Synopsis of the work of the Court of Justice and the Court of First Instance of the European Communities in 1988 and 1989 and record of formal sittings in 1988 and 1989

Luxembourg, 1990

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Foreword

This synopsis of the work of the Court of Justice of the European Communities and, for the first time, the Court of First Instance of the European Communities, established in 1989, is intended for judges, lawyers and practitioners 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 of Justice and the Court of First Instance, whose judgments are published only in the *Reports of Cases before the Court* (ECR).

The synopsis is published in the official languages of the European Communities (Danish, Dutch, English, French, German, Greek, Italian, Portuguese and Spanish). It is obtainable free of charge on request (specifying the language required) from the Press and Information offices of the European Communities whose addresses are listed on page 151.

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I — Proceedings of the Court of Justice of the European Communities in 1988 and 1989

1. Case-law of the Court

A. *Statistical information* [1]

1988

Judgments delivered

During 1988, the Court of Justice of the European Communities delivered 238 judgments and interlocutory orders:

98 were in direct actions (excluding actions brought by officials of the Communities);
108 were in cases referred to the Court for preliminary rulings by the national courts of the Member States;
32 were in cases concerning Community staff law.

115 of the judgments were delivered by the full Court,
123 by the different Chambers.

The President of the Court, or the Presidents of Chambers, were called upon in 1988 to decide on 17 applications for interim measures.

Public sittings

In 1988, the Court held 69 public sittings. The Chambers held 94 public sittings. There were also 218 sittings dealing with submissions.

[1] NB: In contrast to the previous edition of the synopsis for the years 1986 and 1987, the statistical lay-out has had to be modified in view of the computerization of the Registry.

Cases pending

Cases pending may be analysed as follows:

	31 December 1987		31 December 1988	
Full Court		422		402
Chambers				
— Actions by officials of the Communities	104		108	
— Other actions	77		95	
Total number before the Chambers		181		203
Total number of current cases		603		605

Length of proceedings

Proceedings lasted for the following periods:

In cases brought directly before the Court, the average length was approximately 23 months (the shortest being 5 1/2 months). In cases arising from questions referred to the Court by national courts for preliminary rulings, the average length was somewhat less than 17 1/2 months (including judicial vacations).

Cases brought in 1988

In 1988 373 cases were brought before the Court of Justice. They concerned:

1. Treaty infringement proceedings brought by the Commission against a Member State:

Belgium	10
Denmark	3
Federal Republic of Germany	8
Greece	14
Spain	1
France	10
Ireland	8
Italy	14
Luxembourg	2
Netherlands	3
Portugal	—
United Kingdom	—
Total	73

2. Actions brought against the institutions:

the Commission	80
the Council	16
the Court of Justice	6
the European Parliament	13
the Court of Auditors	1
the Economic and Social Committee	4
Total	120

3. Actions brought by officials of the Communities: 58

Total 58

4. 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:

Belgium 32
- 1 from the Conseil d'État
- 31 from courts of first instance or of appeal

Denmark 4
- 2 from the Højesteret
- 2 from courts of first instance or of appeal

Federal Republic of Germany 34
- 2 from the Bundesgerichtshof
- 4 from the Bundesverwaltungsgericht
- 1 from the Bundesfinanzhof
- 1 from the Bundessozialgericht
- 26 from courts of first instance or of appeal

Greece . . . . . —

Spain 1
- from courts of first instance or of appeal

France 37
- 3 from the Cour de cassation
- 1 from the Conseil d'État
- 33 from courts of first instance or of appeal

Ireland . . . . . —

Italy 28
- from courts of first instance or of appeal

Luxembourg	2
1 from the Cour supérieure de justice	
1 from the Conseil d'État	
Netherlands	25
1 from the Raad van State	
6 from the Hoge Raad	
1 from the Centrale Raad van Beroep	
7 from the College van Beroep voor het Bedrijfsleven	
1 from the Tariefcommissie	
9 from courts of first instance or of appeal	
Portugal	—
United Kingdom	16
2 from the Court of Appeal	
14 from courts of first instance or of appeal	
Total	179

Lawyers

During the sittings held in 1988, apart from the representation or agents of the Council, the European Parliament, the Commission and the Member States, the Court heard:

lawyers from Belgium	39
lawyers from Denmark	4
lawyers from the Federal Republic of Germany	26
lawyers from Greece	6
lawyers from Spain	2
lawyers from France	23
lawyers from Ireland	1
lawyers from Italy	19
lawyers from Luxembourg	20
lawyers from the Netherlands	9
lawyers from Portugal	1
lawyers from the United Kingdom	26
	176

Tables of cases decided in 1988 [1]

TABLE 1

Cases decided in 1988 — Form of decision

Form of decision	Direct actions	Actions brought by officials	Preliminary references	Special proceedings	Total
Judgments					
In contested cases	97 (121)	29 (36)	—	—	126 (157)
By default	—	1 (1)	—	—	1 (1)
In interlocutory proceedings	1	2 ( )	—	—	3 ( )
In references for a preliminary ruling	—	—	108 (133)	—	108 (133)
Total judgments	98 (121)	32 (37)	108 (133)	—	238 (291)
Orders					
Removal from Register	43 (45)	7 (7)	14 (17)	1 (1)	65 (70)
Action inadmissible	5 (5)	6 (7)	—	1 (2)	12 (14)
Case not to proceed to judgment	2 (2)	2 (2)	—	—	4 (4)
Action unfounded	1 (1)	—	—	—	1 (1)
Action partially unfounded	—	—	—	1 (1)	1 (1)
Action well founded	—	—	—	5 (5)	5 (5)
Total orders	51 (53)	15 (16)	14 (17)	8 (9)	88 (95)
Total	149 (174)	47 (53)	122 (150)	8 (9)	326 (386)

TABLE 2

Total number of cases decided in 1988 — Bench hearing case

Bench hearing case	Total cases decided	Judgments	Orders
Full Court	103	46	48
Small Plenum	99	69	14
Chambers	184	123	26
Total	386	238	88

[1] The figures in brackets (gross figure) represent the total number of cases, without taking account of cases joined on grounds of similarity (one case number = one case). The net figure represents the number of cases after account has been taken of those joined on grounds of similarity (one series of joined cases = one case).

TABLE 3

Cases decided in 1988 — Basis of proceedings

Basis of proceedings	Judgments	Orders	Total
Article 169 EEC Treaty	46 (47)	29 (31)	75 (78)
Article 171 EEC Treaty	3 (6)	1 (1)	4 (7)
Article 173 EEC Treaty	40 (52)	15 (15)	55 (67)
Article 175 EEC Treaty	3 (3)	—	3 (3)
Article 177 EEC Treaty	103 (128)	13 (16)	116 (144)
Article 178 EEC Treaty	—	1 (1)	1 (1)
1971 Protocol to Brussels Convention	4 (4)	1 (1)	5 (5)
Total EEC Treaty	199 (240)	60 (65)	259 (305)
Article 33 ECSC Treaty	4 (10)	4 (4)	8 (14)
Article 35 ECSC Treaty	1 (1)	—	1 (1)
Article 38 ECSC Treaty	1 (2)	—	1 (2)
Total ECSC Treaty	6 (13)	4 (4)	10 (17)
Article 146 EAEC Treaty	—	1 (1)	1 (1)
Article 150 EAEC Treaty	1 (1)	—	1 (1)
Total EAEC Treaty	1 (1)	1 (1)	2 (2)
Staff Regulations	32 (37)	15 (16)	47 (53)
Total	238 (291)	80 (86)	318 (377)
Article 74 Rules of Procedure	—	6 (6)	6 (6)
Article 102 Rules of Procedure	—	2 (3)	2 (3)
Special proceedings	—	8 (9)	8 (9)
Overall total	238 (291)	88 (95)	326 (386)

TABLE 4

Cases decided in 1988 — Subjects of the proceedings

Subject of the proceedings	Judgments	Orders	Total
Agriculture	48 (67)	18 (20)	66 (87)
Approximation of laws	8 (11)	7 (7)	15 (18)
Brussels Convention	4 (4)	1 (1)	5 (5)
Commercial policy	11 (15)	1 (1)	12 (16)
Company law	2 (2)	—	2 (2)
Competition	10 (9)	2 (2)	12 (11)
Energy policy	—	1 (1)	1 (1)
External relations	1 (2)	2 (2)	3 (4)
Free movement of capital	2 (2)	—	2 (2)
Free movement of goods	30 (30)	6 (6)	36 (36)
Free movement of persons	22 (23)	4 (4)	26 (27)
Law governing the institutions	3 (4)	1 (1)	4 (5)
Principles of the Treaty	11 (13)	—	11 (13)
Privileges and immunities	1 (1)	—	1 (1)
Social policy	7 (8)	3 (3)	10 (11)
State aid	7 (11)	1 (1)	8 (12)
Taxation	24 (31)	9 (12)	33 (43)
Transport	1 (1)	2 (2)	3 (3)
Total EEC Treaty	192 (234)	58 (63)	250 (297)
Joint Undertaking	—	1 (1)	1 (1)
Protection of the population	1 (1)	—	1 (1)
Total EAEC Treaty	1 (1)	1 (1)	2 (2)
Iron and steel	5 (11)	4 (4)	9 (15)
Total ECSC Treaty	5 (11)	4 (4)	9 (15)
Financial and budgetary provisions	4 (4)	—	4 (4)
Privileges and immunities	1 (1)	—	1 (1)
Rules of Procedure	—	8 (9)	8 (9)
Staff Regulations	35 (40)	17 (18)	52 (58)
Total EC	40 (45)	25 (27)	65 (72)
Overall total	238 (291)	88 (95)	326 (386)

Tables of cases brought in 1988

TABLE 1

Cases brought in 1988 — Nature of proceedings

References for a preliminary ruling	179
Direct actions	
— for annulment of measures	53
— for failure to act	1
— for compensation	7
— for failure to fulfil obligations	73
— under an arbitration clause	2
— brought by officials	58
Total	373
Special proceedings	
— Taxation of costs	6
— Revision of a judgment	1
— Third party proceedings	3
Total	10
Immunities	1
Application for attachment order	1
Overall total	385

TABLE 2

Cases brought in 1988 — Basis of proceedings

Article 169 EEC Treaty	70
Article 171 EEC Treaty	2
Article 173 EEC Treaty	44
Article 175 EEC Treaty	1
Article 177 EEC Treaty	172
Article 178 EEC Treaty	5
Article 181 EEC Treaty	1
1971 Protocol to Brussels Convention	6
Total EEC Treaty	301
Article 33 ECSC Treaty	7
Article 34 ECSC Treaty	2
Article 38 ECSC Treaty	1
Article 41 ECSC Treaty	1
Total ECSC Treaty	11
Article 141 EAEC Treaty	1
Article 146 EAEC Treaty	1
Article 153 EAEC Treaty	1
Total EAEC Treaty	3
Staff Regulations	58
Total	373
Article 74 Rules of Procedure	6
Article 97 Rules of Procedure	3
Article 102 Rules of Procedure	1
Protocol on Privileges and Immunities	2
Special proceedings	12
Overall total	385

TABLE 3

Cases brought in 1988 — Subject of actions

Subject of the action	Direct actions	References for a preliminary ruling	Total of cases brought
Agriculture	31	57	88
Approximation of laws	21	5	26
Brussels Convention	—	6	6
Commercial policy	6	8	14
Company law	4	5	9
Competition	6	4	10
Environmental and consumer affairs	1	—	1
External relations	1	—	1
Free movement of goods	13	36	49
Free movement of persons	5	23	28
Law governing the institutions	8	1	9
Principles of the Treaty	—	1	1
Social policy	8	9	17
State aid	4	—	4
Taxation	9	20	29
Transport	2	2	4
Total EEC Treaty	119	177	296
Law governing the institutions	1	—	1
Protection of the population	2	—	2
Total EAEC Treaty	3	—	3
Financial provisions	—	1	1
Law governing the institutions	2	—	2
Iron and steel	7	—	7
Total ECSC Treaty	9	1	10
Financial and budgetary provisions	4	—	4
Law governing the institutions	1	—	2
Privileges and immunities	—	1	2
Rules of Procedure	—	—	10
Staff Regulations	—	—	58
Total EC	5	1	76
Overall total	136	179	385

TABLE 4

Direct actions brought in 1988 — Applicants and defendants

By		Against	
Belgium	—	Belgium	10
Denmark	—	Denmark	3
Federal Republic of Germany	1	Federal Republic of Germany	8
Greece	4	Greece	14
Spain	3	Spain	1
France	6	France	10
Ireland	—	Ireland	8
Italy	4	Italy	14
Luxembourg	1	Luxembourg	2
Netherlands	—	Netherlands	3
Portugal	—	Portugal	—
United Kingdom	1	United Kingdom	—
Member States total	20	Member States total	73
Commission	79	Council	16
		Commission	80
Parliament	1	Court of Justice	6
		Parliament	13
Officials and agents	58	Court of Auditors	1
		Economic and Social Committee	4
Natural or legal persons	36	Natural or legal persons	1
Total	194	Total	194

TABLE 5

Cases brought in 1988 — Origin of references for a preliminary ruling — Courts making the references

Member State	National Court		Total
Belgium	Conseil d'État	1	
	Lower courts	31	
		32	32
Denmark	Højesteret	2	
	Lower courts	2	
		4	4
Federal Republic of Germany	Bundesgerichtshof	2	
	Bundesverwaltungsgericht	4	
	Bundesfinanzhof	1	
	Bundessozialgericht	1	
	Lower courts	26	
		34	34
Spain	Lower courts	1	
		1	1
France	Cour de cassation	3	
	Conseil d'État	1	
	Lower courts	33	
		37	37
Italy	Lower courts	28	
		28	28
Luxembourg	Cour supérieure de justice	1	
	Conseil d'État	1	
		2	2
Netherlands	Raad van State	1	
	Hoge Raad	6	
	Centrale Raad van Beroep	1	
	College van Beroep	7	
	Tariefcommissie	1	
	Lower courts	9	
		25	25
United Kingdom	Court of Appeal	2	
	Lower courts	14	
		16	16
		Overall total	179

Judgments delivered

During 1989, the Court of Justice of the European Communities delivered 188 judgments and interlocutory orders:

64 were in direct actions (excluding actions brought by officials of the Communities);
90 were in cases referred to the Court for preliminary rulings by the national courts of the Member States;
34 were in cases concerning Community staff law.

72 of the judgments were delivered by the full Court,
116 by the different Chambers.

The President of the Court, or the Presidents of Chambers, were called upon in 1989 to decide on 20 applications for interim measures.

Public sittings

In 1989, the Court held 78 public sittings. The Chambers held 148 public sittings. There were also 218 sittings dealing with submissions.

Cases pending

Cases pending may be analysed as follows:

	31 December 1988		31 December 1989	
Full Court		402		362
Chambers				
— Actions by officials of the Communities	108		9	
— Other actions	95		130	
Total number before the Chambers		203		139
Total number of current cases		605		501 [1]

[1] This figure does not include the 153 cases referred to the Court of First Instance by Order of the President of the Court of Justice of 15 November 1989 (see page 260).

Length of proceedings

Proceedings lasted for the following periods:
In cases brought directly before the Court, the average length was approximately 23 months. In cases arising from questions referred to the Court by national courts for preliminary rulings, the average length was less than 17 months (including judicial vacations).

Cases brought in 1989

In 1989 385 cases were brought before the Court of Justice. They concerned:

1. Treaty infringement proceedings brought by the Commission against a Member State:

Belgium	15
Denmark	1
Federal Republic of Germany	5
Greece	10
Spain	5
France	8
Ireland	2
Italy	36
Luxembourg	6
Netherlands	5
Portugal	1
United Kingdom	5
Total	99

2. Actions brought against the institutions:

the Commission	117
the Council	15
the Council and Commission	3
the European Parliament	10
the Court of Auditors	1
the European Investment Bank	1
Total	147

3. Actions brought by officials of the Communities: 41

Total 41

4. 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:

Belgium 13

from courts of first instance or of appeal

Denmark 2

1 from the Højesteret
1 from courts of first instance or of appeal

Federal Republic of Germany 47

2 from the Bundesgerichtshof
3 from the Bundesverwaltungsgericht
12 from the Bundesfinanzhof
5 from the Bundessozialgericht
25 from courts of first instance or of appeal

Greece 2

from courts of first instance or of appeal

Spain 2

from courts of first instance or of appeal

France 28

1 from the Cour de cassation
27 from courts of first instance or of appeal

Ireland 1

from the Supreme Court

Italy 10

1 from the Corte Suprema di cassazione
9 from courts of first instance or of appeal

Luxembourg 1

from the Court supérieure de justice

Netherlands 18

2 from the Raad van State
6 from the Hoge Raad
1 from the Centrale Raad van Beroep
4 from the College van Beroep voor het Bedrijfsleven
2 from the Tariefcommissie
3 from courts of first instance or of appeal

Portugal 1

from a lower court

United Kingdom	14
2 from the House of Lords	
3 from the Court of Appeal	
9 from courts of first instance or of appeal	
Total	139

Lawyers

During the sittings held in 1989, apart from the representatives or agents of the Council, the European Parliament, the Commission and the Member States, the Court heard:

lawyers from Belgium	56
lawyers from Denmark	6
lawyers from the Federal Republic of Germany	41
lawyers from Greece	6
lawyers from Spain	1
lawyers from France	37
lawyers from Ireland	4
lawyers from Italy	28
lawyers from Luxembourg	11
lawyers from the Netherlands	38
lawyers from Portugal	1
lawyers from the United Kingdom	43
	272

Tables of cases decided in 1989 [1]

TABLE 1

Cases decided in 1989 — Form of decision

Form of decision	Direct actions	Actions brought by officials	Preliminary references	Special proceedings	Total
Judgments					
In contested cases	63 (75)	32 (46)	—	—	95 (121)
By default	1 (1)	—	—	—	1 (1)
In interlocutory proceedings	—	2 ( )	—	—	2 ( )
In references for a preliminary ruling	—	—	90 (121)	—	90 (121)
Total judgments	64 (76)	34 (46)	90 (121)	—	188 (243)
Orders					
Removal from Register	57 (60)	13 (13)	7 (7)	—	77 (80)
Action inadmissible	2 (2)	1 (1)	—	3 (3)	6 (6)
Case not to proceed to judgment	4 (4)	1 (1)	—	—	5 (5)
Action partially unfounded	—	—	—	2 (2)	2 (2)
Transfer of cases to the Court of First Instance	75 (75)	76 (78)	—	—	151 (153)
Total orders	138 (141)	91 (93)	7 (7)	5 (5)	241 (246)
Total	202 (217)	125 (139)	97 (128)	5 (5)	429 (489)

TABLE 2

Total number of cases decided in 1989 — Bench hearing case

Bench hearing case	Total cases decided	Judgments	Orders
Full Court	153	18	131
Small Plenum	78	54	14
Chambers	258	116	96
Total	489	188	241

[1] The figures in brackets (gross figure) represent the total number of cases, without taking account of cases joined on grounds of similarity (one case number = one case). The net figure represents the number of cases after account has been taken of those joined on grounds of similarity (one series of joined cases = one case).

TABLE 3

Cases decided in 1989 — Basis of proceedings

Basis of proceedings	Judgments	Orders	Total
Article 169 EEC Treaty	26 (27)	37 (37)	63 (64)
Article 171 EEC Treaty	1 (1)	—	1 (1)
Article 173 EEC Treaty	29 (36)	88 (89)	117 (125)
Article 175 EEC Treaty	1 (1)	1 (1)	2 (2)
Article 177 EEC Treaty	89 (120)	7 (7)	96 (127)
Article 178 EEC Treaty	4 (5)	—	4 (5)
Article 181 EEC Treaty	—	1 (1)	1 (1)
1971 Protocol to Brussels Convention	1 (1)	—	1 (1)
Total EEC Treaty	151 (191)	134 (135)	285 (326)
Article 33 ECSC Treaty	3 (6)	9 (11)	12 (17)
Article 34 ECSC Treaty	—	1 (1)	1 (1)
Article 35 ECSC Treaty	—	1 (1)	1 (1)
Total ECSC Treaty	3 (6)	11 (13)	14 (19)
Staff Regulations	34 (46)	91 (93)	125 (139)
Total	188 (243)	236 (241)	424 (484)
Article 74 Rules of Procedure	—	1 (1)	1 (1)
Article 97 Rules of Procedure	—	3 (3)	3 (3)
Protocol on Privileges and Immunities	—	1 (1)	1 (1)
Special proceedings	—	5 (5)	5 (5)
Overall total	188 (243)	241 (246)	429 (489)

TABLE 4

Cases decided in 1989 — Subjects of the proceedings

Subject of the proceedings	Judgments	Orders	Total
Agriculture	42 (51)	12 (12)	54 (63)
Approximation of laws	—	12 (12)	12 (12)
Brussels Convention	1 (1)	—	1 (1)
Commercial policy	8 (8)	1 (1)	9 (9)
Company law	3 (3)	2 (2)	5 (5)
Competition	9 (14)	74 (74)	83 (88)
Environmental & consumer protection	3 (3)	3 (3)	6 (6)
Free movement of goods	29 (37)	7 (7)	36 (44)
Free movement of persons	21 (22)	4 (4)	25 (26)
Law governing the institutions	3 (3)	4 (4)	7 (7)
Principles of the Treaty	1 (1)	—	1 (1)
Social policy	7 (9)	6 (6)	13 (15)
State aid	1 (1)	2 (3)	3 (4)
Taxation	13 (27)	6 (6)	19 (33)
Transport	4 (4)	—	4 (4)
Total EEC Treaty	145 (184)	133 (134)	278 (318)
Iron and steel	3 (6)	10 (12)	13 (18)
Law governing the institutions	—	1 (1)	1 (1)
Total ECSC Treaty	3 (6)	11 (13)	14 (19)
Financial and budgetary provisions	4 (5)	1 (1)	5 (6)
Privileges and immunities	—	1 (1)	1 (1)
Rules of Procedure	—	4 (4)	4 (4)
Staff Regulations	36 (48)	91 (93)	127 (141)
Total EC	40 (53)	97 (99)	137 (152)
Overall total	188 (243)	241 (246)	429 (489)

Tables of cases brought in 1989

TABLE 1

Cases brought in 1989 — Nature of proceedings

References for a preliminary ruling	139
Direct actions	
— for annulment of measures	98
— for failure to act	2
— for compensation	6
— for failure to fulfil obligations	99
— brought by Community officials	41
Total	385

TABLE 2

Cases brought in 1989 — Basis of proceedings

Article 169 EEC Treaty	93
Article 171 EEC Treaty	6
Article 173 EEC Treaty	95
Article 175 EEC Treaty	2
Article 177 EEC Treaty	135
Article 178 EEC Treaty	5
1971 Protocol to Brussels Convention	4
Total EEC Treaty	340
Article 33 ECSC Treaty	2
Article 34 ECSC Treaty	1
Article 38 ECSC Treaty	1
Total ECSC Treaty	4
Staff Regulations	41
Overall total	385

TABLE 3

Cases brought in 1989 — Subject of actions

Subject of the action	Direct actions	References for a preliminary ruling	Total of cases brought
Agriculture	26	28	54
Approximation of laws	11	2	13
Brussels Convention	—	3	3
Commercial policy	5	—	5
Company law	5	5	10
Competition	58	2	60
Economic policy	1	—	1
Energy policy	1	—	1
Environmental and consumer affairs	20	1	21
External relations	4	3	7
Free movement of goods	17	40	57
Free movement of persons	13	28	41
Law governing the institutions	—	2	2
Principles of the Treaty	2	1	3
Rules of Procedure	2	—	2
Social policy	11	8	19
State aid	7	—	7
Taxation	10	14	24
Transport	5	1	6
Total EEC Treaty	198	138	336
Law governing the institutions	1	—	1
State aid	1	—	1
Iron and steel	1	—	1
Total ECSC Treaty	3	—	3
Financial and budgetary provisions	3	—	3
Law governing the institutions	1	—	1
Staff Regulations	—	1	42
Total EC	4 [1]	1	46
Overall total	205 [1]	139	385

[1] Excluding staff cases.

TABLE 4

Direct actions brought in 1989 — Applicants and defendants

By		Against	
Belgium	1	Belgium	15
Denmark	—	Denmark	1
Federal Republic of Germany	3	Federal Republic of Germany	5
Greece	2	Greece	10
Spain	1	Spain	5
France	1	France	8
Ireland	—	Ireland	2
Italy	7	Italy	36
Luxembourg	1	Luxembourg	6
Netherlands	2	Netherlands	5
Portugal	—	Portugal	1
United Kingdom	1	United Kingdom	5
Member States total	19	Member States total	99
Commission	100	Council	15
		Commission	117
Officials and agents	41	Parliament	10
		Court of Auditors	1
Natural or legal persons	86	European Investment Bank	1
		Council and Commission	3
Total	246	Total	246

TABLE 5

Cases brought in 1989 — Origin of references for a preliminary ruling — Courts making the references

Member State	National Court		Total
Belgium	Lower courts	13	
		13	13
Denmark	Højesteret	1	
	Lower courts	1	
		2	2
Federal Republic of Germany	Bundesgerichtshof	2	
	Bundesverwaltungsgericht	3	
	Bundesfinanzhof	12	
	Bundessozialgericht	5	
	Lower courts	25	
		47	47
Greece	Lower courts	2	
		2	2
Spain	Lower courts	2	
		2	2
France	Cour de cassation	1	
	Lower courts	27	
		28	28
Ireland	Supreme Court	1	
		1	1
Italy	Corte Suprema di cassazione	1	
	Lower courts	9	
		10	10
Luxembourg	Cour supérieure de justice	1	
		1	1
Netherlands	Raad van State	2	
	Hoge Raad	6	
	Centrale Raad van Beroep	1	
	College van Beroep	4	
	Tariefcommissie	2	
	Lower courts	3	
		18	18
Portugal	Lower courts	1	
		1	1
United Kingdom	House of Lords	2	
	Court of Appeal	3	
	Lower courts	9	
		14	14
		Overall total	139

Table of cases brought from 1953 to 31 December 1989

Year	Direct actions (including actions brought by Community officials)	References for a preliminary ruling	Total	Applications for interim measures	Judgments
1953	4	—	4	—	—
1954	10	—	10	—	2
1955	9	—	9	2	4
1956	11	—	11	2	6
1957	19	—	19	2	4
1958	43	—	43	—	10
1959	47	—	47	5	13
1960	23	—	23	2	18
1961	25	1	26	1	11
1962	30	5	35	2	20
1963	99	6	105	7	37
1964	49	6	55	4	31
1965	55	7	62	4	52
1966	30	1	31	2	24
1967	14	23	37	—	24
1968	24	9	33	1	27
1969	60	17	77	2	30
1970	47	32	79	—	64
1971	59	37	96	1	60
1972	42	40	82	2	61
1973	131	61	192	6	80
1974	63	39	102	8	63
1975	61	69	130	5	78
1976	51	75	126	6	88
1977	74	84	158	6	100
1978	145	123	268	7	97
1979	1 216	106	1 322	6	138
1980	180	99	279	14	132
1981	214	109	323	17	128
1982	216	129	345	16	185
1983	199	98	297	11	151
1984	183	129	312	17	165
1985	294	139	433	22	211
1986	238	91	329	23	174
1987	251	144	395	21	208
1988	194	179	373	17	238
1989	246	139	385	20	188
Total	4 656 [1]	1 997	6 653	261	2 922

[1] This figure includes 2 389 actions brought by Community officials.

Trend from 1 January 1980 to 31 December 1989

	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989
Cases brought										
References for a preliminary ruling	99	109	129	98	129	139	91	144	179	139
Direct actions	64	120	131	131	140	229	181	174	136	205
Actions brought by Community officials	116	94	85	68	43	65	57	77	58	41
Total	279	323	345	297	312	433	329	395	373	385
Cases decided (judgments)										
References for a preliminary ruling	75	65	94	58	77	109	78	71	108	90
Direct actions	34	21	60	53	57	63	59	101	98	64
Actions brought by Community officials	23	42	31	39	30	38	35	36	32	34
Opinions	—	—	—	—	—	—	—	—	—	—
Third party proceedings	—	—	—	1	1	1	1	—	—	—
Total	132	128	185	151	165	211	174	208	238	188
Judgments of the Chambers	63	73	102	99	110	138	108	115	123	116
Judgments of the Full Court	69	55	83	52	55	73	66	93	115	72

Direct actions brought up to 31 December 1989

By		Against	
Belgium	8	Belgium	119
Denmark	5	Denmark	16
Federal Republic of Germany	27	Federal Republic of Germany	61
Greece	2	Greece	63
Spain	8	Spain	7
France	30	France	110
Ireland	8	Ireland	37
Italy	42	Italy	230
Luxembourg	7	Luxembourg	34
Netherlands	22	Netherlands	32
Portugal	1	Portugal	1
United Kingdom	18	United Kingdom	29

Actions against a Member State for failure to fulfil its obligations up to 31 December 1989

Against	Number of cases	Withdrawals	Actions for failure to fulfil obligations		Cases pending (31 December 1989)
			dismissed	successful wholly or partially	
Belgium	118	46	6	48	18
Denmark	16	5	1	7	3
Federal Republic of Germany	59	23	2	25	10
Greece	61	23	1	20	19
Spain	7	1	—	—	6
France	109	62	8	25	14
Ireland	37	21	1	10	5
Italy	229	49	10	127	48
Luxembourg	34	22	1	5	6
Netherlands	32	11	2	13	6
Portugal	1	—	—	—	1
United Kingdom	28	6	1	17	5

References for a preliminary ruling made up to 31 December 1989

Belgium	
Cour de cassation	27
Conseil d'État	10
Lower courts	192
Total	229
Denmark	
Højesteret	10
Lower courts	21
Total	31
Federal Republic of Germany	
Bundesgerichtshof	33
Bundesarbeitsgericht	4
Bundesverwaltungsgericht	25
Bundesfinanzhof	101
Bundessozialgericht	35
Lower courts	452
Total	650
Greece	
Council of State	1
Lower courts	20
Total	21
Spain	
Lower courts	5
Total	5
France	
Cour de cassation	38
Conseil d'État	8
Lower courts	332
Total	378
Ireland	
The High Court	14
The Circuit Court	2
The District Court	1
Lower courts	4
Total	21
Italy	
Corte Suprema di cassazione	36
Lower courts	176
Total	212
Luxembourg	
Cour supérieure de justice	9
Conseil d'État	7
Lower courts	8
Total	24
Netherlands	
Raad van State	12
Hoge Raad	52
Centrale Raad van Beroep	30
College van Beroep voor het Bedrijfsleven	78
Tariefcommissie	19
Lower courts	128
Total	319
Portugal	
Lower courts	1
Total	1
United Kingdom	
House of Lords	8
Court of Appeal	11
Lower courts	87
Total	106

Requests to the Court for preliminary rulings

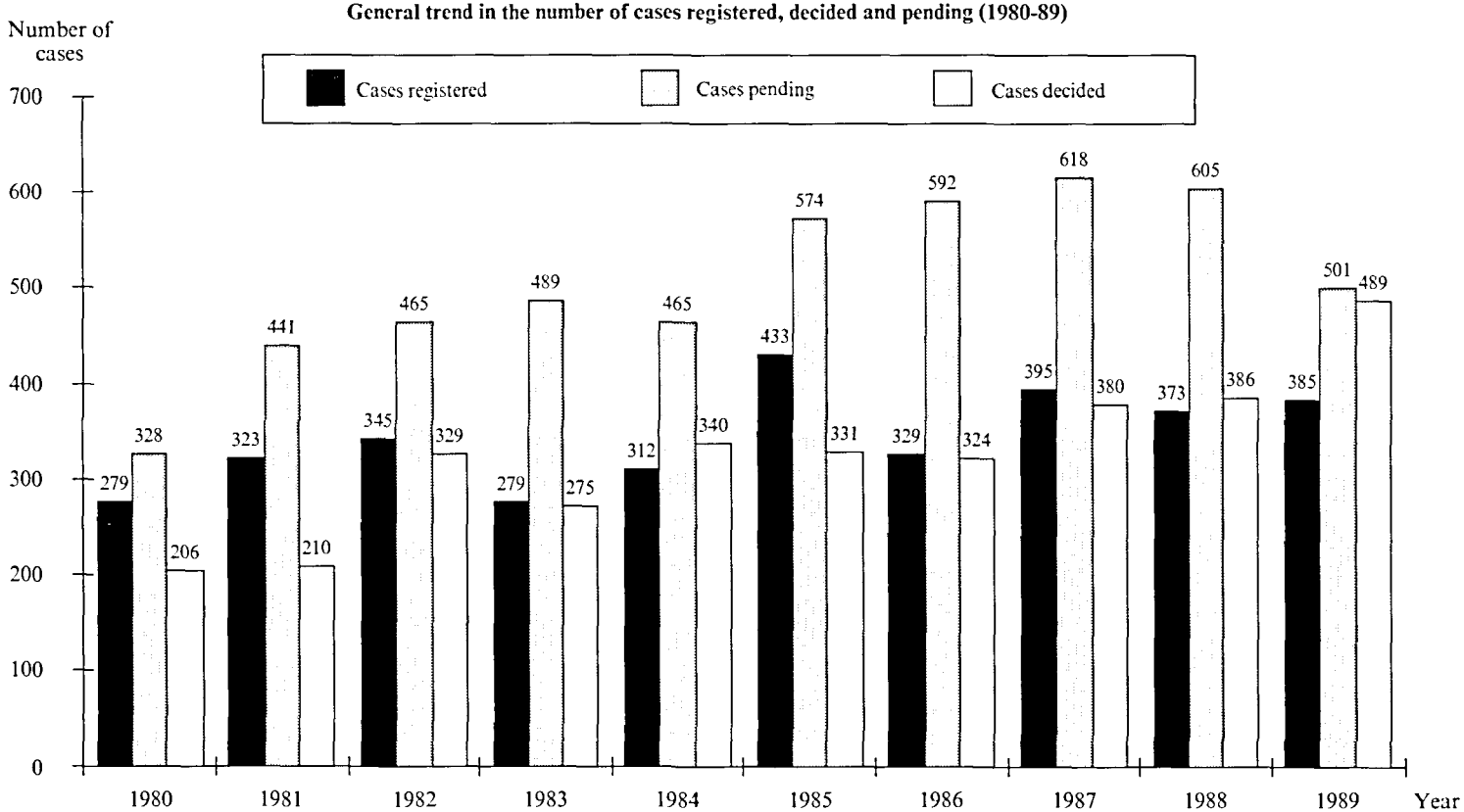
(Arts 177 EEC Treaty, 41 ECSC Treaty, 153 EAEC Treaty, Protocol to Brussels Convention)

Classified by Member State

Year	Belgium	Denmark	Germany	Greece	Spain	France	Ireland	Italy	Luxembourg	Netherlands	Portugal	United Kingdom	Total
1961	—	—	—	—	—	—	—	—	—	1	—	—	1
1962	—	—	—	—	—	—	—	—	—	5	—	—	5
1963	—	—	—	—	—	—	—	—	1	5	—	—	6
1964	—	—	—	—	—	—	—	2	—	4	—	—	6
1965	—	—	4	—	—	2	—	—	—	1	—	—	7
1966	—	—	—	—	—	—	—	—	—	1	—	—	1
1967	5	—	11	—	—	3	—	—	1	3	—	—	23
1968	1	—	4	—	—	1	—	1	—	2	—	—	9
1969	4	—	11	—	—	1	—	—	1	—	—	—	17
1970	4	—	21	—	—	2	—	2	—	3	—	—	32
1971	1	—	18	—	—	6	—	5	1	6	—	—	37
1972	5	—	20	—	—	1	—	4	—	10	—	—	40
1973	8	—	37	—	—	4	—	5	1	6	—	—	61
1974	5	—	15	—	—	6	—	5	—	7	—	1	39
1975	7	1	26	—	—	15	—	14	1	4	—	1	69
1976	11	—	28	—	—	8	1	12	—	14	—	1	75
1977	16	1	30	—	—	14	2	7	—	9	—	5	84
1978	7	3	46	—	—	12	1	11	—	38	—	5	123
1979	13	1	33	—	—	18	2	19	1	11	—	8	106
1980	14	2	24	—	—	14	3	19	—	17	—	6	99
1981	12	1	41	—	—	17	—	12	4	17	—	5	109
1982	10	1	36	—	—	39	—	18	—	21	—	4	129
1983	9	4	36	—	—	15	2	7	—	19	—	6	98
1984	13	2	38	—	—	34	1	10	—	22	—	9	129
1985	13	—	40	—	—	45	2	11	6	14	—	8	139
1986	13	4	18	2	1	19	4	5	1	16	—	8	91
1987	15	5	32	17	1	36	2	5	3	19	—	9	144
1988	30	4	34	—	1	38	—	28	2	26	—	16	179
1989	13	2	47	2	2	28	1	10	1	18	1	14	139
Total	229	31	650	21	5	378	21	212	24	319	1	106	1 997

GRAPH 1

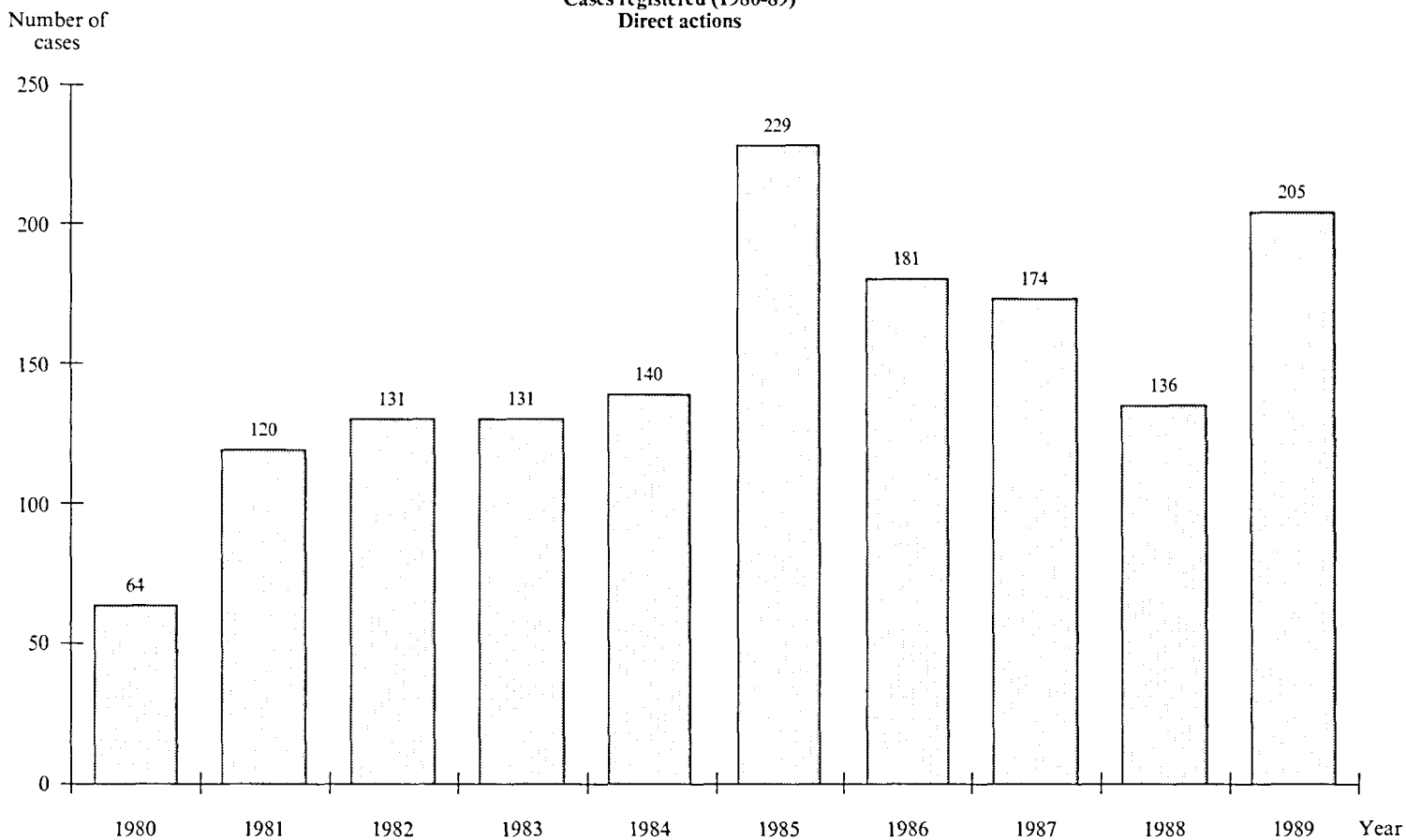
General trend in the number of cases registered, decided and pending (1980-89)



NB: These statistics do not include staff cases brought in 1979 concerning weighting, in which proceedings were suspended prior to removal from the register.

