

**Synopsis of the work  
of the Court of Justice  
of the European Communities  
in 1981**

**Luxembourg 1982**

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## Foreword

**This synopsis of the work of the Court of Justice of the European Communities is intended for judges, lawyers and practitioners generally as well as teachers and students of Community law.**

**It is issued for information only, and obviously must not be cited as an official publication of the Court, whose judgments are published officially only in the *European Court Reports*.**

**The synopsis is published in the working languages of the Communities (Danish, Dutch, English, French, German, Greek, Italian). It is obtainable free of charge on request (specifying the language required) from the Information Offices of the European Communities whose addresses are listed in Annex 6.**

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# I – Proceedings of the Court of Justice of the European Communities

## 1. Case-law of the Court

### A — *Statistical information*

#### **Judgments delivered**

During 1981 the Court of Justice of the European Communities delivered 128 judgments and interlocutory orders (132 in 1980):

21 were in direct actions (excluding actions brought by officials of the Communities);

65 were in cases referred to the Court for preliminary rulings by the national courts of the Member States;

42 were in cases concerning Community staff law.

73 of the judgments were delivered by Chambers, of which:

29 were in cases referred to the Court for a preliminary ruling and assigned to the Chambers pursuant to Article 95 (1) of the Rules of Procedure;

2 were in direct actions assigned to the Chambers pursuant to Article 95 (1) and (2) of the Rules of Procedure; and

42 were in Community staff cases.

The Court or the Presidents of Chambers made 6 orders relating to the adoption of interim measures.

#### **Sittings**

In 1981 the Court held 111 public sittings. The Chambers held 151 public sittings.

#### **Cases pending**

Whilst the number of judgments delivered by the Court in 1981 is substantially the same as in 1980, the number of cases pending on which the Court has not yet given a decision is constantly increasing. Cases pending are divided up as follows:

	31 December 1980	31 December 1981
Full Court	170	217
Chambers		
Actions by officials of the Communities	1 222 <sup>1</sup>	1 281 <sup>1</sup>
Other actions	29	36
	<hr/>	<hr/>
Total number before the Chambers	1 251 <sup>1</sup>	1 317 <sup>1</sup>
	<hr/>	<hr/>
Total number of current cases	1 421 <sup>1</sup>	1 534 <sup>1</sup>

<sup>1</sup> Including 1 112 cases belonging to ten large groups of related cases.

### Length of proceedings

The average length of proceedings has become longer in the last few years as a result of the increasing number of actions which have been brought.

Proceedings lasted in 1981 for the following periods:

In cases brought directly before the Court the average length was approximately 12 months (the shortest being 7 months). In cases arising from questions referred to the Court by national courts for preliminary rulings, the average length was some 12 months (including judicial vacations).

### Cases brought in 1981

In 1981, 323 cases were brought before the Court of Justice. They concerned:

#### 1. Actions by the Commission for a failure to fulfil an obligation brought against:

Belgium . . . . .	9
Denmark . . . . .	2
France . . . . .	6
Federal Republic of Germany . . . . .	2
Ireland . . . . .	3
Italy . . . . .	19
Luxembourg . . . . .	2
The Netherlands . . . . .	5
United Kingdom . . . . .	2
	<hr/>

Carried forward

50

	<b>Brought forward</b>	<b>50</b>
<b>2. Actions brought by the Member States against the Commission:</b>		
<b>Federal Republic of Germany . . . . .</b>	<b>2</b>	
<b>Italy . . . . .</b>	<b>1</b>	
	<b>—</b>	
		<b>3</b>
<b>3. Actions brought by a Member State against the European Parliament:</b>		
<b>Luxembourg . . . . .</b>	<b>1</b>	
	<b>—</b>	
		<b>1</b>
<b>4. Actions brought by the Commission against the Council</b>	<b>1</b>	
	<b>—</b>	
		<b>1</b>
<b>5. Actions brought by the Commission against natural or legal persons . . . . .</b>	<b>2</b>	
	<b>—</b>	
		<b>2</b>
<b>6. Actions brought by natural or legal persons against:</b>		
<b>Commission . . . . .</b>	<b>51</b>	
<b>Council . . . . .</b>	<b>5</b>	
<b>Commission and Council . . . . .</b>	<b>6</b>	
<b>and one action struck off the Register before service . . . . .</b>	<b>1</b>	
	<b>—</b>	
		<b>63</b>
<b>7. Actions brought by officials of the Communities . . . . .</b>	<b>93</b>	
<b>and one action struck off the Register before service . . . . .</b>	<b>1</b>	
	<b>—</b>	
		<b>94</b>
		<b>—</b>
	<b>Carried forward</b>	<b>214</b>
		<b>9</b>

8. References made to the Court of Justice by national courts for preliminary rulings on the interpretation or validity of provisions of Community law. Such references originated as follows:

<i>Belgium</i> . . . . .	12	
4 from the Cour de Cassation		
8 from courts of first instance or of appeal		
<i>Denmark</i> . . . . .	1	
1 from a court of first instance or of appeal		
<i>France</i> . . . . .	17	
2 from the Cour de Cassation		
15 from courts of first instance or of appeal		
<i>Federal Republic of Germany</i> . . . . .	41	
3 from the Bundesgerichtshof		
1 from the Bundesverwaltungsgericht		
11 from the Bundesfinanzhof		
26 from courts of first instance or of appeal		
<i>Italy</i> . . . . .	12	
7 from the Corte Suprema di Cassazione		
5 from courts of first instance or of appeal		
<i>Luxembourg</i> . . . . .	4	
3 from the Cour Supérieure de Justice		
1 from the Conseil d'État		
<i>The Netherlands</i> . . . . .	17	
1 from the Raad van State		
2 from the Hoge Raad		
3 from the Centrale Raad van Beroep		
2 from the Tariefcommissie		
9 from the courts of first instance or of appeal		
<i>United Kingdom</i> . . . . .	5	
1 from the House of Lords		
4 from lower courts		

---



---

Carried forward

109

214



	<b>Brought forward</b>	<b>109</b>	<b>214</b>
<b>9. Applications for the adoption of interim measures</b>			<b>17</b>
<b>10. Taxation of costs</b>			<b>1</b>
			<b>—</b>
		<b>Total</b>	<b>341</b>

### **Lawyers**

During the sittings held in 1981, apart from the representatives or agents of the Council, the Commission and the Member States the Court heard:

- 58 lawyers from Belgium,
- 1 lawyer from Denmark,
- 16 lawyers from France,
- 57 lawyers from the Federal Republic of Germany,
- 4 lawyers from Ireland,
- 25 lawyers from Italy,
- 16 lawyers from Luxembourg,
- 15 lawyers from the Netherlands,
- 30 lawyers from the United Kingdom.

TABLE I

Cases brought since 1953 analysed by subject-matter<sup>1</sup>

Situation at 31 December 1981

(The Court of Justice took up its duties under the ECSC Treaty in 1953 and under the EEC and EAEC Treaties in 1958)

Type of case	Direct actions											
	ECSC				EEC							EAEC
	Scrap equalization	Transport	Competition	Other <sup>2</sup>	Free movement of goods and customs union	Right of establishment, freedom to supply services	Tax cases	Competition	Social security and free movement of workers	Agricultural policy	Other	
Cases brought	167	35	27	108	58	4	23	135	5	166	209	4
	-	-	-	(9)	(3)	-	-	(5)	-	(6)	(35)	-
Cases not resulting in a judgment	25	6	10	28	14	1	3	9	2	25	46	1
	-	-	-	(10)	(3)	-	-	-	-	(4)	(23)	-
Cases decided	142	29	17	54	32	1	18	116	3	127	93	3
	-	-	-	(2)	(3)	-	-	(3)	-	(4)	(21)	-
Cases pending	-	-	-	26	12	2	2	10	-	14	70	-

The figures in brackets represent the cases dealt with by the Court in 1981.

<sup>1</sup> Cases concerning several subjects are classified under the most important heading.<sup>2</sup> Levies, investment declarations, tax charges, miners' bonuses.<sup>3</sup> Free movement of workers.<sup>4</sup> Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (the 'Brussels Convention').

Cases concerning Community staff law	References for preliminary rulings										Total
	Free movement of goods and customs union	Right of establishment, freedom to supply services	Tax cases	Competition	Social security and freedom of movement of workers <sup>1</sup>	Agricultural policy	Transport	Convention Article 220 <sup>2</sup>	Privileges and immunities	Other	
1 894 (78)	221 (30)	26 (5)	45 (10)	48 (2)	200 (21)	272 (27)	16 -	33 (7)	8 (1)	80 (7)	3 784 (246)
120 (9)	9 -	2 -	1 -	4 -	10 (3)	10 (2)	3 -	2 -	1 -	2 (1)	334 (55)
491 (43)	181 (20)	19 (2)	39 (7)	43 (2)	173 (13)	228 (21)	13 -	27 (5)	6 (1)	61 (7)	1 916 (154)
1 283	31	5	5	1	17	34	-	4	1	17	1 534

TABLE 2

Cases brought since 1958 analysed by type (EEC Treaty)<sup>1</sup>

Situation at 31 December 1981

(The Court of Justice took up its duties under the EEC Treaty in 1958)

Type of case	Proceedings brought under											Art. 215	Pro- to- cols, con- ven- tions Art. 220	Grand total <sup>2</sup>
	Arts 169 and 93	Art. 170	Art. 173				Art. 175	Art. 177			Art. 181			
			By gov- ern- ments	By Com- munity insti- tu- tions	By indi- viduals	Total		Valid- ity	Inter- pre- ta- tion	Total				
Cases brought	165	2	35	4	224	263	21	126	787	913	3	163	33	1 563
Cases not resulting in a judgment	41	1	6	–	23	29	3	4	42	46	–	25	2	147
Cases decided	79	1	24	3	174	201	17	113	643	756	–	105	27	1 186
In favour of applicant <sup>3</sup>	71	1	5	1	47	53	–	–	–	–	–	–	–	125
Dismissed on the substance <sup>4</sup>	8	–	18	2	88	108	2	–	–	–	–	92	–	210
Dismissed as inadmissible	–	–	1	–	39	40	15	–	–	–	–	13	–	68
Cases pending	45	–	5	1	27	33	1	9	102	111	3	33	4	230

<sup>1</sup> Excluding proceedings by staff and cases concerning the interpretation of the Protocol on Privileges and Immunities and of the Staff Regulations (see Table 1).<sup>2</sup> Totals may be smaller than the sum of individual items because some cases are based on more than one Treaty article.<sup>3</sup> In respect of at least one of the applicant's main claims.<sup>4</sup> This also covers proceedings rejected partly as inadmissible and partly on the substance.

TABLE 3

Cases brought since 1958 under the ECSC<sup>1</sup> Treaty and since 1958 under the EAEC Treaty<sup>1</sup>

Situation at 31 December 1981

(The Court of Justice took up its duties under the ECSC Treaty in 1953 and under the EAEC Treaty in 1958)

Type of case	Number of proceedings instituted								Total	
	By governments		By Community institutions		By individuals (undertakings)		Art. 150 EAEC			
	ECSC	EAEC	ECSC	EAEC	ECSC	EAEC	Questions of validity	Questions of interpretation	ECSC	EAEC
Cases brought	21	–	1	2	314	2	–	3	336	7
Cases not resulting in a judgment	8	–	–	1	61	–	–	–	69	1
Cases decided	12	–	–	1	229	2	–	3	241	6
In favour of applicants <sup>2</sup>	5	–	–	1	43	1			48	2
Dismissed on the substance <sup>3</sup>	7	–	–	–	136	1			143	1
Dismissed as inadmissible	–	–	–	–	50	–			50	–
Cases pending	1	–	1	–	24	–	–	–	26	–

<sup>1</sup> Excluding proceedings by staff and cases concerning the interpretation of the Protocol on Privileges and Immunities and of the Staff Regulations (see Table 1).

<sup>2</sup> In respect of at least one of the applicant's main claims.

<sup>3</sup> This also covers proceedings rejected partly as inadmissible and partly on the substance.

TABLE 4(a)

Cases dealt with by the full Court and the Chambers analysed according to the type of proceedings

Nature of proceedings	Cases brought in 1981	Cases dealt with in 1981			Judgments and interlocutory judgments	Opinions	Orders	Cases pending	
		(a) Total	(b) By judgment, opinion or order	(c) By order to remove from the Register				31 Dec. 1980	31 Dec. 1981
Art. 177 EEC Treaty	104	79	73	6	60	-	-	86	111
Art. 169 EEC Treaty	50	32	17	15	13	-	-	27	45
Art. 173 EEC Treaty	18	10	7	3	6	-	1	20	28
Arts 173 & 175 EEC Treaty	1	-	-	-	-	-	-	-	1
Arts 173 & 215 EEC Treaty	4	-	-	-	-	-	-	-	4
Art. 181 EEC Treaty	3	-	-	-	-	-	-	-	3
Arts 178 & 215 EEC Treaty	9	19	7	12	1	-	-	39	29
Protocol and Convention on Jurisdiction	5	5	5	-	5	-	-	4	4
Art. 33 ECSC Treaty	33	12	2	10	1	-	-	3	24
Art. 38 ECSC Treaty	1	-	-	-	-	-	-	-	1
Art. 88 ECSC Treaty	1	-	-	-	-	-	-	-	1
Interim measures	17	15	8	7	-	-	6	1	3
Taxation of costs	1	1	1	-	-	-	1	-	-
Legal aid	1	1	1	-	-	-	1	-	-
Art. 179 EEC Treaty Art. 42 ECSC Treaty Art. 152 EAEC Treaty	94	52	43	9	42	-	2	1 241	1 283
<b>Total</b>	<b>342</b>	<b>226</b>	<b>164</b>	<b>62</b>	<b>128</b>	<b>-</b>	<b>11</b>	<b>1 421</b>	<b>1 537</b>
Cases kept on the Register or adjourned <i>sine die</i>	152	4	1	3	1	-	-	1 172	1 194

TABLE 4(b)

