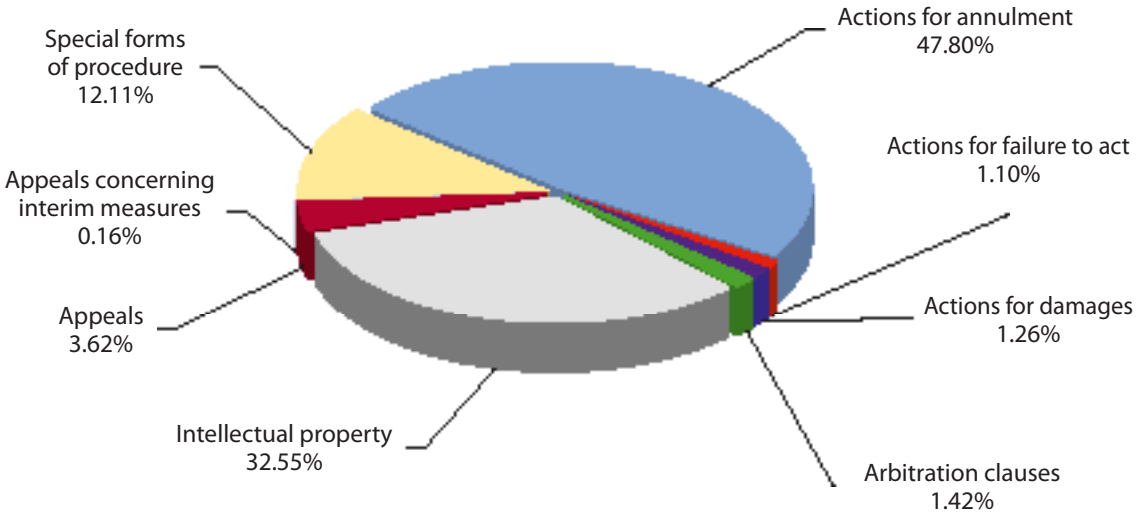
2. *New cases* — Nature of proceedings (2006–10)



	2006	2007	2008	2009	2010
State aid	28	37	56	46	42
Competition	81	62	71	42	79
Staff cases	1	2	2		
Intellectual property	143	168	198	207	207
Other direct actions	135	197	178	158	207
Appeals	10	27	37	31	23
Appeals concerning interim measures					1
Special forms of procedure	34	29	87	84	77
Total	**432**	**522**	**629**	**568**	**636**

3. *New cases* — Type of action (2006–10)

Distribution in 2010



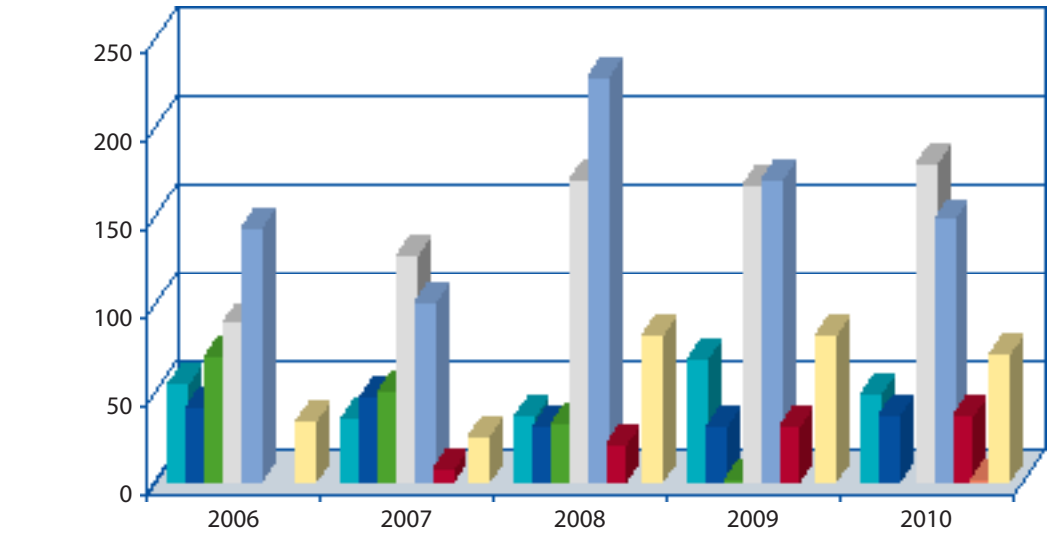
	2006	2007	2008	2009	2010
Actions for annulment	223	251	269	214	304
Actions for failure to act	4	12	9	7	7
Actions for damages	9	27	15	13	8
Arbitration clauses	8	6	12	12	9
Intellectual property	143	168	198	207	207
Staff cases	1	2	2		
Appeals	10	27	37	31	23
Appeals concerning interim measures					1
Special forms of procedure	34	29	87	84	77
Total	**432**	**522**	**629**	**568**	**636**

4. *New cases* — Subject-matter of the action (2006–10) ([1])

	2006	2007	2008	2009	2010
Access to documents	4	11	22	15	19
Accession of new States				1	
Agriculture	26	46	14	19	24
Approximation of laws		1			
Arbitration clause	8	6	12	12	9
Area of freedom, security and justice		3	3	2	
Commercial policy	18	9	10	8	9
Common foreign and security policy					1
Company law	1			1	
Competition	81	62	71	42	79
Consumer protection			2		
Culture	1	1		1	
Customs union and Common Customs Tariff	2	5	1	5	4
Economic and monetary policy	2				4
Economic, social and territorial cohesion	16	17	6	6	24
Education, vocational training, youth and sport		1			
Energy				2	
Environment	9	27	7	4	15
External action by the European Union	2	1	2	5	1
Financial provisions (budget, financial framework, own resources, combatting fraud)	1	1		1	
Fisheries policy		5	23	1	19
Free movement of goods	1	1	1	1	
Freedom of establishment			1		
Freedom of movement for persons	4	4	1	1	1
Freedom to provide services	1		3	4	1
Intellectual and industrial property	145	168	198	207	207
Law governing the institutions	12	19	23	32	17
Public health	1	1	2	2	4
Public procurement	14	11	31	19	15
Registration, evaluation, authorisation and restriction of chemicals (REACH Regulation)					8
Research and technological development and space		4		6	3
Restrictive measures (external action)	5	12	7	7	21
Social policy	2	5	6	2	4
State aid	28	37	55	46	42
Taxation	1	2			1
Transport	1	4	1		1
Total EC Treaty/TFEU	**386**	**464**	**502**	**452**	**533**
Total CS Treaty			**1**		
Total EA Treaty	**1**				**1**
Staff Regulations	11	29	39	32	25
Special forms of procedure	34	29	87	84	77
OVERALL TOTAL	**432**	**522**	**629**	**568**	**636**

([1]) As a result of the entry into force of the Treaty on the Functioning of the European Union (TFEU) on 1 December 2009, it has been necessary to change the presentation of the subject-matter of actions. The data for the period 2006–09 have been revised accordingly.

5. *Completed cases* — Nature of proceedings (2006–10)



	2006	2007	2008	2009	2010
State aid	55	36	37	70	50
Competition	42	48	31	31	38
Staff cases	71	51	33	1	
Intellectual property	90	128	171	168	180
Other direct actions	144	101	229	171	149
Appeals		7	21	31	37
Appeals concerning interim measures					1
Special forms of procedure	34	26	83	83	72
Total	**436**	**397**	**605**	**555**	**527**

6. *Completed cases* — Subject-matter of the action (2010) [1]

	Judgments	Orders	Total
Access to documents	14	7	21
Agriculture	9	7	16
Arbitration clause	10	2	12
Commercial policy	8		8
Company law		1	1
Competition	26	12	38
Consumer protection		2	2
Customs union and Common Customs Tariff	1	3	4
Economic and monetary policy		2	2
Economic, social and territorial cohesion	1	1	2
Education, vocational training, youth and sport	1		1
Energy		2	2
Environment	2	4	6
External action by the European Union	1	3	4
Freedom to provide services		2	2
Intellectual and industrial property	132	48	180
Law governing the institutions	9	17	26
Public health	2		2
Public procurement	10	6	16
Research and technological development and space	2	1	3
Restrictive measures (external action)	8	2	10
Social policy	1	5	6
State aid	28	22	50
Taxation		1	1
Transport	1	1	2
Total EC Treaty/TFEU	**266**	**151**	**417**
Staff Regulations	22	16	38
Special forms of procedure		72	72
OVERALL TOTAL	**288**	**239**	**527**

(1) As a result of the entry into force of the Treaty on the Functioning of the European Union (TFEU) on 1 December 2009, it has been necessary to change the presentation of the subject-matter of actions. The data for the period 2006–09 have been revised accordingly.

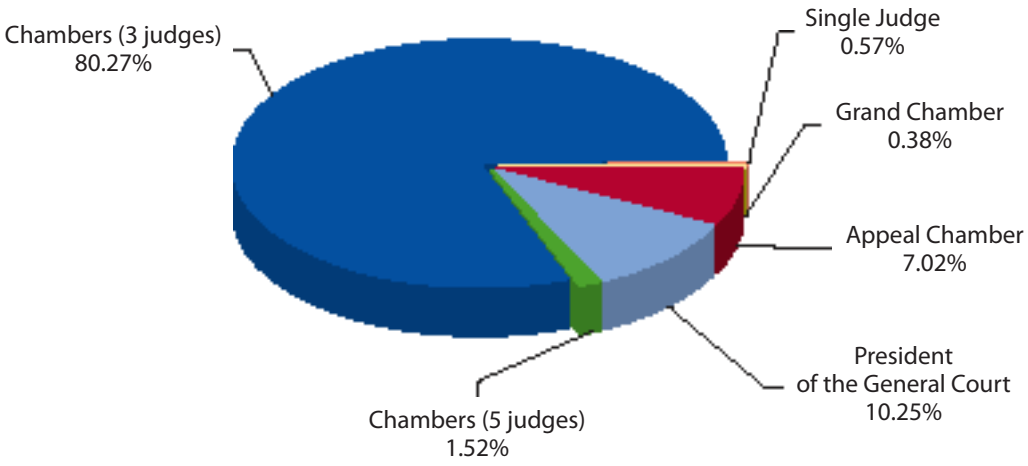
7. *Completed cases* — Subject-matter of the action (2006–10) [1] (judgments and orders)

	2006	2007	2008	2009	2010
Access to documents	7	7	15	6	21
Accession of new States	1			1	
Agriculture	27	13	48	46	16
Approximation of laws		1	1		
Arbitration clause	5	10	9	10	12
Area of freedom, security and justice		2	1	3	
Association of the Overseas Countries and Territories	2				
Commercial policy	13	4	12	6	8
Company law	1	1			1
Competition	42	38	31	31	38
Consumer protection					2
Culture			1	2	
Customs union and Common Customs Tariff	2	3	6	10	4
Economic and monetary policy	1	1	1		2
Economic, social and territorial cohesion	6	5	42	3	2
Education, vocational training, youth and sport					1
Energy					2
Environment	11	10	17	9	6
External action by the European Union	5	4	2		4
Financial provisions (budget, financial framework, own resources, combatting fraud)	4		2	2	
Fisheries policy	24	4	4	17	
Free movement of goods			2	3	
Freedom of establishment			1		
Freedom of movement for persons	4	4	2	1	
Freedom to provide services	2	1		2	2
Industrial policy		1			
Intellectual and industrial property	91	129	171	169	180
Law governing the institutions	8	10	22	20	26
Public health	3	2	1	1	2
Public procurement	4	7	26	12	16
Research and technological development and space	1	1	1	1	3
Restrictive measures (external action)	4	3	6	8	10
Social policy	5	4	2	6	6
State aid	54	36	37	70	50
Taxation	1		2		1
Transport	2	1	3		2
Total EC Treaty/TFEU	**330**	**302**	**468**	**439**	**417**
Total CS Treaty	**1**	**10**			
Total EA Treaty		**1**		**1**	
Staff Regulations	71	58	54	32	38
Special forms of procedure	34	26	83	83	72
OVERALL TOTAL	**436**	**397**	**605**	**555**	**527**

[1] As a result of the entry into force of the Treaty on the Functioning of the European Union (TFEU) on 1 December 2009, it has been necessary to change the presentation of the subject-matter of actions. The data for the period 2006–09 have been revised accordingly.

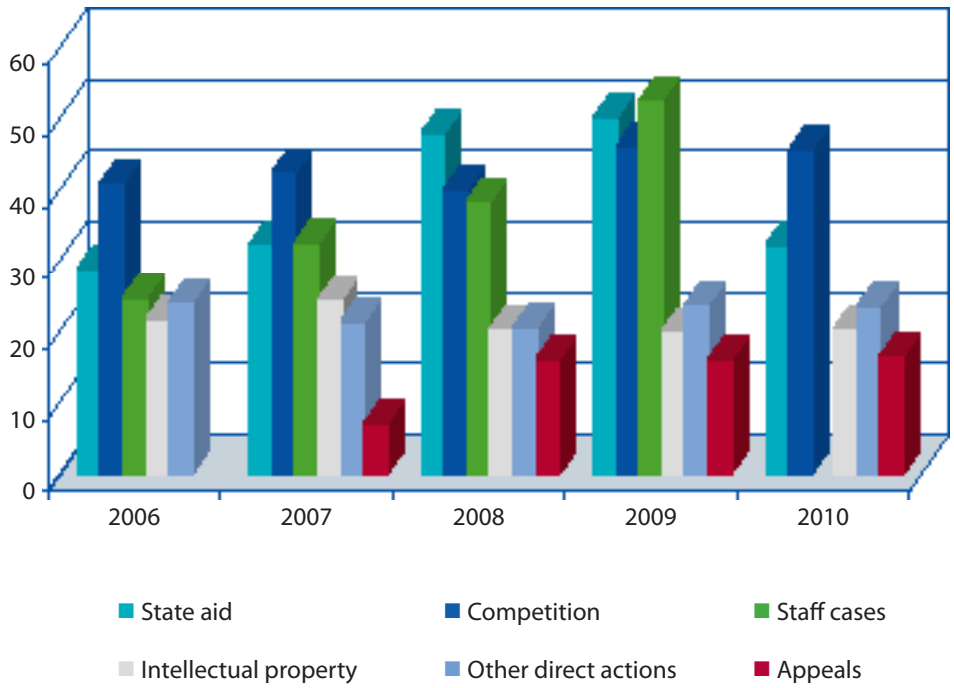
8. *Completed cases* — Bench hearing action (2006–10)