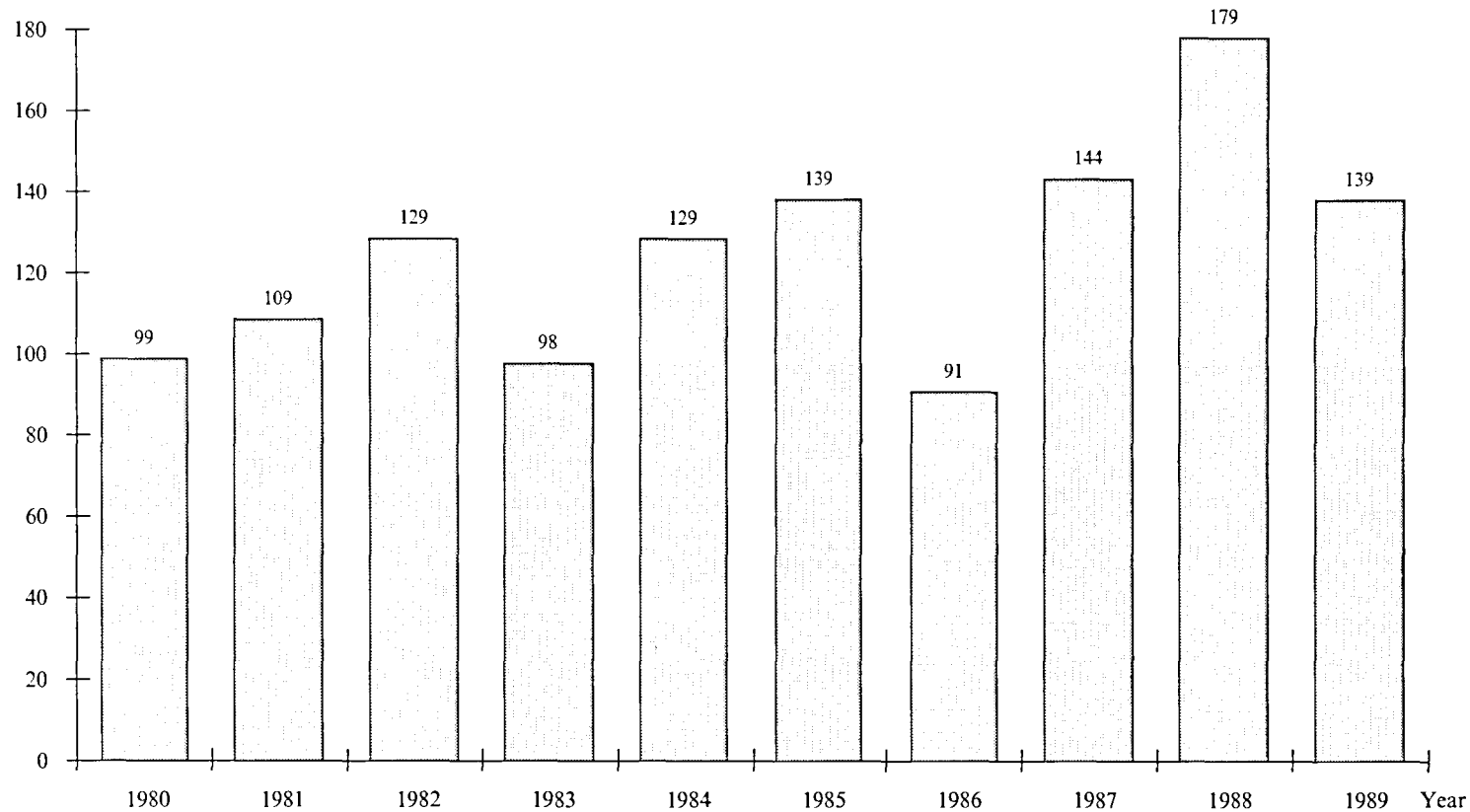
GRAPH 2

Cases registered (1980-89)
Direct actions



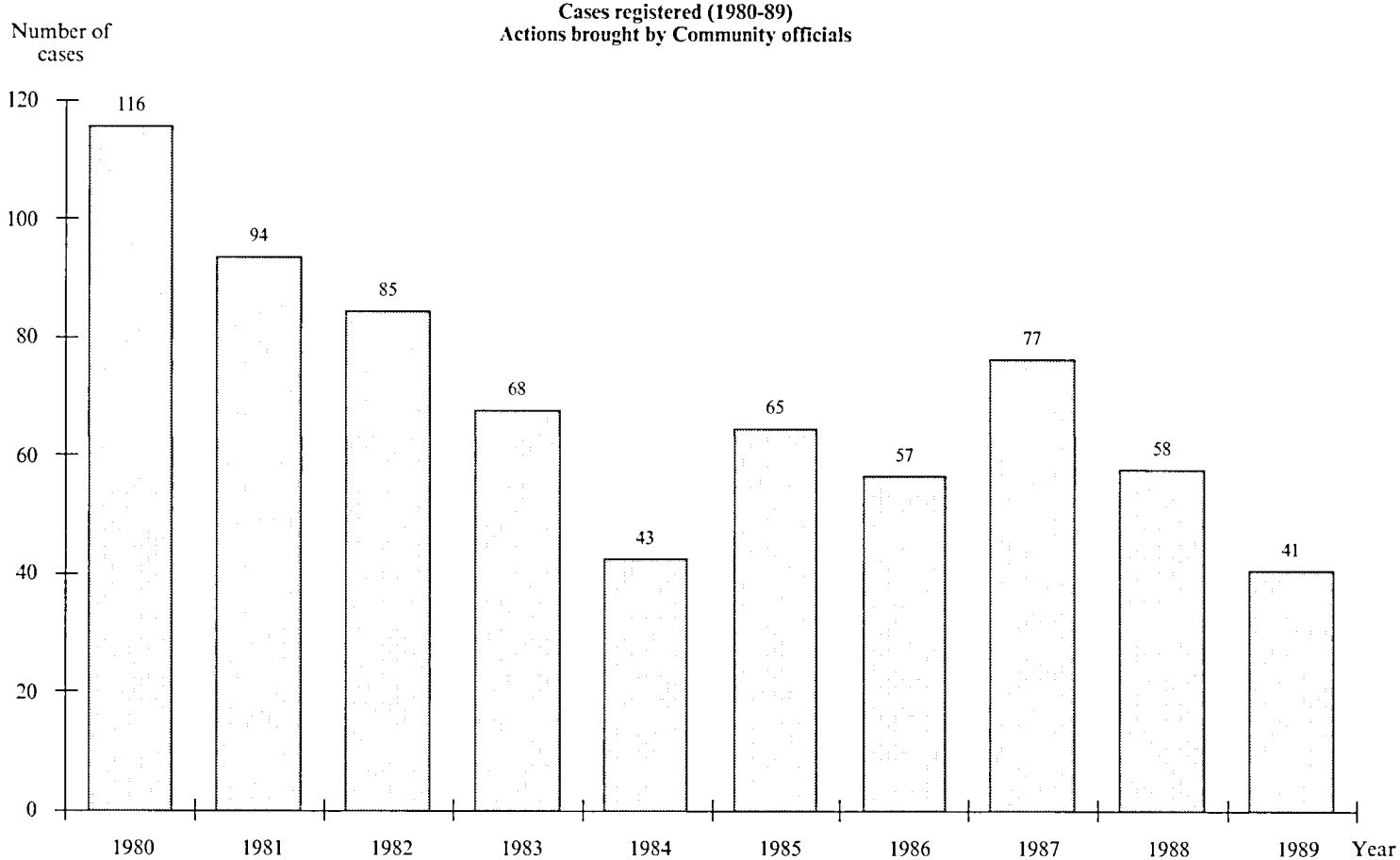
GRAPH 3

Cases registered (1980-89)
References for a preliminary ruling



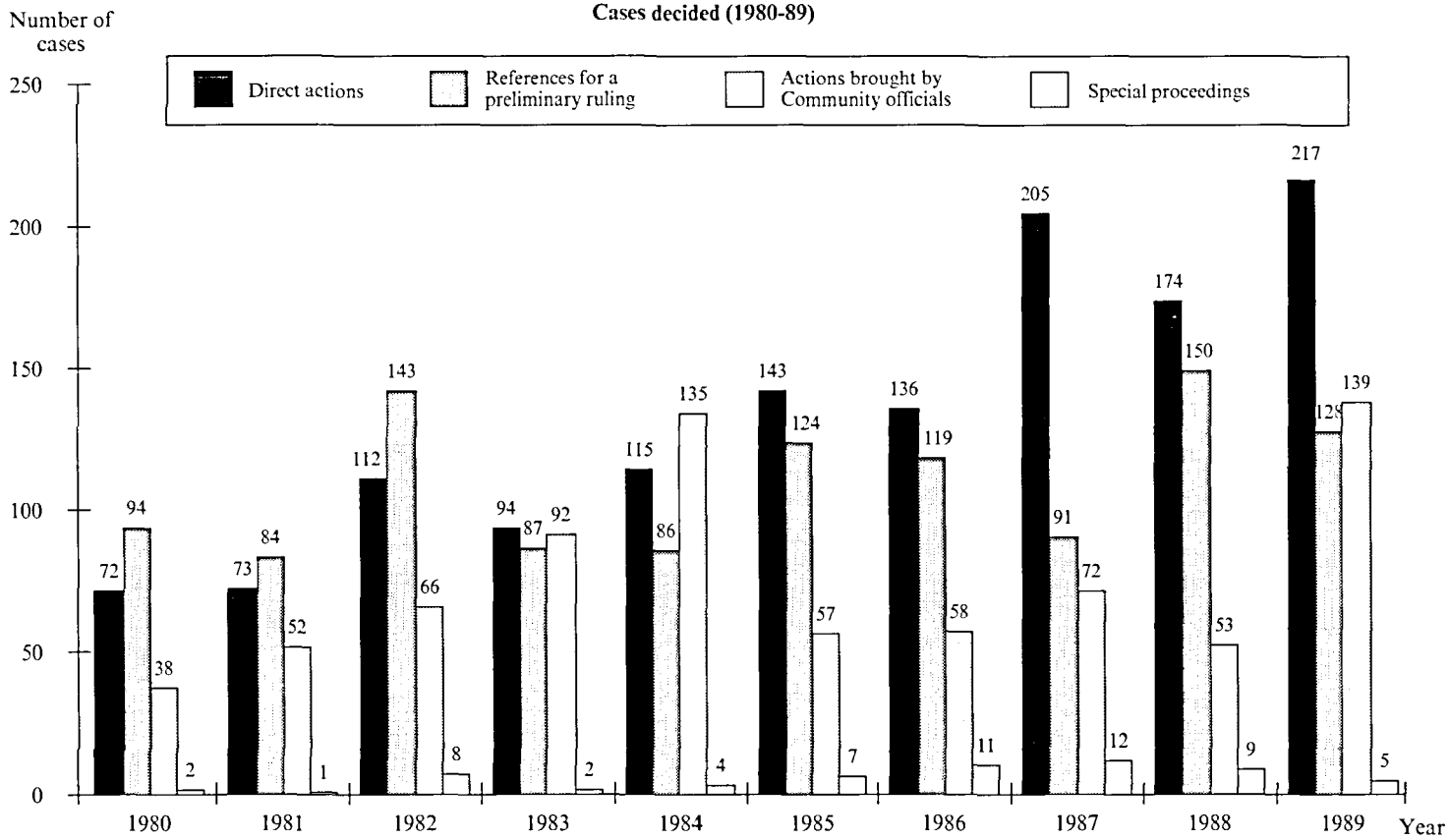
GRAPH 4

Cases registered (1980-89)
Actions brought by Community officials



GRAPH 5

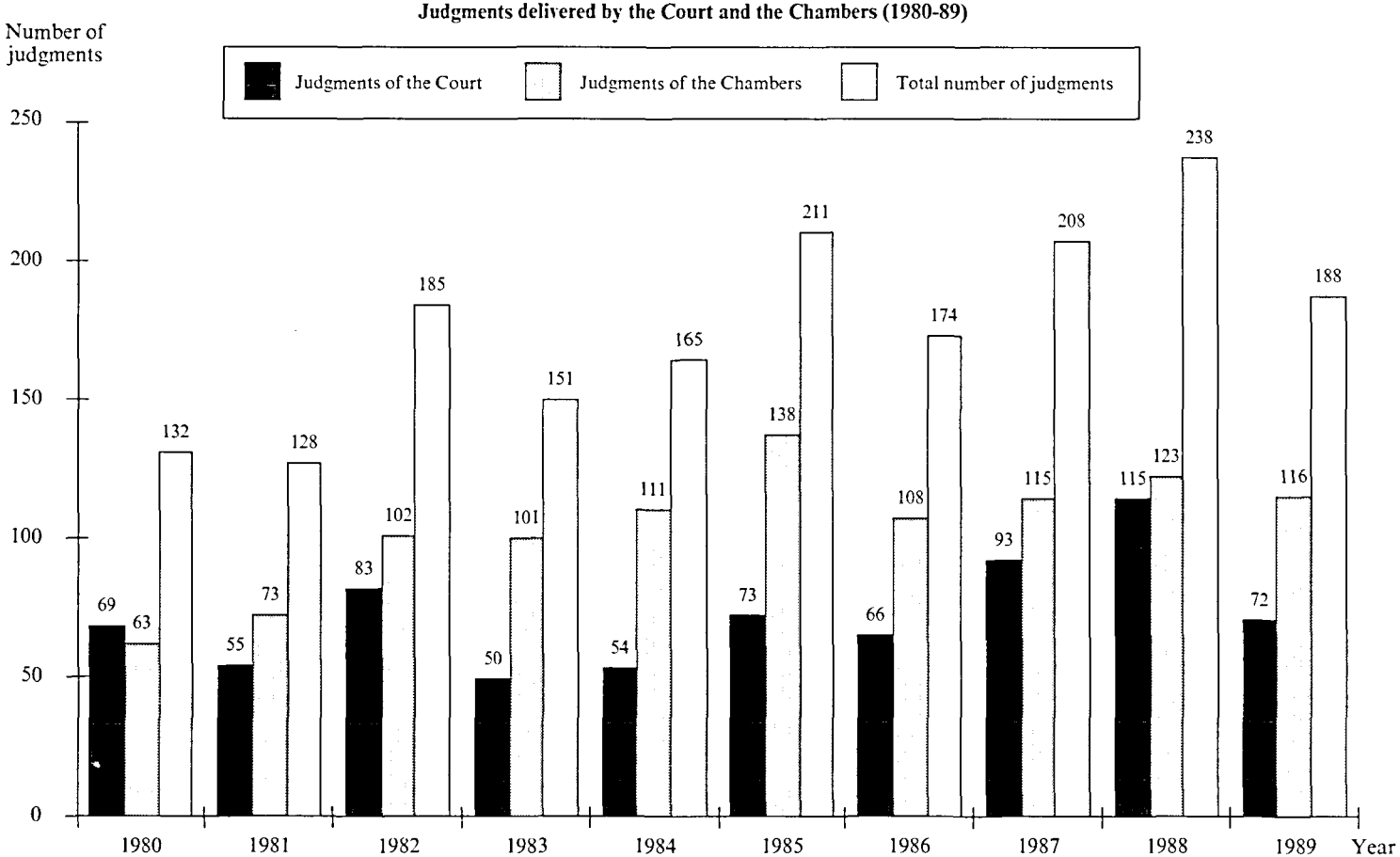
Cases decided (1980-89)



NB: These statistics do not include staff cases brought in 1979 concerning weighting, in which proceedings were suspended prior to removal from the register.

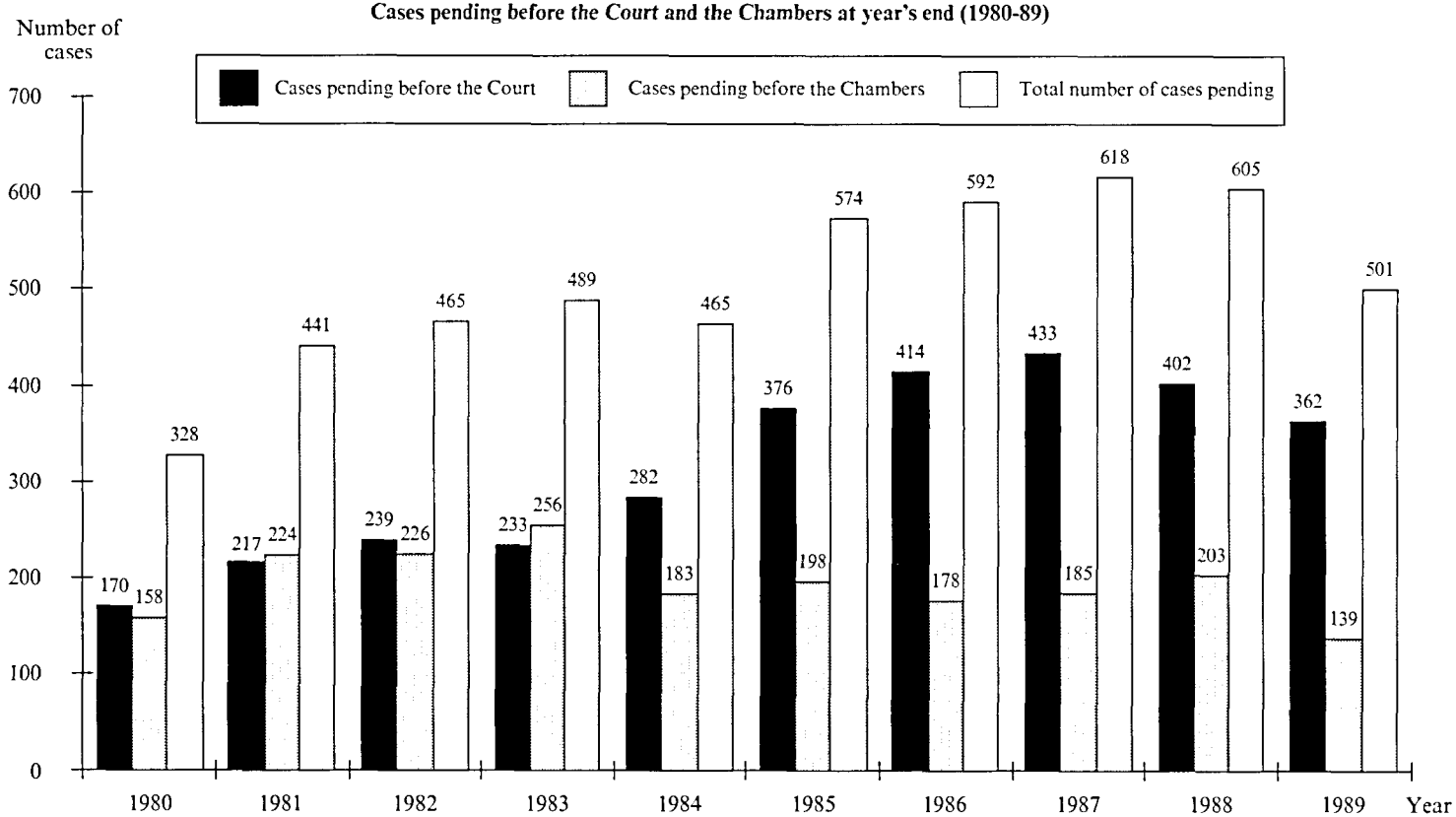
GRAPH 6

Judgments delivered by the Court and the Chambers (1980-89)



GRAPH 7

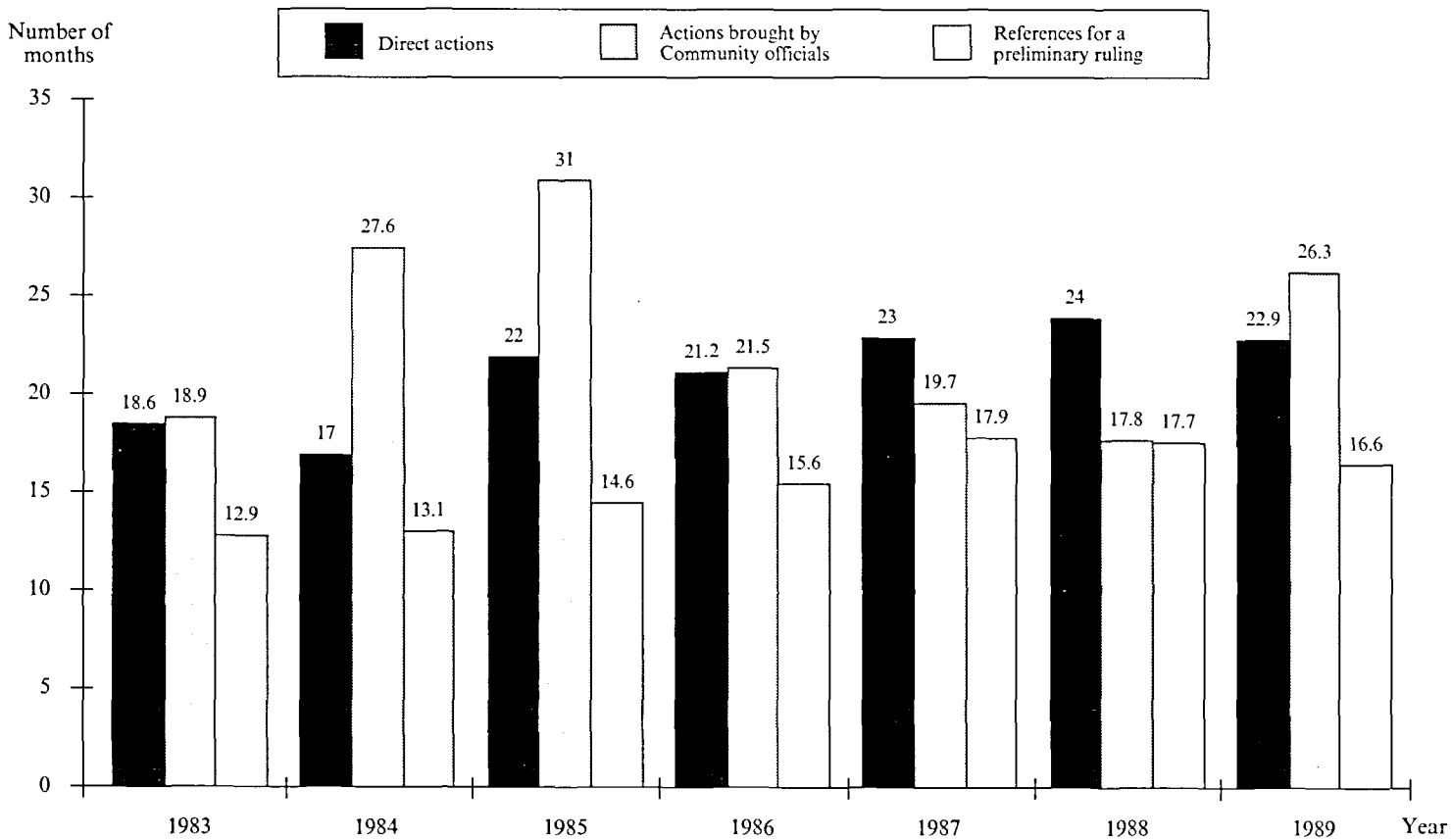
Cases pending before the Court and the Chambers at year's end (1980-89)



NB: These statistics do not include staff cases brought in 1979 concerning weighting, in which proceedings were suspended prior to removal from the register.

GRAPH 8

Length of proceedings (1983-89)



B. Remarks on cases decided by the Court

Agriculture

Case 120/86: *J. Mulder* v *Minister van Landbouw en Visserij* — 28 April 1988
(Additional levy on milk)
(Full Court)

The College van Beroep voor het Bedrijfsleven, in The Hague, referred to the Court three questions for a preliminary ruling on the interpretation and validity of the Community regulations regarding the additional levy on milk.

Those questions were raised in the course of proceedings brought by Mr Mulder, a farmer, against the Dutch Ministry for Agriculture and Fisheries.

Mr Mulder kept a dairy herd and delivered about 500 000 kg of milk to the dairy; in October 1979 he undertook not to deliver milk or milk products for a period of five years from 1 October 1979 to 30 September 1984. In return for that undertaking he received a non-marketing premium in the amount of HFL 193 415 pursuant to Council Regulation No 1078/77.

Beginning in August 1983 he made a number of investments with a view to resuming dairy production at the end of the five-year non-marketing period, and on 28 May 1984 he applied to the competent Dutch authorities for a reference quantity of 726 000 kilograms (182 cows × 5 500 kg of milk), for the purposes of the additional levy on milk established in the mean time by Council Regulation No 856/84.

That application was rejected on the ground that Mr Mulder had not produced milk during the reference year adopted for the purposes of the new system, 1983, and that the fact that he had produced no milk was not due to *force majeure*.

That dispute led the College van Beroep voor het Bedrijfsleven to submit three questions.

Legislative background

In order to curb surplus milk production, Regulation No 1078/77 established for a limited period a system of premiums for farmers who undertook not to market milk or converted their dairy herd to beef production.

Non-marketing premiums were granted for a period of five years.

Faced with a continued increase in milk production, by Regulation No 856/84 the Council introduced an additional levy to be charged on quantities of milk delivered in excess of a reference quantity to be determined.

The rules on the calculation of the reference quantity, that is to say the quantities exempt from the additional levy, were laid down by Council Regulation No 857/84.

The reference quantity was equal to the quantity of milk delivered or purchased during the 1981 calendar year. However, Member States could provide that on their territory the reference quantity should be the quantity of milk delivered or purchased during the 1982 or 1983 calendar year, weighted by a percentage established in such a manner as not to exceed the guaranteed quantity for the Member State in question.

Exceptions to those rules were provided, *inter alia*, for the granting of additional reference quantities to producers realizing a milk production development plan.

The first question

With regard to the interpretation of the legislation in question, all the parties who submitted observations to the Court were agreed that it included a restrictive list of the circumstances in which a milk producer might obtain a reference quantity for the purposes of the additional levy system. They differed on the question to what extent one or other provision could be applied where the producer in question did not deliver milk during the reference year pursuant to an undertaking entered into under Regulation No 1078/77.

The situation for which allowance was made did not cover all the situations in which producers who entered into non-marketing undertakings might find themselves.

The Court held that the legislation in question did not ensure in all cases that a producer in circumstances as those in issue in the main proceedings could obtain a reference quantity for the purposes of the additional levy system.

The second question

With regard to the validity of the legislation in issue, Mr Mulder argued that it was invalid on the ground that it infringed general principles of Community law. He argued that Regulation No 857/84 was contrary to the principles of legal certainty and to the protection of legitimate expectations, since producers who took advantage of the system introduced by Regulation No 1078/77 were entitled to expect that they would be able to resume production on the expiry of their undertaking not to market milk.

The Dutch Government, the Council and the Commission all submitted that the legislation in issue was valid.

The Court stated that the Dutch Government and the Commission were correct to point out that a producer who had freely stopped production for a certain period could not legitimately expect to be able to resume production under the same conditions as those which previously applied, and could not expect not to subject to any rules adopted in the mean time in matters of market and structural policy.

The fact remained that where such an operator, as in this case, was encouraged by a Community measure to suspend the marketing of milk for a limited period in the general interest, in return for the payment of a premium, he might legitimately expect not to be subject, on the expiry of his undertaking, to restrictions which specifically affected him precisely because he took advantage of the possibilities offered by the Community legislation.

Contrary to the Commission's assertions, the Court held that such a total and permanent exclusion for the entire period of application of the legislation on the additional levy, which would have the effect of preventing the producers concerned from resuming the marketing of milk at the end of the five-year period, was not foreseeable for them when they entered into the temporary undertaking not to deliver milk.

Such an effect would thus be contrary to the legitimate expectations of such producers that the scheme they were entering into would be limited in duration.

The third question

In the light of the replies to the first two questions there was no need to reply to the third.

The Court ruled as follows:

'1. Council Regulation (EEC) No 857/84 of 31 March 1984, as supplemented by Commission Regulation (EEC) No 1371/84 of 16 May 1984, must be interpreted as meaning that for the purpose of fixing the reference quantities referred to in Article 2 of that regulation the Member States may take into account the circumstances of producers who, pursuant to an undertaking entered into under Council Regulation (EEC) No 1078/77 of 17 May 1977, did not deliver milk during the reference year adopted only in so far as each producer fulfils the specific conditions laid down in Regulation No 857/84 and if the Member States have reference quantities available for that purpose.

2. Council Regulation (EEC) No 857/84 of 31 March 1984, as supplemented by Commission Regulation (EEC) No 1371/84 of 16 May 1984, is invalid in so far as it does not provide for the allocation of a reference quantity to producers who, pursuant to an undertaking entered into under Council Regulation (EEC) No 1078/77 of 17 May 1977, did not

deliver milk during the reference year adopted by the Member State concerned.'

Advocate General Sir Gordon Slynn delivered his Opinion at the sitting on 13 January 1988.

He proposed that the Court should answer the questions referred as follows:

'1. Council Regulation (EEC) No 857/84, as supplemented by Commission Regulation (EEC) No 1371/84, must be interpreted as meaning that, in establishing the reference quantities referred to in Article 2 Member States may not take into account situations which are not provided for in the Community regulations, in particular the situation of persons who in accordance with Council Regulation (EEC) No 1078/77 have delivered no milk in a reference year.

2. Council Regulation (EEC) No 857/84 is void in so far as it contains no explicit provision taking into account the position of former milk producers who had no milk production in the reference years specified in Article 2 (1) and (2) of the regulation because those producers had given undertakings not to market milk during that period pursuant to Article 2 (2) of Council Regulation (EEC) No 1078/77.

3. Given that the answer to the first question is in the affirmative, the third question referred by the national court no longer requires an answer.'

Annulment of measures

Case 302/87: *European Parliament* v *Council of the European Communities* — 27 September 1988
(Capacity of the European Parliament to bring an action for annulment)
(Full Court)

The European Parliament brought an action pursuant to the first paragraph of Article 173 of the EEC Treaty for a declaration that Council Decision 87/373/EEC laying down the procedure for the exercise of implementing powers conferred on the Commission was void.

By that decision the Council laid down the procedures which it might require to be observed for the exercise of the powers conferred by it on the Commission for the implementation of the rules laid down by the Council and adopted the provisions governing the composition, the functioning and the role of the committees of the representatives of the Member States called upon to act.

The Council raised an objection of inadmissibility.

It claimed that the first paragraph of Article 173 of the Treaty did not expressly provide that the European Parliament might bring an action for annulment.

Intervention and the action for failure to act were wholly separate from the action for annulment.

The Council maintained that neither Court's previous decisions (in Cases 294/83, 'Les Verts', and 34/86, the 'Budget' Case) allowed it to be inferred that the Court recognized by implication that the European Parliament had the capacity to bring an action for annulment. It did not follow from those judgments that there had to be a parallelism between the active and passive participation of the Parliament in proceedings for judicial review of legality.

The Court took the view that it was necessary to consider whether it was possible, by means of an interpretation of the first paragraph of Article 173, for the European Parliament to be recognized as having capacity to bring actions for the annulment of acts of the Council or the Commission.

As was apparent from Articles 143 and 144 of the Treaty, the European Parliament was empowered to exercise political control over the Commission, which was required to 'ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied' and to censure the Commission where necessary if the latter should fail properly to discharge that task.

Moreover, the Parliament was in a position to exercise influence over the content of the legislative measures adopted by the Council, either by means of the opinions which it issued under the consultation procedure or by means of the positions which it adopted under the cooperation procedure.

It did not follow that, because it was entitled to have a failure to act established and to intervene in proceedings before the Court, the Parliament had to be recognized as having the possibility of bringing actions for annulment.

There was no necessary link, the Court held, between the action for annulment and the action for failure to act.

Nor was there any necessary link between the right to intervene and the possibility of bringing an action.

The European Parliament also stated that the first paragraph of Article 173 reflected a principle of equality between the institutions expressly mentioned in that provision, in the sense that each of them was entitled to bring an action against measures adopted by the other and, conversely, its own measures could be submitted by the other institutions for review by the Court. Since it had held that measures of the European Parliament capable of producing legal effects could be the subject of an action for annulment, the Court should, with a view to maintaining the institutional balance, decide that the European Parliament had the capacity to challenge acts of the Council and the Commission.

However, the Court took the view that a comparison between Article 38 of the ECSC Treaty (see the 'Les Verts' judgment) and Article 33 of the same Treaty showed that, according to the scheme of the Treaties, in those cases where provision was made for acts of the European Parliament to be subject to a review of their legality, the European Parliament was not thereby empowered to bring a direct action on its own initiative against acts of other institutions.

The European Parliament's argument that there had to be a parallelism between the capacity of defendant and the capacity of applicant in proceedings for judicial review had therefore to be rejected in the opinion of the Court.

The European Parliament then claimed that the Court had recognized by implication in the 'Budget' judgment (*Council* v *European Parliament*, 3 July 1986) that it had the capacity to bring an action for annulment.

However, the Court pointed out that the budgetary procedure described in Article 203 (4), (5) and (6) of the Treaty was characterized by successive deliberations of the two arms of the budgetary authority in the course of which each of them might, in accordance with the voting conditions laid down in the Treaty, react to the positions taken by the other. Those deliberations constituted measures preparatory to the drawing-up of the budget. As was apparent from the judgment in the 'Budget' case, cited above, the budget did not become legally binding until completion of the procedure, that is to say when the President of the European Parliament, in his capacity as an organ of that institution, declared that the budget had been finally adopted. It followed that as far as the approval of the budget was concerned, the only measure which could be declared void emanated from an organ of the European Parliament and had therefore to be attributed to that institution itself. Consequently, the European Parliament could not rely on the budgetary powers conferred upon it by the Luxembourg and Brussels Treaties cited above in order to obtain recognition of its right to bring actions for the annulment emanating from the Commission and the Council.

The European Parliament then went on to state that if it has no power to bring actions for annulment it would not be in a position to defend its prerogatives *vis-à-vis* the other institutions.

The prerogatives of the European Parliament had been augmented by the Single European Act, which had vested in it a power of joint decision with respect to accession and association agreements and had established a cooperation procedure in certain specified cases, but without any changes having been made to Article 173 of the Treaty.

The Court ruled that, apart from the abovementioned rights granted to the European Parliament by Article 175, the Treaty provided means for submitting for review by the Court acts of the Council adopted in disregard of the Parliament's prerogatives. Whilst the first paragraph of Article 173 granted to all the Member States in general terms the right to bring an action for the annulment of such acts, Article 155 of the Treaty conferred more specifically on the Commission the responsibility of ensuring that the Parliament's prerogatives were

respected and for bringing for that purpose such actions for annulment as might prove to be necessary. Moreover, any natural or legal person might, if the prerogatives of the European Parliament were disregarded, plead an infringement of essential procedural requirements or an infringement of the Treaty in order to obtain the annulment of the measure adopted or, indirectly, a declaration pursuant to Article 184 of the Treaty that the measure was inapplicable. Similarly, the illegality of a measure on the ground of breach of the prerogatives of the European Parliament might be raised as an issue before a national court and the measure in question might be the subject of a reference to the Court for a preliminary ruling as to its validity.

The Court:

1. Dismissed the application as inadmissible;

2. Ordered the European Parliament to bear the costs.

Mr Advocate General Darmon delivered his Opinion at the sitting on 26 May 1988.

He proposed that the Court should: 'Reject the objection of inadmissibility raised by the Council and hold that the European Parliament has the capacity to bring an action for annulment under Article 173 of the Treaty where prerogatives of its own are adversely affected. The question whether such is the case in this instance should be considered at the same time as the substance of the case.'

Approximation of laws

See under *Environment* the judgment in Case C-380/87

Common commercial policy

Case C-26/88: *Brother International GmbH* v *Hauptzollamt Giessen* — see under *Free movement of goods*

Competition

1. Joined Cases 89, 104, 114, 116, 117 and 125 to 129/85: *'Wood pulp producers'* v *Commission of the European Communities* — 27 September 1988
   (Concerted practices between undertakings established in non-member countries affecting selling prices to purchasers established in the Community)
   (Full Court)

A number of wood pulp producers and two of their associations, all having their registered offices outside the Community, brought an action for the annulment of Decision IV/29.725 of 19 December 1984 in which the Commission had estab-

lished that they had committed several infringements of Article 85 of the EEC Treaty and imposed fines on them.

The infringements consisted of: concertation between the producers in question on prices announced each quarter to customers in the Community and on actual transaction prices charged to such customers; price recommendations addressed to its members by KEA (Pulp, Paper and Paperboard Export Association of the United States), and, as regards Finnell (an organization of Finnish producers), the exchange of individualized data concerning prices with certain other wood pulp producers within the framework of the Research and Information Centre for the European Pulp and Paper Industry.

The Commission set out the grounds which in its view justified the Community's jurisdiction to apply Article 85 of the Treaty to the concertation in question.

The addressees of the decision were doing business within the Community through branches, subsidiaries, agencies or other establishments, and two-thirds of total shipments and 60% of consumption of the product in question in the Community had been affected by such concertation.

As regards the Finnish undertakings and Finnell, the Commission stated that the Free Trade Agreement between the Community and Finland contained 'no provision which prevents the Commission from immediately applying Article 85 (1) of the EEC Treaty where trade between Member States is affected'.

A number of applicants raised submissions regarding the Community's jurisdiction to apply its competition rules to them. They submitted that the Commission had misconstrued the territorial scope of Article 85. They noted that the Court did not adopt the 'effects doctrine' (judgment in *ICI* of 14 July 1972) and added that, even if there was a basis in Community law for applying Article 85 to them, the action of applying the rule interpreted in that way would be contrary to public international law which precluded any claim by the Community to regulate conduct restricting competition adopted outside the territory of the Community merely by reason of the economic repercussions which that conduct produced within the Community.

The applicants which were members of KEA further submitted that the application of Community competition rules to them was contrary to public international law in so far as it was in breach of the principle of non-interference.

Certain Canadian applicants also maintained that by imposing fines on them and making reduction of those fines conditional on the producers giving undertakings as to their future conduct the Commission had infringed Canada's sovereignty and thus breached the principle of international comity.

The Finnish applicants considered that in any event it was only the rules on competition contained in the Free Trade Agreement between the Community and

Finland that could be applied to their conduct, to the exclusion of Article 85 of the EEC Treaty, and that the Community should therefore have consulted Finland on the measures which it envisaged adopting with regard to the agreement in question in accordance with the procedure provided for in Article 27 of that Agreement.

Incorrect assessment of the territorial scope of Article 85 of the Treaty and incompatibility of the decision with public international law

(a) The individual undertakings

The Court recalled that Article 85 of the Treaty prohibited all agreements between undertakings and concerted practices which might affect trade between Member States and which had as their object or effect the restriction of competition within the common market.

The Court observed that the main sources of supply of wood pulp were outside the Community, in Canada, the United States of America, Sweden and Finland and that the market therefore had global dimensions. Where wood pulp producers established in those countries sold directly to purchasers established in the Community and engaged in price competition in order to win orders from those customers, that constituted competition within the common market.

It followed that where those producers concerted on the prices to be charged to their customers in the Community and put that concertation into effect by selling at prices which were actually coordinated, they were taking part in concertation which had the object and effect of restricting competition within the common market within the meaning of Article 85 of the Treaty.

The Court concluded that, in those circumstances, the Commission had not made an incorrect assessment of the territorial scope of Article 85.

As for the compatibility of the decision with public international law, the decisive factor was the place where the agreement, decision or concerted practice was implemented.

The producers in this case implemented their pricing agreement within the common market. Accordingly, the Community's jurisdiction to apply its competition rules to such conduct was covered by the territoriality principle as universally recognized in public international law.

As regards the argument relating to disregard of international comity, the Court observed that it amounted to calling in question the Community's jurisdiction to apply its competition rules to conduct such as that found to exist in this case and that, as such, that argument had already been rejected.

(b) KEA

According to its Articles of Association, KEA was a non-profit-making association whose purpose was the promotion of the commercial interests of its members in the exportation of their products and it served primarily as a clearing house for its members for information regarding their export markets. KEA did not itself engage in manufacture, selling or distribution.

The members of the group were empowered to conclude price agreements at meetings which they held from time to time, provided that each member was informed in advance that prices would be discussed and that the meeting was quorate.

It followed, according to the Court, that KEA's pricing recommendations could not be distinguished from the pricing agreements concluded by undertakings which were members of the Pulp Group and that KEA had not played a separate role in the implementation of those agreements.

The Court held that the decision should be declared void in so far as it concerned KEA.

The question whether or not the competition rules in the Free Trade Agreement between the Community and Finland were exclusively applicable

The Court observed that it was necessary to determine whether, as the applicants maintained, Articles 23 and 27 of the Free Trade Agreement had the effect of precluding the application of Article 85 of the EEC Treaty in so far as trade between the Community and Finland was concerned.

The Court noted that under Article 23 (1) of the Free Trade Agreement, in particular, agreements and concerted practices which had as their object or effect the restriction of competition were incompatible with the proper functioning of the Agreement in so far as they might affect trade between the Community and Finland.

The Court also observed that Articles 23 and 27 of the Free Trade Agreement presupposed that the Contracting Parties had rules enabling them to take action against agreements which they regarded as being incompatible with that Agreement. As far as the Community was concerned, those rules could only be the provisions of Articles 85 and 86 of the Treaty. The application of those articles was therefore not precluded by the Free Trade Agreement.

The Court pointed out that in this case the Community applied its competition rules to the Finnish applicants not because they had concerted with each other but because they took part in a very much larger concertation with US, Canadian and Swedish undertakings which restricted competition within the Community. It was thus not just trade with Finland that was affected.

It followed, according to the Court, that the submission relating to the exclusive application of the competition rules in the Free Trade Agreement between the Community and Finland had to be rejected.

The Court held as follows:

'1. The submission relating to the incorrect assessment of the territorial scope of Article 85 of the Treaty and the incompatibility of Commission Decision IV/29.725 of 19 December 1984 with public international law is rejected.

2. Commission Decision IV/29.725 of 19 December 1984 is declared void in so far as it concerns the Pulp, Paper and Paperboard Export Association of the United States.

3. The submission relating to the exclusive application of the competition rules and the Free Trade Agreement between the Community and Finland is rejected.

4. The case is assigned to the Fifth Chamber for consideration of the other submissions.

5. The costs are reserved.'

Mr Advocate General Darmon delivered his Opinion at the sitting on 25 May 1988.

The Advocate General came to the following conclusion:

'In the first place, the Court should dismiss the applicants' claim directed against the contested decision, in so far as it challenges the criterion of the effects as the basis of that decision. It will be for the Court at a later stage to ascertain whether the effects of the conduct alleged by the Commission were substantial, direct and foreseeable in order to determine whether the Commission was right in exercising jurisdiction over the applicants.

Secondly, the Court should reject the submission to the effect that the Free Trade Agreement between the Community and the Republic of Finland constitutes a bar to the application of Article 85 of the EEC Treaty to the Finnish applicants.'

2. Case 66/86: *Ahmed Saeed Flugreisen and Others* v *Zentrale zur Bekämpfung unlauteren Wettbewerbs eV* — 11 April 1989
— see under *Transport*

3. Joined Cases 46/87 and 227/88: *Hoechst AG* v *Commission of the European Communities* — 21 September 1989
(Competition — Action for annulment — Competition law — Regulation No 17 — Investigation — Fundamental right to the inviolability of the home — Reasons — Periodic penalty payments — Procedural defects)
(Full Court)

Hoechst AG brought two actions for declarations that three decisions of the Commission, the first concerning an investigation under Article 14 (3) of Regulation No 17, the second imposing a periodic penalty payment under Article 16 of Regulation No 17 and the third fixing the definitive amount of a periodic penalty payment under the same article, were void.

Since it had information leading it to suppose that there were agreements or concerted practices concerning the fixing of prices and delivery quotas for PVC and polyethylene between certain producers and suppliers of those substances in the Community, the Commission decided to carry out an investigation of several undertakings, including the applicant, and adopted in regard to the latter the decision ordering the investigation referred to above.

The Commission sought to carry out the investigation in question but the applicant refused to submit to it on the grounds that it constituted an unlawful search. The Commission therefore adopted the decision imposing on the applicant a periodic penalty payment of ECU 1 000 for each day of delay.

Since the Bundeskartellamt, the German authority responsible for competition matters, whose assistance had been sought under Regulation No 17, had obtained a search warrant from the Amtsgericht [Local Court] Frankfurt am Main, issued in favour of the Commission, the latter immediately took steps to carry out the investigation in question.

The Commission subsequently fixed the definitive amount of the periodic penalty payment at ECU 55 000.

The decision ordering the investigation

The applicant considered first that the contested decision was unlawful inasmuch as it authorized the Commission's officials to take steps which it regarded as a search, which were not provided for under Article 14 of Regulation No 17 and which infringed the fundamental rights recognized by Community law. It added that if that provision was to be interpreted as meaning that it gave the Commission the power to carry out searches, it was unlawful by reason of its incompatibility with fundamental rights and, in particular, the right to a fair hearing and the right to the inviolability of the home, respect for which required that a search may only be carried out on the basis of a court order obtained in advance.

The Court pointed out first that Article 14 of Regulation No 17 could not be interpreted in such a way as to lead to results which were incompatible with the general principles of Community law and in particular with fundamental rights.

It held that according to settled case-law, fundamental rights are an integral part of the general principles of law which the Court is called upon to apply, in accordance with the constitutional traditions common to the Member States and to the international instruments in which the Member States participated or to which they have become parties. In that regard, the European Convention on Human Rights was of particular significance.

With regard to the right to a fair hearing, the Court considered that it was important to point out that although certain of the rights implied therein concerned only the contentious proceedings following the statement of objections, other rights, for example the right to have the assistance of a lawyer and the privileged nature of correspondence between lawyer and client, had to be respected during the preliminary inquiry, in particular, during investigations.

