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COURT OF JUSTICE OF THE EUROPEAN UNION

Annual report 2012

COURT OF JUSTICE OF THE EUROPEAN UNION

ANNUAL REPORT 2012

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

Luxembourg, 2013

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Foreword

1952–2012: In the past year the Court completed 60 years of existence, throughout which it has contributed to the European project. This anniversary, which was not especially significant in numerical terms, was marked by the Court with an emphasis on substance rather than festivities. In this context, the Court published a collective work devoted to the role of the institution and of its case-law in the construction of Europe, which was presented at a Forum to which the presidents of the constitutional and supreme courts of the Member States of the European Union were invited.

Also, in 2012 the Court's new Rules of Procedure and certain amendments to its Statute were adopted, following a long but productive legislative process. These reforms are designed, first, to modernise procedures before the Court and, second, to enable it to continue to improve its efficiency.

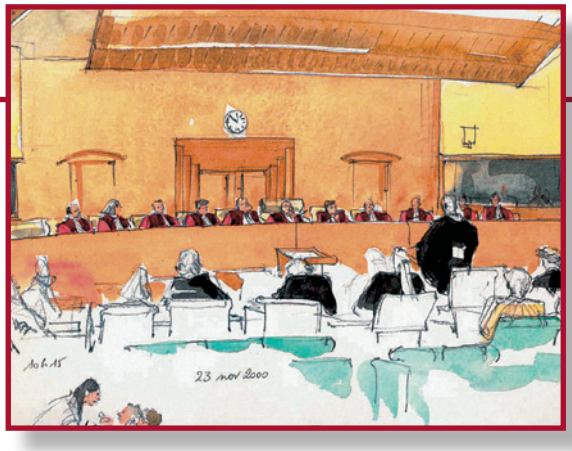
This improvement in efficiency, which has been present throughout recent years, can also be observed in 2012. The duration of preliminary ruling proceedings was the shortest since the end of the 1980s and the General Court managed, after a particularly productive year, to reduce both the 'stock' of pending cases and the duration of proceedings, which was reduced by two months in 2012.

The past year also saw a partial replacement of the membership of the Court and the departure of four of its members. The governments of the Member States were again concerned, in this partial renewal, to make the appointments without delay and to safeguard the stability of the institution as far as possible, thereby enabling it to continue smoothly in the performance of its task. The Court cannot but welcome this.

This report provides a full record of changes concerning the institution and of its work in 2012. 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.

Finally, 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 2012: 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 2012. First, it describes how the institution evolved during the year, with the emphasis on the institutional changes affecting the Court of Justice and developments relating to its internal organisation and its working methods. Second, it includes an analysis of the statistics relating to changes in the Court of Justice's workload and in the average duration of proceedings. Third, it presents, as it does each year, the main developments in the case-law, arranged by subject-matter.

1. The important reforms of the rules governing procedure constitute the principal feature of the institution's evolution in 2012, whilst the Court of Justice also celebrated its 60th anniversary.

On 4 December 2012, the Court of Justice of the European Union celebrated its 60th anniversary. Although 60 years amount to neither half nor three quarters of a century, the Court of Justice nevertheless decided not to let this anniversary pass unnoticed. Indeed, during the last 10 years the judicial system of the European Union has undergone major reforms which, viewed as a whole, constitute a real transformation. Reference can be made in this regard to the entry into force of the Treaty of Nice, two enlargements which resulted in the institution's workforce almost doubling and in multiplication of the languages of the case and working languages, the creation of the Civil Service Tribunal, substantial modernisation of internal working methods, the entry into force of the Treaty of Lisbon with the resulting extension of the Court's jurisdiction, the establishment of the urgent preliminary ruling procedure, and the computerisation of procedure with the launch of the e-Curia system. The view was taken that this transformation would be appropriately marked by celebration in two ways: first, the organisation of a Forum to which the presidents of the constitutional and supreme courts of the Member States of the European Union were invited and, second, the publication of a collective work devoted to the role of the Court and of its case-law in the construction of Europe. Edited by a committee which Judge Allan Rosas presided over and of which Judge Egils Levits and Advocate General Yves Bot were members, that work contains a collection of contributions by a group of authors which is representative both from a geographical point of view and from the point of view of their professional and academic profile.

At a purely judicial level, a new five-Judge chamber and a new three-Judge chamber were created when the Court's membership was partially replaced on 7 October 2012. The simultaneous operation of 10 chambers will enable the Court to maintain and improve its efficiency.

As regards the rules governing procedure, the developments of the past year merit particular attention. First of all, one should note the adoption of Regulation (EU, Euratom) No 741/2012 of the European Parliament and of the Council of 11 August 2012 amending the Protocol on the Statute of the Court of Justice of the European Union and Annex I thereto (OJ 2012 L 228, p. 1), which entered into force on 1 September 2012. The amendments made to the Statute pursuant to this regulation include the establishment of the office of Vice-President of the Court, the increase to 15 in the number of Judges composing the Grand Chamber, the limitation of participation of the Presidents

of the five-Judge chambers in the Grand Chamber ([1]) and removal of the obligation on the Judge-Rapporteur in a case to draw up a report for the hearing.

Next, it is to be noted that the new Rules of Procedure of the Court of Justice of 25 September 2012 (OJ 2012 L 265, p. 1) entered into force on 1 November 2012. These Rules of Procedure constitute a complete recast of the previous Rules of Procedure. Their main objectives are restructuring of the rules contained in the former version in order henceforth to accord an important position to references for a preliminary ruling, reduction of the duration of proceedings, and clarification and simplification of certain provisions of the former version. Furthermore, the new Rules of Procedure renumber the provisions compared with the former version.

That recast was followed by adaptation to the new Rules of Procedure of the information note on references from national courts for a preliminary ruling, which was renamed 'recommendations [of the Court] to national courts and tribunals in relation to the initiation of preliminary ruling proceedings' (OJ 2012 C 338, p. 1). Finally, reference should also be made to the decision of the Court of Justice of 23 October 2012 concerning the judicial functions of the Vice-President of the Court (OJ 2012 L 300, p. 47), by which certain judicial powers formerly held by the President, in particular in relation to applications for interim measures, have now been transferred to the Vice-President.

2. The statistics concerning the Court's activity in 2012 show, overall, sustained productivity and a very significant improvement in efficiency as regards the duration of proceedings. In addition, a slight decrease in the number of cases brought is to be noted, a fall which, having regard to the change in the caseload over the last five years, could be rather short-term in nature.

Thus, the Court completed 527 cases in 2012 (net figure, that is to say, taking account of the joinder of cases on the ground of similarity), a slight decrease compared with the previous year (550 cases completed in 2011). Of those cases, 357 were dealt with by judgments and 168 gave rise to orders.

The Court had 632 new cases brought before it (without account being taken of the joinder of cases on the ground of similarity), which amounts to a decrease of approximately 8% compared with 2011 (688 new cases) but nevertheless constitutes the second highest annual number of cases brought in the Court's history. This decrease in the total number of cases brought relates principally to the slight decrease, compared with the previous year, in the number of appeals lodged. The number of references for a preliminary ruling submitted in 2012 is the second highest reached in the Court's entire history.

So far as concerns the duration of proceedings, the statistics are very positive. In the case of references for a preliminary ruling, the average duration amounted to 15.7 months. In the entire period for which the Court has reliable statistical data, the average time taken to deal with references for a preliminary ruling reached its shortest in 2012. The average time taken to deal with direct actions and appeals was 19.7 months and 15.3 months respectively.

In addition to the reforms in its working methods that have been undertaken in recent years, the improvement 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

([1]) The Grand Chamber is now composed of the President, the Vice-President, three Presidents of five-Judge chambers who are designated on the basis of a rotation mechanism and 10 Judges who are designated, also on the basis of a rotation mechanism, from among the other Judges.

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 (Article 107 et seq. of the new Rules of Procedure) were met in four of them. Those cases were completed in an average period of 1.9 months.

Use of the expedited or accelerated procedure was requested five 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 reasoned order of the President of the Court. In addition, priority treatment was granted in two cases.

Also, the Court utilised the simplified procedure laid down in Article 104(3) of the Rules of Procedure, now Article 99 of the new Rules of Procedure, to answer certain questions referred to it for a preliminary ruling. A total of 26 cases were brought to a close by orders made on the basis of that provision.

Finally, the Court made fairly frequent use of the possibility offered by Article 20 of its Statute of determining cases without an Opinion of the Advocate General where they do not raise any new point of law. About 53% of the judgments delivered in 2012 were delivered without an Opinion.

As regards the distribution of cases between the various formations of the Court, it is to be noted that the Grand Chamber dealt with roughly 9%, chambers of five Judges with 54%, and chambers of three Judges with approximately 34%, of the cases brought to a close by judgments or by orders involving a judicial determination in 2012. Compared with the previous year, the proportion of cases dealt with by the Grand Chamber decreased (11% in 2011), while the proportion of cases dealt with by three-Judge chambers increased (32% in 2011).

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

B — Case-law of the Court of Justice in 2012

Constitutional or institutional issues

As regards contentious proceedings before the Court of Justice, and more specifically proceedings for failure to fulfil obligations, mention should be made of Case C-610/10 *Commission* v *Spain* (judgment of 11 December 2012), which concerned the Kingdom of Spain's failure to comply with the judgment of the Court declaring that that Member State had failed to fulfil its obligations by not taking all the measures necessary to comply with a Commission decision declaring aid to be unlawful and incompatible with the common market.

First, the Court adjudicated on the rules applicable to the pre-litigation procedure that must precede an action for failure by a Member State to comply with a judgment of the Court finding a failure to fulfil obligations. The Treaty of Lisbon altered the conduct of that procedure by removing the stage relating to the issuing of a reasoned opinion. In its judgment, the Court held that a pre-litigation procedure which was initiated before the date on which that amendment entered into force, but which was still pending after that date, is governed by the new rules, laid down in Article 260(2) TFEU. As regards the reference date for assessing whether there has been such a failure to fulfil obligations, in the absence of a reasoned opinion, the Court held that the relevant date is the date of expiry of the period prescribed in the letter of formal notice issued under Article 260(2) TFEU.

Second, the Court ruled on the determination of the periodic penalty payments designed to penalise failure to comply with a judgment making a finding of failure to fulfil obligations. It held that such a penalty must be decided upon according to the degree of pressure needed in order to persuade the defaulting Member State to comply with the judgment establishing a failure to fulfil obligations and to alter its conduct in order to bring to an end the infringement complained of, taking into consideration, in principle, the duration of the infringement, its degree of gravity and the ability of the Member State concerned to pay. In applying those criteria, the Court is required to have regard, in particular, to the effects on public and private interests of failure to comply and to the urgency with which the Member State concerned must be induced to fulfil its obligations.

As regards the hierarchy of rules within the legal order of the European Union and the corresponding allocation of powers between the institutions, Case C-355/10 *Parliament* v *Council* (judgment of 5 September 2012) provided the Court with the opportunity to rule on the extent of the implementing powers of the Commission in the context of the regulatory procedure with scrutiny. In that regard, the Court recalled that, since the adoption of rules essential to a matter of European law is reserved to the legislature of the European Union, those rules must be laid down in the basic legislation and may not be delegated. Thus, provisions which, in order to be adopted, require political choices falling within the responsibility of the European Union legislature cannot be delegated. It follows that implementing measures cannot amend essential elements of basic legislation or supplement such legislation by new essential elements.

In the case of an implementing measure such as Decision 2010/252 ([1]) supplementing the Schengen Borders Code ([2]) as regards the surveillance of the sea external borders, the Court observed that, although the Schengen Borders Code, which is the basic legislation in this sphere, states in Article 12(4) that the aim of such surveillance is to apprehend individuals crossing the border illegally, it does not contain any rules concerning the measures which border guards are authorised to apply against persons or ships when they are apprehended and subsequently — such as the application of enforcement measures, the use of force or conducting the persons apprehended to a specific location — or even measures against persons implicated in human trafficking. Accordingly, the Court held that, as Decision 2010/252/EU is an implementing measure adopted on the basis of Article 12(5) of Regulation No 562/2006 ([3]) it cannot contain rules on the conferral of enforcement powers on border guards, the adoption of which entails political choices falling within the responsibilities of the European Union legislature in that it requires the conflicting interests at issue to be weighed up on the basis of a number of assessments. Furthermore, those provisions, which concern the conferral of powers of public authority on border guards, mean that the fundamental rights of the persons concerned may be interfered with to such an extent that the involvement of the European Union legislature is required. The Court therefore annulled Decision 2010/252 in its entirety.

In the area of public access to documents of the European Union institutions, which regularly provides a source of litigation, two judgments delivered on the same date merit special attention.

Case C-404/10 P *Commission* v *Éditions Odile Jacob* (judgment of 28 June 2012) and Case C-477/10 P *Commission* v *Agrofert Holding* (judgment of 28 June 2012) provided the Court with the opportunity to examine, for the first time, the relationship between Regulation No 1049/2001 on public access to documents of the European Parliament, the Council and the Commission ([4]) and Regulation No 139/2004 on the control of concentrations between undertakings. ([5])

In those two cases appeals had been brought before the Court by the Commission against two judgments of the General Court ([6]) whereby that Court had annulled two Commission decisions refusing access to documents relating to two merger control procedures.

The Court of Justice held that, in order to justify refusal of access to a document, it is not sufficient, in principle, for that document to fall within an activity or an interest, such as protection of the

([1]) Council Decision 2010/252/EU of 26 April 2010 supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ 2010 L 111, p. 20).

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

([3]) See footnote 2.

([4]) 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).

([5]) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ 2004 L 24, p. 1). This regulation repealed Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ 1989 L 395, p. 1, and corrigendum at OJ 1990 L 257, p. 13). However, Regulation No 4064/89 continues to apply to concentrations put into effect before 1 May 2004, which was the case in Case C-404/10 P.

([6]) Case T-237/05 *Éditions Jacob* v *Commission*, judgment of 9 June 2010, and Case T-111/07 *Agrofert Holding* v *Commission*, judgment of 7 July 2010.

purpose of an investigation, set out in Article 4(2) of Regulation No 1049/2001 ([7]), but the institution concerned must also supply explanations as to how access to that document could specifically and actually undermine the interest protected by an exception laid down in that article. However, it is open to the institution to base its decisions in that regard on general presumptions which apply to certain categories of documents, as similar general considerations are likely to apply to requests for disclosure relating to documents of the same nature. Such general presumptions are applicable to merger control operations because the legislation governing those procedures, notably Regulation No 139/2004 ([8]), also lays down strict rules applicable to the treatment of information obtained or established in those proceedings.

Therefore, generalised access, on the basis of Regulation No 1049/2001, to the documents exchanged in such a procedure between the Commission and the notifying parties or third parties would jeopardise the balance which the European Union sought to ensure in the merger regulation between the obligation placed on the undertakings concerned to supply the Commission with possibly sensitive commercial information to enable it to assess the compatibility of the proposed transaction with the common market, on the one hand, and the guarantee of increased protection, by virtue of the requirement of professional secrecy and business secrecy, for the information thus provided to the Commission, on the other. A general presumption of that kind justifying refusal of access to those documents is required irrespective of whether the request for access concerns a control procedure which is already closed or a pending procedure. However, that general presumption does not exclude the possibility of demonstrating that a given document, disclosure of which has been requested, is not covered by that presumption, or that there is a higher public interest justifying the disclosure of the document concerned by virtue of Article 4(2) of Regulation No 1049/2001.

The issue of the protection of fundamental rights, which is necessarily complex owing to the diversity of sources in that area, was addressed in Case C-571/10 *Kamberaj* (judgment of 24 April 2012), which concerned the interpretation of Directive 2003/109. ([9]) In its judgment, the Court ruled on the scope of Article 6(3) TEU, stating that the reference which that article makes to the European Convention on Human Rights does not require the national court, in the event of conflict between a provision of national law and that convention, to apply the provisions of that convention directly, disapplying the provision of national law incompatible with the convention.

That provision of the Treaty on European Union reflects the principle that fundamental rights form an integral part of the general principles of law the observance of which the Court ensures. However, it does not govern the relationship between the European Convention on Human Rights and the legal systems of the Member States, nor does it lay down the conclusions to be drawn by a national court in the event of conflict between the rights guaranteed by that convention and a provision of national law.

Given the place which it now occupies in proceedings before the Court, it is clear that the issue of the scope and implications of the creation of citizenship of the Union has by no means revealed all its aspects, as may be seen from a number of cases that should be mentioned.

([7]) See footnote 4.

([8]) See footnote 5.

([9]) Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44).

In Case C-348/09 *P.I.* (judgment of 22 May 2012), the Court held that criminal offences in areas of particularly serious crime, such as the sexual exploitation of children, may justify an expulsion measure against a citizen of the Union who has lived in the host Member State for more than 10 years.

Under Article 28(3) of Directive 2004/38, ([10]) a host Member State may not take an expulsion decision against Union citizens who have resided continuously on its territory for 10 years except on 'imperative grounds of public security'. ([11]) In a case involving an expulsion decision against a citizen of the Union who had served a term of imprisonment for rape of a minor, the Court ruled that Member States may regard criminal offences such as those referred to in Article 83 TFEU as constituting a particularly serious threat to one of the fundamental interests of society, which might pose a direct threat to the calm and physical security of the population and thus be covered by the concept of 'imperative grounds of public security'. None the less, those offences may justify an expulsion measure only if the manner in which they were committed discloses particularly serious characteristics. Furthermore, under European Union law issue of any expulsion measure is conditional on the requirement that the personal conduct of the individual concerned must represent a genuine, present threat affecting one of the fundamental interests of society or of the host Member State, which implies, in general, the existence in the individual concerned of a propensity to act in the same way in the future. Last, before taking an expulsion decision, the host Member State must take account of considerations such as how long the individual concerned has resided on its territory, his age, state of health, family and economic situation, social and cultural integration into that State and the extent of his links with his country of origin.

In Case C-83/11 *Rahman and Others*, ([12]) the Court provided significant clarification concerning the right for the family to be brought together for the purposes of Directive 2004/38. The main provision at issue was Article 3(2) of that directive, which provides that the host Member State of a Union citizen is to facilitate, in accordance with its national legislation, entry and residence for members of the 'extended family' of the person concerned. ([13]) As a preliminary point, the Court, relying on the wording and the structure of that directive, emphasised that the directive does not oblige the Member States to grant every application for entry or residence submitted by the 'extended family' of a migrant. None the less, it imposes an obligation on Member States to confer certain advantages on the extended family by comparison with applications submitted by other third-country nationals who have no relationship with a Union national. Those advantages consist in being able to require a decision from the host Member State on their application that is based on an extensive examination of their personal situation and duly reasoned in the event of refusal. That examination must cover, for example, the extent of economic or physical dependence and the degree of

([10]) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda at OJ 2004 L 229, p. 35, and OJ 2004 L 197, p. 34).

([11]) Article 28(3) of Directive 2004/38.

([12]) Judgment of 5 September 2012.

([13]) Article 2(2) of Directive 2004/38/EC confers extended rights on a first circle of beneficiaries, including the spouse or registered partner of the migrant, their direct common or respective descendants who are under the age of 21 or are dependants, and also their dependent direct relatives in the ascending line. Article 3(2)(a) of the directive concerns another circle of beneficiaries, the 'extended family', defined as 'any other family members, irrespective of their nationality, not falling under the definition in [Article 2(2)] who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen'.

relationship between the applicant and the Union citizen. Each Member State has a wide discretion as regards the selection of the factors to be taken into account, which must, however, be consistent with the idea of preferential treatment of applicants and must not deprive Article 3 of the directive of its effectiveness. In addition, the applicant is entitled to a judicial review of whether the national legislation and its application have remained within the limits of the wide discretion set by the directive. The Court also considered whether the leeway conferred on the States by the directive enables them to impose requirements as to the nature and the duration of the dependence of the member of the extended family vis-à-vis the European Union citizen. The Court explained that the situation of dependence vis-à-vis the Union citizen must exist in the country from which the family member concerned comes at the time when he applies to join the Union citizen on whom he is dependent. On the other hand, the Court ruled that the question whether the beneficiaries referred to in Article 3(2) of Directive 2004/38 may be refused a residence card in the host Member State on the ground that, after their entry into the host Member State, they have ceased to be dependants of that citizen 'does not fall within the scope of the directive'.

In Case C-249/11 *Byankov* (judgment of 4 October 2012), the Court ruled on the question whether the provisions of the FEU Treaty on citizenship and Directive 2004/38 preclude a Bulgarian provision under which a debtor who fails to pay an unsecured private debt may be prohibited from leaving the territory. The Court held that, even if the view could reasonably be taken that some idea of safeguarding the requirements of public policy underlies the objective of protecting creditors pursued by such a provision, it cannot be ruled out that a measure prohibiting a person from leaving the territory that is adopted on the basis of that provision pursues an exclusively economic objective. However, Article 27(1) of Directive 2004/38 expressly excludes the possibility of a Member State invoking grounds of public policy to serve economic ends. Furthermore, as regards the proportionality of such a provision, the Court pointed out that there exists within European Union law a body of legal rules that are capable of protecting creditors without necessarily restricting the debtor's freedom of movement. The Court also held that European Union law precludes a national provision under which an administrative procedure that has resulted in the adoption of a prohibition on leaving the territory, which has become final and has not been contested before the courts, may be reopened, in the event of the prohibition being clearly contrary to European Union law, only within one month of the prohibition being imposed and only at the initiative of certain bodies, in spite of the fact that such a prohibition produces legal effects with regard to its addressee. A prohibition of that kind is the antithesis of the freedom conferred by Union citizenship to move and reside within the territory of the Member States.

In Case C-364/10 *Hungary* v *Slovakia* (judgment of 16 October 2012), an action for failure to fulfil obligations was brought before the Court by one Member State against another Member State, ([14]) a remedy rarely used. ([15]) The Court ruled on the delicate question whether a measure prohibiting the Head of State of another Member State from entering the national territory infringed the provisions of the FEU Treaty on citizenship of the Union.

The Court held that a Head of State holding the nationality of a Member State unquestionably enjoys the status of citizen of the Union, which, in accordance with Article 21 TFEU, confers a primary and individual right to move and reside within the territory of the Member States, subject to the

([14]) Article 259 TFEU.

([15]) This was only the sixth time in the history of European integration that a Member State had brought a direct action for failure to fulfil obligations against another Member State. Of the five earlier cases, only three were brought to a close by a judgment (Case 141/78 *France* v *United Kingdom*, judgment of 4 October 1979; Case C-388/95 *Belgium* v *Spain*, judgment of 16 May 2000, see also press release No 36/00; and Case C-145/04 *Spain* v *United Kingdom*, judgment of 12 September 2006, see also press release No 70/06).

limitations and restrictions laid down by the Treaties and the measures adopted for their implementation. Such limitations may also be based on relevant rules of international law, which is part of the European Union legal order. In that context, the Court observed that, on the basis of customary rules of general international law and those of multilateral agreements, the Head of State enjoys a particular status in international relations which entails, inter alia, privileges and immunities. The status of Head of State therefore has a specific character, resulting from the fact that it is governed by international law, with the consequence that the conduct of such a person at international level, such as that person's presence in another State, comes under that law, in particular the law governing diplomatic relations. Such a specific feature is capable of distinguishing the person who enjoys that status from all other Union citizens, with the result that that person's access to the territory of another Member State is not governed by the same conditions as those applicable to other citizens. Consequently, the fact that a Union citizen performs the duties of a Head of State is such as to justify a limitation, based on international law, on the exercise of the right to freedom of movement conferred on that person by Article 21 TFEU. The Court concluded that European Union law did not oblige the Slovak Republic to guarantee access to its territory to the President of Hungary and dismissed the action in its entirety.

In Case C-40/11 *Iida* (judgment of 8 November 2012), the Court was asked whether a third-country national legally resident in the Member State of origin of his daughter and his spouse could, in circumstances where the daughter and spouse settled in another Member State, benefit from a right of residence under Directive 2004/38 or the provisions of the FEU Treaty on Union citizenship.

The Court observed, first of all, that that directive confers a right of residence only on relatives in the ascending line who are dependent on their child, who is a Union citizen. On the other hand, the separated, but not divorced, spouse of a Union citizen must be regarded as a member of the family within the meaning of Article 2(2) of the directive. However, the directive confers a derived right of residence solely on members of the family of a Union citizen who accompany or join that person. Last, the Court recalled that a third-country national can claim a right of residence on the basis of the provisions of the FEU Treaty on Union citizenship ([16]) only if the refusal to grant a right of residence might deny the Union citizen the genuine enjoyment of the substance of the rights associated with his status as a Union citizen or impede the exercise of his right to move and reside freely within the territory of the Member States. Purely hypothetical prospects of exercising the right to freedom of movement of Union citizens do not establish a sufficient connection with European Union law to justify the application of those provisions.

Agriculture

In respect of agricultural aid schemes, Case C-489/10 *Bonda* (judgment of 5 June 2012) provided the Court with the opportunity to rule on the legal nature of the measures provided for in the second and third subparagraphs of Article 138(1) of Regulation No 1973/2004. ([17]) Those measures consist in excluding a farmer from receiving aid for the year in respect of which he has made a false declaration as to the area eligible for aid and in reducing the aid to which he would be entitled for the following three calendar years up to an amount which corresponds to the difference between the area declared and the area determined. The Court began by recalling that penalties laid down in rules of the common agricultural policy, such as the temporary exclusion of an economic

([16]) Articles 20 TFEU and 21 TFEU.

([17]) Commission Regulation (EC) No 1973/2004 of 29 October 2004 laying down detailed rules for the application of Council Regulation (EC) No 1782/2003 as regards the support schemes provided for in Titles IV and IVa of that Regulation and the use of land set aside for the production of raw materials (OJ 2004 L 345, p. 1).

operator from the benefit of an aid scheme, are not of a criminal nature. It further observed that, in the context of a European Union aid scheme in which the granting of the aid is necessarily subject to the condition that the beneficiary offers all guarantees of probity and trustworthiness, the penalty imposed in the event of non-compliance with those requirements constitutes a specific administrative instrument forming an integral part of the scheme of aid and intended to ensure the sound financial management of public funds of the European Union. Consequently, the Court held that the exclusion of a farmer from receiving agricultural aid, on account of a false declaration of the area of his holding, is not a criminal penalty. Accordingly, such exclusion does not preclude the imposition of a criminal penalty in respect of the same facts.

Free movement of persons, services and capital

In the area of freedom of movement for persons, freedom to provide services and the free movement of capital, a number of judgments are worthy of attention. In the interests of clarity, these judgments will be presented in groups, on the basis of the particular freedom with which they deal, and then, as the case may be, of the fields of activity concerned.

In the area of freedom of movement for workers, two cases are worthy of mention. First, reference will be made to Joined Cases C-611/10 and C-612/10 *Hudzinski and Wawrzyniak* (judgment of 12 June 2012), concerning the interpretation of Regulation No 1408/71, as amended by Regulation No 647/2005, ([18]) and of Articles 45 TFEU and 48 TFEU. In this instance, the German authorities refused to grant family allowances to two Polish nationals, residing in Poland and covered by social security in that country, who had worked in Germany as a seasonal worker and a worker posted to that Member State by his employer, respectively, on the ground that comparable family allowances could be received in Poland. In that context, the Court held that Articles 14(1)(a) and 14a(1)(a) of Regulation No 1408/71 do not preclude a Member State which is not designated under those provisions as being the competent State from granting child benefits in accordance with its national law to a migrant worker who is working temporarily within the territory of that Member State — where he is subject to unlimited income tax liability, but covered by the social security regime of the competent State — including where it is established, first, that that worker has not suffered any legal disadvantage by reason of the fact that he has exercised his freedom of movement, since he has retained his entitlement to family benefits of the same kind in the competent Member State, and, second, that neither that worker nor the child for whom the benefit is claimed habitually resides within the territory of the Member State in which the temporary work was carried out. The Court made clear, however, that the rules of the FEU Treaty on the free movement of workers preclude the application, in a situation where a worker is temporarily posted in a Member State other than the competent Member State, of a rule of national law designed to prevent the overlapping of child benefits, if that rule entails, not a reduction of the amount of the benefit corresponding to the amount of a comparable benefit received in another State, but exclusion from that benefit.

Second, reference will be made to Case C-367/11 *Prete* (judgment of 25 October 2012), which concerned the grant of a tideover allowance to young persons looking for their first job. In this case, the Court held that Article 39 EC precludes a national provision which makes the right to that allowance subject to the condition that the person concerned has completed at least six years' studies in an educational establishment of the host Member State, in so far as that condition prevents other

([18]) Council Regulation (EEC) No 1408/71 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 resulting from 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).

representative factors liable to establish the existence of a real link between the person claiming the allowance and the geographic employment market concerned from being taken into account and, accordingly, goes beyond what is necessary to attain the aim pursued by that provision, which is to ensure the existence of link exists. According to the Court, such a condition, which may well place nationals of other Member States, above all, at a disadvantage, could be justified only if, by its application, the national legislature wished to ensure the existence of a real link between the person claiming that allowance and the geographic employment market concerned. That is not the case of national legislation under which, for the purpose of appraising the existence of such a link, the fact that the claimant, making use of the freedom of movement guaranteed to Union citizens by Article 18 EC, moved to the host Member State in order to establish his marital residence there, following his marriage to a national of that State, and has lived there for a certain time, and also the fact that he has been registered for a certain time as a job seeker with an employment service of that Member State while actively looking for work there, cannot be taken into account. In fact, those various circumstances are capable of establishing the existence of such a link.

In the area of freedom of establishment, the Court clarified its case-law in relation to restrictions imposed on the transfer of the seat of a company within the European Union.

First, in Case C-378/10 *VALE Építési* (judgment of 12 July 2012), the Court considered the refusal of the Hungarian authorities to register a company of Italian origin in the national commercial register following its removal from the register in Italy and its application to be converted into a company governed by Hungarian law. In that context, the Court held that Articles 49 TFEU and 54 TFEU preclude national legislation which, although enabling a company established under national law to convert, does not allow, in a general manner, a company governed by the law of another Member State to convert to a company governed by national law by incorporating such a company. According to the Court, overriding reasons in the public interest, such as the protection of the interests of creditors, minority shareholders and employees, the preservation of the effectiveness of fiscal supervision and the fairness of commercial transactions, cannot justify such legislation, when that legislation precludes, in a general manner, cross-border conversions and therefore prevents such operations from being carried out even if the abovementioned interests are not threatened. In any event, such a rule goes beyond what is necessary to achieve the objective designed to protect those interests. The Court recalled, moreover, that the host Member State is entitled to determine the national law applicable to such operations and thus to apply the national law provisions on domestic conversions governing the incorporation and functioning of a company. However, the principles of equivalence and effectiveness, respectively, preclude that State from refusing to record the company which has applied to convert as the 'predecessor in law', if such a record is made of the predecessor company in the commercial register for domestic conversions, and from refusing to take due account, when examining a company's application for registration, of documents obtained from the authorities of the Member State of origin.

Second, in Case C-380/11 *DI VI Finanziaria di Diego della Valle* (judgment of 6 September 2012), the Court held that Article 49 TFEU precludes national legislation under which the grant of a reduction in capital tax is conditional upon a company's remaining liable to that tax for the next five tax years, where the company transfers its seat to another Member State. According to the Court, such a restriction cannot be justified by the requirement of balanced allocation of powers of taxation between the Member States. Indeed, withdrawing from a company the capital tax reduction which it was receiving and requiring immediate payment when the company transfers its seat to another Member State do not ensure either the powers of taxation of the latter Member State or the balanced allocation of the powers of taxation between the Member States concerned, since the very nature of the mechanism of withdrawing an advantage implies that the Member State had agreed, in advance, to grant that advantage and, consequently, to reduce the capital tax of

resident taxpayers if the conditions laid down in the national legislation were satisfied. Moreover, that restriction cannot be justified by the need to ensure the coherence of the national tax system.

As regards the Treaty rules on freedom of establishment and freedom to provide services, reference will be made to Joined Cases C-72/10 and C-77/10 *Costa and Cifone* (judgment of 16 February 2012), which follows on from Joined Cases C-338/04, C-359/04 and C-360/04 *Placanica* (judgment of 6 March 2007). A number of questions were referred to the Court relating to measures taken by the Italian Republic to remedy the exclusion of certain betting and gaming operators, which was declared unlawful by the Court in 2007. The Court held, first of all, that Articles 43 EC and 49 EC and the principles of equal treatment and effectiveness preclude a Member State which seeks to remedy that infringement of European Union law by putting out to tender a significant number of new licences from protecting the market positions acquired by the existing operators by providing, inter alia, that a minimum distance must be observed between the establishments of new licence holders and those of existing operators. According to the Court, a system of minimum distances between outlets would be justifiable only if such rules did not have as their true objective the protection of the market positions of the existing operators, rather than the objective of channelling demand for betting and gaming into controlled systems. The Court then stated that Articles 43 EC and 49 EC preclude the imposition of penalties for engaging in the organised activity of collecting bets without a licence or police authorisation on persons who are linked to an operator which was excluded, in breach of European Union law, from an earlier tendering procedure, even following the new tendering procedure intended to remedy that breach of European Union law, in so far as that tendering procedure and the subsequent award of new licences have not in fact remedied the unlawful exclusion of that operator from the earlier tendering procedure. Last, according to the Court, it follows from Articles 43 EC and 49 EC, the principle of equal treatment, the obligation of transparency and the principle of legal certainty that the conditions and detailed rules of a tendering procedure relating to gambling on events other than horse racing and, in particular, the provisions concerning the withdrawal of licences granted under that tendering procedure must be drawn up in a clear, precise and unequivocal manner.

In the area of freedom of establishment and free movement of capital, reference will be made to Case C-35/11 *Test Claimants in the FII Group Litigation* (judgment of 13 November 2012), which follows on from a first judgment delivered in 2006 (Case C-446/04, judgment of 12 December 2006). A number of questions were again referred to the Court for a preliminary ruling on the United Kingdom tax regime applying an exemption method to nationally sourced dividends and an imputation method to foreign-sourced dividends, and the Court provided clarification of the scope of its 2006 judgment. It thus ruled, in particular, that Articles 49 TFEU and 63 TFEU preclude the regime at issue if it is established, first, that the tax credit to which the company receiving the dividends is entitled under the imputation method is equivalent to the amount of the tax actually paid on the profits underlying the distributed dividends and, second, that the effective level of taxation of company profits in the Member State concerned is generally lower than the prescribed nominal rate of tax in that State. Furthermore, the Court provided clarification of the scope of Article 63 TFEU. In that regard, it held that a company that is resident in a Member State and has a shareholding in a company resident in a third country giving it definite influence over the decisions of the latter company and enabling it to determine its activities may rely on Article 63 TFEU in order to call into question the consistency with that provision of legislation of that Member State which relates to the tax treatment of dividends originating in the third country and does not apply exclusively to situations in which the parent company exercises decisive influence over the company paying the dividends.

Last, the Treaty provisions on free movement of capital were interpreted in the context of the lending for cross-border use, free of charge, of a motor vehicle. In Joined Cases C-578/10 to C-580/10 *van*

Putten and Others (judgment of 26 April 2012), the Court, after finding that such a loan of a vehicle constitutes movement of capital within the meaning of Article 56 EC (now Article 63 TFEU), ruled that that article precludes legislation of a Member State which requires residents who have borrowed a motor vehicle registered in another Member State from a resident of that State to pay, on first use of that vehicle on the national road network, the full amount of a tax normally due on registration of a vehicle in the first Member State, without taking account of the duration of the use of that vehicle on that road network and without that person being able to invoke a right to exemption or reimbursement where that vehicle is neither intended to be used essentially in the first Member State on a permanent basis nor, in fact, used in that way. According to the Court, in such circumstances, the connection of those vehicles with the territory of the Member State would be insufficient to justify the charging of a tax normally due on registration of a vehicle in that State.

Visas, asylum and immigration

A number of judgments relating to these various areas merit attention. In Case C-620/10 *Kastrati* (judgment of 3 May 2012), the Court was requested to rule on the consequences of the withdrawal of an application for asylum within the meaning of Regulation No 343/2003. ([19]) The Court held that that regulation must be interpreted as meaning that the withdrawal of an application for asylum within the meaning of Article 2(c) of that regulation which occurs before the Member State responsible for examining that application has agreed to take charge of the applicant has the effect that that regulation can no longer be applicable. In such a case, it is for the Member State within whose territory the application was lodged to take the decisions required as a result of that withdrawal and, in particular, to discontinue the examination of the application, with a record of the information relating to it being placed in the applicant's file.

Where the applicant withdraws his single asylum application before the requested Member State has agreed to take charge of him, the principal objective of Regulation No 343/2003, namely the identification of the Member State responsible for examining an asylum application in order to guarantee effective access to an appraisal of the refugee status of the applicant, can no longer be attained.

In Joined Cases C-71/11 and C-99/11 *Y and Z* (judgment of 5 September 2012), the Court considered the conditions governing the grant of refugee status, and more particularly the concept of an act of persecution on religious grounds for the purposes of Articles 2(c) and 9(1)(a) of Directive 2004/83 ([20]). Y and Z, who were from Pakistan, lived in Germany, where they had sought asylum and protection as refugees. They claimed that they had been forced to leave Pakistan because they were members of the Ahmadiyya community.

The Court stated, first of all, that only certain forms of serious interference with the right to religious freedom — and not any interference with that right — can constitute an act of persecution that would oblige the competent authorities to grant refugee status. Thus, first, limitations on the exercise of that right which are provided for by law cannot be regarded as persecution provided

([19]) 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).

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

that they respect the essential content of that right. Second, the actual violation of that right constitutes persecution only if it is sufficiently serious and if it has a significant effect on the person concerned.

Next, the Court observed that acts that may constitute a severe violation include serious acts which interfere with the freedom of the person concerned not only to practise his faith in private circles but also to live that faith publicly.

Furthermore, the Court held that, where it is established that, upon his return to his country of origin, the person concerned will carry out religious acts which will expose him to a real risk of persecution, he should be granted refugee status. In that regard, the Court considered that, in assessing an application for refugee status on an individual basis, the national authorities cannot reasonably expect the applicant to refrain from demonstrating or practising certain religious acts in order to avoid the risk of persecution.

Last, in determining the level of risk to which the applicant would be exposed in his country of origin on account of his religion, the Court explained that the subjective circumstance that the observance of a certain religious practice in public, which is subject to the restrictions at issue, is of particular importance to the person concerned in order to preserve his religious identity is a relevant factor.

In Case C-245/11 *K* (judgment of 6 November 2012), the Court held that Article 15(2) of Regulation No 343/2003 ([21]) must be interpreted as meaning that, in circumstances where a person enjoying asylum in a Member State is dependent, because, in particular, of serious illness, on a member of his family who is an asylum seeker but whose asylum application is, under the criteria set out in Chapter III of that regulation, being examined in another Member State, the Member State in which those persons reside becomes responsible for examining the application for asylum.

The Court considered that it is for that Member State to assume the obligations which go along with that responsibility and to inform the Member State previously responsible that it is doing so, even where the latter Member State has not made a request to that effect in accordance with the second sentence of Article 15(1) of that regulation.

Article 15(2) of Regulation No 343/2003 is applicable in a situation of dependency where it is not the asylum seeker himself who is dependent on the assistance of the family member present in a Member State other than that identified as responsible by reference to the criteria set out in Chapter III of Regulation No 343/2003, but the family member present in that other Member State who is dependent on the assistance of the asylum seeker.

That provision is also applicable where the humanitarian grounds referred to therein are satisfied in relation to a dependent person within the meaning of that provision who, not being a family member within the meaning of Article 2(i) of that regulation, has family ties with the asylum seeker and is a person to whom the asylum seeker can actually provide the assistance needed in accordance with Article 11(4) of Commission Regulation No 1560/2003 ([22]) laying down detailed rules for the application of Regulation No 343/2003.

([21]) See footnote 19.

([22]) Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Regulation No 343/2003 (OJ 2003 L 222, p. 3).

Still in the area of asylum law, in Case C-364/11 *Abed El Karem El Kott and Others* (judgment of 19 December 2012) the Court interpreted the second sentence of Article 12(1)(a) of Directive 2004/83 ([23]) in harmony with the Geneva Convention ([24]) which provides the cornerstone of the international legal regime for the protection of refugees. The Court held that cessation of protection or assistance from organs or agencies of the United Nations other than the United Nations High Commission for Refugees 'for any reason' includes the situation in which a person who, after actually availing himself of such protection or assistance, ceases to receive it for a reason beyond his control and independent of his volition. It is for the competent national authorities of the Member State responsible for examining the asylum application made by such a person to ascertain, by carrying out an assessment of the application on an individual basis, whether that person was forced to leave the area of operations of such an organ or agency, which will be the case where that person's personal safety was at serious risk and it was impossible for that organ or agency to guarantee that his living conditions in that area would be commensurate with the mission entrusted to that organ or agency.

The Court also observed that the second sentence of Article 12(1)(a) of Directive 2004/83 must be interpreted as meaning that, where the competent authorities of the Member State responsible for examining the application for asylum have established that the condition relating to the cessation of the protection or assistance provided by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) is satisfied as regards the applicant, the fact that that person is *ipso facto* 'entitled to the benefit of [the] directive' means that that Member State must recognise him as a refugee within the meaning of Article 2(c) of that directive and that person must automatically be granted refugee status, provided always that he is not caught by Article 12(1)(b) or (2) and (3) of the directive.

In the area of immigration, in Case C-571/10 *Kamberaj* (judgment of 24 April 2012) the Tribunale di Bolzano (District Court, Bolzano, Italy) requested the Court to rule on the compatibility with Directive 2003/109 ([25]) of a mechanism for allocation of the funds for housing benefit which treated long-term residents of third countries worse than European Union nationals.

The Court observed, first of all, that a third-country national who has acquired the status of long-term resident in a Member State is, with respect to housing benefit, in a situation comparable to that of a citizen of the Union with the same economic need.

Next, according to the Court, it is for the national court to assess whether housing benefit falls within one of the sectors referred to in Directive 2003/09, taking into account both the integration objective pursued by that directive and the provisions of the Charter of Fundamental Rights. According to that directive, in the sectors of social assistance and social protection Member States may limit the application of equal treatment to core benefits. The Court explained that the meaning and scope of the concept of core benefits must be sought taking account of the objective pursued by that directive, namely the integration of third-country nationals who have resided legally and continually in the Member States. That concept must be interpreted in a manner that complies with the principles of the Charter of Fundamental Rights ([26]), which recognises and respects the

([23]) See footnote 20.

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

([25]) Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44).

([26]) Article 34 of the Charter of Fundamental Rights.

right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources.

In addition, the Court recalled that, as the right of third-country nationals to equal treatment in the sectors listed in that directive is the general rule, any derogation in that regard must be interpreted strictly and can be relied on only if the bodies in the Member State concerned responsible for the implementation of the directive have stated clearly that they intended to rely on that derogation.

Consequently, the Court ruled that Article 11(1)(d) of Directive 2003/109 must be interpreted as precluding a national or regional law which — when funds intended for housing assistance are allocated — provides for different treatment of third-county nationals and nationals of the Member State in which they reside, in so far as the housing assistance falls within the sectors covered by the principle of equal treatment laid down in that directive concerning third-country nationals who are long-term residents and constitutes a core benefit within the meaning of that directive, matters which it is for the national court to determine.

As regards border controls, more than two years after *Melki and Abdeli* ([27]) the Court, in Case C-278/12 PPU *Adil* (judgment of 19 July 2012), interpreted Articles 20 and 21 of Regulation No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) ([28]), this time on a reference for a preliminary ruling from the Council of State of the Kingdom of the Netherlands. The proceedings before that court were between a third-country national, who had been placed in administrative detention owing to the unlawful nature of his situation on Netherlands territory after having been stopped during a check carried out in the Netherlands in the frontier area with Germany, and the Minister voor Immigratie, Integratie en Asiel (Minister for Immigration, Integration and Asylum) and they concerned the lawfulness of that check and, consequently of his detention.

The Court held that Articles 20 and 21 of that regulation do not preclude national legislation which enables officials responsible for border surveillance and the monitoring of foreign nationals to carry out checks, in a geographic area 20 kilometres from the land border between a Member State and the State parties to the Convention implementing the Schengen Agreement, with a view to establishing whether the persons stopped satisfy the requirements for lawful residence applicable in the Member State concerned, when those checks are based on general information and experience regarding the illegal residence of persons at the places where the checks are to be made, when they may also be carried out to a limited extent in order to obtain such general information and experience-based data in that regard, and when the carrying out of those checks is subject to certain limitations concerning, inter alia, their intensity and frequency. Those checks are not border checks prohibited by Article 20 of Regulation No 562/2006 and Article 21(a) of that regulation prohibits such checks only where they have an effect equivalent to border checks.

Last, in Case C-83/12 PPU *Vo* (judgment of 10 April 2012), the Court provided clarification of its case-law on visa policy, in the context of a reference for a preliminary ruling from the Bundesgerichtshof (Federal Court of Justice, Germany) in criminal proceedings against a Vietnamese national for having secured the entry into German territory of third-country nationals holding visas obtained by fraud. The Court ruled that Articles 21 and 34 of Regulation No 810/2009 establishing a Community

([27]) Joined Cases C-188/10 and C-189/10, judgment of 22 June 2010.

([28]) See footnote 2.

Code on Visas (Visa Code) ([29]) do not preclude national provisions under which assisting illegal immigration constitutes an offence subject to criminal penalties where the persons smuggled, third-country nationals, hold visas which they obtained fraudulently by deceiving the competent authorities of the Member State of issue as to the true purpose of their journey, without prior annulment of those visas.

Judicial cooperation in civil matters and private international law

In 2012 the Court delivered a number of decisions relating to judicial cooperation in civil matters.

In Case C-92/12 PPU *Health Service Executive* (judgment of 26 April 2012), the Court ruled in urgent preliminary ruling proceedings on various aspects of Regulation No 2201/2003 ([30]) concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility. First of all, the Court ruled that a judgment of a court of a Member State which orders a child to be placed in a secure institution providing therapeutic and educational care situated in another Member State and which entails that, for her own protection, the child is deprived of her liberty for a specific period, falls within the material scope of Regulation No 2201/2003. Next, the Court held that the consent referred to in Article 56(2) of the regulation must be given, prior to the making of the judgment on placement of a child, by a competent authority, governed by public law. It stated that where there is uncertainty as to whether a consent was validly given in the requested Member State, because it was not possible to identify with certainty the competent authority in that State, an irregularity may be corrected in order to ensure that the requirement of consent imposed by Article 56 of the regulation has been fully complied with.

As regards the enforceability of a judgment of a court of a Member State which orders the compulsory placement of a child in a secure care institution situated in another Member State, the Court ruled that such a judgment must, before its enforcement in the requested Member State, be declared to be enforceable in that Member State. In order not to deprive the regulation of its effectiveness, the application for a declaration of enforceability must be dealt with with particular expedition and appeals brought against such a decision of the court of the requested Member State must not have a suspensive effect. Last, the Court ruled that consent to placement in the requested Member State is valid only for the period stated in the judgment of the court of the requesting Member State and that, where the judgment is renewed, new consent must be sought from the requested Member State. Likewise, a judgment on placement for a specific period declared to be enforceable can be enforced in the requested Member State only for the period stated in the judgment on placement.

In Case C-527/10 *ERSTE Bank Hungary* (judgment of 5 July 2012), the Court was required to determine whether Article 5(1) of Regulation No 1346/2000 ([31]) on insolvency proceedings, which concerns the rights in rem of third parties over the debtor's assets situated on the territory of a Member State other than that of the place in which the insolvency proceedings were opened, is also applicable where the asset in question is on the territory of a State which became a member of

([29]) Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ 2009 L 243, p. 1).

([30]) Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1).

([31]) Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L 160, p. 1).

the European Union only after the proceedings against the debtor had been opened. First of all, the Court recalled that Article 4 of the regulation lays down a general principle that the law of the Member State in which the insolvency proceedings are opened is to apply to the proceedings and to their effects. However, in order to protect legitimate expectations and the legal certainty of transactions in Member States other than the State in which proceedings are opened, the regulation lays down a number of exceptions to that rule. Those exceptions include Article 5(1), which states that the opening of insolvency proceedings does not affect the rights *in rem* of creditors in respect of assets belonging to the debtor which are situated within the territory of another Member State at the time of the opening of the proceedings. According to the Court, Article 5(1) is to be understood as a provision which, derogating from the rule of the law of the State in which the proceedings are opened, allows the law of the Member State on whose territory the asset concerned is situated to be applied to the right *in rem* of a creditor or a third party. The Court held that that provision is also applicable to insolvency proceedings opened before the accession of a new Member State to the European Union where, on the date of accession, the assets of the debtor — an insolvent company whose seat is in an 'old' Member State — on which the right *in rem* concerned was based were situated in the new Member State.

In a number of other decisions the Court was required to interpret Regulation No 44/2001 ([32]), in particular in Case C-292/10 *G* (judgment of 15 March 2012), where the Court held that Article 4(1) of that regulation must be interpreted as meaning that it does not preclude the application of Article 5(3) of that regulation to an action for liability arising from the operation of an Internet site against a defendant who is probably a European Union citizen but whose whereabouts are unknown if the court seised of the case does not hold firm evidence to support the conclusion that the defendant is in fact domiciled outside the European Union. The Court also ruled that European Union law must be interpreted as meaning that it does not preclude the issue of a judgment by default against a defendant on whom, given that it is impossible to locate him, the document instituting proceedings has been served by public notice under national law, provided that the court seised of the matter has first satisfied itself that all investigations required by the principles of diligence and good faith have been taken to trace the defendant. Furthermore, in the same decision and with regard this time to Regulation No 805/2004 ([33]), the Court made clear that European Union law must be interpreted as precluding certification as a European Enforcement Order within the meaning of Regulation No 805/2004 of a judgment by default issued against a defendant whose address is unknown.

In another decision, in Case C-133/11 *Folien Fischer and Fofitec* (judgment of 25 October 2012), the Court explained the scope of Article 5(3) of Regulation No 44/2001, ruling that an action for a negative declaration seeking to establish the absence of liability in tort, delict, or quasi-delict falls within the scope of that provision.

In Case C-619/10 *Trade Agency* (judgment of 6 September 2012), the Court had the opportunity to interpret the grounds for refusal to recognise and enforce judgments delivered by default which are provided for in Article 34(1) and (2) of Regulation No 44/2001.

Article 34(2) allows the court of the Member State in which enforcement is sought to refuse to recognise and enforce a judgment given in default of appearance against a defendant on whom

([32]) 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).

([33]) Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (OJ 2004 L 143, p. 15).

the document instituting the proceedings was not served or notified in sufficient time and in such a way as to enable him to arrange for his defence. Under Article 54 of that regulation, the Member State which seeks enforcement of a court judgment must send a certificate to the State in which enforcement is sought, indicating the date of service of the document instituting the proceedings. The Court recalled that the function ascribed to the certificate is to facilitate, at the beginning of the procedure established by that regulation, the adoption of the declaration of enforceability of the judgment given in the Member State of origin. However, that objective cannot be attained by undermining in any way the rights of the defence. Respect for the rights of the defence means that the defendant should, where necessary, be able to appeal in an adversarial procedure against the declaration of enforceability if he considers one of the grounds for non-enforcement to be present. Where the defendant brings such an action, claiming that he was not served with the document instituting the proceedings, the court of the Member State in which enforcement is sought has jurisdiction to carry out an independent assessment of all the evidence and ascertain whether that evidence is consistent with the information in the certificate, for the purpose of establishing whether the defendant in default of appearance was in fact served with the document instituting proceedings and if service was effected in sufficient time and in such a way as to enable him to arrange for his defence.