Distribution in 2010



	2006			2007			2008			2009			2010		
	Judgments	Orders	Total	Judgments	Orders	Total	Judgments	Orders	Total	Judgments	Orders	Total	Judgments	Orders	Total
Grand Chamber				2		2								2	2
Appeal Chamber				3	4	7	16	10	26	20	11	31	22	15	37
President of the General Court		19	19		16	16		52	52		50	50		54	54
Chambers (5 judges)	22	33	55	44	8	52	15	2	17	27	2	29	8		8
Chambers (3 judges)	198	157	355	196	122	318	228	282	510	245	200	445	255	168	423
Single Judge	7		7	2		2							3		3
Total	**227**	**209**	**436**	**247**	**150**	**397**	**259**	**346**	**605**	**292**	**263**	**555**	**288**	**239**	**527**

9. *Completed cases* — Duration of proceedings in months (2006–10) [1] (judgments and orders)

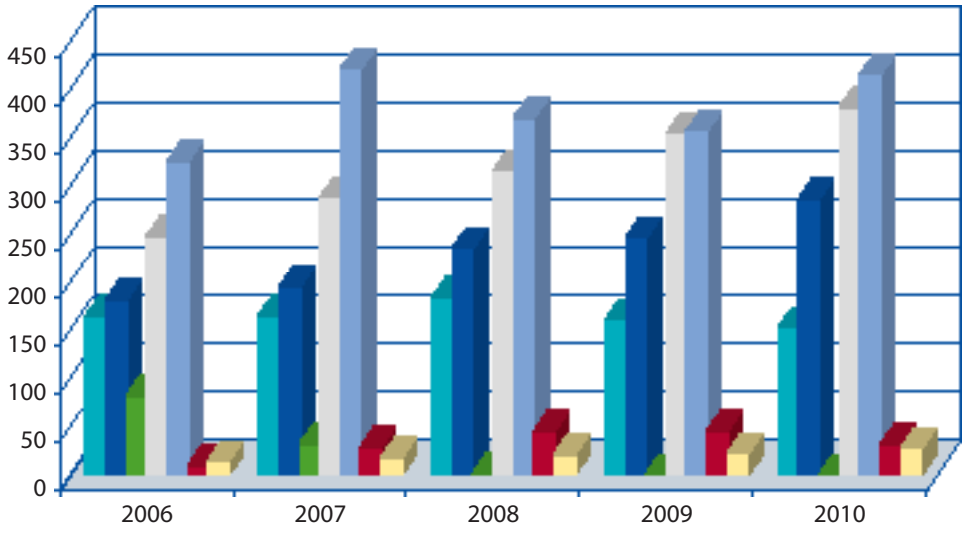


	2006	2007	2008	2009	2010
State aid	29.0	32.4	48.1	50.3	32.4
Competition	41.1	42.6	40.2	46.2	45.7
Staff cases	24.8	32.7	38.6	52.8	
Intellectual property	21.8	24.5	20.4	20.1	20.6
Other direct actions	24.2	21.5	20.6	23.9	23.7
Appeals		7.1	16.1	16.1	16.6

(1) The calculation of the average duration of proceedings does not take account of: cases ruled upon by interlocutory judgment; special forms of procedure; appeals concerning interim measures; cases referred by the Court of Justice following the amendment of the division of jurisdiction between it and the Court of First Instance (now the General Court); 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 (2006–10)



State aid | Competition | Staff cases | Intellectual property | Other direct actions | Appeals | Special forms of procedure

	2006	2007	2008	2009	2010
State aid	165	166	185	161	153
Competition	182	196	236	247	288
Staff cases	82	33	2	1	1
Intellectual property	249	289	316	355	382
Other direct actions	326	422	371	358	416
Appeals	10	30	46	46	32
Special forms of procedure	15	18	22	23	28
Total	**1 029**	**1 154**	**1 178**	**1 191**	**1 300**

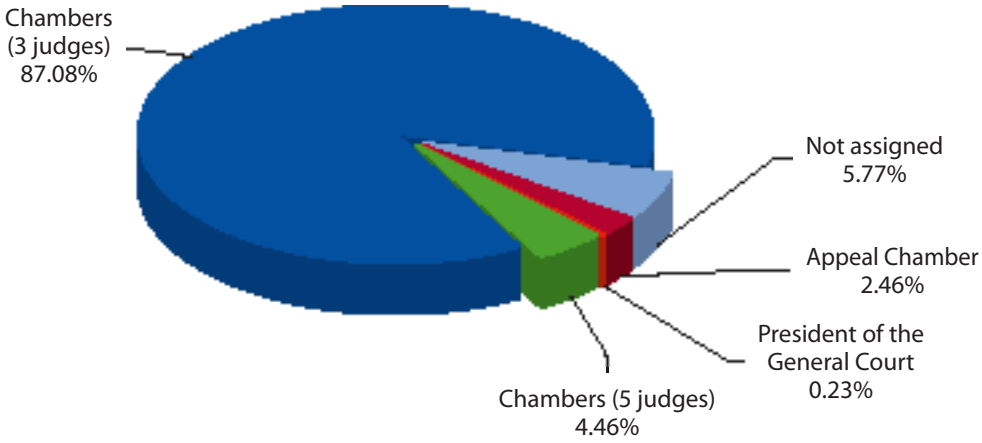
11. *Cases pending as at 31 December* — Subject-matter of the action (2006–10) [1]

	2006	2007	2008	2009	2010
Access to documents	24	28	35	44	42
Agriculture	85	118	84	57	65
Approximation of laws	1	1			
Arbitration clause	21	17	20	22	19
Area of freedom, security and justice		1	3	2	2
Commercial policy	28	33	31	33	34
Common foreign and security policy					1
Company law	1			1	
Competition	172	196	236	247	288
Consumer protection	1	1	3	3	1
Culture	1	2	1		
Customs union and Common Customs Tariff	14	16	11	6	6
Economic and monetary policy	2	1			2
Economic, social and territorial cohesion	37	49	13	16	38
Education, vocational training, youth and sport		1	1	1	
Energy				2	
Environment	23	40	30	25	34
External action by the European Union	6	3	3	8	5
Financial provisions (budget, financial framework, own resources, combatting fraud)	4	5	3	2	2
Fisheries policy	4	5	24	8	27
Free movement of goods	2	3	2		
Freedom of movement for persons	3	3	2	2	3
Freedom to provide services	1		3	5	4
Industrial policy	1				
Intellectual and industrial property	251	290	317	355	382
Law governing the institutions	19	28	29	41	32
Public health	3	2	3	4	6
Public procurement	25	29	34	41	40
Registration, evaluation, authorisation and restriction of chemicals (REACH Regulation)					8
Research and technological development and space	1	4	3	8	8
Restrictive measures (external action)	9	18	19	18	29
Social policy	5	6	10	6	4
State aid	165	166	184	160	152
Taxation		2			
Transport	1	4	2	2	1
Total EC Treaty/TFEU	**910**	**1 072**	**1 106**	**1 119**	**1 235**
Total CS Treaty	**10**		**1**	**1**	**1**
Total EA Treaty	**2**	**1**	**1**		**1**
Staff Regulations	92	63	48	48	35
Special forms of procedure	15	18	22	23	28
OVERALL TOTAL	**1 029**	**1 154**	**1 178**	**1 191**	**1 300**

[1] As a result of the entry into force of the Treaty on the Functioning of the European Union (TFEU) on 1 December 2009, it has been necessary to change the presentation of the subject-matter of actions. The data for the period 2006–09 have been revised accordingly.

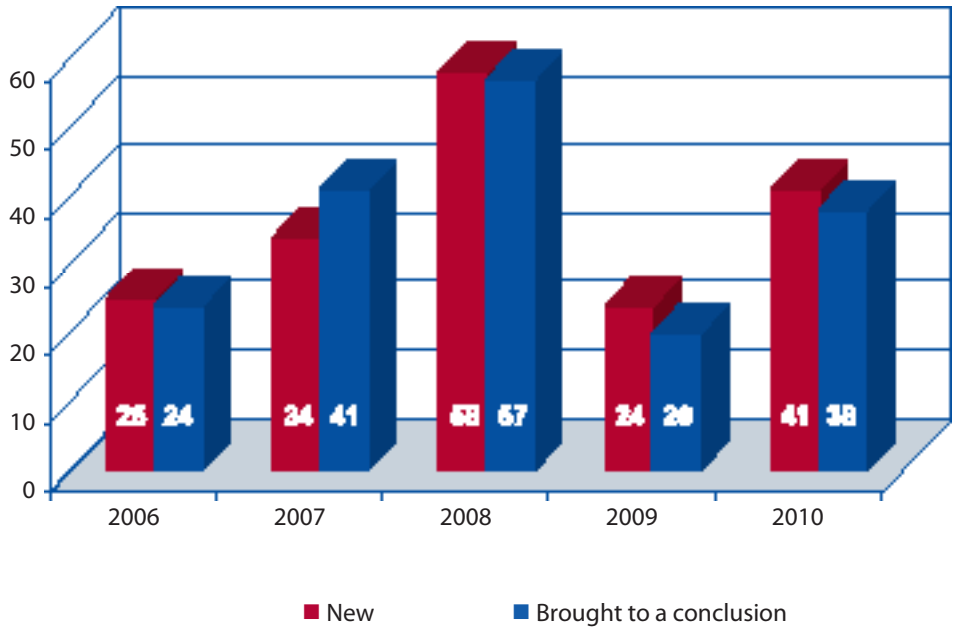
12. *Cases pending as at 31 December* — Bench hearing action (2006–10)

Distribution in 2010



	2006	2007	2008	2009	2010
Grand Chamber	2				
Appeal Chamber	10	30	46	46	32
President of the General Court	1				3
Chambers (5 judges)	117	75	67	49	58
Chambers (3 judges)	825	971	975	1 019	1 132
Single Judge	2			2	
Not assigned	72	78	90	75	75
Total	**1 029**	**1 154**	**1 178**	**1 191**	**1 300**

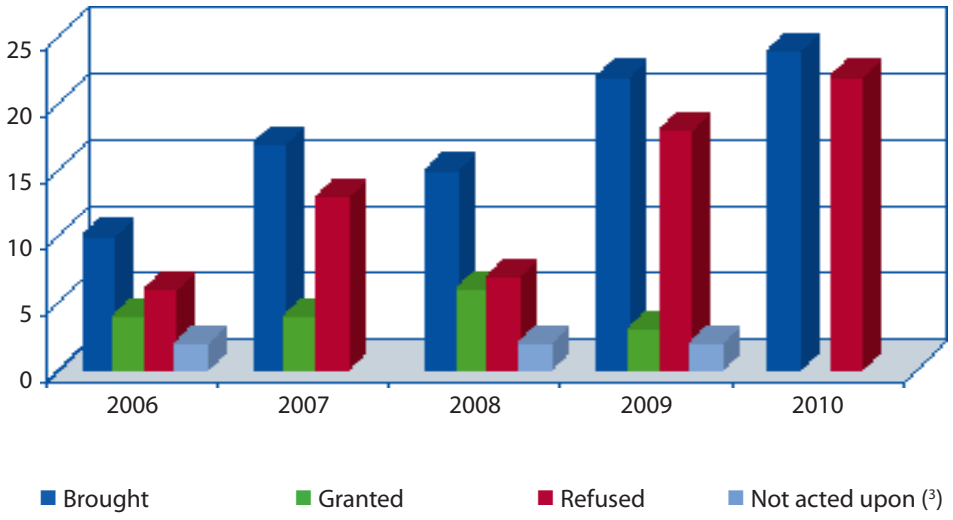
13. *Miscellaneous* — Proceedings for interim measures (2006–10)



Distribution in 2010

	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	3	4	1	2	1
Arbitration clause	1	2	2		
Common foreign and security policy	1	1	1		
Competition	8	4	3		1
Customs union and Common Customs Tariff		1	1		
Economic, social and territorial cohesion	2	2	2		
Environment	2	3	3		
External action by the European Union	1	1	1		
Law governing the institutions	8	8	6		2
Public procurement	3	5	5		
Registration, evaluation, authorisation and restriction of chemicals (REACH Regulation)	1	1	1		
Research and technological development and space	2	2	2		
Staff Regulations	2	2		1	1
State aid	7	2	2		
Total	**41**	**38**	**30**	**3**	**5**

14. *Miscellaneous* — Expedited procedures (2006–10) (1) (2)



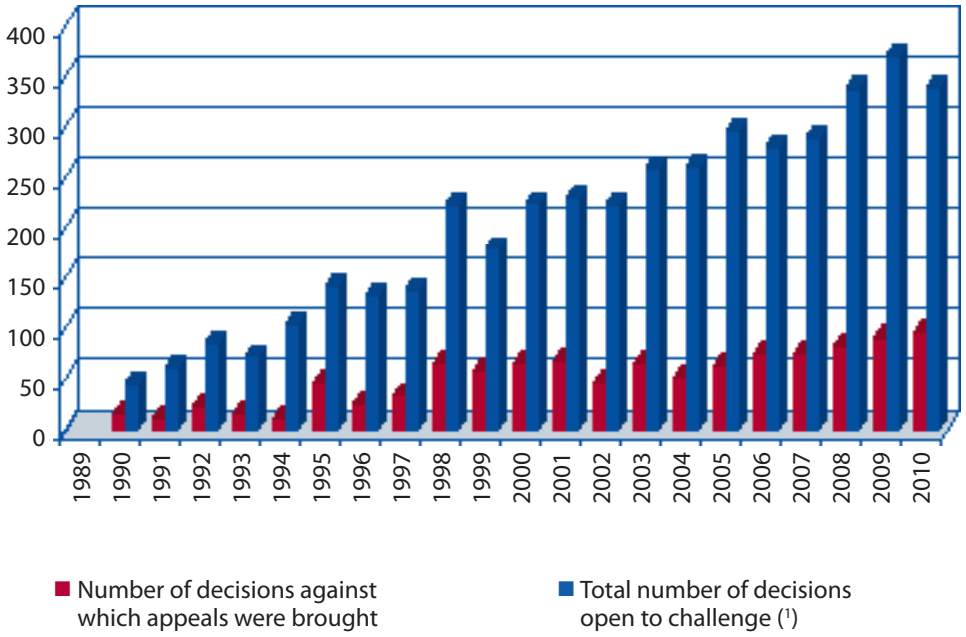
	2006				2007				2008				2009				2010			
		Outcome				Outcome				Outcome				Outcome				Outcome		
	Brought	Granted	Refused	Not acted upon (3)	**Brought**	Granted	Refused	Not acted upon (3)	**Brought**	Granted	Refused	Not acted upon (3)	**Brought**	Granted	Refused	Not acted upon (3)	**Brought**	Granted	Refused	Not acted upon (3)
Access to documents					1		1		2		2		4		4					
Agriculture	3	1	3				1		1				2		3					
Arbitration clause									1			1								
Commercial policy					2	1				1			2		2					
Competition	4	2	2		1		1		1		1		2		2		3		3	
Economic, social and territorial cohesion																	1		1	
Environment	2	1	1		7	1	6						1			1				
External action by the European Union																	1		1	
Financial provisions (budget, financial framework, own resources, combatting fraud)				2																
Freedom to provide services													1	1						
Law governing the institutions									1			1	1		1					
Procedure													1		1					
Public health													1		1					
Public procurement					2		1		3	1	3		2		2		2		2	
Restrictive measures (external action)					3	2	1		4	4			5	1	2	1	10		10	
Staff Regulations									1					1						
State aid	1				1		2		1		1						7		5	
Total	**10**	**4**	**6**	**2**	**17**	**4**	**13**	**0**	**15**	**6**	**7**	**2**	**22**	**3**	**18**	**2**	**24**	**0**	**22**	**0**

(1) The General Court 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.