With regard to the requirements flowing from the fundamental right to the inviolability of the home, the Court observed that although recognition of such a right in regard to the private dwelling of physical persons was required by the Community legal order inasmuch as it was a principle common to the laws of the Member States, the same was not true in regard to undertakings, because there were significant differences between the legal systems of the Member States in regard to the nature and degree of the protection against interventions on the part of the public authorities which was afforded to commercial premises. A different conclusion could not be drawn from Article 8 of the European Convention on Human Rights.

It was none the less true that the legal systems of the Member States provided protection, under various forms, against arbitrary or disproportionate interventions on the part of the public authorities in the sphere of activities of any person, whether physical or legal. The requirement that such protection should be granted had to be regarded as a general principle of Community law.

It was therefore in the light of the general principles set out above that the Court pointed out that, as was apparent from the seventh and eighth recitals in the preamble to Regulation No 17, the powers conferred on the Commission by that regulation were intended to uphold the system of competition laid down in the Treaty, which undertakings were required to respect and that both the purpose of the regulation and the enumeration in Article 14 of the powers of the Commission's officials showed that investigations might have a very broad scope.

In that regard, the right of access to all of the undertakings' premises was of particular importance. Such a right implied, if it was not to be wholly useless, the possibility of seeking various pieces of information which were not already known or fully identified. Without such a possibility, the Commission could not obtain the information necessary for its investigation if the undertakings concerned refused to cooperate or obstructed its investigation.

In such a case, the Court took the view that the Commission's officials might, on the basis of Article 14 (6), seek to obtain, without the cooperation of undertak-

ings, all information necessary for the investigation with the aid of the national authorities, which were required to afford it the assistance necessary for the accomplishment of their tasks.

In such circumstances, the Commission was required to respect the procedural guarantees provided for that purpose by national law and had to ensure that the competent authority under national law disposed of all the factors necessary to permit it to exercise its powers of review. The Court considered that it should be emphasized that that authority, whether judicial or otherwise, could not in such circumstances substitute its own assessment of the necessity or otherwise of the investigations ordered for that of the Commission, whose assessments of fact and law were subject only to review by the Court of Justice. On the other hand, the national authorities were entitled to consider, once the authenticity of the decision ordering the investigation had been proved, whether the restrictive measures envisaged were arbitrary or excessive in relation to the purpose of the investigation and to ensure that the rules of national law were complied with in the application of those measures.

In the light of the foregoing, the Court decided that the measures which the Commission's officials were entitled to take under the decision ordering the investigation at issue did not exceed the powers conferred on it by Article 14 of Regulation No 17.

Although it was true that during the proceedings before the Court the Commission had argued that its officials were entitled, in the course of investigations, to carry out searches without the assistance of the national authorities and without complying with the procedural guarantees provided for under national law, the fact that that interpretation of Article 14 of Regulation No 17 was erroneous could not render unlawful the decisions adopted on the basis of that provision.

The applicant also considered that the decision ordering the investigation infringed Article 190 of the Treaty and Article 14 (3) of Regulation No 17 on the ground that it was lacking in precision, in particular in regard to the subject-matter and purpose of the investigation.

In that regard, the Court pointed out that the Commission's obligation under Article 14 (3) to specify the subject-matter and purpose of the investigation constituted a fundamental guarantee of the right to a fair hearing of the undertakings concerned. It followed that the scope of the obligation to state the reasons on which decisions ordering investigations were based could not be restricted on the basis of considerations connected with the effectiveness of the investigation. In that regard, the Court pointed out that, although it was true that the Commission was not required to communicate to the person to whom a decision ordering an investigation was addressed all information at its disposal in regard to the alleged infringements or to provide a rigorous legal classification of those infringements, it had clearly to indicate the suspicions which it was seeking to verify.

The Court decided that although the statement of the reasons on which the decision at issue was based was drafted in very general terms, which would have benefited from being more precise and could therefore be criticized from that point of view, it none the less contained the essential information required by Article 14 (3) of Regulation No 17.

Finally, the applicant considered that the procedure for the delegation of authority followed in regard to the adoption of the decision ordering the investigation was incompatible with the principle *nulla poena sine lege*. It claimed that the Commission, by a mere measure of internal administration, modified the factors constituting the infringement in respect of which a fine could be imposed under Article 15 of Regulation No 17 because, with effect from the decision of 5 November 1980, which provided for that procedure, such an infringement was constituted by the refusal to submit to an investigation ordered by a single member of the Commission and not, as before, by the Commission as a collegial body.

In that regard, the Court pointed out that although it was true that the conditions under which a fine could be imposed under Article 15 of Regulation No 17 could not be amended by a decision of the Commission, neither the purpose nor the effect of the abovementioned decision delegating authority was to introduce such an amendment. As long as the system delegating authority in regard to decisions ordering investigations did not undermine the principle of collegiality, the decisions adopted on the basis of such a delegation had to be regarded as decisions of the Commission within the meaning of Article 15 of Regulation No 17.

The decision imposing the periodic penalty payment

According to the applicant, the adoption of that decision was vitiated by a breach of essential procedural requirements because the Commission adopted it without first hearing the undertaking concerned and consulting the Advisory Committee on Restrictive Practices and Dominant Positions.

The Court pointed out in that regard that the fixing of periodic penalty payments under Article 16 of Regulation No 17 necessarily took place in two stages. In its first decision, the Commission imposed a periodic penalty payment on the basis of a certain number of units of account per day of delay from a date which it fixed. That decision, since it did not determine the total amount of the payment, could not be implemented. That amount could be definitively fixed only by a further decision.

It has thus fulfilled the obligation to hear the interested parties and to consult the Advisory Committee on Restrictive Practices and Dominant Positions if the hearing and consultation took place before the periodic penalty payment was definitively fixed, so that the undertaking concerned and the Advisory Committee were in a position to make known in good time their point of view on all the

factors on which the Commission relied when imposing the periodic payment and fixing the definitive amount thereof.

Moreover, the requirement to carry out those hearings and consultations before the adoption of a decision imposing a periodic penalty payment on an undertaking which had refused to submit to an investigation amounted to deferring the date of adoption of that decision and, therefore, to undermining the effectiveness of the decision ordering the investigation.

The decision fixing the definitive amount of the periodic penalty payment

The applicant claimed first that the Commission should have excluded from its calculations the time during which the applicant was in the process of applying to the Court for suspension of the operation of the decision ordering the investigation. The Commission contradicted its own position inasmuch as it had stated that it was willing to delay implementation of such a decision until the Court had ruled.

In that regard, the Court considered it sufficient to point out that the statement to that effect made by the Commission during the proceedings concerned only the position it might adopt in the future if, in accordance with the argument it was putting forward, the application for interim measures brought before the Court was regarded as the appropriate form of prior judicial review of investigations ordered by the Commission. Such a statement could not therefore have any effect whatsoever in this case on the fixing of the definitive amount of the periodic penalty payment.

In the second place, the applicant considered that the definitive amount was disproportionate because it had acted solely in the light of higher interests corresponding to the guarantee of an investigation procedure in accordance with law and the constitutional order.

In that regard, the Court decided that the applicant not merely opposed particular measures which it regarded as being outside the powers of the Commission's officials but totally refused to cooperate in the implementation of the decision ordering the investigation which was addressed to it.

Such conduct was incompatible with the obligation on all persons subject to Community law to recognize the validity of measures adopted by the institutions until such time as they had been declared void by the Court and to accept that they might be implemented in so far as the Court had not decided that suspension of the operation of a measure was justified by higher legal interests.

The Court held that:

'1. The applications are dismissed;

2. The applicant is ordered to pay the costs.'

Mr Advocate General Mischo delivered his Opinion at the sitting on 21 February 1989.

He concluded in the following terms:

'I would conclude, therefore, by proposing that the Court dismiss the applications brought against the Commission of the European Communities by Hoechst AG... and order the applicant to pay the costs, including those of the application for interim measures in Case 46/87.'

Environment

1. Case 252/85: *Commission of the European Communities* v *French Republic* — 27 April 1988
   — see under *Failure by a Member State to fulfil its obligations, Action for a declaration of*

2. Case 302/86: *Commission of the European Communities* v *Kingdom of Denmark* — 20 September 1988
   — see under *Failure by a Member State to fulfil its obligations, Action for a declaration of*

3. Case 187/87: *Saarland and Others* v *Minister for Industry, Post and Telecommunications and Tourism, and Others* — 22 September 1988
   (Nuclear power stations — Opinion of the Commission under Article 37 of the EAEC Treaty)
   (Full Court)

The Tribunal Administratif [Administrative Court], Strasbourg, requested a preliminary ruling on the interpretation of Article 37 of the EAEC Treaty under Article 150 of that Treaty.

The question was raised in proceedings brought by Saarland, a number of German local authorities, French and Luxembourg associations for the protection of the Moselle valley and of the environment, and certain private individuals, against certain French interministerial orders of 21 February 1986 authorizing the discharge of, on the one hand, liquid radioactive waste and, on the other, gaseous radioactive waste from the four units of the Cattenom power station, in the Department of the Moselle.

Those orders were adopted on conclusion of an administrative procedure which started on 11 October 1978 with a declaration as to the public utility of the works necessary in order to construct at Cattenom a nuclear power station with two 900 megawatt units and two 1 300 megawatt units; subsequently, between 6 July 1979 and 31 March 1982 building permits were issued for those units, and between 24 June 1982 and 29 February 1984 decrees were issued authorizing the establishment at Cattenom of four units of 1 300 megawatts each.

Before the Tribunal Administratif, Strasbourg, the plaintiffs in the main proceedings claimed, *inter alia*, that the French Government had infringed Article 37 of the EAEC Treaty by not providing to the Commission until 29 April 1986, that is to say after the contested orders were adopted, general data concerning the discharge of radioactive waste by the Cattenom nuclear power station, although that article required those data to be given to the Commission before disposal was authorized by the competent authorities.

The defendants in the main proceedings contended that Article 37 of the EAEC Treaty was to be interpreted as requiring consultation of the Committee before disposal took place, regardless of the fact that authority for disposal had been given before the matter was notified to the Commission.

In those circumstances, the Tribunal Administratif, Strasbourg, asked the Court of Justice whether Article 37 of the Treaty of 25 March 1957 establishing the European Atomic Energy Community required the Commission of the European Communities to be notified before the disposal of radioactive effluent by nuclear power stations was authorized by the competent authorities of the Member States, where a procedure for prior authorization was set in motion, or before such disposal was effected by nuclear power stations.

Article 37 of the EAEC Treaty is worded as follows: 'Each Member State shall provide the Commission with such general data relating to any plan for the disposal of radioactive waste in whatever form as will make it possible to determine whether the implementation of such plan is liable to result in the radioactive contamination of the water, soil or air space of another Member State.'

The Court pointed out that the expression 'plan for... disposal' used in Article 37 appeared to indicate that that article referred to a stage prior to any decision authorizing disposal.

However, Article 37 had to be interpreted in context and by reference to its purpose within the scheme of the EAEC Treaty.

It was significant that that article appeared in Chapter III of the EAEC Treaty, entitled 'Health and Safety'.

Article 37 was, in the opinion of the Court, a provision to be relied upon in order to preclude the possibility of radioactive waste, whereas other provisions, such as Article 38, were applicable where a risk of contamination was imminent or even where contamination had already occurred.

That being the purpose of Article 37, the guidance which the Commission, assisted by highly-qualified groups of experts, might give to the Member State concerned was of very great importance, by virtue in particular of the overall view available only to the Commission regarding the development of activity in the nuclear sector in the territory of the Community as a whole.

Where a Member State made the disposal of waste subject to authorization, it had to be recognized that, to render the Commission's opinion fully effective, that opinion had to be brought to the notice of the Member State concerned before any such authorization was issued.

Moreover, the Commission's opinion could not realistically be studied in detail and effectively influence the attitude of the Member State concerned unless it was given before the adoption of a final decision authorizing disposal, which, *a fortiori*, implied that the opinion should be sought before any such decision was taken.

The Court took the view that the only interpretation of Article 37 which enabled that purpose to be achieved was that it imposed the requirement that the Commission had to be provided with general data relating to any plan for disposal of radioactive waste before definitive authorization for such disposal was given.

The Court ruled as follows:

> 'Article 37 of the Treaty of 25 March 1957 establishing the European Atomic Energy Community must be interpreted as meaning that the Commission of the European Communities must be provided with general data relating to any plan for the disposal of radioactive waste before such disposal is authorized by the competent authorities of the Member State concerned.'

Advocate General Sir Gordon Slynn delivered his Opinion at the sitting on 8 June 1988.

He proposed an answer in the following terms: 'Article 37 of the Treaty of 25 March 1957 establishing the European Atomic Energy Community requires that the Commission be notified and its opinion be given and considered before the competent authorities of the Member States authorize the disposal of radioactive effluent by a nuclear installation.'

4. Case 380/87: *Enichem Base, Montedipe, Solvay, Sipa Industriale, Altene, Neophane and Polyflex Italiana* v *Municipality of Cinisello Balsamo* — 13 July 1989
   (Approximation of laws — Prevention and disposal of waste — Plastic bags)
   (Fifth Chamber)

The Tribunale Amministrativo Regionale per la Lombardia referred to the Court for a preliminary ruling several questions on the interpretation of Council Directives 75/442 on waste, 76/403 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls, and 78/319 on toxic and dangerous waste, and on the determination of the principles applicable to compensation for loss caused by an administrative act contrary to Community law.

Those questions arose in a dispute between the aforesaid undertakings, which produced plastic containers, packages and bags, and the Municipality of Cinisello Balsamo, concerning the annulment of the decision of the mayor of that municipality by which it was prohibited from 1 September 1987 to provide customers with non-biodegradable bags or other non-biodegradable containers in which to carry away their purchases, or to sell or otherwise distribute plastic bags, with the exception of those intended for the disposal of rubbish.

The Court stated that the first question should be understood as asking whether Directive 75/442 conferred on individuals the right to sell or to use plastic bags and other non-biodegradable containers.

In this regard the Court stated that Directive 75/442 did not prohibit the sale or use of any product, but it could not be inferred from that that it precluded the Member States from laying down such a prohibition for the protection of the environment.

The Court stated that a different interpretation could not be founded on the wording of the directive and would in any event be contrary to its objectives.

Since the directive was designed *inter alia* to encourage national measures for the prevention of waste, the restriction or prohibition of the selling or use of products such as non-biodegradable containers were likely to help to attain that aim.

The second question asked essentially whether Article 3 (2) of Directive 75/442 imposed on Member States an obligation to communicate to the Commission any draft rules such as those at issue in the main proceedings before they were finally adopted.

In this regard, it had been argued that the national rules in question were not within the scope of this provision because they did not concern products which might be a source of technical difficulties as regards disposal or lead to excessive disposal costs.

In this regard the Court stated that Article 3 (2) of Directive 75/442 required the Member States to inform the Commission in good time of *any* draft rules to encourage *inter alia* the prevention, recycling and processing of waste, regardless of importance, cost or any technical difficulties.

The third question asked whether Article 3 (2) of Directive 75/442 conferred on individuals a right upon which they could rely before the national courts in order to obtain the annulment or suspension of national rules covered by that provision on the ground that such rules had been adopted without the Commission of the European Communities first having been informed.

In this regard the Court stated that it could not be concluded from the wording or the aim of that provision that failure on the part of the Member States to comply

with their obligations to inform the Commission before adopting the rules would in itself result in the illegality of the rules thus adopted.

It followed from the foregoing that the aforesaid provision concerned the relations between the Member States and the Commission but did not confer on individuals any right which might be breached if a Member State failed to comply with its obligation to inform the Commission of its draft rules before they were adopted.

The Court ruled as follows:

'1. Directive 75/442 properly construed, does not give individuals the right to sell or use non-biodegradable plastic bags or other non-biodegradable containers.

2. Article 3 (2) of Directive 75/442 must be interpreted as requiring Member States to communicate to the Commission any draft legislation such as the legislation in dispute in the main proceedings, prior to its final adoption.'

Mr Advocate General Francis G. Jacobs delivered his Opinion at the sitting on 16 March 1989.

He proposed that the questions should be answered as follows:

'1. Council Directive 75/442/EEC on waste confers no rights on individuals to sell or use the products concerned by that Directive.

2. Article 3 (2) of the Directive on waste must be interpreted as meaning that Member States shall inform the Commission in good time of draft measures for the prevention of waste; however, a failure to inform the Commission does not confer on individuals any rights which can be relied upon before the national courts.'

Failure by a Member State to fulfil its obligations, Action for a declaration of

1. Case 427/85: *Commission of the European Communities* v *Federal Republic of Germany* — 25 February 1988
(Lawyers' freedom to provide services — Transposition into national law of Directive 77/249/EEC)
(Full Court)

The Commission of the European Communities brought an action for a declaration that the Federal Republic of Germany had failed, in regard to the exercise by lawyers of freedom to provide services, to fulfil its obligations under the EEC Treaty and under Council Directive 77/249/EEC to facilitate the effective exercise by lawyers of freedom to provide services.

The Commission's complaints were directed against the manner in which German legislation gave effect to Directive 77/249 as regards the duty of 'cooperation' imposed on a lawyer established in another Member State who pursued activities on German territory by way of provision of services. The concept of 'cooperation' was based on Article 5 of the directive, according to which, 'for the pursuit of activities relating to the representation of a client in legal proceedings' Member States might require lawyers who provided services to 'work in conjunction' either with a lawyer who practised before the judicial authority in question and who would, where necessary, be answerable to that authority, or with an 'avoué' or 'procuratore' practising before it.

The dispute was concerned with three separate issues.

A. *Extent of the cooperation with the German lawyer*

Under the German Law of 1980 the obligation to work in conjunction with a lawyer established in the Federal Republic of Germany arose when a lawyer providing services proposed to 'represent or defend a client' in legal proceedings or certain administrative proceedings.

According to the Commission, that provision defined too broadly the extent of compulsory cooperation with a German lawyer, by embracing not only activities in judicial proceedings but also activities before administrative authorities and contact with persons held in custody.

The Commission argued that, as far as activities in judicial proceedings were concerned, in all cases in which representation by a lawyer was not mandatory under national legislation and in which, therefore, the party concerned could defend his own interests or indeed entrust their defence to a person other than a lawyer who provided services should have the option of representing or defending his client without working in conjunction with a German lawyer.

The Court held that, as the German Government rightly observed, the wording of Article 5 of the directive drew no distinction between those activities of lawyers which did, and those which did not, fall within the ambit of mandatory representation.

A study of the principles of Community law showed the Court that there was no consideration of general interest which could, in relation to those judicial proceedings for which representation by a lawyer was not mandatory, justify the obligation imposed on a lawyer enrolled at the Bar of another Member State and providing his professional services to work in conjunction with a German lawyer.

In so far as the German Law of 1980, by the generality of its wording, extended that obligation to such legal proceedings it was contrary to the directive and to Articles 59 and 60 of the Treaty.

(i) With regard to the activities of lawyers providing services in proceedings before administrative authorities, the Court found that the considerations set out above in connection with activities in judicial proceedings were fully applicable.

(ii) With regard to contact with persons in custody, the German Government set out a series of arguments concerning the lawyers' being answerable to the courts or tribunals involved. The Court decided to consider those arguments below, when examining the detailed rules for cooperation.

B. *Detailed rules for cooperation*

The Commission criticized the Federal Republic of Germany for defining, in its Law of 1980, the meaning of 'cooperation' in such a way as to exceed the limits set by the directive and by Articles 59 and 60 of the Treaty. Its criticisms were particularly directed at the requirements governing (a) evidence of cooperation, (b) the role assigned to the German lawyer with whom there had to be cooperation and (c) contacts between the lawyer providing services and persons held in custody.

In the first place, the German Government contended that only a German lawyer could be answerable for the conduct of proceedings before German courts or tribunals. Secondly, the German Government argued that the freedom to provide services should not adversely affect the proper administration of justice.

With regard to the first argument the Court held that the lawyer providing services and the German lawyer, both of whom were governed by the code of professional conduct which applied in the host State, had to be considered capable of defining jointly, in accordance with that code of conduct and in the exercise of their professional autonomy, the detailed rules for cooperation which were appropriate to the terms of their appointment.

However, the Court was obliged to find that the German Law of 1980 imposed on the two lawyers required to work together obligations which went beyond what was necessary to achieve the aims of the duty of cooperation as defined above. Neither the continuous presence of a German lawyer at the oral procedure nor the requirement that the latter must himself be the authorized representative or counsel for the defence, nor the detailed provisions concerning proof of the cooperation were generally indispensable or even useful in giving the necessary support to the lawyer providing services.

The Court added that, when Article 5 of the directive referred to the 'answerability' of the German lawyer, it envisaged his being answerable to the court or tribunal before which the proceedings had been brought, not to the client. The question of conversancy with German law was one of the matters for which the lawyer providing his services was answerable to his client.

In the second place, with regard to the provisions of the German Law governing visits to persons held in custody, the Court conceded that there might be overriding considerations, particularly of public safety, which it was for the Member State concerned to appraise, which might induce that Member State to regulate the contact between lawyers and persons in custody.

Nevertheless, inasmuch as the German Law stipulated that the lawyer providing services might not, in his capacity as counsel for the defence, visit a person held in custody unless accompanied by the German lawyer in conjunction with whom he was working, and might not correspond with such a person otherwise than through that German lawyer, without any exception—even an exception authorized by the court or tribunal—being allowed, the restrictions imposed by that Law went beyond what was necessary to achieve the legitimate goals which it pursued.

The Court therefore upheld the Commission's criticisms of the detailed rules governing the cooperation between the lawyers.

C. *Territorial limits on representation*

Under the German Code of Civil Procedure, representation by a lawyer admitted to practise before the court or tribunal hearing the case was mandatory in civil proceedings conducted before the Landgerichte [regional courts] and at higher instance, and also before the Familiengerichte [family courts].

Where representation by a lawyer was mandatory in actions brought before such courts or tribunals, the lawyer in question had therefore to be admitted to practise before the court concerned. If not admitted to practise, the lawyer was only entitled, with the assistance of the lawyer admitted to do so, to make observations during the oral procedure; the Law of 1980 placed the lawyer providing services in the same situation.

The Commission took the view that Article 5 of the directive allowed no requirement other than that the lawyer providing his services must work in conjunction with a lawyer admitted to practise before the court in question, but did not allow those services to be limited to explanations in the course of the oral procedure, made with the assistance of the lawyer admitted to practise before that court, as was laid down by the German legislation in respect of all civil proceedings above a given level of magnitude.

The controversy centred on whether the Federal Republic of Germany was entitled to subject lawyers providing services to the same system which it applied to German lawyers who were not admitted to practise before a given court. The question was not answered in the provisions of the directive; it had to be considered in the light of the principles governing the freedom to provide services by virtue of Articles 59 and 60 of the Treaty.

The main aim of those articles was to enable a person wishing to provide services to pursue his activities in the host State without discrimination in favour of the nationals of that State.

The Court held that the rule of territorial exclusivity could not be applied to temporary activities pursued by lawyers established in other Member States, since, for those purposes, their legal and practical circumstances could not legitimately be compared with those applicable to lawyers established on German territory.

However, that finding had to be qualified by the obligation on the part of the lawyer providing services to work in conjunction with a lawyer admitted to practise before the court in question, within the limits and according to the detailed rules set out above.

The Court held as follows:

'1. The Federal Republic of Germany has failed to fulfil its obligations under Articles 59 and 60 of the EEC Treaty and Council Directive 77/249/EEC to facilitate the effective exercise by lawyers of freedom to provide services,

by requiring the lawyer providing services to act in conjunction with a lawyer established on German territory, even where under German law there is no requirement of representation by a lawyer,

by requiring that the German lawyer, in conjunction with whom he must act, himself be the authorized representative or defending counsel in the case,

by not allowing the lawyer providing services to appear in the oral proceedings unless he is accompanied by the said German lawyer,

by laying down unjustified procedures for proving the co-involvement of the two lawyers,

by imposing the requirement, without any possible exception, that the lawyer providing services is to be accompanied by a German lawyer if he visits a person held in custody and is not to correspond with that person except through the said German lawyer, and

by making lawyers providing services subject to the rule of territorial exclusivity laid down in Paragraph 52 (2) of the Bundesrechtsanwaltsordnung.

2. The Federal Republic of Germany is ordered to bear the costs.'

Mr Advocate General da Cruz Vilaça delivered his Opinion at the sitting on 3 December 1987.

He proposed as follows: 'The Court should declare that the Federal Republic of Germany has failed to fulfil its obligations under Articles 59 and 60 of the EEC

Treaty and Council Directive 77/249/EEC to facilitate the effective exercise by lawyers of freedom to provide services, in so far as it:

(a) requires a lawyer from another State who, in connection with the provision of services, pursues in the Federal Republic of Germany activities concerned with the representation or defence of a client in legal proceedings, to work in conjunction with a German lawyer even in cases where German law does not make representation by a lawyer mandatory;

(b) requires that the German lawyer in conjunction with whom the lawyer providing services is to work should be the authorized representative or defending counsel in the proceedings;

(c) prohibits the lawyer providing services from taking part in the oral proceedings or in a criminal trial unless he is accompanied by the German lawyer;

(d) requires that the cooperative work should be proved in relation to every step taken, failing which the step in question is considered null and void;

(e) in all circumstances, and not only when compelling reasons of public interest so justify, prohibits the lawyer providing services from visiting a person held in custody unless he is accompanied by the German lawyer and from corresponding with a person held in custody otherwise than through that lawyer.

In other respects, the application must be dismissed.

Since the Federal Republic of Germany has been unsuccessful in answering the majority of the criticisms made, I believe that it should bear all the costs.'

2. Case 252/85: *Commission of the European Communities* v *French Republic* — 27 April 1988
(Failure to comply with a directive — Conservation of wild birds)
(Full Court)

The Commission of the European Communities brought an action for a declaration that the French Republic, by failing to adopt within the prescribed period all the laws, regulations and administrative provisions needed to comply with Council Directive 79/409/EEC on the conservation of wild birds, had failed to fulfil its obligations under the EEC Treaty. The prescribed period expired on 6 April 1981.

First complaint: Failure to implement Article 5 (b) and (c) of the directive

The Commission complained that the French Government had provided, in Articles 372 (10) and 374 (4) of the Code Rural [Code of the Countryside], for the protection of nests and eggs only outside the hunting season. It also complained that the French Government had not protected the nests and eggs of a certain number of birds, since the provisions of the Ministerial Decree of 17 April 1981 excluded certain species from its scope.

The French Government contended that the objective laid down in Article 5 of the directive had been achieved. The protected species of birds in question did not nest during the hunting season so that the protection of nests and eggs throughout the year would have had no real effect.

The Court stated that the prohibitions laid down in the directive should apply without limitation *ratione temporis*. It was necessary to provide uninterrupted protection for the birds' habitat because every species reused every year the nests that they had built in previous years.

The suspension of such protection at a certain time of year therefore could not be considered compatible with the aforesaid prohibitions.

Secondly, the Court found that the Decree of 17 April 1981 excluded a certain number of protected birds from the prohibition of the destruction of their nests and eggs.

The French rules did not provide any indication of the time and place in which a derogation could be granted.

The Court upheld the first complaint.

Second complaint: Concept of national biological heritage

The Commission stated that the protection provided for by Article 3 of the Law of 10 July 1976 was limited to cases in which it was necessary to preserve the 'national biological heritage' whereas Article 1 of the directive extended its protection to all wild birds naturally occurring in the European territory of the Member States.

The French Government replied that the list of protected species set out in the national rules contained many migratory species which nested not in France but in the other Member States.

The Court stated that, owing to the importance of providing a complete and effective protection of wild birds throughout the whole Community regardless of where they lived or the length of their stay, any national legislation which defined the protection of wild birds by reference to the concept of national heritage was incompatible with the directive.

The Court upheld the second complaint.

Third complaint: Failure to implement Article 5(e) of the directive

The Commission stated that the French Law No 76-629 contained a general authorization of the keeping of protected birds. Article 5(e) of the directive

provided that the Member States were bound to prohibit the keeping of birds which might not be hunted and captured.

Any such general prohibition of the keeping of birds other than species referred to in Annex III to the directive was not to be found in the French legislation, which restricted such protection to a limited number of birds.

The French Government contended that the French rules enabled the result sought by the directive to be achieved. The aforesaid decree prohibited the capture of birds, their removal, their use and, in particular, their sale or purchase. Together, those prohibitions made it impossible to keep the protected species.

The Court held that, in order to ensure a full and effective protection of birds on the territory of all the Member States, it was essential that the prohibitions contained in the directive were expressly provided for in national legislation. The French legislation did not contain any prohibition of the keeping of protected birds and thus permitted the keeping of birds captured or unlawfully obtained, in particular the acquisition of birds from other Member States.

Furthermore, the Court held that the list of birds whose keeping was permitted under the French rules did not correspond to the limited number of species of birds which were capable of being kept in accordance with Annex III to the directive.

The Court upheld the third complaint.

Fourth complaint: Failure to implement Article 7 of the directive

The Court held that this complaint no longer had any purpose.

Fifth complaint: Failure to apply Article 7(4) of the directive

The Court held that this complaint was unfounded.

Sixth complaint: Failure to comply with Article 8(1) of the directive

The Commission stated that, as regards certain departments of France the Decree of 27 July 1982 authorized the use of limes for the capture of thrushes, and the Decrees of 7 September 1982 and 15 October 1982 permitted the capture of skylarks by means of horizontal nets known as *pantes* or *matoles*. The use of limes and nets was expressly prohibited by Article 8 of the directive.

The Commission considered that the use of limes and horizontal nets could not be justified by Article 9 of the directive, since such methods of capture were not

selective methods and therefore did not permit the 'judicious use of certain birds in small numbers' as prescribed by the directive.

The French Government contended that these measures were justified under Article 9, since such methods were strictly supervised with regard both to geographical extent, duration and persons permitted to use them, in order to ensure that they were used on a selective basis.

The French Government considered that the capture of birds using limes and horizontal nets was subject to an extremely strict supervised system of individual authorizations.

The Court stated that the Member States were authorized to derogate from the prohibition laid down in Article 8(1) of the directive, as provided for in Article 9.

The Court stated that the French rule on the capture of thrushes and skylarks in certain departments was very specific. The aforesaid decrees provided a significant number of restrictive conditions for the grant of authorizations to capture such birds.

The Court stated that the Commission had not adduced any evidence to show that the French rules permitted the capturing of birds but was incompatible with a judicious use of certain birds in small numbers.

Consequently, the French provisions in question could not be regarded, in the light of the evidence before the Court, as incompatible with the requirements of Article 9(1)(c) of the directive.

The Court therefore dismissed the sixth complaint.

The Court ruled as follows:

'1. The French Republic, by failing to adopt within the prescribed period all the laws, regulations and administrative provisions needed to comply with Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, has failed to fulfil its obligations under the EEC Treaty.

2. Each of the parties is ordered to bear its own costs.'

Mr Advocate General da Cruz Vilaça delivered his Opinion at the sitting on 4 February 1988.

He reached the following conclusion: 'The French Republic has failed to adopt, within the prescribed period, the provisions needed to implement all the obligations arising out of Council Directive 79/409/EEC of 2 April 1979, and it has thereby failed to fulfil one of its obligations under the EEC Treaty.'

3. Case 302/86: *Commission of the European Communities*, supported by the United Kingdom of Great Britain and Northern Ireland v *Kingdom of Denmark* — 20 September 1988
(Free movement of goods — Containers for beer and soft drinks)
(Full Court)

The Commission of the European Communities brought an action for a declaration that by introducing and applying a system under which all containers of beer and soft drinks had to be returnable the Kingdom of Denmark had failed to fulfil its obligations under Article 30 of the EEC Treaty.

An essential feature of the system was that manufacturers had to market beer and soft drinks only in containers which were returnable. The containers had to be approved by the National Agency for the Protection of the Environment.

The system was subsequently amended to allow, providing a deposit and collection system was established, the use of non-approved containers to a limit of 3 000 hectolitres per producer per annum and as part of transactions carried out by foreign producers to test the market.

In the present case the Danish Government submitted that the said system was justified by the imperative need to protect the environment.

In that respect the Court observed that it had already held that environmental protection was 'one of the Community's essential objectives' which as such might justify certain limitations to the principle of free movement of goods. That view had moreover been confirmed by the Single European Act.

However it had also to be remembered that if a Member State had a choice between various measures suitable to achieve the same aim it had to choose the means which involved the least obstacles to free trade.

In that respect, the Court noted that it was to be observed that although the returnable system for approved containers guaranteed a maximum rate of reuse and thus a very appreciable environmental protection since empty containers could be returned to any retailer of beverages, non-approved containers could be returned only to the retailer who had sold the drinks in view of the impossibility of setting up such a complete organization for them too.

Nevertheless the system of returnable non-approved containers was calculated to protect the environment and as far as imports were concerned only limited quantities of beverages in relation to the quantity of beverages consumed in the country because of the restrictive effect on imports of the requirement that containers should be returnable.

In those circumstances a limitation of the quantity of products which might be marketed by importers was disproportionate to the objective pursued.

The Court held the following:

'1. Declares that by restricting, by Order No 95 of 16 March 1984, the quantity of beer and soft drinks which may be marketed by a single producer in non-approved containers to 3 000 hectolitres a year, the Kingdom of Denmark has failed, as regards imports of those products from other Member States, to fulfil its obligations under Article 30 of the EEC Treaty;

2. Dismisses the remainder of the application;

3. Orders the parties and the intervener to bear their own costs.'

Advocate General Sir Gordon Slynn delivered his Opinion at the sitting on 24 May 1988.

He concluded as follows: 'In my view, the Commission is entitled to the declaration it seeks and to its costs of these proceedings.'

Free movement of goods

1. Case 407/85: *Drei Glocken GmbH and Gertraud Kritzinger* v *USL Centro-Sud and Provincia Autonoma di Bolzano* — 14 July 1988 [1]
(Free movement of goods — Pasta products — Obligation to use only durum wheat)
(Full Court)

The Pretore (Magistrate) of Bolzano referred to the Court for a preliminary ruling two questions on the interpretation of Articles 30 and 36 of the Treaty with a view to determining the compatibility with Community law of domestic legislation which prohibited the sale of pasta products made from common wheat or a mixture of common wheat and durum wheat.

The questions were raised in proceedings between the Unità Sanitaria Locale (Local Health Authority), on the one hand, and, on the other, a German manufacturer, Drei Glocken, and an Italian retailer, Kritzinger.

Drei Glocken exported to Italy pasta products made from a mixture of common wheat and durum wheat, which were resold by Kritzinger.

Having been ordered by the USL to pay an administrative fine for infringement of Article 29 of Law No 580 of 4 July 1967, Drei Glocken and Kritzinger brought an action before the Pretore of Bolzano.

Article 29 of the Italian Law on pasta products required that only durum wheat should be used for the industrial production of dry pasta products. Articles 30 and

[1] The judgment of the same date in Case 90/86, Criminal proceedings against G. Zoni, is identical to that in Case 407/85.

50 of the same law authorized the use of common wheat for the manufacture of fresh pasta products and the production of dry pasta products intended for exportation.

Article 36 of the Law prohibited the sale in Italy of pasta products not conforming with the Law and Article 50 made that prohibition applicable to imported pasta products.

In support of their actions, Drei Glocken and Kritzinger claimed that the application of Article 29 of the Law on pasta products to imported pasta products was incompatible with Article 30 of the Treaty.

Accordingly, the national court submitted two questions relating essentially to the compatibility with Articles 30 and 36 of the Treaty of the extension to imported products of a prohibition of the sale of pasta products made from common wheat or a mixture of common wheat and durum wheat, of the kind contained in the Law on pasta products.

(a) The existence of an obstacle to the free movement of goods

The Court had consistently held that in the absence of common rules, obstacles to the free movement of goods resulting from disparities between national rules on the composition of products had to be accepted, provided that those national rules, applying without distinction to domestic and imported products, were necessary in order to satisfy mandatory requirements such as consumer protection and fair trading. Nevertheless, the Court pointed out that such rules had to be proportionate to the objectives pursued and that if a Member State had available to it less restrictive means enabling it to achieve the same objectives it was under an obligation to use those means.

The Court found that the prohibition on the sale of products made from common wheat or a mixture of common wheat and durum wheat constituted an obstacle to the importation of pasta products lawfully made from common wheat or a mixture of common wheat and durum wheat in other Member States. It was therefore necessary to establish whether that obstacle might be justified for reasons relating to the protection of public health within the meaning of Article 36 of the Treaty or mandatory requirements such as those mentioned above.

(b) The possibility of justifying the prohibition for reasons of protection of public health

The Italian Government drew the attention of the Court to the problem of the use of chemical additives and colourants which might have harmful effects on human health. But it was unable to prove the alleged harmful effects.

A general prohibition on the marketing of imported pasta products made from common wheat or a mixture of common wheat and durum wheat was therefore, in any event, contrary to the principle of proportionality and was not justified by reasons relating to the protection of public health within the meaning of Article 36 of the Treaty.

(c) The possibility of justifying the prohibition by reference to certain mandatory requirements

The view was expressed that a prohibition on the sale of pasta products made from common wheat or a mixture of common wheat and durum wheat was necessary to protect consumers, to guarantee fair trading and, finally, to ensure that the common organization of the market in cereals was fully effective.

It was already apparent from previous decisions of the Court that consumer protection could be provided by means which did not hinder the importation of products lawfully manufactured and marketed in other Member States, and in particular by compulsory labelling giving proper information as to the nature of the product.

Moreover, the Court pointed out that nothing prevented the legislature from reserving the description 'pasta made from durum wheat meal' exclusively for pasta made only from durum wheat.

The objection was raised that adequate labelling indicating the nature of the product offered for sale would not make Italian consumers sufficiently aware of the nature of the pasta which they were purchasing, since in their minds the term 'pasta' meant a product made exclusively from durum wheat.

In the second place, it was contended that, in the case of pasta products made from common wheat or a mixture of common wheat and durum wheat, a list of the ingredients did not make it possible to ensure fair trading.

The Court rejected those arguments as well. The Italian Government had in any event a less restrictive means at its disposal of ensuring fairness in commercial transactions. By reserving the description 'pasta made from durum wheat meal' for pasta made only from durum wheat, it would give Italian consumers an opportunity to express their preference for the products to which they were accustomed and to demonstrate their conviction that the price difference was indeed justified by a difference in quality.

In the third place, it was contended that by providing a commercial outlet for growers, the Law on pasta products supplemented the common agricultural policy in the cereals sector, that policy being designed, on the one hand, to guarantee income for growers of durum wheat by the fixing of an intervention price for durum wheat at a level substantially higher than that fixed for common wheat,

and, on the other, to encourage them, by the grant of direct production aid, to grow durum wheat.

The Court pointed out that it was the extension of the scope of the Law on pasta products to cover imported products which was at issue and that Community law did not require the Italian legislature to repeal the law in so far as it related to producers of pasta established within Italian territory.

It was incumbent upon the Community to seek a solution to the common agricultural policy problem, and not upon a Member State.

The Court ruled:

> 'The extension to imported products of a prohibition on the sale of pasta products made from common wheat or a mixture of common wheat and durum wheat, of the kind contained in the Italian Law on pasta products, is incompatible with Articles 30 and 36 of the Treaty.'

Mr Advocate General Mancini delivered his Opinion at the sitting on 26 April 1988.

He proposed the following answer: 'Until such time as the Community has issued rules on the production and/or designation of pasta products, which take account in particular of the requirement of consumer protection, Article 30 of the EEC Treaty will not prevent the application of a law of a Member State which imposes the obligation to use exclusively durum wheat for the manufacture of pasta products intended to be marketed within that State.'

2. Case 302/86: *Commission of the European Communities* v *Kingdom of Denmark* — 20 September 1988
   — see under *Failure by a Member State to fulfil its obligations, Action for a declaration of*

3. Case C-145/88: *Torfaen Borough Council* v *B & Q plc (formerly B & Q (Retail) Limited* — 23 November 1989
   (Free movement of goods — Interpretation of Articles 30 and 36 of the EEC Treaty — Prohibition of Sunday trading)
   (Sixth Chamber)

Cwmbran Magistrates' Court, United Kingdom, referred to the Court for a preliminary ruling three questions on the interpretation of Articles 30 and 36 of the EEC Treaty in order to assess the compatibility with those provisions of national rules prohibiting trading on Sunday.

Those questions were raised in proceedings between Torfaen Borough Council and B & Q plc, which operated do-it-yourself centres and garden centres.

The Council alleged that B & Q had contravened Sections 47 and 59 of the United Kingdom Shops Act 1950 by causing its retail shop premises to be open for the serving of customers on Sunday other than for the transactions mentioned in the Fifth Schedule to that Act. According to that schedule only intoxicating liquors, certain foodstuffs, tobacco, newspapers and other products of everyday consumption could be sold in shops on Sundays.

Before the national court B & Q submitted that Section 47 of the Shops Act was a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30 of the EEC Treaty and was not justified under Article 36 of the EEC Treaty or by virtue of any 'mandatory requirement'.

The Council denied that argument and claimed that it applied to domestic and imported products alike and did not put imported products at any disadvantage.

The national court found that in the instant case the ban on Sunday trading had the effect of reducing B & Q's total sales, that approximately 10% of the goods sold by B & Q came from other Member States and that a corresponding reduction of imports from other Member States would therefore ensue.

By its first question the national court sought to establish whether the concept of measures having an effect equivalent to quantitative restrictions within the meaning of Article 30 of the Treaty also covered provisions prohibiting retailers from opening their premises on Sunday if the effect of the prohibition was to reduce in absolute terms the sales of goods in those premises, including goods imported from other Member States.

The Court stated first that national rules prohibiting retailers from opening their premises on Sunday applied to imported and domestic products alike. In principle, the marketing of products imported from other Member States was not therefore made more difficult than the marketing of domestic products.

Next, the Court recalled that it had held, with regard to a prohibition of the hiring of video-cassettes applicable to domestic and imported products alike, that such a prohibition was not compatible with the principle of the free movement of goods provided for in the Treaty unless any obstacle to Community trade thereby created did not exceed what was necessary in order to ensure the attainment of the objective in view and unless that objective was justified with regard to Community law.

In those circumstances, it was therefore necessary to consider first of all whether rules such as those at issue pursued an aim which was justified with regard to Community law. As far as that question was concerned, the Court had already stated that national rules governing the hours of work, delivery and sale in the bread and confectionery industry constituted a legitimate part of economic and social policy, consistent with the objectives of public interest pursued by the Treaty.

The Court stated that the same consideration should apply as regards national rules governing the opening hours of retail premises. Such rules reflected certain political and economic choices in so far as their purpose was to ensure that working and non-working hours were so arranged as to accord with national or regional socio-cultural characteristics, and that, in the present state of Community law, was a matter for the Member States. Furthermore, such rules were not designed to govern the patterns of trade between Member States.

Secondly, the Court stated that it was necessary to ascertain whether the effects of such national rules exceeded what was necessary to achieve the aim in view. The prohibition laid down in Article 30 covered national measures governing the marketing of products where the restrictive effect of such measures on the free movement of goods exceeded the effects intrinsic to trade rules.

The question whether the effects of specific national rules did in fact remain within that limit was a question of fact to be determined by the national court.

In view of the reply to the first question there was no need for the Court to rule on the second and third questions.

The Court ruled as follows:

> 'Article 30 of the Treaty must be interpreted as meaning that the prohibition which it lays down does not apply to national rules prohibiting retailers from opening their premises on Sunday where the restrictive effects on Community trade which may result therefrom do not exceed the effects intrinsic to rules of that kind.'

