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COURT OF JUSTICE OF THE EUROPEAN UNION

Annual report 2011

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ANNUAL REPORT 2011

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

Luxembourg, 2012

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Foreword

For the Courts of the European Union, 2011 was above all a year marked by particularly intense judicial activity. With 1 569 new cases and 1 518 cases completed, the Court of Justice of the European Union is seeing a significant increase in the number of actions brought before and disposed of by its three judicial organs. The institution can only be gladdened by this trend which indicates the confidence of national courts and of litigants in the Courts of the European Union. Nevertheless, this increase in the caseload demands a degree of vigilance on the part of both the Court of Justice of the European Union and the European Union's legislative authorities in order that the effectiveness of the European Union's judicial system is not jeopardised and that European citizens continue to be served to the highest standards.

With this in mind, the Court of Justice proposed in the past year a series of amendments to its Statute and a complete recasting of its Rules of Procedure, seeking, first, to improve its efficiency and productivity and those of the General Court and, second, to modernise its procedures.

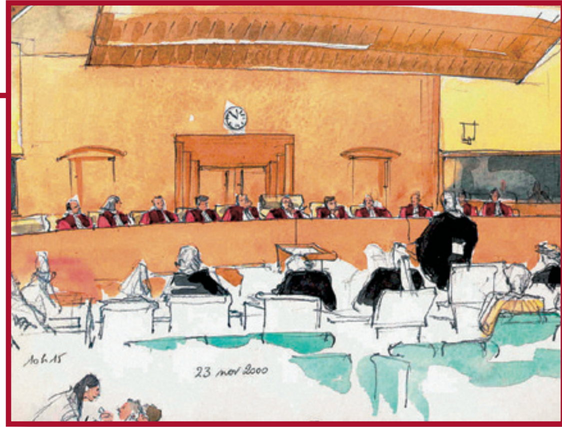
In 2011, three large-scale information technology projects, intended principally to bring the Court closer to the public, were also seen through to a successful conclusion. The opening of the e-Curia system which enables procedural documents to be lodged and served electronically, the launch of a new, more effective, search engine for consulting case-law and the putting online of the catalogue of the Court's library are designed to make the Court of Justice more accessible and more transparent.

The past year also saw the departure of the President and two members of the Civil Service Tribunal as a result of the partial renewal of its membership as well as the departure of one member of the Court of Justice and one member of the General Court.

This report provides a full record of changes concerning the institution and of its work in 2011. 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 relating to the courts.

I would like to take this opportunity to thank warmly my colleagues in the three courts and the entire staff of the Court of Justice for the outstanding work carried out by them during this exceptionally demanding year.

V. Skouris
President of the Court of Justice



Chapter I

The Court of Justice

A — The Court of Justice in 2011: 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 2011. It describes, first, how the institution evolved during the year, with the emphasis on the institutional changes affecting the Court of Justice and/or developments relating to its internal organisation. 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. In 2011, the Court of Justice submitted to the European Union legislature draft amendments to its Statute and a proposed recasting and updating of its Rules of Procedure. The main aim of both proposals is to improve the efficiency of proceedings before the Courts of the European Union.

The proposed amendments to the Statute seek in particular the establishment of the office of Vice-President of the Court of Justice, an increase in the number of judges forming the Grand Chamber to 15 as well as abolition of the automatic participation in the Grand Chamber of the presidents of the chambers of five judges, and the abandonment of reports for the hearing. In the provisions of the Statute relating to the General Court, the Court of Justice proposes to increase the number of General Court judges to 39, in order to respond to the constant increase in its caseload.

The proposed recasting of the Rules of Procedure has the objective of adapting both their structure and their content to changes in the caseload, of continuing the efforts already made over a number of years to maintain the Court's capacity in the face of an ever increasing and ever more complex caseload, of disposing of the cases brought before the Court within a reasonable period of time and of clarifying the procedural rules which the Court applies by making them easier to read.

This body of proposals is the fruit of a process of mature reflection on the basis of internal consultation. The proposals are currently being discussed within the European Union's legislative authorities. The full text of the proposals is available on the Court's website. ([1])

In addition, the amendments made to the Rules of Procedure of the Court of Justice on 24 May 2011 should be noted (OJ 2011 L 162, p. 17). Those amendments provide, for the first time, for the possibility of the Court adopting a decision that determines criteria for a procedural document to be served by electronic means. The Court made use of that possibility in adopting the decision of 13 September 2011 on the lodging and service of procedural documents by means of e-Curia (OJ 2011 C 289, p. 7). This application, which will incontestably contribute to the modernisation of proceedings before the Courts of the European Union, was launched successfully on 21 November 2011.

It is also to be noted that citizens of the European Union now have access to a new search engine, which for the first time sweeps all the data relating to the body of case-law of the Courts of the European Union since the creation of the Court of Justice in 1952. This search engine may be used free of charge via the Court's website.

([1]) http://curia.europa.eu/jcms/jcms/Jo2_7031

Finally, with a like aim in mind, the catalogue of the Court's library is now available via the Court's website. [2] Persons using this catalogue can thus carry out online bibliographical research on European Union law and in the other fields of law covered by the catalogue, such as international law, comparative law, the law of the Member States of the European Union and certain non-member countries and the general theory of law. At the present time, the catalogue is one of the most complete in the world as regards European Union law. It currently includes approximately 340 000 bibliographical entries, including more than 80 000 concerning European Union law, and is growing at a rate of more than 20 000 entries per year.

2. The statistics concerning the Court's activity in 2011 show, overall, sustained efficiency and productivity on the part of the institution. They are also marked by a considerable increase in the number of cases brought.

The Court thus completed 550 cases in 2011 (net figures, that is to say, taking account of the joinder of cases), an increase compared with the previous year (522 cases completed in 2010). Of those cases, 370 were dealt with by judgments and 180 gave rise to orders.

In 2011, the Court had 688 new cases brought before it (without account being taken of the joinder of cases on the ground of similarity), which amounts to a significant increase compared with 2010 (631 cases brought) and, for the second year in succession, is the highest number in the Court's history. The situation is the same as regards references for a preliminary ruling. In 2011, the number of references for a preliminary ruling submitted was, for the third year in succession, the highest ever reached, and it exceeded the number in 2009 by almost 41% (423 cases in 2011 compared with 302 cases in 2009). Also the very marked increase in the number of appeals should be noted (162 in 2011 compared with 97 in 2010), as should the reduction, for the fifth consecutive year, in the number of direct actions. Now direct actions account for only about 12% of the cases brought before the Court, whereas they accounted for approximately 38% in 2007.

So far as concerns the duration of proceedings, the statistics are, in broad terms, as positive as the previous year's. The average time taken to deal with references for a preliminary ruling was 16.4 months, which amounts to a statistically insignificant increase compared with the figure for 2010 (16 months). The average time taken in 2011 to deal with direct actions and appeals was 20.2 months and 15.4 months respectively (compared with 16.7 months and 14.3 months in 2010).

In addition to the reforms in its working methods that have been undertaken in recent years, maintenance of the Court's efficiency in dealing with cases is also due to the increased use of the various procedural instruments at its disposal to expedite the handling of certain cases (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).

Use of the urgent preliminary ruling procedure was requested in five cases and the designated chamber considered that the conditions under Article 104b of the Rules of Procedure were met in two of them. Those cases were completed in an average period of 2.5 months.

Use of the expedited or accelerated procedure was requested 13 times, but the conditions under the Rules of Procedure were met in only two of those cases. Following a practice established in 2004, requests for the use of the expedited or accelerated procedure are granted or refused by

[2] http://bib-curia.eu/

reasoned order of the President of the Court. In addition, priority treatment was granted in seven cases.

Also, the Court utilised frequently 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 30 cases were brought to a close by orders made on the basis of that provision.

Finally, the Court is continuing to make 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 46% of the judgments delivered in 2011 were delivered without an Opinion (compared with 50% in 2010).

As regards the distribution of cases between the various formations of the Court, it may be noted that the Grand Chamber dealt with roughly 11%, chambers of five judges with 55%, and chambers of three judges with approximately 33%, of the cases brought to a close by judgments or by orders involving a judicial determination in 2011. There are no significant differences compared with the previous year in the proportion of cases dealt with by the various formations of the Court.

For more detailed information regarding the statistics for the past judicial year the section of the report devoted solely to that topic should be consulted.

B — Case-law of the Court of Justice in 2011

This section of the Annual Report provides an overview of the case-law in 2011.

Constitutional or institutional issues

In a number of cases, the Court was called upon to specify the conditions under which it exercises jurisdiction. The first judgments noted here relate to actions for failure to fulfil obligations.

In Case C-52/08 *Commission* v *Portugal* (judgment of 24 May 2011), the Court ruled on the Commission's application alleging that Portugal, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2005/36 on the recognition of professional qualifications, [1] had failed to fulfil its obligations.

Regarding the admissibility of the action, the Court noted that, although the subject of the Commission's application was an alleged failure to transpose Directive 2005/36, its letters of formal notice and reasoned opinion related to Directive 89/48 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration. [2]

The Court then recalled that, although the claims as stated in the application cannot as a rule be extended beyond the infringements alleged in the operative part of the reasoned opinion and in the letter of formal notice, the fact nevertheless remains that the Commission has standing to seek a declaration that a Member State has failed to fulfil obligations which were created in the original version of a European Union measure, subsequently amended or repealed, and which were maintained in force under the provisions of a new European Union measure. Conversely, the subject-matter of the dispute cannot be extended to obligations arising under new provisions which do not correspond to those arising under the original version of the measure concerned, for otherwise there would be a breach of the essential procedural requirements of infringement proceedings.

Next, as to the substance, the Court held that, where particular circumstances during the legislative procedure — for instance if the legislature did not adopt a clear position or the scope of a provision of European Union law was not precisely determined — give rise to a situation of uncertainty, it is not possible to conclude that, at the end of the period prescribed in the reasoned opinion, there existed a sufficiently clear obligation for the Member States to transpose a directive. Accordingly, the Court dismissed the Commission's action.

In Case C-496/09 *Commission* v *Italy* (judgment of 17 November 2011), the Commission brought an action for failure to fulfil obligations against the Italian Republic for its failure to comply with a previous judgment of the Court [3] relating to the recovery, from the recipients, of State aid found unlawful and incompatible with the common market by a decision of the Commission. The

[1] Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ 2005 L 255, p. 22).

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

[3] Judgment of 1 April 2004 in Case C-99/02 *Commission* v *Italy* [2004] ECR I-3353.

Commission also sought an order for payment, by the Italian Republic, of a penalty payment and a lump sum.

First of all, the Court recalled, referring to the previous judgment given against the Italian Republic in the matter, that where a Commission decision requiring the cessation of State aid that is incompatible with the common market has not been the subject of a direct action or where such an action has been dismissed, the only defence available to a Member State against an action for failure to fulfil obligations is that it was absolutely impossible for it to implement the decision properly. Neither the apprehension of even insuperable internal difficulties nor the fact that the Member State in question intends to examine the individual situation of each undertaking concerned can justify a failure by that Member State to comply with its obligations under European Union law. Accordingly, the delay in implementing the Commission decision by the Member State concerned, essentially attributable to the lateness with which it acted to remedy the difficulties of identifying and recovering the amounts of unlawful aid, cannot be a valid justification. In that regard, the Court added that it is not relevant that the Member State concerned informed the Commission of the difficulties encountered in recovering the aid and the solutions adopted for remedying them.

Next, regarding the imposition of financial penalties, the Court held that, in the context of the procedure under Article 228(2) EC, it is for the Court, in each case, in the light of the circumstances of the case before it and the degree of persuasion and deterrence which appears to it to be required, to determine the financial penalties appropriate for making sure that the judgment which previously established a breach is complied with as swiftly as possible and preventing similar infringements of European Union law from recurring. It added that the legal and factual context of the infringement established may be an indication that effective prevention of future repetition of similar infringements of European Union law may require the adoption of a deterrent measure. Regarding the amount of the penalty payment, the Court stated that it is for the Court, in exercising its discretion, to set the penalty payment so that it is both appropriate to the circumstances and proportionate to the infringement established and the ability to pay of the Member State concerned.

Finally, the Court recalled that, in view of the objectives of the procedure provided for in Article 228(2) EC, the Court is empowered, in the exercise of the discretion conferred on it in connection with that article, to impose a penalty payment and a lump sum payment cumulatively.

The next case to be mentioned, Case C-83/09 P *Commission* v *Kronoply and Kronotex* (judgment of 24 May 2011), concerns actions for annulment.

In that case, the Court had to rule on the admissibility of an action for annulment brought by third parties in respect of a Commission decision to raise no objections to State aid granted to a company by a Member State. According to the Court, the lawfulness of such a decision, adopted under Article 4(3) of Regulation No 659/1999, [4] depends on whether there are doubts as to the compatibility of the aid with the common market. Since such doubts must trigger the initiation of a formal investigation procedure in which the interested parties referred to in Article 1(h) of Regulation No 659/1999 can participate, it must be held that any interested party within the meaning of the latter provision is directly and individually concerned by such a decision. If the beneficiaries of the procedural guarantees provided for in Article 88(2) EC and Article 6(1) of Regulation No 659/1999

[4] 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).

are to be able to ensure that those guarantees are respected, it must be possible for them to challenge the decision not to raise objections before the European Union judicature. Accordingly, the Court held that, in the context of an action for annulment, the specific status of 'interested party' within the meaning of Article 1(h) of Regulation No 659/1999, in conjunction with the specific subject-matter of the action, is sufficient to distinguish individually, for the purposes of the fourth paragraph of Article 230 EC, the applicant contesting a decision not to raise objections.

Moreover, the Court stated that Article 1(h) of Regulation No 659/1999 does not rule out the possibility that an undertaking which is not a direct competitor of the beneficiary of the aid, but which requires the same raw material for its production process as the beneficiary, can be categorised as an interested party, provided that that undertaking demonstrates that its interests could be adversely affected by the grant of the aid. Finally, the Court held that the requirement to define the subject-matter of the action under Article 44(1)(c) of the Rules of Procedure of the General Court is satisfied to the requisite legal standard where the applicant identifies the decision which he seeks to have annulled. It matters little whether the application initiating proceedings states that it is seeking the annulment of 'a decision not to raise objections' — the term used in Article 4(3) of Regulation No 659/1999 — or of a decision not to initiate the formal investigation procedure, since the Commission takes a position on both aspects of the question by means of a single decision.

Finally, two cases relating to the exercise of Court's jurisdiction to give preliminary rulings are worthy of note.

In Case C-196/09 *Miles and Others* (judgment of 14 June 2011), the Court examined the concept of a 'court or tribunal of a Member State' under Article 267 TFEU.

The Court held that it has no jurisdiction to rule on a reference for a preliminary ruling from the Complaints Board of the European Schools. In order to determine whether a body making a reference is a court or tribunal for the purposes of Article 267 TFEU, which is a question governed by European Union law alone, the Court takes account of a number of factors, such as whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is *inter partes*, whether it applies rules of law and whether it is independent. Although the Complaints Board meets all those criteria and must, therefore, be deemed to be a 'court or tribunal' within the meaning of Article 267 TFEU, it falls within the remit not of a Member State, as stated in that article, but of the European Schools, which constitute, as the first and second recitals of the European Schools' Convention state, a '*sui generis*' system, which achieves, by means of an international agreement, a form of cooperation between the Member States and between those States and the European Union. The Complaints Board is thus a body of an international organisation which, despite the functional links which it has with the European Union, remains formally distinct from it and from its Member States. In those circumstances, the mere fact that the Complaints Board is required to apply the general principles of European Union law when it has a dispute before it is not sufficient to make it fall within the definition of a court or tribunal of a Member State and thus within the scope of Article 267 TFEU.

Case C-240/09 *Lesochranárske zoskupenie* (judgment of 8 March 2011) enabled the Court to rule on its jurisdiction to interpret an international agreement (the Aarhus Convention ([5])) concluded by the Community and the Member States on the basis of shared competence.

The Court stated that, having been duly seised in accordance with the provisions of the Treaty, including Article 267 TFEU, it had jurisdiction to define the obligations which the European Union has assumed and those which remain the sole responsibility of the Member States in order to interpret the Aarhus Convention. Next, it had to be determined whether, in the field covered by Article 9(3) of that convention, the European Union has exercised its powers and adopted provisions to implement the obligations which derive from it. If that were not the case, the obligations deriving from Article 9(3) of the Aarhus Convention would continue to be covered by the national law of the Member States. In those circumstances, it would be for the courts of those Member States to determine, on the basis of national law, whether individuals could rely directly on the rules of that international agreement relevant to that field or whether the courts must apply those rules of their own motion. In that case, European Union law does not require or forbid the legal order of a Member State to accord to individuals the right to rely directly on a rule laid down in the Aarhus Convention or to oblige the courts to apply that rule of their own motion. However, if it were to be held that the European Union has exercised its powers and adopted provisions in the field covered by Article 9(3) of the Aarhus Convention, European Union law would apply and it would be for the Court of Justice to determine whether the provision of the international agreement in question has direct effect. Furthermore, a specific issue which has not yet been the subject of European Union legislation may nevertheless be part of European Union law where that issue is regulated in agreements concluded by the European Union and the Member States and it concerns a field in large measure covered by European Union law.

The Court found that it has jurisdiction to interpret the provisions of Article 9(3) of the Aarhus Convention and, in particular, to give a ruling on whether or not they have direct effect. Where a provision can apply both to situations falling within the scope of national law and to situations falling within the scope of European Union law, there is a clear interest that, in order to forestall future differences of interpretation, that provision should be interpreted uniformly, whatever the circumstances in which it is to apply.

The case-law's contribution to the clarification of issues of a constitutional and institutional nature during 2011 extends far beyond these cases, however.

In Case C-163/10 *Patriciello* (judgment of 6 September 2011), the Court interpreted Article 8 of the Protocol on the Privileges and Immunities of the European Union, annexed to the EU, FEU and EAEC Treaties. It defined the scope of the immunity conferred by European Union law on Members of the European Parliament in respect of opinions expressed and votes cast by them in the performance of their duties.

The Court held that Article 8 of the Protocol on the Privileges and Immunities of the European Union must be interpreted to the effect that a statement made by a Member of the European Parliament beyond the precincts of that institution and giving rise to prosecution in his Member State of origin for the offence of making false accusations does not constitute an opinion expressed in the performance of his parliamentary duties covered by the immunity afforded by that provision

([5]) Convention on access to information, public participation in decision-making and access to justice in environmental matters, approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1).

unless that statement amounts to a subjective appraisal having a direct, obvious connection with the performance of those duties. It is for the national court to determine whether those conditions have been satisfied in a given case.

In the context of the accession of new Member States to the European Union on 1 May 2004, the Court considered, in Joined Cases C-307/09 to C-309/09 *Vicoplus and Others* (judgment of 10 February 2011), the interpretation of Articles 56 TFEU and 57 TFEU and of Article 1(3)(c) of Directive 96/71 ([6]) concerning the posting of workers in the framework of the provision of services.

The Court held that Articles 56 TFEU and 57 TFEU do not preclude a Member State from making, during the transitional period provided for in Chapter 2, paragraph 2, of Annex XII to the 2003 Act of Accession, ([7]) the hiring-out, within the meaning of Article 1(3)(c) of Directive 96/71, on its territory, of workers who are Polish nationals subject to the obtaining of a work permit. Such a national measure, though it amounts to a restriction on the freedom to provide services, must be considered to be a measure regulating access of Polish nationals to the labour market of that State within the meaning of Chapter 2, paragraph 2, of Annex XII to the 2003 Act of Accession. Such a finding also necessarily follows from the purpose of that paragraph, which is intended to prevent, following the accession to the European Union of new Member States, disturbances on the labour market of the existing Member States due to the immediate arrival of a large number of workers who are nationals of those new States.

In the area of the public's right of access to documents, the Court was seised, in Case C-506/08 P *Sweden* v *My Travel and Commission* (judgment of 21 July 2011), of an appeal brought against a judgment of the Court of First Instance (now the General Court) ([8]) dismissing the action brought by My Travel in respect of two decisions ([9]) of the Commission refusing access to certain documents internal to the institution relating to merger proceedings which had already been closed.

Article 4 of Regulation No 1049/2001 ([10]) regarding public access to European Parliament, Council and Commission documents provides for exceptions which derogate from the principle of the widest possible public access to documents and which must, accordingly, be interpreted and applied strictly. The Court held that where an institution decides to refuse access to a document which it has been asked to disclose, it must, in principle, explain how disclosure of that document could specifically and effectively undermine the protected interest — namely, inter alia, protection of the institution's decision-making process and protection of legal advice — upon which it is relying.

The Court analysed all the documents at issue and concluded, inter alia, that the General Court should have required the Commission to indicate the specific reasons why it considered that its

([6]) 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).

([7]) Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 33).

([8]) Case T-403/05 *My Travel* v *Commission* [2008] ECR II-2027.

([9]) Commission Decision D(2005) 8461 of 5 September 2005, and Commission Decision D(2005) 9763 of 12 October 2005.

([10]) 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).

decision-making process would have been seriously undermined by disclosure of certain documents at issue, despite the fact that the procedure to which those documents referred had been closed.

Accordingly, the Court concluded that the Commission, in its decisions, had not correctly applied the exception for protecting its decision-making process or the exception for protecting legal advice. It therefore decided to set aside the judgment of the General Court and to annul the two Commission decisions in so far as those two points were concerned.

Given that some of the arguments put forward by the Commission to justify refusing disclosure of certain other internal documents — in particular, those relating to the other exceptions for protecting the purpose of inspections, investigations and audits — had not been examined by the General Court, the Court found that it was not in a position to rule on those pleas and decided to refer the case back to the General Court.

Regarding the application of European Union law in the internal legal orders of the Member States, two judgments call for particular attention.

In Joined Cases C-201/10 and C-202/10 *Ze Fu Fleischhandel and Vion Trading* (judgment of 5 May 2011), the Court held that the principle of legal certainty did not preclude in principle, in the context of the protection of the European Union's financial interests as defined by Regulation No 2988/95 [11] and pursuant to Article 3(3) of that regulation, the national authorities and courts of a Member State from applying 'by analogy' to proceedings relating to repayment of a wrongly granted export refund a limitation period derived from a general provision of national law, provided, however, that such application resulting from a judicially determined practice was sufficiently foreseeable, a matter which it was for the referring court to establish. However, according to the Court, the principle of proportionality precludes, in the context of exercise by the Member States of the power which they are given by Article 3(3) of Regulation No 2988/95, application of a 30-year limitation period to proceedings relating to repayment of wrongly received refunds. In light of the objective of protecting the European Union's financial interests, an objective for which the European Union legislature considered that a limitation period of four, or indeed even three, years is already in itself sufficient to enable the national authorities to bring proceedings in respect of an irregularity detrimental to those financial interests and capable of leading to the adoption of a measure such as recovery of a wrongly received advantage, to grant those authorities a period of 30 years goes beyond what is necessary for a diligent public service. Finally, the Court found that, in a situation falling within the scope of Regulation No 2988/95, the principle of legal certainty precludes a 'longer' limitation period within the meaning of Article 3(3) of that regulation from resulting from a limitation period under the general law that is reduced by case-law so that, when applied, it complies with the principle of proportionality, since, in any event, the four-year limitation period provided for in the first subparagraph of Article 3(1) of the regulation could be applied in such circumstances.

In Case C-398/09 *Lady & Kid and Others* (judgment of 6 September 2011), the Court held that the rules of European Union law on recovery of sums wrongly paid must be interpreted to the effect that recovery of sums wrongly paid can give rise to unjust enrichment only when the amounts wrongly paid by a taxpayer under a tax levied in a Member State in breach of European Union law have been passed on direct to the purchaser. The Court inferred from this that European Union

(11) Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ 1995 L 312, p. 1).

law precludes a Member State from refusing reimbursement of a tax wrongfully levied on the ground that the amounts wrongly paid by the taxpayer have been set off by a saving made as a result of the concomitant abolition of other levies, since such a set-off cannot be regarded, from the point of view of European Union law, as an unjust enrichment as regards that tax.

As regards the Court's contribution to the definition of the effects of agreements concluded by the European Union with third countries, reference will be made to Case C-187/10 *Unal* (judgment of 29 September 2011) and Case C-484/07 *Pehlivan* (judgment of 16 June 2011), which raised important questions concerning the interpretation of international agreements, in particular the EEC–Turkey association agreement. (12)

Still in the area of international agreements, Case C-240/09 *Lesoochranárske zoskupenie* (judgment of 8 March 2011), concerning the interpretation of the Aarhus Convention, (13) will be noted.

First of all, in *Unal*, the Court held that the first indent of Article 6(1) of Decision No 1/80 of the EEC–Turkey Association Council ('Decision No 1/80') must be interpreted as precluding the competent national authorities from withdrawing the residence permit of a Turkish worker with retroactive effect from the point in time at which there was no longer compliance with the condition on the basis of which his residence permit had been issued under national law if there is no question of fraudulent conduct on the part of that worker and that withdrawal occurs after the expiry of the one-year period of legal employment provided for in the first indent of Article 6(1) of Decision No 1/80. The Court found that that provision cannot be construed as permitting a Member State to modify unilaterally the scope of the system of gradual integration of Turkish workers into the host Member State's labour force. Also, not to accept that such a worker has been legally employed in the host Member State for more than one year would be contrary to the general principle of respect for acquired rights, according to which, in the case where a Turkish national may legitimately rely on rights pursuant to a provision of Decision No 1/80, those rights are no longer dependent on the continuing existence of the circumstances which gave rise to them, as no condition of that nature is laid down by that decision.

Next, in *Pehlivan*, the Court concluded that it follows both from the primacy of European Union law and from the direct effect of a provision such as the first paragraph of Article 7 of Decision No 1/80 that Member States are not permitted to modify unilaterally the scope of the system of gradually integrating Turkish nationals in the host Member State and do not have the power to adopt measures which may undermine the legal status expressly conferred on those nationals by the law governing the EEC–Turkey Association. Thus, members of a Turkish worker's family who fulfil the conditions laid down in the first paragraph of Article 7 can lose the rights conferred on them by that provision only in two cases, that is to say, either where the presence of the Turkish migrant in the host Member State constitutes, by reason of his personal conduct, a genuine and serious threat to public policy, public security or public health, within the terms of Article 14(1) of Decision No 1/80, or where the person concerned has left the territory of that State for a significant length of time without legitimate reason.

(12) Council Decision 64/732/EEC of 23 December 1963 on the conclusion of the Agreement establishing an Association between the European Economic Community and Turkey (OJ 1973 C 113, p. 1).

(13) See footnote 5.

Finally, in *Lesoochranárske zoskupenie*, the Court held that Article 9(3) ([14]) of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) does not have direct effect in European Union law. It is, however, for the national courts to interpret, to the fullest extent possible, the procedural rules relating to the conditions to be met in order to bring administrative or judicial proceedings in accordance with the objectives of Article 9(3) of that convention and the objective of effective judicial protection of the rights conferred by European Union law, in order to enable an environmental protection organisation to challenge before a court a decision taken following administrative proceedings liable to be contrary to European Union environmental law. In the absence of European Union rules governing the matter, it is for the domestic legal system of each Member State to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from European Union law, since the Member States are responsible for ensuring that those rights are effectively protected in each case. On that basis, the detailed procedural rules governing actions for safeguarding an individual's rights under European Union law must be no less favourable than those governing similar domestic actions (principle of equivalence) and must not make it in practice impossible or excessively difficult to exercise rights conferred by European Union law (principle of effectiveness).

Citizenship of the Union, and the rights attaching to it, have not by any means exhausted their potential.

In Case C-34/09 *Ruiz Zambrano* (judgment of 8 March 2011), the Court gave a ruling on the sensitive question of whether the Treaty provisions on citizenship of the Union confer on a parent who is a third country national and upon whom his minor children, who are Union citizens, are dependent a right to reside and work in the Member State of which the children are nationals, in which they reside and which they have never left since birth. The Court held that Article 20 TFEU precludes a Member State from refusing a third country national upon whom his minor children, who are Union citizens, are dependent, a right of residence in the Member State of residence and nationality of those children, and from refusing to grant a work permit to that third country national, in so far as such decisions deprive those children of the genuine enjoyment of the substance of the rights attaching to the status of Union citizen. Citizenship of the Union is intended to be the fundamental status of nationals of the Member States. Such a refusal would lead to a situation where those children, citizens of the Union, would have to leave the territory of the European Union in order to accompany their parents. Similarly, if a work permit were not granted to such a person, he would risk not having sufficient resources to provide for himself and his family, which would also result in the children, citizens of the Union, having to leave the territory of the European Union. In those circumstances, those citizens of the Union would, in fact, be unable to exercise the substance of the rights conferred on them by virtue of their status as citizens of the Union.

In Case C-434/09 *McCarthy* (judgment of 5 May 2011), the Court was given the opportunity to determine whether the provisions concerning citizenship of the Union are applicable to the situation of a Union citizen who has never exercised his right of free movement, who has always resided in a Member State of which he is a national and who is also a national of another Member State. The Court first concluded that Article 3(1) of Directive 2004/38 on the right to move and reside

([14]) 'In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.'

freely [15] is not applicable to such a Union citizen. That finding cannot be influenced by the fact that the citizen concerned is also a national of a Member State other than that where he resides. The fact that a Union citizen is a national of more than one Member State does not mean that he has made use of his right of freedom of movement. Secondly, the Court held that Article 21 TFEU is not applicable to a Union citizen who has never exercised his right of free movement, who has always resided in a Member State of which he is a national and who is also a national of another Member State, provided that the situation of that citizen does not include the application of measures by a Member State that would have the effect of depriving him of the genuine enjoyment of the substance of the rights conferred by virtue of his status as a Union citizen or of impeding the exercise of his right of free movement and residence within the territory of the Member States. The fact that a citizen, in addition to being a national of the Member State in which he resides, is also a national of another Member State is not sufficient, in itself, for a finding that the situation of the person concerned is covered by Article 21 TFEU, as that situation exhibits no factor linking it with any of the situations governed by European Union law and is confined in all relevant respects within a single Member State.

The question arising in Case C-256/11 *Dereci and Others* (judgment of 15 November 2011) was whether the provisions concerning citizenship of the Union enable a third country national to reside on the territory of a Member State in the case where that third country national wishes to reside with a family member who is a Union citizen, is resident in that Member State and a national of that Member State, has never exercised his right to free movement and is not maintained by the third country national. The Court held that European Union law, in particular, its provisions on citizenship of the Union, does not preclude a Member State from refusing to allow a third country national to reside on its territory, where that third country national wishes to reside with a member of his family who is a citizen of the Union residing in the Member State of which he has nationality, who has never exercised his right to freedom of movement, provided that such refusal does not lead, for the Union citizen concerned, to the denial of the genuine enjoyment of the substance of the rights conferred by virtue of his status as a citizen of the Union, which is a matter for the national courts to verify. In that regard, the criterion relating to the denial of the genuine enjoyment of the substance of the rights conferred by virtue of Union citizen status refers to situations in which the Union citizen has, in fact, to leave not only the territory of the Member State of which he is a national but also the territory of the European Union as a whole. Consequently, the mere fact that it might appear desirable to a national of a Member State, for economic reasons or in order to keep his family together in the territory of the European Union, for the members of his family who do not have the nationality of a Member State to be able to reside with him in the territory of the European Union, is not sufficient in itself to support the view that the Union citizen will be forced to leave European Union territory if such a right is not granted.

In Case C-434/10 *Aladzhov* (judgment of 17 November 2011), the Court interpreted Article 27(1) and (2) of Directive 2004/38. [16] The Court held that European Union law does not preclude a legislative provision of a Member State which permits an administrative authority to prohibit a national of that State from leaving it on the ground that a tax liability of a company of which he is one of the managers has not been settled, subject, however, to the twofold condition that the measure at issue is intended to respond, in certain exceptional circumstances which might arise from, inter

[15] 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).

[16] See footnote 15.

alia, the nature or amount of the debt, to a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society and that the objective thus pursued does not solely serve economic ends. It is for the national court to determine whether that twofold condition is satisfied. First, the possibility cannot be ruled out as a matter of principle that non-recovery of tax liabilities may fall within the scope of the requirements of public policy. Second, since the purpose of recovery of debts owed to a public authority, in particular the recovery of taxes, is to ensure the funding of actions of the Member State concerned on the basis of the choices which are the expression of, inter alia, its general policy in economic and social matters, the measures adopted by the public authorities in order to ensure such recovery also cannot be considered, as a matter of principle, to have been adopted exclusively to serve economic ends, within the meaning of Article 27(1) of Directive 2004/38. The Court further stated that, even if a measure imposing a prohibition on leaving the territory has been adopted under the conditions laid down in Article 27(1) of Directive 2004/38, the conditions laid down in Article 27(2) thereof preclude such a measure if it is founded solely on the existence of the tax liability of the company of which the party concerned is one of the joint managers, and on the basis of that status alone, without any specific assessment of the personal conduct of the person concerned and with no reference to any threat of any kind which he represents to public policy, and if the prohibition on leaving the territory is not appropriate to ensure the achievement of the objective it pursues and goes beyond what is necessary to attain it. Again, it is for the national court to determine whether that is the position in the case before it.

Case C-391/09 *Runevič-Vardyn and Wardyn* (judgment of 12 May 2011) gave the Court the opportunity to express a view on rules governing the transcription of forenames and surnames of citizens of the Union on the certificates of civil status of a Member State. First of all, the Court held that Article 21 TFEU does not preclude the competent authorities of a Member State from refusing, pursuant to national rules which provide that a person's surnames and forenames may be entered on the certificates of civil status of that State only in a form which complies with the rules governing the spelling of the official national language, to amend, on the birth certificate and marriage certificate of one of its nationals, the surname and forename of that person in accordance with the spelling rules of another Member State. The fact that the person's surname and forename cannot be changed and entered in civil status documents of his Member State of origin except using the characters of the language of that latter Member State cannot constitute treatment that is less favourable than that which he enjoyed before he availed himself of the opportunities offered by the Treaty in relation to free movement of persons and, hence, is not liable to deter a citizen of the Union from exercising the rights of movement recognised in Article 21 TFEU. Next, according to the Court, Article 21 TFEU does not preclude the competent authorities of a Member State from refusing, pursuant to the abovementioned national rules, to amend the joint surname of a married couple who are citizens of the Union, as it appears on the certificates of civil status issued by the Member State of origin of one of those citizens, in a form which complies with the spelling rules of that latter State, on condition that that refusal does not give rise, for those Union citizens, to serious inconvenience at administrative, professional and private levels, this being a matter which it is for the national court to decide. If that proves to be the case, it is also for the national court to determine whether the refusal to make the amendment is necessary for the protection of the interests which the national rules are designed to secure and is proportionate to the legitimate aim pursued. The Court finally held that Article 21 TFEU does not preclude those same authorities from refusing, pursuant to those national rules, to amend the marriage certificate of a citizen of the Union who is a national of another Member State in such a way that the forenames of that citizen are entered on that certificate with diacritical marks as they were entered on the certificates of civil status issued by his Member State of origin and in a form which complies with the rules governing the spelling of the official national language of that latter State.

Following the judgment in *Lassal,* [17] the Court again interpreted Article 16 of Directive 2004/38 [18] in Case C-325/09 *Dias* (judgment of 21 July 2011), in response to a reference from the same court. The Court held that Article 16(1) and (4) of Directive 2004/38 must be interpreted as meaning (i) that periods of residence completed before the date of transposition of that directive, namely 30 April 2006, on the basis solely of a residence permit validly issued pursuant to Council Directive 68/360, [19] without the conditions governing entitlement to any right of residence having been satisfied, cannot be regarded as having been completed legally for the purposes of the acquisition of the right of permanent residence under Article 16(1) of Directive 2004/38 and (ii) that periods of residence of less than two consecutive years, completed on the basis solely of a residence permit validly issued pursuant to Directive 68/360, without the conditions governing entitlement to a right of residence having been satisfied, which occurred before 30 April 2006 and after a continuous period of five years' legal residence completed prior to that date, are not such as to affect the acquisition of the right of permanent residence under Article 16(1) of Directive 2004/38. Even though Article 16(4) of Directive 2004/38 refers only to absences from the host Member State, the integration link between the person concerned and that Member State is also called into question in the case of a citizen who, while having resided legally for a continuous period of five years, then decides to remain in that Member State without having a right of residence. In that regard, the integration objective which lies behind the acquisition of the right of permanent residence laid down in Article 16(1) of Directive 2004/38 is based not only on territorial and time factors but also on qualitative elements, relating to the level of integration in the host Member State.

Finally, in Case C-503/09 *Stewart* (judgment of 21 July 2011) concerning the nature of a short-term incapacity benefit in youth, the Court gave a ruling on the conditions for the award of the benefit, which consisted not only in the presence of the claimant on the territory of the Member State on the date on which the claim was made, but also in his past presence on the territory of that State. The Court found that Article 21(1) TFEU precluded a Member State from making the award of a short-term incapacity benefit in youth subject to a condition of past presence of the claimant in that State to the exclusion of any other element enabling the existence of a genuine link between the claimant and that Member State to be established, or to a condition of presence of the claimant in that State on the date on which the claim was made.

Free movement of goods

In this area, the case-law is now significantly less abundant than it was for several decades. However, the number of cases lodged remains high.

One such case was Case C-291/09 *Francesco Guarnieri & Cie* (judgment of 7 April 2011), which concerned a commercial dispute between a Monegasque company and a Belgian company. The Court first observed that goods originating in Monaco are covered by the rules of the Treaty on the free movement of goods. That is because, pursuant to Article 3(2)(b) of Regulation No 2913/92 [20] establishing the Community Customs Code, the territory of the Principality of Monaco is to be considered to be part of the customs territory of the European Union. As no customs duty or

[17] Judgment of 7 October 2010 in Case C-162/09 *Lassal*. See *Annual Report 2010*, p. 17.

[18] See footnote 15.

[19] Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families (OJ, English Special Edition 1968 (II), p. 485).

[20] Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).

charge having equivalent effect can, consequently, be applied to trade between Monaco and the Member States, goods originating in Monaco, exported directly to a Member State, must be treated as if they originated in those Member States. Secondly, the Court ruled on the question whether a provision of a Member State that requires any foreign national, such as Monegasque nationals, to provide security pending judgment when he seeks to bring proceedings against a national of that Member State, although such a requirement is not imposed on nationals of that State, constitutes a hindrance to the free movement of goods under Article 34 TFEU. The Court answered that question in the negative. In the Court's view, a measure of that sort does admittedly have the effect of making traders wishing to bring proceedings subject to different procedural rules according to whether or not they have the nationality of the Member State concerned. Nevertheless, the possibility that nationals of other Member States would therefore hesitate to sell goods to purchasers established in that Member State who have the nationality of that State is too uncertain and indirect for that national measure to be regarded as liable to hinder intra-Community trade; the causal link between the possible distortion of intra-Community trade and the difference in treatment at issue is therefore not established.

Another judgment relating to the free movement of goods calls for attention. At issue in Case C-28/09 *Commission* v *Austria* (judgment of 21 December 2011) was a national rule prohibiting lorries of over 7.5 tonnes carrying certain goods from using a section of motorway which is one of the principal land transport routes between certain Member States. In the Court's view, a Member State which adopts such a rule with the aim of ensuring ambient air quality in the zone concerned, in accordance with Article 8(3) of Directive 96/62 on ambient air quality assessment and management ([21]) in conjunction with Directive 1999/30 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, ([22]) fails to fulfil its obligations under Articles 28 EC and 29 EC. The Court observes that, in so far as it forces the undertakings concerned to seek viable alternative solutions for the transport of the relevant goods, such a prohibition impedes the free movement of goods and must be regarded as constituting a measure having equivalent effect to quantitative restrictions which is incompatible with the obligations under Articles 28 EC and 29 EC, unless it can be objectively justified. In the Court's assessment, although overriding requirements relating to protection of the environment — which, in principle, also incorporates protection of health — can justify national measures that are liable to obstruct intra-Community trade, provided that those measures are suitable for securing the attainment of that objective and do not go beyond what is necessary for attaining it, the prohibition in question cannot be justified on that ground as it has not been established that the objective pursued could not be attained by other measures less restrictive of freedom of movement, including extending the traffic prohibition for lorries in certain classes to lorries in other classes, or replacing the variable speed limit by a permanent 100 km/h speed limit.

Free movement of persons, services and capital

In 2010, the Court again delivered many judgments concerning freedom of establishment, freedom to provide services, freedom of movement of workers and the free movement of capital. In the interests of clarity, the judgments selected will be presented in groups on the basis of the freedom with which they deal and then, as the case may be, of the fields of activity in question.

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

([22]) Council Directive 1999/30/EC of 22 April 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air (OJ 1999 L 163, p. 41).

In the area of freedom of establishment, the Court gave rulings in several related cases on the concept of activities connected with the exercise of official authority and the exclusion of the profession of notary from the application of Article 49 TFEU (ex Article 43 EC). In actions for failure to fulfil obligations brought against six Member States whose national laws restricted access to the profession of notary to nationals of the Member State concerned, the Court held, in Case C-47/08 *Commission* v *Belgium* (judgment of 24 May 2011), Case C-50/08 *Commission* v *France* (judgment of 24 May 2011), Case C-51/08 *Commission* v *Luxembourg* (judgment of 24 May 2011), Case C-53/08 *Commission* v *Austria* (judgment of 24 May 2011), Case C-54/08 *Commission* v *Germany* (judgment of 24 May 2011) and Case C-61/08 *Commission* v *Greece* (judgment of 24 May 2011), that the first paragraph of Article 45 EC is an exception to the fundamental rule of freedom of establishment and must be interpreted in a manner which limits its scope to what is strictly necessary to safeguard the interests it allows the Member States to protect. Further, that exception must be restricted to activities which in themselves are directly and specifically connected with the exercise of official authority. Regarding the activities entrusted to notaries, the Court then explained that, in order to ascertain whether those activities involve a direct and specific connection of that kind with the exercise of official authority, account must be taken of the nature of the activities carried out by notaries. In that regard, the Court found that a direct and specific connection with the exercise of official authority within the meaning of the first paragraph of Article 45 EC (now the first paragraph of Article 51 TFEU) was lacking in the various activities carried out by notaries in the Member States concerned, despite the significant legal effects with which notarial acts are endowed, inasmuch as either the intention of the parties or the supervision or decision of the court are of particular importance. The Court also noted that, within the geographical limits of their office, notaries practise their profession in conditions of competition, which is not characteristic of the exercise of official authority. Likewise, they are directly and personally liable to their clients for loss arising from any default in the exercise of their activities, whereas the State is liable for the wrongful acts or omissions of public authorities. Accordingly, the Court concluded that each of the States under scrutiny had failed to fulfil its obligations under Article 43 EC (now Article 49 TFEU), since the activities entrusted to notaries in the legal order of each of those States were not connected to the exercise of official authority within the meaning of the first paragraph of Article 45 EC (now the first paragraph of Article 51 TFEU).

Still in the area of freedom of establishment, the Court also clarified its case-law regarding restrictions imposed in the case of a transfer of a company's place of management to a Member State other than that in which it is incorporated.

In Case C-371/10 *National Grid Indus* (judgment of 29 November 2011), the Court held that Article 49 TFEU does not preclude legislation of a Member State under which the amount of tax on unrealised capital gains relating to a company's assets is fixed definitively, without taking account of decreases or increases in value which may occur subsequently, at the time when the company, because of the transfer of its place of effective management to another Member State, ceases to obtain profits taxable in the former Member State. It makes no difference that the unrealised capital gains that are taxed relate to exchange rate gains which cannot be reflected in the host Member State under the tax system in force there. In the Court's view, such legislation complies with the principle of proportionality, having regard to the objective of subjecting to tax in the Member State of origin the capital gains which arose within the ambit of that State's power of taxation. It is proportionate for a Member State of origin, for the purpose of safeguarding the exercise of its powers of taxation, to determine the tax due on the unrealised capital gains that have arisen in its territory at the time when its power of taxation in respect of the company in question ceases to exist, here the time of the transfer of the company's place of effective management to another Member State. By contrast, the Court held that Article 49 TFEU does preclude legislation of a Member State which prescribes the immediate recovery of tax on unrealised capital gains relating to

assets of a company transferring its place of effective management to another Member State at the very time of that transfer. In the Court's assessment, national legislation offering a company transferring its place of effective management to another Member State the choice between, first, immediate payment of the amount of tax, which creates a disadvantage for that company in terms of cash flow but frees it from subsequent administrative burdens, and, second, deferred payment of the amount of tax, possibly together with interest in accordance with the applicable national legislation, which necessarily involves an administrative burden for the company in connection with tracing the transferred assets, would constitute a measure which, while being appropriate for ensuring the balanced allocation of powers of taxation between the Member States, would be less harmful to freedom of establishment than the immediate recovery of the tax.

The Court also interpreted the Treaty rules on freedom of establishment and the freedom to provide services with regard to determination of the level of lawyers' fees.

In Case C-565/08 *Commission* v *Italy* (judgment of 29 March 2011), the Commission complained that the Italian Republic had maintained, in breach of Articles 43 EC and 49 EC (now Articles 49 TFEU and 56 TFEU), provisions which oblige lawyers to comply with maximum fee tariffs. The Court rejected the Commission's arguments and decided that the Italian State had not failed to fulfil its obligations under Article 43 EC (now Article 49 TFEU) and 49 EC (now Article 56 TFEU), since the national legislation in question was not established in a manner which adversely affected access to the market for lawyers' services under conditions of normal and effective competition. According to the Court, that was so in the case of a system characterised by a flexibility allowing proper remuneration for all types of services provided by lawyers given that, in certain cases, the fees could be increased by two or four times the maximum tariffs or even more, and given that it was also open to lawyers, in numerous situations, to conclude a special agreement with their clients to fix the amount of the fees. The Court explained that the existence of a restriction within the meaning of the Treaty cannot be inferred from the mere fact that lawyers established in Member States other than the host Member State must become accustomed to the rules applicable in that latter Member State for the calculation of their fees for services provided there, but must be based upon the fact that such a system impedes the access of lawyers from other Member States to the market of the host Member State.

Regarding the freedom to provide services, the Court delivered a number of important judgments in very diverse areas such as, inter alia, broadcasting services, games of chance, the activities of court experts, public health and commercial communication. In these judgments, the Court was called on either to apply the principle of the freedom to provide services as enshrined by the Treaty, or to interpret a directive intended to implement that principle in a particular field.

First to be noted among the case-law relating to Article 56 TFEU are Joined Cases C-403/08 and C-429/08 *Football Association Premier League and Others* (judgment of 4 October 2011), concerning the exclusive right, granted to certain broadcasters on a territorial basis, to broadcast live football matches, and the practice of certain proprietors of public houses of using foreign decoder cards to circumvent that exclusivity. According to the Court, Article 56 TFEU precludes legislation which makes it unlawful to import into and sell and use in the State concerned foreign decoding devices which give access to an encrypted satellite broadcasting service from another Member State that includes subject-matter protected by the legislation of that first State. In particular, such a restriction cannot be justified in light of the objective of protecting intellectual property rights. The Court recognised that sporting events, as such, have a unique and, to that extent, original character which can transform them into subject-matter that is worthy of protection comparable to the protection of works. However, since safeguarding of the rights which constitute the specific subject-matter of the intellectual property guarantees the right holders concerned only

appropriate remuneration and not the highest possible remuneration for the commercial exploitation of the protected subject-matter, such safeguarding is ensured where reception of a satellite broadcast requires possession of a decoding device and where, consequently, it is possible to determine with a very high degree of precision the total number of viewers who form part of the actual and potential audience of the broadcast concerned, hence of the viewers residing within and outside the Member State of broadcast. Moreover, the premium paid by broadcasters in order to be granted territorial exclusivity is such as to result in artificial price differences between the partitioned national markets. Such partitioning and such an artificial price difference are irreconcilable with the fundamental aim of the Treaty, which is completion of the internal market.

Next, reference should be made to Case C-347/09 *Dickinger and Ömer* (judgment of 15 September 2011), which confirms and clarifies the Court's case-law concerning monopolies in respect of the operation of games of chance. The Court recalled that, although a monopoly over games of chance constitutes a restriction on the freedom to provide services, such a restriction can, however, be justified by overriding reasons in the public interest such as the objective of ensuring a particularly high level of consumer protection, this being a question for the national court. Regarding, in particular, the possibility for the holder of the monopoly to pursue an expansionist commercial policy, the Court stated that, to be consistent with the objective of fighting crime and reducing opportunities for gambling, national legislation establishing a monopoly over games of chance must, first, be based on a finding that the crime and fraud linked to gaming and addiction to gambling are a problem in the Member State concerned which could be remedied by expanding authorised regulated activities, and second, allow only moderate advertising limited strictly to what is necessary for channelling consumers towards monitored gaming networks. In order for that objective of channelling into controlled circuits to be achieved, the authorised operators must provide a reliable, but at the same time attractive, alternative to non-regulated activities, which may as such necessitate the offer of an extensive range of games, advertising on a certain scale, and the use of new distribution techniques. In that regard, the Court however stated that the advertising must remain measured and strictly limited to what is necessary and cannot aim to encourage consumers' natural propensity to gamble by stimulating their active participation in it, such as by trivialising gambling or giving it a positive image because revenues derived from it are used for activities in the public interest, or by increasing the attractiveness of gambling by means of enticing advertising messages holding out the prospect of major winnings.

The Court also had the opportunity, in Joined Cases C-372/09 and C-373/09 *Peñarroja Fa* (judgment of 17 March 2011), to devote attention to the conditions as to qualifications which can be imposed upon court experts wishing to pursue activities in the field of translation. In response to several questions referred for a preliminary ruling by the French Cour de cassation (Court of Cassation), the Court noted, first of all, that the activities of court experts in the field of translation do not constitute activities which are connected with the exercise of official authority for the purposes of the first paragraph of Article 45 EC (now the first paragraph of Article 51 TFEU), since the translations carried out by such an expert are merely ancillary steps and leave the discretion of judicial authority and the free exercise of judicial power intact. The Court then held that Article 49 EC (now Article 56 TFEU) precludes national legislation under which enrolment in a register of court expert translators is subject to conditions concerning qualifications, but the interested parties cannot obtain knowledge of the reasons for the decision taken in their regard and that decision is not open to effective judicial scrutiny enabling its legality to be reviewed, inter alia, as regards its compliance with the requirement under European Union law that the qualifications obtained and recognised in other Member States must have been properly taken into account. Likewise, according to the Court, Article 49 EC (now Article 56 TFEU) precludes a requirement to the effect that no person may be enrolled in a national register of court experts as a translator unless he can prove that he has been enrolled for three consecutive years in a register of court

experts maintained by a cour d'appel (appeal court), where it is found that such a requirement prevents, in the consideration of an application by a person established in another Member State who cannot prove that he has been so enrolled, the qualification obtained by that person and recognised in that other Member State from being duly taken into account for the purposes of determining whether — and, if so, to what extent — that qualification may attest to skills equivalent to those normally expected of a person who has been enrolled for three consecutive years in a register of court experts maintained by a cour d'appel. In that regard, the Court recalled that national authorities must ensure that qualifications obtained in another Member State are accorded their proper value and duly taken into account.

Finally, mention should be made of Case C-490/09 *Commission* v *Luxembourg* (judgment of 27 January 2011). At issue in that case were Luxembourg rules preventing reimbursement of costs relating to laboratory analyses and tests carried out in other Member States. In its judgment, the Court held that by failing to provide, under its social security rules, for the possibility of acceptance of liability by means of reimbursement of the costs paid for those analyses and tests, but by providing solely for a system of direct billing to sickness insurance funds, Luxembourg had failed to fulfil its obligations under Article 49 EC (now Article 56 TFEU). According to the Court, in so far as the application of such a system effectively precludes, in practice, the possibility of acceptance of liability for laboratory analyses and tests carried out by almost all, or even all, medical service providers established in other Member States, it deters or even prevents persons insured by the social security scheme of the Member State in question from using such providers and constitutes, both for such persons and for providers, an obstacle to the freedom to provide services.

Among the cases concerning the interpretation of a particular directive, the first to be mentioned is Case C-119/09 *Société fiduciaire nationale d'expertise comptable* (judgment of 5 April 2011), relating to the interpretation of Directive 2006/123. ([23]) In that case, the French Conseil d'État (Council of State) raised the question of the possibility for Member States to maintain a general prohibition on canvassing by members of a regulated profession, namely accountants. First of all, the Court held that the concept of commercial communication as defined in Article 4(12) of Directive 2006/123 covers not only traditional advertising but also other forms of advertising and communications of information intended to obtain new clients and that, accordingly, canvassing does come within the concept of commercial communication. The Court then pointed out that a ban on any canvassing, whatever its form, its content or the means employed, and which includes a prohibition of all means of communication enabling the carrying out of that form of commercial communication, must be regarded as a total prohibition of commercial communications prohibited by Article 24(1) of Directive 2006/123. The Court concluded that, since it totally prohibits a form of commercial communication and, therefore, comes within the scope of Article 24(1) of Directive 2006/123, such legislation is incompatible with that directive and cannot be justified under Article 24(2) of the directive, even if it is non-discriminatory, based on an overriding reason relating to the public interest and proportionate.

Next, in the field of television broadcasting, Joined Cases C-244/10 and C-245/10 *Mesopotamia Broadcast and Roj TV* (judgment of 22 September 2011) should be mentioned. In that judgment, the Court held that Article 22a of Directive 89/552, as amended by Directive 97/36, ([24]) which

([23]) Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36).

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

provides that Member States are to ensure that broadcasts do not contain any 'incitement to hatred on grounds of race, sex, religion or nationality', was to be interpreted as meaning that facts covered by a rule of national law prohibiting infringement of the principles of international understanding had to be regarded as being included in the concept mentioned above. According to the Court, that article does not preclude a Member State from adopting measures against a television broadcaster established in another Member State, pursuant to a general law such as a law on associations, on the ground that the activities and objectives of that broadcaster run counter to the prohibition of the infringement of the principles of international understanding, provided that those measures do not prevent retransmission per se on the territory of the receiving Member State of television broadcasts made by that broadcaster from another Member State, this being a matter to be determined by the national court.

In the area of the freedom of movement for workers, two cases are worthy of note. First, reference should be made to Case C-424/09 *Toki* (judgment of 5 April 2011), which concerns the interpretation of Directive 89/48. ([25]) In that case, a Greek national, who had obtained her qualification in the United Kingdom in the field of environmental engineering, was refused admission to the regulated profession of engineer in Greece, on the ground that she was not a full member of the Engineering Council, a private United Kingdom organisation expressly named in Directive 89/48 but of which membership is not obligatory in order to pursue the regulated profession of engineer in the United Kingdom. The Court stated first that the mechanism of recognition provided for in point (b) of the first subparagraph of Article 3 of Directive 89/48 is applicable irrespective of whether the person concerned is or is not a full member of the association or organisation concerned. The Court held next that professional experience relied on by a person seeking to obtain authorisation to pursue a regulated profession in the host Member State must satisfy the following three conditions: (i) the experience relied on must consist of full-time work for at least two years during the previous 10 years; (ii) that work must have consisted of the continuous and regular pursuit of a range of professional activities which characterise the profession concerned in the Member State of origin, but that work need not have encompassed all those activities; and (iii) the profession, as it is normally pursued in the Member State of origin, must be equivalent, in respect of the activities which it covers, to the profession which the person has sought authorisation to pursue in the host Member State.

The second case to be mentioned is Case C-379/09 *Casteels* (judgment of 10 March 2011), which concerns the safeguarding of the supplementary pension rights of a migrant worker. In that judgment the Court held that Article 45 TFEU precludes, in the context of the mandatory application of a collective labour agreement, in order to determine the period for the acquisition of definitive entitlements to supplementary pension benefits in a Member State, the non-inclusion of the years of service completed by a worker for the same employer in establishments of that employer situated in different Member States and pursuant to the same coordinating contract of employment. That provision also precludes a worker who has been transferred from an establishment of his employer in one Member State to an establishment of the same employer in another Member State from being regarded as having left the employer of his own free will. The Court also stated that Article 48 TFEU does not have any direct effect capable of being relied on by an individual against his private-sector employer in a dispute before national courts.

([25]) Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989, L 19, p. 16), as amended by Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001 (OJ 2001 L 206, p. 1).

The principle of the free movement of capital was the subject of a number of tax judgments. Among those, the first that should be mentioned is Case C-10/10 *Commission* v *Austria* (judgment of 16 June 2011), in which the Court held that a Member State which authorises the deduction from tax of gifts to research and teaching institutions exclusively where those institutions are established in its territory fails to fulfil its obligations under Article 56 EC (now Article 63 TFEU) and Article 40 of the Agreement on the European Economic Area. According to the Court, a distinction between taxpayers according to the sole criterion of the place of establishment of the recipient of the gift cannot, by definition, be a valid criterion for assessing the objective comparability of the situations or, consequently, for establishing an objective difference between them. Further, while the promotion of research and development may constitute an overriding reason in the public interest, national legislation reserving the benefit of a tax credit solely to research carried out in the Member State concerned is directly contrary to the objective of European Union policy in the field of research and technical development. In accordance with Article 163(2) EC, that policy aims in particular to remove the fiscal obstacles to cooperation in the field of research, and cannot therefore be implemented by the promotion of research and development at national level.

Secondly, Case C-450/09 *Schröder* (judgment of 31 March 2011) is to be noted. In that case, the Court held that Article 63 TFEU precludes legislation of a Member State which, while allowing a resident taxpayer to deduct the annuities paid to a relative who transferred to him immovable property situated in the territory of that State from the rental income derived from that property, does not grant such a deduction to a non-resident taxpayer, in so far as the undertaking to pay those annuities results from the transfer of that property. The Court pointed out that, to the extent that the undertaking of a non-resident taxpayer to pay the annuity to his relative results from the transfer to that taxpayer of immovable property situated in the Member State concerned, that annuity constitutes an expense directly linked to the use of that property, with the result that the non-resident taxpayer is in that regard in a situation comparable to that of a resident taxpayer. In those circumstances, national provisions which, in matters of income tax, deny non-residents the right to deduct such an expense, while that right is, by contrast, granted to residents, is, in the absence of valid justification, contrary to Article 63 TFEU.

One final judgment should be noted, namely Case C-503/09 *Stewart* (judgment of 21 July 2011), which gave the Court the opportunity to give a ruling, in the area of social security for migrant workers, on the nature of a short-term incapacity benefit in youth and to examine the condition of ordinary residence on the territory of the Member State to which the grant of that benefit was subject. The Court's judgment establishes that a short-term incapacity benefit in youth is an invalidity benefit within the meaning of Article 4(1)(b) of Regulation No 1408/71 ([26]) if it is clear that, on the date on which the claim is made, the claimant has a permanent or long-term disability, since, in that case, the benefit relates directly to the risk of invalidity referred to in that provision. The judgment also establishes that the first subparagraph of Article 10(1) of Regulation No 1408/71 precludes a Member State from making the award of short-term incapacity benefit in youth, when it is considered to be an invalidity benefit, subject to a condition of ordinary residence by the claimant in that State.