(2) As a result of the entry into force of the Treaty on the Functioning of the European Union (TFEU) on 1 December 2009, it has been necessary to change the presentation of the subject-matter of actions. The data for the period 2006–09 have been revised accordingly.

(3) 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 General Court to the Court of Justice (1989–2010)



	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	25	86	29%
1993	17	73	23%
1994	12	105	11%
1995	47	143	33%
1996	27	133	20%
1997	35	139	25%
1998	67	224	30%
1999	60	180	33%
2000	67	225	30%
2001	69	230	30%
2002	47	224	21%
2003	66	260	25%
2004	53	261	20%
2005	64	297	22%
2006	77	281	27%
2007	77	290	27%
2008	84	339	25%
2009	92	371	25%
2010	98	340	29%

(1) Total number of decisions open to challenge — judgments, orders concerning interim measures or refusing leave to intervene, and all orders terminating proceedings other than those removing a case from the register or transferring a case — in respect of which the period for bringing an appeal expired or against which an appeal was brought.

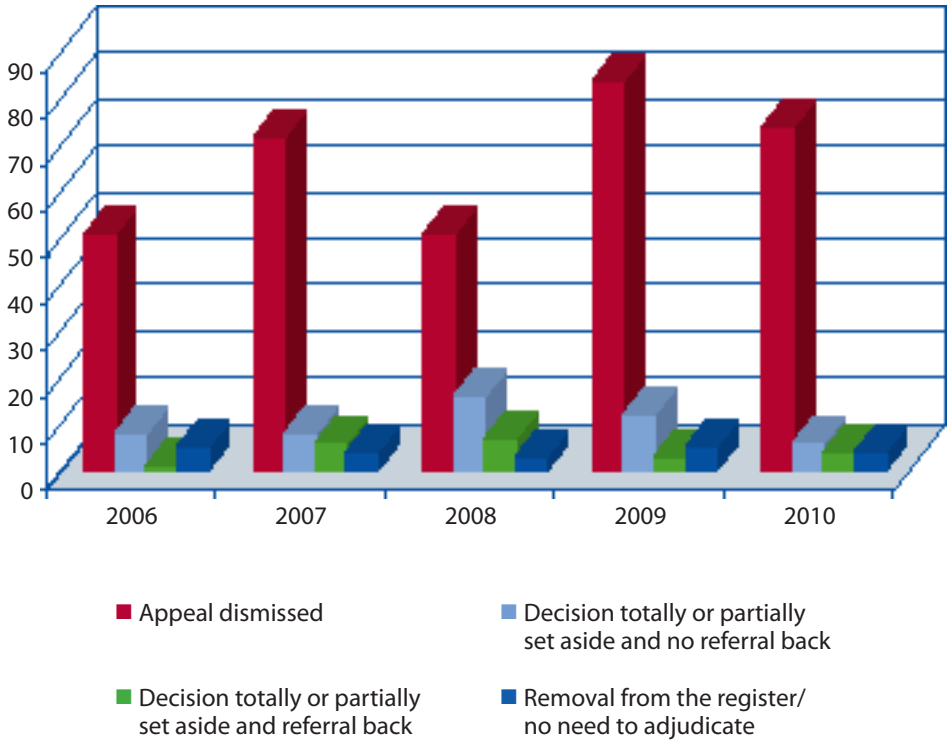
16. *Miscellaneous* — Distribution of appeals before the Court of Justice according to the nature of the proceedings (2006–10)

	2006			2007			2008			2009			2010		
	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**
State aid	5	21	**24%**	11	30	**37%**	4	19	**21%**	23	51	**45%**	17	35	**49%**
Competition	14	41	**34%**	13	33	**39%**	7	26	**27%**	11	45	**24%**	15	33	**45%**
Staff cases	13	62	**21%**	10	53	**19%**	9	31	**29%**	1	3	**33%**			
Intellectual property	18	62	**29%**	14	64	**22%**	24	105	**23%**	25	153	**16%**	32	140	**23%**
Other direct actions	27	95	**28%**	29	110	**26%**	40	158	**25%**	32	119	**27%**	34	132	**26%**
Total	77	281	**27%**	77	290	**27%**	84	339	**25%**	92	371	**25%**	98	340	**29%**

17. *Miscellaneous* — Results of appeals before the Court of Justice (2010) (judgments and orders)

	Appeal dismissed	Decision totally or partially set aside and no referral back	Decision totally or partially set aside and referral back	Removal from the register/no need to adjudicate	Total
Agriculture	2				2
Commercial policy	1				1
Competition	8	3			11
Customs union and Common Customs Tariff	2				2
Economic and monetary policy	1				1
Education, vocational training, youth and sport				1	1
Environment and consumers	1				1
Fisheries policy	1				1
Free movement of goods	1				1
Freedom of movement for persons	1				1
Intellectual and industrial property	23	1	1	3	28
Law governing the institutions	20	2	1		23
Regional policy	2				2
Social policy	1				1
Staff Regulations	3				3
State aid	7		2		9
Total	**74**	**6**	**4**	**4**	**88**

18. *Miscellaneous* — Results of appeals before the Court of Justice (2006–10) (judgments and orders)



	2006	2007	2008	2009	2010
Appeal dismissed	51	72	51	84	74
Decision totally or partially set aside and no referral back	8	8	16	12	6
Decision totally or partially set aside and referral back	1	6	7	3	4
Removal from the register/no need to adjudicate	5	4	3	5	4
Total	**65**	**90**	**77**	**104**	**88**

19. *Miscellaneous* — General trend (1989–2010)
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
2009	568	555	1 191
2010	636	527	1 300
Total	**8 611**	**7 311**	

(1) 1989: the Court of Justice referred 153 cases to the newly created Court of First Instance (now the General Court).
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 Civil Service Tribunal

A — Proceedings of the Civil Service Tribunal in 2010

By Mr Paul Mahoney, President of the Civil Service Tribunal

1. The judicial statistics of the Civil Service Tribunal reveal that the number of cases brought in 2010 (139) is significantly higher than the number of applications lodged in 2009 (113) and 2008 (111).

The number of cases brought to a close (129), on the other hand, is lower ([1]) than that for the previous year (155).

Thus, the number of pending cases ([2]) is slightly higher than the previous year (185 at 31 December 2010 compared with 175 at 31 December 2009). The average duration of proceedings is also increasing (18.1 months in 2010 compared with 15.1 months in 2009 ([3])([4]).

Appeals to the General Court of the European Union were brought against 24 decisions of the Civil Service Tribunal. Ten decisions of the Civil Service Tribunal were set aside or set aside in part by the General Court and six of those cases were referred back to the Civil Service Tribunal.

Twelve cases were brought to a close by amicable settlement, which is the highest figure since the creation of the Civil Service Tribunal ([5]). Thus, the statistics for 2010 seem to attest to a greater readiness to resolve conflicts in this way.

2. As regards procedural tools, it is of note that, in 2010, the Civil Service Tribunal made use for the first time of the option open to it under its Rules of Procedure ([6]) of sitting as a single Judge ([7]).

3. Finally, as 2010 was the fifth anniversary of the Civil Service Tribunal, a colloquium ([8]) was held to mark the occasion, bringing together judges, professors and lawyers specialising in the field of the

([1]) The increase in 2010 in the percentage of cases brought to a close by judgment compared with those brought to a close by the less onerous procedure of an order has doubtless been a factor in the reduction in the number of cases brought to a close. In addition, account must be taken of the fact that the Civil Service Tribunal did not have its full complement of judges because of the continued unavailability of one of its seven judges.

([2]) The cases still pending include 15 brought by 327 officials and other staff, seeking the annulment of their salary adjustment slips for the period from July to December 2009 and the salary slips issued since 1 January 2010 in so far as those salary slips apply a salary increase based on a rate of 1.85% rather than the rate of 3.7% which would have been the result of the application of Article 65 of the Staff Regulations of officials of the European Union ('the Staff Regulations') and Annex XI thereto. Those cases are closely linked to Case C-40/10 *Commission* v *Council* (judgment of 24 November 2010), by which the Court annulled Council Regulation (EU, Euratom) No 1296/2009 of 23 December 2009 adjusting with effect from 1 July 2009 the remuneration and pensions of officials and other servants of the European Union and the correction coefficients applied thereto.

([3]) Not including the duration of any stay of proceedings.

([4]) That increase in the duration of proceedings must doubtless be seen as a parallel development to the increase in the percentage of cases brought to a close by judgment compared with those brought to a close by order.

([5]) Interestingly, for the first time, an amicable settlement was reached between parties in an application for interim measures, regarding the question of the implementation of the interim measures applied for (Case F-50/10 R *De Roos-Le Large* v *Commission*).

([6]) Article 14 of the Rules of Procedure.

([7]) That option was used in Case F-1/10 *Marcuccio* v *Commission* (judgment of 14 December 2010).

([8]) The proceedings of the colloquium will be published in 2011 in the *Revue universelle des droits de l'homme* (*RUDH*), Éditions N. P. Engel. The speeches given on the day are already available on the Curia website.

European and international civil service, officials of the European institutions and representatives of professional and trade union organisations. The views aired at that colloquium will certainly serve as a source of inspiration for the discussion within the Civil Service Tribunal, and in particular for its planned discussion with regard to the revision of its Rules of Procedure in the light of the experience it has gained since its creation. The events to mark the fifth anniversary of the Civil Service Tribunal included an 'open day' reserved for the staff of the institution.

4. The account given below will describe the most significant decisions of the Civil Service Tribunal as regards procedure and merits. As there are no significant new developments as regards proceedings for interim relief ([9]), costs and legal aid, the sections usually devoted to those questions will not appear in the 2010 report.

I. Procedural aspects

Conditions for admissibility

1. Pre-contentious procedure: rule of concordance between complaint and action

In its judgment of 1 July 2010 in Case F-45/07* ([10]) *Mandt* v *Parliament,* the Civil Service Tribunal relaxed the rule of concordance between the pre-contentious complaint and the application, holding that the concordance rule is infringed only where the judicial action alters the relief sought in the complaint or its cause of action, and that the concept of 'cause of action' must be given a broad interpretation. As regards claims for annulment, the 'cause of action of the dispute' must be understood as the applicant's challenge to the substantive legality of the contested decision or, in the alternative, the challenge to its procedural legality. Consequently, and subject to pleas alleging illegality (which are intrinsically legal in nature and not easy for non-lawyers to understand), and to grounds raising a public-policy issue, the cause of action of the dispute will normally be altered, and the action therefore inadmissible on the ground that it fails to observe the concordance rule, only where the applicant, who criticises in his complaint solely the formal validity of the act adversely affecting him, raises substantive pleas in the application, or conversely where the applicant, having disputed in the complaint only the substantive legality of the act adversely affecting him, submits an application containing pleas relating to the formal validity of that act.

It must be observed that, in its judgment of 23 November 2010 in Case F-50/08* *Bartha* v *Commission*, the Civil Service Tribunal, for the first time, held a plea admissible in the light of the judgment in *Mandt* v *Parliament*.

2. Definition of act adversely affecting an official

In its judgment of 13 January 2010 in Joined Cases F-124/05 and F-96/06* *A and G* v *Commission*, the Civil Service Tribunal, following the judgment of the Court of First Instance (now the General Court) of 15 October 2008 in Case T-345/05 *Mote* v *Parliament*, which concerned the waiver of the

([9]) Four orders for interim measures were made in 2010 by the President of the Civil Service Tribunal (order of 23 February 2010 in Case F-99/09 R *Papathanasiou* v *OHIM*; order of 14 July 2010 in Case F-41/10 R *Bermejo Garde* v *EESC*; order of 10 September 2010 in Case F-62/10 R *Esders* v *Commission*, and order of 15 December 2010 in Joined Cases F-95/10 R and F-105/10 R *Böm-cke* v *EIB*). In those four cases, the applications for interim measures were dismissed.

([10]) The judgments marked with an asterisk have been translated into all the official languages of the European Union except Irish.

immunity from legal proceedings of a Member of the European Parliament, held that the waiver of the immunity from legal proceedings of an official was an act adversely affecting that official. In the case in question, however, the applicant's reliance, in the action for damages he brought, on the illegality of the decision waiving his immunity was no longer admissible as he had not contested that decision within the time-limits laid down by Articles 90 and 91 of the Staff Regulations.

By a judgment of 23 November 2010 in Case F-8/10* *Gheysens* v *Council*, the Civil Service Tribunal held that a decision not to renew a fixed-term contract was an act adversely affecting a person for which reasons had to be stated in accordance with Article 25 of the Staff Regulations, where it is distinct from the contract in question, which will be the case, in particular if it is based on new factors or if it constitutes an expression of the position of the administration adopted following a request from the member of staff concerned and dealing with the possibility, provided for in the contract, of renewing that contract.

3. Interest in bringing proceedings

In its judgment of 5 May 2010 in Case F-53/08* *Bouillez and Others* v *Council*, the Civil Service Tribunal held that officials eligible for promotion to a particular grade have, in principle, a personal interest in challenging not only the decision not to promote them but also the decisions promoting other officials to that grade.