Cases dealt with by the full Court analysed according to the type of proceedings

Nature of proceedings	Cases brought before the full Court in 1981	Cases brought before a Chamber and referred to the full Court in 1981	Cases dealt with in 1981			Judgments and interlocutory judgments	Opinions	Orders	Cases assigned to a Chamber in 1981	Cases pending	
			(a) Total	(b) By judgment, opinion or order	(c) By order to remove from the Register					31 Dec. 1980	31 Dec. 1981
Art. 177 EEC Treaty	104	—	40	37	3	33	—	—	41	59	82
Art. 169 EEC Treaty	50	—	32	17	15	13	—	—	—	27	45
Art. 173 EEC Treaty	18	—	9	6	3	5	—	1	3	19	25
Arts 173 & 175 EEC Treaty	1	—	—	—	—	—	—	—	—	—	1
Arts 173 & 215 EEC Treaty	4	—	—	—	—	—	—	—	—	—	4
Art. 181 EEC Treaty	3	—	—	—	—	—	—	—	1	—	2
Arts 178 & 215 EEC Treaty	9	—	12	—	12	—	—	—	9	39	27
Protocol and Convention on Jurisdiction	5	—	3	3	—	3	—	—	2	3	3
Art. 33 ECSC Treaty	33	—	12	2	10	1	—	—	—	3	24
Art. 38 ECSC Treaty	1	—	—	—	—	—	—	—	—	—	1
Art. 88 ECSC Treaty	1	—	—	—	—	—	—	—	—	—	1
Interim measures	11	—	12	6	6	—	—	4	—	1	—
Art. 179 EEC Treaty Art. 42 ECSC Treaty Art. 152 EAEC Treaty	—	—	—	—	—	—	—	—	17	19	2
<b>Total</b>	<b>240</b>	<b>—</b>	<b>120</b>	<b>71</b>	<b>49</b>	<b>55</b>	<b>—</b>	<b>5</b>	<b>73</b>	<b>170</b>	<b>217</b>
Cases kept on the Register or adjourned <i>sine die</i>	—	—	2	—	2	—	—	—	—	47	14

TABLE 4(c)

## Cases dealt with by the First Chamber analysed according to the type of proceedings

Nature of proceedings	Cases brought before the First Chamber in 1981	Cases brought before the full Court or Chamber and assigned to the First Chamber in 1981	Cases dealt with in 1981			Judgments and interlocutory judgments	Orders	Cases referred to the Court or a Chamber in 1981	Cases pending	
			(a) Total	(b) By judgment, opinion or order	(c) By order to remove from the Register				31 Dec. 1980	31 Dec. 1981
Art. 177 EEC Treaty	-	13	16	15	1	11	-	1	13	9
Art. 173 EEC Treaty	-	1	-	-	-	-	-	-	-	1
Art. 181 EEC Treaty	-	1	-	-	-	-	-	-	-	1
Arts 178 & 215 EEC Treaty	-	2	-	-	-	-	-	-	-	2
Protocol and Convention on Jurisdiction	-	1	-	-	-	-	-	-	-	1
Interim measures	1	-	-	-	-	-	-	-	-	1
Taxation of costs	1	-	1	1	-	-	1	-	-	-
Art. 179 EEC Treaty Art. 42 ECSC Treaty Art. 152 EAEC Treaty	66	-	23	19	4	20	1	1	1 170	1 212
<b>Total</b>	<b>68</b>	<b>18</b>	<b>40</b>	<b>35</b>	<b>5</b>	<b>31</b>	<b>2</b>	<b>2</b>	<b>1 183</b>	<b>1 227</b>
Cases kept on the Register or adjourned <i>sine die</i>	-	-	-	-	-	-	-	-	1 124	1 140



TABLE 4(d)

Cases dealt with by the Second Chamber analysed according to the type of proceedings

Nature of proceedings	Cases brought before the Second Chamber in 1981	Cases brought before the full Court or Chamber and assigned to the Second Chamber in 1981	Cases dealt with in 1981			Judgments and interlocutory judgments	Orders	Cases referred to the Court or a Chamber in 1981	Cases pending	
			(a) Total	(b) By judgment, opinion or order	(c) By order to remove from the Register				31 Dec. 1980	31 Dec. 1981
Art. 177 EEC Treaty	-	14	13	11	2	11	-	-	10	11
Art. 173 EEC Treaty	-	1	-	-	-	-	-	-	-	1
Arts 178 & 215 EEC Treaty	-	7	7	7	-	1	-	-	-	-
Interim measures	3	-	1	1	-	-	1	-	-	2
Legal aid	1	-	1	1	-	-	1	-	-	-
Art. 179 EEC Treaty										
Art. 42 ECSC Treaty	58	-	22	19	3	17	1	1	23	58
Art. 152 EAEC Treaty										
<b>Total</b>	<b>62</b>	<b>22</b>	<b>44</b>	<b>39</b>	<b>5</b>	<b>29</b>	<b>3</b>	<b>1</b>	<b>33</b>	<b>72</b>
Cases kept on the Register or adjourned <i>sine die</i>	39	-	2	1	1	-	-	-	2	40



TABLE 5

## Judgments delivered by the Court and Chambers analysed by language of the case

1975-1981

Judgments	Year	Danish	Dutch	English	French	German	Italian	Total
<i>Full Court</i>								
Direct actions	1975	-	2	-	8	3	1	11
	1976	-	-	-	4	3	4	11
	1977	-	2	-	4	4	1	11
	1978	-	3	2	5	5	5	20
	1979	-	4	7	7	10	9	37
	1980	1	1	7	8	2	11	30
	1981	-	1	3	2	3	11	20
References for a preliminary ruling	1975	-	6	-	14	17	8	45
	1976	1	6	2	9	19	13	50
	1977	-	17	3	17	17	10	64
	1978	2	7	6	10	20	6	51
	1979	2	11	4	12	21	8	58
	1980	1	7	5	11	10	6	40
	1981	1	11	6	4	7	7	36
Staff cases	1975	-	-	-	3	-	-	3
	1976	-	-	-	2	-	-	2
	1977	-	-	-	-	-	-	-
	1978	-	-	-	-	-	-	-
	1979	-	-	-	-	-	-	-
	1980	-	-	-	-	-	-	-
	1981	-	-	-	-	-	-	-
<i>Chambers</i>								
Direct actions	1980	-	-	-	1	1	2	4
	1981	-	-	-	1	-	-	1
References for a preliminary ruling	1975	-	-	-	-	-	-	-
	1976	-	-	-	1	2	-	3
	1977	-	1	-	-	10	-	11
	1978	-	1	1	1	8	-	11
	1979	-	8	-	6	10	1	25
	1980	-	3	3	9	14	6	35
	1981	1	7	2	7	11	1	29
Staff cases	1975	-	2	-	15	1	1	19
	1976	1	2	1	17	-	1	22
	1977	-	1	-	11	1	1	14
	1978	-	1	1	12	1	-	15
	1979	-	-	-	17	-	1	18
	1980	-	-	-	23	-	-	23
	1981	-	2	4	28	4	4	42

## **B – Summary of cases decided by the Court**

It is not possible within the confines of this brief synopsis to present a full report on the case-law of the Court of Justice.

Although there is always a danger that a selective presentation may be influenced by subjective factors, this synopsis presents a selection of judgments worthy of particular attention.

### **(a) Free movement of sound recordings – Copyright**

Judgment of 20 January 1981, *Joined Cases 55 and 57/80 Musik-Vertrieb membran GmbH and K-tel International v GEMA* ([1981] ECR 147)

The Bundesgerichtshof [Federal Court of Justice] has referred to the Court of Justice a preliminary question on the interpretation of Articles 30 and 36 of the Treaty. This question was raised in the context of two cases between GEMA (Gesellschaft für Musikalische Aufführungs- und Mechanische Vervielfältigungsrechte, the German performing right association) and two undertakings which imported into the Federal Republic sound recordings containing musical works protected by copyright. The first case concerns gramophone records and cassettes from various countries including Member States of the Community; in the second case a consignment of 100 000 records was imported from the United Kingdom. The sound recordings from other Member States were manufactured and marketed in these Member States with the consent of the proprietor of the copyright in the musical works in question but the necessary licences were granted and the corresponding royalties calculated by the proprietors on the sole basis of distribution in the country of manufacture.

GEMA claimed that the importation of such recordings into German territory constitutes an infringement of the copyrights which it is required to protect on behalf of their proprietors. Consequently, it considers that it is entitled to damages in the form of payment of the licence fees collected for placing them on the German market subject to deduction of the lower licence fees previously paid in respect of marketing in the Member States where they were manufactured.

The national court raises the point whether such an exercise of copyright, which is lawful under German domestic law, is compatible with the requirements of the Treaty on the free movement of goods.

The settled case-law of the Court indicates that the proprietor of an industrial and commercial property right protected by the law of a Member State may not rely upon that law in order to prevent the marketing of a product which has been lawfully distributed on the market of another Member State by the proprietor of that right himself or with his consent. These decisions also cover the case of a proprietor or of a licensee and a performing right association acting on behalf of the proprietor or licensee as the commercial exploitation of the copyright raises the same problems as that of any other industrial or commercial property right.

In fact GEMA has maintained that its claim before the German courts does not concern the prohibition or restriction of the marketing of the sound recordings in question on German territory but only the balance of the licences paid for all distribution of such articles on the German market. Since GEMA has nevertheless claimed damages for the alleged infringement of copyright its claims are in any event based upon the sole right of the proprietor of the copyright to exploit it, which permits him to prohibit or restrict the free movement of the products incorporating the protected musical work.

GEMA, which claims the difference between the rate paid in the other Member States and that charged on the German market, endeavours in fact to neutralize the differences in price resulting from conditions existing in the other Member States and thereby to eliminate the economic advantage arising for importers of sound recordings from the establishment of the common market.

It must further be remarked that within the framework of that common market the proprietor is able freely to choose the place, in any of the Member States, in which he places his work on the market; he may make that choice in terms of his own interest. In those circumstances it is impossible to permit a performing right association to claim in respect of the importation into another Member State payment of an additional fee in terms of the difference in the levels of fees existing in the various Member States.

The Court consequently replied to the question with the following ruling:

Articles 30 and 36 of the Treaty must be interpreted to mean that they preclude the application of a national law which permits a performing right association entrusted with the exploitation of the copyrights of composers of musical works recorded on gramophone records or other sound recording media in another Member State from relying on such rights in order to claim, in cases of the distribution of such recordings on the national market, when they have been placed in free circulation in that other Member State by the proprietors of the copyright or with their consent, payment of a fee corresponding to the licence fees usually collected on marketing on the national market subject to deduction of the lower licence fees paid in the Member State of manufacture.

Mr Advocate General Warner delivered his opinion at the sitting on 11 November 1980.

**(b) Equal pay for male and female employees**

**Judgment of 31 March 1981, Case 96/80 *J.P. Jenkins v Kingsgate (Clothing Productions) Ltd* ([1981] ECR 911)**

This case deals with a series of questions which were referred to the Court for a preliminary ruling on the interpretation of Article 119 of the EEC Treaty in connection with equal pay for men and women.

The main action was concerned with a dispute between a female employee working part-time and her employer, a manufacturer of women's clothing, against whom she claimed that she was receiving an hourly rate of pay lower than that paid to one of her male colleagues employed full-time on the same work.

The Industrial Tribunal, hearing the case at first instance, held that in the case of part-time work the fact that the weekly working hours amounted, as in that case, to 75% of the full working hours was sufficient to constitute a 'material difference' between part-time work and full-time work.

According to the order making the reference the part-time workers employed by the employer in question were all female with the exception of a sole male part-time worker who had just retired and who at the time had been authorized to continue working, exceptionally and for short periods, after the normal age of retirement.

The national court was therefore principally concerned to know whether a difference in the level of pay for work carried out part-time and the same work carried out full-time might amount to discrimination of a kind prohibited by Article 119 of the Treaty when the category of part-time workers was exclusively or predominantly comprised of women.

Where the hourly rate of pay differs according to whether the work is part-time or full-time it is for the national courts to decide in each individual case whether, regard being had to the facts of the case, its history and the employer's intention, a pay policy such as that which is at issue in the main proceedings although represented as a difference based on weekly working hours is or is not in reality discrimination based on the sex of the worker.

On the first group of questions the Court ruled that: 'A difference in pay between full-time workers and part-time workers does not amount to discrimination prohibited by Article 119 of the Treaty unless it is in reality merely an indirect way of reducing the level of pay of part-time workers on the ground that that group of workers is composed exclusively or predominantly of women.'

The national court also asked whether the provisions in Article 119 of the Treaty were directly applicable in the circumstances of the case.

The Court ruled that:

'Where the national court is able, using the criteria of equal work and equal pay, without the operation of Community or national measures, to establish that the payment of lower hourly rates of remuneration for part-time work than for full-time work represents discrimination based on difference of sex the provisions of Article 119 of the Treaty apply directly.'

Mr Advocate General Warner delivered his opinion at the sitting on 28 January 1981.

**(c) Sea fisheries – Conservation measures**

Judgment of 5 May 1981, *Case 804/79 Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland* ([1981] ECR 1045)

The Commission of the European Communities brought an action for a declaration that, by applying in the matter of sea fisheries unilateral measures comprising on the one hand five Statutory Instruments relating to the mesh of nets and the minimum landing sizes for certain species and on the other hand a licensing system for fishing in the Irish Sea and the waters round the Isle of Man, the United Kingdom has failed to fulfil its obligations under the Treaty.

*History of the dispute*

It is common ground that at the beginning of 1979 the Council, to which the Commission, in pursuance of Article 102 of the Act of Accession, had proposed the adoption of a series of measures for the conservation of fishery resources in the waters under the jurisdiction of the Member States, failed to adopt the necessary provisions. The Council adopted interim measures.

By a letter of 21 March 1979 the Government of the United Kingdom informed the Commission of its intention to bring into force on 1 June 1979 a series of measures for the conservation of fishery resources concerning the mesh of nets, minimum landing sizes and by-catches and sought the approval of the Commission in this matter.

The Commission did not obtain the complete text of the proposed measures until 19 June 1979 whereas the measures in question were to be brought into force on 1 July 1979.

On 6 July the Commission made a protest. It considered that the measures in question could not be introduced otherwise than by its authority.

*The state of the law at the time in question*

Since 1 January 1979, the date on which the transitional period laid down by Article 102 of the Act of Accession expired, power to adopt, as part of the common fisheries policy, measures relating to the conservation of the resources of the sea has belonged fully and definitively to the Community.

Member States are therefore no longer entitled to exercise any power of their own in the matter of conservation measures in the waters under their jurisdiction.

Under Article 7 of the Treaty Community fishermen must have, subject to the exceptions mentioned above, equal access to the fish stocks coming within the jurisdiction of the Member States.