([26]) Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ, English Special Edition, 1971 (II), p. 416), in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1), as amended by Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005 (OJ 2005 L 117, p. 1).

Approximation of laws

The case-law on the approximation of laws — abundant once again — displays great variety, much like the legislative action giving rise to it.

In the area of consumer protection, the Court gave a ruling in Joined Cases C-65/09 and C-87/09 *Gebr. Weber and Putz* (judgment of 16 June 2011) on the interpretation of Article 3(2) and (3) of Directive 1999/44 on certain aspects of the sale of consumer goods and associated guarantees, ([27]) which provides that, in the case of a lack of conformity of the goods delivered, the consumer is entitled to require of the seller that the goods be repaired or replaced free of charge. More specifically, the Court had to provide answers to two questions, namely, first, whether replacement free of charge encompasses removal of the defective goods and installation of the replacement goods, and second, whether the seller may refuse to bear the costs of replacement if they are disproportionate, in the case where that is the only remedy available.

In answering the first question, the Court recalled that the 'free of charge' aspect of the seller's obligation to bring goods into conformity is an essential element of the protection afforded to consumers by Directive 1999/44. Accordingly, the Court decided, relying on the purpose of that directive which is to ensure a high level of consumer protection, that Article 3(2) and (3) of the directive must be interpreted as meaning that, where consumer goods not in conformity with the contract which were installed in good faith by the consumer in a manner consistent with their nature and purpose, before the defect became apparent, are restored to conformity by way of replacement, the seller is obliged either to remove the goods from where they were installed and to install the replacement goods there or else to bear the cost of that removal and installation of the replacement goods. The Court further specified that that obligation on the seller exists regardless of whether he was obliged under the contract of sale to install the consumer goods originally purchased.

With regard to the second question, the Court held that Article 3(3) of Directive 1999/44 precludes national legislation from granting the seller the right to refuse to replace goods not in conformity, as the only remedy possible, on the ground that, because of the obligation to remove the goods from where they were installed and to install the replacement goods there, replacement imposes costs on him which are disproportionate with regard to the value that the goods would have if there were no lack of conformity and the significance of the lack of conformity. However, the Court also recognised that that provision, in order to establish a fair balance between the interests of the consumer and the seller, does not preclude the consumer's right to reimbursement of the cost of removing the defective goods and of installing the replacement goods from being limited, in such a case, to the payment by the seller of a proportionate amount, fixed in accordance with the criteria defined in the judgment.

Regarding liability for defective products, note should be taken of Case C-495/10 *Dutrueux* (judgment of 21 December 2011), in which the Court, to which a reference for a preliminary ruling had been made on a point of interpretation, had to define once again ([28]) the extent of the

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

([28]) See Case C-285/08 *Moteurs Leroy Somer* [2009] ECR I-4733.

harmonisation brought about by Directive 85/374. ([29]) The question referred in the case was, essentially, whether that directive precludes the French system of no-fault liability of public healthcare establishments for harm sustained by a patient as a result of the failure of equipment or products used in the course of treatment.

The Court first recalled its case-law on the extent and the degree of fullness of the harmonisation effected by Directive 85/374, stating that the latter seeks to achieve, in the matters regulated by it, complete ([30]) and exhaustive ([31]) harmonisation. That said, in order to establish whether, pursuant to that case-law, the directive precludes a given national liability system, it should first be established whether that system falls within the scope of the directive. Accordingly, having recalled the case-law, the Court proceeded to examine the limits of the ambit of the directive in terms of the class of persons who can be liable under the liability system it establishes. According to the Court, that class, which covers, as provided by Article 3 of the directive, the producer, the importer of the product into the European Union and the supplier where the producer cannot be identified, is defined exhaustively. Accordingly, the Court held that the liability of a service provider which, in the course of providing services such as treatment given in a hospital, uses defective equipment or products of which it is not the producer within the meaning of Article 3 of Directive 85/374 and thereby causes damage to the recipient of the service does not fall within the scope of the directive. On that basis the Court concluded that the directive does not prevent a Member State from applying rules, such as those which were at issue in the main proceedings, under which such a provider is liable for damage thus caused, even in the absence of any fault on its part, provided, however, that the injured person and/or the service provider retain the right to put in issue the producer's liability on the basis of the directive when the conditions laid down by the latter are fulfilled.

In the area of medicinal products for human use, reference should be made to two decisions delivered on the same day — Case C-249/09 *Novo Nordisk* (judgment of 5 May 2011) and Case C-316/09 *MSD Sharp & Dohme* (judgment of 5 May 2011) — in which the Court provided important clarification of the meaning of certain provisions which are contained in Directive 2001/83 on the Community code relating to medicinal products for human use ([32]) and regulate the advertising of such products.

In the first case, *Novo Nordisk*, the dispute in the main proceedings concerned a company specialising in the treatment of diabetes, which had been banned by decision of the Medicines Office of the Republic of Estonia from publishing in a medical journal an advertisement, aimed at persons entitled to prescribe medicines, for an insulin-based medicine, on the basis that it contravened the provisions of national law providing that advertising for a medicinal product may not contain information which is not in the summary of the product's characteristics. The national court, before which an action for annulment of that decision had been brought, referred two questions to the Court for a preliminary ruling, concerning the interpretation of Article 87(2) of Directive

([29]) Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ 1985 L 210, p. 29), as amended by Directive 1999/34/EC of the European Parliament and of the Council of 10 May 1999 (OJ 1999 L 141, p. 20).

([30]) See, inter alia, Case C-52/00 *Commission* v *France* [2002] ECR I-3827, paragraph 24; Case C-154/00 *Commission* v *Greece* [2002] ECR I-3879, paragraph 20; and Case C-402/03 *Skov and Bilka* [2006] ECR I-199, paragraph 23.

([31]) See *Moteurs Leroy Somer*, paragraphs 24 and 25.

([32]) 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).

2001/83, under which 'all parts of the advertising of a medicinal product must comply with the particulars listed in the summary of product characteristics'.

By the first question, the referring court wished to know whether Article 87(2) of Directive 2001/83 was to be interpreted as extending also to quotations taken from medical journals or other scientific works which are included in advertisements for medicinal products directed at persons qualified to prescribe medicines. The Court answered in the affirmative, holding that it follows from the position of Article 87 of Directive 2001/83 in the structure of that directive, and from the wording and content of that provision, that Article 87(2) is a general rule applicable to all advertising for medicinal products, including that directed at persons qualified to prescribe or supply medicinal products.

By the second question, the national court asked the Court about the extent of the prohibition laid down by Article 87(2) of Directive 2001/83. The Court's response was that that provision must be interpreted as prohibiting the publication, in advertising of medicinal products directed at persons qualified to prescribe or supply them, of claims which conflict with the summary of product characteristics, but it does not require that all the claims in such advertisements are included in that summary or can be derived from it. The Court further stated that such advertisements may include claims supplementing the information referred to in Article 11 of that directive, provided that those claims confirm or clarify — and are compatible with — that information and do not distort it, and are consistent with the requirements of Articles 87(3) and 92(2) and (3) of the directive.

In the second case, *MSD Sharp & Dohme*, the Court had to give a ruling on the interpretation of Article 88(1)(a) of Directive 2001/83, which prohibits the advertising to the general public of medicinal products which are available on medical prescription only. In the main proceedings, a pharmaceutical company alleged that one of its competitors had breached the national law which transposed that rule by publishing on its website freely accessible information concerning three medicinal products manufactured by it which were available only on prescription. The claimant persuaded the national courts to order the banning of the publication in question. The referring court, to which the defendant appealed on a point of law, asked the Court, essentially, if the publication at issue really constituted advertising within the meaning of Article 88(1)(a) of Directive 2001/83. The Court answered that that provision is to be interpreted as meaning that it does not prohibit the dissemination on a website, by a pharmaceutical undertaking, of information relating to medicinal products available on medical prescription only, where that information is accessible on the website only to someone who seeks to obtain it and that dissemination consists solely in the faithful reproduction of the packaging of the medicinal product, in accordance with Article 62 of the Directive 2001/83, and in the literal and complete reproduction of the package leaflet or the summary of the product's characteristics, which have been approved by the authorities with competence in relation to medicinal products. On the other hand, the dissemination, on such a website, of information relating to a medicinal product which has been selected or rewritten by the manufacturer is prohibited since such manipulation of information can be explained only by an advertising purpose.

Staying with medicinal products for human use, but focusing now on Regulation No 469/2009 concerning the supplementary protection certificate for medicinal products, [33] Case C-322/10 *Medeva* (judgment of 24 November 2011) should be mentioned. In that case, the Court responded

[33] Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products (OJ 2009 L 152, p. 1).

to a reference for a preliminary ruling seeking clarification of the conditions for obtaining a supplementary protection certificate ('SPC').

In order to make up for the insufficiency of the protection afforded by a patent, Article 3 of Regulation No 469/2009 provides the possibility for the holder of a national patent to obtain an SPC, on condition, inter alia, that the product is already protected by a basic patent in force and that a valid authorisation to place the product on the market as a medicinal product has been granted. The Court stated first, regarding the criteria for deciding whether 'the product is protected by a basic patent in force', that Article 3(a) of the regulation is to be interpreted as precluding the competent industrial property office of a Member State from granting a supplementary protection certificate relating to active ingredients which are not specified in the wording of the claims of the basic patent relied on in support of the application for such a certificate. Next, with regard to the second condition, laid down in Article 3(b) of Regulation No 469/2009, that the product must be covered by an authorisation to place it on the market as a medicinal product, the Court held, as regards the product's composition, that, provided the other requirements laid down in Article 3 are also met, Article 3(b) of the regulation does not preclude the competent industrial property office of a Member State from granting an SPC for a combination of two active ingredients, corresponding to that specified in the wording of the claims of the basic patent relied on, where the medicinal product for which the marketing authorisation is submitted in support of the application for an SPC contains not only that combination of the two active ingredients but also other active ingredients.

In the area of the protection of biotechnological inventions, the Court gave an important preliminary ruling in Case C-34/10 *Brüstle* (judgment of 18 October 2011), in which it devoted attention to defining the concept of 'human embryo'. The reference for a preliminary ruling was made in the context of an action brought by Greenpeace seeking annulment of a patent relating to neural precursor cells produced from human embryonic stem cells and used to treat neurological diseases. The Court was asked about the interpretation of the concept of 'human embryo', which is not defined by Directive 98/44 on the legal protection of biotechnological inventions, ([34]) and about the scope of the exclusion from patentability of inventions relating to the use of human embryos for industrial and commercial purposes laid down in Article 6(2)(b) of that directive.

First, the Court stated that the term 'human embryo' in Article 6(2) of Directive 98/44 must be regarded as designating an autonomous concept of European Union law, which must be interpreted in a uniform manner throughout the territory of the European Union. Noting, next, that the context and aim of the directive show that the European Union legislature intended to exclude any possibility of patentability where respect for human dignity could thereby be affected, the Court took the view that the concept of 'human embryo' was to be understood in a wide sense and that, in that framework, any non-fertilised human ovum into which the cell nucleus from a mature human cell has been transplanted and any non-fertilised human ovum whose division and further development have been stimulated by parthenogenesis constitute a 'human embryo' within the meaning of that provision. On the other hand, the Court held that it is for the national court to ascertain, in the light of scientific developments, whether a stem cell obtained from a human embryo at blastocyst stage constitutes a 'human embryo' within the meaning of that provision.

([34]) 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).

Second, the Court held that the exclusion from patentability relating to the concept of 'uses of human embryos for industrial or commercial purposes' also covers the use of human embryos for purposes of scientific research. In the Court's view, the grant of a patent for an invention implies, in principle, its industrial or commercial application, and although the aim of scientific research must be distinguished from industrial or commercial purposes, the use of human embryos for the purposes of research which constitutes the subject-matter of a patent application cannot be separated from the patent itself and the rights attaching to it.

Finally, the Court gave its ruling on the patentability of an invention involving the production of neural precursor cells. It held that an invention must be regarded as unpatentable where (as in the case at hand) the implementation of the invention requires the prior destruction of human embryos or their use as base material, whatever the stage at which that takes place and even if the description of the technical teaching claimed does not refer to the use of human embryos.

In Joined Cases C-58/10 to C-68/10 *Monsanto and Others* (judgment of 8 September 2011), the Court ruled on the circumstances in which national authorities may adopt emergency measures designed to suspend or provisionally to prohibit the use or sale of genetically modified organisms ('GMOs') the placing on the market of which has already been authorised under Directive 90/220 on GMOs ([35]) (repealed by Directive 2001/18 ([36])).

The Court observed that, in the case in point, MON 810 maize, which was authorised as, inter alia, a seed for the purpose of planting pursuant to Directive 90/220, was notified as an 'existing product' under Regulation No 1829/2003 on genetically modified food, ([37]) and was subsequently the subject of a pending application for renewal of authorisation pursuant to that regulation. The Court held that, in such circumstances, Member States cannot have recourse to the safeguard clause provided by Directive 2001/18 to adopt measures suspending and then prohibiting provisionally the use or sale of a GMO such as MON 810 maize. The Court stated that such emergency measures may, however, be adopted pursuant to Regulation No 1829/2003.

In that regard, the Court emphasised that, where a Member State intends to adopt emergency measures pursuant to Regulation No 1829/2003, it must comply not only with the substantive conditions laid down by that regulation, but also with the procedural conditions provided for in Regulation No 178/2002, ([38]) to which the former regulation refers on that point. Accordingly, the Member State must inform the Commission 'officially' of the need to take emergency measures. If the Commission takes no measure, the Member State must inform 'immediately' the Commission and the other Member States of the content of the interim protective measures adopted.

The Court held, moreover, regarding the substantive conditions for emergency measures adopted pursuant to Regulation No 1829/2003, that the latter requires the Member States to establish, in

([35]) Council Directive 90/220/EEC of 23 April 1990 on the deliberate release into the environment of genetically modified organisms (OJ 1990 L 117, p. 15).

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

([37]) Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed (OJ 2003 L 268, p. 1).

([38]) Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002 L 31, p. 1).

addition to urgency, the existence of a situation which is likely to constitute a clear and serious risk to human health, animal health or the environment. Notwithstanding their temporary and preventive character, protective measures may be adopted only if they are based on a risk assessment which is as complete as possible in the particular circumstances of an individual case, which indicate that those measures are necessary.

Finally, the Court observed that, in the light of the overall scheme provided for by Regulation No 1829/2003 and its objective of avoiding artificial disparities, the assessment and management of a serious and evident risk ultimately come under the sole responsibility of the Commission and the Council, subject to review by the European Union judicature.

Case C-442/09 *Bablok and Others* (judgment of 6 September 2011), which likewise concerns the interpretation of Regulation No 1829/2003 on genetically modified food, ([39]) is also worthy of note. The dispute in the main proceedings was between a beekeeper and Freistaat Bayern (Germany), the owner of plots of land on which MON 810 (GMO) maize had been cultivated. The beekeeper maintained that the presence of MON 810 maize DNA in maize pollen and a number of samples of his honey was liable to make his apicultural products not marketable or fit for consumption. The referring court, pointing out that the pollen in question loses its capacity to fertilise as soon as it is incorporated in honey or in pollen-based food supplements, made a reference to the Court for a preliminary ruling in order to ascertain principally whether the mere presence, in the apicultural products in question, of the pollen of genetically modified maize which has lost its reproductive capacity means that authorisation for placing those products on the market is required.

Thus it fell to the Court to clarify the concept of a genetically modified organism within the meaning of Article 2(5) of Regulation No 1829/2003. The Court took the view that a substance such as pollen derived from a variety of genetically modified maize, which has lost its ability to reproduce and is totally incapable of transferring the genetic material which it contains, no longer comes within the scope of that concept. Nevertheless, the Court held that products such as honey and food supplements containing such pollen constitute food containing ingredients produced from GMOs within the meaning of Regulation No 1829/2003. In that regard, the Court found that the pollen at issue was 'produced from GMOs' and constituted an 'ingredient' of honey and pollen-based food supplements. Concerning honey, the Court observed that pollen is not a foreign substance or impurity, but rather a normal component of it, so that it in fact must be classified as an 'ingredient'. Accordingly, the pollen at issue fell within the scope of Regulation No 1829/2003 and had to be subjected to the authorisation scheme provided for by that regulation before being placed on the market. The Court added that that authorisation scheme applies to the foodstuff containing ingredients produced from GMOs irrespective of whether such pollen is introduced into honey intentionally or adventitiously. The Court stated, finally, that the obligation to authorise and supervise a foodstuff imposed by Articles 3(1) and 4(2) of Regulation No 1829/2003 subsists whatever the amount of genetically modified material contained in the product in question, and that a tolerance threshold such as that provided for in respect of labelling in Article 12(2) of that regulation may not be applied to that obligation by analogy.

In the area of copyright protection in the information society, two decisions are particularly noteworthy.

The first concerns national measures designed to combat illegal downloading from the Internet (Case C-70/10 *Scarlet Extended* (judgment of 24 November 2011)). The case arose from a dispute

([39]) See footnote 37.

between Scarlet Extended SA, an Internet service provider ('ISP'), and SABAM, a Belgian management company entrusted with authorising the use, by third parties, of musical works of authors, composers and editors. SABAM had established that Internet users using Scarlet's services were downloading works in SABAM's catalogue from the Internet, without authorisation and without paying royalties, by means of 'peer-to-peer' networks. SABAM brought proceedings before the national court and obtained, at first instance, an order requiring the ISP to bring those copyright infringements to an end by making it impossible for its customers to send or receive in any way files containing a musical work in the SABAM catalogue using 'peer-to-peer' software. Following an appeal by the ISP, the referring court stayed proceedings in order to ask the Court, essentially, whether such an injunction was compatible with European Union law.

The Court answered that Directives 2000/31, ([40]) 2001/29, ([41]) 2004/48, ([42]) 95/46 ([43]) and 2002/58, ([44]) read together and construed in the light of the requirements stemming from the protection of the applicable fundamental rights, must be interpreted as precluding an injunction made against an ISP which requires it to install — as a preventive measure, exclusively at its expense, and for an unlimited period — a system, which applies indiscriminately to all its customers, for filtering all electronic communications passing via its services, in particular those involving the use of peer-to-peer software, and which is capable of identifying on that provider's network the movement of electronic files containing a musical, cinematographic or audiovisual work in respect of which the applicant claims to hold intellectual property rights, with a view to blocking the transfer of files the sharing of which infringes copyright.

As grounds for its decision, the Court stated that such an injunction both infringes the prohibition on imposing a general monitoring obligation on such a provider laid down by Article 15(1) of Directive 2000/31, and fails to comply with the requirement that a fair balance be struck between the right to intellectual property, on the one hand, and the freedom to conduct business, the right to protection of personal data and the freedom to receive or impart information, on the other.

In the second case (Case C-462/09 *Stichting de Thuiskopie* (judgment of 16 June 2011)), the Court ruled on the method of implementation and the extent of the obligation, owed by Member States which apply the private copying exception, to ensure payment of fair compensation to rightholders under Article 5(2)(b) of Directive 2001/29 on copyright and related rights in the information society. ([45]) The case concerned the particular situation where a commercial seller of reproduction media is established in a Member State other than that owing that obligation and focuses its operations on that State.

([40]) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ 2000 L 178, p. 1).

([41]) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).

([42]) Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45).

([43]) 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).

([44]) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (OJ 2002 L 201, p. 37).

([45]) See footnote 41.

The Court first recognised that although, in principle, it is the final user who carries out, on a private basis, the reproduction of a protected work who must be regarded as the person responsible for paying the fair compensation, it is open to the Member States, given the practical difficulties in identifying private users and obliging them to compensate rightholders for the harm caused to them, to establish a private copying levy chargeable to the persons who make reproduction equipment, devices and media available to the final user, since they are able to pass on the amount of that levy in the price paid by the final user for that service. Second, the Court interpreted the provisions of Directive 2001/29 as imposing on a Member State which has introduced the private copying exception into its national law an obligation to achieve a certain result, meaning that it must guarantee, within the framework of its competences, the effective recovery of the fair compensation intended to compensate the authors harmed for the prejudice sustained, in particular if that harm arose on the territory of that Member State. In that regard, the mere fact that the commercial seller of reproduction equipment, devices and media is established in a Member State other than that in which the purchasers reside has no bearing on that obligation to achieve a certain result. It is for the national court, where it is impossible to ensure recovery of the fair compensation from the purchasers, to interpret national law in order to allow recovery of that compensation from the person responsible for payment who is acting on a commercial basis.

Concerning the protection of intellectual property rights more generally, the Court gave a ruling in Case C-406/09 *Realchemie Nederland* (judgment of 18 October 2011) on the scope of the rule laid down by Article 14 of Directive 2004/48 on the enforcement of intellectual property rights, [46] under which Member States are to ensure that legal costs incurred by the successful party in a dispute concerning infringement of an intellectual property right are, as a general rule, borne by the unsuccessful party.

In that case, the Court held that the costs relating to an exequatur procedure brought in a Member State, in the course of which the recognition and enforcement are sought of a judgment given in another Member State in proceedings seeking to enforce an intellectual property right, fall within Article 14 of Directive 2004/48. According to the Court, that interpretation is consistent both with the general objective of Directive 2004/48, which aims to approximate the legislative systems of the Member States in order to ensure a high, equivalent and homogeneous level of intellectual property protection, and with the specific aim of Article 14, which attempts to prevent the injured party from being deterred from bringing legal proceedings in order to protect his intellectual property rights. In accordance with those objectives, the author of the infringement of the intellectual property rights must generally bear all the financial consequences of his conduct.

In Case C-236/09 *Association Belge des Consommateurs Test-Achats and Others* (judgment of 1 March 2011), the Cour constitutionnelle du Royaume de Belgique (Constitutional Court of the Kingdom of Belgium) sought a ruling from the Court on the validity of Article 5(2) of Directive 2004/113 [47] which provides that 'notwithstanding paragraph 1, Member States may decide before 21 December 2007 to permit proportionate differences in individuals' premiums and benefits where the use of sex is a determining factor in the assessment of risk based on relevant and accurate actuarial and statistical data'. The Court recalled that it is established that the purpose of Directive 2004/113 in the insurance services sector is, as is reflected in Article 5(1) of that directive, the application of unisex rules on premiums and benefits. Recital 18 in the preamble to Directive 2004/113 expressly states that, in order to guarantee equal treatment between men and women, the use of sex as an

(46) See footnote 42.

(47) Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ 2004 L 373, p. 37).

actuarial factor must not result in differences in premiums and benefits for insured individuals. Recital 19 in the preamble to that directive describes the option granted to Member States not to apply the rule of unisex premiums and benefits as an option to permit 'exemptions'. Accordingly, Directive 2004/113 is based on the premiss that, for the purposes of applying the principle of equal treatment for men and women, enshrined in Articles 21 and 23 of the Charter of Fundamental Rights of the European Union, the respective situations of men and women with regard to insurance premiums and benefits contracted by them are comparable. The Court then held that Article 5(2) of Directive 2004/113, which enables the Member States in question to maintain without temporal limitation an exemption from the rule of unisex premiums and benefits, works against the achievement of the objective of equal treatment between men and women, which is the purpose of Directive 2004/113, and is incompatible with Articles 21 and 23 of the Charter of Fundamental Rights of the European Union. Accordingly, the Court concluded that Article 5(2) of that directive must be regarded as invalid with effect from 21 December 2012.

In Case C-442/10 *Churchill Insurance Company and Evans* (judgment of 1 December 2011), concerning the first, second and third directives on civil liability in respect of the use of motor vehicles (respectively, Directives 72/166, (48) 84/5 (49) and 90/232 (50), now codified by Directive 2009/103, (51) the Court had to give a preliminary ruling on the scope of compulsory insurance cover in respect of third parties who have been victims of an accident.

In its judgment, the Court held that the first paragraph of Article 1 of Third Directive 90/232 and Article 2(1) of Second Directive 84/5 preclude national rules the effect of which is to omit automatically the requirement that the insurer compensate a passenger who is a victim of a road traffic accident when that accident was caused by a driver who was not insured under the insurance policy and the victim, who was a passenger in the vehicle at the time of the accident, was insured to drive the vehicle himself but had given permission to the driver to drive it. The Court further stated that that interpretation does not differ depending on whether the insured victim was aware that the person to whom he gave permission to drive the vehicle was not insured to do so, whether he believed that the driver was insured or whether or not he had turned his mind to that question. The Court did, however, recognise that that does not mean that the Member States may not take account of that factor within the ambit of their rules relating to civil liability provided, none the less, that they exercise their powers in that field in compliance with European Union law and, in particular, with Article 3(1) of the First Directive, Article 2(1) of the Second Directive and Article 1 of the Third Directive, and that those national rules do not deprive those directives of their effectiveness. Accordingly, national rules, formulated in terms of general and abstract criteria, may not refuse or restrict to a disproportionate extent the compensation to be made available to a passenger by compulsory insurance against civil liability in respect of the use of motor vehicles solely on the basis of his contribution to the occurrence of the loss which arises. It is only in exceptional circumstances that the amount of compensation may be limited on the basis of an assessment of that particular case.

(48) Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability (OJ, English Special Edition 1972 (II), p. 360).

(49) Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ 1984 L 8, p. 17).

(50) Third Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ 1990 L 129, p. 33).

(51) Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ 2009 L 263, p. 11). This directive had not yet entered into force at the material time.

Transport

In Case C-176/09 *Luxembourg* v *Parliament and Council* (judgment of 12 May 2011), the Court gave a ruling on the validity of Directive 2009/12 on airport charges. ([52]) The Grand Duchy of Luxembourg's only airport, though it does not meet the quantitative criterion laid down by that directive (5 million passenger movements per year), and though it is close to other airports situated in neighbouring Member States, is subject to the administrative and financial obligations under the directive, since it is regarded, in accordance with the directive, as enjoying a privileged position as the point of entry to that State. The Grand Duchy of Luxembourg relied, in challenging the validity of Directive 2009/12, on an infringement of the principle of equal treatment on the basis, first, that there were other regional airports registering higher passenger movements and, second, that its only airport was treated like an airport registering annual passenger traffic in excess of 5 million.

The Court first recalled that the European Union legislature had drawn a distinction between two categories of airports, and that the airport recording the highest passenger movements per year in a Member State where no airport reaches the threshold of 5 million passenger movements is regarded as the point of entry into the Member State because it enjoys a privileged position. The Court then held that the European Union legislature had neither erred nor exceeded its powers in establishing a distinction between secondary airports and principal airports, irrespective of the number of passenger movements per year: secondary airports cannot be regarded as the point of entry into the Member State within the meaning of the directive. Finally, the Court held that the mere fact that an airport enjoys a privileged position suffices to justify the application of the directive. The Court also pointed out that the charges stemming from the system introduced by the directive do not appear disproportionate to the advantages it brings, and that the European Union legislature had rightly considered that it was not necessary to include in the scope of the directive airports recording traffic under 5 million passenger movements per year when they are not the main airport of their Member State.

Competition

Whether it be through the examination of appeals against judgments of the General Court or following references for preliminary rulings, the Court has had the chance to clarify various aspects of competition law, both at the level of substantive Treaty rules and at the level of procedures for applying them, particularly in relation to the division of powers between the European Union authorities and those of the Member States.

In Joined Cases C-78/08 to C-80/08 *Paint Graphos and Others* (judgment of 8 September 2011), several questions relating to tax advantages granted by Italian law to cooperative societies were submitted to the Court for a preliminary ruling. The Court had to rule on the application of the provisions relating to State aid ([53]) to the various exemptions from taxes to which cooperative societies are entitled under Italian legislation. The referring court had held that it was necessary to ascertain first whether and, if so, under what conditions, the fact that the cooperative societies in question made tax savings, which were often considerable, constituted aid incompatible with the common market within the meaning of Article 87(1) EC. Owing to the direct effect of Article 88(3) EC, if those benefits were found to be incompatible, the national authorities, including the judicial authorities, would be obliged to disapply the Italian decree providing for the tax advantages.

([52]) Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges (OJ 2009 L 70, p. 11).

([53]) Articles 87 and 88 of the EC Treaty (OJ 2002 C 325, p. 67).

The Court therefore explained how it is necessary to interpret the conditions for categorising a national measure as State aid under Article 87(1) EC, namely: (i) the financing of that measure by the State or through State resources; (ii) the selectivity of that measure; and (iii) the effect of that measure on trade between Member States and the distortion of competition resulting from the measure. The Court stated that tax exemptions constitute State aid and that aid which favours certain undertakings or the production of certain goods is prohibited. The Court also pointed out that a measure which constitutes an exception to the application of the general tax system may nevertheless be justified if the Member State concerned can show that that measure results directly from the basic or guiding principles of its tax system, while observing that the objective pursued by State measures is not sufficient to exclude those measures outright from classification as State aid. In any event, in order for tax exemptions such as those of the Italian cooperatives to be justified by the nature or general scheme of the tax system of the Member State concerned, it is also necessary to ensure that those exemptions are consistent with the principle of proportionality and do not go beyond what is necessary, in that the legitimate objective being pursued could not be attained by less far-reaching measures. Finally, the Court examined the issue of the effect on trade between Member States and that of the distortion of competition, in accordance with the provisions of Article 87(1) EC. The Court observed that, when aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid. In that regard, the Court stated that it is not necessary that the beneficiary undertaking itself be involved in intra-Community trade. Where a Member State grants aid to an undertaking, internal activity may be maintained or increased as a result, so that the opportunities for undertakings established in other Member States to penetrate the market in that Member State are thereby reduced. Furthermore, the strengthening of an undertaking which, until then, was not involved in intra-Community trade may place that undertaking in a position which enables it to penetrate the market of another Member State. That is why the Court concluded that the tax benefit granted to Italian cooperative societies was capable of affecting trade between Member States and distorting competition, and constituted State aid, provided, however, that all the requirements for the application of Article 87(1) EC were met. The Court stated that it was for the referring court to determine whether the tax exemptions granted to cooperative societies are selective and whether they may be justified by the nature or general scheme of the national tax system of which they form part. In order to do this, the Court recommended the Italian court to establish in particular whether the cooperative societies are in fact in a comparable situation to that of other operators in the form of profit-making legal entities and, if that is indeed the case, whether the more advantageous tax treatment enjoyed by those cooperative societies, first, forms an inherent part of the essential principles of the tax system applicable in the Member State concerned and, second, complies with the principles of consistency and proportionality.

In Joined Cases C-106/09 P and C-107/09 P *Commission and Spain* v *Government of Gibraltar and the United Kingdom* (judgment of 15 November), the Court set aside the judgment of the General Court of 18 December 2008 by which the General Court annulled a decision of the Commission relating to an aid regime which the United Kingdom of Great Britain and Northern Ireland was planning to implement through the reform of corporate tax in Gibraltar. The Court held that the General Court had made an error of law by holding that the proposed tax reform did not confer selective advantages on offshore companies. The Court held that, while a different tax burden resulting from the application of a 'general' tax regime is not sufficient on its own to establish the selectivity of taxation, that selectivity nevertheless exists when, as in the case in point, the taxation criteria adopted by a tax system are such as to characterise the recipient undertakings, by virtue of the properties which are specific to them, as a privileged category of undertakings. The Court stated in particular that the classification of a tax system as 'selective' is not conditional upon that system being designed in such a way that all undertakings are liable to the same tax

burden and that some of them benefit from derogating provisions giving them a selective advantage. Such a view of the selectivity criterion would require that, in order for a tax system to be classifiable as selective, it must be designed in accordance with a certain regulatory technique. However, the consequence of such an approach would be that national tax rules would from the outset fall outside the scope of control of State aid merely because they were adopted under a different regulatory technique although they produce the same effects.

In Case C-52/09 *TeliaSonera Sverige* (judgment of 17 February 2011), the Court dealt with an anti-competitive practice in the telecommunications sector, on the wholesale market in asymmetric digital subscriber line input services used for broadband connections. A Swedish court raised before the Court the question of the criteria on the basis of which a pricing practice causing margin squeeze should be held to constitute an abuse of a dominant position. The practice called 'margin squeeze' consists of an operator, which is generally vertically integrated, setting both the retail tariffs in a market and the tariff of an intermediary service which is necessary for entry onto the retail market, without leaving a margin between the two sufficient to cover the other costs incurred in supplying the retail service. Such a practice may constitute an abuse, within the meaning of Article 102 TFEU, by the vertically integrated telecommunications undertaking of its dominant position.

The Court recalled that subparagraph (a) of the second paragraph of Article 102 TFEU expressly prohibits a dominant undertaking from directly or indirectly imposing unfair prices. The Court then stated that the list of abusive practices contained in Article 102 TFEU is not exhaustive, so that the list of abusive practices contained in that provision does not exhaust the methods of abusing a dominant position prohibited by European Union law. The concept of abuse of a dominant position prohibited by that provision is an objective concept relating to the conduct of a dominant undertaking which, on a market where the degree of competition is already weakened precisely because of the presence of the undertaking concerned, through recourse to methods different from those governing normal competition in products or services on the basis of the transactions of commercial operators, has the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition. Thus, according to the Court, in order to determine whether the dominant undertaking has abused its position by the pricing practices it applies, it is necessary to consider all the circumstances and to investigate whether the practice tends to remove or restrict the buyer's freedom to choose his sources of supply, to bar competitors from access to the market, to apply dissimilar conditions to equivalent transactions with other trading parties or to strengthen the dominant position by distorting competition.

The Court therefore held that, in the absence of any objective justification, the fact that a vertically integrated undertaking, holding a dominant position on the wholesale market in asymmetric digital subscriber line input services, applies a pricing practice under which the spread between the prices applied on that market and those applied in the retail market for broadband connection services to end users is not sufficient to cover the specific costs which that undertaking must incur in order to gain access to that retail market may constitute an abuse within the meaning of Article 102 TFEU.

The Court specified the circumstances of the case which, when assessing whether such a practice is abusive, are not relevant to the determination of the existence of the abuse of a dominant position. They include the following circumstances: the absence of any regulatory obligation on the undertaking concerned to supply asymmetric digital subscriber line input services on the wholesale market in which it holds a dominant position; the degree of dominance held by that undertaking in that market; the fact that that undertaking does not also hold at the same time a dominant position in the retail market for broadband connection services to end users; whether

the customers to whom such a pricing practice is applied are new or existing customers of the undertaking concerned; the fact that the dominant undertaking is unable to recoup any losses which the establishment of such a pricing practice might cause, or the extent to which the markets concerned are mature markets and whether they involve new technology requiring high levels of investment.

The Court held that, as a general rule, primarily the prices and costs of the undertaking concerned on the retail services market should be taken into consideration. Only where it is not possible, in particular circumstances, to refer to those prices and costs should those of its competitors on the same market be examined. The Court also held that it is necessary to demonstrate that, taking particular account of whether the wholesale product is indispensable, that practice produces an anti-competitive effect, at least potentially, on the retail market, and that the practice is not in any way economically justified.

In Case C-90/09 *General Química and Others* v *Commission* (judgment of 20 January 2011), the Court ruled on the regime providing for a presumption of actual exercise by a parent company of decisive influence over the conduct of its subsidiary, in connection with a cartel in the rubber chemicals sector. That case concerned a holding company that held 100% of the capital of an interposed company which, in turn, held the entire capital of a subsidiary. According to the Court, it cannot be excluded that a holding company may be held jointly and severally liable for the infringements of European Union competition law committed by a subsidiary of its group whose capital it does not hold directly, in so far as that holding company exercises decisive influence over that subsidiary, even indirectly via an interposed company. That is the case, in particular, where the subsidiary does not determine its conduct independently on the market in relation to that interposed company, which does not operate autonomously on the market either, but essentially acts in accordance with the instructions given to it by the holding company. In such a situation, the holding company, the interposed company and the last subsidiary in the group form part of the same economic unit and, therefore, constitute a single undertaking for the purposes of European Union competition law. The Court therefore confirmed that the Commission is entitled to require the holding company to pay the fine imposed on the last subsidiary of the group jointly and severally, without it being necessary to establish direct involvement in that infringement, unless the holding company can rebut the presumption by demonstrating that either the interposed company or the subsidiary operate independently on the market. The Court however set aside the judgment of the General Court, which confirmed the decision of the Commission, on the ground that the General Court was required to take account of and to conduct a concrete examination of the factors which were raised by the parent company to show that the subsidiary implemented its commercial policy independently, in order to ascertain whether the Commission had made an error of assessment in regarding that evidence as insufficient to demonstrate that that subsidiary did not constitute a single economic entity with the parent company. The General Court committed an error of law by affirming that the arguments raised in order to establish such independence could not succeed without carrying out a concrete examination of the factors raised by the parent company, but by referring only to case-law.

In a case relating to a cartel in the chemical products sector, the Court again ruled on the regime providing for a presumption of actual exercise by a parent company of decisive influence over the conduct of its subsidiary (Case C-521/09 P *Elf Aquitaine* v *Commission*, judgment of 29 September 2011).

By a decision of 2005, the Commission had imposed fines on several companies, including Elf Aquitaine S.A. and its subsidiary Arkema S.A., which it considered to be creators of a cartel on the market for a substance used as a chemical intermediate.

Those two companies brought two separate appeals before the General Court, seeking the setting aside of the decision of the Commission or reduction of the fines which had been imposed upon them.

The General Court rejected all of the arguments put forward by the two companies. It held in the classical manner that, when all or virtually all of the capital of a subsidiary is held by the parent company, the Commission can presume that that parent company exercises a decisive influence over the subsidiary's commercial policy.

The Court of Justice started by recalling that, where a decision on competition law relates to several addressees and concerns the imputability of the infringement, it must include an adequate statement of reasons with respect to each addressee. Thus, in regard to a parent company held liable for the infringement committed by its subsidiary, such a decision must in principle contain a detailed statement of reasons for imputing the infringement to that company.

The Court stated that, given that the Commission decision relied exclusively on the presumption that Elf Aquitaine S.A. actually exercised decisive influence over the conduct of its subsidiary, the Commission was required to explain adequately the reasons why the matters of fact and of law put forward by Elf Aquitaine S.A. did not suffice to rebut that presumption, as otherwise the presumption would be rendered irrebuttable. The rebuttable nature of the presumption requires that those concerned produce evidence relating to the economic, organisational and legal links between the undertakings concerned, in order for that presumption to be rebutted.

According to the Court, the General Court therefore had to pay particular attention to the question of whether the Commission decision contained a detailed statement of the reasons for which the evidence put forward by Elf Aquitaine S.A. was not sufficient to rebut the presumption of liability applied in that decision.

The Court then stated that the grounds of the Commission decision concerning the arguments put forward by Elf Aquitaine S.A. consisted only of a series of mere repetitive, and by no means detailed, assertions and denials, and, in the absence of further information, that set of assertions and denials was therefore incapable of enabling Elf Aquitaine S.A. to ascertain the reasons for the measure or the competent court to exercise its power of review.

As a consequence, the Court set aside the judgment of the General Court and annulled the Commission decision in so far as it imputed the infringement to Elf Aquitaine S.A. and imposed a fine upon it.

In a case relating to a set of agreements and practices in the copper industrial tubes sector concerning three companies in the same group, the Commission adopted a decision relating to a proceeding under Article 81 EC and Article 53 of the Agreement on the European Economic Area. ([54]) The three companies brought an action before the General Court, relying on pleas relating to the amount of the fine imposed by the Commission. The General Court rejected each of the pleas and the companies appealed to the Court of Justice (Case C-272/09 P *KME Germany and Others* v *Commission*, judgment of 8 December 2011).

In addition to review of application of the criteria — forming the subject of settled and well-established case-law of the European Union judicature — applicable to the fixing of the amount of

([54]) Agreement on the European Economic Area (OJ 1994 L 1, pp. 181 to 185).

fines in the event of anti-competitive practices, that is to say, the duration of the infringement, its seriousness and any cooperation of the companies concerned, the Court ruled on the plea alleging breach of the right to an effective judicial remedy. The companies submitted that the General Court had infringed European Union law and their fundamental right to a full and effective judicial review by failing to examine their arguments closely and thoroughly and had deferred, to an excessive and unreasonable extent, to the Commission's discretion. They relied on Article 6 of the European Convention on Human Rights and on the Charter of Fundamental Rights of the European Union. ([55])

The Court of Justice observed that the principle of effective judicial protection is a general principle of European Union law to which expression is now given by Article 47 of the Charter. The judicial review of the decisions of the institutions was arranged by the founding Treaties; in addition to the review of legality, provided for under Article 263 TFEU, a review with unlimited jurisdiction was envisaged with regard to the penalties laid down.

As to the review of legality, the Court held in line with its previous case-law that, whilst the Commission has a margin of discretion in areas giving rise to complex economic assessments, that does not however mean that the European Union judicature must refrain from reviewing the Commission's interpretation of information of an economic nature. It is for the European Union judicature to carry out that review on the basis of the matters adduced by the applicant.

The Court therefore held that the European Union judicature cannot use the Commission's margin of discretion — either as regards the choice of factors taken into account in the assessment by the Commission of the criteria which are taken into consideration in order to determine the amount of fines or as regards the assessment of those factors — as a basis for dispensing with the conduct of an in-depth review of the law and of the facts.

As to the unlimited jurisdiction relating to the amount of fines, the Court held that that jurisdiction empowers the European Union judicature, in addition to carrying out a mere review of the lawfulness of the penalty, to substitute its own appraisal for the Commission's and, consequently, to cancel, reduce or increase the pecuniary sanction imposed. However, the exercise of unlimited jurisdiction does not mean that the European Union judicature is required to carry out a review of its own motion of the whole of the contested decision; that would involve a new complete investigation of the documents in the case.

The Court therefore firstly concluded that the European Union judicature must review both the law and the facts, and that it has the power to assess the evidence, to annul the decision of the Commission and to alter the amount of a fine. The Court pointed out that the review of legality as provided for by European Union law is therefore not contrary to the requirements of the principle of effective judicial protection set out in the Charter of Fundamental Rights. The Court then held that the General Court had carried out the full and unrestricted review, in law and in fact, required of it in the case which was brought before it.

Case C-109/10 P *Solvay* v *Commission* and Case C-110/10 P *Solvay* v *Commission* (judgments of 25 October 2011) provided the Court with the opportunity to define the outline of the obligation to respect the rights of the defence. The Commission had sanctioned Solvay for the first time in 1990 for abuse of a dominant position on the soda ash market and a pricing agreement with a competitor. The decisions by means of which the Commission had sanctioned this Belgian

([55]) Charter of Fundamental Rights of the European Union (OJ 2010 C 83, p. 401).

undertaking were annulled. The Commission therefore adopted new decisions in 2000 imposing new fines on Solvay for the same conduct. Solvay brought an action before the General Court, alleging that the Commission had infringed the right of access to documents held by the Commission, in particular due to the fact that some of those documents had been lost. Solvay also claimed that, before taking new decisions, the Commission ought to have heard it. After the General Court dismissed Solvay's actions, that company appealed to the Court, which had to examine the same complaints.

The Court firstly pointed out that the right of access to the file means that the Commission provides the undertaking concerned with the opportunity to examine all the documents in the investigation that might be relevant for its defence. A breach of the right of access to the file during the procedure prior to the adoption of a decision is, in principle, capable of giving rise to the annulment of that decision when it has adversely affected the rights of the defence.

The Court stated that, in the case in point, it was not a question of some missing documents, whose contents could have been reconstructed from other sources, but of whole sub-files which could have contained essential documents in the procedure followed before the Commission and which could have also been relevant for Solvay's defence.

As a consequence, the Court stated that the General Court had committed an error of law by holding that the fact that Solvay had not had access to all of the documents in the case did not amount to an infringement of the rights of the defence.

As regards hearing of an undertaking before the adoption of a Commission decision, the Court stated that it forms part of the rights of the defence and that it must therefore be examined in the light of the specific circumstances of each case. Where, following the annulment of a decision on account of a procedural defect concerning exclusively the procedures governing its final adoption by the College of Commissioners, the Commission adopts a new decision, having substantially the same content and based on the same objections, the Commission is not required to conduct a new hearing of the undertaking concerned. However, the Court held that the question of the hearing of Solvay could not be separated from access to the documents in the case, since, during the administrative procedure which preceded the adoption of the first decisions of 1990, the Commission had not provided Solvay with all the documents in the case. Despite that factor and the importance which the case-law of the Court and the General Court gives to access to the documents in the case, the Commission adopted the same decisions as those which were annulled for lack of proper authentification without initiating a new administrative procedure in the course of which it would have had to hear Solvay, after having given it access to the file.

The Court therefore concluded that the General Court had committed an error of law in holding that the hearing of Solvay was not necessary in order to adopt the new decisions. It set aside the judgments of the General Court and, ruling on the substance of the case, annulled the Commission decisions.

In cases relating to agreements and concerted practices involving European producers of beams, the European Commission adopted, in 1994, a decision against ARBED (now Arcelor Mittal) and, in 1998, a decision against Thyssen Stahl (now ThyssenKrupp), imposing fines on both of those undertakings. Those two decisions were set aside by the Court of Justice for infringement of the rights of the defence. The Commission nevertheless adopted two new decisions in 2006 in respect of the same facts, which dated from 1988 to 1991, relying on, inter alia, the provisions of the ECSC Treaty, which expired on 23 July 2002. Those last two decisions were initially placed before the General Court (which confirmed them), and then before the Court of Justice. In Joined Cases

C-201/09 P and C-216/09 P *ArcelorMittal Luxembourg* v *Commission and Commission* v *ArcelorMittal Luxembourg and Others* (judgment of 29 March 2011) and in Case C-352/09 P *ThyssenKrupp Nirosta* v *Commission* (judgment of 29 March 2011), the Court of Justice upheld the judgments of the General Court, ruling, inter alia, on the issue of the possibility of applying procedural rules adopted on the basis of the EC Treaty to breaches of the ECSC Treaty after the ECSC Treaty had expired. The Court held that, unless the legislature expresses a contrary intention, when legislation is amended there is a need to ensure continuity of the legal system. In the absence of any indication that the European Union legislature wished it to be possible for concerted practices prohibited under the ECSC Treaty to escape the application of all penalties after that treaty expired, the Court held that it would be contrary to the objectives and the coherence of the Treaties and irreconcilable with the continuity of the legal order of the European Union if the Commission did not have jurisdiction to ensure the uniform application of the rules deriving from the ECSC Treaty which continue to produce effects even after the expiry of that Treaty. The Court then stated that the principles of legal certainty and the protection of legitimate expectations required the application in the case of the substantive provisions provided for by the ECSC Treaty, whilst observing that a diligent undertaking could not be unaware of the consequences of its conduct or expect to escape a penalty through the succession of the legal framework of the EC Treaty in place of that of the ECSC Treaty. The Court thus held, first, that the Commission's power to impose fines on the companies concerned derived from the rules adopted on the basis of the EC Treaty and that the procedure had to be carried out in accordance with those rules and, second, that the substantive law providing for the applicable sanction was that of the ECSC Treaty.

In Case C-375/09 *Tele2 Polska* (judgment of 3 May 2011), relating to a decision of a national competition authority in which that authority decided that, pursuant to national law, the undertaking had not abused its dominant position and ruled that there were no grounds for a decision in respect of infringement of the EC Treaty, questions on the extent of the powers of national competition authorities were submitted to the Court for a preliminary ruling.

The Court firstly stated that, in order to ensure a coherent application of the competition rules in the Member States, a cooperation mechanism between the Commission and the national competition authorities was set up by Regulation No 1/2003, ([56]) as part of the general principle of sincere cooperation.

The Court then observed that where, on the basis of the information in its possession, a national competition authority decides that the conditions for prohibition are not met, the regulation clearly states that the power of that authority is limited to the adoption of a decision stating that that are no grounds for action.

According to the Court, empowerment of national competition authorities to take decisions stating that there has been no breach of the provisions of the Treaty concerning the abuse of a dominant position would call into question the system of cooperation established by Regulation No 1/2003 and would undermine the power of the Commission. The Court held that such a negative decision on the merits would risk undermining the uniform application of the competition rules established by the Treaty, ([57]) which is one of the objectives of that regulation, since such a decision might prevent the Commission from finding subsequently that the practice in question amounts to a breach of those rules.

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

([57]) Articles 101 and 102 of the Treaty on the Functioning of the European Union (OJ 2010 C 83, p. 47).

The Court therefore held that only the Commission is empowered to make a finding that there has been no breach of the prohibition of abuse of a dominant position provided for by Article 102 TFEU, even if that article is applied in a procedure undertaken by a national competition authority. The Court concluded that a national competition authority cannot take a decision stating that the prohibition of abuse of a dominant position has not been breached where it examines whether the conditions for applying Article 102 TFEU are satisfied and it forms the view that there has been no abuse.

The Court also held that European Union law precludes a rule of national law which would require a procedure relating to the application of Article 102 TFEU to be brought to an end by a decision stating that there has been no breach of that article. The Court pointed out that it is only where European Union law does not lay down a specific rule that a national competition authority may apply its national rules.

In Case C-360/09 *Pfleiderer* (judgment of 14 June 2011), following a reference for a preliminary ruling by a German court, the Court found it necessary to give a ruling on the possibility for third parties in the context of proceedings where fines are imposed for cartels, including parties adversely affected by a cartel, to have access to leniency applications and to information and documents voluntarily submitted by applicants for leniency to a national competition authority.

The Court firstly pointed out that neither the provisions of the EC Treaty on competition nor Regulation No 1/2003 (58) lay down common rules on leniency or common rules on the right of access to documents relating to a leniency procedure which have been voluntarily submitted to a national competition authority pursuant to a national leniency programme. The Court then stated that the Commission notice on cooperation within the Network of Competition Authorities (59) and that on immunity from fines and reduction of fines in cartel cases (60) are not binding on Member States, nor is the model leniency programme drawn up in connection with the European Competition Network.

The Court then held that the provisions of European Union law on cartels, and in particular Regulation No 1/2003, do not preclude a person who has been adversely affected by an infringement of European Union competition law and is seeking to obtain damages from being granted access to documents relating to a leniency procedure involving the perpetrator of that infringement. However, the Court stated that it is for the courts and tribunals of the Member States, on the basis of their national law, to determine the conditions under which such access must be permitted or refused by weighing the interests protected by European Union law.

Fiscal provisions

As regards value added tax, Case C-539/09 *Commission* v *Germany* (judgment of 15 November 2011) is particularly noteworthy. In that case, the Commission complained that the Federal Republic of Germany had objected to the conduct by the Court of Auditors of the European Union of

(58) See footnote 56.

(59) Commission Notice 2004/C 101/04 on cooperation within the Network of Competition Authorities (OJ 2004 C 101, p. 43).

(60) Commission Notice 2006/C 298/11 on immunity from fines and reduction of fines in cartel cases (OJ 2006 C 298, p. 17).

audits in Germany concerning administrative cooperation under Regulation No 1798/2003. ([61]) The Court held that, by acting in that way, the Federal Republic of Germany had failed to fulfil its obligations under Article 248(1) to (3) EC, which provides that the Court of Auditors is to examine the accounts of all revenue and expenditure of the Community, the legality and regularity of that revenue and expenditure as well as the soundness of financial management, and which empowers the Court of Auditors to carry out audits based on records and, if necessary, on the spot, including in the Member States.

According to the Court, the system of own resources established pursuant to the Treaty is designed, as regards VAT resources, to create an obligation on the part of the Member States to make available to the Community as own resources a proportion of the amounts which they collect as VAT. In so far as they are intended to combat VAT fraud and avoidance, the mechanisms of cooperation to which the Member States are subject by virtue of Regulation No 1798/2003 are themselves capable of having a direct and fundamental impact on the effective collection of VAT revenue and, therefore, on the availability to the Community budget of VAT resources. Thus, the effective application by a Member State of the rules on cooperation established by Regulation No 1798/2003 is likely to determine not only that Member State's ability to take effective measures to prevent tax evasion and tax avoidance in its own territory but also the ability of the other Member States to take such measures in their own territories, especially where the correct application of VAT in those other Member States depends on the information which that Member State holds. An audit by the Court of Auditors relating to administrative cooperation under Regulation No 1798/2003 therefore deals with Community revenue from the aspect of its legality and its sound financial management, and thus has a direct link with the powers conferred on the Court of Auditors by Article 248 EC.

Trade marks

Trade mark law, whether it be envisaged through the Community trade mark ([62]) or through the approximation of the laws of the Member States in that field, ([63]) required the attention of the Court on various occasions.

In Case C-263/09 P Edwin v OHIM (judgment of 5 July 2011), which related to the validity of a trade mark formed from the family name of the Italian fashion designer Elio Fiorucci, the Court ruled on the instances of invalidity of a Community trade mark following an appeal brought against the judgment of the General Court in Case T-165/06 Fiorucci v OHIM — Edwin (ELIO FIORUCCI) (judgment of 14 May 2009). The Court of Justice held that, under Article 52(2) of Regulation No 40/94, ([64]) a Community trade mark may be declared invalid on application by a person concerned claiming another earlier right. The list of rights contained in that article does not amount to an exhaustive list of rights intended to protect interests of different types, such as the right to a name, the right of personal portrayal, a copyright and an industrial property right. Therefore, the Court held that the wording and structure of the article interpreted by it do not, where a right to a name is asserted, allow application of that provision to be restricted merely to situations where the registration of a Community trade mark conflicts with a right intended exclusively to pro-

([61]) Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax (OJ 2003 L 264, p. 1).

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

([63]) Directive 2004/48/EC of the European Parliament and the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45).

([64]) See footnote 62.

tect a name as an attribute of personality; like other rights, the right to a name is therefore also protected in its economic aspects. Furthermore, the Court affirmed the jurisdiction of the General Court to review the legality of the assessment by the Office for Harmonization in the Internal Market of the national law relied upon. The Court then approved of the decision of the General Court in so far as the latter inferred from the findings made on the content of the national law concerned by the case that the proprietor of a well-known name is entitled to prevent the use of his name as a trade mark where he has not given his consent to registration of that mark.

In Case C-235/09 *DHL Express France* (judgment of 12 April 2011), the Court held following a reference for a preliminary ruling that, as a rule, a prohibition against further infringement or threatened infringement issued by a Community trade mark court extends to the entire area of the European Union. Both the objective of uniform protection of the Community trade mark pursued by Regulation No 40/94 [65] and the unitary character of that mark justify such a scope. However, the Court stated that the territorial scope of the prohibition can be limited, in particular where detriment or a threat of a detriment to the functions of the trade mark do not exist on part of the territory of the European Union. The territorial scope of the exclusive right of a Community trade mark proprietor cannot extend beyond what that right allows its proprietor to do in order to protect his trade mark. The Court added that the other Member States are, as a rule, required to recognise and enforce the judgment, thereby conferring on it a cross-border effect. Referring to the principle of sincere cooperation laid down in the second subparagraph of Article 4(3) of the Treaty on European Union, the Court then held that Member States are to provide for the measures, procedures and remedies necessary to ensure the enforcement of the intellectual property rights covered by Directive 2004/48. [66] As a consequence, the Court held that a coercive measure, such as a periodic penalty payment, ordered by a Community trade mark court by application of its national law also has effect in Member States other than the Member State of that court. Such measures can be effective only if they have effect in the same territory as that in which the judgment itself has effect. However, if coercive measures similar to those ordered by the Community trade mark court do not exist in the law of the Member State where enforcement is sought, the court seised of the case must attain the coercive objective by having recourse to the relevant provisions of its national law so as to ensure that the coercive measure originally issued is complied with in an equivalent manner.

In Case C-324/09 *L'Oréal and Others* (judgment of 12 July 2011) between, on the one hand, L'Oréal and several of its subsidiaries and, on the other, eBay International and several of its subsidiaries as well as individual sellers, the Court gave a ruling on several points concerning Community trade mark law after a United Kingdom court had referred for a preliminary ruling several questions concerning referencing services for keywords corresponding to registered trade marks. The Court held that, where offers for sale or advertisements in respect of products bearing Community trade marks whose use has not been authorised by their proprietors are targeted at consumers within the territory of the European Union, the rules of European Union law can apply. In order to assess whether such offers or advertisements are actually targeted at consumers within the European Union, the Court invited national courts to check the existence of relevant factors, particularly the geographic areas to which the seller is willing to dispatch the product in question. The Court also stated that items bearing a trade mark intended to be offered as free samples, given by the proprietor of the trade mark to his authorised distributors, are not put on the market within the

[65] See preceding footnote.

[66] See footnote 63.

meaning of Directive 89/104 ([67]) or Regulation No 40/94. ([68]) The Court provided clarification relating to the liability of the operator of an online marketplace, who, whilst not being the person who uses the trade marks when he merely allows his customers to reproduce signs corresponding to trade marks, is none the less liable where he plays an active role of such a kind as to give him knowledge of, or control over, the data relating to those offers. The operator cannot therefore exonerate himself from all liability when he assists his customers to enhance the presentation of the offers or their promotion. He also cannot exonerate himself if he was aware of facts or circumstances such that a diligent economic operator should have identified the illegality of the online offers for sale and he did not act expeditiously to remove, or disable access to, the information. The Court held that, in that last case, injunctions can be issued against the operator concerned, including a requirement to transmit information enabling the identification of customer-sellers, subject to compliance with the rules relating to the protection of personal data. Thus, according to the Court, European Union law requires the Member States to ensure that the national courts with jurisdiction in relation to the protection of intellectual property rights are able to order the operator of an online marketplace to take measures which contribute not only to bringing to an end infringements of those rights but also to preventing further infringements of that kind. The injunctions thereby authorised must, however, be effective, proportionate and dissuasive and must not create barriers to legitimate trade.

When an appeal was brought against the judgment of the General Court in Joined Cases T-225/06, T-255/06, T-257/06 and T-309/06 *Budějovický Budvar* v *OHIM — Anheuser-Busch (BUD)* (judgment of 16 December), the Court had to decide a dispute between Anheuser-Busch and Budějovický Budvar in relation to the use of the trade mark BUD to designate certain products, including beer. The first ground of appeal concerned the scope of earlier rights (a national trade mark and appellations of origin protected in certain Member States) invoked in support of the oppositions filed against the registration of the trade marks in question: ([69]) in Case C-96/09 P *Anheuser-Busch* v *Budějovický Budvar* (judgment of 29 March 2011), the Court held that it was not sufficient that the earlier rights were protected in several Member States in order to infer that those rights did not have a merely local significance. Even if the geographical extent of the protection is more than local, the rights must have been used in a sufficiently significant manner in the course of trade in a substantial part of the territory where they are the subject of protection. Furthermore, the Court stated that the use in the course of trade must be assessed separately for each of the territories concerned. The Court also held that it is only in the whole or part of the territory in which the earlier rights are protected that the exclusive rights relating to the sign can enter into conflict with a Community trade mark. The Court finally held that the General Court had committed an error of law by stating that it has to be shown only that a sign was used in the course of trade before publication of the trade mark application and not, at the latest, as at the date of that application. In view, in particular, of the considerable period of time which may elapse between the filing of an application for registration and its publication, applying the temporal condition used for acquiring the right to a mark, namely the date of application for registration of the Community trade mark, provides a better guarantee that the use claimed for the sign concerned is real and not an exercise whose sole aim is to prevent registration of a new trade mark. The judgment was therefore partially set aside and the case was referred back to the General Court.