Mr Advocate General Van Gerven delivered his Opinion at the sitting on 29 June 1989.

He proposed that the Court should reply to the questions submitted to it in the following terms: 'A national rule which prohibits retail premises from being open on Sunday for the sale of goods to customers, save in respect of certain specified items, is not covered by the prohibition laid down in Article 30 if the rule does not cause imported goods to be discriminated against or placed at an actual disadvantage compared with domestic goods and if it does not screen off the domestic market of the Member State in question or make access to that market substantially more difficult or unattractive for imported goods to which the rule applies.

In the event that the Court should nevertheless decide that such a rule is in principle a measure caught by Article 30, I propose in the alternative that the Court should answer the preliminary questions as follows: "Articles 30 and 36 of the Treaty do not preclude a national rule which prohibits retail premises from being open on Sunday for the sale of goods to customers, save in respect of certain specified articles, if the rule does not cause imported goods to be discriminated against or placed at an actual disadvantage compared with domestic goods and if any obstacles to intra-Community trade which may be caused by the

application of that prohibition are not greater than is necessary for encouraging non-working activities and social contacts on a specified day which is already devoted to those purposes by a large part of the population."'

4. Case C-26/88: *Brother International GmbH* v *Hauptzollamt Giessen* — 13 December 1989
(Free movement of goods — Origin of goods — Assembly of prefabricated components)
(Fifth Chamber)

By order of 17 December 1987, received at the Court on 25 January 1988, the Hessisches Finanzgericht referred two questions to the Court for a preliminary ruling on the interpretation of Article 5 and 6 of Regulation (EEC) No 802/68 of the Council on the common definition of the concept of the origin of goods.

Those questions were raised in proceedings between Brother International and the Hauptzollamt in relation to the post clearance recovery of certain anti-dumping duties.

In 1984 and 1985 Brother International imported into the Federal Republic of Germany electronic typewriters from Taiwan which it declared to have originated in Taiwan.

Following an inspection carried out at Brother International's premises in September 1986 the German authorities concluded that the typewriters were to be regarded as originating in Japan and that in consequence they came within the scope of Council Regulation (EEC) No 1698/85 imposing a definitive anti-dumping duty on imports of electronic typewriters originating in Japan. Thereupon, by a post clearance recovery decision of 12 May 1987, the Hauptzollamt claimed from Brother International a sum totalling DM 3 210 277.83 by way of anti-dumping duties.

The Hauptzollamt considered that Brother International's factory in Taiwan was a 'screwdriver factory' which did nothing other than unpack and assemble separate components. In its view such an operation did not amount to a substantial process economically justified determining origin. Even if the process were regarded as determining origin, in the Hauptzollamt's view anti-dumping duty should be imposed since the transfer of the final assembly from Japan to Taiwan was amply sufficient to justify the presumption that the sole object of the transfer was to avoid anti-dumping duties.

The first question from the national court sought essentially to establish the conditions on which the simple assembly of prefabricated components originating in a different country from that of assembly sufficed to confer on the resulting product the origin of the country where assembly had taken place.

As the Court had already held, the process of assembly could be regarded as determining the origin where, from a technical point of view and having regard to

the definition of the goods in question, such assembly represented the decisive production stage during which the intended use of the parts used became definite and the goods in question took on their specific qualities.

In view, however, of the variety of processes which could be defined as assembly, there were, in the Court's view, situations where consideration on the basis of criteria of a technical nature might not be decisive in determining the origin of the goods. In such cases it was necessary to take account of the value added by assembly as an ancillary criterion. The relevance of that criterion was moreover confirmed by the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention).

As regards the application of that criterion and in particular the question of how much value was to be added to determine the origin of the goods in question, the Court believed that it was necessary to assume that the assembly process in question as a whole had to involve an appreciable increase in the commercial value ex-factory of the finished product. In that respect it was necessary to determine in each case whether the amount of the value added in the country of assembly justified, by comparison with the value added in other countries, designating the country of assembly as the country of origin.

Where only two countries were involved in production of goods and consideration of criteria of a technical nature was insufficient to determine origin, the simple assembly of the goods in one country from prefabricated components originating in another country did not suffice to confer on the resulting product the origin of the country of assembly if the value so added was appreciably less than the value conferred in the other country. In such a situation value added of less than 10%, as estimated by the Commission in its observations, could not in any event be regarded as sufficient to confer on the finished product the origin of the country of assembly.

The Court held that the origin of goods which had been assembled was to be determined on the basis of the abovementioned criteria without it being necessary to determine whether the assembly involved an intellectual operation, which was not a criterion provided for in Article 5 of the Regulation.

With its second question the national court asked whether the transfer of assembly from the country of manufacture of the parts to another country where they were used in factories already available justified the presumption that the sole object of the transfer was to evade the applicable provisions and in particular the application of the anti-dumping duty within the meaning of Article 6 of the regulation.

In that respect the Court observed that the transfer of assembly from the country of manufacture of the parts to another country where factories already available were used did not in itself give rise to such a presumption. There could be other reasons to justify such a transfer. Where however the entry into force of the relevant rules coincided with the transfer of assembly it was for the trader

concerned to adduce evidence of a reasonable ground, other than evasion of the consequences of the provisions in question, for carrying out assembly in the country from which the goods had been exported.

The Court held:

'1. The simple assembly of prefabricated parts originating in a country different from that in which they were assembled is sufficient to give the resulting product the origin of the country in which assembly took place, provided that from a technical point of view and having regard to the definition of the goods in question such assembly represents the decisive production stage during which the intended use of the parts used becomes definite and the goods in question take on their specific qualities; if the application of that criterion does not lead to a conclusion, it must be examined whether all the assembly operations in question result in an appreciable increase in the commercial value ex-factory of the finished product.

2. The transfer of assembly from the country in which the parts were manufactured to another country in which existing factories are used does not in itself justify the presumption that the sole object of the transfer was to circumvent the applicable provisions unless the transfer of assembly coincides with the entry into force of the relevant regulations. In that case, the manufacturer concerned must prove that there was a reasonable ground for carrying out the assembly operations in the country from which the goods have been exported.'

Mr Advocate General Van Gerven delivered his Opinion at the sitting on 16 March 1989.

He proposed the following answer:

'Where the simple assembly of imported prefabricated parts determines the origin for the purposes of Article 5 of Regulation (EEC) No 802/68, Article 6 thereof is not to be interpreted as meaning that the mere fact that exports are diverted using manufacturing premises that are already available justifies the presumption that the object of the diversion is to circumvent the applicable provisions (on anti-dumping duty).'

Free movement of persons

1. Case 292/86: *Claude Gullung* v *Conseil de l'ordre des avocats du barreau de Colmar and Conseil de l'ordre des avocats du barreau de Saverne* — 19 January 1988
   (Right of establishment and freedom of lawyers to provide services)
   (Sixth Chamber)

The Cour d'appel [Court of Appeal], Colmar, referred two questions to the Court concerning the interpretation of Articles 52 and 59 of the EEC Treaty and the

provisions of Council Directive 77/249 of 22 March 1977 facilitating the effective exercise by lawyers of freedom to provide services.

Those questions were raised in proceedings between the Conseils de l'ordre des avocats du barreau [Bar Councils] of Colmar and Saverne and Mr Gullung, a lawyer of dual French and German nationality and a member of the Offenburg Bar in the Federal Republic of Germany, who was relying on the provisions in the EEC Treaty concerning freedom of establishment and freedom to provide services, with a view to exercising his profession in France, although he had been denied admission to the Bar in France because he did not fulfil the necessary conditions of good character.

The main proceedings concerned the actions brought by Mr Gullung against two decisions of the Conseils de l'ordre des avocats du barreau of Colmar and Saverne prohibiting their members from lending assistance under the conditions laid down in the Community legislation and by the French Decree of 22 March 1979 to any *avocat* who did not fulfil the necessary conditions of good character and, in particular, to Mr Gullung, even though disciplinary sanctions had not been imposed.

In support of his actions Mr Gullung argued that, as a result of Directive 77/249 guaranteeing lawyers established in other Member States freedom to provide services and the Treaty provisions concerning freedom of establishment, establishment as an *avocat* was possible without having to be registered at a Bar.

In view of those proceedings the national court referred two questions to the Court for a preliminary ruling.

Dual nationality

The problem raised by dual nationality was whether a national of two Member States who had been admitted to the legal profession in one of those two Member States might rely on the provisions of Directive 77/249 in the territory of the other Member State.

Free movement of persons, freedom of establishment and freedom to provide services, all of which were fundamental in the Community system, would not be fully achieved if a Member State were entitled not to extend the benefit of the provisions of Community law to its nationals established in another Member State of which they were also nationals who used the possibilities afforded by Community law in order to exercise their activities in the former State as providers of services.

Provision of services

The first question referred for a preliminary ruling was concerned, in particular, with whether the provisions of Directive 77/249 might be relied upon by a lawyer

established in one Member State with a view to pursuing his activities as a provider of services in the territory of another Member State where he had been barred from access to the profession of *avocat* in the latter Member State for reasons relating to dignity, good repute and integrity. In the event that the question was answered in the affirmative, the national court asked whether public policy might not preclude application of the directive.

The Court stated that the objective of Directive 77/249 was to facilitate the effective exercise by lawyers of freedom to provide services. To that end Member States were obliged, under the directive, to recognize as lawyers, in respect of the exercise of those activities, any person who was established in another Member State as an 'avocat', 'Rechtsanwalt', etc.

It followed from the provisions of the directive that lawyers providing services were under an obligation to comply with the rules of professional conduct in force in the host Member State.

It was argued before the Court that the provisions of the directive seemed to require those rules of professional conduct to be complied with at the time when the services were provided, whereas the question submitted by the national court related to an infringement of those rules which took place before the provision of services.

The Court, however, found that argument unconvincing. By imposing observance of the rules of professional conduct of the host Member State, the directive assumed that the lawyer providing services had to be capable of observing such rules. If, in the course of the procedure relating to admission to the profession of *avocat*, the competent authority of the host Member State had already found such capacity to be lacking and hence refused to admit the person concerned to practise as an *avocat*, it had to be held that he did not satisfy the very conditions laid down by the directive with regard to freedom to provide services.

Right of establishment

The second question raised by the national court concerned the interpretation of Article 52 of the Treaty, more specifically, whether the establishment of a lawyer in the territory of another Member State pursuant to Article 52 was conditional upon registration at a Bar of the host Member State where such registration was a statutory requirement in that Member State.

The Court emphasized that under the second paragraph of Article 52 of the Treaty, freedom of establishment included the right to take up and pursue activities as self-employed persons 'under the conditions laid down for its own nationals by the law of the country where such establishment is effected'. As a result, in the absence of specific Community rules each Member State remained in principle free to regulate the exercise of the profession of lawyer in its territory.

Therefore Member States under whose legislation persons wishing to establish themselves in their territory as a member of a legal profession within the meaning of their national legislation had to register at a Bar might impose the same requirement on lawyers from other Member States who relied upon the right of establishment provided for in the Treaty with a view to practising in that same capacity.

The Court held:

'1. A national of two Member States who has been admitted to a legal profession in one of those States may rely, in the territory of the other State, upon the provisions of Directive 77/249/EEC which is designed to facilitate the effective exercise by lawyers of freedom to provide services, where the conditions for the application of that directive, as laid down therein, are satisfied;

2. Directive 77/249/EEC must be interpreted as meaning that its provisions may not be relied upon by a lawyer established in one Member State with a view to pursuing his activities as a provider of services in the territory of another Member State where he was barred from access to the profession of *avocat* in the latter Member State for reasons relating to dignity, good repute and integrity;

3. Article 52 of the EEC Treaty must be interpreted as meaning that a Member State whose legislation requires lawyers to be registered at a Bar may impose the same requirement on lawyers from other Member States who take advantage of the right of establishment guaranteed by the Treaty in order to establish themselves as members of a legal profession in the territory of the first Member State.'

Mr Advocate General Darmon delivered his Opinion at the sitting on 18 November 1987.

He proposed that the Court should rule as follows:

'1. A person who is a national of two Member States may rely, as against each of the States concerned, on the rights derived from the Treaty and from secondary law provided that there is a factor connecting his situation to the provisions laid down by Community law.

2. Such a national, established as a lawyer in one Member State, may not, where he fails to satisfy its conditions, rely on Directive 77/249 facilitating the exercise by lawyers of freedom to provide services, in a State where access to the legal profession is refused by a court or tribunal for reasons of dignity, good repute and integrity.

3. Article 52 of the EEC Treaty does not prevent a Member State from making the establishment as a lawyer in its territory of a lawyer of another Member State subject to the requirement, imposed on its own nationals, of registration at a bar.'

2. Case 81/87: *The Queen* v *HM Treasury and Commissioners of Inland Revenue, ex parte Daily Mail and General Trust PLC* — 27 September 1988
(Freedom of establishment — Right to leave the Member State of origin — Legal persons)
(Full Court)

The High Court of Justice, Queen's Bench Division, referred several questions to the Court for a preliminary ruling on the interpretation of Articles 52 and 58 of the Treaty and Council Directive 73/148 of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services.

Those questions arose in proceedings between Daily Mail and General Trust plc, the applicant in the main proceedings, and HM Treasury for a declaration that the applicant was not required to obtain consent under United Kingdom tax legislation in order to cease to be resident in the United Kingdom for the purpose of establishing its residence in the Netherlands.

Under United Kingdom company legislation a company could establish its central management and control outside the United Kingdom without losing legal personality or ceasing to be a company incorporated in the United Kingdom.

According to United Kingdom tax legislation, only companies which were resident for tax purposes in the United Kingdom were as a rule liable to United Kingdom corporation tax. A company was resident for tax purposes in the place in which its central management and control was located.

The Income and Corporation Taxes Act 1970 prohibited companies resident for tax purposes in the United Kingdom from ceasing to be so resident without the consent of the Treasury.

In 1984 the applicant, which was an investment holding company, applied for consent under the abovementioned national provision in order to transfer its central management and control to the Netherlands, whose legislation did not prevent foreign companies from establishing their central management there; the company proposed, in particular, to hold board meetings in the Netherlands. Without waiting for the consent, it decided to open an investment management office in the Netherlands with a view to providing services to third parties.

It was common ground that the principal reason for the proposed transfer of central management and control was to enable the applicant, after establishing its residence for tax purposes in the Netherlands, to sell a significant part of its non-permanent assets and to use the proceeds of that sale to buy its own shares, without having to pay the tax to which such transactions would make it liable under United Kingdom tax law, in regard in particular to the substantial capital gains on the assets which the applicant proposed to sell. After establishing its central management and control in the Netherlands the applicant would be subject to Netherlands corporation tax, but the transactions envisaged would be taxed only on the basis of any capital gains which accrued after the transfer of its residence for tax purposes.

After a long period of negotiations with the Treasury, the applicant initiated proceedings before the High Court of Justice. Before that court, it claimed that Articles 52 and 58 of the EEC Treaty gave it the right to transfer its central management and control to another Member State without prior consent or the right to obtain such consent unconditionally.

In order to resolve that dispute, the national court stayed the proceedings and referred several questions to the Court of Justice.

First question

The first question sought in essence to determine whether Articles 52 and 58 of the Treaty gave a company incorporated under the legislation of a Member State and having its registered office there, the right to transfer its central management and control to another Member State. If that was so, the national court went on to ask whether the Member State of origin could make that right subject to the consent of national authorities, the grant of which was linked to the company's tax position.

The applicant claimed that Article 58 of the Treaty expressly conferred on the companies to which it applied the same right of primary establishment in another Member State as was conferred on natural persons by Article 52.

The United Kingdom argued that the provisions of the Treaty did not give companies a general right to move their central management and control from one Member State to another.

The Commission recognized that in the present state of Community law, the conditions under which a company might transfer its central management and control from one Member State to another were still governed by the national law of the State in which it was incorporated and of the State to which it wished to move. It referred to the differences between the national systems of company law.

All the systems permitted the winding-up of a company in one Member State and its re-incorporation in another.

The Commission considered that where the transfer of central management and control was possible under national legislation, the right to transfer it to another Member State was a right protected by Article 52 of the Treaty.

The Court pointed out that freedom of establishment constituted one of the fundamental principles of the Community and that the provisions of the Treaty guaranteeing that freedom had been directly applicable since the end of the transitional period. Those provisions secured the right of establishment in another Member State not merely for Community nationals but also for the companies referred to in Article 58.

The Court also pointed out that the provision of United Kingdom law at issue in the main proceedings imposed no restriction on transactions such as those described above. Nor did it stand in the way of a partial or total transfer of the activities of a company incorporated in the United Kingdom to a company newly incorporated in another Member State, if necessary after winding-up and, consequently, the settlement of the tax position of the United Kingdom company. It required Treasury consent only where such a company sought to transfer its central management and control out of the United Kingdom while maintaining its legal personality and its status as a United Kingdom company.

The Court noted that it had to be borne in mind that, unlike natural persons, companies were creatures of the law and in the present state of Community law, creatures of national law. They existed only by virtue of the varying national legislation which determined their incorporation and functioning. The Treaty had taken account of that variety in national legislation. In defining, in Article 58, the companies which enjoyed the right of establishment, the Treaty placed on the same footing, as connecting factors, the registered office, central administration and principal place of business of a company.

Moreover, Article 220 of the Treaty provided for the conclusion, so far as was necessary, of agreements between the Member States with a view to securing *inter alia* the retention of legal personality in the event of transfer of the registered office of companies from one country to another.

The Court therefore held that the Treaty regarded the differences in national legislation concerning the required connecting factor and the question whether—and if so how—the registered office or real head office of a company incorporated under national law might be transferred from one Member State to another as problems which were not resolved by the rules concerning the right of establishment but had to be dealt with by future legislation or conventions.

Under those circumstances, the Court held that Articles 52 and 58 of the Treaty could not be interpreted as conferring on companies incorporated under the law of a Member State a right to transfer their central management and control and their central administration to another Member State while retaining their status as companies incorporated under the legislation of the first Member State.

Second question

In its second question, the national court asked whether the provisions of Council Directive 73/148 of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services gave a company a right to transfer its central management and control to another Member State.

The Court merely pointed out in that regard the title and provisions of that directive referred solely to the movement and residence of natural persons and

that the provisions of the directive could not, by their nature, be applied by analogy to legal persons.

The Court held that:

'1. In the present state of Community law, Articles 52 and 58 of the Treaty, properly construed, confer no right on a company incorporated under the legislation of a Member State and having its registered office there to transfer its central management and control to another Member State.

2. Council Directive 73/148 of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services, properly construed, confers no right on a company to transfer its central management and control to another Member State.'

Mr Advocate General Darmon delivered his Opinion at the sitting on 7 June 1988.

He proposed that the Court should rule that:

'(i) The transfer to another Member State of the central management of a company may constitute a form of exercise of the right of establishment, subject to the assessment by the national court of any elements of fact showing whether or not such a transfer reflects a genuine integration of the said company into the economic life of the host Member State;

(ii) Under Community law a Member State may not require a company wishing to establish itself in another Member State, by transferring its central management there, to obtain prior authorization for such transfer;

(iii) However, Community law does not prohibit a Member State from requiring a company established on its territory, but establishing itself in another Member State by transferring its central management there, to settle its tax position in regard to the part of its assets affected by the transfer, the value of which is to be determined at the date of transfer;

(iv) Council Directive 72/148/EEC is applicable only to natural persons.'

3. Case 9/88: *Mário Lopes da Veiga* v *Staatssecretaris van Justitie* — 27 September 1989
(Freedom of movement for workers — Seaman — Act of Accession of Spain and Portugal — Transitional arrangements)
(Sixth Chamber)

The Raad van State [State Council] of the Netherlands referred to the Court two questions concerning the interpretation of Articles 216 (1) and 218 of the Act concerning the Conditions of Accession of the Kingdom of Spain and the Portuguese Republic to the European Communities (hereinafter referred to as 'the Act of Accession').

Mário Lopes da Veiga, a Portuguese national, had been employed since 1974 as a seaman on Dutch-registered vessels in the service of a shipping company whose registered office was in the Netherlands. He had been recruited in the Netherlands, was insured there under the Dutch social security system and was subject to Netherlands income tax. The vessel on which Mr Lopes da Veiga was employed called regularly at ports in the Netherlands, where he spent his periods of leave.

After he had had himself put on the population register of the local authority of The Hague, Mr Lopes da Veiga applied for a residence permit, but his application was rejected by the local chief of police.

When an appeal against that rejection came before the Raad van State, it asked the Court in its first question whether Article 216 (1) of the Act of Accession should be interpreted as meaning that Article 7 *et seq.* of Regulation (EEC) No 1612/68 applied to a Portuguese citizen who was pursuing an activity as an employed person on a Dutch vessel for an employer established in the Netherlands and who had not been given a residence document entitling him to work as an employed person in the territory of the Netherlands pursuant to the policy on entry generally applied to aliens or on any other basis.

In that connection the Court pointed out first of all that the reason for the transitional arrangements laid down in Article 216 (1) of the Act of Accession suspending until 1 January 1993 the application of the provisions of Title I of Regulation No 1612/68 on eligibility for employment was to prevent the disturbances on the employment market in the States which were already members of the Communities that would result if there was a mass influx of Portuguese workers seeking work. There was no reason of that kind to preclude Portuguese workers who were already employed in the territory of one of those States from taking advantage of the provisions of Title II of Regulation No 1612/68 on employment and equality of treatment.

The Court then emphasized that it had already held Articles 48 to 51 of the EEC Treaty to be applicable to the area of sea transport, thus recognizing by implication that a national of a Member State employed on board a vessel of another Member State was to be regarded as a worker within the meaning of the Treaty, and that persons pursuing occupations partially or temporarily outside Community territory were deemed to be workers employed in the territory of another Member State since the legal employment relationship could be located within the territory of the Community or retain a sufficiently close link with that territory.

According to the Court, that criterion of a close link had also to be applied in the case of a worker who was a national of one Member State and permanently employed on a vessel flying the flag of another Member State. It was for the national court to examine whether the employment relationship of the applicant in the main proceedings provided a sufficiently close link with the territory of the Netherlands.

Since the court referring the question had stated therein that the applicant in the main proceedings had not obtained a residence document entitling him to work as an employed person in the Netherlands, the Court pointed out that it had consistently held that a worker had an entitlement to residence pursuant to the provisions of Community law irrespective of whether he has been issued by the competent authority of a Member State with a residence document, which was of a purely declaratory nature.

In its second question the Raad van State asked whether, in the event that its first question was answered in the affirmative, Article 218 of the Act of Accession was to be interpreted as meaning that Article 4 of Directive 68/360 was also applicable to the Portuguese citizen referred to in the first question.

In that connection the Court found that it sufficed to hold that a Portuguese national who was already employed in the territory of one of the States which were already Members of the Community when his country acceded thereto and who could, pursuant to Article 216 (1) of the Act of Accession, take advantage of the provisions of Title II of Regulation No 1612/68, could, in view of the wording of Article 1 of Directive 68/360, rely on the provisions of that directive.

The Court ruled that:

'1. Article 216 (1) and Article 218 of the Act concerning the Conditions of Accession of the Kingdom of Spain and the Portuguese Republic and the Adjustments to the Treaties must be interpreted as meaning that Articles 7 to 12 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, may, subject to the interim conditions governing the application of Article 11 of that regulation as laid down in Article 217 of the said Act, be relied upon by a Portuguese national working as an employed person on board a vessel flying the flag of a Member State for an employer established in that State, even if no residence permit has been issued by the competent authority of that State.

2. Such a national may rely on Article 4 of Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families.'

Mr Advocate General Darmon delivered his Opinion at the sitting on 13 July 1989.

He concluded:

'1. Articles 216 (1) and 218 of the Act concerning the Conditions of Accession of the Kingdom of Spain and the Portuguese Republic and the Adjustments to the Treaties must be interpreted as meaning that Articles 7 to 12 of

Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, subject to the provisional conditions of application of Article 11 as laid down in Article 217 of the said Act, may be relied on by a Portuguese national employed on board a vessel flying the flag of a Member State as an employee of an employer established in that State, even though he has not been issued with a residence document by the competent authority of that State.

2. Such a national may rely on the provisions of Article 4 of Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families.'

Freedom to provide services

1. Case 352/85: *Bond van Adverteerders and Others* v *The Netherlands State* — 26 April 1988
(Prohibition of advertising and subtitling in television programmes transmitted from abroad)
(Full Court)

The Gerechtshof [Regional Court of Appeal], The Hague, referred to the Court for a preliminary ruling nine questions on the interpretation of the provisions of the EEC Treaty relating to the freedom to supply services and the scope of certain general principles of Community law in order to assess the compatibility with Community law of a Dutch regulation designed to prohibit the distribution by cable of radio and television programmes broadcast from other Member States which contained advertisements aimed especially at the public in the Netherlands or which contained subtitles in Dutch.

The questions arose in proceedings between, on the one hand, the Dutch advertisers' association, 14 advertising agencies and a cable network operator, and, on the other, the Netherlands State. The proceedings in question were concerned with the prohibitions on advertising and subtitling incorporated in the Kabelregeling, a Dutch ministerial decree of 26 July 1984, which the applicants considered to be contrary to Article 59 *et seq.* of the EEC Treaty and to the principle of freedom of expression guaranteed by Article 10 of the European Convention on Human Rights.

The prohibitions on advertising and subtitling were set out in the Kabelregeling, which provided that 'the use of an antenna system to relay to the public radio and television programmes shall be authorized in the case of...

(c) programmes supplied from abroad by cable, over the air or by satellite... provided that:

(i) the programme does not contain advertisements intended especially for the public in the Netherlands;

(ii) the programme does not contain subtitles in Dutch'.

The prohibitions in question did not apply to the retransmission by a cable network operator of programmes broadcast over the air. In the view of the Netherlands Government, the prohibitions set out in the Kabelregeling applied only where a cable network transmitted programmes sent to it by a foreign 'point-to-point' broadcaster via a telecommunication satellite, as in the case of the programmes broadcast by Sky Channel, Super Channel and TV5.

According to the statement of reasons in the Kabelregeling the prohibitions on advertising and subtitling were intended to prevent 'the indirect establishment in the Netherlands of commercial teledistribution or television received by subscribers which would unfairly compete with national broadcasting and with Netherlands television by subscription which has not yet been developed'.

Under the Omroepwet [Broadcasting Law] the right to broadcast advertisements on the two national television channels was confined to the Stichting Etherreclame, STER [National Broadcasting Foundation].

The applicant advertisers considered that the advertising facilities afforded by the STER were too limited. In particular, advertisements could not be broadcast sufficiently frequently by the STER. Consequently, they wished to use the more extensive facilities offered to them by foreign broadcasters of commercial programmes, which they were prevented from using as a result of the Kabelregeling's prohibitions of advertising and subtitling.

The Gerechtshof therefore put nine questions to the Court.

(a) Was there a provision of a service or services within the meaning of Articles 59 and 60 of the EEC Treaty?

The national court's first question sought essentially to establish whether the distribution, by operators of cable networks established in a Member State, of television programmes supplied by broadcasters established in other Member States and containing advertisements intended especially for the public in the Member State where the programmes were received, constituted a service or several services within the meaning of Articles 59 and 60 of the Treaty.

In the view of the Court, the services in question first had to be identified. Then it had to be considered whether the services were of a transfrontier nature within the meaning of Article 59 of the Treaty. Finally, it had to be established whether the services in question were services normally provided for remuneration within the meaning of Article 60 of the Treaty.

The transmissions of programmes at issue involved two separate services: the first was the service provided by the cable network operators established in one

Member State to the broadcasters established in other Member States, the second was the service provided by broadcasters established in certain Member States to advertisers established in the Member State where the programmes were received, by broadcasting advertisements prepared for the public in the Member State where the programmes were received.

Both those services were, in the opinion of the Court, transfrontier services within the meaning of Article 59 of the Treaty.

The two services in question were also provided for remuneration within the meaning of Article 60 of the Treaty.

(b) Did the prohibitions in question constitute restrictions on freedom to supply services contrary to Article 59 of the Treaty?

The national court's second, fourth and fifth questions essentially sought to establish whether prohibitions of advertising and subtitling such as those contained in the Kabelregeling entailed restrictions on freedom to supply services contrary to Article 59 of the Treaty, regard being had to the fact that the national law on broadcasting prohibited national broadcasters from broadcasting advertisements and restricted the right to broadcast advertisements to a foundation which was bound by its statutes to transfer the resulting revenue to the State, which used it to subsidize national broadcasters and the press.

The prohibition of advertising

The Court took the view that a ban on advertising such as the one embodied in the Kabelregeling involved a two-fold restriction on freedom to supply services.

'It prevented cable network operators established in a Member State from transmitting television programmes supplied by broadcasters established in other Member States;

it impeded those broadcasters from scheduling for advertisers established in particular in the Member State where the programmes were received advertisements intended especially for the public in that State.'

The situation of the Dutch television stations as a whole had to be compared with that of the foreign broadcasters. It had to be stressed that the STER merely organized the transmission of advertising prepared by third parties, to whom it sold air time.

The Court held that there was discrimination owing to the fact that the prohibition on advertising laid down in the Kabelregeling deprived broadcasters established in other Member States of any possibility of broadcasting on their

stations advertisements intended especially for the Dutch public whereas the Netherlands broadcasting law permitted the broadcasting of such advertisements on national television stations for the benefit of all officially authorized broadcasting organizations.

The prohibition of subtitling

The Netherlands Government argued in essence that the prohibition of subtitling was designed solely to prevent the prohibition on advertising from being circumvented.

It was sufficient, in the opinion of the Court, to observe that the prohibition on subtitling to which broadcasters established in other Member States were subject simply had the aim of complementing the prohibition of advertising, which fell within the sphere of application of Article 59 of the Treaty.

(c) The possibility of justifying restrictions on the freedom to supply services of the type at issue

On the basis that national rules of the type at issue were not discriminatory, the national court asked in its sixth question whether they must be justified on grounds relating to the public interest and must be proportional to the objective to be achieved. In its seventh and eighth questions it asked whether those grounds might relate to cultural policy or to policy designed to combat a form of unfair competition.

The only derogation which might be contemplated in such a case was the one provided for in Article 56 of the Treaty, to which Article 66 referred, under which national provisions for special treatment for foreign nationals might escape being subject to Article 59 of the Treaty if they were justified on grounds of public policy.

The Court stressed that economic aims, such as that of securing for a national public foundation all the revenue from advertising intended especially for the public of the Member State in question, could not constitute public policy grounds within the meaning of Article 56 of the Treaty.

(d) General principles of Community law and fundamental rights enshrined in Community law

The national court basically asked whether the principle of proportionality and the right of freedom of expression guaranteed by Article 10 of the European Convention on Human Rights imposed directly applicable obligations on the Member States, regardless of the applicability of provisions of Community law.

The Court held that that question no longer had any purpose.

The Court ruled as follows:

'1. The distribution, by operators of cable networks established in a Member State, of television programmes supplied by broadcasters established in other Member States and containing advertisements intended especially for the public in the Member State where the programmes are received, comprises several services within the meaning of Articles 59 and 60 of the Treaty.

2. Prohibitions of advertising and subtitling such as those contained in the Kabelregeling entail restrictions on freedom to supply services contrary to Article 59 of the Treaty.

3. Such prohibitions cannot be justified on grounds of public policy under Article 56 of the Treaty.'

Mr Advocate General Mancini delivered his Opinion at the sitting on 14 January 1988.

He suggested that the national court should be answered as follows: 'For the purposes of Articles 59 and 60 of the Treaty, broadcasts of television programmes in one Member State by the authorized television organization or organizations must be regarded as being, by reason of their nature, a single and indivisible provision of services even if the broadcasts are received by viewers in another Member State via a cable linked to a telecommunication satellite.

It is contrary to the Treaty provisions on freedom to supply services for the legislation of a Member State to make the distribution of programmes supplied from abroad as described above, subject to the requirements that they should not contain advertising or subtitles in the language of that State when such conditions are not laid down, or are not laid down with equal effectiveness, with regard to similar domestic programmes.

The fact that advertising contained in domestic programmes can be broadcast solely subject to the supervision of a public organization with a legal monopoly over advertising time and that the revenue of that organization goes almost entirely to finance the activities of domestic broadcasting organizations and the press does not change or attenuate the incompatibility of that legislation with the Treaty provisions relating to freedom to provide services.'

2. Case 427/85: *Commission of the European Communities* v *Federal Republic of Germany* — 25 February 1988
— see under *Failure by a Member State to fulfil its obligations, Action for a declaration of*

3. Case 186/87: *Ian William Cowan* v *The Treasury* — 2 February 1989 — see under *Principles of the Treaty*

Principles of the Treaty

Case 186/87: *Ian William Cowan* v *The Treasury* — 2 February 1989
(Tourists as recipients of services — Right to compensation following an assault)
(Full Court)

The Commission d'Indemnisation des Victimes d'Infraction [Compensation Board for Victims of an Offence] attached to the Tribunal de Grande Instance, Paris, referred a question concerning the interpretation of the principle of non-discrimination set out in Article 7 of the EEC Treaty for a preliminary ruling in order to assess whether a provision of the French Code de Procédure Pénale [Code of Criminal Procedure] was compatible with Community law.

That question was raised in proceedings between the French Treasury and a United Kingdom national, Mr Ian William Cowan, concerning a refusal to award him compensation for the harm resulting from a violent assault against him at the exit of a metro station whilst he was temporarily in Paris on the ground that he did not fulfil the conditions required by Article 706/15 of the Code de Procédure Pénale for entitlement to the compensation concerned.

The essential purpose of the question was to ascertain whether the prohibition of discrimination set out, in particular, in Article 7 of the Treaty precluded a Member State from making it a condition of entitlement to compensation from the State intended to indemnify the victim of an assault causing physical damage for the harm caused to him in that State that that person hold a residence permit or be the national of a country which has concluded a reciprocal agreement with that Member State in the case of persons who were in a situation governed by Community law.

The principle of non-discrimination

In that respect, the Court stressed that Article 7 of the Treaty required that persons who were in a situation governed by Community law be treated perfectly equally with nationals of that Member State and that the right to equality of treatment was conferred directly by Community law.

It followed that in so far as the principle of non-discrimination was applicable it precluded a Member State from making the right of a person in a situation governed by Community law subject to the condition that he hold a residence permit or be the citizen of a country which has concluded a reciprocal agreement with that Member State.

The scope of the principle of non-discrimination

The Court stressed that under Article 7 the principle of non-discrimination applied *inter alia* to freedom to provide services and noted that it had already held, on the one hand, that freedom to provide services included the freedom of recipients of those services to go to another Member State to receive such a service without being prevented by restrictions and that, on the other hand, tourists in particular had to be considered to be recipients of services.

The French Government had submitted that in the present state of Community law a recipient of services could not rely on the principle of non-discrimination in so far as the national legislation in question did not create any barrier to his freedom of movement. It submitted that a provision such as that at issue in the main proceedings did not impose any restriction in that respect. Furthermore, it concerned an entitlement expressing the principle of national solidarity. Such a right presupposed a narrower link with the State than that of a recipient of services and for that reason it could be reserved to persons who were either nationals or foreign nationals residing on the national territory.

The Court rejected that line of argument. It stated that when Community law guaranteed a natural person the freedom to go to another Member State the protection of that person in the Member State concerned on the same basis as nationals and persons residing there was the corollary of his freedom of movement. It followed, therefore, that the principle of non-discrimination was applicable to recipients of services within the meaning of the Treaty as regards protection against the risk of assault and, if that risk materialized, financial compensation provided for by national law. The fact that the compensation in question was financed by the Treasury could not alter the scheme of protection of rights guaranteed by the Treaty.

The French Government had also submitted that compensation such as that at issue in the main proceedings escaped the prohibition of discrimination because it fell within the law of criminal procedure which was not covered by the Treaty.

In that respect the Court recalled that although in principle penal legislation and the rules of criminal procedure in which the national provision at issue had been inserted fell within the jurisdiction of the Member States it was established case-law that Community law set limits to that jurisdiction. Such legislative provisions could not in fact bring about a discrimination with regard to persons upon whom Community law conferred the right to equality of treatment or restrict fundamental liberties guaranteed by Community law.

The Court ruled:

> 'The prohibition of discrimination laid down in particular in Article 7 of the EEC Treaty must be interpreted as meaning that in respect of persons whose freedom to travel to a Member State, in particular as recipients of services, is guaranteed by Community law, that State may not make the award of State

compensation for harm caused in that State to the victim of an assault resulting in physical injury subject to the condition that he hold a residence permit or be a national of a country which has entered into a reciprocal agreement with that Member State.'

Mr Advocate General Lenz delivered his Opinion at the sitting on 6 December 1988.

He proposed that the Court should rule as follows: 'A difference in treatment of Community citizens, on the basis of nationality, under a compensation scheme for victims of crime can constitute a discriminatory obstacle, contrary to Community law, to a right of temporary residence extended under Community law. It must be borne in mind in that regard that a recipient of services also has a primary right of residence. A person's capacity as a recipient of services is to be assessed on the basis of the services of which he will avail himself during his period of residence.'

Social policy

1. Case 157/86: *Mary Murphy and Others* v *An Bord Telecom Eireann* — 4 February 1988
   (Equal pay for men and women)
   (Full Court)

The High Court of Ireland referred three questions to the Court for a preliminary ruling on the interpretation of Article 119 of the EEC Treaty and Article 1 of Council Directive 75/117 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women.

The questions were raised in the context of proceedings brought by Mary Murphy and 28 other women against their employer, Bord Telecom Eireann. They were employed as factory workers and were engaged in such tasks as dismantling, cleaning, oiling and re-assembling telephones and other equipment. They claimed the right to be paid at the same rate as a specified male worker employed in the same factory as a stores labourer and engaged in cleaning, collecting and delivering equipment and components and in lending general assistance as required.

It was apparent from the documents before the Court that the Equality Officer considered the appellants' work to be of higher value taken as a whole than that of the male worker and, consequently, did not constitute 'like work' within the meaning of the aforesaid Act. She sought guidance as to whether the difference in pay involved amounted to discrimination on grounds of sex.

That led the national court to refer questions to the Court of Justice for a preliminary ruling.

First question

It was apparent to the Court that the first question essentially sought to ascertain whether Article 119 of the EEC Treaty had to be interpreted as covering a case where a worker who relied on that provision to obtain equal pay within the meaning thereof was engaged in work of higher value than that of the person with whom a comparison was to be made.

Under Article 119 the Member States were to ensure and maintain 'the application of the principle that men and women should receive equal pay for equal work'. That provision was directly applicable in particular in cases where men and women received unequal pay for equal work carried out in the same establishment or service, whether public or private.

Bord Telecom Eireann contended that the principle did not apply to the situation where a lower wage was paid for work of higher value. It maintained that the term 'equal work' in Article 119 could not be understood as embracing unequal work and that the effect of a contrary interpretation would be that equal pay would have to be paid for work of different value.

While it was true that Article 119 applied solely in the case of equal work, the Court nevertheless held that if the principle forbade workers of one sex engaged in work of equal value to that of workers of the opposite sex to be paid a lower wage than the latter on grounds of sex, it *a fortiori* prohibited such a difference in pay where the lower paid category of workers was engaged in work of higher value.

To adopt the contrary interpretation would, in the Court's view, have been tantamount to rendering the principle of equal pay ineffective and nugatory.

In so far as it was established that the difference in wage levels in question was based on discrimination on grounds of sex, the Court held that Article 119 of the Treaty was directly applicable in the sense that the workers concerned might rely on it in legal proceedings in order to obtain equal pay within the meaning of the provision and in the sense that national courts or tribunals had to take it into account as a constituent part of Community law.

The Court held that:

> 'Article 119 of the EEC Treaty must be interpreted as covering the case where a worker who relies on that provision to obtain equal pay within the meaning thereof is engaged in work of higher value than that of the person with whom a comparison is to be made.'

Mr Advocate General Lenz delivered his Opinion at the sitting on 10 November 1987.

He proposed that the Court should reply in the following terms:

'The Community law principle of equal pay for equal work which is derived from Article 119 of the EEC Treaty also applies to a claim for equal pay for work of a higher value than that done by the person with whom a comparison is made.'

2. Case 109/88: *Handels- og Kontorfunktionærernes Forbund i Danmark* v *Dansk Arbejdsgiverforening* (for Danfoss) — 17 October 1989
(Social policy — Equal pay for men and women)
(Full Court)

The Faglige Voldgiftsret [Industrial Arbitration Board] referred several questions to the Court for a preliminary ruling on the interpretation of Council Directive 75/117.

Those questions arose in proceedings between Handels- og Kontorfunktionærernes Forbund i Danmark [Union of Commercial and Clerical Employees in Denmark] and Dansk Arbejdsgiverforening [Danish Employers Association], on behalf of Danfoss. The employees' union maintained that the salary practice of the Danfoss undertaking involved discrimination based on sex and thus infringed the provisions of the Danish Law No 237 of 5 May 1986 which implemented Directive 75/117.

The Danfoss undertaking paid the same basic salary to employees in the same salary class. In exercise of the option provided for by the collective agreement between the employers' association and the employees' union it paid individual salary supplements to its employees based on their mobility, training and length of service. The result was that the average wage of men was 6.85% higher than that of women.

The Industrial Arbitration Board as a court

According to Danish Law No 317 on industrial tribunals, disputes between parties to collective agreements were submitted to an industrial arbitration board whose jurisdiction and composition did not depend on any agreement between the parties and whose judgment was final.

In those circumstances the Court held that the industrial arbitration board was to be regarded as a court of a Member State within the meaning of Article 177 of the Treaty.

The burden of proof (questions 1 (a) and 3 (a))

It appeared from the documents that the case between the parties to the main action had its origin in the fact that the machinery for individual supplements applied to basic salaries was implemented in such a way that a woman was unable to identify the reasons for a difference between her salary and that of a man doing the same work.

In those circumstances the Court took the view that the questions put by the national court were to be understood as asking whether Directive 75/117 was to be interpreted as meaning that where an undertaking applied a system of remuneration a feature of which was a complete lack of transparency, the employer had to show that its salary practice was not discriminatory if a woman showed that in relation to a relatively large number of employees the average wage of women was less than that of men.

In a situation such as that with which the appeal was concerned women would be deprived of any effective means of enforcing the principle of equal pay before the national court if the fact of showing that there was a difference between the average wages did not mean that the employer had to show that its salary practice was in fact not discriminatory.

In the opinion of the Court, the concern for effectiveness underlying Directive 75/117 meant that it had to be interpreted as meaning that there had to be adjustments to the national rules on the burden of proof in special situations where such adjustments were necessary for the effective implementation of the principle of equality.

To show that its salary practice did not systematically put women at a disadvantage the employer had to show how it had applied the criteria for additional payments and would thus be led to make its salary system transparent.

The lawfulness of the criteria for additional payments in question (questions 1 (b), 2 (a) and (c))

These questions were essentially concerned with whether the directive had to be interpreted as meaning that where it appeared that the application of criteria for additional payments such as mobility, training or seniority of the employee, systematically worked to the disadvantage of women, the employer could nevertheless justify the use of them and if so on what terms he could do so.

As regards the criterion of mobility, the Court ruled that a distinction had to be made according to whether the criterion was used to remunerate the quality of work carried out by the employee or was used to remunerate the adaptability of the employee to variable hours and places of work.