The Court also ruled on the possibility for the court to rely on the clause relating to public policy provided for in Article 34(1) of the regulation, on the ground that the judgment to be enforced would infringe the defendant's right to a fair trial. According to the Court, the court of the Member State in which enforcement is sought may refuse to enforce a judgment given in default of appearance which disposes of the substance of the dispute but which does not contain an assessment of the subject-matter or the basis of the action and which lacks any argument of its merits only if it appears to that court, in the light of all the relevant circumstances, that that judgment is a manifest and disproportionate breach of the defendant's right to a fair trial.

Last, in Case C-190/11 *Mühlleitner* (judgment of 6 September 2012), the Court held that the possibility for a consumer to bring proceedings against a foreign trader before the national courts, pursuant to Article 15(1)(c) of Regulation No 44/2001, does not require that the contract at issue was concluded at a distance. That is applied, in particular, where a consumer travels to the Member State of the trader in order to sign the contract. The Court made clear that the essential condition to which the application of that rule is subject is that relating to a commercial or professional activity directed to the consumer's domicile. In that regard, both the establishment of contact at a distance and the reservation of goods or services at a distance or, a fortiori, the conclusion of a consumer contract at a distance, are indications that the contract is connected with such an activity.

Police and judicial cooperation in criminal matters

In this area, two cases relating to Framework Decision 2002/584 ([34]) and to the European arrest warrant deserve special mention.

In the first decision, in Case C-192/12 PPU *West* (judgment of 28 June 2012), the Court considered the concept of 'executing Member State' within the meaning of Article 28(2) of the Framework Decision. That article provides that a person who has been surrendered to the issuing Member State pursuant to a European arrest warrant may be surrendered by that State to a Member State other than the 'executing Member State' under a European arrest warrant issued for any offence

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

committed prior to his surrender only with the consent of that 'executing Member State'. The problem in *West* related to the determination of the 'executing Member State' that had to give its consent to a subsequent surrender to another Member State, since the person sought had been subject to successive requests for surrender. Relying on the objective of the establishment of an area of freedom, security and justice pursued by the Framework Decision, and in accordance with the mutual confidence which must exist between the Member States, the Court held that Article 28(2) of the Framework Decision must be interpreted as meaning that, where a person has been subject to more than one surrender between Member States under successive European arrest warrants, the subsequent surrender of that person to a Member State other than the Member State having last surrendered him is subject to the consent only of the Member State which carried out that last surrender.

In the second case, Case C-42/11 *Lopes Da Silva Jorge* (judgment of 5 September 2012), the Court interpreted Article 4(6) of the Framework Decision, which states that the execution of a European arrest warrant may be refused where the person sought for the purposes of the execution of his sentence is staying in, or is a national or a resident of, the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law. The Court was required to rule on the legality of the French legislation transposing that provision, which excluded automatically and absolutely the possibility for nationals of other Member States who were resident or staying in France of serving their sentence in France. In application of the principle of non-discrimination on the ground of nationality, set out in Article 18 TFEU, the Court held that a Member State cannot limit to its own nationals the benefit of non-execution of a European arrest warrant with a view to executing on its own territory a sentence of imprisonment imposed in another Member State.

Competition

In the area of competition, the Court again delivered in the past year a number of judgments which merit attention.

As regards agreements, decisions and concerted practices, reference will be made, first, to Case C-17/10 *Toshiba Corporation and Others* (judgment of 14 February 2012), which concerns the application of the European Union competition rules to a cartel which produced its effects in a Member State before that State's accession to the European Union. The Court ruled that, in the context of a proceeding initiated after 1 May 2004, the provisions of Article 81 EC and Article 3(1) of Regulation No 1/2003 do not apply to a cartel which produced effects, in the territory of a Member State which acceded to the European Union on 1 May 2004, during periods before that date. Furthermore, the opening by the European Commission of a proceeding against a cartel under Chapter III of Regulation No 1/2003 does not, pursuant to Article 11(6) of Regulation No 1/2003, read in combination with Article 3(1) of that regulation, cause the competition authority of the Member State concerned to lose its power, by the application of its national competition law, to penalise the anti-competitive effects produced by that cartel on the territory of that Member State during periods before its accession to the European Union. As regards the application of the *ne bis in idem* principle, the Court also made clear that that principle does not preclude penalties which the national competition authority of the Member State concerned imposes on undertakings participating in a cartel on account of the anti-competitive effects to which the cartel gave rise in the territory of that Member State before its accession to the European Union, where the fines imposed on the same cartel members by a Commission decision taken before the decision of that national competition authority was adopted were not designed to penalise those effects.

Second, in Joined Cases C-628/10 P and C-14/11 P *Alliance One International and Standard Commercial Tobacco* v *Commission* and *Commission* v *Alliance One International and Others* (judgment of 19 July 2012), the Court provided clarification of its case-law on the presumption of decisive influence exercised by a parent company over its wholly-owned subsidiary. The Court held that, while there is nothing to prevent the Commission from establishing that a parent company actually exercises decisive influence over its subsidiary by means of other evidence or by a combination of such evidence and that presumption, the principle of equal treatment requires that where the Commission adopts a particular method in order to determine whether liability should be attributed to parent companies whose subsidiaries have taken part in the same cartel, it must, save in specific circumstances, rely on the same criteria in the case of all those parent companies. Furthermore, where there are allegations of discrimination, the Commission's rights of defence do not extend to the possibility that it may defend the lawfulness of its decision by producing, during the proceedings, evidence which serves to establish the liability of a parent company but which is not mentioned in that decision. The Court also stated that a parent company and its subsidiary, which is itself the parent company of the company which has committed an infringement, may both be deemed to be members of an economic unit which includes the latter company. The mere fact that that parent company and its subsidiary exercise, during a certain period, only joint control of the subsidiary which has committed the infringement does not preclude a finding that those companies formed an economic unit, provided that it is established that both parent companies did in fact exercise decisive influence over the commercial policy of the subsidiary which committed the infringement.

Third and last, reference will be made to Case C-199/11 *Otis and Others* (judgment of 6 November 2012), which arose in the context of a civil action brought by the European Commission before the Belgian courts for damages in respect of loss caused to the European Union by a cartel in the lift sector which may have affected certain public contracts awarded by various European Union institutions and bodies. The Court, before which a number of questions were referred for a preliminary ruling concerning the Commission's powers and respect for the right to effective judicial protection, ruled, first, that European Union law does not preclude the European Commission from representing the European Union before a national court hearing such an action, and there is no need for the Commission to have authorisation for that purpose from those institutions or bodies. Second, the Court held that Article 47 of the Charter of Fundamental Rights of the European Union does not preclude the European Commission from bringing an action before a national court, on behalf of the European Union, for damages in respect of loss sustained by the European Union as a result of an agreement or practice which has been found by a Commission decision to infringe Article 81 EC or Article 101 TFEU. After recalling that the right to effective judicial protection consists, in particular, in the right of access to a tribunal and the principle of equality of arms, the Court observed, first of all, that the rule that the national courts are bound by the finding of unlawful conduct made in a Commission decision does not mean that the parties do not have access to a tribunal, as European Union law provides for a system of judicial review of Commission decisions in competition matters which affords all the safeguards required by the Charter of Fundamental Rights. Next, according to the Court, while it is true that the national courts are bound by the Commission's findings as to the existence of anti-competitive conduct, the fact remains that they alone have jurisdiction to assess the existence of loss and a direct causal link between that conduct and the loss sustained. Even when the Commission has in its decision determined the precise effects of the infringement, it still falls to the national courts to determine individually the loss caused to each of the persons who have brought an action for damages. For those reasons, the Commission is not judge and party in its own cause. Last, as regards the principle of equality of arms, the Court recalled that the aim of that principle is to ensure a balance between the parties to proceedings, thus ensuring that any document submitted to a court may be examined and challenged by any party to the proceedings. The Court found that the information received by the Commission during the

infringement proceedings had not been supplied to the national court by the Commission. In any event, according to the Court, European Union law prohibits the Commission from using information gathered in the course of a competition investigation for purposes other than those of the investigation.

In the area of abuse of a dominant position, in Case C-209/10 *Post Danmark* (judgment of 27 March 2012) the Court was requested to rule on the circumstances in which a policy, pursued by an undertaking in a dominant position, in this instance a historical postal operator, of charging low prices to certain former customers of a competitor must be regarded as constituting an exclusionary abuse contrary to Article 82 EC. In its judgment, the Court held that Article 82 EC prohibits, among other things, an undertaking in a dominant position from adopting practices that have an exclusionary effect on competitors considered to be as efficient as it is itself and strengthen its dominant position by the use of methods other than those which come within the scope of competition on the merits. Thus, with specific regard to the practices at issue, the Court ruled that Article 82 EC must be interpreted as meaning that a policy by which a dominant undertaking charges low prices to certain major customers of a competitor may not be considered to amount to an exclusionary abuse merely because the price that undertaking charges to one of those customers is lower than the average total costs attributed to the activity concerned, but higher than the average incremental costs pertaining to that activity, defined as the costs that would disappear in the short or medium term if the undertaking were to give up the activity concerned. In order to assess the existence of anti-competitive effects in such circumstances, it is necessary to consider whether that pricing policy, without objective justification, produces an actual or likely exclusionary effect, to the detriment of competition and thus of consumers' interests. Also, the Court ruled that the fact that a pricing policy applied by an undertaking in a dominant position may be characterised as price discrimination cannot in itself suggest the presence of an exclusionary abuse. Furthermore, the Court ruled that it is open to an undertaking in a dominant position to provide justification for behaviour that is liable to be caught by the prohibition laid down in Article 82 EC. In particular, such an undertaking may demonstrate, for that purpose, either that its conduct is objectively necessary or that the exclusionary effect produced may be counterbalanced, or even outweighed, by advantages in terms of efficiency that also benefit consumers.

The other case to be noted in the area of abuse of a dominant position, Case C-457/10 P *AstraZeneca* v *Commission* (judgment of 6 December 2012), was an appeal against a judgment of the General Court which had essentially upheld a Commission decision finding abusive practices imputable to AstraZeneca, a pharmaceutical undertaking. In its decision, the Commission took issue with the undertaking, first, for an abusive practice consisting in deliberately misleading representations made to patent offices in certain Member States in order to obtain or maintain supplementary protection certificates — which extend the patent protection — so as to keep manufacturers of generic products away from the market. The second abusive practice complained of consisted in the withdrawal of marketing authorisations for a medicinal product in certain Member States, in order to delay and render more difficult the marketing of generic medicinal products and also to prevent parallel imports.

As regards, in particular, the first abuse, concerning supplementary protection certificates, the Court recalled that European Union law prohibits an undertaking in a dominant position from eliminating a competitor and thereby strengthening its position by using methods other than those which come within the scope of competition on the merits. The Court concluded, in this regard, that the General Court had been correct to find that the pharmaceutical undertaking's consistent and linear conduct, which was characterised by the notification of misleading representations to the patent offices and a lack of transparency by which the undertaking had deliberately attempted to mislead the patent offices and judicial authorities in order to maintain its monopoly on

the medicinal products market for as long as possible, was a practice which fell outside the scope of competition on the merits and was therefore an abuse of a dominant position. As regards the second abuse of a dominant position, the Court held that the deregistration, without objective justification and after expiry of the exclusive right recognised by European Union law, of the marketing authorisations, with the aim of impeding the introduction of generic products and parallel imports, also fell outside the scope of competition on the merits. Last, as regards the fine imposed on the companies, the Court held that the General Court had not erred in law in concluding, in particular, that, in the absence of mitigating circumstances or special circumstances, the abuses must be characterised as serious infringements. Consequently, there was no need to reduce the amount of the fine.

In the area of concentrations, appeals were brought before the Court against two judgments of the General Court delivered in connection with the transaction whereby Vivendi Universal had sold its book publishing assets to Lagardère, through a nominee holding arrangement involving the bank Natexis Banques Populaires. Part of the assets had then been sold to Wendel following approval by the Commission, in the context of the implementation of the undertakings given by Lagardère in order to obtain approval of the concentration.

In the first case, Case C-551/10 P *Éditions Odile Jacob* v *Commission* (judgment of 6 November 2012), the Court upheld the decision whereby the General Court had dismissed an action against the Commission decision declaring the concentration to be compatible with the common market. In particular, the Court held that the fact that the transaction had been completed before being notified to the Commission was of no relevance to the legality of that decision. Although such a circumstance may possibly entail penalties prescribed by European Union law, in particular the imposition of a fine, it cannot lead to the annulment of the Commission's decision, since it has no relevance to the compatibility of the concentration at issue with the common market.

In the second judgment, in Joined Cases C-553/10 P and C-554/10 P *Commission and Lagardère* v *Éditions Odile Jacob* (judgment of 6 November 2012), the Court upheld the judgment whereby the General Court had annulled the Commission decision approving the acquisition by Wendel of part of the assets held by Lagardère at the close of the concentration. The Court held that, when the Commission declares a concentration to be compatible with the common market subject to compliance by the buyer with certain undertakings, including the obligation to sell assets and to appoint a trustee who will be responsible for ensuring that that sale proceeds, such a trustee must, first, be independent of the parties and, in addition, act independently of the parties, with the result that a lack of independence is sufficient ground for annulment of the Commission's decision. The question whether that trustee did act independently arises only if it has first been established that the trustee was in fact independent of the parties. Thus, where a Court of the European Union correctly finds that the trustee was not independent, it is under no obligation to examine whether that trustee actually acted in a way which demonstrated that lack of independence.

Last, as regards anti-competitive measures attributable to Member States, and more specifically aid, Case C-124/10 P *Commission* v *EDF* (judgment of 5 June 2012) concerned the Commission's classification as State aid of a waiver by the French Republic of a tax claim which it held over Électricité de France, a public undertaking which at the time was wholly owned by the French Republic. The question for the Court was whether a Member State which is a tax creditor of a public undertaking and at the same time its sole shareholder may rely on the application of the 'private investor in a market economy' test, and therefore avoid its action being classified as State aid, where it brings about an increase in the capital of that undertaking by waiving that tax claim or whether it is appropriate to rule out that test, as the Commission had done in this instance, on the ground that

the claim is fiscal in nature and that the State uses its prerogatives as a public authority in waiving the claim.

In its judgment, the Court recalled that a measure cannot be classified as State aid if the recipient public undertaking could, in circumstances which correspond to normal market conditions, have obtained the same advantage as that which has been made available to it through State resources. For the purpose of assessing whether the same advantage would have been conferred in such conditions by a private investor, the Court held that only the benefits and obligations linked to the situation of the State as shareholder, to the exclusion of those linked to its situation as a public authority, are to be taken into account. Accordingly, the applicability of the private investor test ultimately depends on the Member State concerned having conferred, in its capacity as shareholder and not in its capacity as public authority, an economic advantage on an undertaking belonging to it. Furthermore, the Court pointed out that the financial situation of the recipient public undertaking depends not on the means used to place it at an advantage, however that may have been effected, but on the amount that the undertaking ultimately receives. The Court therefore held that the private investor test could be applicable even where fiscal means had been employed.

However, the Court made clear that, if a Member State relies on the applicability of the private investor test, it must establish unequivocally and on the basis of objective and verifiable evidence that the measure has been implemented in its capacity as shareholder. In particular, that evidence must show clearly that, before or at the same time as conferring the economic advantage, the Member State concerned took the decision to make an investment, by means of the measure actually implemented, in the public undertaking which it controls. If the Member State concerned produces such evidence, it is for the Commission to carry out a global assessment, taking into account any evidence enabling it to determine whether the Member State took the measure in question in its capacity as shareholder or as a public authority. Consequently, the Court held that the objective pursued by the French Republic could be taken into account for the purposes of determining whether the latter had acted in its capacity as shareholder.

Still in the area of State aid, Case C-610/10 *Commission* v *Spain* (judgment of 11 December 2012) concerned the Kingdom of Spain's failure to comply with the judgment of the Court finding that that Member State had failed to fulfil its obligations by not taking the measures necessary to comply with a Commission decision declaring aid to be unlawful and incompatible with the common market.

On the question of the recovery of the aid declared to be unlawful and incompatible with the common market, the Court recalled that, if the undertaking which received the aid has been declared insolvent, the restoration of the previous situation and the elimination of the distortion of competition resulting from the unlawfully paid aid may in principle be achieved through registration of the liability relating to the repayment of such aid in the schedule of liabilities. However, such registration can meet the recovery obligation only if, where the State authorities are unable to recover the full amount of the aid, the insolvency proceedings result in the winding up of the undertaking which received the unlawful aid, that is to say, in the definitive cessation of its activities. Consequently, the Court held that, where the undertaking which received the unlawful aid is insolvent and a company has been created to continue some of its activities, the pursuit of those activities may, where the aid concerned is not recovered in its entirety, prolong the distortion of competition brought about by the competitive advantage which it enjoyed on the market by comparison with its competitors. Thus, such a newly created company may, if it retains that advantage, be required to repay the aid in question. In such a case, the registration in the schedule of liabilities of the liability relating to such aid is not sufficient, on its own, to make the distortion of competition thus created disappear.

Fiscal provisions

As regards value added tax, Case C-500/10 *Belvedere Costruzioni* (judgment of 29 March 2012) is particularly noteworthy. The case concerned the application, with respect to value added tax, of an exceptional Italian provision under which proceedings pending before the tax court of third instance were automatically concluded where they originated in an application brought at first instance more than 10 years before the date of the entry into force of that provision and the tax authorities had been unsuccessful at first and second instance; the consequence of that automatic closure was that the decision of the court of second instance became final and binding and the debt claimed by the tax authorities was extinguished. The Court held that Article 4(3) TEU and Articles 2 and 22 of Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes ([35]) do not preclude such legislation. According to the Court, the obligation to ensure effective collection of the European Union's resources cannot run counter to compliance with the principle that judgment should be given within a reasonable time, which, under the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, must be observed by the Member States when they implement European Union law and which must also be observed under Article 6(1) of the European Convention on Human Rights.

Transport

In the field of air transport, three judgments gave the Court the opportunity to interpret a number of provisions of Regulation No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights ([36]).

After the judgment in *Sturgeon and Others* ([37]), Joined Cases C-581/10 and C-629/10 *Nelson and Others* and *TUI Travel and Others* (judgment of 23 October 2012) enabled the Court to confirm its case-law that passengers whose flights are significantly delayed may be compensated. The Court held that Articles 5, 6 and 7 of Regulation No 261/2004 ([38]) must be interpreted as meaning that passengers whose flights are delayed are entitled to compensation under that regulation where they suffer, on account of those flights, a loss of time equal to or in excess of three hours, that is to say, where they reach their final destination three hours or more after the arrival time originally scheduled by the air carrier. Such a delay does not, however, entitle passengers to compensation if the air carrier can prove that the long delay is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken, namely circumstances beyond the actual control of the air carrier. Furthermore, the Court observed that the requirement to compensate passengers whose flights are delayed is compatible with the Montreal Convention. ([39]) The Court also considered that that obligation is not incompatible with the principle of legal certainty or the principle of proportionality.

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

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

([37]) Joined Cases C-402/07 and C-432/07, judgment of 19 November 2009. See *Annual Report 2009*, p. 29.

([38]) See footnote 36.

([39]) Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention), approved on behalf of the European Community by Decision 2001/539/EC of 5 April 2001 (OJ 2001 L 194, p. 38).

Two cases decided on the same date enabled the Court to clarify the scope of the concept of 'denied boarding'.

In Case C-22/11 *Finnair* (judgment of 4 October 2012), the Court held that the concept of 'denied boarding', within the meaning of Articles 2(j) and 4 of Regulation No 261/2004, ([40]) must be interpreted as relating not only to cases where boarding is denied because of overbooking but also to those where boarding is denied on other grounds, such as operational reasons. According to the Court, limiting the scope of 'denied boarding' exclusively to cases of overbooking would have the practical effect of substantially reducing the protection afforded to passengers under Regulation No 261/2004 and would therefore be contrary to the aim of that regulation — referred to in recital 1 in the preamble thereto — of ensuring a high level of protection for passengers, which means that a broad interpretation of the rights granted to passengers is justified. Furthermore, the Court held that Articles 2(j) and 4(3) of Regulation No 261/2004 must be interpreted as meaning that the occurrence of 'extraordinary circumstances' resulting in an air carrier rescheduling flights after those circumstances arose cannot give grounds for denying boarding on those later flights or for exempting that carrier from its obligation, under Article 4(3) of that regulation, to compensate a passenger to whom it denies boarding on such a flight.

In Case C-321/11 *Rodríguez Cachafeiro and Martínez-Reboredo Varela-Villamor* (judgment of 4 October 2012), the Court held that Article 2(j) of Regulation No 261/2004, ([41]) read in conjunction with Article 3(2) of that regulation, must be interpreted as meaning that the concept of 'denied boarding' includes a situation where, in the context of a single contract of carriage involving a number of reservations on immediately connecting flights and a single check-in, an air carrier denies boarding to some passengers on the ground that the first flight included in their reservation has been subject to a delay attributable to that carrier and the latter mistakenly expected those passengers not to arrive in time to board the second flight.

Approximation of laws

Since the approximation of laws is applied in a great variety of areas, it is not surprising that the case-law relating thereto should be very varied. The Court ruled twice on the legal protection of computer programs by interpreting the two directives of 1991 ([42]) and 2009 ([43]) concerning such protection, ruling, first, on the object of that protection and, second, on the exhaustion of the exclusive right to distribute a copy of a computer program. The facts giving rise to the first case on which it adjudicated, Case C-406/10 *SAS Institute* (judgment of 2 May 2012), had led the United Kingdom court to refer a number of questions to it for a preliminary ruling. The Court was requested to clarify the object of the protection, by copyright, of computer programs and, in particular, whether that protection extended to functionality and the programming language. The Court held, first of all, that neither the functionality of a computer program nor the programming language and the format of data files used in a computer program in order to exploit certain of its functions constitute a form of expression. For that reason, they are not covered by copyright protection. The Court stated, however, that if a third party were to procure the part of the source code or the object code relating to the programming language or to the format of data files used

([40]) See footnote 36.

([41]) See footnote 36.

([42]) Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs (OJ 1991 L 122, p. 42).

([43]) Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (OJ 2009 L 111, p. 16).

in a computer program, and if that party were to create, with the aid of that code, similar elements in its own computer program, that conduct would be liable to be prohibited by the author of the program. The Court then observed that, according to Directive 91/250, the purchaser of a software licence is entitled to observe, study and test the functioning of that software in order to determine the ideas and principles which underlie any element of the program, and that any contractual provisions contrary to that right will be null and void. The Court also held that the determination of those ideas and principles may be carried out within the framework of the acts permitted by the licence. Consequently, according to the Court, the owner of the copyright in a computer program may not, by relying on the licensing agreement, prevent the person who has obtained that licence from observing, studying or testing the functioning of the program in order to determine the ideas and principles which underlie all the elements of the program in the case where that person carries out acts covered by that licence and the acts of loading and running necessary for the use of the program, on condition that that person does not infringe the exclusive rights of the owner of the copyright in the program. Nor, according to the Court, is there any infringement of copyright where, as in the case in point, the lawful acquirer of the licence did not have access to the source code of the computer program but merely studied, observed and tested that program in order to reproduce its functionality in a second program. The Court then stated that the reproduction, in a computer program or a user manual for that program, of certain elements described in the user manual for another computer program protected by copyright can constitute an infringement of the copyright in that manual if that reproduction constitutes the expression of the intellectual creation of the author of the manual. In that regard, the Court considered that, in the case in point, the keywords, syntax, commands and combinations of commands, options, defaults and iterations consisted of words, figures or mathematical concepts which, considered in isolation, were not, as such, an intellectual creation of the author of the program, since they were not an expression of the creativity of the author. Therefore, according to the Court, it was for the national court to ascertain whether the reproduction alleged in the main proceedings constituted the expression of the intellectual creation — which is protected by copyright — of the author of the user manual for the computer program.

In the second case, Case C-128/11 *UsedSoft* (judgment of 3 July 2012), the Court, on a reference for a preliminary ruling from the Bundesgerichtshof, explained that the principle of the exhaustion of the right to distribute applies not only where the owner of the copyright markets copies of his software on a material medium (CD-ROM or DVD), but also where he distributes them by downloading from his Internet site. Where the owner of the copyright makes available to his customer a copy — whether tangible or intangible — and at the same time concludes, in return for payment, a licence agreement granting the customer the right to use that copy for an unlimited period, the owner sells that copy to the customer and thus extinguishes his exclusive right of distribution. Such a transaction involves a transfer of the right of ownership of that copy. Accordingly, even if the licence agreement prohibits a further transfer, the owner of the right can no longer oppose the resale of that copy.

The Court observed, in particular, that if the application of the principle of the exhaustion of the right of distribution were limited solely to copies of computer programs that are sold on a material medium, the owner of the copyright would be able to control the resale of copies downloaded via the Internet and to demand further remuneration on the occasion of each new sale, even though the first sale of the copy had already enabled the rightholder to obtain an appropriate remuneration. Such a restriction of the resale of copies of computer programs downloaded from the Internet would go beyond what is necessary to safeguard the specific subject-matter of the intellectual property concerned. Furthermore, the exhaustion of the right of distribution extends to the copy of the computer program sold as corrected and updated by the copyright holder. Even if the maintenance agreement is for a limited period, the functionalities corrected, altered or added on the

basis of such an agreement form an integral part of the copy originally downloaded and can be used by the customer for an unlimited period.

The Court emphasised, however, that if the licence acquired by the first acquirer relates to a greater number of users than he needs, he is not, however, authorised by the effect of the exhaustion of the distribution right to divide the licence and resell it in part. Furthermore, an original acquirer who resells a tangible or intangible copy of a computer program for which the copyright holder's right of distribution is exhausted must make the copy downloaded onto his own computer unusable at the time of its resale. If he continued to use it, he would infringe the copyright holder's exclusive right of reproduction of his computer program. Unlike the exclusive right of distribution, the exclusive right of reproduction is not exhausted by the first sale. However, Directive 2009/24 authorises any reproduction necessary to enable the lawful acquirer to use the computer program in accordance with its intended purpose. Such reproductions cannot be prohibited by contract.

In that context, the Court answered the question referred to it by stating that any subsequent acquirer of a copy for which the copyright holder's right of distribution is exhausted is a lawful acquirer for that purpose. He can therefore download on to his computer the copy sold to him by the first acquirer. Such a download must be regarded as a reproduction that is necessary to enable the new acquirer to use the program in accordance with its intended purpose. Thus, the new acquirer of the user licence may, as lawful acquirer of the corrected and updated copy of the computer program concerned, download that copy from the copyright holder's website.

Still in the field of copyright, the Court ruled on the concept of holder of copyright, and the rights flowing therefrom, in a dispute between the principal director of a documentary film and the producer of that film concerning the implementation of the contract whereby the principal director had transferred his copyright and certain exploitation rights in the film to the producer. A number of provisions of European Union law were concerned by this reference for a preliminary ruling from an Austrian court, more specifically Directives 92/100, ([44]) 93/83, ([45]) 93/98 ([46]) and 2001/29. ([47])

The Court thus held, in Case C-277/10 *Luksan* (judgment of 9 February 2012), that Articles 1 and 2 of Directive 93/83, and Articles 2 and 3 of Directive 2001/29 in conjunction with Articles 2 and 3 of Directive 2006/115 and with Article 2 of Directive 2006/116, ([48]) must be interpreted as meaning that rights to exploit a cinematographic work (reproduction right, satellite broadcasting right and any other right of communication to the public through the making available to the public) vest by operation of law, directly and originally, in the principal director. Consequently, those provisions must be interpreted as precluding national legislation which allocates those exploitation rights by operation of law exclusively to the producer of the work in question. The Court went on to state that Article 2 of Directive 93/83 and Articles 2 and 3 of Directive 2001/29 cannot be interpreted,

([44]) Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ 1992 L 346, p. 61).

([45]) Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ 1993 L 248, p. 15).

([46]) Council Directive 93/98/EEC of 29 October 1993 harmonising the term of protection of copyright and certain related rights (OJ 1993 L 290, p. 9).

([47]) 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).

([48]) Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (OJ 2006 L 372, p. 12).

in the light of Article 1(4) of the World Intellectual Property Organisation Treaty, as meaning that a Member State might in its national legislation, on the basis of Article 14 bis of the Berne Convention for the Protection of Literary and Artistic Works and in reliance upon the power which that convention article is said to accord to it, deny the principal director of a cinematographic work the rights to exploit that work, because such an interpretation, first, would not respect the competence of the European Union in the matter, second, would not be compatible with the aim pursued by Directive 2001/29 and, finally, would not be consistent with the requirements flowing from Article 17(2) of the Charter of Fundamental Rights of the European Union guaranteeing the protection of intellectual property.

The Court then held that European Union law allows the Member States the option of laying down a presumption of transfer, in favour of the producer of a cinematographic work, of rights to exploit the cinematographic work (satellite broadcasting right, reproduction right and any other right of communication to the public through the making available to the public), provided that such a presumption is not an irrebuttable one that would preclude the principal director of that work from agreeing otherwise.

On the other hand, it held that, in his capacity as author of a cinematographic work, the principal director of that work must be entitled, by operation of law, directly and originally, to the right to the fair compensation provided for in Article 5(2)(b) of Directive 2001/29.

The Court thus stated that European Union law does not allow the Member States the option of laying down a presumption of transfer, in favour of the producer of a cinematographic work, of the remuneration rights vesting in the principal director of that work, whether that presumption is couched in irrebuttable terms or may be departed from. Unless it is to be deprived of all practical effect, Article 5(2)(b) of Directive 2001/29 on the harmonisation of certain aspects of copyright and related rights in the information society imposes on a Member State which has introduced the private copying exception into its national law an obligation to achieve a certain result, in the sense that that State must ensure, within the framework of its powers, that the fair compensation intended to compensate the rightholders harmed for the prejudice sustained is actually recovered. The fact that such an obligation to achieve the result of recovery of the fair compensation for the rightholders is imposed on the Member States is conceptually irreconcilable with the possibility for a rightholder to waive that fair compensation and, a fortiori, with the option for Member States to lay down such a presumption of transfer of the relevant rights.

In another case, Case C-5/11 *Donner* (judgment of 21 June 2012), the Court ruled on the possibility of restricting the free movement of goods for copyright protection reasons. A German national had been convicted by the Landgericht München II (Regional Court, Munich II) for aiding and abetting the prohibited exploitation of copyright-protected works. According to the findings of the Landgericht München II, the national concerned had participated between 2005 and 2008 in the distribution in Germany of replicas of furnishings protected by copyright in Germany. Those copies originated in Italy, where the furnishings were not protected by copyright between 2002 and 2007, or not fully protected at the material time because, according to the Italian case-law, that protection was unenforceable as against manufacturers who had reproduced or marketed the replicas for a certain time. The replicas had been offered for sale to customers residing in Germany through advertisements and supplements in magazines, direct publicity letters and a German website.

The seller, based in Italy, recommended to its purchasers an Italian freight forwarder, which was managed by the German national concerned. When the goods were delivered to customers in Germany, the freight forwarder's drivers collected the purchase price of the replicas of the works and the freight charges. From a legal viewpoint, the ownership of the goods sold had been transferred

to the German customers in Italy. The actual power of disposal over those goods had, on the other hand, been transferred to the customers, with the assistance of the freight forwarder, only in Germany, when they were delivered. Thus, according to the Landgericht München II, distribution for copyright purposes had not taken place in Italy, but in Germany, where it was prohibited without the authorisation of the holders of the copyright.

The Bundesgerichtshof, on appeal, sought to ascertain whether the application of German criminal law constituted in this instance an unjustified restriction on the free movement of goods guaranteed by European Union law.

The Court observed, first, that the application of criminal law in this instance presupposed that there was, on the national territory, a 'distribution to the public' within the meaning of European Union law. ([49]) In that regard, it held that a trader who directs his advertising at members of the public residing in a given Member State and creates or makes available to them a specific delivery system and payment method, or allows a third party to do so, thereby enabling those members of the public to receive delivery of copies of works protected by copyright in that same Member State, makes such a distribution in the Member State where the delivery takes place. The Court therefore left to the national court the task of determining whether there was evidence supporting a conclusion that that trader made such a distribution to the public.

Second, the Court stated that the prohibition on distribution under criminal law in Germany constitutes an obstacle to the free movement of goods. Such a restriction may, however, be justified on grounds of protection of industrial and commercial property. The restriction in question is based on the disparity, in the different Member States, in the practical conditions of protection of the respective copyrights. That disparity is inseparably linked to the very existence of the exclusive rights. Here, the protection of the right of distribution cannot be deemed to give rise to a disproportionate or artificial partitioning of the markets. The application of criminal law may be considered necessary to protect the specific subject-matter of the copyright, which confers, in particular, the exclusive right of exploitation. The restriction in question thus appears to be justified and proportionate to the aim pursued.

The Court's answer was therefore that European Union law does not preclude a Member State from bringing a prosecution under national criminal law against the freight forwarder for the offence of aiding and abetting the prohibited distribution of copyright-protected works where they are distributed to the public on the territory of that Member State in the context of a sale, aimed specifically at the public of that State, concluded in another Member State where those works are not protected by copyright or the protection of which is not enforceable as against third parties.

The Court twice had occasion to adjudicate on the concept of communication to the public in the context of Directive 2006/115, ([50]) which, in contrast to private use, requires payment of a fee to the owner of the rights to exploit the broadcast work. Both cases concerned broadcasts in the course of a trade or business — by the operator of a hotel in the first case and by a dentist in the second case — of phonograms in business premises. In the two judgments delivered on the same

([49]) See footnote 47.

([50]) Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ 2006 L 376, p. 28). This directive, which entered into force on 16 January 2007, codified and repealed Council Directive 92/100/EEC of 19 November 1992 on lending right and on certain rights related to copyright in the field of intellectual property (OJ 1992 L 346, p. 61).

date, in Case C-135/10 *SCF* and Case C-162/10 *Phonographic Performance (Ireland)* (judgments of 15 March 2012), the Court considered the criteria that must be used in order to determine whether or not the communication of the work is made to the public.

The Court began by observing that it had already held that the concept of 'communication to the public' requires an individual assessment and that, for the purpose of such an assessment, account must be taken of several complementary criteria, which are not autonomous and are interdependent. Among these criteria is, first, the indispensable role of the user. That user makes a communication to the public when it intervenes, in full knowledge of the consequences of its action, to give access to a broadcast containing the protected work to its customers. The Court identified certain aspects of the concept of public. In that regard, the 'public' must consist of an indeterminate number of potential listeners and a fairly large number of persons. The Court added that it is relevant that a 'communication to the public' is of a profit-making nature. It is thus understood that the public which is the subject of the communication is both targeted by the user and receptive, in one way or another, to that communication, and not merely 'caught' by chance.

As regards the number of potential listeners, the Court has already held that the guests of a hotel constitute a fairly large number of persons, such that they must be considered to be a public, and that the broadcasting of phonograms by a hotel operator is of a profit-making nature. Indeed, the action of the hotel operator by which it gives access to the broadcast work to guests constitutes an additional service which has an influence on the hotel's standing and, therefore, on the price of rooms. Moreover, it is likely to attract additional guests who are interested in that additional service.

Consequently, such an operator is a 'user' carrying out an act of 'communication to the public' of a broadcast phonogram within the meaning of European Union law.

As such, that operator is obliged to pay equitable remuneration for the distribution of a broadcast phonogram, in addition to that paid by the broadcaster. When a hotel operator communicates a broadcast phonogram in its guest bedrooms, it is using that phonogram in an autonomous way and transmitting it to a public which is distinct from and additional to the one targeted by the original act of communication. Moreover, the hotel operator derives economic benefits from that transmission which are independent of those obtained by the broadcaster or the producer of the phonograms.

The Court also held that a hotel operator which provides in guest bedrooms, not televisions and/or radios, but other apparatus and phonograms in physical or digital format capable of being broadcast or heard by means of that apparatus, is a 'user' making a 'communication to the public' of a phonogram for the purposes of European Union law. It is therefore obliged to pay equitable remuneration for the transmission of those phonograms.

In addition, according to the Court, although European Union law limits the right to equitable remuneration in the case of 'private use', it does not allow Member States to exempt a hotel operator which makes a 'communication to the public' of a phonogram from the obligation to pay such remuneration.

In that context, the Court explained that it is not the private nature or otherwise of the use of the work by the guests of a hotel, but whether the use made of the work by the operator is private or not, that is relevant for the purpose of determining whether the operator may rely on the limitation based on 'private use'. However, the 'private use' of a protected work communicated to the public by its user constitutes a contradiction in terms, since 'public' is, by definition, 'not private'.

It was by reference to the same criteria, and by adopting the same reasoning, that the Court held that, unlike the operator of a hotel, a dentist who broadcast phonograms free of charge in his dental practice, for the benefit of his patients and enjoyed by them without any active choice on their part, is not making a 'communication to the public' for the purposes of European Union law.

Although a dentist intervenes deliberately in the broadcast of phonograms, his patients generally form a very consistent group of persons and thus constitute a determinate circle of potential recipients, and not persons in general. As regards the number of persons to whom the same broadcast phonogram is made audible by the dentist, the Court stated that, in the case of patients of a dentist, the number of persons is not large, indeed it is insignificant, given that the number of persons present in his practice at the same time is, in general, very limited. Moreover, although there are a number of patients in succession, the fact remains that, as those patients attend one at a time, they do not generally hear the same phonograms, in the case of broadcast phonograms in particular. Last, such a broadcast is not of a profit-making nature. The patients of a dentist visit a dental practice with the sole objective of receiving treatment, as the broadcasting of phonograms is in no way a part of dental treatment. They have access to certain phonograms by chance and without any active choice on their part, according to the time of their arrival at the practice and the length of time they wait and the nature of the treatment they receive. In those circumstances, the Court concluded that it cannot be presumed that the usual customers of a dentist are receptive as regards the broadcast in question and that such a broadcast does not confer entitlement to remuneration in favour of the producers of phonograms.

The Court also considered on a number of occasions the question of unfair terms in consumer contracts, in particular in three cases, Case C-453/10 *Pereničová and Perenič* (judgment of 15 March 2012), Case C-472/10 *Invitel* (judgment of 26 April 2012) and Case C-618/10 *Banco Español de Crédito* (judgment of 14 June 2012). Two of those references for a preliminary ruling concerned the compatibility of national laws with European Union law while the third concerned the powers of the national courts.

In the first case, a Slovak court requested the Court to analyse, by reference to the provisions of Directive 93/13, ([51]) the terms of a credit agreement concluded by individuals, in order to ascertain whether the provisions of that directive authorised it to declare a consumer contract containing unfair terms void when such a solution would be more advantageous for the consumer. The referring court observed that a declaration that the credit agreement was invalid in its entirety, made on account of the unfair nature of certain of its terms, would be more advantageous for the applicants than maintaining the validity of the non-unfair terms in the agreement. In the former case, the consumers in question would be obliged to pay only interest for late payment, at the rate of 9%, rather than all the charges relating to the loan granted, which would be much higher than that interest.

In its judgment, the Court observed, first of all, that the objective of the directive is to eliminate unfair terms in consumer contracts, while maintaining, if possible, the validity of the contract as a whole, and not to annul all contracts containing such terms. As regards the criteria for assessing whether a contract can indeed continue to exist without the unfair terms, the Court observed that it is necessary to use an objective approach, so that the situation of one of the parties to the contract, in this case the situation of the consumer, cannot be regarded as the decisive criterion for the purpose of determining the fate of the contract. Consequently, the directive precludes that, when assessing whether a contract containing one or more unfair terms can continue to exist without

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

those terms, only the advantageous effects for the consumer of the annulment of the contract as a whole are taken into consideration.

However, the Court observed that the directive carried out only a partial and minimum harmonisation of national legislation concerning unfair terms, while allowing Member States the option of giving consumers a higher level of protection than that for which the directive provides. Consequently, that directive does not preclude a Member State from enacting, in compliance with European Union law, legislation under which a contract concluded between a trader and a consumer which contains one or more unfair terms may be declared void as a whole where that will provide better protection of the consumer.

Last, the Court stated in answer that a commercial practice which consists in indicating in a credit agreement an annual percentage rate lower than the real rate must be regarded as 'misleading' under the Unfair Commercial Practices Directive, ([52]) in so far as it causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise. According to the Court, although that circumstance may be taken into account, among other elements, for the purposes of establishing the unfairness of the terms of a contract under the Unfair Terms Directive, it is not such as to establish, automatically and on its own, that the terms are unfair. Indeed, all the circumstances of the particular case must be examined before the clauses in question can be classified. Also, a finding that a commercial practice is unfair has no direct effect on the validity of the contract as a whole.

Another case, this time a reference to the Court for a preliminary ruling from a Hungarian court, gave rise to the judgment in *Invitel* relating to the compatibility with European Union law of national legislation on unfair terms in contracts concluded with consumers.

The Hungarian consumer protection authority is empowered to request the courts to declare an unfair term in a consumer contract invalid if the use of such a term by a trader affects a significant number of consumers or causes significant harm. According to the Hungarian legislation, a declaration of invalidity made by a court following public-interest proceedings (class action) applies to any consumer who has concluded a contract with a seller or supplier which includes that term.

The Hungarian consumer protection authority had received a large number of complaints from consumers concerning a fixed-line telephone operator which had unilaterally inserted into the general conditions of subscriber contracts a term under which it was entitled to invoice customers retroactively for the fees charged in the event of payment of invoices by money order. Furthermore, the method of calculation of those money order fees had not been specified in those contracts.

Taking the view that the term in question constituted an unfair contractual term, the authority requested the Hungarian courts to declare it void and to order reimbursement to the telephone operator's customers of the amounts wrongly invoiced by way of those fees.

A Hungarian district court hearing the case asked the Court of Justice whether the national provision that allowed all affected consumers to benefit from the legal effects of a declaration that

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

an unfair terms is void, made following public-interest proceedings, is compatible with the Unfair Terms Directive. ([53])

In its judgment, the Court observed, first of all, that that directive obliges Member States to permit persons or organisations having a legitimate interest in protecting consumers to bring an action for an injunction in order to obtain a judicial decision as to whether contract terms drawn up for general use are unfair and, where appropriate, to have them prohibited. The Court none the less made clear that the directive does not seek to harmonise the penalties applicable where a term has been found to be unfair in proceedings brought by those persons or organisations.

Next, the Court observed that the effective implementation of the deterrent objective of public-interest proceedings requires that terms declared unfair in such an action brought against the seller or supplier concerned are not binding on either consumers who are parties to the proceedings or those who have concluded with that seller or supplier a contract to which the same general conditions apply. In that connection, the Court stated that public-interest proceedings aimed at eliminating unfair terms may also be brought before those terms have been used in contracts.

In those circumstances, the Court stated that the Hungarian legislation at issue is consistent with the aim of the directive whereby the Member States are required to ensure that adequate and effective means exist to prevent the use of unfair terms. Consequently, that legislation is compatible with the directive.

The Court then added that the national courts are required of their own motion, also with regard to the future, to draw the appropriate conclusions from the finding, in an action for an injunction, of invalidity, so that consumers who have concluded a contract containing such a term and to which the same general conditions apply are not bound by the unfair term.

Last, as regards assessment of whether the term which it was requested to appraise was unfair, the Court replied that that assessment fell within the jurisdiction of the national court. As part of that assessment, the Hungarian court would have to determine whether, in the light of all the terms appearing in the contract and of the applicable national legislation, the reasons for, or the method of, the amendment of the fees connected with the service to be provided were set out in plain, intelligible language and whether consumers had a right to terminate the contract.

The third case relating to unfair terms in consumer contracts originated in Spain, where application may be made to the courts for an order for payment of an outstanding and payable pecuniary debt which does not exceed EUR 30 000 provided that the amount of that debt is duly established. If such an application is made in accordance with those requirements, the debtor must pay his debt or may object to payment within a period of 20 days, in which case his case will be heard in an ordinary civil procedure. None the less, the Spanish legislation does not authorise the courts dealing with an application for an order for payment to hold, of their own motion, that unfair terms in a contract concluded between a seller or supplier and a consumer are void. Thus, assessment of the unfairness of the terms of such a contract is permitted only where the consumer objects to payment.

Furthermore, where a Spanish court is authorised to find that an unfair term in a consumer contract is void, the national legislation allows it to modify the contract by revising the content of that term in such a way as to remove its unfairness.

([53]) See footnote 51.

A private individual had entered into a loan agreement for the sum of EUR 30 000 with a Spanish bank in order to purchase a motor vehicle. Although the term of the contract had been fixed at 2014, the creditor bank took the view that it had expired before that date since, in September 2008, reimbursement of seven monthly repayments had not yet been made. Thus, the bank made application to the court of first instance for an order for payment corresponding to the unpaid monthly repayments plus contractual interest and costs. The court declared of its own motion that the term relating to interest for late payment was void on the ground that it was unfair, the rate having been fixed at 29%, and fixed the new rate of such interest at 19%, referring to the statutory rate of interest and to the rate of interest for late payment. It also ordered the credit institution to recalculate the amount of the interest.

In the proceedings on the appeal against that decision, the Spanish court asked the Court, first, whether the Unfair Terms Directive ([54]) precludes legislation of a Member State, such as that at issue in the main proceedings, which does not permit a court dealing with an application for an order for payment to assess of its own motion whether a term in a consumer contract is unfair; second, the Spanish court sought to ascertain whether the Spanish legislation which permitted the courts not only to strike out but also to revise the content of the unfair terms was compatible with that directive. In its judgment, the Court stated, first, that the national court is required to assess of its own motion whether a contractual term in a consumer contract in unfair, provided that it has the legal and factual elements necessary for that task available to it. The Court observed that the Spanish legislation does not permit a court dealing with an application for an order for payment to assess of its own motion, even though it already has available to it the legal and factual elements necessary for that task, whether the terms in a contract concluded between a seller or supplier and a consumer are unfair. In those circumstances, the Court considered that such a procedural arrangement is liable to undermine the effectiveness of the protection which the Unfair Terms Directive was intended to confer on consumers. The Court concluded that the Spanish procedural legislation is not compatible with that directive in so far as it makes impossible or excessively difficult, in proceedings initiated by sellers or suppliers against consumers, the application of the protection which the directive seeks to confer on consumers. The Court stated, however, second, that, according to that directive, an unfair term in a contract concluded between a seller or supplier and a consumer is not binding on the consumer and that the contract containing such a term will continue to bind the parties upon those terms if it is capable of continuing in existence without that unfair term. Accordingly the Court held that the directive precludes the Spanish legislation in that it allows a national court, where it finds that an unfair term is void, to revise the content of that term.

The Court considered that the power to do so, if it were conferred on the national court, would be liable to eliminate the dissuasive effect on sellers and suppliers of the straightforward non-application with regard to the consumer of the unfair terms. The protection afforded to consumers if that power were used would thus be less efficient than that resulting from the non-application of those terms. Indeed, if it were open to the national court to revise the content of unfair terms, sellers and suppliers would remain tempted to use those terms in the knowledge that, even if they should be declared invalid, the contract could none the less be modified by the court in such a way as to safeguard their interests.

Consequently, where they find the existence of an unfair term, the national courts are required solely to exclude the application of such a term so that it will not produce binding effects on consumers, and are not authorised to revise the content of the unfair term. The contract containing the term must continue in existence, in principle, without any amendment other than that resulting

([54]) See footnote 51.

from the deletion of the unfair terms, in so far as, in accordance with the rules of domestic law, such continuity of the contract is legally possible.

In a completely different area, the case concerning genetically modified organisms ('GMO's) with which the Court had to deal — in Case C-36/11 *Pioneer Hi Bred Italia* (judgment of 6 September 2012) — originated in a dispute before an Italian court concerning an authorisation for the cultivation of GMOs.

A Commission decision authorising the placing on the market of inbred lines and hybrids derived from maize line MON 810 had been adopted on application by Monsanto Europe on the basis of Directive 90/220. ([55]) That company notified to the Commission, in particular under the provisions of Regulation No 1829/2003, ([56]) the varieties of MON 810 maize as 'existing products', and then the Commission approved the inclusion of 17 varieties derived from MON 810 maize in the common catalogue. However, Monsanto Europe did not effect a notification under the provisions of Directive 2001/18 ([57]) to the competent national authority within the prescribed period, but subsequently applied for renewal of the authorisation to place varieties of MON 810 maize on the market pursuant to the provisions of Regulation No 1829/2003.

A company whose main business is the global production and distribution of conventional and genetically modified seeds planned to cultivate the MON 810 maize varieties listed in the common catalogue. It therefore applied to the competent Italian ministry for authorisation to cultivate those varieties in accordance with the relevant national legislation. The ministry informed that company, by a note, that it could not consider its application for authorisation to cultivate hybrids of genetically modified maize already listed in the common catalogue 'pending the adoption by the regions of rules to ensure the coexistence of the conventional, organic and genetically modified crops, as provided for in the circular from Mipaaf [Ministero delle Politiche agricole alimentari e forestali; Ministry for Agriculture, Food and Forestry Policy] of 31 March 2006'.

In its action for annulment of that note, the company disputed the requirement for national authorisation for the cultivation of products such as GMOs listed in the common catalogue. Furthermore, it disputed the interpretation of Article 26a of Directive 2001/18, according to which the cultivation of GMOs in Italy would not be authorised until the regions had adopted rules to implement measures ensuring the coexistence of conventional, organic and genetically modified crops.

In those circumstances, the Italian Council of State decided to stay proceedings and to refer a question to the Court for a preliminary ruling concerning the system for national authorisation of the cultivation of GMOs.

The Court held that the cultivation of GMOs such as the MON 810 maize varieties cannot be made subject to a national authorisation procedure when the use and marketing of those varieties are authorised under Regulation No 1829/2003 and those varieties have been accepted for inclusion in the common catalogue of varieties of agricultural plant species provided for in Directive

([55]) 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).

([56]) 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).

([57]) 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).

2002/53 ([58]) on the common catalogue of varieties of agricultural plant species, as amended by Regulation No 1829/2003. Regulation No 1829/2003 and Directive 2002/53 both seek to enable the free use and marketing of GMOs throughout the European Union, provided that they are authorised in accordance with that regulation and accepted for inclusion in the common catalogue pursuant to that directive. Furthermore, the Court considered that the conditions imposed by those two acts, for authorisation or inclusion in the common catalogue, cover the requirements for the protection of health and the environment.

The Court then explained that Article 26a of Directive 2001/18 does not permit a Member State to prohibit in a general manner the cultivation on its territory of such GMOs pending the adoption of coexistence measures to avoid the unintended presence of GMOs in other crops. Indeed, an interpretation of that article which would enable the Member States to establish such a prohibition would run counter to the system implemented by Regulation No 1829/2003, which consists in ensuring the immediate free movement of products authorised at Community level and accepted for inclusion in the common catalogue, once the requirements of protection of health and the environment have been taken into consideration during the authorisation and acceptance procedures. Thus, according to the Court, Article 26a of Directive 2001/18 can give rise to restrictions, or even to geographically restricted prohibitions, only through the effect of coexistence measures actually adopted in compliance with the objective of such measures.

In an area unrelated to the preceding one, the Tribunal Supremo (Supreme Court, Spain) asked the Court whether, on the basis of Directive 2002/20 ([59]) ('the Authorisation Directive'), the Member States may impose charges for the installation, on municipal public land, of the infrastructures necessary for the supply of telecommunications services to users of the telecommunications network. In its judgment in Joined Cases C-55/11, C-57/11 and C-58/11 *Vodafone España and France Telecom España* (judgment of 12 July 2012), the Court held, first of all, that, within the framework of the Authorisation Directive, Member States may not levy any fees or charges in relation to the provision of networks and electronic communication services other than those provided for by that directive. According to the Court, Member States are entitled, in particular, to impose charges for the rights to install facilities on, over or under public or private property. In that regard, the Court stated that that directive does not define either the concept of installation of facilities on, over or under public or private property or the person responsible for paying the fee for rights relating to that installation. However, the Court observed that, according to Directive 2002/21, ([60]) the rights to permit the installation on public or private property of installations — that is to say, of physical infrastructure — are granted to an undertaking authorised to provide public communications networks and entitled, on that basis, to install the necessary facilities. Consequently, the fee for the right to install facilities can be imposed only on the holder of those rights, that is to say, on the proprietor of the infrastructures installed on, over or under the public or private property concerned.