As this is a field reserved to the powers of the Community, within which Member States may henceforth act only as trustees of the common interest, a Member State cannot therefore, in the absence of appropriate action on the part of the Council, bring into force any interim conservation measures which may be required by the situation except as part of a process of collaboration with the Commission and with due regard to the general task of supervision which Article 155, in conjunction, in this case, with the decision of 25 June 1979 and the parallel decisions, gives to the Commission.

Thus, in a situation characterized by the inaction of the Council and by the maintenance, in principle, of the conservation measures in force at the expiration of the period laid down in Article 102 of the Act of Accession, the decision of 25 June 1979 and the parallel decisions, as well as the requirements inherent in the safeguard by the Community of the common interest and the integrity of its own powers, imposed upon Member States not only an obligation to undertake detailed consultations with the Commission and to seek its approval in good faith, but also a duty not to lay down national conservation measures in spite of objections, reservations or conditions which might be formulated by the Commission.

It is in the light of the state of law as thus defined that the two groups of measures which are the subject of the dispute must be considered.

*The Statutory Instruments contested by the Commission*

The Government of the United Kingdom claims that the five Statutory Instruments contested by the Commission were the subject of prior consultation on its part in accordance with the decisions of the Council and the procedure laid down by The Hague Resolution.

In this respect it must be stated that the consultation carried out by the Government of the United Kingdom was unsatisfactory and cannot be considered as being in accordance with the requirements of the Council decisions.



Although it is true that the Commission was informed on 21 March 1979 of the Government's intentions it was only on 19 June that it was able to acquaint itself with the text of the proposed measures. Having regard to technical complexity of the matter it is clear that this way of handling the matter did not allow the Commission to weigh up all the implications of the provisions proposed and to exercise its duty of supervision properly.

Furthermore it is worth noting that the Commission put forward its reservations at the very beginning of the consultation procedures.

*The measures applicable to the Irish Sea and the waters round the Isle of Man*

The Government of Ireland, which attaches special importance to this aspect of the dispute, has asked the Court to clarify the legal situation as regards the application of the relevant rules of Community law in the territorial waters round the Isle of Man. The Court can only adopt once more the terms of its judgment of 10 July 1980. The system of fishing licences applied in the Irish Sea and the waters round the Isle of Man did not form the subject-matter of any consultation or consequently of any authorization on the part of the Commission, and the detailed rules for its implementation were reserved wholly to the discretion of the United Kingdom authorities without its being possible for the Community authorities, the other Member States and those concerned to be legally certain how the system would actually be applied.

This system, as such, has infringed one of the fundamental rules in this matter, in the sense that it has prevented the fishermen of other Member States and particularly those of Ireland from having access to fishery zones which ought to be open to them on an equal footing with the fishermen of the United Kingdom.

The Court declared that the United Kingdom has failed to fulfil its obligations under the EEC Treaty:

- (a) by having brought into force on 1 July 1979 without appropriate prior consultation and in spite of the Commission's objections, the following Statutory Instruments:
  - The Fishing Nets (North-East Atlantic) (Variation) Order 1979, SI No 744;
  - The Immature Sea Fish Order 1979, SI No 741;
  - The Immature Nephrops Order 1979, SI No 742;
  - The Nephrops Tails (Restrictions on Landing) Order 1979, SI No 235;
  - The Sea Fish (Minimum Size) (Amendment) Order (Northern Ireland) 1979, SI No 235;
- (b) by having maintained in force in the Irish Sea and the waters round the Isle of Man in pursuance of the Herring (Irish Sea) Licensing Order 1977, SI No 1388, and the Herring (Isle of Man) Licensing Order 1977, SI No 1389, a system of fishing licences which had not been the subject of appropriate consultation with or an authorization from the Commission, the detailed rules

for the implementation of which were reserved wholly to the discretion of the United Kingdom authorities, without its being possible for the Community authorities, the other Member States and those concerned to be legally certain how the system would actually be applied and which, as a result, had the effect of preventing fishermen from other Member States from having access to fishery zones which ought to be open to them on an equal footing with the fishermen of the United Kingdom.

The Court ordered the United Kingdom to pay the costs including those of the interveners.

Mr Advocate General Reischl delivered his opinion at the sitting on 12 February 1981.

**(d) Declaration of invalidity – Effects – Recovery of undue payment**

Judgment of 13 May 1981, Case 66/80 *International Chemical Corporation SpA v Amministrazione delle Finanze dello Stato* ([1981] ECR 1191)

The regulations of the Council or of the Commission on the compulsory purchase of skimmed-milk powder held by intervention agencies and export refunds for compound feedingstuffs are once more the subject of questions as to their interpretation or validity.

The dispute in the main action is between the Italian Finance Administration and *International Chemical Corporation SpA*, a manufacturer of compound feedingstuffs. That undertaking seeks from the Finance Administration on the one hand the refund of securities which it has provided or at any rate paid on behalf of its suppliers and which the Administration has declared forfeit and, on the other hand, the payment of export refunds which were refused at the time of the exportation of certain compound feedingstuffs. It will be remembered that in order to reduce stocks of skimmed-milk powder by increasing the use of that product in animal feedingstuffs, Council Regulation No 563/76 made the grant of certain Community aids in respect of the use of protein products and the release into free circulation in the Community of certain products used in the manufacture of compound feedingstuffs dependent on the obligation to purchase certain quantities of skimmed-milk powder held by the intervention agencies. The grant of aids and release into free circulation was made subject either to proof of purchase of skimmed-milk powder or the prior provision of a security which was forfeited in the event of non-performance of the purchasing obligation.

The plaintiff in the main action first of all provided securities and paid for those provided by certain of its suppliers. But as it did not purchase skimmed-milk powder those securities have not been released by the Italian Administration. Secondly, it imported products from non-member countries under the temporary importation procedure rather than under the procedure for release into free

circulation with the result that when those feedingstuffs came to be exported to non-member countries the refunds for which it applied were refused on the ground that those feedingstuffs contained products which had never been in free circulation in the Community.

By various judgments given on 5 July 1977 the Court held that Council Regulation No 563/76 was null and void on the ground that the price at which the milk powder had to be purchased was set at a level so disproportionate by comparison to the conditions on the market that it was equivalent to a discriminatory distribution of the burden of costs between the various agricultural sectors and that moreover such an obligation was not necessary to dispose of the stocks of skimmed-milk powder.

The plaintiff in the main action, who was not a party to the previous disputes, accordingly took the view that the securities could not be required or forfeited since they served only to ensure the performance of an obligation which had been unlawfully imposed. It further believes that it should be entitled to export refunds for the compound feedingstuffs as if those constituents were in free circulation in the Community since by importing them under the temporary importation procedure it has avoided the provision of securities.

The dispute brought the Tribunale Civile, Rome, to submit a number of questions to the Court for a preliminary ruling.

Those questions basically raise three issues:

The first concerns the effect of preliminary rulings given by the Court in 1977 in regard to third parties, be they private individuals, institutions or national courts.

The second concerns the consequences in the legal systems of both the Community and the Member States of a judgment declaring a regulation to be void as regards what happens to charges previously imposed on traders by that regulation.

The third, put in the alternative and more specific in nature, concerns particular features of the export refund rules for certain agricultural products.

1. The main object of the powers accorded to the Court by Article 177, which sets out the procedure for a preliminary ruling, is to ensure that Community law is applied uniformly by national courts. Uniform application of Community law is imperative not only when a national court is faced with a rule of Community law whose meaning and scope need to be defined, it is just as imperative when the court is confronted by a dispute as to the validity of measures adopted by the institutions.

When the Court is compelled to declare a measure of the institutions to be void it follows that a national court may not apply the measure declared to be void without once more creating serious uncertainty as to the Community law applicable.

Although the Court's judgment is directly addressed only to the national court which submitted the matter to the Court it is sufficient reason for any other national court to regard that measure as void for the purposes of a judgment which it has to give. However, it always rests with national courts to decide whether there is an interest in raising once again a question which has already been settled by the Court where the Court has previously declared a measure of a Community institution to be void.

The Court therefore answered the *first point* by ruling that:

- (a) although a judgment of the Court given under Article 177 of the Treaty declaring a measure of an institution, in particular a Council or Commission regulation, to be void is directly addressed only to the national court which submitted the matter to the Court, it is sufficient reason for any other national court to regard that measure as void for the purposes of a judgment which it has to give. That having been said, it does not however result in depriving national courts of the power given to them by Article 177 of the Treaty; it rests with those courts to decide whether there is an interest in raising once again a question which has already been settled by the Court where the Court has previously declared a measure of a Community institution to be void. There may be such an interest especially if questions arise as to the grounds, the scope and possibly the consequences of the invalidity established earlier;
- (b) Council Regulation No 563/76 of 15 March 1976 is void for the reasons already stated in the judgments of 5 July 1977 in Cases 114, 116 and 119 and 120/76.

2. The *second point* is basically whether rules of Community law govern legal actions brought by traders before a national court to obtain repayment of Community charges due and paid pursuant to a Council or Community regulation even though that national court is bound to refrain from applying that regulation as a result of a judgment of the Court declaring it to be void.

Regulation No 563/76, as applied before it was declared to be void, should be examined to ascertain whether it contained provisions affecting the recovery of sums received by national authorities acting on behalf of the Community authorities on the basis of that regulation.

It should be observed that Article 5 of the regulation establishes a scheme designed to spread out the effects of a measure of economic policy. The fact that the scheme made provision for traders actually to be able to pass on the charge imposed on them to subsequent stages of the economic process leads to the conclusion that in a situation such as that at the heart of the dispute in the main proceedings an action for the recovery of an undue payment has no legal foundation.

The Court replies by ruling that the existence during the period in which Council Regulation No 563/76 was applied of a specially designed scheme the aim of which

was to spread out the economic effects of the obligation which it imposed destroys the basis of an action for the recovery of securities which have been provided and forfeited even if a similar action could be successfully brought under national law alone. In this regard it does not matter whether the trader has actually passed on the charge or whether he has decided not to do so owing to his undertaking's financial policy.

Recovery is in itself ruled out *a fortiori* if the trader was not himself bound to pay the charge in question which he advanced voluntarily or refunded to his suppliers.

3. The answer to the *last question* should help to resolve the issue of whether the plaintiff in the main action is entitled to export refunds in respect of compound feedingstuffs constituted in part of products from non-member countries referred to in Article 3 (1) of Regulation No 563/76 which have been imported and processed into compound feedingstuffs under a system of customs control, that is to say without having been released into free circulation in the Community.

The first part of the question raised seeks to determine whether, in view of the fact that the plaintiff opted for the system of importation under customs control simply in order to escape the purchasing obligation since declared to be illegal, the conclusion must be drawn that the plaintiff is still entitled to export refunds.

That question calls for a negative answer.

The second part of that question seeks to determine whether, regardless of any considerations as to the consequences of the invalidity of Regulation No 563/76, the plaintiff in the main action was not entitled to export refunds on the basis of Article 8 of Regulation No 192/75 which states that when compound products qualifying for a refund fixed on the basis of one or more of their components, are exported, that refund shall be paid only in so far as the component or components in respect of which the refund is claimed are in free circulation.

The Court replies to that question by ruling that the fact that Regulation No 563/76 has been declared void does not justify either an individual or a general derogation from the rule stated in the first subparagraph of Article 8 (1) of Regulation No 192/75.

The third subparagraph of Article 8 (1) of Regulation No 192/75 covers only the case of a compound product which, as such, is not capable of attracting export refunds but which contains certain constituents which do. It does not cover the case of a compound product which as such attracts a refund and to which the condition stipulated in the first subparagraph of Article 8 (1) applies.

Mr Advocate General Reischl delivered his opinion on 21 January 1981.

**(e) Right of establishment – Doctors**

Judgment of 6 October 1981, Case 246/80 *Broekmeulen v Huisarts Registratie Commissie* [General Medical Practitioners' Registration Committee] ([1981] ECR 2311)

The General Medical Appeals Committee at The Hague has referred a question to the European Court of Justice for a preliminary ruling on the interpretation of Council Directives 75/362 and 75/363. The former concerns the mutual recognition of diplomas, certificates and other evidence of formal qualification in medicine including measures to facilitate the effective exercise of the right of establishment and freedom to provide services. The latter concerns the coordination of provisions laid down by law, regulation or administrative action in respect of the activities of doctors.

The facts leading up to the dispute are as follows:

Mr Broekmeulen, a doctor of Netherlands nationality, obtained a diploma of Doctor of Medicine, Surgery and Obstetrics at the Catholic University of Louvain, Belgium. He was authorized to practise medicine in the Netherlands by the Secretary of State for Health and the Environment but his application to be entered on the register as a 'huisarts' (general medical practitioner) was refused by the General Medical Practitioners' Registration Committee.

In the Netherlands, the medical profession is controlled by three bodies:

- (i) a General Medical Council whose main function is to set the requirements for the training of general medical practitioners;
- (ii) a General Medical Practitioners' Recognition Committee whose main function is to register as general practitioners those doctors who request registration and who meet the requirements laid down by the Council;
- (iii) a General Medical Appeals Committee which has to investigate appeals against the decisions of the Registration Committee.

The Registration Committee refused to enter Mr Broekmeulen on the register of general medical practitioners stating that it was necessary for him to train for a period of one year in general medicine before being registered as a general practitioner, as in the case of Netherlands doctors holding a diploma in medicine from a Netherlands university.

An appeal against that decision was brought before the Registration Committee which has raised the question whether it is a logical consequence of applying Council Directives 75/362 and 75/363 that a Netherlander, having obtained the Diploma of Doctor of Medicine, Surgery and Obstetrics in Belgium and who as a result may practise as a general practitioner in Belgium is entitled, on settling in the Netherlands, to have his name entered on the register of general medical practitioners without having previously undergone general medical training in the

Netherlands. The Appeals Committee has stated that, by virtue of the rules in force in the Netherlands, entry on the register is only possible after completion of the training period mentioned above and that in the Netherlands a doctor may only practise general medicine after having been entered on the register.

The first problem raised is concerned with ascertaining whether a Netherlands national holding a Belgian diploma mentioned in Article 3 of Council Directive 75/362 and recognized by every Member State by virtue of Article 2 of that directive may invoke those provisions if he intends to settle in the Netherlands.

According to that directive every Member State shall recognize the diplomas listed in Article 3 and 'awarded to nationals of Member States by the other Member States'.