In the first case the criterion of mobility was undoubtedly quite neutral in relation to sex. When it resulted in systematically putting women workers at a disadvantage that could only be because the employer misapplied it. It was, in the Court's view, inconceivable that the quality of work performed by women should be generally less good. The employer could not therefore justify recourse to the criterion of mobility, so understood, where its application was shown to be systematically unfavourable to women.

The position was different in the second case. As the Court had already held, the employer could justify the remuneration of such adaptability and special training by showing that they were important for the performance of specific tasks entrusted to the employee.

As regards the criterion of length of service and the fact that it was associated with experience which generally allowed the employee to perform his services better, it was open to the employer to remunerate it without in that case having to establish the importance which it had for the performance of specific tasks entrusted to the employee.

The Court held:

'Council Directive 75/117 of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women must be interpreted as meaning that:

1. where an undertaking applies a system of pay which is totally lacking in transparency, it is for the employer to prove that his practice in the matter of wages is not discriminatory, if a female worker establishes, in relation to a relatively large number of employees, that the average pay for women is less than that for men;

2. where it appears that the application of criteria for additional payments such as mobility, vocational training or the length of service of the employee systematically works to the disadvantage of female employees,

   (i) the employer may justify recourse to the criterion of mobility if it is understood as referring to adaptability to variable hours and places of work, by showing that such adaptability is of importance for the performance of the specific tasks which are entrusted to the employee, but not if the criterion is understood as covering the quality of the work done by the employee;

   (ii) the employer may justify recourse to the criterion of vocational training by showing that such training is of importance for the performance of the specific tasks which are entrusted to the employee;

   (iii) the employer does not have to provide special justification for recourse to the criterion of length of service.'

Mr Advocate General Lenz delivered his Opinion at the sitting on 31 May 1989.

He proposed that the questions be answered as follows:

'1. (a) Where from considerations of sex a different wage is paid for the same work or for work of equal value (direct discrimination), the employee must show that the work is the same or of equal value and that there is a salary difference for a man and woman in the same establishment or undertaking. The employer may refute the objection of discrimination based on sex by showing that the difference in salary is justified by neutral criteria not associated with sex.

Where an unequal wage is based on neutral criteria systematically satisfied by persons of the same sex who are thereby placed at a disadvantage (indirect discrimination), the employee must show that the difference in salary based on neutral criteria affects mainly or exclusively employees of one sex and thus places them at a disadvantage. The employer may refute the complaint of discrimination based on sex by showing that on the contrary the differentiation is based on objective considerations economically justified which are not associated with the sex of the employee.

Where the employee has no access to the particulars of fact needed to establish indirect discrimination, the system of proof operates in such a way that there is a presumption of discrimination where it is shown that the average salary of women within a representative group of employees is less than that of men.

1. (b), 2 (a), (b) and (c)

It is contrary to the principle of equal pay, as is clear from Article 119 of the EEC Treaty and Directive 75/117/EEC, to pay a higher wage to a male employee doing the same work or work of equal value as a female employee on the sole basis of subjective criteria. It is not incompatible with the said principle to make additional payments by reason of individual characteristics such as length of service, vocational training or mobility, provided that the criteria are objectively justified in relation to the work to be performed and exclude any discrimination.

3. (a) and (b)

The presumption of discrimination may be established by showing that the average wage of women within a representative group of employees is less than that of men. The question of the composition of a representative group depends on the circumstances in the undertaking or establishment and must be assessed by the national court. It does not however follow that the average wage of men and women must always be equal since differences may result from criteria independent of any consideration based on sex.

4. (a) The principle of equal pay also applies to the parties to a collective agreement. The parties to a collective agreement are not entitled to derogate from that principle by means of a collective agreement.

(b) The fact that a collective agreement covers mainly male or female employees respectively does not constitute *per se* an infringement of the prohibition of discrimination. Definitive judgment however depends on how the collective agreement is applied in practice.'

Transport

Case 66/86: *Ahmed Saeed Flugreisen and Silver Line Reisebüro GmbH* v *Zentrale zur Bekämpfung unlauteren Wettbewerbs eV* — 11 April 1989
(Competition — Airline tariffs)
(Full Court)

The Bundesgerichtshof [Federal Court of Justice] referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions on the interpretation of Articles 5, 85, 86, 88, 89 and 90 of the Treaty with a view to assessing the compatibility with those provisions of certain practices in connection with the fixing of the tariffs applicable to scheduled passenger flights.

The questions were raised in proceedings between Zentrale zur Bekämpfung unlauteren Wettbewerbs eV, a German association campaigning against unfair competition, and two travel agents which obtained from airlines or travel agents established in another State airline tickets made out in the currency of that State. Although the starting point for the journey mentioned in those tickets was situated in that State, passengers who purchased those tickets actually boarded their flight at a German airport where the scheduled flight made a stopover. It was maintained that by selling such tickets the two German travel agents had contravened the Luftverkehrsgesetz [law concerning air navigation] which prohibited the application in German territory of air tariffs not approved by the competent Federal minister. It was further alleged that their actions also constituted unfair competition, in so far as the prices of the airline tickets which they sold undercut the approved tariffs applied by their competitors.

The Bundesgerichtshof's first question read as follows: 'Are bilateral or multilateral agreements regarding airline tariffs (for example, IATA resolutions) to which at least one airline with its registered office in a Member State of the EEC is a party void for infringement of Article 85 (2) of the EEC Treaty as provided for in Article 85 (1), even if neither the relevant authority of the Member State concerned (Article 88) nor the Commission (Article 89 (2)) has declared them incompatible with Article 85?'

The Court first pointed out that, as it had held in its judgment of 30 April 1986 (Joined Cases 209 to 213/84, *Ministère Public* v *Asjes and Others* [1986] ECR 1425), subject to the application of Articles 88 and 89 of the Treaty price agreements were not liable to be automatically void under Article 85 (2) until after the entry into force of Community rules adopted pursuant to Article 87 with a view to organizing the Commission's powers to grant exemptions under Article 85 (3) and hence to bringing about the competition policy sought by the Treaty.

To date, the Court went on to state, the Community rules adopted with regard to air transport under Article 87 applied only to international air transport services between Community airports and it had to be inferred from this that price agreements in respect of domestic air transport and air transport to and from airports in non-member countries continued to be subjected to the transitional provisions laid down in Articles 88 and 89, that was to say, it was necessary in

order for them to be void for there to be a finding by a Member State or the Commission that they were incompatible with Article 85.

The Court considered in what circumstances agreements relating to tariffs for scheduled flights between airports in the various Member States were liable to be automatically void. The Court observed that such agreements could not qualify for block exemption under the Commission regulations, since no provision was made for such a possibility in Council Regulation No 3976/87 and Commission Regulation No 2671/88 expressly excluded such a possibility.

It followed that the tariff agreements in respect of international intra-Community flights were automatically void under Article 85 (2), subject, however, to the application of Article 5 of Commission Regulation No 3975/87, governing objections.

The national court's second question was: 'Does charging only such tariffs for scheduled flights constitute an abuse of a dominant position in the common market within the meaning of Article 86 of the EEC Treaty?'

In the Court's view, the first question to be considered was whether for the purposes of the application of Article 86 the same distinction had to be made as in the case of Article 85, that was to say between international flights between airports in the Member States and other flights.

Contrary to the argument put forward by the United Kingdom and the Commission that question had to be answered in the negative.

Whereas agreements, decisions and concerted practices covered by Article 85 (1) might qualify for exemption under Article 85 (3), no exemption might be granted in respect of the abuse of a dominant position in any way whatsoever; such an abuse, the Court held, was simply prohibited by the Treaty and it was for the competent national authorities or the Commission, as the case might be, to act on that prohibition within the limits of their powers.

It had to be concluded that the prohibition laid down in Article 86 of the Treaty was fully applicable to the whole of the air transport sector.

The second problem raised by the second preliminary question was whether the application of a tariff might in principle constitute an abuse of a dominant position where it was the result of concerted action between two undertakings which, itself, was capable of falling within the prohibition set out in Article 85 (1).

In that connection the Court pointed out that in so far as the new Council regulations provided that Article 86 might be applicable to an agreement which had initially been granted either a block exemption or individual exemption under the oppositions procedure, it followed that in certain cases Article 86 might cover the application of tariffs on scheduled flights on a particular route or routes where those tariffs were fixed by bilateral agreements concluded between air carriers, provided that the conditions laid down in Article 86 were fulfilled.

According to the Court, the test to be employed in order to assess whether an airline had a dominant position on the market was whether the scheduled flight on a particular route could be distinguished from possible alternative modes of transport owing to specific characteristics as a result of which it was not interchangeable with those alternative modes of transport and affected only to an insignificant degree by competition from them.

Where the competent national authority found that an air carrier had a dominant position on the market in question, it had then to consider whether the application of tariffs imposed by that undertaking on other air carriers operating on the same route constituted an abuse of that dominant position. Such an abuse might be held to exist in particular where such imposed tariffs must be regarded as unfair conditions of transport with regard to competitors or with regard to passengers.

Such unfair conditions might, in the view of the Court, be due to the rate of tariffs imposed being excessively high, or excessively low in order to eliminate from the market undertakings not party to the agreement, or to the application of only one tariff on a given route. If it was found that an undertaking had abused its dominant position on the market and that trade between Member States might be affected, the conduct of the undertaking concerned was subject to the prohibition laid down by Article 86. In the absence of intervention by the Commission, pursuant to its powers under the Treaty and rules implementing the Treaty, to put an end to the infringement or impose sanctions, the competent national administrative or judicial authorities had to draw the consequences of the applicability of the prohibition and, where appropriate, rule that the agreement in question was void on the basis, in the absence of relevant Community rules, of their national legislation.

The national court's third question was concerned with the legality of approval by the supervisory body of a Member State of tariffs contrary to approval by the supervisory body of a Member State of tariffs contrary to Article 85 (1) or Article 86 of the Treaty. The national court asked in particular whether such approval was not incompatible with the second paragraph of Article 5 and Article 90 (1) of the Treaty, even if the Commission had not objected to such approval under Article 90 (3).

In that connection, the Court ruled that it had to be borne in mind in the first place that, as the Court had consistently held, while it was true that the competition rules set out in Articles 85 and 86 concerned the conduct of undertakings and not measures of the authorities in the Member States, Article 5 of the Treaty nevertheless imposed a duty on the authorities in the Member States not to adopt or maintain in force any measure which could deprive those competition rules of their effectiveness. That would be the case, in particular, if a Member State were to require or favour the adoption of agreements contrary to Article 85 or reinforce their effects.

The Court concluded as a result that the approval by the aeronautical authorities of tariff agreements contrary to Article 85 (1) was not compatible with Commun-

ity law and in particular with Article 5 of the Treaty. It also followed therefrom that the aeronautical authorities had to refrain from taking any measure which might be construed as encouraging airlines to conclude tariff agreements contrary to the Treaty. In the specific case of tariffs for scheduled flights that interpretation was borne out by Article 90 (1) of the Treaty.

Although in the preamble to Regulation No 3976/87 the Council expressed a desire to increase competition in air transport services between Member States gradually, that aim could be respected only within the limits laid down by the provisions of the Treaty.

Whilst, as a result, the new rules laid down by the Council and the Commission left the Community institutions and the authorities in the Member States free to encourage the airlines to organize mutual consultations on the tariffs to be applied on certain routes served by scheduled flights, the Court held that the Treaty nevertheless strictly prohibited them from giving encouragement, in any form whatsoever, to the adoption of agreements or concerted practices with regard to tariffs contrary to Article 85 (1) or Article 86.

The national court also referred to Article 90 (3), but that provision appeared, in the opinion of the Court, to be of no relevance for the purpose of resolving the questions raised by this case.

In contrast, the Court ruled that Article 90 (2) might entail consequences for decisions by the aeronautical authorities with regard to the approval of tariffs.

That provision might be applied to carriers, which might be obliged by the public authorities to operate on routes which were not commercially viable but which it was necessary to operate for reasons of the general interest. It was necessary in each case for the competent national administrative or judicial authorities to establish whether the airline in question had actually been entrusted with the task of operating on such routes by an act of the public authority.

However, the Court held that in order for it to be possible for the competition rules to be restricted under Article 90 (2) by needs arising from performance of a task of general interest, the national authorities responsible for the approval of tariffs and the courts to which disputes relating thereto were submitted had to be able to determine the exact nature of the needs in question and their impact on the structure of the tariffs applied by the airlines in question.

Indeed, where there was no effective transparency of the tariff structure it was, in the Court's view, difficult, if not impossible, to assess the influence of the task of general interest on the application of the competition rules in the field of tariffs. It was for the national court to make the necessary findings of fact in that connection.

The Court ruled as follows:

'1. Bilateral or multilateral agreements regarding airline tariffs applicable to scheduled flights are automatically void under Article 85 (2):

(i) in the case of tariffs applicable to flights between airports in a given Member State or between such an airport and an airport in a non-member country: where either the authorities of the Member State in which the registered office of one of the airlines concerned is situated or the Commission, acting under Article 88 and Article 89 respectively, have ruled or recorded that the agreement is incompatible with Article 85;

(ii) in the case of tariffs applicable to international flights between airports in the Community: where no application to exempt the agreement from the prohibition set out in Article 85 (1) has been submitted to the Commission under Article 5 of Regulation No 3975/87; or where such an application has been made but received a negative response on the part of the Commission within 90 days of the publication of the application in the Official Journal; or again where the 90-day time-limit expired without any response on the part of the Commission but the period of validity of the exemption of six years laid down in the aforesaid Article 5 has expired or the Commission withdrew the exemption during that period.

2. The application of tariffs for scheduled flights on the basis of bilateral or multilateral tariffs may, in certain circumstances, constitute an abuse of a dominant position on the market in question, in particular where an undertaking in a dominant position has succeeded in imposing on other carriers the application of excessively high or excessively low tariffs or the exclusive application of only one tariff on a given route;

3. Articles 5 and 90 of the EEC Treaty must be interpreted as:

(i) prohibiting the national authorities from encouraging the conclusion of agreements on tariffs contrary to Article 85 (1) or Article 86 of the Treaty, as the case may be;

(ii) precluding the approval by those authorities of tariffs resulting from such agreements;

(iii) not precluding a limitation of the effects of the competition rules in so far as it is indispensable for the performance of a task of general interest which air carriers are required to carry out, provided that the nature of that task and its effects on the tariff structure are clearly defined.'

Mr Advocate General Lenz delivered his Opinion at the sitting on 28 April 1988.

He proposed that the Court should answer the questions submitted as follows:

'1. In the present state of Community law bilateral and multilateral agreements regarding airline tariffs to which at least one airline with its registered office in a Member State of the Community is a party are void for infringement of Article 85 (1) of the EEC Treaty as provided for in Article 85 (2)

(i) if they relate to international air transport between airports in the Community,

(ii) if they relate to air transport to and from non-member countries and, in addition, it has been ruled or recorded in the form and according to the procedure laid down in Article 88 or Article 89 (2) of the EEC Treaty that those tariffs are the result of agreements between undertakings, decisions by associations of undertakings or concerted practices contrary to Article 85 of the EEC Treaty.

2. At the same time, charging only such tariffs for international scheduled flights between airports in the Community or to and from non-member countries may, where the conditions of Article 86 of the EEC Treaty are fulfilled, constitute an abuse of a dominant position within the common market; under Article 86 the charging of such tariffs for travel to and from non-member countries is prohibited even if there has been no ruling or recording made in the form and according to the procedure laid down in Article 88 or Article 89 (2) of the EEC Treaty.

3. In so far as approvals relate to scheduled airline tariffs which are contrary to Community law having regard to the answers to questions 1 and 2, they constitute an infringement of the obligations incumbent upon the Member States under Article 5 (2) of the EEC Treaty in conjunction with Article 3 (f) and Articles 85, 86 and 90, without the Commission having specifically to record that infringement pursuant to Article 90 (3) of the Treaty.'

Following the reopening of the procedure, Mr Advocate General Lenz delivered a further Opinion at the sitting on 17 January 1989.

He stated as follows: 'In the light of what I have said above I adopt my Opinion of 28 April 1988 and propose that the questions submitted by the Bundesgerichtshof be answered as I suggested in that Opinion.

In addition, I suggest that the Court should declare that the direct effect of Article 86 of the EEC Treaty may not be relied on in respect of scheduled air services between Member States and non-member countries in the case of circumstance concluded prior to the delivery of the judgment in this case, provided that the parties concerned did not bring legal proceedings or submit a claim before that date.'

2. Meetings and visits

1988

(a) The Court of Justice continued its traditional contacts with the *judges from the Member States* by organizing on their behalf the *Conference of Members of the Judiciary* on 16 and 17 May 1988, and exceptionally, in view of the high number of interested judges, by organizing on two occasions (instead of one) the one-week *seminar course for judges* in the autumn (from 17 to 19 October and from 21 to 23 November).

Outside of this conference and the seminar courses for judges, which will henceforth become the norm, the Court received a visit from 2 to 6 May 1988 from the École Nationale de la Magistrature, Paris.

On 12 October 1988 senior Spanish judges and legal officials paid a visit to the Court.

On 7 and 8 December, the First President and the Procureur Général of the Cour d'appel, Paris, along with the members of that court, paid a visit to the Court of Justice.

There were two meetings between the Court of Justice and *judges from non-member countries*:

(i) on 9 June 1988, a delegation of Chinese judges was received by the Court;
(ii) on 26 October 1988, the Norwegian Supreme Court paid a visit to the Court of Justice.

At the level of *international institutions*, three visits deserve to be mentioned:

(i) the International Court of Justice at The Hague paid an official visit to the Court of Justice on 1 June 1988;
(ii) on 7 March 1988, the Legal Affairs Committee of the European Parliament visited the Court;
(iii) finally, on 17 March 1988, there was a visit by the Human Rights Sub-Committee of the Legal Affairs Committee of the Council of Europe.

Turning to visits by *groups of public servants* from different government departments in the Member States, mention ought to be made of the visits by the President of the Bundeskartellamt [Federal Monopolies Board], Berlin, accompanied by a delegation, on 28 and 29 April 1988, as well as a visit by senior United Kingdom civil servants (UK Government lawyers) from 8 to 10 November 1988.

With regard to public servants from non-member countries, there was a visit from 17 to 19 October 1988 by senior Soviet public servants.

(b) Among the numerous individual visitors, the following visits should be noted in particular:

(i) that of the President of the Republic of Portugal, Mr Mario Soares, on 18 May 1988;
(ii) that of the President of the Federal Republic of Germany, Mr Richard von Weizsäcker, on 8 September 1988;

and, at a governmental level,

(i) that of the German Minister for Transport, Mr Jürgen Warnke, on 28 January 1988; and
(ii) that of the Lord Chancellor, Lord Mackay of Clashfern, on 26 September 1988.

There was a working dinner on 7 November 1988 with Mr Jacques Santer, Minister of State and President of the Government of the Grand Duchy of Luxembourg, and Mr Marcel Schlechter, Minister for Public Works.

In addition to groups of students accompanied by their professors, there were many contacts with the academic world. To give only two examples, the Court received, on 12 January 1988, Mr Emile Noël, President of the European University Institute at Florence, and, on 24 May 1988, Mr Laborinho Lucio, Director of the Centre for Legal Studies at Lisbon.

(c) The *President* and the *Members of the Court* took part in numerous visits and external events, represented the Court at official ceremonies and, finally, gave talks and lectures. Mention should be made in this context of the official visit of the Court to Portugal from 9 to 11 March 1988 and of the attendance of the President and the majority of the Members at the Congress of the FIDE [International Federation of European Law] which was held from 28 September to 1 October at Thessaloniki.

It should, however, be pointed out that this list inevitably gives only an incomplete picture of all the external activities of the Court of Justice.

1989

(a) The Court of Justice held its traditional *Conference of Members of the Judiciary* intended for judges from various courts in the Member States on 24 and 25 April 1989.

The *seminar course for judges*, traditionally held in the autumn, took place during the week of 16 to 18 October 1989.

Apart from these annual events, Mr J. B. Asscher, President of the Municipal Court of Amsterdam, set in motion the series of visits by judges and senior legal officials of the Member States for 1989 when he visited the Court on 18 January 1989.

On 18 April 1989, a delegation from the Tribunal de Defensa de la Competencia, Madrid, paid a visit to the Court.

The Generalbundesanwalt of the Federal Republic of Germany, along with the German Attorneys General and their hosts, who were meeting for a conference in Zweibrücken, travelled to Luxembourg on 23 May 1989, to attend a public sitting of the Court and to take part in a discussion with members of the institution.

On 19 June 1989, there was a visit to the Court by the Permanent Delegation of the CCBE [Bar Council of the European Community], followed on 27 October by the Bar Council of the European Community. On the previous day, 26 October, the Conseil supérieur de la Magistrature (France) had paid a visit to the Court of Justice.

On 28 November 1989, the Court was pleased to receive a visit from nine Greek judges.

With regard to *judges from non-member countries*, mention should be made of a visit by nine senior Turkish judges from 16 to 20 January 1989 and a visit on 27 April 1989 by six Chinese judges.

A group of Norwegian judges also paid a visit to the Court on 25 October 1989.

From the world of politics, there was a visit on 21 June 1989 by the Committee of Permanent Representatives of the German *Länder*, at the Federal level with ministerial rank [Ständiger Beirat des Bundesrates].

From 26 to 28 June 1989, an Austrian delegation, consisting of 7 senior public servants from different Austrian Government ministries, spent three days at the Court in order to follow its work and to participate in various discussions and meetings with Members of the Court and a number of officials.

Without enumerating the varied contacts with the *academic world*, apart from visits by groups of students, three Russian professors attended the proceedings of the Court on 17 January 1989.

(b) Among the numerous *individual visitors*, mention should be made in particular of the following:

the visit by their Majesties the King and Queen of Spain on 9 March 1989.

The following visits also deserve mention:

that of Frau Herta Däubler-Gmelin, Vice-President of the SPD and Member of the Bundestag, on 1 March 1989;
that of Mr Antonio La Pergola, the Italian Minister responsible for the coordination of Community policy, on 17 April 1989;
that of Lady Elles, President of the Legal Affairs Committee of the European Parliament, on 27 June 1989;

that of Mr Ali Bozer, Deputy Prime Minister of Turkey, and Minister of State responsible for European Affairs, together with the Turkish Ambassador to Luxembourg, on 20 September 1989;
that of Mr John Murray SC, Attorney General of Ireland, on 6 and 7 December 1989;
that of Madame Cadoux, Conseiller d'État (France), on 25 and 26 October 1989;
that of Mr Augusto Lopes Cardoso, President of the Bar Association of Portugal, from 19 to 22 November 1989.

On 20 November 1989, Mr Hans Engell, the Danish Minister for Justice, together with the Danish Ambassador and senior public servants, paid a visit to the Court for the unveiling of three paintings by the artist Sven Dalsgaard, a gift from Denmark.

The academic world was represented by Professor Jerzy Makarczyck, Director of the Institute for International Law at Warsaw and President of the International Law Association, who visited the Court on 22 February 1989.

(c) As in the previous year, the *President* and the *Members of the Court* took part in numerous visits and external events, represented the Court at official ceremonies and, finally, gave talks and lectures. With regard to these activities, mention should be made of the official visit by a delegation from the Court to the USSR from 22 to 27 May 1989.

It should, however, be pointed out that this list inevitably gives only an incomplete picture of all the external activities of the Court of Justice.

Visits to the Court during 1988

Description	B	DK	D	GR	E	F	IRL	I	L	NL	P	UK	Non-members	Mixed groups [1]	Total
National judges [2]	—	—	30	35	9	23	65	—	32	—	2	37	79	204	516
Lawyers, trainee lawyers & legal advisers	55	30	278	—	27	77	—	2	41	9	2	68	6	118	713
Professors, Community law lecturers and teachers	—	30	232	—	2	45	—	1	—	51	1	3	3	35	403
Officials, political groups, parliamentarians and diplomats	198	172	386	—	—	166	1	52	3	30	7	196	107	73	1 391
Journalists	—	—	37	—	—	2	—	—	7	2	1	11	6	—	66
Students, scholars, EEC trainees	460	56	659	30	279	373	96	122	28	452	90	1 260	186	120	4 211
Professional associations	50	35	55	—	—	35	—	—	—	—	—	—	49	24	248
Others	94	12	35	—	—	24	—	6	—	45	—	18	10	35	279
Total	857	335	1 712	65	317	745	162	183	111	589	103	1 593	446	609	7 827

[1] The heading 'Mixed groups' covers groups consisting of delegates of different nationalities (Member States or non-member countries, or both).

[2] This heading provides information, on an individual Member State basis, on the number of national judges who visited the Court in national groups. The column headed 'Mixed groups' represents the total number of judges from all the Member States who took part in the conference of members of the judiciary and in the seminar courses for judges. These conferences and seminar courses have been organized by the Court of Justice on an annual basis since 1967.

Participation in	*1988*	*1989*	Participation in	*1988*	*1989*
Belgium	10	10	Ireland	9	9
Denmark	9	10	Italy	26	26
Federal Republic of Germany	27	25	Luxembourg	4	3
Greece	9	10	Netherlands	8	8
Spain	26	25	Portugal	9	9
France	26	26	United Kingdom	26	26

Visits to the Court during 1989

Description	B	DK	D	GR	E	F	IRL	I	L	NL	P	UK	Non-members	Mixed groups [1]	Total
National judges [2]	21	51	380	10	31	146	42	—	4	26	—	110	—	75	896
Lawyers, trainee lawyers & legal advisers	34	29	414	9	45	352	—	45	29	36	—	82	—	189	1 264
Professors, Community law lecturers and teachers	40	—	—	—	—	25	—	—	—	40	—	—	—	—	105
Officials, political groups, parliamentarians and diplomats	—	198	248	—	—	113	—	8	—	—	—	94	—	23	684
Journalists	—	—	25	—	—	11	—	—	—	—	10	—	—	—	46
Students, scholars, EEC trainees	185	185	415	13	51	249	58	252	—	539	75	1 566	—	784	4 372
Professional associations	215	90	405	—	14	205	—	—	75	50	—	160	—	16	1 230
Others	125	102	160	—	—	119	—	—	30	—	40	—	—	65	641
Total	620	655	2 047	32	141	1 220	100	305	138	691	125	2 012	—	1 152	9 238

[1] The heading 'Mixed groups' covers groups consisting of delegates of different nationalities (Member States or non-member countries, or both).

[2] This heading provides information, on an individual Member State basis, on the number of national judges who visited the Court in national groups. The column headed 'Mixed groups' represents the total number of judges from all the Member States who took part in the conference of members of the judiciary and in the seminar courses for judges. These conferences and seminar courses have been organized by the Court of Justice on an annual basis since 1967.

Participation in	*1988*	*1989*
Belgium	10	10
Denmark	9	10
Federal Republic of Germany	27	25
Greece	9	10
Spain	26	25
France	26	26
Ireland	9	9
Italy	26	26
Luxembourg	4	3
Netherlands	8	8
Portugal	9	9
ım	26	26

II — Decisions of national courts on Community law

Statistical information

The Court of Justice endeavours to obtain the fullest possible information on decisions of national courts on Community law.

The tables below show the number of national decisions, with a breakdown by Member State, delivered between 1 July 1987 and 30 June 1989 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, which was signed in Brussels on 27 September 1968.

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

Tables showing the numbers of judgments on questions of Community law delivered between 1 July 1987 and 30 June 1989, arranged by Member State

Member State	Judgments on questions of Community law other than those concerning the Brussels Convention	Judgments concerning the Brussels Convention	Total
Belgium	127	47	174
Denmark	15	3	18
FR of Germany	393	56	449
Greece	14	—	14
Spain	33	1	34
France	234	27	261
Ireland	10	4	14
Italy	195	13	208
Luxembourg	17	—	17
Netherlands	187	30	217
Portugal	1	—	1
United Kingdom	146	30	176
Total	1 372	211	1 583

III — The departments of the Court of Justice

The Registry

The Court of Justice performs by its very nature two functions: in the first place, it is a court of law and, secondly, it constitutes one of the institutional pillars of the European Community.

That twofold role is clearly reflected in the Registry.

The Registry is both the focal point of the Court's activities, in keeping with the manner in which courts are organized in all the Member States, and also the nerve centre of the administration, as is particularly apparent from the tasks entrusted to the Registrar.

The Registrar

The Registrar is appointed by the Court for a term of six years which may be renewed.

In institutional terms the Registrar is responsible, under the President's authority, for the administration of the Court, financial management and the accounts. The Registrar's powers and duties are of course very extensive. He is responsible for maintaining files of cases pending, he follows the proceedings in cases brought before the Court and deals with the representatives of the parties, and he is responsible for the conservation of official records. The Registrar is responsible for the acceptance, transmission and custody of documents and for effecting such service as is provided for by the Rules of Procedure. Finally, the Registrar attends the sittings of the Court and of the Chambers.

The Registry staff

It is clear that in order to cope with such a heavy workload, the Registrar must delegate certain tasks to other members of staff. He is therefore assisted by an Assistant Registrar, whose task is specifically to oversee the running of the Registry, and three administrators who between them attend the sittings and deal with the various procedural formalities.

Office duties are entrusted to assistants and secretaries who are recruited in such a way as to ensure that all the official languages of the Community are represented in the Registry.

Tasks of the Registry

The department consists of several distinct sections. The secretariat of the Registry is responsible for sorting and distributing the post, preparing the administrative meetings of the Court and the Chambers (drawing up the agenda, issuing the notice convening the meeting, creating files), drawing up the calendar and list of public sittings and indicating the court rooms in which the sittings are to be held.

The 'language' sections themselves are small units consisting of an assistant and a number of secretaries. These officials are responsible for dealing with cases pending, in their own mother tongue, under the supervision of the Deputy Registrar. There are nine sections in all, which makes it possible for documents to be accepted and for cases to be followed without any language problems.

In each section, the real cogs in the procedural machinery are the assistants. They are responsible for maintaining the files and constantly updating them, and for the internal distribution of the pleadings and documents relating to the cases. They are also responsible for effecting service, giving notice and transmitting communications, in accordance with the requirements of Community law, and deal with any correspondence relating to cases.

Legal information section

In the performance of its duties, it is important that the Registry should, on the one hand, have available to it reliable information on the entire judicial process in regard to all current cases and, on the other hand, be aware of the judicial precedents in regard to the management of the procedure. The constant increase in workload and the need to provide more effective management of judicial activities has led the Registry to use modern data-processing methods and office technology.

In 1984, the Registry began to install a system permitting automatic management of cases before the Court the purpose of which is to provide the Court with complete and reliable information on the course of proceedings (the 'Litige' system — Logiciel intégré pour le traitement des informations du greffe).

More recently, so as to put the information on judicial practice on a systematic basis, the Registry has developed a documentary database the purpose of which is to organize access to internal legal documentation and to provide users with information on the application of the Rules of Procedure to current cases and

references to all decisions of the Court concerned with its judicial activities ('Ordinatoria Litis' system).

The study and implementation of the data-processing project have been carried out entirely by the Court Registry with the assistance of an analyst-programmer.

The 'Litige' system

The functions of the system may be classified under two headings: the first is the placing of information in the database and the management thereof and the second is the use of the information in the database.

A new file for each case is opened in the computer file on the very day that the application or the decision of a national court requesting a preliminary ruling is received at the Registry. The opening of a new file means that certain formal and substantive information identifying the application are stored — that is to say, the names of the parties to the proceedings, the date on which the instrument initiating the proceedings was received at the Registry, the language of the case, the nature of the proceedings, the subject-matter of the proceedings, etc.

Subsequent updating relates to the situation of the file from the point of view of the internal organization of the Court. For example, the name of the judge-rapporteur is stored. Furthermore, changes relating to the course of the procedure are made to the computer file in cases pending before the Court. For instance, details are recorded of decisions setting time-limits, requests for the extension of time-limits and the lodging of the various procedural documents.

Computer processing ensures that the information stored in the computer is reliable and up-to-date and generates a list of warnings indicating, for instance, that an item of information is missing, a time-limit has been exceeded or a time-limit needs to be fixed.

Consultation of the automated file via a terminal enables users to 'read' the information contained in a case file on a visual display unit.

The process of consulting files is designed so that it is tailored to users' manifold interests, with only data which are relevant to the users' information needs being displayed.

The automation of the procedural process enables decision-taking to be rationalized. For example, a case in which the written procedure has closed has to be discussed at an administrative meeting. Through to the selections made by Litige, the computer assists the judges and the Advocates General in making their choice as to whether to place a given case on the agenda for a particular meeting.

Litige can also generate automatically and at predetermined intervals synoptic tables which are defined in advance in the light of users' interests. In this way, the system can produce an automated edition of the list of cases pending before the Court containing basic data on each case.

Finally, the Litige system has been capable, since October 1988, of providing automatically statistics on the work of the Court over a specified period.

The 'Ordinatoria Litis' system

For the purposes of the management of the files relating to pending cases, the Registry submits to the Court proposals for decisions on the application of the Rules of Procedure and carries out the instructions given it by the Court. In this way, with the passage of time, judicial practice has been constantly enriched by the addition of a very great variety of decisions based on the interpretation and application of the Rules of Procedure. These decisions take the form of orders, decisions taken in the deliberation room, measures taken by the President or decisions taken more generally in connection with the examination of a case file. The mass of procedural information is constantly expanding. The fact that this information is not published means that it is difficult for users to have access to it. The need to take judicial documentation in hand has become all the more necessary because the number of cases brought before the Court is increasing every year and the number of users of that documentation is rising.

Furthermore, each year the Court or the President adopt a number of measures to deal with problems connected, directly or indirectly, with the judicial business of the Court. For example, decisions concerning the internal and external distribution of procedural documents, publication in the European Court Reports, the composition of the Chambers, and so on. The Court does not have a tool codifying all those measures.

It therefore seemed worthwhile to create an automated documentation system to provide the Court with the information necessary for the performance of its judicial functions.

The Ordinatoria Litis database is therefore the Court's internal system of automatic documentary research. The system meets the individual requests of users wishing to see documents, recent or otherwise, dealing with a procedural subject in which they are interested at that time.

Future perspectives for data processing in the Registry

In the medium term the implementation of the decentralized phase of the computerization project needs to be envisaged. That aspect will cover the documents and operations connected with the automated production of adminis-

trative procedural documents. The availability of judicial information on a computer will necessarily lead to its being used for the automated production of administrative procedural documents. However, its 'Community' nature implies that it must be possible to do that in the nine languages of the Community.

Finally, the integration of data processing into the organization of the Registry will be completed by installing an archive system permitting procedural documents to be stocked, consulted and reproduced.

The Court's official records are also stored at the Registry. The records of judicial work kept at the Registry span more than 30 years and constitute at present an impressive quantity of documents.

Finally, the Registrar is responsible for the publication of the *Reports of Cases before the Court*. Only these reports may be cited as official publications of the Court. They contain the full text of the judgments, the Opinions of the Advocates General and certain orders. They are published in the nine official languages of the European Communities.

Library, Research and Documentation Directorate

This Directorate includes the library and the research and documentation divisions.

Library Division

1. 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. Outside users who can show that they have a genuine need to use the facilities may also be admitted.

The library's collection covers the following areas: Community law, public international law, private international law, comparative law, national law (of the Member States of the European Communities and of certain non-member countries) and the general theory of law.

On 31 December 1989 the library contained 88 212 volumes. It subscribes to 500 periodicals and its collection increases annually by an average of 3 500 volumes.

The library has an alphabetical card catalogue (authors, titles) and a subject catalogue, consultation of which is facilitated by a key-word index. The catalogues

contain references not only to individual works (books, series, etc.) but also to articles in periodicals and in joint works, which are searched systematically in particular for articles on Community law.

The computerization of the abovementioned catalogues, which began in 1985, was completed in March 1988. Since that date, the catalogues may be consulted on a monitor and automated bibliographical research may be carried out.

2. The library publishes a current bibliography which contains a systematic list of all literature (independent publications and articles) received or analysed during the reference period. The bibliography is composed of two separate sections:

Section A:
Legal publications dealing with European integration.

Section B:
General theory of law — International law — Comparative law — National legal systems.

The division also publishes each year the *Bibliographie juridique de l'intégration européenne*, based on books acquired and periodicals analysed in the field of Community law during the year in question.

A cumulative edition of Volumes 4 to 6 (1984-86) of that work was published in 1987.

The second edition of the bibliographical work entitled *Inventaire des périodiques faisant partie du fonds de la Bibliothèque de la Cour de Justice*, was published in 1989.

Research and Documentation Division

The main task of this division is to assist the Members of the Court in the study of cases assigned to them when they consider this useful. The assistance takes the form of research notes on both Community law and the laws of the Member States, and on comparative law and international law.

The division participates in the publication of the Reports of Cases before the Court by preparing the summaries of judgments and the index of subject-matter and, in parallel with that work, constantly provides information to the Court on the development of its case-law through a bulletin on the case-law which is prepared periodically from the summaries of judgments.

It is also responsible for the publication of the *Digest of case-law relating to the European Communities*. The 'A' Series, which covers the general case-law of the Court, and the 'D' Series which covers the case-law of both the Court and the national courts in the particular field of jurisdiction and the enforcement of judgments in civil and commercial matters governed by the Brussels Convention

of 27 September 1968 have already been published and are regularly brought up to date.

The 'B' Series, which covers the decisions of national courts in matters of Community law, is prepared from a card index of decisions kept by the division which contains more than 7 500 judicial decisions, each accompanied by all the commentaries on them which may have appeared in the various legal publications. That Series is currently in the form of a computerized data bank kept at the Court, which may be consulted by interested researchers. Access to it by a wider public is envisaged in ways still to be determined. However, it is now possible, using that data bank, to produce, depending on the stage which the analysis work has reached, lists of decisions with, for each decision, a classification or its contents, both by country and by subject-matter. (For more detailed information on the structure of the Digest, the extent to which it has been brought up to date and how it may be obtained, see p. 146.)

The Legal Data-Processing Department

The main task of the department consists in making available to the Members of the Court and those working with them computerized documentary services and research on specific subjects (about 2 000 topics each year).

The case-law section of the Celex bank facilitates rapid access to all the decisions of the Court and the opinions of its Advocates General. This data bank, for which all the Community institutions have joint responsibility, exists at present in Dutch, English, French, German and Italian (Danish and Greek versions are in preparation) and can be used not only by the staff of the institutions but also by other people both inside and outside Europe through access terminals.

In addition, there are several databases managed and operated on hardware belonging to the Court, using the Mnidoc software developed by the Department, which cater for specific internal information requirements. They include the AFF.CJ base which contains the judgments delivered and orders made by the Court since 1 January 1983 and also pending cases. Detailed classification categories ensure that each of these documents can be easily identified. In addition, the Department's databases facilitate enquiries on specific matters and the regular publication of lists such as the list of all the cases brought before the Court since 1954 (Index A-Z).

To enable it to include material on national law in the documentation provided to the Members of the Court the Department also has access to external legal databases, such as Juris (Federal Republic of Germany), Crédoc (Belgium), Juridial (France), Italgiure (Italy), Kluwer (Netherlands) and Lexis (United Kingdom and United States of America).

Translation Directorate

1. In *1988* the Translation Directorate was composed of 148 lawyer-linguists divided as follows into the nine translation divisions and the documentation and terminology branch:

Danish language division:	15
Dutch language division:	15
English language division:	15
French language division:	19
German language division:	13
Greek language division:	15
Italian language division:	15
Portuguese language division:	20
Spanish language division:	20
Documentation and terminology branch:	1

The total number of staff of the Directorate was 224.

The principal task of the Translation Directorate is to translate into all the official languages of the European 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.

Between 1 January 1988 and 31 December 1988 the Translation Directorate translated 114 621 pages of which 75 371, representing 68.2% of the total, were revised by a person other than the translator.

The relative importance of the various official languages of the Community 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 by each of the nine translation divisions.

Translation:

into Danish:	10 519 pages	from that language:	797 pages
into Dutch:	10 129 pages	from that language:	4 417 pages
into English:	11 711 pages	from that language:	6 977 pages
into French	13 019 pages	from that language:	82 009 pages
into German:	9 792 pages	from that language:	9 083 pages
into Greek:	17 846 pages	from that language:	1 147 pages
into Italian:	13 061 pages	from that language:	6 078 pages
into Portuguese:	14 699 pages	from that language:	3 049 pages
into Spanish:	13 845 pages	from that language:	1 064 pages
	114 621 pages		114 621 pages

2. In *1989* the Translation Directorate was composed of 156 lawyer-linguists divided as follows into the nine translation divisions and the documentation and terminology branch:

Danish language division:	15
Dutch language division:	16
English language division:	15
French language division:	19
German language division:	16
Greek language division:	18
Italian language division:	16
Portuguese language division:	20
Spanish language division:	20
Documentation and terminology branch:	1

The total number of staff of the Directorate was 229.

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.

Between 1 January 1988 and 31 December 1989 the Translation Directorate translated 243 913 pages of which 169 931 were revised by a person other than the translator.

The relative importance of the various official languages of the Community 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 by each of the nine translation divisions.

Translation:

into Danish:	23 074 pages	from that language:	1 464 pages
into Dutch:	23 417 pages	from that language:	10 120 pages
into English:	25 666 pages	from that language:	14 975 pages
into French:	28 152 pages	from that language:	181 025 pages
into German:	25 701 pages	from that language:	17 807 pages
into Greek:	31 226 pages	from that language:	2 243 pages
into Italian:	28 659 pages	from that language:	10 802 pages
into Portuguese:	27 019 pages	from that language:	3 373 pages
into Spanish:	30 999 pages	from that language:	2 104 pages
	243 913 pages		243 913 pages

Interpretation Division

During *1988*, the division provided interpretation for the sittings and meetings organized by the Court with a permanent staff of 36.

The appointment of a number of new Members resulted in certain changes to the linguistic requirements of the Court. As a result, the Spanish interpreting team was faced with an increased work-load.

In *1989*, the division made preparations for the establishment of the Court of First Instance, which held its first public sitting in December.

Information Service

In 1967, at the initiative of Robert Lecourt, the President of the Court of Justice, the Court set up an information service.

By that time the Court had already delivered several major judgments demonstrating the importance of Community law and the role of the Court in its development, but in order for information about its decisions to be circulated and for judges in the Member States to be made aware of the new legal order which they were called upon to interpret and apply, a particular effort was required on the part of the Court.

The beginnings of the Information Service were modest and at first it confined itself to providing information to judges and academics, hence its original title: 'Judicial and University Relations Service'. Composed of only two persons at the beginning, the service quickly grew, both from the point of view of the range of duties which it was called upon to perform and the number of people carrying out the directions of the President and Members of the Court.

Little by little, the work of the Court attracted the attention not only of lawyers but also of universities, professional groups and, finally, the daily press.

The realization of the importance of the Court's work in the daily life of the European citizen led the Information Service to adapt its activities to the new demands for information and to change its name from the somewhat elitist 'Judicial and University World' to the broader 'Information Service'.

The Information Service is at present composed of 13 persons whose activities cover several areas.

The organization of visits is an area in which the Information Service has seen its work increased considerably. The Court now receives 8 000 to 9 000 visitors a

year. These visiting groups, usually composed of young lawyers and students, attend a hearing after receiving a preparatory talk from an administrator of the Information Service. Certain visits, by specific groups, such as legal data-processing experts, for example, are prepared in greater detail and take account of specific requirements.