([67]) 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).

([68]) See footnote 62.

([69]) Idem.

The Court looked again into the respective rights of Anheuser-Busch and Budějovický Budvar in Case C-482/09 *Budějovický Budvar* (judgment of 22 September 2011). The questions referred for a preliminary ruling by the United Kingdom court had their origin in the specific facts which the Court took into account in order to give its judgment. For nearly 30 years, the two companies had used the word 'Budweiser' in good faith by way of a trade mark in order to identify beer, before registering that sign as a trade mark. In response to the first two questions posed by the United Kingdom court, the Court firstly held that the notion of acquiescence, within the meaning of Article 9(1) of Directive 89/104, ([70]) is a concept of European Union law and the proprietor of an earlier trade mark cannot be held to have acquiesced in the long and well-established honest use, of which he has long been aware, by a third party of a later trade mark which is identical to his if that proprietor was not in any position to oppose that use. The Court then pointed out that the period of limitation in consequence of acquiescence cannot start to run from the date of mere use of a later trade mark, even if the proprietor of that mark subsequently has it registered because, according to the Court, the registration of the earlier trade mark in the Member State concerned does not constitute a prerequisite for the period of limitation in consequence of acquiescence to begin to run. The prerequisites for the running of that period of limitation, which it is for the national court to determine, are the registration of the later trade mark in the Member State concerned, the application for registration of that mark being made in good faith, the use of the later trade mark by its proprietor in the Member State where it has been registered and, finally, knowledge by the proprietor of the earlier trade mark that the later trade mark has been registered and used after its registration. In response to the third question referred for a preliminary ruling, the Court stated that a later registered trade mark can be declared invalid only when it has an adverse effect or is liable to have an adverse effect on the essential function of the earlier trade mark in accordance with Article 4(1) of Directive 89/104, that function being to guarantee to consumers the origin of the goods or services designated by it. Referring expressly to good faith, the Court then held that the long period of honest concurrent use of the two identical trade marks designating identical goods neither had nor was liable to have an adverse effect on the essential function of the earlier trade mark and that, as a consequence, the later trade mark did not have to be annulled. The Court itself, however, limited the scope of its judgment by pointing out on several occasions the particular circumstances of the case, going as far as to state that the circumstances which gave rise to the dispute were 'exceptional'.

Social policy

Whilst, in this area, questions of equal treatment recur, they are not the only ones to have been addressed by the Court.

Two cases gave the Court the opportunity to interpret the principle of non-discrimination on grounds of age.

In Joined Cases C-297/10 and C-298/10 *Hennigs and Mai* (judgment of 8 September 2011), the Court firstly held that the principle of non-discrimination on grounds of age proclaimed in Article 21 of the Charter of Fundamental Rights of the European Union and given specific expression in Directive 2000/78 establishing a general framework for equal treatment in employment and occupation, ([71]) and more particularly Articles 2 and 6(1) of that directive, preclude a measure laid down by a collective agreement which provides that, within each salary group, the basic pay

([70]) See footnote 67.

([71]) 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).

step of a public sector contractual employee is determined on appointment by reference to the employee's age. The fact that European Union law precludes that measure and that it appears in a collective agreement does not interfere with the right to negotiate and conclude collective agreements recognised in Article 28 of the Charter. Whilst the criterion of length of service is, as a general rule, appropriate to achieve the legitimate aim of taking into account the professional experience acquired by the employee before his appointment, the determination according to age of the basic pay step on appointment of a public sector contractual employee goes beyond what is necessary and appropriate for that purpose. A criterion also based on length of service or professional experience but without resorting to age would, from the point of view of Directive 2000/78, appear better adapted to achieving the legitimate aim mentioned above. Secondly, the Court was of the opinion that Articles 2 and 6(1) of Directive 2000/78 and Article 28 of the Charter do not preclude a measure in a collective agreement which replaces a system of pay of public sector contractual employees leading to discrimination on grounds of age by a system of pay based on objective criteria while maintaining, for a transitional period limited in time, some of the discriminatory effects of the earlier system in order to ensure that employees in post are transferred to the new system without suffering a loss of income. Transitional arrangements intended to protect established advantages must be regarded as pursuing a legitimate aim within the meaning of Article 6(1) of Directive 2000/78. Moreover, having regard to the broad discretion enjoyed by the social partners in the field of determining pay, it is not unreasonable for the social partners to adopt appropriate and necessary transitional measures to avoid a loss of income on the part of the contractual employees in question.

In Case C-447/09 *Prigge and Others* (judgment of 13 September 2011), the Court firstly held that Article 2(5) of Directive 2000/78 ([72]) must be interpreted as meaning that the Member States may authorise, through rules to that effect, the social partners to adopt measures within the meaning of that provision in the areas referred to in the provision that fall within collective agreements on condition that those rules of authorisation are sufficiently precise so as to ensure that those measures fulfil the requirements set out in Article 2(5) of the directive. A measure which fixes the age limit from which pilots may no longer carry out their professional activities at 60, whereas national and international legislation fixes that age at 65, is not a measure that is necessary for public security and protection of health, within the meaning of Article 2(5) of Directive 2000/78. The Court then held that Article 4(1) of Directive 2000/78 precludes a clause in a collective agreement that fixes at 60 the age limit from which pilots are considered as no longer possessing the physical capabilities to carry out their professional activity while national and international legislation fix that age at 65. In so far as it allows a derogation from the principle of non-discrimination, Article 4(1) of the directive must be interpreted strictly. Whilst possessing particular physical capabilities may be considered a genuine and determining occupational requirement, within the meaning of that provision, for acting as an airline pilot and whilst the aim of guaranteeing air traffic safety pursued by that measure constitutes a legitimate aim within the meaning of Article 4(1) of the directive, the fixing at 60 of the age limit from which airline pilots are regarded as no longer possessing the physical capabilities to carry out their occupational activity amounts in such circumstances, and having regard to the national and international legislation, to a disproportionate requirement within the meaning of that article. Finally, the Court held that the first subparagraph of Article 6(1) of Directive 2000/78 must be interpreted to the effect that air traffic safety does not constitute a legitimate aim within the meaning of that provision. Although the list of legitimate aims set out in the first subparagraph of Article 6(1) of the directive is not exhaustive, the aims that may be considered legitimate within the meaning of that provision and, consequently, appropriate for the purposes of justifying derogation from the principle prohibiting discrimination on grounds of

([72]) See preceding footnote.

age, are social policy objectives, such as those related to employment policy, the labour market or vocational training.

It was again Directive 2000/78, ([73]) but in relation to a different type of discrimination, that the Court had to interpret in Case C-147/08 *Römer* (judgment of 10 May 2011). That case concerned discrimination on grounds of sexual orientation, relating to the amount of a supplementary retirement pension. As regards the scope of the directive, the Court firstly held that Directive 2000/78 is to be interpreted as meaning that supplementary retirement pensions such as those paid by a public employer to former employees and their survivors on the basis of national law, which constitute pay within the meaning of Article 157 TFEU, do not fall outside the material scope of the directive either on account of Article 3(3) thereof or on account of recital 22 in the preamble thereto. The Court then held that Article 1 in conjunction with Articles 2 and 3(1)(c) of Directive 2000/78 preclude a provision of national law under which a person who has entered into a registered life partnership receives a supplementary retirement pension lower than that granted to a married, not permanently separated, person, if, first, in the Member State concerned, marriage is reserved to persons of different gender and exists alongside a life partnership, which is reserved to persons of the same gender, and, second, there is direct discrimination on the ground of sexual orientation because, under national law, that life partner is in a legal and factual situation comparable to that of a married person as regards that pension. It is for national courts to assess comparability, focusing on the respective rights and obligations of spouses and persons in a registered life partnership, as governed within the corresponding institutions, which are relevant taking account of the purpose of and the conditions for the grant of the benefit in question. The Court finally held that, should such a national provision constitute discrimination within the meaning of Article 2 of Directive 2000/78, the right to equal treatment could be claimed by an individual affected by that provision at the earliest after the expiry of the period for transposing the directive, and it would not be necessary to wait for that provision to be made consistent with European Union law by the national legislature.

In Case C-214/10 *KHS* (judgment of 22 November 2011), the Court held that Article 7(1) of Directive 2003/88 ([74]) does not preclude national provisions or practices, such as collective agreements, which limit, by a carry-over period of 15 months on the expiry of which the right to paid annual leave lapses, the accumulation of entitlement to such leave of a worker who is unfit for work for several consecutive reference periods. Unlimited accumulation would no longer reflect the actual purpose of the right to paid annual leave. That purpose has two aspects, in that it enables the worker both to rest from his work and to enjoy a period of relaxation and leisure. While the positive effect of paid annual leave for the safety and health of the worker is deployed fully where that leave is taken in the year prescribed for that purpose, namely the current year, the significance of that rest period remains if it is taken during a later period. However, in so far as the carry-over exceeds a certain temporal limit, annual leave ceases to have its positive effect for the worker with regard to its purpose of rest time, leaving only its purpose of a period of relaxation and leisure. In consequence, in light of the actual purpose of the right to paid annual leave, a worker who is unfit for work for several consecutive years cannot have the right to accumulate, without any limit, entitlements to paid annual leave acquired during that period. In that context, in order to uphold the right to paid annual leave, the objective of which is the protection of workers, the Court held that any carry-over period must take into account the specific circumstances of a worker who is unfit for work for several consecutive reference periods. Thus, that carry-over period must inter

([73]) See footnote 71.

([74]) Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9).

alia be substantially longer than the reference period in respect of which it is granted. Accordingly, the Court held that it may reasonably be considered that a carry-over period of 15 months is not contrary to the purpose of the right to paid annual leave, in that it ensures that the latter retains its positive effect for the worker as a rest period.

In Case C-108/10 *Scattolon* (judgment of 6 September 2011), the Court defined the scope of the protection of the rights of workers taken over by a new employer. The Court firstly held that the takeover by a public authority of a Member State of staff employed by another public authority and entrusted with the supply to schools of auxiliary services including, in particular, tasks of maintenance and administrative assistance constitutes a transfer of an undertaking falling within Directive 77/187, ([75]) where that staff consists of a structured group of employees who are protected as workers by virtue of the domestic law of that Member State. The Court then held that, where a transfer within the meaning of Directive 77/187 leads to the immediate application to the transferred workers of the collective agreement in force with the transferee, and where the conditions for remuneration laid down by that agreement are linked in particular to length of service, Article 3 of that directive precludes the transferred workers from suffering, in comparison with their situation immediately before the transfer, a substantial loss of salary by reason of the fact that their length of service with the transferor, equivalent to that completed by workers in the service of the transferee, is not taken into account when determining their starting salary position with the transferee. It is for national courts to examine whether, at the time of such a transfer, there is such a loss of salary.

In Case C-435/10 *van Ardennen* (judgment of 17 November 2011), the Court defined the scope of the protection of employees in the event of the insolvency of their employer. The Court held that Articles 3 and 4 of Directive 80/987 ([76]) preclude national legislation which obliges employees to register as job-seekers in the event of the insolvency of their employer, in order to fully assert their right to payment of wage claims which are outstanding, non-contested and recognised by the national legislation. It is purely by way of exception that Member States have the option, under Article 4 of Directive 80/987, to limit the payment obligation referred to in Article 3 of that directive. Article 4 must be interpreted strictly and in conformity with its social objective, which is to guarantee a minimum of protection to all employees. To that effect, the cases in which it is permitted to limit the payment obligation of the guarantee institutions are listed exhaustively by Directive 80/987 and the provisions concerned must be interpreted strictly, having regard to their derogatory character and the social objective of the directive. In that respect, it would be contrary to the objective of the directive to interpret it, and in particular Articles 3 and 4, in such a way that an employee is subject — owing to failure to comply with the obligation to register as a job-seeker within a given period — to an automatic and flat-rate reduction of the reimbursement of his salary claims, which are non-contested and recognised by the national legislation, and is not, therefore, entitled to the guarantee in respect of the salary which he has in fact lost during the reference period.

([75]) Council Directive 77/187/EEC of 14 February 1977 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 businesses (OJ 1977 L 61, p. 26).

([76]) Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer (OJ 1980 L 283, p. 23), as amended by Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 (OJ 2002 L 270, p. 10).

Environment

Implementation of the environmental protection policy which is resolutely pursued by the European Union gave rise to a number of issues to which it fell to the Court to respond.

In Joined Cases C-165/09 to C-167/09 *Stichting Natuur en Milieu and Others* (judgment of 26 May 2011), the Court looked into the question of the interpretation of Directive 2008/1, [77] which establishes the principles that govern the procedures and conditions for granting permits for the construction and operation of large industrial installations, and of Directive 2001/81, [78] which introduces a system of national emission ceilings for certain pollutants. The Court held that, when granting an environmental permit for the construction and operation of an industrial installation, the Member States are not obliged to include among the conditions for grant of that permit the national emission ceilings for SO_2 and NO_x laid down by Directive 2001/81. They are nevertheless required to comply with the obligation arising from that directive of reducing emissions of inter alia those pollutants, to amounts not exceeding the ceilings laid down in Annex I to that directive by the end of 2010 at the latest. During the transitional period from 27 November 2002 to 31 December 2010, the Member States had to refrain from adopting measures liable seriously to compromise the attainment of the prescribed result. [79] However, the Court allowed Member States the possibility of adopting a specific measure relating to a single source of SO_2 and NO_x during that period, stating that such a measure did not appear liable seriously to compromise the attainment of the result in question. The Court was of the view that, during that period, Directive 2001/81 did not itself require the Member States to refuse or to attach restrictions to the grant of an environmental permit for the construction and operation of an industrial installation, or to adopt specific compensatory measures for each permit granted of that kind, even where the national emission ceilings for SO_2 and NO_x were exceeded or risked being exceeded. Finally, the Court held that Article 4 of Directive 2001/81 is neither unconditional nor sufficiently precise for individuals to be able to rely upon it before the national courts before 31 December 2010. By contrast, Article 6 grants rights to individuals directly concerned which can be relied upon before the national courts in order to claim that, during the transitional period, the Member States should adopt or envisage appropriate and coherent policies and measures capable of reducing emissions of the pollutants covered so as to comply with the national ceilings laid down in Annex I to that directive. Individuals can also claim that the States should make the programmes drawn up for those purposes available to the public and appropriate organisations by means of clear, comprehensible and easily accessible information.

In Case C-366/10 *The Air Transport Association of America and Others* (judgment of 21 December 2011), the Court stated that Directive 2008/101 [80] must be interpreted in the light of the relevant rules of the international law of the sea and international law of the air. European Union legislation may be applied to an aircraft operator when its aircraft is in the territory of one of the Member States and, more specifically, on an aerodrome situated in such territory. In laying down a criterion for Directive 2008/101 to be applicable to operators of aircraft registered in a Member State or in

[77] Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (OJ 2008 L 24, p. 8).

[78] Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants (OJ 2001 L 309, p. 22).

[79] Article 4(3) TFEU and Article 288(3) TFEU. Directive 2001/81/EC, see footnote 78.

[80] Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community (OJ 2009 L 8, p. 3).

a third State that is founded on the fact that those aircraft perform a flight which departs from or arrives at an aerodrome situated in the territory of one of the Member States, Directive 2008/101 does not infringe the principle of territoriality or the sovereignty of the third States from or to which such flights are performed, since those aircraft are physically in the territory of one of the Member States of the European Union and are thus subject on that basis to the unlimited jurisdiction of the European Union. The Court then stated that the European Union legislature may in principle choose to permit a commercial activity, in this instance air transport, to be carried out in the territory of the European Union only on condition that operators comply with the criteria that have been established by the European Union and are designed to fulfil the environmental protection objectives which it has set for itself, in particular where those objectives follow on from an international agreement to which the European Union is a signatory, such as the Framework Convention [81] and the Kyoto Protocol. According to the reasoning of the Court, the fact that, in the context of applying European Union environmental legislation, certain matters contributing to the pollution of the air, sea or land territory of the Member States originate in an event which occurs partly outside that territory is not such as to call into question, in the light of the principles of customary international law, the full applicability of European Union law in that territory.

In Case C-115/09 *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (judgment of 12 May 2011), the Court held that Article 10a of Directive 85/337 [82] precludes legislation which does not permit non-governmental organisations promoting environmental protection, as referred to in Article 1(2) of that directive, to rely before the courts, in an action contesting a decision authorising projects likely to have significant effects on the environment for the purposes of Article 1(1) of that directive, on the infringement of a rule flowing from the law of the European Union and intended to protect the environment, on the ground that that rule protects only the interests of the general public and not the interests of individuals.

In Joined Cases C-128/09 to C-131/09, C-134/09 and C-135/09 *Boxus and Others* (judgment of 12 May 2011), the Court held that Article 1(5) of Directive 85/337 [83] must be interpreted as meaning that only projects the details of which have been adopted by a specific legislative act, in such a way that the objectives of that directive have been achieved by the legislative process, are excluded from the directive's scope. It is for the national court to verify that those two conditions are satisfied, taking account both of the content of the legislative act adopted and of the entire legislative process which led to its adoption. In that regard, a legislative act which does no more than simply ratify a pre-existing administrative act, by merely referring to overriding reasons in the general interest without a substantive legislative process enabling those conditions to be fulfilled having first been commenced, cannot be regarded as a specific legislative act for the purposes of that provision and would therefore not be sufficient to exclude a project from the scope of Directive 85/337. Interpreting Article 9(2) of the Aarhus Convention [84] and Article 10a of Directive 85/337, the Court held that, when a project falling within their scope is adopted by a legislative act, the question whether the conditions laid down in Article 1(5) of that directive are complied with must be capable of being submitted to a court of law or an independent and impartial body

[81] United Nations Framework Convention on Climate Change, signed on 9 May 1992 in New York.

[82] Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 (OJ 2003 L 156, p. 17).

[83] See preceding footnote.

[84] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1).

established by law. The Court also held that, if no review procedure is available in respect of such an act, any national court before which an action falling within its jurisdiction is brought has the task of carrying out that review and, as the case may be, disapplying that legislative act.

Visas, asylum and immigration

Responsible for reviewing the actions of Member States in this particularly sensitive area, national courts found it necessary on various occasions to use the preliminary ruling procedure in order for the Court to explain the requirements resulting from European Union law on the treatment of third-country nationals who want to stay in the European Union.

In Case C-61/11 PPU *El Dridi* (judgment of 28 April 2011), the Court was asked whether Directive 2008/115, ([85]) in particular Articles 15 and 16 thereof, had to be interpreted as precluding national legislation which provides for a sentence of imprisonment to be imposed on an illegally staying foreign national on the sole ground that he remains, without valid grounds, on national territory, contrary to an order to leave that territory within a given period. The Court, which dealt with the case under the urgent preliminary ruling procedure upon application of the referring court, answered in the affirmative, since such a penalty, due inter alia to its conditions and methods of application, risks jeopardising the attainment of the objective pursued by that directive, namely, the establishment of an effective policy of removal and repatriation of illegally staying third-country nationals.

Case C-329/11 *Achughbabian* (judgment of 6 December 2011) also concerns the interpretation of Directive 2008/115 ([86]) in relation to national legislation imposing penal sanctions. More precisely, the Court was asked whether, taking into account its scope, Directive 2008/115 precludes national legislation which provides for the imposition of a sentence of imprisonment on a third-country national on the sole ground of his illegal entry and residence in national territory. The Court firstly stated that Directive 2008/115 only concerns the adoption of decisions to return third-country nationals illegally staying in a Member State and the implementation of those decisions. It is thus not designed to harmonise in their entirety the national rules on the stay of foreign nationals. According to the Court, it follows that that directive does not preclude the law of a Member State from classifying an illegal stay as an offence and laying down penal sanctions to deter and prevent such an infringement of the national rules on residence. It also does not preclude a third-country national being placed in detention with a view to determining whether or not his stay is lawful.

Secondly, the Court held that Directive 2008/115 must be interpreted as precluding legislation of a Member State repressing illegal stays by criminal sanctions, in so far as that legislation permits the imprisonment of a third-country national who, though staying illegally in the territory of that Member State and not being willing to leave that territory voluntarily, has not been subject to coercive measures within the meaning of Article 8 of that directive and has not, in the event of placing in detention with a view to the preparation and implementation of his removal, reached the expiry of the maximum duration of that detention. The Court then stated that, by contrast, that directive does not preclude such legislation in so far as the latter permits the imprisonment of a third-country national to whom the return procedure established by the directive has been applied and who is staying illegally in the territory of that Member State with no justified ground

([85]) Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98).

([86]) See preceding footnote.

for non-return. Whilst the Member States bound by Directive 2008/115 cannot provide for a term of imprisonment for illegally staying third-country nationals in situations in which the latter must, by virtue of the common standards and procedures established by that directive, be removed and may, with a view to preparation and implementation of that removal, at the very most be subject to detention, that does not exclude the possibility of Member States adopting or maintaining provisions, which may be of a criminal nature, governing, in compliance with the principles of the directive and its objective, the situation in which coercive measures have not enabled the removal of an illegally staying third-country national to take place.

Case C-69/10 *Samba Diouf* (judgment of 28 July 2011) concerned a third-country national whose application for international protection made to the authorities of a Member State was refused under an accelerated procedure. He then brought an action seeking, in particular, annulment of the decision refusing his application in so far as the national authorities had thereby decided to rule on the merits of his application under the accelerated procedure, and reversal or annulment of that decision in so far as it refused him international protection. During its consideration of the admissibility of the action for annulment of the decision of the national authorities to rule under an accelerated procedure, the national court concluded that the application of domestic law, which provided that such a decision was not open to any appeal, gave rise to questions concerning the interpretation of Article 39 of Directive 2005/85 on minimum standards on procedures in Member States for granting and withdrawing refugee status, ([87]) with respect to the application of the general principle of the right to an effective remedy. Following a reference for a preliminary ruling, the Court held that, on a proper construction, Article 39 of that directive and the principle of effective judicial protection do not preclude national rules under which no separate action may be brought against the decision of the competent national authority to deal with an application for asylum under such an accelerated procedure, provided that the reasons which led that authority to examine the merits of the application under that procedure can in fact be subject to judicial review in the action which may be brought against the final decision rejecting the application — a matter which falls to be determined by the national courts. According to the Court, the decision relating to the procedure to be applied for the examination of the application for asylum, viewed separately and independently from the final decision which grants or rejects the application, is a measure preparatory to the final decision on the application. Accordingly, the absence of a remedy at that stage of the procedure does not constitute an infringement of the right to an effective remedy, provided, however, that the legality of the final decision adopted in an accelerated procedure and, in particular, the reasons which led the competent authority to reject the application for asylum as unfounded may be the subject of a thorough review by the national court, within the framework of an action against the decision rejecting the application. By contrast, the Court stated that the effectiveness of such an action would not be guaranteed if, because of the impossibility of bringing an appeal against the decision of the competent authority to examine an application for asylum under an accelerated procedure, the reasons which led that authority to examine the merits of the application under such a procedure could not be the subject of judicial review, in so far as those reasons are the same as those which led to the application being rejected. Such a situation would render review of the legality of the decision impossible, as regards both the facts and the law. What is important, therefore, is that such reasons may be effectively challenged at a later stage before the national court and reviewed by it within the framework of the action that may be brought against the final decision closing the procedure relating to the application for asylum.

([87]) Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13).

Still in relation to the right of asylum, in Joined Cases C-411/10 and C-493/10 *NS* (judgment of 21 December 2011), the Court was asked whether Member States can transfer asylum seekers to other Member States where there is a risk of a serious infringement of the rights which the Charter of Fundamental Rights of the European Union grants to those asylum seekers. For that purpose, the Court gave a ruling on the interpretation to be given to Articles 1, 4, 18 and 47 of the Charter of Fundamental Rights and Article 3 of Regulation No 343/2003. ([88])

The Court firstly interpreted Article 4 of the Charter of Fundamental Rights of the European Union as meaning that the Member States, including the national courts, may not transfer an asylum seeker to the Member State responsible within the meaning of Regulation No 343/2003 where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that Member State amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman and degrading treatment within the meaning of that provision. According to the Court, it follows that European Union law precludes the operation of a conclusive presumption that the Member State to which responsibility is allocated by Article 3(1) of Regulation 343/2003 complies with the fundamental rights of the European Union, a solution which is not rebutted by Articles 1, 18 and 47 of the Charter of Fundamental Rights.

The Court then held that, subject to the right itself to examine the application referred to in Article 3(2) of Regulation No 343/2003, the finding that it is impossible to transfer an applicant to another Member State, where that State is identified as the Member State responsible in accordance with the criteria set out in Chapter III of that regulation, entails that the Member State which should carry out that transfer must continue to examine the criteria set out in that chapter in order to establish whether one of the following criteria enables another Member State to be identified as responsible for the examination of the asylum application. According to the Court, the Member State in which the asylum seeker is present must ensure that it does not worsen a situation where the fundamental rights of that applicant have been infringed by using a procedure for determining the Member State responsible which takes an unreasonable length of time. If necessary, the first mentioned Member State must itself examine the application in accordance with the procedure laid down in Article 3(2) of Regulation No 343/2003. Articles 1, 18 and 47 of the Charter of Fundamental Rights of the European Union do not lead to a different analysis.

Judicial cooperation in civil matters and private international law

During 2011, the Court delivered several judgments concerning Regulation No 44/2001, ([89]) of which two in particular are noteworthy.

The first, in Case C-144/10 *BVG* (judgment of 12 May 2011), concerned the scope of Article 22(2) of Regulation No 44/2001, according to which, in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or the validity of the decisions of their organs, the courts of the Member State in which the company, legal person or association has its seat are to have exclusive jurisdiction, regardless of domicile. According to the Court, that rule of exclusive jurisdiction

([88]) Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 50, p. 1).

([89]) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

does not apply to proceedings in which a company pleads that a contract cannot be relied upon against it because a decision of its organs which led to the conclusion of the contract is supposedly invalid on account of infringement of its statutes. Any question concerning the validity of a decision to enter into a contract taken by organs of one of the parties thereto must be considered ancillary in the context of a contractual dispute. The subject-matter of such a contractual dispute does not necessarily display a particularly close link with the courts where the party which pleads that a decision of its own organs is invalid has its seat. It would therefore be contrary to the sound administration of justice to confer exclusive jurisdiction for such disputes upon the courts of the Member State in which one of the contracting companies has its seat.

The second judgment, in Joined Cases C-509/09 and C-161/10 *eDate Advertising and Others* (judgment of 25 October 2011), gave the Court the opportunity to set out how the expression 'place where the harmful event occurred or may occur', used in Article 5(3) of Regulation No 44/2001, is to be interpreted in the case of an alleged infringement of personality rights by means of content placed online on an Internet website. The Court firstly pointed out that that expression is intended to cover both the place where the damage occurred and the place of the event giving rise to it. It then stated that the placing online of content on a website is to be distinguished from the regional distribution of printed matter in that that content may be consulted instantly by an unlimited number of Internet users throughout the world. Thus, the universal distribution is liable, first, to increase the seriousness of the infringements of the personality rights and, second, to make the locating of the places where the damage resulting from those infringements occurred extremely difficult. The Court therefore inferred from this that the difficulties in giving effect to the criterion relating to the occurrence of damage arising from the distribution of information make it obligatory to adapt that connecting criterion. Given that the impact which material placed online is liable to have on an individual's personality rights might best be assessed by the court of the place where the alleged victim has his centre of interests, the Court attributed jurisdiction to that court in respect of all the damage caused on the territory of the European Union. In that context, the Court observed that the place where a person has the centre of his interests corresponds in general to his habitual residence. The Court added that that person also has the option of bringing an action for liability, in respect of all the damage caused, before the courts of the Member State in which the publisher of that content placed online is established. That person may also, instead of an action for liability in respect of all the damage caused, bring his action before the courts of each Member State in the territory of which content placed online is or has been accessible, those courts having jurisdiction only in respect of the damage caused in the territory of the Member State of the court seised.

Furthermore, in the same judgment, the Court gave a ruling on the methodological implication of Article 3 of Directive 2000/31. ([90]) According to the Court, whilst that article does not require transposition in the form of a specific conflict-of-laws rule, Member States must ensure that, in the coordinated field and subject to the derogations authorised in accordance with the conditions set out in Article 3(4) of that directive, the provider of an electronic commerce service is not made subject to stricter requirements than those provided for by the substantive law applicable in the Member State in which that service provider is established.

([90]) 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).

In addition, a reference seeking interpretation of Article 6 of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations, [91] a provision which relates to individual contracts of employment, was made to the Court for the first time in Case C-29/10 *Koelzsch* (judgment of 15 March 2011), in connection with an international dispute arising out of the termination of the contract of employment of a heavy goods vehicle driver. According to Article 6(1) of that convention, 'a choice of law made by the parties shall not have the result of depriving the employee of the protection afforded to him by the mandatory rules of the law which would be applicable under paragraph 2 in the absence of choice'. In the case in point, the Court had to interpret the connecting criterion laid down in Article 6(2)(a) of the Rome Convention. It held that that provision must be interpreted as meaning that, in a situation in which an employee carries out his activities in more than one Contracting State, the country in which the employee habitually carries out his work in performance of the contract, within the meaning of that provision, is that in which or from which, in the light of all the factors which characterise that activity, the employee performs the greater part of his obligations towards his employer. The Court explained that the criterion laid down by that provision can apply also in a situation where the employee carries out his activities in more than one Contracting State, if it is possible, for the court seised, to determine the State with which the work has a significant connection. The Court also stated that, bearing in mind the objective of Article 6 of the Rome Convention, which is to guarantee adequate protection for the employee, the criterion of the country in which the work is habitually carried out, set out in Article 6(2)(a) of that convention, must be given a broad interpretation. Following the example of the interpretation given by the Court, within the context of the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, [92] in respect of Article 5(1) of that convention, the criterion of the country in which the work is habitually carried out must be understood as referring to the place in which or from which the employee actually carries out his working activities and, in the absence of a centre of activities, to the place where he carries out the majority of his activities. Such an interpretation is consistent also with the wording of the new provision on the conflict-of-law rules relating to individual contracts of employment, introduced by Regulation No 593/2008 on the law applicable to contractual obligations (Rome I), [93] and in particular with Article 8 of that regulation.

The Court finally added that, as regards work carried out in the international transport sector, the referring court was required, in order to determine the State in which the employee habitually carried out his work, to take account of all the factors specific to that activity. For that purpose, it had, in particular, to determine in which State the place from which the employee carried out his transport tasks, received instructions concerning his tasks and organised his work was situated, and the place where his work tools were situated. It had to also determine the places where the transport was principally carried out, where the goods were unloaded and the place to which the employee returned after completion of his tasks.

Police and judicial cooperation in criminal matters

In this area, attention will be drawn only to Joined Cases C-483/09 and C-1/10 *Gueye and Salmerón Sánchez* (judgment of 15 September 2011), in which the Court interpreted Articles 2, 3, 8 and 10 of

[91] 1980 Rome Convention on the law applicable to contractual obligations (consolidated version) (OJ 1998 C 27, p. 34).

[92] 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36).

[93] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6).

Framework Decision 2001/220 ([94]) on the standing of victims in criminal proceedings. It defined in particular the scope of the right, recognised by the framework decision, for victims to be heard, and the effects of that right on the penalties to be imposed on offenders.

The Court firstly held that Articles 2, 3 and 8 of that framework decision do not preclude the mandatory imposition of an injunction to stay away for a minimum period, provided for as an ancillary penalty by the criminal law of a Member State, on persons who commit crimes of violence within the family, even when the victims of those crimes oppose the application of such a penalty.

The Court stated that the obligations laid down in Article 2(1) of that framework decision are intended to ensure that a victim can effectively and adequately take part in the criminal proceedings, which does not imply that a mandatory injunction to stay away cannot be imposed contrary to the wishes of the victim. Also, the procedural right to be heard under the first paragraph of Article 3 of the framework decision does not confer on victims any rights in respect of the choice of form of penalties nor in respect of the level of those penalties. The Court then explained that the protection offered by criminal law against acts of domestic violence is intended to protect not only the interests of the victim but also other more general interests of society. Finally, the protection under Article 8 of the framework decision, which is intended in particular to offer protection which is suitable to the victim from the offender during the criminal proceedings, cannot be understood as meaning that Member States are also obliged to protect victims from indirect consequences which may, at a later stage, arise as a result of the penalties imposed by the national courts.

In addition, the Court stated that the obligation to impose an injunction to stay away in accordance with the substantive law at issue did not fall within the scope of the framework decision.

Secondly, the Court held that Article 10(1) of the framework decision must be interpreted as permitting Member States, having regard to the particular category of offences committed within the family, to exclude recourse to mediation in all criminal proceedings relating to such offences.

Common and foreign and security policy

Within the limited framework of powers which it has in this area, the Court delivered three judgments which are particularly worth mentioning.

In the context of the common foreign and security policy, in Case C-27/09 P *France* v *People's Mojahedin Organization of Iran* (judgment of 21 December 2011), the Court, before which an appeal was brought by the French Republic against a judgment of the General Court ([95]) which had annulled Decision 2008/583 ([96]) ('the contested decision') in so far as it concerned the People's Mojahedin Organization of Iran, noted that in the case of an initial decision to freeze funds, the institution is not obliged to inform the person or entity concerned beforehand of the grounds on which that institution intends to rely in order to include that person or entity's name in the

([94]) Council Framework Decision 2001/200/JHA of 15 March 2001 on the standing of victims in criminal proceedings (OJ 2001 L 82, p. 1).

([95]) Case T-284/08 *People's Mojahedin Organization of Iran* v *Council* [2008] ECR II-3487.

([96]) Council Decision 2008/583/EC of 15 July 2008 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2007/868/EC (OJ 2008 L 188, p. 21).

list referred to in Article 2(3) of Regulation No 2580/2001. [97] So that its effectiveness may not be jeopardised, such a measure must be able to take advantage of a surprise effect and to be applicable immediately. By contrast, in the case of a subsequent decision to freeze funds by which the inclusion of the name of a person or entity already appearing in the list referred to in Article 2(3) of that regulation is maintained, that surprise effect is no longer necessary in order to ensure that the measure is effective, with the result that the adoption of such a decision must, in principle, be preceded by notification of the incriminating evidence and by allowing the person or entity concerned an opportunity of being heard. The Court therefore held that General Court had rightly concluded that, given that the name of the People's Mojahedin Organization of Iran ('the PMOI') had been maintained by the contested decision in the list referred to in Article 2(3) of Regulation No 2580/2001, the Council could not communicate the new incriminating evidence against the PMOI at the same time as it adopted the contested decision. The Council was bound, imperatively, to ensure that the PMOI's rights of defence were observed, that is to say, notification of the incriminating evidence against it and the right to be heard, before that decision was adopted. In that respect, the Court held that the element of protection afforded by the requirement of notification of incriminating evidence and the right to make representations before the adoption of a measure, such as the contested decision, that sets in motion the application of restrictive measures is fundamental and essential to the rights of defence. This is all the more the case because such measures have a considerable effect on the rights and freedoms of the persons and groups concerned.

Finally, bearing in mind the fundamental importance which must attach to observance of the rights of the defence, expressly affirmed in Article 41(2)(a) of the Charter of Fundamental Rights of the European Union, in the procedure preceding the adoption of a decision such as the contested decision, the General Court did not err in law in holding that the Council had not established that the contested decision had so urgently to be adopted that it was impossible for that institution to notify the PMOI of the new evidence adduced against it and to allow the PMOI to be heard before the contested decision was adopted.

As regards, this time, the restrictive measures taken against the Islamic Republic of Iran with the aim of stopping nuclear proliferation, in Case C-548/09 P *Bank Melli Iran* v *Council* (judgment of 16 November 2011), an appeal was brought before the Court by Bank Melli Iran, an Iranian bank owned by the Iranian State, seeking the setting aside of the judgment of the General Court [98] by which that court had dismissed the action [99] of the bank for annulment of measures relating to it. The Court of Justice held that the principle of effective judicial protection means that the European Union authority which adopts an act imposing restrictive measures against a person or entity is bound to communicate the grounds on which it is based, so far as possible, either when that measure is adopted or, at the very least, as swiftly as possible after it has been adopted in order to enable those persons or entities to exercise their right to bring an action. It is with a view to ensuring observance of that principle that Article 15(3) of Regulation No 423/2007 [100] requires the Council to state individual and specific reasons for decisions taken pursuant to Article 7(2) of

[97] 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).

[98] Case T-390/08 *Bank Melli Iran* v *Council* [2009] ECR II-3967.

[99] Action seeking the annulment of paragraph 4 of Table B in the annex to Council Decision 2008/475/EC of 23 June 2008 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran (OJ 2008 L 163, p. 29).

[100] Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran (OJ 2007 L 103, p. 1).

the regulation and make them known to the persons, entities and bodies concerned. The freezing of funds has considerable consequences for the entities concerned, for it may restrict the exercise of their fundamental rights. It follows that the Council is required to communicate a decision individually to satisfy the obligation imposed on it by that provision. In addition, although an individual communication is necessary in principle, Article 15(3) of that regulation does not require communications to take a specific form, and refers only to the obligation to 'make [the reasons] known'. What matters is that useful effect should have been given to that provision, namely, effective judicial protection of the persons and entities concerned by the restrictive measures adopted pursuant to Article 7(2) of the regulation.

The Court also held that the choice of legal basis for a Community measure must rest on objective factors that are amenable to judicial review, including, in particular, the aim and the content of the measure. According to its title, Regulation No 423/2007 concerns restrictive measures against the Islamic Republic of Iran. It is apparent from the recitals in the preamble thereto and from its provisions taken as a whole that the regulation is intended to prevent or slow down the nuclear policy of that State, in the light of the threat it poses, by means of restrictive economic measures. It is not nuclear proliferation in general which is being combated, but the risks inherent in the Iranian nuclear proliferation programme. The aim and content of the measure in question clearly being the adoption of economic measures against the Islamic Republic of Iran, it was not necessary to have recourse to Article 308 EC, since Article 301 EC constitutes a sufficient legal basis in that it provides for an action by the European Union to interrupt or to reduce, in part or completely, economic relations with one or more third countries; that action may cover the freezing of funds of entities, such as Bank Melli Iran, which are associated with the regime of the third country concerned. As regards the need to include Common Position 2007/140 ([101]) among the legal bases, Article 301 EC indicates that the common position or joint action must exist in order for Community measures to be adopted, but not that those measures must be based on that common position or joint action. In any event, a common position cannot constitute the legal basis for a Community measure. Council common positions in the sphere of the common foreign and security policy (CFSP), such as Common Positions 2007/140 and 2008/479, ([102]) are adopted within the framework of the Treaty on European Union, in accordance with Article 15 thereof, whereas Council regulations, such as Regulation No 423/2007, are adopted within the framework of the EC Treaty. As a consequence, the Council could adopt a Community measure only on the basis of the powers conferred on it by the EC Treaty, in this case Articles 60 EC and 301 EC.

Still in relation to Regulation No 423/2007 ([103]) concerning restrictive measures against the Islamic Republic of Iran, the Court, to which a reference was made by the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf), interpreted Article 7(3) and (4) of that regulation in Case C-72/11 *Afrasiabi and Others* (judgment of 21 December 2011).

The Court held that Article 7(3) of that regulation must be interpreted as meaning that the prohibition on indirectly making available an economic resource, within the meaning of Article 1(i) of the regulation, encompasses acts relating to the supply and installation in Iran of a sintering furnace in working condition but not yet ready to use for the benefit of a third party which, acting on behalf, under the control or on the instructions of a person, an entity or a body listed in Annexes IV and

([101]) Council Common Position 2007/140/CFSP of 27 February 2007 concerning restrictive measures against Iran (OJ 2007 L 61, p. 49).

([102]) Council Common Position 2008/479/CFSP of 23 June 2008 amending Common Position 2007/140 (OJ 2008 L 163, p. 43).

([103]) See footnote 100.

V to that regulation, intends to use that furnace to manufacture, for the benefit of such a person, entity or body, goods capable of contributing to nuclear proliferation in that State. The Court also held that Article 7(4) of the regulation must be interpreted as meaning that: (a) it covers activities which, under cover of a formal appearance which enables them to avoid the constituent elements of an infringement of Article 7(3) of the regulation, none the less have the object or effect, direct or indirect, of frustrating the prohibition laid down in that provision; (b) the terms 'knowingly' and 'intentionally' imply cumulative requirements of knowledge and intent, which are met where the person participating in an activity having such an object or such an effect deliberately seeks that object or effect or is at least aware that his participation may have that object or that effect and he accepts such a possibility.

C — Composition of the Court of Justice

(order of precedence as at 7 October 2011)

First row, from left to right:

U. Lõhmus, President of Chamber; J. Mazák, 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; J. Malenovský, President of Chamber; M. Safjan, President of Chamber.

Second row, from left to right:

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

Third row, from left to right:

V. Trstenjak, Advocate General; Y. Bot, Advocate General; E. Sharpston, Advocate General; A. Ó Caoimh, Judge; E. Levits, Judge; L. Bay Larsen, Judge; P. Mengozzi, Advocate General; T. von Danwitz, Judge; A. Arabadjiev, Judge.

Fourth row, from left to right:

C. G. Fernlund, Judge; P. Cruz Villalón, Advocate General; M. Berger, Judge; J.-J. Kasel, Judge; C. Toader, Judge; D. Šváby, Judge; N. Jääskinen, Advocate General; E. Jarašiūnas, 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.

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*, PhD 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.

Endre Juhász

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

George Arestis

Born 1945; graduated in law from the University of Athens (1968); MA in Comparative Politics and Government, University of Kent at Canterbury (1970); practice as a lawyer in Cyprus (1972–82); appointed District Court Judge (1982); promoted to President of a 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 (1992–2010); Emeritus Fellow (2011-); 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); Honorary Fellow of Corpus Christi College, Oxford (2010); LL.D (h.c.) Glasgow (2010) and Nottingham Trent (2011); 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 from 7 October 2006 to 6 October 2011.

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; Degree in law (1986), doctorate in law (1997), University of Bucharest; Trainee judge at the Court of First Instance, Buftea (1986–88); Judge at the Court of First Instance, Sector 5, Bucharest (1988–92); 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 and 2011); 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 working groups of the Council of Ministers (1976); First Embassy Secretary (Paris), Deputy Permanent Representative to the OECD (liaison officer to Unesco, 1976–79); Head of the Office of the Vice-President of the government (1979–80); Chairman of the EPC working groups (Asia, Africa, Latin America); Adviser, then Deputy Head of 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 (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 Poland on the Bioethics Committee of the Council of Europe (1991–97); 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.

Carl Gustav Fernlund

Born 1950; graduated in law from the University of Lund (1975); Clerk at the Landskrona District Court (1976–78); Assistant Judge at an administrative court of appeal (1978–82); Deputy Judge at an administrative court of appeal (1982); Legal Adviser to the Swedish parliament's Standing Committee on the Constitution (1983–85); Legal Adviser at the Ministry of Finance (1985–90); Director of the Division for Personal Income Taxes at the Ministry of Finance (1990–96); Director of the Excise Duty Division at the Ministry of Finance (1996–98); Fiscal Counsellor at the Permanent Representation of Sweden to the European Union (1998–2000); Director-General for Legal Affairs in the Tax and Customs Department of the Ministry of Finance (2000–05); Judge at the Supreme Administrative Court (2005–09); President of the Administrative Court of Appeal, Gothenburg (2009–11); Judge at the Court of Justice since 6 October 2011.

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 2011

Formal sitting on 6 October 2011

Following the resignation of Ms Pernilla Lindh, by decision of 8 September 2011 the representatives of the governments of the Member States of the European Union appointed Mr Carl Gustav Fernlund as Judge at the Court of Justice of the European Union for the remainder of Ms Lindh's term of office, that is to say, until 6 October 2012.

3. Order of precedence

From 1 January 2011 to 6 October 2011

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

From 7 October 2011 to 31 December 2011

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
J. MAZÁK, First Advocate General
J. MALENOVSKÝ, President of the Seventh Chamber
U. LÕHMUS, President of the Sixth Chamber
M. SAFJAN, President of the Fifth Chamber
A. PRECHAL, President of the Eighth Chamber
A. ROSAS, Judge
R. SILVA de LAPUERTA, Judge
J. KOKOTT, Advocate General
K. SCHIEMANN, Judge
E. JUHÁSZ, Judge
G. ARESTIS, Judge
A. BORG BARTHET, Judge
M. ILEŠIČ, Judge
E. LEVITS, Judge
A. Ó CAOIMH, Judge
L. BAY LARSEN, Judge
E. SHARPSTON, Advocate General
P. MENGOZZI, Advocate General
Y. BOT, Advocate General
T. von DANWITZ, Judge
V. TRSTENJAK, Advocate General
A. ARABADJIEV, Judge
C. TOADER, Judge
J.-J. KASEL, Judge
D. ŠVÁBY, Judge
M. BERGER, Judge
N. JÄÄSKINEN, Advocate General
P. CRUZ VILLALÓN, Advocate General
E. JARAŠIŪNAS, Judge
C.G. FERNLUND, 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 (1974–85)
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 Moithinho 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)
Pernilla Lindh, Judge (2006–11)

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 (2007–11)

New cases

2. Nature of proceedings (2007–11)
3. Subject-matter of the action (2011)
4. Actions for failure of a Member State to fulfil its obligations (2007–11)

Completed cases

5. Nature of proceedings (2007–11)
6. Judgments, orders, opinions (2011)
7. Bench hearing action (2007–2011)
8. Cases completed by judgments, by opinions or by orders involving a judicial determination (2007–11)
9. Subject-matter of the action (2007–11)
10. Subject-matter of the action (2011)
11. Judgments concerning failure of a Member State to fulfil its obligations: outcome (2007-11)
12. Duration of proceedings (judgments and orders involving a judicial determination) (2007-11)

Cases pending as at 31 December

13. Nature of proceedings (2007-11)
14. Bench hearing action (2007-11)

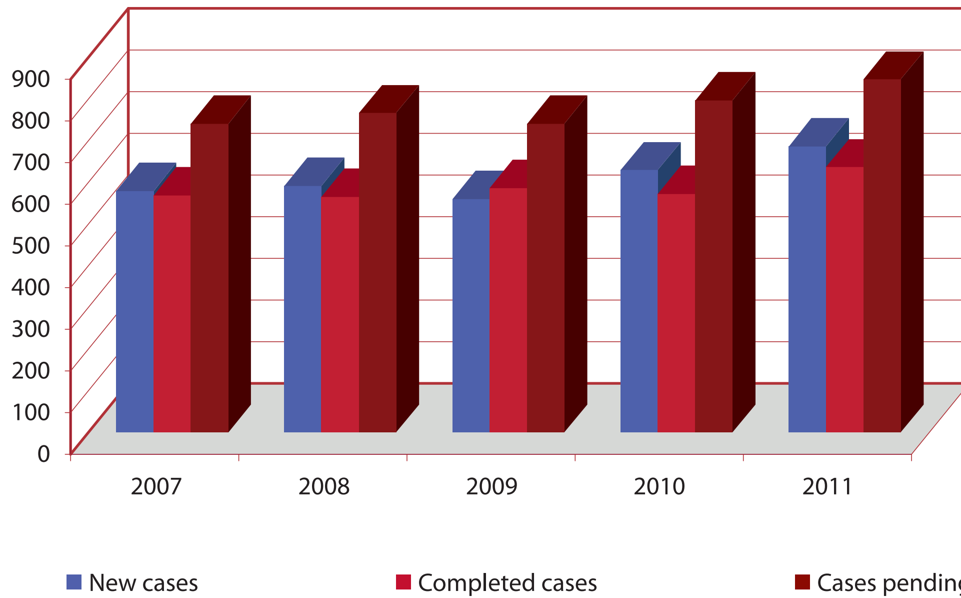
Miscellaneous

15. Expedited and accelerated procedures (2007-11)
16. Urgent preliminary ruling procedure (2008-11)
17. Proceedings for interim measures (2011)

General trend in the work of the Court (1952-2011)

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

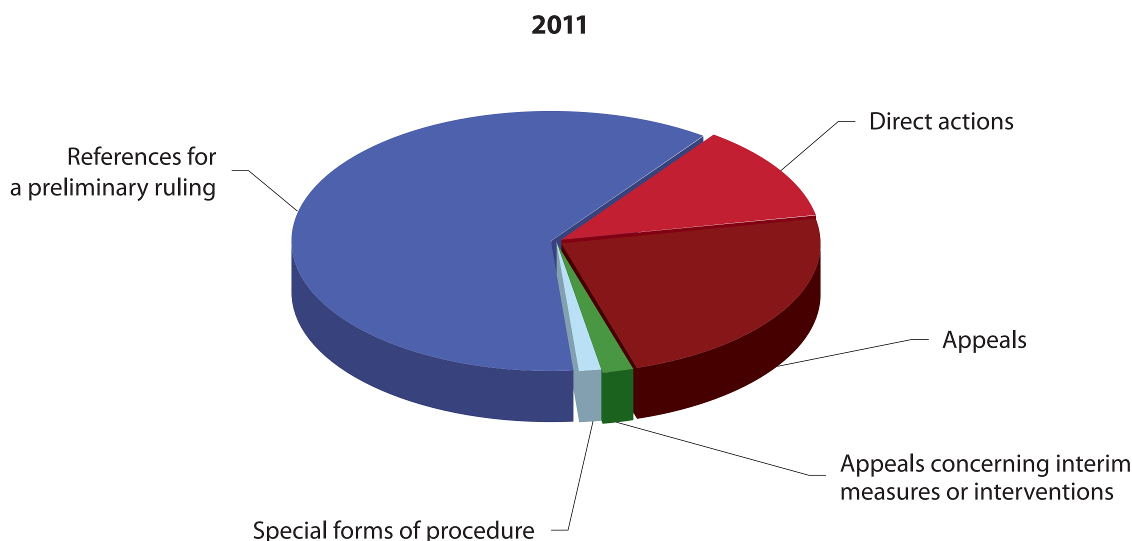
1. *General activity of the Court of Justice*
New cases, completed cases, cases pending (2007–11) ([1])



	2007	2008	2009	2010	2011
New cases	581	593	562	631	688
Completed cases	570	567	588	574	638
Cases pending	742	768	742	799	849

([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 (2007–11) ([1])



	2007	2008	2009	2010	2011
References for a preliminary ruling	265	288	302	385	423
Direct actions	222	210	143	136	81
Appeals	79	78	105	97	162
Appeals concerning interim measures or interventions	8	8	2	6	13
Opinions of the Court		1	1		
Special forms of procedure ([2])	7	8	9	7	9
Total	**581**	**593**	**562**	**631**	**688**
Applications for interim measures	3	3	2	2	3

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

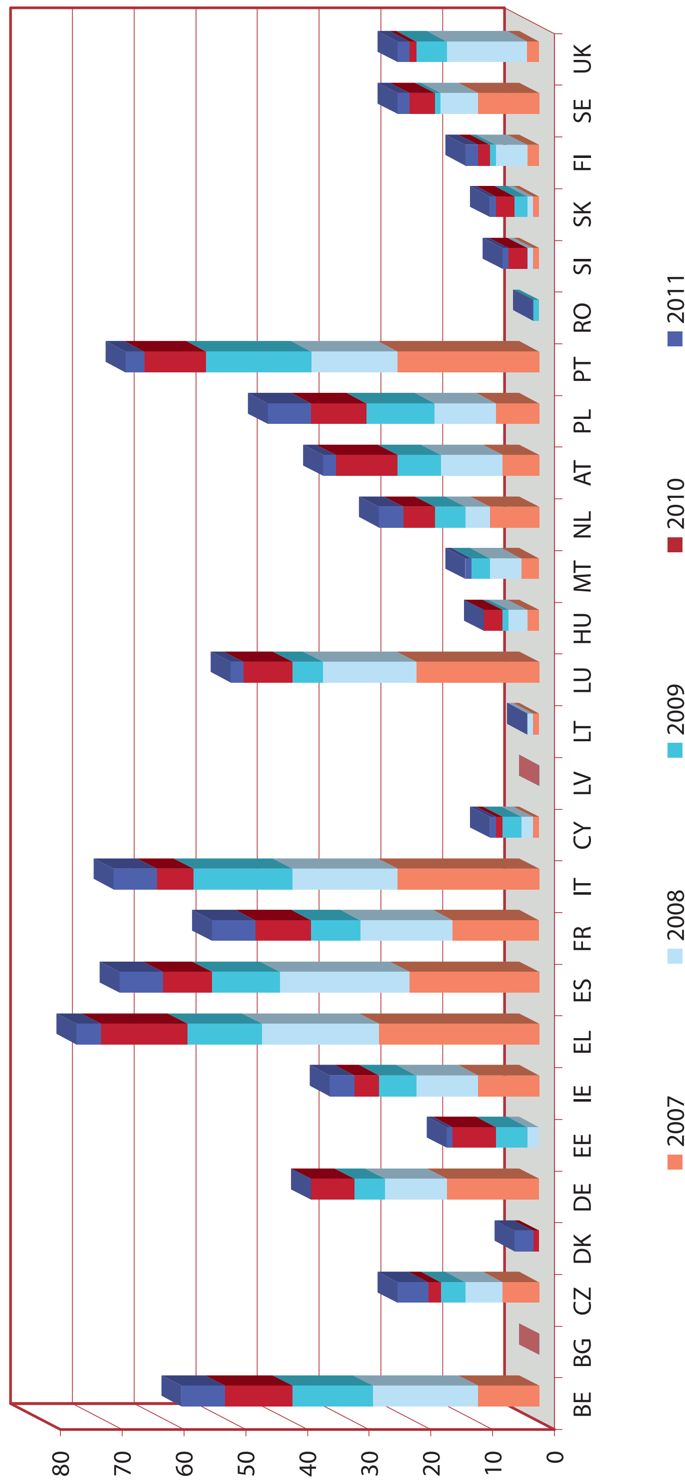
([2]) The following are considered to be 'special forms of procedure': rectification (Article 66 of the Rules of Procedure); taxation of costs (Article 74 of the Rules of Procedure); legal aid (Article 76 of the Rules of Procedure); application to set aside a judgment given by default (Article 94 of 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 (2011) ([1])

	Direct actions	References for a preliminary ruling	Appeals	Appeals concerning interim measures or interventions	Total	Special forms of procedure
Access to documents			6		6	
Accession of new States		2			2	
Agriculture	3	23	5		31	
Approximation of laws		15			15	
Area of freedom, security and justice		44			44	
Citizenship of the Union	1	12			13	
Commercial policy		2	2		4	
Common foreign and security policy	1	9	6	1	17	
Company law	2	1			3	
Competition		7	52	1	60	
Consumer protection	2	21			23	
Customs union and Common Customs Tariff		19			19	
Economic and monetary policy			1		1	
Economic, social and territorial cohesion		2	4		6	
Education, vocational training, youth and sport		1			1	
Environment	20	19	3		42	
External action by the European Union	1	5	1		7	
Financial provisions (budget, financial framework, own resources, combatting fraud and so forth)	1	3			4	
Free movement of capital	3	19			22	
Free movement of goods	3	2			5	
Freedom of establishment	4	11			15	
Freedom of movement for persons	1	11	2		14	
Freedom to provide services	1	12	3		16	
Industrial policy	3	7			10	
Intellectual and industrial property	2	17	39		58	
Law governing the institutions	7	2	17	10	36	1
Principles of European Union law		9	2		11	
Public health		2			2	
Public procurement		9	3		12	
Social policy	3	37	1		41	
Social security for migrant workers		11			11	
State aid	2	3	14		19	
Taxation	19	66			85	
Tourism		1			1	
Transport	2	19			21	
TFEU	**81**	**423**	**161**	**12**	**677**	**1**
Law governing the institutions				1	1	
Privileges and immunities						1
Procedure						7
Staff Regulations			1		1	
Others			**1**	**1**	**2**	**8**
OVERALL TOTAL	**81**	**423**	**162**	**13**	**679**	**9**

([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).

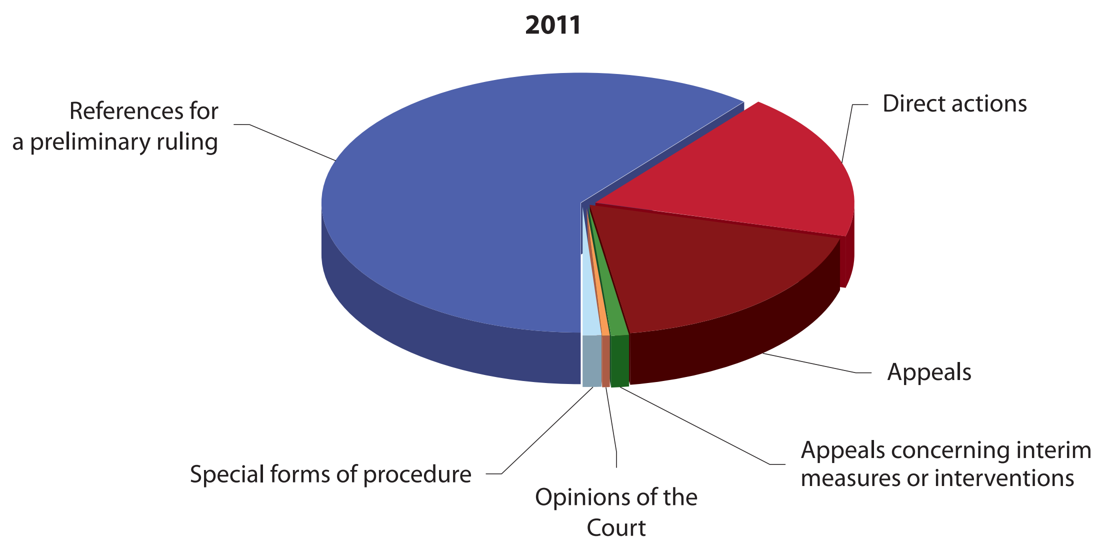
4. *New cases* — Actions for failure of a Member State to fulfil its obligations (2007–11) (1)



	2007	2008	2009	2010	2011
Belgium	10	17	13	11	7
Bulgaria					
Czech Republic	6	6	4	2	5
Denmark				1	3
Germany	15	10	5	7	
Estonia		2	5	7	1
Ireland	10	10	6	4	4
Greece	26	19	12	14	4
Spain	21	21	11	8	7
France	14	15	8	9	7
Italy	23	17	16	6	7
Cyprus	1	2	3	1	1
Latvia					
Lithuania	1	1			
Luxembourg	20	15	5	8	2
Hungary	2	3	1	3	
Malta	3	5	3		1
Netherlands	8	4	5	5	4
Austria	6	10	7	10	2
Poland	7	10	11	9	7
Portugal	23	14	17	10	3
Romania			1		
Slovenia	1	1		3	1
Slovakia	1	1	2	3	1
Finland	2	5	1	2	2
Sweden	10	6	1	4	2
United Kingdom	2	13	5	1	2
Total	**212**	**207**	**142**	**128**	**73**

([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).