This provision may therefore be invoked in one Member State by nationals of any Member State who have obtained in a different Member State the diploma listed in Article 3. This provision serves besides to ensure the observance of fundamental freedoms in the Community.

The second problem raised is concerned to ascertain whether a Member State may make the practice of general medicine by a holder of a diploma obtained in a different Member State and recognized under the provisions of Council Directive 75/362 subject to the successful completion of a supplementary period of training, a requirement which that Member State likewise demands of holders of diplomas in medicine obtained within its borders.

The General Medical Practitioners' Registration Committee maintained that the directive did not lay down any rules concerning recognition of professional training as a general practitioner undergone prior to the university examination in medicine.

Recent thinking has shown that general medicine is a specific discipline similar to other specialized disciplines. Moreover, the principle of free establishment of doctors should not be allowed to undermine efforts made by Member States to elaborate the best system possible of health care.

That line of reasoning, however, runs counter to Council Directive 75/362 which, in its general scheme, distinguishes between the recognition of medical diplomas and diplomas in specialized branches of medicine. A Member State is only permitted to lay down additional requirements as regards the training of specialist doctors.

It is well known, and this is also borne out by the wording of the directive, that qualification as a general practitioner, in the sense used by Netherlands law, is not recognized as being a specialism by the directive. Therefore, in a situation such as the one existing in the Netherlands, fitness to practise results from the recognition itself under Article 2 of the directive of the diploma awarded in a different Member State and not by virtue of an additional qualification obtained in the Member State where the doctor concerned establishes himself.

The Court of Justice has replied to the question raised and has held that:

'Council Directive 75/362 is to be interpreted as meaning that a national of one Member State who has obtained a diploma which is listed in Article 3 of the directive in a different Member State, and who, by that token, may practise as a general medical practitioner in that Member State, may establish himself as a general medical practitioner in the Member State of which he is a national, even if that Member State makes entry to that profession, by holders of medical diplomas obtained within its own borders, subject to additional training requirements.'

Mr Advocate General Reischl delivered his opinion at the sitting on 25 June 1981.

**(f) Competition – Declaration that the decision initiating a procedure and the statement of objections are void**

Judgment of 11 November 1981, Case 60/81 *International Business Machines Corporation v Commission of the European Communities* ([1981] ECR 2639)

By application lodged at the Court Registry on 18 March 1981, IBM, whose headquarters are in Armonk, New York, United States of America, brought an action under the second paragraph of Article 173 of the EEC Treaty for a declaration that the measure or measures of the Commission of which IBM was notified in a letter dated 19 December 1980, initiating a procedure against IBM pursuant to Articles 85 and 86 of the EEC Treaty (competition) and notifying IBM of a statement of objections, or the statement of objections itself, are void. The letter, signed by the Commission's Director-General for Competition, was sent to IBM after a lengthy inquiry by the Commission in connection with some of the marketing practices of IBM and its subsidiaries in order to determine whether or not such practices constitute an abuse of a dominant position on the market in question within the meaning of Article 86 of the EEC Treaty.

The letter informed IBM that the Commission had initiated against the company a procedure under Article 3 of Regulation No 17 of the Council and that it was about to take a decision concerning infringements of Article 86. That letter contained a statement of objections to which the company was requested to reply in writing within a specified period and stated that it would be given an opportunity to explain its point of view in the course of a hearing. IBM took the view that the measures notified to it in the letter of 19 December 1980 were vitiated by a number of defects and requested the Commission to terminate the procedure. Following the Commission's refusal to do so, IBM brought the present action to have the measures in question declared void.

IBM's action is based on the submission that the measures which it challenges do not meet the minimum legal criteria which have been laid down for such measures, and have made it impossible for IBM to raise a defence. IBM considers that the measures impugned amount to an unlawful exercise of its powers by the



Commission inasmuch as they have not been the subject of a collegiate decision adopted by all the members of the Commission together. Finally, IBM maintains that the measures in question offend against the international legal principles of comity between nations and non-interference in internal affairs, because the conduct of IBM which is the subject of complaint occurred in the main outside the Community, in particular in the United States of America where it is also the subject of legal proceedings.

The Commission, supported by Memorex SA, intervening, lodged an objection of inadmissibility under Article 91 (1) of the Rules of Procedure.

The Court decided to adjudicate on the objection of inadmissibility without going into the substance of the case.

In support of the objection the Commission and the intervener Memorex submit that *the measures in question are procedural steps* paving the way for the final decision and do not constitute decisions capable of being challenged under Article 173 of the EEC Treaty.

IBM maintains that the initiation of a procedure and notification of the objections amount to decisions within the meaning of Article 173 of the EEC Treaty by reason of their legal nature and their consequences.

According to Article 173 of the EEC Treaty proceedings may be brought for a declaration that acts of the Council and the Commission other than recommendations or opinions are void.

That remedy is available in order to ensure that in the interpretation and application of the Treaty the law is observed, and it would be inconsistent with that objective to interpret restrictively the conditions under which the action is admissible. In order to ascertain whether the measures in question are acts within the meaning of Article 173 it is necessary to look to their substance.

According to the consistent case-law of the Court, any measure the legal effects of which are binding on, and capable of affecting the interests of the applicant, is an act or decision which may be the subject of an action for a declaration that it is void. However, the form of such acts is immaterial as regards the question whether they are open to challenge under that article.

In the case of acts or decisions adopted by a procedure involving several stages, in particular where they are the culmination of an internal procedure, it is clear from the case-law that an act *is now open to review* only if it is a measure *definitively* laying down the position of the Commission or the Council on the conclusion of that procedure, and not a provisional measure intended to pave the way for the final decision.

The effects and the legal character of the initiation of an administrative procedure

pursuant to the provisions of Regulation No 17 and of the notification of objections must be determined in the light of the purpose of such acts in the context of the Commission's administrative procedure in matters of competition.

The procedure was designed to enable the undertakings concerned to communicate their views and to provide the Commission with the fullest information possible before it adopted a decision affecting the interests of an undertaking. Its purpose is to create procedural guarantees for the benefit of the latter. For that reason, and in order to guarantee observance of the principle of the right to be heard, it is necessary to ensure that the undertaking concerned has the right to submit its observations on conclusion of the inquiry on all the Commission's objections.

In support of its submission that the application is admissible IBM relies on a number of effects arising from the initiation of a procedure and from communication of the statement of objections.

In its reply, the Court states that some of those effects amount to no more than the ordinary effects of any procedural step and, apart from the procedural aspect, do not affect the legal position of the undertaking concerned.

A statement of objections does not compel the undertaking concerned to alter or reconsider marketing practices and it does not have the effect of depriving it of the protection hitherto available to it against the application of a fine.

An application for a declaration that the initiation of a procedure and a statement of objections are void might make it necessary for the Court to arrive at a decision on questions on which the Commission has not yet had an opportunity to state its position and would as a result anticipate the arguments on the substance of the case, confusing different procedural stages both administrative and judicial. It would thus be incompatible with the system of the division of powers between the Commission and the Court and of the remedies laid down by the Treaty.

It follows that neither the initiation of a procedure nor a statement of objections may be considered, on the basis of their nature and the legal effects they produce, as being decisions within the meaning of Article 173 of the EEC Treaty which may be challenged in an action for a declaration that they are void. They are merely procedural measures paving the way for the decision which represents their culmination.

The Court:

1. Dismissed the application as inadmissible;
2. Ordered the applicant to pay the costs including the costs of the intervener, Memorex SA and the costs resulting from IBM's applications for the adoption of interim measures and the production of information and documents concerning the Commission's initiation of the procedure.

Sir Gordon Slynn, Advocate General, delivered his opinion at the sitting on 30 September 1981.

**(g) Free movement of capital – National control requirements**

Judgment of 11 November 1981, Case 203/80 *Casati* ([1981] ECR 2595)

An Italian national residing in the Federal Republic of Germany is charged with attempting to export from Italy, without the authorization provided for by Italian exchange control legislation, the sum of DM 24 000 which was found in his possession at the frontier between Italy and Austria.

The defendant in the main action contended that he had previously imported that sum of money into Italy, without declaring it, with a view to purchasing equipment which he needed for his business in Germany, and was obliged to re-export the currency in question because the factory where he intended to buy the equipment was closed for the holidays.

Italian law provides, first, that foreign bank notes may be freely imported and, secondly, that the unauthorized exportation of currency of a value exceeding LIT 500 000 is penalized by a term of imprisonment of one to six years and by a fine of two to four times the value of the currency exported.

The court hearing the action referred to the Court of Justice for a preliminary ruling on a series of questions which may be subdivided into two groups: one on the interpretation of the provisions of the EEC Treaty on movements of capital and monetary transfers; the other on the limits, if any, set by Community law to the provisions of criminal law and procedure adopted by the Member States in matters connected with Community law.

*Interpretation of the provisions on capital movements and monetary transfers*

Articles 3 and 67 of the EEC Treaty show that the free movement of capital constitutes, alongside that of persons and services, one of the fundamental freedoms of the Community.

However, capital movements also have close links with the economic monetary policy of the Member States. At present, it cannot be ruled out that complete freedom of movement in relation to capital might undermine the economic policy of one of the Member States or create an imbalance in its balance of payments, thereby impairing the proper functioning of the common market. The extent of that restriction varies in time and depends on an assessment of the requirements of the common market.

Such an assessment is a matter, first and foremost, for the Council which adopts numerous directives. All the movements of capital are subdivided into four lists (A, B, C, D) set out in an annex to the directives. The capital movements contained in lists A and B have been liberalized unconditionally.

In the case of list C, the directives authorize the Member States to maintain or reimpose exchange restrictions if the freedom of movement is such as to hinder the functioning of the common market.

In the case of list D, the directives do not require the Member States to adopt any liberalization measures. List D covers, *inter alia*, the physical importation and exportation of financial assets, including bank notes. The Council has so far taken the view that liberalization of the exportation of bank notes, the operation with which the defendant in the main action is charged, is unnecessary and there is no reason to suppose that, by adopting that position, the Council has overstepped the limits of its discretionary power.

The Court of Justice is asked to determine whether a principle of Community law or a provision of the EEC Treaty guarantees the right of a non-resident to re-export a previously imported sum of money which has not been used.

According to Article 71 of the EEC Treaty, the Member States must endeavour to avoid introducing within the Community any new exchange restrictions on the movement of capital and not to make existing rules more restrictive.

It is clear from the use of the term 'shall endeavour' that Article 71 does not impose on the Member States unconditional legislation capable of being relied upon by individuals. The national court draws attention to Article 106 and to the 'stand-still' obligation contained in the third paragraph thereof. According to that provision, the Member States undertake not to introduce between themselves any new restrictions on transfers connected with the so-called 'invisible' transactions listed in Annex 3 to the Treaty. It must be borne in mind that the defendant in the main action stated that he intended to re-export a sum of money previously imported with a view to making purchases of a commercial nature and not to re-export an amount actually listed in Annex 3.

In reply to all the questions put to it, the Court ruled as follows:

- (1) Article 67 (1) must be interpreted as meaning that restrictions on the exportation of bank notes may not be regarded as abolished as from the end of the transitional period, irrespective of the provisions of Article 69.
- (2) Failure to have recourse to the procedures provided for by Article 73 in regard to restrictions on capital movements which the Member State concerned is not obliged to liberalize under the rules of Community law does not constitute an infringement of the EEC Treaty.
- (3) The first paragraph of Article 71 does not impose on the Member States an unconditional obligation capable of being relied upon by individuals.
- (4) Article 106 (3) is inapplicable to the re-exportation of a sum of money previously imported with a view to making purchases of a commercial nature, where such purchases have not in fact been effected.
- (5) The right of non-residents to re-export bank notes which were previously

imported with a view to carrying out commercial transactions but have not been used is not guaranteed by any principle of Community law or by any of the provisions of Community law relating to capital movements or by the rules of Article 106 concerning payments connected with the movement of goods.'

*Possible limits set by Community law to national rules of criminal law and procedure*

The national court wished to know whether penalties of the kind provided for by Italian exchange control legislation were incompatible with the principles of proportionality and non-discrimination which form part of Community law.

The Court ruled that:

'With regard to movements of capital and monetary transfers which the Member States are not obliged to liberalize under the rules of Community law, those rules do not restrict the Member States' power to adopt control measures and to enforce compliance therewith by means of criminal penalties.'

Mr Advocate General Capotorti delivered his opinion at the sitting on 7 July 1981.

**Visits to the Court of Justice during 1981<sup>1</sup>**

Description	Belgium	Denmark	FR of Germany	France	Greece
Judges of national courts <sup>2</sup>	30	–	59	74	–
Lawyers, trainees, legal advisers <sup>3</sup>	21	27	269	46	–
Professors, lecturers in Community law <sup>4</sup>	–	–	172	4	–
Members of parliaments, national civil servants, political groups	114	35	494	–	8
Journalists	–	–	55	102	20
Students, school-children	353	147	1 110	506	22
Professional associations	–	–	406	40	–
Others	47	35	91	55	–
<b>Total</b>	<b>565</b>	<b>244</b>	<b>2 565</b>	<b>827</b>	<b>50</b>

<sup>1</sup> In all 321 individual or group visits.