In those circumstances, the Court held that European Union law does not permit Member States to impose that fee on operators which, without being proprietors of the infrastructures, use them to provide mobile telephony services. It then stated that as Article 13 of the Authorisation Directive, on the imposition of fees, is couched in unconditional and precise terms, it may be invoked directly

([58]) Council Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species (OJ 2002 L 193, p. 1).

([59]) Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) (OJ 2002 L 108, p. 21).

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

by individuals before the national courts in order to dispute the application of a decision by a public authority that is incompatible with that provision.

Last, the Bundesgerichtshof requested the Court to clarify the concept of 'information of a precise nature' in Directive 2003/6, ([61]) which, with the aim of ensuring the integrity of the financial markets in the European Union and enhancing investor confidence in those markets, prohibits insider dealing and requires issuers of financial instruments to disclose, as soon as possible, inside information which is of direct concern to them. 'Inside information' is defined as information of a precise nature, which has not yet been made public, which relates, directly or indirectly, to one or more financial instruments or their issuers and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or the price of related derivative financial instruments. Directive 2003/124 ([62]) provides a more specific definition of the concept of 'information of a precise nature'. Thus, the information must refer to a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so.

The background to the reference for a preliminary ruling from the German court was a dispute between a German national and Daimler AG concerning the loss which he claimed to have suffered as a result of the allegedly late public disclosure by that company of information relating to the early departure of the Chairman of its Board of Management. The company's share price rose steeply following the publication of the decision of Daimler's Supervisory Board that the Chairman of the Board of Management would leave his post at the end of the year and that he would be replaced; however, the German national concerned had sold his shares in Daimler shortly before that announcement was published.

The national court was uncertain whether precise information concerning the departure of the Chairman of the Board of Management might have existed before the decision of the Supervisory Board was taken, since the Chairman of the Board of Management had already discussed his intention to leave with the Chairman of the Supervisory Board and other members of the Supervisory Board and the Board of Management had also subsequently been informed.

The Court responded in Case C-19/11 *Gelti* (judgment of 28 June 2012) by stating that, in the case of a protracted process intended to bring about a particular circumstance or to generate a particular event, not only that future circumstance or future event, but also the intermediate steps of that process which are connected with bringing about that future circumstance or event, may be regarded as precise information. Indeed, an intermediate step in a protracted process may in itself constitute a set of circumstances or an event within the meaning normally attributed to those terms. That interpretation not only holds true for those steps which have already come into existence or have already occurred, but also concerns steps which may reasonably be expected to come into existence or occur.

Any other interpretation would risk undermining the objectives of that directive, which are to protect the integrity of the European Union financial markets and to enhance investor confidence in those markets. If it were precluded that information relating to an intermediate step in a protracted process could be deemed to be of a precise nature, that would remove the obligation to disclose

([61]) Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (OJ 2003 L 96, p. 16).

([62]) Commission Directive 2003/124/EC of 22 December 2003 implementing Directive 2003/6 as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest (OJ 2003 L 339, p. 70).

that information, even if it were quite specific and even though the other elements making up inside information were also present. In such a situation, certain parties in possession of that information could be in an advantageous situation vis-à-vis other investors and would be able to profit from that information, to the detriment of those who are unaware of it.

As regards the concept of a set of circumstances or an event which may reasonably be expected to come into existence or to occur, the Court explained that this refers to future circumstances or events from which it appears, on the basis of an overall assessment of the factors existing at the relevant time, that there is a realistic prospect that they will come into existence or occur. Accordingly, it is not necessary to demonstrate a high likelihood that such circumstances or events will come into existence or occur. Furthermore, the magnitude of the possible effect on the prices of the financial instruments concerned is of no relevance to the interpretation of that concept.

Trade marks

In a case relating to trade mark law, Case C-307/10 *Chartered Institute of Patent Attorneys* (judgment of 19 June 2012), the Court considered the requirements for the identification of the goods or services in respect of which trade mark protection is sought.

An application to register a term as a national trade mark had been filed in the United Kingdom and, in order to identify the services covered by that registration, the applicant had used general terms corresponding exactly to those of the heading of the class of services concerned. The national authority competent for the registration of trade marks refused that application on the basis of the national provisions transposing Directive 2008/95. ([63]) That authority concluded that the application covered not only services of the kind specified by the applicant for registration but also every other service falling within the relevant class. The term at issue therefore lacked distinctive character and it was also descriptive. Moreover, there was no evidence that the word sign concerned had acquired a distinctive character through use in relation to the services in question before the date of the application for registration. Nor had the applicant requested that such services be excluded from its trade mark application.

The applicant for registration appealed against the refusal to register and the High Court of Justice asked the Court about the requirements of clarity and precision for identification of the goods and services in respect of which trade mark protection is applied for and the possibility of using, for that purpose, general indications of the class headings of the official classification of goods and services.

In its judgment, the Court held, first, that the directive must be interpreted as meaning that it requires the goods and services for which trade mark protection is sought to be identified by the applicant with sufficient clarity and precision to enable the competent authorities and economic operators, on that basis alone, to determine the extent of the protection conferred by the trade mark. The competent authorities must know with sufficient clarity and precision the goods or services covered by a trade mark in order to be able to fulfil their obligations in relation to the prior examination of applications for registration and the publication and maintenance of an appropriate and precise register of trade marks. In addition, economic operators must be able to acquaint themselves, with clarity and precision, with registrations or applications for registration made by

([63]) Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (OJ 2008 L 299, p. 25).

their actual or potential competitors and thus to obtain relevant information about the rights of third parties.

Second, the Court held that the directive does not preclude the use of the general indications of the class headings of the Nice classification in order to identify the goods and services for which trade mark protection is sought. However, that identification must be sufficiently clear and precise to allow the competent authorities and economic operators to determine the scope of the protection sought. In that context, the Court observed that some of the general indications in class headings of the official classification are, in themselves, sufficiently clear and precise, while others are too general and cover goods or services which are too variable to be compatible with the trade mark's function as an indication of origin. It is therefore for the competent authorities to make an assessment on a case-by-case basis, according to the goods or services for which the applicant seeks the protection conferred by the trade mark, in order to determine whether those indications meet the requirements of clarity and precision.

Last, the Court made clear that an applicant for a national trade mark who uses all the general indications of a particular class heading to identify the goods or services for which trade mark protection is sought must specify whether its application is intended to cover all the goods or services included in the alphabetical list of that class or only some of those goods or services. Where the application concerns only some of those goods or services, the applicant is required to specify which of the goods or services in that class are intended to be covered.

Thus, it was for the referring court to determine whether, when it used all the general indications of a class heading in the Nice classification, the applicant for registration did or did not specify in its application whether or not that application covered all the services in that class.

Economic and monetary policy

Following a reference for a preliminary ruling from the Supreme Court (Ireland), received on 3 August 2012, the Court, sitting as a full Court and applying the accelerated procedure, ruled in Case C-370/12 *Pringle* (judgment of 27 November 2012) that European Union law does not preclude the conclusion and ratification by the Member States whose currency is the euro of the Treaty establishing the European stability mechanism ('the ESM Treaty').

Applying the simplified revision procedure introduced by the Treaty of Lisbon, ([64]) the European Council had adopted on 25 March 2011 Decision 2011/199, ([65]) which provides for the addition to the Treaty on the Functioning of the European Union (TFEU) of a new provision ([66]) according to which the Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The States of the euro area had then concluded the ESM Treaty on 2 February 2012.

In answer to a question on the validity of Decision 2011/199, the Court recalled that the simplified revision procedure may be applied only to the internal policies and actions of the European Union and cannot extend the powers conferred on the European Union by the Treaties.

([64]) Article 48(6) TEU.

([65]) European Council Decision 2011/199/EU of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro (OJ 2011 L 91, p. 1).

([66]) The new paragraph 3 of Article 136 TFEU.

As regards the first of those conditions, the Court held, first of all, that the amendment at issue does not encroach on the exclusive competence of the European Union in the area of monetary policy for Member States whose currency is the euro. Whereas the primary objective of the European Union's monetary policy is to maintain price stability, the ESM Treaty pursues an objective that is clearly distinct, namely the stability of the euro area as a whole. The mere fact that that economic policy measure may have indirect effects on the stability of the euro does not mean that it can be treated as equivalent to a monetary policy measure. Furthermore, the ESM Treaty serves to complement the new regulatory framework for strengthened economic governance of the European Union, which establishes closer coordination and surveillance of the economic and budgetary policies conducted by the Member States. The objective of the establishment of the ESM Treaty is the management of financial crises which might arise in spite of preventive action taken in accordance with the new regulatory framework. The ESM Treaty therefore forms part of economic policy and not monetary policy. Nor does the amendment at issue affect the competence conferred on the European Union in the area of the coordination of the Member States' economic policies. As the provisions of the Treaty on European Union and the TFEU do not confer any specific power on the European Union to establish a stability mechanism of the kind envisaged by Decision 2011/199, the Member States whose currency is the euro are entitled to conclude an agreement between themselves for the establishment of a stability mechanism. Furthermore, the reason why the grant of financial assistance by the ESM Treaty is subject to strict conditionality under the contested amendment of the TFEU is in order to ensure that that mechanism will operate in a way that will comply with European Union law, including the measures adopted by the European Union in the context of the coordination of the Member States' economic policies.

As regards the second condition for application of the simplified revision procedure, the Court held that the amendment of the TFEU does not create any legal basis on which the European Union might undertake any action which was not previously possible and therefore does not increase the powers conferred on the European Union by the Treaties.

The Court held, moreover, that neither the various provisions of the Treaty on European Union and the TFEU mentioned by the Supreme Court, nor the principle of effective judicial protection, preclude the conclusion of an agreement such as the ESM Treaty.

The Court stated, in particular, that the aim of the 'no bail-out clause', ([67]) pursuant to which the European Union or a Member State is not to be liable for or assume the commitments of another Member State, is to ensure that the Member States follow a sound budgetary policy by ensuring that they remain subject to the logic of the market when they enter into debt. Accordingly, it does not prohibit the granting of financial aid by one or more Member States to a Member State which remains responsible for its commitments to its creditors, provided that the conditions attached to such assistance are such as to prompt that Member State to implement a sound budgetary policy. In addition, the allocation by the ESM Treaty of new tasks to the Commission, the European Central Bank and the Court of Justice is compatible with their powers as defined in the Treaties. ([68]) Last, when they create a stability mechanism such as the ESM for the establishment of which the EU and FEU Treaties do not confer any specific competence on the European Union, the Member States do not implement European Union law, so that the Charter of Fundamental Rights of the European Union, ([69]) which guarantees that everyone has the right to effective judicial protection, does not apply.

([67]) Article 125 TFEU.

([68]) Article 13 TEU.

([69]) Article 47 of the Charter of Fundamental Rights.

Social policy

Under the heading of social policy, two judgments must be mentioned, one relating to annual leave and the other to the prohibition of discrimination on the ground of age.

In the area of paid annual leave, Case C-282/10 *Dominguez* (judgment of 24 January 2012) provided the Court with the opportunity to interpret Article 7(1) of Directive 2003/88 concerning certain aspects of the management of working time. ([70]) First, the Court held that Article 7(1) of Directive 2003/88 precludes national provisions or practices which make entitlement to paid annual leave conditional on a minimum period of 10 days' or one month's actual work during the reference period. Although Member States are free to lay down, in their domestic legislation, conditions for the exercise and implementation of the right to paid annual leave, they are not entitled to make the very existence of that right subject to any preconditions whatsoever. Second, the Court stated that, in the event of a dispute between individuals where national law, in that it does not, for the purpose of entitlement to paid annual leave, treat the absence of the worker due to an accident on the journey to or from work as equivalent to absence due to an accident at work, is contrary to Article 7 of Directive 2003/88, it is for the national court to determine — taking the whole body of domestic law into consideration, in particular the relevant employment law, and applying the interpretative methods recognised by domestic law, with a view to ensuring that Directive 2003/88 is fully effective and achieving an outcome consistent with the objective pursued by the directive — whether it can find an interpretation of that national law that allows the absence of the worker due to an accident on the journey to or from work to be treated as being equivalent to one of the situations covered by the relevant provison of national employment law. If such an interpretation is not possible, it is for the referring court to determine whether, in the light of the legal nature of the respondents in the main proceedings, the direct effect of Article 7(1) of Directive 2003/88 may be relied upon as against them. If the national court is unable to achieve the objective laid down in Article 7 of that directive, the party injured as a result of domestic law not being in conformity with European Union law can none the less rely on the judgment in *Francovich and Bonifaci* v *Italy* ([71]) in order to obtain, if appropriate, compensation for the loss sustained. Third, the Court held that Article 7(1) of Directive 2003/88 does not preclude a national provision which, depending on the reason for the worker's absence on sick leave, provides for a period of paid annual leave equal to or exceeding the minimum period of four weeks laid down in that directive.

Case C-286/12 *Commission* v *Hungary* (judgment of 6 November 2012) concerned national legislation entailing the compulsory retirement of judges, prosecutors and notaries who had reached the age of 62 years. First of all, the Court held, in the light of Article 2(1) of Directive 2000/78, ([72]) that such legislation establishes a difference in treatment between persons engaged in those professions who have reached the age of 62 years and younger individuals engaged in the same professions, since the former, owing to their age, are required automatically to cease their functions. According to the Court, that discrimination is not justified in so far as such legislation is not an appropriate and necessary means of achieving its legitimate objectives. Admittedly, under Article 6(1) of Directive 2000/78, the objective of standardising, in the context of professions in the public sector, the age-limits for compulsory retirement may constitute a legitimate objective. However, provisions which abruptly and significantly lower the age-limit for compulsory retirement,

([70]) 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).

([71]) Joined Cases C-6/90 and C-9/90, judgment of 19 November 1991.

([72]) 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).

without introducing transitional measures of such a kind as to protect the legitimate expectations of the persons concerned, go beyond what is necessary to achieve that objective. Likewise, the objective of establishing a more balanced age structure facilitating access for young lawyers to the professions of judge, prosecutor and notary may constitute a legitimate objective of employment and labour market policy. However, provisions the effects of which are apparently positive in the short term but are liable to call into question the possibility of achieving a truly balanced age structure in the medium and long terms are not an appropriate means of achieving that objective. Accordingly, the Court held that Hungary had failed to fulfil its obligations under Articles 2 and 6(1) of Directive 2000/78.

Environment

As in previous years, the Court of Justice ruled on many occasions on questions relating to the environment protection policy pursued by the European Union.

First of all, in the area of waste regulation, in Case C-1/11 *Interseroh Scrap and Metals Trading* (judgment of 29 March 2012) the Court ruled on the scope of the right to protection of business secrets with respect to the information that is to accompany shipments of non-hazardous waste. The Court ruled that Article 18(4) of Regulation No 1013/2006, ([73]) which provides that the information accompanying a shipment of certain waste is to be treated as confidential where this is required by Community and national legislation, does not permit an intermediary dealer arranging a shipment of waste not to disclose the name of the waste producer to the consignee of the shipment, as provided for in Regulation No 1013/2006, even though such non-disclosure might be necessary in order to protect the business secrets of that intermediary dealer. In addition, the Court ruled that Article 18(1) of Regulation No 1013/2006 requires an intermediary dealer, in the context of a shipment of waste covered by that provision, to complete Field 6 of the document accompanying the shipment of waste, in which he must mention the name of the waste producer, and to transmit it to the consignee, without any possibility of the scope of that requirement being restricted by a right to protection of business secrets. Even if the obligation to reveal the name of the waste producer to the consignee of a shipment of waste were to constitute a breach of the protection of the business secrets of intermediary dealers, that could not have the consequence of restricting the scope of a provision of secondary law that is clear and unconditional.

Next, a number of cases that are to be mentioned provided clarification of the scope of the right to information and to public participation in environmental matters.

In Case C-182/10 *Solvay* (judgment of 16 February 2012), the Court ruled on the implementation of Directive 85/337 ([74]) on environmental impact assessments, Directive 92/43 ([75]) and the Aarhus

([73]) Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ 2006 L 190, p. 1), as amended by Commission Regulation No 308/2009 of 15 April 2009 amending, for the purposes of adaptation to scientific and technical progress, Annexes IIIA and VI to Regulation No 1013/2006 of the European Parliament and of the Council on shipments of waste (OJ 2009 L 97, p. 8).

([74]) 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).

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

Convention ([76]) in relation to infrastructure projects approved by a legislative authority, and also on the rules applicable to projects that will adversely affect the integrity of a protected site but are based on an imperative reason of overriding public interest.

First of all, the Court confirmed that only projects which satisfy the twofold condition that, first, the details of the projects were adopted by a specific legislative act and, second, the projects were adopted in such a way that the objectives of Directive 85/337 and the Aarhus Convention were achieved through a legislative process are excluded from the scope of that directive and that convention, before recalling that the question whether the legislative act satisfies those conditions must be capable of being submitted to a court of law or another independent and impartial body established by law. Failing that, any national court before which an action falling within its jurisdiction is brought would have the task of carrying out such a review and, as the case may be, drawing the necessary conclusions by disapplying that legislative act.

Next, the Court ruled that Directive 92/43 does not allow a national authority, even if it is a legislative authority, to authorise a plan or project without having ascertained that it will not adversely affect the integrity of the protected site concerned. That directive does not lay down any special rule for plans or projects approved by a legislative authority. Those plans and projects must therefore be subject to the assessment procedure laid down in Article 6(3) of Directive 92/43.

Last, still in relation to Directive 92/43, the Court set out the circumstances in which an imperative reason of overriding public interest is capable of justifying the implementation of a plan or project that will adversely affect the integrity of a protected site, on the basis of Article 6(4) of that directive. The Court ruled that the interest capable of justifying the implementation of a project in such a situation must be both 'public' and 'overriding', which means that it must be of such importance that it can be weighed up against that directive's objective of the conservation of natural habitats and wild fauna and flora. Consequently, works intended for the location or expansion of an undertaking satisfy those conditions only in exceptional circumstances. It cannot be ruled out that that is the case where a project, although of a private character, in fact by its very nature and by its economic and social context presents an overriding public interest and it has been shown that there are no alternative solutions. However, the creation of infrastructure intended to accommodate a management centre cannot be regarded as an imperative reason of overriding public interest — which reasons include those of a social or economic nature — capable of justifying the implementation of a plan or project that will adversely affect the integrity of the site concerned.

Case C-204/09 *Flachglas Torgau* (judgment of 14 February 2012) concerned the limits that Member States may place on the right of public access to environmental information held by a national authority, in the light of Directive 2003/4. ([77]) In its judgment, the Court first of all ruled that Member States may make provision for ministries to refuse public access to environmental information to the extent that those ministries participate in the legislative process, in particular by tabling draft laws or giving opinions. However, once the legislative process has been completed, the ministry which participated in it can no longer rely on that exception, since the smooth running of that process can, in principle, no longer be impeded by the environmental information being made available. On the other hand, it is not precluded that the ministry may refuse to provide that infor-

([76]) 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).

([77]) Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ 2003 L 41, p. 26).

mation on other grounds recognised by European Union law. Thus, Member States may provide for a request for environmental information to be refused if its disclosure would adversely affect the confidentiality of the proceedings of public authorities, where such confidentiality is 'provided for by law'. The Court held that the latter condition may be regarded as fulfilled by the existence, in the national law of the Member State concerned, of a rule which provides, generally, that the confidentiality of the proceedings of public authorities is a ground for refusing access to environmental information held by those authorities, in so far as national law clearly defines the concept of 'proceedings'. In addition, the Court recalled that a public authority which intends to rely on the confidentiality of its proceedings in order to refuse a request for access to environmental information must balance the interests involved in each particular case.

In Case C-567/10 *Inter-Environnement Bruxelles and Others* (judgment of 22 March 2012), the Court provided clarification of the concept of 'plans and programmes' referred to in Directive 2001/42, ([78]) and therefore of the scope of the rules on environmental impact assessment laid down in that directive. The Court first of all explained that the concept of plans and programmes 'which are required by legislative, regulatory or administrative provisions' also concerns land development plans the adoption of which is not compulsory. Next, the Court held that a national procedure for the total or partial repeal of a land management plan falls in principle within the scope of Directive 2001/42. However, the Court also stated that, in principle, that is not the case if the repealed measure falls within a hierarchy of town and country planning measures, as long as those measures lay down sufficiently precise rules governing land use, they have themselves been the subject of an assessment of their environmental effects and it may reasonably be considered that the interests which Directive 2001/42 is designed to protect have been taken into account sufficiently within that framework.

Last, in Case C-41/11 *Inter-Environnement Wallonie and Terre wallonne* (judgment of 28 February 2012), the Court was asked about the role of the national court with jurisdiction to annul a measure when hearing an action against a national measure adopted in breach of the obligation laid down in Directive 2001/42 ([79]) to carry out a prior environmental assessment for certain plans and programmes, in circumstances where that national measure constitutes the transposition of another environmental directive, in this instance Directive 91/676 ([80]) (the Nitrates Directive). In its judgment, the Court first of all recalled that where a national court has before it an action for annulment of a national measure constituting a 'plan' or 'programme' within the meaning of Directive 2001/42 that was adopted in breach of the obligation to carry out a prior environmental assessment, that court is obliged to take all the measures provided for by its national law in order to remedy the failure to carry out such an assessment, including the possible suspension or annulment of the contested plan or programme. However, the Court held that, in view of the specific circumstances of the case referred to it, the referring court could exceptionally be authorised to make use of a national provision empowering it to maintain certain effects of a national measure which has been annulled in so far as: the national measure was a measure which correctly transposed Directive 92/676; the adoption and entry into force in the meantime of a new national measure implementing that directive did not enable the adverse effects on the environment resulting from the annulment of the contested measure to be avoided; the annulment of that contested measure would result in a legal vacuum in relation to the transposition of Directive 91/676 which would be

([78]) Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ 2001 L 197, p. 30).

([79]) See preceding footnote.

([80]) Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ 1991 L 375, p. 1).

more harmful to the environment, in the sense that that annulment would result in a lower level of protection of waters and would thereby run specifically counter to the fundamental objective of that directive; and the effects of such a measure were exceptionally maintained only for the period of time which was strictly necessary to adopt the measures enabling the irregularity which had been established to be remedied.

European civil service

In Case C-566/10 P *Italy* v *Commission* (judgment of 27 November 2012), the Court ruled on the languages to be used by the European Personnel Selection Office ('EPSO') ([81]) when publishing in the *Official Journal of the European Union* ('the OJEU') notices of competitions for the recruitment of officials to the institutions of the European Union. The Italian Republic had brought an action before the Court of First Instance (now 'the General Court') against certain notices of competition published only in German, French and English. ([82]) As regards entry to and the taking of the admission tests, a thorough knowledge of one of the official languages of the European Union and a satisfactory knowledge of German, English or French as a second language, different from the main language, were required. In addition, it was stipulated that invitations to the various tests, correspondence between EPSO and candidates and the admissions tests would be in German, English or French. The same conditions were stipulated for admission to the written tests and also for the conduct of those tests. The General Court dismissed that action ([83]) and the Italian Republic appealed to the Court of Justice.

The Court began by observing that the language rules of the European Union define the 23 current languages of the European Union as official languages and working languages of the European Union institutions, that the OJEU must appear in all the official languages ([84]) and that, according to the Staff Regulations of Officials of the European Union, ([85]) a notice for an open competition must be published in the OJEU. Accordingly, those rules, taken together, mean that the competitions at issue ought to have been published in full in all the official languages.

The Court then examined the limitation of the choice of the second language for participation in a competition. It considered that the requirements of specific language knowledge laid down in a competition notice may be justified by the interest of the service, which may be a legitimate objective. The Court made clear, however, that that interest of the service must be objectively justified and that the level of language knowledge required must be proportionate to the genuine needs of the service. Furthermore, in accordance with the first paragraph of Article 27 of the Staff Regulations, the recruitment of officials is to be directed to securing for the institution the services of officials of the highest standards of ability, efficiency and integrity. Since that objective can best be achieved when the candidates are allowed to sit the selection tests in their mother tongue or in

([81]) European Personnel Selection Office, created by 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 (OJ 2002 L 197, p. 53).

([82]) Competitions EPSO/AD/94/07, EPSO/AST/37/07 and EPSO/AD/95/07.

([83]) Joined Cases T-166/07 and T-285/07 *Italy* v *Commission* (judgment of 13 September 2010).

([84]) Regulation No 1 determining the languages to be used by the European Economic Community (OJ, English Special Edition 1952–58, p. 59).

([85]) Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ, English Special Edition 1968(I), p. 30).

the second language of which they think they have the best command, it is, in that regard, for the institutions to weigh the legitimate objective justifying the limitation of the number of languages of the competition against the objective of identifying the most competent candidates. The Court therefore set aside the judgment of the General Court and annulled the notices of competition at issue.

Common foreign and security policy

In the area of the common foreign and security policy, four decisions in 2012 deserve attention.

As regards the restrictive measures taken against the Islamic Republic of Iran with the aim of preventing nuclear proliferation, an appeal was lodged with the Court by Melli Bank, a United Kingdom bank wholly owned by Bank Melli Iran, an Iranian bank controlled by the Iranian State. In that appeal, in Case C-380/09 P *Melli Bank* v *Council* (judgment of 13 March 2012), the Court was asked to set aside the judgment of the General Court ([86]) dismissing Melli Bank's action for annulment of Decision 2008/475/EC, ([87]) in so far as it concerned Melli Bank. A few months earlier, an appeal had been lodged with the Court, in Case C-548/09 P *Bank Melli Iran* v *Council* (judgment of 16 November 2011), ([88]) by Bank Melli Iran, Melli Bank's parent company, seeking to have set aside the judgment of the General Court ([89]) dismissing its action for annulment of the same Decision 2008/475/EC, in so far as it concerned Bank Melli Iran. The Court had dismissed the appeal and, consequently, upheld the decision freezing the funds of Bank Melli Iran.

In Case C-380/09 P *Melli Bank* v *Council*, the Court held that the General Court had not erred in considering that Article 7(2)(d) of Regulation No 423/2007 concerning restrictive measures against the Islamic Republic of Iran ([90]) required the Council to freeze the funds of an entity 'owned or controlled' by an entity identified as engaged in nuclear proliferation. Accordingly, the reason for the freezing of the funds of Melli Bank — an undertaking wholly owned by Bank Melli Iran, an entity identified as engaged in nuclear proliferation — did not need to be that Melli Bank itself participated in nuclear proliferation. Also, the freezing of funds, when applied to an entity wholly owned by an entity regarded as participating in nuclear proliferation, does not affect the presumption of innocence. The adoption of fund-freezing measures under Article 7(2)(d) of Regulation No 423/2007 is specifically not directed against the autonomous behaviour of such an entity and therefore does not require that entity to have behaved in a manner contrary to the provisions of that regulation.

Furthermore, according to the Court, the General Court had been correct to take the view that the freezing of Melli Bank's funds was consistent with the principle of proportionality, since it was appropriate and necessary in order to attain the legitimate objective of maintaining international peace and security. Where the funds of an entity identified as participating in nuclear proliferation are frozen, there is a considerable likelihood that that entity will exert pressure on the entities which it owns or controls, in order to circumvent the measures adopted against it. In those circumstances, the freezing of the funds of the entities owned or controlled by an entity participating in nuclear proliferation is necessary and appropriate in order to ensure the effectiveness of the

([86]) Joined Cases T-246/08 and T-332/08 *Melli Bank* v *Council*, judgment of 9 July 2009.

([87]) More specifically, point 4 in 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).

([88]) See *Annual Report 2011*, p. 64.

([89]) Case T-390/08 *Bank Melli Iran* v *Council*, judgment of 14 October 2009.

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

measures taken against the latter entity and to ensure that those measures will not be circumvented. The Court also upheld the General Court's finding that there were no appropriate alternative measures for attaining the same objective. Given the prime importance of the preservation of peace and international security, the restrictions on the freedom to carry on economic activity and the right to property of a bank that were occasioned by the fund-freezing measures were not disproportionate to the ends sought.

Last, the Court also recalled that Security Council resolutions, on the one hand, and Council common positions and regulations, on the other, originate from distinct legal orders. Measures adopted within the framework of the United Nations and the European Union are adopted by organs with autonomous powers, granted to them by their basic charters, that is to say, the Treaties that created them. However, in drawing up Community measures aimed at giving effect to a Security Council resolution envisaged in a common position, the European Union must take due account of the terms and objectives of the resolution concerned. Similarly, it is necessary to take account of the wording and purpose of a Security Council resolution when interpreting the regulation which seeks to implement that resolution.

In Case C-376/10 P *Tay Za* v *Council* (judgment of 13 March 2012), the Court was requested, in an appeal, to adjudicate on the circumstances in which a system of sanctions put in place by the Council against a third country may be directed against natural persons, and on the intensity of the relationship required between those persons and the ruling regime. In that regard, the Court recalled that, in order for it to be possible for them to be adopted on the basis of Articles 60 EC and 301 EC as restrictive measures imposed on third countries, the measures in respect of natural persons must be directed only against the leaders of such countries and the persons associated with those leaders. The Court explained that, in holding in *Kadi* ([91]) that the restrictive measures adopted against a third country could not be directed at persons associated with that country 'in some other way', the Court intended to restrict the categories of natural persons at whom targeted restrictive measures may be directed to the categories of natural persons whose connection with the third country in question is quite obvious, namely the leaders of third countries and the individuals associated with them. Accordingly, the Court held that the application of such measures to natural persons on the sole ground of their family connection with persons associated with the leaders of the third country concerned, irrespective of the personal conduct of such natural persons, was contrary to European Union law. Consequently, the measure freezing the funds and economic resources belonging to Mr Pye Phyo Tay Za could have been adopted only in reliance upon precise, concrete evidence which would have enabled it to be established that he benefited from the economic policies of the leaders of Myanmar.

In Case C-130/10 *Parliament* v *Council* (judgment of 19 July 2012), an action was brought before the Court by the European Parliament, seeking annulment of Regulation No 1286/2009 amending Regulation No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban. ([92])

In support of its action, the Parliament claimed, principally, that the contested regulation was wrongly based on Article 215 TFEU, when the correct legal basis was Article 75 TFEU. In order

([91]) Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation* v *Council and Commission*, judgment of 3 September 2008.

([92]) Council Regulation (EU) No 1286/2009 of 22 December 2009 amending Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban (OJ 2009 L 346, p. 42).

to determine, in the light of the aim and the content of the contested regulation, whether Article 215(2) TFEU constituted the appropriate legal basis for that regulation, the Court therefore examined the wording of that article, its context and the objectives which it pursued, in relation to those pursued by Article 75 TFEU.

Following that examination, the Court held that Article 215(2) TFEU may constitute the legal basis of restrictive measures, including those designed to combat terrorism, taken against natural or legal persons, groups or non-State entities by the European Union when the decision to adopt those measures is part of its action in the sphere of the CFSP. While admittedly the combating of terrorism and its financing may well be among the objectives of the area of freedom, security and justice, as they appear, in particular, in Article 3(2) TEU, the objective of combating international terrorism and its financing in order to preserve international peace and security corresponds, nevertheless, to the objectives of the Treaty provisions on external action by the European Union, as set out in Article 21(2)(c) TEU. Accordingly, the object of actions undertaken by the European Union in the sphere of the CFSP and of the measures taken in order to implement that policy in the sphere of the external action of the European Union, and in particular of restrictive measures within the meaning of Article 215(2) TFEU, may be to combat terrorism. It follows that Article 215(2) TFEU constitutes the appropriate legal basis for Regulation No 1286/2009. That regulation, which contains safeguards for the respect of the fundamental right of the persons whose names appear in the list, may therefore be adopted on the basis of Article 215(2) TFEU and not of Article 75 TFEU. The difference between Article 75 TFEU and Article 215 TFEU, so far as the Parliament's involvement is concerned, is the result of the choice made by the framers of the Treaty of Lisbon of conferring a more limited role on the Parliament with regard to the European Union's action under the CFSP. Furthermore, the duty to respect fundamental rights is imposed, in accordance with Article 51(1) of the Charter of Fundamental Rights of the European Union, on all the institutions and bodies of the European Union.

Furthermore, the fact that the Treaty on European Union no longer provides for common positions but for decisions in matters relating to the CFSP does not have the effect of rendering non-existent the common positions adopted before the Treaty of Lisbon entered into force. Common positions, like Common Position 2002/402, ([93]) which have not been repealed, annulled or amended after the Treaty of Lisbon entered into force, may be considered to correspond, for the purpose of implementing Article 215 TFEU, to the decisions adopted in accordance with Chapter 2 of Title V of the Treaty on European Union to which that article refers.

As regards, this time, the specific restrictive measures taken against certain persons and entities in the context of the combating of terrorism, two appeals were brought before the Court by Stichting Al-Aqsa, a Netherlands foundation, and the Kingdom of the Netherlands, respectively. By the two appeals in Joined Cases C-539/10 P and C-550/10 P *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa* (judgment of 15 November 2012), the appellants requested the Court to set aside the judgment of the General Court ([94]) in which that Court had annulled a number of Council measures placing Stichting Al-Aqsa on the list of persons and entities whose assets were frozen.

([93]) Council Common Position 2002/402/CFSP of 27 May 2002 concerning restrictive measures against Usama bin Laden, members of the Al-Qaida organisation and the Taliban and other individuals, groups, undertakings and entities associated with them and repealing Common Positions 96/746/CFSP, 1999/727/CFSP, 2001/154/CFSP and 2001/771/CFSP (OJ 2002 L 139, p. 4).

([94]) Case T-348/07 *Al-Aqsa* v *Council*, judgment of September 2010.

First of all, the Court dismissed Stichting Al-Aqsa's appeal as inadmissible, since it concerned only the amendment of certain grounds of the judgment of the General Court.

Next, as regards the appeal brought by the Kingdom of the Netherlands, the Court held that the General Court erred in law in taking the view, following the repeal of the Sanctieregeling, ([95]) that there was no longer any 'substratum' in national law that justified continuing to include Stichting Al-Aqsa on the list, without taking due account of the reason why that measure was repealed. The sole reason justifying that repeal was to prevent an overlap between the national fund-freezing measure, imposed by the Sanctieregeling, and the freezing measure prescribed at European Union level by Regulation No 2580/2001, ([96]) following the inclusion of Stichting Al-Aqsa on the list. The Court therefore set aside the judgment of the General Court. After doing so, the Court itself gave final judgment on the initial action brought by Stichting Al-Aqsa before the General Court for annulment of the Council's fund-freezing decisions.

First of all, the Court observed that the Council held precise information and evidence in the file showing that a decision satisfying the criteria laid down in European Union law had been taken by a competent Netherlands authority against Stichting Al-Aqsa. The Court emphasised, in that context, that, in accordance with European Union law, such a reference to the national decision implies the existence of serious and credible evidence, regarded as reliable by the competent national authorities, of the involvement of a person in terrorist activities. Next, the Court considered that the Council had not failed to comply with its obligation to review the existence of the grounds justifying the fund-freezing decisions. It stated that the repeal of the Sanctieregeling did not suffice to declare that continuing to include Stichting Al-Aqsa on the list was incompatible with European Union law. In effect, there was no evidence that could have led the Council to find that Stichting Al-Aqsa had suspended or ceased to contribute to the financing of terrorist activities, irrespective of the fact that the freezing of its funds made such contributions more difficult, if not impossible. Last, the Court considered that the Council's decisions did not infringe Stichting Al-Aqsa's right to property. As the freezing of funds constitutes a temporary precautionary measure, it is not intended to deprive the persons concerned of their property. Since alternative and less restrictive measures are not as effective in achieving the goal pursued by the European Union, namely to combat the financing of terrorism, the restrictions on Stichting Al-Aqsa's right to property imposed by the Council satisfy the requirement of necessity. Likewise, owing to the importance of combating the financing of terrorism, those restrictions are not disproportionate to the aims pursued. Consequently the Court dismissed the initial action brought by Stichting Al-Aqsa.

([95]) The regulation on sanctions for the suppression of terrorism adopted against Stichting Al-Aqsa by the Kingdom of the Netherlands.

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

C — Composition of the Court of Justice

(order of precedence as at 28 November 2012)

First row, from left to right:

N. Jääskinen, First Advocate General; L. Bay Larsen, President of Chamber; R. Silva de Lapuerta, President of Chamber; K. Lenaerts, Vice-President of the Court; V. Skouris, President of the Court; A. Tizzano, President of Chamber; M. Ilešič, President of Chamber; T. von Danwitz, President of Chamber; A. Rosas, President of Chamber.

Second row, from left to right:

U. Lõhmus, Judge; E. Juhász, Judge; E. Jarašiūnas, President of Chamber; J. Malenovský, President of Chamber; G. Arestis, President of Chamber; M. Berger, President of Chamber; J. Kokott, Advocate General; A. Borg Barthet, Judge; E. Levits, Judge.

Third row, from left to right:

J.-J. Kasel, Judge; A. Arabadjiev, Judge; Y. Bot, Advocate General; E. Sharpston, Advocate General; A. Ó Caoimh, Judge; P. Mengozzi, Advocate General; J.-C. Bonichot, Judge; C. Toader, Judge; M. Safjan, Judge.

Fourth row, from left to right:

N. Wahl, Advocate General; M. Wathelet, Advocate General; C.G. Fernlund, Judge; P. Cruz Villalón, Advocate General; D. Šváby, Judge; A. Prechal, Judge; J.L. da Cruz Vilaça, Judge; C. Vajda, 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.

Koen Lenaerts

Born 1954; lic. iuris, Ph.D. in Law (Katholieke Universiteit Leuven); Master of Laws, Master in Public Administration (Harvard University); Lecturer (1979–83), subsequently Professor of European Law, Katholieke Universiteit Leuven (since 1983); Legal Secretary at the Court of Justice (1984–85); Professor at the College of Europe, Bruges (1984–89); member of the Brussels Bar (1986–89); Visiting Professor at the Harvard Law School (1989); Judge at the Court of First Instance of the European Communities from 25 September 1989 to 6 October 2003; Judge at the Court of Justice since 7 October 2003; Vice-President of the Court of Justice since 9 October 2012.

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 from 7 October 2000 to 8 October 2012.

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.

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 from 8 January 2004 to 8 October 2012.

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 (since 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.

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 from 7 October 2006 to 8 October 2012.

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 of 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 from 7 October 2006 to 28 November 2012.

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 University of Vienna (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; Doctor *honoris causa* of the European University Institute (2012); 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.

José Luis da Cruz Vilaça

Born 1944; degree in law and master's degree in political economy at the University of Coimbra; Doctor in International Economics (University of Paris I – Panthéon Sorbonne); compulsory military service performed in the Ministry for the Navy (Justice Department, 1969–72); Professor at the Catholic University and the New University of Lisbon; formerly Professor at the University of Coimbra and at Lusíada University, Lisbon (Director of the Institute for European Studies); Member of the Portuguese Government (1980–83): State Secretary for Home Affairs, State Secretary in the Prime Minister's Office and State Secretary for European Affairs; Deputy in the Portuguese Parliament, Vice-President of the Christian-Democrat Group; Advocate General at the Court of Justice (1986–88); President of the Court of First Instance of the European Communities (1989–95); lawyer at the Lisbon bar, specialising in European and competition law (1996–2012); member of the Working Party on the Future of the European Communities' Court System — 'Due Group' (2000); Chairman of the Disciplinary Board of the European Commission (2003–07); President of the Portuguese Association of European Law (since 1999); Judge at the Court of Justice since 8 October 2012.

Melchior Wathelet

Born 1949; degrees in law and in economics (University of Liège); Master of Laws (Harvard University, United States); Doctor *honoris causa* (Université Paris-Dauphine); Professor of European Law at the Catholic University of Louvain and the University of Liège; Deputy (1977–95); State Secretary, Minister and Minister-President of the Walloon Region (1980–88); Deputy Prime Minister, Minister for Justice and for Small and Medium-Sized Businesses, the Liberal Professions and the Self-Employed (1988–92); Deputy Prime Minister, Minister for Justice and Economic Affairs (1992–95); Deputy Prime Minister, Minister for National Defence (1995); Mayor of Verviers (1995); Judge at the Court of Justice of the European Communities (1995–2003); legal adviser, then counsel (2004–12); Minister of State (2009–12); Advocate General at the Court of Justice since 8 October 2012.

Christopher Vajda

Born 1955; law degree from Cambridge University; *licence spéciale en droit européen* at the Université libre de Bruxelles (*grande distinction*); called to the Bar of England and Wales by Gray's Inn (1979); Barrister (1979–2012); called to the Bar of Northern Ireland (1996); Queen's Counsel (1997); Bencher of Gray's Inn (2003); Recorder of the Crown Court (2003–12); Treasurer of the United Kingdom Association for European Law (2001–12); contributor to 3rd to 6th eds of *European Community Law of Competition* (Bellamy and Child); Judge at the Court of Justice since 8 October 2012.

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 from 7 October 2006 to 28 November 2012; Advocate General at the Court of Justice since 28 November 2012.

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 2012

Formal sitting on 8 October 2012

By decisions of 25 April 2012 and 20 June 2012, Mr José Luís da Cruz Vilaça and Mr Christopher Vajda were appointed as Judges at the Court of Justice for the period from 7 October 2012 to 6 October 2018, replacing Mr José Narciso da Cunha Rodrigues and Mr Konrad Schiemann respectively.

By decisions of 25 April 2012 and 20 June 2012, the representatives of the governments of the Member States renewed, for the period from 7 October 2012 to 6 October 2018, the terms of office as Advocates General at the Court of Justice of Mr Yves Bot and Mr Paolo Mengozzi. By decision of 25 April 2012, Mr Melchior Wathelet was appointed as Advocate General at the Court of Justice for the period from 7 October 2012 to 6 October 2018, replacing Mr Ján Mazák.

Formal sitting on 28 November 2012

A formal sitting of the Court of Justice took place on this day on the occasion of the departure from office of Ms Verica Trstenjak and the entry into office of Mr Nils Wahl.

3. Order of precedence

From 1 January 2012 to 10 October 2012

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

From 11 October 2012 to 28 November 2012

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

A. CALOT ESCOBAR, Registrar

From 29 November 2012 to 31 December 2012

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

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)
José Narciso Da Cunha Rodrigues, Judge (2000–12)
Luís Miguel Poiares Pessoa Maduro, Advocate General (2003–09)
Jerzy Makarczyk, Judge (2004–09)
Ján Klučka, Judge (2004–09)
Pranas Kūris, Judge (2004–10)
Konrad Hermann Theodor Schiemann, Judge (2004–12)

Pernilla Lindh, Judge (2006–11)
Ján Mazák, Advocate General (2006–12)
Verica Trstenjak, Advocate General (2006–12)

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 (2008–12)

New cases

2. Nature of proceedings (2008–12)
3. Subject-matter of the action (2012)
4. Actions for failure of a Member State to fulfil its obligations (2008–12)

Completed cases

5. Nature of proceedings (2008–12)
6. Judgments, orders, opinions (2012)
7. Bench hearing action (2008–12)
8. Cases completed by judgments, by opinions or by orders involving a judicial determination (2008–12)
9. Subject-matter of the action (2008–12)
10. Subject-matter of the action (2012)
11. Judgments concerning failure of a Member State to fulfil its obligations: outcome (2008–12)
12. Duration of proceedings (judgments and orders involving a judicial determination) (2008–12)

Cases pending as at 31 December

13. Nature of proceedings (2008–12)
14. Bench hearing action (2008–12)

Miscellaneous

15. Expedited and accelerated procedures (2008–12)
16. Urgent preliminary ruling procedure (2008–12)
17. Proceedings for interim measures (2012)

General trend in the work of the Court (1952–2012)

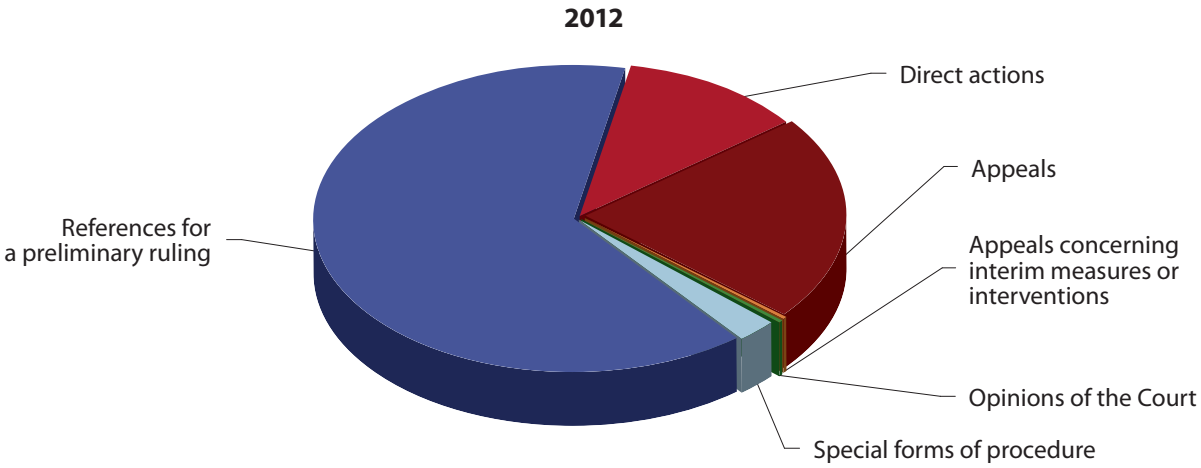
18. New cases and judgments
19. New references for a preliminary ruling (by Member State per year)
20. New references for a preliminary ruling (by Member State and by court or tribunal)
21. New actions for failure of a Member State to fulfil its obligations

1. *General activity of the Court of Justice —* New cases, completed cases, cases pending (2008–12) ([1])

	2008	2009	2010	2011	2012
New cases	593	562	631	688	632
Completed cases	567	588	574	638	595
Cases pending	768	742	799	849	886

([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 (2008–12) ([1])



	2008	2009	2010	2011	2012
References for a preliminary ruling		302	385	423	404
Direct actions		143	136	81	73
Appeals		105	97	162	136
Appeals concerning interim measures or interventions		2	6	13	3
Opinions of the Court		1			1
Special forms of procedure ([2])		9	7	9	15
Total		**562**	**631**	**688**	**632**
Applications for interim measures		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).

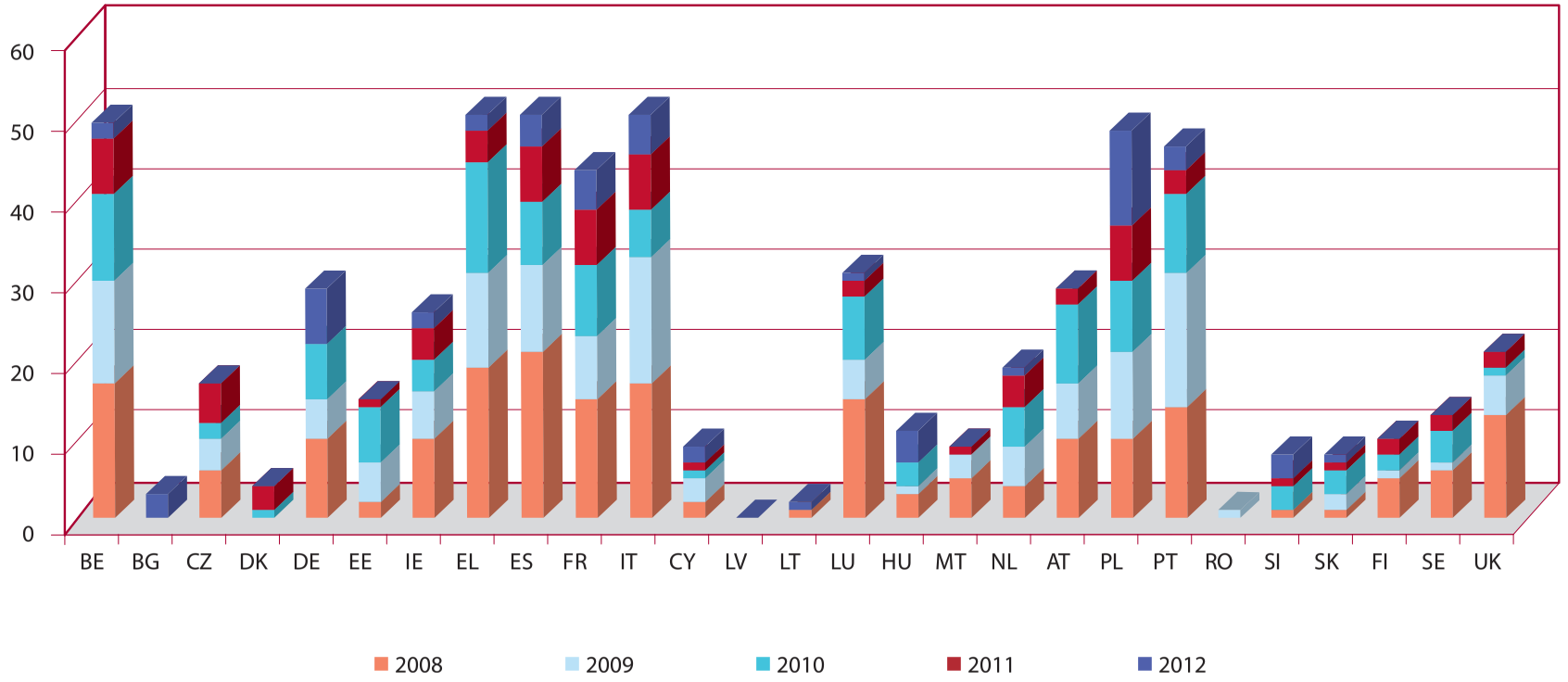
([2]) The following are considered to be 'special forms of procedure': legal aid; taxation of costs; rectification; application to set aside a judgment delivered by default; third-party proceedings; interpretation; revision; examination of a proposal by the First Advocate General to review a decision of the General Court; attachment procedure; cases concerning immunity.

3. *New cases* — Subject-matter of the action (2012) ([1])

	Direct actions	References for a preliminary ruling	Appeals	Appeals concerning interim measures or interventions	Total	Special forms of procedure
Access to documents			3		3	
Agriculture	1	15	5		21	
Approximation of laws	6	30			36	
Area of freedom, security and justice	1	56			57	
Citizenship of the Union		11			11	
Commercial policy	1	1	5		7	
Common fisheries policy	2		1		3	
Common foreign and security policy			4	2	6	
Company law		4			4	
Competition		6	23	1	30	
Consumer protection	1	22	1		24	
Customs union and Common Customs Tariff		11	2		13	
Economic and monetary policy	1	1	1		3	
Economic, social and territorial cohesion		2	3		5	
Energy	3				3	
Environment	14	19	5		38	
External action by the European Union	2	1			3	1
Financial provisions (budget, financial framework, own resources, combatting fraud and so forth)	1	1			2	
Free movement of capital	2	9			11	
Free movement of goods	2	1			3	
Freedom of establishment		10			10	
Freedom of movement for persons	1	21			22	
Freedom to provide services	2	8			10	
Industrial policy	4	12			16	
Intellectual and industrial property		16	43		59	
Law governing the institutions	3	3	15		21	4
Principles of European Union law		21			21	
Public procurement	3	8	1		12	
Research, technological development and space		2			2	
Social policy	2	34	2		38	
Social security for migrant workers		8			8	
State aid	5	3	20		28	
Taxation	2	57	1		60	
Transport	10	11			21	
TFEU	**69**	**404**	**135**	**3**	**611**	**5**
Procedure						11
Staff Regulations	4		1		5	
Others	**4**		**1**		**5**	**11**
OVERALL TOTAL	**73**	**404**	**136**	**3**	**616**	**16**

([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).