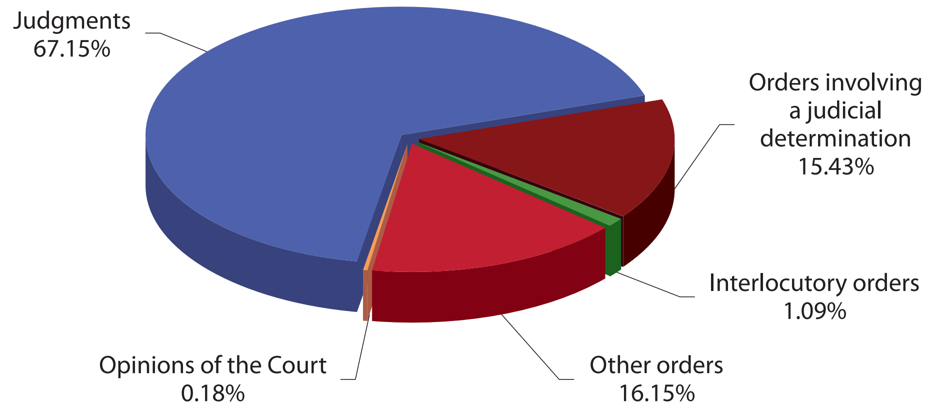
5. *Completed cases* — Nature of proceedings (2007–11) ([1])



	2007	2008	2009	2010	2011
References for a preliminary ruling	235	301	259	339	388
Direct actions	241	181	215	139	117
Appeals	88	69	97	84	117
Appeals concerning interim measures or interventions	2	8	7	4	7
Opinions of the Court			1		1
Special forms of procedure	4	8	9	8	8
Total	**570**	**567**	**588**	**574**	**638**

([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 (2011) ([1])



	Judgments	Orders involving a judicial determination ([2])	Interlocutory orders ([3])	Other orders ([4])	Opinions of the Court	Total
References for a preliminary ruling	237	38		45		320
Direct actions	82	1		34		117
Appeals	51	41	2	5		99
Appeals concerning interim measures or interventions			4	3		7
Opinions of the Court					1	1
Special forms of procedure		5		2		7
Total	**370**	**85**	**6**	**89**	**1**	**551**

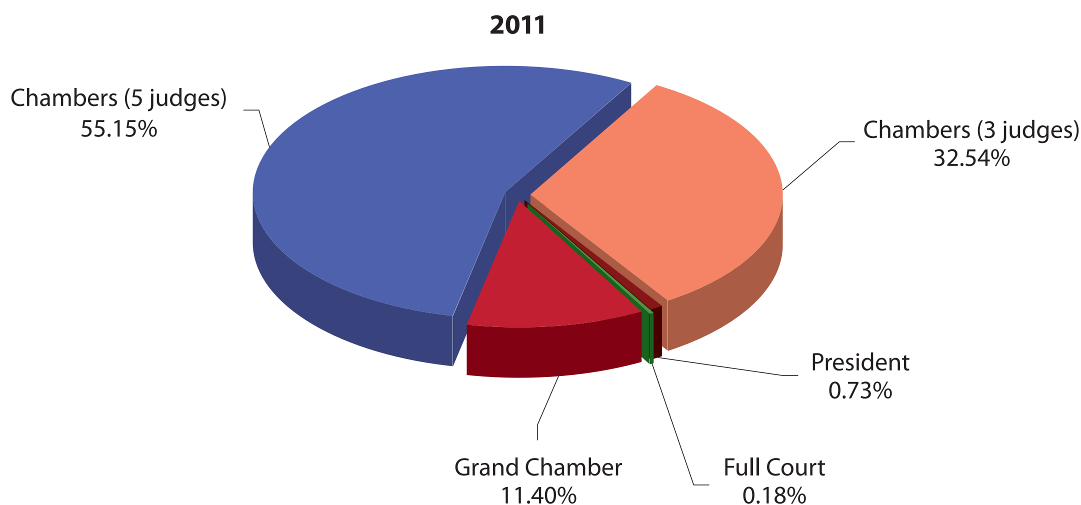
([1]) The figures given (net figures) represent the number of cases after joinder on the ground of similarity (a set of joined cases = one case).

([2]) Orders terminating proceedings 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 (2007–11) ([1])

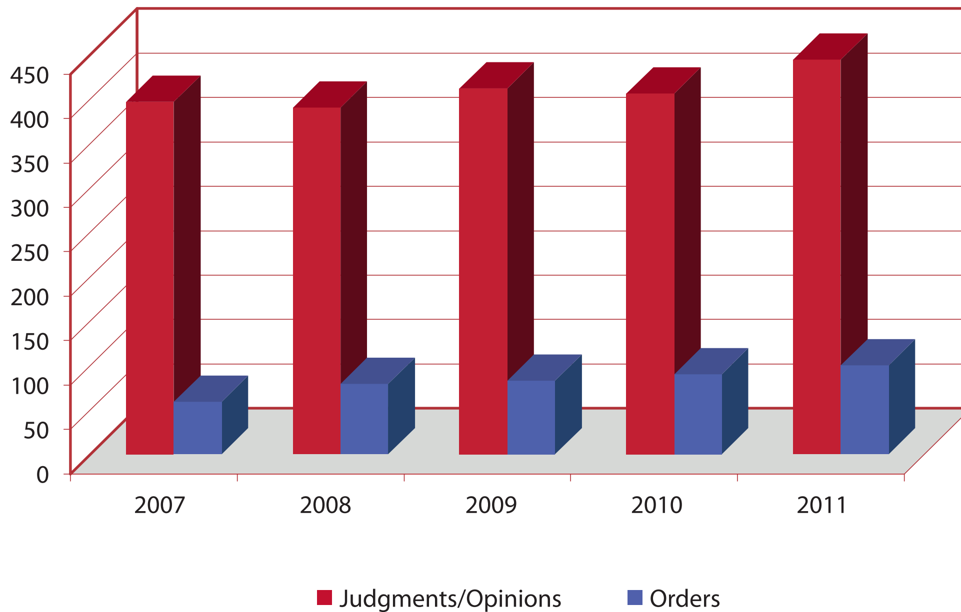


	2007			2008			2009			2010			2011		
	Judgments/Opinions	Orders ([2])	Total	Judgments/Opinions	Orders ([2])	Total	Judgments/Opinions	Orders ([2])	Total	Judgments/Opinions	Orders ([2])	Total	Judgments/Opinions	Orders ([2])	Total
Full Court													1		1
Grand Chamber	51		51	66		66	41		41	70	1	71	62		62
Chambers (5 judges)	241	8	249	259	13	272	275	8	283	280	8	288	290	10	300
Chambers (3 judges)	105	49	154	65	59	124	96	70	166	56	76	132	91	86	177
President		2	2		7	7		5	5		5	5		4	4
Total	**397**	**59**	**456**	**390**	**79**	**469**	**412**	**83**	**495**	**406**	**90**	**496**	**444**	**100**	**544**

([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* (2007–11) ([1]) ([2])



	2007	2008	2009	2010	2011
Judgments/Opinions	397	390	412	406	444
Orders	59	79	83	90	100
Total	**456**	**469**	**495**	**496**	**544**

([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 (2007–11) (1)

	2007	2008	2009	2010	2011
Access to documents					2
Accession of new States	1		1		1
Agriculture	23	54	18	15	23
Approximation of laws	21	21	32	15	15
Area of freedom, security and justice	17	4	26	24	23
Brussels Convention	2	1	2		
Budget of the Communities (2)				1	
Citizenship of the Union	2	7	3	6	7
Commercial policy	1	1	5	2	2
Common Customs Tariff (4)	10	5	13	7	2
Common fisheries policy	6	6	4	2	1
Common foreign and security policy	4	2	2	2	4
Community own resources (2)	3		10	5	2
Company law	16	17	17	17	8
Competition	17	23	28	13	19
Consumer protection (3)				3	4
Customs union and Common Customs Tariff (4)	12	8	5	15	19
Economic and monetary policy	1	1	1	1	
Energy	4	4	4	2	2
Environment (3)				9	35
Environment and consumers (3)	50	43	60	48	25
External action by the European Union	9	8	8	10	8
Financial provisions (budget, financial framework, own resources, combatting fraud and so forth) (2)				1	4
Free movement of capital	13	9	7	6	14
Free movement of goods	14	12	13	6	8
Freedom of establishment	19	29	13	17	21
Freedom of movement for persons	19	27	19	17	9
Freedom to provide services	24	8	17	30	27
Industrial policy	11	12	6	9	9
Intellectual and industrial property	21	22	31	38	47
Justice and home affairs		1			
Law governing the institutions	6	15	29	26	20
Principles of European Union law	4	4	4	4	15
Privileges and immunities	1	2			
Public health					3
Public procurement					7
Regional policy	7	1	3	2	
Registration, evaluation, authorisation and restriction of chemicals (REACH Regulation)					1
Research, information, education and statistics				1	
Rome Convention			1		

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	2007	2008	2009	2010	2011
Social policy	26	25	33	36	36
Social security for migrant workers	7	5	3	6	8
State aid	9	26	10	16	48
Taxation	44	38	44	66	49
Transport	6	4	9	4	7
CS Treaty	**1**	**2**			**1**
EA Treaty	1				
EC Treaty/TFEU	430	445	481	482	535
EU Treaty	4	6	1	4	1
Privileges and immunities					2
Procedure	3	5	5	6	5
Staff Regulations	17	11	8	4	
Others	20	16	13	10	7
OVERALL TOTAL	**456**	**469**	**495**	**496**	**544**

(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 headings 'Budget of the Communities' and 'Community own resources' have been combined under the heading 'Financial provisions' for cases brought after 1 December 2009.

(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 combined 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 (2011) ([1])

	Judgments/Opinions	Orders ([2])	Total
Access to documents		2	2
Accession of new States	1		1
Agriculture	21	2	23
Approximation of laws	13	2	15
Area of freedom, security and justice	22	1	23
Commercial policy	2		2
Common Customs Tariff ([5])	2		2
Common fisheries policy	1		1
Common foreign and security policy	4		4
Community own resources ([3])	2		2
Company law	7	1	8
Competition	17	2	19
Consumer protection ([4])	2	2	4
Customs union and Common Customs Tariff ([5])	18	1	19
Energy	2		2
Environment ([4])	34	1	35
Environment and consumers ([4])	21	4	25
European citizenship	7		7
External action by the European Union	7	1	8
Financial provisions (budget, financial framework, own resources, combatting fraud and so forth) ([3])	4		4
Free movement of capital	13	1	14
Free movement of goods	8		8
Freedom of establishment	20	1	21
Freedom of movement for persons	9		9
Freedom to provide services	26	1	27
Industrial policy	8	1	9
Intellectual property	26	21	47
Law governing the institutions	8	12	20
Principles of European Union law	7	8	15
Public health	1	2	3
Public procurement	3	4	7
Registration, evaluation, authorisation and restriction of chemicals (REACH Regulation)	1		1
Social policy	28	8	36
Social security for migrant workers	8		8
State aid	42	6	48
Taxation	39	10	49
Transport	6	1	7

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CS Treaty	1		1
EC Treaty/TFEU	440	95	535
EU Treaty	1		1
Privileges and immunities	2		2
Procedure		5	5
Others	2	5	7
OVERALL TOTAL	**444**	**100**	**544**

(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).

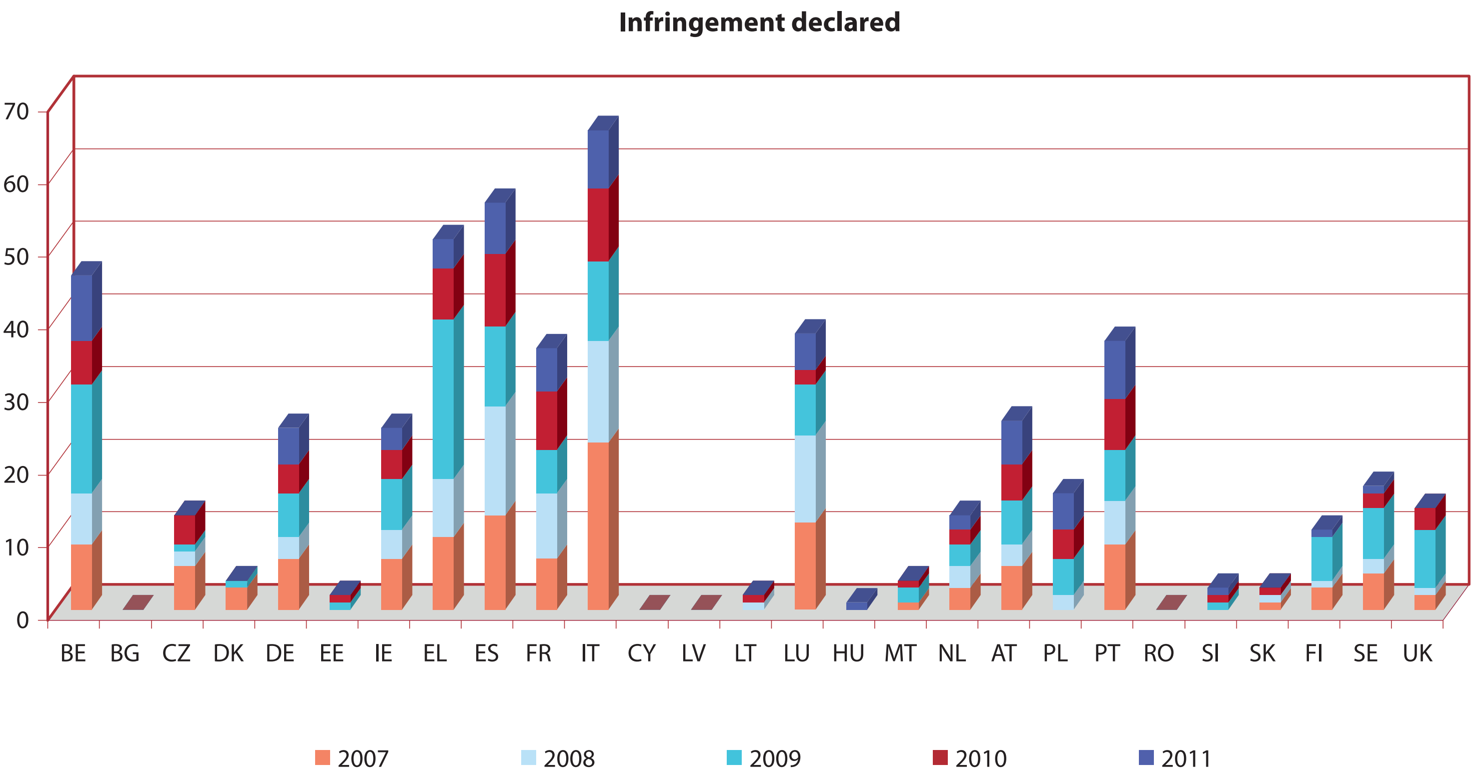
(2) Orders terminating proceedings other than those removing a case from the register, declaring that there is no need to give a decision or referring a case to the General Court.

(3) The headings 'Budget of the Communities' and 'Community own resources' have been combined under the heading 'Financial provisions' for cases brought after 1 December 2009.

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

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

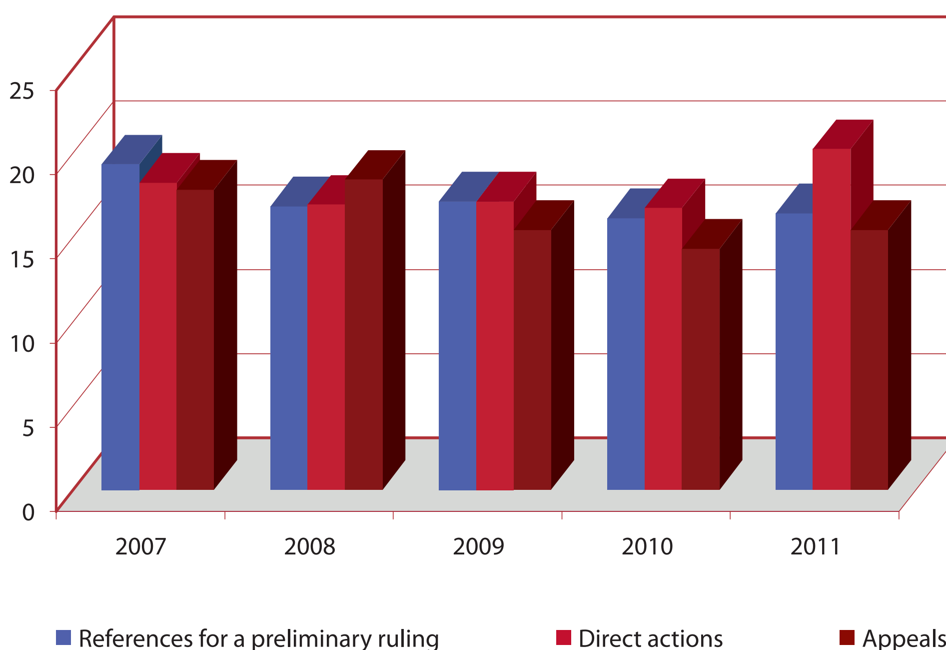
11. *Completed cases* — Judgments concerning failure of a Member State to fulfil its obligations: outcome (2007–11) ([1])



	2007		2008		2009		2010		2011	
	Infringement declared	**Dismissed**	**Infringement declared**	**Dismissed**	**Infringement declared**	**Dismissed**	**Infringement declared**	**Dismissed**	**Infringement declared**	**Dismissed**
Belgium	9	1	7		15	1	6	1	9	1
Bulgaria										
Czech Republic	6		2		1		4			
Denmark	3				1					
Germany	7	1	3	3	6	2	4	2	5	
Estonia					1		1			
Ireland	7	2	4		7		4		3	
Greece	10	3	8	1	22		7		4	
Spain	13	1	15	1	11		10	2	7	1
France	7		9	1	6		8	2	6	
Italy	23	2	14	1	11	4	10		8	1
Cyprus										1
Latvia										
Lithuania			1				1			
Luxembourg	12		12		7		2		5	
Hungary									1	1
Malta	1				2		1	1		1
Netherlands	3	1	3		3		2	1	2	
Austria	6		3		6		5		6	
Poland			2		5		4	1	5	
Portugal	9		6		7	1	7	1	8	1
Romania										1
Slovenia					1		1		1	
Slovakia	1		1				1			1
Finland	3	1	1	1	6	1			1	
Sweden	5		2	1	7		2		1	
United Kingdom	2	4	1		8	1	3	1		
Total	**127**	**16**	**94**	**9**	**133**	**10**	**83**	**12**	**72**	**9**

[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).

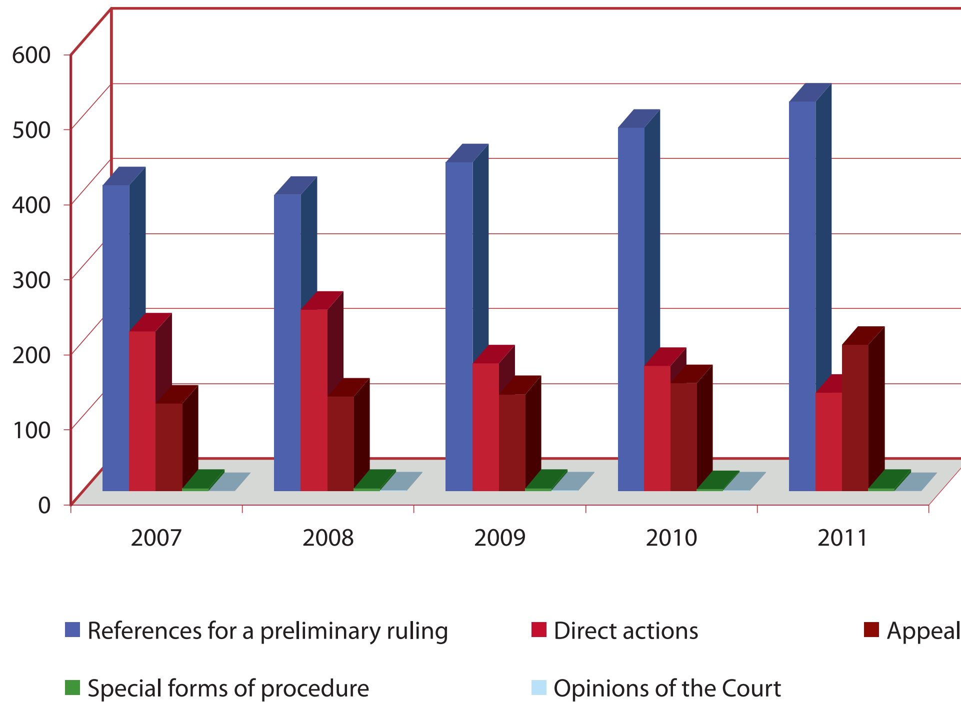
12. *Completed cases* — Duration of proceedings (2007–11) ([1])
(judgments and orders involving a judicial determination)



	2007	2008	2009	2010	2011
References for a preliminary ruling	19.3	16.8	17.1	16.1	16.4
Urgent preliminary ruling procedure		2.1	2.5	2.1	2.5
Direct actions	18.2	16.9	17.1	16.7	20.2
Appeals	17.8	18.4	15.4	14.3	15.4

([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.

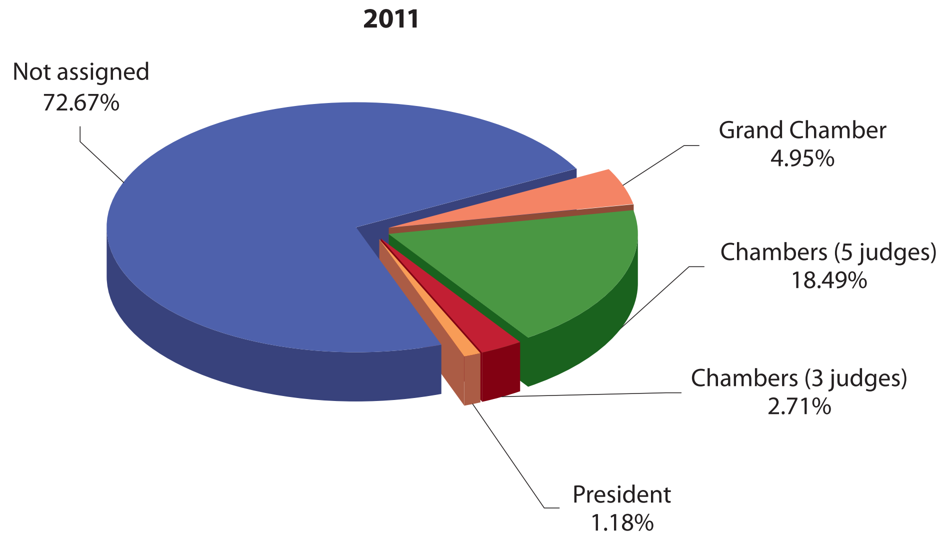
13. *Cases pending as at 31 December* — Nature of proceedings (2007–11) ([1])



	2007	2008	2009	2010	2011
References for a preliminary ruling	408	395	438	484	519
Direct actions	213	242	170	167	131
Appeals	117	126	129	144	195
Special forms of procedure	4	4	4	3	4
Opinions of the Court		1	1	1	
Total	**742**	**768**	**742**	**799**	**849**

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

14. *Cases pending as at 31 December* — Bench hearing action (2007–11) ([1])



	2007	2008	2009	2010	2011
Not assigned	481	524	490	519	617
Full Court				1	
Grand Chamber	59	40	65	49	42
Chambers (5 judges)	170	177	169	193	157
Chambers (3 judges)	24	19	15	33	23
President	8	8	3	4	10
Total	**742**	**768**	**742**	**799**	**849**

([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 (2007–11) ([1])

	2007		2008		2009		2010		2011	
	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	2	6	1	3	4	7	2	6
Appeals		1				1				5
Special forms of procedure						1				
Total		**7**	**2**	**6**	**1**	**5**	**4**	**8**	**2**	**11**

16. *Miscellaneous* — Urgent preliminary ruling procedure (2008–11) ([2])

	2008		2009		2010		2011	
	Granted	Not granted	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	2	3
Total	**3**	**3**	**2**	**1**	**5**	**1**	**2**	**3**

([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 (2011) ([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		
Commercial policy					1
Common foreign and security policy		1			
Competition		1			1
Environment					1
External action by the European Union	1				
Intellectual and industrial property	2				
Law governing the institutions		11	3		1
State aid			1		
OVERALL TOTAL	**3**	**13**	**5**		**4**

([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 (1952–2011)* — 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

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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
2011	81	423	162	13		679	3	371
Total	**8 682**	**7 428**	**1 280**	**98**	**19**	**17 507**	**354**	**9 008**

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

(2) Net figures.

19. *General trend in the work of the Court (1952–2011)* — New references for a preliminary ruling

(by Member State per year)

	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
2011	34	22	5	6	83	1	7	9	27	31	44		10	1	2	13		22	24	11	11	14	1	3	12	4	26		423
Total	**685**	**40**	**20**	**141**	**1 885**	**7**	**62**	**160**	**271**	**847**	**1 100**	**2**	**20**	**11**	**75**	**46**	**1**	**789**	**387**	**43**	**88**	**33**	**4**	**11**	**76**	**91**	**531**	**2**	**7 428**

(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 (1952–2011) —* **New references for a preliminary ruling** (by Member State and by court or tribunal)

			Total
Belgium	Cour constitutionnelle	21	
	Cour de cassation	85	
	Conseil d'État	64	
	Other courts or tribunals	515	685
Bulgaria	Софийски градски съд Търговско отделение	1	
	Other courts or tribunals	39	40
Czech Republic	Nejvyššího soudu		
	Nejvyšší správní soud	10	
	Ústavní soud		
	Other courts or tribunals	10	20
Denmark	Højesteret	30	
	Other courts or tribunals	111	141
Germany	Bundesgerichtshof	148	
	Bundesverwaltungsgericht	105	
	Bundesfinanzhof	279	
	Bundesarbeitsgericht	23	
	Bundessozialgericht	74	
	Staatsgerichtshof des Landes Hessen	1	
	Other courts or tribunals	1 255	1 885
Estonia	Riigikohus	2	
	Other courts or tribunals	5	7
Ireland	Supreme Court	19	
	High Court	20	
	Other courts or tribunals	23	62
Greece	Άρειος Πάγος	10	
	Συμβούλιο της Επικρατείας	50	
	Other courts or tribunals	100	160
Spain	Tribunal Supremo	46	
	Audiencia Nacional	1	
	Juzgado Central de lo Penal	7	
	Other courts or tribunals	217	271
France	Cour de cassation	95	
	Conseil d'État	75	
	Other courts or tribunals	677	847
Italy	Corte suprema di Cassazione	110	
	Corte Costituzionale	1	
	Consiglio di Stato	75	
	Other courts or tribunals	914	1 100
Cyprus	Ανώτατο Δικαστήριο	2	
	Other courts or tribunals		2

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			Total
Latvia	Augstākā tiesa	18	
	Satversmes tiesa		
	Other courts or tribunals	2	20
Lithuania	Lietuvos Respublikos Konstitucinis Teismas	1	
	Lietuvos Aukščiausiasis Teismas	3	
	Lietuvos vyriausiasis administracinis Teismas	3	
	Other courts or tribunals	4	11
Luxembourg	Cour supérieure de justice	10	
	Cour de cassation	8	
	Conseil d'État	13	
	Cour administrative	8	
	Other courts or tribunals	36	75
Hungary	Legfelsőbb Bíróság	3	
	Fővárosi Ítélőtábla	2	
	Szegedi Ítélötáblá	1	
	Other courts or tribunals	40	46
Malta	Constitutional Court		
	Qorti ta' l- Appel		
	Other courts or tribunals	1	1
Netherlands	Raad van State	74	
	Hoge Raad der Nederlanden	207	
	Centrale Raad van Beroep	49	
	College van Beroep voor het Bedrijfsleven	140	
	Tariefcommissie	34	
	Other courts or tribunals	285	789
Austria	Verfassungsgerichtshof	4	
	Oberster Gerichtshof	87	
	Oberster Patent- und Markensenat	3	
	Bundesvergabeamt	24	
	Verwaltungsgerichtshof	66	
	Vergabekontrollsenat	4	
	Other courts or tribunals	199	387
Poland	Sąd Najwyższy	5	
	Naczelny Sąd Administracyjny	15	
	Trybunał Konstytucyjny		
	Other courts or tribunals	23	43
Portugal	Supremo Tribunal de Justiça	2	
	Supremo Tribunal Administrativo	45	
	Other courts or tribunals	41	88
Romania	Tribunal Dâmbovița	3	
	Curtea de Apel	14	
	Other courts or tribunals	16	33

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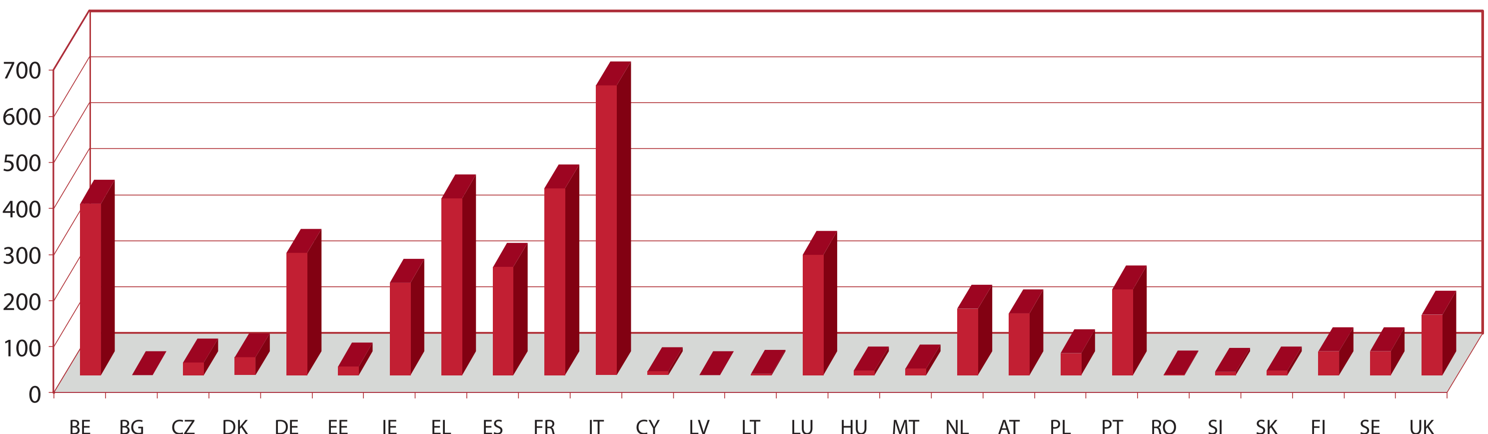
			Total
Slovenia	Vrhovno sodišče	1	
	Ustavno sodišče		
	Other courts or tribunals	3	4
Slovakia	Ústavný Súd		
	Najvyšší súd	6	
	Other courts or tribunals	5	11
Finland	Korkein hallinto-oikeus	38	
	Korkein oikeus	12	
	Other courts or tribunals	26	76
Sweden	Högsta Domstolen	14	
	Marknadsdomstolen	5	
	Regeringsrätten	24	
	Other courts or tribunals	48	91
United Kingdom	House of Lords	40	
	Supreme Court	3	
	Court of Appeal	69	
	Other courts or tribunals	419	531
Others	Cour de justice Benelux/Benelux Gerechtshof [1]	1	1
	Complaints Board of the European Schools [2]	1	1
Total			**7 428**

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

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

21. *General trend in the work of the Court (1952–2011)* — 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
1952–2011	371		27	38	265	18	200	383	234	405	628	8		2	260	9	14	143	133	47	185	1	6	10	52	52	131	**3 622**

Chapter II

The General Court

A — Proceedings of the General Court in 2011

By Mr Marc Jaeger, President of the General Court

Although it was not a year entailing partial renewal of the General Court's membership, 2011 did not prove to be a year in which the Court's composition remained absolutely stable. Whilst the Court welcomed Ms M. Kancheva, appointed to replace Mr T. Tchipev who had resigned in June 2010, it also regretted the departure of Mr E. Moavero Milanesi. Such changes, outside the established timetable for partial renewal of membership every three years, have become a recurring feature in the life of the Court, to be met by appropriate organisational measures and measures for the administration of justice.

From a statistical point of view, 2011 can without doubt be classified as a record year. The total of 722 new cases registered amounts to an increase of nearly 15 % compared with 2010 (636 new cases), a year which likewise saw the number of cases brought rise to a level not reached before. Also, the remarkable advance in the number of cases decided (+ 35 %) meant an unprecedented degree of activity for the Court, it completing 714 cases (as against 527 in 2010), to which 52 applications for interim measures should be added. These figures must be seen as the fruit of the far-reaching reforms implemented by the General Court as regards both case management, in the broad sense, and drafting methods and the development of computing tools.

Even though the Court must endeavour to maintain, in the longer term, the pace kept to in 2011, the fact that other factors will from time to time obtain means that it cannot be guaranteed that that pace will be systematically reproduced from year to year. Reforms must therefore be continued, so that the Court can not only respond to the systemic growth of the caseload but also reduce its backlog. It should thus be noted that, despite the exceptional results described above, the number of cases pending increased, reaching 1 308 cases, and the duration of proceedings rose, averaging 26.7 months (as against 24.7 months in 2010).

As the possibilities for internal reform have been fully exploited, thought should now be directed towards modernisation of the Rules of Procedure of the General Court, with a view to ensuring greater efficiency and improved flexibility in the procedural treatment of the various types of cases before the Court, whilst observing parties' procedural rights. Above all, however, beyond these admittedly necessary improvements, the statistics for 2011 tell us that the Court cannot reasonably contemplate the future without structural change and the addition of new resources, in an economic, financial and budgetary context which is nevertheless not auspicious.

As regards the nature of the Court's caseload, in 2011 the number of cases concerning State aid grew (67 new cases), the large proportion of intellectual property cases was confirmed (219 cases, that is to say, 30 % of the total number) and there was a sudden and substantial inflow of actions relating to restrictive measures adopted by the European Union in connection with the situation in certain non-member countries (93 new cases), this illustrating with particular clarity the way in which the European Union's legislative and regulatory activity directly affects the Court's situation. Generally, the caseload was also increasingly diverse and complex, as is indicated by the following account devoted to the Court's various fields of activity when exercising 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 brought under Article 263 TFEU

1. Time-limit for bringing an action

In order for an action for annulment to be admissible it must comply with the time-limit laid down in the sixth paragraph of Article 263 TFEU, according to which proceedings for annulment must be instituted within two months of the publication of the contested measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be. Under Article 102(1) of the Rules of Procedure of the General Court, where the contested measure is published, that period starts to run at the end of the 14th day after publication.

In Case T-268/10 *PPG and SNF* v *ECHA* (order of 21 September 2011 made by a chamber in extended composition, not yet published, under appeal), the contested measure was a decision of the European Chemicals Agency which, in accordance with the latter's obligation under the REACH regulation, ([1]) had been published on its website. Observing that Article 102(1) of the Rules of Procedure relates only to decisions published in the *Official Journal of the European Union* and that, in the case in point, no provision required publication of the contested decision in the Official Journal (unlike, for example, decisions relating to State aid), the Court held that the 14-day increase in the period was not applicable. It thus concluded that the action was inadmissible.

Also, in Case T-468/10 *Doherty* v *Commission* (order of 1 April 2011, not yet published), the Court held that the time to be taken into account when an application is lodged by fax is the time recorded at the Court Registry, given the provisions of Article 43(3) of the Rules of Procedure (which states that in the reckoning of time-limits for taking steps in proceedings only the date of lodgment at the Registry is to be taken into account). That time is Luxembourg time, in light of the fact the seat of the Court of Justice of the European Union is located in Luxembourg under Protocol No 6 to the FEU Treaty.

Finally, in Case T-409/09 *Evropaïki Dynamiki* v *Commission* (order of 22 June 2011, not yet published, under appeal), the Court held that the 10-day extension on account of distance, laid down in Article 102(2) of the Rules of Procedure, relates only to procedural time-limits and not to the five-year limitation period provided for in Article 46 of the Statute of the Court of Justice of the European Union, the passing of which results in actions to establish non-contractual liability being barred. Thus, procedural time-limits, such as those prescribed for bringing proceedings, and the five-year limitation period in respect of actions to establish non-contractual liability against the European Union are time-limits which are, by nature, different. Indeed, the periods prescribed for bringing proceedings are a matter of public policy and are not subject to the discretion of the parties or the Court, since they were laid down with a view to ensuring clarity and legal certainty. The European Union judicature must therefore examine, even of its own motion, whether the action was brought within the prescribed period. By contrast, the Court may not of its own motion raise the issue of time limitation of actions to establish non-contractual liability.

([1]) 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).

2. Fourth paragraph of Article 263 TFEU — First instances of its application

(a) Concept of a regulatory act

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 by that decision only if it 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. [2]

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. The Court has provided its first interpretations of this new provision, which is intended to relax the requirements governing the access of individuals to the European Union judicature.

Thus, in Case T-18/10 *Inuit Tapiriit Kanatami and Others* v *Parliament and Council* (order of 6 September 2011 made by a chamber in extended composition, not yet published), the Court defined 'regulatory act' within the meaning of the fourth paragraph of Article 263 TFEU for the first time. Interpreting that provision, the Court observed that, even though the provision omits the word 'decision', it permits the institution of proceedings, first, against individual acts, second, against acts of general application which are of direct and individual concern to a natural or legal person and, third, against a regulatory act which is of direct concern to such a person and does not entail implementing measures. According to the Court, it is apparent from the ordinary meaning of the word 'regulatory' that the acts covered by that third possibility are also of general application. That possibility does not, however, relate to all acts of general application, but only those which are not legislative in nature, as is apparent from the broad logic of Article 263 and from the history of the process which led to the adoption of that provision, which had initially been proposed as the fourth paragraph of Article III-365 of the draft Treaty establishing a Constitution for Europe. The Court, then conducting a teleological analysis, added that it is consistent with the purpose of that provision — namely to allow individuals to institute proceedings against an act of general application which is not a legislative act, thereby avoiding the situation in which they would have to infringe the law to have access to the courts — that the conditions of admissibility of an action challenging a legislative act are still more restrictive than those relating to proceedings instituted against a regulatory act.

In the case in point, the Court observed that the contested act, namely the regulation on trade in seal products, [3] was adopted in accordance with the co-decision procedure, under the EC Treaty (Article 251 EC). Pointing out that it is apparent from Article 289 TFEU that acts adopted under the procedure defined in Article 294 TFEU (the ordinary legislative procedure) constitute legislative acts, and that that procedure reproduces, in essence, the co-decision procedure, the

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

(3) 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).

Court concluded, in the light of the various categories of legal acts provided for by the TFEU, that the contested regulation must be categorised as a legislative act. Thus, categorisation as a legislative act or a regulatory act under the TFEU is based on the criterion of the procedure, legislative or not, which led to its adoption. In the case in point, therefore, if the action brought by the applicants were to be admissible, they had to show that the regulation was of direct and individual concern to them within the meaning of the second possibility referred to above provided for by the fourth paragraph of Article 263 TFEU.

(b) Direct concern and concept of an act requiring implementing measures

It was on the basis of that definition of the concept of a regulatory act that the Court concluded in Case T-262/10 *Microban International and Microban (Europe) v Commission* (judgment of 25 October 2011, not yet published) that an action was admissible where it had been brought against the Commission's decision concerning the non-inclusion of triclosan, a chemical substance produced by the applicants, in the list of additives which may be used in the manufacture of plastic materials and articles intended to come into contact with foodstuffs.

The Court found, first, that the contested decision was adopted by the Commission in the exercise of implementing powers and not in the exercise of legislative powers and, second, that that decision was of general application in that it applied to objectively determined situations and produced legal effects with respect to categories of persons envisaged in general and in the abstract. The Court therefore concluded that the contested decision constituted a regulatory act within the meaning of the fourth paragraph of Article 263 TFEU.

Observing that the fourth paragraph of Article 263 TFEU, by allowing natural or legal persons to institute proceedings against regulatory acts of direct concern to them which do not entail implementing measures, pursues an objective of opening up the conditions for bringing direct actions, the Court held that the concept of direct concern as recently introduced in that provision cannot be subject to a more restrictive interpretation than the notion of direct concern as it appeared in the fourth paragraph of Article 230 EC. After establishing that the applicants were directly concerned by the contested decision within the meaning of the concept of direct concern as laid down by the fourth paragraph of Article 230 EC, the Court deduced from this that they were also directly concerned by the contested decision within the meaning of the concept of direct concern as recently introduced in the fourth paragraph of Article 263 TFEU.

As regards the question whether the contested decision entailed implementing measures, the Court noted that, by virtue of Directive 2002/72, ([4]) only additives appearing in the provisional list could continue to be used after 1 January 2010. Moreover, under that directive an additive is to be removed from the provisional list when a decision is taken by the Commission not to include it in the positive list. Accordingly, the decision not to include triclosan had the immediate consequence of its removal from the provisional list and a prohibition on its marketing, without the Member States needing to adopt any implementing measure. In addition, the transitional provision, allowing the possibility of marketing triclosan to be extended until 1 November 2011, did not in itself require any implementing measure on the part of the Member States, as any intervention by those States before 1 November 2011 was purely optional. Finally, the Court pointed out that although, in that last situation, the transitional provision could give rise to implementing measures on the part of the Member States, that provision was intended solely to facilitate the implementation of the

([4]) Commission Directive 2002/72/EC of 6 August 2002 relating to plastic materials and articles intended to come into contact with foodstuffs (OJ 2002 L 220, p. 18).

contested decision. It was thus ancillary to the main purpose of the contested decision which was the prohibition on the marketing of triclosan.

Since the Court found that the contested act constituted a regulatory act of direct concern to the applicants which did not entail any implementing measures, it held the action admissible on the basis of the new provisions in Article 263 TFEU.

3. Jurisdiction of the General Court to annul decisions enforcing penalty payments imposed by the Court of Justice for failure to comply with a judgment establishing a failure to fulfil obligations

In Case T-33/09 *Portugal* v *Commission* (judgment of 29 March 2011, not yet published, under appeal), an action was brought before the General Court for annulment of the Commission's decision requiring payment of the penalty payments due pursuant to the judgment of the Court of Justice of 10 January 2008 in Case C-70/06 *Commission* v *Portugal*, ([5]) which had itself followed an initial judgment ([6]) in which it was declared that that State had failed to fulfil its obligations by not repealing its national legislation making the award of damages to persons harmed by a breach of European Union law in the field of public procurement conditional on proof of fault or fraud.

The General Court found that the Treaty does not make any specific provision regarding the settlement of disputes between a Member State and the Commission at the time of recovery of the sums stated to be payable pursuant to a judgment delivered by the Court of Justice finding a failure to fulfil obligations and ordering a Member State to pay a penalty payment to the Commission in the event of failure to comply with the initial judgment establishing a failure to fulfil obligations. It follows that the remedies established by the Treaty apply and that the decision by which the Commission determines the amount due from the Member State in terms of the penalty payment which it has been ordered to make can be the subject of an action for annulment, which falls within the General Court's jurisdiction.

However, in exercising such jurisdiction, the General Court cannot impinge on the exclusive jurisdiction reserved to the Court of Justice with regard to failure by Member States to fulfil their obligations. The General Court may not rule, therefore, in the context of an action for annulment brought against a decision of the Commission relating to the enforcement of such a judgment of the Court of Justice, on a question relating to the infringement by the Member State of its obligations under the Treaty that has not been previously decided by the Court of Justice.

The General Court also stated that, in the context of enforcing a judgment of the Court of Justice imposing a penalty payment on a Member State, the Commission must be able to assess the measures adopted by the Member State to comply with the judgment of the Court of Justice, without prejudicing either the rights of Member States as resulting from the Treaty infringement procedure or the exclusive jurisdiction of the Court of Justice to rule on the compliance of national legislation with European Union law. The Commission is therefore obliged to determine, before recovering a penalty payment, whether the complaints upheld by the Court of Justice in a judgment delivered at the end of the Treaty infringement procedure still pertain on the date of expiry of the period within which the Court of Justice required the Member State to bring the failure to fulfil obligations

([5]) [2008] ECR I-1. A dispute of the same nature gave rise to Case T-139/06 *France v Commission* (judgment of 19 October 2011, not yet published).

([6]) Judgment of the Court of Justice of 14 October 2004 in Case C-275/03 *Commission* v *Portugal*, not published in the ECR.

to an end. However, the Commission is not entitled to decide, in this context, that the measures adopted by a Member State to comply with a judgment are not consistent with European Union law so as to draw conclusions from this for the calculation of the penalty payment determined by the Court of Justice. If the Commission considers that the new system of rules introduced by a Member State still does not constitute a correct transposition of a directive, it must initiate the Treaty infringement procedure.

In the case in point, the General Court noted that it followed from the judgment of the Court of Justice in Case C-70/06 *Commission* v *Portugal* that that Member State had to repeal the national legislation at issue and that the penalty payment was due until the date of that repeal. The legislation was repealed by a law which entered into force on 30 January 2008. The Commission nevertheless refused to accept that the failure to fulfil oblgations had ended on that date, taking the view that it had ceased on 18 July 2008, the date on which fresh legislation entered into force. The General Court held that the Commission had thereby failed to have regard to the operative part of that judgment and it annulled the contested decision.

Competition rules applicable to undertakings

1. General issues

(a) Concept of an undertaking

In Joined Cases T-208/08 and T-209/08 *Gosselin Group and Stichting Administratiekantoor Portielje* v *Commission* (judgment of 16 June 2011, not yet published, under appeal), the Court specified the conditions for the application of the case-law according to which the direct or indirect involvement of an entity in the economic activity of an undertaking in which it holds a controlling shareholding enables that entity to be classified as an undertaking for the purposes of competition law. In its decision the Commission had considered that Portielje, a foundation holding, as trustee, shares in Gosselin, indirectly played a part in the economic activity carried on by Gosselin. However, the Court observed that, as the case-law had not established a presumption of 'involvement' in the management of an undertaking, the burden of proving that element was borne by the Commission. The Court considered in this case that the Commission had put forward merely structural argument — merely noting that Portielje held virtually the entire capital of Gosselin and that the three main members of its management were at the same time members of Gosselin's board of directors — and had provided no firm evidence capable of showing that Portielje was actually involved in the management of Gosselin. The Court therefore concluded that the Commission had not established that Portielje was an undertaking.

(b) Restriction of competition — Potential competition

In Case T-461/07 *Visa Europe and Visa International Service* v *Commission* (judgment of 14 April 2011, not yet published), the applicants took issue with the Commission for having evaluated the effects on competition of the unlawful conduct of which they were accused by applying a test which was economically and legally incorrect, namely that there was scope for further competition in the market in question. The Court rejected that argument, pointing out that the fact that the Commission had acknowledged that competition on the relevant market was not inefficient did not prevent it from penalising conduct having the effect of excluding a potential competitor. Indeed, examination of the conditions of competition on a given market must be based not only on the existing competition between undertakings already present on the market in question, but also on potential competition. The Court therefore endorsed the Commission's approach based on the

assessment of the effects restrictive of competition that might result for potential competition and for the structure of the market concerned.

That judgment also provided the Court with the opportunity to clarify the definition of potential competition. Thus, it stated that while the intention of an undertaking to enter a market may be of relevance for the purpose of determining whether it can be considered to be a potential competitor, the essential factor on which such a description must be based is whether it has the ability to enter that market.

(c) Reasonable period

In Case T-240/07 *Heineken Nederland and Heineken* v *Commission* and Case T-235/07 *Bavaria* v *Commission* (judgments of 16 June 2011, not yet published, under appeal), relating to the Netherlands beer cartel, the Commission had accorded a reduction of EUR 100 000 in the amount of the fine imposed on each undertaking owing to the unreasonable length of the administrative procedure, which had lasted more than seven years after the inspections. In that regard, the Court considered that the length of the administrative procedure had entailed a breach of the reasonable time principle and that the lump-sum reduction granted by the Commission had not taken account of the amount of the fines imposed on those undertakings — namely EUR 219.28 million on Heineken NV and its subsidiary and EUR 22.85 million on Bavaria NV — so that that reduction was not capable of providing an adequate remedy for that breach. The Court therefore increased the reduction in question to 5 % of the amount of the fine.

2. Points raised in the field of Article 101 TFEU

(a) The taking of evidence

The judgments delivered regarding the gas-insulated switchgear cartel enabled the Court to make a number of observations concerning the rules governing evidence in cartel matters.

— Admissibility

In Case T-132/07 *Fuji Electric* v *Commission* (judgment of 12 July 2011, not yet published), the Commission maintained that both the complaints not formulated during the administrative procedure and the documents not produced during that procedure and submitted for the first time by the applicant before the Court were inadmissible. The Court rejected that approach and observed that the rules setting out the rights and duties within the administrative procedure provided for by competition law cannot be interpreted as obliging a person to cooperate and, in response to the statement of objections sent to it by the Commission, to set out, at the stage of the administrative procedure, all the complaints on which it may wish to rely in support of an action for annulment.

The Commission likewise argued that the complaints whereby the applicant challenged facts or points of law which it had expressly acknowledged during the administrative procedure were inadmissible. However, the Court observed that where the person concerned decides voluntarily to cooperate and, within the administrative procedure, accepts explicitly or implicitly facts or points of law which justify the attribution of the infringement to it, the actual exercise of its right to bring proceedings under the Treaty is not thereby restricted. In the absence of a specific legal basis, such a restriction is contrary to the fundamental principles of the rule of law and of respect for the rights of the defence.

— Witness statements

In Case T-112/07 *Hitachi and Others* v *Commission* (judgment of 12 July 2011, not yet published), the Court recalled, first of all, that a statement by one undertaking accused of having participated in a cartel, the accuracy of which is contested by several other undertakings similarly accused, cannot be regarded as constituting adequate proof of an infringement committed by those other undertakings unless it is supported by other evidence. The Court further stated that the written witness statements of the employees of a company, drawn up under the supervision of that company and submitted by it in its defence in the administrative procedure carried out by the Commission, cannot, in principle, be classed as evidence which is different from, and independent of, the statements made by that same company. They merely complement those statements, and can explain them and express them in concrete form. Consequently, they must also be corroborated by other evidence.

— Contextual evidence

In the judgments of 12 July 2011 in *Hitachi and Others* v *Commission*, in Case T-113/07 *Toshiba* v *Commission* (not yet published, under appeal) and in Case T-133/07 *Mitsubishi Electric* v *Commission* (not yet published, under appeal), the Court recalled that, where the Commission relies solely on the conduct of the undertakings at issue on the market to conclude that there was an infringement, it is sufficient for those undertakings to prove the existence of circumstances which cast the facts established by the Commission in a different light and thus allow another plausible explanation of those facts to be substituted for the one adopted by the Commission. However, although the lack of documentary evidence may be relevant in the global assessment of the set of indicia on which the Commission relies, it does not in itself enable the undertaking concerned to call the Commission's claims into question by submitting an alternative explanation of the facts. That is the case only where the evidence put forward by the Commission does not enable the existence of the infringement to be established unequivocally and without the need for interpretation.

— Review by the Court

In *Mitsubishi Electric* v *Commission*, the applicant challenged the case-law according to which, because of the difficulties faced by the Commission when trying to prove an infringement, a more lenient evidential standard is acceptable. In support of its argument, the applicant observed that fines imposed in cartel cases had constantly increased in recent years, which must affect the intensity with which the Commission's decisions are reviewed. The Court rejected that argument, observing that while it is true that the increase in the amounts of fines may have more serious consequences for the parties on which such fines are imposed, it has the consequence, since the Commission's initiative in that regard is generally well known, that if undertakings make themselves liable for an infringement, they will make an even greater effort to limit as far as possible the number of items that may serve as evidence, thereby making the Commission's task more difficult.

In addition, the Court also observed, in Case T-348/08 *Aragonesas Industrias y Energía* v *Commission* (judgment of 25 October 2011, not yet published), that, in so far as it is the Court's task to assess whether the evidence and the other factors referred to by the Commission in the contested decision are sufficient to establish the existence of an infringement, it must also identify the evidence relied on by the Commission to show that the applicant participated in the infringement at issue. For that purpose, the identification of those items of evidence can relate only to the part of the grounds of the contested decision in which the Commission describes the *inter partes* stage of the administrative procedure.

(b) Participation in a single and continuous infringement

In Case T-210/08 *Verhuizingen Coppens* v *Commission* (judgment of 16 June 2011, not yet published, under appeal), the Court observed that in order for an undertaking to be held liable for a single and continuous infringement, its awareness of the offending conduct of the other participants in the infringement is required. The Court observed, first of all, that in this case, although the applicant had indeed participated in providing false quotes for removal services, it had not, on the other hand, been aware of the anti-competitive activities of the other undertakings concerning the agreements as to financial compensation for rejected offers or for not quoting. In so far as — irrespective of the operative part — it was clear from the grounds of the decision that the Commission had considered that those practices formed a single and continuous infringement, the Court annulled both the finding of infringement and the fine imposed.

(c) Calculation of the amount of the fine

The year 2011 was marked by the very large number of cartel cases raising problems in connection with the calculation of the fine imposed and by the first cases in which the Court interpreted the 2006 Guidelines. [7]

— The value of sales

In Joined Cases T-204/08 and T-212/08 *Team Relocations and Others* v *Commission* (judgment of 16 June 2011, not yet published, under appeal), the Court found it necessary to interpret the concept of 'sales' to be taken into account in the application of the 2006 Guidelines. The Court rejected on that occasion the applicant's argument that only the value of sales resulting from the service actually affected by the infringement should be taken into consideration and concluded that the value of sales, within the meaning of those guidelines, must be taken to refer to sales in the relevant market.

— Gravity

In Case T-199/08 *Ziegler* v *Commission* (judgment of 16 June 2011, not yet published, under appeal), the applicant claimed that there had been a failure to state reasons with regard to the calculation of the basic amount of the fine. In that regard, the Court observed that the 2006 Guidelines had brought about a fundamental change in the methodology for calculating fines. In particular, the threefold categorisation of infringements ('minor', 'serious' and 'very serious') had been abolished, and a scale from 0 % to 30 % introduced in order to enable finer distinctions to be made. Furthermore, the basic amount of the fine will in future be 'related to a proportion of the value of sales, depending on the degree of gravity of the infringement, multiplied by the number of years of the infringement'. As a general rule, 'the proportion of the value of sales taken into account will be set at a level of up to 30 %'. With respect to horizontal price-fixing, market-sharing and output-limitation agreements 'which … are, by their very nature, among the most harmful restrictions of competition', the proportion of the value of sales taken into account must generally be set 'at the higher end of the scale'. In those circumstances, and as a corollary of the discretion which it enjoys in that regard, the Commission is required to state its reasons for choosing the proportion of sales taken into account and cannot simply state reasons only for the classification of an infringement as 'very serious'. More generally, while accepting that the decision stated sufficient reasons on

[7] Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003, adopted on 1 September 2006 (OJ 2006 C 210, p. 2).

that point, in the light of the existing case-law, the Court emphasised that that case-law had been developed by reference to the preceding guidelines and therefore requested the Commission, in applying the 2006 Guidelines, to augment its reasoning as to the calculation of fines in order, in particular, to enable undertakings to acquire a detailed knowledge of the method of calculating the fine imposed on them.

In *Team Relocations and Others* v *Commission,* the Court, after observing that the 2006 Guidelines abolished both the categorisation of infringements and the flat-rate amounts of fines and enable a finer distinction to be made according to the gravity of the infringements, concluded that the Commission is free to determine the gravity of the role played by each individual undertaking either when determining the percentage of the value of sales adopted or when assessing the mitigating and aggravating circumstances. In the latter case, however, assessment of mitigating and aggravating circumstances must enable sufficient account to be taken of the relative gravity of the participation in a single infringement and also of any variation of that gravity over time.

— Duration

In *Team Relocations and Others* v *Commission,* the automatic multiplication of the amount determined on the basis of the value of sales by the number of years of an undertaking's participation in the infringement, as provided for in the 2006 Guidelines, was challenged since that system was said to confer on the alleged duration of the infringement an importance disproportionate in relation to the other relevant factors, in particular the gravity of the infringement. Although the Court, in line with what has been indicated in relation to the gravity of the infringement, observed that the Commission's new approach represents, in this regard too, a fundamental change in methodology, in so far as multiplication by the number of years of participation in the infringement is equivalent to increasing the amount by 100 % per year, it none the less pointed out that Article 23(3) of Regulation No 1/2003 ([8]) does not preclude such a development.

In its judgment of the same date in *Gosselin Group and Stichting Administratiekantoor Portielje* v *Commission*, on the other hand, the Court specified the effect that that change would have on the Commission's work. Thus, it observed that, while it is settled case-law that the burden of proof relating to infringements of Article [101](1)[TFEU] is borne by the Commission and that the Commission must adduce precise and consistent evidence to substantiate the firm conviction that the alleged infringement has been committed, that applies particularly in relation to evidence of the duration of the infringement, a criterion the weight of which was considerably increased in the 2006 Guidelines.

— Equal treatment — Turnover taken into consideration

In *Toshiba* v *Commission* and *Mitsubishi Electric* v *Commission,* the Court observed that the Commission had chosen the year 2001 as the reference year for the purpose of determining the value of worldwide sales and for the calculation of the starting amount of the fines to be imposed on Toshiba and Mitsubishi Electric, whose gas-insulated switchgear activities had been taken over by their joint venture TM T & D in 2002, whereas it had chosen 2003, the last full year of the infringement, for the European producers. The Commission maintained that that distinction reflected its desire to take into consideration the fact that, for most of the period of the infringement, Toshiba had held a considerably smaller share of the worldwide market than Mitsubishi. While the Court

([8]) 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).

considered that such an objective was lawful, it none the less took the view that other non-discriminatory methods could have been used in order to achieve it, such as the division of the starting amount of the fine, calculated on the basis of turnover for 2003, in accordance with the proportion of sales of the product concerned during the year preceding the creation of the joint venture. As the Commission had committed a breach of the principle of equal treatment, and in the absence of any factor enabling the Court to calculate a new amount for the fine, the Court annulled the fines imposed on those two undertakings.