<sup>2</sup> This column shows, for each Member State, the number of national judges who visited the Court in national groups. The column headed 'mixed groups' shows the total number of judges from all Member States who attended the study days or courses for judges. These study days and courses have been arranged each year by the Court of Justice since 1967. In 1981 the following numbers took part:

Belgium	: 12 judges
Denmark	: 12 judges
Federal Republic of Germany	: 32 judges
France	: 30 judges
Greece	: 21 judges
Ireland	: 11 judges
Italy	: 28 judges
Luxembourg	: 4 judges
The Netherlands	: 10 judges
United Kingdom	: 33 judges

Ireland	Italy	Luxembourg	The Netherlands	United Kingdom	Non-member States	Mixed groups	Total
-	-	60	16	-	8	193	440
-	2	-	-	29	39	114	547
-	-	-	-	7	-	49	232
-	57	-	19	99	29	114	969
-	-	9	-	7	31	-	224
107	57	117	326	1 194	350	261	4 550
-	108	-	54	98	-	58	764
1	-	40	-	50	68	2	389
108	244	226	415	1 484	525	791	8 115

<sup>3</sup> This column shows, for each Member State, the number of national lawyers who visited the Court in national groups. The column headed 'mixed groups' shows the total number of lawyers from all Member States who took part in the visit of lawyers on 1 and 2 June 1981. The following numbers took part:

Belgium	: 7 lawyers
Denmark	: 6 lawyers
Federal Republic of Germany	: 19 lawyers
France	: 19 lawyers
Greece	: 11 lawyers
Ireland	: 6 lawyers
Italy	: 19 lawyers
Luxembourg	: 2 lawyers
The Netherlands	: 7 lawyers
United Kingdom	: 18 lawyers

<sup>4</sup> This column shows, for each Member State, the number of professors and lecturers in Community law who visited the Court in national groups. The column headed 'mixed groups' shows the total number of professors and lecturers in Community law from all Member States who took part in the visit of professors and lecturers in law on 16, 17 and 18 November 1981. The following numbers took part:

Belgium	: 4 professors or lecturers in law
Denmark	: 2 professors or lecturers in law
Federal Republic of Germany	: 8 professors or lecturers in law
France	: 6 professors or lecturers in law
Greece	: 4 professors or lecturers in law
Ireland	: 1 professor or lecturer in law
Italy	: 8 professors or lecturers in law
Luxembourg	: -
The Netherlands	: 4 professors or lecturers in law
United Kingdom	: 8 professors or lecturers in law
(Switzerland and Commission of the European Communities)	: 4 professors or lecturers in law

## **2. Meetings and visits**

**The Court of Justice has continued its tradition of maintaining contacts with judges in the Member States.**

**In 1981, the Court organized two study days on 30 and 31 March for judges from the ten Member States and a one-week course from 19 to 23 October 1981.**

**A one-week course lasting from 30 November to 4 December 1981 was organized for the Greek judges who were unable to attend the earlier course owing to the elections in Greece.**

**Lawyers from the Member States had the opportunity of becoming acquainted with the Court of Justice during two study days on 1 and 2 June 1981.**

**On 1 June 1981 a delegation of lawyers and registrars from the town of Antwerp visited the Court of Justice.**

**On 22 October 1981 the Court received a delegation of young Belgian diplomats.**

**From 16 to 18 November 1981 the Court held three study days on Community law for 40 teachers from universities of the Member States. The purpose of that meeting was not only to enable visitors to exchange views with members of the Court, but also to give them the opportunity of comparing their respective methods of teaching European law.**

**From 24 to 26 November 1981 the Court received a group of Swedish judges.**

**During 1981 the members of the Court took part in a number of educational and legal events.**

**On 31 January and 1 February 1981, the President of the Court, Mr J. Mertens de Wilmars, attended the formal sitting of the 'Conférence du Stage' [the assembly of lawyers entering their pupillage] in Paris.**

**Professor Max Sørensen, former member of the Court accepted an invitation to come to Luxembourg and on 16, 17 and 18 March 1981 gave lectures on Danish law.**

**From 30 September to 3 October 1981 the President, Mr J. Mertens de Wilmars and Sir Gordon Slynn attended the 'Opening of the Legal Year' in London.**

**From 25 to 30 October 1981 Mrs Advocate General Rozès and Mr Advocate General Reischl represented the Court at the Conference of Constitutional Courts which was held at Lausanne.**



### 3. Composition of the Court

The composition of the Court changed several times during 1981.

Following the accession of Greece to the European Communities, Alexander Chloros was appointed as a judge at the Court of Justice and took up office on 12 January 1981. The Court welcomed Alexander Chloros at a formal sitting held on 12 January 1981.

On 26 February 1981 Mr Advocate General Warner relinquished office and on the same day Sir Gordon Slynn took up office. The Court said farewell to Jean-Pierre Warner and welcomed Sir Gordon Slynn at a formal sitting held on 26 February 1981.

On 18 March 1981 Mr Advocate General Mayras relinquished office and on the same day Simone Rozès took up office. At a formal sitting held on 18 March 1981 the Court said farewell to Henri Mayras and welcomed Simone Rozès.

The increase in the number of judges and advocates general led to the designation of Pieter VerLoren van Themaat as Advocate General and of Fernand Grévisse as judge. Messrs VerLoren van Themaat and Grévisse took up office on 4 June 1981. The Court welcomed Messrs VerLoren van Themaat and Grévisse at a formal sitting on 4 June 1981.

By a decision of the Court of 30 September 1981 Mr Advocate General Capotorti on the one hand and Judges Bosco, Due and Touffait on the other were designated respectively First Advocate General and Presidents of Chambers for the judicial year 1981/82.

#### **Composition of the Court of Justice of the European Communities for the judicial year 1980/81**

**from 1 January to 12 January 1981**

Josse MERTENS de WILMARS, President  
Pierre PESCATORE, President of the Second Chamber  
Gerhard REISCHL, First Advocate General  
Thymen KOOPMANS, President of the First Chamber  
Henri MAYRAS, Advocate General  
Jean-Pierre WARNER, Advocate General  
Lord Alexander J. MACKENZIE STUART, Judge  
Andreas O'KEEFFE, Judge  
Francesco CAPOTORTI, Advocate General

**Giacinto BOSCO, Judge**  
**Adolphe TOUFFAIT, Judge**  
**Ole DUE, Judge**  
**Ulrich EVERLING, Judge**  
**Albert VAN HOUTTE, Registrar**

*Composition of the First Chamber*

**Thymen KOOPMANS, President**  
**Andreas O'KEEFFE, Judge**  
**Giacinto BOSCO, Judge**

*Composition of the Second Chamber*

**Pierre PESCATORE, President**  
**Adolphe TOUFFAIT, Judge**  
**Ole DUE, Judge**

*Composition of the Third Chamber*

**Josse MERTENS de WILMARS, President**  
**Lord Alexander J. MACKENZIE STUART, Judge**  
**Ulrich EVERLING, Judge**

**from 12 January to 26 February 1961**

**Josse MERTENS de WILMARS, President**  
**Pierre PESCATORE, President of the Second Chamber**  
**Lord Alexander J. MACKENZIE STUART, President of the Third Chamber**  
**Gerhard REISCHL, First Advocate General**  
**Thymen KOOPMANS, President of the First Chamber**  
**Henri MAYRAS, Advocate General**  
**Jean-Pierre WARNER, Advocate General**  
**Andreas O'KEEFFE, Judge**  
**Francesco CAPOTORTI, Advocate General**  
**Giacinto BOSCO, Judge**  
**Adolphe TOUFFAIT, Judge**  
**Ole DUE, Judge**  
**Ulrich EVERLING, Judge**  
**Alexander CHLOROS, Judge**  
**Albert VAN HOUTTE, Registrar**

*Composition of the First Chamber*

**Thymen KOOPMANS, President**  
**Andreas O'KEEFFE, Judge**  
**Giacinto BOSCO, Judge**

*Composition of the Second Chamber*

**Pierre PESCATORE, President**  
**Ole DUE, Judge**  
**Alexander CHLOROS, Judge**

*Composition of the Third Chamber*

**Lord Alexander J. MACKENZIE STUART, President**  
**Adolphe TOUFFAIT, Judge**  
**Ulrich EVERLING, Judge**

**from 26 February to 18 March 1981**

Josse MERTENS de WILMARS, President  
Pierre PESCATORE, President of the Second Chamber  
Lord Alexander J. MACKENZIE STUART, President of the Third Chamber  
Gerhard REISCHL, First Advocate General  
Thymen KOOPMANS, President of the First Chamber  
Henri MAYRAS, Advocate General  
Andreas O'KEEFFE, Judge  
Francesco CAPOTORTI, Advocate General  
Giacinto BOSCO, Judge  
Adolphe TOUFFAIT, Judge  
Ole DUE, Judge  
Ulrich EVERLING, Judge  
Alexander CHLOROS, Judge  
Sir Gordon SLYNN, Advocate General  
Albert VAN HOUTTE, Registrar

**from 18 March to 4 June 1981**

Josse MERTENS de WILMARS, President  
Pierre PESCATORE, President of the Second Chamber  
Lord Alexander J. MACKENZIE STUART, President of the Third Chamber  
Gerhard REISCHL, First Advocate General  
Thymen KOOPMANS, President of the First Chamber  
Andreas O'KEEFFE, Judge  
Francesco CAPOTORTI, Advocate General  
Giacinto BOSCO, Judge  
Adolphe TOUFFAIT, Judge  
Ole DUE, Judge  
Ulrich EVERLING, Judge  
Alexander CHLOROS, Judge  
Sir Gordon SLYNN, Advocate General  
Simone ROZÈS, Advocate General  
Albert VAN HOUTTE, Registrar

**from 4 June to 6 October 1981**

Josse MERTENS de WILMARS, President  
Pierre PESCATORE, President of the Second Chamber  
Lord Alexander J. MACKENZIE STUART, President of the Third Chamber  
Gerhard REISCHL, First Advocate General  
Thymen KOOPMANS, President of the First Chamber  
Andreas O'KEEFFE, Judge  
Francesco CAPOTORTI, Advocate General  
Giacinto BOSCO, Judge  
Adolphe TOUFFAIT, Judge  
Ole DUE, Judge  
Ulrich EVERLING, Judge  
Alexander CHLOROS, Judge  
Sir Gordon SLYNN, Advocate General  
Simone ROZÈS, Advocate General  
Pieter VERLOREN VAN THEMAAT, Advocate General  
Fernand GRÉVISSE, Judge  
Albert VAN HOUTTE, Registrar

*Composition of the First Chamber*

Thymen KOOPMANS, President  
Andreas O'KEEFFE, Judge  
Giacinto BOSCO, Judge

*Composition of the Second Chamber*

Pierre PESCATORE, President  
Ole DUE, Judge  
Alexander CHLOROS, Judge  
Fernand GRÉVISSE, Judge

*Composition of the Third Chamber*

Lord Alexander J. MACKENZIE STUART, President  
Adolphe TOUFFAIT, Judge  
Ulrich EVERLING, Judge

**from 7 October to 31 December 1981**

Josse MERTENS de WILMARS, President  
Francesco CAPOTORTI, First Advocate General  
Giacinto BOSCO, President of the First Chamber  
Adolphe TOUFFAIT, President of the Third Chamber  
Ole DUE, President of the Second Chamber  
Pierre PESCATORE, Judge  
Lord Alexander J. MACKENZIE STUART, Judge  
Gerhard REISCHL, Advocate General  
Andreas O'KEEFFE, Judge  
Thymen KOOPMANS, Judge  
Ulrich EVERLING, Judge  
Alexander CHLOROS, Judge  
Sir Gordon SLYNN, Advocate General  
Simone ROZÈS, Advocate General  
Pieter VERLOREN VAN THEMAAT, Advocate General  
Fernand GRÉVISSE, Judge  
Albert VAN HOUTTE, Registrar

*Composition of the First Chamber*

Giacinto BOSCO, President  
Andreas O'KEEFFE, Judge  
Thymen KOOPMANS, Judge

*Composition of the Second Chamber*

Ole DUE, President  
Pierre PESCATORE, Judge  
Alexander CHLOROS, Judge  
Fernand GRÉVISSE, Judge

*Composition of the Third Chamber*

Adolphe TOUFFAIT, President  
Lord Alexander J. MACKENZIE STUART, Judge  
Ulrich EVERLING, Judge

## Former Presidents and members of the Court of Justice

### *Former Presidents*

<b>PILOTTI, Massimo</b> (died on 29 April 1962)	President of the Court of Justice of the European Coal and Steel Community from 10 December 1952 to 6 October 1958
<b>DONNER, Andreas Matthias</b>	President of the Court of Justice of the European Communities from 7 October 1958 to 7 October 1964
<b>HAMMES, Charles-Léon</b> (died on 9 December 1967)	President of the Court of Justice of the European Communities from 8 October 1964 to 7 October 1967
<b>LECOURT, Robert</b>	President of the Court of Justice of the European Communities from 8 October 1967 to 6 October 1976
<b>KUTSCHER, Hans</b>	President of the Court of Justice of the European Communities from 7 October 1976 to 30 October 1980

### *Former members*

<b>PILOTTI, Massimo</b> (died on 29 April 1962)	President and Judge at the Court of Justice from 10 December 1952 to 6 October 1958
<b>SERRARENS, Petrus J.S.</b> (died on 26 August 1963)	Judge at the Court of Justice from 10 December 1952 to 6 October 1958
<b>VAN KLEFFENS, Adrianus</b> (died on 2 August 1973)	Judge at the Court of Justice from 10 December 1952 to 6 October 1958
<b>CATALANO, Nicola</b>	Judge at the Court of Justice from 7 October 1958 to 7 March 1962
<b>RUEFF, Jacques</b> (died on 24 April 1978)	Judge at the Court of Justice from 10 December 1952 to 17 May 1962
<b>RIESE, Otto</b> (died on 4 June 1977)	Judge at the Court of Justice from 10 December 1952 to 5 February 1963
<b>ROSSI, Rino</b> (died on 6 February 1974)	Judge at the Court of Justice from 7 October 1958 to 7 October 1964
<b>LAGRANGE, Maurice</b>	Advocate General at the Court of Justice from 10 December 1952 to 7 October 1964
<b>DELVAUX, Louis</b> (died on 24 August 1976)	Judge at the Court of Justice from 10 December 1952 to 9 October 1967
<b>HAMMES, Charles-Léon</b> (died on 9 December 1967)	Judge at the Court of Justice from 10 December 1952 to 9 October 1967, President of the Court from 8 October 1964 to 7 October 1967
<b>GAND, Joseph</b> (died on 4 October 1974)	Advocate General at the Court of Justice from 8 October 1964 to 6 October 1970
<b>STRAUSS, Walter</b> (died on 1 January 1976)	Judge at the Court of Justice from 6 February 1963 to 27 October 1970
<b>DUTHEILLET DE LAMOTHE, Alain</b> (died on 2 January 1972)	Advocate General at the Court of Justice from 7 October 1970 to 2 January 1972
<b>ROEMER, Karl</b>	Advocate General at the Court of Justice from 2 February 1953 to 8 October 1973

<b>Ó DÁLAIGH, Cearbhall</b> (died on 21 March 1978)	Judge at the Court of Justice from 9 January 1973 to 11 December 1974
<b>MONACO, Riccardo</b>	Judge at the Court of Justice from 8 October 1964 to 2 February 1976
<b>LECOURT, Robert</b>	Judge at the Court of Justice from 18 May 1962 to 25 October 1976, President of the Court from 8 October 1967 to 6 October 1976
<b>TRABUCCHI, Alberto</b>	Judge at the Court of Justice from 8 March 1962 to 8 January 1973, Advocate General at the Court from 9 January 1973 to 6 October 1976
<b>DONNER, Andreas Matthias</b>	Judge at the Court of Justice from 7 October 1958 to 29 March 1979, President of the Court from 7 October 1958 to 7 October 1964
<b>SØRENSEN, Max</b> (died on 11 October 1981)	Judge at the Court of Justice from 9 January 1973 to 6 October 1979
<b>KUTSCHER, Hans</b>	Judge at the Court of Justice from 28 October 1970 to 30 October 1980, President of the Court from 7 October 1976 to 30 October 1980
<b>WARNER, Jean-Pierre</b>	Advocate General at the Court of Justice from 9 January 1973 to 26 February 1981
<b>MAYRAS, Henri</b>	Advocate General at the Court of Justice from 22 March 1972 to 18 March 1981

#### 4. Library, Research and Documentation Directorate

This directorate includes the Library and the Research and Documentation Division.