As well as those visits, which are spread out over the entire judicial year, each year the Information Service organizes study days for senior judges from all the Member States.

Those visits, which take place in April or May, bring together about 140 judges who, amongst other things, attend a hearing and have an opportunity to talk with their 'European' colleagues.

Another annual event is the judges study visit, which traditionally takes place in the autumn. It is intended particularly for junior judges and magistrates from the Member States. During the course of the visit they are able to hear lectures presented by legal secretaries and officials of the Court.

Official visits by Sovereigns, Heads of State and Heads of Government are also part of the activities of the Information Service.

In addition to activities concerned with the organization of visits, the most important task of the service is the publication of the Court's decisions. That task involves short and medium-term objectives.

A short-term objective is to provide information to the daily press. The dates on which judgments are to be delivered are announced a week in advance and administrators are ready to explain judgments to the press and send them copies as soon as they are delivered. The telex, telecopier and telephone are used to meet the needs of journalists.

In the medium term, the service publishes a weekly bulletin entitled *Proceedings of the Court of Justice*.

That publication, which is stencilled, contains summaries and the operative part of all the judgments delivered during each week together with the Opinion summary and, in addition, brief notes on the Opinions delivered, the hearings held and the new cases brought during that week.

The *Proceedings of the Court of Justice* is published in the nine languages of the Community and sent free of charge to subscribers each week in the language requested. It enables a great many persons, from lawyers to students, from the heads of the legal departments of multinational corporations to trade unionists and from law professors to national civil servants, to follow the Court's decisions at a glance.

The Service also publishes the present work, a sort of general report on the work of the institution which contains much statistical information.

IV — Composition of the Court of Justice

During 1988, the composition of the Court changed in the following way:

On 9 February 1988, the Registrar, Mr P. Heim, left office and was succeeded as Registrar by Mr J.-G. Giraud, who took up office on the same date. The Court marked the departure of Mr Heim and the arrival of Mr Giraud at a formal sitting on 9 February 1988.

On 6 October 1988, Lord Mackenzie Stuart, President of the Court of Justice, G. Bosco, President of Chamber, U. Everling, K. Bahlmann, Y. Galmot, Judges, and Mr Advocate General J. L. da Cruz Vilaça left office. At a formal sitting on 6 October 1988, the Court marked their departure and the arrival of Mr F. Grévisse, Mr Díez de Velasco Vallejo and Mr M. Zuleeg, Judges, along with that of Mr W. Van Gerven, Mr F. Jacobs and Mr G. Tesauro, Advocates General, who took up their duties on 7 October 1988.

Former Advocates General Sir Gordon Slynn and Mr G. F. Mancini were appointed Judges with effect from 7 October 1988 and took up their duties on that date.

The composition of the Court did not undergo any changes during 1989.

Composition of the Court of Justice from 10 February 1988
Order of precedence [1]

Lord Mackenzie Stuart, President
Giacinto Bosco, President of the First and Fifth Chambers
Ole Due, President of the Second and Sixth Chambers
Marco Darmon, First Advocate General
José Carlos de Carvalho Moitinho de Almeida, President of the Third Chamber
Gil Carlos Rodríguez Iglesias, President of the Fourth Chamber
Thijmen Koopmans, Judge
Ulrich Everling, Judge
Sir Gordon Slynn, Advocate General
Kai Bahlmann, Judge

[1] For the composition of the Court prior to 10 February 1988, see the previous issue of the *Synopsis of the work of the Court of Justice of the European Communities in 1986 and 1987*, Luxembourg 1988, at p. 149.

Frederico Mancini, Advocate General
Yves Galmot, Judge
Constantinos Kakouris, Judge
Carl Otto Lenz, Advocate General
René Joliet, Judge
Thomas Francis O'Higgins, Judge
Fernand Schockweiler, Judge
Jean Mischo, Advocate General
José Luís da Cruz Vilaça, Advocate General
Jean-Guy Giraud, Registrar.

Composition of the Court of Justice from 7 October 1988
Order of precedence

Ole Due, President
Thijmen Koopmans, President of the Fourth and Sixth Chambers
René Joliet, President of the First and Fifth Chambers
Thomas Francis O'Higgins, President of the Second Chamber
Jean Mischo, First Advocate General
Fernand Grévisse, President of the Third Chamber
Sir Gordon Slynn, Judge
Frederico Mancini, Judge
Constantinos Kakouris, Judge
Carl Otto Lenz, Advocate General
Marco Darmon, Advocate General
Fernand Schockweiler, Judge
José Carlos de Carvalho Moitinho de Almeida, Judge
Gil Carlos Rodríguez Iglesias, Judge
Manuel Díez de Velasco, Judge
Manfred Zuleeg, Judge
Walter Van Gerven, Advocate General
Francis Jacobs, Advocate General
Giuseppe Tesauro, Advocate General
Jean-Guy Giraud, Registrar.

Composition of the Chambers from 7 October 1988

First Chamber

René Joliet, President of the Chamber,
Sir Gordon Slynn and Gil Carlos Rodríguez Iglesias, Judges.

Second Chamber

Thomas Francis O'Higgins, President of the Chamber,
Frederico Mancini and Fernand Schockweiler, Judges.

Third Chamber

Fernand Grévisse, President of the Chamber,
José Carlos de Carvalho Moitinho de Almeida and Manfred Zuleeg, Judges.

Fourth Chamber

Thijmen Koopmans, President of the Chamber,
Constantinos Kakouris and Manuel Díez de Velasco, Judges.

Fifth Chamber

René Joliet, President of the Chamber,
Fernand Grévisse, Sir Gordon Slynn, José Carlos de Carvalho Moitinho de Almeida, Gil Carlos Rodríguez Iglesias and Manfred Zuleeg, Judges.

Sixth Chamber

Thijmen Koopmans, President of the Chamber,
Thomas Francis O'Higgins, Frederico Mancini, Constantinos Kakouris, Fernand Schockweiler and Manuel Díez de Velasco, Judges.

Composition of the Court of Justice from 7 October 1989
Order of precedence

Ole Due, President
Sir Gordon Slynn, President of the First and Fifth Chambers
Constantinos Kakouris, President of the Fourth and Sixth Chambers
Fernand Schockweiler, President of the Second Chamber
Manfred Zuleeg, President of the Third Chamber
Walter Van Gerven, First Advocate General
Thijmen Koopmans, Judge
Frederico Mancini, Judge
Carl Otto Lenz, Advocate General
Marco Darmon, Advocate General
René Joliet, Judge
Thomas Francis O'Higgins, Judge
Jean Mischo, Advocate General
José Carlos de Carvalho Moitinho de Almeida, Judge
Gil Carlos Rodríguez Iglesias, Judge
Fernand Grévisse, Judge
Manuel Díez de Velasco, Judge
Francis Jacobs, Advocate General
Giuseppe Tesauro, Advocate General
Jean-Guy Giraud, Registrar.

Composition of the Chambers from 7 October 1989

First Chamber

Sir Gordon Slynn, President of the Chamber,
René Joliet and Gil Carlos Rodríguez Iglesias, Judges.

Second Chamber

Fernand Schockweiler, President of the Chamber,
Frederico Mancini and Thomas Francis O'Higgins, Judges.

Third Chamber

Manfred Zuleeg, President of the Chamber,
José Carlos de Carvalho Moitinho de Almeida and Fernand Grévisse, Judges.

Fourth Chamber

Constantinos Kakouris, President of the Chamber,
Thijmen Koopmans and Manuel Díez de Velasco, Judges.

Fifth Chamber

Sir Gordon Slynn, President of the Chamber,
Manfred Zuleeg, René Joliet, José Carlos de Carvalho Moitinho de Almeida, Gil Carlos Rodríguez Iglesias and Fernand Grévisse, Judges.

Sixth Chamber

Constantinos Kakouris, President of the Chamber,
Fernand Schockweiler, Thijmen Koopmans, Frederico Mancini, Thomas Francis O'Higgins and Manuel Díez de Velasco, Judges.

V — Publications of the Court of Justice

A. *Texts of judgments and opinions*

1. *Reports of Cases before the Court of Justice and the Court of First Instance*

The *Reports of Cases before the Court* are published in the nine Community languages, and are the only authentic source for citations of decisions of the Court of Justice or of the Court of First Instance.

In the Member States and in certain non-member countries, the Reports are on sale at the addresses shown on the last page of this section. In other countries, orders should be addressed to the Office for Official Publications of the European Communities, L-2985 Luxembourg.

2. *Judgments of the Court of Justice and the Court of First Instance and Opinions of the Advocates General*

Orders for offset copies may, subject to availability, be made in writing, stating the language desired, to the Internal Services Division of the Court of Justice of the European Communities, L-2925 Luxembourg, on payment of a fixed charge of BFR 200 for each document. Orders will no longer be accepted once the issue of the *Reports of Cases before the Court* containing the required Judgment or Opinion has been published.

Subscribers 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 fee is the same as for the *Reports of Cases before the Court.*

For certain cases, the *Reports of Cases before the Court* will in future contain only a summary publication of the judgment and the Opinion of the Advocate General. In such cases, the full text of the judgment in the language of the case and of the Opinion delivered in the language of the Advocate General may be obtained on request from the Registry of the Court of Justice.

B. *Other publications*

1. *Selected instruments relating to the organization, jurisdiction and procedure of the Court*

This work contains a selection of the provisions concerning the Court to be found in the Treaties, in secondary law and in a number of conventions.

The 1990 edition has been updated to 31 December 1989. It contains, *inter alia*, all the rules which, pending the adoption of Rules of Procedure of the Court of First Instance, govern procedure before that court—which took up its duties on 31 October 1989—and appeals from its judgments.

Consultation is facilitated by a 25-page index.

The Selected instruments are available in the nine official languages at the price of ECU 12, excluding VAT, from the Office for Official Publications of the European Communities, L-2985 Luxembourg, and from the addresses given on the last page of this section.

2. *List of the sittings of the Court of Justice and the Court of First Instance*

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

This list may be obtained on request.

3. *Publications of the Information Service of the Court of Justice*

Applications to subscribe to the following publications, which are available in the nine Community languages, should be sent to the Information Service, L-2925 Luxembourg, specifying the language required. They are supplied free of charge.

(i) Proceedings of the Court of Justice of the European Communities

Weekly information on the judicial proceedings of the Court of Justice and the Court of First Instance containing a short summary of judgments delivered and brief notes on opinions delivered, hearings conducted and new cases brought during the previous week.

(ii) Synopsis of the work of the Court

Annual publication giving a synopsis of the work of the Court of Justice and of the Court of First Instance both in their judicial capacity and in the field of their

other activities (meetings and study courses for members of the judiciary, visits, study groups, etc.). This publication contains much statistical information and the texts of addresses delivered at formal sittings of the Courts.

4. *Publications of the Library Division of the Court*

(i) 'Bibliographie courante'

Bi-monthly bibliography comprising of a complete list of all the works—both monographs and articles—received or catalogued during the reference period. The bibliography consists of two separate parts:

Part A:
Legal publications dealing with European integration;

Part B:
General theory of law — International law — Comparative law — National legal systems.

(ii) Legal bibliography of European integration

Annual publication based on books acquired and periodicals analysed during the year in question in the area of Community law.

In 1987, a cumulative edition of Volumes 4 to 6 (1984-86) of the bibliography was published.

Enquiries concerning these publications should be sent to the Library Division of the Court of Justice.

5. *Publications of the Research and Documentation Division and the Legal Data-Processing Department of the Court*

Digest of case-law relating to the European Communities

The Court of Justice has commenced publication of the *Digest of case-law relating to the European Communities*, which systematically presents not only the whole of the case-law of the Court of Justice of the European Communities but also selected judgments of courts in the Member States. Its concept is based on that of the former 'Répertoire de la jurisprudence relative aux traités instituant les Communautés européennes'. The Digest is published, in several of the Community languages, in the form of looseleaf binders and supplements are issued periodically.

The Digest comprises four series, each of which may be obtained separately, covering 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 (not yet published);

C Series: Case-law of the Court of Justice of the European Communities relating to Community staff law (not yet published);

D Series: Case-law of the Court of Justice of the European Communities and of the courts of the Member States relating to the 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 formerly published in instalments but which has now been discontinued.)

The first issue of the A Series was published in 1983. Since the publication of the fourth issue, it now covers the case-law of the Court of Justice of the European Communities from 1977 to 1985.

The first issue of the D Series was published in 1981. With the publication of the fourth issue (now in the press), it will cover the case-law of the Court of Justice of the European Communities from 1976 to 1987 and the case-law of the courts of the Member States from 1973 to 1985.

Work on the C Series is in progress. Work on the B Series is also in progress and priority has been given to its computerization.

Orders for the available series may be addressed either to the Office for Official Publications of the European Communities, L-2985 Luxembourg, or to any of the outlets listed on page 152 of this section.

In addition to the commercially marketed publications, the Research and Documentation Division compiles a number of working documents for internal use.

'Bulletin périodique de jurisprudence': This document assembles, for each quarterly, half-yearly and yearly period, all the summaries of the decisions of the Court which will appear in due course in the *Reports of Cases before the Court*. It is set out in systematic form and contains an analytical table of contents and an alphabetical table of parties so that it forms a precursor, for any given period, to the Digest and can provide a similar service to the user (available only in French).

'Notes—Références des notes de doctrine aux arrêts de la Cour': This publication gives references in legal literature to the judgments of the Court since its inception. Regular updates are issued.

'Index A-Z': Computer-produced publication containing a numerical list of all the cases brought before the Court since 1954, and an alphabetical list of names

of parties. These lists give the details of the publication of the Court's judgment in the *Reports of Cases before the Court*. Issued twice-yearly.

'Jurisprudence nationale en matière de droit communautaire': The B Series of the *Digest of Community case-law* at present takes the form of a computer data bank which is internal to the Court. Using that data bank, as the work of analysis and coding progresses, it is possible to print out tables of the judgments it contains (with keywords, in French, indicating their tenor), either by Member State or by subject-matter.

Publications covering case-law in Belgium, Ireland, Greece and France are available.

Enquiries concerning these publications should be sent to the Research and Documentation Division of the Court of Justice.

VI — General information

A. *Information on general questions relating to the work of the Court of Justice and the Court of First Instance may be obtained from the Information Service*

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Formal sittings of the Court of Justice of the European Communities

1988 and 1989

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I — FORMAL SITTING
of 9 February 1988

Address by Lord Mackenzie Stuart, President of the Court, on the occasion of the departure of the Registrar, Mr Paul Heim

Your service as Registrar of the Court of Justice of the European Communities has been only a phase—albeit a most distinguished phase—in a long career of public service.

Shortly after your university days and having learnt your trade at Lincoln's Inn you entered the legal administration of Kenya. There your progress was rapid — Judge of First Instance, Deputy Registrar and finally, by 1964, Acting Registrar of the Supreme Court of Kenya, that is to say Head of the Judicial Department composed of some 2 000 officials.

With the independence of Kenya it was necessary for you to seek new outlets for your ability and in 1965 we find you in a very different environment, that of the Council of Europe at Strasbourg. There again your rise was rapid in the Secretariat of the Committee of Ministers. It was, however, characteristic of your known conviction that the United Kingdom had an important role to play in the evolution of the European Community that on British accession you sought and obtained a post with the European Parliament. Once more, in the short space of seven years, your advancement was remarkable. By 1980 we find you appointed Director of the Sessions Service, a key role since you were responsible for the running of the plenary session of the European Parliament. The esteem in which you were held by a succession of Presidents, themselves personalities of international renown, is well known.

It was no surprise, therefore, that in 1982 the Court appointed you as its Registrar. From an administrative point of view the Court of Justice is an unusual body. Its fundamental task is to give judgment, efficiently and expeditiously, in the ever increasing number of cases brought before it. The responsibility for achieving this aim necessarily rests upon the Advocates General and upon the Judges. They alone must bear the final responsibility; there is no power of delegation.

It goes without saying, however, that the Members of the Court could not fulfil their task without the continuous and devoted assistance of a large staff which now, after the accession of Spain and Portugal, total over 600. The Registrar, under the ultimate control of the President, has an onerous and two-fold duty. On the one hand, he must see that all litigation is brought before the Court in a manner that is procedurally correct and properly presented. On the other, he has to coordinate the many services of the Court to ensure that the highest standard of help is given to the Court and this always under the pressure of the timetable, a timetable which has grown more exigent with each month that passes. In many ways the work of the Registrar is a thankless task. It is a task which when well

performed attracts no commendation because that is what is expected. If there is imperfection, no matter in what corner of the administration, it is the Registrar who is held to account.

May I try to remedy that omission?

At this moment of farewell I would like to express our thanks for your great service to the Court. Every day of your service has brought its own crop of problems and just because they have been surmounted with success, they have, by that very fact, passed unnoticed. While I shall mention a number of the particular difficulties of your time at the Court, may I on this occasion pay tribute to the overall efficiency of the Court and to your exemplary part in achieving it.

Not only does the office of Registrar require great administrative ability it requires linguistic skill. Your exceptional ability in this sphere is known to all of us and has been greatly appreciated. Only your knowledge of Swahili has failed to be of service to the Court — at least so far.

It is only right to underline how important has been the period of your mandate for the Court as an institution and for the evolution of the European Community at large. You arrived at the Court when Greece had recently joined the Community. You witnessed the negotiations leading to the accession of Spain and Portugal and their successful accomplishment. That all three Member States have been successfully and, I trust, happily integrated in the structure of the Court is in large measure due to yourself.

The rising volume of the work-load of the Court, compounded by the arrival of three new Member States, has meant that the Court had by the early 1980s outgrown its existing building. Apart from you, perhaps only I as President can bear witness to the complexity of the negotiations leading to the present construction of the Annexe which is now well on its way to completion and which will solve our problems in the short term — but I fear only in the short term. Our thanks are due to the Luxembourg Government for their help and cooperation but your role has indeed been an important one.

I have referred more than once to the continual increase in the work-load of the Court. As every one knows discussions are well advanced for the creation of a Tribunal of First Instance which will transfer from the shoulders of the Court part of our work while leaving intact our responsibility for ensuring the correct application of Community law. For the part which you have played in this further step in the wider European construction may I express our thanks.

There is much else besides which I could mention but let me confine myself to two more matters. At the heart of all Community achievement is the question of finance, or to be more precise that of the budget. The Court cannot achieve its purpose without budgetary support. That that budgetary support has been forthcoming from the budgetary authorities, if sometimes too little and too late

even for our modest demands, has been in large measure due to your skill as negotiator.

In the second place, I cannot leave unmentioned your devotion to the external relations of the Court. On a personal level your hospitality to visitors to the Court has become legendary. In this respect I am sure you would be the first to acknowledge, along with all Members of the Court, the invaluable support of your wife whose absence from our Community will be sadly missed. At the level of the Court's official relations with the Member States, their judges and their professors, in the Court's relations with other institutions, indeed with all those who show an interest in our work, you have ensured that the Court has been represented with dignity and style.

May I end by expressing our warmest good wishes to you and to Elizabeth for the future. You have earned your respite from your labours here but I have no doubt that many calls will yet be made upon your European conviction and experience.

Mr Paul Heim

Address by Mr Paul Heim, Registrar of the Court of Justice, on the occasion of his retirement from office

Mr President,

I thank you for the very kind remarks which you have just made about me, now that my term of office as Registrar of this Court has drawn to a close, just as I thank the Court for the six interesting, fruitful and immensely rewarding years which I was able to spend in that office.

Those who drafted the Treaties were wise in conferring on the Registrar a position which is *sui generis*, stressing, as it does, in one respect the independence of the Court and in another the pivotal importance of its function in the Court's work.

No Registrar, however, can operate successfully, unless he has, as I have always had, the support and back-up of the departments devoted to the cause of European justice and profoundly attached to the Court. I must therefore pay tribute to the professional qualities of the officials and staff of the Court who, in all circumstances, and during a period of continually increasing work-loads, never failed to carry out their responsibilities with exemplary professionalism. Many years of experience in courts, tribunals and legal institutions throughout the world allow me to state that the officials of the Court are unique in their quality and devotion. The Deputy Registrars, Mr Pompe and Mr Jung, the directors and heads of departments in the Court, the Registry and the other departments enjoy a reputation which is soundly based. I am proud to have been in charge of those departments for the six years—years which have been so momentous, years of development and success—and if I extend my thanks to the Court, I must surely, for the same reason, extend them also to the staff of this Court who have assisted me so ably and so faithfully in my work. My very special thanks go to the General Secretariat of the Registry, Mme Lavall, Mme Sculfort, Mme Azurmendi and Mr Blum.

I do not intend on this occasion, Mr President, to review all the events of the past six years during which I have had the honour of being associated with European justice, but it is only necessary to gaze through the windows of this building to realize just how far the system of European justice, a symbol of many other successes, has advanced in concrete terms.

In that regard, I also take pleasure in expressing my personal and professional gratitude to the authorities here in Luxembourg. Throughout my time in Europe, they have shown understanding for the needs of European justice and, with a constructive and European mind, have gone to great lengths to find answers to the many problems which arose. They made my task of building up the vital infrastructure of the Court all that much easier, and I would like at this point to thank them for that.

Mr President, now that I have come to the end of my European career, I would like for a moment to speak on a personal level. My European career brought me from far away to this place. It gave me the opportunity to work happily for the construction of Europe. For the past fifteen years my family and I have lived in this beautiful country of Luxembourg, which welcomed us warmly and in which we have been very happy to live. Our gratitude is profound and sincere.

Mr President, please accept my thanks to yourself and the entire Court, with the expression of my constant devotion to European justice and my profound good wishes for its future.

Address by Lord Mackenzie Stuart, President of the Court, on the occasion of the entry into office of Mr Jean-Guy Giraud as Registrar of the Court of Justice

I turn now from *vale* to *ave*. It is my great pleasure on behalf of the Court to welcome you, Mr Giraud. Like your predecessor you have had a distinguished career in public service. After your law degree at the University of Paris, with an emphasis on public and international law, you decided to examine the problems of the world from a different viewpoint, that of Washington, at the Johns Hopkins University where in 1970 you graduated with honours and distinction before taking the Diplôme of the Institut d'Études Politiques at Paris.

You then entered the public service of your country, France, including a period as legal and economic adviser at the Australian Embassy. In 1973 you began your career with the European Parliament.

I will not rehearse in detail your many activities in that institution. I will only mention your time as Director in the cabinet of Mr Pflimlin and Director in charge of many activities, budgetary, administrative, legal and institutional. This was followed by a brief period when you were Director *ad interim* of the Directorate-General for Committees with many and diverse responsibilities. That period was brief, because last year you were nominated to his cabinet by Lord Plumb, Mr Pflimlin's successor as President, as special adviser in charge of budgetary, administrative and legal questions. Tenure of this office too was brief since, last year, to the regret I know of Lord Plumb, the Court was fortunate enough to secure your services.

In my words of farewell to Mr Heim I emphasized the importance of the role of Registrar to the Court. I also emphasized the formidable difficulties in terms of its work-load with which the Court is currently faced.

We are confident that with the help of your proven abilities these difficulties can be overcome. To you and to your wife I convey our warmest good wishes and ask you to take your oath of office in the usual fashion.

Mr Jean-Guy Giraud

Curriculum vitae of Mr Jean-Guy Giraud

Born on 12 April 1944 at Casablanca, Morocco.
Married with four children.

He holds a Diploma of Higher Study in Public Law from the Faculty of Law of Paris and a Diploma from the Institut d'Études Politiques in Paris; he also has a Master of Arts Degree in International Relations, awarded by the School of Advanced International Studies of the Johns Hopkins University, Washington DC (USA).

In 1972, Mr Giraud worked as an economic and legal adviser at the Australian Embassy in Paris.

Upon his entry in 1973 into the General Secretariat of the European Parliament, Mr Giraud worked for eight years as an administrator in the Secretariat of the Committee on Budgets, where he was involved, *inter alia*, in the preparation of the budgetary Treaties of 1970 and 1975.

In 1982 he was appointed Head of the Secretariat Division of the Committee on Institutional Affairs where he was engaged in preparatory work on the Treaty on European Union.

In 1984, Mr Giraud was appointed Head of the Secretariat Division of the Committee on Budgets, before being called to the Cabinet of Mr Pflimlin, President of the European Parliament, where he acted as an adviser on financial, administrative, legal and institutional matters; in 1986 he was appointed Director to this post.

In 1987, Mr Giraud was appointed to the Cabinet of Lord Plumb, President of the European Parliament, where he performed similar functions; at the same time—and in addition—he was named Director *ad interim* of the Directorate-General for Committees, with the task of applying the Single European Act, dealing with questions relating to matters of jurisdiction and power of the institution, and supervising five committee secretariats, including those of the Committee on Budgets and the Committee on Institutional Affairs.

On 8 July 1987, Mr Giraud was appointed Registrar of the Court of Justice; the date on which he was to assume office was fixed at 9 February 1988.

II — FORMAL SITTING
of 6 October 1988

Address by Lord Mackenzie Stuart, President of the Court of Justice of the European Communities to the departing Members of the Court

Here, ladies and gentlemen, I turn to those members of the Court who are now leaving us.

In the seat of honour I must place President of Chamber, *Mr Giacinto Bosco*. You are in every sense the doyen of us all. The Court has in the past had many members of academic distinction; it has had some who have made a notable career in politics. No one in the history of the Court has combined the two avenues with such success as yourself and over such an extended period.

It is worth recalling that it is more than 60 years since you first obtained your 'licence en droit' and that you were appointed to your first university chair in 1932. I shall not rehearse your academic career in detail. I would however remind today's audience of your activities in the public domain where you have led an equally long remarkable political career. As long ago as 1948 you became a member of the Senate of the Italian Republic and so continued for 24 years — for a period as its vice-president. The roll-call of your ministerial offices speaks for itself, Education, Justice, Employment, Finance and Foreign Affairs.

For the years immediately preceeding your nomination to our Court in 1976 you held what was in effect the presidency of the Consiglio superiore della Magistratura — I say 'in effect' because the presidency is held, as everyone knows, by the President of the Republic and the real presidency of this vitally important Council, controlling as it does all judicial appointments in Italy, was in your capable hands.

It is, however, as a friend and colleague I bid you farewell. I wish to thank you in addition for the brilliant way in which you carried out the duties of the Presidency during my absence last year.

Your vision of a more united Europe, and you were among its pioneers, has been an inspiration to us all. Your wisdom and perspicacity have helped us all. That very great British statesman R.A. Butler quoting Count Bismark, once described politics as 'the art of the possible'. With your political shrewdness you have translated that concept into judicial terms and pointed the road which we could properly follow. We are all deeply grateful to you for your contribution.

I turn now to *Mr Everling*. It in no way diminishes the warmth of welcome which I shall extend to your distinguished successor when I say how particularly sorry we are to see you leave. The Court to function properly must have continuity and the eight years of service which you have given is too short. We can ill afford to

lose you. One of the strengths of the Court has been the diversity of background of its various members. In your case you came to us with a life-time of experience in Community law as seen through the eyes of a national administration charged with particular duties as regards the Community. Indeed in your case, as a young man, you were part of the German team which after the Messina Conference, was responsible for drafting the Treaty of Rome as we know it today.

I do not repeat in detail your predestined rise in responsibility in the German Ministry of Economic Affairs devoted to the affairs of the Community. At the same time your intellectual capacity was acknowledged by your appointment as honorary professor at the University of Munster. To the Court, then, you brought exceptional qualities in the field of Community law. It is, however, as a member of the Court that we shall remember you. Your patience, your determination to reach the heart of every problem, your understanding of the practical consequences of any judgment proposed have aided us all beyond measure. In the name of us all I thank you for the major contribution which you have made to the work of the Court over the last eight years.

It is also with great regret that we say adieu to our colleague *Mr Bahlmann*. You, too, Mr Bahlmann have had a long and varied career of public service in your national administration. After your studies at Cologne, Bonn and Fribourg you became a 'collaborateur scientifique attaché au Bundesverfassungsgericht' where you had your first initiation into the complexities of constitutional law. The major part of your career, however, before you came to Luxembourg was with the Federal Ministry of Justice where you had to tackle an immense variety of problems. I single out your period as 'Ministerialdirektor' concerned with finding legislative solutions to problems of constitutional law, international public law and Community law. That experience you brought to the Court and we have greatly benefited from it.

We are grateful to you for the care, indeed the anxiety, with which you have approached the many and varied problems with which we have had to deal during your mandate and most warmly thank you for the vital role which you have played in our deliberations.

To *Mr Galmot* I also express the most sincere thanks of the Court for his work since he arrived in Luxembourg in 1982.

Mr Galmot, you came to us from the Conseil d'État, that breeding ground of distinguished members of the Court beginning with Advocate General Maurice Lagrange who, in the early days of the Court, was the author of so many statements on the nature and essence of Community law the originality of which we now forget because they have today become common place. The Conseil d'État is a remarkable institution in that its members are expected to be both jurists and administrators and to excel in both capacities. You have indeed done both. I do not list your achievements—they are well known—but to underline and illustrate what I have said may I recall that shortly before your appointment to this Court you were not a lawyer but the délégué du Gouvernement with

responsibility for rescuing the ailing industrial group Saint Gobain – Pont-à-Mousson.

From the first moment at the Court you gave proof of your exceptional qualities. If I had to select two I would choose to mention the incisive clarity of your mind — the ability to crystallize the essential elements of a case perhaps incoherently presented. The other quality which we shall remember is your gift of language outstanding even by the high standards of your compatriots. We shall miss you greatly.

Mr da Cruz Vilaça, it seems but yesterday that we were celebrating the accession of Spain and Portugal to the Communities, and with it, your arrival at the Court as Advocate General. It now seems all too soon that you must leave the Court.

In the course of your studies, undertaken not only in your own country but also in Paris and at Oxford, you achieved distinction both in law and in economics and political science. Subsequently, you led a double career. On the one hand you were Professor of fiscal law at your own former university in Coimbra where you were also responsible for courses in European studies. On the other hand, you led a brilliant career in politics and public administration as a member of your national parliament, Secretary of State to various ministries and, most notably, Secretary of State for European Integration at the time of the Portuguese accession negotiations.

That those negotiations were successfully accomplished was due in no small measure to the breadth of your understanding of problems as well as your technical mastery of fine points of detail — qualities which we have come to expect in the Opinions which you have presented to the Court on a wide variety of cases. Although I regret your departure from the Court so soon after your arrival, I am convinced that before you lies a glittering future of service to your country and to the European Communities.

Farewell addresses by the departing Members

Mr Giacinto Bosco

Address by Mr Giacinto Bosco, President of Chamber, on the occasion of his retirement from office

Mr President,

Thank you very much for your kind words now that my duties as a judge at the Court of Justice are coming to an end.

I should also like to express my warmest thanks to my fellow members and the Registrar, to my close collaborators—my legal secretaries and secretaries—and to all the staff of the Court, who, on every occasion, have shown dedication and devotion to the noble cause of Community justice.

By tradition, it is to the most senior judge remaining in office—on this occasion Judge Koopmans—to whom the privilege falls of giving a speech in honour of the President, to thank him for the distinguished services which he has rendered to the Court.

As for myself—addressing you as the oldest judge and as the most senior of those of us who are leaving—I shall confine myself to a few brief reflections on the experience which I have gained in the performance of my duties with this court.

Ladies and gentlemen,

During my long career I have been an active participant in the process of the formation and development of the European Community. Indeed I have had the good fortune to get to know the machinery of the Community from the inside, since I have served in three of the institutions: the Parliament, the Council and the Court of Justice. And I am pleased to have rounded off my career with a period as a judge at a court which can boast that it has raised Community legislation as a whole to the status of a legal order in its own right, distinct from both the international legal order and the domestic legal systems of the Member States. The *acquis communautaire*, as it is termed, is largely composed of the great principles which have emerged from the case-law of the Court, such as the direct applicability of certain provisions of Community law, the primacy of Community law over conflicting national legislation and the requirement that Community law should be uniformly applied throughout the Community.

The Single European Act has enlarged the scope of Community law by giving the Community new powers with a view to making it advance towards European union, in particular through the completion of the internal market.

Hundreds of regulations and directives have already been adopted following the entry into force of the Single Act. Other legislation has been proposed by the Commission pursuant to its White Paper.

The integration of that new legislation into the legal orders of the Member States will give a considerable boost to economic and social intercourse between Community nationals. Such a development will be bound to have an impact on the number of cases involving Community law which are brought before the Court of Justice and before the courts in the Member States. In view of this, the Court of Justice has obtained the establishment of a court of first instance with a view to lightening its work-load. But that measure on its own will not be enough to secure the proper operation of the machinery of justice in the Community, for the national courts are also involved and they will be more directly affected by the judicial proceedings to which the intensification of intra-Community relations will give rise.

Whilst measures are proliferating in all the Member States with a view to adapting their domestic structures on the economic and social level to the advent of the single European market at the end of 1992, the same is not true in every case as regards legal problems and questions relating to the judicial system. If the national courts' reaction to the increase in cases involving Community law is reflected simply in a massive rise in the number of requests for preliminary rulings under Article 177 of the EEC Treaty, the upshot will be a marked slowing-down in the work of the Court of Justice. If, in contrast, the response of the judiciary in the Member States is to disregard—even to some extent—Community law, the outcome will be just as negative, not only with regard to the effectiveness of Community law, but also for the very achievement of the objectives of the Single European Act.

Since the effects of the increase in litigation involving Community law will not make themselves felt for some years, it is to be hoped that in the mean time the dissemination of knowledge of Community law—Community legislation and the case-law of the Court of Justice—will be stepped up at all levels, both in the universities, at the Bar and amongst the judiciary.

The Community institutions must help with that drive to foster knowledge of Community law by calling on the Member States to make the teaching of Community law compulsory and by distributing the Official Journal and the European Court Reports to all the national courts. Those measures would promote the uniform application of Community law in all the Member States, for failing its uniform application the very bases of the Community would be weakened.

As a convinced supporter of the European idea, I hope that it will advance at the same pace everywhere, also in the legal sphere, an area in which an important chapter of the new European culture has already been written by the case-law of the Court.

Ladies and gentlemen,

Now that I leave off my judge's robes, after 12 years of serving justice in the Community, I am conscious that I shall ever be guided by its spirit, even in the modest undertakings in which I shall henceforth be engaged.

Mr Ulrich Everling

Address by Judge Ulrich Everling on the occasion of his retirement from office

Today marks the end, for me, of more than 30 years in the service of European integration. Such an occasion calls for some reflection both on the past and on the future.

My work for Europe began in 1955 when, as a young civil servant, I took part in the preliminary negotiations to the Spaak Report and in the negotiations on some chapters of the EEC Treaty. The beginning of the story goes even further back, however, in my case to the years 1943 to 1945. In all the Member States we are now seeing a change of generations, which is increasingly affecting even the Court. The generation of those who, even when very young, saw by their own experience that European union is essential in order to ensure peace and freedom in this part of the world is beginning to leave the scene. When one observes the discussions in our Member States one must ask, with some concern, whether that consciousness of the urgent need for European integration still exists today to the same degree, above all among younger people.

I wish to stress the origin of the Community and its political goals. That applies equally to the Court of Justice. It must not allow its activities to be directed by politics, but it is part of the constitutional system of the Community and is thus bound by the Community's goals. The Court must always be conscious of that orientation, which requires its wholehearted commitment.

From the conclusion of the EEC Treaty until I became a Member of the Court of Justice my work always lay on the dividing line between the Community and the Member States. In Brussels I represented German interests and in Bonn I represented Community interests, and the latter was certainly a more difficult task. That too was a source of experience which I have sought to draw on during my time at the Court.

As units of political organization nation-States continue to exist and are no doubt indispensable, whether we like it or not. The Community is more than a simple association of States; it directly incorporates individual citizens. It cannot, however, seek to arrogate all legislative power to itself, as a central authority, at a time when federal or regional structures are becoming increasingly important in the Member States. The Community must find the right path between resolute joint action on the one hand and the tolerance of national diversity on the other. That presents a difficult task for the Court of Justice too. It is like a tight-rope walk, which is not always free of risk.

That leads me to a further consideration. Law does not owe its existence simply to the say-so of 12 ministers in Brussels or 13 judges in Luxembourg. In our democratic societies it derives its validity from its acceptance in the consciousness of citizens. In the Council the long and often difficult-to-understand decision-

making process, with frequent feedback to the Member States, tends to foster that acceptance. The Court of Justice can only seek to achieve such acceptance for its judgments by means of the persuasive force of its reasoning.

In so doing it often tests the bounds of its possibilities. Community statute law is rudimentary, full of lacunae and incomplete. Even more than national law, it requires development by the courts. And thus we are faced with the well-known problems of the limits of judge-made law. On the one hand, the Court of Justice must develop Community law in an energetic and forward-looking manner, but on the other hand it may not put itself in the place of the political institutions and thus place too much strain on the social structures in the Member States. This, too, is a tight-rope walk beset with danger; the matter has been the subject of discussion very recently. The Court of Justice has been at its most persuasive in cases where by decisions of principle it has prevailed upon the Council to live up to its political responsibilities.

In my eight years at the Court of Justice it has delivered 1 488 judgments, that is to say more than half of the 2 705 judgments it has delivered since 1953. That is an indication of the constantly increasing work-load of the Court, which has led to a dramatic increase in the time taken to deal with cases and may thus compromise the effectiveness of the Community judicial system. Since there are limits on the further expansion of the Court of Justice, the Court of First Instance is the only solution. I have been a partisan of its creation throughout, although in the light of the Council's decision establishing the new Court it can only have limited success. The, in my view, short-sighted decision not to give the Court of First Instance jurisdiction to hear anti-dumping cases, which are extremely complex and involve a host of technical issues, is dubious not only from the constitutional point of view. It jeopardizes the very objective that is put forward as the reason for that restriction, that is to say, to ensure that convincing judgments are delivered within a reasonable time. It is urgently necessary for the Commission, in particular, to review its attitude in this respect.

All that remains is for me to say thank you. To you, Mr President, and to all my colleagues with whom I have been able to work in a climate of mutual trust. I thank in particular all those persons who have worked most closely with me. Without their whole-hearted efforts it would not have been possible for me to carry out my duties in the proper manner. In a harmonious working atmosphere such as I have rarely experienced in my long career we worked together with a common commitment to common goals. Finally, I thank all the Court's staff, who have always been ready to provide their assistance.

'Was bleibet aber, stiften die Dichter' ('But that which remaineth the poets write'). I should like to close with a few words from Friedrich Hölderlin, which express in the timeless metaphors of the Early Romantic period a little of which I wished to say in my references to the political tasks and structure of the Community and of the Court of Justice. In Hölderlin's poem, Empedokles, looking out on the crater of Vesuvius, describes his vision of an age to come in the following terms:

'... wie auf schlanken Säulen, ruh'
Auf richt'gen Ordnungen das neue Leben
Und euern Bund befest'ge das Gesetz.'

('... as on slender columns,
Let the new life rest on a just order,
and let the law bind your union.')

Mr Kai Bahlmann

Address by Judge Kai Bahlmann on the occasion of his retirement from office

As the thirteenth Member of this Court of Justice, whose judicial office is to be taken over by a colleague from another Member State, may I be permitted to make a few observations. They are inspired by the fact that the desire for a deeper understanding of the significance of the law for the Community has not been quenched but has been still further aroused by a six-year term of office.

1. My first remark has to do only at first glance with legal history; it is in fact closely concerned with modern reality. It concerns the basic construction of the European Community as a community of law. This development into a community of law is only the result of an integrating process of development. That process would not have been possible, in the form and with the efficacy it has displayed, without a profound fundamental consensus of all the Governments of the Member States and the Community institutions concerning the outstanding importance of the law, precisely in the framework of a community whose domain is the economy and economic activity, that is to say a field which by its very nature is characterized by the presence of opposing material interests. Only a law that seeks common acceptance is in a position to make the set target of a genuine common market a binding one and to moderate between opposing interests.

The six years of my term of office covered a period characterized by widespread economic recession, economic imbalances and national budgetary problems, in other words factors of disturbance which, precisely in the economic sector, do not exactly favour conduct in conformity with the Treaty but are apt instead to constitute a danger for integration. These challenges have, as we know, frequently led in the matter of consensus to serious difficulties in the general policy of the Community and to a certain stagnation, which can be regarded as overcome only with the advent of the Single European Act. It may today truly be said that the legal order of the Community, already established when this difficult phase began, was already so stable that the basic consensus recorded in the Treaties was never seriously challenged. Even in that period it was possible to extend, and indeed to some extent to expand and strengthen the case-law of the Court of Justice on the article of importance.

2. A second observation is directed to the fact that in the last six years the number of cases on references from national courts has also considerably increased. Behind this lies not just a statement of a statistical nature but an increasing trust in and familiarity with the legal foundations of the Community. In fact the national judges are, in so far as they are concerned with the interpretation and application of Community law, performing an extremely important task in the clarification and further development of that law. There is today no doubt that even from the point of view of the domestic legal orders of the Member States the European Court of Justice is an instrument of decisive importance for the guarantee of rights. It is not possible to overestimate the

importance, for the integration of the legal order of the Community, of the procedure for a preliminary ruling because of the cooperation with the national courts which that procedure entails.

May I append to what I have just said the following remark: If the decisions of the European Court of Justice have gained such wide recognition in the Member States, in the courts and in academic circles, this is in no small measure due to the fact that the decisive legal questions before the Court have been the subject of highly expert analysis by all concerned — the Commission, and frequently also the representatives of the Member States and Counsel for the parties. The Court was thereby provided by those participating in the proceedings, notwithstanding the frequent differences of opinion which came to light, with an excellent basis for decision. In circumstances such as these it seems virtually impossible that a court's case-law should meet with the criticism that it runs the risk of withdrawing into an ivory tower. A debt of gratitude is owed to all concerned for this collaboration in the service of the law.

3. A third observation. If we are able today to speak of the Community as a community of law, this is something whose roots lie deeper. They will be found in the fact that the conception of the law in the Community is not exclusively, and its essential content is not even decisively, determined by the economic factor; its point of reference is to be found in values common to all Member States. For all the differences in the features which characterize the legal orders of the Member States the law is still everywhere acknowledged as a force for the protection of the citizen and also as an element in the separation of powers and a factor for the assurance of order. The law is also founded on a concept of solidarity and social fairness so that it is inherently well adapted to produce an integrating effect for the larger community.

The effectiveness of the European legal order can therefore also not be explained by any particular contrast with the legal orders of the Member States. On the contrary: The undisputed precedence of Community law is to be seen in the context of the fact that Community law is founded on a convergence and concordance of legal principles which correspond to the legal standards and standards of protection in the legal orders of our Member States and which indeed were to a considerable extent first developed on the basis of those standards. That is true as regards the development in the case-law of this Court of general principles in the field of administrative law, and also—and in particular—the recognition of fundamental human and citizens' rights in the Community and, finally, the recognition of the principle of subsidiarity as a principal factor in every federative system. The force of the concept of law in the Community thus reflects nothing other than the importance attributed to the law in all the Member States; therein lies its decisive power and integrating force.

Let me at this point describe an enduring experience in my work at the Court of Justice. At no time in performing the duties of my judicial office have I had the feeling that I was working in another world or in one where social concepts predominated which differed from those to be found in the world in which I

worked the greater part of my life. I am sure that the same is true in the case of my colleagues.