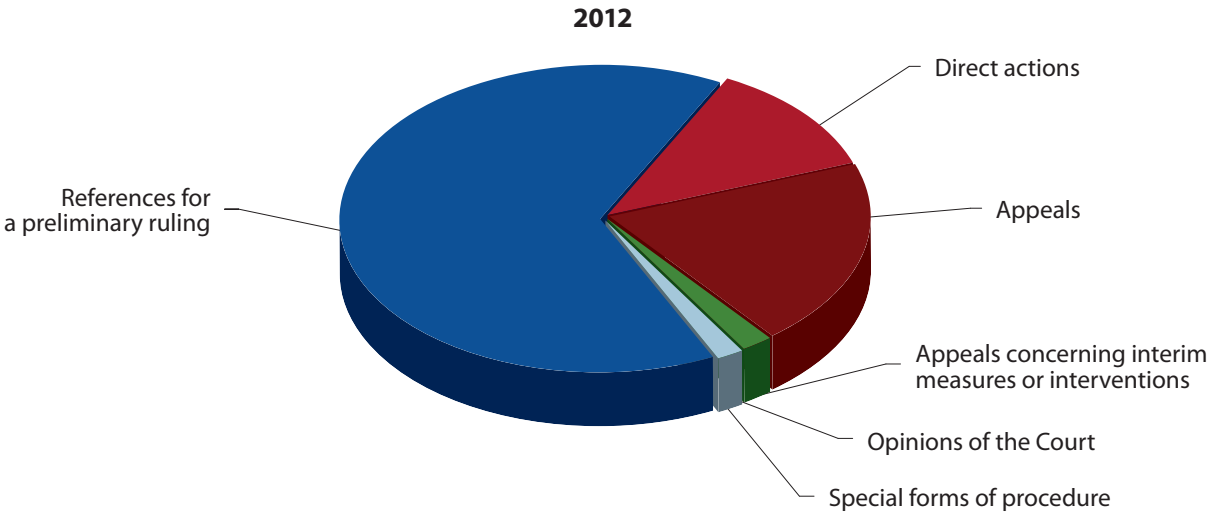
4. *New cases* — Actions for failure of a Member State to fulfil its obligations (2008–12) [1]



	2008	2009	2010	2011	2012
Belgium	17	13	11	7	2
Bulgaria					3
Czech Republic	6	4	2	5	
Denmark			1	3	
Germany	10	5	7		7
Estonia	2	5	7	1	
Ireland	10	6	4	4	2
Greece	19	12	14	4	2
Spain	21	11	8	7	4
France	15	8	9	7	5
Italy	17	16	6	7	5
Cyprus	2	3	1	1	2
Latvia					
Lithuania	1				1
Luxembourg	15	5	8	2	1
Hungary	3	1	3		4
Malta	5	3		1	
Netherlands	4	5	5	4	1
Austria	10	7	10	2	
Poland	10	11	9	7	12
Portugal	14	17	10	3	3
Romania		1			
Slovenia	1		3	1	3
Slovakia	1	2	3	1	1
Finland	5	1	2	2	
Sweden	6	1	4	2	
United Kingdom	13	5	1	2	
Total	**207**	**142**	**128**	**73**	**58**

(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).

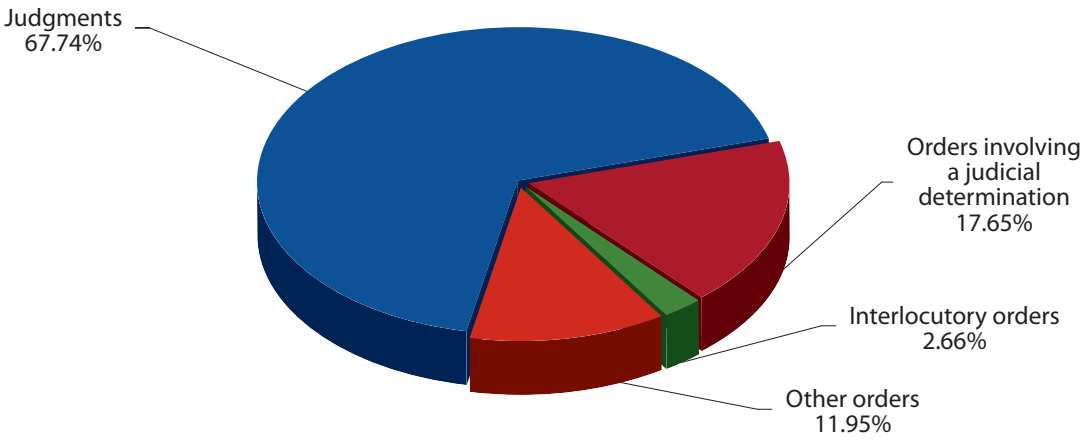
5. *Completed cases* — Nature of proceedings (2008–12) ([1])



	2008	2009	2010	2011	2012
References for a preliminary ruling	301	259	339	388	386
Direct actions	181	215	139	117	70
Appeals	69	97	84	117	117
Appeals concerning interim measures or interventions	8	7	4	7	12
Opinions of the Court		1		1	
Special forms of procedure	8	9	8	8	10
Total	**567**	**588**	**574**	**638**	**595**

([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 (2012) (1)



	Judgments	Orders involving a judicial determination (2)	Interlocutory orders (3)	Other orders (4)	Opinions of the Court	Total
References for a preliminary ruling	249	41		36		326
Direct actions	56		1	13		70
Appeals	52	44	1	14		111
Appeals concerning interim measures or interventions			12			12
Opinions of the Court						
Special forms of procedure		8				8
Total	**357**	**93**	**14**	**63**		**527**

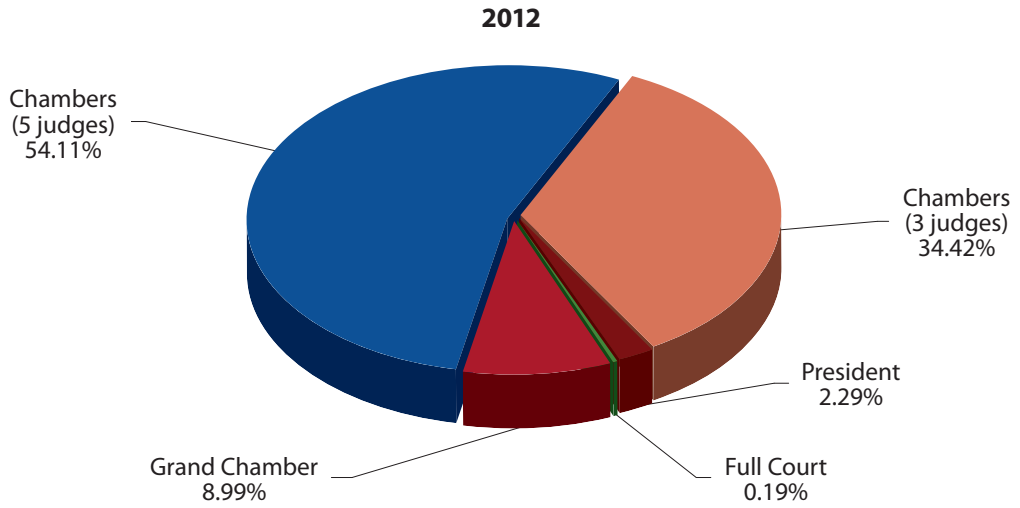
(1) The figures given (net figures) represent the number of cases after joinder on the ground of similarity (a set of joined cases = one case).

(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 (2008–12) (1)

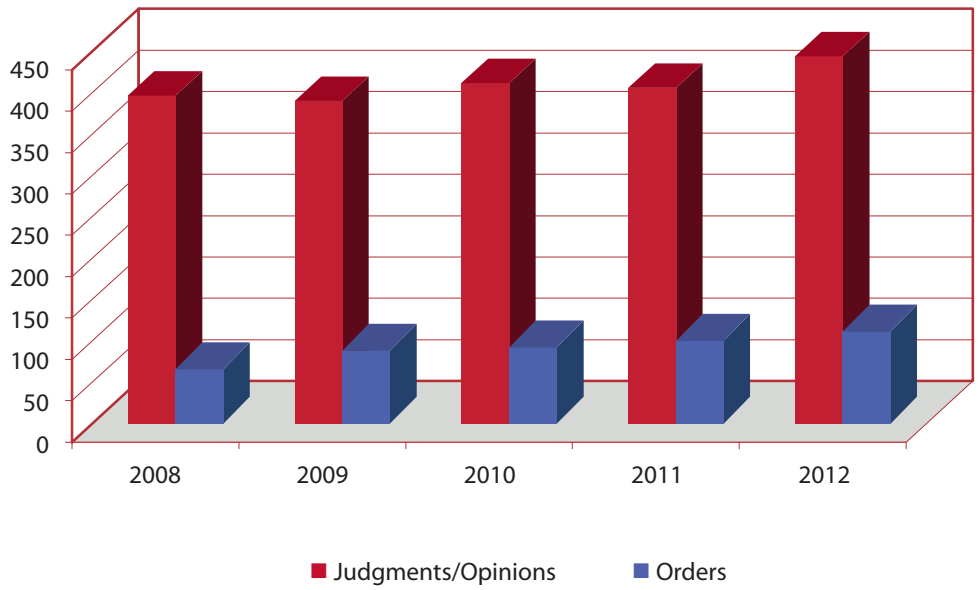


	2008			2009			2010			2011			2012		
	Judgments/ Opinions	Orders (2)	Total	Judgments/ Opinions	Orders (2)	Total	Judgments/ Opinions	Orders (2)	Total	Judgments/ Opinions	Orders (2)	Total	Judgments/ Opinions	Orders (2)	Total
Full Court										1		1	1		1
Grand Chamber	66		66	41		41	70	1	71	62		62	47		47
Chambers (5 judges)	259	13	272	275	8	283	280	8	288	290	10	300	275	8	283
Chambers (3 judges)	65	59	124	96	70	166	56	76	132	91	86	177	83	97	180
President		7	7		5	5		5	5		4	4		12	12
Total	**390**	**79**	**469**	**412**	**83**	**495**	**406**	**90**	**496**	**444**	**100**	**544**	**406**	**117**	**523**

(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* (2008–12) (1) (2)



	2008	2009	2010	2011	2012
Judgments/Opinions	390	412	406	444	406
Orders	79	83	90	100	117
Total	**469**	**495**	**496**	**544**	**523**

(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 (2008–12) ([1])

	2008	2009	2010	2011	2012
Access to documents				2	5
Accession of new States		1		1	2
Agriculture	54	18	15	23	22
Approximation of laws	21	32	15	15	12
Area of freedom, security and justice	4	26	24	23	37
Brussels Convention	1	2			
Budget of the Communities ([2])			1		
Citizenship of the Union	7	3	6	7	8
Commercial policy	1	5	2	2	8
Common Customs Tariff ([4])	5	13	7	2	
Common fisheries policy	6	4	2	1	
Common foreign and security policy	2	2	2	4	9
Community own resources ([2])		10	5	2	
Company law	17	17	17	8	1
Competition	23	28	13	19	30
Consumer protection ([3])			3	4	9
Customs union and Common Customs Tariff	8	5	15	19	19
Economic and monetary policy	1	1	1		3
Economic, social and territorial cohesion					3
Education, vocational training, youth and sport					1
Energy	4	4	2	2	
Environment ([3])			9	35	27
Environment and consumers ([3])	43	60	48	25	1
External action by the European Union	8	8	10	8	5
Financial provisions (budget, financial framework, own resources, combatting fraud and so forth) ([2])			1	4	3
Free movement of capital	9	7	6	14	21
Free movement of goods	12	13	6	8	7
Freedom of establishment	29	13	17	21	6
Freedom of movement for persons	27	19	17	9	18
Freedom to provide services	8	17	30	27	29
Industrial policy	12	6	9	9	8
Intellectual and industrial property	22	31	38	47	46
Justice and home affairs	1				
Law governing the institutions	15	29	26	20	27
Principles of European Union law	4	4	4	15	7
Privileges and immunities	2				
Public health				3	1
Public procurement				7	12
Regional policy	1	3	2		
Registration, evaluation, authorisation and restriction of chemicals (REACH Regulation)				1	
Research, information, education and statistics			1		

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	2008	2009	2010	2011	2012
Research, technological development and space					1
Rome Convention		1			
Social policy	25	33	36	36	28
Social security for migrant workers	5	3	6	8	8
State aid	26	10	16	48	10
Taxation	38	44	66	49	64
Tourism					1
Transport ([4])	4	9	4	7	14
EC Treaty/TFEU	**445**	**481**	**482**	**535**	**513**
EU Treaty	6	1	4	1	
CS Treaty	2			1	
Privileges and immunities				2	3
Procedure	5	5	6	5	7
Staff Regulations	11	8	4		
Others	16	13	10	7	10
OVERALL TOTAL	**469**	**495**	**496**	**544**	**523**

([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 (2012) (1)

	Judgments/Opinions	Orders (2)	Total
Access to documents	3	2	5
Accession of new States	2		2
Agriculture	20	2	22
Approximation of laws	9	3	12
Area of freedom, security and justice	33	4	37
Citizenship of the Union	8		8
Commercial policy	7	1	8
Common foreign and security policy	6	3	9
Company law	1		1
Competition	20	10	30
Consumer protection (4)	7	2	9
Customs union and Common Customs Tariff (5)	17	2	19
Economic and monetary policy	1	2	3
Economic, social and territorial cohesion	1	2	3
Education, vocational training, youth and sport	1		1
Environment (4)	26	1	27
Environment and consumers (4)	1		1
External action by the European Union	4	1	5
Financial provisions (budget, financial framework, own resources, combatting fraud and so forth) (3)	3		3
Free movement of capital	18	3	21
Free movement of goods	7		7
Freedom of establishment	6		6
Freedom of movement for persons	12	6	18
Freedom to provide services	14	15	29
Industrial policy	8		8
Intellectual and industrial property	29	17	46
Law governing the institutions	13	14	27
Principles of European Union law	2	5	7
Public health	1		1
Public procurement	9	3	12
Research, technological development and space	1		1
Social policy	26	2	28
Social security for migrant workers	8		8
State aid	7	3	10
Taxation	59	5	64
Tourism	1		1
Transport	14		14
EC Treaty/TFEU	405	108	513

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	Judgments/Opinions	Orders ([2])	Total
Privileges and immunities	1	2	3
Procedure		7	7
Others	1	9	10
OVERALL TOTAL	**406**	**117**	**523**

([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).

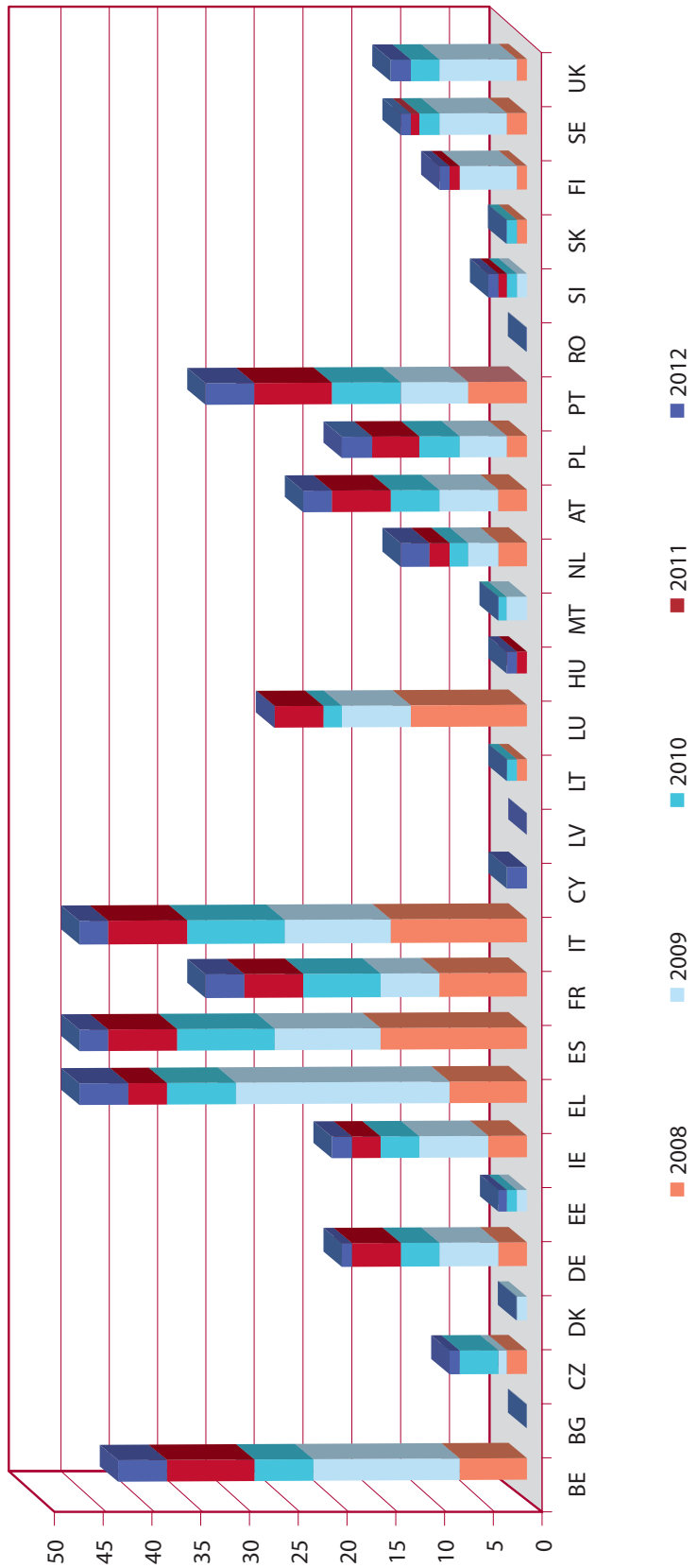
([2]) Orders terminating proceedings other than those removing a case from the register, declaring that there is no need to give a decision or referring a case to the General Court.

([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.

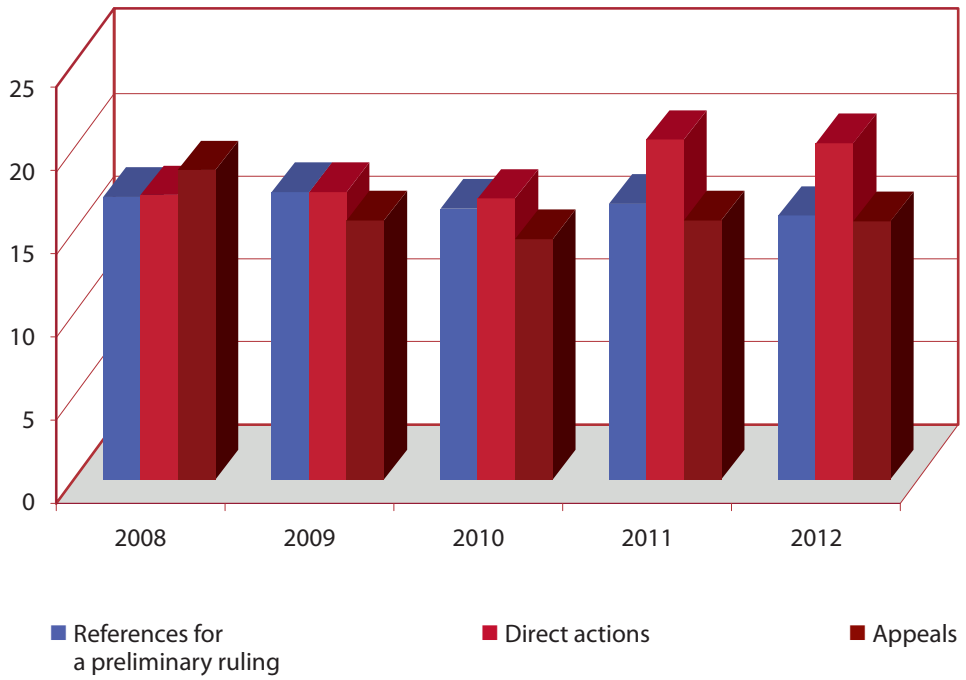
11. *Completed cases* — Judgments concerning failure of a Member State to fulfil its obligations: outcome (2008–12) ([1])



	2008		2009		2010		2011		2012	
	Infringement declared	Dismissed	Infringement declared	Dismissed	Infringement declared	Dismissed	Infringement declared	Dismissed	Infringement declared	Dismissed
Belgium	7		15	1	6	1	9	1	5	1
Bulgaria										
Czech Republic	2		1		4				1	
Denmark			1							
Germany	3	3	6	2	4	2	5		1	2
Estonia			1		1				1	
Ireland	4		7		4		3		2	
Greece	8	1	22		7		4		5	
Spain	15	1	11		10	2	7	1	3	
France	9	1	6		8	2	6		4	
Italy	14	1	11	4	10		8	1	3	
Cyprus								1	2	
Latvia										
Lithuania	1				1					
Luxembourg	12		7		2		5			
Hungary							1	1	1	
Malta			2		1	1		1		
Netherlands	3		3		2	1	2		3	1
Austria	3		6		5		6		3	
Poland	2		5		4	1	5		3	
Portugal	6		7	1	7	1	8	1	5	
Romania								1		
Slovenia			1		1		1		1	
Slovakia	1				1			1		1
Finland	1	1	6	1			1		1	
Sweden	2	1	7		2		1		1	
United Kingdom	1		8	1	3	1			2	
Total	**94**	**9**	**133**	**10**	**83**	**12**	**72**	**9**	**47**	**5**

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

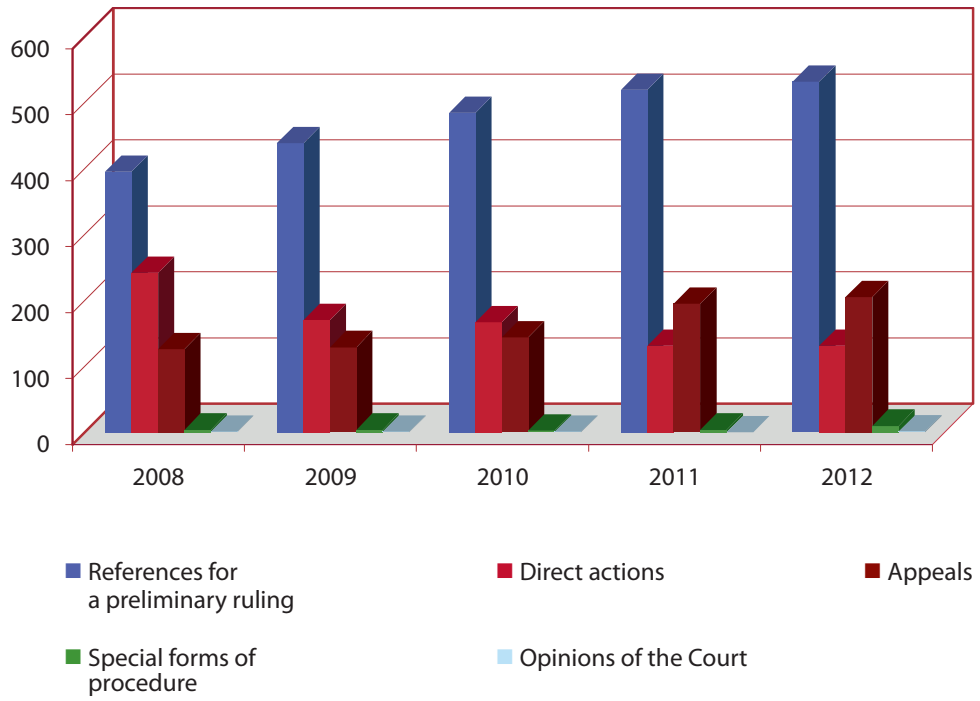
12. *Completed cases* — Duration of proceedings (2008–12) ([1])
(judgments and orders involving a judicial determination)



	2008	2009	2010	2011	2012
References for a preliminary ruling	16.8	17.1	16.1	16.4	15.7
Urgent preliminary ruling procedure	2.1	2.5	2.1	2.5	1.9
Direct actions	16.9	17.1	16.7	20.2	19.7
Appeals	18.4	15.4	14.3	15.4	15.3

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

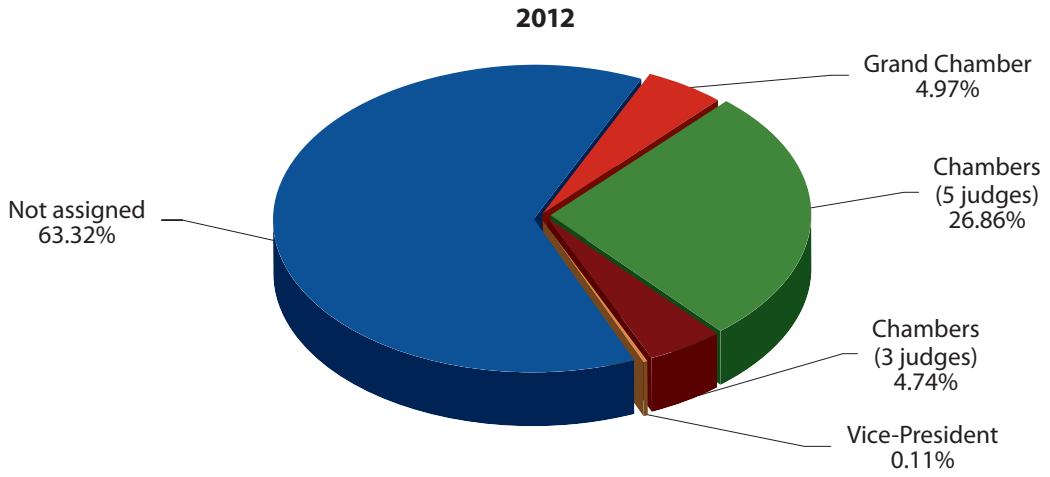
13. *Cases pending as at 31 December* — Nature of proceedings (2008–12) (1)



	2008	2009	2010	2011	2012
References for a preliminary ruling	395	438	484	519	537
Direct actions	242	170	167	131	134
Appeals	126	129	144	195	205
Special forms of procedure	4	4	3	4	9
Opinions of the Court	1	1	1		1
Total	**768**	**742**	**799**	**849**	**886**

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

14. *Cases pending as at 31 December* — Bench hearing action (2008–12) (1)



	2008	2009	2010	2011	2012
Not assigned	524	490	519	617	561
Full Court			1		
Grand Chamber	40	65	49	42	44
Chambers (5 judges)	177	169	193	157	238
Chambers (3 judges)	19	15	33	23	42
President	8	3	4	10	
Vice-President					1
Total	**768**	**742**	**799**	**849**	**886**

(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 (2008–12)

	2008		2009		2010		2011		2012	
	Granted	Not granted	Granted	Not granted	Granted	Not granted	Granted	Not granted	Granted	Not granted
Direct actions						1			1	
References for a preliminary ruling		6	1	3	4	7	2	6	1	3
Appeals				1				5		
Special forms of procedure				1						
Total	**2**	**6**	**1**	**5**	**4**	**8**	**2**	**11**	**2**	**3**

16. *Miscellaneous* – Urgent preliminary ruling procedure (2008–12)

	2008		2009		2010		2011		2012	
	Granted	Not granted	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	4	1
Total	**3**	**3**	**2**	**1**	**5**	**1**	**2**	**3**	**4**	**1**

17. *Miscellaneous* — Proceedings for interim measures (2012) ([1])

	New applications for interim measures	Appeals concerning interim measures or interventions	Outcome	
			Not granted	Granted
External action by the European Union			1	
Competition		1	1	
Law governing the institutions			8	
Common foreign and security policy		2	3	
Intellectual property			1	
OVERALL TOTAL		**3**	**14**	

([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 (1952–2012) — 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	2	377
2010	136	385	97	6		624	2	370
2011	81	423	162	13		679	3	371
2012	73	404	136	3	1	617		357
Total	**8 755**	**7 832**	**1 416**	**101**	**20**	**18 124**	**355**	**9 365**

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

(2) Net figures.

19. *General trend in the work of the Court (1952–2012) —* 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
2012	28	15	7	8	68	5	6	1	16	15	65		5	2	8	18	1	44	23	6	14	13		9	3	8	16		404
Total	**713**	**55**	**27**	**149**	**1 953**	**12**	**68**	**161**	**287**	**862**	**1 165**	**2**	**25**	**13**	**83**	**64**	**2**	**833**	**410**	**49**	**102**	**46**	**4**	**20**	**79**	**99**	**547**	**2**	**7 832**

([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 (1952–2012) —* New references for a preliminary ruling (by Member State and by court or tribunal)

			Total
Belgium	Cour constitutionnelle	25	
	Cour de cassation	88	
	Conseil d'État	66	
	Other courts or tribunals	534	713
Bulgaria	Върховен административен съд	10	
	Върховен касационен съд	1	
	Other courts or tribunals	44	55
Czech Republic	Nejvyššího soudu		
	Nejvyšší správní soud	14	
	Ústavní soud		
	Other courts or tribunals	13	27
Denmark	Højesteret	32	
	Other courts or tribunals	117	149
Germany	Bundesgerichtshof	163	
	Bundesverwaltungsgericht	105	
	Bundesfinanzhof	285	
	Bundesarbeitsgericht	25	
	Bundessozialgericht	74	
	Staatsgerichtshof des Landes Hessen	1	
	Other courts or tribunals	1 300	1 953
Estonia	Riigikohus	4	
	Other courts or tribunals	8	12
Ireland	Supreme Court	22	
	High Court	20	
	Other courts or tribunals	26	68
Greece	Άρειος Πάγος	10	
	Συμβούλιο της Επικρατείας	50	
	Other courts or tribunals	101	161
Spain	Tribunal Supremo	47	
	Audiencia Nacional	1	
	Juzgado Central de lo Penal	7	
	Other courts or tribunals	232	287
France	Cour de cassation	100	
	Conseil d'État	80	
	Other courts or tribunals	682	862
Italy	Corte suprema di Cassazione	111	
	Corte Costituzionale	1	
	Consiglio di Stato	86	
	Other courts or tribunals	967	1 165
Cyprus	Ανώτατο Δικαστήριο	2	
	Other courts or tribunals		2

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			Total
Latvia	Augstākā tiesa	18	
	Satversmes tiesa		
	Other courts or tribunals	7	25
Lithuania	Lietuvos Respublikos Konstitucinis Teismas	1	
	Lietuvos Aukščiausiasis Teismas	3	
	Lietuvos vyriausiasis administracinis Teismas	5	
	Other courts or tribunals	4	13
Luxembourg	Cour supérieure de justice	10	
	Cour de cassation	12	
	Conseil d'État	13	
	Cour administrative	10	
	Other courts or tribunals	38	83
Hungary	Legfelsőbb Bíróság	3	
	Fővárosi Ítélőtábla	2	
	Szegedi Ítélötáblá	1	
	Other courts or tribunals	58	64
Malta	Constitutional Court		
	Qorti ta' l- Appel		
	Other courts or tribunals	2	2
Netherlands	Raad van State	88	
	Hoge Raad der Nederlanden	221	
	Centrale Raad van Beroep	50	
	College van Beroep voor het Bedrijfsleven	142	
	Tariefcommissie	34	
	Other courts or tribunals	298	833
Austria	Verfassungsgerichtshof	5	
	Oberster Gerichtshof	92	
	Oberster Patent- und Markensenat	4	
	Bundesvergabeamt	24	
	Verwaltungsgerichtshof	69	
	Vergabekontrollsenat	4	
	Other courts or tribunals	212	410
Poland	Sąd Najwyższy	5	
	Naczelny Sąd Administracyjny	19	
	Trybunał Konstytucyjny		
	Other courts or tribunals	25	49
Portugal	Supremo Tribunal de Justiça	3	
	Supremo Tribunal Administrativo	47	
	Other courts or tribunals	52	102
Romania	Înalta Curte de Casație și Justiție	6	
	Curtea de Apel	21	
	Other courts or tribunals	19	46

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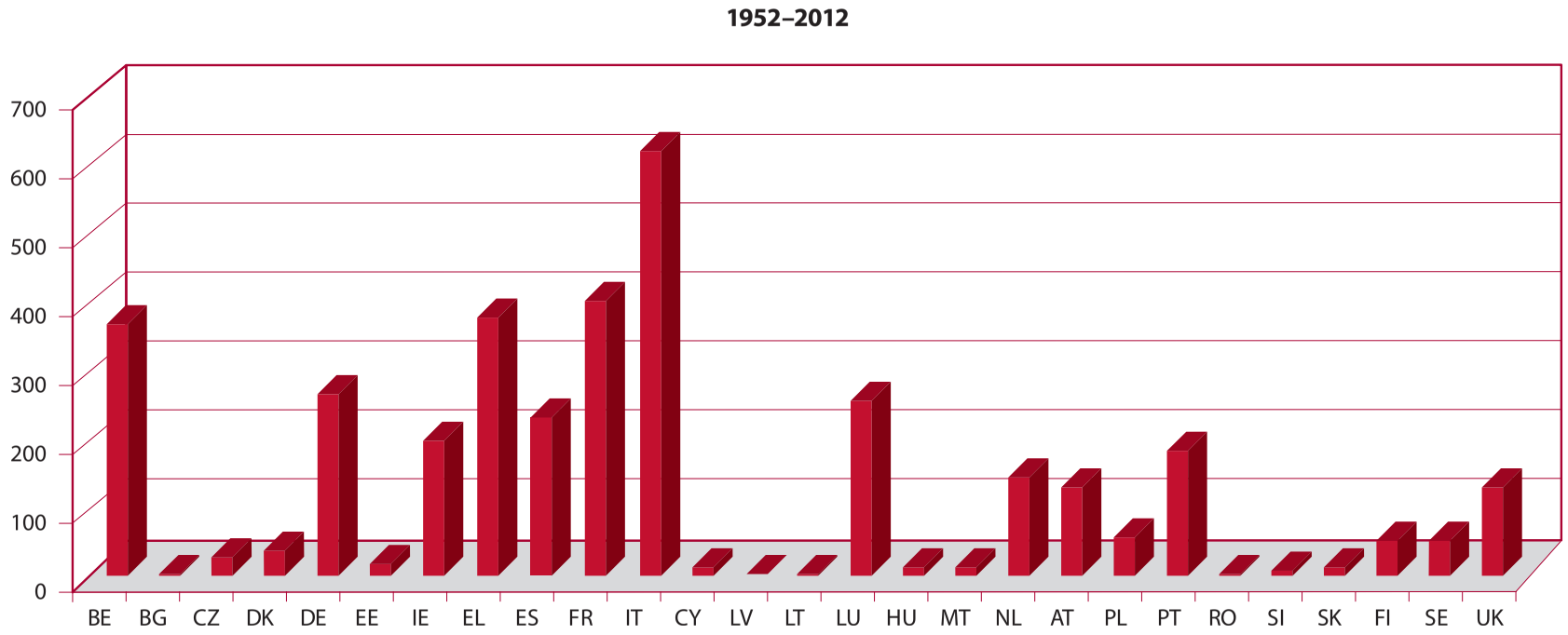
			Total
Slovenia	Vrhovno sodišče	1	
	Ustavno sodišče		
	Other courts or tribunals	3	4
Slovakia	Ústavný Súd		
	Najvyšší súd	8	
	Other courts or tribunals	12	20
Finland	Korkein hallinto-oikeus	40	
	Korkein oikeus	13	
	Other courts or tribunals	26	79
Sweden	Högsta Domstolen	16	
	Marknadsdomstolen	5	
	Regeringsrätten	24	
	Other courts or tribunals	54	99
United Kingdom	House of Lords	40	
	Supreme Court	3	
	Court of Appeal	70	
	Other courts or tribunals	434	547
Others	Cour de justice Benelux/Benelux Gerechtshof ([1])	1	
	Complaints Board of the European Schools ([2])	1	2
Total			**7 832**

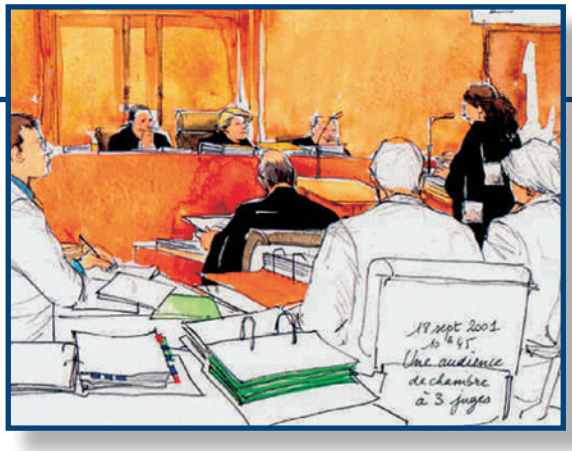
([1]) Case C-265/00 Campina Melkunie.

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

21. *General trend in the work of the Court (1952–2012) —* 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
1952–2012	373	3	27	38	272	18	202	385	238	410	633	10		3	261	13	14	144	133	59	188	1	9	11	52	52	131	**3 680**



Chapter II

The General Court

A — Proceedings of the General Court in 2012

By Mr Marc Jaeger, President of the General Court

The year 2012 has demonstrated, in the light of the two previous years, that periods in which the General Court can enjoy a stable and full complement of members have become rare. This is a phenomenon which the Court is now compelled to take into account in its operation and working methods. Although Mr E. Moavero Milanesi and Ms E. Cremona departed from office on 15 November 2011 and 22 March 2012 respectively, they were replaced from, respectively, 17 September 2012, when Mr G. Berardis entered into office, and 8 October 2012, when Mr E. Buttigieg entered into office. Similarly, Mr N. Wahl, who entered into office at the Court of Justice as Advocate General on 28 November 2012, has not yet been replaced. Whilst departures of members are inevitable in a Court soon to be enlarged to 28 judges (taking account of the future accession of the Republic of Croatia), they quite evidently are not conducive to optimal management of judicial activity. It is therefore essential that the timetable for appointing members following such departures — in particular, on the partial renewal of the Court's membership every three years — allows continuity in dealing with cases, in a context where the pursuit of efficiency is permanently at the centre of the Court's efforts.

From a statistical point of view, despite those unfavourable circumstances, the Court can nevertheless be pleased to have succeeded in consolidating the real quantitative leap of 2011. Some 688 cases were completed in 2012 (which constitutes, apart from 2011, the highest figure since the Court's creation) and hearings were held in some 322 cases. The new level of judicial productivity that has been established — which stems from the many internal reforms that have been implemented in recent years and are producing cumulative efficiency gains — has made a historic reduction ([1]) in the number of pending cases possible (a reduction of 71 cases, that is to say, of more than 5%), thanks to a one-off fall in the number of new cases, of which there were 617 in 2012 (that is to say, a fall of nearly 15%). However, in the light of the overall increase in the caseload that has been observed for a decade, this decline cannot be regarded as lasting, and the Court must therefore intensify its commitment to eliminate the backlog of cases, with the objective of improving upon the reduction in the duration of proceedings that has already been achieved (the duration of cases averaged 24.8 months in 2012, that is to say, 1.9 months shorter than in 2011).

It is in particular to this end that the Court has embarked upon a radical reform of its Rules of Procedure, which — in accordance with the fifth paragraph of Article 254 TFEU — will be submitted to the Council for approval in the course of 2013. However, necessary though it may be, this modernisation of the Rules of Procedure will produce effects that are not quantifiable in advance and will be perceptible only in the medium term, after the new provisions have been applied for a sufficiently long period. It follows that the intended reform will not, in itself, make possible the major increase in productivity that is essential in order to achieve a sufficiently appreciable and lasting reduction in the duration of proceedings, in particular as regards voluminous and complex cases. The reform should thus as a matter of urgency be accompanied by the addition of new staff resources, pending a possible change in the Court's structure.

As is indicated by the overview presented in the following pages, 2012 saw a variety of developments in the case-law, a significant part of which concerned disputes relating to competition law,

([1]) Over the last 10 years, the number of pending cases has consistently increased, with the exception of 2005 and 2006 (owing to the transfer of jurisdiction to the Civil Service Tribunal).

State aid and intellectual property. The various areas of the Court's activities will be dealt with according to the different roles of the Court: proceedings concerning the legality of measures (I), appeals (II) and interim measures (III).

I. Proceedings concerning the legality of measures

Admissibility of actions brought under Article 263 TFEU

1. Measure against which an action may be brought

In Case T-237/09 *Région wallonne* v *Commission* (judgment of 1 February 2012, not yet published), the Court, called upon to determine whether it is possible to bring an action for annulment of an implied decision of rejection resulting from the reasoning on which a measure is based, recalled first of all that, in principle, only the operative part of a decision is capable of producing legal effects and thus of adversely affecting the interests of those concerned, irrespective of the grounds on which that decision is based. Conversely, the assessments contained in the reasoning on which the contested decision is based cannot, as such, be the subject of an action for annulment and may be subject to judicial review by the Courts of the European Union only if, as the reasoning of an act adversely affecting the interests of those concerned, they constitute the essential basis for its operative part. However, even though the operative part of a decision does not expressly reject a request formulated by the addressee, it may none the less be apparent from the decision read in the light of its fundamental grounds that the institution which adopted it expressly adopted a position on that request and rejected it. In that case the decision entails binding legal effects adversely affecting the addressee on that point.

2. Act not entailing implementing measures

The Court was led to rule on the concept of an act which does not entail implementing measures within the meaning of the fourth paragraph of Article 263 TFEU. First, in Case T-221/10 *Iberdrola* v *Commission* (judgment of 8 March 2012, not yet published), the applicant claimed, in its action against the Commission decision which declared that the scheme, implemented by Spanish legislation, allowing the tax amortisation of financial goodwill for foreign share acquisitions was incompatible with the common market, that it was not required to show that the decision was of individual concern to it, since the decision was a regulatory act which was of direct concern to the applicant and did not entail implementing measures.

Observing that Article 6(2) of the contested decision referred to the existence of 'national measures taken to implement [it] until recovery of the aid granted under the scheme [at issue]', the Court stated that the very existence of those recovery measures, which constituted implementing measures, justified the contested decision's being regarded as an act entailing implementing measures, which were capable of being challenged before a national court by persons to whom they were addressed. The measures implementing the contested decision were not confined to those recovery measures, but also included the measures for implementing the incompatibility decision, including inter alia the measure rejecting an application for the tax advantage at issue, a rejection which the applicant could also challenge before the national court. The Court therefore rejected the applicant's argument that the contested decision did not entail or require implementing measures to give it effect because it automatically prevented the continued application of the scheme at issue by the beneficiaries and the Kingdom of Spain.

Second, Case T-381/11 *Eurofer* v *Commission* (order of 4 June 2012, not yet published) concerned a Commission decision determining transitional Union-wide rules for harmonised free allocation of greenhouse gas emission allowances pursuant to Article 10a of Directive 2003/87/EC. [2]

Although the Court concluded that that decision constituted a regulatory act within the meaning of Article 263 TFEU, in that it was of general application and did not constitute a legislative act, it none the less held that the decision could not be regarded as not entailing implementing measures. Since the contested decision provided that the Commission and the Member States were to adopt several implementing measures, which culminated in the determination by the Member States of the final total annual amount of emission allowances allocated free of charge for each of the installations concerned, the Court considered that it entailed implementing measures within the meaning of the fourth paragraph of Article 263 TFEU. That conclusion was not called into question by the objective sought by that provision, which is to enable natural and legal persons to bring an action against acts of general application which are not legislative acts, which are of direct concern to them and which do not entail implementing measures, therefore avoiding a situation in which such a person would have to break the law in order to have access to justice. The Court observed in that regard that the situation of the undertakings belonging to an association representing the interests of the European steel industry in the context of an action brought by that association against the contested decision was not that to which that objective is intended to apply. Those undertakings could, in principle, without being required to infringe the contested decision beforehand, challenge the national measures implementing the contested decision and, in that context, plead the unlawfulness of the contested decision before the national courts, which could, before giving judgment, have recourse to the provisions of Article 267 TFEU.

3. Direct effect

In Case T-541/10 *ADEDY and Others* v *Council* (order of 27 November 2012, not yet published), an action was brought before the Court by, among others, a Greek trade union confederation against two Council decisions addressed to the Hellenic Republic concerning the situation of excessive deficit in that State. The applicants took issue with the contested measures on the ground that they contained a number of provisions affecting the financial interests and working conditions of Greek civil servants.

The Court observed that the fourth paragraph of Article 263 TFEU limits actions for annulment brought by a natural or legal person to three categories of act: first, acts addressed to that person; second, acts which are of direct and individual concern to them; and, third, regulatory acts which are of direct concern to them and do not entail implementing measures. In that regard, the Court recalled that, according to the case-law on the fourth paragraph of Article 230 EC, the condition that the decision forming the subject-matter of the action must be of direct concern to the natural or legal person concerned requires in principle that two cumulative conditions be satisfied: the contested measure must directly affect the legal situation of the person concerned and it must not leave any discretion to its addressees, who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from European Union rules without the application of other intermediate rules. That case-law remains applicable to the fourth paragraph of Article 263 TFEU, in the absence of any change to the 'direct effect' condition laid down in that provision.

(2) 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).

The Court examined the various provisions of the contested decisions against the yardstick of those conditions and held that the provision imposing the reduction of the bonuses paid to civil servants was not capable of directly affecting the applicants' legal situation since, while it placed an obligation on the Member State concerned to achieve a budgetary objective, namely to make savings each year by reducing the bonuses paid to officials, it did not determine either the procedures governing that reduction or the categories of civil servants affected by the reduction, factors in respect of which the national authorities had a wide discretion. The same applied, according to the Court, with respect to the provision placing an obligation on the State concerned to adopt within a prescribed period a law reforming the retirement arrangements in order to ensure that they would be practicable in the medium and long term. Since it required the adoption of a national law in order to be implemented and left a very wide discretion to the State authorities to define the terms of that law, on condition that the law would ensure the medium-term and long-term practicability of the retirement arrangements, that provision was not of direct concern to the applicants, within the meaning of the fourth paragraph of Article 263 TFEU; only that law might possibly have a direct effect on their legal situation. As for the provision placing a ceiling on the replacement of persons retiring in the public sector, the Court considered that it constituted a general measure for the organisation and management of the public administration and that therefore it too did not directly affect the applicants' legal situation. In so far as that provision led to a deterioration in the functioning of public services and worsened the applicants' conditions of employment, that was a circumstance which did not affect their legal situation, but only their factual situation.

4. Representation by a lawyer

Under the third and fourth paragraphs of Article 19 of the Statute of the Court of Justice of the European Union, which, pursuant to the first paragraph of Article 53 of that Statute, is applicable to the procedure before the General Court, individuals must be represented by a lawyer authorised to practise before a court of a Member State or of another State which is a party to the Agreement on the European Economic Area. ([3])

In Case T-508/09 *Cañas* v *Commission* (order of 26 March 2012, under appeal), the application had been signed jointly by two lawyers, the first of whom was a member of the Bar of Lausanne (Switzerland), while the second was a member of that Bar and also of the Bar of Paris (France). Since the latter was a full member of both Bars, the Court considered that the application had been lodged by a lawyer authorised to practise before a court of a Member State. However, that lawyer was replaced in the course of the proceedings by a third lawyer, of Swiss nationality, who was a member of the Paris Bar included on the list of foreign lawyers, and the Commission requested the Court to confirm that that Swiss lawyer was authorised to represent the applicant before it in view of the potential risk of distortion of the rules on the authorisation of lawyers before the Courts of the European Union, in particular on the basis of bilateral agreements between a Member State and a non-member State. The Court observed in that regard that, although Directive 98/5/EC, ([4]) read in conjunction with Annex III to the EC-Switzerland agreement on the free movement of persons, ([5]) gives Member States the possibility of requiring that Swiss lawyers permanently established on their territory act with a local lawyer when representing a client in legal proceedings, French law

([3]) Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3).

([4]) Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ 1998 L 77, p. 36).

([5]) Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, signed on 21 June 1999 (OJ 2002 L 114, p. 6).

does not impose such an obligation. As the lawyer in question had, moreover, produced a certificate authorising him to practise before a court of a Member State, the Court concluded that he was permitted to represent the applicant before it.

The Court ruled, last, on the possibility for the first lawyer, who was a member only of the Lausanne Bar, to rely on his right to freedom to provide services in order to represent the applicant in the main proceedings. Observing that Article 5 of Directive 77/249/EEC, ([6]) on which Swiss lawyers could rely, stated that, for the pursuit of activities relating to the representation of a client in legal proceedings, a Member State might require lawyers providing services to work in conjunction with a lawyer who practises before the judicial authority in question, or with an '*avoué*' or '*procuratore*' practising before it, the Court considered that that requirement was satisfied provided that the applicant was also represented by a lawyer who was a full member of the Paris Bar.

5. Capacity to act as defendant

In Case T-395/11 *Elti* v *Delegation of the European Union to Montenegro* (order of 4 June 2012, not yet published), an action was brought before the Court against a decision of the Head of the Delegation of the European Union to Montenegro rejecting the applicant's tender for the supply of equipment for the digitisation of the public broadcasting service in that country. That case gave the Court the opportunity to make clear that a delegation of the European Union to a non-member State cannot be considered a body, office or agency of the European Union within the meaning of the first paragraph of Article 263 TFEU.

The Court observed that it follows from Article 221 TFEU, Decision 2010/427/EU ([7]) and the second paragraph of Article 51 and Articles 59, 60a and 85 of the Financial Regulation ([8]) that the legal status of the Union Delegations is characterised by a two-fold organic and functional dependence with respect to the European External Action Service (EEAS). For that reason, they cannot be characterised as bodies, offices or agencies of the European Union within the meaning of Article 263 TFEU.

Furthermore, measures adopted pursuant to delegated powers are normally attributed to the delegating institution, on which it falls to defend the measure in question before the courts, an outcome which holds all the more true for signature by delegation and in a scenario of sub-delegation. Thus, the measures adopted by the Head of Delegation of the European Union to Montenegro, acting in his capacity as sub-delegated authorising officer of the Commission, in the procedure for a public supply contract, did not confer capacity on that delegation to act as a defendant in legal proceedings and in the present case were attributable to the Commission. It followed that the Delegation of the European Union to Montenegro could not be considered a body, office or agency of the European Union and that the action brought against that delegation in the present case was dismissed as inadmissible.

([6]) Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ 1977 L 78, p. 17).

([7]) Council Decision 2010/427/EU of 26 July establishing the organisation and functioning of the European External Action Service (OJ 2010 L 201, p. 30).

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

Competition rules applicable to undertakings

1. General issues

(a) Requests for information

Joined Cases T-458/09 and T-171/10 *Slovak Telekom* v *Commission* (judgment of 22 March 2012, not yet published) provided the Court with the opportunity to rule on the extent of the Commission's power to request information from undertakings under Article 18 of Regulation (EC) No 1/2003. ([9]) Those cases concerned two Commission decisions ordering the applicant to provide information about its activity, not only during the period following the Slovak Republic's accession to the European Union but also during the preceding period. The Court observed that the powers of investigation provided for in Article 18(1) of Regulation No 1/2003 are subject only to a single requirement, namely that the information requested be necessary, which it is for the Commission to evaluate, in order to assess the putative infringements justifying the undertaking of the investigation. It follows that the Commission is entitled to request an undertaking to provide information relating to a period during which the competition rules of the European Union did not apply to it if such information should be necessary for the detection of a possible infringement of those rules from the point at which they became applicable. In that context, the Court rejected the applicant's argument that there was in this instance no nexus between the alleged infringement and the information requested. The Court observed in that regard that the information would enable the Commission to define the markets at issue, to determine whether the applicant held a dominant position on those markets or to assess the gravity of the infringement, while certain data from before 1 May 2004 might also be necessary in order to establish the economic context of the conduct at issue.