##### *The Library*

This division is responsible for the organization and operation of the Library of the Court which is primarily a working instrument for the members and the officials of the Court. At present it contains approximately 39 500 bound volumes (books, series and bound journals), 7 500 unbound booklets and brochures and 387 current legal journals and law reports supplied on subscription.

It may be mentioned purely as a guide that in the course of 1981 new acquisitions amounted to 1 000 books (3 000 volumes), 770 booklets and 14 new subscriptions.

All these works may be consulted in the reading-room of the Library. They are lent only to the members and the officials of the Court. No loan to persons outside the institutions of the Community is permitted. Loan of works to officials of other Community institutions may be permitted through the library of the institution to which the official seeking to borrow a book belongs.

It is proposed to publish a quarterly bibliographical bulletin of new acquisitions, comprising both text-books and articles appearing in journals relating to Community law. The data appearing on that list will be computerized using the Court's computer as is already being done for the recording of the case-law of the Community. In that way those seeking information will rapidly be able to look up a point on the Community's case-law.

##### *The Research and Documentation Division of the Court of Justice*

The primary task of this division is to prepare summaries of judgments, to draw up the tables (indexes) for the Reports of Cases before the Court and, at the request of members of the Court, to prepare documentation concerning Community law and comparative law for the purposes of preparatory inquiries.

The division is also responsible for drawing up the alphabetical index of subject-matter in the Reports of Cases before the Court which, since 1981, appears

not merely in the form of an annual index but also as a monthly index inserted in each part of the Reports of Cases before the Court. It also collates a periodical bulletin on the recent case-law of the Court of Justice for internal use.

The division has continued work on the drawing-up of a digest of Community case-law. The work will cover the case-law of the Court as well as a selection of the case-law of the courts of Member States on Community law. The first issue of the D Series was published in 1981. It comprises the case-law of the court from 1976 to 1979 on the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters as well as a selection of national case-law on this subject covering the years 1973 to 1978. The first issue of the A Series (case-law of the Court of Justice from 1977 to 1980 save for cases concerning the Convention mentioned above and Community staff law) will be published in 1982. The second issue of the D Series, including the first supplement, is in the course of preparation.

The legal information section of the division runs a computerized retrieval system for the case-law of the Court of Justice enabling rapid access to the whole of the case-law of the Court including the opinions of the Advocates General. That system, known as CJUS, forms part of the Celex inter-institutional system of computerized documentation for Community law. Since 1981 the data base is accessible not only to members and officials of the Court but may also be used by the public by means of inquiry terminals installed in Member States and linked to Community institutions through the Euronet-Diane data transmission network. Also in 1981 the legal information section undertook the setting-up of a new data base comprising information relating to cases pending before the Court. That data base, intended for internal use, will become operational in 1982.

In the performance of its duties, the Research and Documentation Division uses not only the books available in the Library but also its own card-indexes of Community case-law, which contain in particular a large collection of decisions by national courts on Community law and notes on theoretical writing concerning the case-law of the Court of Justice.



## 5. Translation Directorate

The Translation Directorate is at present composed of 87 lawyer-linguists who are divided up as follows into the seven translation divisions and the Terminology Branch:

Danish Language Division	14	German Language Division	8
Dutch Language Division	12	Greek Language Division	15
English Language Division	13	Italian Language Division	10
French Language Division	13	Terminology Branch	1

The total number of staff is 132. Since 1980 it has increased by 9 persons.

The principal task of the Translation Directorate is to translate into all the official languages of the Communities for publication in the Reports of Cases before the Court the judgments of the Court and the opinions of the Advocates General. In addition it translates any documents in the case into the language or languages required by members of the Court.

In 1981 the Translation Directorate translated some 62 500 pages as against 58 100 pages translated during the previous year.

The relative importance of the various official languages of the Community and of Greek as languages into which texts are translated on the one hand and as source languages on the other may be seen from the following table. The first column of the table at the same time shows the amount of work done in 1981 by each of the seven translation divisions.

### Translations:

into Danish:	10 100 pages;	from that language:	460 pages
into Dutch:	9 450 pages;	from that language:	2 300 pages
into English:	9 200 pages;	from that language:	6 440 pages
into French:	9 500 pages;	from that language:	36 070 pages
into German:	8 500 pages;	from that language:	11 720 pages
into Greek:	6 150 pages;	from that language:	60 pages
into Italian:	9 600 pages;	from that language:	5 450 pages
	<hr/>		<hr/>
	62 500 pages		62 500 pages

## **6. Interpretation Division**

**The Interpretation Division provides interpretation for all sittings and other meetings organized by the institution. Except for French it translates the opinions of the Advocates General for the purposes of public sittings. A good deal of an interpreter's work is devoted to the preparation of the interpretation. This requires reading, understanding and assimilation of the written procedure as well as terminological and document research.**

## II – Decisions of national courts on Community law

### A – *Statistical information*

The Court of Justice endeavours to obtain as full information as possible on decisions of national courts on Community law.<sup>1</sup>

The tables below show the number of national decisions, with a breakdown by Member States, delivered between 1 July 1980 and 30 June 1981 entered in the card-indexes maintained by the Library, Research and Documentation Directorate of the Court. The decisions are included whether or not they were taken on the basis of a preliminary ruling by the Court.

A separate column headed Brussels Convention contains the decisions on the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, known as the Brussels Convention, which has led to a considerable increase in the number of cases coming before the national courts.

It should be emphasized that the tables are only a guide as the card-indexes on which they are based are necessarily incomplete.

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<sup>1</sup> The Library, Research and Documentation Directorate of the Court of Justice of the European Communities, L-2920 Luxembourg, welcomes copies of any such decisions.

General table, by Member State, of decisions on Community law  
(from 1 July 1980 to 30 June 1981)

Member States	Supreme Courts	Cases in previous column on Brussels Convention	Courts of appeal or of first instance	Cases in previous column on Brussels Convention	Total	Cases in previous column on Brussels Convention <sup>1</sup>
Belgium	5	-	61	41	66	41
Denmark	1	-	2	-	3	-
France	27	7	32	3	59	10
Federal Republic of Germany	69	5	98	14	167	19
Greece	-	-	-	-	-	-
Ireland	2	-	-	-	2	-
Italy	22	3	23	2	45	5
Luxembourg	5	-	3	2	8	2
The Netherlands	10	4	56	7	66	11
United Kingdom	3	-	23	-	26	-
<b>Total</b>	<b>144</b>	<b>19</b>	<b>298</b>	<b>69</b>	<b>442</b>	<b>88</b>

<sup>1</sup> This table does not include decisions merely authorizing enforcement under the Convention. Those decisions are included in the statistics appearing in the *Digest of Community Case-law, D Series, Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters*.

Detailed table, broken down by Member State and by court, of decisions on Community law

Member State	Number	Court giving judgment	
Federal Republic of Germany	167	<i>Supreme Courts</i>	
		Bundesgerichtshof . . . . .	11
		Bundesverwaltungsgericht . . . . .	11
		Bundesfinanzhof . . . . .	33
		Bundessozialgericht . . . . .	14
		<b>69</b>	
		<i>Courts of appeal or first instance</i>	
		Bayerisches Oberstes Landesgericht . . . . .	1
		Hanseatisches Oberlandesgericht . . . . .	1
		Oberlandesgericht Düsseldorf . . . . .	1
Oberlandesgericht Frankfurt . . . . .	3		
Oberlandesgericht Hamburg . . . . .	1		

Member State	Number	Court giving judgment
Federal Republic of Germany (continued)	167	Oberlandesgericht Hamm . . . . . 1
		Oberlandesgericht Karlsruhe . . . . . 1
		Oberlandesgericht Koblenz . . . . . 2
		Oberlandesgericht München . . . . . 1
		Oberlandesgericht Stuttgart . . . . . 1
		Bayerischer Verwaltungsgerichtshof . . . . . 1
		Hessischer Verwaltungsgerichtshof . . . . . 7
		Finanzgericht Baden-Württemberg . . . . . 1
		Finanzgericht Berlin . . . . . 3
		Finanzgericht Bremen . . . . . 1
		Finanzgericht Düsseldorf . . . . . 2
		Finanzgericht Hamburg . . . . . 29
		Finanzgericht München . . . . . 5
		Finanzgericht Münster . . . . . 4
		Finanzgericht Rheinland-Pfalz . . . . . 2
		Hessisches Finanzgericht . . . . . 2
		Niedersächsisches Finanzgericht . . . . . 1
		Hessisches Landessozialgericht . . . . . 1
		Landgericht Düsseldorf . . . . . 1
		Landgericht Hamburg . . . . . 3
		Landgericht Wiesbaden . . . . . 1
		Verwaltungsgericht Düsseldorf . . . . . 2
		Verwaltungsgericht Frankfurt . . . . . 12
		Verwaltungsgericht Kassel . . . . . 1
		Verwaltungsgericht Münster . . . . . 1
		Verwaltungsgericht Stuttgart . . . . . 1
		Socialgericht Hildesheim . . . . . 1
		Arbeitsgericht Reutlingen . . . . . 1
Amtsgericht Rosenheim . . . . . 2		
		98
Belgium	66	<i>Supreme Courts</i>
		Cour de Cassation . . . . . 5
		5
		<i>Courts of appeal or first instance</i>
		Cour d'Appel de Bruxelles . . . . . 1
		Cour d'Appel de Liège . . . . . 9
		Hof van Beroep Antwerpen . . . . . 1
		Hof van Beroep Gent . . . . . 2
		Arbeidshof Brussel . . . . . 1
		Arbeidshof Gent . . . . . 1
		Cour du Travail de Mons . . . . . 4
		Tribunal de Première Instance d'Arlon . . . . . 3
		Tribunal de Première Instance de Bruxelles . . . . . 3
		Tribunal de Première Instance de Charleroi . . . . . 2
Tribunal de Première Instance de Liège . . . . . 2		

Member State	Number	Court giving judgment	
Belgium (continued)	66	Tribunal de Première Instance de Tournai . . . . .	2
		Tribunal de Première Instance de Verviers . . . . .	1
		Rechtbank Van Eerste Aanleg Antwerpen . . . . .	1
		Rechtbank Van Eerste Aanleg Brugge . . . . .	1
		Rechtbank Van Eerste Aanleg Gent . . . . .	2
		Rechtbank Van Eerste Aanleg Leuven . . . . .	1
		Rechtbank Van Eerste Aanleg Mechelen . . . . .	1
		Rechtbank Van Eerste Aanleg Tongeren . . . . .	1
		Tribunal du Travail de Liège . . . . .	1
		Tribunal de Commerce de Bruxelles . . . . .	3
		Rechtbank Van Koophandel Antwerpen . . . . .	2
		Rechtbank Van Koophandel Brugge . . . . .	5
		Rechtbank Van Koophandel Brussel . . . . .	2
		Rechtbank Van Koophandel Gent . . . . .	3
		Rechtbank Van Koophandel Kortrijk . . . . .	1
		Rechtbank Van Koophandel Oudenaarde . . . . .	4
		Rechtbank Van Koophandel Tongeren . . . . .	1
	<b>61</b>		
Denmark	3	<i>Supreme Courts</i>	
		Højesteret . . . . .	1
			<b>1</b>
		<i>Courts of appeal or first instance</i>	
		Østre Landsret . . . . .	1
		Københavns Byret . . . . .	1
			<b>2</b>
France	59	<i>Supreme Courts</i>	
		Cour de Cassation . . . . .	20
		Conseil d'État . . . . .	7
			<b>27</b>
		<i>Courts of appeal or first instance</i>	
		Cour d'Appel de Colmar . . . . .	1
		Cour d'Appel de Grenoble . . . . .	1
		Cour d'Appel de Paris . . . . .	4
		Cour d'Appel de Rouen . . . . .	2
		Cour d'Appel de Toulouse . . . . .	1
		Cour d'Appel de Versailles . . . . .	2
		Tribunal Administratif de Paris . . . . .	2
		Tribunal de Commerce de Paris . . . . .	2
		Tribunal de Grande Instance de Bayonne . . . . .	4
Tribunal de Grande Instance d'Évry . . . . .	1		

Member State	Number	Court giving judgment
France (continued)	59	Tribunal de Grande Instance de Lure . . . . . 1
		Tribunal de Grande Instance de Montpellier . . . . . 1
		Tribunal de Grande Instance de Nanterre . . . . . 1
		Tribunal de Grande Instance de Paris . . . . . 5
		Tribunal de Grande Instance de Pau . . . . . 1
		Tribunal de Grande Instance de Saint-Nazaire . . . . . 1
		Tribunal de Grande Instance de Strasbourg . . . . . 1
		Commission de Première Instance du contentieux de la sécurité sociale et de la mutualité sociale agricole de Paris . . . . . 1
	<hr/> 32	
Ireland	2	<i>Supreme Courts</i>
		High Court Dublin . . . . . 2
		<hr/> 2
Italy	45	<i>Supreme Courts</i>
		Corte Costituzionale . . . . . 1
		Corte di Cassazione . . . . . 21
		<hr/> 22
		<i>Courts of appeal or first instance</i>
		Corte d'Appello di Roma . . . . . 1
		Corte d'Appello di Torino . . . . . 2
		Tribunale Amministrativo Regionale del Lazio . . . . . 1
		Tribunale Amministrativo Regionale del Veneto . . . . . 2
		Tribunale di Bolzano . . . . . 2
		Tribunale di Genova . . . . . 1
		Tribunale di Milano . . . . . 3
		Tribunale di Ravenna . . . . . 4
		Tribunale di Roma . . . . . 4
		Tribunale di Torino . . . . . 1
		Pretura di Bra . . . . . 1
		Pretura di Parma . . . . . 1
<hr/> 23		