4. Time-limits

In its judgment of 30 September 2010 in Case F-29/09* *Lebedef and Jones* v *Commission* (in a dispute concerning the legality of the provision in the first subparagraph of Article 3(5) of Annex XI to the Staff Regulations, according to which no correction coefficient is to be applicable not only in Belgium (the country of reference for the determination of the cost of living) but also in Luxembourg), the Civil Service Tribunal first recalled the case-law according to which an official who fails to contest, within the time-limits for lodging a complaint and bringing an action, the salary slip documenting, for the first time, the implementation of a measure of general application establishing financial entitlements, may not, once those time-limits have passed, contest the salary slips for subsequent months, relying on the illegality allegedly vitiating the first salary slip. However, in this case, the Civil Service Tribunal found that the applicants were essentially criticising the Commission for continuing to apply the first subparagraph of Article 3(5) of Annex XI to the Staff Regulations without having undertaken a study into the possible difference in purchasing power between Brussels and Luxembourg, whereas they claim that new economic circumstances have arisen which they allege no longer justify the application of that provision, in the light, inter alia, of the principle of equal treatment. Moreover, the Civil Service Tribunal pointed to the difficulties of a procedural nature which an individual would encounter in bringing an action under Article 265 TFEU against an institution for failure to act in order to have a rule adopted by the Union legislature repealed. Against that background, the Civil Service Tribunal held that to exclude, in accordance with the case-law set out above, the possibility open to an official of contesting his salary slip on the ground of a change in circumstances, such as a change in economic conditions, and raising in that connection a plea of illegality against a provision of the Staff Regulations which, while it appeared valid at the time it was adopted, has, according to the official concerned, become illegal because of that change of circumstances would render it impossible in practice to bring an action to ensure respect for the principle of equal treatment recognised by European Union law and would thus have a disproportionate effect on the right to effective judicial protection.

In its order of 16 December 2010 in Case F-25/10 *AG* v *Parliament*, the Civil Service Tribunal held, with regard to the notification of a decision by registered letter, that, if the addressee of a registered

letter who is not at home when the postman calls does not take any action whatsoever or does not collect the letter within the period for which the postal services usually retain letters, it must be found that the addressee was duly notified of the decision at issue on the date that period ends. If such conduct on the part of the addressee were allowed to prevent the proper notification of a decision by registered letter, the guarantees offered by this method of notification would be considerably weakened, whereas it is a particularly safe and objective method of notification of administrative measures. Moreover, the addressee would thereby be allowed a certain amount of latitude in the establishment of the starting point for the time-limit for bringing an action, whilst that time-limit may not be at the discretion of the parties and must meet the requirements of legal certainty and the sound administration of justice. Nonetheless, the presumption that the addressee has been notified of the decision on expiry of the usual period for retention of a registered letter by the postal services is not absolute in nature. Application of that presumption is subject to proof, by the administration, of proper notification by registered letter, in particular by the fact that a delivery advice note was left at the last address given by the addressee. Furthermore, that presumption is not irrebuttable. The addressee may, for example, seek to establish that he was prevented, inter alia, by illness or an act of force majeure outside his control, from taking proper cognisance of the delivery advice note.

Confidential documents

In Case F-2/07 *Matos Martins* v *Commission* (judgment of 15 April 2010), the Civil Service Tribunal found that certain documents, whose production it had requested by way of measure of organisation of the procedure, were confidential vis-à-vis the applicant, limited access to those documents to the lawyer of the person concerned, excluding the applicant himself, and ordered that they be consulted at the premises of the Registry without giving authorisation for any copies of those documents to be made.

By two orders of 17 March 2010 and 20 May 2010 given in Case F-50/09 *Missir Mamachi di Lusignano* v *Commission* ([11]), the Civil Service Tribunal ordered the defendant to produce certain documents classified as 'restricted EU', specifying the security measures to which access to those documents would be subject, and pointing out inter alia that neither the applicant nor his lawyer would be authorised to consult those documents. It made clear, in particular, that, although it planned to base its decision on the dispute on the documents in question, it was appropriate to discuss the rules for applying in this case the principle that both parties should be heard in the proceedings and the provisions of Article 44(1) of the Rules of Procedure, as that principle and those provisions could imply that the applicant should have at least partial access to those documents ([12]).

Raising a plea of the Tribunal's own motion

By 11 judgments of 29 June 2010 ([13]), the Civil Service Tribunal recalled that respect for the rights of the defence is an essential procedural requirement breach of which may be raised of the Tribunal's own motion, and in this case annulled decisions of the European Police Office (Europol) refusing to grant contracts of indefinite duration to the applicants for breach of that principle.

([11]) The decision closing the proceedings in this case has not yet been delivered.

([12]) Order of 17 March 2010.

([13]) Judgments in Cases F-27/09, F-28/09, F-34/09, F-35/09, F-36/09, F-37/09, F-38/09, F-39/09, F-41/09, F-42/09 and F-44/09.

II. Merits

General principles

1. Non-contractual liability of the institutions

In its judgment of 11 May 2010 in Case F-30/08* *Nanopoulos* v *Commission* (under appeal to the General Court), the Civil Service Tribunal recalled that where it is put in issue under the provisions of Article 236 EC (now, after amendment by the Treaty of Lisbon, Article 270 TFEU), the non-contractual liability of the institutions may be incurred on the ground solely of the illegality of an act adversely affecting an official (or of non-decision-making conduct), without there being any need to consider whether it is a sufficiently serious breach of a rule of law intended to confer rights on individuals. The Civil Service Tribunal stressed that that case-law does not preclude the Tribunal from determining the extent of the administration's discretion in the field concerned; on the contrary, that criterion is an essential parameter in the examination of the legality of the decision or conduct at issue, since the judicial review carried out and its intensity depend on the degree of latitude available to the administration on the basis of the relevant law and of the requirements of proper functioning to which that administration is subject.

In its judgment of 9 March 2010 in Case F-26/09 *N* v *Parliament*, the Civil Service Tribunal, having recalled that annulment of a measure contested by an official will in itself constitute appropriate and, generally, sufficient reparation for any non-material harm suffered by the applicant, specified the situations in which the Courts of the European Union had allowed certain exceptions to that rule. For instance, it pointed out that the annulment of an unlawful act of the administration cannot constitute full reparation for the non-material harm suffered, first, if that act entails an explicitly negative appraisal of the abilities of the applicant such as to injure him, second where the unlawful act committed is particularly serious and, third, where annulment of an act has no useful effect.

2. Fundamental rights and general principles of civil service law

(a) Fundamental right to the inviolability of the home

In its judgment of 9 June 2010 in Case F-56/09 *Marcuccio* v *Commission*, the Civil Service Tribunal recalled that the fundamental right to the inviolability of the home must be recognised in the Community legal order as a general principle common to the laws of the Member States in regard to the private dwellings of natural persons, and that, in addition, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), to which Article 6(2) of the EU Treaty refers, provides in Article 8(1) that '[e]veryone has the right to respect for his private and family life, his home and his correspondence'. In this case it was held that, by entering the service accommodation of the applicant without observing any formalities, the administration had breached the right of the person concerned to respect for his property, his home and his private life, and that wrongful maladministration of that sort is such as to give rise to the liability of the defendant.

(b) Presumption of innocence

In Case F-75/09 *Wenig* v *Commission* (judgment of 23 November 2010), the Civil Service Tribunal had to consider a plea by which the applicant argued that, by refusing to grant his requests for assistance, the Commission had breached the principle of the presumption of innocence, since that refusal implied that, in the eyes of the Commission, he had actually committed certain acts which were reported in a newspaper article. The Civil Service Tribunal first recalled that the principle of

the presumption of innocence enshrined in Article 6(2) of the ECHR is not limited to a procedural guarantee in criminal matters, but that its scope is wider and requires that no representative of the State declare that a person is guilty of an offence before his guilt has been established by a court. It went on to hold, in this case, that, as the Commission had made no statement which implied that, in its view, the applicant had committed or could have committed an offence, the applicant was not justified in claiming that the Commission had breached the principle of the presumption of innocence merely by refusing to give him assistance.

(c) Duty to have regard for the welfare of officials

In its judgment of 28 October 2010 in Case F-92/09* *U* v *Parliament*, the Civil Service Tribunal made the point that the duty to have regard for the welfare of officials requires the administration, where there is doubt as to the medical origin of the difficulties encountered by an official in performing the tasks falling to him or her, to take all necessary steps to dispel that doubt before a decision dismissing that official is adopted. Moreover, the obligations imposed on the administration by the duty to have regard for the welfare of officials are substantially reinforced when what is at issue is the particular situation of an official in respect of whom there are doubts regarding his or her mental health, and, consequently, regarding his or her capacity to defend his or her own interests adequately.

3. Application of private international law by an institution of the European Union

In its judgment in *Mandt* v *Parliament*, the Civil Service Tribunal made clear, as regards the application by an institution of a provision concerning the marital status of individuals, that the administration was not obliged to determine the applicable law and/or the relevant legal order by means of reasoning based purely on private international law but was entitled simply to select as a connecting factor the existence of 'very close' links with the dispute.

In this case, two people claimed a survivor's pension under Article 79 of the Staff Regulations as the surviving spouse of the same official. Faced with that situation the Parliament had decided to apportion the pension between the two claimants. Having dismissed an action brought by one of those two claimants as inadmissible (order of 23 May 2008 in Case F-79/07 *Braun-Neumann* v *Parliament*) the Civil Service Tribunal dismissed the action brought by the other claimant on its merits, rejecting both the plea in law seeking to deny the first claimant the status of surviving spouse (the Civil Service Tribunal having found in that connection that that person was considered to be the surviving spouse by the law and the legal order of a country with very close links both with that person and with the dispute as a whole) and the plea that, where there were two surviving spouses, each of them was entitled to a full survivor's pension. Thus, the Civil Service Tribunal held that the Parliament, faced with a legislative lacuna, did not err in law by adopting the solution described.

Rights and obligations of officials

1. Obligation to provide assistance

In its judgment in *Wenig* v *Commission*, the Tribunal held that the administration could not be obliged to provide assistance, in the context of criminal proceedings, to an official suspected, in the light of clear and relevant evidence, of having seriously breached his professional obligations and subject, on that ground, to disciplinary proceedings, despite the fact that that breach is alleged to have arisen as a result of the unlawful conduct of third parties.

2. Access for an official to documents concerning him

In its judgment in *A and G* v *Commission*, the Civil Service Tribunal clarified the relationship between the provisions of Article 26 of the Staff Regulations regarding the right of access of an official to his personal file, the provisions concerning access to documents of a medical nature relating to him such as those provided for by the common rules on the insurance of officials of the European Communities against the risk of accident and of occupational disease, and the provisions of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

Careers of officials

1. Competitions

In its judgment of 15 June 2010 in Case F-35/08* *Pachtitis* v *Commission* (under appeal to the General Court), the Civil Service Tribunal annulled the decision of the European Personnel Selection Office (EPSO) excluding the applicant from the list of the candidates who had obtained the best marks in the admission tests for an open competition, on the ground that EPSO did not have the authority to make such a decision. It held that without an amendment to the Staff Regulations expressly conferring on EPSO the tasks previously assigned to the selection board, EPSO does not have the authority to carry out such tasks, and in particular tasks which, in the case of recruitment of officials, affect the determination of the content of the tests and their correction, including tests comprising multiple-choice questions to assess verbal and numerical reasoning ability and/or general knowledge and knowledge of the European Union, even if those tests are presented as tests for 'admission' of candidates to the competition's written and oral tests.

In its judgment in *Bartha* v *Commission*, the Civil Service Tribunal clarified certain points relating to the provision in the fifth paragraph of Article 3 of Annex III to the Staff Regulations, according to which if a selection board consists of more than four members, it is to comprise at least two members of each gender. It specified inter alia that compliance with that rule had to be verified at the time of the constitution of the selection board as recorded in the list published by the institution or institutions organising the competition, and that only the full members of the selection board should be taken into account.

2. Promotion procedures

In *Bouillez and Others* v *Council*, it was held that it follows from Article 45(1) of the Staff Regulations that the level of responsibilities exercised by the officials eligible for promotion is one of the three relevant elements that the administration must take into account in the analysis of the comparative merits of those officials. The expression 'where appropriate' in the fourth subparagraph of Article 45(1) of the Staff Regulations simply means that while, in principle, servants in the same grade are supposed to hold posts involving equivalent responsibilities, where that is not in fact the case that circumstance must be taken into consideration in the promotion procedure.

The Civil Service Tribunal, having held that the plea alleging breach of Article 45(1) of the Staff Regulations was well founded, first recalled that the Courts of the European Union have acknowledged that where the act that should be annulled benefits a third party, which is the case of an entry on a reserve list, a promotion decision or a decision making an appointment to a vacant post, it must first determine whether annulment would constitute an excessive penalty for the irregularity committed. The Civil Service Tribunal went on to observe that, where promotion is concerned, the Courts of the European Union undertake a case-by-case examination. In the first place, they take

into consideration the nature of the irregularity. In the second place, they balance the interests involved. When balancing the interests, they take into consideration, first of all, the interest which the officials concerned have in being reinstated in law and in full in their rights, second, the interests of the illegally promoted officials and, finally, the interests of the service.

In its judgment of 15 December 2010 in Case F-14/09 *Almeida Campos and Others* v *Council*, the Civil Service Tribunal held that the appointing authority could not lawfully examine the merits of officials in the same grade separately according to whether they belonged, under the old Staff Regulations, to category A or to the language grades LA, given that the legislature had decided that, under the new Staff Regulations, both groups would belong to the single function group of administrators.

Working conditions of officials

In the judgment of 30 November 2010 in Case F-97/09 *Taillard* v *Parliament*, it was held that, given that diseases may evolve, it cannot be maintained that the results of an arbitration which found that an official was fit for work remain valid when that official produces a new medical certificate. As regards the risk of circumvention of the procedure for medical checks by the production of successive medical certificates relating to the same disease, the Civil Service Tribunal held that, where it proves necessary, in particular where there is evidence of abuse by the applicant, the institution concerned can have recourse to the relevant disciplinary procedures.