— Deterrence

In Case T-217/06 *Arkema France and Others* v *Commission* (judgment of 7 June 2011, not yet published), the Commission had applied an increase of 200 % in order to ensure that the financial penalty would have a sufficient deterrent effect, in view of the size and economic power of the undertaking concerned. That increase had been based on the worldwide turnover of Total, the undertaking's parent company. However, the Court observed that, a few days before the Commission adopted its decision, the applicant had ceased to be controlled by Total, and therefore considered that the increase of the fine for deterrence was not justified. The Court observed that the need to ensure that a fine has sufficient deterrent effect requires, in particular, that the amount be adjusted in order to take account of the desired impact on the undertaking on which it is imposed, so that the fine is not rendered negligible or, on the contrary, excessive, particularly in the light of the undertaking's financial capacity. Consequently, that objective of deterrence can be validly achieved only if regard is had to the situation of the undertaking on the day on which the fine is imposed. Since the economic unity linking Arkema to Total had been broken before the date on which the decision was adopted, Total's resources could not be taken into consideration for the determination of the increase in the fine imposed on Arkema and its subsidiaries. The Court therefore held that the increase of 200 % was excessive so far as those undertakings were concerned and that an increase of 25 % was adequate to ensure that the fine imposed on them would have a sufficiently deterrent effect. On that ground, the Court decided to reduce the amount of the fine imposed on Arkema from EUR 219.1 million to EUR 113.1 million.

— Cooperation

In *Fuji Electric* v *Commission,* the Court observed that, while it is correct that the date on which evidence is delivered to the Commission has an effect on whether that evidence is to be classified as having significant added value, since that classification is dependent on what evidence is already held by the Commission at the date of delivery, the mere fact that such evidence has been delivered after the notification of the statement of objections does not mean that it may not still constitute, notwithstanding the advanced stage of the administrative proceedings, significant added value. In particular, in an application under the Leniency Notice submitted after the statement of objections has already been sent, an undertaking may focus on the facts which, in its opinion, have not been proved to the requisite legal standard in order to provide significant added value by comparison with the evidence already in the Commission's possession.

In Case T-12/06 *Deltafina* v *Commission* (judgment of 9 September 2011, not yet published, under appeal), the Commission had decided, for the first time, to grant the applicant conditional immunity under a Leniency Notice. The Court stated that, in view of the fact that the grant of total immunity from fines constitutes an exception to the principle that the undertaking is personally liable for the breach of the competition rules, it is logical that the Commission may, in return, require the undertaking not to omit to inform the Commission of the relevant facts of which it is aware and which are capable of affecting the conduct of the administrative procedure and the effectiveness of the investigation. The Court observed that at a meeting with its competitors the applicant had

disclosed, voluntarily and without informing the Commission, the fact that it had submitted an application for leniency to the Commission before the Commission had the opportunity to carry out the inspections relating to the cartel in question. As such conduct did not indicate a spirit of genuine cooperation, the Court held that the Commission had not erred in not granting Deltafina definitive immunity.

— Aggravating circumstances

In Case T-343/08 *Arkema France* v *Commission* (judgment of 17 May 2011, not yet published), the Court observed that while no limitation period precludes a finding by the Commission of repeated infringement, the fact none the less remains that, in accordance with the principle of proportionality, the Commission cannot take one or more previous decisions penalising an undertaking into account without limitation in time. In this case, the Court found that the applicant had infringed the competition rules by participating in cartels continuously from 1961 until May 1984, for which it had been penalised first in 1984, then in 1986 and finally in 1994, and that, in spite of that series of decisions, it had repeated its unlawful conduct by participating in a new cartel, penalised in the contested decision, from 17 May 1995 until 9 February 2000. In consequence, the Commission had increased the basic amount of the fine imposed on the applicant by 90 %. The Court approved the Commission's approach, stating that, since that series of decisions, the adoption of which had been separated by short intervals and the last of which had been adopted one year before the applicant had participated in the infringement penalised in the contested decision, demonstrated the applicant's tendency towards infringing the competition rules, the Commission had not breached the principle of proportionality in taking that series of decisions into consideration when assessing the applicant's conduct from the aspect of repeated infringement.

In the decision contested in Case T-39/07 *ENI* v *Commission* and Case T-59/07 *Polimeri Europa* v *Commission* (judgments of 13 July 2011, not yet published, under appeal), the Commission, observing that EniChem had already been fined for its participation in two previous cartels, had considered that the basic amount of the fine imposed on the applicants, Eni and its subsidiary Polimeri, should be increased by 50 % to reflect the aggravating circumstance of repeated infringement. The Commission had taken the view that, although the legal persons involved in the infringements in issue were not the same, the same undertaking had none the less repeated the infringement in issue. The Court was careful to observe, however, that, as the development of the structure and control of the companies concerned was complex, the Commission had to be particularly precise and to adduce all the detailed evidence necessary to show that the companies to which the contested decision was addressed and the companies to which the previous decisions had been addressed formed the same 'undertaking' for the purposes of Article [101 TFEU]. The Court considered that in this case that had not been done and that the repeated infringement had not been demonstrated. It therefore reduced the amount of the fine from EUR 272.25 million to EUR 181.5 million.

In a judgment delivered on the same date in Joined Cases T-144/07, T-147/07 to T-150/07 and T-154/07 *ThyssenKrupp Liften Ascenseurs and Others* v *Commission* (not yet published, under appeal), the Court observed that the Commission had increased the amount of the fines imposed on the parent company, ThyssenKrupp AG, its subsidiary, ThyssenKrupp Elevator AG, and certain national subsidiaries by 50 % for repeated infringement, as certain companies in the ThyssenKrupp group had already been penalised in 1998 for their participation in a cartel on the market affected by the 'alloy surcharge'. In that regard, the Court observed that the Commission had found, in that earlier decision, an infringement committed only by the companies of that group, and not by their then parent companies, to which ThyssenKrupp AG was the economic and legal successor. Nor had the Commission considered that the subsidiaries and their parent companies formed an economic entity. The Court noted, moreover, that the subsidiaries which had been fined in connection with

the cartel in the sector affected by the 'alloy surcharge' were not among the undertakings penalised in the contested decision. Thus, the infringements found could not be regarded as constituting a repeated infringement by the same undertaking.

— Mitigating circumstances

In *Ziegler* v *Commission,* the applicant relied, as a mitigating circumstance, on the fact that it had terminated the infringement. The Court observed that, although the 2006 Guidelines provide that the basic amount of the fine may be reduced on that basis, that 'will not apply to secret agreements or practices (in particular, cartels)'. In addition, the benefit of that mitigating circumstance is limited to cases where the infringement ceases following the Commission's first involvement. Pointing out that the applicant had participated in the infringement until 8 September 2003, whereas the inspections had taken place after that date, namely on 16 September 2003, the Court rejected the applicant's complaint.

In the same case, the applicant claimed that the fact that the Commission had been aware of the offending practice and that it had tolerated it for years had led it to the legitimate, albeit mistaken, belief that that practice was lawful. In that regard, the Court emphasised that mere knowledge of anti-competitive conduct does not imply that that conduct was implicitly 'authorised or encouraged' by the Commission within the meaning of the 2006 Guidelines. Alleged inaction cannot be treated in the same way as a positive act, such as an authorisation or encouragement, that would lead to recognition of a mitigating circumstance.

In *Arkema France* v *Commission* the applicant maintained that the Commission had wrongly refused to grant it a reduction of the amount of the fine for its cooperation outside the scope of a Leniency Notice. The Court explained that in order to maintain the practical effect of a notice of that type it can only be in exceptional situations that the Commission is required to grant a reduction of the fine to an undertaking on a different basis. The Court considered that that is the case, in particular, where cooperation provided by an undertaking, which goes beyond the undertaking's legal obligation to cooperate, but does not give rise to the right to a reduction of the amount of the fine under that notice, is of objective use to the Commission. The cooperation in question must be found to be of such use where the Commission bases its final decision on evidence without which it would not have been in a position to penalise the infringement concerned in whole or in part.

— Exceptional circumstances

In *Ziegler* v *Commission,* the Court examined the application of the 2006 Guidelines with regard to taking account of the ability of the undertaking concerned to pay the fine. It observed that in order to benefit from an exceptional reduction in the fine on account of economic difficulties, under those guidelines, in addition to an application to that effect, two cumulative conditions must be met, namely, first, an insuperable difficulty in paying the fine and, second, the existence of a specific 'social and economic context'. As regards the first condition, the Court found that the Commission had simply observed that the fine represented only 3.76 % of the undertaking's worldwide turnover in 2006 and had thus concluded that the fine would not irretrievably jeopardise its economic viability. The Court considered, first, that that assessment was abstract and took no account of the applicant's specific circumstances and, second, that a simple calculation of the fine as a percentage of the undertaking's worldwide turnover could not of itself lead to the conclusion that the fine was not liable to jeopardise irretrievably the undertaking's economic viability. However, as the second condition was not met, the Court concluded that the Commission had been justified in rejecting the applicant's arguments.

— The ceiling of 10 % of turnover

In Case T-211/08 *Putters International* v *Commission* (judgment of 16 June 2011, not yet published), the Court stated that the mere fact that the fine ultimately imposed amounted to 10 % of the applicant's turnover, while that percentage was lower for the other participants in the cartel, could not constitute a breach of the principles of equal treatment or proportionality. That consequence is inherent in the interpretation of the 10 % ceiling as a capping ceiling which is applied after any reduction in the fine on account of mitigating circumstances or the principle of proportionality. However, the Court observed that the multiplication of the amount determined on the basis of the value of sales by the number of years of participation in the infringement may mean that, in the context of the 2006 Guidelines, the application of the 10 % ceiling is now the rule rather than the exception for any undertaking which operates mainly on a single market and has participated in a cartel for over a year. In that case, any distinction on the basis of gravity or mitigating circumstances will as a matter of course no longer be capable of impacting on a fine which has been capped in order to be brought below the 10 % ceiling. The Court thus emphasised that the failure to draw a distinction with regard to the final fine that results presents a difficulty in terms of the principle that penalties must be specific to the offender and the offence, which is inherent in the new methodology.

(d) Imputability of the infringement and joint and several liability for payment of the fine

— Conditions governing application of the presumption of liability of a parent company for the acts of its subsidiary

In Case T-234/07 *Koninklijke Grolsch* v *Commission* (judgment of 15 September 2011, not yet published), the Court observed that the Commission had not adduced evidence of the applicant's direct participation in the cartel In fact, the applicant was assimilated to its (wholly owned) subsidiary without the Commission having distinguished between the legal persons or provided the reasons why the infringement should be attributed to the parent company. The Court considered that, in thus failing to have regard to the economic, organisational or legal links between the applicant and its subsidiary, the Commission had deprived the applicant of the possibility of challenging the substance of that attribution of liability before the Court by rebutting the presumption that it actually exercised decisive influence over the subsidiary and had not put the Court in a position to exercise its power of review in that regard, which justified the annulment of the decision.

— Rebuttal of the presumption

In Case T-185/06 *Air liquide* v *Commission* (judgment of 16 June 2011, not yet published) and Case T-196/06 *Edison* v *Commission* (judgment of 16 June 2011, not yet published, under appeal), the Court found, first of all, that the Commission had been entitled to presume the actual exercise of decisive influence by the applicants over their respective subsidiaries, in the light of the undisputed 100 % control linking them. The Court observed, next, that the applicants had raised a specific argument in order to rebut that presumption, by attempting to demonstrate that their respective subsidiaries were autonomous. In response to those arguments, the Commission had merely referred to certain additional indicia of the applicants' exercise of decisive influence over their respective subsidiaries. The Court considered that the Commission had thus failed to set out in the contested decision the reasons why the evidence adduced by the applicants was not sufficient to rebut the presumption in question. The Commission's duty to state reasons for its decision on that point follows clearly from the rebuttable nature of the presumption in question, the rebuttal of which involves the applicants' producing evidence covering all the economic, organisational

and legal links between themselves and their respective subsidiaries. As the Commission had not adopted a detailed position in that regard, the Court annulled the contested decision for breach of the obligation to state reasons.

In *Gosselin Group and Stichting Administratiekantoor Portielje* v *Commission,* the Commission had applied the presumption that Portielje exercised decisive influence over Gosselin, since the parent company held virtually all the capital of its subsidiary. However, the Court observed that the evidence adduced by Portielje enabled that presumption to be rebutted. Among that evidence, the Court placed particular emphasis on the fact that the only possibility for the parent company to influence its subsidiary would have been to make use of the voting rights associated with the shares which it held when a general meeting of the subsidiary was held. The Court observed that no shareholders' meeting had been held during the infringement period and therefore decided to annul the Commission's decision in so far as it concerned Portielje.

— The scope of the liability

In Case T-382/06 *Tomkins* v *Commission* (judgment of 24 March 2011, not yet published, under appeal), the applicant had been held liable for the offending conduct of its subsidiary, Pegler, on the ground that it held 100 % of the latter's capital. Among the pleas which it put forward, the applicant disputed its subsidiary's participation in the cartel during part of the infringement period. By judgment of the same date in Case T-386/06 *Pegler* v *Commission* (not yet published), the Court annulled the Commission's decision concerning Pegler's participation in the copper fittings cartel during a longer part of the infringement period than that referred to in the plea put forward by Tomkins, the parent company. The Court observed, in that regard, that since the European Union judicature cannot rule *ultra petita*, the scope of the annulment which it pronounces may not go further than that sought by the applicant. However, under competition law Tomkins and its subsidiary, which had been partly successful following the action for annulment in *Pegler* v *Commission*, constituted a single entity. Therefore, the Commission's imputation of liability to the applicant meant that the applicant had the benefit of the partial annulment of the contested decision in that case. Indeed, the applicant had put forward a single plea challenging the duration of Pegler's participation in the infringement and had claimed that the contested decision should be annulled on that ground. The Court thus considered that, where it has before it actions for annulment brought separately by a parent company and by its subsidiary, it does not rule *ultra petita* if it takes into account the outcome of the action brought by the subsidiary, if the form of order sought in the action brought by the parent company has the same object.

On the other hand, in *Tomkins* v *Commission* the applicant had expressly withdrawn the complaint alleging an error of assessment with regard to the increase in the amount of the fine for the purpose of deterrence. The Court inferred that it could not rule on that point without going beyond the bounds of the dispute as defined by the parties in the case, even though it had considered in *Pegler* v *Commission* that the Commission had erred in applying that multiplier.

— Joint and several payment

In Case T-41/05 *Alliance One International* v *Commission* (judgment of 12 October 2011, not yet published), the Court considered that the applicant could not be held liable for the infringement on the part of Agroexpansión in respect of the period before 18 November 1997, since it was only from that date that it had formed an economic unit with Agroexpansión and thus an undertaking within the meaning of Article [101 TFEU]. Since joint and several liability for payment of a fine can cover only the period of the infringement during which the parent company and the subsidiary constituted such an undertaking, the Commission had not been justified in requiring the applicant

to pay jointly and severally, with Agroexpansión, the total amount imposed on Agroexpansión, namely EUR 2 592 000, an amount relating to the entire infringement period. Consequently, the Court reduced the increase applied for duration from 50 % to 35 %.

(e) Unlimited jurisdiction

Under Article 261 TFEU and Article 31 of Regulation No 1/2003, the Court has unlimited jurisdiction, which authorises it, in addition to carrying out a mere review of the lawfulness of the penalty, where its only option is to dismiss the action for annulment or to annul the contested measure, to vary the contested measure, even without annulling it, in the light of all the factual circumstances, by amending, for example, the fine imposed. [9]

In *Arkema France and Others* v *Commission* the Court pointed out that the Commission had not contested the accuracy of the applicants' statements according to which, from 18 May 2006, they had no longer been controlled by Total and Elf Aquitaine. The Court was asked by the applicants to exercise its unlimited jurisdiction in order to reduce the amount of the fine in the light of that fact, and it reduced from 200 % to 25 % the increase imposed in order to ensure that the fine had a sufficiently deterrent effect, as that increase was deemed excessive because it had been calculated on the basis of the parent company's worldwide turnover. Consequently, the amount of the fine imposed on Arkema was reduced to EUR 105.8 million.

In *Ziegler* v *Commission* and *Team Relocations and Others* v *Commission,* the Court observed that the augmented statement of reasons concerning the calculation of the amount of the fine, made necessary as a result of the fundamental change in methodology brought about by the application of the 2006 Guidelines, is also intended to facilitate the exercise by the Court of its unlimited jurisdiction, which must enable it to review not only the legality of the contested decision but also the appropriateness of the fine imposed.

In *Putters International* v *Commission,* the Court held that the failure to draw a distinction with respect to the final fine, which sometimes results from the 2006 Guidelines, may require the Court to exercise its unlimited jurisdiction in those specific cases where the application of the 2006 Guidelines alone does not enable an appropriate distinction to be drawn.

In Case T-11/06 *Romana Tabacchi* v *Commission* (judgment of 5 October 2011, not yet published), the Court, after finding that the Commission had made errors of assessment of the facts concerning the duration of the applicant's participation in the cartel and, furthermore, had breached the principle of equal treatment in assessing the specific weight of that participation, redressed that situation by exercising its unlimited jurisdiction. Thus, the Court considered that, taking account in particular of the cumulative effect of the illegalities previously found and also of the applicant's weak financial capacity, an equitable assessment of all the circumstances of the case would be made if the Court set the final amount of the fine imposed on the applicant at EUR 1 million instead of EUR 2.05 million. The Court observed, in that regard, that a fine of such an amount made it possible to penalise the applicant's conduct effectively, in a manner which was not negligible and which remained sufficiently deterrent, and, moreover, that any fine above that amount would be disproportionate to the infringement found as against the applicant appraised as a whole.

[9] See, in particular, Joined Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P *Limburgse Vinyl Maatschappij and Others* v *Commission* [2002] ECR I-8375, paragraph 692.

3. Points raised in the field of concentrations

In Case T-224/10 *Association belge des consommateurs test-achats* v *Commission* (judgment of 12 October 2011, not yet published), the Court clarified the conditions governing the admissibility of an action brought by third parties, first, against a Commission decision declaring a merger (in this case between EDF and Segebel) compatible with the common market and, second, against the rejection of the national authorities' request that examination of the merger be referred in part to those authorities (the non-referral decision).

(a) *Locus standi* of third parties

In that regard, the Court recalled that it follows from the case-law that, for decisions of the Commission relating to the compatibility of a merger with the common market, the *locus standi* of third parties concerned by a merger must be assessed differently depending on whether they, first, rely on defects affecting the substance of those decisions ('first category' of interested third parties) or, second, submit that the Commission infringed procedural rights granted to them by the acts of European Union law governing the control of concentrations ('second category' of interested third parties).

As regards the first category, those third parties must be affected by the contested decision by virtue of attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and which thereby distinguish them individually just as in the case of the person addressed. In this case the applicant was not covered by the first category, since it was not individually affected by the Commission's decision. As to whether the applicant came within the second category, the Court observed that consumer associations have a procedural right — the right to be heard — in the context of the administrative procedure in respect of the merger investigation, subject to compliance with two conditions: first, that the merger concerns products or services used by final consumers; and, second, that an application to be heard by the Commission during the investigation procedure has been made in writing.

The Court found that the applicant satisfied the first condition — the merger at issue was likely to have effects, at least secondary effects, on consumers — but not the second. In that regard, the Court stated that the steps which third parties are required to undertake in order to be involved in the procedure relating to the examination of the concentration must be taken following the formal notification of the concentration. That makes it possible, in the interest of third parties, to avoid such requests being made by them without the Commission having determined the purpose of the merger control procedure, at the time of notification of the transaction at issue. Furthermore, it means that the Commission does not have to separate systematically, from among the requests received, those which concern transactions attributable only to abstract hypotheses, or even to mere hearsay, from those which concern transactions leading to a notification. In this instance the applicant had requested the Commission to be heard in the examination of the merger two months before it was notified. That, according to the Court, could not make up for the non-renewal of the application or for the lack of any initiative on the applicant's part once the economic transaction envisaged by EDF and Segebel had in fact become a duly notified concentration.

(b) Challengeable nature of a non-referral decision

According to settled case-law, a third party concerned by a merger may be entitled to challenge, before the Court, the decision whereby the Commission granted the referral request submitted by a national competition authority. Conversely, the Court held that interested third parties do not have *locus standi* to challenge a decision refusing to refer whereby the Commission rejects the

referral request submitted by a national authority. The procedural rights and the judicial protection that European Union law accords to those third parties are not in any way jeopardised by the non-referral decision. Quite to the contrary, that decision ensures for third parties concerned by a concentration with a Community dimension, first, that that concentration will be assessed by the Commission in the light of European Union law and, second, that the Court will be the judicial body having jurisdiction to deal with any action against the Commission's decision to terminate the procedure.

State aid

1. Admissibility

The judgments delivered this year provide further clarification of the concepts of 'act producing mandatory legal effects' and 'interest in bringing proceedings'.

In Case T-421/07 *Deutsche Post* v *Commission* (judgment of 8 December 2011, not yet published), the Court declared inadmissible the action brought by Deutsche Post against the Commission's decision to initiate the formal investigation procedure with regard to the aid granted to Deutsche Post by the Federal Republic of Germany. The Court held that the contested decision, which had been preceded by a first decision to initiate the formal investigation in 1999, did not constitute a contestable act.

According to the Court, a Commission decision to initiate the formal procedure, an act that is preparatory in nature to the final decision, produces independent legal effects and therefore constitutes a contestable act not only where the applicant disputes the classification of the aid as new aid but also where it disputes the actual classification of the measure in issue as State aid within the meaning of Article 87(1) EC.

In this case, however, the Court held that the contestable act, consisting of a second decision to initiate the formal procedure, did not constitute a challengeable act in that it did not produce independent legal effects by comparison with the first decision to initiate the procedure. The contested act concerned the same measures as those which had already formed the subject-matter of the earlier decision to initiate the procedure. In addition, the Commission had already mentioned the fact that the measures at issue could fall within the scope of the prohibition of Article 87(1) EC and that the independent legal effects relating to the contested act had therefore already been produced following that decision to open the procedure. The Court also observed that when the contested act was adopted the formal investigation procedure initiated in 1999 with respect to the measures at issue had not yet been closed and that the contested act had not altered either the legal scope of the measures or the applicant's legal situation.

In Joined Cases T-443/08 and T-455/08 *Freistaat Sachsen and Others* v *Commission* (judgment of 24 March 2011, not yet published, under appeal), the classification of a capital contribution as State aid was challenged before the Court in two actions brought against the Commission's decision declaring the aid provided by the Federal Republic of Germany to Leipzig-Halle airport compatible with the common market, the first by the public shareholders of the undertakings managing the airport (Case T-443/08) and the second by the two undertakings operating the airport (Case T-455/08).

The Court declared the action brought by the public shareholders in Case T-443/08 inadmissible on the ground of lack of interest in acting. By way of preliminary observation, the Court recalled that an action for annulment brought by a natural or legal person is admissible only in so far as the

applicant has an interest in seeing the contested decision annulled. That interest must be vested and present and is evaluated on the date on which the action is brought. The Court also observed that the mere fact that a Commission decision declares aid compatible with the common market and thus, in principle, does not have an adverse effect on the undertakings receiving the aid does not dispense the Community judicature from examining whether the Commission's finding has binding legal effects such as to affect the interests of those undertakings.

In the first place, the Court held that the fact that the decision did not correspond to the position put forward by applicants during the administrative procedure did not in itself produce binding legal effect such as to affect their interests and could not therefore in itself form a basis for their interest in bringing proceedings. The procedure for reviewing State aid is, in view of its general scheme, a procedure initiated in respect of the Member State responsible for granting the aid. The undertakings that receive aid and the local authorities within that State which grant the aid are considered, in the same way as competitors of the recipients of the aid, only to be 'interested parties' in that procedure. The Court added that such applicants are not in the least deprived of any effective judicial protection against the Commission decision characterising a capital contribution as State aid. Indeed, even if the action for annulment were declared inadmissible, there would be nothing to prevent those applicants from requesting the national courts, in the course of any proceedings before them in which they were called upon to accept the consequences of the alleged nullity of the capital contribution to which they referred, to make a reference for a preliminary ruling under Article 234 EC putting in issue the validity of the Commission decision in so far as it found that the measure in question was State aid.

In the second place, as regards the alleged negative consequences entailed by the classification of the capital contribution as State aid, the Court considered that an applicant cannot rely upon future uncertain circumstances to establish his interest in applying for annulment of the contested act. That fact that an applicant refers to the 'possible' consequences of the alleged nullity of a capital contribution under company law and the law on insolvency and not to consequences which are certain is therefore insufficient for such an interest to be recognised. Furthermore, the Court observed that the applicants, public shareholders of the recipient of the aid, had not demonstrated that they had a legal interest of their own, distinct from that of the recipient, in seeking annulment of the decision. Unless he is able to show a legal interest in bringing proceedings separate from that of an undertaking which he partly controls and which is concerned by a European Union measure, a person cannot defend his interests in relation to that measure other than by exercising his rights as a member of that undertaking.

In Joined Cases T-394/08, T-408/08, T-453/08 and T-454/08 *Regione autonoma della Sardegna and Others* v *Commission* (judgment of 20 September 2011, not yet published, under appeal), the Court rejected the plea of inadmissibility raised by the Commission and held that the fact that applicants and the interveners had not brought an action within the specified time-limit against a correction decision having the same object and purpose as a decision to initiate the formal investigation procedure did not prevent them from putting forward pleas in law alleging the illegality of that decision in order to oppose the Commission's final decision.

In effect, a decision closing the formal investigation procedure produces legal effects which are binding on and capable of affecting the interests of the parties concerned, since it concludes the procedure in question and definitively decides whether the measure under review is compatible with the rules applying to State aid. Accordingly, interested parties are always able to contest that decision and must, in that context, be able to challenge the various elements which form the basis for the position definitively adopted by the Commission. The Court added that that right is independent of whether the decision to initiate the formal review procedure may be the subject-matter

of an action for annulment. Admittedly, an action may be brought against that initiation decision when it gives rise to definitive legal effects, which is the case where the Commission initiates the formal investigation procedure in respect of a measure which it provisionally classifies as new aid. None the less, the right to contest a decision to initiate the procedure may not diminish the procedural rights of interested parties by preventing them from challenging the final decision and relying in support of their action on defects at any stage of the procedure leading to that decision.

2. Substantive rules

(a) Concept of State aid

In Joined Cases T-267/08 and T-279/08 *Région Nord-Pas-de-Calais and Communauté d'Agglomération du Douaisis* v *Commission* (judgment of 12 May 2011, not yet published, under appeal), the Court further developed the concept of State resources, in particular the condition that the measures concerned must be attributable to the State.

The Court observed on that point that the fact that the advances had been made by the region and by the municipal authority, and therefore by territorial communities and not by the central authority, was not in itself such as to allow those measures to escape the field of application of Article 107(1) TFEU. The Court stated, moreover, that the fact that the financing of the measures in issue from the region's and the municipal authority's own resources was not of a fiscal or a parafiscal nature could not allow those measures to escape classification as State aid. The decisive test in respect of State resources is public control, and Article 107(1) TFEU encompasses all financial means, whether or not they result from compulsory contributions, by which the public sector may actually support undertakings.

In *Regione autonoma della Sardegna and Others* v *Commission,* the Commission was accused of having incorrectly classified the measures in issue as unlawful new aid, on the ground that it was not notified, rather than as existing aid that had been misused.

The Court observed that where the alteration affects the actual substance of the original scheme, the original scheme is transformed into a new aid scheme. On the other hand, if the alteration is not substantive, only the alteration as such is liable to be classified as new aid. In the present case, the approval decision expressly referred to the condition that the application for aid had to be submitted before work was started on the investment projects. Pointing out that, on the basis of the non-notified measure, the Region of Sardinia had been permitted to grant aid for projects on which work had started before the submission of the applications for aid, the Court considered that the scheme as it had been applied had therefore been altered by comparison with the scheme approved. According to the Court, that alteration could not be regarded as minor or insignificant. Indeed, since, as was clear from the 1998 Guidelines, [10] the Commission regularly made its approval of regional aid schemes subject to the condition that the application for aid must be made before work was started on the projects, it was clear that the removal of that condition was likely to influence the assessment of the compatibility of the aid measure with the common market. The Court concluded that the aid in issue was new aid and not existing aid. That new aid was unlawful, since the alteration of the approved scheme had not been notified to the Commission.

Last, the Court observed that the aid in issue could not be classified as a misuse of aid, as that classification required that the beneficiary would use the aid in contravention of the decision by which

[10] Guidelines of 10 March 1998 on national regional aid (OJ 1998 C 74, p. 9).

it had been approved. However, in the present case, the infringement of the approval decision was attributable not to the beneficiaries of the aid but to the Region of Sardinia.

(b) The Commission's discretion — Examination of an aid scheme — Exempting regulation

In Case T-357/02 RENV *Freistaat Sachsen* v *Commission* (judgment of 14 July 2011, not yet published), the Court rejected the applicant's plea that the Commission had failed to exercise its discretion during the investigation of the aid scheme at issue and had merely applied the criteria provided for in the regulation exempting SMEs. ([11])

The Court observed that the object of the regulation exempting SMEs is to declare compatible with the common market certain aid granted to small and medium-sized enterprises (SMEs) and to exempt States from the obligation to notify that aid. However, that does not mean that no aid in favour of small and medium-sized enterprises can be declared compatible with the common market following an examination by the Commission by reference to the criteria defined in Article 87(3) EC, after notification by a Member State. The Court also stated that, while the Commission can establish general implementing measures which structure the way in which it exercises its discretion under Article 87(3) EC, it cannot wholly deprive itself of that discretion where it examines a specific case, and that is particularly so in relation to cases which it has not expressly referred to, or indeed has not regulated, in those general implementing rules. That discretion is therefore not exhausted by the adoption of such general rules and there is in principle no obstacle to an individual assessment outside the context of those rules, provided, however, that the Commission complies with the higher rules of law, such as the rules of the Treaty and the general principles of European Union law. In this case, the Court found that the Commission had indeed exercised that discretion when examining the compatibility of the measure not only by reference to the criteria defined in the regulation exempting SMEs but also on the basis of Article 87(3) EC.

(c) Concept of serious difficulties

In Case T-30/03 RENV *3F* v *Commission* (judgment of 27 September 2011, not yet published, under appeal), the applicant sought annulment of the Commission's decision not to raise objections against the Danish tax regime in issue. The Court dismissed the action on the ground that the applicant had not shown that the Commission had been confronted with serious difficulties of assessment and should have initiated the formal investigation procedure.

According to the Court, the formal investigation procedure is obligatory where the Commission experiences serious difficulties in establishing whether or not aid is compatible with the common market. The notion of serious difficulties is an objective one, and whether or not such difficulties exist requires investigation of both the circumstances in which the contested measure was adopted and its content. That investigation must be conducted objectively, comparing the grounds of the decision with the information available to the Commission when it took a decision on the compatibility of the disputed aid with the common market. It follows that judicial review by the Court of the existence of serious difficulties will, by its nature, go beyond simple consideration of whether or not there has been a manifest error of assessment. The applicant bears the burden of proving the existence of serious difficulties and may discharge that burden of proof by reference to a body of

([11]) Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 [EC] and 88 [EC] to State aid to small and medium-sized enterprises (OJ 2001 L 10, p. 33).

consistent evidence, concerning, first, the circumstances and the length of the preliminary examination procedure and, second, the content of the contested decision.

For the purpose of establishing the existence of serous difficulties reference was made, in particular, to the length of the preliminary investigation procedure. In that regard, the Court stated that, although the Commission is not required to carry out a preliminary investigation within a specific period where the State measures have not been notified, as in the case in point, it is none the less required to conduct a diligent and impartial examination of the complaints received concerning the non-notified State measures and cannot prolong the preliminary investigation indefinitely. Whether or not the duration of the preliminary investigation procedure is reasonable must be determined in relation to the particular circumstances of each case.

In the present case, the Court considered that although a preliminary examination that had lasted more than four years might be considered, as a whole, to have exceeded the time normally required for a preliminary examination, that duration was justified to a large extent by the circumstances and context of the procedure. The Court took account, in particular, of the fact that the tax regime in issue had been the subject of legislative amendment which had given rise to numerous discussions and exchanges of correspondence between the Member State and the Commission. Furthermore, while the duration of the preliminary examination may constitute an indication of the existence of serious difficulties, it does not of itself suffice to show the existence of such difficulties. It is only if it is reinforced by other factors that the passage of time, even if that time considerably exceeds the time usually required for a preliminary examination, may lead to the conclusion that the Commission encountered serous difficulties of assessment necessitating initiation of the formal examination procedure.

(d) Concept of economic activity

In *Freistaat Sachsen and Others* v *Commission,* the Court was required to rule on whether the construction of airport infrastructure, when that infrastructure was made available to managers of infrastructures, constituted an economic activity.

In the context of competition law, the concept of 'undertaking' covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed. Any activity consisting in offering goods or services on a given market is an economic activity. In that regard, the Court found, first, that the management of airport infrastructure is an economic activity, in particular where the undertaking provides airport services for money coming from airport taxes, which must be regarded as remuneration for the provision of services by the concession holder of the airport. The Court also stated that the fact that an undertaking manages a regional airport and not an international airport does not alter the economic nature of its activity inasmuch as that activity consists in providing services for remuneration in the regional airport market. The operation of a runway is part of the economic activity of the managing undertaking, particularly where it is commercially exploited. Second, the Court held that, for the purposes of examining the economic nature of the undertaking's activity in the context of the public financing of the development of a runway, there is no need to dissociate the activity of building or enlarging infrastructure from the subsequent use to which it is put and that the nature of the development activity must be determined according to whether or not the subsequent use of the infrastructure built amounts to an economic activity. The landing and take-off runways are essential elements for the economic activities engaged in by an airport operator. The construction of landing and take-off runways thus permits an airport to engage in its principal economic activity or, in the case of the construction of an additional runway or the extension of an existing runway, to develop that activity.

(e) Private investor in a market economy test

In *Région Nord-Pas-de-Calais and Communauté d'Agglomération du Douaisis* v *Commission,* the Court held that the Commission had, as it was required to do, carried out an analysis designed to ensure that the recipient of the aid could not have obtained a loan in similar conditions on the credit market. The Court observed that, in order to determine whether a State measure constitutes aid, it is necessary to establish whether the recipient undertaking received an economic advantage which it would not have obtained under normal market circumstances. For that purpose, it is relevant to apply the test based on the possibilities which the recipient undertaking has to obtain the sums in question in similar conditions on the capital market. In particular, it is appropriate to ask whether a private investor would have carried out the transaction in question in the same conditions. In this case, the Court observed that the Commission had relied on the finding that, owing to its financial situation, the company Arbel Fauvet Rail could not have obtained funds on the credit market on terms as advantageous as those obtained from the applicants, as the advances in issue had been made without any security guaranteeing repayment, while the interest rates applied corresponded to normal secured loans. In addition, the Court emphasised that the fact that a borrower can obtain short-term credit does not provide a reliable indication of its ability to obtain a longer-term loan, repayment of which will depend on its capacity to survive.

In Case T-1/08 *Buczek Automotive* v *Commission* (judgment of 17 May 2011, not yet published, under appeal), the Court held that the Commission's application of the test of the hypothetical private creditor was contrary to Article 87(1) EC and that the Commission had therefore failed to establish properly the existence of State aid.

The Court observed that when a firm faced with a substantial deterioration of its financial situation proposes an agreement or series of agreements for debt arrangement to its creditors with a view to remedying the situation and avoiding liquidation, each creditor must make a decision having regard to the amount offered to it under the proposed agreement, on the one hand, and the amount it expects to be able to recover following possible liquidation of the firm, on the other. Its choice is influenced by a number of factors, including the creditor's status as the holder of a secured, preferential or ordinary claim, the nature and extent of any security it may hold, its assessment of the chances of the firm being restored to viability, as well as the amount it would receive in the event of liquidation. It was therefore for the Commission to determine, for each public body in question, having regard inter alia to the abovementioned factors, whether the debt remissions granted by them were manifestly more generous than the remission that would have been granted by a hypothetical private creditor in a situation comparable vis-à-vis the undertaking concerned to that of the public body in question and seeking to recover the sums owed to it.

In the present case, the Commission had therefore been required to establish whether, taking those factors into account, a private creditor would have opted for the legal procedure for the recovery of debts over insolvency proceedings, as the public bodies had. The Court found, however, that the Commission did not have at the time the contested decision was adopted specific evidence enabling it to conclude that a private creditor would have opted for the insolvency procedure and would not have pursued the legal procedure for recovery of the debts. The Court observed that, with regard to the benefit that a hypothetical private creditor could have hoped to obtain in the context of insolvency proceedings, the Commission had merely asserted that 'careful examination of the advantage derived from rescheduling the debt would have shown that the potential recovery would not have exceeded the safe return inherent in the firm's liquidation', without, however, identifying in the contested decision the material evidence on which it based that assertion. In particular, the Commission had failed to state in the contested decision whether it had had in its possession, in support of that assertion, analyses comparing the benefit which would have been

obtained by the hypothetical private creditor following insolvency proceedings — taking into account inter alia the costs incurred in the context of such proceedings — by comparison with the benefit obtained from the legal procedure for the recovery of the debts. The contested decision likewise failed to state whether the Commission had had in its possession studies or analyses comparing the duration of insolvency proceedings with that of the legal procedure for the recovery of the debts.

3. Procedural rules

(a) Obligation to state reasons

In *Buczek Automotive* v *Commission,* the Court held that the Commission had not given sufficient reasons for its decision concerning the conditions relating to the effect on trade between Member States and the distortion or threatened distortion of competition.

The Court observed that the Commission is not under a duty to carry out an economic analysis of the actual situation on the relevant market, of the applicant's market share, of the position of competing undertakings or of trade flows between Member States in the goods and services in question, once it has explained how the aid at issue distorts competition and affects trade between Member States. None the less, even in cases where it is clear from the circumstances in which the aid has been granted that it is liable to affect trade between Member States and to distort or threaten to distort competition, the Commission must at least set out those circumstances in the grounds of its decision.

In this case, the Court found that the Commission, in the contested decision, had merely reproduced the wording of Article 87(1) EC and had not explained, even succinctly, the facts and legal considerations taken into account in the assessment of those conditions. Nor did the contested decision contain the slightest evidence capable of demonstrating that the aid in question was liable to affect trade between Member States and to distort or threaten to distort competition, not even in the description of the circumstances in which that aid had been granted.

In *Freistaat Sachsen and Others* v *Commission*, the Court annulled for breach of the obligation to state reasons Article 1 of the Commission's decision inasmuch as it fixed at EUR 350 million the amount of State aid that the Federal Republic of Germany intended to granted to Leipzig-Halle airport.

The Court held that, although the Commission accepted that certain costs connected with the capital contribution fell within the public policy remit and could therefore not be regarded as State aid, it had none the less considered, in Article 1 of the decision concerned, that the entire capital contribution constituted State aid.

Although no provision of European Union law requires the Commission to fix the precise amount of aid to be reimbursed, where the Commission decides to state the amount of State aid — even where the aid is declared compatible with the common market — it is under a duty to state the correct amount of the aid. In this case, the Court observed that the amount of the aid referred to in Article 1 of the decision concerned seemed to be incorrect, since the amounts falling within the public policy remit did not constitute State aid and thus had to be deducted from the total amount of the capital contribution.

(b) Rights of the defence

In *Région Nord-Pas-de-Calais and Communauté d'Agglomération du Douaisis* v *Commission*, the Court referred to the settled case-law according to which the interested parties cannot rely on rights of defence as such, but have only the right to be heard and to be involved in the procedure to a sufficient extent, taking the circumstances of the case into account. Although it cannot be precluded that a local authority may have a status that renders it sufficiently independent vis-à-vis the central government of a Member State to play a fundamental role in defining the political and economic environment in which undertakings operate, the Court emphasised that the role of interested parties other than the Member State concerned is limited to acting as a source of information for the Commission in the procedure for the review of the State aid. They cannot thus claim the right to participate in an *inter partes* discussion with the Commission.

(c) Protection of legitimate expectations

In *Regione autonoma della Sardegna and Others* v *Commission,* the Court rejected the complaint alleging breach of the principle of protection of legitimate expectations, observing that protection of legitimate expectations could not be relied upon by a person who had committed a manifest infringement of the rules in force. That was the case here, in so far as the Region of Sardinia had introduced an aid scheme which was unlawful on the ground that it had not been notified to the Commission. That breach was considered to be manifest, since both the 1998 Guidelines and the approval decision ([12]) made explicit reference to the condition that the application must be submitted before work is started.

As regards the legitimate expectation which the recipients based on the existence of an earlier approval decision, the Court observed that a legitimate expectation in the lawfulness of State aid can, in principle, save in exceptional circumstances, be relied upon only where that aid was granted in a manner compatible with the procedure laid down in Article 88 EC, which a diligent operator should normally be able to determine. In this case, the Court observed that the approval decision had clearly stated that the Commission's approval related only to aid for projects started after the submission of the application for aid. The recipients of the disputed aid, which did not comply with that condition, could therefore not, in principle, rely on a legitimate expectation in the lawfulness of the aid. Although the case-law does not preclude the possibility that, in order to challenge its repayment, recipients of aid may, in the procedure for the recovery of the aid, plead exceptional circumstances, they can rely on such exceptional circumstances, on the basis of the relevant provisions of national law, only in the framework of the recovery procedure before the national courts, which alone are competent to assess the circumstances of the case, if necessary after obtaining a preliminary ruling on interpretation from the Court of Justice.

Community trade mark

Decisions relating to the application of Regulation No 40/94, replaced by Regulation No 207/2009, ([13]) continued to represent in 2011 a significant number of the cases dealt with by the Court (240 cases disposed of, 219 cases lodged). It is therefore possible only to give a brief outline of those decisions.

([12]) Commission Decision SG(98) D/9547 approving the aid scheme 'N 272/98 — Italy — Aid in favour of the hotel industry'.

([13]) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1), replaced by Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

1. Absolute grounds for refusal

The year 2011 was marked in particular by the first two cases involving the application of Article 7(1)(f) of Regulation No 207/2009. The Court dismissed two actions brought against refusals to register Community trade marks deemed to be contrary to public policy and to accepted principles of morality. First of all, in Case T-232/10 *Couture Tech* v *OHIM* (*Representation of the Soviet coat of arms*) (judgment of 20 September 2011, not yet published), the Court stated that signs likely to be perceived by the relevant public as being contrary to public policy or to accepted principles of morality are not the same in all Member States, inter alia for linguistic, historic, social and cultural reasons. It concluded from this that it is necessary to take account not only of the circumstances common to all Member States of the European Union, but also of the particular circumstances of individual Member States which are likely to influence the perception of the relevant public within those States. The Court observed that factors arising from national law (in this case Hungarian) are not applicable by reason of their normative value and are not, therefore, rules by which the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) is bound. None the less, those factors are evidence of facts which make possible an assessment of how certain categories of signs are perceived by the relevant public in the Member State concerned.

Having noted that the Hungarian Criminal Code bans certain uses of 'symbols of despotism', including the hammer and sickle and the five-point red star, that ban also covering the use of those signs as trade marks, the Court stated, inter alia, that the semantic content of the coat of arms of the former USSR has not been diffused or transformed to the point where it would no longer be perceived as a political symbol. The Court therefore took the view that the Board of Appeal was right to find that the use of the mark applied for as a trade mark would be perceived by a substantial section of the relevant public in Hungary as being contrary to public policy or to accepted principles of morality within the meaning of Article 7(1)(f) of Regulation No 207/2009.

Next, in Case T-526/09 *PAKI Logistics* v *OHIM* (*PAKI)* (judgment of 5 October 2011, not published), the sign PAKI was at issue. The Board of Appeal had refused registration of that sign on the ground that it is perceived by the English-speaking public of the European Union as a racist term, and is a degrading and insulting name for a Pakistani or, more generally, persons from the Indian subcontinent, particularly those living in the United Kingdom. In that context, the Court stated that, although Article 7(1)(f) of Regulation No 207/2009 is aimed, first and foremost, at any sign whose use is prohibited by a provision of European Union or national law, even in the absence of such a prohibition, its registration as a Community trade mark is precluded by the absolute ground for refusal laid down by that provision if it is deeply offensive. The existence of that ground for refusal must be assessed on the basis of the criteria of a reasonable person with average sensitivity and tolerance thresholds. Moreover, the relevant public cannot be limited to the public at whom the goods and services in respect of which registration is sought are directly targeted. Account must be taken of the fact that signs covered by that ground for refusal will shock not only the public at whom the goods and services designated by the sign are targeted, but also other persons who, although not concerned by those goods and services, will be faced with that sign in an incidental manner in their daily lives. Rejecting the various arguments of the applicant that the term 'paki' is not unequivocal and discriminatory in all circumstances, the Court concluded that the Board of Appeal was right to find that that term is regarded as a racist insult by the English-speaking public of the European Union and that, consequently, its registration is precluded by public policy and accepted principles of morality.

Moreover, in Case T-258/09 *i-content* v *OHIM* (*BETWIN*) (judgment of 6 July 2011, not yet published), the Court annulled the contested decision on the ground that the Board of Appeal had failed to provide to the requisite legal standard a statement of reasons in respect of the descriptive character

and the absence of distinctive character of the mark applied for in respect of certain services covered in the application for registration. The Court recalled, in that regard, that the option for the Board of Appeal to use general reasoning for a series of goods or services can extend only to goods or services which have a sufficiently direct and specific link to each other to the extent that they form such a sufficiently homogenous category as to enable all the factual and legal considerations constituting the grounds of the decision in question, first, to explain adequately the reasoning followed by the Board of Appeal for each of the goods and services belonging to that category and, second, to be applied without distinction to each of the goods or services concerned. In the case in point, the contested decision provided only a few indicators as to how the various grounds of refusal were linked to the very numerous services covered by the mark applied for. Similarly, the Court observed that the statement of reasons for the absence of distinctive character of the mark applied for is limited to the reference that, as a description 'whose meaning anyone would understand without specialised knowledge and without undertaking any analysis', the mark applied for, which is also devoid of any distinctive character, is barred from registration pursuant to Article 7(1)(b) of Regulation No 207/2009. The Court also stated that the Board of Appeal found merely that the term 'betwin' conveyed simply the idea of a general incitement to participate in certain bets or games, or to obtain economic advantages in the form of winnings, without specifying the possible link with a particular supplier and that, accordingly, the sign in question did not enable the consumer concerned to conceive of it as a reference to a particular commercial source of the services in connection with the possibility of bets and winnings and to perceive it as the individual sign of a particular supplier in that sector. In those circumstances, the Court held that, for services other than those directly connected with betting and prize competitions, it was required to raise of its own motion a failure to state the grounds. It is not possible to understand how that global reasoning of the Board of Appeal could apply to all the other heterogeneous services which are the subject of the trade mark application, some of which have no connection with bets and winnings.

With respect to the sign TDI, the Court was also called upon, in Case T-318/09 *Audi and Volkswagen* v *OHIM* (*TDI*) (judgment of 6 July 2011, not yet published, under appeal), to dismiss the action brought against the decision of the Board of Appeal according to which the sign TDI, consisting of the first letters of the words contained in the expressions 'turbo direct injection' or 'turbo diesel injection', was descriptive throughout the European Union.

In the first place, the Court stated that the word sign TDI — whose registration as a Community trade mark was sought in respect of 'vehicles and constructive parts thereof' — may serve to designate the essential characteristics of the goods and services covered by the trade mark application. It is the quality of vehicles which is designated by that word sign, given that being equipped with a 'turbo diesel injection' or 'turbo direct injection' engine is the essential characteristic of a vehicle. As regards constructive parts for vehicles, the word sign TDI designates the type of goods. The Court therefore held that the sign TDI is descriptive of the goods concerned in the entire European Union. In the second place, the Court rejected the argument that, for the purposes of demonstrating acquisition of distinctive character through use, first, the acceptance of the mark does not have to be proved in all the Member States and, second, the principles applicable to the reputation of a mark must be applied, so that it is sufficient to show that the mark has been accepted in a substantial part of the territory of the European Union. The Court took the view that it is in all the Member States of the European Union in which the mark applied for did not, *ab initio*, have distinctive character that it must have become distinctive through use. In that regard, the Court stated inter alia that, in the light of the object of Article 9(1)(c) of Regulation No 207/2009 — which seeks to protect the legitimate interests of proprietors whose marks have, on account of their commercial and advertising efforts, acquired a reputation — the method used to determine the relevant territory when applying that provision cannot be applied with respect to the acquisition of distinctive character through use.

Furthermore, in Case T-341/09 *Consejo Regulador de la Denominación de Origen Txakoli de Álava and Others* v *OHIM* (*TXAKOLI*) (judgment of 17 May 2011, not yet published), the Court was called upon to interpret Article 66(2) of Regulation No 207/2009, relating to Community collective marks, which provides for an exception to Article 7(1)(c) of Regulation No 207/2009. According to Article 66(2) of Regulation No 207/2009, signs or indications which — although descriptive — may serve to designate the geographical origin of the goods or services may constitute Community collective marks. In the case in point, the applicants maintained that the word 'txakoli' constitutes an indication which may serve to designate the geographical provenance of goods and services for which registration is sought, since it is another traditional term protected by the wine regulation which is reserved for wines with designations of origin for which the applicants were the regulatory boards.

The Court held, in that regard, that that word is considered by the applicable regulation only as an indication of the characteristic of wines and not as an indication of their geographical provenance, despite the alleged link existing between the word 'txakoli' and the Basque Country. Article 66 of Regulation No 207/2009 must not be interpreted broadly. That would amount to encroaching on the powers of the authorities intervening in the area of designations of origin or geographical indications. Moreover, the exclusivity of the word 'txakoli' conferred by other provisions of European Union law cannot automatically imply the registration of a sign at issue as a Community mark. Such registration confers specific rights on its proprietor, which do not arise from other rules such as those coming under agricultural policy.

Lastly, the Court stated that the refusal to register the mark applied for does not affect the exclusive right which, so far, the applicants have, to use the words in question in accordance with the wine regulation, and does not result in authorising the use of that word for operators other than those who benefit from that right under that regulation, or in preventing the applicants from requiring that that regulation be respected.

Finally, in Case T-508/08 *Bang & Olufsen* v *OHIM* (*Representation of a loudspeaker*) (judgment of 6 October 2011, not yet published), the Court rejected the action brought against the decision of the Board of Appeal — which was itself hearing the case following the General Court's annulment of a previous decision — [14] which had refused registration of a Community trade mark consisting of a three-dimensional sign in the shape of a loudspeaker, since the sign consisted exclusively of the shape which gave substantial value to the goods within the meaning of Article 7(1)(e)(iii) of Regulation No 40/94.

In the case in point, the Court was faced with the question whether the Board of Appeal had erred in law by proceeding, after concluding that a further absolute ground for refusal could apply in the circumstances of the case — since the first examination, which had led to the annulling judgment of the Court, related only to Article 7(1)(b) of Regulation No 40/94, that is to say the requirement of distinctiveness — to examine the sign under the absolute ground for refusal deriving from Article 7(1)(e)(iii) of that regulation.

The Court replied in the negative and stated that, even if a sign, the object of an application for a Community trade mark, were to be considered by the Court, contrary to the decision reached by OHIM, not to be covered by one of the absolute grounds for refusal referred to in Article 7(1) of Regulation No 40/94, the annulment by the Court of the OHIM decision refusing registration of that mark would necessarily lead OHIM, which is required to give due effect to the grounds and operative part of the Court's judgment, to reopen the procedure for the examination of the

[14] Case T-460/05 *Bang & Olufsen* v *OHIM (Shape of a loudspeaker)* [2007] ECR II-4207.

mark in question and to reject it where it considers that the sign in question is covered by another absolute ground for refusal referred to in that provision. Pursuant to Article 74(1) of Regulation No 40/94, when considering the absolute grounds for refusal, OHIM is required to examine of its own motion the relevant facts which may lead it to apply an absolute ground for refusal. Moreover, a sign caught by Article 7(1)(e) of Regulation No 40/94 can never acquire distinctive character for the purposes of Article 7(3) of the regulation through the use made of it, although that possibility exists, according to that last provision, for signs covered by the grounds for refusal provided for in Article 7(1)(b) to (d) of Regulation No 40/94.

Consequently, if the examination of a sign under Article 7(1)(e) of Regulation No 40/94 leads to the conclusion that one of the criteria mentioned in that provision is met, this results in a release from examination of the sign under Article 7(3) of the regulation, since registration of the sign in such circumstances is clearly impossible. That release explains the advantage of undertaking a prior examination of the sign under Article 7(1)(e) of Regulation No 40/94 where several of the absolute grounds for refusal provided for in paragraph 1 may apply, although such a release may not be interpreted as implying that there is an obligation to examine that sign first under Article 7(1)(e) of Regulation No 40/94.

2. Relative grounds for refusal

In Case T-10/09 *Formula One Licensing* v *OHIM — Global Sports Media* (*F1-LIVE*) (judgment of 17 February 2011, not yet published, under appeal), the Court found that there was no likelihood of confusion between the mark F1-LIVE designating goods or services relating to the field of Formula 1 (namely magazines, books and publications, the reservation of tickets and arranging competitions on the Internet) and the marks F1 and F1 Formula 1 of Formula One Licensing BV, on account of the descriptive character attributed by the public to the 'F1' element and of the low level of similarity between the signs.

The relevant public will perceive the combination of the letter 'F' and the numeral '1' as an abbreviation of 'Formula One', which is the commonly used designation of a category of racing car and, by extension, of races involving such cars. Moreover, the relevant public may perceive the 'F1' element in the earlier Community figurative trade mark F1 Formula 1 as the trade mark used by the proprietor of that mark in relation to its commercial activities in the field of Formula 1 motor racing. Thus, the relevant public will not perceive the 'F1' element in the mark applied for as a distinctive element, but as an element with a descriptive function. Accordingly, the 'F1' element, in ordinary typeset, has only a weak distinctive character in relation to the goods and services covered and the reputation of the Community figurative mark used in the European Union is essentially linked to the logotype F1 of the F1 Formula 1 mark.

As regards, specifically, the word marks F1, consumers will not connect the 'F1' element in the mark applied for with the proprietor of the earlier marks, because the only sign that they have learned to associate with that proprietor is the F1 Formula 1 logotype, and not the sign F1 in standard typeset. Consumers will regard the sign 'F1' in ordinary typeset as an abbreviation of 'Formula 1', that is to say, as a description.

Given the lack of visual similarity and only limited phonetic and conceptual similarities, the relevant public will not confuse the mark applied for with the figurative mark F1 Formula 1. In that connection, the fact that the public attributes a generic meaning to the sign F1 means that it will understand that the mark applied for concerns Formula 1, but, because of its totally different layout, the public will not make a connection between that mark applied for and the activities of the proprietor of the earlier mark.

3. Procedural questions

In Case T-222/09 *Ineos Healthcare* v *OHIM — Teva Pharmaceutical Industries (ALPHAREN)* (judgment of 9 February 2011, not yet published), the Court clarified its case-law on the examination by the Board of Appeal of facts which are well known.

Under Article 74 of Regulation No 40/94, in proceedings relating to relative grounds for refusal of registration, OHIM's examination is restricted to the facts, evidence and arguments provided by the parties and the relief sought. According to the Court, that provision relates, in particular, to the factual basis of decisions of OHIM, that is, the facts and evidence on which those decisions may be validly based. Thus, the Board of Appeal, when hearing an appeal against a decision terminating opposition proceedings, may base its decision only on the facts and evidence which the parties have presented. However, the restriction of the factual basis of the examination by the Board of Appeal does not preclude it from taking into consideration, in addition to the facts expressly put forward by the parties to the opposition proceedings, facts which are well known, that is, which are likely to be known by anyone or which may be learnt from generally accessible sources.

In the case in point, the Court stated that, although it was taken from the results of Internet research carried out by the Board of Appeal, the description of the pharmaceutical preparations and their therapeutic indications on which the Board of Appeal based its assessment of the similarity of certain goods could not, having regard to the highly technical of those goods, be regarded as information constituting well-known facts. Given that, without the use of the information in question, the contested decision would have been substantially different, the Court partially annulled that decision.

In Case T-145/08 *Atlas Transport* v *OHIM — Atlas Air (ATLAS)* (judgment of 16 May 2011, not yet published, under appeal), the Court was able to clarify, first, the applicable requirements as regards the obligation to set out the grounds of an appeal before the Board of Appeal and, second, the review carried out by the Court of the Board of Appeal's decision relating to the suspension of invalidity proceedings.

In the first place, the Court observed that the notice of appeal must be filed in writing at OHIM within two months after the date of notification of the decision and that within four months after the date of notification of the decision, a written statement setting out the grounds of appeal must be filed. The Court concluded from this that an appellant wishing to bring an appeal before the Board of Appeal is required, within the prescribed time-limit, to file with OHIM a written statement setting out the grounds for its appeal, failing which his appeal is to be dismissed as inadmissible, and that those grounds involve more than an indication of the decision appealed and of the fact that the appellant wishes it to be amended or annulled by the Board of Appeal. Further, it follows from a literal reading of the word 'grounds' that the appellant before the Board of Appeal must set out in a statement the reasons for his appeal. It is not for the Board of Appeal to determine, by means of inferences, what are the grounds on which the appeal of which it is seised is based. Accordingly, where the appellant lodges a statement, he must set out, in writing and sufficiently clearly, what matters of fact and/or of law support his request. In the case in point, in light of the absence of clear and intelligible grounds set out in the appellant's letters, and given that the statement of grounds before the Board of Appeal must, inter alia, enable a potential intervener, unassisted by a lawyer, to assess whether it would be appropriate for it to respond to the arguments contained in the appeal, the Court held that the appeal before the Board of Appeal failed to satisfy the requirements of Article 59 of Regulation No 40/94.

In the second place, the Court recalled that the possibility of suspension of the procedure before the Board of Appeal in opposition proceedings constitutes the expression of the principle generally recognised in Member States relating to the possibility for a decision-making authority to suspend proceedings of which it is seised where that is appropriate in the circumstances. Application by analogy of that possibility is justified in the context of invalidity proceedings, since both opposition proceedings and proceedings based on relative grounds for invalidity are designed to assess the likelihood of confusion between two marks, and the possibility of suspending proceedings contributes to the effectiveness of those proceedings. Accordingly, the Board of Appeal has the power to suspend invalidity proceedings where this is appropriate in the circumstances. The Court also held that the discretion of the Board of Appeal whether or not to suspend proceedings is broad. That discretion does not however take the Board of Appeal's assessment outside the scope of judicial review; that review is limited to ensuring that there is no manifest error of assessment or misuse of powers. In particular, the Court specified that, in that context, the Board of Appeal must comply with the general principles governing procedural fairness within a community governed by the rule of law by taking into account not only the interests of the party whose Community mark is contested, but also those of the other parties.