Member State	Number	Court giving judgment	
Luxembourg	8	<i>Supreme Courts</i>	
		Conseil d'État. Comité du contentieux . . . . .	2
		Cour Supérieure de Justice (Cour de Cassation) . . . . .	3
			5
		<i>Courts of appeal or first instance</i>	
		Cour Supérieure de Justice (Cour d'Appel) . . . . .	2
		Conseil Supérieur des Assurances Sociales . . . . .	1
			3
The Netherlands	66	<i>Supreme Courts</i>	
		Hoge Raad . . . . .	9
		Raad van State . . . . .	1
			10
		<i>Courts of appeal or first instance</i>	
		Centrale Raad van Beroep . . . . .	2
		College van Beroep voor het Bedrijfsleven . . . . .	20
		Gerechtshof Amsterdam . . . . .	4
		Gerechtshof 's-Gravenhage . . . . .	3
		Gerechtshof 's-Hertogenbosch . . . . .	2
		Tariefcommissie . . . . .	10
		Arrondissementsrechtbank Alkmaar . . . . .	2
		Arrondissementsrechtbank Amsterdam . . . . .	1
		Arrondissementsrechtbank Arnhem . . . . .	2
		Arrondissementsrechtbank Assen . . . . .	1
		Arrondissementsrechtbank Breda . . . . .	1
		Arrondissementsrechtbank Haarlem . . . . .	1
		Arrondissementsrechtbank Maastricht . . . . .	1
		Arrondissementsrechtbank Rotterdam . . . . .	3
		Arrondissementsrechtbank Utrecht . . . . .	1
		Kantongerecht Apeldoorn . . . . .	1
		Kantongerecht Breda . . . . .	1
			56



Member State	Number	Court giving judgment
United Kingdom	26	<i>Supreme Courts</i>
		House of Lords . . . . . 3
		<hr/> 3
		<i>Courts of appeal or first instance</i>
		Court of Appeal . . . . . 5
		High Court of Justice . . . . . 9
		Employment Appeal Tribunal . . . . . 3
		Social Security Commissioner
		(formerly National Insurance Commissioner) . . . . . 3
		Belfast Recorder's Court . . . . . 1
		Commissioners for Special Purpose of the
		Income Tax Acts . . . . . 1
		Value Added Tax Tribunal London . . . . . 1
		<hr/> 23

## B – Remarks on some specific decisions

Of the large number of decisions on Community law made by national courts during the reference period attention should be drawn to two in particular. Needless to say, many other decisions are worth mentioning but the limited space available prevents them from being published here.

Both the judgment<sup>1</sup> of the Bundesgerichtshof [Federal Court of Justice of the Federal Republic of Germany] of 27 February 1981 and the judgment<sup>2</sup> of the French Cour d'Appel (Chambre Correctionnelle) [Court of Appeal, Criminal Division], Rouen are directly in line with decisions of the Court of Justice in the sphere of the free movement of goods. Thus, the Bundesgerichtshof, following the judgment of the Court of Justice of 20 January 1981 in Joined Cases 55 and 57/80 *Music-Vertrieb membran GmbH and K-tel International v GEMA* ([1981] ECR 147) has limited, in the field of copyright, the right of an owner in one Member State of distribution rights in respect of musical works recorded on discs or other sound recording media to oppose the importation of those recordings from another Member State where they have been lawfully marketed. The Court of Appeal, Rouen, draws the consequences, from the point of view of criminal law, of the judgment of the Court of Justice of 10 July 1980 in Case 152/78 *Commission v France* ([1980] ECR 2299) which states that certain provisions of the French legislation relating to the advertising of alcoholic beverages by their discriminatory nature, impede trade within the common market.

### (a) Judgment of the Bundesgerichtshof of 27 February 1981 'ABBA/Arrival'

The owner of the exclusive world-wide rights to exploit the record 'ABBA/Arrival' had assigned those rights to the plaintiff in respect of the Federal Republic of Germany and to the defendant in respect of Great Britain and Israel. The defendant produces the record in Israel and imports it *inter alia* into the Federal Republic of Germany and markets it there. The imports are partly effected direct from Israel and partly from Great Britain. In its action for an injunction to restrain the defendant the plaintiff claims infringement of its exclusive distribution rights over the record. The defendant claims that the action should be dismissed and submits *inter alia* that the enforcement of the right to restrain the defendant offends against the prohibition of restrictions on trade laid down in Article 30 of the EEC Treaty (measures having equivalent effect to quantitative restrictions).

The Bundesgerichtshof states first that under German law alone the action would be well-founded. Whilst the principle of the exhaustion of commercial property rights is also applicable to the distribution rights of a producer of sound recording media with the result that further dealings are no longer covered by the commercial

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<sup>1</sup> *Gewerblicher Rechtsschutz und Urheberrecht, Internationaler Teil* 1981, p. 562; *Monatsschrift für deutsches Recht* 1981, p. 642.

<sup>2</sup> Not reported.

property right once the sound recording media have been placed on the market, distribution rights as regards the domestic market are, however, not exhausted where the marketing took place abroad and the copyrights were transferred to the person entitled to those rights subject only to a territorial limitation to markets other than the domestic market. The comprehensive copyright protection which lies at the heart of the relevant German law (Copyright Law of 9 September 1965) gives the author the right to exploit it commercially also by issuing separate licences in respect of individual countries and to receive a fee in respect of each licence. A licence agreement in respect of one State therefore does not fully exhaust the distribution rights existing as regards other States.

By applying the provisions of Community law, in this case Articles 30 and 36 of the EEC Treaty, the Bundesgerichtshof came to the conclusion that the plaintiff may not restrain the marketing by the defendant of the records, at any rate in so far as they have been lawfully placed on the market in Great Britain, a Member State of the Community. It follows from the judgment of the Court of Justice of the European Communities of 20 January 1981 that neither the owner of a copyright nor his licensee may rely upon the exclusive exploitation rights conferred by copyright in order to prevent or restrict the importation of sound recording media which have been lawfully placed on the market in another Member State by the owner of the rights himself or with his approval. It is of no account that the goods were manufactured in Israel, a non-member country, since they were placed on the market in a Member State. However, to the extent to which the records were imported by the defendant direct from Israel into the Federal Republic of Germany, Community law will not operate to debar the plaintiff from succeeding in its action for an order restraining the defendant. The agreement of 11 May 1975 between the European Economic Community and the State of Israel (Official Journal L 136, p. 1) does contain provisions relating to restrictions on imports but lays down no prohibition, akin to Article 30 of the EEC Treaty, of restrictions on trade but simply provides in Article 3 thereof that no fresh quantitative restrictions on imports or measures having equivalent effect may be implemented. The agreement does not therefore preclude actions from being brought to restrain the defendant from importing records from Israel.

**(b) Cour d'Appel de Rouen (Chambre Correctionnelle) [Court of Appeal, Criminal Division], Rouen – Procureur de la République v Cuel and Others**

In France the advertising of alcoholic beverages is governed restrictively by the code on the retail sale of beverages. However, those restrictions are not imposed uniformly since each of the categories in which the various alcoholic beverages are classified according to their characteristics, are subject to particular rules. The Court of Appeal, Rouen, heard appeals from several persons who had been accused, prosecuted and convicted at first instance in 1978 for having contravened the code on the retail sale of beverages by engaging in an advertising campaign for drinks of group 5 in respect of which any advertising is prohibited.

In 1979, in support of their appeal the accused submitted that the provisions of the code on the retail sale of beverages against which they had been found guilty of an offence impeded the free movement of goods within the common market and must be regarded as a measure having an equivalent effect to a quantitative restriction prohibited by Article 30 of the EEC Treaty. In further support of their submission they cited the action for failure to fulfil an obligation which the Commission of the European Communities had brought against the French Republic before the Court of Justice on 6 July 1968 on those very provisions.

By a judgment of 10 July 1979 the Court of Appeal decided to stay the proceedings until judgment had been delivered by the Court of Justice in the above-mentioned action for failure to fulfil an obligation. By judgment of 10 July 1980 the Court of Justice held that 'by subjecting advertising in respect of alcoholic beverages to discriminatory rules and thereby maintaining obstacles to the freedom of intra-Community trade, the French Republic has failed to fulfil its obligations under Article 30 of the EEC Treaty'.

The objections raised by the accused against the provisions which had been applied in their case were thus vindicated.

On those grounds the Court of Appeal, having re-stated that 'the EEC Treaty of 25 March 1957 which, pursuant to Article 55 of the Constitution, has an authority superior to that of laws, established a new legal order integrated with that of the Member States which is directly applicable to the nationals of those States and is binding on the courts of Member States', acquitted the accused on the ground that 'since the Court of Justice of the European Communities had thus declared that by regulating in a discriminatory manner advertising in favour of alcoholic beverages had failed to fulfil its obligations imposed upon it by virtue of Article 30 of the Treaty of the European Economic Community the rules governing such advertising thus conflict with the legal order established by the Treaty and cannot be applied to French nationals, as the Treaty has an authority superior to the law laying down those rules with the result that the accused may not be charged with a breach of those rules'. Other French courts ruling in similar cases have also followed the judgment of the Court of Justice of 10 July 1980 by granting acquittals on very similar grounds.

### III – Annexes

#### ANNEX I

##### **Organization of public sittings of the Court**

As a general rule, sittings of the Court are held on Tuesdays, Wednesdays and Thursdays every week, except during the Court's vacations (from 22 December to 8 January, the week preceding and two weeks following Easter, and 15 July to 15 September) and three weeks each year when the Court also does not sit (the week following Carnival Monday, the week following Whit Monday and the week of All Saints).

See also the full list of public holidays in Luxembourg set out below.

Visitors may attend public hearings of the Court or of the Chambers to the extent permitted by the seating capacity. No visitor may be present at cases heard *in camera* or during interlocutory proceedings.

Half an hour before the beginning of public hearings visitors who have indicated that they will be attending the hearing are supplied with relevant documents.

##### **Public holidays in Luxembourg**

In addition to the Court's vacations mentioned above the Court of Justice is closed on the following days:

New Year's Day	1 January
Easter Monday	
Ascension Day	
Whit Monday	
May Day	1 May
Luxembourg national holiday	23 June
Assumption	15 August
All Saints' Day	1 November
All Souls' Day	2 November
Christmas Eve	24 December
Christmas Day	25 December
Boxing Day	26 December
New Year's Eve	31 December

## ANNEX 2

### Summary of types of procedure before the Court of Justice

It will be remembered that under the Treaties a case may be brought before the Court of Justice either by a national court with a view to determining the validity or interpretation of a provision of Community law, or directly by the Community institutions, Member States or private parties under the conditions laid down by the Treaties.

#### A - *References for preliminary rulings*

The national court submits to the Court of Justice questions relating to the validity or interpretation of a provision of Community law by means of a formal judicial document (decision, judgment or order) containing the wording of the question(s) which it wishes to refer to the Court of Justice. This document is sent by the registry of the national court to the Registry of the Court of Justice,<sup>1</sup> accompanied in appropriate cases by a file intended to inform the Court of Justice of the background and scope of the questions referred to it.

During a period of two months the Council, the Commission, the Member States and the parties to the national proceedings may submit observations or statements of case to the Court of Justice, after which they will be summoned to a hearing at which they may submit oral observations, through their agents in the case of the Council, the Commission and the Member States, through lawyers who are members of a Bar of a Member State or through university teachers who have a right of audience before the Court pursuant to Article 36 of the Rules of Procedure.

After the Advocate General has presented his opinion the judgment given by the Court of Justice is transmitted to the national court through the registries.

#### B - *Direct actions*

Actions are brought before the Court by an application addressed by a lawyer to the Registrar (L-2920 Luxembourg) by registered post.

Any lawyer who is a member of the Bar of one of the Member States or a professor holding a chair of law in a university of a Member State, where the law of such State authorizes him to plead before its own courts, is qualified to appear before the Court of Justice.

The application must contain:

the name and permanent residence of the applicant;

the name of the party against whom the application is made;

the subject-matter of the dispute and the grounds on which the application is based;

the form of order sought by the applicant;

the nature of any evidence offered;

an address for service in the place where the Court has its seat, with an indication of the name of a person who is authorized and has expressed willingness to accept service.

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<sup>1</sup> Court of Justice of the European Communities, L-2920 Luxembourg. Telephone: 43031. Telegrams: CURIA. Telex: 2510 CURIA LU.

The application should also be accompanied by the following documents:

the decision the annulment of which is sought, or, in the case of proceedings against an implied decision, documentary evidence of the date on which the request to the institution in question was lodged;  
a certificate that the lawyer is entitled to practise before a court of a Member State;  
where an applicant is a legal person governed by private law, the instrument or instruments constituting and regulating it, and proof that the authority granted to the applicant's lawyer has been properly conferred on him by someone authorized for the purpose.

The parties must choose an address for service in Luxembourg. In the case of the governments of Member States, the address for service is normally that of their diplomatic representative accredited to the Government of the Grand Duchy of Luxembourg. In the case of private parties (natural or legal persons) the address for service – which in fact is merely a 'letter-box' – may be that of a Luxembourg lawyer or any person enjoying their confidence.

The application is notified to defendants by the Registry of the Court of Justice. It calls for a defence to be put in by them; these documents may be supplemented by a reply on the part of the applicant and finally a rejoinder on the part of the defence.

The written procedure thus completed is followed by an oral hearing, at which the parties are represented by lawyers or agents (in the case of Community institutions or Member States).

After the opinion of the Advocate General has been heard, the judgment is given. It is served on the parties by the Registry.

## ANNEX 3

### Notes for the guidance of Counsel at oral hearings<sup>1</sup>

These notes are issued by the Court with the object of making it possible, with the assistance of Counsel for the parties, to ensure that the Court may dispose of its business in the most effective and expeditious manner possible.

#### 1. *Estimates of time*

The Registrar of the Court always requests from Counsel an estimate in writing of the length of time for which they wish to address the Court. It is most important that this request be promptly complied with so that the Court may arrange its timetable. Moreover, the Court finds that Counsel frequently underestimate the time likely to be taken by their address – sometimes by as much as 100%. Mistaken estimates of this kind make it difficult for the Court to draw up a precise schedule of work and to fulfil all its commitments in an orderly manner. Counsel are accordingly asked to be as accurate as possible in their estimates, bearing in mind that they may have to speak more slowly before this Court than before a national court for the reasons set out in point 4 below.