Emoluments and social security benefits of officials

1. Pay

In its judgment of 14 October 2010 in Case F-86/09* *W* v *Commission*, the Civil Service Tribunal was called upon to rule on a claim for annulment of a Commission decision refusing to pay the household allowance to a member of staff on the ground that the couple formed by that member of staff and his non-marital same-sex partner did not fulfil the condition laid down by Article 1(2)(c)(iv) of Annex VII to the Staff Regulations, since he had access to legal marriage in Belgium. The applicant, who has dual Belgian and Moroccan nationality, put the argument to the administration that, given his Moroccan nationality, such a marriage was impossible, since, in entering into a marriage with a person of the same sex, he ran the risk of a criminal prosecution in Morocco under Article 489 of the Moroccan penal code, which outlaws homosexuality. The Civil Service Tribunal held, on the basis of the case-law of the European Court of Human Rights, that the rules of the Staff Regulations extending the right to the household allowance to officials registered as stable non-marital partners should be interpreted in such a way as to ensure that that right is not merely theoretical but is real and effective. In this case, the Civil Service Tribunal held that a national law such as Article 489 of the Moroccan penal code, which criminalises homosexual acts regardless of the place where such acts are committed, is likely to make access to marriage and thus to the right to a household allowance theoretical. It therefore annulled the decision of the defendant refusing to pay the applicant that allowance.

2. Social security

In its judgment of 1 July 2010 in Case F-97/08 *Füller-Tomlinson* v *Parliament* (under appeal to the General Court), the Civil Service Tribunal rejected a plea raised by the applicant of the illegality of the European physical and mental disability rating scale which is an integral part of the common rules on the insurance of officials of the European Communities against the risk of accident and of occupational disease, which entered into force on 1 January 2006.

In its judgment of 14 September 2010 in Case F-79/09 *AE* v *Commission*, the Civil Service Tribunal, ruling in an action to establish liability pleading the unreasonable duration of the procedure for the recognition of an occupational disease, observed that it is the responsibility of the Commission as an institution to remind the members of the medical committees of their duty to act with due diligence.

In its judgment of 23 November 2010 in Case F-65/09 *Marcuccio* v *Commission*, the Civil Service Tribunal rejected a plea of illegality directed against the criteria for the definition of a serious illness within the meaning of Article 72 of the Staff Regulations, namely, a poor prognosis, chronic progression, the need for extreme diagnostic or therapeutic measures and the presence or the risk of serious handicap. By that judgment, it was also made clear that the term 'mental illness' within the meaning of Article 72 of the Staff Regulations can only refer to an illness objectively presenting a degree of seriousness and not to any psychological and psychiatric problem whatever its degree of seriousness.

In the judgment of 1 December 2010 in Case F-89/09 *Gagalis* v *Council*, it was made clear that both Article 73(3) of the Staff Regulations and the third subparagraph of Article 9(1) of the common rules on the risk of accident must be interpreted as meaning that they only provide for a supplementary reimbursement of the costs of benefits covered by Article 72 of the Staff Regulations after reimbursement of the part of the cost falling on the sickness insurance scheme. The accident insurance scheme is a supplementary scheme and thus does not provide for any reimbursement of the costs of benefits, apart from those provided for by Article 9(2), which are not covered by the sickness insurance scheme and which were thus not defrayed by the sickness insurance scheme.

Disciplinary rules

In the judgment in *A and G* v *Commission*, the point was made that the fact that the disciplinary proceedings have been terminated without a disciplinary measure being taken against the official in question cannot prevent the Courts of the European Union from carrying out a review of the legality of the decision to bring disciplinary proceedings against the person concerned. In order to protect the rights of the official concerned, the appointing authority must be considered to have exercised its powers unlawfully not only if a misuse of powers is proven but also in the absence of sufficiently precise and relevant evidence suggesting that the person concerned has committed a disciplinary offence. Moreover, in that judgment, the principle that disciplinary proceedings must be held within a reasonable time was upheld. The duty to act with due diligence falling on the disciplinary authority concerns both the opening of the disciplinary procedure and its conduct.

Conditions of employment of other servants

1. Dismissal of a member of staff under a contract of indefinite duration

In its judgments of 9 December 2010 in Case F-87/08 *Schuerings* v *ETF* and Case F-88/08 *Vandeuren* v *ETF*, the Civil Service Tribunal, after pointing out that to allow an employer to end an employment relationship of indefinite duration without a valid reason would be contrary to the principle of stable employment which characterises contracts of indefinite duration and would run counter to the very nature of this type of contract, held that the reduction of the scale of the activities of an agency may be considered liable to constitute a valid reason for dismissal, provided, however, that that agency has no post available to which the member of staff concerned could be transferred. When it considers whether a member of staff can be transferred to another post, whether already in existence or to be created, the administration must weigh the interest of the service, which demands the recruitment of the most suitable person for the post, against the interest of the member

of staff whose dismissal is proposed. In doing so, it must take account, in the exercise of its discretion, various criteria, which include the requirements of the post in terms of the qualifications and potential of the member of staff, whether or not the employment contract of the member of staff concerned specifies that he is engaged to occupy a particular post, his appraisals and his age, his seniority and the number of years of pensionable service remaining before he can claim his retirement pension.

2. Dismissal of a member of staff at the end of his probation period

In its judgment of 24 February 2010 in Case F-2/09 *Menghi* v *ENISA*, the Civil Service Tribunal clarified several points regarding dismissals in connection with the dismissal of a member of the temporary staff at the end of his probation period. It stated, first, that the fact it has been established that a member of staff has suffered psychological harassment does not make every decision adversely affecting that member of staff arising in the context of that harassment illegal. There still has to be a link between the harassment at issue and the grounds of the contested decision. It stated, second, that breach of the provisions of Article 24 of the Staff Regulations concerning the obligation to provide assistance cannot be relied on against a decision to dismiss. Only administrative decisions connected with the duty to provide assistance, that is to say, decisions rejecting a request for assistance or, in certain exceptional circumstances, failure to provide assistance spontaneously to a member of staff, are liable to breach that obligation. The subject of a decision to dismiss does not fall within the scope of Article 24 of the Staff Regulations and is, consequently, not connected with the obligation to provide assistance laid down by that article. Finally, it held that the provisions laid down in Article 22a(3) of the Staff Regulations, according to which an official who has provided information concerning facts which give rise to a presumption of the existence of possible illegal activity or conduct which may constitute a serious failure to comply with the obligations of officials of the Union 'shall not suffer any prejudicial effects on the part of the institution … provided that he acted reasonably and honestly', do not offer an official who, under Article 222a(1) of the Staff Regulations has provided information concerning facts which give rise to a presumption of the existence of possible illegal activity protection against any decision liable to affect him adversely but only against decisions adopted because of that provision of information.

B — Composition of the Civil Service Tribunal

(order of precedence as at 7 October 2009)

From left to right:

S. Van Raepenbusch, Judge; H. Kreppel, Judge; H. Tagaras, President of Chamber; P. Mahoney, President of the Tribunal; S. Gervasoni, President of Chamber; I. Boruta, Judge; M. I. Rofes i Pujol, 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 (2000–05); Deputy Minister for Labour and Social Affairs (1998–2001); member of the negotiation team for the accession of the Republic of Poland to the European Union (1998–2001); representative of the Polish Government to the International Labour Organisation (1998–2001); author of a number of works on labour law and European social law; Judge at the Civil Service Tribunal since 6 October 2005.

Haris Tagaras

Born in 1955; law graduate (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; law graduate (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.

Maria Isabel Rofes i Pujol

Born in 1956; study of law (law degree, University of Barcelona, 1981); specialisation in international trade (Mexico, 1983); study of European integration (Barcelona Chamber of Commerce, 1985) and of Community law (School of Public Administration, Catalonia, 1986); official of the Government of Catalonia (member of the Legal Service of the Ministry of Industry and Energy, April 1984 to August 1986); member of the Barcelona Bar (1985–87); Administrator, then Principal Administrator, in the Research and Documentation Division of the Court of Justice of the European Communities (1986–94); Legal Secretary at the Court of Justice (Chamber of Advocate General Ruiz-Jarabo Colomer, January 1995 to April 2004; Chamber of Judge Lõhmus, May 2004 to August 2009); Lecturer on Community Cases, Faculty of Law, Autonomous University of Barcelona (1993–2000); numerous publications and courses on European social law; member of the Board of Appeal of the Community Plant Variety Office (2006–09); Judge at the Civil Service Tribunal since 7 October 2009.

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. Changes in the composition of the Civil Service Tribunal in 2010

There was no change in the composition of the Civil Service Tribunal in 2010.

3. Order of precedence

from 1 January to 31 December 2010

P. MAHONEY, President of the Tribunal
H. TAGARAS, President of Chamber
S. GERVASONI, President of Chamber
H. KREPPEL, Judge
I. BORUTA, Judge
S. VAN RAEPENBUSCH, Judge
M. I. ROFES i PUJOL, Judge

W. HAKENBERG, Registrar

4. Former Member of the Civil Service Tribunal

Kanninen Heikki (2005–09)

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 (2006–10)

New cases

2. Percentage of the number of cases per principal defendant institution (2006–10)
3. Language of the case (2006–10)

Completed cases

4. Judgments and orders — Bench hearing action (2010)
5. Outcome (2010)
6. Applications for interim measures (2006–10)
7. Duration of proceedings in months (2010)

Cases pending as at 31 December

8. Bench hearing action (2006–10)
9. Number of applicants (2010)

Miscellaneous

10. Appeals against decisions of the Civil Service Tribunal to the General Court (2006–10)
11. Results of appeals before the General Court (2006–10)

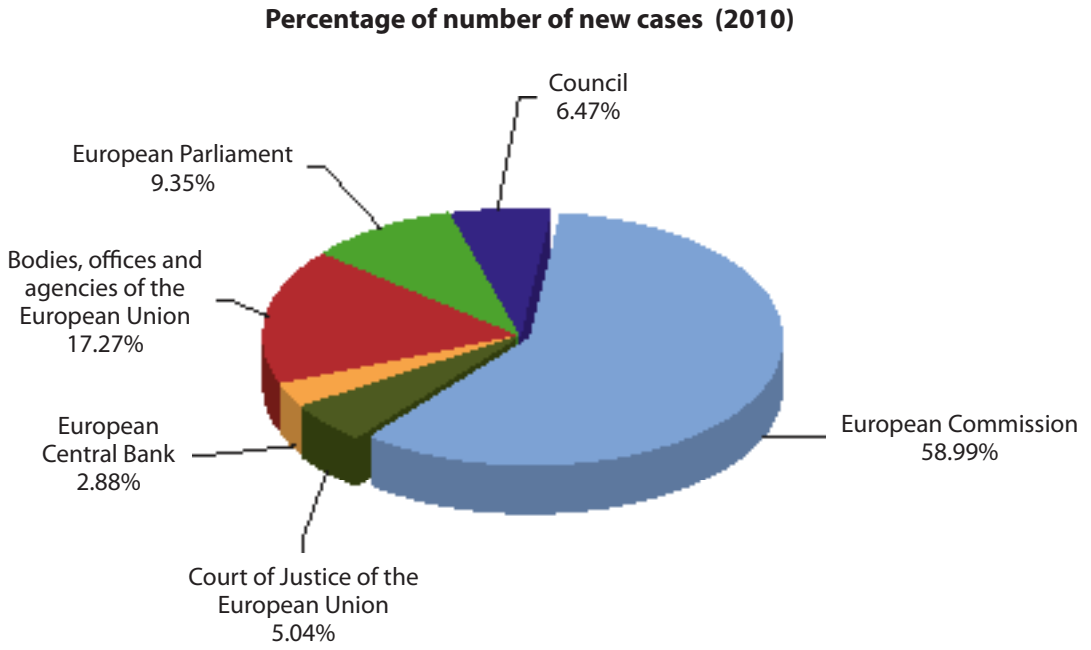
1. *General activity of the Civil Service Tribunal* — New cases, completed cases, cases pending (2006–10)

	2006	2007	2008	2009	2010
New cases	148	157	111	113	139
Completed cases	50	150	129	155	129
Cases pending	228	235	217	175	185 ([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 14 cases in which proceedings were stayed.

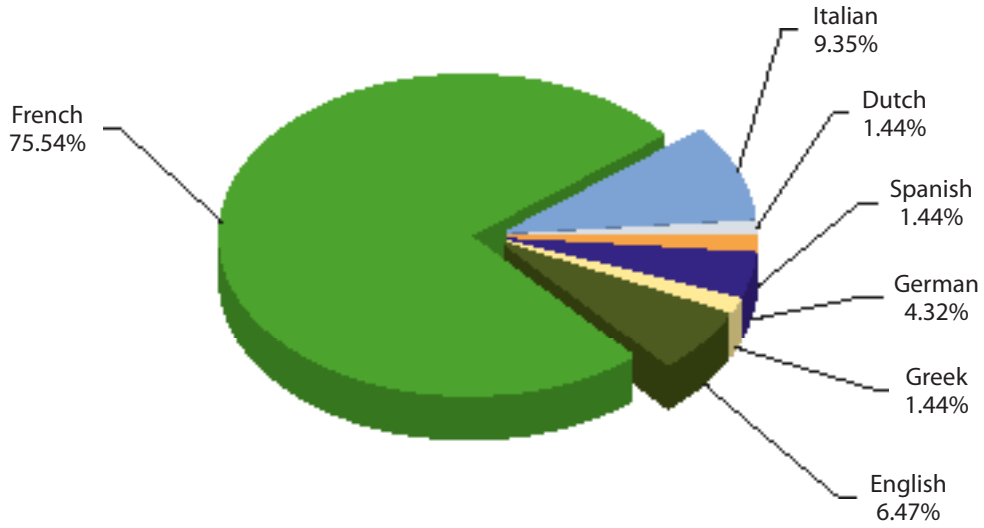
2. *New cases* — Percentage of the number of cases per principal defendant institution (2006–10)



	2006	2007	2008	2009	2010
European Parliament	7.48%	15.29%	14.41%	8.85%	9.35%
Council	5.44%	4.46%	4.50%	11.50%	6.47%
European Commission	72.79%	63.69%	54.95%	47.79%	58.99%
Court of Justice of the European Union	4.08%	3.82%		2.65%	5.04%
European Central Bank		1.27%	2.70%	4.42%	2.88%
Court of Auditors	2.72%	2.55%	5.41%	0.88%	
Bodies, offices and agencies of the European Union	7.48%	8.92%	18.02%	23.89%	17.27%
Total	**100%**	**100%**	**100%**	**100%**	**100%**

3. *New cases* — Language of the case (2006–10)

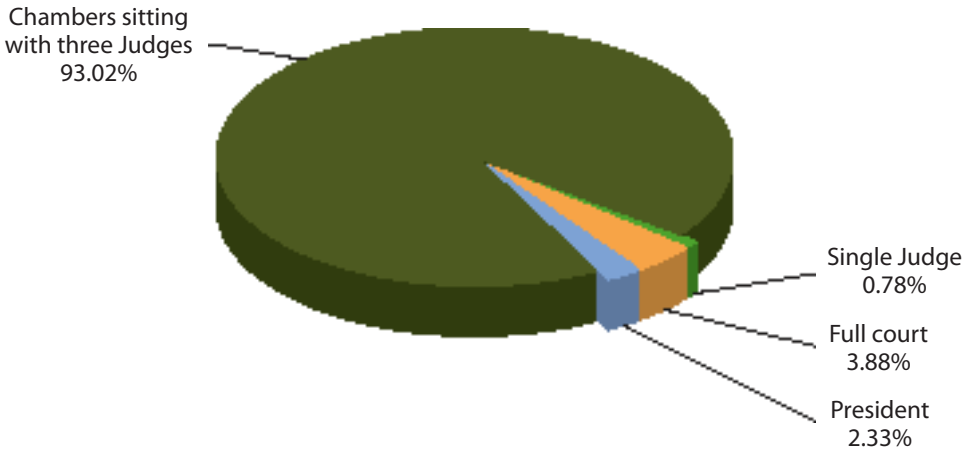
Distribution in 2010



Language of the case	2006	2007	2008	2009	2010
Bulgarian		2			
Spanish	1	2	1	1	2
Czech				1	
German	2	17	10	9	6
Greek	3	2	3	3	2
English	8	8	5	8	9
French	113	101	73	63	105
Italian	10	17	6	13	13
Lithuanian		2	2		
Hungarian	2	1	1		
Dutch	7	4	8	15	2
Polish			1		
Portuguese			1		
Romanian		1			
Slovene	1				
Finnish	1				
Total	**148**	**157**	**111**	**113**	**139**

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 (2010)



	Judgments	Orders for removal from the register, following amicable settlement (1)	Other orders terminating proceedings	Total
Full court	4	1		**5**
President			3	**3**
Chambers sitting with three Judges	84	11	25	**120**
Single Judge	1			**1**
Total	**89**	**12**	**28**	**129**

(1) In the course of 2010, there were also 12 unsuccessful attempts to bring cases to a close by amicable settlement on the initiative of the Civil Service Tribunal.