4. May I make one final observation. Law is no more, and no less, than a cultural factor, and a particularly important one as it concerns life as lived between people. For too long in Europe was there no conscious awareness that our culture, for all its variety, is a homogeneous culture. In the field of law our common roots were wholly forgotten. Only after Europe had lived through extremely sombre times did it come to be realized that Europe is more than just a geographical concept. The European Community is an example of the overcoming of centuries-old rivalries in a constructive manner.

I would like to conclude with some words written by Ortega y Gasset in 1929. From the standpoint of the law there is nothing to add to them.

> 'If we were today to take stock of our spiritual possessions ..., it would be found that the greater part of these stem not from our particular native country but from the common European estate. In all of us the European by far outweighs the German, the Spaniard, the Frenchman ...; four-fifths of our spiritual assets is the common patrimony of Europe.'

I have the Court of Justice and all its Members to thank for having made these words of Ortega y Gasset a reality for me in the field of law as well.

Mr Yves Galmot

Address by Judge Yves Galmot on the occasion of his retirement from office

Ladies and gentlemen, my dear colleagues,

It is impossible not to feel some emotion in leaving an institution in which one has passed six years of one's life, especially an institution as important as the Court of Justice. That emotion must not stand in the way of reflection, however, and a time of change such as this is a particularly good opportunity to take stock.

These six years which I have spent among you have given me much pleasure; they have aroused a few worries but have also given me great hopes for the future.

* * *

If Saint-Exupéry was right to say that the most important thing in life is one's relations with other people, then I have benefited to the full from the most important thing in life. I have benefited first of all in my Chambers—six years with Dominique Maidani, with my assistants, Sylvia Neyen and Corinne Rybicki, and with my chauffeur, Mr Faget; four and a half years with Jacques Biancarelli and one and a half years with Bernard Pommiès and Jean-Claude Bonichot—in an atmosphere of warm friendship which my wife and I will never forget.

I have also benefited from my contacts with all the Court's staff; their ability and their conscientiousness have already been praised by previous speakers.

Finally, I have benefited from the time spent with you, my dear friends, in the Court and outside it. In a short time we have become good friends, and that friendship will not be extinguished by mere physical distance.

* * *

In speaking of the pleasures I have enjoyed here I must not, of course, leave out intellectual pleasures.

What I want to emphasize in this respect is what constitutes the real interest of our institution, that is to say the sharing of our differing legal cultures and the communication which we manage to achieve even though our approach to issues may at the outset be very dissimilar. There can be no substitute for the Court of Justice in the formation of a truly European legal culture. I can assure you that after six years in Luxembourg I shall never again, as a Conseiller d'État, look at French public law in quite the same way.

* * *

Let me turn now to my worries.

The first, and most important, concerns the organization of the Court and its evolution to cope with the Europe of tomorrow. Like all the courts of the Member States, the Court is faced with an increase in litigation throughout Europe. I shall not go into the causes of that phenomenon, which is in itself an entirely favourable one. However, it places heavy burdens and serious obligations on the Court. We have not yet managed to come to grips with that phenomenon; from 1983 to 1987 the time taken by the Court to deal with cases has increased significantly, from 18 months to 23 months on average for direct actions and from 13 months to 18 months for preliminary rulings. If we do not react now, where will we be in the Europe of 1993 or of the year 2000? The danger is two-fold: on the one hand, that national courts may become discouraged and stop referring questions to the Court for preliminary rulings, thereby severing the mainstay of Community law. Conversely, one might fear that in order to avert that danger the Court might devote itself to quantity at the expense of quality and in so doing neglect its *raison d'être*, that is to say, the consistency of its case-law.

My second worry concerns our means of making the substance of Community law available to lawyers in the Member States. All the law lecturers and practitioners with whom I have had the opportunity to discuss the matter have told me that in their view the case-law of the Court is difficult to research.

The *Reports of Cases before the Court* lack a proper analytical index, and there is no up-to-date digest of the Court's case-law. There is an urgent need for the Court to provide itself with a documentary record worthy of its task.

* * *

Finally, let me speak of my great hopes for the future of the administration of justice at the Community level.

My hopes are based first of all on the fact that in general the judgments delivered by the Court are well accepted, in particular by the people of Europe. I think our case-law, which seeks to break down national barriers and uphold the great Community freedoms, falls in with the main concerns of the citizens of Europe. We must take advantage of that feeling in order to create the judicial structures necessary for a united Europe.

The process has begun—and this is my second ground for hope—with the establishment of the Court of First Instance. In its initial stages that new court will lighten the burden of litigation coming before the Court, and perhaps it will prompt an even greater decentralization of Community law. Perhaps one day the Court of Justice will play the role of an appellate court to a number of courts of first instance, some of them specialized.

But you know as well as I do that that essential reform will not be sufficient to deal with the problems which I raised a moment ago. A thorough reform of our

working methods is inevitable, and I know that many of my colleagues are giving this matter serious consideration. I am certain they will succeed in that endeavour.

My third ground for hope is the ability and reputation of our successors. And I refer in particular to my own successor — my friend Mr Grévisse, a Président de Section at the Conseil d'État and a former judge of this Court.

Good luck, then, and *bon courage*, to him and to the team which is now his, and I hope that in the course of his duties he experiences all the joy which has been mine during these six years spent among you.

Mr José Luís da Cruz Vilaça

Address by Mr Advocate General José Luís da Cruz Vilaça on the occasion of his departure

Mr President,

When we reach a moment which constitutes a turning-point in our careers and which is as intense as the one we are experiencing at present, silence and reflection are, at times, the most appropriate attitude to adopt in order to accomplish the transition between two stages that should ideally be connected by a thread of continuity.

Personally, I feel that the words of my colleagues already express quite adequately, in my name as well, the sentiments and reflections which this moment inspires.

May I just take the liberty, with your kind permission, of breaking the silence which is so dear to me in order to express, as briefly as possible, a personal opinion for which I alone am responsible and which is difficult to delegate in view of its highly subjective content.

* * *

Permit me to continue in my mother tongue.

I have now come to the end of a cycle which I had the privilege of opening on 25 June 1986. In accordance with the tradition that Advocates General deliver opinions in their own language, I had occasion on that date to express myself, in this very room and for the first time, in a new official language of the Communities. I thereby accomplished an action which, beyond its objective purpose, assumed a symbolic significance, namely the full integration into the European family of a country which has, for a long time, been too far removed from that family of nations but which has, since time immemorial, forged with them profound cultural, economic and human ties which are rooted in history.

If I refer to those matters at this juncture, it is because I cannot help being alert to whatever constitutes a step forward in the gradual integration of the European nations.

* * *

The special nature of the political arrangements which preceded enlargement meant that the new Advocate General was to join the Court with a term of office of only two years and nine months ahead of him. Whilst this may to some extent have been contrary to the spirit in which the Treaties were drawn up, I must say that at no time did it cause me to experience any particular sensation of precariousness or to feel that my status was thereby diminished.

The dignity with which the authors of the Treaty endowed the office of Community magistrate constitutes, in its own right, the indispensable safeguard of the independence of that office. What is more, a new arrival inherits from his

predecessors a body of case-law laying down the principles on which he must rely and receives from his colleagues renewed instruction which revitalizes those principles. As Mr Robert Lecourt, a former President of the Court of Justice, stated with wonderful conciseness, the Court has made its bright triad of values—independence, prudence and firmness—into a charter which rebounds to its credit.

May this patrimony of values be passed on intact to the future Court of First Instance. That court cannot be regarded as a lesser body. The confidence which citizens have in the system of Community justice—of which the Court of First Instance will form an integral part—and which the Judges and Advocates General of the Court of Justice have succeeded in consolidating over the years could not possibly be shaken by decisions that were less well-pondered or by erroneous conceptions of its nature and functions.

To be sure, the prestige of the institutions is created by those who compose them at any given time. Inevitably, we identify with the image of the Court during our term of office there.

I have the feeling that the Court has added a few more bricks in recent years to help consolidate that structure. It is sufficient to recall the growing number of applications requesting it to decide genuinely constitutional questions concerning the division of powers between the different institutions.

The conditions in which the Court accomplished that task were indeed difficult and severe ones! During the last three years I witnessed those conditions myself and, as a participant, I experienced them daily. At times, I had the feeling that it was necessary to squeeze every minute out of the time available, by degrees, as if struggling to eject an enemy from an impregnable redoubt. I do not know, to be quite frank, whether it would be humanly possible to carry on for much longer at the pace dictated by the volume of cases brought before the Court.

For that reason, I feel that the Court is at a crossroads and that it must not hesitate for a moment in making the choices facing it.

It can safely be said that history has never seen a judicial institution which has exerted such a profound influence on the lives of Europe's citizens. Its ability to pursue that mission in the face of the increasingly exacting objectives of integration (which are laid down in the Treaties) must not only be preserved but also re-invigorated if necessary.

I hope that my colleagues will find in future, by virtue of the improvements which are certain to be introduced in the judicial structure of the Community resulting particularly from the addition of a Court of First Instance and from their detailed consideration of the manner in which the work of the Court is to be organized, the best conditions in which to pursue a mission which has come to be regarded by everyone—the Member States, the Community institutions, undertakings and ordinary citizens—as important and indispensable.

At the end of my term of office I should like to state how honoured I feel to have been able to cooperate, to the best of my ability and in the singular role of Advocate General, in the accomplishment of the task entrusted to the Court of Justice. It is conforting to know that legal writers and informed legal circles in the Member States have recognized the usefulness of that role and the contribution which it makes to the development of Community law and the protection of the rights of citizens. Its foreseeable inclusion in the Court of First Instance stems from that recognition and consolidates that contribution.

It may be said that the office of judge and that of advocate general complement one another in the accomplishment of a common mission.

A mutual understanding of the demands of those two roles has, in this Court, been a decisive factor in the establishment of a creative dialogue between judge and advocate general. I believe that, in the future, the effectiveness of that dialogue with regard to the organization of the work cannot fail to increase.

In conclusion, I would like to express my gratitude to you, Mr President, and to all my colleagues for the stimulus generated by the magnificent solidarity that was constantly shown by everyone as from the very first day on which you extended a generous welcome to me and my wife in Luxembourg. It is difficult to estimate the extent to which that helped me to carry out my task as a Member of the Court of Justice of the European Communities, and to make it stimulating and at times even exhilarating.

To my closest collaborators—legal secretaries, typists and chauffeur—I wish to express publicly my gratitude for their loyal and devoted cooperation and my appreciation for the quality of all the work which, heedless of the time and human effort involved, I demanded of them throughout my tenure of office.

Finally, I wish to say that I shall not forget the debt of gratitude which the Court and I myself owe to all the officials who, under the Registrar's guidance, have competently and devotedly ensured the functioning of all the machinery which serves as a basis for the administration of justice in the Community.

Address by Judge Koopmans in gratitude to Lord Mackenzie Stuart, President of the Court of Justice

Mr President,

You are about to leave us after performing the duties of Judge at the Court since 9 January 1973 and those of President since 10 April 1984. May I be allowed to address to you a few words of farewell on behalf of my colleagues, both those who are staying and those who are leaving, and myself.

You were the first British judge to take up duties at the Court, with all which that implied in 1973. First, from the human point of view. The small British community had to organize itself and you, together with your wife, made a large contribution to setting it on its feet and integrating it into Luxembourg life. Next, from the psychological point of view. At the time many of the 'original' Europeans still harboured some mistrust in regard to everything that came from the far side of the Channel. They wondered whether the United Kingdom had really joined the Community in order to be a wholehearted member or rather to put a brake on the work of integration, or indeed (*sit venia verbo*) to prevent it. That is a time which nowadays seems to be long gone and to belong to an almost paleontological period in the history of the European Community. Whatever may be the state of the political debate today, the United Kingdom is coming increasingly under the influence of Community law whilst contributing greatly to its development. That development is characterized not only by the influence of European law on British life but by the impact of the English and Scottish legal traditions on that law. To be convinced of this, it is not even necessary to study the development of the case-law of the Court since 1973. All one has to do is to attend, in this building, a hearing and observe the surprise of the continental lawyers when they find themselves asked numerous, sometimes hostile, questions by the Judges of the Court and the Advocate General. It is also interesting, however, to attend a hearing at the Court in a British case and see how argument is presented with a perfect understanding of the principles and rules of the Community and how practised are the advocates in dealing with the relevant provisions and the case-law of the Court. Now may be an opportune moment to state all this publicly.

Such a development is the sign of a slow but profound transformation which, moreover, affects all our countries. It is not, of course, the work of any one man. It is necessary, however, to recognize the considerable importance of the part you have played, Mr President, as regards the legal relations between the Community and the United Kingdom: by your efforts to reconcile the continental traditions and those of the Common Law and to identify systematically the points which they have in common; by the tranquillity of your convictions, even where they might not do much to enhance your popularity, in London or elsewhere; and by the excellent contacts you have always managed to maintain with the Bar. The

fact that for many years you were an advocate yourself, and Keeper of the Library of the Faculty of Advocates in Edinburgh, no doubt has something to do with this.

Your experience as an advocate has had its importance when you were called upon to preside over the Court. During the years of your presidency the Court has always shown the greatest understanding of difficulties experienced by Agents of the Governments of the Member States and the Community institutions and by lawyers acting for private parties, whilst showing itself to be strict when it considered that certain conduct might jeopardize the proper administration of justice. You were not one of those who allow themselves to be intimidated, as your colleagues found on various occasions, even in deliberation. Perhaps it was while you were inspecting lighthouses in the Scottish Isles when you were Sheriff Principal of Aberdeen, Kincardine and Banff that you learned to keep your head in a storm and sometimes even to be in your element. Your serenity in difficult discussions will long be remembered. You told me once, in that half-serious, half-facetious tone so typical of you, that your experience in the army had also been useful to you as it had taught you to defuse landmines. It may be that an institution such as ours may need a president who has the gift of firing hearts and minds and, above all, a sense of humour.

Under your presidency the Court has continued, calmly but firmly, to follow the course on which it had set out. The decisions on foodstuffs bears witness to this, as do the judgments on the purity of beer and pasta. Similarly, the Court has clarified its case-law on the effect of directives in certain fields such as equality of treatment for men and women in social life, and value-added tax, both of them subjects which have already enriched our case-law and which may yet continue to do so. But the Court has also struck out in new directions, for example in the cases on teachers, air transport and insurance. Lastly, it has made it clear in certain cases between institutions that it cannot substitute itself for the political organs: courts are not equipped to adjudicate on all the problems which politicians, diplomats and senior civil servants cannot resolve themselves.

All that has been accomplished in quite a difficult period. The number of cases has almost unfailingly increased; numerous changes have taken place in the Court; the accession of the Iberian countries and the introduction of two new official languages have given rise to a considerable increase in the staff of the Court; the deliberations of a bench of 13 are more difficult than those of a bench of nine or 11; when the Court has needed the support of the other institutions and the Governments of the Member States, that support has sometimes been grudging, as is shown, to name but one instance, by the way in which the Court's proposal for the creation of a Court of First Instance was mutilated at the discussions in Brussels. It has not always been easy to keep our good humour. If we have managed to do so, this is due in particular, Mr President, to your 'unflappable' nature.

I would now like to say a few words to your wife and would prefer to express myself in English.

Dear Ann. We shall miss you as, I am sure, you will miss us a little bit. You followed, here in Luxembourg, your own European career, in particular through your involvement in the work of the European School. But you have been at the centre of many other activities; the Members of the Court have been among those who benefited from what you did.

You had also a keen interest in the Court's work. About four years ago, when Jack was still a relatively new president, I was next to you in a little theatre where one of the English amateur theatrical groups was performing Gilbert and Sullivan's 'The Gondeliers'. I remember that, when the song on 'quiet and calm deliberation' began, you leaned on my chair and said quietly into my ear: 'That could have been written for you and your colleagues'. I said softly: 'Some of us might benefit from the idea', but when I saw your stern face I added immediately: '... others not excluded, of course.' I can assure you that this story sometimes comes back to my mind on the rare occasions on which I have difficulty in hiding my dissatisfaction. As such a situation may recur, you can be sure that I shall remember you. And so will many of us, each for his own particular reasons.

Dear Jack, your return to Britain will not put a halt to your work on European law. Now that you have been elevated to a life peerage, you will, I understand, be able to work in the House of Lords' legal subcommittee on European matters. We may see you back in Luxembourg in that capacity. Rest assured that our warm feelings go with you. We have no doubt that you will find satisfaction in your new life — it *may* be less exciting than defusing landmines, or sailing to lighthouses, or presiding over the Court of Justice, but the lawyer's life is attractive because it embodies the sum of different kinds of experience. Edmund Burke, that most English of Englishmen (though born in Dublin), and himself a lawyer, told us nearly 200 years ago why it is worthwhile to work in that field. He wrote in his 'Reflections on the Revolution in France' about

> 'the science of jurisprudence, the pride of the human intellect, which, with all its defects, redundancies, and errors, is the collected reason of ages, combining the principles of original justice with the infinite variety of human concerns ...'.

There is nothing to add.

Lord Mackenzie Stuart

Address by Lord Mackenzie Stuart, President of the Court of Justice of the European Communities, on the occasion of his retirement from office

It is difficult for me to find words to reply to the overgenerous speech which you have just made about me.

However, a quotation which immediately springs to mind is that of Dr Johnson, a contemporary of Burke whom you have so justly quoted, and who said that 'in lapidary inscriptions a man is not upon oath'.

Do not think that I propose to match your kind words with a funeral oration, even though, to use a well-known saying 'Partir, c'est mourir un peu'.

The only part of your speech to which I can subscribe without reservation is that in which you pay tribute to my wife. She has indeed played a central part in our life here and I am certain that she would wish me to thank you in her name.

The Court, at least in so far as the judges are concerned, is a collegiate one. It speaks with a single voice. It is perhaps ironic that only at the moment of departure is a judge permitted to express an individual view.

I leave the Court with great regret. I have now served with no less than 42 Judges and Advocates General, not to mention three Registrars. From each I have learnt much. Certainly I can say that thanks to them I am now, if not wiser, at least better informed. At the same time I firmly believe that outstaying one's welcome should be added to the seven deadly sins.

While, as I have said, my thanks are due to all with whom I have worked I would particularly like to thank my present collegues who gave me their confidence in electing me to the presidency of the Court in 1984. The task of president is essentially, at least on a daily basis, a thankless one. If you fulfil it competently no one notices because that is what is expected. Should you stray from the 'straight and narrow path' you must expect to be told so in uncompromising terms.

My colleagues have, however, tempered justice with mercy and I am immensely grateful to them for the support which I have received. The practical effect of that support which I have received from all my colleagues is demonstrated by the fact that yesterday saw the pronouncement of the 229th judgment of the Court this year as compared with 208 judgments in the whole of 1987.

That this result has been achieved is highly commendable but it has been the result of unacceptable pressures and I would be doing a disservice to the Court if I did not mention the events of the last year.

Some weeks ago I had the honour to receive in this room the President of the Federal German Republic. I feel that it is only right to repeat part of what I said then before a wider audience. I quote:

> 'For the past 35 years the Court has developed and maintained its independence and integrity. It has scrupulously kept itself apart from the political tensions to be found, perhaps inevitably, elsewhere within the structure of the Community. Through its judgments the Court has defined the Community legal order and, by reminding Member States of the scope of the commitments which they have made by adhering to the Community, it has ensured that, like its constituent Member States, the Community remains founded on the rule of law.
>
> There is, however, a danger that, as a consequence of keeping its traditionally low profile, the efficiency of the Court in carrying out the tasks conferred upon it by the Treaties may be taken for granted.
>
> It is vital that the Member States recognize the essentially non-political quality of the Court as a Community institution and, at the same time, accord to it the material infrastructure necessary to its proper functioning.'

As long ago as December of last year I wrote to the then President of the Council of Ministers regarding the forthcoming expiry of the current mandates of certain members of the Court, and reminded him of the responsibility of the Member States in that respect and of the necessity for early action to ensure the effective functioning of the Court as a judicial institution. Despite constant reminders through two succeeding presidencies the Member States have only at the eleventh hour managed to perform their simple and unambiguous duties under the Treaties.

What has made the present situation worse is that it is not without precedent. The departure of my first president, Mr Robert Lecourt, was, in 1976, delayed for not dissimilar reasons. He, in his farewell address, and bear in mind that he spoke only of a single appointment, had this to say in characteristically trenchant terms:

> 'The weakness of the system of triennial renewal which has just inflicted upon [the] Court a paralysis, emanating from elsewhere, from which it has hitherto been preserved: let us hope that it is temporary...'.

Despite Mr Lecourt's hope it is evident that the lesson of 1976 has not been learnt.

I do not need to stress the personal problems which have been created for the individuals concerned, important though they are. One cannot expect effective and creative judicial work from those who have no concept of what tomorrow may bring. I speak rather of the obvious disruption which this delay will cause to the working of the Court. Today is not the occasion to point the finger at individual Member States. My complaint is directed against the Member States collectively for their failure to fulfil their Community responsibilities.

What I did not then stress when I welcomed President von Weizsäcker but wish to underline today is that nationality plays no part in the composition of the Court. The Treaties are silent, rightly silent, on this matter. This contrasts with the provisions relating to the Commission, the European Parliament and indeed the Council itself which are all, to a greater or lesser extent, based on nationality. The Judges and Advocates General are independent persons who have put their national allegiance aside on accepting appointment to this institution—not their national professional training or forensic skills which they freely place at our disposal—but their national allegiance as such. In no sense are members of this Court representatives of their respective Member States.

This has been so during the 16 years of my membership of the Court. At all times it has performed its duties, in the ringing words of the Cranmer prayer-book, 'without fear, favour, partiality or affection'. Despite the recent difficulties I leave the Court fully confident that the same tradition will be maintained.

If I have to single out one aspect of our activities over the last 16 years it has been our ever increasing work-load. Here I am happy to say that I can thank the Member States for taking our position into account in the Single European Act and the Council of Ministers for their cooperation in the creation of a Tribunal of First Instance. I see no reason why this should not be in operation next year and making a real contribution to the efficiency of the Court. I regret, of course, that the Council has been unable to follow all our proposals for the jurisdiction of the new Tribunal but I am optimistic that good sense will ultimately prevail.

Let me end on a more personal note. I recalled to President von Weizsäcker how as a very junior British officer I had seen the ashes of the Ruhr in April and May 1945 and of the indelible effect of what I had observed at an impressionable age. I then recalled to him the incredible progress we have made since those sad, far-off, days. Set against my memories of 1945 current difficulties become insignificant. In creating the new climate, which today we all accept as if it had never been otherwise, the Court has played an essential, indeed pivotal, role. It has been the greatest privilege to have participated in that great adventure and to use the words of the Schuman declaration of May 1950, to see the European construction taking shape.

When I hear the speeches of politicians who disparage or belittle the *acquis communautaire* I am reminded of the French poet, Paul Verlaine, who altered his daily walk so that he should not see the Eiffel Tower. Despite his somewhat pathetic gesture, the Eiffel Tower, whether we like it or not, is still very much with us nearly a century after Verlaine's death.

No man is an island. Any contribution which I have been able to make has, in large measure, been due to the help and support of others. To all the staff of the Court, past and present, I extend my warmest thanks. More particularly I wish to thank those who have worked so closely with me in my chambers—once again I would emphasize—of many nationalities.

In pride of place I thank Mme Grelli who for more than 15 years has freely placed at my disposal her astonishing linguistic skills, her efficiency and above all her tolerant good nature. To Mrs Thompson for her competence and good humour in every moment of crisis and Mme Sauren for unruffled and impeccable response in the face of constant pressure.

The office of legal secretary is vital to any member of the Court. It would for each of us be impossible to cope with our work-load without the efficient and intelligent assistance of our collaborators. Over a long period I have been very fortunate in having the help of a succession of able young men. To mention only the latest in a distinguished line of succession I owe much to Eric van Ginderachter and to Tom Kennedy for their aid and support during a difficult period. Both have shown themselves not only as distinguished jurists but as the most able of administrators.

My thanks, too, to the continual cheerfulness and skill of my chauffeur, M. Brachetti.

To all present in this room and to many, many more, outside and beyond, then, may I say thank you, and I know that my wife joins me in this, for having made our time in the Grand Duchy so stimulating and so pleasant.

Address by Lord Mackenzie Stuart, President of the Court of Justice of the European Communities, welcoming the new Members of the Court

Mr Grévisse

It is always a pleasure to welcome an old friend. As everyone knows, you were, for too brief a period, a member of this Court in 1981 and 1982 when, in the short time available to you, you demonstrated to us all your intellectual capacities and your skill in adapting to our collegiate life. Much though we regret losing your predecessor his departure is fully compensated by your return. Like your predecessor you come to us from the Conseil d'État where, most recently, you have been a Divisional President. Like him you have played an increasingly important role in the public life of your country, both administrative and judicial. Most important of all we already know your qualities as a judge of this Court.

I take note that, at the formal sitting of the Court on 4 June 1981 you took the oath required by the Statutes of the Court and signed the declaration required by Article 3(2) of the Rules of Procedure. Your presence here today is sufficient re-affirmation of the solemn undertakings which you entered into on that day.

Professor Diez de Velasco

I have already alluded to the events preceding your appointment to serve on the Court. However much I deplore those events it gives me great satisfaction that the Court should have secured the services of a man of your erudition and experience.

From the outset of your academic career you have concentrated your efforts on international law, indeed your doctoral thesis in 1951 dealt with the general theory of reservations in international Treaties. Since then you have pursued a remarkable academic career with a long succession of academic posts in the Universities of Valladolid, Madrid, Valencia, Granada and Barcelona, culminating in your present position as Professor of Public International Law at the Universidad Complutense of Madrid, a post you have held since 1974.

Your expertise in the field is demonstrated, not only by the recital of posts which you have held and by your many publications but also by your being one of the arbitrators provided for by the Vienna Convention on the Law of Treaties and the fact that you were one of the experts on international law involved in the preparation of the famous *Barcelona Traction and Power Company* Case, before the International Court of Justice in The Hague. I wish also to emphasize that your interest in and knowledge of Community law stretches back long before the accession of your country to the Communities. As long ago as 1975 you gave

courses on Community law in Madrid and your encouragement of the study of the subject has been largely responsible for the availability of so many talented Spanish lawyers to the Community institutions.

Lest it be thought that your career has been confined to the academic world, let me mention finally that you are a member of the Bars of Barcelona and Madrid and that you have been a member both of the Spanish Constitutional Court and of the State Council. That judicial experience in addition to your renowned learning will make you a valued member of this Court.

May I now invite you to take the oath provided for in the Statutes of the Court.

Professor Zuleeg

You too, Professor Zuleeg, are already well known to the Court. Your distinguished academic career stretches back a quarter of a century and has included studies in the United States as well as a succession of prestigious posts in the Universities of Cologne, Bonn and Frankfurt. However, at every stage of your career your interest in European law has been in evidence and your extensive and impressive list of publications on the subject includes one of the standard works in German on the vital subject of the relationship between national law and European Community law.

Moreover, in the exercise of the right of audience open to university professors in your country, you have appeared before us in a number of important cases.

You will therefore bring to the service of the Court your skills as an advocate as well as a reputation for an original approach to problems and for the forthright expression of opinion. Due to the collegiate nature of the Court to which I have already referred, these talents will, for the duration of your mandate, not be on public view. They will be none the less valuable to the Court for that.

May I now ask you to take the oath required of you by the Statutes of the Court.

Professor Van Gerven

I turn now to Professor Van Gerven. It is sometimes an easy way out for a host to say of a guest that he needs no introduction. In the case of those who have followed the evolution of Community law over the last 20 years such an observation is, in the case of Professor Van Gerven, entirely true. As the author of countless review articles, the author of many books, as professor at Leuven and visiting professor on both sides of the Atlantic you have, Professor Van Gerven, made a notable contribution to the study of Community law, a contribution which I know will be enhanced in your new career as advocate general. That,

however, is not your only qualification. You bring with you much practical experience as an advocate, and your skill in the world of affairs has been recognized since 1982 by your position as 'président de la Commission bancaire et, à ce titre, membre du Conseil de l'Institut belgo-luxembourgeois du change, du Conseil supérieur des finances et du Comité consultatif bancaire de la Communauté européenne'.

This experience will be of inestimable value to the Court.

May I now ask you to take the oath required of you by the Statutes of the Court.

Professor Jacobs

When I welcomed M. le Conseiller Grévisse I said that it was always a pleasure to welcome an old friend. Once again may I say the same thing. In your case the pleasure is personal since I am the only member of the Court who can recall your time here in 1973 and 1974 as legal secretary to Sir Jean-Pierre Warner, whom I am happy to say has honoured us by his presence. In 1973 you came to the Court, after a distinguished academic career and a period with the Commission of Human Rights at Strasbourg. You left us to become Professor of European law at King's College, London. You have published widely on the Convention of Human Rights and Community Law. You have served as technical adviser to the House of Lords Scrutiny Committee of European Affairs on a number of important topics including that of the future of our Court.

It is, however, as an advocate that my colleagues know you and it is particularly as an advocate that you have won their respect. Clarity, brevity and persuasiveness. These are the qualities which you bring to your new position and which you now place at the service of the Court.

May I now ask you to take the oath required of you by the Statutes of the Court.

Professor Tesauro

Your compatriots have contributed greatly to the development of the 'jurisprudence' of the Court as advocates general. Of those with whom I have had the honour to serve, Professors Trabucchi, Capotorti — both of whom had also been judges of the Court and Professor Mancini, now to become a judge, each in their own distinctive and characteristic way have aided the advancement of Community law. I do not doubt that you will follow that worthy tradition taking into account, in particular, the wide variety of posts you have previously occupied. Professor of internal law in the Universities of Catania, Messina, Naples and Rome, and director in the latter university of the specialist school of European Affairs, you

have also had practical experience as an 'avvocato cassazionista' in civil, international and European Community cases.

Your range of intellectual endeavour has been wide indeed as is demonstrated by the inclusion of international law, Community law, industrial and commercial law within the subjects covered in your published work.

The Court has need of these skills and it is now my great pleasure to invite you to take the oath required of you by the Statutes of the Court.

Mr Fernand Grévisse

Curriculum vitae of Mr Fernand Grévisse

Born on 28 July 1924 at Boulogne-Billancourt (Hauts-de-Seine).

Married to Suzanne Grévisse, née Seux, President of the Social Affairs Section of the Conseil d'État.

Children: Christine, Françoise.

Commandeur de la Légion d'Honneur. Médaille Militaire. Commandeur de l'Ordre National du Mérite. Croix de Guerre (1939-45).

Studied at the École Nationale d'Administration (classed first in the 'Jean Moulin' year).

President of the Public Works Section and member of the Consultative Committee of the Conseil d'État.

Career

February 1948 to December 1949: studied at the École Nationale d'Administration.

27 December 1949: Auditeur de Deuxième Classe at the Conseil d'État.

February 1954 to October 1955: Commissaire Adjoint du Gouvernement attached to the full judicial assembly of the Conseil d'État, the Judicial Section and sub-sections thereof.

24 July 1954: Auditeur de Première Classe at the Conseil d'État.

2 March 1956: Maître des Requêtes at the Conseil d'État.

April 1956 to February 1957: Legal Adviser to the French Embassy in Tunis.

March 1957: Commissaire du Gouvernement attached to the full judicial assembly of the Conseil d'État, the Judicial Section and sub-sections thereof.

14 January to 21 February 1959: Head of the Cabinet (unofficial appointment) of the Minister for Justice (Mr Michelet).

February 1960: Directeur des Affaires Civiles et du Sceau at the Ministry of Justice.

December 1962: member of the study group on the organization of the Conseil d'État.

August 1964: Director-General responsible for Forestry at the Ministry of Agriculture. Vice-President of the Conseil de l'Ordre du Mérite Agricole. Vice-President of the Conseil Supérieur de la Forêt et des Produits Forestiers.

July 1965: Director-General responsible for the rural environment.

January 1966: Vice-President of the Office National des Forêts.

10 August 1966: resumed former duties at his former grade at the Conseil d'État.

10 April to 13 July 1967: Head of Cabinet of the Minister responsible for the Civil Service (Mr Michelet).

July 1967 to May 1971: Director-General for Administration and the Civil Service attached to the General Secretariat of the Government.

2 June 1971: resumed former duties at his former grade at the Conseil d'État.

12 June 1973: Conseiller d'État.

December 1974: President of the committee responsible for checking and assessing the results of the Comoro Islands referendum.

May 1975 to April 1981: President of the First Sub-section of the Judicial Section of the Conseil d'État.

1977-80: Professor at the Institut d'Études Politiques, Paris.

1977-79: President of the Centre d'Études Supérieures du Management Public.

November 1980 to May 1981: Member of the Tribunal des Conflits.

April 1981 to October 1982: Judge at the Court of Justice of the European Communities.

1 October 1983: Vice-President of the Judicial Section of the Conseil d'État.

January 1984: President of the Section for Public Works.

Mr Manuel Díez de Velasco Vallejo

Curriculum vitae of Mr Manuel Díez de Velasco Vallejo

Born in Santander on 22 May 1926.

Professor of Public International Law at Universidad Complutense, Madrid.

I. Academic qualifications

Graduate in Law, University of Valladolid, 20 June 1949.

Doctor of Law, University of Madrid, 28 May 1951, his doctoral thesis being entitled 'Las reservas en los Tratados Internacionales: Teoría General'.

'Graduado Social', 20 October 1958.

Elected Professor of Public and Private International Law, by competitive procedure, on 7 July 1958.

II. Other offices and distinctions

Judge of the Spanish Constitutional Court (1980-86), Emeritus Judge since 1986.

Professor of Public and Private International Law of the Universities of Granada (1959-61), Barcelona (1961-71) and the Autonomous University of Madrid (1971-74).

Member of the Institut de Droit International (as from 1979).

Former elected Member of the Consejo de Estado (1987).

Member of the Real Academia de Jurisprudencia y Legislación, Madrid.

President of the Spanish Association of Teachers of International Law and International Relations.

Editor of the *Revista de Instituciones Europeas* (Madrid) since 1975 and Member of the Editorial Board since its foundation.

Member of the Bars of Barcelona (1964) and Madrid (1971).

III. Decorations

Holder of the Gran Cruz de la Orden de Isabel la Católica and the Gran Cruz de la Orden de San Raimundo de Peñafort.

IV. Principal legal publications

(A) *General works*

Curso de Derecho Internacional Público, Volume I, Madrid, 1963.

Prácticas de Derecho Internacional Privado (under the direction of Mr Díez de Velasco), Madrid, 1986, third edition.

Instituciones de Derecho Internacional Público, Volume I, eighth edition, Madrid, 1988.

Instituciones de Derecho Internacional Público: Organizaciones Internacionales, Volume II, sixth edition, Madrid, 1988.

(B) *Courses*

Nociones Elementales de Derecho Internacional Público, Granada, 1959.

'La protection diplomatique des Sociétés et des actionnaires' published in *Recueil de Cours de l'Académie de Droit International de La Haye*, 1974, (I), No 141, pp. 89 to 195.

'Las Organizaciones Económicas Internacionales', Facultad de Ciencias Económicas de la Universidad de Barcelona, Course 1963-64, 106 pp.

(C) *Articles and monographs*

'El Séptimo Dictamen del Tribunal Internacional de Justicia: Las reservas a la Convención del Genocidio', in *Revista Española de Derecho Internacional*, Vol. IV (1951), pp. 1029-1089.

'Naturaleza jurídica y funciones del Depositario de Tratados', in *Rivista de Diritto Internazionale*, No 3, Rome, 1958, pp. 390-413.

'Mecanismos de garantía y medios procesales de protección creados por la Convención Europea de Derechos del Hombre', in *Estudios — Homenaje a D. Nicolás Pérez Serrano*, Volume II, Madrid, 1959, pp. 585-663.

'La pretendida responsabilidad internacional del Estado Español por actos de sus Autoridades administrativas en el caso Barcelona Traction', in *Revista Española de Derecho Internacional*, Madrid, 1970, pp. 433-464.

'La proyección del Derecho Comunitario Europeo sobre el Estatuto Jurídico del Extranjero' in *Curso de Conferencias sobre Derecho Comunitario Europeo* (1975), Centro de Estudios Hipotecarios del Ilustre Colegio Nacional de Registradores de la Propriedad de España, Madrid, 1976, pp. 9-34.

'La compatibilité des engagements internationaux de l'Espagne dans le domaine commercial avec le Traité instituant la Communauté Économique Européenne', in *Spain and the European Communities*, Brussels, 1979, pp. 51-77.

'El proceso histórico de las Comunidades Europeas y su objetivo final', in Primer Symposium sobre España y las Comunidades Europeas, Valladolid, 1983, pp. 133-153.

'Aspectos institucionales de las Comunidades Europeas y naturaleza de su ordenamiento jurídico', in *I Semana de Cuestiones Internacionales*, Zaragoza, 1983, pp. 175-199.

'El Tribunal de Justicia de las Comunidades Europeas', Madrid, 1984.

'El Tribunal de Justicia de las Comunidades Europeas: su fundamento jurídico y estructura', in *Tratado de Derecho Comunitario Europeo*, Volume I, Chapter XV, Madrid, 1986, pp. 629-665.

'La Compétence Consultative de la Cour de justice des Communautés Européennes', in *Liber Amicorum Pierre Pescatore*, Baden-Baden, 1987, pp. 177-194.

Mr Manfred Zuleeg

Curriculum vitae of Mr Manfred Zuleeg

Born at Creglingen/Württemberg on 21 March 1935.

Married to Sigrid Zuleeg née Feuerhahn in 1965; four children.

Attended school at Brunn (District of Neustadt an der Aisch) and at Neustadt an der Aisch from 1941 until 1953 when he took the Abitur [school-leaving examination].

1953 to 1957 studied law at the Universities of Erlangen and Hamburg.

Erste Juristische Staatsprüfung taken in Erlangen in 1957, Zweite Juristische Staatsprüfung taken in Munich in 1961.

Attended the Hochschule für Verwaltungswissenschaften Speyer [university specializing in administration] in summer 1959.

Awarded doctorate in law by the University of Erlangen in 1959.

Studied international relations at the Bologna Centre of Johns Hopkins University 1961/62.

Academic assistant at the Institute for European Community Law of the University of Cologne 1962 to 1968.

1968 granted habilitation by the Law Faculty of the University of Cologne to lecture in public law and Community law.

1968 to 1971 lecturer at the University of Cologne.

1969/70 research at the University of California, Berkeley.

1971 to 1978 professor of public law and Community law at the University of Bonn.

As from 1978 professor of public law, including Community law and international law, at the University of Frankfurt am Main.

Deputy Chairman of the Board of the Arbeitskreis Europäische Integration eV [Study Group on European Integration] from 1975 to 1985, Chairman from 1985 to 1988.

Mr Walter Van Gerven

Curriculum vitae of Mr Walter Van Gerven

Born at Sint-Niklass, 11 May 1935.

University

Baccalauréat [Bachelor's degree] in thomist philosophy (cum laude, Louvain, 1955).

Degree course in applied economics, first examination (magna cum laude, Louvain, 1956).

Doctorate in law and degree in notarial studies (both summa cum laude, Louvain, 1957).

Certificate to teach law in institutes of higher education (Louvain, 1962, on the basis of the dissertation 'Bewindsbevoegdheid' [administrative powers], for which he was awarded the E. Van Dievoet Prize).

Professional activities

Successively a member of the Dendermonde, Louvain and Brussels Bars. 1970-80 founder member of the Brussels chambers of De Bandt, Van Gerven and others.

Until 1982 member of the Board of Directors of Banque Bruxelles-Lambert (as from 1976), BASF Chimie (as from 1976) and Janssen Pharmaceutica (as from 1977).

Since 1982 President of the Belgian Banking Commission and, in that capacity, member of the Board of the Institut Belgo-Luxembourgeois du Change, member of the Conseil Supérieur des Finances and member of the Advisory Committee on Banking of the European Community.

University posts

1959-60 teaching fellow in the Faculty of Law of the University of Chicago.

1961 appointed maître de conférences [lecturer] in the Faculty of Law of the Catholic University of Louvain; 1962 chargé de cours [asssociate professor]; 1967 professeur ordinaire and 1982 professeur extraordinaire.

Visiting professor at the International Faculty, Luxembourg (1966), at Lovanium University (1967) and at the University of Chicago (1968); in 1981 appointed visiting professor at the Gemeentelijke Universiteit Amsterdam.

From 1970 to 1976 Vice-Rector and in 1981-82 President of the Human Sciences Group at the Catholic University of Louvain and, in that capacity, a member of the Board of Governors, Academic Board and Bureau of that university. Member since 1986 of the Organizing Authority of the Catholic University of Louvain.

Prizes and academic distinctions

Concours Universitaire pour les Bourses de Voyage [University competition for travelling scholarships], of the Comité National pour les Placements en Titres [National Committee for Securities Investments], the F. Collin Prize and the E. Van Dievoet Prize.

Corresponding member since 1977 and full member since 1985 of the Académie Royale des Sciences, des Lettres et des Beaux-Arts de Belgique [Belgian Royal Academy of Science, Literature and Fine Arts].

Since 1985 foreign member of the Koninklijke Nederlandse Academie voor Wetenschappen [Royal Dutch Academy of Science].

Publications

Some 150 articles on commercial, economic and financial law, on civil and administrative law and on the general theory of law at the European level and at Belgian level.

Author of some 10 books, the best known being *Algemeen Deel* [The General Part] (first edition, 1969) in the series *Beginselen van Belgisch Privaatrecht* [Principles of Belgian private law]; *Handels- en Economisch Recht* [Commercial and economic law], Part 1: *Ondernemingsrecht* [Law relating to undertakings] (first edition, 1975; second revised edition, 1978), Part 2: *Handelspraktijken* [Commercial practices] (in collaboration with J. Stuyck, 1984), and Part 3: *Kartelrecht* [Law relating to cartels] (in collaboration with M. Maresceau and J. Stuyck, 1985), all in the same series; and *Het beleid van de rechter* [The policy of the judge] (first edition, 1973).

Other functions

Member of the international committee of the Nederlandse Stichting Praemium Erasmiamum.

Member of the editorial boards of *Cahiers de droit européen, Common Market Law Review, European Law Review* and *Tijdschrift voor Europees en Economisch Recht.*

Member of the Board of the Centre Interuniversitaire de Droit Comparé [Inter-university Centre for Comparative Law], the Association Belge de Droit Européen [Belgian European-Law Association] and the Centre Belge pour l'Étude et la Pratique de l'Arbitrage National et International [Belgian Centre for the Study and Practice of National and International Arbitration].

Mr Francis Jacobs

Curriculum vitae of Mr Francis Jacobs

Date of birth: 8.6.1939.

University

MA, D.Phil. Called to the Bar 1964.

Professional activities

Secretariat, European Commission of Human Rights and Legal Directorate, Council of Europe (1969-72).