#### 2. *Length of address to the Court*

This inevitably must vary according to the complexity of the case but Counsel are requested to remember that:

- (i) the members of the Court will have read the papers;
- (ii) the essentials of the arguments presented to the Court will have been summarized in the Report for the Hearing and
- (iii) the object of the oral hearing is, for the most part, to enable Counsel to comment on matters which they were unable to treat in their written pleadings or observations.

Accordingly, the Court would be grateful if Counsel would keep the above considerations in mind. This should enable Counsel to limit their address to the essential minimum. Counsel are also requested to endeavour not to take up with their address the whole of the time fixed for the hearing, so that the Court may have the opportunity to ask questions.

#### 3. *The Report for the Hearing*

As this document will normally form the first part of the Court's judgment Counsel are asked to read it with care and, if they find any inaccuracies, to inform the Registrar before the hearing. At the hearing they will be able to put forward any amendment which they propose for the drafting of the part of the judgment headed 'Facts and Issues'.

#### 4. *Simultaneous translation*

Depending on the language of the case not all the members of the Court will be able to listen directly to the Counsel. Some will be listening to an interpreter. The interpreters are highly skilled but their task is a difficult one and Counsel are particularly asked, in the interests of justice, to speak slowly and into the microphone. Counsel are also asked so far as it is possible to simplify their presentation. A series of short sentences in place of one long and complicated sentence is always to be preferred. It is also helpful to the Court and would avoid misunderstanding if, in approaching any topic, Counsel

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<sup>1</sup> These notes are issued to Counsel before the hearing.



would first state very briefly the tenor of their arguments, and, in an appropriate case, the number and nature of their supporting points, before developing the argument more fully.

#### 5. *Written texts*

For simultaneous translation it is always better to speak *freely* from notes rather than to read a prepared text. However, if Counsel has prepared a written text of his address which he wishes to *read* at the hearing it assists the simultaneous translation if the interpreters can be given a copy of it some days before the hearing. It goes without saying that this recommendation does not in any way affect Counsel's freedom to amend, abridge, or supplement his prepared text (if any) or to put his points to the Court as he sees fit. Finally it should be emphasized that any reading should not be too rapid and that figures and names should be pronounced clearly and slowly.

#### 6. *Citations*

Counsel are requested, when citing in argument a previous judgment of the Court, to indicate not merely the number of the case in point but also the names of the parties and the reference to it in the Reports of Cases before the Court (the ECR). In addition, when citing a passage from the Court's judgment or from the opinion of its Advocate General, Counsel should specify the number of the page on which the passage in question appears.

#### 7. *Documents*

The Court wishes to point out that under Article 37 of the Rules of Procedure all documents relied on by the parties must be annexed to a pleading. Save in exceptional circumstances and with the agreement of the parties, the Court will not admit any documents produced after the close of pleadings, except those produced at its own request; this also applies to any documents submitted at the hearing.

Since all the oral arguments are recorded, the Court also does not allow notes of oral arguments to be lodged.

## ANNEX 4

### Information and documentation on the Court of Justice and its work

#### COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

L-2920 Luxembourg

Telephone: 43031

Telex (Registry): 2510 CURIA LU

Telex (Information Office of the Court): 2771 CJ INFO LU

Telegrams: CURIA

Complete list of publications:

#### A – Texts of judgments and opinions and information on current cases

##### 1. *Judgments or orders of the Court and opinions of Advocates General*

Orders for offset copies, provided some are still available, may be made to the Internal Services Branch of the Court of Justice of the European Communities. L-2920 Luxembourg, on payment of a fixed charge of BFR 100 for each document. Copies may no longer be available once the issue of the European Court Reports containing the required judgment or opinion of an Advocate General has been published.

Anyone showing he is already a subscriber to the Reports of Cases before the Court may pay a subscription to receive offset copies in one or more of the Community languages.

The annual subscription will be the same as that for European Court Reports, namely BFR 2 000 for each language.

Anyone who wishes to have a complete set of the Court's cases is invited to become a regular subscriber to the Reports of Cases before the Court (see below).

##### 2. *Calendar of the sittings of the Court*

The calendar of public sittings is drawn up each week. It may be altered and is therefore for information only.

This calendar may be obtained free of charge on request from the Court Registry.

#### B – Official publications

##### 1. *Reports of Cases before the Court*

The Reports of Cases before the Court are the only authentic source for citations of judgments of the Court of Justice.

The volumes for 1954 to 1980 are published in Dutch, English, French, German and Italian.

The Danish edition of the volumes for 1954 to 1972 comprises a selection of judgments, opinions and summaries from the most important cases.

Since 1973, all judgments, opinions and summaries are published in their entirety in Danish.

The Reports of Cases before the Court are on sale at the following addresses:

BELGIUM:	Éts Émile Bruylant, Rue de la Régence 67, 1000 Bruxelles.
DENMARK:	J.H. Schultz Boghandel, Møntergade 19, 1116 København K.
FRANCE:	Éditions A. Pedone, 13 rue Soufflot, 75005 Paris.
FEDERAL REPUBLIC OF GERMANY:	Carl Heymann's Verlag, Gereonstraße 18-32, 5000 Köln 1.
IRELAND:	Stationery Office, Dublin 4, or Government Publications Sales Office, GPO Arcade, Dublin 1.
ITALY:	CEDAM – Casa Editrice Dott. A. Milani, Via Jappelli 5, 35100 Padova (M-64194).
LUXEMBOURG:	Office for Official Publications of the European Communities, 2985 Luxembourg.
NETHERLANDS:	NV Martinus Nijhoff, Lange Voorhout 9,'s-Gravenhage.
UNITED KINGDOM:	Hammick, Sweet & Maxwell, 16 Newman Lane, Alton. Hants GU34 2PJ.
OTHER COUNTRIES:	Office for Official Publications of the European Communities, 2985 Luxembourg.

*2. Selected Instruments Relating to the Organization Jurisdiction and Procedure of the Court (1975 edition)*

Orders, indicating the language required, should be addressed to the Office for Official Publications of the European Communities, L-2985 Luxembourg.

**C – General legal information and documentation**

**I – Publications by the Information Office of the Court of Justice of the European Communities**

Applications to subscribe to the following three publications may be sent to the Information Office (L-2920 Luxembourg) specifying the language required. They are supplied free of charge.

*1. Proceedings of the Court of Justice of the European Communities*

Weekly information sheet on the legal proceedings of the Court containing a short summary of judgments delivered and a brief description of the opinions, the oral procedure and the cases brought during the previous week.

*2. Information on the Court of Justice of the European Communities*

Quarterly bulletin containing the summaries and a brief résumé of the judgments delivered by the Court of Justice of the European Communities.

*3. Annual synopsis of the work of the Court*

Annual publication giving a synopsis of the work of the Court of Justice of the European Communities in the area of case-law as well as of other activities (study courses for judges, visits, study groups, etc.). This publication contains much statistical information.

#### 4. *General information brochure on the Court of Justice of the European Communities*

This brochure provides information on the organization, jurisdiction and composition of the Court of Justice of the European Communities.

The first three publications mentioned above are published in each official language of the Communities. The general information brochure is not available in Greek.

## II – Publications by the Research and Documentation Division of the Court of Justice

### 1. *Digest of Community Case-law*

The Court of Justice has commenced publication of the 'Digest of Community Case-law' which will systematically present not only the whole of the case-law of the Court of Justice of the European Communities but also selected judgments of national courts. In its conception it is based on the 'Répertoire de la Jurisprudence relative aux traités instituant les Communautés européennes' (see below under 2.) The Digest will appear in all the languages of the Communities. It will be published in the form of loose-leaf binders and supplements will be issued periodically.

The Digest comprising four series each of which will appear and may be obtained separately will cover the following fields:

- A series: Case-law of the Court of Justice of the European Communities excluding the matters covered by the C and D series.
- B series: Case-law of the courts of Member States excluding the matters covered by the D series.
- C series: Case-law of the Court of Justice of the European Communities relating to Community staff law.
- D series: Case-law of the Court of Justice of the European Communities and of the courts of Member States relating to the EEC Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters. (This series replaces the *Synopsis of case-law* which was published in instalments by the Documentation Division of the Court but has now been discontinued.)

The first issue of the A series will be published during 1982 and will begin with the French edition. That issue will cover the judgments delivered by the Court of Justice of the European Communities during the years 1977 to 1980. Periodic supplements will be issued.

*The first issue of the D series was published in autumn 1981.* It covers the case-law of the Court of Justice of the European Communities from 1976 to 1979 and the case-law of the courts of Member States from 1973 to 1978. The first supplement will cover the case-law of the Court of Justice in 1980 and judgments of national courts in 1979.

Orders may be addressed, either to the Office for Official Publications of the European Communities, L-2985 Luxembourg, or to one of the addresses given for the sale of Reports of Cases Before the Court under B 1 above.

### 2. *Répertoire de la jurisprudence relative aux traités instituant les Communautés européennes – Europäische Rechtsprechung* (published by H.J. Eversen and H. Sperl)

This *répertoire* which has ceased publication contains extracts from judgments of the Court of Justice

of the European Communities and from judgments of national courts and covers the years 1954 to 1976. The German and French versions are on sale at:

Carl Heymann's Verlag  
Gereonstraße 18-32  
D - 5000 Köln 1  
(Federal Republic of Germany)

*Compendium of case-law relating to the European Communities*  
(published by H.J. Eversen, H. Sperl and J.A. Usher)

In addition to the complete collection in French and German (1954 to 1976) an English version is now available for 1973 to 1976. The English version is on sale at:

Elsevier - North Holland  
PO Box 211  
Amsterdam (The Netherlands)

## ANNEX 5

### Information on Community law

Community case-law<sup>1</sup> is published in the following journals amongst others:

- Belgium:**
- Cahiers de droit européen
  - Info-Jura
  - Journal des tribunaux
  - Journal des tribunaux du travail
  - Jurisprudence commerciale de Belgique
  - Pasicrisie belge
  - Rechtskundig weekblad
  - Recueil des arrêts et avis du Conseil d'État
  - Revue belge de droit international
  - Revue belge de sécurité sociale
  - Revue de droit fiscal
  - Revue de droit international et de droit comparé
  - Sociaal-economische wetgeving
  - Tijdschrift rechtsdocumentatie
  - Tijdschrift voor privaatrecht
  - Revue de droit intellectuel – "l'Ingénieur-conseil"
- Denmark:**
- Juristen & Økonomen
  - Nordisk Tidsskrift for International Ret
  - Ugeskrift for Retsvæsen
- France:**
- Actualité juridique
  - Annales de la propriété industrielle, artistique et littéraire
  - Annuaire français de droit international
  - Le droit et les affaires
  - Droit rural
  - Droit social
  - Gazette du palais
  - Journal du droit international
  - Propriété industrielle, bulletin documentaire
  - Le Quotidien juridique
  - Recueil Dalloz-Sirey
  - Revue critique de droit international privé
  - Revue du droit public et de la science politique en France et à l'étranger
  - Revue internationale de la concurrence
  - Revue trimestrielle de droit européen
  - La Semaine juridique – Juris-Classeur périodique, Édition générale
  - La Semaine juridique – Juris-Classeur périodique, Édition commerce et industrie
  - La Vie judiciaire

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<sup>1</sup> Community case-law means the decisions of the Court as well as those of national courts concerning a point of Community law.

*Federal Republic  
of Germany:*

Deutsches Verwaltungsblatt  
Entscheidungen der Finanzgerichte  
Europarecht  
Europäische Grundrechte-Zeitschrift (EuGRZ)  
Gewerblicher Rechtsschutz und Urheberrecht, Internationaler Teil  
Gewerblicher Rechtsschutz und Urheberrecht  
Juristenzeitung  
Jus-Juristische Schulung  
Monatsschrift für deutsches Recht  
Neue juristische Wochenschrift  
Die öffentliche Verwaltung  
Recht der internationalen Wirtschaft (Außenwirtschaftsdienst des Betriebs-  
Beraters)  
Wirtschaft und Wettbewerb  
Zeitschrift für das gesamte Handels- und Wirtschaftsrecht  
Zeitschrift für Zölle und Verbraucheteuern

*Greece:*

Ἑλληνική ἐπιθεώρηση εὐρωπαϊκοῦ δικαίου  
Ἐπιθεώρηση τῶν Εὐρωπαϊκῶν Κοινοτήτων

*Ireland:*

The Gazette of the Incorporated Law Society of Ireland  
The Irish Jurist  
The Irish Law Times

*Italy:*

Affari sociali internazionali  
Diritto comunitario e degli scambi internazionali  
Il Foro italiano  
Il Foro padano  
Giustizia civile  
Giurisprudenza italiana  
Nuove leggi civili commentate  
Rassegna dell'avvocatura dello Stato  
Rivista di diritto agrario  
Rivista di diritto europeo  
Rivista di diritto industriale  
Rivista di diritto internazionale  
Rivista di diritto internazionale privato e processuale  
Rivista di diritto processuale

*Luxembourg:*

Pasicrisie luxembourgeoise  
Questions sociales  
Recueil des arrêts rendus en matière administrative par le Conseil d'État, Comité  
du contentieux

*The Netherlands:*

Ars aequi  
Bijblad bij de Industriële Eigendom  
BNB - Beslissingen in Nederlandse belastingzaken  
Common Market Law Review  
Nederlandse Jurisprudentie - Administratieve en Rechterlijke Beslissingen  
Nederlandse Jurisprudentie - Uitspraken in burgerlijke en strafzaken  
Rechtspraak Sociale Verzekering  
Rechtspraak van de Week  
Sociaal-economische Wetgeving  
UTC - Uitspraken van de Tariefcommissie  
WPNR - Weekblad voor Privaatrecht, Notariaat en Registratie

*United Kingdom:* All England Law Reports  
Cambridge Law Journal  
Common Market Law Reports  
Current Law  
European Law Digest  
European Law Letter  
European Law Review  
Fleet Street Patent Law Reports  
Industrial Cases Reports  
Industrial Relations Law Reports  
The Journal of the Law Society of Scotland  
The Law Reports  
The Law Society's Gazette  
Modern Law Review  
New Law Journal  
Scottish Current Law  
Scots Law Times  
Weekly Law Reports



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