5. *Completed cases* — Outcome (2010)

	Judgments			Orders				Total
	Actions upheld in full	Actions upheld in part	Actions dismissed in full, no need to adjudicate	Actions/applications [manifestly] inadmissible or unfounded	Amicable settlements following intervention by the bench hearing the action	Removal from the register on other grounds, no need to adjudicate or referral	Applications upheld in full or in part (special forms of procedure)	
Assignment/Reassignment		1	1	1				**3**
Competitions	3	2	6					**11**
Working conditions/Leave	1	1	1		1			**4**
Appraisal/Promotion	1	3	5		3	8		**20**
Pensions and invalidity allowances			3		1			**4**
Disciplinary proceedings		2						**2**
Recruitment/Appointment/ Classification in grade	2	1	16	1	2	5		**27**
Remuneration and allowances	2		3		2			**7**
Termination of an agent's contract	11	4	7	2	1			**25**
Social security/Occupational disease/Accidents		2	4	1	1	1		**9**
Other		5	2	5	1	2	2	**17**
Total	**20**	**21**	**48**	**10**	**12**	**16**	**2**	**129**

6. *Applications for interim measures* (2006–10)

Applications for interim measures brought to a conclusion		Outcome		
		Granted in full or in part	Dismissal	Removal from the register
2006	**2**		2	
2007	**4**		4	
2008	**4**		4	
2009	**1**	1		
2010	**6**		4	2
Total	**17**	**1**	**14**	**2**

7. *Completed cases* — Duration of proceedings in months (2010)

		Duration of full procedure	Duration of procedure, not including duration of any stay of proceedings
Judgments		**Average duration**	**Average duration**
New cases before the Civil Service Tribunal	81	21.4	19.7
Cases initially brought before the General Court ([1])	8	62.4	34.9
Total	**89**	**25.1**	**21**

		Duration of full procedure	Duration of procedure, not including duration of any stay of proceedings
Orders		**Average duration**	**Average duration**
New cases before the Civil Service Tribunal	37	17.1	10.1
Cases initially brought before the General Court ([1])	3	66.5	28.9
Total	**40**	**20.8**	**11.5**

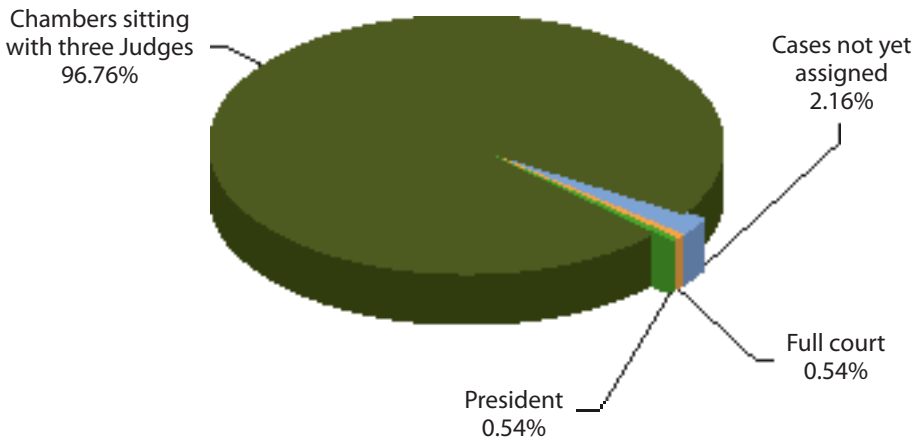
OVERALL TOTAL	**129**	**23.8**	**18.1**

The durations are expressed in months and tenths of months.

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

8. *Cases pending as at 31 December* — Bench hearing action (2006–10)

Distribution in 2010



	2006	2007	2008	2009	2010
Full court	2	3	5	6	1
President	4	3	2	1	1
Chambers sitting with three Judges	212	206	199	160	179
Single Judge					
Cases not yet assigned	10	23	11	8	4
Total	**228**	**235**	**217**	**175**	**185**

9. *Cases pending as at 31 December* — Number of applicants (2010)

The pending cases with the greatest number of applicants

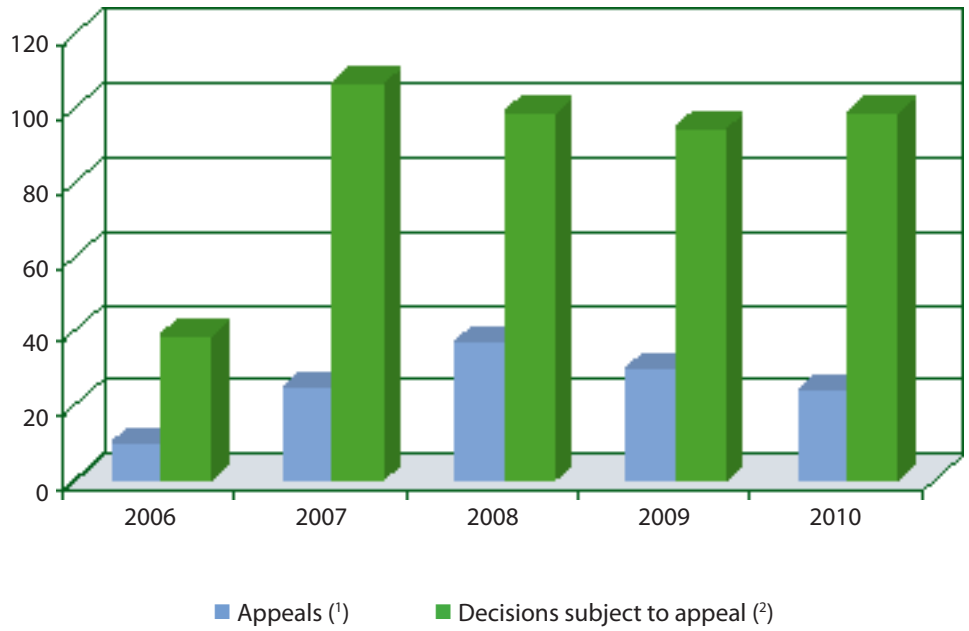
Number of applicants	Fields
327 (15 cases)	Staff Regulations — Remuneration — Annual adjustment of the remuneration and pensions of officials and other servants — Article 65 of and Annex XI to the Staff Regulations — Council Regulation (EU, Euratom) No 1296/2009 of 23 December 2009 Staff Regulations — Promotion — Promotion year 2005 — Additional grades provided for by the new Staff Regulations
169	Staff Regulations — ECB staff — Reform of the pension scheme
35	Staff Regulations — EIB — Pensions — Reform of 2008
26 (3 cases)	Staff Regulations — Reclassification — Candidates placed on the reserve list in an internal competition before the new Staff Regulations — Classification in grade under less favourable provisions — Transitional provisions in Annex XIII to the Staff Regulations — Loss of promotion points
18	Staff Regulations — Remuneration — Member of the contract staff employed either in a safety and security department or in emergency and crisis coordination — Allowance for workers regularly required to remain on standby duty — Article 56b of the Staff Regulations
16 (2 cases)	Staff Regulations — Members of the contract staff — Clause terminating a contract where the member of staff is not included on a reserve list of a competition — Termination of the contract of a member of staff
14	Staff Regulations — Appointment — Security firm employees — Claim for recognition as a member of staff
13	Staff Regulations – Member of the auxiliary staff – Member of the temporary staff – Conditions of engagement – Duration of contract

The term 'Staff Regulations' means the Staff Regulations of Officials of the European Union and the Conditions of Employment of other servants of the Union.

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
2009	461	175
2010	812	185

10. *Miscellaneous* — Appeals against decisions of the Civil Service Tribunal to the General Court (2006–10)



	Appeals (1)	**Decisions subject to appeal** (2)	**Percentage of appeals** (3)	***Percentage of appeals including amicable settlements*** (4)
2006	10	39	25.64%	*22.22%*
2007	25	107	23.36%	*21.93%*
2008	37	99	37.37%	*34.91%*
2009	30	95	31.58%	*30.93%*
2010	24	99	24.24%	*21.62%*

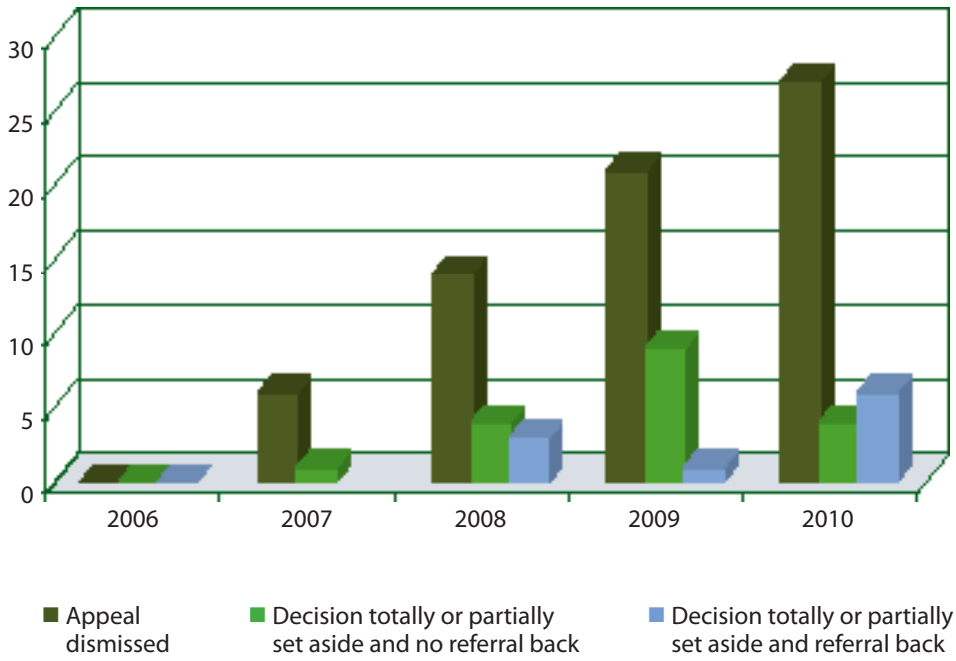
(1) Decisions appealed against by several parties are taken into account only once. In 2007, two decisions were each the subject of two appeals.

(2) Judgments, orders — declaring the action inadmissible, manifestly inadmissible or manifestly 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 appeal may span two years.

(4) The Civil Service Tribunal endeavours to answer the legislature's appeal for the facilitation of the amicable settlement of disputes. A certain number of cases are closed in this way each year. Those cases do not give rise to 'decisions subject to appeal' on the basis of which the 'percentage of appeals' is traditionally calculated in the Annual Report, including for the Court of Justice and the General Court. In so far as the 'percentage of appeals' may be considered to represent the 'rate of challenge' of the decisions of a court, that percentage would reflect the position better if it were calculated so as to take account not only of decisions subject to appeal but also those which are not precisely because they have brought the dispute to a close by amicable settlement. The result of that calculation appears in this column.