In addition, in Case T-36/09 *dm-droguerie markt* v *OHIM — Distribuciones Mylar (dm)* (judgment of 9 September 2011, not yet published), ([15]) the Court held that, where OHIM becomes aware of a linguistic error, error of transcription or obvious mistake in a decision, it must correct spelling mistakes or grammatical errors, errors of transcription or errors which are so obvious that nothing but the wording as corrected could have been intended. Furthermore, the jurisdiction of the Opposition Divisions to give a fresh decision in proceedings in which they have already adopted and notified a decision bringing those proceedings to an end cannot go beyond the situations envisaged in Article 42 of Regulation No 207/2009 (revocation, correction of clerical errors and review proceedings). In the case in point, since the amendments made consisted not only in completing an unfinished sentence the meaning of which was incomprehensible but also in eliminating an internal contradiction in the grounds and a contradiction between the grounds and the operative part, the Court concluded that the correction to the original version of the Opposition Division's decision concerned the very substance of that decision and in consequence could not be construed as the correction of a clerical error. In view of the gravity and blatancy of that irregularity, the Court annulled the decision of the Board of Appeal in so far as the Board failed to find that the amended version of the Opposition Division's decision was non-existent and in so far, therefore, as it did not declare that measure null and void.

Lastly, in Case T-504/09 *Völkl* v *OHIM — Marker Völkl (VÖLKL)* (judgment of 14 December 2011, not yet published), the Court held that, where an appeal before the Board of Appeal concerned only part of the goods or services covered by an application for registration or by the opposition, that appeal entitled the Board to carry out a new examination of the substance of the opposition, but only so far as concerns those goods or services, since the application for registration and the opposition were not brought before it as regards the other goods or services covered. Consequently, by annulling paragraph 2 of the operative part of the decision of the Opposition Division relating

([15]) See also, as regards Community designs, Case T-53/10 *Reisenthel* v *OHIM — Dynamic Promotion (Hampers, crates and baskets)* (judgment of 18 October 2011, not yet published), in which it was held that a breach of the rights of the defence stemming from the fact that a decision was adopted before expiry of the period of time granted to the applicant to submit its observations does not amount to an obvious error within the meaning of Article 39 of Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No 6/2002 on Community designs (OJ 2002 L 341, p. 28). Such a breach amounts to an error affecting the procedure which leads to the adoption of the decision and, therefore, is capable of vitiating the substance of that decision.

to the other goods, the Board of Appeal exceeded the limits of its jurisdiction as defined in Article 64(1) of Regulation No 207/2009. [16]

4. Proof of genuine use of the mark

In Case T-108/08 *Zino Davidoff* v *OHIM — Kleinakis kai SIA (GOOD LIFE)* (judgment of 15 July 2011, not yet published), the opponent had inter alia based proof of genuine use of the earlier mark on a decision of the Greek Administrative Trade Marks Committee. The Court stated, in that context, that, whilst it is, in principle, permissible for OHIM to base its decision on a national decision as a piece of evidence, it must none the less examine with all the required care and in a diligent manner whether that piece of evidence is such as to show the genuine use of an earlier mark. In this case, a diligent examination of the Greek decision would have revealed that it only briefly refers to the documents submitted and the arguments raised by the parties during the procedure that led to its adoption. Furthermore, those documents were not put in the file before OHIM and were therefore not available to the Board of Appeal. The Board of Appeal was not therefore in a position to understand the reasoning, including the assessment of the evidence, or to identify the evidence on which the Greek decision finding a genuine use of the earlier mark was based. Thus, by adopting the conclusion of the Greek authorities, without further examining whether the Greek decision was based on conclusive evidence, the Board of Appeal acted in breach of Article 74(1) of Regulation No 40/94 and the duty of diligence.

5. Community designs

In Case T-68/10 *Sphere Time* v *OHIM — Punch (Watch attached to a lanyard)* (judgment of 14 June 2011, not yet published), the Court submitted the application, in the context of invalidity proceedings, of Article 7(2) of Regulation No 6/2002, which makes it possible not to take into consideration a disclosure if a design for which protection is claimed has been made available to the public by the designer, his successor in title, or a third person as a result of information provided or action taken by the designer or his successor in title during the 12-month period preceding the date of filing of the application or the date of priority, on the condition that the owner of the design that is the subject of the application for invalidity establishes that it is either the creator of the design upon which that application is based or the successor in title to that creator.

In the same judgment, the Court expanded on the concept of 'informed user', by clarifying its earlier case-law [17] and by stating that, with respect to promotional items, that concept includes, firstly, a professional who acquires them in order to distribute them to the final users and, secondly, those final users themselves. The Court concluded from this that the fact that one of the two groups of informed users perceives the designs at issue as producing the same overall impression is sufficient for a finding that the contested design lacks individual character. Lastly, the Court

[16] It should be noted that, in that judgment, the Court also stated that, for the purposes of determining whether an applicant is entitled to challenge a decision of the Board of Appeal before the Court, the view must be taken that a decision of a Board of Appeal of OHIM does not uphold, for the purposes of Article 65(4) of Regulation No 207/2009, the claims of a party, where, after having rejected an application the admission of which would have ended the proceedings before OHIM in a manner favourable to the party which made it, the Board remits the case to the lower department for further prosecution, irrespective of the fact that that re-examination could give rise to a decision favourable to that party. That possibility is not sufficient to regard that situation as similar to that in which the Board of Appeal grants an application on the basis of some of the pleas or arguments submitted in support thereof and rejects or does not examine the remainder of the pleas or arguments raised in the application.

[17] Case T-153/08 *Shenzhen Taiden* v *OHIM Bosch Security Systems (Communications Equipment)* [2010] ECR II-2517.

stated that, in the context of the specific assessment of the overall impression, the graphic representation of the prior designs should not be examined in isolation and exclusively: instead all the elements presented should be subject to a global assessment allowing the overall impression produced by the design at issue to be determined in a sufficiently precise and certain manner. In relation, in particular, to a design that has been used, without having been registered, it may be the case that there is no graphic representation of the design showing its relevant details, comparable to the application for registration. According to the Court, it is therefore unreasonable to require the applicant for invalidity to provide such a representation in all cases.

Access to documents of the institutions

The year 2011 was a significant year from the point of view of the case-law on access to documents. In total, 23 cases were disposed of and dealt with varied aspects in that field.

1. Interest in bringing proceedings

In Case T-233/09 *Access Info Europe* v *Council* (judgment of 22 March 2011, not yet published, under appeal), the Court held that the disclosure of the full version of the requested document on the Internet site of a third party — which had not complied with the rules applicable to public access to Council documents — did not support the conclusion that the applicant did not have, or no longer had, an interest in applying for annulment of the Council decision refusing it full access to that document. An applicant retains inter alia an interest in seeking the annulment of an act of an institution in order to prevent its alleged unlawfulness from recurring in the future. However, that interest can exist only if the alleged unlawfulness is liable to recur in the future independently of the circumstances which have given rise to the action brought by the applicant. That is the case of an action for annulment against a Council decision refusing full access to a document, where, first, the applicant's allegation of unlawfulness is based on an interpretation of one of the exceptions provided for in Regulation No 1049/2001 ([18]) that the Council is very likely to rely on again at the time of a new request and, second, the applicant — as an association seeking to promote openness within the European Union — is likely to submit, in future, similar requests for access to the same type of document.

2. Definition of documents

In Case T-436/09 *Dufour* v *ECB* (judgment of 26 October 2011, not yet published), the Court was called upon to clarify the meaning of a 'document' as set out in Article 3(a) of Decision 2004/258 ([19]) of the European Central Bank (ECB) on public access to its documents, in the context of a request for access to a database.

In that regard, the Court inferred from the wording of Article 3(a) of Decision 2004/258 that the concept of a document is to be understood as stored content, which is capable of being reproduced or consulted after it has been produced, and that the manner in which the content is stored is not relevant. Moreover, the Court specified that a database is characterised by the existence of content of whatever nature and by a fixed base in which that content is stocked. The Court inferred from this that all the data contained in the database constituted a document within the meaning

([18]) 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).

([19]) Decision 2004/258/EC of the European Central Bank of 4 March 2004 on public access to European Central Bank documents (OJ 2004 L 80, p. 42).

of Article 3(a) of Decision 2004/258. The Court added that, since the sets of data were independent of one another, the ECB was required to carry out a specific and individual examination and to authorise partial access to documents which could be broken down individually by means of the research tools available to the ECB for that database, on condition that those data did not fall within the exceptions laid down in Article 4 of Decision 2004/258.

3. Exception relating to protection of the decision-making process

In *Access Info Europe* v *Council*, the Court annulled the Council's decision, and held that the Council had not established that the disclosure of the identity of those who had made proposals in a document relating to a proposal for a regulation on public access to documents would seriously undermine the ongoing decision-making process. Having stated that the public has a right of access to all the documents whose disclosure it seeks, the Court recalled that an even wider access must be authorised where the Council is acting in its legislative capacity in order to enable citizens to scrutinise all the information which has formed the basis for a legislative act. The possibility for citizens to find out the considerations underpinning legislative action is a precondition for the effective exercise of their democratic rights. In the case in point, the Court held that the risk that disclosure of the identity of those who made the proposals set out in the document in question would reduce the room for manoeuvre of Member States' delegations during a legislative procedure to alter their position and would seriously compromise the chances of finding a compromise does not amount to a sufficiently serious and reasonably foreseeable risk.

In Case T-471/08 *Toland* v *Parliament* (judgment of 7 June 2011, not yet published), the Court annulled the decision of the European Parliament by which it had refused to grant access to an audit report concerning the parliamentary assistance allowance drawn up by its internal audit service on the ground, inter alia, that its disclosure would seriously undermine its decision-making process. Although the Court acknowledged that the audit report concerned was indeed a document drawn up by the institution for internal use and that it concerned an issue on which the institution had not yet taken any decision, it held that the institution failed to establish to the requisite legal standard that disclosure of that document would specifically and actually undermine its decision-making process and would have a substantial impact on that process. The contested decision did not contain any tangible element which would allow the conclusion to be drawn that that risk that the decision-making process would be undermined was, on the date on which that decision was adopted, reasonably foreseeable and not purely hypothetical. The Court added, in that regard, that neither the fact that the use by the Members of Parliament of the financial resources made available to them is a sensitive matter followed with great interest by the media nor the alleged complexity of the decision-making process could constitute in themselves an objective reason sufficient to justify the concern that the decision-making process would be seriously undermined.

4. Exception relating to protection of the purpose of inspections, investigations and audits

In Case T-29/08 *LPN* v *Commission* (judgment of 9 September 2011, not yet published, under appeal), the Court recalled that, although an institution must, as a rule, carry out a specific and individual examination of the content of each document requested in order to determine to what extent an exception to the right of access is applicable and whether partial access may be granted, it is possible to derogate from that obligation where, because of the particular circumstances of the case, it is obvious that access must be refused or granted. In such a case, it is in principle permissible for the institution to base its refusal decision on general presumptions applying to certain categories of documents.

In that regard, the Court held that, where an applicant does not have the right to consult the documents of the Commission's administrative file in infringement proceedings, the existence of a general presumption that disclosure of the documents of the administrative file would, in principle, undermine the protection of the purpose of investigations must be acknowledged, by analogy with the situation of interested persons under the procedure for reviewing State aid. It is therefore sufficient for the Commission to ascertain whether that general presumption must apply to all the documents concerned, and there is no need to carry out a prior specific and individual examination of the content of each of those documents. Where the infringement proceedings are ongoing, the Commission must necessarily proceed on the basis that that general presumption applies to all the documents concerned. That presumption does not however exclude the right for interested parties to show that a given document whose disclosure is requested is not covered by that presumption or that there is a higher public interest justifying disclosure of the document in question under Article 4(2) of Regulation No 1049/2001.

Moreover, in Case T-437/08 *CDC Hydrogene Peroxide* v *Commission* (judgment of 15 December 2011, not yet published), the applicant contested the Commission's decision refusing it access to the table of contents of the case-file relating to the participation of nine undertakings in a cartel on the hydrogen peroxide market. The Commission justified its refusal by invoking, inter alia, the need to protect the effectiveness of its cartel policy and, in particular, its leniency programme. The Court annulled the Commission's decision since it failed to show that disclosure of the document in question was likely specifically and actually to undermine the protected interests.

As regards the exception relating to the protection of commercial interests, the Court held that the interest of a company which took part in a cartel in avoiding damages actions cannot be regarded as a commercial interest and, in any event, does not constitute an interest deserving of protection, having regard, in particular, to the fact that any individual has the right to claim damages for loss caused to him by conduct which is liable to restrict or distort competition.

With respect to the exception relating to the protection of the purpose of Commission investigations, the Court held that the investigation in a given case is closed once the final decision is adopted, irrespective of whether that decision might subsequently be annulled by the courts, because it is at that moment that the institution in question itself considers that the procedure has been completed. Moreover, the Court rejected the Commission's argument that the exception based on the concept of the purpose of the investigation activities is independent of any specific procedure and may be relied on, in a general way, to refuse disclosure of any document likely to undermine the Commission's cartel policy and, in particular, its leniency programme. Such a broad interpretation of the concept of investigation activities is incompatible with the principle that the exceptions laid down in Article 4 of Regulation No 1049/2001 must be interpreted and applied strictly. The Court stressed that nothing in Regulation No 1049/2001 leads to the supposition that European Union competition policy should enjoy, in the application of that regulation, treatment different from other European Union policies and that there is thus no reason to interpret the concept of the purpose of the investigation activities differently in the context of competition policy. Lastly, the Court observed that the leniency and cooperation programmes whose effectiveness the Commission is seeking to protect are not the only means of ensuring compliance with European Union competition law. Actions for damages before the national courts can also make a significant contribution to the maintenance of effective competition in the European Union.

5. Reliance on exceptions by the Member State which is the author of the act

Case T-362/08 *IFAW Internationaler Tierschutz-Fonds* v *Commission* (judgment of 13 January 2011, not yet published, under appeal) addressed the issue of the review carried out by the European

Union judicature on the application of a substantive exception relied upon by a Member State in the framework of Article 4(5) of Regulation No 1049/2001. That provision authorises a Member State to request the institution to which an application to disclose a document originating from that Member State has been made not to disclose that document without its prior agreement. ([20])

The Court stated that, where the decision of an institution refusing access to a document originating in a Member State corresponds to the latter's request pursuant to Article 4(5) of Regulation No 1049/2001, it is within the jurisdiction of the European Union judicature to review, on application by a person to whom the institution has refused to grant access, whether that refusal was validly based on the exceptions laid down in Article 4(1) to (3) of Regulation No 1049/2001, regardless of whether the refusal results from an assessment of those exceptions by the institution itself or by the relevant Member State. It follows that, because of the application of Article 4(5) of Regulation No 1049/2001, the review carried out by the European Union judicature is not limited to a *prime facie* review. The application of that provision does not prevent a complete review being carried out of the Commission's refusal decision, which must, in particular, respect the obligation to give reasons and be based on the substantive assessment made by the Member State concerned of the applicability of the exceptions laid down in Article 4(1) to (3) of Regulation No 1049/2001. In the context of the application of Article 4(5) of Regulation No 1049/2001, Member States none the less enjoy a broad discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by the exceptions provided for in Article 4(1)(a) of Regulation No 1049/2002 could undermine the public interest. The assessment of the question whether disclosure of a document undermines the interest protected by those substantive exceptions can be among the political responsibilities of that Member State. In such a case, the Member State must enjoy a broad discretion, in the same manner as the institution. The European Union judicature's review of the legality of such a decision must therefore be limited to verifying whether the procedural rules and the duty to state reasons have been complied with, whether the facts have been accurately stated and whether there has been a manifest error of assessment or a misuse of powers.

Common foreign and security policy — Restrictive measures

In 2011, a record number of cases (90) involving restrictive measures was brought. The judgments of the Court were marked by the speed with which they were delivered and by their affirmation of the requirements relating to the obligation to provide a statement of reasons for decisions imposing such measures.

Thus, in Case T-86/11 *Bamba* v *Council* (judgment of 8 June 2011, not yet published, under appeal) — resolved under the expedited procedure, in a chamber in extended composition and in a period of less than four months after the action was brought — a case was brought before the Court concerning the lawfulness of the restrictive measures taken against Ms Nadiany Bamba, the second wife of Mr Laurent Gbagbo, former President of Côte d'Ivoire. Those measures were taken against the backdrop of the presidential election which took place in Côte d'Ivoire in autumn

([20]) A similar issue was dealt with in Case T-250/08 *Batchelor* v *Commission* (judgment of 24 May 2011, not yet published). The Court recalled therein that the exception laid down in the second subparagraph of Article 4(3) of Regulation No 1049/2001 is intended to protect certain types of documents drawn up in the course of a procedure, the disclosure of which, even after that procedure has terminated, may undermine the decision-making process of the institution concerned. Such documents must contain 'opinions for internal use as part of deliberations and preliminary consultations within the institution concerned'. Documents sent to an institution by an external person or body, in order to be the subject of an exchange of views with the institution concerned, do not fall within the scope of that category.

2010, as a result of which the United Nations (UN) certified the victory of Mr Alassane Ouattara. The European Union also recognised the victory of Mr Ouattara and called on the Ivorian leaders, both civilian and military, to place themselves under the authority of the democratically elected President, and confirmed the determination of the European Union to take targeted restrictive measures against those who obstructed observance of the sovereign will expressed by the Ivorian people. In that regard, the Court pointed out that the effectiveness of judicial review implies that the European Union authority in question must communicate the grounds of the restrictive measures imposed, so far as possible, either at the time of their adoption or, at the very least, as swiftly as possible after that adoption, in order to enable the addressees thereof, within the periods prescribed, to exercise their right to bring an action. Where the party concerned is not afforded the opportunity to be heard before the adoption of an initial act imposing such measures, compliance with the obligation to state reasons is all the more important because it constitutes the sole safeguard enabling the party concerned to make effective use of the legal remedies available to it to challenge the lawfulness of that act. As a rule, the statement of reasons for an act of the Council imposing such restrictive measures must refer not only to the statutory conditions of application of that act, but also to the actual and specific reasons why the Council considers, in the exercise of its discretion, that such measures must be adopted in respect of the party concerned. Since the Council enjoys such discretion with regard to the matters to be taken into consideration for the purpose of adopting or of maintaining in force a measure freezing funds, it cannot be required to state with greater precision in what way freezing a person's funds may in concrete terms contribute to combating obstruction of the process of peace and national reconciliation or to produce evidence to show that the person concerned might use his funds to make such an obstruction in the future.

In the case in point, the Court stated that the Council merely set out vague and general considerations as justification for Ms Bamba's inclusion on the contested list. In particular, the indication that she is the director of the Cyclone group which publishes the newspaper *Le Temps* does not constitute a circumstance such as to provide a specific and concrete statement of reasons for the contested acts against her. In the absence of concrete evidence, that indication does not make it possible to understand in what way Ms Bamba was involved in obstruction of the peace and reconciliation processes through public incitement to hatred and violence and through participation in disinformation campaigns in connection with the 2010 presidential election.

In those circumstances, the Court held that the statement of reasons in the contested acts did not enable Ms Bamba to challenge their validity before it. The Court noted that that statement did not place it in a position to exercise its review of the merits of the contested acts and it therefore annulled the contested acts, although their effects were maintained until expiry of the appeal period before the Court of Justice, that is to say two months and 10 days from notification of the judgment, or, in the event of an appeal being lodged, after dismissal of that appeal, by application of Article 280 TFEU and the second paragraph of Article 264 TFEU.

In the context of the campaign against nuclear proliferation, it should also be noted that, in Case T-562/10 *HTTS* v *Council* (judgment of 7 December 2011, not yet published, delivered under the procedure by default), the Court annulled the regulation imposing restrictive measures on the applicant, and held that that the reasons provided by the Council were at first sight contradictory and did not make it possible to ascertain whether the applicant's name was placed on the list because of the continuance of the circumstances relied on in the previous regulation, namely the links between the applicant and the company HDSL, or the new circumstances, namely the direct links between the applicant and the company IRISL. In any event, neither the regulation nor the Council's letter of reply to the application for review made by the applicant makes it possible to assess the reasons why the Council considered that the matters set out by the applicant concerning the nature of its activities and its autonomy in regard to HDSL and IRISL were not capable of altering its

position with regard to the continuance of restrictive measures concerning it. Similarly, the Council did not specify the nature of the control allegedly exercised over the applicant by IRISL or the activities which the applicant carries out on behalf of IRISL. The Court annulled the contested regulation in so far as it concerns the applicant for infringement of the obligation to state reasons. So as not to do serious and irreparable harm to the effectiveness of the restrictive measures imposed by the contested regulation, and to ensure that the applicant could not engage in conduct intended to circumvent the effect of later restrictive measures, the Court none the less decided to maintain the effects of that regulation for a period of no more than two months from the date of delivery of the judgment.

Environment — Scheme for greenhouse gas emission allowance trading

Case T-369/07 *Latvia* v *Commission* (judgment of 22 March 2011, not yet published, under appeal) concerned the Commission's decision declaring incompatible with the scheme for greenhouse gas emission allowance trading, set up by Directive 2003/87, ([21]) an aspect of the proposed amendment of the national allocation plan ('the NAP') of emission allowances for the Republic of Latvia for the period from 2008 to 2012. That amended NAP, notified by the Republic of Latvia, was in response to a first Commission decision by which the Commission had declared an aspect of the initial NAP incompatible with Directive 2003/87 and had made the approval of the NAP subject to the condition that amendments be made to it with a view to reducing the total quantity of allowances to be granted. The decision relating to the amended NAP had however been adopted after expiry of the time-limit laid down in Article 9(3) of Directive 2003/87, which provides that, within three months of notification of a national allocation plan by a Member State, the Commission may reject that plan, or any aspect thereof, on the basis that it is incompatible with the criteria listed in Annex III to that directive.

In order to ascertain whether the Commission could validly adopt the contested decision after expiry of that time-limit, the Court observed that, if within three months following the Member State's notification of its NAP, the Commission opts not to exercise that power, the Member State may, in principle, implement the NAP without any requirement of approval by the Commission. Thus, the procedure for reviewing NAPs need not necessarily culminate in a formal decision. By contrast, the Court stated that the Commission may decide to use its decision-making powers where the Member State refrains from amending its NAP or refuses to do so before the expiry of the three-month time-limit, despite the objections raised. If the Commission does not take such a rejection decision, the notified NAP becomes definitive and there is a presumption of legality allowing the Member State to implement it.

As regards amendments which, as in the case in point, are introduced during a subsequent phase of the review procedure, the Court observed that they are aimed specifically at addressing the objections initially expressed by the Commission. Accordingly, the acceptance of those amendments by the Commission is merely the corollary of the objections initially expressed by it and not the expression of a general power of authorisation. Moreover, the Commission does not have to accept the amendments made to the NAP by way of formal decision.

([21]) 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), as amended by Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004 (OJ 2004 L 338, p. 18).

Moreover, the Court observed that the purpose of the procedure under Article 9(3) of Directive 2003/87 is to provide legal certainty for the Member States and, in particular, to permit them to be sure, within a short time, how they may allocate emission allowances and manage the trading scheme on the basis of their NAP during the period in question. There is a legitimate interest in ensuring that, during the entire period of its validity, the NAP does not risk being contested by the Commission. Those considerations apply to any NAP, irrespective of whether it is the version as initially notified or as revised and subsequently notified, especially as the Commission's review has already been preceded by a first review stage.

Consequently, the concept of notification within the meaning of Article 9(3) of Directive 2003/87 encompasses both initial notifications and subsequent notifications of different versions of an NAP, with the result that each of those notifications triggers a new three-month time-limit. In the case in point, the Court annulled the contested decision, since it was adopted after the expiry of that time-limit, following which the revised NAP became definitive.

Public health

In Case T-257/07 *France* v *Commission* (judgment of 9 September 2011, not yet published, under appeal), the applicant sought the annulment of the regulation by which the Commission had amended Regulation No 999/2001, ([22]) in so far as it authorised measures for monitoring and eradicating which are less restrictive than those previously provided for in respect of sheep and goat herds. In that context, the Court stated that it falls to the institutions responsible for the political choice of fixing the appropriate level of protection to determine the level of risk deemed unacceptable for society. It is incumbent on those institutions to determine the critical threshold of the probability of adverse effects on public health, safety and the environment and of the gravity of those potential effects which, in their view, appear no longer to be acceptable for society and which, once exceeded, require preventive measures to be taken despite the continuing scientific uncertainty. When determining the level of risk deemed unacceptable for society, the institutions are bound by their obligation to ensure a high level of protection but are not permitted to adopt a purely hypothetical approach to the risk and to be guided by a 'zero risk' approach in their decisions. The Court stated also that management of the risk covers all action taken by an institution which must deal with a risk in order to reduce it to an acceptable level for society in the light of the institution's obligation to ensure a high level of protection of public health, safety and the environment.

The Court went on to state that it is for the competent authority to review within a reasonable period the interim measures adopted since, where new information alters the perception of a risk or shows that that risk can be circumscribed by less restrictive measures than existing measures, the institutions must ensure that rules are adjusted to take account of new data. Thus, where new knowledge or new scientific discoveries justify relaxation of a preventive measure, they alter the specific content of the public authorities' obligation to maintain a constant high level of protection of human health. If such factors alter the initial assessment of the risks, the lawfulness of the adoption of less restrictive preventive measures must be assessed by reference to those factors and not according to the factors which determined the assessment of the risks when the initial preventive measures were adopted. It is only where that new level of risk exceeds the level of risk deemed

([22]) Regulation (EC) No 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies (OJ 2001 L 147, p. 1).

acceptable for society that the Court must find that there has been a breach of the precautionary principle.

Television broadcasting

In Case T-385/07 *FIFA* v *Commission* (judgment of 17 February 2011, not yet published, under appeal) and Case T-55/08 *UEFA* v *Commission* (judgment of 17 February 2011, not yet published, under appeal), actions for annulment were brought before the Court by FIFA and UEFA against Commission decisions by which the Commission considered compatible with European Union law the lists, drawn up by the Kingdom of Belgium and the United Kingdom of Great Britain and Northern Ireland, of the events regarded as being of major importance for society within the meaning of Article 3a(1) of Directive 89/552. ([23]) Those lists contained inter alia, for Belgium, all the matches of the finals of the football World Cup and, for the United Kingdom, all the matches of the final stage of the European Football Championship (EURO). Those lists had been sent to the Commission pursuant to Directive 89/552, which permits Member States to prohibit the broadcasting on an exclusive basis of events that they consider to be of major importance for their society, where such broadcasting would deprive a significant section of the public the possibility of following certain events on free television.

The Court held first of all that the reference to the World Cup and to the EURO in recital 18 of Directive 97/36 ([24]) means that, when a Member State includes World Cup and EURO matches in the list it has drawn up, it does not need to include in its notification to the Commission specific grounds concerning their nature as an event of major importance for society. However, any finding by the Commission that the inclusion of the entire World Cup and EURO in a list of events of major importance for the society of a Member State is compatible with European Union law, on the ground that those tournaments are, by their nature, regarded as single events, may be called into question on the basis of specific factors. In particular, it is for the applicants to show that 'non-prime' World Cup matches (namely matches other than the semi-finals, the final and the matches of the national team/one of the national teams of the country concerned and/or 'non-gala' matches of the EURO (namely matches other than the opening match and the final) are not of such importance for the society of that state.

In that context, the Court stated that 'prime' and 'gala' matches as well as matches involving a national team concerned are of major importance for the public of a given Member State and may therefore be included in a national list of events that the public must be able to follow on free television. As regards other World Cup and EURO matches, the Court held that they may be regarded as single events and not as a succession of individual events divided into matches. The Court specified that matches other than 'prime' matches, 'gala' matches and matches involving a national team concerned may have an impact on the participation of those teams in 'prime' and 'gala' matches, which may create a particular interest for the public to follow them. In that regard, the Court noted that it cannot be determined in advance — at the time when national lists are drawn up or when broadcasting rights are acquired — what matches will be absolutely decisive for the later stages of those tournaments or will have an impact on the fate of a given national team. For that reason, the Court held that the fact that certain 'non-prime' or 'non-gala' matches may

([23]) Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities (OJ 1989 L 298, p. 23).

([24]) Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending [Directive 89/552] (OJ 1997 L 202, p. 60).

influence participation in 'prime' or 'gala' matches may justify the decision of a Member State to regard all the matches of those tournaments as being of major importance for society. Moreover, the Court established that there was no harmonisation of events that could be regarded as being of major importance for society and observed that the viewing figures concerning 'non-prime' and 'non-gala' matches from recent tournaments show that those matches have attracted a large number of viewers many of whom are not normally interested in football.

The Court stated lastly that, although the categorisation of the World Cup and the EURO as events of major importance for society may affect the price which FIFA and UEFA will obtain for the grant of the rights to broadcast those tournaments, it does not destroy the commercial value of those rights because it does not oblige those two organisations to sell them on whatever conditions it can obtain. In addition, although such categorisation restricts the freedom to provide services and the freedom of establishment, that restriction is justified, since it is intended to protect the right to information and to ensure wide public access to television broadcasts of events of major importance for society.

Public procurement — Right to an effective remedy

In Case T-461/08 *Evropaïki Dynamiki* v *EIB* (judgment of 20 September 2011, not yet published), the Court, having first found that it had jurisdiction to hear an action brought by an unsuccessful tenderer against a decision taken by the Management Committee of the European Investment Bank (EIB) to award a public contract for the provision of IT services, annulled that decision on the ground, inter alia, that the tendering procedure had failed to satisfy the requirements of full legal protection. First, the contested decision was not notified to the applicant, who became aware of it after it had, in principle, been implemented, since the contract had been signed and had entered into force. In the case in point, it was necessary for the applicant to be in a position to bring an application for suspension of the operation of the decision awarding the contract, even before the signature and entry into force of the contract, in order to render effective its substantive application, which sought review of the impartiality of the tendering procedure and the preservation of its chance of concluding the contract with the EIB at the end of that procedure.

Second, the EIB had failed to provide to the applicant an adequate statement of reasons for the decision awarding the contract before it brought its main action seeking, inter alia, annulment of the decision. In public procurement procedures, the right of an unsuccessful tenderer to an effective remedy against the decision awarding the public contract to another tenderer and the corresponding obligation on the contracting authority to communicate to the unsuccessful tenderer, upon request, the grounds of the decision must be regarded as essential procedural requirements within the meaning of the case-law, in so far as those requirements dictate that safeguards be attached to the award decision so as to enable the impartiality of the tendering procedure which resulted in the decision to be effectively reviewed.

II. Actions for damages

In Case T-88/09 *Idromacchine and Others* v *Commission* (judgment of 8 November 2011, not yet published), the Court addressed the issue of whether the Community's non-contractual liability is incurred in the event that an institution infringes its obligation to respect professional secrecy by publishing information concerning the applicant in the *Official Journal of the European Union*.

The Court stated, as regards disclosure of information in a Commission State aid decision, that it is necessary to regard as confidential information that an undertaking, which did not receive the aid

in question, was not in a position to deliver to its co-contractor goods compliant with the rules in force and with the terms of the contract, since that information was communicated by the Member State concerned to the Commission for the sole purposes of the administrative procedure for the examination of the State aid in question and since it related to the execution of the contractual relations between the companies concerned. Such information was moreover, capable of causing serious harm to the undertaking concerned since it referred to it by name in an unfavourable manner. Moreover, in so far as disclosure of the information was liable to undermine the undertaking's image and reputation, the latter's interest in ensuring that that information was not divulged was objectively worthy of protection.

The Court stated that the assessment as to the confidentiality of a piece of information requires the individual legitimate interests opposing disclosure of the information to be weighed against the public interest that the activities of the European Union institutions take place as openly as possible. In the case in point, the disclosure of the information was deemed disproportionate in the light of the object of the Commission's decision since it would have been sufficient to refer to the failure to fulfil contractual obligations in very general terms or, if necessary, in more specific terms, and it was not necessary in either of those situations to mention the supplier's name.

Observing that the Commission does not have broad discretion as to the issue whether it is necessary to depart, in a specific case, from the rule of confidentiality, the Court concluded that disclosure of confidential information which undermines the reputation of a company constitutes an infringement of the obligation of professional secrecy laid down in Article 287 EC and is enough to establish that there has been a sufficiently serious breach. The Commission was therefore ordered to pay EUR 20 000 by way of compensation for harm to the applicant's image and reputation.

In Case T-341/07 *Sison* v *Council* (judgment of 23 November 2011 delivered by a chamber in extended composition, not yet published), the Court clarified the conditions under which the European Union's non-contractual liability is breached — in particular the rule relating to whether there has been a sufficiently serious breach of a rule conferring rights on individuals — in the event that the unlawful decision which gives rise to the damage is annulled by the Court on the ground that the national decisions on which the Council relied in order to freeze the applicant's funds did not relate to the instigation of investigations or prosecutions or a conviction for terrorist activity, contrary to the requirements of European Union law.

In that regard, the Court recalled that it is not the purpose of an action for damages to make good damage caused by all unlawfulness. Only a sufficiently serious breach of a rule of law intended to confer rights on individuals can render the European Union liable. The decisive test for a finding that this requirement has been satisfied is whether the institution concerned has manifestly and gravely disregarded the limits of its discretion. None the less, the extent of the discretion enjoyed by the institution concerned, although determinative, is not the only yardstick. Thus, the system of non-contractual liability takes into account, in particular, the complexity of the situations to be regulated and the difficulties in applying or interpreting the texts.

The Court took the view that, although there is no margin of appreciation for the Council when it determines whether the matters of law and of fact, that may be preconditions for the application of a fund-freezing measure, are satisfied, the interpretation and application of European Union law were particularly difficult in the case in point. The Court found that the actual wording of the provisions concerned is particularly confused, as shown by the copious case-law of the General Court in this area. It is only through its consideration of some 10 cases, spread over several years, that the Court has by degrees constructed a rational, consistent framework for the interpretation of those provisions. It was only on the occasion of the judgment annulling the decision that gave rise to

the damage that the Court held that a national decision must, if the Council is to be able validly to invoke it, form part of national proceedings seeking, directly and principally, the imposition on the person concerned of measures of a preventive or punitive nature, in connection with the combating of terrorism. Furthermore, the Court noted the complexity of the legal and factual assessments required in order to settle the case in point. Lastly, the Court stated that the fundamental importance of the objective of general interest consisting in combating threats to international peace and security and the particular constraints imposed by the pursuit of that objective 'by all means' on the European Union institutions concerned, at the urgent request of the United Nations Security Council, are also factors that must necessarily be taken into consideration.

Thus, in the case in point, the Council's infringement of the applicable rules, while clearly established, could, according to the Court, be accounted for by the particular constraints and responsibilities borne by that institution and that constituted an irregularity that an administrative authority exercising ordinary care and diligence could have committed if placed in similar circumstances, so that it could not be concluded that there had been a sufficiently serious breach giving rise to a right to compensation.

III. Appeals

In 2011, 44 appeals were brought against decisions of the Civil Service Tribunal and 29 cases were brought to a close by the Appeal Chamber of the General Court. Four of those cases merit particular attention.

In Case T-80/09 P *Commission* v *Q* (judgment of 12 July 2011, not yet published), the Court held that a finding of illegality is on its own sufficient for regarding as satisfied the first of the three conditions necessary for the Community to incur liability for damage caused to its officials owing to an infringement of European Civil Service law, and it is not necessary to establish the existence of a sufficiently serious breach of a rule of law intended to confer rights on individuals. ([25]) Moreover, the Court stated that the admissibility of an action for damages brought by an official pursuant to the second paragraph of Article 24 of the Staff Regulations of Officials of the European Union is conditional on national remedies having been exhausted, provided that they protect the persons concerned effectively and may culminate in compensation for the alleged damage. In that regard, the special liability regime, which is a strict liability regime, established by that provision is based on the duty of the administration to protect the health and safety of its officials and agents against attacks or ill-treatment by third parties or other officials, of which they may be victim in the exercise of their duties, particularly in the form of psychological harassment, within the meaning of Article 12a(3) of the Staff Regulations. Accordingly, the Court held that the Civil Service Tribunal had infringed Articles 90 and 91 of the Staff Regulations, and ordered the Commission to pay compensation for the non-material damage arising from an administrative fault which helped to isolate the applicant within her unit. Lastly, the Court held that the Civil Service Tribunal had infringed Articles 90 and 91 of the Staff Regulations and exceeded the limits of the judicial review, by, in practice, assuming the role of the administration, in that it had ruled on the complaint of psychological harassment raised by the applicant.

([25]) Thereby confirming Case T-143/09 P *Commission* v *Petrilli* (judgment of 16 December 2010, not yet published), which had been the subject of a proposal to review, which was closed by the decision of the Court of Justice of 8 February 2011 in Case C-17/11 RX.

Furthermore, in Case T-361/10 P *Commission* v *Pachtitis* and Case T-6/11 P *Commission* v *Vicente Carbajosa and Others* (judgments of 14 December 2011, not yet published) confirming on that point the judgments delivered by the Civil Service Tribunal, the Court held that the European Personnel Selection Office (EPSO) lacked the power to determine the content of admission tests for a competition. The Court analysed the division of powers between EPSO and the selection board in the light of Annex III to the Staff Regulations and concluded that, although the power to determine the content of admission tests has not been expressly attributed to either EPSO or the selection board, before the establishment of EPSO, the organisation of tests was entrusted only to the selection board of a competition according to settled case-law. Accordingly, because there had been no amendment to the Staff Regulations conferring expressly such a power on EPSO, and because of the essentially organisational nature of the tasks allocated to EPSO by Article 7 to that Annex, the Court held that EPSO did not have the power to determine the content of the pre-selection tests for a competition. As regards the decision establishing EPSO ([26]) and the decision on the organisation and operation of that body, ([27]) the Court held that they have a lower rank than the provisions of the Staff Regulations. Accordingly, by virtue of the principle of legality, although those decisions may sometimes contain formulations which may erroneously suggest that EPSO has the power to determine the content of admission tests, they cannot be interpreted as contravening the Staff Regulations.

Lastly, in Case T-325/09 P *Adjemian and Others* v *Commission* (judgment of 21 September 2011, not yet published), the Court held that the principle prohibiting abuse of rights, pursuant to which nobody may rely abusively on rules of law, is among the general principles of law. It follows that the legislature and the authority empowered to conclude contracts of employment (AECE) are required, when adopting or implementing the rules governing the relationship between the European Communities and their servants, to prevent abuses of law that may result from the use of successive fixed-term contracts, in accordance with the objectives of improving the living and working conditions of workers and of proper social protection for workers, which are referred to in Article 136 EC. Furthermore, the Court held that the main characteristic of contracts of employment as a member of the contract staff is their precariousness in time, which is precisely the purpose of such contracts which is to arrange for occasional staff to perform duties which — by their nature or by virtue of the absence of a holder of the post — are precarious. That system cannot therefore be used by the AECE to assign for long periods duties corresponding to a 'permanent post' to such staff, who would thus be used in an inappropriate manner and be subjected to prolonged uncertainty. Such use would be contrary to the principle prohibiting abuse of rights, when that principle is applied to the use, by the AECE, of successive fixed-term contracts in the civil service. However, such abuse could be remedied and the negative consequences suffered by the interested party eliminated by reclassification of the contract of employment. That reclassification may lead inter alia to the conversion of successive fixed-term contracts into contracts of indefinite duration.

([26]) Decision 2002/620/EC of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions and the European Ombudsman of 25 July 2002 establishing [EPSO] (OJ 2002 L 197, p. 53).

([27]) Decision 2002/621/EC of the Secretaries-General of the European Parliament, the Council and the Commission, the Registrar of the Court of Justice, the Secretaries-General of the Court of Auditors, the Economic and Social Committee and the Committee of the Regions, and the Representative of the European Ombudsman of 25 July 2002 on the organisation and operation of [EPSO] (OJ 2002 L 197, p. 56).

IV. Applications for interim measures

In 2011, 44 applications for interim measures were brought before the President of the General Court, a slight increase compared with the number of applications (41) made in 2010. In 2011, the judge hearing such applications disposed of 52 cases, as against 38 in 2010. The judge hearing such applications granted two applications for suspension of operation directed against fines which had been imposed on the applicants for their participation in anti-competitive agreements, namely in Case T-392/09 R *1. garantovaná* v *Commission* (order of 2 March 2011, not published), and in Case T-393/10 R *Westfälische Drahtindustrie and Others* v *Commission* (order of 13 April 2011, not yet published). Those two orders afforded the President of the Court the opportunity to clarify the case-law on groups, which led to consideration being taken, in the context of urgency, of the financial resources of the group of companies to which the company which requested the grant of the interim measures belonged.

In *1. garantovaná v Commission*, the applicant, a company active in the financial field, sought exemption from the obligation, imposed by the Commission, to provide a bank guarantee as a condition for the non-immediate recovery of a fine imposed on that company for having exercised decisive influence over the commercial policy of another company, which was participating in a cartel in the sector of calcium carbide and magnesium-based reagents for the steel and gas industries. The President of the Court held that in the case in point, there were exceptional circumstances which justified the suspension of the obligation to provide such a guarantee. The applicant had demonstrated, in addition to a *prima facie* case, that its precarious financial situation was the cause of the refusals of a number of banks to grant the bank guarantee in question. In addition, the evidence put forward by the Commission did not make it possible to call in question the applicant's statement that it was not the subsidiary of a parent company or of a larger group and that it had no majority shareholder. Furthermore, the applicant did not appear to be part of a network the other members of which might have interests in common with it. Moreover, it cannot be alleged that the applicant provoked its poor financial situation by own its conduct. The fact that shortly before its fine was imposed, it invested the bulk of its remaining assets in long-term loans and thus tied up its assets could be reasonably explained by its activity as a capital investor. In that regard, the applicant could not be required to freeze its investments and to cease its economic activity during the administrative procedure undertaken by the Commission. In weighing up the interests at stake, the President of the Court held that the financial interests of the European Union would not necessarily be best served by the immediate initiation of enforcement proceedings in respect of the fine, since it was unlikely that the Commission could in this way obtain the amount of the fine. The President of the Court therefore ordered that the exemption sought be granted, on condition however that the applicant could not sell certain assets without the Commission's prior authorisation, that it pay the Commission the sum equivalent to the provision that it had effected and that it inform the Commission regularly of the development of its assets and investments.

In *Westfälische Drahtindustrie and Others* v *Commission*, three companies belonging to a group active in the industrial steel sector, which had had fines imposed on them for their participation in a cartel on the market for prestressing steel, brought an application for interim measures by which they sought exemption from the obligation to provide bank guarantees. In that regard, the President of the Court recalled that exemption from the obligation to provide a bank guarantee can be granted only if the party applying for such exemption adduces proof that it is objectively impossible for it to provide such guarantee or that such provision would imperil its existence. It was found that the applicants had promptly, repeatedly and seriously sought to obtain a bank guarantee in respect of the fines imposed, but that those efforts had been in vain, since their 14 usual banks, which had been contacted on a number of occasions, had refused them that guarantee after examining their financial situation in detail. The President did not take into consideration the financial

means of the shareholder ArcelorMittal, which held a one-third holding in one of the applicant companies. The Court recalled that the case-law on groups has been extended to minority holdings (30 %) — depending on the capital structure of the undertaking concerned — but held that the ArcelorMittal group and the group to which the applicants belonged were competitors on the steel market and pursued different strategic objectives. The Court also rejected the Commission's argument based on the own interest of the usual banks, which were creditors of the applicants, in covering their own demands. According to the President, the interests of a bank as a credit institution which has refused to grant a bank guarantee must be subordinated to those of the Commission only if the case-law on groups of companies is applicable, which was not the case here. The 14 usual banks of the applicants were not part of the applicants' group. Their business relationships with that group were limited to the area of credit, the recovery of debts and interest. To that extent there was no objective identity between the strategic interests of those credit institutions and those of the applicants. Since it was established that there was no possibility of obtaining a bank guarantee, the President regarded as irrelevant the Commission's claims, based on financial documents and economic data, that subsequent to a rejection of the application for interim measures, 'any sensible bank' would in the end provide the applicants with the bank guarantee in question.

Furthermore, the existence of a *prima facie* case was confirmed only in relation to the interim application for fine reduction, which was based inter alia on the plea alleging that account was not taken of the applicants' inability to pay, since the President had taken the view that it could not be ruled out in the case in point that the Court would make use of its unlimited jurisdiction in the area of fines and that it would reduce the fines imposed on the applicants. The President therefore ordered that the exemption requested be granted, on condition however that the applicants pay the Commission the amount corresponding to the reserve that they had built up and instalments according to the payment plan offered.

The other applications for interim measures were rejected, most often for want of urgency. Special mention should be made of the following cases.

In the field of State aid, it is appropriate to mention, by reason of their procedural particularities, the 'Spanish coal' cases (Case T-484/10 R *Gas Natural Fenosa SDG* v *Commission*, Case T-486/10 R *Iberdrola* v *Commission* and Case T-490/10 R *Endesa and Endesa Generación* v *Commission* (orders of 17 February 2011, not published). Those cases stem from a decision of the Kingdom of Spain to set up a financial aid scheme for the production of electricity from indigenous coal. To that effect, the scheme in question obliged several electricity generating stations to supply themselves with indigenous coal and to produce certain volumes of electricity from that coal, in return for compensation from the State for the extra production costs entailed by the purchase of indigenous coal. The Commission having authorised the scheme in question, the three applicant undertakings brought actions for annulment of that authorisation decision and submitted applications for suspension of operation. In the light of the imminent adoption of a decision of the competent Spanish authority obliging the applicants to undertake, within three days, to acquire specific quantities of national coal, the President of the Court ordered, on 3 November 2010, pursuant to Article 105(2) of the Rules of Procedure, that is to say without hearing the opposing parties, the suspension of the contested decision until the adoption of the orders terminating the proceedings for interim relief. Since the Kingdom of Spain had requested that that provisional suspension be revoked and since the applicants had, at a particularly late stage of the proceedings, expressed their intention to abandon their action, the President held that, pending final removal from the register, it was necessary to adjudicate, in the interest of the sound administration of justice, on whether to maintain or to deprive of effect the provisional suspension of the Commission's decision. Whilst acknowledging that there was a *prima facie* case, the Court ruled that there were no circumstances creating urgency such as to justify the grant of the interim measures sought. As regards the balancing of

the interests, having recalled the importance of services of general economic interest within the European Union and the wide discretion of the national authorities in delivering, implementing and organising them, the President held that the interest in implementing as quickly as possible the Spanish service of general economic interest and the associated compensation had to prevail over the opposing interests relied on by the applicant undertakings. Consequently, the orders of 3 November 2010 granting the provisional suspension of the contested decision were revoked. Lastly, since the applicant undertakings withdrew their applications for interim relief, the President adopted, on 12 April 2011, three orders removing them from the register, in the context of proceedings for interim relief, in which the Court ordered the applicants on an exceptional basis to pay the costs.

Lastly, in Case T-62/06 RENV-R *Eurallumina* v *Commission* (order of 9 June 2011, not published, paragraphs 29 to 56) and Case T-207/07 R *Eurallumina* v *Commission* (order of 10 June 2011, not published, paragraphs 32 to 59), the President, having set out in detail the various constituent parts of the case-law on groups, held that that case-law is compatible with Article 47 of the Charter of Fundamental Rights of the European Union, ([28]) with Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and with the judgments of the European Court of Human Rights, and observed that the concept of a group does not impose a condition that is impossible to satisfy, since it does not prevent a company belonging to a group from demonstrating in particular that its objective interests do not coincide with those of its group or its parent company, that the parent company is prevented by law from providing it with financial support, or that the group as a whole is financially incapable of coming to its aid.

([28]) OJ 2010 C 83, p. 392.

B — Composition of the General Court

(order of precedence as at 16 November 2011)

First row, from left to right:

L. Truchot, 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; A. Dittrich, President of Chamber; H. Kanninen, Judge.

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:

M. Kancheva, Judge; D. Gratsias, Judge; J. Schwarcz, Judge; S. Frimodt Nielsen, Judge; S. Soldevila Fragoso, Judge; K. O'Higgins, Judge; M. Van der Woude, Judge; A. Popescu, 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.

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 for 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 Liège, 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 from 3 May 2006 to 15 November 2011.

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.

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, from 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 for European Integration (2001–05); Head of Department at the Legislative Council of Romania (1996–2001 and 2005–09); founding editor of the *Romanian Review of European Law*; President of the Romanian Society for European Law (2009–10); Agent of the Romanian government before the Courts of the European Union (2009–10); Judge at the General Court since 26 November 2010.

Mariyana Kancheva

Born 1958; degree in law at the University of Sofia (1979–84); post-master's degree in European law at the Institute for European Studies, Free University of Brussels (2008–09); specialisation in economic law and intellectual property law; trainee Judge at the Regional Court, Sofia (1985–86); Legal Adviser (1986–88); Lawyer at the Sofia Bar (1988–92); Director-General of the Services Office for the Diplomatic Corps at the Ministry of Foreign Affairs (1992–94); pursuit of the profession of lawyer in Sofia (1994–2011) and Brussels (2007–11); Arbitrator in Sofia for the resolution of commercial disputes; participation in the drafting of various legislative texts as legal adviser to the Bulgarian Parliament; Judge at the General Court since 19 September 2011.

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 2011

Mr Emmanuel Coulon, Registrar of the General Court since 6 October 2005, whose term of office would expire on 5 October 2011, had his term renewed on 13 April 2011, for the period from 6 October 2011 to 5 October 2017.

Formal sitting on 19 September 2011

Following the resignation of Mr Teodor Tchipev, by decision of 8 September 2011 the representatives of the governments of the Member States of the European Union appointed Ms Mariyana Kancheva as Judge at the General Court of the European Union for the period from 12 September 2011 to 31 August 2013.

3. Order of precedence

From 1 January 2011 to 18 September 2011

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

From 19 September 2011 to 15 November 2011

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
M. KANCHEVA, Judge

E. COULON, Registrar

From 16 November 2011 to 22 November 2011

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
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
M. KANCHEVA, Judge

E. COULON, Registrar

From 23 November 2011 to 31 December 2011

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
A. DITTRICH, President of Chamber
L. TRUCHOT, President of Chamber
H. KANNINEN, 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
J. SCHWARCZ, Judge
M. VAN DER WOUDE, Judge
D. GRATSIAS, Judge
A. POPESCU, Judge
M. KANCHEVA, 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 (1989–95)
Jacques Biancarelli (1989–95)
Donal Patrick Michael Barrington (1989–96)
Romain Alphonse Schintgen (1989–96)
Heinrich Kirschner (1989–97)
Antonio Saggio (1989–98), President (1995–98)
Cornelis Paulus Briët (1989–98)
Koen Lenaerts (1989–2003)
Bo Vesterdorf (1989–2007), President (1998–2007)
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)
Enzo Moavero Milanesi (2006–11)
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 (2007–11)

New cases

2. Nature of proceedings (2007–11)
3. Type of action (2007–11)
4. Subject-matter of the action (2007–11)

Completed cases

5. Nature of proceedings (2007–11)
6. Subject-matter of the action (2011)
7. Subject-matter of the action (2007–11) (judgments and orders)
8. Bench hearing action (2007–11)
9. Duration of proceedings in months (2007–11) (judgments and orders)

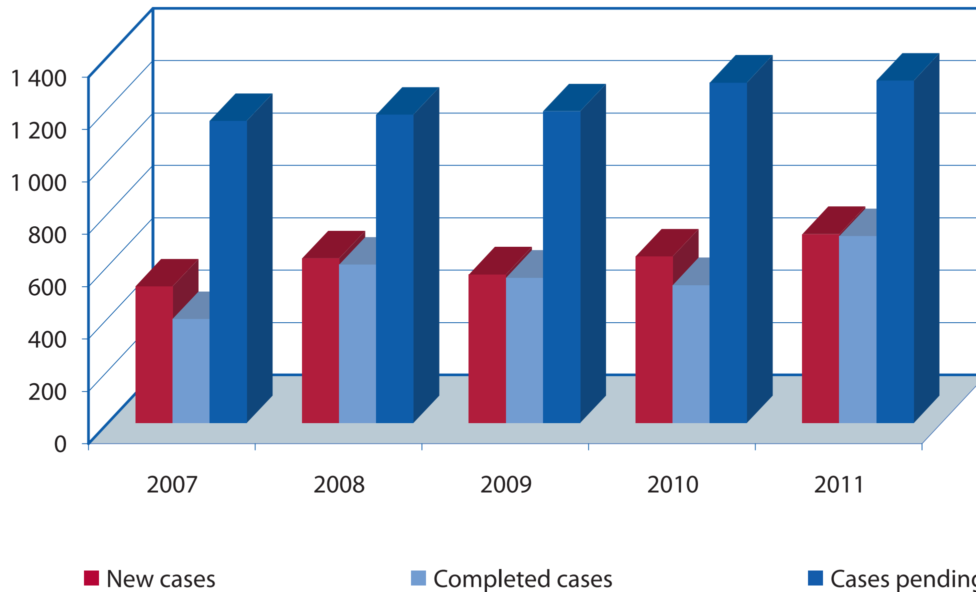
Cases pending as at 31 December

10. Nature of proceedings (2007–11)
11. Subject-matter of the action (2007–11)
12. Bench hearing action (2007–11)

Miscellaneous

13. Proceedings for interim measures (2007–11)
14. Expedited procedures (2007–11)
15. Appeals against decisions of the General Court to the Court of Justice (1989–2011)
16. Distribution of appeals before the Court of Justice according to the nature of the proceedings (2007–11)
17. Results of appeals before the Court of Justice (2011) (judgments and orders)
18. Results of appeals before the Court of Justice (2007–11) (judgments and orders)
19. General trend (1989–2011) (new cases, completed cases, cases pending)

1. *General activity of the General Court* — New cases, completed cases, cases pending (2007–11) ([1]) ([2])



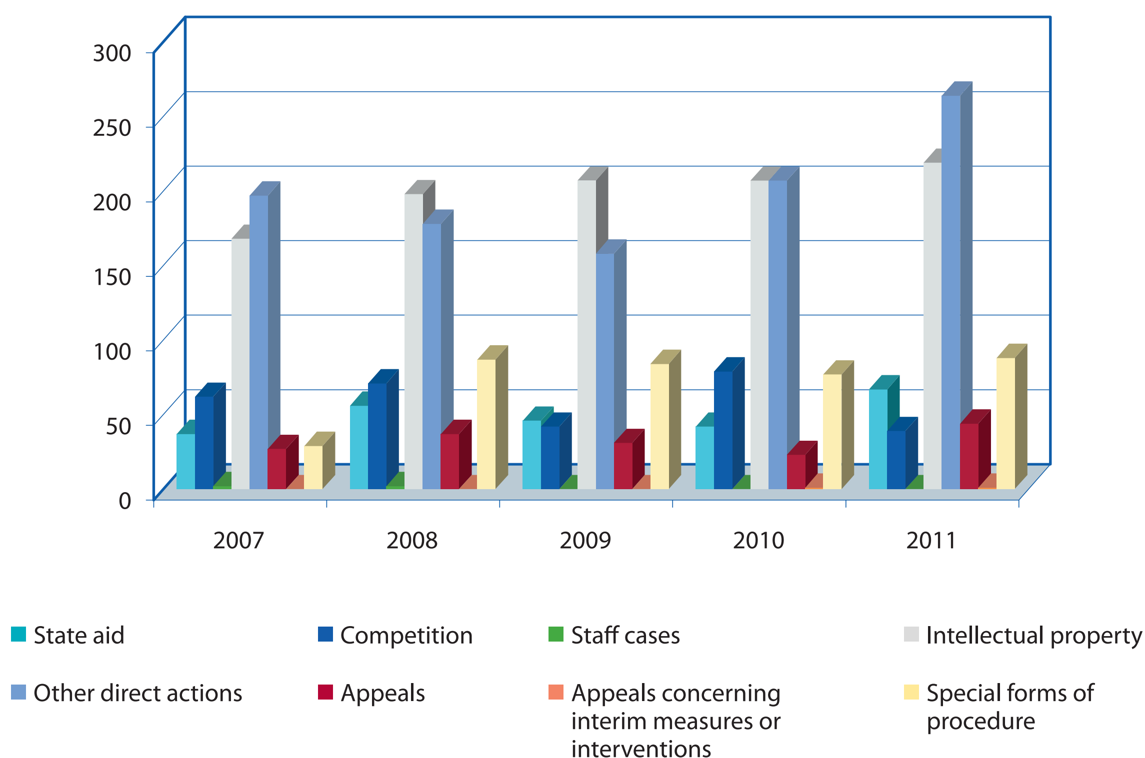
	2007	2008	2009	2010	2011
New cases	522	629	568	636	722
Completed cases	397	605	555	527	714
Cases pending	1 154	1 178	1 191	1 300	1 308

([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]) Unless otherwise indicated, this table and the following tables do not take account of proceedings concerning interim measures.