(b) Commission's investigatory powers

— Assistance of a lawyer

In Case T-357/06 *Koninklijke Wegenbouw Stevin* v *Commission* (judgment of 27 September 2012, not yet published), the Court observed that, while certain rights of the defence, including the right to legal assistance, must be observed even at the stage of the preliminary investigation, it is none the less necessary to ensure that observance of those rights does not undermine the effectiveness of investigations, in order that the Commission is able to carry out its role as guardian of the Treaty in competition matters. It is necessary, in that context, to weigh up the general principles of European Union law on the rights of the defence and the effectiveness of the Commission's power of investigation, by preventing the possible destruction or concealment of documents. Thus, while the presence of an external lawyer or an in-house lawyer is possible, the legality of the inspection cannot be conditional on such presence. Where an undertaking so desires, and in particular where it has no lawyer on the premises, it may therefore seek the advice of a lawyer and request him to attend as soon as possible. In order that the exercise of that right to be assisted by a lawyer cannot undermine the proper conduct of the inspection, the persons responsible for the inspection must be able to enter immediately all the premises of the undertaking, to notify the undertaking of the inspection decision and to occupy the offices of their choice without having to wait. Those persons must also be put in a position to monitor the telephone and electronic communications of the undertaking. Furthermore, the period which the Commission is required to allow an undertaking in

([9]) 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).

order for it to be able to contact its lawyer before the Commission begins the inspection can only be very brief and must be kept to a strict minimum.

In this connection, the Court considered that, by refusing to grant an undertaking's request that the agents responsible for the inspection should wait in a waiting room until its external lawyers arrive and only then be allowed to enter its premises, the Commission does not breach any of the rights of defence of that undertaking. The undertaking's refusal to grant the Commission's inspectors access to its premises before its lawyers arrived must therefore be characterised as a refusal to submit to the investigation decision.

— Scope

In *Koninklijke Wegenbouw Stevin* v *Commission*, the Court also had the opportunity to rule on the scope of the Commission's powers of inspection. Observing in that regard that undertakings are under an obligation to cooperate actively in the measures of investigation in the course of the preliminary investigation procedure, the Court placed particular emphasis on the importance assumed in that context by the right to have access to all their premises, land and means of transport. That right plays a crucial role inasmuch as it is intended to permit the Commission to obtain evidence of infringements of the competition rules in places in which such evidence is normally to be found, that is to say, on the business premises of undertakings.

Thus, the Court held that the mere fact that an undertaking's lawyers refuse to grant the Commission access to the office of one of the directors of that undertaking is sufficient for that undertaking to be considered to have refused to submit in full to the investigation decision, without its being necessary for the Commission to establish that the delay caused by that refusal led to the destruction or concealment of documents.

In Case T-135/09 *Nexans France and Nexans* v *Commission* and Case T-140/09 *Prysmian and Prysmian Cavi e Sistemi Energia* v *Commission* (judgments of 14 November 2012, not yet published), relating again to the same issue, the Court none the less made clear that, when the Commission carries out an inspection at the premises of an undertaking, it is required to restrict its searches to the activities of that undertaking relating to the sectors indicated in the decision ordering the inspection. Conversely, when it finds, after examination, that a document or other item of information does not relate to those sectors, it must refrain from using that document or item of information for the purposes of the investigation. The Court made clear in that regard that, if the Commission were not subject to such a restriction, it would in practice be able, every time it has indicia suggesting that an undertaking has infringed the competition rules in a specific field of its activities, to carry out an inspection covering all those activities. That would be incompatible with the protection of the sphere of private activity of legal persons, guaranteed as a fundamental right in a democratic society. In this instance, the Commission was thus under an obligation, in order to adopt the inspection decisions, to have reasonable grounds to justify an inspection at the applicants' premises covering all the applicants' activities in relation to electric cables and the material associated with those cables.

(c) Reasonable period of time

In Case T-214/06 *Imperial Chemical Industries* v *Commission* (judgment of 5 June 2012, not yet published), the Court, before which it was pleaded that the duration of the administrative procedure and judicial proceedings had been excessive, held that its unlimited jurisdiction in relation to fines for infringements of the competition rules enabled it to adjudicate on the applicant's request for a reduction on that ground of the amount of the fine imposed on it by the Commission. The Court

observed, in particular, that such a possibility was justified in this instance by reasons of procedural economy and in order to ensure an immediate and effective remedy regarding such a breach of the 'reasonable time' principle.

Recalling that the reasonableness of a period must be appraised in the light of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the person concerned and of the competent authorities, the Court considered that, while the duration of the judicial proceedings of which the applicant complained — five years and nine months in all — was indeed considerable, that duration was explained by the circumstances and the complexity of the case. Thus, given that the applicant had not put forward any argument as regards the importance for it of the case, and in view of the fact that the case did not, by its nature or its importance for the applicant, require that it be dealt with particularly expeditiously, the Court considered that that duration was not capable of justifying a reduction of the amount of the fine imposed.

(d) Sanctions

— Calculation of fines

Case T-336/07 *Telefónica and Telefónica de España* v *Commission* (judgment of 29 March 2012, not yet published, under appeal) also provided the Court with the opportunity to explain the criteria to be taken into consideration in the calculation of fines. The Court recalled that, in accordance with the Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) [CS], ([10]) the Commission must, in assessing the gravity of the infringement, examine its actual impact on the market only where that impact can be measured. In that context, the size of the geographic market is only one of the three criteria that are relevant for the purpose of the overall assessment of the gravity of the infringement. In addition, the size of the geographic market is not an autonomous criterion in the sense that only infringements affecting several Member States could be qualified as 'very serious'. The Commission may therefore qualify an infringement as 'very serious' even though the size of the relevant geographic market is limited to the territory of a single Member State.

The Court also emphasised that, in assessing the gravity of an infringement for the purpose of setting the amount of the fine, the Commission must ensure that its action has the necessary deterrent effect, especially as regards those types of infringement that are particularly harmful to the attainment of the objectives of the European Union. Deterrence must be both specific and general, in the sense that, as well as constituting punishment for an individual infringement, a fine also forms part of the general policy of compliance by undertakings with the competition rules.

Furthermore, since the increase for duration involves the application of a certain percentage to the starting amount of the fine, which is determined according to the gravity of the infringement as a whole and which already reflects the varying levels of intensity of the infringement, there is no reason to take into account, for the increase of that amount on the basis of the duration of the infringement, a variation in the intensity of the infringement during the period concerned. Last, while it is not excluded that, in certain circumstances, a national legal framework or conduct on the part of national authorities may constitute attenuating circumstances, the approval or tolerance of the infringement by the national authorities cannot be taken into account as attenuating

([10]) OJ 1998 C 9, p. 3.

circumstances where the undertakings concerned have the necessary means to obtain precise and accurate information.

— Fines and periodic penalty payments

In Case T-167/08 *Microsoft* v *Commission* (judgment of 27 June 2012, not yet published), the Court stated that, although a fine is the consequence of an infringement of Article 101 TFEU or Article 102 TFEU and a periodic penalty payment is the consequence of a decision ordering that the infringement in question be brought to an end and, where appropriate, prescribing behavioural remedies, they both none the less relate to the conduct of the undertaking as revealed in the past and both require a deterrent effect in order to prevent repetition or continuation of the infringement. In view of those shared characteristics and objectives, there is no reason to state with different degrees of precision what an undertaking must do or not do in order to comply with the competition rules before either a decision imposing a fine or a decision imposing a definitive periodic penalty payment is adopted in its regard.

— Orders addressed to undertakings — Limits

In *Microsoft* v *Commission*, the Court recalled that, although the Commission has the power to find that an infringement exists and to order the parties concerned to bring it to an end, it is not for the Commission to impose upon the parties its own choice from among the various potential courses of action which are in conformity with the Treaty or with a decision imposing behavioural remedies. Thus, where the undertaking has chosen one of those potential courses of action, the Commission will not be in a position to make a finding of infringement or to impose a periodic penalty payment on the ground that it would prefer another of them.

2. Points raised in the field of Article 101 TFEU

(a) Concept of a decision by an association of undertakings

In Case T-111/08 *MasterCard and Others* v *Commission* (judgment of 24 May, not yet published, under appeal), an action was brought before the Court for annulment of a Commission decision declaring the multilateral fallback interchange fees ('MIF') applied within the MasterCard payment system to be contrary to competition law. The cost of MIF is charged to merchants in the general context of the costs charged for the use of payment cards by the financial institution which manages their transactions.

The judgment delivered in that case provided the Court with the opportunity to clarify the concept of decision of an association of undertakings, within the meaning of Article [101 TFEU]. The Court observed that that concept seeks to prevent undertakings from being able to evade the rules on competition on account simply of the form in which they coordinate their conduct on the market. It is in order to ensure that that principle is effective that Article [101](1) [TFEU] covers not only direct methods of coordinating conduct between undertakings (agreements and concerted practices) but also institutionalised forms of cooperation in which they act through a collective structure or a common body. In that context, the existence of a commonality of interests or a common interest is relevant evidence for assessment.

Emphasising, in particular, the existence of a commonality of interests between the MasterCard payment organisation and the financial institutions in relation to the setting of the MIF at a high level, the Court concluded that, in spite of changes following the initial public offering of MasterCard Inc. on the stock exchange, the MasterCard payment organisation still constituted an

institutional form of coordination of the conduct of the participating financial institutions. The Commission had therefore been fully entitled to characterise as decisions by an association of undertakings the decisions taken by the bodies of the MasterCard payment organisation in determining the MIF.

(b) Restrictions of competition

— Ancillary nature

In *MasterCard and Others* v *Commission*, the Court rejected the argument that the MIF were objectively necessary to the functioning of the MasterCard payment system. According to that argument, if those fees had not been charged, the financial institutions would have been prompted to offer other types of payment cards to their customers or to reduce the advantages conferred on cardholders, which would have adversely affected the viability of the MasterCard system. Referring to the significant revenues and commercial benefits other than MIF which those institutions derived from their payment card issuing business, the Court rejected that reasoning, taking the view that while, in a system operating without a MIF, a reduction in the benefits conferred on cardholders or the profitability of the card issuing business might be expected, it was reasonable to conclude that such a reduction would not have been sufficient to affect the viability of the MasterCard system.

— Effects

In *MasterCard and Others* v *Commission*, the applicants claimed, in particular, that the fact that the MIF had an impact on the merchant service charge did not affect competition between acquirers, on the ground that they applied in the same way to all acquirers. The Court held in that regard that, since it was acknowledged that the MIF set a floor for the merchant service charge, and inasmuch as the Commission had been legitimately entitled to find that a MasterCard system operating without a MIF would have remained economically viable, it necessarily followed that the MIF had effects restrictive of competition. By comparison with an acquiring market operating without them, the MIF limited the pressure which merchants could exert on acquiring banks when negotiating the merchant service charge by reducing the possibility of prices dropping below a certain threshold.

— Potential competition

In Case T-360/09 *E.ON Ruhrgas and E.ON* v *Commission* and Case T-370/09 *GDF Suez* v *Commission* (judgments of 29 June 2012, not yet published), the Court was required to adjudicate on actions for annulment of the Commission decision imposing a fine of EUR 553 million on each of the applicant energy companies for having infringed European Union competition law by entering into an agreement to share the French and German natural gas markets. That agreement had been concluded in 1975, when Ruhrgas AG (which became E.ON Ruhrgas AG, part of the E.ON group), and Gaz de France (GDF) (now part of the GDF Suez group) decided to construct jointly a gas pipeline across Germany in order to import Russian gas into Germany and France. The Commission decided that, by the agreement at issue, the undertakings had each agreed not to sell the gas conveyed through that gas pipeline on the other party's national market. Those cases provided the Court with the opportunity to adjudicate on the conditions in which an undertaking may be characterised as a potential competitor in the context of the application of Article [101](1) [TFEU].

In that regard, the Court pointed out that the examination of conditions of competition on a given market must be based not only on existing competition between undertakings already present on

the relevant market but also on potential competition. 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 in that market, none the less the essential factor on which such a description must be based is whether it has the ability to enter that market. As regards a national market characterised by the existence of de facto territorial monopolies, the fact that there is no legal monopoly in that market is irrelevant. In order to ascertain whether there is potential competition in a market, the Commission must examine the real concrete possibilities for the undertakings concerned to compete among themselves or for a new competitor to enter that market and compete with established undertakings. That examination on the part of the Commission must be made on an objective basis, with the result that the fact that such possibilities are precluded on account of a monopoly which derives directly from national legislation or, indirectly, from the factual situation arising from the implementation of that legislation is irrelevant. Furthermore, the purely theoretical possibility that a company may enter such a market is not sufficient to establish the existence of such competition.

In this instance, the Court found that the situation on the German market until 24 April 1998, in that it was characterised by the lawful existence of de facto territorial monopolies, was likely to result in the absence of any competition, not only actual, but also potential, on that market. The fact that there was no legal monopoly in Germany was irrelevant in that respect. The Court concluded that the Commission had not demonstrated the existence of potential competition between E.ON and GDF Suez on the German gas market between 1 January 1980 and 24 April 1998 that could have been harmed by the agreement concluded between them.

(c) Calculation of the fine

— Cooperation

(i) Scope

In Case T-347/06 *Nynäs Petroleum and Nynas Belgium* v *Commission* (judgment of 27 September 2012, not yet published), the Court stated that, according to the sixth indent of Section 3 of the Guidelines on the method of setting fines, the Commission may reduce the basic amount of the fine for effective cooperation by the undertaking in the proceedings outside the scope of the 2002 Leniency Notice. However, the Commission can grant an undertaking which has cooperated during the proceedings for infringement of the competition rules a reduction of the fine under those provisions of the Guidelines only where the 2002 Leniency Notice is not applicable. That notice does not apply to vertical cartels or cartels falling within the scope of Article [102 TFEU]. Accordingly, and since, in this instance, the infringement in question did fall within the scope of the 2002 Leniency Notice, the Court considered that the provisions of the sixth indent of Section 3 of the Guidelines on the method of setting fines could not apply to the applicants.

(ii) Consequences

In Case T-370/06 *Kuwait Petroleum and Others* v *Commission* (judgment of 27 September 2012, not yet published, under appeal), the Court observed that, under point 27 of the 2002 Leniency Notice, in cartel cases, in any decision which it adopts at the close of the administrative procedure, the Commission will evaluate the final position of each undertaking which has filed an application for a reduction of the fine. It follows, according to the Court, that the Commission must assess the value of the information provided by an undertaking at the end of the administrative procedure and it cannot be criticised for taking the view that it could not reward an undertaking for statements which had appeared to be decisive at one point in the procedure but which turned out to

be unusable at a later stage in the administrative procedure, since the undertaking had revised its statements.

— Aggravating circumstances

(i) Role as leader or instigator of the infringement

In Case T-343/06 *Shell Petroleum and Others* v *Commission* (judgment of 27 September 2012, not yet published, under appeal), the Court stated that in principle there is nothing to prevent the Commission from relying on a single event in order to establish that an undertaking played a role of instigator in a cartel, on condition that it is possible to establish with certainty from that single event that the undertaking persuaded or encouraged other undertakings to establish the cartel or to join it.

Furthermore, in *Koninklijke Wegenbouw Stevin* v *Commission*, the Court recalled that, while the Courts of the European Union draw a distinction between the roles of instigator and leader, they none the less consider that, even if the evidence adduced by the Commission is insufficient with respect to either of those roles, they may, in the exercise of their unlimited jurisdiction, maintain the increase of the amount of the fine applied by the Commission. In view of the importance of the applicant's role as leader, the Court thus considered in this instance that the increase of the fine should not be reduced.

(ii) Repeat infringement

The judgment in *Shell Petroleum and Others* v *Commission* gave the Court the opportunity to provide explanations on this subject in the case of similar infringements committed successively by two subsidiaries of the same parent company. The Court held that, since European Union competition law recognises that different companies belonging to the same group constitute the same economic entity if the companies concerned do not decide independently upon their own conduct on the market, the Commission is entitled to find that there has been a repeated infringement where one of the subsidiaries of the parent company commits an infringement of the same type as that for which another subsidiary was previously punished. Since, however, the Commission is able, but under no obligation, to do so, the mere fact that it did not impute liability in an earlier decision does not mean that it is required to make the same assessment in a subsequent decision.

In this case, the Court considered that, as the subsidiary which had been the subject of the earlier decision and the subsidiary concerned by the Commission's new decision were both indirectly wholly owned by the same parent companies, the fact that in the previous decision the Commission had chosen to impute the infringement to the first subsidiary rather than to its parent companies did not affect the possibility of applying the case-law on repeated infringement in the new decision. Nor did the fact that one of the parent companies no longer existed affect the possibility of applying repeated infringement to the company that had continued to exist. Last, the Commission was not required to provide evidence establishing that that parent company had in fact exercised decisive influence over the unlawful conduct of the subsidiary to which the earlier decision was addressed, since when the infringements were committed that subsidiary was wholly owned jointly by the abovementioned parent companies.

(d) Imputation of the unlawful conduct — Finding of joint and several liability

In Case T-361/06 *Ballast Nedam* v *Commission* (judgment of 27 September 2012, not yet published, under appeal) the Court held that a parent company forming a single undertaking with its

subsidiary cannot maintain that the reduction by the Courts of the European Union of the amount of the fine imposed on its subsidiary means that the fine imposed jointly and severally on it as the parent company of the group should also be reduced, when the decision to reduce the amount of the fine was the consequence of the fact that the Commission infringed the subsidiary's rights of defence.

(e) Unlimited jurisdiction

— Earlier matter

In *Shell Petroleum and Others* v *Commission*, the Court recalled that the unlimited jurisdiction of the Courts of the European Union empowers them, in addition to carrying out a mere review of the lawfulness of the penalty, to substitute their own appraisal for the Commission's and, consequently, to cancel, reduce or increase the fine or penalty payment imposed. That entails, in accordance with the requirements of the principle of effective judicial protection in Article 47 of the Charter of Fundamental Rights of the European Union, ([11]) review by the Courts of the European Union of both the law and the facts, and means that they have the power to assess the evidence, to annul the contested decision and to alter the amount of a fine. Thus, it is for the Court, in the exercise of its unlimited jurisdiction, to assess, on the date on which it adopts its decision, whether the undertakings concerned received a fine the amount of which properly reflects the gravity of the infringement in question. In the exercise of its unlimited jurisdiction, the Court may, in principle, take account of an undertaking's lack of cooperation and consequently increase the fine imposed on it for infringement of Articles [101 TFEU] or [102 TFEU]. According to the Court, that could be the case where, in reply to a request to that effect from the Commission, an undertaking has failed to submit, intentionally or negligently, during the administrative procedure, decisive evidence for the setting of the amount of the fine which was or might have been in its possession at the time of adoption of the contested decision. In that case, although the Court is not prevented from taking such evidence into consideration, the fact remains that an undertaking which relies on such evidence only at the judicial stage of the proceedings, thus prejudicing the purpose and the proper conduct of the administrative procedure, exposes itself to the risk that that factor will be taken into consideration when the Court determines the appropriate amount of the fine.

— Subsequent matter

The Court observed in *Imperial Chemical Industries* v *Commission* that, even though it was put forward only at the hearing, a plea relating to the overall duration of the proceedings against the applicant could not be regarded as inadmissible on the ground that it was out of time. The Court considered that the overall duration of the proceedings constituted a new matter of fact which, pursuant to Article 48(2) of its Rules of Procedure, justified the introduction of that plea in the course of proceedings.

— Method — Non-binding nature of the Guidelines with respect to the Court

In *E.ON Ruhrgas and E.ON* v *Commission* and *GDF Suez* v *Commission* the Court observed that it is not bound by the Commission's calculations or by the Commission's Guidelines when it adjudicates in the exercise of its unlimited jurisdiction, but must make its own appraisal, taking account of all the circumstances of the specific case. In the Court's view, the application of the method followed by the Commission would in this instance have led to a reduction of the amount of the fine imposed

([11]) OJ 2010 C 83, p. 389.

that would have been disproportionate to the importance of the error which had been found to exist. Although the Commission's error related solely to the French market and to only around one fifth of the duration of the infringement, the application of the Commission's method would have led to a reduction of the amount of the fine of more than 50%. Observing that it was not bound by that method, the Court thus concluded that, in the light of the duration and gravity of the infringement, the final amount of the fine imposed on each company should be set at EUR 320 million.

3. Points raised in the field of Article 102 TFEU

(a) Dominant position

In *Telefónica and Telefónica de España* v *Commission* an action was brought before the Court for annulment of the decision whereby the Commission had imposed on the applicants — companies in the Telefónica group, the historical Spanish telecommunications operator — a fine of around EUR 151 million for abuse of a dominant position on the broadband Internet access market in Spain. The Commission maintained that the applicants had abused their dominant position on the Spanish market for wholesale broadband Internet access services at regional and national levels between September 2001 and December 2006.

The Court recalled that the possible existence of competition on the market is a relevant factor for the purposes of determining the existence of a dominant position. However, even the existence of lively competition on a particular market does not rule out the possibility that there is a dominant position on that market, since the predominant feature of such a position is the ability of the undertaking concerned to act without having to take account of that competition in its market strategy and without thereby suffering detrimental effects from such behaviour. The Court also recalled that although the ability to impose regular price increases unquestionably constitutes a factor capable of pointing to the existence of a dominant position, it is by no means an indispensable factor, as the independence which a dominant undertaking enjoys in pricing matters has more to do with the ability to set prices without having to take account of the reaction of competitors, customers and suppliers than with the ability to increase prices.

(b) Abusive practices

— Margin squeeze

In the same case, the Commission had made a finding of infringement against the applicants on the ground that they had imposed unfair prices on their competitors in the form of a margin squeeze between the prices for retail broadband access and the prices on the regional and national wholesale broadband access markets.

The Court recalled that a margin squeeze is, in the absence of any objective justification, in itself capable of constituting abuse within the meaning of Article [102 TFEU]. A margin squeeze is the result of the spread between the prices for wholesale services and those for retail services and not of the level of those prices as such. Such a squeeze may be the result not only of an abnormally low price on the retail market, but also of an abnormally high price on the wholesale market. In order to assess the lawfulness of the pricing policy applied by a dominant undertaking, reference should be made, in principle, to pricing criteria based on the costs incurred by the dominant undertaking itself and on its strategy. In particular, as regards a pricing practice which causes a margin squeeze, the use of such analytical criteria can establish whether that undertaking would have been sufficiently efficient to offer its retail services to end-users otherwise than at a loss if it had first been obliged to pay its own wholesale prices for the intermediary services.

— Potential effect on competition

In that case, the Court also pointed out that, for the purposes of establishing an infringement of Article [102 TFEU], it is sufficient to show that the abusive conduct of the undertaking in a dominant position tends to restrict competition or, in other words, that the conduct is capable of having, or likely to have, that effect. Thus, a pricing practice must have an anti-competitive effect on the market, but the effect does not necessarily have to be concrete, and it is sufficient in that regard to demonstrate that there is a potential anti-competitive effect that may exclude competitors who are at least as efficient as the dominant undertaking.

— Concept of infringement committed intentionally or negligently

In *Telefónica and Telefónica de España* v *Commission* the Court made clear, regarding the question whether an infringement has been committed intentionally or negligently, that that condition is satisfied where the undertaking concerned could not have been unaware that its conduct was anti-competitive, whether or not it was aware that it was infringing the competition rules of the Treaty. An undertaking is aware of the anti-competitive nature of its conduct where it was aware of the essential facts justifying both the finding of a dominant position on the relevant market and the finding by the Commission of an abuse of that position.

In that regard, there can be no doubt, for a prudent economic operator, that the possession of large market shares has a considerable significance which must of necessity be taken into consideration by him in relation to his possible conduct on the market. A historical operator and owner of the only significant infrastructure for the supply of wholesale products in the telecommunications sector cannot be unaware that it holds a dominant position on the relevant markets. It follows that the significance of the market shares held by such an operator on the relevant markets means that its belief that it did not occupy a dominant position on those markets can only be the outcome of an inadequate study of the structure of the markets on which it operates or a refusal to take those structures into consideration.

— Interoperability

In *Microsoft* v *Commission* an action had been brought before the Court for annulment of the Commission decision imposing a periodic penalty payment on Microsoft Corp. on the ground that the remuneration which it required in order to allow its competitors access to information on interoperability between its own products and competitors' products was unreasonable.

In the Court's view, the pricing principles applied by the Commission in the contested decision and, in particular, the criterion that the technologies concerned be innovative, gave an indication of whether Microsoft's remuneration rates reflected the intrinsic value of a technology rather than its strategic value. It followed that the application of those principles objectively met the need to assess whether Microsoft's remuneration rates were reasonable. In the context of grant of a right of access to and use of interoperability information on reasonable and non-discriminatory terms excluding any remuneration for strategic value, the Commission is entitled to assess the innovative character of the technologies by reference to its constituent elements, namely novelty and non-obviousness, the latter belonging to the notion of 'inventive step'. The effect of assessing the innovative character of technologies by reference to novelty and inventive step is not to extinguish generally the value of intellectual property rights, trade secrets or other confidential information or, a fortiori, to make innovative character a precondition for a product or information to be covered by such a right or to constitute a trade secret.

4. Points raised in the field of concentrations

In Case T-332/09 *Electrabel* v *Commission* (judgment of 12 December 2012, not yet published), an action was brought before the Court by the Belgian company Electrabel against the Commission decision imposing on it a fine of EUR 20 million for putting a concentration into effect before its notification, contrary to Article 7(1) of Regulation (EEC) No 4064/89. ([12]) The case concerned Electrabel's acquisition of sole de facto control of Compagnie nationale du Rhône (CNR). Having acquired shares increasing its shareholding to 49.95% of the capital and 47.92% of the voting rights of CNR on 23 December 2003, Electrabel did not contact the Commission in order to seek its opinion on the acquisition of such control until 9 August 2007. As the Commission stated that control had indeed been acquired, Electrabel gave formal notice of the concentration. Although, by a first decision of 29 April 2008 the Commission did not object to the concentration and declared it to be compatible with the common market, it none the less left open the question of the precise date on which Electrabel had acquired sole de facto control of CNR. Taking the view that the date to be applied in that regard must be 23 December 2003, it then, however, adopted the contested decision.

In assessing the validity of the Commission's analysis of the existence of a concentration, the Court recalled that the Commission's examination of the circumstances in which a concentration was put into effect is amenable to a full review by the Courts of the European Union. In that regard, it observed that, according to point 14 of the Notice on the concept of a concentration, ([13]) even a minority shareholder may be regarded as having sole control of an undertaking where it is highly likely to achieve a majority at the general meeting because the remaining shareholders are widely dispersed. The determination of whether or not sole control exists in a particular case will be based on the evidence resulting from the presence of shareholders in previous years. Where, on the basis of the number of shareholders attending the shareholders' meeting, a minority shareholder has a stable majority of the votes at this meeting, then the minority shareholder in question is taken to have sole control of the undertaking. The Court held that that was so in this instance, since the applicant had been unable to call into question the Commission's finding that on 23 December 2003 it had been highly likely to achieve a majority at general meetings even without holding a majority of voting rights.

In addition, the Court held that, in applying a limitation period of five years, the Commission had not erred, since the infringement which the applicant was found to have committed, namely the putting into effect of a concentration before notification, was an infringement capable of giving rise to substantial changes of the conditions of competition and could not be characterised as purely formal or procedural, within the meaning of Article 1(1)(a) of Regulation (EEC) No 2988/74. ([14])

Last, as regards the determination of the amount of the fine, in the first place the Court observed that the Commission could not be criticised for not having followed the principles and methods set out in the Guidelines on the method of setting fines imposed for infringements of Articles [101 TFEU] and [102 TFEU] when setting the amount of the fine in this case. The framework of its analysis had to be that set out in Article 14(3) of Regulation No 4064/89, which provides that, in setting the amount of a fine, regard is to be had to the nature and gravity of the infringement.

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

([13]) Commission notice on the concept of concentration under Regulation No 4064/89 (OJ 1998 C 66, p. 5).

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

State aid

1. Admissibility

In Case T-154/10 *France* v *Commission* (judgment of 20 September 2012, not yet published, under appeal), the Court held that the fact that a Member State withdrew a measure categorised as existing aid by a contested decision several months before that decision was adopted does not render the action brought against that decision inadmissible. The Court was called upon to adjudicate in an action brought against a Commission decision declaring incompatible with the internal market aid allegedly implemented by the French Republic in the form of an implied unlimited guarantee in favour of La Poste resulting from its status as a publicly owned establishment.

The Court pointed out that a Commission decision finding that there was State aid in the form of an unlimited guarantee in favour of an undertaking, and declaring that aid incompatible with the internal market, is necessarily intended to produce binding legal effects and is therefore a challengeable act under Article 263 TFEU. Although it was true that in this instance the French Government had decided, for its own reasons and without being obliged to do so by the Commission, to withdraw the measure categorised as existing aid by the Commission several months before the contested decision was adopted, the fact remained that the French Republic was legally bound to implement the contested decision. In the Court's view, the fact that in the implementation of the decision there might have been a convergence between the interests defended by the Commission and those of the Member State did not preclude the latter from bringing an action for annulment of the decision. If such an action were precluded, the Member States would be penalised depending on whether or not they had an interest in complying with a Commission decision and such an approach would be eminently subjective in nature.

In Case T-123/09 *Ryanair* v *Commission* (judgment of 28 March 2012, not yet published, under appeal), the applicant claimed that the Court should annul two Commission decisions relating to the loan of EUR 300 million granted by the Italian State to Alitalia — Compagnia Aera Italiana SpA in 2008. While the first of those decisions, declaring that measure to be incompatible with the common market and ordering recovery of the aid paid to Alitalia, closed a formal investigation procedure, the second, refusing to categorise the sale of Alitalia's assets as aid, so long as certain undertakings given by the Italian authorities were fully complied with, had been adopted on the basis of Article 4(3) of Regulation (EC) No 659/1999, ([15]) without initiation of the formal investigation stage.

As regards the second decision, the Court, observing that the lawfulness of a decision not to raise objections depends on whether there are doubts as to the compatibility of the aid with the common market, stated that, 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 [108](2) [TFEU] and Article 6(1) of Regulation No 659/1999 are to be able to ensure that those guarantees are respected, it must be possible for them to challenge before the Courts of the European Union the decision not to raise objections. Thus, under Article 1(h) of Regulation No 659/1999, 'interested party' must mean, inter alia, any person, undertaking or association of undertakings whose interests might be affected by the granting of aid, that is to say, in particular competing undertakings of the beneficiary of the aid.

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

Drawing the appropriate conclusions from Case C-83/09 P *Commission* v *Kronoply and Kronotex* [2011] ECR I-4441, the Court explained that, where an applicant seeks annulment of a decision not to raise objections, it essentially contests the fact that the Commission adopted the decision in relation to the aid at issue without initiating the formal investigation procedure, thereby infringing the applicant's procedural rights. In order to have its action for annulment upheld, the applicant may invoke any plea to show that the assessment of the information and evidence which the Commission had at its disposal during the preliminary examination phase of the measure notified should have raised doubts as to the compatibility of that measure with the common market.

The outcome is different, however, with respect to the decision declaring the aid incompatible with the common market. A decision closing a proceeding pursuant to Article [108](2) [TFEU] is of individual concern to any undertaking which was at the origin of the complaint which led to the opening of the investigation procedure, and whose views were heard during that procedure and largely determined the conduct of that procedure, only if its position on the market was substantially affected by the aid which is the subject of that decision or if it succeeds in demonstrating by other means, by reference to specific circumstances distinguishing it individually as in the case of the person addressed, that it is individually concerned. While acknowledging that in this instance the applicant had played an active role in the procedure, the Court found that such individual effect was lacking.

2. Substantive issues

(a) Concept of State aid

In Case T-154/10 *France* v *Commission*, the Court stated that aid in the form of an unlimited guarantee granted by the State without consideration is, as a rule, liable to confer an advantage on the beneficiary, in that that party thereby enjoys an improvement in its financial position through a reduction of the charges which would normally encumber its budget. In that regard, the Court pointed out that the definition of aid is more general than that of subsidy, because it includes not only positive benefits, such as subsidies themselves, but also State measures which, in various forms, mitigate the charges which are normally included in the budget of an undertaking and which thus, without being subsidies in the strict sense of the word, are similar in character and have the same effect. An unlimited State guarantee enables its recipient inter alia to obtain more favourable credit terms than those which it would have obtained on its own merits alone and, therefore, eases the pressure on its budget. In that context, the Court held that, in order to show that a publicly owned establishment enjoyed more favourable terms of credit and, therefore, a financial advantage, the Commission may refer to the findings of the ratings agencies and, more specifically, to the leading agencies. Since it is established that the market takes accounts of the leading agencies' ratings in assessing the credit to be granted to a given undertaking, a rating by those agencies which is better than would have been given without a guarantee is liable to procure an advantage for the publicly owned establishment.

In Joined Cases T-50/06 RENV, T-56/06 RENV, T-60/06 RENV, T-62/06 RENV and T-69/06 RENV *Ireland and Others* v *Commission* (judgment of 21 March 2012, not yet published, under appeal), the Court provided clarification of the relationship between the rules on State aid and the rules flowing from a harmonisation directive relating to exemption from excise duty. The Court observed in that regard that the rules on the harmonisation of national fiscal legislation, including the rules on excise duty, and the rules on State aid pursue the same objective, namely to promote the proper functioning of the internal market by combating, especially, distortion of competition. In the light of their common objective, in order for those different rules to be implemented consistently, the notion of distortion of competition must be regarded as having the same scope and the same

meaning with regard to both the harmonisation of domestic fiscal legislation and State aid. Moreover, the rules governing the harmonisation of domestic fiscal legislation, including the rules on excise duties, laid down in Article [113 TFEU] and in Directive 92/81/EC, ([16]) expressly confer on the European Union institutions, namely the Commission, which submits a proposal, and the Council, which enacts legislation, the responsibility for assessing whether competition may be distorted, and on that basis to authorise, or not authorise, a Member State to apply, or to continue to apply, an exemption from the harmonised excise duty under Article 8(4) of Directive 92/81, or whether there may be unfair competition or distortion of the functioning of the internal market justifying a review of authorisation already granted under that provision, as provided for in Article 8(5) of Directive 92/81.

The Court observed, none the less, that in order for advantages to be capable of being categorised as State aid within the meaning of Article [107](1) [TFEU], they must be imputable to an autonomous and unilateral decision of the Member State concerned. That was not so in the case of the exemptions from excise duty at issue, which, having been granted in reliance on the Council's authorisation decisions issued on a proposal from the Commission in accordance with Directive 92/81, had to be imputed to the European Union. It followed that, as long as the Council's authorisation decisions remained in force and had not been amended by the Council or annulled by the Courts of the European Union, the Commission was not entitled to classify the exemptions as State aid. Moreover, since the procedural requirements laid down in Article [108 TFEU] stem from the classification of the measures in question as State aid within the meaning of Article [107](1) [TFEU], there was no basis for the Commission's complaint that the Member States concerned had failed to notify to it the exemptions at issue which they had granted on the basis of the Council's authorisation decisions. The Court concluded that the contested decision breached the principle of legal certainty and the principle of the presumption of legality attaching to European Union measures.

Case T-139/09 *France* v *Commission* (judgment of 27 September 2012, not yet published) raised, in particular, the question whether measures intended to support the fruit and vegetable market in France could be categorised as State aid in view of the fact that they were financed in part by voluntary contributions from persons operating in that sector. In that regard, the Court observed that the relevant criterion for the purpose of assessing whether the resources are public, whatever their origin, is that of the degree of intervention of the public authority in the definition of the measures in question and their methods of financing. The mere fact that the contributions of the economic operators concerned in respect of the partial financing of the measures in question are only voluntary and not obligatory is not sufficient to call that principle into question. The degree of intervention of the public authority as regards those contributions may be great, even where those contributions are not obligatory. As regards the assessment of the role of the public authority in the definition of the measures financed by a public establishment and by voluntary contributions from producers' organisations, it was for the Court to make an overall assessment, without its being possible to draw a distinction according to their method of financing, since the public and private contributions had been put together and mixed in an operational fund. In this instance, in view of the fact that the definition of the disputed measures and the way in which they were financed was carried out by a public industrial and commercial institution under the supervision of the State, while the beneficiaries of the measures, conversely, had the power only to participate or not to participate in the system thus defined, by agreeing or refusing to pay the sectoral contribution which that public establishment fixed, the Court concluded that those measures constituted State aid within the meaning of Article [107](1) [TFEU].

([16]) Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils (OJ 1992 L 316, p. 12).

Last, Case T-210/02 RENV *British Aggregates* v *Commission* (judgment of 7 March 2012, not yet published, under appeal) led the Court to examine the criteria that must serve to guide assessment of the selectivity of a State measure. The Court recalled in that regard that, in establishing whether a measure is selective in nature, it is necessary to determine whether, in a given legal system, that measure is such as to favour certain undertakings or the production of certain goods within the meaning of Article [107](1) [TFEU] by comparison with other undertakings which are in a legal and factual situation that is comparable in the light of the objective pursued by the measure in question. The Court observed, however, that that condition is not satisfied by a measure which, although conferring an advantage on its recipient, is justified by the nature or general scheme of the tax system of which it forms part. For the purposes of that assessment, a distinction must be made between, on the one hand, the objectives attributed to a particular tax system which are extrinsic to it and, on the other, the mechanisms inherent in the tax system itself which are necessary for the achievement of such objectives, since, as basic or guiding principles of the tax system in question, those objectives and mechanisms could support such justification, which it is for the Member State to demonstrate. Furthermore, for the purpose of assessing the selective nature of the advantage conferred by the measure in question, the determination of the reference framework assumes particular importance in the case of tax measures, since the very existence of an advantage can be established only when compared with 'normal' taxation. Thus, in order to classify a domestic tax measure as 'selective', it is necessary to begin by identifying and examining the common or 'normal' tax system applicable in the Member State concerned. It is by reference to that common or 'normal' regime that it is then necessary to assess and determine whether any advantage granted by the tax measure at issue may be selective, by demonstrating that the measure derogates from that common regime in so far as it differentiates between economic operators who, in the light of the objective assigned to the tax system of the Member State concerned, are in a comparable factual and legal situation.

In this instance, the Court considered that the question whether the rules at issue, establishing an environmental tax on aggregates in the United Kingdom, accorded more favourable treatment to certain undertakings or the production of certain goods in a comparable factual and legal situation had to be examined in the light of the environmental objective pursued by those rules. In that context, the Court found that those rules had resulted in tax differentiation between materials exempted from tax and alternative aggregates derived from other materials that were subject to tax. Such a differentiation could not be justified by the nature and general structure of the tax regime at issue since it clearly derogated from the normal taxation rationale of the tax at issue and, furthermore, it was likely to undermine the environmental objective of that tax.

(b) Services of general economic interest

In Case T-137/10 *CBI* v *Commission* (judgment of 7 November 2012, not yet published), the Court set out the circumstances in which measures intended to compensate for public service obligations may be categorised as State aid. That case originated in subsidies granted by the Belgian authorities to five public general hospitals in the Brussels-Capital Region (Belgium). On a complaint lodged by the applicant and another association concerning alleged State aid, the Commission had decided not to raise objections with respect to the measures at issue following the preliminary examination stage provided for in Article [108](3) [TFEU]. That decision was based on the judgment of the Court of Justice in *Altmark Trans and Regierungspräsidium Magdeburg*, ([17]) where it was held that compensation granted in consideration for the discharge of public services obligations does not constitute State aid, provided that certain criteria are met. Maintaining that, in the light of those

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

criteria, the Commission ought to have had serious doubts as to the compatibility with the internal market of the aid measures examined, the applicant, an association governed by Belgian law consisting of nine private hospitals, brought an action for annulment of that decision.

The Court observed first of all that, as regards, in particular, the public hospital service, it is necessary, when applying Article [106](2) [TFEU], to take into consideration the absence of a trade dimension, as its characterisation as a service of general economic interest is to be explained rather more by its impact on the competitive and trade sector than by an alleged trade dimension. The application of that provision must therefore take into account respect for the responsibilities of the Member States as regards the definition of their health policy and the organisation and provision of health services and medical care. In accordance with those considerations, Member States organise their national health systems according to the principles which they choose. None the less, where the organisation of the provision of health services decided upon by a Member State imposes public service obligations on private operators, it is necessary to take that circumstance into account when assessing the State measures adopted in the sector. In particular, where different requirements are made of the public and private entities responsible for the same public service, those differences must be clear from their respective terms of reference, notably in order to permit an assessment of the compatibility of the subsidy with the principle of equal treatment.

The Court then observed that Member States have a wide discretion as to the definition of what they consider to be services of general economic interest; that definition can be called into question by the Commission only in the event of manifest error. Review by the Courts of the European Union of the Commission's assessment as to the existence of a public service task must focus on compliance with certain minimum criteria relating, in particular, to the presence of an act by a public authority charging the operators in question with a task amounting to a service of general economic interest and also to the universal and obligatory nature of that task. In that regard, the Court recalled that, in order for the decisions of an entity to be able to characterised as public acts, that entity's organs must be composed of persons having a public interest task and the public authorities must have actual power to control those decisions. That wide discretion also extends to the determination of the parameters on the basis of which compensation for a task of service of general economic interest is calculated; those parameters must, however, be defined in such a way as to preclude any improper use by the Member State of the concept of service of general economic interest. Should a Member State employ a number of compensation measures, the Commission carries out an incomplete examination of the aid measure concerned if it fails to carry out a separate assessment of the financing parameters relating to one of the measures.

(c) Notion of serious difficulties

In *Ryanair* v *Commission* the Court recalled that the notion of serious difficulties, which determines whether the Commission is obliged to initiate the formal investigation procedure in respect of State aid, is an objective one. Although the Commission has no discretion in relation to the decision to initiate the formal investigation procedure where it finds that such difficulties exist, it none the less enjoys a certain margin of discretion in identifying and evaluating the circumstances of the case in order to determine whether or not they present serious difficulties. In accordance with the objective of Article [108](3) [TFEU] and its duty of good administration, the Commission may, amongst other things, engage in talks with the notifying State or with third parties in an endeavour to overcome, during the preliminary examination procedure, any difficulties encountered. That power presupposes that the Commission may bring its position into line with the results of the dialogue it engaged in, without that alignment having to be interpreted a priori as establishing the existence of serious difficulties. Furthermore, if the examination carried out by the Commission

during the preliminary examination procedure is insufficient or incomplete, that constitutes evidence of the existence of serious difficulties.

(d) Private investor in a market economy test

In Case T-565/08 *Corsica Ferries France* v *Commission* (judgment of 11 September 2012, not yet published, under appeal), an action was brought before the Court against the Commission decision declaring measures for the restructuring of Société nationale maritime Corse-Méditerranée (SNCM) put in place by the French Republic in 2002 to be compatible with the common market and refusing to categorise as aid the measures for the plan, approved in 2006, for the privatisation of that undertaking. The applicant disputed, in particular, the Commission's application of the private investor test to the privatisation of that company for a negative selling price of EUR 158 million. It claimed, in particular, that the Commission could not include in the calculation of the hypothetical cost of the liquidation of SNCM additional severance payments in excess of the strict obligations imposed by law and agreement, since such an approach could not characterise the conduct of a private investor guided by prospects of long-term profitability.

The Court observed that, in a market economy, a prudent private investor cannot ignore, on the one hand, his responsibility to all the undertaking's stakeholders and, on the other, changes in the social, economic and environmental context in which he seeks to develop. On that basis, payment by a private investor of additional severance payments is, in principle, liable to constitute a legitimate and appropriate practice with the aim of promoting calm dialogue between management and labour and maintaining the brand image of a company or group of companies. However, in the absence of any economic, rationality, even in the long term, the taking into account of costs going beyond the strict obligations imposed by law and by agreement must be regarded as State aid within the meaning of Article [107](1) [TFEU]. In that context, the protection of the brand image of a Member State as a global investor in the market economy cannot, where there are no special circumstances and without particularly convincing reasons, constitute sufficient justification to demonstrate the long-term economic rationality of assuming additional costs such as additional severance payments.

The private investor test was also central to the issue raised in Joined Cases T-29/10 and T-33/10 *Netherlands and ING Groep* v *Commission* (judgment of 2 March 2012, not yet published, under appeal), where the applicants challenged the Commission's decision on the compatibility with the common market of the aid measures adopted by the Kingdom of the Netherlands in 2008 and 2009 in favour of ING Groep NV, in the context of the financial crisis of autumn 2008. The applicants took issue with the Commission for having considered that an amendment to the conditions of repayment of the capital contribution arising from the creation of one billion ING Groep securities wholly underwritten by the Kingdom of the Netherlands constituted additional aid of EUR 2 billion.

The Court held that the Commission could not merely find that the amendment to those repayment conditions constituted, ipso facto, State aid without first examining whether that amendment conferred on ING Groep an advantage to which a private investor in the same position as the Netherlands State would not have agreed. It is only on completion of such an examination, which presupposes in particular a comparison of the initial repayment terms with the amended terms, that the Commission is able to conclude that there was or was not a conferral of an additional benefit within the meaning of Article [107](1) [TFEU]. The Court considered that, in this instance, it was not apparent from the contested decision that the Commission had undertaken such an analysis. Having merely found that the amendment to the repayment terms entailed a loss of profits for the Netherlands State, the Commission had not examined how the return of between 15% and 22% granted to the Netherlands State following the amendment to the repayment terms did not

correspond to what could be reasonably expected by a private investor confronted by a similar situation. The Court observed that, in failing to evaluate whether, in agreeing to the amendment to the repayment terms, the Netherlands State had acted like a private investor, in particular because it could be repaid early and because it benefited when the amendment occurred from greater certainty of being repaid in a satisfactory manner in view of the market conditions, the Commission had misinterpreted the notion of aid, and it annulled the contested decision.

In Joined Cases T-268/08 and T-281/08 *Land Burgenland and Austria* v *Commission* (judgment of 28 February 2012, not yet published, under appeal), the Court was required to adjudicate on the application of the private investor test in the context of the privatisation of a bank through a tender procedure. The point at issue was the choice of Land Burgenland (Province of Burgenland, Austria) to award the Austrian bank Hypo Bank Burgenland AG to two Austrian companies, although the purchase price offered by those companies had been significantly lower than the price offered by an Austro-Ukrainian consortium. On a complaint lodged by that consortium, the Commission characterised the difference between the two final offers submitted during the tender procedure as State aid incompatible with the common market, taking the view that the Austrian authority had not behaved as a market economy seller.

In cases brought against that decision by both Land Burgenland and the Republic of Austria, the Court confirmed that the appropriate test for determining whether the sale of property by a public authority to a private person constitutes State aid is the private operator in a market economy test, the specific application of which requires in principle a complex economic assessment. While it acknowledged that a market economy vendor can accept the lower bid if it is obvious that the sale to the highest bidder is not realisable, the Court none the less considered, in this instance, that the Commission had been entitled to conclude that neither the uncertain outcome nor the probably longer duration of the procedure before the financial markets supervisory authority if the bank had been sold to the consortium justified the consortium being excluded. The Court observed, in that regard, that Land Burgenland would have had to adduce hard evidence to demonstrate that the length of the procedure before the market supervisory authority if the bank had been sold to the consortium would have seriously compromised the chances of privatisation.

3. Procedural rules

(a) Cumulative effect of aid with previous aid

Joined Cases T-115/09 and T-116/09 *Electrolux and Whirlpool Europe* v *Commission* (judgment of 14 February 2012, not yet published) concerned two actions for annulment of the Commission decision declaring that restructuring aid of EUR 31 million granted by the French Republic to Fagor France SA (FagorBrandt), a competitor of the applicants, was compatible with the common market, on certain conditions. The contested decision followed a previous decision declaring fiscal aid granted by the Italian Republic to a subsidiary of that company incompatible with the common market and ordering recovery of that aid. The applicants maintained, in particular, that the Commission had failed to examine the cumulative effect of the aid at issue with the incompatible Italian aid.

The Court observed that it follows from the judgment of the Court of Justice in *TWD* v *Commission*, ([18]) and also from point 23 of the Community Guidelines on State aid for rescuing and

([18]) C-355/95 P [1997] ECR I-2549.

restructuring firms in difficulty, ([19]) that, in its examination of the compatibility of restructuring aid with the common market, the Commission must in principle examine the cumulative effect of that aid with any earlier aid which has not been recovered. Such an examination is justified on account of the fact that the advantages conferred by the grant of the earlier incompatible aid which has not yet been recovered continue to produce effects on competition. However, if the Commission makes the grant of the planned aid subject to the prior recovery of earlier aid, it is not obliged to examine the cumulative effect of the aid on competition. In such a case, the imposition of such a condition in itself prevents the advantage conferred by the planned aid from combining with that conferred by the earlier aid, the negative effects on competition resulting from the grant of the earlier aid having been eliminated by the recovery of the amount of that aid plus interest. Conversely, where the Commission does not make the grant of the aid at issue conditional on the recovery of the incompatible aid, it must necessarily examine the cumulative effect of the two forms of aid.

(b) Effectiveness of the administrative procedure

In Case T-139/09 *France* v *Commission*, the Court had occasion to recall that a Member State which has granted or seeks to be allowed to grant aid under one of the exceptions provided for in the Treaty rules has a duty to cooperate with the Commission in the proceedings in which it takes part. It must provide all the information necessary to enable the Commission to verify that the conditions for the derogation sought are fulfilled. The legality of a decision concerning State aid falls to be assessed in the light of the information available to the Commission at the time when the decision was adopted. Since the concept of State aid must be applied to an objective situation appraised on the date on which the Commission takes its decision, it is the appraisals carried out on that date that must be taken into account when the Court undertakes its review. It follows that, where there is no information to the contrary from interested parties, the Commission is empowered to take as its basis the factual elements it has before it at the time when it adopts its final decision, even if they are incorrect, provided that the factual elements in question were the subject of an order issued by the Commission to the Member State to provide it with the necessary information.

In that context, the Court observed, moreover, that it is apparent from Article 13(1) of Regulation No 659/1999 that, at the end of the formal investigation procedure into unlawful aid, the decision is to be taken by the Commission on the basis of the information available, in particular that supplied by the Member State in response to the Commission's requests for information. In this instance, the applicant State could not therefore, in the light of the principle of effectiveness of the administrative procedure, challenge for the first time during the legal proceedings the content of factual observations made by an interested third party during the administrative procedure which had been sent to that Member State.

(c) Proof of the existence of an advantage constituting aid

In Case T-154/10 *France* v *Commission*, the Court also observed that the Commission cannot assume that an undertaking has benefited from an advantage constituting State aid solely on the basis of a negative presumption, based on a lack of information enabling the contrary to be found. The Commission is, at the very least, required to ensure that the information at its disposal, even if incomplete and fragmented, constitutes a sufficient basis on which to conclude that an undertaking has benefited from an advantage amounting to State aid. In particular, proof of the existence of an

([19]) OJ 2004 C 244, p. 2.

implied State guarantee may be inferred from a bundle of converging facts having a certain degree of reliability and coherence, taken inter alia from an interpretation of the relevant provisions of national law, and, in particular, be inferred from the legal effects flowing from the legal status of the recipient undertaking. Memoranda and interpretation bulletins may be considered relevant for demonstrating that a State has granted an implied financial guarantee, which, by definition, is not explicitly provided for by national law.

Intellectual property

With 210 cases brought to a close and 238 new cases, intellectual property proceedings represented, in terms of numbers of cases, a significant source of the Court's activity, of which the following is merely an overview.