11. *Miscellaneous* — Results of appeals before the General Court (2006–10)



	2006	2007	2008	2009	2010
Appeal dismissed		6	14	21	27
Decision totally or partially set aside and no referral back		1	4	9	4
Decision totally or partially set aside and referral back			3	1	6
Total		**7**	**21**	**31**	**37**

Chapter IV

Meetings and visits

A — Official visits and events at the Court of Justice, the General Court and the Civil Service Tribunal

Court of Justice

25 and 26 January	Delegation from the judiciary of England and Wales, Scotland and Northern Ireland
29 January	Delegation from the Spanish Presidency of the 'Court of Justice' Group of the Council
7 to 9 February	Delegation from the Supreme Court of the United States of America and professors of the SMU Dedman School of Law
23 February	Delegation from the Committee on Legal Affairs of the European Parliament
2 March	Mr M. Šefčovič, Vice-President of the European Commission
9 March	Ms A. Merkel, Chancellor of the Federal Republic of Germany
22 and 23 March	Seminar for judges of the Member States (Belgium, Bulgaria, Denmark, Germany, Estonia, Greece, Cyprus, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal and the United Kingdom)
19 April	Mr C. Kart, Ambassador of the Republic of Turkey to the Grand Duchy of Luxembourg
19 to 21 April	Delegation from the Constitutional Court of the Republic of Slovenia
26 April	Meeting of Agents of the Member States and the institutions of the European Union
26 to 28 April	Delegations from the Court of Justice of the West African Economic and Monetary Union (WAEMU), from the Court of Justice of the Central African Economic and Monetary Community (CAEMC) and from the Court of Justice of the Economic Community of West African States (Ecowas)
4 May	Delegation from the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament
17 and 18 May	Delegation from the Constitutional Court of the Republic of Turkey
31 May	Mr P. Étienne, Permanent Representative of the French Republic to the European Union
3 June	Mr J.-M. Bockel, Secretary of State for Justice of the French Republic
7 and 8 June	Colloquium and General Assembly of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union
9 June	Ms H. Trüpel, Rapporteur of the Committee on Budgets of the European Parliament
14 June	Mr A. Ronchi, Minister for European Affairs of the Italian Republic
20 to 22 June	Delegation from the Hoge Raad of the Kingdom of the Netherlands
28 and 29 June	Delegation from the Supreme Court of the Former Yugoslav Republic of Macedonia
1 and 2 July	Delegation from the Supreme Court of the Republic of Croatia
6 and 7 September	'4. Luxemburger Expertenforum zur Entwicklung des Unionsrechts', with the participation of Ms Sabine Leutheusser-Schnarrenberger, Minister for Justice of the Federal Republic of Germany

20 to 22 September	Delegation from the Superior Council of the Magistracy and the National Institute for Magistrates of Romania
7 October	Mr T. de Maizière, Minister for the Interior of the Federal Republic of Germany
7 October	Mr L. Barfoed, Minister for Justice of the Kingdom of Denmark
7 October	Mr K. Jäger, Ambassador of the Principality of Liechtenstein to the Kingdom of Belgium and to the European Union
12 October	Permanent Delegation of the Council of Bars and Law Societies of Europe (CCBE)
25 October	Mr M. Radović, Minister for Justice of Montenegro, and Mr A. A. Pejović, Ambassador of Montenegro to the European Union
8 November	Mr L. Mosar, President of the Chamber of Deputies of the Grand Duchy of Luxembourg, and members of the Legal Committee of the Chamber of Deputies of the Grand Duchy of Luxembourg
8 and 9 November	Delegation from the EU Select Committee of the House of Lords
10 November	Ms A. Pipan, Ambassador of the Republic of Slovenia to the Kingdom of Belgium and to the Grand Duchy of Luxembourg
15 November	Seminar for judges of the Member States (Czech Republic, Spain, France, Italy, Hungary, Malta, Austria, Romania, Slovenia, Slovakia, Finland and Sweden)
18 November	Delegation of judges of the Kingdom of Saudi Arabia, led by Prince Dr Bandar bin Salman bin Mohammed Al Saud, Councillor to the King, President of the Saudi Arbitration Team
23 November	Mr M. Manevski, Minister for Justice of the Former Yugoslav Republic of Macedonia and HE Ambassador Nikola Poposki, Head of Mission of the Former Yugoslav Republic of Macedonia to the European Union
24 and 25 November	Ms K. Prost, Ombudsperson of the 1267 Committee of the United Nations Security Council
2 December	Mr J.-U. Hahn, Deputy Prime Minister and Minister for Justice, Integration and European Affairs of Hesse (Germany)

General Court

29 January	Delegation from the Spanish Presidency of the 'Court of Justice' Group of the Council
7 to 9 February	Delegation from the Supreme Court of the United States of America and of university professors
23 February	Delegation from the Committee on Legal Affairs of the European Parliament
16 March	Delegation from the Comisión Nacional de la Competencia (Spain)
26 April	Meeting of Agents of the Member States and the institutions of the European Union
12 October	Delegation from the Council of Bars and Law Societies of Europe (CCBE)
27 October	Mr N. Diamandouros, European Ombudsman
28 October	Visit of members of the three Courts to the Villa Vauban

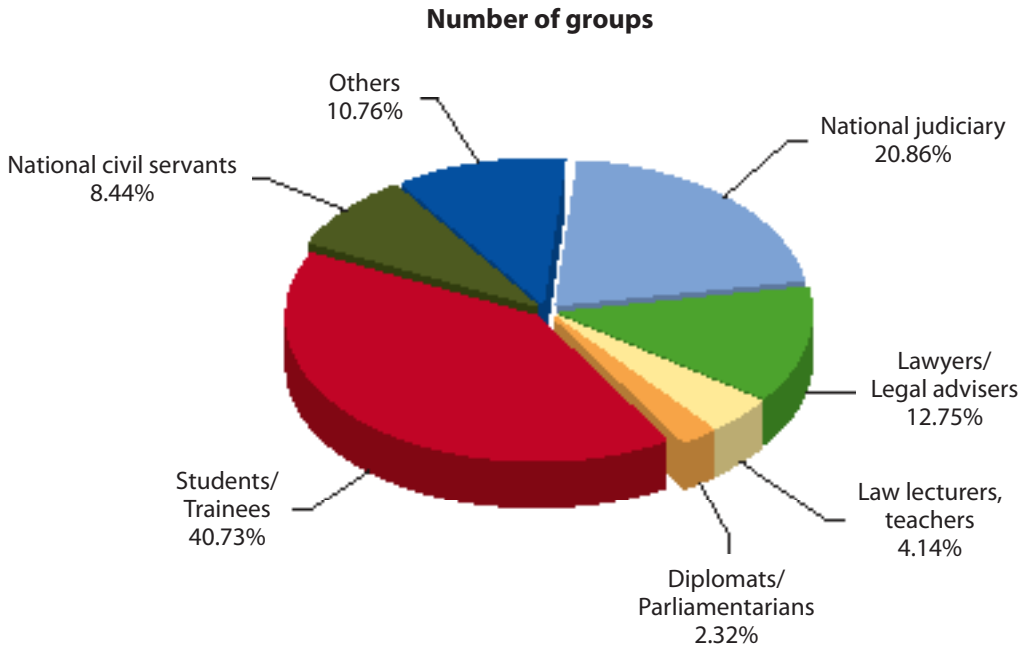
8 November	President of the Chamber of Deputies of the Grand Duchy of Luxembourg and members of the Legal Committee of the Chamber of Deputies of the Grand Duchy of Luxembourg
8 to 9 November	Delegation from the EU Select Committee of the House of Lords
24 and 25 November	Ms K. Prost, Ombudsperson of the 1267 Committee of the United Nations Security Council
2 December	Mr J.-U. Hahn, Deputy Prime Minister and Minister for Justice, Integration and European Affairs of Hesse (Germany)

Civil Service Tribunal

25 March	Ms M. de Sola Domingo, Mediator of the European Commission
20 April	Mr A. Schneebalg, lawyer and mediator
30 September	Mr A. Zack, President of the Administrative Tribunal of the Asian Development Bank
1 October	Colloquium on the occasion of the fifth anniversary of the Civil Service Tribunal
26 October	Mr N. Diamandouros, European Ombudsman

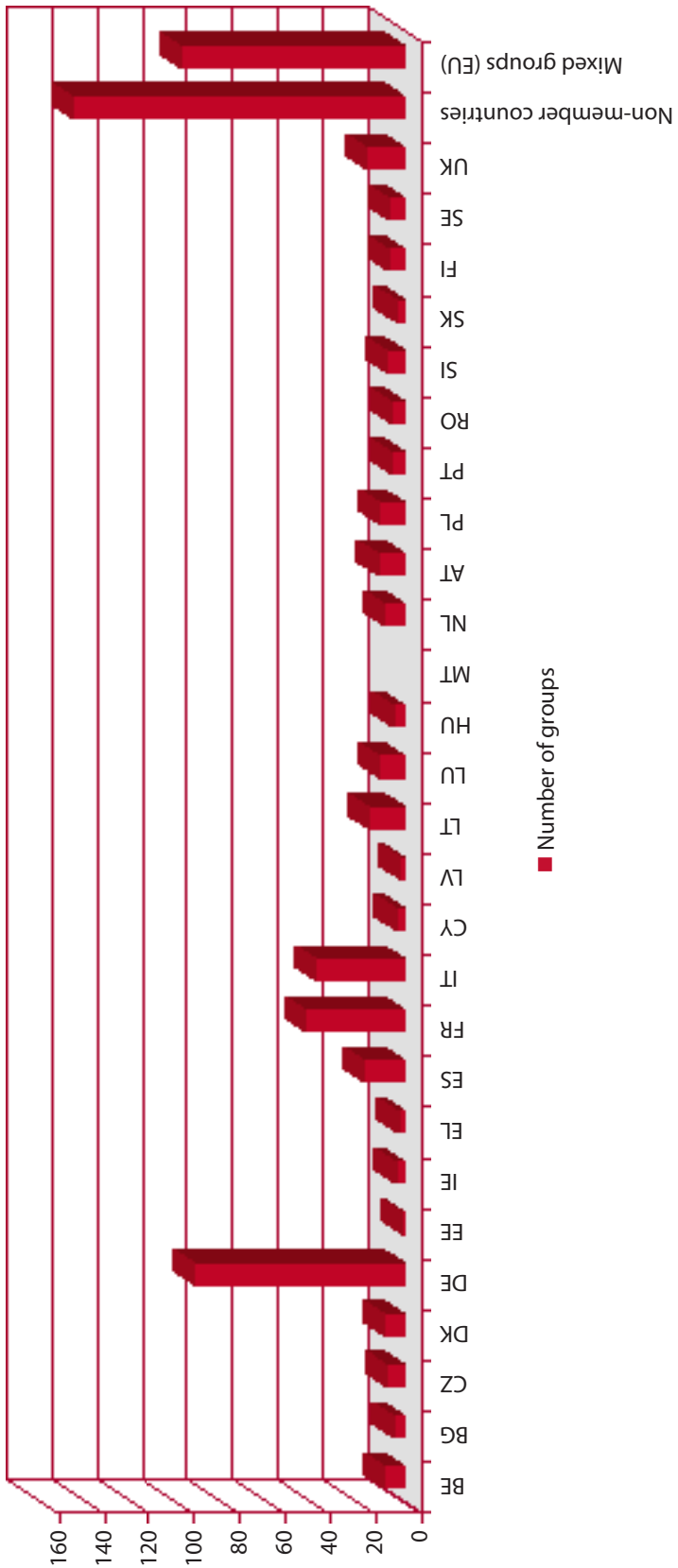
B — Study visits (2010)

1. Distribution by type of group



	National judiciary	Lawyers/Legal advisers	Law lecturers, teachers	Diplomats/ Parliamentarians	Students/Trainees	National civil servants	Others	Total
Number of groups	126	77	25	14	246	51	65	604

2. *Study visits* — Distribution by Member State (2010)



	Number of visitors								Number of groups
	National judiciary	Lawyers/Legal advisers	Law lecturers, teachers	Diplomats/ Parliamentarians	Students/ Trainees	National civil servants	Others	Total	
BE	10				208	25	32	**275**	**9**
BG	59	35						**94**	**5**
CZ	15	24			84			**123**	**8**
DK	5	24			100	21	29	**179**	**9**
DE	291	260		56	795	166	606	**2 174**	**93**
EE		40						**40**	**1**
IE	16				48			**64**	**4**
EL	12				35			**47**	**3**
ES	97	71	19		128		51	**366**	**18**
FR	176	65			534	12	143	**930**	**44**
IT		23	10		597			**630**	**39**
CY	8				16			**24**	**4**
LV		11						**11**	**2**
LT			11		5			**16**	**16**
LU	23				63	49	102	**237**	**11**
HU	78		6		39			**123**	**5**
MT								**0**	**0**
NL	32	57			39	23	25	**176**	**9**
AT		16			144		79	**239**	**12**
PL	62	94			21		35	**212**	**11**
PT	135				2			**137**	**6**
RO	16						4	**20**	**6**
SI					93	5		**98**	**8**
SK	42				12			**54**	**4**
FI	11			27	60		40	**138**	**7**
SE	93	13				27	12	**145**	**7**
UK	58	35	1		109			**203**	**17**
Non-member countries	368	81		56	1 414	95	175	**2 189**	**147**
Mixed groups (EU)	480	439		7	2 061	407	174	**3 568**	**99**
Total	**2 087**	**1 288**	**47**	**146**	**6 607**	**830**	**1 507**	**12 512**	**604**

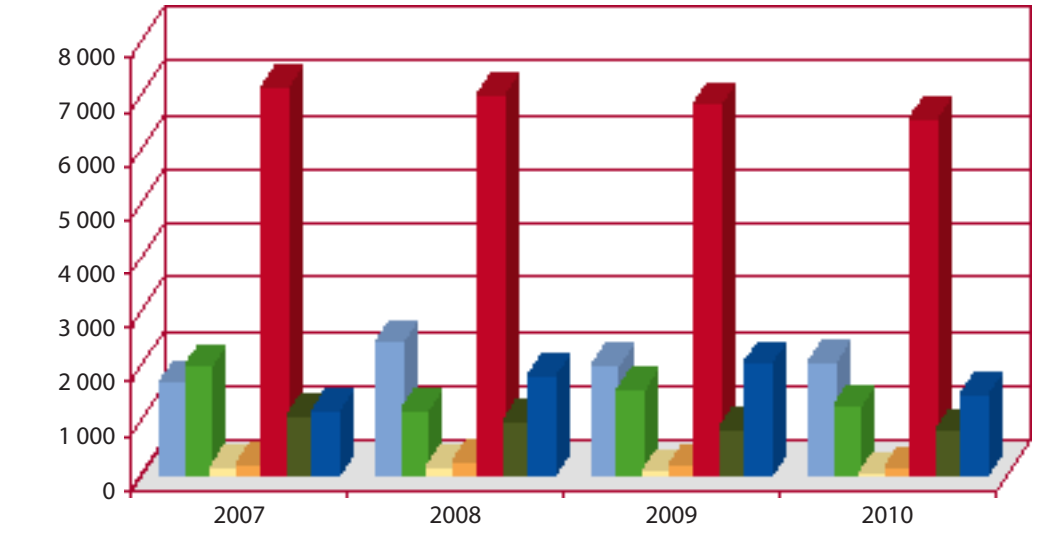
3. *Study visits* — National judiciary (2010)

Seminar

BE	8	**DK**	4	**IE**	4	**FR**	16	**LV**	2	**HU**	8	**AT**	6	**RO**	8	**FI**	4
BG	3	**DE**	17	**EL**	7	**IT**	19	**LT**	4	**MT**	1	**PL**	16	**SI**	2	**SE**	5
CZ	8	**EE**	2	**ES**	12	**CY**	2	**LU**	2	**NL**	7	**PT**	8	**SK**	4	**UK**	11