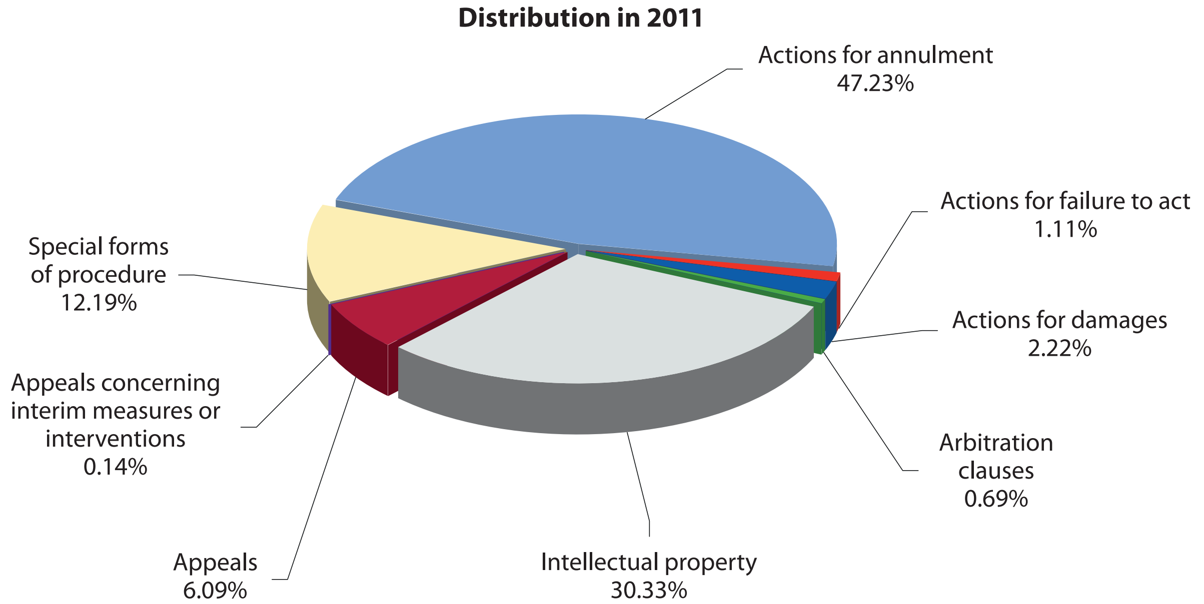
2. *New cases* — Nature of proceedings (2007–11)



	2007	2008	2009	2010	2011
State aid	37	56	46	42	67
Competition	62	71	42	79	39
Staff cases	2	2			
Intellectual property	168	198	207	207	219
Other direct actions	197	178	158	207	264
Appeals	27	37	31	23	44
Appeals concerning interim measures or interventions				1	1
Special forms of procedure	29	87	84	77	88
Total	**522**	**629**	**568**	**636**	**722**

3. *New cases* — Type of action (2007–11)

Distribution in 2011



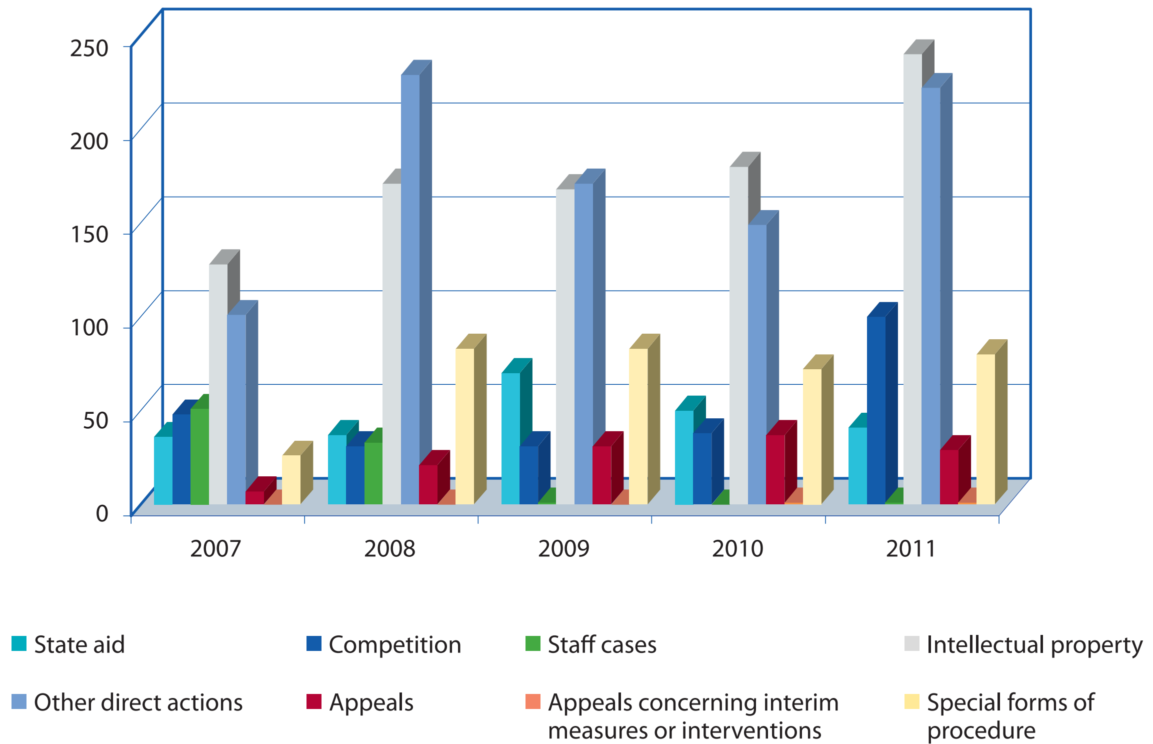
	2007	2008	2009	2010	2011
Actions for annulment	251	269	214	304	341
Actions for failure to act	12	9	7	7	8
Actions for damages	27	15	13	8	16
Arbitration clauses	6	12	12	9	5
Intellectual property	168	198	207	207	219
Staff cases	2	2			
Appeals	27	37	31	23	44
Appeals concerning interim measures or interventions				1	1
Special forms of procedure	29	87	84	77	88
Total	**522**	**629**	**568**	**636**	**722**

4. *New cases* — Subject-matter of the action (2007–11) ([1])

	2007	2008	2009	2010	2011
Access to documents	11	22	15	19	21
Accession of new States			1		
Agriculture	46	14	19	24	22
Approximation of laws	1				
Arbitration clause	6	12	12	9	5
Area of freedom, security and justice	3	3	2		1
Commercial policy	9	10	8	9	11
Common fisheries policy	5	23	1	19	3
Common foreign and security policy				1	
Company law			1		
Competition	62	71	42	79	39
Consumer protection		2			
Culture	1		1		
Customs union and Common Customs Tariff	5	1	5	4	10
Economic and monetary policy				4	4
Economic, social and territorial cohesion	17	6	6	24	3
Education, vocational training, youth and sport	1				2
Energy			2		1
Environment	27	7	4	15	6
External action by the European Union	1	2	5	1	2
Financial provisions (budget, financial framework, own resources, combatting fraud)	1		1		
Free movement of goods	1	1	1		
Freedom of establishment		1			
Freedom of movement for persons	4	1	1	1	
Freedom to provide services		3	4	1	
Intellectual and industrial property	168	198	207	207	219
Law governing the institutions	19	23	32	17	44
Public health	1	2	2	4	2
Public procurement	11	31	19	15	18
Registration, evaluation, authorisation and restriction of chemicals (REACH Regulation)				8	3
Research and technological development and space	4		6	3	4
Restrictive measures (external action)	12	7	7	21	93
Social policy	5	6	2	4	5
State aid	37	55	46	42	67
Taxation	2			1	1
Transport	4	1		1	1
Total CS Treaty		**1**			
Total EA Treaty				**1**	
Total EC Treaty/TFEU	**464**	**502**	**452**	**533**	**587**
Special forms of procedure	29	87	84	77	88
Staff Regulations	29	39	32	25	47
OVERALL TOTAL	**522**	**629**	**568**	**636**	**722**

([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 2007–09 have been revised accordingly.

5. *Completed cases* — Nature of proceedings (2007–11)



	2007	2008	2009	2010	2011
State aid	36	37	70	50	41
Competition	48	31	31	38	100
Staff cases	51	33	1		1
Intellectual property	128	171	168	180	240
Other direct actions	101	229	171	149	222
Appeals	7	21	31	37	29
Appeals concerning interim measures or interventions				1	1
Special forms of procedure	26	83	83	72	80
Total	**397**	**605**	**555**	**527**	**714**

6. *Completed cases* — Subject-matter of the action (2011)

	Judgments	Orders	Total
Access to documents	11	12	23
Agriculture	13	13	26
Arbitration clause	2	4	6
Commercial policy	8	2	10
Common fisheries policy		5	5
Competition	91	9	100
Consumer protection	1		1
Customs union and Common Customs Tariff	1		1
Economic and monetary policy		3	3
Economic, social and territorial cohesion	6	3	9
Education, vocational training, youth and sport		1	1
Environment	11	11	22
External action by the European Union		5	5
Freedom of movement for persons	2		2
Freedom to provide services	2	1	3
Intellectual and industrial property	178	62	240
Law governing the institutions	8	28	36
Public health	2	1	3
Public procurement	13	2	15
Registration, evaluation, authorisation and restriction of chemicals (REACH Regulation)		4	4
Research and technological development and space	1	4	5
Restrictive measures (external action)	4	28	32
Social policy	2	3	5
State aid	21	20	41
Transport		1	1
Total EA Treaty		**1**	**1**
Total EC Treaty/TFEU	**377**	**222**	**599**
Special forms of procedure		80	80
Staff Regulations	16	18	34
OVERALL TOTAL	**393**	**321**	**714**

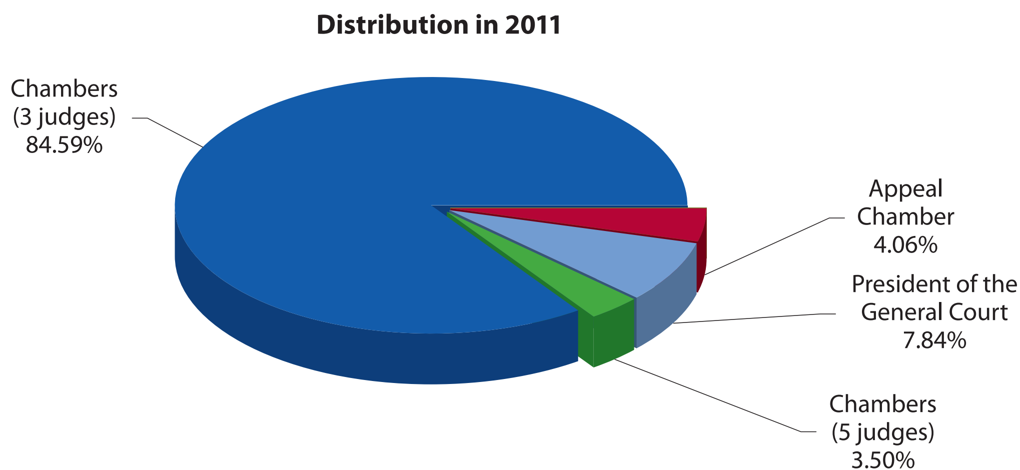
7. *Completed cases* — Subject-matter of the action (2007–11) [1] (judgments and orders)

	2007	2008	2009	2010	2011
Access to documents	7	15	6	21	23
Accession of new States			1		
Agriculture	13	48	46	16	26
Approximation of laws	1	1			
Arbitration clause	10	9	10	12	6
Area of freedom, security and justice	2	1	3		
Commercial policy	4	12	6	8	10
Common fisheries policy	4	4	17		5
Company law	1			1	
Competition	38	31	31	38	100
Consumer protection				2	1
Culture		1	2		
Customs union and Common Customs Tariff	3	6	10	4	1
Economic and monetary policy	1	1		2	3
Economic, social and territorial cohesion	5	42	3	2	9
Education, vocational training, youth and sport				1	1
Energy				2	
Environment	10	17	9	6	22
External action by the European Union	4	2		4	5
Financial provisions (budget, financial framework, own resources, combatting fraud)		2	2		
Free movement of goods		2	3		
Freedom of establishment		1			
Freedom of movement for persons	4	2	1		2
Freedom to provide services	1		2	2	3
Industrial policy	1				
Intellectual and industrial property	129	171	169	180	240
Law governing the institutions	10	22	20	26	36
Public health	2	1	1	2	3
Public procurement	7	26	12	16	15
Registration, evaluation, authorisation and restriction of chemicals (REACH Regulation)					4
Research and technological development and space	1	1	1	3	5
Restrictive measures (external action)	3	6	8	10	32
Social policy	4	2	6	6	5
State aid	36	37	70	50	41
Taxation		2		1	
Transport	1	3		2	1
Total CS Treaty	**10**				
Total EA Treaty	**1**		**1**		**1**
Total EC Treaty/TFEU	**302**	**468**	**439**	**417**	**599**
Special forms of procedure	26	83	83	72	80
Staff Regulations	58	54	32	38	34
OVERALL TOTAL	**397**	**605**	**555**	**527**	**714**

[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 2007–09 have been revised accordingly.

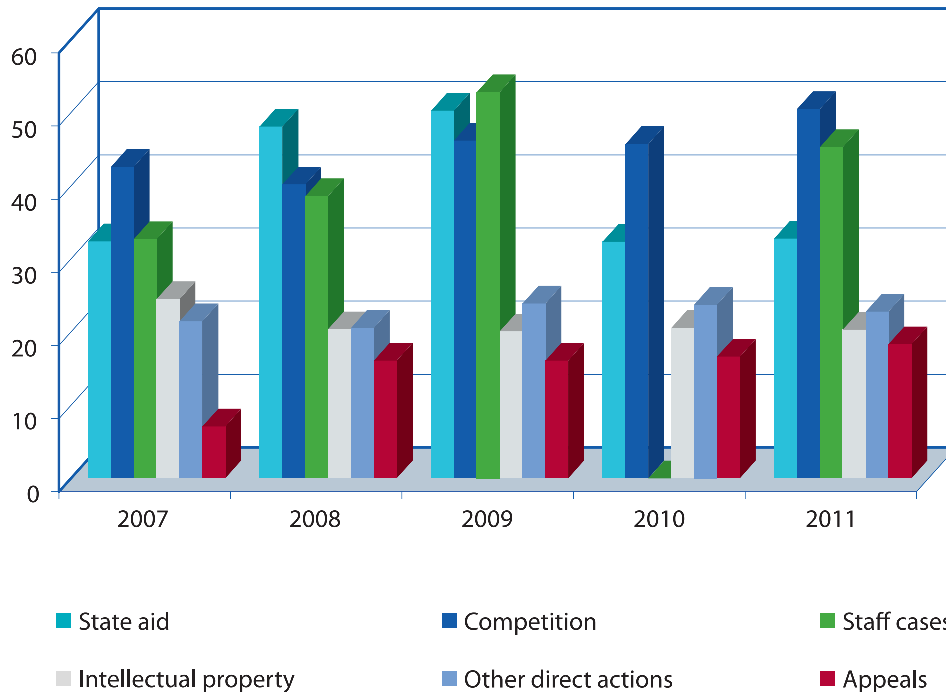
8. *Completed cases* — Bench hearing action (2007–11)

Distribution in 2011



	2007			2008			2009			2010			2011		
	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	15	14	29
President of the General Court		16	16		52	52		50	50		54	54		56	56
Chambers (5 judges)	44	8	52	15	2	17	27	2	29	8		8	19	6	25
Chambers (3 judges)	196	122	318	228	282	510	245	200	445	255	168	423	359	245	604
Single judge	2		2							3		3			
Total	**247**	**150**	**397**	**259**	**346**	**605**	**292**	**263**	**555**	**288**	**239**	**527**	**393**	**321**	**714**

9. *Completed cases* — Duration of proceedings in months (2007–11) ([1]) (judgments and orders)

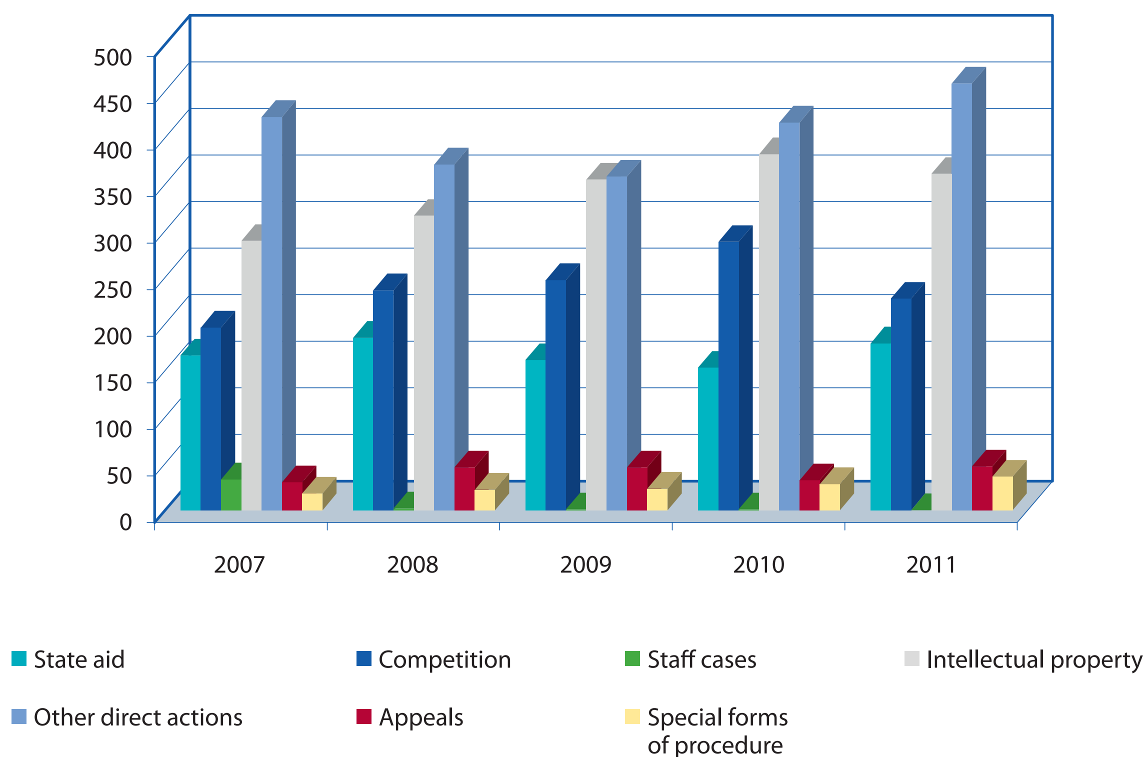


	2007	2008	2009	2010	2011
State aid	32.4	48.1	50.3	32.4	32.8
Competition	42.6	40.2	46.2	45.7	50.5
Staff cases	32.7	38.6	52.8		45.3
Intellectual property	24.5	20.4	20.1	20.6	20.3
Other direct actions	21.5	20.6	23.9	23.7	22.8
Appeals	7.1	16.1	16.1	16.6	18.3

([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 or interventions; 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 (2007–11)



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

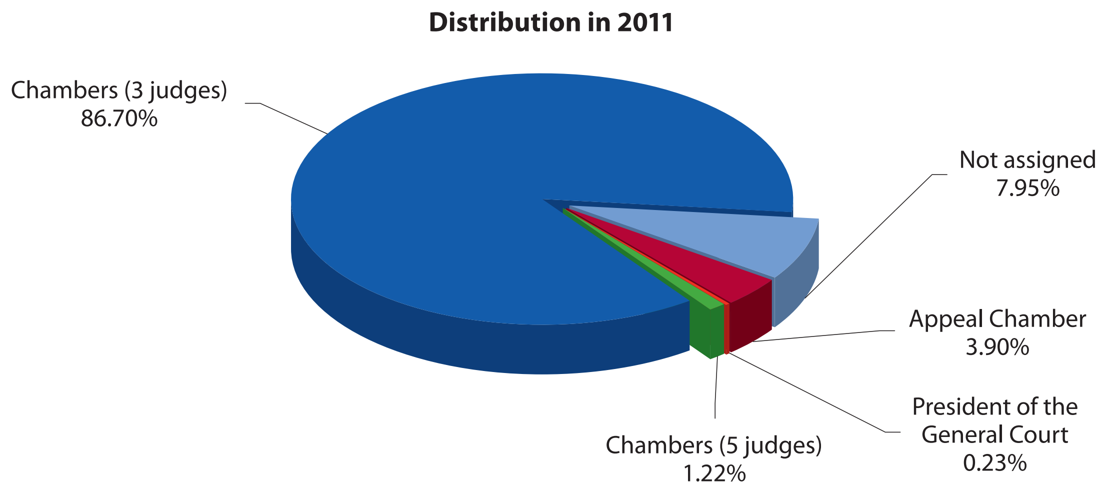
	2007	2008	2009	2010	2011
State aid	166	185	161	153	179
Competition	196	236	247	288	227
Staff cases	33	2	1	1	
Intellectual property	289	316	355	382	361
Other direct actions	422	371	358	416	458
Appeals	30	46	46	32	47
Special forms of procedure	18	22	23	28	36
Total	**1 154**	**1 178**	**1 191**	**1 300**	**1 308**

11. *Cases pending as at 31 December* — Subject-matter of the action (2007–11) ([1])

	2007	2008	2009	2010	2011
Access to documents	28	35	44	42	40
Agriculture	118	84	57	65	61
Approximation of laws	1				
Arbitration clause	17	20	22	19	18
Area of freedom, security and justice	1	3	2	2	3
Commercial policy	33	31	33	34	35
Common fisheries policy	5	24	8	27	25
Common foreign and security policy				1	1
Company law			1		
Competition	196	236	247	288	227
Consumer protection	1	3	3	1	
Culture	2	1			
Customs union and Common Customs Tariff	16	11	6	6	15
Economic and monetary policy	1			2	3
Economic, social and territorial cohesion	49	13	16	38	32
Education, vocational training, youth and sport	1	1	1		1
Energy			2		1
Environment	40	30	25	34	18
External action by the European Union	3	3	8	5	2
Financial provisions (budget, financial framework, own resources, combatting fraud)	5	3	2	2	2
Free movement of goods	3	2			
Freedom of movement for persons	3	2	2	3	1
Freedom to provide services		3	5	4	1
Intellectual and industrial property	290	317	355	382	361
Law governing the institutions	28	29	41	32	40
Public health	2	3	4	6	5
Public procurement	29	34	41	40	43
Registration, evaluation, authorisation and restriction of chemicals (REACH Regulation)				8	7
Research and technological development and space	4	3	8	8	7
Restrictive measures (external action)	18	19	18	29	90
Social policy	6	10	6	4	4
State aid	166	184	160	152	178
Taxation	2				1
Transport	4	2	2	1	1
Total CS Treaty		**1**	**1**	**1**	**1**
Total EA Treaty	**1**	**1**		**1**	
Total EC Treaty/TFEU	**1 072**	**1 106**	**1 119**	**1 235**	**1 223**
Special forms of procedure	18	22	23	28	36
Staff Regulations	63	48	48	35	48
OVERALL TOTAL	**1 154**	**1 178**	**1 191**	**1 300**	**1 308**

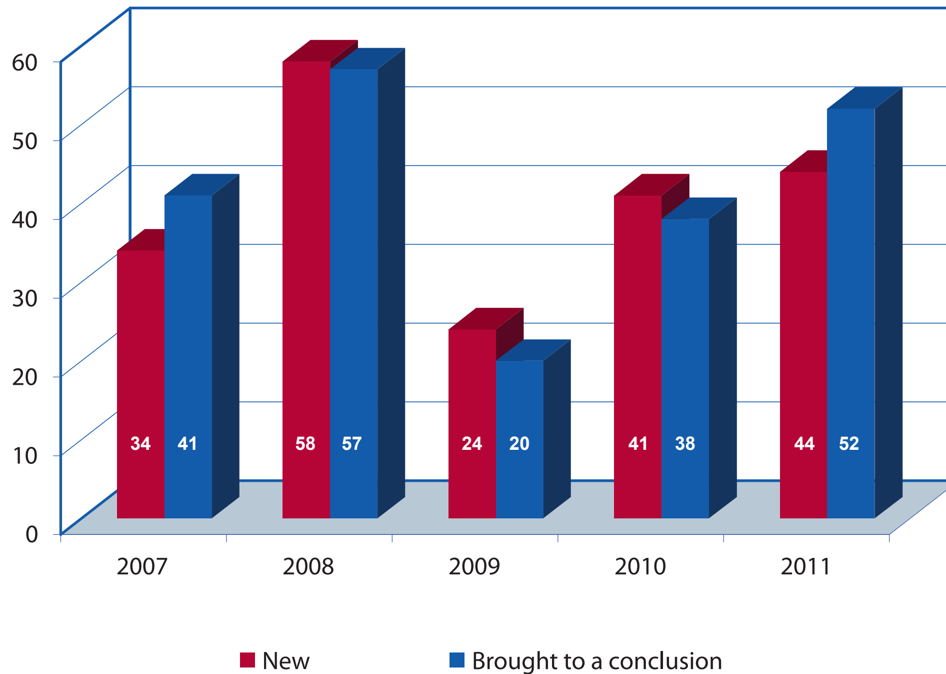
([1]) As a result of the entry into force of the Treaty on the Functioning of the European Union (TFEU) on 1 December 2009, it has been necessary to change the presentation of the subject-matter of actions. The data for the period 2007–09 have been revised accordingly.

12. *Cases pending as at 31 December* — Bench hearing action (2007–11)



	2007	2008	2009	2010	2011
Appeal Chamber	30	46	46	32	51
President of the General Court				3	3
Chambers (5 judges)	75	67	49	58	16
Chambers (3 judges)	971	975	1 019	1 132	1 134
Single judge			2		
Not assigned	78	90	75	75	104
Total	**1 154**	**1 178**	**1 191**	**1 300**	**1 308**

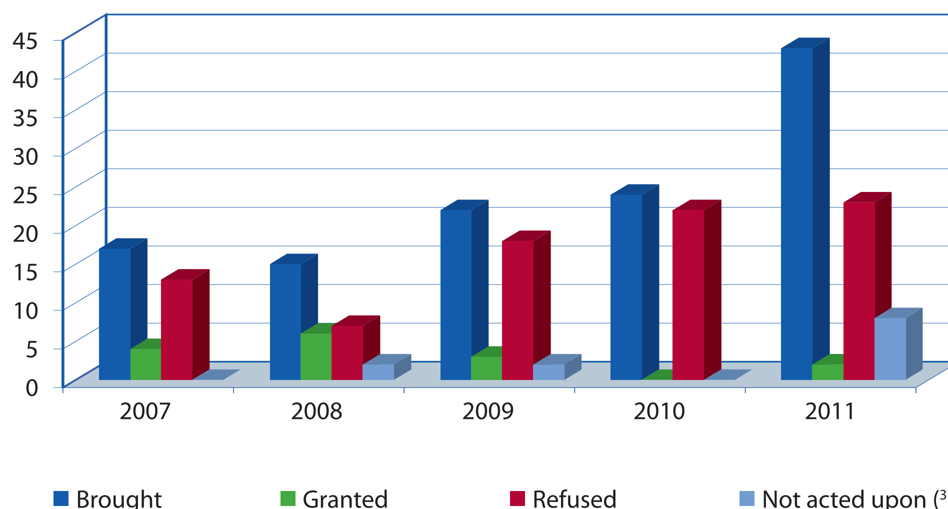
13. *Miscellaneous* — Proceedings for interim measures (2007–11)



Distribution in 2011

	New applications for interim measures	Applications for interim measures brought to a conclusion	Outcome		
			Granted	Removal from the register/ no need to adjudicate	Dismissed
Access to documents	1				
Agriculture	2	2			2
Arbitration clause	1	1			1
Competition	5	12	2		10
Customs union and Common Customs Tariff	1	1			1
Education, vocational training, youth and sport	1	1		1	
Environment	2	2			2
Law governing the institutions	4	5		1	4
Public procurement	5	4			4
Research and technological development and space	1	1			1
Restrictive measures (external action)	11	9		3	6
Staff Regulations	1	1			1
State aid	9	13		3	10
Total	**44**	**52**	**2**	**8**	**42**

14. *Miscellaneous* — Expedited procedures (2007–11) ([1]) ([2])



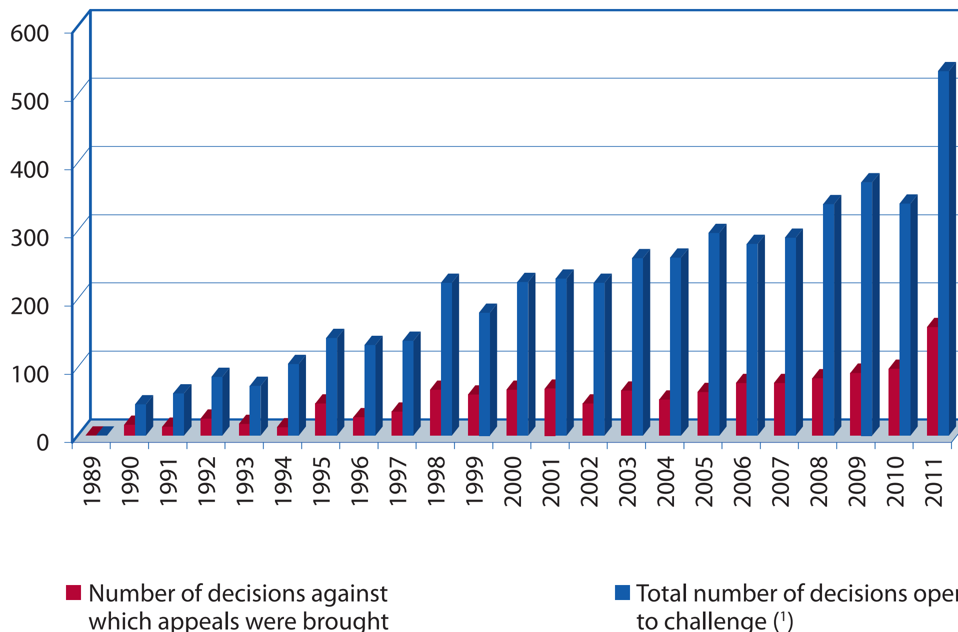
	2007				2008				2009				2010				2011			
		Outcome				Outcome				Outcome				Outcome				Outcome		
	Brought	Granted	Refused	Not acted upon ([3])	**Brought**	Granted	Refused	Not acted upon ([3])	**Brought**	Granted	Refused	Not acted upon ([3])	**Brought**	Granted	Refused	Not acted upon ([3])	**Brought**	Granted	Refused	Not acted upon ([3])
Access to documents	1		1		2		2		4		4						2		1	
Agriculture			1		1				2		3									
Arbitration clause					1			1												
Commercial policy	2	1				1			2		2						3		2	
Competition	1		1		1		1		2		2		3		3		4		4	
Economic, social and territorial cohesion													1		1					
Environment	7	1	6						1			1					2		2	
External action by the European Union													1		1					
Freedom to provide services									1	1										
Law governing the institutions					1			1	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		30	2	12	7
Social policy																	1			
Staff Regulations					1					1										
State aid	1		2		1		1						7		5				2	
Total	**17**	**4**	**13**		**15**	**6**	**7**	**2**	**22**	**3**	**18**	**2**	**24**		**22**		**43**	**2**	**23**	**8**

([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 2007–09 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 (1989–2011)



	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%
2011	159	534	30%

[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.

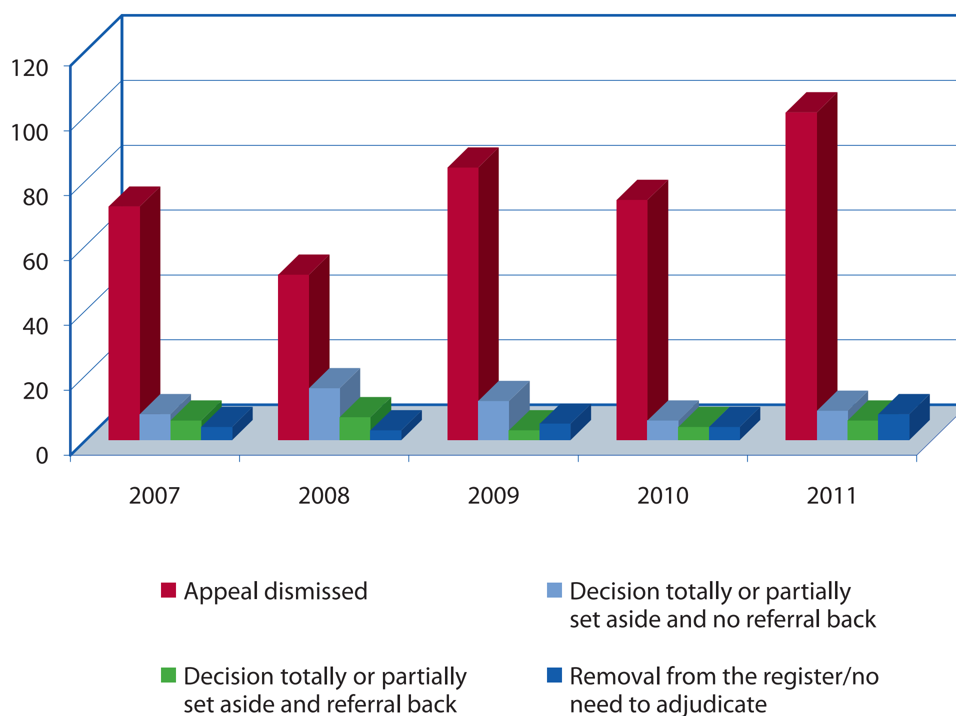
16. *Miscellaneous* — Distribution of appeals before the Court of Justice according to the nature of the proceedings (2007–11)

	2007			2008			2009			2010			2011		
	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	11	30	**37%**	4	19	**21%**	23	51	**45%**	17	35	**49%**	10	37	**27%**
Competition	13	33	**39%**	7	26	**27%**	11	45	**24%**	15	33	**45%**	50	90	**56%**
Staff cases	10	53	**19%**	9	31	**29%**	1	3	**33%**				1	1	**100%**
Intellectual property	14	64	**22%**	24	105	**23%**	25	153	**16%**	32	140	**23%**	39	201	**19%**
Other direct actions	29	110	**26%**	40	158	**25%**	32	119	**27%**	34	132	**26%**	59	205	**29%**
Total	77	290	**27%**	84	339	**25%**	92	371	**25%**	98	340	**29%**	159	534	**30%**

17. *Miscellaneous* — Results of appeals before the Court of Justice (2011) (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
Access to documents	2				2
Agriculture	2				2
Commercial policy	1				1
Common foreign and security policy	2				2
Company law	1				1
Competition	10	4		2	16
Environment				1	1
External action by the European Union	1				1
Intellectual and industrial property	27	2	2	3	34
Law governing the institutions	15		2	1	18
Principles of European Union law	1				1
Public procurement	4				4
Social policy	1				1
State aid	34	3	2	1	40
Total	**101**	**9**	**6**	**8**	**124**

18. *Miscellaneous* — Results of appeals before the Court of Justice (2007–11) (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

	2007	2008	2009	2010	2011
Appeal dismissed	72	51	84	74	101
Decision totally or partially set aside and no referral back	8	16	12	6	9
Decision totally or partially set aside and referral back	6	7	3	4	6
Removal from the register/ no need to adjudicate	4	3	5	4	8
Total	**90**	**77**	**104**	**88**	**124**

19. *Miscellaneous* — General trend (1989–2011)
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
2011	722	714	1 308
Total	**9 333**	**8 025**	

(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 2011

By Mr Sean Van Raepenbusch, President of the Civil Service Tribunal

1. The year 2011 saw the replacement of three Members who had reached the end of their term of office. This was the first substantial change in the composition of the Civil Service Tribunal since its creation. ([1])

2. The judicial statistics of the Civil Service Tribunal reveal a further substantial increase in 2011 in the number of cases brought (159) compared with the previous year (139), which had already been marked by a clear increase in applications (111 in 2008 and 113 in 2009).

The number of cases brought to a close (166) is, for its part, very much higher than that in the previous year (129) and represents the best result achieved by the Civil Service Tribunal in terms of quantity since its creation. ([2])

Thus, the number of pending cases is slightly lower than the previous year (178 at 31 December 2011, compared with 185 at 31 December 2010). The average duration of proceedings has also decreased markedly (14.2 months in 2011 compared with 18.1 months in 2010) ([3]) because of the increase in the number of cases brought to a close, particularly by means of orders (90 in 2011 compared with 40 in 2010).

During the course of 2011, 44 appeals were brought before the General Court of the European Union against decisions of the Civil Service Tribunal. During the same period, 23 appeals against its decisions were dismissed while seven of its decisions were set aside in full or in part, four of which cases were referred back to it.

Eight cases were brought to a close by amicable settlement, which represents a fall compared with the previous year (12) and a return to the level of 2007 and 2008 (7).

3. The account given below will describe the most significant decisions of the Civil Service Tribunal. As there are no significant new developments as regards proceedings for interim relief ([4]) and legal aid, the sections usually devoted to those questions will not appear in the 2011 report.

([1]) One judge was replaced in 2009 following his appointment to the Court of First Instance (now the General Court).

([2]) Following the judgment of 24 November 2010 in Case C-40/10 *Commission* v *Council*, the Tribunal was able to bring to a close 15 cases brought against salary statements after the adoption of 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]) Seven orders for interim measures were made in 2011 by the President of the Civil Service Tribunal. Three of them took the form of orders for removal from the register or orders that there is no need to adjudicate.

I. Procedural aspects

Jurisdiction of the Civil Service Tribunal

In its judgment of 20 January 2011 in Case F-121/07 *Strack* v *Commission* (under appeal to the General Court), the Civil Service Tribunal ruled that it had jurisdiction to rule on an action for annulment brought on the basis of Article 236 EC against the refusal of an institution of the European Union to grant a request for access to documents made by an official under Regulation No 1049/2001, [5] where that request originates in the employment relationship which links that official to the institution in question.

Conditions for admissibility

1. Time-limits

In the absence of clear indications in the EIB's own rules on procedural time-limits applicable to its staff, the Civil Service Tribunal, in several decisions, applied the time-limits laid down by the Staff Regulations by analogy (judgments of 28 June 2011 in Case F-49/10 *De Nicola* v *EIB* and of 28 September 2011 in Case F-13/10 *De Nicola* v *EIB*; order of 4 February 2011 in Case F-34/10 *Arango Jaramillo and Others* v *EIB*, under appeal to the General Court of the European Union).

2. Respect for the pre-contentious procedure

In its judgment of 12 May 2011 in Case F-50/09 *Missir Mamachi di Lusignano* v *Commission* (under appeal to the General Court of the European Union), the Civil Service Tribunal held that the admissibility of claims for compensation based on different heads of damage must be examined in the light of each of those heads of damage. Thus, in order for claims relating to a head of damage to be admissible, that head of damage must have been raised in an application to the administration for compensation and a complaint must then have been lodged against the rejection of that application.

3. Complex operation originating in a contract

The Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) had offered its staff contracts for an indefinite period containing a termination clause applicable in the event that the persons concerned were not included on a reserve list drawn up following an open competition. In its judgment of 15 September 2011 in Case F-102/09 *Bennett and Others* v *OHIM*, the Civil Service Tribunal held that that arrangement was akin to a complex operation comprising a number of closely linked decisions, from the insertion of a termination clause in contracts to the adoption, after a reserve list had been drawn up, of decisions to terminate the contract. Consequently, it took the view that it was permissible to rely on a plea of the unlawfulness of the contested clause in support of the claims seeking annulment of decisions terminating contracts in the course of that operation.

[5] 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).

Court proceedings

1. Confidential documents

In its judgment in *Missir Mamachi di Lusignano* v *Commission*, the Civil Service Tribunal established the rule that only overriding considerations, based in particular on the protection of fundamental rights, can justify, as an exceptional measure, placing a classified document in the case file and communicating it to all the parties without the agreement of the administration. In the absence of such circumstances, and in the light of Article 44(1) of its Rules of Procedure, the Civil Service Tribunal asked the administration to draw up a non-confidential summary of that document. As it found, however, that that summary did not enable the applicant to exercise his right to effective judicial protection and that it had to rule out allowing access to that document even if only to the applicant's lawyer at the offices of the Registry, the Civil Service Tribunal derogated from the above provision in order to base its decision on the relevant extracts of the document in question so as to be in a position to decide in full knowledge of the facts, even though that document had not been communicated to the person concerned.

2. Intervention

In two orders of 19 July 2011 in Case F-105/10 and Case F-127/10 *Bömcke* v *EIB*, the Civil Service Tribunal held the college of staff representatives of the EIB to be equivalent to the Staff Committees in the institutions subject to the Staff Regulations and recalled that those committees were in the nature of internal bodies of their institution and therefore lack the capacity to be a party to judicial proceedings. Consequently, it dismissed as inadmissible an application for leave to intervene made by that college.

In its order in Case F-105/10 *Bömcke* v *EIB*, the Civil Service Tribunal inferred from the case-law to the effect that, in electoral disputes relating to the bodies representing staff, each member of staff derives from his status as an elector a sufficient interest to bring an action seeking to ensure that staff representatives are elected according to voting arrangements which comply with the provisions of the Staff Regulations that members of staff also derived from their status as electors a direct, existing interest in the solution of a dispute concerning the compulsory retirement of a staff representative who has already been elected. Consequently, their application for leave to intervene was held admissible.

3. Costs

Where an institution, organ or body of the European Union has instructed a lawyer, the question arises whether and under what conditions the fees paid to that lawyer constitute 'recoverable costs' under Article 91(b) of the Rules of Procedure.

The Civil Service Tribunal observed, in that connection, in its order in Case F-55/08 DEP *De Nicola* v *EIB*, that to refuse ever to regard such fees as essential, and thus recoverable, costs on the ground that the institution is not required to instruct a lawyer would be to deny a prerogative inherent in the exercise of the rights of the defence. None the less the Civil Service Tribunal also observed that all the servants of the European Union must be able to have access to justice in equivalent conditions and that the degree of effectiveness of their right to bring actions cannot vary according merely to the budgetary or organisational choices of their employer. It therefore held that it is for the institution which proposes to recover the fees paid to its lawyer to prove, on the basis of objective evidence, that those fees were 'essential costs' for the purpose of the proceedings. It might do so by establishing, in particular, the existence of economic and temporary reasons connected,

inter alia, with a specific increase in workload or unforeseen absences of the members of its legal service, or by establishing, where an applicant has brought actions which are substantial in volume or in number, that if it had not instructed a lawyer it would have been obliged to devote a disproportionate part of the resources of its services to dealing with those actions.

Finally, the Civil Service Tribunal stated that the total number of hours of work that can be deemed to be objectively essential must be evaluated, in principle, at one third of the hours that the lawyer would have needed to spend had he not been able to rely on the work previously done by the legal services of the institution.

5. Revision

In 2011, for the first time, the Civil Service Tribunal ruled on applications for revision made on the basis of Article 44 of the Statute of the Court of Justice of the European Union and Article 119 of the Rules of Procedure.

In one of the cases in question, the judgment whose revision was applied for had been partially annulled on appeal before the General Court. However, the applicant sought the revision of the whole of the judgment given by the Civil Service Tribunal. The Civil Service Tribunal held that the claims made in support of revision were inadmissible as regards that part of those claims regarding which the judgment given on appeal replaced the judgment at first instance. Moreover, as the applicant for revision did not contest the judgment given on appeal, his application did not give rise to referral of the case to the General Court pursuant to Article 8(2) of Annex I to the Statute of the Court of Justice (judgment of 15 June 2011 in Case F-17/05 REV *de Brito Sequeira Carvalho* v *Commission*).

In addition, in several judgments of 20 September 2011 (Case F-45/06 REV *De Buggenoms and Others* v *Commission,* Cases F-8/05 REV and F-10/05 REV *Fouwels and Others* v *Commission* and Case F-103/06 REV *Saintraint* v *Commission*), the Civil Service Tribunal held that an order removing a case from the register under Article 74 of the Rules of Procedure merely takes note of the wish of the applicant to discontinue proceedings and of the absence of any observations from the defendant, so that, in the absence of any view taken by the European Union judicature on the questions raised by the case, there is no decision which can be the subject of revision within the meaning of Article 119 of the Rules of Procedure.

Moreover, in light of the fact that that the lawyer representing a party does not, as a rule, have to produce an authority to act, the Civil Service Tribunal held that it could not, in revision proceedings, decide that a discontinuance was not valid vis-à-vis certain applicants on the ground that their counsel acted without their consent.

II. Merits

General principles

1. Possibility of reliance on directives

Following the path set by earlier case-law according to which directives adopted by the institutions with regard to the Member States could to some extent be relied on against those institutions, the Civil Service Tribunal, in its judgment of 15 March 2011 in Case F-120/07 *Strack* v *Commission*

(under appeal to the General Court), observed that Directive 2003/88 ([6]) seeks to lay down minimum safety and health requirements for the organisation of working time, so that, by virtue of Article 1e(2) of the Staff Regulations, the Commission had to ensure compliance with those requirements in the application and interpretation of the rules of the Staff Regulations relating, in particular, to annual leave.

2. Rights of defence

Taking the view that requiring the administration to hear every member of staff concerned before adopting any measure would constitute an unreasonable burden, the Civil Service Tribunal held, in its judgment of 28 September 2011 in Case F-26/10 *AZ* v *Commission*, that a plea of infringement of the rights of defence could validly be relied on only in so far as, first, the contested decision was adopted on conclusion of a procedure opened against a person and, second, the seriousness of the consequences which that decision was liable to entail for the position of that person was proven. As a promotion procedure is not opened against an official, the Civil Service Tribunal therefore concluded that there was no obligation on the administration to hear the official before excluding him from a promotion exercise.

3. Discrimination

In the case leading to the judgment of 15 February 2011 in Case F-68/09 *Barbin* v *Parliament* (under appeal to the General Court), the Civil Service Tribunal applied, for the first time, the mechanism for reversal of the burden of proof provided for by Article 1d of the Staff Regulations, according to which, where persons covered by the Staff Regulations, who consider themselves wronged because the principle of equal treatment has not been applied to them, establish facts from which it may be presumed that there has been discrimination, the onus is on the institution to prove that there has been no breach of that principle.

In the same judgment the Civil Service Tribunal held that, in order to assess the merits of a plea alleging discrimination, account must be taken of the relevant factual background as a whole, including the assessments contained in earlier decisions which have become final. According to the Civil Service Tribunal, the principle that a final decision may not be re-examined by the judicature does not deny the judicature the possibility of taking account of such a decision as an indication which may, together with other evidence, establish discriminatory conduct on the part of the administration, as discrimination may be revealed only after the time-limits for bringing an action against a decision which is merely a manifestation of such discrimination.

Moreover, once again in *Barbin* v *Parliament*, the Civil Service Tribunal held that, where an official exercises a right granted to him by the Staff Regulations, such as the right to parental leave, the administration may not, without prejudicing the effectiveness of that right, take the view that the position of that official is different from that of an official who has not exercised that right. Consequently it may not treat him differently on that ground, unless that difference in treatment is both objectively justified, inter alia in that it is confined to drawing the appropriate inferences, for the period under consideration, from the fact that the member of staff concerned has not performed any work, and also strictly proportionate to the justification given.

([6]) Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9).

In a judgment of 27 September 2011 in Case F-98/09 *Whitehead* v *ECB*, the Civil Service Tribunal recalled that a person on sick leave is not in the same position as a person in active employment, so that no general principle requires the authority to ensure that the period of sick leave is neutral in effect when assessing the contribution of that person to the tasks of the administration for the purposes of the payment of a bonus, because that person had had less time to contribute to the work of the department.

Finally, the Civil Service Tribunal held, in its judgment of 29 June 2011 in Case F-7/07, that an administration faced with a choice between two approaches, both giving rise to a difference in treatment as between two groups of persons, is justified in opting for the approach involving the lesser difference in treatment.

4. Manifest error of assessment

In its judgments of 24 March 2011 in Case F-104/09 *Canga Fano* v *Council* (under appeal to the General Court) and of 29 September 2011 in Case F-80/10 *AJ* v *Commission*, regarding promotion, and of 29 September 2011 in Case F-74/10 *Kimman* v *Commission*, regarding an assessment report, the Civil Service Tribunal held that an error of assessment may only be considered manifest where it is easily recognisable and can be readily detected, in the light of the criteria to which the legislature intended decisions on promotion to be subject.

The Civil Service Tribunal held, further, in its judgments in *Kimman* v *Commission* and *AJ* v *Commission*, that, in order to establish whether the administration has made a manifest error in the assessment of the facts which is such as to justify the annulment of a decision on promotion or an assessment report, the evidence, which it is for the applicant to adduce, must be sufficient to destroy the plausibility of the assessments made by the administration. Thus, a plea of manifest error must be rejected if, despite the evidence put forward by the applicant, the assessment which is called into question can be accepted as correct or valid.

In its judgment of 28 September 2011 in Case F-9/10 *AC* v *Council*, the Civil Service Tribunal held that, in order to safeguard the effectiveness of the discretion which the legislature intended to give to the appointing authority as regards promotion, the judicature may not annul a decision on the sole ground that it considers that there are facts which give rise to plausible doubts regarding the assessment made by the appointing authority. In this case, it therefore held that, in view of the obvious merits of the applicant, the appointing authority would not have made a manifest error of assessment if it had decided to include him in the group of officials who were promoted, but that, nevertheless, that finding did not mean that the decision not to promote him was vitiated by a manifest error of assessment.

It follows from the foregoing observations that, where the scrutiny of the judicature is limited to manifest errors of assessment, the administration has the benefit of the doubt.

5. Legitimate expectations

In its judgment of 15 March 2011 in Case F-28/10 *Mioni* v *Commission* (under appeal to the General Court), the Civil Service Tribunal recalled that the fact that an official was paid financial benefits by the administration, even for several years, cannot in itself be considered a precise, unconditional and consistent assurance, since, if it were, any decision by the administration refusing for the future, and, possibly, for the past, to pay such benefits which had been unduly paid to the person concerned would always amount to a breach of the principle of legitimate expectations and would

therefore deprive Article 85 of the Staff Regulations concerning recovery of sums overpaid of its effectiveness.

6. Duty to have regard for the welfare of officials

The Civil Service Tribunal held, in its judgments of 17 February 2011 in Case F-119/07 *Strack* v *Commission* and of 15 September 2011 in Case F-62/10 *Esders* v *Commission*, that the obligations of the administration inherent in the duty to have regard for the welfare of staff are significantly greater in the case of an official whose physical or mental health is affected. In such a case, the administration must consider the claims of the official with a particularly open mind.

Career of officials and other staff

1. Competitions

In the judgment in *Angioi and Others* v *Commission*, the Civil Service Tribunal held that, where the needs of the service or of the job require, an administration may legitimately specify, in a recruitment procedure, the language or languages of which thorough or satisfactory knowledge is required. Although such a condition at first sight constitutes discrimination based on language which is in principle prohibited by the Staff Regulations, it may be objectively and reasonably justified by a legitimate objective in the general interest in the framework of staff policy. The need to ensure that staff have a knowledge of languages matching the languages of internal communication of the institution constitutes such an objective. Moreover, there is a reasonable relationship of proportionality between those requirements and the objective envisaged, since a knowledge of more than one of those languages is not required.

2. Notices of vacancy

In the judgment of 28 June 2011 in Case F-55/10 *AS* v *Commission* (under appeal to the General Court), the Civil Service Tribunal held that the transitional provisions of Annex XIII to the Staff Regulations which impose limitations on the career of certain officials in the former Categories C and D do not authorise the Commission to reserve certain posts for them on that basis alone and, consequently, to prohibit access to those posts for other officials who have the same grade as them. The Commission's maintenance of a distinction in principle between officials who are in the same grade and belong to the same function group for the purposes of access to certain posts is not compatible with one of the objectives of the reform of the Staff Regulations in 2004, which was to merge the former categories B, C and D into a single AST function group.

3. Promotions

(a) Comparison of merits

Having noted that Article 43 of the Staff Regulations requires the preparation of a staff report only every two years and that the Staff Regulations do not require that the promotions exercise cover the same period, the Civil Service Tribunal held, in its judgment of 10 November 2011 in Case F-18/09 *Merhzaoui* v *Council*, that the Staff Regulations do not preclude a decision being made on promotion where the appointing authority does not have a recent staff report at its disposal.

Moreover, the Civil Service Tribunal held, in its judgment in *AC* v *Council*, that, although Article 45(1) of the Staff Regulations mentions reports on officials, knowledge of languages and the level of responsibilities exercised as the three main criteria to be taken into account in the consideration of

comparative merits, it does not thereby preclude the consideration of other factors if those factors are likely to give some indication of the merits of the officials eligible for promotion.

In the same judgment, the Civil Service Tribunal held that the administration has a certain margin for manoeuvre regarding the relative significance it attaches to each of those three criteria, since Article 45(1) of the Staff Regulations does not preclude weighting those criteria differently, where justified.

Finally, still in the same judgment, the Civil Service Tribunal held that it is not contrary to Article 45 of the Staff Regulations to include in the assessment of merits the languages whose use, in the light of the actual requirements of the service, brings added value of such significance as to appear necessary for the smooth running of that service.

(b) Interinstitutional transfer during the promotion exercise

In the judgment of 28 June 2011 in Case F-128/10 *Mora Carrasco and Others* v *Parliament* and the order of 5 July 2011 in Case F-38/11 *Alari* v *Parliament*, the Civil Service Tribunal held that where an official is eligible for promotion during the year in which he is transferred from one institution of the European Union to another, the competent authority for taking a decision on his promotion is the authority of his institution of origin. Article 45 of the Staff Regulations provides that promotion happens 'after consideration of the comparative merits of the officials eligible for promotion' and the appointing authority can, in practice, compare only the past merits of officials, so that it is necessary to compare the merits of transferred officials with those of officials who were still their colleagues during the year preceding the transfer, which is an assessment that can only be made by the institution of origin.

Emoluments and social security benefits of officials

1. Annual leave

Under the first paragraph of Article 4 of Annex V to the Staff Regulations, the right to leave acquired in respect of a calendar year must, as a rule, be used during that year. It also follows from that provision that an official has the right to carry over all days of annual leave not taken in one calendar year to the following calendar year, where he was unable to use his annual leave for reasons attributable to the requirements of the service.

On the basis of Article 7(1) of Directive 2003/88, ([7]) which is applicable to the institutions pursuant to Article 1e(2) of the Staff Regulations, the Civil Service Tribunal held that other reasons, which may not be attributable to the requirements of the service, may also justify the carrying over of all the days of leave not taken. It took the view that this is so, in particular, where an official who has been absent because of sickness for all or part of a calendar year, has been deprived on that ground of the possibility of exercising his right to leave (judgment of 25 May 2011 in Case F-22/10 *Bombín Bombín* v *Commission*).

To the same effect, the Civil Service Tribunal held that an official whose incapacity for work had prevented him from taking the annual leave to which he was entitled could not be deprived, when his employment ceased, of the possibility of receiving financial compensation for annual leave not taken (judgment of 15 March 2011 in *Strack* v *Commission*).

([7]) See footnote 6.

2. Social security

In its judgment of 28 September 2011 in Case F-23/10 *Allen* v *Commission*, the Civil Service Tribunal recalled that, according to the general implementing provisions for the reimbursement of medical expenses, recognition of the existence of a serious illness requires the fulfilment of four cumulative criteria. However, since those provisions provide for a relationship of interdependence between those criteria, the assessment made of one of them in a medical examination is liable to influence the assessment of the others. Accordingly, although one of the criteria may appear not to be satisfied when considered in isolation, examination of it in the light of the assessment made of the other criteria may lead to the opposite conclusion, namely that that criterion is in fact satisfied. Consequently, the medical officer or the medical council may not confine itself to consideration of merely one criterion taken on its own, but must undertake a specific and thorough examination of the state of health of the person concerned, taking into account in a comprehensive manner the four interdependent criteria mentioned above. Such consideration is all the more necessary as the procedure laid down for recognition of a serious illness does not provide the same level of safeguard with regard to the balance between the parties as the procedures provided for by Articles 73 (concerning occupational diseases and accidents) and Article 78 (concerning invalidity) of the Staff Regulations.

Rights and obligations of officials

In its judgment in *AS* v *Commission*, the Civil Service Tribunal held that the use of documents covered by medical confidentiality in support of a plea of inadmissibility based on the absence of an interest in bringing proceedings constituted an interference by a public authority in the right to respect for private life and that such interference was not in pursuit of any of the objectives listed exhaustively in Article 8(2) of the European Convention for Human Rights and Fundamental Freedoms ('ECHR') in so far as, inter alia, the dispute did not concern the lawfulness of a decision of a medical nature.

Moreover, in its judgment of 5 July 2011 in Case F-46/09 *V* v *Parliament*, the Civil Service Tribunal held that the transfer to a third party, including to another institution, of personal data relating to a person's state of health collected by an institution constitutes in itself an interference with the private life of the person concerned, whatever the subsequent use of the information thus communicated. However, the Civil Service Tribunal recalled that restrictions may be imposed on fundamental rights provided that they in fact correspond to objectives of general public interest and do not constitute, with regard to the objectives pursued, a disproportionate and intolerable interference which infringes upon the very substance of the right protected. In that regard, the Civil Service Tribunal considered that reference should be made to the conditions laid down by Article 8(2) of the ECHR.

The Civil Service Tribunal weighed the interest of the Parliament in satisfying itself that it is recruiting a person fit to perform the duties which are going to be entrusted to him against the seriousness of the infringement of the right of the person concerned to respect for his private life and took the view that although the pre-recruitment examination serves the legitimate interest of the European Union institutions, which must be in a position to fulfil the tasks required of them, that interest does not justify carrying out a transfer of particularly sensitive data such as medical data from one institution to another without the consent of the person concerned.

In the same judgment, the Civil Service Tribunal then held that Regulation No 45/2001 ([8]) had been breached. It took the view that the personal data at issue had been processed for purposes other than those for which they had been collected without that change of purpose having been expressly permitted by the internal rules of the Commission or Parliament. It also found that it was not established that that transfer was necessary for the purposes of complying with the obligations and specific rights of the Parliament in the field of employment law, as the latter could have invited the applicant to provide certain information on her medical history or had the necessary medical examinations performed by its own staff.

Contractual disputes

1. Conclusion of a second amendment to a fixed-term contract under Article 2 of the Conditions of Employment of Other Servants of the European Union ('the CEOS')

In the case leading to the judgment of the Civil Service Tribunal of 13 April 2011 in Case F-105/09 *Scheefer* v *Parliament*, the applicant was employed as a member of the temporary staff under Article 2(a) of the CEOS. That employment was extended by a first amendment of 26 February 2007, and then by a second amendment of 26 March 2008 which 'cancel[led] and replace[d]' the first in order to extend the applicant's employment for a further fixed period. However, under the first paragraph of Article 8 of the CEOS, the employment of a member of the temporary staff under Article 2(a) of the CEOS may be renewed not more than once for a fixed period, '(a)ny further renewal … be[ing] for an indefinite period'.

The Civil Service Tribunal held, first, in the light of Directive 1999/70 ([9]) and the terms of the framework agreement annexed to it, that the first paragraph of Article 8, mentioned above, must be interpreted in a manner which ensures that it has a broad scope, and must be applied strictly. On that basis, the Civil Service Tribunal took the view that the applicant's contract had to be considered to have been renewed twice, whatever the form of words used in the second amendment. It therefore concluded that that amendment should be automatically converted into an engagement for an indefinite period in accordance with the intention of the legislature, and that the expiry of the period set in that amendment could not lead to the end of the applicant's employment.

Finally, the Civil Service Tribunal held that the decision 'confirm[ing]' that her contract would end on 31 March 2009 necessarily brought about a distinct change in her legal position under the first paragraph of Article 8 of the CEOS and constituted an act adversely affecting her, adopted in breach of that provision.

2. Conclusion of a contract of indefinite duration containing a cancellation clause in the event of failure to pass a competition

In its judgment in *Bennett and Others* v *OHIM*, the Civil Service Tribunal found that a clause allowing the cancellation of a contract if the member of staff in question was not included on a reserve list drawn up following an open competition did not enable that contract to be classified as a contract of indefinite duration, as the duration of the contract — as is apparent from Clause 381 of

([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).

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

the framework agreement implemented by Directive 1999/70 — could be determined not only by 'reaching a specific date', but also by 'completing a specific task, or the occurrence of a specific event', such as the drawing up of a competition reserve list.