1. Community trade mark

(a) Absolute grounds for refusal

In Case T-33/11 *Peeters Landbouwmachines* v *OHIM – Fors MW (BIGAB)* (judgment of 14 February 2012, not yet published), the Court held that the question whether an applicant for a trade mark was acting in bad faith within the meaning of Article 52(1)(b) of Regulation No 207/2009 on the Community trade mark — which justifies refusal to register the trade mark applied for — must be decided by means of an overall assessment in which all the factors relevant to the particular case are taken into account. Those factors include the fact that the applicant knows or must know that a third party is using, in at least one Member State, an identical or similar sign for identical or similar goods, which could give rise to confusion with the sign for which registration is sought; the applicant's intention to prevent that third party from continuing to use such a sign; and the degree of legal protection enjoyed by the third party's sign and the sign for which registration is sought. In the context of the overall analysis undertaken pursuant to Article 52(1)(b) of Regulation No 207/2009, account may none the less also be taken of the origin of the contested sign and its use since its creation, and of the commercial logic underlying the filing of the application for registration of that sign as a Community trade mark. In addition, the Court made clear that the intention of preventing certain goods from being marketed may, in certain circumstances, be indicative of bad faith on the part of the applicant. That is the case, in particular, where it subsequently becomes apparent that the applicant had the sign registered as a Community trade mark with no intention of using it, his sole objective being to prevent a third party from entering the market.

Furthermore, the Court observed that the fact that the applicant knows or must know that a third party has long been using, in at least one Member State, an identical or similar sign for identical or similar goods, which could give rise to confusion with the sign for which registration is sought, is not sufficient in itself to permit the conclusion that the applicant was acting in bad faith. Accordingly, it cannot be excluded that, where a number of producers use, on the market, identical or similar signs for identical or similar goods, which could give rise to confusion with the sign for which registration is sought, the applicant's registration of the sign may be in pursuit of a legitimate objective. That may be the position, in particular, where the applicant knows, at the time of filing the application for registration, that a third-party undertaking is making use of the mark covered by that application by giving its customers the impression that it officially distributes the goods sold under that mark, even though it has not received authorisation to do so. Accordingly, the good faith of a trade mark applicant cannot be challenged solely because that applicant is the proprietor of other marks and it did not take the initiative of applying to have those marks registered as Community trade marks. Last, the Court stated that, for the purposes of determining whether the trade mark applicant was acting in bad faith, consideration may be given to the

extent of the reputation enjoyed by a sign at the time when the application for its registration as a Community trade mark was filed, since the extent of that reputation might justify the applicant's interest in ensuring a wider legal protection for his sign.

(b) Relative grounds for refusal

In Case T-424/10 *Dosenbach-Ochsner* v *OHIM – Sisma (Representation of elephants in a rectangle)* (judgment of 7 February 2012, not yet published), an action was brought before the Court against the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) dismissing the application for a declaration of invalidity lodged by the proprietor of earlier international and national figurative marks representing an elephant and the earlier national word mark elefanten against the figurative Community trade mark representing elephants in a rectangle.

In response to the plea alleging phonetic similarity between the signs concerned, the Court held that a phonetic comparison is not relevant in the examination of the similarity to another mark of a figurative mark without word elements. A figurative mark without word elements cannot, as such, be pronounced. At the very most, its visual or conceptual content can be described orally. According to the Court, however, such a description necessarily coincides with either the visual perception or the conceptual perception of the mark in question. Accordingly, it is not necessary to examine separately the phonetic perception of a figurative mark lacking word elements and to compare it with the phonetic perception of other marks.

Also, in Case T-369/10 *You-Q* v *OHIM – Apple Corps (BEATLE)* (judgment of 29 March 2012, not published, under appeal), the Court was requested to examine the legality of the decision relating to the opposition proceedings concerning the registration of the figurative Community trade mark BEATLE for apparatus for locomotion of persons of reduced mobility. Apple Corps Ltd, an undertaking founded by the musical group The Beatles, had opposed the application for registration of that mark submitted by You-Q BV (formerly Handicare Holding BV), relying on various earlier Community and national trade marks including the word mark BEATLES and a number of figurative marks composed of the words 'beatles' or 'the beatles'. Taking the view that, owing to the similarity of the signs, the considerable and long-standing reputation of the earlier marks and the overlap of the relevant public, it was likely that, by using the mark applied for, You-Q would take unfair advantage of the repute and consistent selling power of the earlier marks, the Board of Appeal had concluded that there was a serious risk that detriment to those marks would occur.

The Court's judgment confirmed that analysis. The Court observed, first of all, that on the basis of the evidence adduced and, in particular, of sales of records of the Beatles, the Board of Appeal had been entitled to find that the earlier trade marks BEATLES and THE BEATLES had an enormous reputation for sound records, video records and films. It had also been entitled to find that the earlier marks had a reputation for merchandising products such as toys and games, although that reputation was lesser than the reputation for sound records, video records and films. In the Court's view, the Board of Appeal had also been right to find that, visually, phonetically and conceptually, the signs at issue were very similar. Likewise, the Board of Appeal had been correct to observe that there was an overlap between the public affected by the signs at issue, in so far as persons with reduced mobility are also part of the public at large at whom the earlier marks are directed. Consequently, the Board of Appeal had been entitled to infer from those factors that, notwithstanding the difference between the goods in question, there was a link between those signs. Owing to the existence of that link, the relevant public would, even if there was no likelihood of confusion, have been led to transfer the value of the earlier marks to the goods bearing the mark applied for, enabling the applicant to introduce that mark on the market without incurring any great risk and

without having to bear the costs of launching a newly created mark. Accordingly, the Court found that the Board of Appeal had not erred in finding that it was likely that, by using the mark at issue, the applicant would have taken unfair advantage of the repute and the consistent selling power of the earlier trade marks.

(c) Procedural issues

In Case T-298/10 *Arrieta D. Gross* v *OHIM – International Biocentric Foundation and Others (BIODANZA)* (judgment of 8 March 2012, not published), the Court ruled on the question of the outcome of an application to register a Community trade mark in the event of the death of the applicant. The Court observed in that regard that it is apparent from Article 5 of Regulation (EC) No 207/2009 ([20]) that the proprietors of Community trade marks are natural or legal persons. Consequently, a Community trade mark cannot be registered in the name of a deceased person. Nor is there any provision in that regulation that the death of the applicant for registration of a Community trade mark entails the expiry of that application; indeed, such a conclusion would be contrary to the nature of the application for registration as an object of property. It follows, according to the Court, that in the event of the death of the proprietor of an application to register a Community trade mark, that application is transferred to another person, to be determined according to the provisions of the law of succession of the relevant Member State. In order to ensure the efficient conduct of the proceedings before OHIM, it is for the new proprietor of such an application to register its transfer with OHIM. However, regardless of the moment when that registration takes place, the new proprietor of the application for registration must be regarded as having acquired that status from the moment of death of the initial applicant.

Furthermore, in Case T-227/09 *Feng Shen Technology* v *OHIM – Majtczak (FS)* (judgment of 21 March 2012, not yet published, under appeal), the Court explained that, although the Community trade mark system is based on the principle under Article 8(2) of Regulation No 40/94 ([21]) (now Article 8(2) of Regulation No 207/2009) that an exclusive right is granted to the first applicant, that principle is not absolute. It is qualified, in particular, by Article 51(1)(b) of Regulation No 40/94, under which a Community trade mark is to be declared invalid, on application to OHIM or on the basis of a counterclaim in infringement proceedings, where the applicant was acting in bad faith when he filed the application for the trade mark, which it is for the applicant for invalidity to establish.

In addition, in Case T-523/10 *Interkobo* v *OHIM – XXXLutz Marken (my baby)* (judgment of 27 June 2012, not yet published), the Court held that, when the information and evidence referred to in Rule 19(1) and (2) of Regulation No 2868/95 ([22]) are in a language other than that of the proceedings, the opposing party must file, at the stage of the opposition and within the period prescribed for the production of that information and evidence, a translation of those documents, which must meet specific requirements regarding both its form and content. Thus, first, the translation of any of the information and evidence referred to in Rule 19(1) and (2) of Regulation No 2868/95 must be submitted not in the form of mere annotations in the original document but of one or several separate written documents. In the event that that procedural requirement is not met, the abovementioned information and evidence submitted by the opposing party cannot be taken into account in the opposition proceedings. The purpose of that procedural requirement is, first, to ensure that the other party to the opposition proceedings, as well as the OHIM bodies, can readily distin-

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

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

([22]) Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1).

guish the original document from its translation and, second, to ensure that the translation is sufficiently clear. Second, it is apparent from Rule 98(1) of Regulation No 2868/95 that the translation, presented in the form of a separate written document, must faithfully reproduce the contents of the original document. In case of doubt as to the faithfulness of the translation, the OHIM bodies are entitled to require from the interested party the production of a certificate attesting that the translation corresponds to the original text.

Case T-279/09 *Aiello* v *OHIM – Cantoni ITC (100% Capri)* (judgment of 12 July 2012, not yet published) provided the Court with the opportunity to explain the conditions governing notification to the applicant for a trade mark of the opposing party's pleading before the Board of Appeal. The Court pointed out that, under Rule 67(1) of Regulation No 2868/95, if a representative has been appointed or where the applicant first named in a common application is considered to be the common representative, notifications are to be addressed to that appointed or common representative. Therefore, OHIM cannot rely on the alleged notification of the opposing party's pleading to the applicant himself in order to justify the failure to notify the applicant's representative.

Nor, according to the Court, can it be inferred from Rule 77 of Regulation No 2868/95, under which any notification addressed to a representative is to have the same effect as if it had been addressed to the represented person, that notification to the represented person is the same as notification to the representative, since, if that were the case, Rule 67 of that regulation would serve no purpose.

Last, in Case T-278/10 *Wesergold Getränkeindustrie* v *OHIM – Lidl Stiftung (WESTERN GOLD)* (judgment of 21 September 2012, not yet published, under appeal), the Court, called upon to examine the scope of the examination by one of the Boards of Appeal of OHIM of an appeal against a decision of the Opposition Division, recalled that, under Article 64(1) of Regulation No 207/2009, following the examination as to the merits of the appeal the Board of Appeal is to decide on that appeal and, in doing so, it may 'exercise any power within the competence of the department which was responsible for the contested decision', that is to say, it may make a ruling itself on the opposition either by rejecting it or by declaring it to be well founded, thereby either upholding or reversing the contested decision. Thus, the absence in the defence submitted to the Board of Appeal of any specific invocation of distinctive character enhanced by use does not affect the obligation incumbent on the Board of Appeal, where it decides on the opposition itself, to carry out a new, comprehensive examination of the merits of the opposition, in terms of both law and of fact. The extent of the examination which the Board of Appeal must undertake in relation to the decision under appeal is not, in principle, delimited by the pleas relied on by the party who has brought the appeal. A fortiori, the extent of the examination which the Board of Appeal must undertake is not limited by the lack of precision of certain pleas raised before it.

(d) Proof of genuine use

In *BIODANZA*, first, the Court held that the assessment of the genuine use of a trade mark must, in particular, take account of the nature of the goods or services to which the mark applies and also of the uses considered to be justified in the economic sector concerned. In that regard, the requirement that genuine use of a trade mark cannot be proved by probabilities or presumptions, but must be demonstrated by solid and objective evidence, is also applicable in the case of trade marks for services. In that case, the evidence required must be compatible with the nature of the services covered by the trade mark. Second, the Court observed that neither Article 42 nor any other provision of Regulation No 207/2009 expressly provides that the application seeking proof of genuine use is to be refused in the event of bad faith on the part of the party making the application. Nor can such a rule be implied from the applicable provisions. To make absence of bad faith on the part of the applicant a condition for the admissibility of an application seeking evidence of genuine use

would needlessly complicate the procedure and would, ultimately, be contrary to the *ratio legis* of the provisions relating to it.

In Case T-170/11 *Rivella International* v *OHIM – Baskaya di Baskaya Alim (BASKAYA)* (judgment of 12 July 2012, not yet published, under appeal), the Court held, with respect to the determination of the territory on which genuine use of the earlier mark must be established, that questions relating to the proof furnished in support of the grounds for opposition to an application for registration of a Community trade mark and questions relating to the territorial aspect of the use of marks are governed by the relevant provisions of Regulation No 207/2009 and that it is not necessary to refer to any provision of domestic law of the Member States. The fact that earlier national or international marks may be cited in opposition against the registration of Community trade marks does not imply that the national law applicable to the earlier mark cited in opposition is the relevant law as regards Community opposition proceedings. It is true that, in the absence of relevant provisions in Regulation No 207/2009 or, where appropriate, in Directive 2008/95/EC, ([23]) national law serves as a point of reference. Whilst that is true as regards the date of registration of an earlier mark cited in Community opposition proceedings, the same does not apply, however, as regards the determination of the territory in which use of the earlier mark must be established. That question is exhaustively governed by Regulation No 207/2009 and it is not necessary to refer to national law. It follows that genuine use of an earlier mark, be it a Community, national or international mark, must be proved in the European Union or in the Member State concerned.

2. Designs

Joined Cases T-83/11 and T-84/11 *Antrax It* v *OHIM – THC (Heating radiators)* (judgment of 13 November 2012, not yet published) provided the Court with the opportunity to clarify the criteria for the determination of the degree of freedom of the designer in the context of the assessment of the individuality of the design. The Court observed that such a degree of freedom is established, inter alia, by the constraints of the features imposed by the technical function of the product or an element thereof, or by statutory requirements applicable to the product to which the design is applied. Those constraints result in a standardisation of certain features, which will thus be common to the designs applied to the product concerned. Accordingly, the greater the designer's freedom in developing the design, the less likely it is that minor differences between the designs being compared will suffice to produce a different overall impression on an informed user. Conversely, the more the designer's freedom in developing the design is restricted, the more likely it is that minor differences between the designs being compared will suffice to produce a different overall impression on an informed user. Thus, if a designer enjoys a high degree of freedom in developing a design, that reinforces the conclusion that the designs being compared which do not have significant differences produce the same overall impression on an informed user. In that context, any saturation of the state of the art, deriving from the existence of other designs which have the same overall features as the designs concerned, is relevant, in that it may be liable to make the informed user more aware of the differences in the internal proportions of those different designs.

3. Plant variety rights

In Joined Cases T-133/08, T-134/08, T-177/08 and T-242/09 *Schräder* v *CPVO – Hansson (LEMON SYMPHONY and SUMOST 01)* (judgment of 18 September 2012, not yet published, under appeal), the Court ruled on the consequences of the finding of a well-known fact by the Community Plant

([23]) Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (OJ 2008 L 299, p. 25).

Variety Office (CPVO). Recalling that, according to the case-law of the Court of Justice, in Community trade mark proceedings OHIM bodies are not required to prove, in their decisions, the accuracy of well-known facts, the Court considered that that principle must apply to the bodies of the CPVO. Observing, moreover, that it also follows from the case-law of the Court of Justice in that area that the finding, by the General Court, as to whether the facts on which the Board of Appeal of OHIM has based its decision are well known or not is a factual assessment which, save where the facts or evidence are distorted, is not subject to review by the Court of Justice on appeal, the General Court took the view that it was appropriate to transpose that solution to the judicial review which it exercises over the decisions of the bodies of the CPVO.

Common foreign and security policy — Restrictive measures

The year 2012 confirmed the important place which disputes relating to restrictive measures occupy among the various fields of litigation in respect of which the Court has jurisdiction, with 42 cases brought to a close and 60 cases brought.

Particularly deserving of mention are Joined Cases T-439/10 and T-440/10 *Fulmen and Mahmoudian v Council* (judgment of 21 March 2012, not yet published, under appeal), in which the Court was called upon to examine the lawfulness of the restrictive measures imposed on an Iranian company, active in particular in the electrical equipment sector, and on the chairman of its board of directors. These measures, adopted in the context of the restrictive measures adopted against the Islamic Republic of Iran in order to prevent nuclear proliferation, were based on that company's alleged participation in the installation of electrical equipment on the Qom/Fordoo site (Iran) at a time when the existence of that site had not yet been revealed. The applicants denied such participation and maintained that the Council had not adduced evidence of its claims on that point. The Council submitted that it could not be expected to adduce such evidence, as review by the Courts of the European Union must be limited to determining that the reasons relied on to justify the adoption of the restrictive measures were 'probable', which they were in this instance, given that Fulmen was a company which had long been active on the Iranian electrical equipment market.

The Court rejected that line of argument. It stated that judicial review of the lawfulness of a measure whereby restrictive measures have been imposed on an entity extends to the assessment of the facts and circumstances relied on as justifying it, and to the evidence and information on which that assessment is based. In the event of challenge, it is for the Council to present that evidence for review by the Courts of the European Union. Thus, the review of lawfulness which must be carried out is not limited to an appraisal of the abstract 'probability' of the grounds relied on, but must include the question whether those grounds are supported, to the requisite legal standard, by concrete evidence and information. The Court observed that, although the restrictive measures at issue had been adopted on the proposal of a Member State, in accordance with the procedure laid down in Article 23(2) of Decision 2010/413/CFSP, ([24]) that circumstance in no way detracted from the fact that the contested measures were measures taken by the Council, which therefore had to ensure that their adoption was justified, if necessary by requesting the Member State concerned to submit to it the evidence and information required for that purpose. Nor could the Council rely on a claim that the evidence concerned came from confidential sources. Taking into consideration the essential role of judicial review in the context of the adoption of restrictive measures, the Courts of the European Union must be able to review the lawfulness and merits of such measures without it being possible to raise objections that the evidence and information used by the Council are secret

([24]) Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39).

or confidential. Furthermore, the Council is not entitled to base an act adopting restrictive measures on information or evidence in the file communicated by a Member State if that Member State is not willing to authorise its communication to the Courts of the European Union whose task is to review the lawfulness of that decision.

Access to documents of the institutions

1. Obligation for the institutions to undertake a concrete, individual examination of the documents covered by the request

Case T-344/08 *EnBW Energie Baden-Württemberg* v *Commission* (judgment of 22 May 2012, not yet published, under appeal) concerned the Commission's refusal to provide access to the administrative file in a cartel procedure, on the basis of various exceptions provided for in Regulation (EC) No 1049/2001, ([25]) without undertaking a concrete, individual examination of the documents concerned.

In the context of an action against that decision refusing access, the Court held that, although, where there has been a request for access to documents, it is open to the institution concerned to base its decision refusing access on general presumptions which apply to certain categories of document and which may be based on a document-access system specific to a particular procedure, the fact remains that such systems, whether in the matter of State aid or cartels, are applicable only for the duration of the procedure in question and not where the institution has already adopted a final decision closing the file to which access is sought. Furthermore, while account must be taken of any restrictions on access to the file that may obtain in particular procedures, such as cartel procedures, the fact that such matters are taken into account does not give grounds for assuming that, if the Commission's ability to proceed against cartels is not to be undermined, all the documents held in its files in that domain are automatically covered by one of the exceptions laid down in Article 4 of Regulation No 1049/2001.

The Court also stated that a single justification for refusing such access may be applied to documents belonging to the same category, especially if they contain the same type of information. In such circumstances, justifying non-disclosure by groups of documents facilitates or simplifies the Commission's task when it examines the request and provides reasons for its decision. It follows that an examination by categories is lawful only if it plays a useful role in processing a request for access, and the document categories must therefore be defined on the basis of criteria that enable the Commission to apply a single line of reasoning to all the documents within one category.

2. Protection of international relations

In Case T-529/09 *In 't Veld v Council* (judgment of 4 May 2012, not yet published, under appeal), the Court was required to interpret the exception relating to the protection of international relations provided for in the third indent of Article 4(1)(a) of Regulation No 1049/2001. In this case, the applicant, a Member of the European Parliament, had requested access to an opinion of the Council's Legal Service concerning a recommendation from the Commission for the adoption by the Council of a decision authorising the opening of negotiations between the European Union and the United States of America for an international agreement to make financial messaging data available to the United States Treasury Department in the framework of the prevention of terrorism.

([25]) 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).

The Court observed, first of all, that a document such as that at issue, relating to the legal basis of a decision to be adopted by the Council concerning the opening of negotiations for the signature of an international agreement, is capable of being covered, given its content and the context in which it has been drawn up, by the third indent of Article 4(1)(a) of Regulation No 1049/2001. Since such a document has been drawn up specifically for the opening of negotiations which are to lead to the conclusion of an international agreement, the analysis carried out by the Legal Service of the institution concerned is necessarily linked to the specific context of the envisaged international agreement, even though the document deals with the issue of the legal basis, which is an issue of internal European Union law. Thus, the disclosure of elements connected with the objectives pursued by the European Union in the negotiations, in that they deal with the specific content of the envisaged agreement, would damage the climate of confidence in the negotiations.

Conversely, the Council's reliance on a weakening of the European Union's position in the ongoing negotiations was not appropriate. The Court observed that, since the choice of the legal basis rested on objective factors and did not fall within the discretion of the institution, any divergence of opinions on that subject could not be equated with a difference of opinion between the institutions as to matters which related to the substance of the agreement. Accordingly, the mere fear of disclosing a disagreement within the institutions regarding the legal basis of a decision authorising the opening of negotiations on behalf of the European Union is not a sufficient basis for concluding that the protected public interest in the field of international relations may be undermined.

Also, in Case T-465/09 *Jurašinović v Council* (judgment of 3 October 2012, not yet published), the Court held that the exception relating to the protection of the public interest in international relations justified the Council's refusal to give access to the reports of the European Union's observers in Croatia, in the Knin area, between 1 and 31 August 1995. Indeed, the disclosure of those reports would have been liable to undermine the objectives pursued by the European Union in the western Balkans region — namely, to contribute to peace, stability and a lasting regional reconciliation, with a view, in particular, to reinforcing, in relation to the European Union, the integration of the countries of that region — and, accordingly, liable to undermine international relations. The observations or evaluations made by the European Community's surveillance mission on the political, military and security situation at a decisive stage of the conflict between the Croatian forces and the Yugoslavian federal forces would have been disclosed. The disclosure of those matters was liable to give rise to or to increase resentment or tensions between the different communities of the countries which had been parties to the conflicts in the former Yugoslavia or between the countries which had emerged from Yugoslavia, thus weakening the confidence of the States of the western Balkans in that process of integration.

3. Protection of court proceedings and legal advice

The Court explained the scope of the exception relating to the protection of court proceedings in Case T-63/10 *Jurašinović v Council* (judgment of 3 October 2012, not yet published). It stated that the interpretation according to which only proceedings before a court of the European Union or before a court of one of the Member States may be protected under the exception in the second indent of Article 4(2) of Regulation No 1049/2001 cannot be upheld. No argument derived from the wording of Article 4 can lead to the view that the court proceedings referred to in that indent are only those taking place before the Courts of the European Union or those of its Member States; that finding is strengthened by an overall reading of Regulation No 1049/2001, which establishes a link with the European Union or its Member States only for certain aspects of the rules which it lays down. It follows, according to the Court, that there is nothing in that regulation to prevent court proceedings referred to by the exception provided for in the second indent of Article 4(2) from being proceedings taking place before a court not belonging to the legal order of the

European Union or the legal orders of its Member States, and that exception can protect, inter alia, court proceedings before the International Criminal Court for the former Yugoslavia ('the ICCY').

As regards the documents capable of being covered by the exception, the Court pointed out that the protection of the public interest precludes the disclosure of the content of documents drawn up for the sole purpose of particular court proceedings. Thus, in principle, that protection from any disclosure may apply to documents exchanged between, on the one hand, the prosecutor of the ICCY or the First Chamber of First Instance of the ICCY and, on the other hand, the European Union High Representative for the Common Foreign and Security Policy in the context of proceedings before that court, where the documents relate to an aspect of the organisation of a criminal trial and reveal the way in which the judicial bodies of the ICCY decided to conduct the procedure as well as the reactions of the defence and a third party to the measures taken by those bodies in order to obtain the evidence necessary for the proper conduct of the trial. That is not the case, conversely, for reports of the European Union observers in Croatia between 1 and 31 August 1995, exchanged between the European Union institutions and the ICCY, which were drawn up more than 10 years before the beginning of the trial and cannot be regarded as having been drawn up for the sole purposes of court proceedings.

As regards the exception relating to the protection of legal advice, in *In 't Veld* v *Council* the Court held that the Council could not rely, with respect to the exception provided for in the second indent of Article 4(2) of Regulation No 1049/2001, on the general consideration that a threat to a protected public interest might be presumed in a sensitive area, in particular in the case of legal advice given during the negotiation procedure for an international agreement. Nor could a specific and foreseeable threat to the interest in question be established by a mere fear of disclosure to citizens of differences of opinion between the European Union institutions regarding the legal basis for the international activity of the European Union and, thus, of creating doubts as to the lawfulness of that activity, with the result that the Council had been unable to show that the public interest relating to the protection of legal advice might be undermined.

The Court considered, moreover, that there was in any event an overriding public interest justifying disclosure of the document at issue, since disclosure would have helped to confer greater legitimacy on the institutions and would have increased European citizens' confidence in those institutions by making it possible to have an open debate on the points where there was a divergence of opinion. Those considerations would have been all the more relevant because the document examined the legal basis of an agreement which, once concluded, would have an impact on the fundamental right to the protection of personal data.

4. Protection of the purpose of inspections, investigations and audits

In *EnBW Energie Baden-Württemberg* v *Commission*, the Court recalled that the exception relating to the protection of the purpose of inspections, investigations and audits provided for in the third indent of Article 4(2) of Regulation No 1049/2001 is not intended to protect investigations as such, but rather their purpose, which, in the case of competition proceedings, is to determine whether an infringement of Article [101 TFEU] has taken place and to penalise the companies responsible if that be the case. While the documents relating to the various acts of investigation may remain covered by the exception in question so long as that goal has not been attained, even if the particular investigation or inspection which gave rise to the document to which access is sought has been completed, the investigation in a given case must be regarded as closed once the final decision has been adopted, regardless of whether that decision might subsequently be annulled by the courts, because it is at that moment that the institution in question itself considered the proceedings to be completed. Indeed, to accept that the various documents relating to investigations are covered

by the exception provided for in the third indent of Article 4(2) of Regulation No 1049/2001 until all the possible consequences of the proceedings in question have been decided — even in the case where an action which may lead to a re-opening of the proceedings before the Commission has been brought before the Court — would make access to those documents dependent on uncertain events, namely the outcome of that action and the conclusions which the Commission might draw from it. In any event, they are uncertain and future events which depend on decisions of the addressees of the decision censuring a cartel and of the various authorities concerned.

Environment

In Case T-396/09 *Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht* v *Commission* (judgment of 14 June 2012, not yet published, under appeal), the Court was led to rule on the effects of the Aarhus Convention ([26]) in the European Union legal order, and also on the relationship between that Convention and Regulation (EC) No 1367/2006. ([27]) The case arose from a Commission decision rejecting as inadmissible a request submitted by the applicants, two non-governmental organisations having as their object the protection of the environment, that the Commission should review an earlier decision granting the Kingdom of the Netherlands a temporary exemption from the obligations laid down in Directive 2008/50/EC. ([28]) That refusal was based on the fact that, as the earlier decision was not a measure of individual scope, the request for review did not relate to an administrative act within the meaning of Article 10(1) of Regulation No 1367/2006 and was therefore inadmissible. In their action, the applicants maintained, in particular, that that provision was contrary to the Aarhus Convention, in that it limited the concept of 'acts' in Article 9(3) of that Convention to 'administrative acts', which are defined in Article 2(1)(g) of Regulation No 1367/2006 as 'measure[s] of individual scope'.

Observing that the European Union institutions are bound by the Aarhus Convention, which prevails over secondary Community legislation, the Court held that the validity of Regulation No 1367/2006, concerning the application to the institutions and bodies of the Community of the provisions of that Convention, may be affected by the fact that it is incompatible with that Convention. Where the Community has intended to implement a particular obligation assumed under an international agreement, or where the measure makes an express *renvoi* to particular provisions of that agreement, it is for the Courts of the European Union to review the legality of the measure in question in the light of the rules laid down in that agreement. Thus, the Courts of the European Union must be able to review the legality of a regulation in the light of an international treaty without first having to determine whether the nature and the broad logic of the international treaty preclude such review and whether the provisions of that treaty appear, as regards their content, to be unconditional and sufficiently precise, where the regulation is intended to implement an obligation imposed on the European Union institutions by the international treaty. Taking the view that Article 9(3) of the Aarhus Convention cannot be interpreted as referring only to measures of individual scope, the Court held that, in so far as it limits the concept of acts amenable to challenge set out in that article to administrative acts defined as measures of individual scope, Article 10(1) of

([26]) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, signed at Aarhus on 25 June 1998.

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

([28]) Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ 2008 L 152, p. 1).

Regulation No 1367/2006 must be considered to be incompatible with that provision of the Aarhus Convention.

II. Appeals

In 2012, 10 appeals were brought against decisions of the Civil Service Tribunal and 32 cases were brought to a close by the Appeal Chamber of the Court; of these, Case T-37/10 P *De Nicola* v *EIB* (judgment of 27 April 2012, not yet published) is particularly noteworthy.

In *De Nicola* v *EIB* the Court held that the possibility — conferred on the Appeals Committee of the European Investment Bank (EIB) by point 6 of the Decision of 27 June 2006 on the rules of procedure before that committee — of invalidating 'any statement in the assessment form' implies that that committee is empowered to re-appraise the merits of each of those statements before finding fault with it. The scope of that power thus clearly exceeds the power solely to review legality and to annul the operative part of a measure, since it encompasses the possibility of invalidating even the grounds on which the operative part was adopted. The Court added that, even considering that, when examining a complaint under Article 90(2) of the Staff Regulations of the European Union ('the Staff Regulations'), the appointing authority does not conduct an unlimited review of the decision of the assessor, the fact remains that that provision does not provide for review criteria comparable to and as precise as those laid down in point 6 of the decision of 27 June 2006, or the possibility of holding a hearing or hearing witnesses. The internal rules of the EIB are therefore not incomplete in that respect, which precludes the application by analogy of the rules governing the complaints procedure established by Article 90 of the Staff Regulations.

Thus, the renunciation by the Appeal Committee of such unlimited review is tantamount to depriving the person concerned of a review body provided for in the internal rules of the EIB and therefore adversely affects that person, so that that renunciation is amenable to review by the tribunal of first instance. In the light of the power of unlimited review conferred on the Appeals Committee under point 6 of the Decision of 27 June 2006 with respect to the assessments contained and the marks awarded in the impugned report, it is essential for the tribunal of first instance to ascertain, admittedly within the framework of its limited power of review, whether and to what extent that committee discharged that duty of unlimited review in accordance with the applicable rules. Last, the Court held that the particular nature of Article 41 of the Staff Regulations of the EIB, which provides for an optional conciliation procedure, unlike the mandatory pre-litigation procedure provided for in Articles 90 and 91 of the Staff Regulations, precludes a simple transposition of the pre-litigation system laid down in the Staff Regulations, as Article 41 constitutes, in principle, a complete internal system of rules for the EIB, the nature and rationale of which are very different from those of the Staff Regulations. The very existence of those internal rules prohibits, except in the case of a manifest lacuna contrary to higher rules of law which must necessarily be made good, the drawing of analogies with the Staff Regulations.

III. Applications for interim measures

In the past year 21 applications for interim measures were made to the President of the General Court, a significant reduction by comparison with the number of applications (44) made in 2011. In 2012, the judge hearing such applications disposed of 23 cases, as against 52 in 2011. The President of the Court granted four applications: in Case T-52/12 R *Greece* v *Commission* (order of 19 September 2012, not yet published), concerning State aid; and in Case T-341/12 R *Evonik Degussa* v *Commission* (order of 16 November 2012, not published), Case T-345/12 R *Akzo Nobel and Others*

v *Commission* (order of 16 November 2012, not yet published), and Case T-164/12 R *Alstom* v *Commission* (order of 29 November 2012, not yet published), all relating to the problem of disclosure by the Commission of allegedly confidential information.

Greece v *Commission* concerned a decision of 7 December 2011 whereby the Commission had classified as State aid incompatible with the internal market a total amount of EUR 425 million paid by the Greek authorities to the Greek agricultural sector to make good damage attributable to adverse weather conditions, and had ordered those authorities to recover the sums paid from the beneficiaries. The Hellenic Republic brought an action for annulment and submitted an application for suspension of operation of that decision.

In his order, the President of the Court considered that the case raised the question whether, in the particular circumstances that had marked the economic and financial situation in Greece since 2008, the financial impact of the payments at issue was genuinely such as to affect trade between Member States and to threaten to distort competition for the purposes of Article 107(1) TFEU. Indeed, the sum of EUR 425 million identified by the Commission had to be reduced considerably, since numerous beneficiaries of the payments at issue had received *de minimis* aid so that they were exempt from the obligation to repay aid, and those payments had been partly financed by contributions from the Greek farmers (that is to say, the beneficiaries) themselves. A further question was whether the contested decision had to be considered excessive in that it required recovery of aid on 7 December 2011, although the extremely difficult state of the Greek agricultural sector had deteriorated further since the aid was granted. The President of the Court considered that the answers to those questions were not immediately obvious and called for detailed examination in the context of the main proceedings, so that they appeared, at first sight, sufficiently serious to constitute a prima facie case.

As regards the condition relating to urgency, the President of the Court recalled that Member States may seek the grant of interim measures by asserting that the contested measure could seriously jeopardise performance of their State tasks and public order. The Hellenic Republic was therefore not prevented from submitting that forced immediate recovery of the sums at issue by the tax authorities' staff from several hundreds of thousands of farmers would have entailed administrative difficulties liable to cause it serious and irreparable harm. Indeed, the Hellenic Republic legitimately intended to concentrate its resources on the establishment of effective tax authorities that would be capable of identifying and pursuing the 'big tax avoiders' and combating tax fraud, the volume of which, in terms of loss of revenue, came to EUR 20 billion. As forced recovery would have required massive intervention on the part of the Greek tax authorities' staff, such forcible large-scale collection of the sums in question would have prevented those authorities from devoting themselves to their priority, namely combating tax avoidance and collecting sums eluding tax that were nearly 50 times greater than the contested payments. Furthermore, a deterioration of confidence in the public authorities, generalised discontent and a feeling of injustice were features of the social climate in Greece. In particular, violent demonstrations against the draconian austerity measures adopted by the Greek public authorities were constantly increasing. In those circumstances, the risk that immediate recovery of the payments at issue in the agricultural sector might trigger demonstrations liable to degenerate into violence appeared to be neither purely hypothetical nor theoretical or uncertain. The perturbation of public order that would be brought about by such demonstrations and by the excesses to which, as recent dramatic events had shown, they might give rise would have caused serious and irreparable harm which the Hellenic Republic could legitimately invoke.

Last, when weighing up the various interests involved, the President of the Court accorded priority to the interests invoked by the Hellenic Republic, consisting in, first, preserving social peace and

preventing social unrest and, second, being able to concentrate the capacities of its tax authorities on the tasks which it regarded as paramount for the country, whereas the grant of suspension of operation exposed the European Union's interests solely to the risk of postponement of the national measures for recovery to a later date and there was no evidence that that postponement would in itself have prejudiced the chances of success of those measures. Consequently, the operation of the contested decision, in so far as it obliged the Hellenic Republic to recover the sums paid from the beneficiaries, was suspended pending the outcome of the main proceedings.

The applications in *Evonik Degussa* v *Commission* and *Akzo Nobel and Others* v *Commission* were lodged by undertakings which had participated in a cartel and whose anti-competitive conduct had in 2006 formed the subject-matter of a Commission decision pursuant to Article 81 EC. Having acknowledged the infringement and produced evidence relating to its existence, pursuant to the 2002 Leniency Notice, one of the applicant undertakings had been granted total immunity and the others a reduction in the fines which would otherwise have been imposed on them. After taking into consideration requests for confidential treatment submitted by the applicants, the Commission had, in September 2007, published a full-text non-confidential version of the 2006 decision on its website. In November 2011 the Commission informed the applicants of its intention to publish a fuller version of the 2006 decision. Taking the view that that version contained information which they had provided on the basis of the 2002 Leniency Notice and which had not been published in September 2007 for reasons of confidentiality, the applicants objected to the Commission's proposal, on the ground that it would have caused considerable and irreversible harm to their interests and would have breached the principles of legal certainty and the protection of legitimate expectations. By decision of 24 May 2012 the Commission rejected the applicants' claim for confidential treatment. In their applications for interim measures against that decision, the applicants claimed that the President of the Court should suspend the operation of the contested decision and order the Commission to refrain from publishing a non-confidential version. In his orders, the President of the Court granted the interim measures sought.

As regards the weighing-up of the various interests involved, the President of the Court observed that the purpose of the procedure for interim relief is limited to guaranteeing the full effectiveness of the future decision on the main action and that that procedure is merely ancillary to the main action to which it is an adjunct, so that the decision made by the judge hearing an application for interim measures is by nature interim in the sense that it must not either prejudge the future decision on the substance of the case or render it illusory by depriving it of effectiveness. In this instance, the Court would be called upon to rule, in the main action, on whether the decision whereby the Commission had rejected the claim that it should refrain from publishing the disputed information had to be annulled because of an infringement of the obligation of professional secrecy protected in Article 339 TFEU and because of the disregard of the confidentiality of the information which the applicants had submitted to the Commission in order to have the benefit of the 2002 Leniency Notice. In order to protect the effectiveness of a judgment annulling that decision, the applicants had to be able to ensure that the Commission would not publish the disputed information. A judgment ordering annulment would have been rendered illusory and would have been deprived of effectiveness if the application for interim measures had been dismissed, since the consequence of that dismissal would have been that the Commission was free immediately to publish the information at issue and therefore de facto to prejudge the future decision in the main action, namely dismissal of the action for annulment. Consequently, the interest defended by the applicants had to prevail over the Commission's interest in the dismissal of the application for interim measures, a fortiori as the grant of the interim measures would amount to no more than maintaining, for a limited period, the status quo which had existed for several years (since September 2007).

As regards urgency, the President of the Court considered that the applicants were likely to suffer serious and irreparable harm in the event of their application for interim measures being dismissed. If it should be established, in the main proceedings, that the publication envisaged by the Commission concerned confidential information the disclosure of which was incompatible with the protection of professional secrecy under Article 339 TFEU, the applicants could rely on that provision, which bestows on them a fundamental right, in order to object to that publication. If the application for interim measures had been dismissed, there would have been a risk that the applicants' fundamental right to the protection of professional secrecy would irreversibly have lost any meaning in relation to that information. Likewise, it was likely that the applicants' fundamental right to an effective remedy, enshrined in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and in Article 47 of the Charter of Fundamental Rights, would have been jeopardised if the Commission had been allowed to publish the information at issue before the Court had ruled on the main action.

As for the condition relating to a prima facie case, the President of the Court observed that the case raised complex questions, requiring a thorough examination within the main proceedings, concerning problems connected with the confidentiality to be granted to leniency applications. It would be important to ascertain whether the applicants, in March 2003, when they voluntarily sent the information at issue to the Commission in connection with the Leniency Notice, could rely — in particular by reference to the position taken by the Commission at that time — on the fact that that information would, as information which was essentially confidential, enjoy an enduring protection against publication. The President of the Court thus held that there was a prima facie case. Since all the requisite conditions were satisfied, the application for interim measures prohibiting the Commission from publishing the disputed information was granted. ([29])

([29]) Similar reasoning was followed in the order in *Alstom* v *Commission*, although in that case the decision suspension of enforcement of which was ordered was the Commission's decision to grant the request of the High Court of Justice of England and Wales to obtain, in the context of an action for damages against Alstom, the allegedly confidential data submitted by Alstom in response to the statement of objections when the Commission had initiated a competition procedure.

B — Composition of the General Court

(order of precedence as at 8 October 2012)

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, President of Chamber.

Second row, from left to right:

S. Frimodt Nielsen, Judge; M. Prek, Judge; I. Labucka, Judge; V. Vadapalas, Judge; F. Dehousse, Judge; M.E. Martins Ribeiro, Judge; I. Wiszniewska-Białecka, Judge; K. Jürimäe, Judge; N. Wahl, Judge; S. Soldevila Fragoso, Judge.

Third row, from left to right:

E. Buttigieg, Judge; M. Kancheva, Judge; D. Gratsias, Judge; J. Schwarcz, Judge; K. O'Higgins, Judge; M. Van der Woude, Judge; A. Popescu, Judge; G. Berardis, 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 Liège 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 from 12 May 2004 to 22 March 2012.

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.

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 from 7 October 2006 to 28 November 2012.

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.

Guido Berardis

Born 1950; degree in law (Sapienza University of Rome, 1973), Diploma of Advanced European Studies at the College of Europe (Bruges, 1974–75); official of the Commission of the European Communities ('International Affairs' Directorate of the Directorate-General for Agriculture, 1975–76); member of the Legal Service of the Commission of the European Communities (1976–91 and 1994–95); Representative of the Legal Service of the Commission of the European Communities in Luxembourg (1990–91); Legal Secretary at the Court of Justice of the European Communities in the chambers of the judge Mr G.F. Mancini (1991–94); Legal Adviser to members of the Commission of the European Communities, Mr M. Monti (1995–97) and Mr F. Bolkestein (2000–02); Director of the 'Procurement Policy' Directorate (2002–03), the 'Services, Intellectual and Industrial Property, Media and Data Protection' Directorate (2003–05) and the 'Services' Directorate (2005–11) at the Directorate-General for the Internal Market of the Commission of the European Communities; Principal Legal Adviser and Director of the 'Justice, Freedom and Security, Private Law and Criminal Law' Team at the Legal Service of the European Commission (2011–12); Judge at the General Court since 17 September 2012.

Eugène Buttigieg

Born 1961; Doctor of Laws, University of Malta; Master of Laws in European Legal Studies, University of Exeter; Ph.D. in Competition Law, University of London; Legal Officer at the Ministry of Justice (1987–90); Senior Legal Officer at the Ministry of Foreign Affairs (1990–94); Member of the Copyright Board (1994–2005); Legal Reviser at the Ministry of Justice and Local Government (2001–02); Board Member of the Malta Resources Authority (2001–09); Legal Consultant in the field of European Union law from 1994, Legal Adviser to the Ministry of Finance, the Economy and Investment on consumer and competition law (2000–10), Legal Adviser to the Office of the Prime Minister on consumer affairs and competition (2010–11), Legal Consultant with the Malta Competition and Consumer Affairs Authority (2012); Lecturer (1994–2001), Senior Lecturer (2001–06), subsequently Associate Professor (from 2007) and holder of the Jean Monnet Chair in European Union Law (from 2009) at the University of Malta; Co-founder and Vice-President of the Maltese Association for European Law; Judge at the General Court since 8 October 2012.

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 2012

Formal sitting on 17 September 2012

Following the resignation of Mr Enzo Moavero Milanesi, by decision of 5 September 2012 the representatives of the governments of the Member States of the European Union appointed Mr Guido Berardis as Judge at the General Court of the European Union for the remainder of Mr Moavero Milanesi's term of office, that is to say, until 31 August 2013.

Formal sitting on 8 October 2012

By decision of 20 September 2012 Mr Eugène Buttigieg was appointed as Judge at the General Court for the period from 22 September 2012 to 31 August 2013, replacing Ms Ena Cremona.

3. Order of precedence

From 1 January 2012 to 22 March 2012

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

From 23 March 2012 to 16 September 2012

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
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

From 17 September 2012 to 7 October 2012

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
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
G. BERARDIS, Judge

E. COULON, Registrar

From 8 October 2012 to 28 November 2012

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
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J. SCHWARCZ, Judge
M. VAN DER WOUDE, Judge
D. GRATSIAS, Judge
A. POPESCU, Judge
M. KANCHEVA, Judge
G. BERARDIS, Judge
E. BUTTIGIEG, Judge

E. COULON, Registrar

From 29 November 2012 to 31 December 2012

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
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D. GRATSIAS, Judge
A. POPESCU, Judge
M. KANCHEVA, Judge
G. BERARDIS, Judge
E. BUTTIGIEG, 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)
Ena Cremona (2004–12)
Enzo Moavero Milanesi (2006–11)
Nils Wahl (2006–12)
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 (2008–12)

New cases

2. Nature of proceedings (2008–12)
3. Type of action (2008–12)
4. Subject-matter of the action (2008–12)

Completed cases

5. Nature of proceedings (2008–12)
6. Subject-matter of the action (2012)
7. Subject-matter of the action (2008–12) (judgments and orders)
8. Bench hearing action (2008–12)
9. Duration of proceedings in months (2008–12) (judgments and orders)

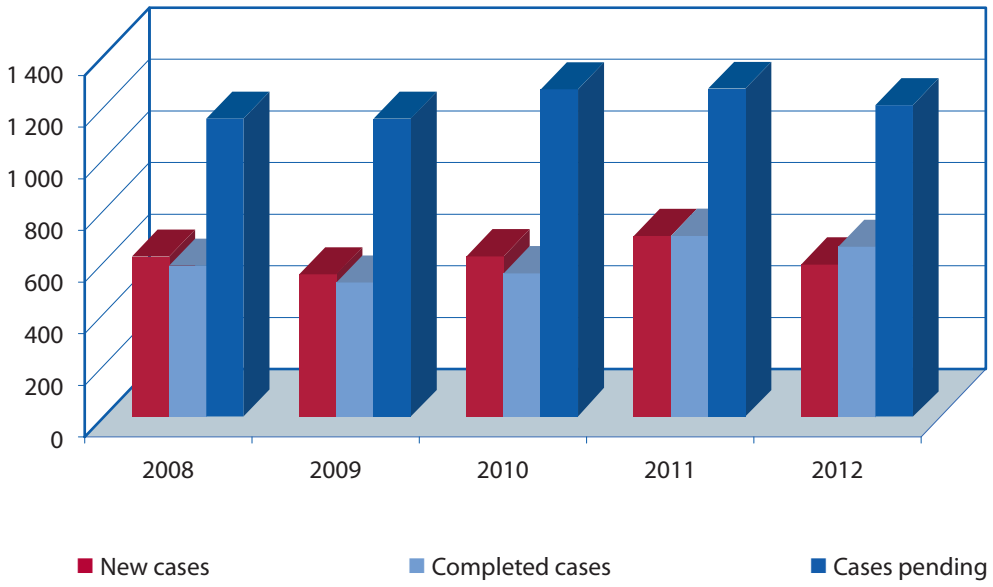
Cases pending as at 31 December

10. Nature of proceedings (2008–12)
11. Subject-matter of the action (2008–12)
12. Bench hearing action (2008–12)

Miscellaneous

13. Proceedings for interim measures (2008–12)
14. Expedited procedures (2008–12)
15. Appeals against decisions of the General Court to the Court of Justice (1990–2012)
16. Distribution of appeals before the Court of Justice according to the nature of the proceedings (2008–12)
17. Results of appeals before the Court of Justice (2012) (judgments and orders)
18. Results of appeals before the Court of Justice (2008–12) (judgments and orders)
19. General trend (1989–2012) (new cases, completed cases, cases pending)

1. *General activity of the General Court* — New cases, completed cases, cases pending (2008–12) (1) (2)



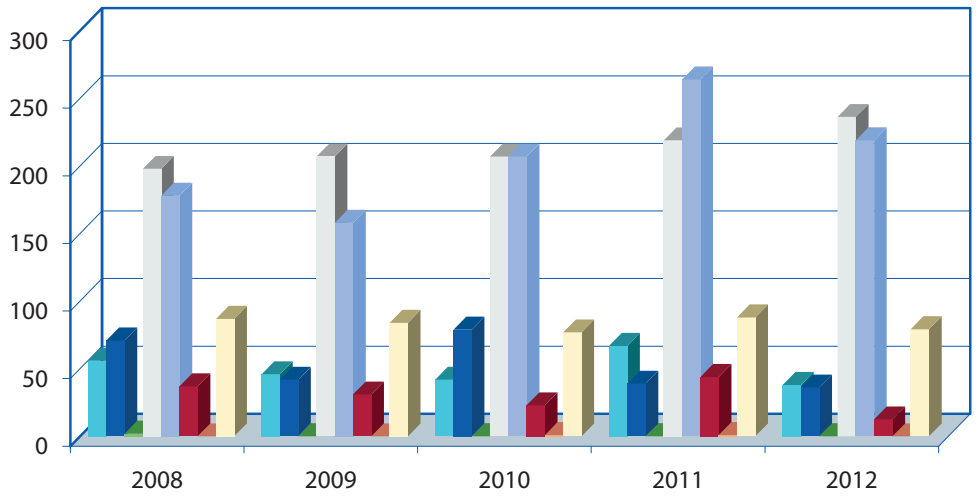
	2008	2009	2010	2011	2012
New cases	629	568	636	722	617
Completed cases	605	555	527	714	688
Cases pending	1 178	1 191	1 300	1 308	1 237

(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 (2008–12)

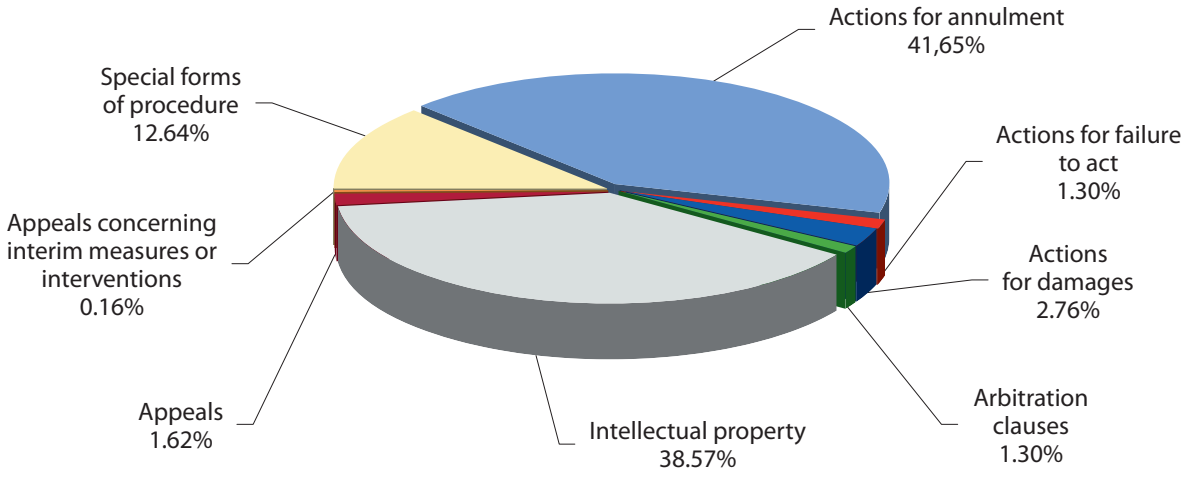


State aid
Competition
Staff cases
Intellectual property
Other direct actions
Appeals
Appeals concerning interim measures or interventions
Special forms of procedure

	2008	2009	2010	2011	2012
State aid	56	46	42	67	36
Competition	71	42	79	39	34
Staff cases	2				
Intellectual property	198	207	207	219	238
Other direct actions	178	158	207	264	220
Appeals	37	31	23	44	10
Appeals concerning interim measures or interventions			1	1	1
Special forms of procedure	87	84	77	88	78
Total	**629**	**568**	**636**	**722**	**617**

3. *New cases* — Type of action (2008–12)

Distribution in 2012



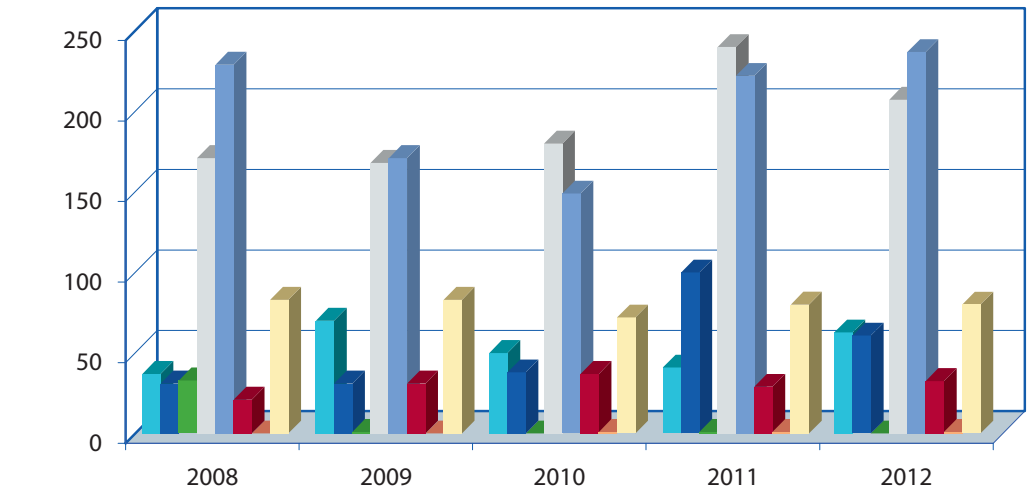
	2008	2009	2010	2011	2012
Actions for annulment	269	214	304	341	257
Actions for failure to act	9	7	7	8	8
Actions for damages	15	13	8	16	17
Arbitration clauses	12	12	9	5	8
Intellectual property	198	207	207	219	238
Staff cases	2				
Appeals	37	31	23	44	10
Appeals concerning interim measures or interventions			1	1	1
Special forms of procedure	87	84	77	88	78
Total	**629**	**568**	**636**	**722**	**617**

4. *New cases* — Subject-matter of the action (2008–12) ([1])

	2008	2009	2010	2011	2012
Access to documents	22	15	19	21	18
Accession of new States		1			
Agriculture	14	19	24	22	11
Arbitration clause	12	12	9	5	8
Area of freedom, security and justice	3	2		1	
Commercial policy	10	8	9	11	20
Common fisheries policy	23	1	19	3	
Common foreign and security policy			1		
Company law		1			
Competition	71	42	79	39	34
Consumer protection	2				
Culture		1			
Customs union and Common Customs Tariff	1	5	4	10	6
Economic and monetary policy			4	4	3
Economic, social and territorial cohesion	6	6	24	3	4
Education, vocational training, youth and sport				2	1
Energy		2		1	
Environment	7	4	15	6	3
External action by the European Union	2	5	1	2	1
Financial provisions (budget, financial framework, own resources, combatting fraud)		1			1
Free movement of goods	1	1			
Freedom of establishment	1				
Freedom of movement for persons	1	1	1		
Freedom to provide services	3	4	1		1
Intellectual and industrial property	198	207	207	219	238
Law governing the institutions	23	32	17	44	40
Public health	2	2	4	2	12
Public procurement	31	19	15	18	23
Registration, evaluation, authorisation and restriction of chemicals (REACH Regulation)			8	3	2
Research, technological development and space		6	3	4	3
Restrictive measures (external action)	7	7	21	93	60
Social policy	6	2	4	5	1
State aid	55	46	42	67	36
Taxation			1	1	1
Transport	1		1	1	
Total EC Treaty/TFEU	**502**	**452**	**533**	**587**	**527**
Total CS Treaty	**1**				
Total EA Treaty			**1**		
Staff Regulations	39	32	25	47	12
Special forms of procedure	87	84	77	88	78
OVERALL TOTAL	**629**	**568**	**636**	**722**	**617**

([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 2008–09 have been revised accordingly.