Total **190**

4. Trend in number and type of visitors (2007–10)



Number of visitors

	National judiciary	Lawyers/Legal advisers	Law lecturers, teachers	Diplomats/ Parliamentarians	Students/ Trainees	National civil servants	Others	Total
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
2009	2 037	1 586	84	193	6 867	870	2 078	13 715
2010	2 087	1 288	47	146	6 607	830	1 507	12 512

C — Formal sittings

1 February	Formal sitting in remembrance of Advocate General D. Ruiz-Jarabo Colomer
8 March	Formal sitting in remembrance of Lord Slynn of Hadley, of Mr K. Bahlmann and of Mr M. Diez de Velasco, former members of the Court of Justice
15 March	Formal sitting in remembrance of Mr H. Jung, former Registrar of the Court of First Instance
3 May	Formal sitting for the giving of solemn undertakings by the President and the Members of the European Commission, in the presence of HRH the Grand Duke, HRH the Grand Duchess and Mr J. Buzek, President of the European Parliament
10 June	Formal sitting on the occasion of the departure from office of Judge C. W. A. Timmermans and the entry into office of Ms S. Prechal as a Judge at the Court of Justice
28 June	Formal sitting for the giving of solemn undertakings by the new members of the European Court of Auditors
13 September	Formal sitting on the occasion of the departure from office of Judge A. W. H. Meij and the entry into office of Mr M. van der Woude as a Judge at the General Court
6 October	Formal sitting on the occasion of the departure from office of Judge P. Kūris and the entry into office of Mr E. Jarašiūnas as a Judge at the Court of Justice, and of the departure from office of Mr R. Grass, Registrar of the Court of Justice, and the entry into office of Mr A. Calot Escobar as Registrar of the Court of Justice
25 October	Formal sitting for the giving of solemn undertakings by Baroness Ashton, Vice-President of the European Commission, High Representative of the Union for Foreign Affairs and Security Policy, and by Mr N. Diamandouros, European Ombudsman, and on the occasion of the departure from office of Judge M. Vilaras and the entry into office of Mr D. Gratsias as a Judge at the General Court
26 November	Formal sitting on the occasion of the departure from office of Judge V.M. Ciucă and the entry into office of Mr A. Popescu as a Judge at the General Court

D — Visits and participation in official functions

Court of Justice

4 January	Representation of the Court at the New Year reception organised by the Court of Cassation, in Brussels
11 January	Representation of the Court at the New Year reception organised by the Council of State, in Brussels
14 January	Representation of the Court at the ceremonies organised to mark the 90th anniversary of the Supreme Court of the Republic of Estonia, in Tartu
18 January	Representation of the Court at the formal sitting for the start of the legal term of the Court of Appeal of Paris
29 January	Participation of a delegation from the Court at the seminar entitled 'The Convention is yours' and at the formal sitting of the European Court of Human Rights, in Strasbourg
29 January	Representation of the Court at the ceremony inaugurating the judicial year of the Corte Suprema di Cassazione, in Rome
4 to 6 February	Delegation from the Court to the Federal Supreme Court of Switzerland, in Lausanne
8 February	Representation of the Court at the official celebration organised to mark the 15th anniversary of the accession of the Republic of Finland to the European Union, at the invitation of Mr Eikka Kosonen, Head of the European Commission Representation in Finland, in Helsinki
9 February	Representation of the Court at the 'Rechtspolitischer Neujahrsempfang 2010', at the invitation of Ms Sabine Leutheusser-Schnarrenberger, Minister for Justice of the Federal Republic of Germany, in Berlin
12 February	Reception at the Grand Ducal Court of a delegation from the Court of Justice on the occasion of the New Year
7 to 11 March	Representation of the Court at the 10th Congress of the International Association of Supreme Administrative Jurisdictions, in Sydney
15 March	Participation of the President of the Court at the hearing of Mr Jean-Paul Costa, President of the European Court of Human Rights, organised by the European Committee of Social Rights, in Strasbourg
18 March	Representation of the Court at a hearing organised by the Committee on Constitutional Affairs of the European Parliament on 'Institutional aspects of accession by the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms', in Brussels
19 March	Participation of the President of the Court at the colloquium of the Network of the Presidents of the Supreme Judicial Courts of the European Union on the topic 'Practical aspects of the independence of justice', in Dublin
14 April	Representation of the Court at the General Assembly of the Constitutional Court, in Warsaw
17 and 18 April	Representation of the Court at the ceremonies organised on the occasion of the funeral of Lech Kaczyński, President of the Republic of Poland, in Warsaw

23 April	Representation of the Court at the Annual Conference of the European Employment Lawyers Association (EELA), in Luxembourg
8 to 10 May	Participation of the President of the Court, and representation of the Court, in the visit made at the invitation of Ms Iva Brožová, President of the Supreme Court of the Czech Republic, in Prague and Brno
9 May	Representation of the Court at the celebration of the 60th anniversary of the Declaration of Robert Schuman at the seat of the European Parliament, in Strasbourg
19 to 22 May	Representation of the Court at the international conference on the topic 'Global environmental governance', organised by the International Court of the Environmental Foundation (ICEF), in Rome
3 and 4 June	Representation of the Court at the meeting of the General Assembly of the European Network of Councils for the Judiciary on the topic 'Towards a European judicial culture', in London
6 to 8 June	Representation of the Court at the colloquium on the topic 'Preventing backlog in administrative justice' and at the Board Meeting and General Assembly of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union, in Luxembourg
10 June	Representation of the Court at the ceremonies organised to mark the 25th anniversary of the foundation of the Constitutional Court of the Republic of Poland, in Warsaw
23 June	Luxembourg National Day, celebration of the solemn Te Deum followed by a reception at the Grand Ducal Court
1 July	Representation of the Court at the funeral of A. Brazauskas, former President of the Republic of Lithuania, in Vilnius
24 July	Reception of the President of the Hellenic Republic organised to mark the 36th anniversary of the restoration of the Republic, in Athens
16 August	Representation of the Court at the funeral of G. de Marco, former President of the Republic of Malta, in Valletta
17 September	Representation of the Court at the Regleg conference ('Access of regions with legislative powers to the European Court of Justice'), in Zaragoza
26 and 27 September	Official visit of a delegation from the Court to the Bundesverfassungsgericht, in Karlsruhe
1 October	Representation of the Court at the Opening of the Legal Year, at the invitation of the Lord Chancellor, in London
1 October	Representation of the Court at the 'Jubiläum — 90-jähriges Bestehen der Bundesverfassung Österreichs', in Vienna
3 October	Representation of the Court at the ceremonies organised for the 'Tag der Deutschen Einheit', in Bremen
21 to 23 October	Official visit to the higher courts of Slovakia at the invitation of Mr Štefan Harabin, President of the Supreme Court of the Slovak Republic, and meeting with representatives of the Parliament and the Government, in Bratislava
22 and 23 October	Representation of the Court at the conference 'Criminal justice in Europe: Challenges, principles and perspectives', organised by the Institut universitaire international Luxembourg, in Luxembourg
3 to 6 November	Participation at the 24th FIDE Congress, in Madrid

18 November	Representation of the Court at the formal sitting organised to mark the 130th anniversary of the Supreme Court of Cassation of the Republic of Bulgaria, in Sofia
18 November	Representation of the Court at the 'Conference for the 25th anniversary of the EIA directive', organised by the European Commission (Environment DG), in Leuven
18 November	Representation of the Court at the formal sitting for the installation of Mr Robert Biever as Procureur général d'État (Principal State Counsel) at the High Court of Justice of Luxembourg
22 November	Representation of the Court at the Board Meeting of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union, in Brussels
25 November	Representation of the Court at the special academic session to mark the 40th anniversary of the creation of the Fondation du Mérite Européen, in Luxembourg

General Court

1 January	Representation of the Court at the reception of the President of the Republic of Malta, on the occasion of the traditional ceremony for the exchange of New Year greetings, in Valletta
14 January	Representation of the Court on the occasion of the 90th anniversary of the Supreme Court of the Republic of Estonia, in Tartu
9 February	Representation of the Court at the reception 'Rechtspolitischer Neujahrsempfang 2010' organised by the Minister for Justice of the Federal Republic of Germany, in Berlin
12 February	Representation of the Court at the reception at the Grand Ducal Court of a delegation from the Court of Justice on the occasion of the New Year
9 April	Representation of the Court at the formal Judges' Congress, organised by the President of the Council of Judges of the Republic of Lithuania, to mark the 20th anniversary of the restoration of the Lithuanian State and the 15th anniversary of the restoration of the Court of Appeal of the Republic of Lithuania and the regional courts, in Vilnius
16 to 18 April	Representation of the Court at the national ceremony in remembrance of Lech Kaczyński, President of the Republic of Poland, and of his wife
12 May	Participation in the 'Día Europeo de la Competencia' organised by the Comisión Nacional de la Competencia, in Madrid
1 June	Representation of the Court at the reception of the President of the Italian Republic, on the occasion of the National Day, in Rome
23 June	Representation of the Court at the Luxembourg National Day events, celebration of the solemn Te Deum followed by a reception at the Grand Ducal Court
24 July	Representation of the Court at the reception of the President of the Hellenic Republic to mark the 36th anniversary of the restoration of the Republic, in Athens
16 to 19 September	Participation in the 'Seminar for the EU and US judiciary' under the patronage of Justice Antonin Scalia of the Supreme Court of the United

	States of America and of Judge A. Borg Barthet, organised by the Boston-based research institute 'Mentor Group', in Berlin
1 October	Representation of the Court at the formal celebration of the 90th anniversary of the enactment of the Constitution of the Republic of Austria
1 October	Representation of the Court at the Opening of the Legal Year, at Westminster Abbey, in London
3 October	Representation of the Court at the reception of the President of the Federal Republic of Germany, on the occasion of the National Day
22 and 23 October	Representation of the Court at the conference 'Criminal justice in Europe: Challenges, principles and perspectives', organised by the Institut universitaire international Luxembourg, in Luxembourg
28 to 29 October	Representation of the Court at the formal sitting for the installation of Mr R. Grass as a judge at the Court of Cassation in the presence of the First President of the Court of Cassation, in Paris
3 to 6 November	Representation of the Court at the 24th FIDE Congress, in Madrid
25 November	Representation of the Court at the special academic session to mark the 40th anniversary of the creation of the Fondation du Mérite Européen, in Luxembourg
6 December	Representation of the Court at the official reception of the President of the Republic of Finland and of her husband on the occasion of the Independence Day of the Republic of Finland

Civil Service Tribunal

23 March	Participation of Registrar W. Hakenberg in the symposium organised to mark the 30th anniversary of the establishment of the World Bank Administrative Tribunal, in Washington
15 December	Meeting of Judges H. Tagaras and H. Kreppel with the judges of the United Nations Dispute Tribunal, in Geneva
16 December	Visit of Judge H. Kreppel to the Administrative Tribunal of the International Labour Organisation, in Geneva

Abridged organisational chart

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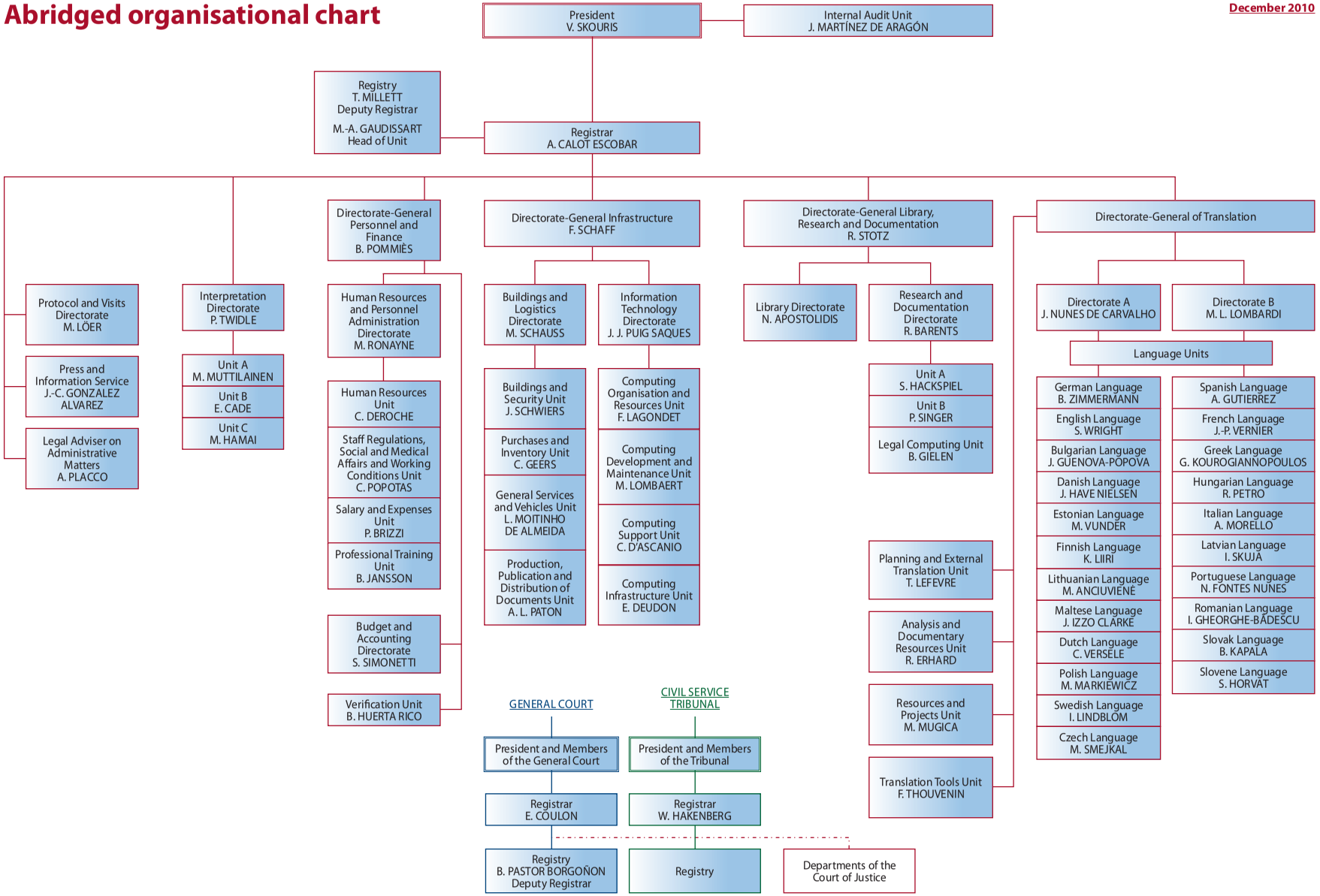
December 2010



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