3. Non-renewal of a contract

In its judgment of 15 April 2011 in Joined Cases F-72/09 and F-17/10 *Daake* v *OHIM*, the Civil Service Tribunal held that, although a letter which merely recalls the terms of a contract relating to its expiry date and which contains no new factor as compared with the terms of the contract does not constitute an act adversely affecting a member of staff, a decision not to renew a contract capable of renewal constitutes an act adversely affecting a member of staff distinct from the contract in question and against which an action could be brought. Such a decision, which is made following re-examination of the interest of the service and the situation of the person concerned, contains a new factor as compared with the initial contract and cannot be regarded as merely confirming that contract.

Non-contractual liability of the institutions

The Civil Service Tribunal extended the case-law according to which liability for damage must be shared where that damage is caused both by the fault of an institution and the fault of the victim to cover cases where the fault is shared between an institution and a third party (*Missir Mamachi di Lusignano* v *Commission*).

B — Composition of the Civil Service Tribunal

(order of precedence as at 7 October 2011)

From left to right:

R. Barents, Judge; I. Boruta, Judge; H. Kreppel, President of Chamber; S. Van Raepenbusch, President of the Tribunal; M. I. Rofes i Pujol, President of Chamber; E. Perillo, Judge; K. Bradley, 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 from 6 October 2005 to 6 October 2011.

Sean Van Raepenbusch
Born in 1956; graduate in law (Free University of Brussels, 1979); special diploma in international law (Brussels, 1980); Doctor of Laws (1989); head of the legal service of the Société anonyme du canal et des installations maritimes (Canals and Maritime Installations company), Brussels (1979–84); official of the Commission of the European Communities (Directorate-General for Social Affairs, 1984–88); member of the Legal Service of the Commission of the European Communities (1988–94); Legal Secretary at the Court of Justice of the European Communities (1994–2005); Lecturer at the University of Charleroi (international and European social law, 1989–91), at the University of Mons Hainault (European law, 1991–97), at the University of Liège (European civil service law, 1989–91; institutional law of the European Union, 1995–2005; European social law, 2004–05); numerous publications on the subject of European social law and constitutional law of the European Union; Judge at the Civil Service Tribunal since 6 October 2005.

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 of 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; graduate in law (University of Thessaloniki, 1977); special diploma in European law (Institute for European Studies, Free University of Brussels, 1980); Doctorate in Law (University of Thessaloniki, 1984); Lawyer-linguist at the Council of the European Communities (1980–82); researcher at the Thessaloniki Centre for International and European Economic Law (1982–84); Administrator at the Court of Justice of the European Communities and at the Commission of the European Communities (1986–90); Professor of Community Law, International Private Law and Human Rights at Athens Panteion University (since 1990); external consultant for European matters at the Ministry of Justice and member of the Permanent Committee of the Lugano Convention (1991–2004); member of the national Postal and Telecommunications Commission (2000–02); member of the Thessaloniki Bar, lawyer to the Court of Cassation; founder member of the Union of European Lawyers (UAE); associate member of the International Academy of Comparative Law; Judge at the Civil Service Tribunal from 6 October 2005 to 6 October 2011.

Stéphane Gervasoni

Born in 1956; graduate in law (Free University of Brussels, 1979); Special Diploma in International Law (Brussels, 1980); Doctor of Laws (1989); head of the legal service of the Société anonyme du canal et des installations maritimes (Canals and Maritime Installations company), Brussels (1979–84); official of the Commission of the European Communities (Directorate-General for Social Affairs, 1984–88); member of the Legal Service of the Commission of the European Communities (1988–94); Legal Secretary at the Court of Justice of the European Communities (1994–2005); lecturer at the University of Charleroi (international and European social law, 1989–91), at the University of Mons Hainault (European law, 1991–97), at the University of Liège (European civil service law, 1989–91; institutional law of the European Union, 1995–2005; European social law, 2004–05); numerous publications on the subject of European social law and constitutional law of the European Union; Judge at the Civil Service Tribunal from 6 October 2005 to 6 October 2011.

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.

Ezio Perillo

Born in 1950; Doctor of Laws and lawyer at the Padua Bar; Assistant Lecturer and senior researcher in civil and comparative law in the law faculty of the University of Padua (1977–82); Lecturer in Community law at the European College of Parma (1990–98), in the law faculties of the University of Padua (1985–87), the University of Macerata (1991–94) and the University of Naples (1995), and at the University of Milan (2000–01); Member of the Scientific Committee for the Master's in European Integration at the University of Padua; Official at the Court of Justice, in the Library, Research and Documentation Directorate (1982–84); Legal Secretary to Advocate General Mancini (1984–88); Legal Adviser to the Secretary-General of the European Parliament, Mr Enrico Vinci (1988–93); also, at the same institution: Head of Division in the Legal Service (1995–99); Director for Legislative Affairs and Conciliations, Interinstitutional Relations and Relations with National Parliaments (1999–2004); Director for External Relations (2004–06); Director for Legislative Affairs in the Legal Service (2006–11); author of a number of publications on Italian civil law and European Union law; Judge at the Civil Service Tribunal since 6 October 2011.

René Barents

Born in 1951; graduated in law, specialisation in economics (Erasmus University Rotterdam, 1973); Doctor of Laws (University of Utrecht, 1981); researcher in European law and international economic law (1973–74) and Lecturer in European law and economic law at the Europa Institute of the University of Utrecht (1974–79) and at the University of Leiden (1979–81); Legal Secretary at the Court of Justice of the European Communities (1981–86), then Head of the Employee Rights Unit at the Court of Justice (1986–87); Member of the Legal Service of the Commission of the European Communities (1987–91); Legal Secretary at the Court of Justice (1991–2000); Head of Division (2000–09) in and then Director of the Research and Documentation Directorate of the Court of Justice of the European Union (2009–11); Professor (1988–2003) and Honorary Professor (since 2003) in European law at the University of Maastricht; Adviser to the Regional Court of Appeal, 's-Hertogenbosch (1993–2011); Member of the Royal Netherlands Academy of Arts and Sciences (since 1993); numerous publications on European law; Judge at the Civil Service Tribunal since 6 October 2011.

Kieran Bradley

Born in 1957; law degree (Trinity College, Dublin, 1975–79); research assistant to Senator Mary Robinson (1978–79 and 1980); Pádraig Pearse Scholarship to study at the College of Europe (1979); postgraduate studies in European law at the College of Europe, Bruges (1979–80); Master's degree in law at the University of Cambridge (1980–81); Trainee at the European Parliament (Luxembourg, 1981); Administrator in the Secretariat of the Committee on Legal Affairs of the European Parliament (Luxembourg, 1981–88); Member of the Legal Service of the European Parliament (Brussels, 1988–95); Legal Secretary at the Court of Justice (1995–2000); Lecturer in European law at Harvard Law School (2000); Member of the Legal Service of the European Parliament (2000–03), then Head of Unit (2003–11) and Director (2011); author of numerous publications; Judge at the Civil Service Tribunal since 6 October 2011.

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 (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. Change in the composition of the Civil Service Tribunal in 2011

Following the partial renewal of the members of the European Union Civil Service Tribunal, Mr Sean Van Raepenbusch, who has been a Judge at the Tribunal since 6 October 2005, was elected President of the European Union Civil Service Tribunal for the period from 7 October 2011 to 30 September 2014.

Formal sitting of 6 October 2011

In view of the expiry of the terms of office of Mr Stephane Gervasoni, Mr Paul J. Mahoney and Mr Haris Tagaras, by decision of 18 July 2011 the Council of the European Union appointed Mr René Barents, Mr Kieran Bradley and Mr Ezio Perillo as Judges at the European Union Civil Service Tribunal for the period from 1 October 2011 until 30 September 2017.

Ms Waltraud Hakenberg, who has been Registrar of the European Union Civil Service Tribunal since 30 November 2005 and whose term of office would have come to an end on 29 November 2011, was reappointed to her office on 10 October 2011 for the period from 30 November 2011 until 29 November 2017.

3. Order of precedence

From 1 January to 6 October 2011

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

From 7 October to 31 December 2011

S. VAN RAEPENBUSCH, President of the Tribunal
H. KREPPEL, President of Chamber
M. I. ROFES I PUJOL, President of Chamber
I. BORUTA, Judge
E. PERILLO, Judge
R. BARENTS, Judge
K. BRADLEY, Judge

W. HAKENBERG, Registrar

4. Former members of the Civil Service Tribunal

Heikki Kanninen (2005–09)
Haris Tagaras (2005–11)
Stéphane Gervasoni (2005–11)

President

Paul J. Mahoney (2005–11)

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 (2007–11)

New cases

2. Percentage of the number of cases per principal defendant institution (2007–11)
3. Language of the case (2007–11)

Completed cases

4. Judgments and orders — Bench hearing action (2011)
5. Outcome (2011)
6. Applications for interim measures (2007–11)
7. Duration of proceedings in months (2011)

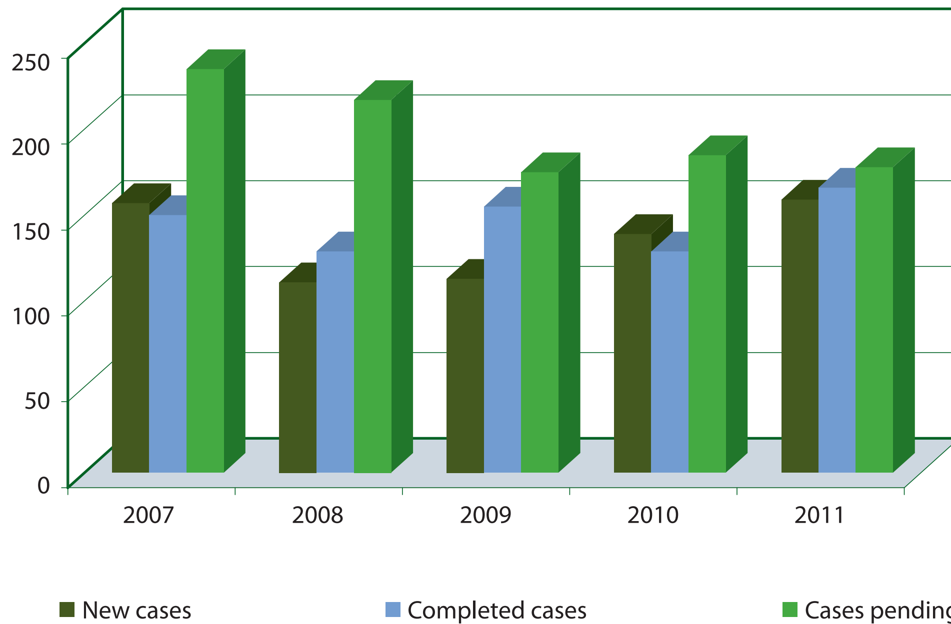
Cases pending as at 31 December

8. Bench hearing action (2007–11)
9. Number of applicants (2011)

Miscellaneous

10. Appeals against decisions of the Civil Service Tribunal to the General Court (2007–11)
11. Results of appeals before the General Court (2007–11)

1. *General activity of the Civil Service Tribunal* New cases, completed cases, cases pending (2007–11)

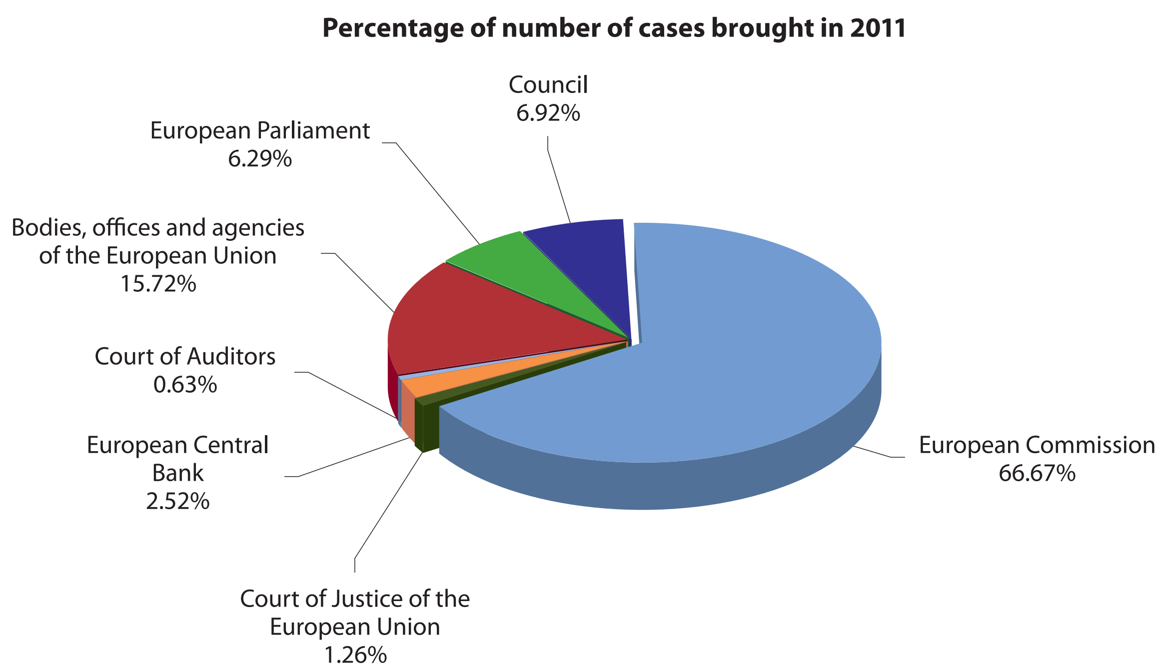


	2007	2008	2009	2010	2011
New cases	157	111	113	139	159
Completed cases	150	129	155	129	166
Cases pending	235	217	175	185	178 (1)

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).

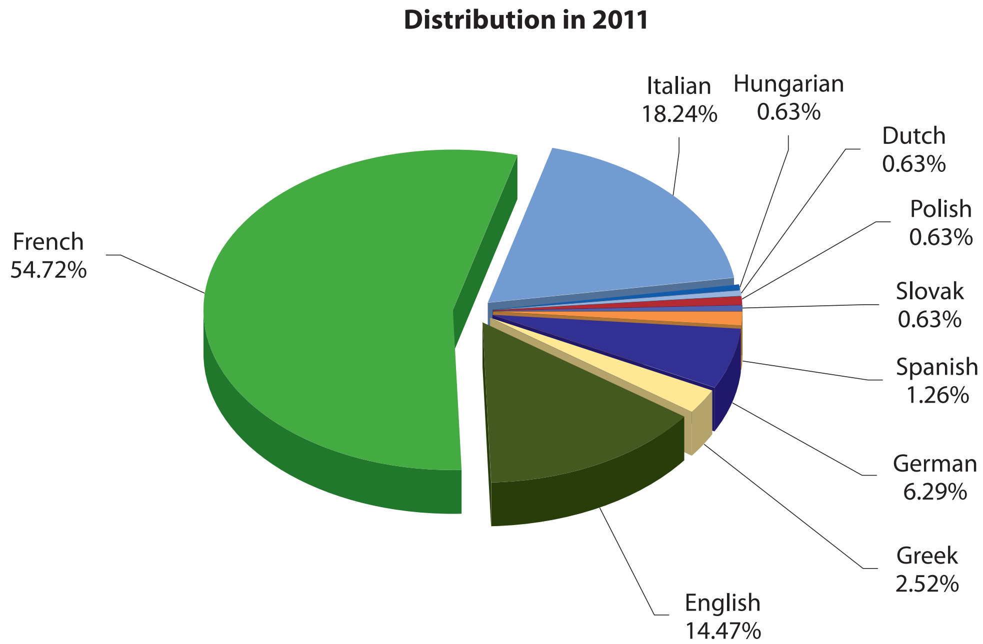
(1) Including 6 cases in which proceedings were stayed.

2. *New cases* — Percentage of the number of cases per principal defendant institution (2007–11)



	2007	2008	2009	2010	2011
European Parliament	15.29%	14.41%	8.85%	9.35%	6.29%
Council	4.46%	4.50%	11.50%	6.47%	6.92%
European Commission	63.69%	54.95%	47.79%	58.99%	66.67%
Court of Justice of the European Union	3.82%		2.65%	5.04%	1.26%
European Central Bank	1.27%	2.70%	4.42%	2.88%	2.52%
Court of Auditors	2.55%	5.41%	0.88%		0.63%
Bodies, offices and agencies of the European Union	8.92%	18.02%	23.89%	17.27%	15.72%
Total	**100%**	**100%**	**100%**	**100%**	**100%**

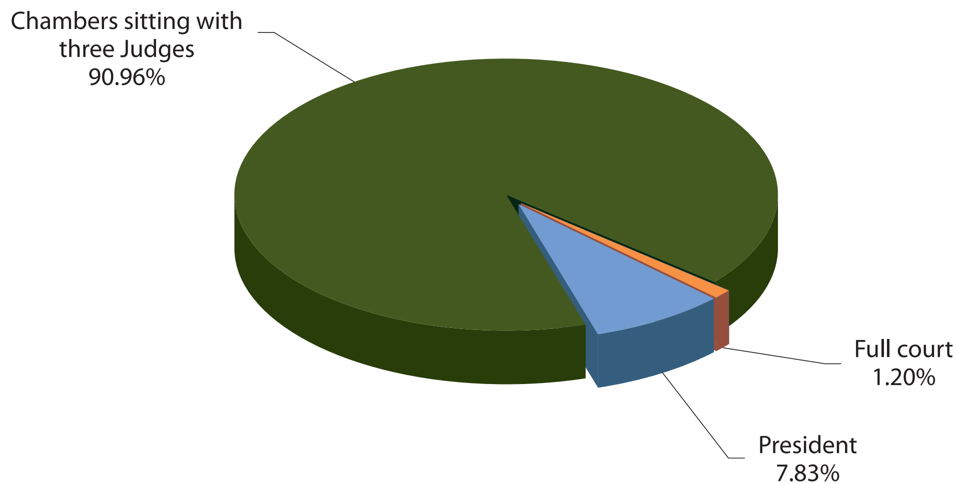
3. *New cases* — Language of the case (2007–11)



Language of the case	2007	2008	2009	2010	2011
Bulgarian	2				
Spanish	2	1	1	2	2
Czech			1		
German	17	10	9	6	10
Greek	2	3	3	2	4
English	8	5	8	9	23
French	101	73	63	105	87
Italian	17	6	13	13	29
Lithuanian	2	2			
Hungarian	1	1			1
Dutch	4	8	15	2	1
Polish		1			1
Portuguese		1			
Romanian	1				
Slovak					1
Total	**157**	**111**	**113**	**139**	**159**

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 (2011)



	Judgments	Orders for removal from the register, following amicable settlement [1]	Other orders terminating proceedings	Total
Full court	1		1	**2**
President			13	**13**
Chambers sitting with three Judges	75	8	68	**151**
Single judge				
Total	**76**	**8**	**82**	**166**

[1] In the course of 2011, there were also 13 unsuccessful attempts to bring cases to a close by amicable settlement on the initiative of the Civil Service Tribunal.

5. *Completed cases* — Outcome (2011)

	Judgments			Orders				
	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)**	**Total**
Appraisal/Promotion	1	4	15	7	5	6		**38**
Assignment/Reassignment	1	1	2					**4**
Competitions			1	1		2		**4**
Disciplinary proceedings			1	2	1			**4**
Other	1	1	10	20	1	4	6	**43**
Pensions and invalidity allowances			2	1		1		**4**
Recruitment/Appointment/ Classification in grade	1	3	9	3		1		**17**
Remuneration and allowances	1	1	6	5	1	17		**31**
Social security/Occupational disease/ Accidents		3	5	5				**13**
Termination or non-renewal of the contract of a member of staff	2	1		1				**4**
Working conditions/Leave		1	3					**4**
Total	**7**	**15**	**54**	**45**	**8**	**31**	**6**	**166**

6. *Applications for interim measures* (2007–11)

Applications for interim measures brought to a conclusion		Outcome		
		Granted in full or in part	Dismissal	Removal from the register
2007	**4**		4	
2008	**4**		4	
2009	**1**	1		
2010	**6**		4	2
2011	**7**		4	3
Total	**22**	**1**	**16**	**5**

7. *Completed cases* — Duration of proceedings in months (2011)

		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	73	21.0	18.6
Cases initially brought before the General Court ([1])	3	73.7	57.7
Total	**76**	**23.1**	**20.1**

		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	89	11.9	9.0
Cases initially brought before the General Court ([1])	1	18.5	18.5
Total	**90**	**12.0**	**9.1**

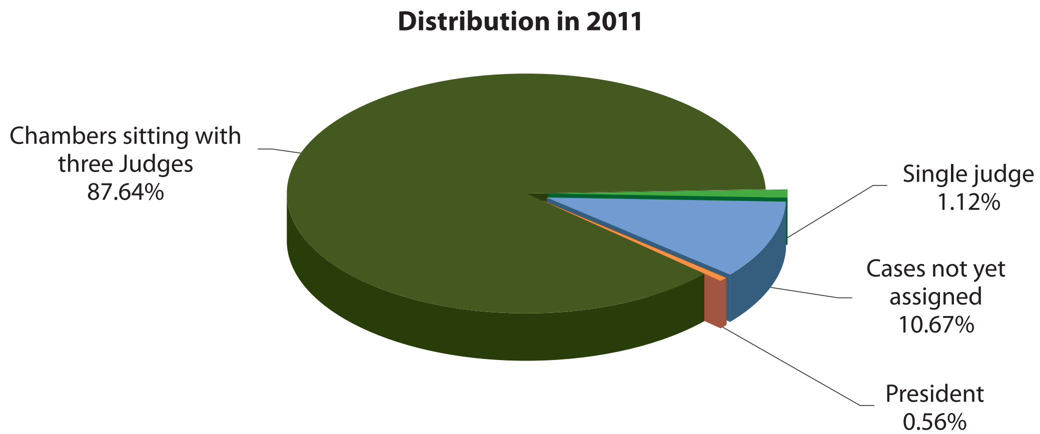
OVERALL TOTAL	**166**	**17.1**	**14.2**

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 (2007–11)

Distribution in 2011



	2007	2008	2009	2010	2011
Full court	3	5	6	1	
President	3	2	1	1	1
Chambers sitting with three Judges	206	199	160	179	156
Single judge					2
Cases not yet assigned	23	11	8	4	19
Total	**235**	**217**	**175**	**185**	**178**

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

The pending cases with the greatest number of applicants in 2011

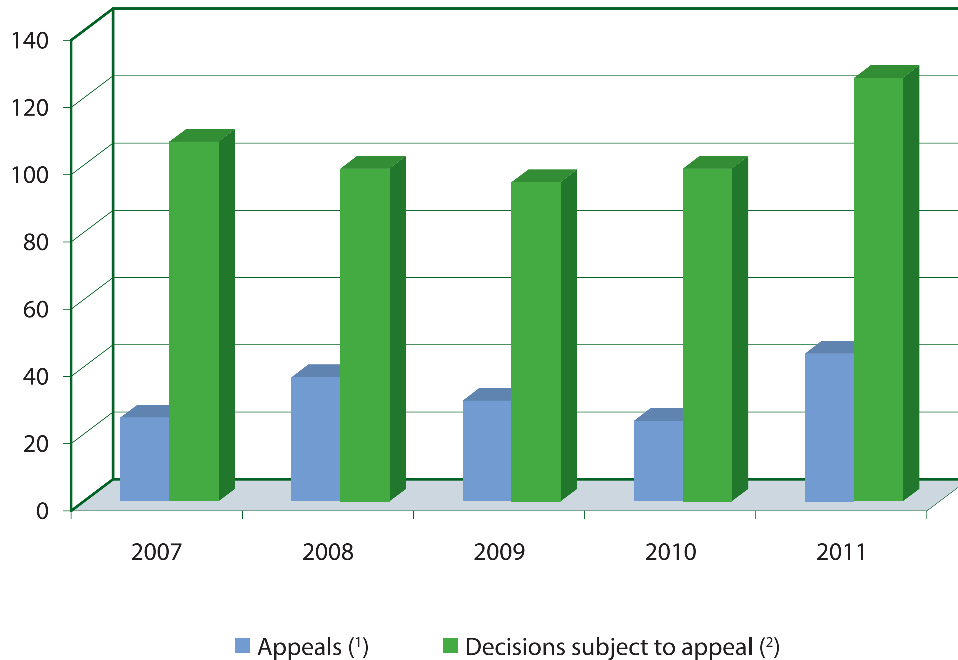
Number of applicants	Fields
535 (2 cases)	Staff Regulations — Remuneration — Annual adjustment of the remuneration and pensions of officials and other servants — Articles 64, 65 and 65a of and Annex XI to the Staff Regulations — Council Regulation (EU) No 1239/2010 of 20 December 2010 — Correction cefficient — Officials assigned to Ispra
169	Staff Regulations — ECB staff — Reform of the pension scheme
34	Staff Regulations — EIB — Pensions — Reform of the pension scheme
25	Staff Regulations — Promotion — 2010 and 2011 promotions periods — Fixing promotion thresholds
20 (6 cases)	Staff Regulations — Remuneration — Family allowances — Education allowance — Conditions for granting
19	Staff Regulations — Staff Committee of the Parliament — Elections — Irregularities in the election process
13	Staff Regulations — Member of the auxiliary staff — Member of the temporary staff — Conditions of engagement — Duration of contract
10	Staff Regulations — Members of the contract staff — Member of the temporary staff — Conditions of engagement — Duration of contract
6 (2 cases)	Staff Regulations — Promotion — 2010 promotions period — Consideration of comparative merits — Decision not to promote the applicant
5 (5 cases)	Staff Regulations — Promotion — 2008 promotions period — Decision not to promote the applicant

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 (2007–11)

	Total applicants	Total pending cases
2007	1 267	235
2008	1 161	217
2009	461	175
2010	812	185
2011	1 006	178

10. *Miscellaneous* — Appeals against decisions of the Civil Service Tribunal to the General Court (2007–11)



	Appeals (1)	Decisions subject to appeal (2)	Percentage of appeals (3)	Percentage of appeals including amicable settlements (4)
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%
2011	44	126	34.92%	32.84%

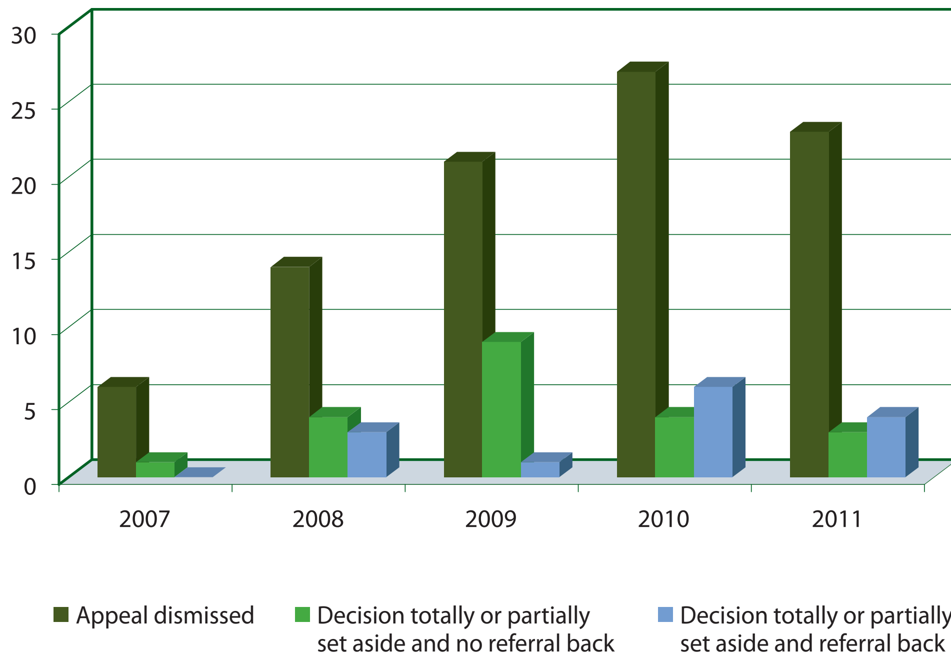
(1) Decisions appealed against by several parties are taken into account only once. In 2007, two decisions were each the subject of two appeals; in 2011, one decision was the subject of two appeals.

(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 (2007–11)



	2007	2008	2009	2010	2011
Appeal dismissed	6	14	21	27	23
Decision totally or partially set aside and no referral back	1	4	9	4	3
Decision totally or partially set aside and referral back		3	1	6	4
Total	**7**	**21**	**31**	**37**	**30**

Chapter IV

Meetings and visits

A — Official visits and events at the Court of Justice, the General Court and the Civil Service Tribunal in 2011

Court of Justice

16 and 17 January	Delegation from the European Court of Human Rights
19 January	Mr L. Planas Puchades, Permanent Representative of the Kingdom of Spain to the European Union
25 January	Delegation from the Association of Lawyers of Russia
31 January	Mr R. Répássy, minister responsible for justice at the Ministry of Public Administration and Justice of the Republic of Hungary, in the context of the Hungarian Presidency of the Council of the European Union
31 January	Delegation from the Unterausschuss Europarecht des Rechtsausschusses des Deutschen Bundestages
7 February	Delegation from the Constitutional Council of the French Republic
7 and 8 February	Delegation from the Court of Cassation of the Republic of Turkey
8 March	Delegation from the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)
10 March	Mr M. Szpunar, Deputy Minister for Foreign Affairs of the Republic of Poland
14 and 15 March	Delegation from the Constitutional Court of Romania
18 March	Präsidenten der deutschsprachigen Zeitungsverlegerverbände
22 March	Delegation from the Swedish parliament — Committee on the Constitution
27 to 29 March	Delegation from the Network of the Presidents of the Supreme Judicial Courts of the European Union
5 April	HE Mr W. E. Kennard, Ambassador of the United States of America to the European Union
5 April	Delegation from the Niedersächsischer Staatsgerichtshof
11 April	Delegation from the Swedish parliament — Committee on Taxation
11 April	Mr M. Kjærum, Director of the European Union Agency for Fundamental Rights
11 April	Mr C. Predoiu, Minister for Justice of Romania
11 to 13 April	Delegations from the Court of Justice of the Economic and Monetary Community of Central Africa (EMCCA), the Court of Justice of the Economic Community of West African States (Ecowas) and the Court of Justice of the West African Economic and Monetary Union (WAEMU)
12 April	Mr R. Sikorski, Minister for Foreign Affairs of the Republic of Poland
1 to 3 May	Delegation from the Supreme Court of the Kingdom of Denmark
5 May	Mr D. Grieve, Attorney General for England and Wales, and Mr E. Garnier, Solicitor General for England and Wales
5 May	Visit of the Board of Management of the Institute for European Affairs (INEA)
5 May	Ms I. Degutienė, President of the parliament of the Republic of Lithuania

15 to 17 May	Delegation from the Constitutional Court of the Slovak Republic
20 June	Delegation from the EU–Mexico Joint Parliamentary Committee
24 June	Meeting of the Agents of the Member States and of the institutions of the European Union
26 and 27 June	Delegation from the Bundesverfassungsgericht
27 June	Delegation from the Supreme Court of the former Yugoslav Republic of Macedonia
30 June	Mr M. Boddenberg, Minister for Federal Affairs of the *Land* of Hesse (Federal Republic of Germany)
30 June	Ms D. Wallis, Vice-President of the European Parliament
6 September	Delegation from the Legal Committee of the Swedish parliament
7 September	Mr P. Tempel, Permanent Representative of the Federal Republic of Germany to the European Union
21 and 22 September	Delegation from the Ministry of Foreign Affairs of the Republic of Estonia
22 September	Mr E. Uhlenberg, President of the parliament of the *Land* of North Rhine-Westphalia (Federal Republic of Germany)
25 to 27 September	Chief Public Prosecutor and Public Prosecutors of the Kingdom of Denmark
30 September	Mr J. M. Fernandes, Rapporteur of the Committee on Budgets of the European Parliament
4 October	Mr W. Grahammer, Permanent Representative of the Republic of Austria to the European Union
7 October	Mr U. Mifsud Bonnici, former President of the Republic of Malta
10 and 11 October	'5. Luxemburger Expertenforum zur Entwicklung des Unionsrechts'
11 October	Mr U. Corsepius, Secretary-General of the Council of the European Union
11 October	Presentation by Ms B. Ohlsson, Minister for European Affairs of the Kingdom of Sweden, of the sculpture 'Two couplets'
12 to 14 October	Delegation from the Court of Justice of the Economic Community of West African States (Ecowas)
17 and 18 October	Delegation of Judges from the Court of Cassation of the French Republic
17 and 18 October	First seminar of Spanish lawyers: 'La Carta de los derechos fundamentales de la Unión europea'
27 October	Ms B. Karl, Federal Minister for Justice of the Republic of Austria
27 October	HE Mr J.-F. Terral, Ambassador of the French Republic to the Grand Duchy of Luxembourg
27 October	Ms A.-M. Henriksson, Minister for Justice of the Republic of Finland, Mr J. Store, Permanent Representative of the Republic of Finland to the European Union, and HE Ms M. Lehto, Ambassador of the Republic of Finland to the Grand Duchy of Luxembourg
7 November	Mr M. Sudo, Judge at the Supreme Court of Japan
11 November	Mr H. Koh, Legal Adviser to the Department of State of the United States of America, and HE Mr R. Mandell, Ambassador designate of the United States of America to the Grand Duchy of Luxembourg
21 to 23 November	Judges' Forum
28 and 29 November	Delegation from the Court of Cassation of the Republic of Turkey

29 November	Delegation of Judges from the higher courts of the People's Republic of China
13 December	Delegation from the Commission of the West African Economic and Monetary Union (WAEMU)
14 December	HE Mr I. Rizopoulos, Ambassador designate of the Hellenic Republic to the Grand Duchy of Luxembourg

General Court

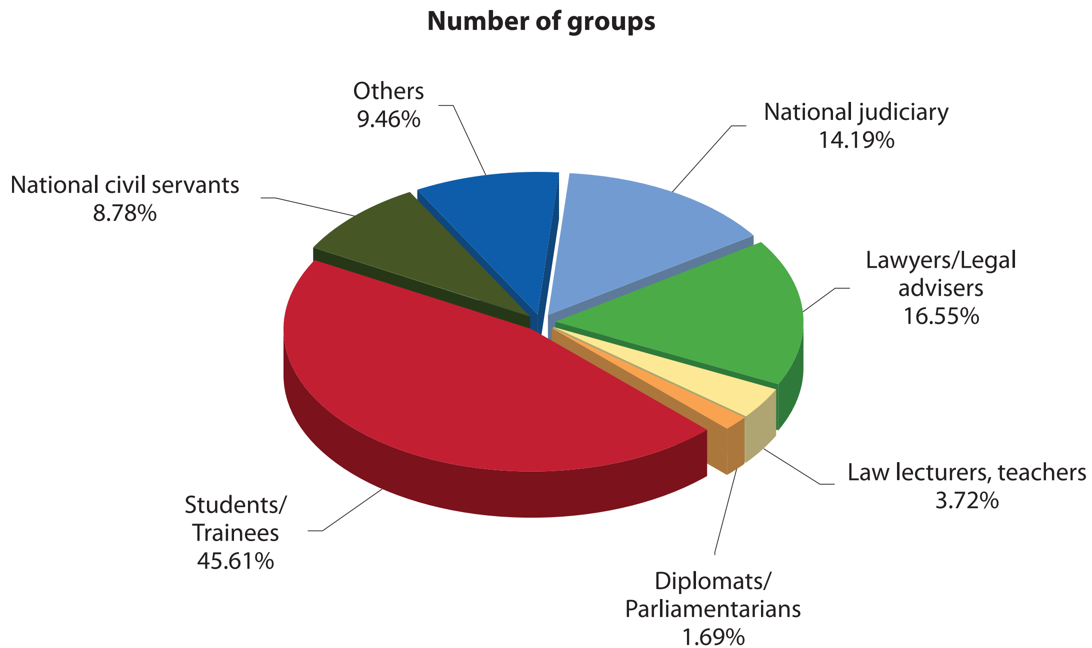
31 January	Visit of the Hungarian Presidency of the Council of the European Union
8 March	Visit of a delegation from the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)
10 March	Visit of Mr M. Szpunar, Deputy Minister for Foreign Affairs of the Republic of Poland
2 and 3 May	Visit of a delegation from the Supreme Court of the Kingdom of Denmark
30 June	Visit of Ms D. Wallis, Vice-President of the European Parliament
22 September	Visit of a delegation from the Ministry of Foreign Affairs of the Republic of Estonia
23 September	Visit of HE Ms M. Lehto, Ambassador of the Republic of Finland to the Grand Duchy of Luxembourg
10 October	Visit of Mr R. Cachia Caruana, Permanent Representative of the Republic of Malta to the European Union
27 October	Visit of Mr G. F. Ioannidis, Secretary-General of the Ministry of Justice of the Hellenic Republic
7 November	Visit of Mr M. Sudo, Judge at the Supreme Court of Japan
28 November	Visit of a delegation from the Court of Cassation of the Republic of Turkey
30 November	Visit of a delegation from the Republic of Latvia
6 December	Visit of Mr P. N. Diamandouros, European Ombudsman

Civil Service Tribunal

11 and 12 July	Visit of Ms K. M. Lueken, Administrator at the Registry of the United Nations Dispute Tribunal in New York
20 September	Visit of Ms M. de Sola Domingo, Mediator of the European Commission
6 December	Visit of Mr P. N. Diamandouros, European Ombudsman

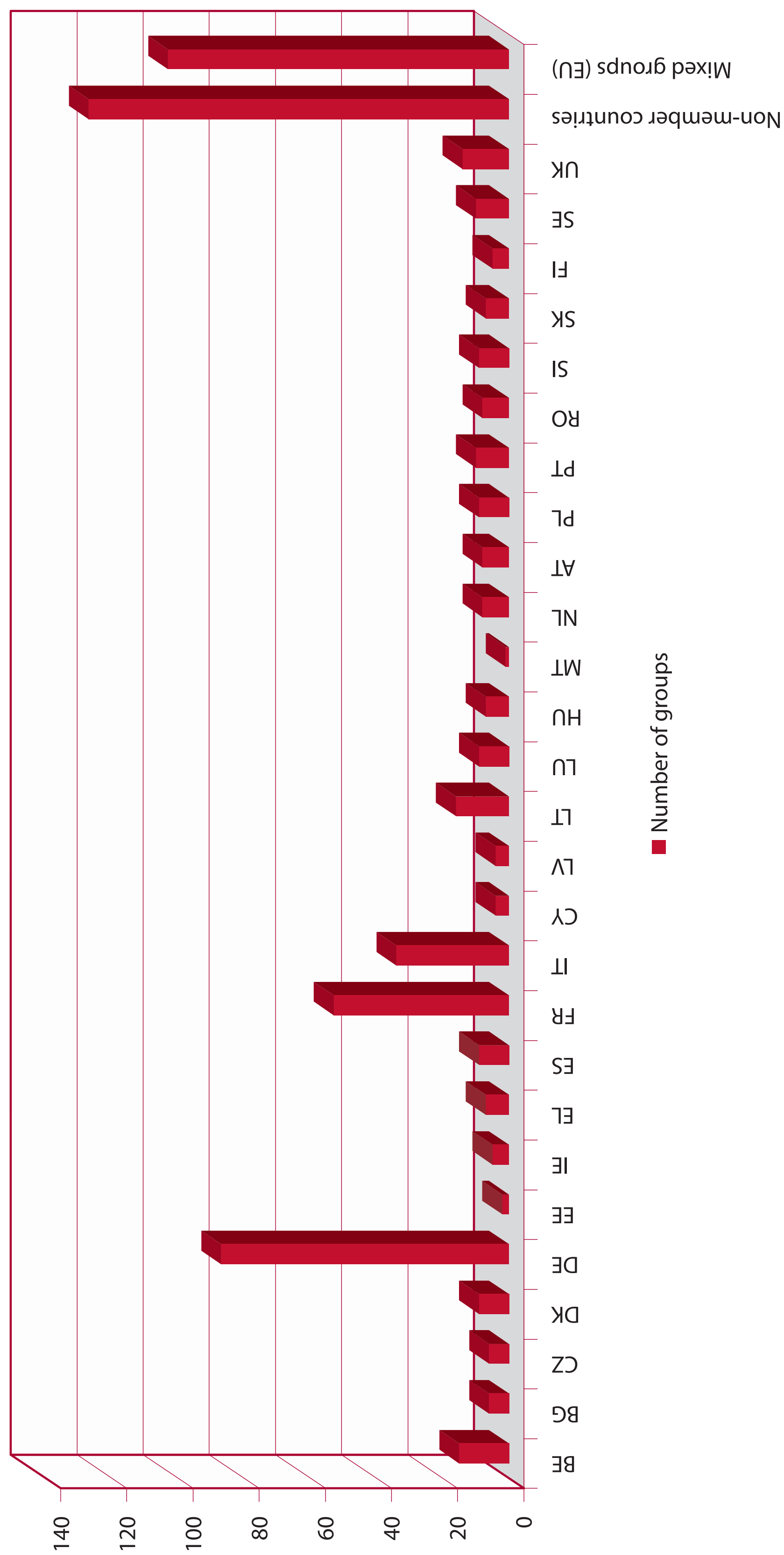
B — Study visits (2011)

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	84	98	22	10	270	52	56	592

2. *Study visits* — Distribution by Member State (2011)



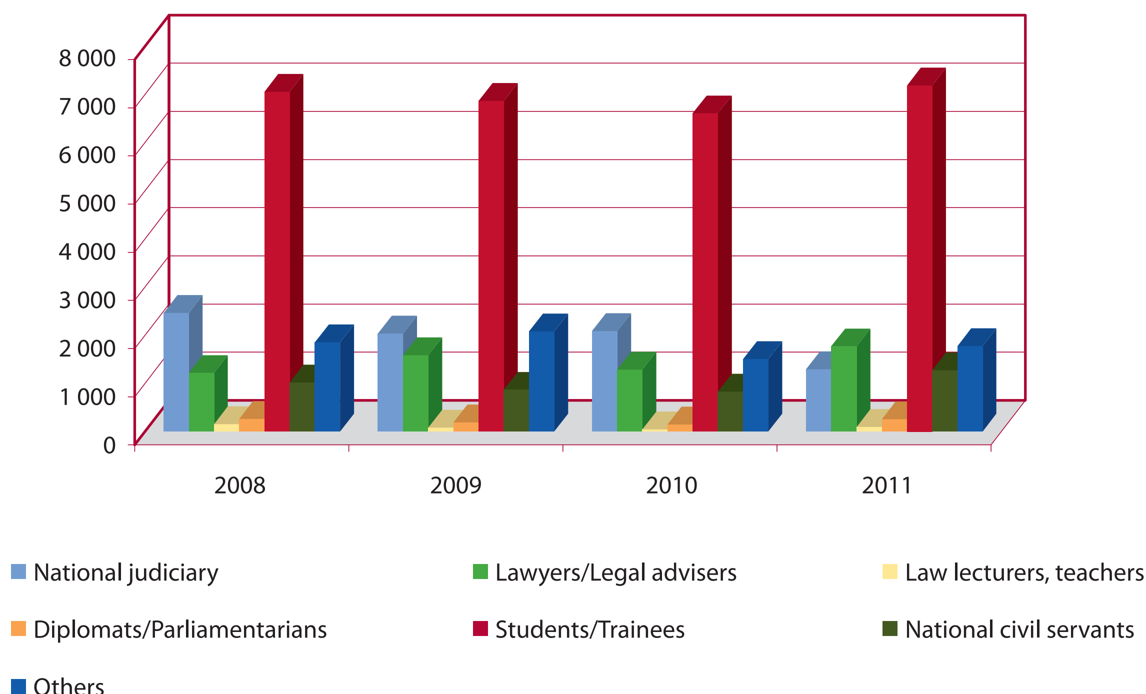
	Number of visitors								
	National judiciary	Lawyers/ Legal advisers	Law lecturers, teachers	Diplomats/ Parliamentarians	Students/ Trainees	National civil servants	Others	Total	Number of groups
BE	31	15			352	26	47	**471**	**15**
BG	6	80		6				**92**	**6**
CZ	3				63			**66**	**6**
DK					164	15	91	**270**	**9**
DE	251	343		83	901	211	662	**2 451**	**87**
EE						14		**14**	**2**
IE			8		54			**62**	**5**
EL	8				64			**72**	**7**
ES	60				95		17	**172**	**9**
FR	163	59			823	46	239	**1 330**	**53**
IT	2	23	20		320	8	32	**405**	**34**
CY	10				18			**28**	**4**
LV		10			30			**40**	**4**
LT			4	8	28	33		**73**	**16**
LU	8	45		26	30	22	97	**228**	**9**
HU			8		160		47	**215**	**7**
MT					32			**32**	**1**
NL				54	140	14		**208**	**8**
AT					205		18	**223**	**8**
PL		79			7			**86**	**9**
PT		195			1			**196**	**10**
RO	25				42	18		**85**	**8**
SI		10	5		143			**158**	**9**
SK	40				104			**144**	**7**
FI		30			46	30	20	**126**	**5**
SE	118	4		8		6	11	**147**	**10**
UK	56	53	30		88			**227**	**14**
Non-member countries	400	156	24	57	1 443	80	168	**2 328**	**127**
Mixed groups (EU)	114	669		12	1 828	751	328	**3 702**	**103**
Total	**1 295**	**1 771**	**99**	**254**	**7 181**	**1 274**	**1 777**	**13 651**	**592**

3. Judges' Forum (2011)

BE	5	**DK**	3	**IE**	2	**FR**	13	**LV**	2	**HU**	6	**AT**	5	**RO**	7	**FI**	3
BG	5	**DE**	10	**EL**	6	**IT**	13	**LT**	3	**MT**	1	**PL**	12	**SI**	2	**SE**	3
CZ	6	**EE**	2	**ES**	13	**CY**	2	**LU**	2	**NL**	6	**PT**	6	**SK**	3	**UK**	12

Total	**153**

4. Trend in number and type of visitors (2008–11)



National judiciary · Lawyers/Legal advisers · Law lecturers, teachers · Diplomats/Parliamentarians · Students/Trainees · National civil servants · Others

Number of visitors

	National judiciary	Lawyers/Legal advisers	Law lecturers, teachers	Diplomats/ Parliamentarians	Students/ Trainees	National civil servants	Others	Total
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**
2011	1 295	1 771	99	254	7 181	1 274	1 777	**13 651**

C — Formal sittings in 2011

24 January	Formal sitting for the giving of solemn undertakings by two new members of the European Court of Auditors
11 April	Formal sitting in remembrance of Pierre Pescatore and Antonio Saggio
19 September	Formal sitting on the occasion of the entry into office of Ms M. Kancheva as Judge at the General Court
26 September	Formal sitting for the giving of solemn undertakings by two new members of the European Court of Auditors
6 October	Formal sitting on the occasion of the departure from office of Judge P. Lindh and the entry into office of Mr C. G. Fernlund as Judge at the Court of Justice, and of the departure from office of President P. Mahoney and Judges H. Tagaras and S. Gervasoni and the entry into office of Mr E. Perillo, Mr R. Barents and Mr K. Bradley as Judges on the partial renewal of the membership of the Civil Service Tribunal

D — Visits and participation in official functions

Court of Justice

1 January	Representation of the Court at the ceremony for the exchange of New Year greetings, at the invitation of the President of the Republic of Malta, in Valletta
7 January	Representation of the Court at the formal sitting of the Court of Cassation of the French Republic marking the opening of 2011, in Paris
11 January	Participation of the President of the Court at the reception given by HRH the Grand Duke of Luxembourg for the New Year
13 January	Representation of the Court at the New Year reception given by the President of the Federal Republic of Germany, in Berlin
25 January	Representation of the Court at the 'Rechtspolitischer Neujahrsempfang 2011', at the invitation of the Minister for Justice of the Federal Republic of Germany, in Berlin
28 January	Participation of a delegation from the Court at the formal sitting of the European Court of Human Rights and the seminar 'What are the limits to the evolutive interpretation of the Convention?', in Strasbourg
10 February	Participation of the President of the Court at the conference 'Implementing the Lisbon Treaty' organised by the European Commission and the Bureau of European Policy Advisers, in Brussels
14 February	Participation of the President of the Court at the ceremony to celebrate the 350th anniversary of the creation of the Supreme Court of the Kingdom of Denmark, in Copenhagen
21 March	Representation of the Court at the seminar organised by the European Court of Human Rights on the occasion of the launch of the manual 'Handbook on European non-discrimination case-law', in Strasbourg
21 and 22 March	Official visit of a delegation from the Court to the judiciary of England and Wales, in London
31 March	Representation of the Court at the formal sitting organised on the occasion of the departure of Mr W. Spindler, President of the Federal Finance Court, at the invitation of the Minister for Justice of the Federal Republic of Germany, in Munich
8 and 9 May	Representation of the Court at the meeting of the Board of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union, in Madrid
19 May	Representation of the Court at the comparative law colloquium on 'Constitutional control in Europe', organised by the Association of European Administrative Judges (AEAJ), in Paris
19 to 21 May	Representation of the Court at the 'First St Petersburg International Legal Forum', in St Petersburg
23 to 27 May	Representation of the Court at the 15th Congress of the Conference of European Constitutional Courts, in Bucharest

25 May	Meeting of a delegation from the Court with Mr R. Pofalla, Minister, Head of the Federal Chancellery, and Ms S. Leutheusser-Schnarrenberger, Minister for Justice of the Federal Republic of Germany, in Berlin
26 May	Representation of the Court at the inaugural session of the plenary meeting of the Network of Public Prosecutors of the Supreme Judicial Courts of the Member States of the European Union, in the presence of the President of the Italian Republic, in Rome
31 May	Representation of the Court, at the invitation of the President of the Italian Republic, at the ceremony organised on the occasion of the National Day, in Rome
1 June	Participation of the President of the Court at the Inaugural Congress of the European Law Institute, in Paris
20 June	Official visit of a delegation from the Court to the Supreme Court of the Republic of Croatia, in Zagreb
20 June	Representation of the Court at the conference 'Practical application of Regulation (EC) No 2201/2003 — On the eve of review', organised by the Hungarian Presidency of the Council of the European Union and by the European Commission, in Budapest
23 June	Participation of the members of the Court at the ceremonies for the Luxembourg National Day
24 June	Representation of the Court, at the invitation of the President of the Republic of Slovenia, at the ceremonies and the reception organised on the occasion of the Slovenian National Day, in Ljubljana
24 July	Participation of the President of the Court at the reception given by the President of the Hellenic Republic on the occasion of the anniversary of the restoration of the Republic, in Athens
29 and 30 July	Participation of the President of the Court at the ceremonies organised on the occasion of the 20th anniversary of the Constitutional Court of the Republic of Bulgaria, at the invitation of its President, in Sofia
4 to 6 September	Participation of the President of the Court at the seminar organised by the Ministry of Foreign Affairs of the Kingdom of Sweden in honour of Judge P. Lindh, in Stockholm
28 September	Participation of a delegation from the Court at the ceremony in celebration of the 60th anniversary of the Bundesverfassungsgericht, in Karlsruhe
30 September	Representation of the Court at the ceremony for the Verfassungstag, in Vienna
3 October	Official visit of a delegation from the Court to the European Court of Human Rights, in Strasbourg
3 October	Representation of the Court at the ceremonies for the Opening of the Legal Year, at the invitation of the Lord Chancellor, in London
3 October	Representation of the Court at the official ceremonies organised on the occasion of the National Day of the Federal Republic of Germany
13 and 14 October	Representation of the Court at the Seventh European Trade Mark and Design Judges' Symposium, in Alicante

20 October	Meeting of a delegation from the Court with Mr D. Tusk, Prime Minister of the Republic of Poland, in the context of the Polish Presidency of the Council of the European Union, in Brussels
25 October	Representation of the Court at the official events marking the 19th anniversary of the Constitution of the Republic of Lithuania, in Vilnius
31 October	Representation of the Court at the celebration of the 180th anniversary of the Council of State of the Italian Republic, in Rome
31 October to 2 November	Official visit of a delegation from the Court to the Constitutional Court of the Republic of Malta
10 November	Representation of the Court at the hearing relating to fundamental rights 'The implementation of the EU Charter of Fundamental Rights two years after the Lisbon Treaty's entry into force', at the European Parliament in Brussels
16 and 17 November	Representation of the Court at the international conference organised by the Public Procurement Council of the Republic of Hungary on the topic 'Actual Questions of Public Procurements in the European Union and in the Member States', in Budapest
23 and 24 November	Representation of the Court at the experts' seminar on the application of the Charter of Fundamental Rights of the European Union by the courts in the Member States, organised by the Council of State of the Kingdom of the Netherlands, in The Hague
25 November	Representation of the Court at the seminar on the topic 'Dallo Statuto albertino alla Costituzione repubblicana', organised by the Constitutional Court of the Italian Republic on the occasion of the celebration of 150 years of unification of Italy, in Rome
15 December	Participation of the President of the Court at the conference organised by the *Land* of Hesse on the topic 'Hessen und der EuGH im Dialog', in Berlin
23 December	Representation of the Court, at the invitation of the President of the Republic of Slovenia, at the reception organised on the occasion of Independence and Unity Day, in Ljubljana

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
19 January	Representation of the Court at the reception of the Federal Chancellor and the Vice-Chancellor of the Republic of Austria, on the occasion of the official New Year ceremony
25 January	Representation of the Court at the 'Rechtspolitischer Neujahrsempfang 2011' reception organised by the Minister for Justice of the Federal Republic of Germany, in Berlin
14 February	Representation of the Court on the occasion of the 350th anniversary of the creation of the Højesteret, organised by Mr Torben Melchior, President of the Supreme Court of the Kingdom of Denmark, in Copenhagen
14 and 15 April	Representation of the Court at the 'XV. Internationale Kartellkonferenz' of the Bundeskartellamt, in Berlin

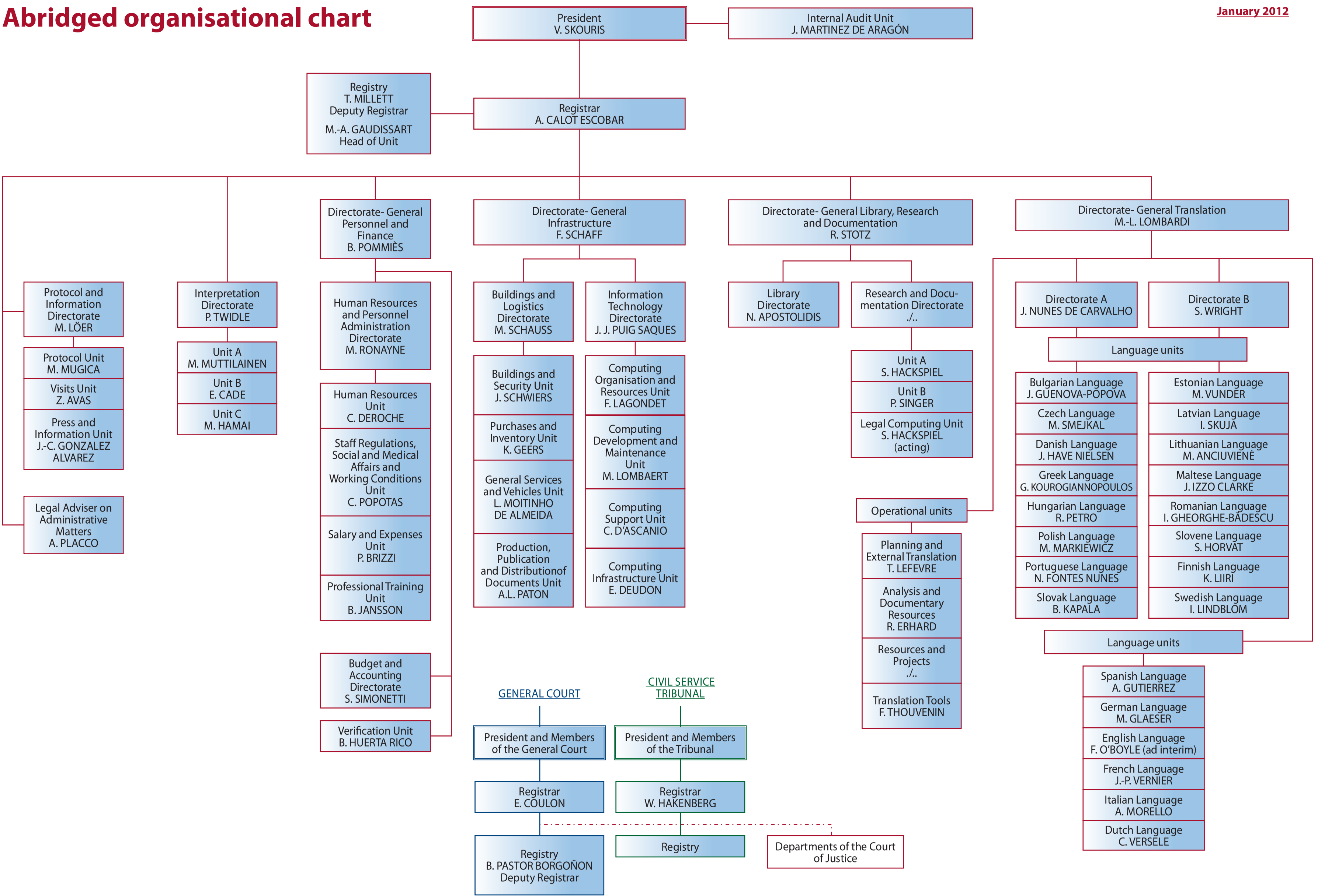
19 to 21 May	Representation of the Court at the Sixth European Jurists' Forum
30 May to 1 June	Representation of the Court on the occasion of the official visit to Malta at the invitation of the President of the Supreme Court
31 May	Representation of the Court at the reception of the President of the 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, on the occasion of the 37th anniversary of the restoration of the Republic, in Athens
28 September	Representation of the Court at the ceremony for the presentation of the Order of Merit to judges and professors of law by the President of the Republic of Poland, in Warsaw
30 September	Representation of the Court at the formal celebration of the 91st anniversary of the enactment of the Constitution of the Republic of Austria, in Vienna
2 and 3 October	Representation of the Court at the ceremony for 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 German National Day
12 to 15 October	Representation of the Court at the Seventh European judges' symposium organised by the Office for Harmonization in the Internal Market (Trade Marks and Designs), in Alicante
14 and 15 November	Representation of the Court at the conference 'Die freiheitliche Grundordnung der Europäischen Union' organised by the Ministry for Economic Affairs and Technology, in Berlin
24 November	Representation of the Court at the conference organised by the Academy of European Law on the topic 'Transnational use of video conferencing in court', in Trier
6 December	Representation of the Court at the official reception of the President of the Republic of Finland on the occasion of Independence Day

Civil Service Tribunal

21 and 22 March	Visit to the National School of Judges, Thessaloniki
16 and 17 May	Visit to the Supreme Court and Constitutional Court of the Republic of Hungary
22 and 23 September	Visit to the Supreme Court and Constitutional Court of the Kingdom of Spain

Abridged organisational chart

Abridged organisational chart



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