5. *Completed cases* — Nature of proceedings (2008–12)



State aid
Competition
Staff cases
Intellectual property
Other direct actions
Appeals
Appeals concerning interim measures or interventions
Special forms of procedure

	2008	2009	2010	2011	2012
State aid	37	70	50	41	63
Competition	31	31	38	100	61
Staff cases	33	1		1	
Intellectual property	171	168	180	240	210
Other direct actions	229	171	149	222	240
Appeals	21	31	37	29	32
Appeals concerning interim measures or interventions			1	1	1
Special forms of procedure	83	83	72	80	81
Total	**605**	**555**	**527**	**714**	**688**

6. *Completed cases* — Subject-matter of the action (2012)

	Judgments	Orders	Total
Access to documents	9	12	21
Agriculture	23	9	32
Arbitration clause	9	2	11
Area of freedom, security and justice	1	1	2
Commercial policy	11	3	14
Common fisheries policy	3	6	9
Competition	49	12	61
Customs union and Common Customs Tariff	2	4	6
Economic and monetary policy		2	2
Economic, social and territorial cohesion	10	2	12
Education, vocational training, youth and sport		1	1
Environment	3	5	8
Financial provisions (budget, financial framework, own resources, combatting fraud)		2	2
Freedom of movement for persons		1	1
Freedom to provide services		2	2
Intellectual and industrial property	160	50	210
Law governing the institutions	4	37	41
Public health	1	1	2
Public procurement	13	11	24
Registration, evaluation, authorisation and restriction of chemicals (REACH Regulation)		1	1
Research, technological development and space	1	2	3
Restrictive measures (external action)	7	35	42
Social policy		1	1
State aid	30	33	63
Taxation		2	2
Transport	1		1
Total EC Treaty/TFEU	**337**	**237**	**574**
Special forms of procedure		81	81
Staff Regulations	17	16	33
OVERALL TOTAL	**354**	**334**	**688**

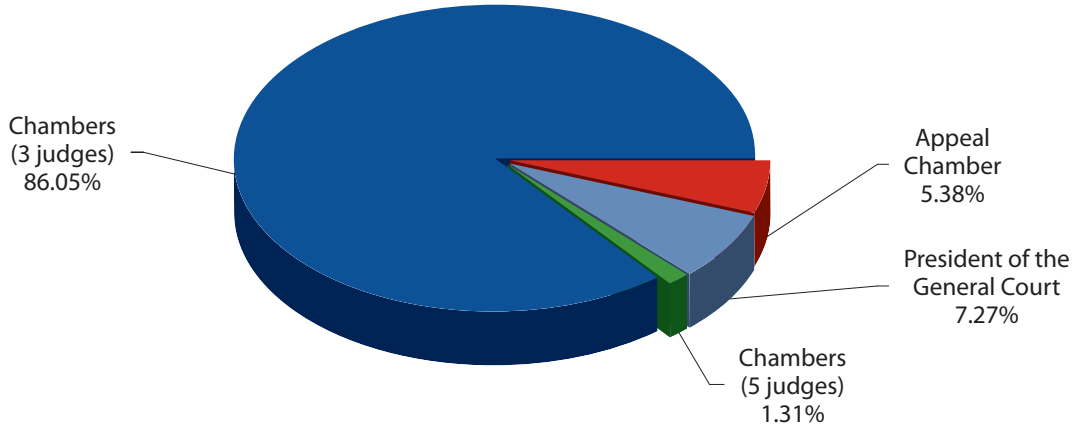
7. *Completed cases* — Subject-matter of the action (2008–12) (1) (judgments and orders)

	2008	2009	2010	2011	2012
Access to documents	15	6	21	23	21
Accession of new States		1			
Agriculture	48	46	16	26	32
Approximation of laws	1				
Arbitration clause	9	10	12	6	11
Area of freedom, security and justice	1	3			2
Commercial policy	12	6	8	10	14
Common fisheries policy	4	17		5	9
Company law			1		
Competition	31	31	38	100	61
Consumer protection			2	1	
Culture	1	2			
Customs union and Common Customs Tariff	6	10	4	1	6
Economic and monetary policy	1		2	3	2
Economic, social and territorial cohesion	42	3	2	9	12
Education, vocational training, youth and sport			1	1	1
Energy			2		
Environment	17	9	6	22	8
External action by the European Union	2		4	5	
Financial provisions (budget, financial framework, own resources, combatting fraud)	2	2			2
Free movement of goods	2	3			
Freedom of establishment	1				
Freedom of movement for persons	2	1		2	1
Freedom to provide services		2	2	3	2
Intellectual and industrial property	171	169	180	240	210
Law governing the institutions	22	20	26	36	41
Public health	1	1	2	3	2
Public procurement	26	12	16	15	24
Registration, evaluation, authorisation and restriction of chemicals (REACH Regulation)				4	1
Research, technological development and space	1	1	3	5	3
Restrictive measures (external action)	6	8	10	32	42
Social policy	2	6	6	5	1
State aid	37	70	50	41	63
Taxation	2		1		2
Transport	3		2	1	1
Total EC Treaty/TFEU	**468**	**439**	**417**	**599**	**574**
Total EA Treaty		**1**		**1**	
Special forms of procedure	83	83	72	80	81
Staff Regulations	54	32	38	34	33
OVERALL TOTAL	**605**	**555**	**527**	**714**	**688**

(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 2008–09 have been revised accordingly.

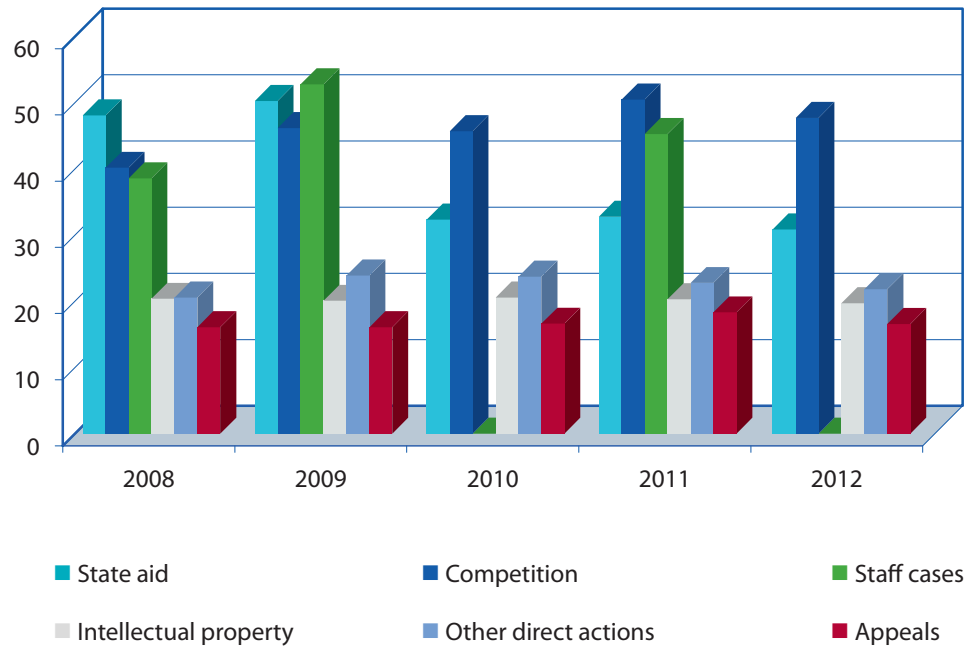
8. *Completed cases* — Bench hearing action (2008–12)

Distribution in 2012



	2008			2009			2010			2011			2012		
	Judgments	Orders	Total	Judgments	Orders	Total	Judgments	Orders	Total	Judgments	Orders	Total	Judgments	Orders	Total
Grand Chamber								2	2						
Appeal Chamber	16	10	26	20	11	31	22	15	37	15	14	29	17	20	37
President of the General Court		52	52		50	50		54	54		56	56		50	50
Chambers (5 judges)	15	2	17	27	2	29	8		8	19	6	25	9		9
Chambers (3 judges)	228	282	510	245	200	445	255	168	423	359	245	604	328	264	592
Single judge							3		3						
Total	**259**	**346**	**605**	**292**	**263**	**555**	**288**	**239**	**527**	**393**	**321**	**714**	**354**	**334**	**688**

9. *Completed cases* — Duration of proceedings in months (2008-12) ([1]) (judgments and orders)

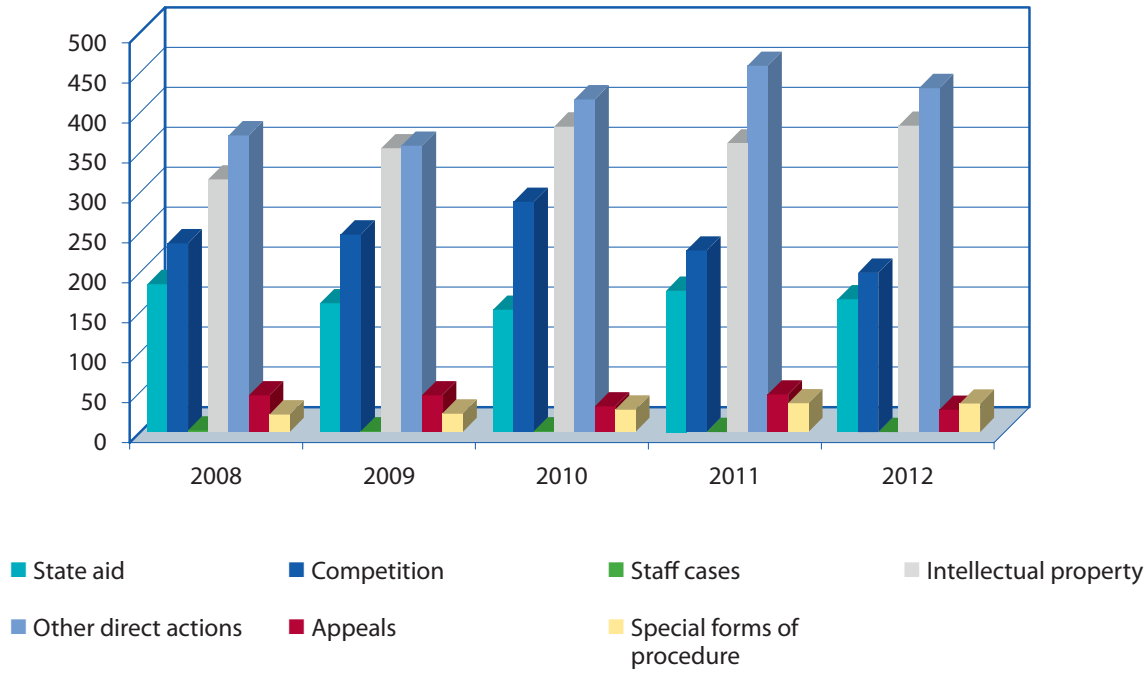


	2008	2009	2010	2011	2012
State aid	48.1	50.3	32.4	32.8	31.5
Competition	40.2	46.2	45.7	50.5	48.4
Staff cases	38.6	52.8		45.3	
Intellectual property	20.4	20.1	20.6	20.3	20.3
Other direct actions	20.6	23.9	23.7	22.8	22.2
Appeals	16.1	16.1	16.6	18.3	16.8

([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 (2008–12)



	2008	2009	2010	2011	2012
State aid	185	161	153	179	152
Competition	236	247	288	227	200
Staff cases	2	1	1		
Intellectual property	316	355	382	361	389
Other direct actions	371	358	416	458	438
Appeals	46	46	32	47	25
Special forms of procedure	22	23	28	36	33
Total	**1 178**	**1 191**	**1 300**	**1 308**	**1 237**

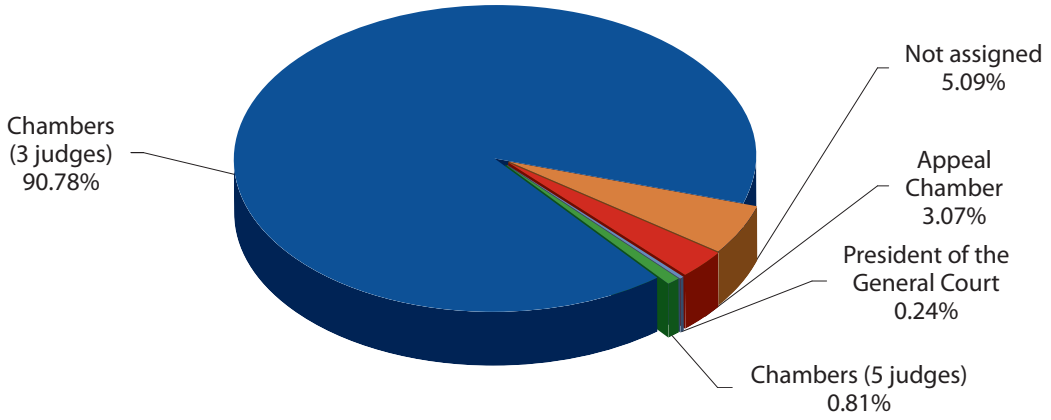
11. *Cases pending as at 31 December* — Subject-matter of the action (2008–12) (1)

	2008	2009	2010	2011	2012
Access to documents	35	44	42	40	37
Agriculture	84	57	65	61	40
Arbitration clause	20	22	19	18	15
Area of freedom, security and justice	3	2	2	3	1
Commercial policy	31	33	34	35	41
Common fisheries policy	24	8	27	25	16
Common foreign and security policy			1	1	1
Company law		1			
Competition	236	247	288	227	200
Consumer protection	3	3	1		
Culture	1				
Customs union and Common Customs Tariff	11	6	6	15	15
Economic and monetary policy			2	3	4
Economic, social and territorial cohesion	13	16	38	32	24
Education, vocational training, youth and sport	1	1		1	1
Energy		2		1	1
Environment	30	25	34	18	13
External action by the European Union	3	8	5	2	3
Financial provisions (budget, financial framework, own resources, combatting fraud)	3	2	2	2	1
Free movement of goods	2				
Freedom of movement for persons	2	2	3	1	
Freedom to provide services	3	5	4	1	
Intellectual and industrial property	317	355	382	361	389
Law governing the institutions	29	41	32	40	39
Public health	3	4	6	5	15
Public procurement	34	41	40	43	42
Registration, evaluation, authorisation and restriction of chemicals (REACH Regulation)			8	7	8
Research, technological development and space	3	8	8	7	7
Restrictive measures (external action)	19	18	29	90	108
Social policy	10	6	4	4	4
State aid	184	160	152	178	151
Taxation				1	
Transport	2	2	1	1	
Total EC Treaty/TFEU	**1 106**	**1 119**	**1 235**	**1 223**	**1 176**
Total CS Treaty	**1**	**1**	**1**	**1**	**1**
Total EA Treaty	**1**		**1**		
Staff Regulations	48	48	35	48	27
Special forms of procedure	22	23	28	36	33
OVERALL TOTAL	**1 178**	**1 191**	**1 300**	**1 308**	**1 237**

(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 2008–09 have been revised accordingly.

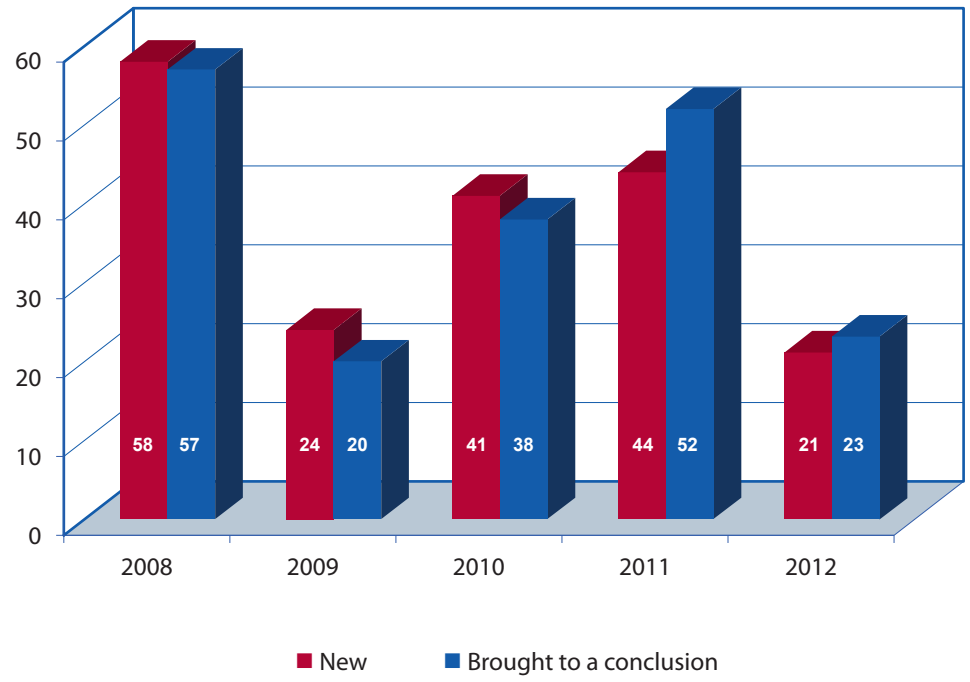
12. *Cases pending as at 31 December* — Bench hearing action (2008–12)

Distribution in 2012



	2008	2009	2010	2011	2012
Appeal Chamber	46	46	32	51	38
President of the General Court			3	3	3
Chambers (5 judges)	67	49	58	16	10
Chambers (3 judges)	975	1 019	1 132	1 134	1 123
Single judge		2			
Not assigned	90	75	75	104	63
Total	**1 178**	**1 191**	**1 300**	**1 308**	**1 237**

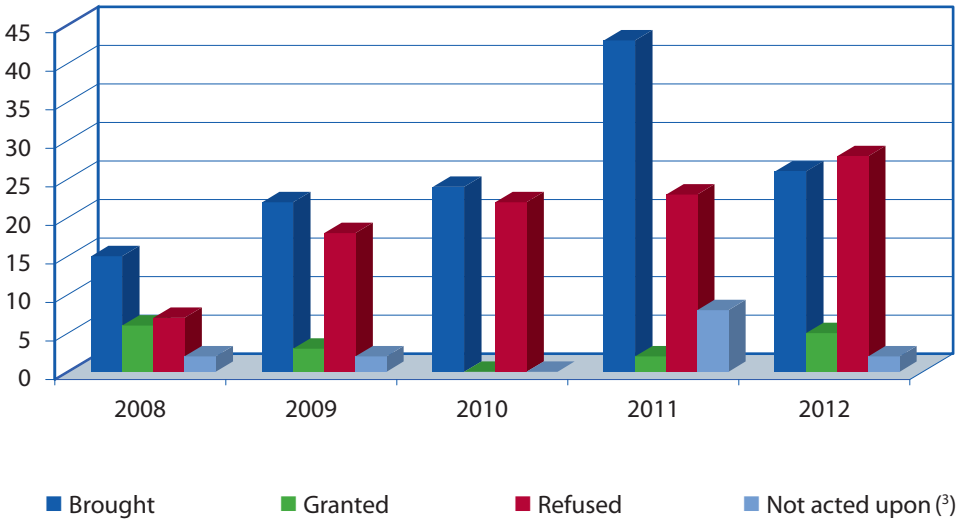
13. *Miscellaneous* — Proceedings for interim measures (2008–12)



Distribution in 2012

	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			1
State aid	3	3	1	1	1
Arbitration clause	1	1		1	
Competition	6	5	3	1	1
Registration, evaluation, authorisation and restriction of chemicals (REACH Regulation)	1				
Public procurement	4	5		2	3
Restrictive measures (external action)	4	6		2	4
Research, technological development and space	1	1			1
Staff Regulations	1	1			1
Total	**21**	**23**	**4**	**7**	**12**

14. *Miscellaneous* — Expedited procedures (2008–12) (1) (2)



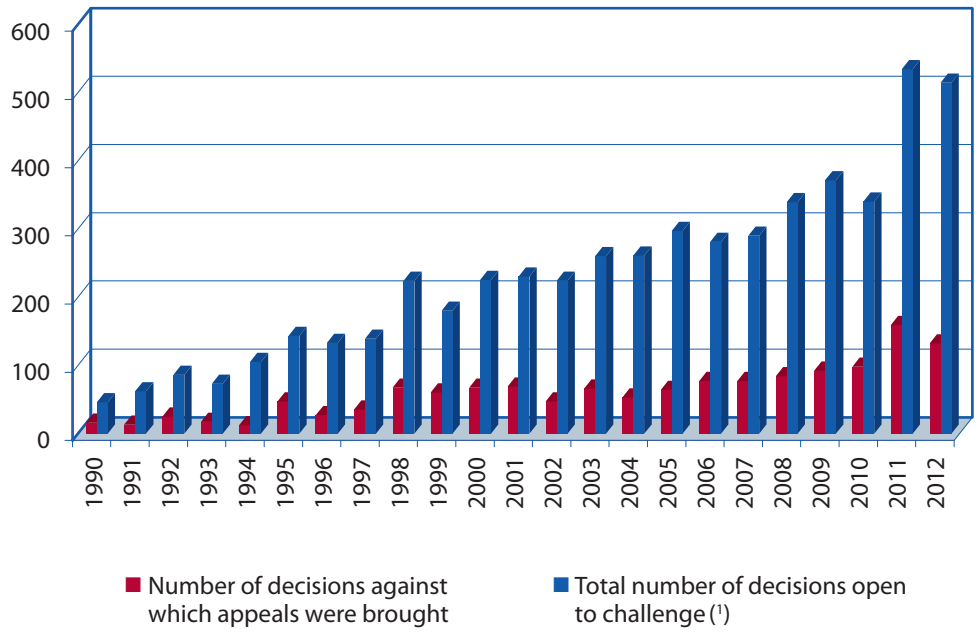
	2008				2009				2010				2011				2012			
	Brought	Outcome			Brought	Outcome			Brought	Outcome			Brought	Outcome			Brought	Outcome		
		Granted	Refused	Not acted upon (3)		Granted	Refused	Not acted upon (3)		Granted	Refused	Not acted upon (3)		Granted	Refused	Not acted upon (3)		Granted	Refused	Not acted upon (3)
Access to documents	2		2		4		4						2		1		1		2	
External action by the European Union									1		1									
Agriculture	1				2		3													
State aid	1		1						7		5				2		2			2
Arbitration clause	1			1																
Economic, social and territorial cohesion									1		1						1		1	
Competition	1		1		2		2		3		3		4		4		2		2	
Law governing the institutions	1			1	1		1						1			1				
Environment					1			1					2		2					
Freedom to provide services					1	1														
Public procurement	3	1	3		2		2		2		2									
Restrictive measures (external action)	4	4			5	1	2	1	10		10		30	2	12	7	11	4	17	
Commercial policy		1			2		2						3		2		3		2	
Social policy													1			1				
Procedure					1		1													
Public health					1		1										5	1	3	
Staff Regulations	1					1														
Customs union and Common Customs Tariff																	1		1	
Total	**15**	**6**	**7**	**2**	**22**	**3**	**18**	**2**	**24**		**22**		**43**	**2**	**23**	**9**	**26**	**5**	**28**	**2**

(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 2008–09 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 (1990–2012)



	Number of decisions against which appeals were brought	Total number of decisions open to challenge (1)	Percentage of decisions against which appeals were brought
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	78	290	27%
2008	84	339	25%
2009	92	371	25%
2010	98	338	29%
2011	158	532	30%
2012	132	514	26%

(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.

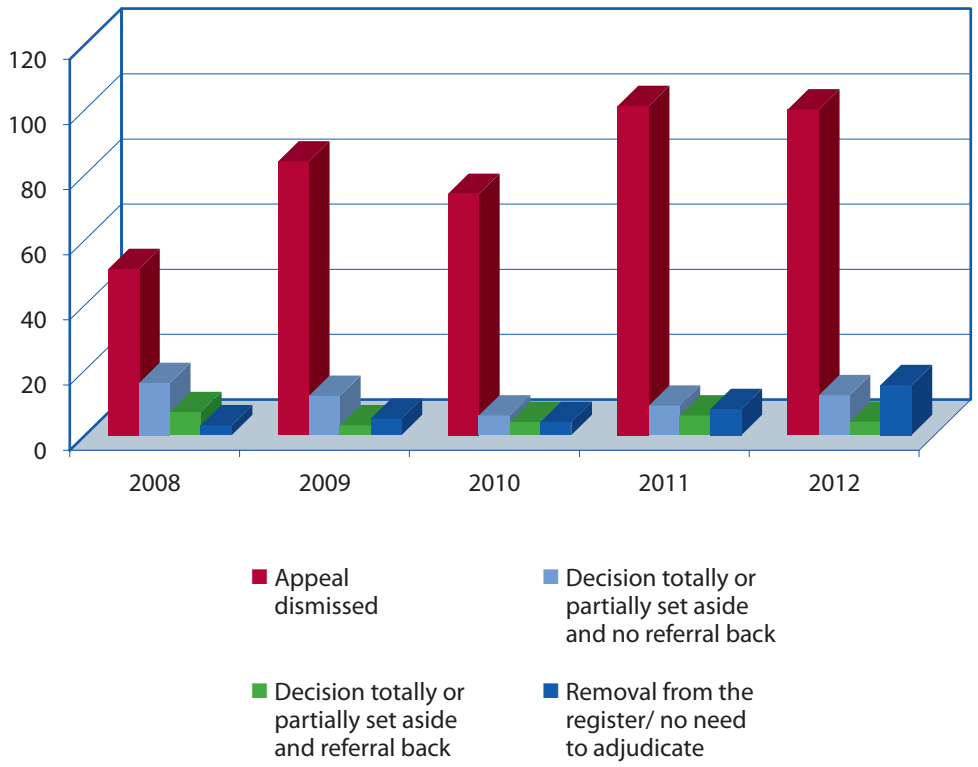
16. *Miscellaneous* — Distribution of appeals before the Court of Justice according to the nature of the proceedings (2008–12)

	2008			2009			2010			2011			2012		
	Decisions against which appeals were brought	Decisions open to challenge	**Appeals as a percentage**	Decisions against which appeals were brought	Decisions open to challenge	**Appeals as a percentage**	Decisions against which appeals were brought	Decisions open to challenge	**Appeals as a percentage**	Decisions against which appeals were brought	Decisions open to challenge	**Appeals as a percentage**	Decisions against which appeals were brought	Decisions open to challenge	**Appeals as a percentage**
State aid	4	19	**21%**	23	51	**45%**	17	34	**50%**	10	37	**27%**	18	52	**35%**
Competition	7	26	**27%**	11	45	**24%**	15	33	**45%**	49	90	**54%**	24	60	**40%**
Staff cases	9	31	**29%**	1	3	**33%**				1	1	**100%**			
Intellectual property	24	105	**23%**	25	153	**16%**	32	140	**23%**	39	201	**19%**	41	190	**22%**
Other direct actions	40	158	**25%**	32	119	**27%**	34	131	**26%**	59	203	**29%**	47	208	**23%**
Appeals														2	**0%**
Special forms of procedure													2	2	**100%**
Total	84	339	**25%**	92	371	**25%**	98	338	**29%**	158	532	**30%**	132	514	**26%**

17. *Miscellaneous* — Results of appeals before the Court of Justice (2012) (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	1		5
External action by the European Union	1				1
Agriculture	4		1		5
State aid	5	1		3	9
Economic, social and territorial cohesion	1				1
Competition	23	1		6	30
Law governing the institutions	16	1			17
Environment	4				4
Freedom to provide services	2				2
Public procurement	3				3
Commercial policy	4	2		1	7
Economic and monetary policy	2				2
Common foreign and security policy	4	4			8
Social policy	1				1
Principles of European Union law		1			1
Intellectual and industrial property	25		2	5	32
Customs union and Common Customs Tariff	1				1
Total	**98**	**12**	**4**	**15**	**129**

18. *Miscellaneous* — Results of appeals before the Court of Justice (2008–12) (judgments and orders)



	2008	2009	2010	2011	2012
Appeal dismissed	51	84	73	101	98
Decision totally or partially set aside and no referral back	16	12	6	9	12
Decision totally or partially set aside and referral back	7	3	5	6	4
Removal from the register/ no need to adjudicate	3	5	4	8	15
Total	**77**	**104**	**88**	**124**	**129**

19. *Miscellaneous* — General trend (1989–2012) 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
2012	617	688	1 237
Total	**9 950**	**8 713**	

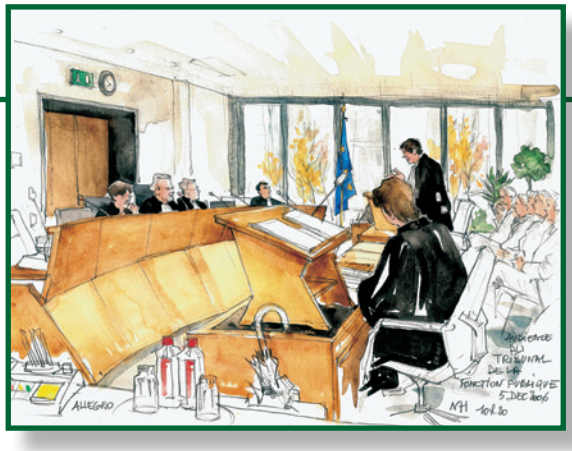
(1) 1989: the Court of Justice referred 153 cases to the newly created Court of First Instance (now the General Court).

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 2012

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

1. The year 2012 was the first full year of activity of the Civil Service Tribunal in its new composition, three of its members having been replaced from 6 October 2011.

2. The judicial statistics of the Tribunal reveal a further increase in 2012 in the number of cases brought (178) compared with the previous year (159). This number has thus been consistently rising since 2008 (111).

The number of cases brought to a close (121), for its part, has fallen markedly, compared with that of the previous year (166), which, it must be said, represented the best result achieved by the Tribunal in terms of quantity since its creation. That fall is explained by the change in the composition of the Tribunal in 2011. Every departing judge is required, well before the end of his term of office, to concentrate on finalising the cases which can be brought to a close before his departure, thus leaving before the Tribunal those which cannot be, while newly appointed judges do not generally reach their full productivity until they have been in office for several months because of the time required for the investigation, the scheduling and judging of cases. These difficulties are particularly serious where, as in 2012, almost half of the members of the Tribunal were replaced.

It follows that the number of pending cases has risen markedly compared with the previous year (235 at 31 December 2012 compared with 178 at 31 December 2011). However, the average duration of proceedings has not altered much (14.8 months in 2012 compared with 14.2 months in 2011). ([1])

In addition, 11 orders for interim measures were made in 2012 by the President of the Tribunal, compared with seven in 2011.

In 2012, 11 appeals were brought before the General Court of the European Union against decisions of the Tribunal, compared with 44 in 2011. Moreover, of 33 appeals decided in 2012, 28 were dismissed and only four upheld in full or in part; two of the cases in which the judgment was set aside were referred back to the Tribunal. One appeal was removed from the register.

Finally, four cases were brought to a close by amicable settlement under Article 69 of the Rules of Procedure.

3. The year 2012 was also noteworthy for the adoption, on 11 August 2012, of Regulation (EU, Euratom) No 741/2012 of the European Parliament and of the Council of 11 August 2012 amending the Protocol on the Statute of the Court of Justice of the European Union and Annex I thereto. ([2]) That amendment allows, inter alia, the appointment of temporary Judges to replace, in their absence, Judges who, while not suffering from disablement deemed to be total, are prevented from participating in the disposal of cases for a lengthy period of time. The intention is to prevent the Tribunal being placed, as a result of a Judge's unavailability, in a difficult situation such as to impede its discharge of its judicial function. Pursuant to Regulation No 741/2012, on 25 October 2012 the Euro-

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

([2]) OJ 2012 L 228, p. 1.

pean Parliament and the Council adopted Regulation (EU, Euratom) No 979/2012 of the European Parliament and of the Council of 25 October 2012 relating to temporary Judges of the European Union Civil Service Tribunal. [3] That regulation lays down the conditions for the appointment of such judges.

4. The account given below will describe the most significant decisions of the Tribunal.

I. Procedural aspects

Conditions for admissibility

1. Act adversely affecting an official

In a judgment of 23 October 2012 in Case F-57/11 *Eklund* v *Commission*, the Tribunal recalled that an offer of a post addressed to a candidate with a view to his appointment as an official constitutes a mere declaration of intention since the appointment of an official may be effected only in accordance with the requirements and procedures laid down by the Staff Regulations of Officials of the European Union ('the Staff Regulations'). Consequently, it was held that no action for annulment can be brought against the withdrawal of an offer of a post. In the same judgment, however, the Tribunal made clear that a decision not to proceed with an offer of a post and to withdraw that offer when it has already been accepted by an applicant constitutes an act adversely affecting that person.

2. Interest in bringing proceedings

After outlining the case-law according to which an applicant may pursue an action for annulment of a decision only if he has a personal, vested and present interest in the annulment of that decision after his action has been brought, the Tribunal held, in a judgment of 11 December 2012 in Case F-107/11 *Ntouvas* v *ECDC*, that the fact that an applicant no longer works at the agency which appraised him and that the appraisal report will not be disclosed to third parties is not such as to deprive him of his legal interest in bringing proceedings to challenge that report. The Tribunal based its view in that regard on the fact that an appraisal report constitutes written, formal evidence of the quality of the work carried out by the person concerned and thus includes an assessment of the personal qualities shown by the individual assessed in the conduct of his professional activities.

3. Respect for the pre-contentious procedure

The Tribunal recalled, in two judgments of 20 June 2012 in Case F-66/11 and F-83/11 *Cristina* v *Commission*, that the legal remedy available regarding decisions of a competition selection board normally consists of a direct application to the European Union court without a prior complaint. It therefore held that a candidate in a competition who did none the less make a complaint to the appointing authority against such a decision is not required to wait for the decision of the appointing authority on that complaint before bringing the case before the court. On the contrary, a complaint against a decision of the selection board in a competition may not have the effect of depriving the person concerned of his right to bring a direct action before the competent court. However,

[3] OJ 2012 L 303, p. 83.

the case must be brought within the period of three months and 10 days of the notification of the decision adversely affecting the person concerned.

Court proceedings

1. Immunity of parties' representatives

In a case where an applicant requested the waiver of the immunity of the defendant's representatives in respect of words spoken or written during the proceedings, in its judgment of 23 October 2012 in Case F-44/05 RENV *Strack* v *Commission*, the Tribunal had to interpret Article 30 of its Rules of Procedure which authorises it to waive that immunity. The Tribunal first found that that article protects the parties' representatives from proceedings being brought against them, that the article does not allow a request for waiver of immunity to be brought by one of the parties and that the freedom of expression of those representatives helps to ensure a fair hearing, and went on to hold that a request for the waiver of immunity may only be made by a court or a competent national authority and may not be made by a party.

2. Costs

As European Union law does not lay down any provisions on rates for recoverable fees, it is for the judicature itself to assess the amount of such fees. The Tribunal held, in that connection, in an order of 22 March 2012 in Case F-5/08 DEP *Brune* v *Commission*, that the hourly rate which it had to apply could not be set by reference to the average rate charged by a lawyer at the Brussels Bar, because such a solution would act as an incentive for applicants to choose lawyers registered at that Bar and would affect the freedom to provide services. However, the hourly rate set may be that of a specialist lawyer where the dispute may appear, for a reasonably informed party, to raise particularly difficult questions of law or where it has a particular importance for that party.

II. Merits

General conditions for validity of measures

1. Breach of a procedural requirement

In its judgment in *Strack* v *Commission* the Tribunal recalled that a breach of a procedural requirement may result in an annulment only if, had it not been for that irregularity, the outcome of the procedure might have been different. It pointed out, in that connection, that the applicant need not demonstrate that the contested decision would necessarily have been different if it had not been affected by the irregularity in question, but it suffices that it cannot be entirely ruled out that the administration might have adopted a different decision, in order for the existence of that irregularity to result in annulment.

2. Rights of defence and right to participate in a procedure

In order not to impose an unreasonable burden on the administration before the adoption of any act adversely affecting staff, the Tribunal, following the line of its previous case-law, held, in a judgment of 18 April 2012 in Case F-50/11 *Buxton* v *Parliament*, that the rights of defence are not applicable to a procedure for awarding merit points to an official, because such a procedure, which is inherent in a promotion exercise, cannot in any way be considered to be a procedure brought

against that official. Similarly, in a judgment of 16 May 2012 in Case F-42/10 *Skareby* v *Commission*, it held that the alleged victim of psychological harassment could not invoke her rights of defence because an inquiry procedure initiated following her request for assistance cannot be compared to an inquiry procedure opened against her. Finally, in its judgment of 6 November 2012 in Case F-41/06 RENV *Marcuccio* v *Commission*, it held that the work of an Invalidity Committee does not constitute a procedure brought against the official concerned and, consequently, there is no requirement that he should be heard by such a committee in order to respect the rights of the defence.

However, in its judgment in *Skareby* v *Commission*, the Tribunal added that, in the light of the general principle of good administration laid down by Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter'), the alleged victim of psychological harassment may claim procedural rights that are separate from the rights of defence and are not as extensive as those rights. The Tribunal essentially reiterated that case-law in its judgment in *Marcuccio* v *Commission*.

Also in its judgment in *Skareby* v *Commission*, the Tribunal held, specifically, that the applicant, who had had the opportunity to put forward her arguments, could not invoke the abovementioned procedural rights to claim access to a final report and to the evidence obtained in the course of compiling it nor to claim that she should have been heard on the content of those documents before the decision refusing assistance was made. In the judgment in *Marcuccio* v *Commission* it was held that the procedure before the Invalidity Committee respects the procedural rights of the official in that his interests are safeguarded by the presence on that committee of the doctor representing him, by the appointment of the third doctor by agreement of the two members appointed by each party and by the fact that the official concerned may put before the Invalidity Committee all the reports and certificates of the practitioners he consulted.

3. Impartiality

The Tribunal annulled a decision rejecting a request for assistance in a case of psychological harassment on the ground of the lack of objective impartiality of the person who had conducted the inquiry underlying that decision. In its judgment of 18 September 2012 in Case F-58/10 *Allgeier* v *FRA* the Tribunal observed that the investigator was chairman of the board of an institute which had concluded an important contract with the defendant, a contract capable of being renewed repeatedly, and concluded that the importance of that business relationship was such as to give rise to justified concern on the part of the applicant that the investigator, because he wanted to maintain that business relationship, would be guided by the aim of protecting the reputation of the Agency.

4. Obligation to observe a reasonable time-limit

Under the principle of good administration, the authority has an obligation to act within a reasonable time in conducting any administrative procedure. In that regard, the Tribunal held, in its judgment in *Strack* v *Commission,* that the duration of a pre-contentious procedure organised under Articles 90 and 91 of the Staff Regulations could not, as a matter of principle, be excessive since, as a result of the time-limits laid down by those provisions, it cannot exceed 14 months and 10 days where it begins with a request, and 10 months and 10 days where it begins with a complaint.

5. Obligation to disapply an unlawful provision

In its judgment of 8 February 2012 in Case F-11/11 *Bouillez and Others* v *Council*, the Tribunal held that, where a decision of a general nature taken by an institution derogates unlawfully from higher-ranking provisions, that institution must disapply that decision of a general nature. That is the case, in particular, where the institution has to decide on the individual situation of an official and is

faced with a general implementing provision which disregards a higher-ranking rule of law. In such a case, the institution must decide on the individual situation of the person concerned without applying the unlawful general implementing provision.

6. Plurality of grounds

In its judgment of 28 March 2012 in Case F-36/11 *BD* v *Commission*, the Tribunal recalled that where a contested decision is based on several grounds, the fact that one of those grounds is erroneous cannot result in the annulment of that decision if the other grounds provide justification which is sufficient in itself.

7. Cancellation of acts

In the context of an action leading to its judgment of 5 December 2012 in Case F-110/11 *Lebedef and Others* v *Commission*, the Tribunal had occasion to state that every legislative authority is under a duty, first, to check, if not constantly at least periodically, that the rules which it has imposed still meet the needs which they were intended to meet and, second, to amend or even repeal the rules which have ceased to have any justification and are thus no longer appropriate in the new context in which they must produce their effects. According to the Tribunal, such a check is required, in particular, when correction coefficients are updated.

In its judgment in *Eklund* v *Commission*, after recalling the distinction to be made, in accordance with the theory of cancellation of administrative acts, between acts which create rights and those which do not, the Tribunal held that an offer of a post addressed to a candidate with a view to his appointment as an official constitutes a mere declaration of intention and does not create rights, so that the administration has the option of withdrawing it at any time. It also made clear that the fact that the person concerned accepts that offer does not have the effect of giving rise to an act which creates rights within the meaning of that theory. As was explained above, an appointment may only be made in accordance with the procedural rules and conditions laid down by the Staff Regulations.

8. Implementation of a judgment annulling a measure

Taking the view that the administration may seek an equitable solution to resolve the particular case of a candidate unlawfully excluded from an open competition, the Tribunal held, in a judgment of 13 December 2012 in Case F-42/11 *Honnefelder* v *Commission*, that, where a decision not to include a candidate on a reserve list was annulled because of an irregularity affecting the whole competition, the decision to re-open the procedure in the competition only for that candidate appears to be such as to allow the full implementation of the judgment annulling the first decision, although it cannot entirely remedy the irregularity found.

Career of officials and other staff

1. Competitions

In its judgment of 1 February 2012 in Case F-123/10 *Bancale and Buccheri* v *Commission*, the Tribunal held that the requirement of professional experience acquired after the obtaining of a diploma giving access to a competition is an appropriate means for the administration to recruit the services of officials who have the qualities called for by the first subparagraph of Article 27 of the Staff Regulations and, therefore, to safeguard the interest of the service. Professional experience acquired after a diploma is obtained and relevant to it is more likely to give the candidate concerned

a clear picture of the application of scientific approaches to practical problems than professional experience gained before a diploma is obtained. It follows that the appointing authority is entitled to decide, in the exercise of its wide discretion, to limit access to competitions to candidates who have professional experience which is more valuable in that it is obtained after their university diploma was obtained and is relevant to that diploma.

In its judgment of 18 September 2012 in Case F-96/09 *Cuallado Martorell* v *Commission*, the Tribunal held that a procedure provided for by the notice of competition giving candidates the option of making a request for additional information within a period of one month after notification of the results of the competition and requiring the administration to reply within a month, is a procedure which is intended to allow candidates to exercise a specific right of access to certain information of direct and individual concern to them. The Tribunal therefore took the view that strict respect for that specific right, both as regards its content and the time-limit for reply, ensures compliance with the obligations derived from the principle of good administration, the right of access to public documents and the right to an effective remedy, pursuant to Articles 41, 42 and 47 of the Charter. Consequently, failure to respect that right is liable not only to lead rejected candidates to lodge appeals or complaints without having sufficient data, but also to constitute maladministration which could, in appropriate cases, require compensation to be paid.

In a judgment of 5 December 2012 in Case F-29/11 *BA* v *Commission*, an action brought by an applicant who was of Romanian nationality, but whose first language was Hungarian, led the Tribunal to clarify the knowledge of languages which can be required in recruitment competitions linked to an enlargement. While accepting that the obligation to sit a written test in Romanian might place the applicant at a disadvantage compared with candidates whose mother tongue is Romanian, the Tribunal held that any such disadvantage would not constitute a breach of the principle of equality. Given that, in the light of the needs of the service, the administration may specify the language or languages of which thorough or satisfactory knowledge is required, the Tribunal held that the requirement of a test in Romanian had, in this case, to be considered legitimate, because it was justified by higher-ranking requirements deriving precisely from the accession of Romania, which had selected only Romanian as its official language. In addition, the difference in treatment appeared proportionate to the objective pursued in that it occurred during a transitional period, following that accession and in that knowledge of Romanian was such as to appear to be useful, or even necessary, because the administrators recruited would be taking part in various tasks within the institutions and, where appropriate, in relation to economic and social operators in the Member States. The contested requirement thus did not breach the principle of equality. However, the Tribunal excludes the case where the Member State in question has recognised as a language of the Union, as regards its participation in the work of its institutions, a minority language which is spoken on its territory although it is not one of its official languages.

2. Reports

As a matter of principle, an official may not be penalised in his appraisal because of justified absences. However, that does not mean that reporting officers must refrain systematically from taking account of absences justified by illness when they assess the performance of the persons concerned. In its judgment of 2 October 2012 in Case F-52/05 RENV *Q* v *Commission*, the Tribunal made clear that the mark for performance of an official who has met his objectives may be increased so as to take account of the fact that the time he had worked was less because of such absence. Similarly, before a poor mark is awarded for performance, reporting officers must take account of the fact that the performance of the official was affected by his absence on grounds of sickness.

3. Promotion

In its judgment of 8 February 2012 in Case F-23/11 *AY* v *Council* (under appeal to the General Court of the European Union), the Tribunal held that the certification of officials in function group AST constitutes further training and instruction within the meaning of Article 24a of the Staff Regulations which must be taken into account for purposes of promotion in the careers of the persons concerned. That obligation must be reflected in the content of appraisal reports. As such reports are, according to Article 45(1) of the Staff Regulations, one of the matters to be taken into account in the consideration of comparative merits with a view to promotion, and promotion is one of the aspects of the progress of an official's career, the Tribunal held that the appointing authority cannot, without breaching Article 45, fail to take any account of certification when considering comparative merits in a round of promotions. Consequently, it also held that, when considering comparative merits of officials eligible for promotion, the appointing authority may not leave out of account the fact that an official was selected to take part in a training programme for the purposes of his certification and that he has passed the tests certifying that he has followed that programme successfully.

Rights and obligations of officials and other staff

1. Equal treatment of men and women

Having recalled that Article 1e(2) of the Staff Regulations provides that officials in active employment are to be accorded working conditions complying with appropriate health and safety standards at least equivalent to the minimum requirements applicable under measures adopted in these areas pursuant to the Treaties, the Tribunal held, in its judgment of 17 July 2012 in Case F-54/11 *BG* v *European Ombudsman*, that the objective of Directive 92/85 ([4]) is precisely to improve the working environment by strengthening the protection of the health and safety of pregnant workers. Consequently, it held that that directive binds the institutions and that they must therefore provide pregnant officials and other staff with protection equivalent to the minimum protection offered by that directive. However, although Directive 92/85 prohibits the dismissal of a pregnant worker, it excludes the case where the grounds for that dismissal are not connected with the pregnancy and are allowed by the legislation and/or practice. The Tribunal held, in that regard, that, although the Staff Regulations do not contain any provision expressly establishing an exception to the prohibition on dismissal of pregnant workers, those regulations must be interpreted as meaning that Article 47(e) thereof constitutes such an exception in that it provides for the possibility, entirely by way of exception, of termination of the service of an official in the event of a decision to remove an official from post following a disciplinary procedure.

2. Prevention of conflicts of interest

It follows from the judgment in *BD* v *Commission*, that Article 11a of the Staff Regulations is intended to guarantee the independence, integrity and impartiality of officials and, consequently, of the institutions which they serve by imposing on the persons concerned a preventive duty to inform the authority intended to allow that authority to take appropriate measures where necessary. Having regard to the fundamental nature of the objectives of independence and integrity pursued

([4]) Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) (OJ 1992 L 348, p. 1).

by that provision and to the general nature of the obligation imposed on officials, the Tribunal held that Article 11a must be acknowledged to have a wide scope, covering any situation in the light of which the person concerned must reasonably understand, given the duties he performs and the circumstances, that it is such as to appear, in the eyes of third parties, to be a possible cause of impairment of his independence. In addition, it made clear that the independence of officials vis-à-vis third parties must not be assessed only from a subjective viewpoint. Such independence also requires the avoidance, particularly in the management of the finances of the European Union, of any conduct objectively likely to affect the image of the institutions and undermine the confidence which they should inspire in the public.

3. Outside activity

As Article 12b of the Staff Regulations obliges officials wishing to engage in an outside activity, whether paid or unpaid, to obtain permission, the Tribunal recalled, in its judgment in *BD* v *Commission*, that that obligation applies without exception and no distinction is to be made according to the nature or extent of the activity. On that basis, it held that the obligation to obtain such permission applies not only to officials who, in the course of their career, envisage engaging in such activity, but also to recruits who wish to continue an activity which they pursued before being recruited and which becomes an 'outside' activity from the time they take up their duties.

4. Psychological harassment

The Tribunal had held, in its judgment of 9 December 2008 in Case F-52/05 *Q* v *Commission*, set aside in part by the judgment of the General Court of 12 July 2011 in Case T-80/09 P *Commission* v *Q*, that, in order to constitute harassment, the conduct at issue must have 'led objectively to … consequences' such as to discredit the victim or impair her working conditions. The *Skareby* v *Commission* case, already discussed, led it to specify that a classification as harassment is subject to the condition that the abusive nature of the conduct in question should be objectively sufficiently real, in the sense that an impartial and reasonable observer, of normal sensitivity and in the same situation, would consider it to be excessive and open to criticism. It follows that recognition of the existence of harassment, within the meaning of Article 12a of the Staff Regulations, is subject to the intentional nature of the physical behaviour, spoken or written language, gestures or other acts in question, but does not require that it be demonstrated that such acts were committed with the intention of undermining the personality, dignity or physical or psychological integrity of a person, provided that they lead objectively to consequences that discredit the victim or impair her working conditions.

In a judgment of 15 February 2012 in Case F-113/10 *AT* v *EACEA*, the Tribunal held, with regard to a dismissal for professional incompetence, that a member of staff may reasonably argue that he has not been able to perform his duties satisfactorily as a result of psychological harassment and that, consequently, the professional incompetence given as the ground for the decision he disputes is vitiated by a manifest error of assessment. In particular, the existence of a background of psychological harassment may also be taken into account in order to establish that the dismissal decision was adopted with the aim of harming the staff member where the author of the harassment took part in the assessment on the basis of which the dismissal decision was taken or is the signatory of that decision.

5. Right of disclosure

Article 22a(3) of the Staff Regulations provides that an official who becomes aware of facts which give rise to a presumption of the existence of possible illegal activity, 'including fraud or corruption,

detrimental to the interests of the Union' or of a serious failure to comply with the obligations of officials and without delay informs either his immediate superior or OLAF directly 'shall not suffer any prejudicial effects on the part of the institution …, provided that he acted reasonably and honestly'.

In its judgment of 25 September 2012 in Case F-41/10 *Bermejo Garde*v *EESC*, the Tribunal clarified the conditions to be fulfilled for an official who has disclosed such information to be regarded as having acted 'reasonably and honestly' within the meaning of Article 22a of the Staff Regulations.

First, the irregularities disclosed must, where they actually occurred, be of an obviously serious nature. Second, the accusations made must be based on correct facts, or, at the very least, have a 'sufficient factual basis'. The exercise of freedom of expression, which encompasses the possibility of an official's denouncing psychological harassment or the existence of unlawful circumstances or of a serious failure by officials to fulfil their obligations, carries with it duties and responsibilities and any person who chooses to disclose such information must carefully verify, to the extent permitted by the circumstances, that it is accurate and reliable. Third, the official must use appropriate means to make the disclosure and, in particular, must disclose the matter to the authority or body responsible, namely, 'his immediate superior or his Director-General or, if he considers it useful, the Secretary-General, or the persons in equivalent positions, or [OLAF] direct'. Fourthly and finally, disclosure motivated by a personal grievance or animosity or by the prospect of personal advantage, including financial gain, cannot be considered to be a disclosure made reasonably and honestly.

6. Duty to have regard for the interests of officials

Although, according to settled case-law, a member of the temporary staff who is the holder of a fixed-term contract does not, in principle, have any right to the renewal of his contract, which is a mere option, subject to the condition that such renewal is consistent with the interest of the service, the Tribunal none the less made clear, in its judgment of 13 June 2012 in Case F-63/11 *Macchia* v *Commission* (under appeal to the General Court), that, before refusing a member of staff any further employment within the organisation, it was incumbent on the authority empowered to conclude contracts, by virtue of its duty to have regard for the interests of officials, to consider whether there was another temporary staff post in respect of which the applicant's contract could, in the interest of the service, have legitimately been renewed. In the present case, the Commission intentionally omitted to make any assessment in that regard because it was seeking to work in favour of the 'refreshing' of its staff's knowledge, and to avoid any extension of a contract or continuation of an employment relationship which might, eventually, lead to the conclusion of contracts for an indefinite period.

Emoluments and social security benefits of officials

According to Article 12(2) of Annex VIII to the Staff Regulations, officials or other staff members under 63 years of age with at least one year of service whose service terminates for reasons other than death or invalidity without their qualifying for an immediate or deferred retirement pension, are entitled to a severance grant, provided that, since taking up their duties, they have, in order to establish or maintain pension rights, paid into a national pension scheme, a private insurance scheme or a pension fund of their choice which satisfies the requirements set out in Article 12(1) of that Annex. The Tribunal made clear, in its judgment of 22 May 2012 in Case F-109/10 *AU* v *Commission*, that the mere fact that, without paying in to a national pension scheme, the person concerned continued to acquire pension rights in his home country could not confer entitlement to a severance grant on him. Similarly, taking out a private insurance policy for the constitution of pension rights which can be cancelled before term with reimbursement of the capital sums paid in cannot confer

entitlement to a severance grant because, under Article 12(1)(b) of Annex VIII to the Staff Regulations, that entitlement is available only to those whose private insurance fulfils certain conditions, which include precisely the condition that the capital will not be repaid to the persons concerned.

In its judgment in *Marcuccio* v *Commission*, the Tribunal held that the decision to consult the Invalidity Committee must be distinguished from the individual decisions concerning its composition, which can be changed where that proves necessary. Thus, the gradual replacement of one or more members of an Invalidity Committee does not automatically cause its mandate to expire. In addition, new members of the Invalidity Committee, appointed to represent the institution and the official concerned respectively, cannot be denied their power to appoint a new third doctor by agreement between them, despite the fact that the previous one was appointed ex officio by the President of the Court of Justice. That solution can be explained inter alia by the fact that the option which the institution's doctor and the doctor of the official concerned have of appointing a third doctor by agreement between them favours the choice of a doctor whose medical knowledge reflects the professional requirements they consider necessary and ensures their confidence in that third doctor.

Finally, according to settled case-law a new rule applies, save as otherwise provided, immediately to situations yet to arise and to the future effects of situations which arose, but were not fully constituted, under the old rule. In a judgment of 13 June 2012 in Case F-31/10 *Guittet* v *Commission*, the Tribunal held, as regards insurance against the risk of accident and of occupational disease and, in particular, the application of the scale for rating physical or mental impairment ('disability rating scale'), that the situation of an insured party is not fully constituted until after the consolidation of his injuries. Consequently, the Tribunal considered that Article 30 of the new Insurance Rules, in so far as it provides that the scale annexed to those rules is applicable to insured parties who are victims of an accident or an occupational disease and whose injuries consolidated before the date of its entry into force, refers, in the case of those insured parties, to situations fully constituted under the disability rating scale annexed to the old Insurance Rules, so that that article gives retroactive effect to the scale annexed to the new rules. On that basis, the Tribunal recalled that the principle of legal certainty precludes a European Union act from taking effect as from a date prior to its entry into force, save, exceptionally, where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected. It held that, in the present case, those conditions were not fulfilled.

Disciplinary measures

Article 25 of Annex IX to the Staff Regulations lays down the principle that 'criminal prosecutions' cause disciplinary proceedings to be suspended until after a final judgment has been handed down by the court hearing the case where they concern the same facts. In the absence of any clear definition of criminal prosecution in the Staff Regulations and in the light of several express or implied references made to national law in that regard by the European Union legislature, the Tribunal took the view, in its judgment *BG* v *European Ombudsman,* that it could not identify an independent definition of the concept and needed to refer to the law of the Member States as regards the application of Article 25, and specifically to the law of the State whose criminal authorities consider they have jurisdiction with regard to the facts of which the official subject to disciplinary proceedings is accused.

In the same judgment, the Tribunal pointed out that the principle of effective judicial protection laid down in Article 47 of the Charter does not mean that a penalty should not be imposed first by an administrative authority, provided, however, that the decision of that authority is subject to subsequent review by a 'judicial body that has full jurisdiction'. In addition, it recalled that, in

order to be classified as a judicial body that has full jurisdiction, a judicial body must inter alia have jurisdiction to examine all questions of fact and law relevant to the dispute before it, which means, in the case of a disciplinary measure, that it should have, inter alia, the power to determine the proportionality between the misconduct and the penalty, without confining itself to seeking out errors of assessment or misuse of powers.

Disputes concerning contracts

The Tribunal observed, in its judgment of 27 November 2012 in Case F-59/11 *Sipos* v *OHIM*, that it appears from Article 1a(1) of the Staff Regulations read in conjunction with Articles 2 to 5 of the Conditions of Employment of Other Servants ('CEOS') that permanent posts in the institutions are, generally, to be filled by officials and that it is only by way of exception that such posts may be occupied by staff under contract. Thus, although Article 2(b) provides expressly that temporary staff may be engaged to fill a permanent post, it specifies that this may happen only temporarily. In addition, the second paragraph of Article 8 of the CEOS provides that a contract of employment as a member of the temporary staff may not exceed four years and may be renewed for a duration of a maximum period of two years. At the end of that period the employment as a member of the temporary staff must cease, either by the termination of his employment or by his appointment as an official under the terms laid down in the Staff Regulations.

B — Composition of the Civil Service Tribunal

(Order of precedence as at 1 January 2012)

From left to right:

R. Barents, Judge; I. Boruta, Judge; H. Kreppel, President of Chamber; S. Van Raepenbusch, President of the Civil Service 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)

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; President of the Civil Service Tribunal since 7 October 2011.

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.

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 for 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–April 2004; Chamber of Judge Lõhmus, May 2004–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, Inter-Institutional 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 of the European Communities (in the Chambers of Judge Jann, 1995–2005); teaching for a number of universities in Germany, Austria, Switzerland and Russia; Honorary Professor at Saarland University (since 1999); member of various legal committees, associations and boards; numerous publications on Community law and Community procedural law; Registrar of the Civil Service Tribunal since 30 November 2005.

2. Change in the composition of the Civil Service Tribunal in 2012

There has been no change in the composition of the Civil Service Tribunal in 2012.

3. Order of precedence

from 1 January to 31 December 2012

S. VAN RAEPENBUSCH, President of the Civil Service 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 (2008–12)

New cases

2. Percentage of the number of cases per principal defendant institution (2008–12)
3. Language of the case (2008–12)

Completed cases

4. Judgments and orders — Bench hearing action (2012)
5. Outcome (2012)
6. Applications for interim measures (2008–12)
7. Duration of proceedings in months (2012)

Cases pending as at 31 December

8. Bench hearing action (2008–12)
9. Number of applicants (2012)

Miscellaneous

10. Appeals against decisions of the Civil Service Tribunal to the General Court (2008–12)
11. Results of appeals before the General Court (2008–12)

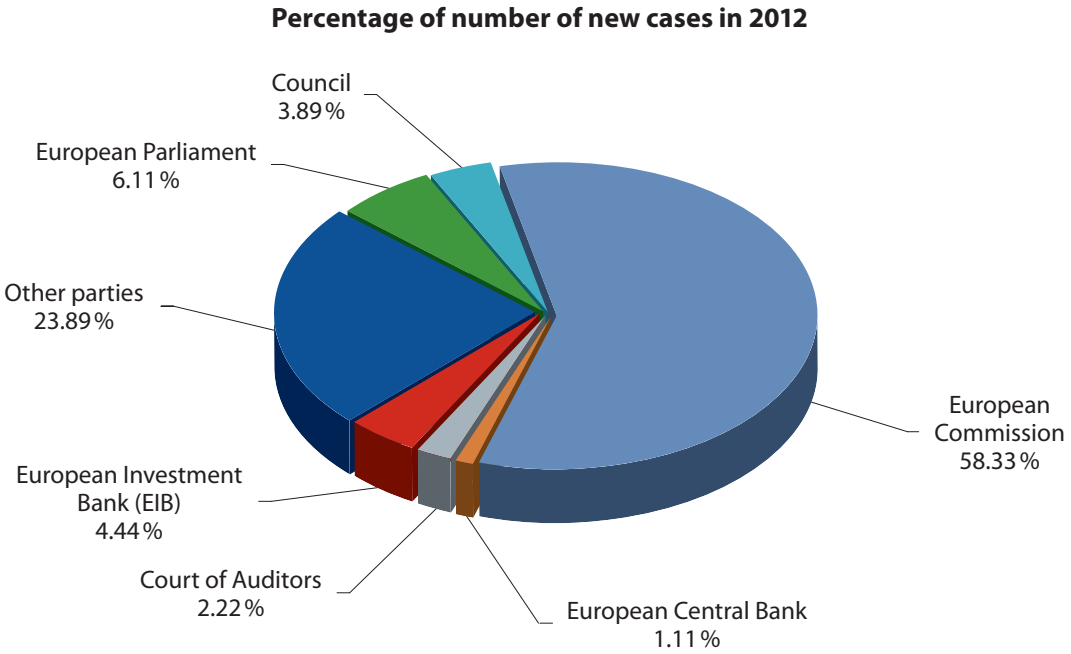
1. *General activity of the Civil Service Tribunal* — New cases, completed cases, cases pending (2008–12)

	2008	2009	2010	2011	2012
New cases	111	113	139	159	178
Completed cases	129	155	129	166	121
Cases pending	217	175	185	178	235[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 25 cases in which proceedings were stayed.

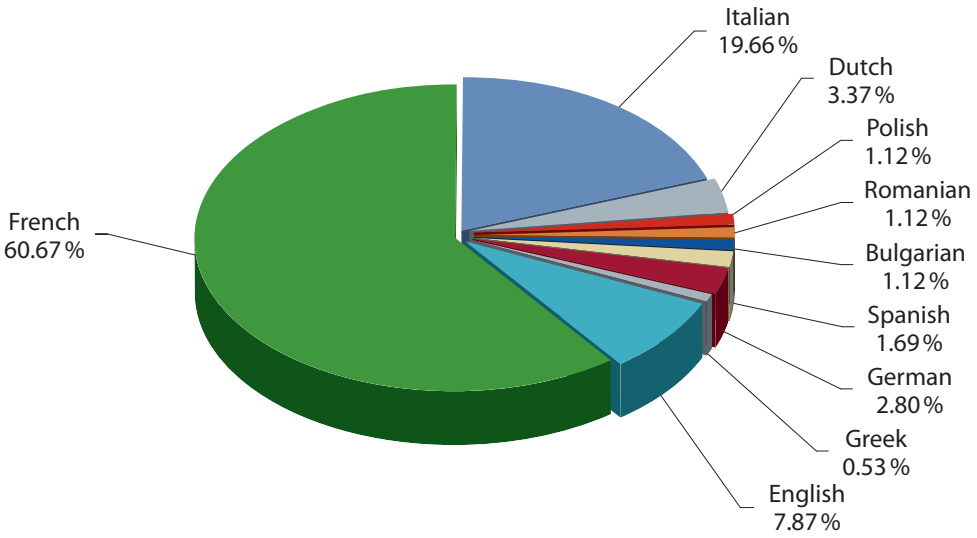
2. *New cases* — Percentage of the number of cases per principal defendant institution (2008–12)



	2008	2009	2010	2011	2012
European Parliament	14.41 %	8.85 %	9.35 %	6.29 %	6.11 %
Council	4.50 %	11.50 %	6.47 %	6.92 %	3.89 %
European Commission	54.95 %	47.79 %	58.99 %	66.67 %	58.33 %
Court of Justice of the European Union		2.65 %	5.04 %	1.26 %	
European Central Bank	2.70 %	4.42 %	2.88 %	2.52 %	1.11 %
Court of Auditors	5.41 %	0.88 %		0.63 %	2.22 %
European Investment Bank (EIB)	1.80 %	0.88 %	5.76 %	4.32 %	4.44 %
Other parties	16.21 %	23.01 %	11.51 %	11.40 %	23.89 %
Total	**100 %**	**100 %**	**100 %**	**100 %**	**100 %**

3. *New cases* — Language of the case (2008–12)

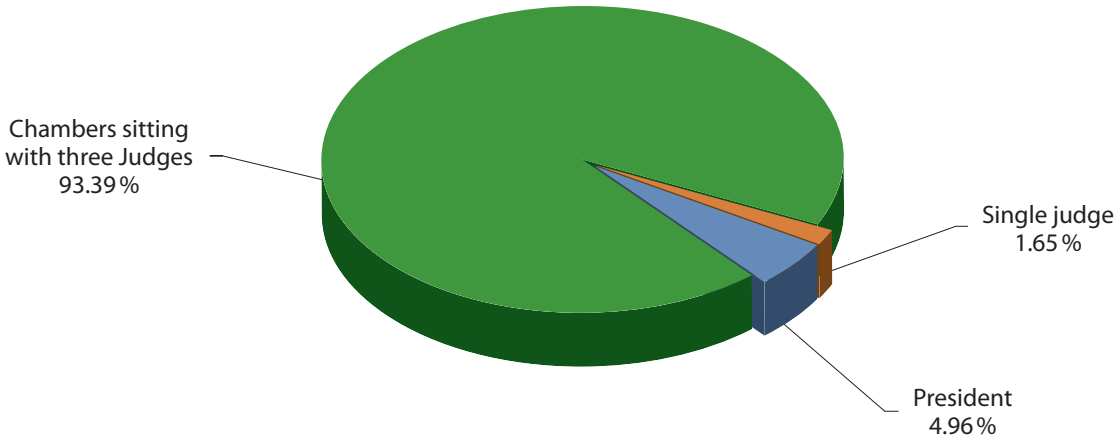
Distribution in 2012



Language of the case	2008	2009	2010	2011	2012
Bulgarian					2
Spanish	1	1	2	2	3
Czech		1			
German	10	9	6	10	5
Greek	3	3	2	4	1
English	5	8	9	23	14
French	73	63	105	87	108
Italian	6	13	13	29	35
Lithuanian	2				
Hungarian	1			1	
Dutch	8	15	2	1	6
Polish	1			1	2
Portuguese	1				
Romanian					2
Slovak				1	
Total	**111**	**113**	**139**	**159**	**178**

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 (2012)



	Judgments	Orders for removal from the register, following amicable settlement (1)	Other orders terminating proceedings	Total
Full court				
Chambers sitting with three Judges			6	6
Single judge	62	4	47	113
President			2	2
Total	**62**	**4**	**55**	**121**

(1) In the course of 2012, there were also 18 unsuccessful attempts to bring cases to a close by amicable settlement on the initiative of the Civil Service Tribunal.

5. *Completed cases* — Outcome (2012)

	Judgments			Orders				Total
	Actions upheld in full	Actions upheld in part	Actions dismissed in full, no need to adjudicate	Actions/applications [manifestly] inadmissible or unfounded	Amicable settlements following intervention by the bench hearing the action	Removal from the register on other grounds, no need to adjudicate or referral	Applications upheld in full or in part (special forms of procedure)	
Assignment/Reassignment	1		2			1		**4**
Competitions			13	3	1	5		**22**
Working conditions/Leave	1							**1**
Appraisal/Promotion		1	5	4	2	8		**20**
Pensions and invalidity allowances		1	1	1		1		**4**
Disciplinary proceedings			4					**4**
Recruitment/Appointment/ Classification in grade	2	1	4	1	1	1		**10**
Remuneration and allowances	1		5	2		2		**10**
Termination or non-renewal of the contract of a member of staff		1	5	2		4		**12**
Social security/Occupational disease/ Accidents		2	4			1		**7**
Other		1	7	7		7	5	**27**
Total	**5**	**7**	**50**	**20**	**4**	**30**	**5**	**121**

6. *Applications for interim measures (2008–12)*

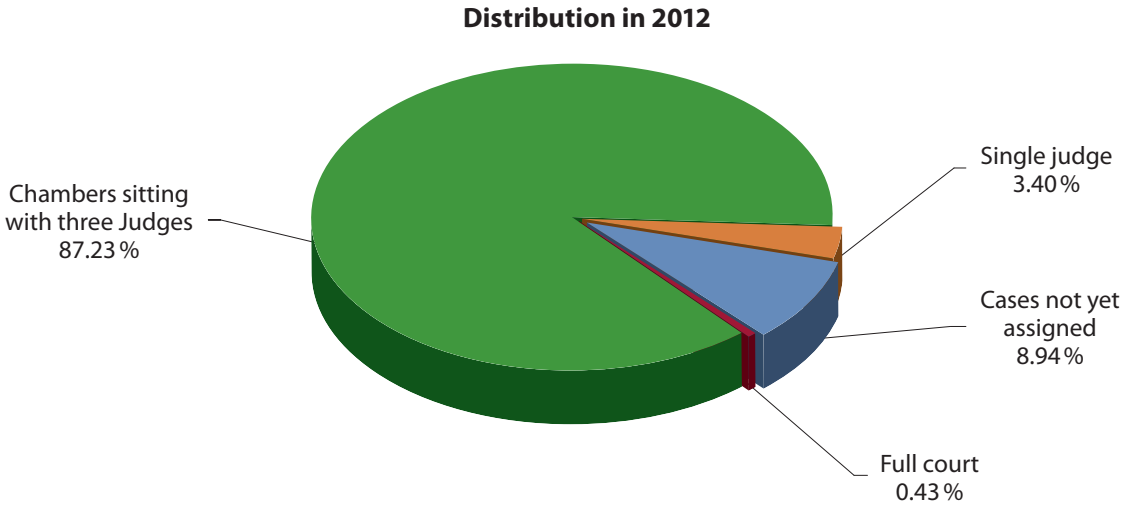
Applications for interim measures brought to a conclusion		Outcome		
		Granted in full or in part	Dismissal	Removal from the register
2008	**4**		4	
2009	**1**	1		
2010	**6**		4	2
2011	**7**		4	3
2012	**11**		10	1
Total	**29**	**1**	**22**	**6**

7. *Completed cases* — Duration of proceedings in months (2012)

New cases		Average duration	
		Duration of full procedure	Duration of procedure, not including duration of any stay of proceedings
Judgments	62	19.4	19.3
Orders	59	12.3	10.1
Total	**121**	**15.9**	**14.8**

The durations are expressed in months and tenths of months.

8. *Cases pending as at 31 December* — Bench hearing action (2008–12)



	2008	2009	2010	2011	2012
Full court	5	6	1		1
President	2	1	1	1	
Chambers sitting with three Judges	199	160	179	156	205
Single judge				2	8
Cases not yet assigned	11	8	4	19	21
Total	**217**	**175**	**185**	**178**	**235**

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

The pending cases with the greatest number of applicants in 2012

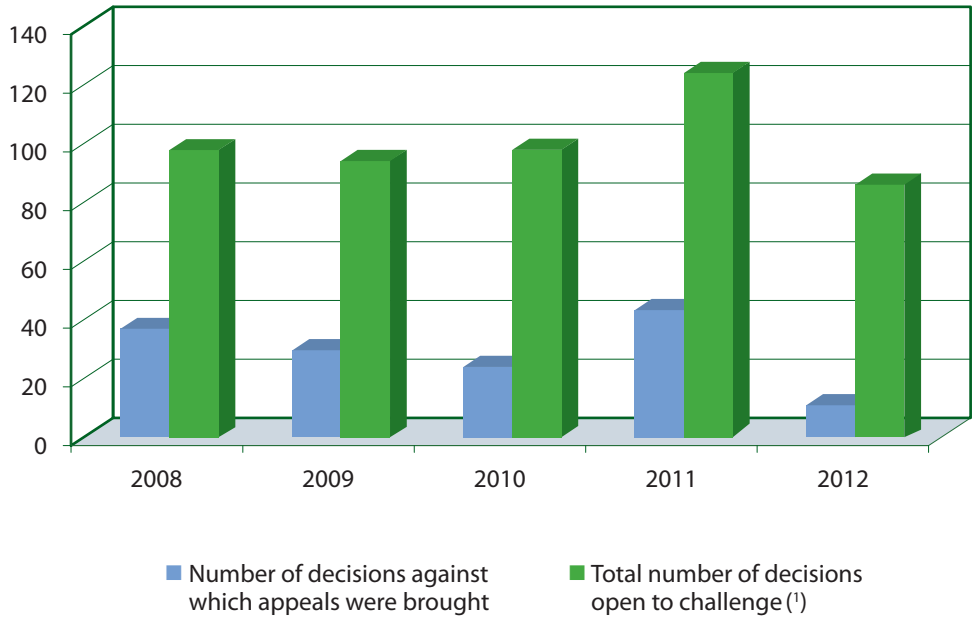
Number of applicants	Fields
535 (2 cases)	Staff Regulations – Remuneration – Annual adjustment of the remuneration and pensions of officials and other servants – Articles 64, 65, 65a of and Annex XI to the Staff Regulations – Council Regulation (EU) No 1239/2010 of 20 December 2010 – Correction coefficient – Officials posted to Ispra – Staff Regulations – Promotion – Promotion year 2005 – Additional grades provided for by the new Staff Regulations
169	Staff Regulations – ECB staff – Reform of the pension scheme – Staff Regulations – Promotion – Promotion year 2005 – Additional grades provided for by the new Staff Regulations
37 (26 cases)	Staff Regulations – Pensions – Article 11(2) and (3) of Annex VIII to the Staff Regulations concerning the transfer of pension rights – Staff Regulations – Promotion – Promotion year 2005 – Additional grades provided for by the new Staff Regulations
33	Staff Regulations – EIB – Pensions – Reform of the pension scheme – Staff Regulations – Promotion – Promotion year 2005 – Additional grades provided for by the new Staff Regulations
25	Staff Regulations – Promotion – Promotion years 2010 and 2011 – Fixing of promotion thresholds – Staff Regulations – Promotion – Promotion year 2005 – Additional grades provided for by the new Staff Regulations
19	Staff Regulations – Staff Committee of the Parliament – Elections – Irregularities in the electoral process Staff Regulations – Promotion – Promotion year 2005 – Additional grades provided for by the new Staff Regulations
16 (3 cases)	Staff Regulations – Remuneration – Family allowances – Education allowance – Conditions for granting Staff Regulations – Promotion – Promotion year 2005 – Additional grades provided for by the new Staff Regulations
13	Staff Regulations – Member of the auxiliary staff – Member of the temporary staff – Conditions of engagement – Duration of contract – Staff Regulations – Promotion – Promotion year 2005 – Additional grades provided for by the new Staff Regulations
10	Staff Regulations – Members of the contract staff – Member of the temporary staff – Conditions of engagement – Duration of contract – Staff Regulations – Members of the contract staff – Member of the temporary staff – Conditions of engagement – Duration of contract
10 (2 cases)	Staff Regulations – Open competition – Notice of competition EPSO/AD/204/10 – Non-admission to the next stage of the competition as a result of the selection made on the basis of qualifications Staff Regulations – Promotion – Promotion year 2005 – Additional grades provided for by the new Staff Regulations
10 (10 cases)	Staff Regulations – Procedures – Taxation of costs – Staff Regulations – Promotion – Promotion year 2005 – Additional grades provided for by the new Staff Regulations

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 (2008–12)

	Total applicants	Total pending cases
2008	1 161	217
2009	461	175
2010	812	185
2011	1 006	178
2012	1 086	235

10. *Miscellaneous* — Decisions of the Civil Service Tribunal which have been the subject of an appeal to the General Court (2008–12)

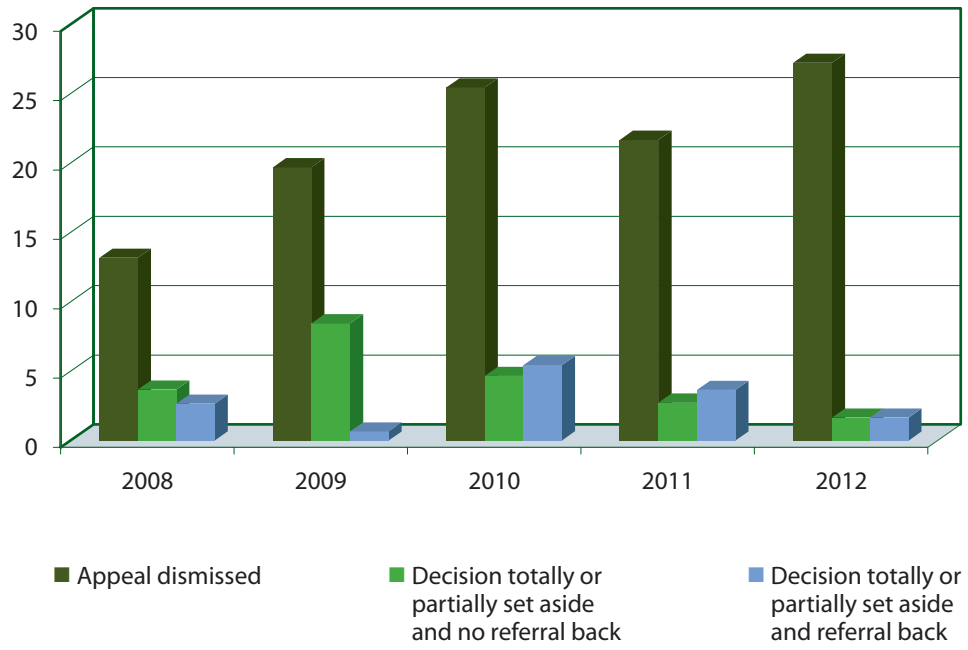


	Number of decisions against which appeals were brought	Total number of decisions open to challenge (1)	Percentage of decisions against which appeals were brought (2)
2008	37	99	37.37 %
2009	30	95	31.58 %
2010	24	99	24.24 %
2011	44	126	34.92 %
2012	11	87	12.64 %

(1) 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.

(2) 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.

11. *Miscellaneous* — Results of appeals before the General Court (2008–12)



	2008	2009	2010	2011	2012
Appeal dismissed	14	21	27	23	29
Decision totally or partially set aside and no referral back	4	9	4	3	2
Decision totally or partially set aside and referral back	3	1	6	4	2
Total	**21**	**31**	**37**	**30**	**33**

Chapter IV

Meetings and visits

A — Official visits and events at the Court of Justice, the General Court of the European Union and the European Union Civil Service Tribunal in 2012

Court of Justice

12 January	Ms R.D. Iftimie, Ambassador of Romania to Luxembourg
31 January	Mr J. Peumans, President of the Flemish Parliament, accompanied by a delegation of members of the Flemish Parliament
6 February	Mr R. Montgomery, Permanent Representative of Ireland to the European Union
9 February	Visit on the occasion of the regional meeting of Ambassadors of the French Republic to Europe
9 February	Mr H.M. Szpunar, Under-Secretary of State at the Ministry of Foreign Affairs of the Republic of Poland
9 February	Mr D. Reynders, Deputy Prime Minister and Minister for Foreign Affairs, External Trade and European Affairs of the Kingdom of Belgium
12 to 14 February	Delegations from the Highest German-speaking Courts ('Sechser-Treffen')
16 February	Ms M. Němcová, President of the Chamber of Deputies of the Parliament of the Czech Republic
16 February	Mr M. Schulz, President of the European Parliament
27 February	Mr V.A. Chizhov, Ambassador of the Russian Federation to the European Union
1 March	Mr D. Christofias, President of the Republic of Cyprus
5 March	Mr A. Dastis Quecedo, Permanent Representative of the Kingdom of Spain to the European Union
7 March	Mr A. Avello Díez del Corral, Ambassador of the Kingdom of Spain to Luxembourg
14 March	Ms P. Kaukoranta, Director-General of the Legal Service of the Ministry of Foreign Affairs of the Republic of Finland
22 and 23 March	Delegation from the Supreme Administrative Court of the Kingdom of Sweden
29 March	Mr L. Teirlinck, Ambassador of the Kingdom of Belgium to Luxembourg, and Mr J.-F. Terral, Ambassador of the French Republic to Luxembourg
23 and 24 April	Delegation from the Supreme Court of the Czech Republic
23 to 25 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)
27 April	Mr D. Teixeira de Abreu Fezas Vital, Permanent Representative of the Portuguese Republic to the European Union
3 May	Mr K. Massimov, Prime Minister of the Republic of Kazakhstan
3 May	Mr X. Bettel, Mayor of Luxembourg

14 May	Mr W. Hoyer, President of the European Investment Bank
30 May	Ms S. Day O'Connor, former Judge of the Supreme Court of the United States of America
6 June	Mr D. Gros, Mayor of Metz
11 June	Mr D. Vaughan, Rapporteur of the Committee on Budgets of the European Parliament
15 and 16 June	Conference of the Association amicale des référendaires et anciens référendaires of the Court of Justice of the European Union
25 June	Official return of a painting by J. Birkemose loaned to the Court by the Kingdom of Denmark, in the presence of Mr N. Wammen, Minister for European Affairs of the Kingdom of Denmark
25 to 27 June	Delegation from the Court of Justice of the Economic Community of West African States (ECOWAS)
11 July	Mr J.-U. Hahn, Deputy Prime Minister and Minister for Justice, Integration and European Affairs of Hesse (Germany)
16 July	Mr O. Miljenić, Minister for Justice of the Republic of Croatia, Mr B. Hrvatin, President of the Supreme Court of the Republic of Croatia, and Mr S. Petrović, Professor at the Law Faculty of the University of Zagreb
14 September	Cypriot Members of the European Parliament
24 and 25 September	UK and Ireland Judicial and Academic Visit
25 September	Mr A. Seban, President of the Centre Pompidou
2 October	Ms C. Gläser, Ambassador of the Federal Republic of Germany to Luxembourg
8 October	Presentation of a 'Festschrift' to Ms P. Lindh, former Member of the Court
25 October	Mr F. Mulholland, Lord Advocate of Scotland
7 November	Delegation of senior judges from south-eastern Europe
12 and 13 November	6th Luxemburger Expertenforum zur Entwicklung des Unionsrechts
26 November	Delegation from the European Court of Human Rights
30 November	Mr N. Stefanovic, President of the National Assembly of the Republic of Serbia
3 and 4 December	Judges' Forum
4 December	Presentation of the commemorative stamp for the 60th anniversary of the Court by the Luxembourg Post and Telecommunications Undertaking
12 December	Mr M. Entin, Ambassador of the Russian Federation to Luxembourg

General Court

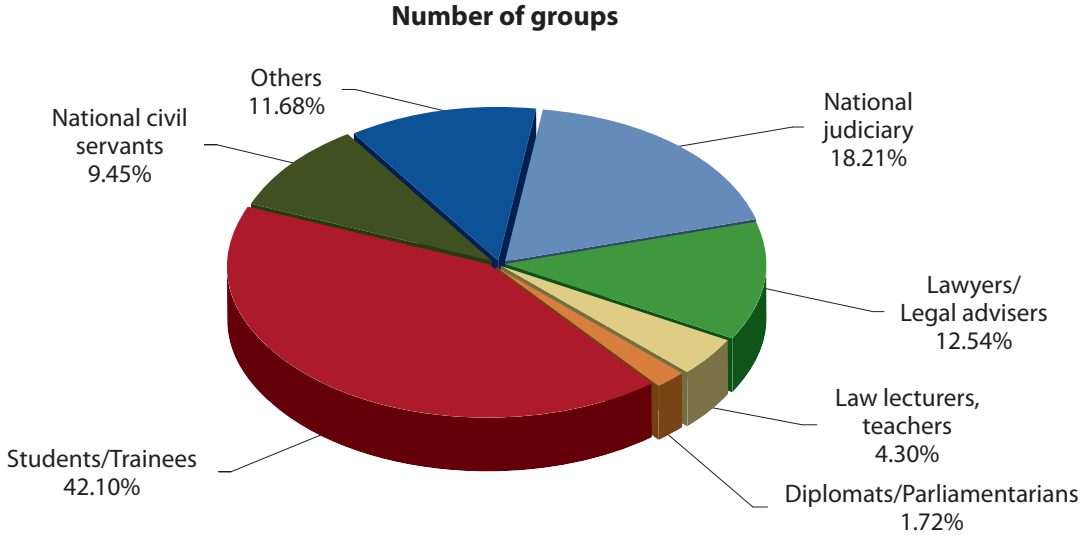
24 January	Visit of a Belgian delegation regarding judicial productivity
3 February	Visit of a delegation from the Ministry of Foreign Affairs of the Grand Duchy of Luxembourg
11 May	Visit of a delegation from the Ministry of Justice of the Republic of Croatia
6 June	Visit of a delegation from the 'Public Law Discussion Forum'
23 October	Visit of the 'Working Party on External Relations — Sanctions', composed of Agents of the Member States, the EEAS and the Legal Services of the Commission and the Council

Civil Service Tribunal

12 September	Visit of Ms M. de Sola Domingo, Mediator of the European Commission
26 September	Visit of Mr P.N. Diamandouros, European Ombudsman

B — Study visits

1. Distribution by type of group (2012)



	National judiciary	Lawyers/Legal advisers	Law lecturers, teachers	Diplomats/ Parliamentarians	Students/Trainees	National civil servants	Others	Total
Number of groups	106	73	25	10	245	55	68	582

2. *Study visits* — Distribution by Member State (2012)

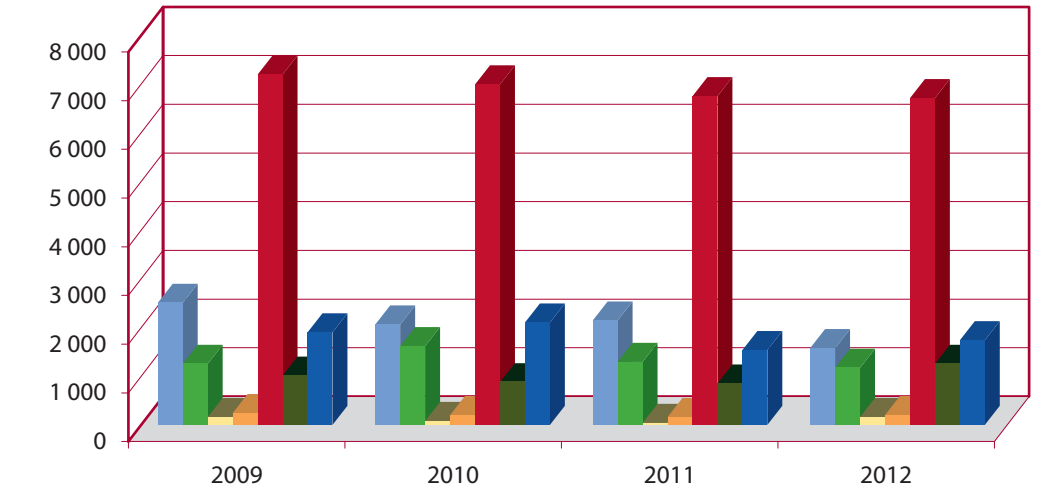
	Number of visitors								Number of groups
	National judiciary	Lawyers/Legal advisers	Law lecturers, teachers	Diplomats/ Parliamentarians	Students/ Trainees	National civil servants	Others	Total	
BE	12	72	28		628		84	**824**	**25**
BG	28	52				18	5	**103**	**7**
CZ	4				86	60		**150**	**8**
DK	75	50		13	51	16	23	**228**	**10**
DE	295	191		43	861	172	1 037	**2 599**	**97**
EE									
IE	4				45			**49**	**4**
EL	10				28			**38**	**3**
ES	25	95			132		10	**262**	**18**
FR	186			25	743	49	275	**1 278**	**54**
IT		20	18		390			**428**	**32**
CY	6				16			**22**	**4**
LV		3			15			**18**	**6**
LT	8				8			**16**	**8**
LU	14	15		19	55		12	**115**	**6**
HU					44			**44**	**1**
MT									
NL		24		40	109	11		**184**	**8**
AT	34	17		48	207		24	**330**	**14**
PL									
PT		48			145			**193**	**8**
RO	10	21			10	16		**57**	**9**
SI			5		128		32	**165**	**9**
SK					45			**45**	**3**
FI	24	6					20	**50**	**3**
SE	85	20	52		49			**206**	**8**
UK	36	32			46		9	**123**	**12**
Non-member countries	436	73	79	33	1 169	96	98	**815**	**122**
Mixed groups (EU)	246	434			1 556	793	89	**3 118**	**103**
Total	**1 538**	**1 173**	**182**	**221**	**6 566**	**1 231**	**1 718**	**12 629**	**582**

3. Judges' Forum (2012)

BE	6	**DK**	3	**IE**	2	**FR**	8	**LV**	3	**HU**	3	**AT**	3	**RO**	4	**FI**	3
BG	2	**DE**	8	**EL**	5	**IT**	3	**LT**	3	**MT**	1	**PL**	5	**SI**	2	**SE**	0
CZ	2	**EE**	1	**ES**	5	**CY**	2	**LU**	2	**NL**	7	**PT**	4	**SK**	3	**UK**	5

Total	**95**

4. Trend in number and type of visitors (2009–12)



Number of visitors

	National judiciary	Lawyers/Legal advisers	Law lecturers, teachers	Diplomats/ Parliamentarians	Students/ Trainees	National civil servants	Others	Total
2009	2 463	1 219	156	262	7 053	1 016	1 854	**14 023**
2010	2 037	1 586	84	193	6 867	870	2 078	**13 715**
2011	2 087	1 288	47	146	6 607	830	1 507	**12 512**
2012	1 538	1 173	182	221	6 566	1 231	1 718	**12 629**

C — Formal sittings

14 May	Formal sitting on the occasion of the partial replacement of the Members of the European Court of Auditors
14 May	Formal sitting on the occasion of the partial replacement of the Members of the European Court of Auditors
8 October	Formal sitting on the occasion of the partial replacement of the Members of the Court of Justice, involving the departure from office of President of Chamber J.N. Cunha Rodrigues, First Advocate General J. Mazák, Judge K. Schiemann and Judge E. Cremona and the entry into office of Mr J.L. da Cruz Vilaça as Judge, Mr M. Wathelet as Advocate General and Mr C. Vajda as Judge, and on the occasion of the entry into office of Mr E. Buttigieg as Judge at the General Court
28 November	Formal sitting on the occasion of the departure from office of Advocate General V. Trstenjak and the entry into office of Mr N. Wahl as Advocate General at the Court of Justice
4 December	Formal sitting on the occasion of the 60th anniversary of the Court

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
3 January	Representation of the Court at the New Year reception organised by the Court of Cassation of Belgium, in Brussels
9 January	Representation of the Court at the formal sitting of the Court of Cassation of the French Republic, in Paris
11 January	Representation of the Court at the New Year reception given by HRH the Grand Duke, in Luxembourg
12 January	Representation of the Court at the New Year reception given by the President of the Federal Republic of Germany, in Berlin
19 January	Representation of the Court at the New Year reception organised by the Permanent Representation of the Kingdom of Belgium to the European Union, in Brussels
20 January	Representation of the Court at the official ceremony organised on the occasion of the entry into office of Mr R. Mellinghoff as President of the Federal Finance Court, in Munich
24 January	Representation of the Court at a dinner organised by the Danish Presidency of the European Union, in Brussels
26 January	Representation of the Court at the ceremony inaugurating the legal year of the Supreme Court of Cassation, in Rome
27 January	Participation of a delegation from the Court at the formal sitting and the seminar 'How can we ensure greater involvement of the national courts in the Convention system?', organised by the European Court of Human Rights, in Strasbourg
30 January	Representation of the Court, at the invitation of the University of Bologna, at the ceremony for awarding the title of Doctor honoris causa in international relations to Mr G. Napolitano, President of the Italian Republic, in Bologna
8 February	Representation of the Court at the 'Rechtspolitischer Neujahrsempfang', at the invitation of the Minister for Justice of the Federal Republic of Germany, in Berlin
1 March	Representation of the Court at the ceremonies for the entry into office of the new President of the Republic of Finland, Mr S. Niinistö, in Helsinki
15 and 16 March	Representation of the Court at a seminar organised on the occasion of the Danish Presidency by the Danish Ministry of Justice on the topic 'The Practical Application of the EU Charter of Fundamental Rights', in Copenhagen
22 March	Participation of the President of the Court in the round-table conference on the topic 'Europe after the crisis', organised on the occasion of the State visit of the Queen of the Kingdom of the Netherlands, at the University of Luxembourg

2 to 6 April	Official visit of a delegation from the Court to the Russian Federation
4 April	Representation of the Court at the General Assembly of the Constitutional Court, and the giving of a speech on the topic 'Requests for preliminary rulings from the Constitutional Court', in Warsaw
16 to 19 May	Representation of the Court at the 'Second Petersburg International Legal Forum', in Saint Petersburg
16 to 20 May	Official visit of a delegation from the Court to Romania
17 to 19 May	Representation of the Court at 'The 9th Ibero-American Conference on Constitutional Justice', in Cadiz
22 and 23 May	Representation of the Court and contribution on the topic 'Recent developments in the case-law of the Court on direct taxation as regards citizens', as part of the Fiscalis programme organised by the Directorate-General for Taxation and Customs Union of the European Commission, jointly with the Ministry of Finance of Cyprus, in Nicosia
30 May to 2 June	Participation of a delegation from the Court in the 25th FIDE Congress, in Tallinn
1 June	Representation of the Court, at the invitation of the President of the Italian Republic, at the ceremony organised on the occasion of the National Day, in Rome
25 and 26 June	Representation of the Court at the 23rd colloquium of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union, in Madrid
5 July	Representation of the Court at the ceremony inaugurating the Cypriot Presidency of the Council of the European Union, at the invitation of the President of the Republic of Cyprus, in Limassol
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
1 to 4 September	Official visit of a delegation from the Court to the Republic of Cyprus
4 to 7 September	Representation of the Court at the '16th Symposium of European Patent Judges', in Dublin
21 September	Participation of a delegation from the Court at the '69. Deutscher Juristentag', in Munich
28 September	Participation of the President of the Court in the conference of the European Law Institute and giving of the closing speech, in Brussels
1 October	Representation of the Court at the 'Opening of the Legal Year', in London
1 October	Representation of the Court at the 'Opening of the Legal Year', in London
2 October	Representation of the Court at the conference on the topic 'Effective enforcement of the competition rules in the EU', organised by the Commission for the Protection of Competition of the Republic of Cyprus, in Nicosia
3 October	Representation of the Court at the ceremonies organised as part of the 'Tag der Deutschen Einheit', in Munich

26 October	Representation of the Court at the 5th colloquium of the Network of the Presidents of the Supreme Judicial Courts of the European Union, on the topic 'Appointment of Judges to the European Court of Justice and the European Court of Human Rights', in Paris
9 November	Representation of the Court at the 'Roundtable discussion on leading asylum cases', at the European Court of Human Rights, in Strasbourg
15 and 16 November	Representation of the Court, at the invitation of the Cypriot Presidency of the Council of the European Union, at the symposium 'Fundamental rights in the EU; three years after Lisbon' and giving of a speech on the topic 'Fundamental rights in the EU — The Luxembourg perspective', at the College of Europe, in Bruges
23 November	Representation of the Court at the seminar organised by the Association of the Councils of States and Supreme Administrative Jurisdictions of the European Union, on the topic 'Citizens' access to justice and judicial bodies in environmental matters — National particularities and influences of European Union law', in Brussels
29 November	Representation of the Court at the Romanian National Day, in Brussels
6 December	Representation of the Court, at the invitation of the President of the Republic of Finland, at the annual reception organised on the occasion of Independence Day, in Helsinki
20 December	Representation of the Court, at the invitation of the President of the Constitutional Court, at the reception for the National Day of the Republic of Slovenia, in Ljubljana

General Court

8 February	Representation of the Court at the reception 'Rechtspolitischer Neujahrsempfang 2012' of the Federal Minister for Justice, in Berlin
8 March	Representation of the Court at the British Embassy in Luxembourg, on the occasion of the visit of the Secretary of State for Justice
22 May	Representation of the Court at the 'Queen's Royal Garden Party', at Buckingham Palace
27 to 29 May	Representation of the Court on the occasion of the official visit to Vilnius at the invitation of the President of the Republic of Lithuania
30 May to 2 June	Representation of the Court at the 25th FIDE Congress in Tallinn, Estonia
23 June	Representation of Court at the celebration of the solemn Te Deum followed by a reception at the Grand Ducal Court, on the occasion of the Luxembourg National Day
8 to 10 July	Representation of the Court at a study visit to the French Council of State, in Paris
1 October	Representation of the Court at the formal celebration of the 92nd anniversary of the enactment of the Constitution of the Republic of Austria, in Vienna
1 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 organised by the President of the Federal Republic of Germany, on the occasion of the National Day
29 to 31 October	Representation of the Court on the occasion of the official visit to Sofia at the invitation of the Vice-President of the Republic of Bulgaria
6 December	Representation of the Court at the official reception organised by the President of the Republic of Finland on the occasion of Independence Day, in Helsinki
20 December	Representation of the Court at the Day for Constitutionality, at the invitation of the President of the Constitutional Court of the Republic of Slovenia

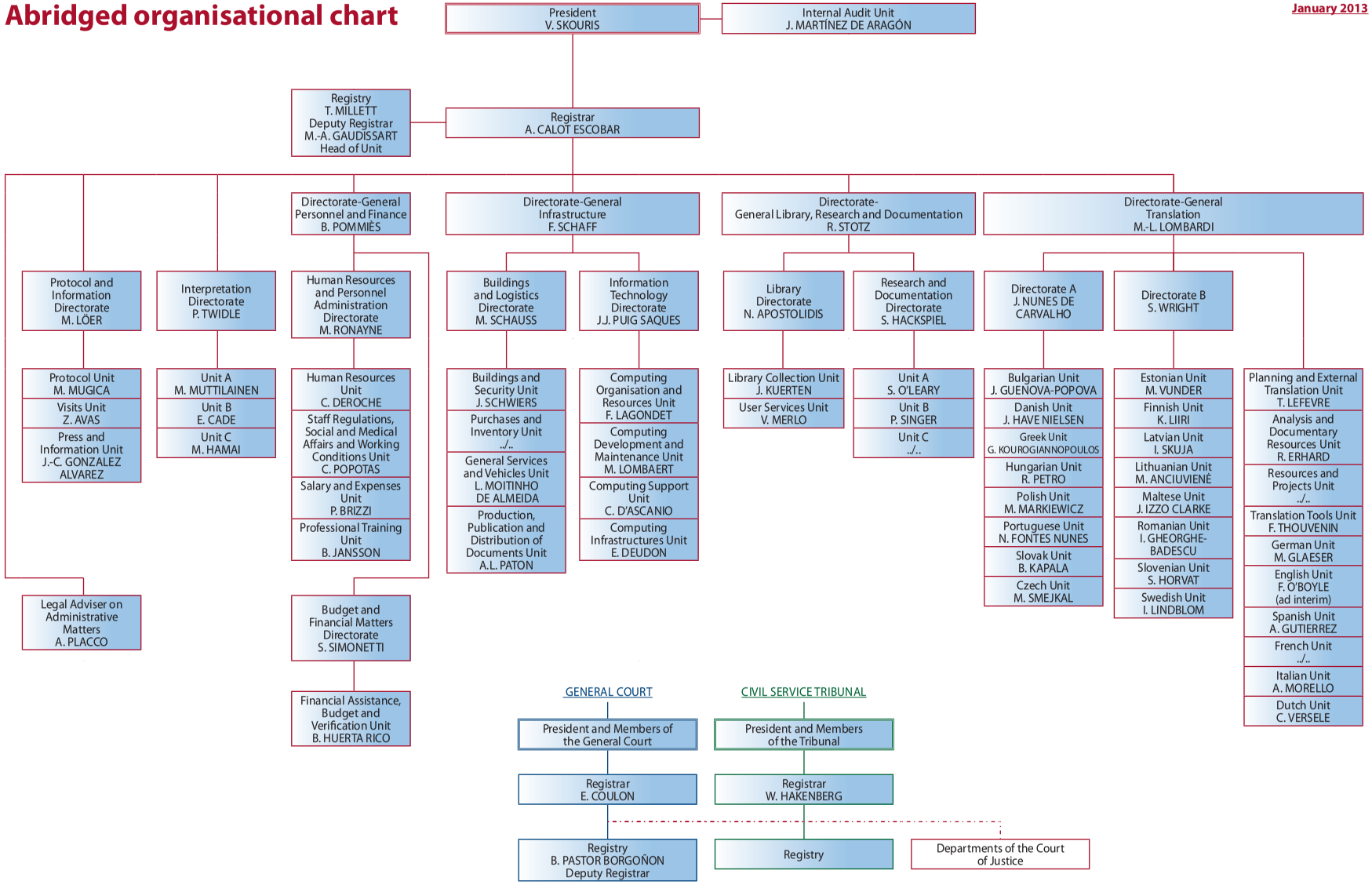
Civil Service Tribunal

29 and 30 October	Visit to the Council of State of the Italian Republic, in Rome

Abridged organisational chart

Abridged organisational chart

January 2013



Court of Justice of the European Union

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