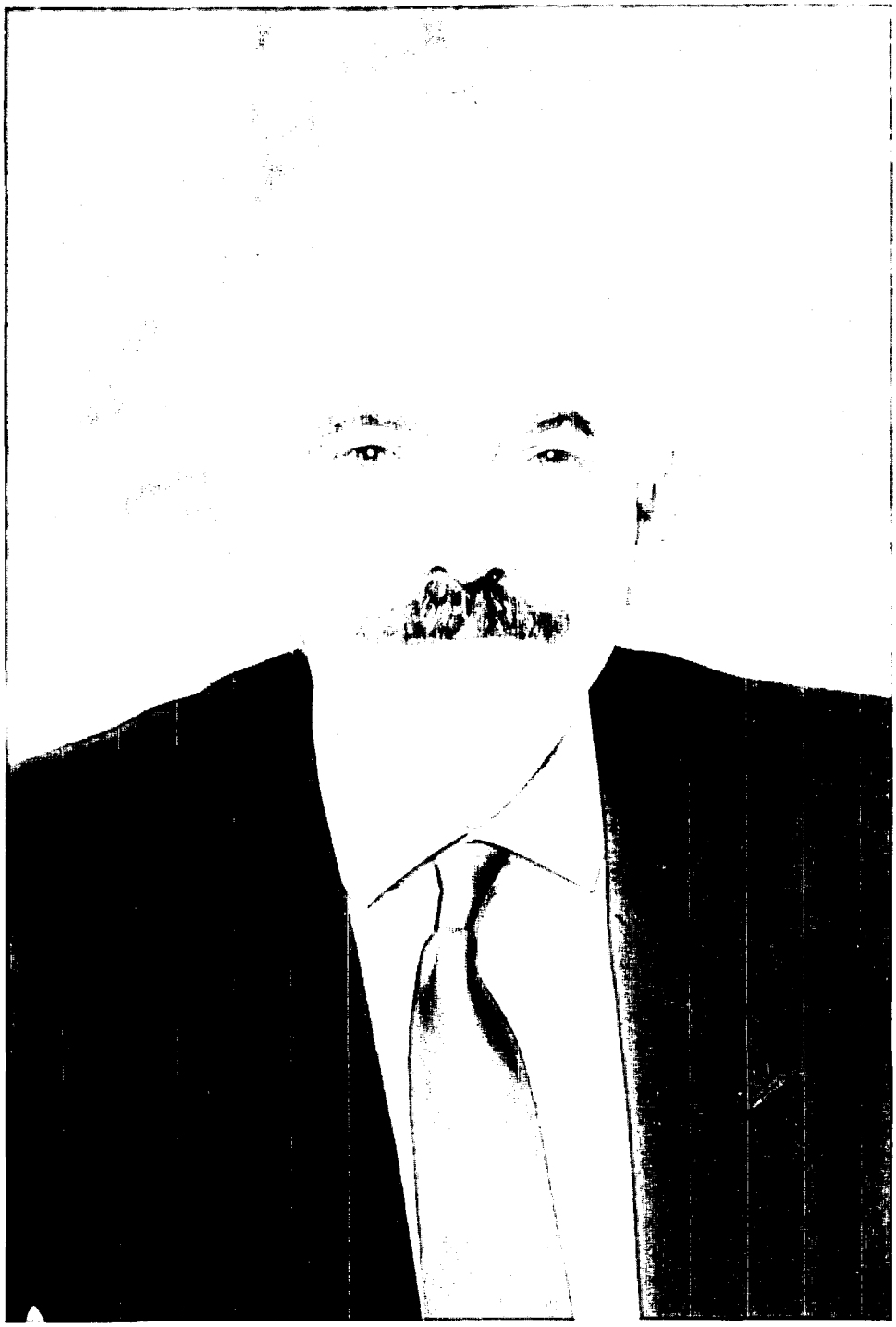
Legal Secretary to Advocate General J.-P. Warner, European Court of Justice (1972-74).

Professor of European Law, King's College, London (1974-88).

Member of UK delegation (with Woolf L.J.), Conference of Supreme Administrative Courts of the European Communities (1984-88).

Publications

The European Convention on Human Rights, 1975; *References to the European Court,* 1975; *European law and the individual,* 1976; *The Court of Justice of the European Communities,* 1977, 1983; *The European Union Treaty,* 1986.



Mr Giuseppe Tesauro

Curriculum vitae of Mr Giuseppe Tesauro

Born in Naples on 15 November 1942.

Classical education; 1964 awarded degree in law (international law) by the University of Naples.

1965: Assistant specializing in international law at the Law Faculty of the University of Naples.

1967-68: two-year period spent at the Max-Planck-Institut, Heidelberg, on a bursary from the Von-Humboldt-Stiftung.

1969: qualified lecturer in international law.

1969-72: professor of international organization, international law and international economic organization at the Universities of Catania (political sciences) and Messina (law).

Professor of international law at the Universities of Messina (from 1972), Naples (from 1975) and Rome (from 1982). Director of the Institute of International Law in the Faculty of Economics and Commerce of the University of Rome.

Since 1964: head of the School of the University of Rome specializing in the European Communities.

Avvocato with right of audience at the Court of Cassation (civil, international and Community law); chambers: Studio Carnelutti, Rome.

From 1987 member of the Council for Contentious Diplomatic Affairs at the Ministry of Foreign Affairs.

Principal publications

Il finanziamento degli enti internazionali [financing of international bodies] — 1969

L'inquinamento marino nel diritto internazionale [marine pollution in international law] — 1972

Sul prelievo Ceca [the ECSC levy] — 1972

Le misure cautelari della Corte Internazionale di Giustizia [protective measures of the International Court of Justice] — 1975

Nazionalizzazioni e diritto internazionale [nationalization and international law] — 1976

Revoca di concessioni e diritto internazionale [revocation of concessions and international law] — 1979

Libera circolazione dei capitali e Trattato CEE [free movement of capital and the EEC Treaty] — 1981

Politica industriale CEE e Mezzogiorno [EEC industrial policy and the Mezzogiorno] — 1982

Esportazione di valuta per turismo e diritto comunitario [exportation of foreign currency for tourism and Community law] — 1984

Acquisto liberalizzato di titoli esteri e controllo degli Stati [liberalized acquisition of foreign securities and State supervision] — 1987

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3. Decision of the Representatives of the Governments of the Member States of the European Communities of 18 July 1989 appointing the members of the Court of First Instance of the European Communities
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4. Decision of the Representatives of the Governments of the Member States of the European Communities of 18 July 1989 appointing the President of the Court of First Instance of the European Communities
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I — The Court of First Instance of the European Communities

The Court of First Instance of the European Communities was established by decision of the Council of 24 October 1988, [1] acting in pursuance of Articles 32d of the ECSC Treaty, 168a of the EEC Treaty and 140a of the EAEC Treaty.

The Court exercises, at first instance, the jurisdiction conferred on the Court of Justice by the Treaties establishing the Communities and by the acts adopted in implementation thereof:

(a) in disputes between the Communities and their servants referred to in Article 179 of the EEC Treaty and Article 152 of the EAEC Treaty;

(b) in actions brought against the Commission pursuant to the second paragraph of Article 33 and Article 35 of the ECSC Treaty by undertakings referred to in Article 48 of that Treaty and which concern individual acts relating to the application of Article 50 and Article 57 to 66 of that Treaty;

(c) in actions brought against an institution of the Communities by natural or legal persons pursuant to the second paragraph of Article 173 and the third paragraph of Article 175 of the EEC Treaty relating to the implementation of the competition rules applicable to undertakings.

Where the same natural or legal person brings an action which the Court of First Instance has jurisdiction to hear and an action referred to in the first and second paragraphs of Article 40 of the ECSC Treaty, Article 178 of the EEC Treaty, or Article 151 of the EAEC Treaty, for compensation for damage caused by a Community institution through the act or failure to act which is the subject of the first action, the Court of First Instance is also to have jurisdiction to hear and determine the action for compensation for that damage. [2]

The entry into operation of the Court of First Instance

The members of the Court of First Instance, appointed by decision of the representatives of the Member States of the Communities on 18 July 1989, were sworn in before the Court of Justice on 25 September 1989.

Following the appointment of the Registrar, [3] who was sworn in before the Court of First Instance during the formal sitting of 10 October, the President of the Court of Justice, by a decision of 11 October 1989, declared that the Court

[1] Decision 88/591/ECSC, EEC, Euratom, of 24 October 1988, Official Journal, L 319, 25.11.1988.

[2] Article 3 (1) and (2) of the Decision of 24.10.1988.

[3] Decision of the Court of First Instance of 26.9.1989.

of First of Instance was duly constituted. That decision was published in the Official Journal of 31 October, the date on which the provisions relating to the jurisdictional powers conferred on the new court entered into force, pursuant to Article 13 of the Decision of 24 October 1988.

Organization of the Court of First Instance

At its meeting of 4 October 1989, the Court of First Instance decided to establish, for the period to 31 August 1990, two Chambers (the First and Second Chambers) consisting of five Judges and three Chambers (the Third, Fourth and Fifth Chambers) consisting of three Judges. [1]

It was also decided to assign staff cases, taking account of the order in which they were lodged at the Court Registry, to the Third, Fourth and Fifth Chambers in turn, beginning with the Third Chamber, and other cases to the First and Second Chambers, starting with the First Chamber. The President of the Court of First Instance, however, may decide to assign cases on a different basis because of related cases or for the purpose of equitable distribution of the work-load among the different chambers.

The Court of First Instance may in certain cases, pursuant to Article 2 (4) of the Council Decision of 24 October 1988, sit in plenary session, where the complexity or the special circumstances of the case so warrant.

Under Article 2 (3) of the Decision of 24 October 1988, a Member of the Court of First Instance may be called upon to perform the task of Advocate General in a case, the complexity or importance of which makes it necessary. The Member so designated will have the duty, acting with complete impartiality and independence, to make, in open court, reasoned submissions on the case in order to assist the Court of First Instance in the performance of its task, but he may not take part in the judgment of the case.

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[1] The composition of the Chambers for the period to 31 August 1990 was as follows:

First Chamber
Mr da Cruz Vilaça, President, and Mr Edward, Mr Kirschner, Mr Schintgen, Mr García-Valdecasas and Mr Lenaerts;

Second Chamber
Mr Barrington, President, and Mr Saggio, Mr Yeraris, Mr Vesterdorf, Mr Briët and Mr Biancarelli;

Third Chamber
Mr Saggio, President, and Mr Yeraris, Mr Vesterdorf and Mr Lenaerts;

Fourth Chamber
Mr Edward, President, and Mr Schintgen and Mr García-Valdecasas;

Fifth Chamber
Mr Kirschner, President, and Mr Briët and Mr Biancarelli.

Procedure before the Court of First Instance

Under Article 46 of the Statute of the Court of Justice of the ECSC and the EEC and Article 47 of the Statute of the Court of Justice of the EAEC, the procedure before the Court of First Instance shall be governed by the same basic provisions as those which apply to the procedure before the Court of Justice.

Those conditions remain to be clarified and expanded, as the need arises, by the Rules of Procedure of the Court of First Instance, which are to be drawn up by that Court, with the agreement of the Court of Justice, and require the unanimous approval of the Council.

In pursuance of the second paragraph of Article 11 of the Decision of 24 October 1988, the Court of First Instance, immediately after its establishment, embarked on the task of drawing up its Rules of Procedure, in order to be able to submit them for agreement to the Court of Justice at the beginning of 1990.

Until these future rules come into force, the Rules of Procedure of the Court of Justice are to apply *mutatis mutandis* to cases pending before the Court of First Instance.

Staff

In accordance with the second paragraph of Article 45 of the Statute of the Court of Justice of the ECSC and the EEC and the second paragraph of Article 46 of the Statute of the Court of Justice of the EAEC, a certain number of officials attached to the Court of Justice are to render their services to the Court of First Instance to enable it to function. Those officials may be attached to the cabinets of the members of the Court of First Instance or to the Registry.

The tasks and responsibilities of the Registry of the Court of First Instance are identical to those which devolve on the Registry of the Court of Justice. With regard to the structures of the department, the Registry of the Court of First Instance consists of the Secretariat to the Registrar, the Legal Affairs Section, the Archives Section and the Data-processing Section.

Cases pending before the Court of First Instance

Following the entry into operation of the Court of First Instance, the Court of Justice, pursuant to Article 14 of the Decision of 24 October 1988, referred to the new court cases coming within its competence of which the Court of Justice was seised at that date and in which the preliminary report provided for in Article 44 (1) of the Rules of Procedure of the Court of Justice had not yet been presented.

A total of 153 cases were involved; these consisted of 73 cases relating to competition law, 2 cases concerning the ECSC Treaty and 78 staff cases, at various procedural stages.

Sixteen new applications were brought during November and December; fourteen of these concerned disputes between the Communities and their servants and two related to the law on competition.

The Court of First Instance began its judicial work immediately after its establishment. A large number of decisions relating to the progress of cases already pending were taken during November and December 1989, while two summary orders were made by the President of the Court of First Instance. In addition, the Full Court was able to hold its first hearing or oral arguments on 14 December 1989. Finally, it ought to be mentioned that the first decision closing proceedings by way of an order for an objection based on lack of form was delivered by the Fifth Chamber on the same date.

II — Documents relating to the establishment of the Court of First Instance

1. COUNCIL DECISION

of 24 October 1988

establishing a Court of First Instance of the European Communities

(88/591/ECSC, EEC, Euratom)

(as amended by the corrigendum published in Official Journal of the European Communities L 241 of 17 August 1989)

(89/C 215/01)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 32d thereof,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 168a thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 140a thereof,

Having regard to the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community, signed in Paris on 18 April 1951,

Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, signed in Brussels on 17 April 1957,

Having regard to the Protocol on the Statute of the Court of Justice of the European Atomic Energy Community, signed in Brussels on 17 April 1957,

Having regard to the Protocol on Privileges and Immunities of the European Communities, signed in Brussels on 8 April 1965,

Having regard to the request of the Court of Justice,

Having regard to the opinion of the Commission,

Having regard to the opinion of the European Parliament,[1]

Whereas Article 32d of the ECSC Treaty, Article 168a of the EEC Treaty and Article 140a of the EAEC Treaty empower the Council to attach to the Court of Justice a Court of First Instance called upon to exercise important judicial functions and whose members are independent beyond doubt and possess the ability required for performing such functions;

Whereas the aforesaid provisions empower the Council to give the Court of First Instance jurisdiction to hear and determine at first instance, subject to a right of appeal to the Court of Justice on points of law only and in accordance with the conditions laid down by the Statutes, certain classes of action or proceeding brought by natural or legal persons;

Whereas, pursuant to the aforesaid provisions, the Council is to determine the composition of that Court and adopt the necessary adjustments and additional provisions to the Statutes of the Court of Justice;

[1] OJ C 187, 18.7.1988, p. 227.

Whereas, in respect of actions requiring close examination of complex facts, the establishment of a second court will improve the judicial protection of individual interests;

Whereas it is necessary, in order to maintain the quality and effectiveness of judicial review in the Community legal order, to enable the Court to concentrate its activities on its fundamental task of ensuring uniform interpretation of Community law;

Whereas it is therefore necessary to make use of the powers granted by Article 32d of the ECSC Treaty, Article 168a of the EEC Treaty and Article 140a of the EAEC Treaty and to transfer to the Court of First Instance jurisdiction to hear and determine at first instance certain classes of action or proceeding which frequently require an examination of complex facts, that is to say actions or proceedings brought by servants of the Communities and also, in so far as the ECSC Treaty is concerned, by undertakings and associations in matters concerning levies, production, prices, restrictive agreements, decisions or practices and concentrations, and so far as the EEC Treaty is concerned, by natural or legal persons in competition matters,

HAS DECIDED AS FOLLOWS:

Article 1

A Court, to be called the Court of First Instance of the European Communities, shall be attached to the Court of Justice of the European Communities. Its seat shall be at the Court of Justice.

Article 2

1. The Court of First Instance shall consist of 12 members.

2. The members shall elect the President of the Court of First Instance from among their number for a term of three years. He may be re-elected.

3. The members of the Court of First Instance may be called upon to perform the task of an Advocate General.

It shall be the duty of the Advocate General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on certain cases brought before the Court of First Instance in order to assist the Court of First Instance in the performance of its task.

The criteria for selecting such cases, as well as the procedures for designating the Advocates General, shall be laid down in the Rules of Procedure of the Court of First Instance.

A member called upon to perform the task of Advocate General in a case may not take part in the judgment of the case.

4. The Court of First Instance shall sit in chambers of three or five judges. The composition of the chambers and the assignment of cases to them shall be governed by the Rules of Procedure. In certain cases governed by the Rules of Procedure the Court of First Instance may sit in plenary session.

5. Article 21 of the Protocol on Privileges and Immunities of the European Communities and Article 6 of the Treaty establishing a Single Council and a Single Commission of the European Communities shall apply to the members of the Court of First Instance and to its Registrar.

Article 3

1. The Court of First Instance shall exercise at first instance the jurisdiction conferred on the Court of Justice by the Treaties establishing the Communities and by the acts adopted in implementation thereof:

(a) in disputes between the Communities and their servants referred to in Article 179 of the EEC Treaty and in Article 152 of the EAEC Treaty;

(b) in actions brought against the Commission pursuant to the second paragraph of Article 33 and Article 35 of the ECSC Treaty by undertakings or by associations of undertakings referred to in Article 48 of that Treaty, and which concern individual acts relating to the application of Article 50 and Articles 57 and 66 of the said Treaty;

(c) in actions brought against an institution of the Communities by natural or legal persons pursuant to the second paragraph of Article 173 and the third paragraph of Article 175 of the EEC Treaty relating to the implementation of the competition rules applicable to undertakings.

2. Where the same natural or legal person brings an action which the Court of First Instance has jurisdiction to hear by virtue of paragraph 1 of this Article and an action referred to in the first and second paragraphs of Article 40 of the ECSC Treaty, Article 178 of the EEC Treaty, or Article 151 of the EAEC Treaty, for compensation for damage caused by a Community institution through the act or failure to act which is the subject of the first action, the Court of First Instance shall also have jurisdiction to hear and determine the action for compensation for that damage.

3. The Council will, in the light of experience, including the development of jurisprudence, and after two years of operation of the Court of First Instance, re-examine the proposal by the Court of Justice to give the Court of First Instance competence to exercise jurisdiction in actions brought against the Commission pursuant to the second paragraph of Articles 33 and 35 of the ECSC Treaty by undertakings or by associations of undertakings referred to in Article 48 of that Treaty, and which concern acts relating to the application of Article 74 of the said Treaty as well as in actions brought against an institution of the Communities by natural or legal persons pursuant to the second paragraph of Article 173 and the third paragraph of Article 175 of the EEC Treaty and relating to measures to protect trade within the meaning of Article 113 of that Treaty in the case of dumping and subsidies.

Article 4

Save as hereinafter provided, Articles 34, 36, 39, 44 and 92 of the ECSC Treaty, Articles 172, 174, 176, 184 to 187 and 192 of the EEC Treaty, and Articles 147, 149, 156 to 159 and 164 of the EAEC Treaty shall apply to the Court of First Instance.

Article 5

The following provisions shall be inserted after Article 43 of the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community:

'TITLE IV:

The Court of First Instance of the European Communities

Rules concerning the members of the Court of First Instance and its organization

Article 44

Articles 2, 3, 4, 6 to 9, the first paragraph of Article 13, Article 17, the second paragraph of Article 18 and Article 19 of this Statute shall apply to the Court of First Instance and its members. The oath referred to in Article 2 shall be taken before the Court of Justice and the decisions referred to in Articles 3, 4 and 7 shall be adopted by that Court after hearing the Court of First Instance.

Registrar and staff

Article 45

The Court of First Instance shall appoint its Registrar and lay down the rules governing his service. Articles 9 and 14 of this Statute shall apply to the Registrar of the Court of First Instance *mutatis mutandis*.

The President of the Court of Justice and the President of the Court of First Instance shall determine, by common accord, the conditions under which officials and other servants attached to the Court of Justice shall render their services to the Court of First Instance to enable it to function. Certain officials or other servants shall be responsible to the Registrar of the Court of First Instance under the authority of the President of the Court of First Instance.

Procedure before the Court of First Instance

Article 46

The procedure before the Court of First Instance shall be governed by Title III of this Statute, with the exception of Articles 41 and 42.

Such further and more detailed provisions as may be necessary shall be laid down in the Rules of Procedure established in accordance with Article 32d (4) of this Treaty.

Notwithstanding the fourth paragraph of Article 21 of this Statute, the Advocate General may make his reasoned submissions in writing.

Article 47

Where an application or other procedural document addressed to the Court of First Instance is lodged by mistake with the Registrar of the Court of Justice it shall be transmitted immediately by that Registrar to the Registrar of the Court of First Instance; likewise, where an application or other procedural document addressed to the Court of Justice is lodged by mistake with the Registrar of the Court of First Instance, it shall be transmitted immediately by that Registrar to the Registrar of the Court of Justice.

Where the Court of First Instance finds that it does not have jurisdiction to hear and determine an action in respect of which the Court of Justice has jurisdiction, it shall refer that action to the Court of Justice; likewise, where the Court of Justice finds that an action falls within the jurisdiction of the Court of First Instance, it shall refer that action to the Court of First Instance, whereupon that Court may not decline jurisdiction.

Where the Court of Justice and the Court of First Instance are seised of cases in which the same relief is sought, the same issue of interpretation is raised or the validity of the same act is called in question the Court of First Instance may, after hearing the parties, stay the proceedings before it until such time as the Court of Justice shall have delivered judgment. Where applications are made for the same act to be declared void, the Court of First Instance may also decline jurisdiction in order that the Court of Justice may rule on such applications. In the cases referred to in this subparagraph, the Court of Justice may also decide to stay the proceedings before it; in that event, the proceedings before the Court of First Instance shall continue.

Article 48

Final decisions of the Court of First Instance, decisions disposing of the substantive issues in part only, or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility, shall be notified by the Registrar of the Court of First Instance to all parties as well as all Member States and the Community institutions even if they did not intervene in the case before the Court of First Instance.

Appeals to the Court of Justice

Article 49

An appeal may be brought before the Court of Justice, within two months of the notification of the decision appealed against, against final decisions of the Court of First Instance and decisions of that Court disposing of the substantive issues in part only, or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility.

Such an appeal may be brought by any party which has been unsuccessful, in whole or in part, in its submissions. However, interveners other than the Member States and the Community institutions may bring such an appeal only where the decision of the Court of First Instance directly affects them.

With the exception of cases relating to disputes between the Community and its servants, an appeal may also be brought by Member States and Community institutions which did not intervene in the proceedings before the Court of First Instance. Such Member States and institutions shall be in the same position as Member States or institutions which intervened at first instance.

Article 50

Any person whose application to intervene has been dismissed by the Court of First Instance may appeal to the Court of Justice within two weeks of the notification of the decision dismissing the application.

The parties to the proceedings may appeal to the Court of Justice against any decision of the Court of First Instance made pursuant to the second or third paragraph of Article 39 or the third paragraph of Article 92 of the Treaty within two months from their notification.

The appeal referred to in the first two paragraphs of this Article shall be heard and determined under the procedure referred to in Article 33 of this Statute.

Article 51

An appeal to the Court of Justice shall be limited to points of law. It shall lie on the grounds of lack of competence of the Court of First Instance, a breach of procedure before it which adversely affects the interests of the appellant as well as the infringement of Community law by the Court of First Instance.

No appeal shall lie regarding only the amount of the costs or the party ordered to pay them.

Procedure before the Court

Article 52

Where an appeal is brought against a decision of the Court of First Instance, the procedure before the Court of Justice shall consist of a written part and an oral part. In accordance with conditions laid down in the Rules of Procedure the Court of Justice, having heard the Advocate General and the parties, may dispense with the oral procedure.

Suspensory effect

Article 53

Without prejudice to the second and third paragraphs of Article 39 of this Treaty, an appeal shall not have suspensory effect.

By way of derogation from Article 44 of this Treaty, decisions of the Court of First Instance declaring a general decision to be void shall take effect only as from the date of expiry of the period referred to in the first paragraph of Article 49 of this Statute or, if an appeal shall have been brought within that period, as from the date of dismissal of the appeal, without prejudice, however, to the right of a party to apply to the Court of Justice, pursuant to the second and third paragraphs of Article 39 of this Treaty, for the suspension of the effects of the decision which has been declared void or for the prescription of any other interim measure.

The decision of the Court of Justice on the appeal

Article 54

If the appeal is well founded, the Court of Justice shall quash the decision of the Court of First Instance. It may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the Court of First Instance for judgment.

Where a case is referred back to the Court of First Instance, that Court shall be bound by the decision of the Court of Justice on points of law.

When an appeal brought by a Member State or a Community institution, which did not intervene in the proceedings before the Court of First Instance, is well founded the Court of Justice may, if it considers this necessary, state which of the effects of the decision of the Court of First Instance which has been quashed shall be considered as definitive in respect of the parties to the litigation.'

Article 6

The former Articles 44 and 45 of the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community shall become Articles 55 and 56 respectively.

Article 7

The following provisions shall be inserted after Article 43 of the Protocol on the Statute of the Court of Justice of the European Economic Community:

'TITLE IV:

The Court of First Instance of the European Communities

Article 44

Articles 2 to 8, and 13 to 16 of this Statute shall apply to the Court of First Instance and its members. The oath referred to in Article 2 shall be taken before the Court of Justice and the decisions referred to in Articles 3, 4 and 6 shall be adopted by that Court after hearing the Court of First Instance.

Article 45

The Court of First Instance shall appoint its Registrar and lay down the rules governing his service. Articles 9, 10 and 13 of this Statute shall apply to the Registrar of the Court of First Instance *mutatis mutandis*.

The President of the Court of Justice and the President of the Court of First Instance shall determine, by common accord, the conditions under which officials and other servants attached to the Court of Justice shall render their services to the Court of First Instance to enable it to

function. Certain officials or other servants shall be responsible to the Registrar of the Court of First Instance under the authority of the President of the Court of First Instance.

Article 46

The procedure before the Court of First Instance shall be governed by Title III of this Statute, with the exception of Article 20.

Such further and more detailed provisions as may be necessary shall be laid down in the Rules of Procedure established in accordance with Article 168a (4) of this Treaty.

Notwithstanding the fourth paragraph of Article 18 of this Statute, the Advocate General may make his reasoned submissions in writing.

Article 47

Where an application or other procedural document addressed to the Court of First Instance is lodged by mistake with the Registrar of the Court of Justice it shall be transmitted immediately by that Registrar to the Registrar of the Court of First Instance; likewise, where an application or other procedural document addressed to the Court of Justice is lodged by mistake with the Registrar of the Court of First Instance, it shall be transmitted immediately by that Registrar to the Registrar of the Court of Justice.

Where the Court of First Instance finds that it does not have jurisdiction to hear and determine an action in respect of which the Court of Justice has jurisdiction, it shall refer that action to the Court of Justice; likewise, where the Court of Justice finds that an action falls within the jurisdiction of the Court of First Instance, it shall refer that action to the Court of First Instance, whereupon that Court may not decline jurisdiction.

Where the Court of Justice and the Court of First Instance are seised of cases in which the same relief is sought, the same issue of interpretation is raised or the validity of the same act is called in question, the Court of First Instance may, after hearing the parties, stay the proceedings before it until such time as the Court of Justice shall have delivered judgment. Where applications are made for the same act to be declared void, the Court of First Instance may also decline jurisdiction in order that the Court of Justice may rule on such applications. In the cases referred to in this subparagraph, the Court of Justice may also decide to stay the proceedings before it; in that event, the proceedings before the Court of First Instance shall continue.

Article 48

Final decisions of the Court of First Instance, decisions disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility, shall be notified by the Registrar of the Court of First Instance to all parties as well as all Member States and the Community institutions even if they did not intervene in the case before the Court of First Instance.

Article 49

An appeal may be brought before the Court of Justice, within two months of the notification of the decision appealed against, against final decisions of the Court of First Instance and decisions of that Court disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility.

Such an appeal may be brought by any party which has been unsuccessful, in whole or in part, in its submissions. However, interveners other than the Member States and the Community

institutions may bring such an appeal only where the decision of the Court of First Instance directly affects them.

With the exception of cases relating to disputes between the Community and its servants, an appeal may also be brought by Member States and Community institutions which did not intervene in the proceedings before the Court of First Instance. Such Member States and institutions shall be in the same position as Member States or institutions which intervened at first instance.

Article 50

Any person whose application to intervene has been dismissed by the Court of First Instance may appeal to the Court of Justice within two weeks of the notification of the decision dismissing the application.

The parties to the proceedings may appeal to the Court of Justice against any decision of the Court of First Instance made pursuant to Article 185 or 186 or the fourth paragraph of Article 192 of this Treaty within two months from their notification.

The appeal referred to in the first two paragraphs of this Article shall be heard and determined under the procedure referred to in Article 36 of this Statute.

Article 51

An appeal to the Court of Justice shall be limited to points of law. It shall lie on the grounds of lack of competence of the Court of First Instance, a breach of procedure before it which adversely affects the interests of the appellant as well as the infringement of Community law by the Court of First Instance.

No appeal shall lie regarding only the amount of the costs or the party ordered to pay them.

Article 52

Where an appeal is brought against a decision of the Court of First Instance, the procedure before the Court of Justice shall consist of a written part and an oral part. In accordance with conditions laid down in the Rules of Procedure the Court of Justice, having heard the Advocate General and the parties, may dispense with the oral procedure.

Article 53

Without prejudice to Articles 185 and 186 of this Treaty, an appeal shall not have suspensory effect.

By way of derogation from Article 187 of this Treaty, decisions of the Court of First Instance declaring a regulation to be void shall take effect only as from the date of expiry of the period referred to in the first paragraph of Article 49 of this Statute or, if an appeal shall have been brought within that period, as from the date of dismissal of the appeal, without prejudice, however, to the right of a party to apply to the Court of Justice, pursuant to Articles 185 and 186 of this Treaty, for the suspension of the effects of the regulation which has been declared void or for the prescription of any other interim measure.

Article 54

If the appeal is well founded, the Court of Justice shall quash the decision of the Court of First Instance. It may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the Court of First Instance for judgment.

Where a case is referred back to the Court of First Instance, that Court shall be bound by the decision of the Court of Justice on points of law.

When an appeal brought by a Member State or a Community institution, which did not intervene in the proceedings before the Court of First Instance, is well founded the Court of Justice may, if it considers this necessary, state which of the effects of the decision of the Court of First Instance which has been quashed shall be considered as definitive in respect of the parties to the litigation.'

Article 8

The former Articles 44, 45 and 46 of the Protocol on the Statute of the Court of Justice of the European Economic Community shall become Articles 55, 56 and 57 respectively.

Article 9

The following provisions shall be inserted after Article 44 of the Protocol on the Statute of the Court of Justice of the European Atomic Energy Community:

'TITLE IV:

The Court of First Instance of the European Communities

Article 45

Articles 2 to 8, and 13 to 16 of this Statute shall apply to the Court of First Instance and its members. The oath referred to in Article 2 shall be taken before the Court of Justice and the decisions referred to in Articles 3, 4 and 6 shall be adopted by that Court after hearing the Court of First Instance.

Article 46

The Court of First Instance shall appoint its Registrar and lay down the rules governing his service. Articles 9, 10 and 13 of this Statute shall apply to the Registrar of the Court of First Instance *mutatis mutandis*.

The President of the Court of Justice and the President of the Court of First Instance shall determine, by common accord, the conditions under which officials and other servants attached to the Court of Justice shall render their services to the Court of First Instance to enable it to function. Certain officials or other servants shall be responsible to the Registrar of the Court of First Instance under the authority of the President of the Court of First Instance.

Article 47

The procedure before the Court of First Instance shall be governed by Title III of this Statute, with the exception of Articles 20 and 21.

Such further and more detailed provisions as may be necessary shall be laid down in the Rules of Procedure established in accordance with Article 140a (4) of this Treaty.

Notwithstanding the fourth paragraph of Article 18, the Advocate General may make his reasoned submissions in writing.

Article 48

Where an application or other procedural document addressed to the Court of First Instance is lodged by mistake with the Registrar of the Court of Justice it shall be transmitted immediately by that Registrar to the Registrar of the Court of First Instance; where an application or other procedural document addressed to the Court of Justice is lodged by mistake with the Registrar of

the Court of First Instance, it shall be transmitted immediately by that Registrar to the Registrar of the Court of Justice.

Where the Court of First Instance finds that it does not have jurisdiction to hear and determine an action in respect of which the Court of Justice has jurisdiction, it shall refer that action to the Court of Justice; likewise, where the Court of Justice finds that an action falls within the jurisdiction of the Court of First Instance, it shall refer that action to the Court of First Instance, whereupon that Court may not decline jurisdiction.

Where the Court of Justice and the Court of First Instance are seised of cases in which the same relief is sought, the same issue of interpretation is raised or the validity of the same act is called in question, the Court of First Instance may, after hearing the parties, stay the proceedings before it until such time as the Court of Justice shall have delivered judgment. Where applications are made for the same act to be declared void, the Court of First Instance may also decline jurisdiction in order that the Court of Justice may rule on such applications. In the cases referred to in this subparagraph, the Court of Justice may also decide to stay the proceedings before it; in that event, the proceedings before the Court of First Instance shall continue.

Article 49

Final decisions of the Court of First Instance, decisions disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility, shall be notified by the Registrar of the Court of First Instance to all parties as well as all Member States and the Community institutions even if they did not intervene in the case before the Court of First Instance.

Article 50

An appeal may be brought before the Court of Justice, within two months of the notification of the decision appealed against, against final decisions of the Court of First Instance and decisions of that Court disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility.

Such an appeal may be brought by any party which has been unsuccessful, in whole or in part, in its submissions.

However, interveners other than the Member States and the Community institutions may bring such an appeal only where the decision of the Court of First Instance directly affects them.

With the exception of cases relating to disputes between the Community and its servants, an appeal may also be brought by Member States and Community institutions which did not intervene in the proceedings before the Court of First Instance. Such Member States and institutions shall be in the same position as Member States or institutions which intervened at first instance.

Article 51

Any person whose application to intervene has been dismissed by the Court of First Instance may appeal to the Court of Justice within two weeks of the notification of the decision dismissing the application.

The parties to the proceedings may appeal to the Court of Justice against any decision of the Court of First Instance made pursuant to Article 157 or 158 or the third paragraph of Article 164 of this Treaty within two months from their notification.

The appeal referred to in the first two paragraphs of this Article shall be heard and determined under the procedure referred to in Article 37 of this Statute.

Article 52

An appeal to the Court of Justice shall be limited to points of law. It shall lie on the grounds of lack of competence of the Court of First Instance, a breach of procedure before it which adversely affects the interests of the appellant as well as the infringement of Community law by the Court of First Instance.

No appeal shall lie regarding only the amount of the costs or the party ordered to pay them.

Article 53

Where an appeal is brought against a decision of the Court of First Instance, the procedure before the Court of Justice shall consist of a written part and an oral part. In accordance with conditions laid down in the Rules of Procedure the Court of Justice, having heard the Advocate General and the parties, may dispense with the oral procedure.

Article 54

Without prejudice to Articles 157 and 158 of this Treaty, an appeal shall not have suspensory effect.

By way of derogation from Article 159 of this Treaty, decisions of the Court of First Instance declaring a regulation to be void shall take effect only as from the date of expiry of the period referred to in the first paragraph of Article 50 of this Statute or, if an appeal shall have been brought within that period, as from the date of dismissal of the appeal, without prejudice, however, to the right of a party to apply to the Court of Justice, pursuant to Articles 157 and 158 of this Treaty, for the suspension of the effects of the regulation which has been declared void or for the prescription of any other interim measure.

Article 55

If the appeal is well founded, the Court of Justice shall quash the decision of the Court of First Instance. It may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the Court of First Instance for judgment.

Where a case is referred back to the Court of First Instance, that Court shall be bound by the decision of the Court of Justice on points of law.

When an appeal brought by a Member State or a Community institution, which did not intervene in the proceedings before the Court of First Instance is well founded the Court of Justice may, if it considers this necessary, state which of the effects of the decision of the Court of First Instance which has been quashed shall be considered as definitive in respect of the parties to the litigation.'

Article 10

The former Articles 45, 46 and 47 of the Protocol on the Statute of the Court of Justice of the European Atomic Energy Community shall become Articles 56, 57 and 58 respectively.

Article 11

The first President of the Court of First Instance shall be appointed for three years in the same manner as its members. However, the Governments of the Member States may, by common accord, decide that the procedure laid down in Article 2 (2) shall be applied.

The Court of First Instance shall adopt its Rules of Procedure immediately upon its constitution.

Until the entry into force of the Rules of Procedure of the Court of First Instance, the Rules of Procedure of the Court of Justice shall apply *mutatis mutandis*.

Article 12

Immediately after all members of the Court of First Instance have taken oath, the President of the Council shall proceed to choose by lot the members of the Court of First Instance whose terms of office are to expire at the end of the first three years in accordance with Article 32d (3) of the ECSC Treaty, Article 168a (3) of the EEC Treaty, and Article 140a (3) of the EAEC Treaty.

Article 13

This Decision shall enter into force on the day following its publication in the *Official Journal of the European Communities*, with the exception of Article 3, which shall enter into force on the date of the publication in the *Official Journal of the European Communities* of the ruling by the President of the Court of Justice that the Court of First Instance has been constituted in accordance with law.

Article 14

Cases referred to in Article 3 of which the Court of Justice is seised on the date on which that Article enters into force but in which the preliminary report provided for in Article 44 (1) of the Rules of Procedure of the Court of Justice has not yet been presented shall be referred to the Court of First Instance.

Done at Luxembourg, 24 October 1988.

For the Council
The President
Th. PANGALOS

2. AMENDMENTS TO THE RULES OF PROCEDURE OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

of 7 June 1989

THE COURT,

Having regard to Article 55 of the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community,

Having regard to the third paragraph of Article 188 of the Treaty establishing the European Economic Community,

Having regard to the third paragraph of Article 160 of the Treaty establishing the European Atomic Energy Community,

Whereas the establishment of a Court of First Instance of the European Communities by Council Decision 88/591/ECSC, EEC, Euratom renders it necessary to amend the Rules of Procedure;

With the unanimous approval of the Council given on 29 May 1989,

HAS ADOPTED THE FOLLOWING AMENDMENTS TO ITS RULES OF PROCEDURE:

Article 1

The following provisions shall be inserted after Article 109 and before the 'Miscellaneous Provisions' of the Rules of Procedure of the Court of Justice of the European Communities adopted on 4 December 1974 (*Official Journal of the European Communities* L 350, 28.12.1974, p. 1, and amended on 12 September 1979 (*Official Journal of the European Communities* L 238, 21.9.1979, p. 1), 27 May 1981 (*Official Journal of the European Communities* L 199, 20.7.1981, p. 1) and 8 May 1987 (*Official Journal of the European Communities* L 165, 24.6.1987, p. 1):

'TITLE IV

Appeals against decisions of the Court of First Instance of the European Communities

Article 110

Without prejudice to the arrangements laid down in Article 29 (2) (b) and (c) and the fourth subparagraph of Article 29 (3) of these Rules, in appeals against decisions of the Court of First Instance as referred to in Articles 49 and 50 of the Statute of the Court of Justice of the ECSC, Articles 49 and 50 of the Statute of the Court of Justice of the EEC, and Articles 50 and 51 of the Statute of the Court of Justice of the EAEC, the language of the case shall be the language of the decision of the Court of First Instance against which the appeal is brought.

Article 111

1. An appeal shall be brought by lodging an application at the Registry of the Court of Justice or of the Court of First Instance.

2. The Registry of the Court of First Instance shall immediately transmit to the Registry of the Court of Justice the papers in the case at first instance and, where necessary, the appeal.

Article 112

1. An appeal shall contain:

(a) the name and permanent address of the party bringing the appeal, who shall be called the appellant;

(b) the names of the other parties to the proceedings before the Court of First Instance;

(c) the grounds on which the appeal is based and the arguments of law relied on;

(d) the form of order sought by the appellant.

Articles 37 and 38 (2) and (3) of these Rules shall apply to appeals.

2. The decision of the Court of First Instance appealed against shall be attached to the appeal. The appeal shall state the date on which the decision appealed against was notified to the appellant.

3. If an appeal does not comply with Article 38 (2) and (3) or with paragraph 2 of this Article, Article 38 (7) of these Rules shall apply.

Article 113

1. An appeal shall seek:

(i) to quash, in whole or in part, the decision of the Court of First Instance,

(ii) the same form of order, in whole or in part, as that sought at first instance and shall not seek a different form of order.

2. The subject-matter of the proceedings before the Court of First Instance may not be changed in the appeal.

Article 114

Notice of the appeal shall be served on all the parties to the proceedings before the Court of First Instance. Article 39 of these Rules shall apply.

Article 115

1. Any party to the proceedings before the Court of First Instance may lodge a response within two months after service on him of notice of the appeal. The time limit for lodging a response shall not be extended.

2. A response shall contain:

(a) the name and permanent address of the party lodging it;

(b) the date on which notice of the appeal was served on him;

(c) the grounds relied on and arguments of law raised;

(d) the form of order sought.

Article 38 (2) and (3) of these Rules shall apply.

Article 116

1. A response shall seek:

(i) to dismiss, in whole or in part, the appeal or to quash, in whole or in part, the decision of the Court of First Instance,

(ii) the same form of order, in whole or in part, as that sought at first instance and shall not seek a different form of order.

2. The subject-matter of the proceedings before the Court of First Instance may not be changed in the response.

Article 117

1. The appeal and the response may be supplemented by a reply and a rejoinder or any other pleading, where the President expressly, on application made within seven days of service of the response or of the reply, considers such further pleading necessary and expressly allows it in order to enable the party concerned to put forward its point of view or in order to provide a basis for the decision on the appeal.

2. Where in the response it is submitted that the decision of the Court of First Instance should be quashed in whole or in part on an issue which was not raised in the appeal, the appellant or any other party may submit a reply on that issue alone, within two months of the service of the response in question. Paragraph 1 shall apply to any further pleading following such a reply.

3. Where the President allows the lodging of a reply and a rejoinder, or any other pleading, he shall prescribe the period within which they are to be submitted.

Article 118

Subject to the following provisions, Articles 42 (2), 43, 44, 55 to 90, 93, 95 to 100 and 102 of these Rules shall apply to the procedure before the Court of Justice on appeal from a decision of the Court of First Instance.

Article 119

Where the appeal is, in whole or in part, clearly inadmissible or clearly unfounded, the Court may at any time, upon report of the Judge-Rapporteur and after hearing the Advocate General, by reasoned order dismiss the appeal in whole or in part.

Article 120

1. After the submission of pleadings as provided for in Article 115 (1) and, if any, Article 117 (1) and (2) of these Rules, the Court may, upon report of the Judge-Rapporteur and after hearing the Advocate General and the parties, decide to dispense with the oral procedure unless one of the parties objects on the ground that the written procedure did not enable him fully to defend his point of view.

2. Where, in an appeal before the Court, there is no oral procedure, the Advocate General shall none the less deliver his opinion orally at a public sitting on a date to be fixed by the President.

Article 121

The report referred to in Article 44 (1) shall be presented to the Court after pleadings provided for in Article 115 (1) and Article 117 (1) and (2) of these Rules have been lodged. The report shall contain, in addition to the recommendations provided for in Article 44 (1), a recommendation as to whether Article 120 (1) of these Rules should be applied. Where no such pleadings are lodged, the same procedure shall apply after the expiry of the period prescribed for lodging them.

Article 122

Where the appeal is unfounded or where the appeal is well founded and the Court itself gives final judgment in the case, the Court shall make a decision as to costs.

In the proceedings referred to in Article 95 (3) of these Rules:

(i) Article 70 of these Rules shall apply only to appeals brought by Community institutions,

(ii) by way of derogation from Article 69 (2) of these Rules, the Court may, in appeals brought by officials or other servants of an institution, order the parties to bear all or part of their own costs where so required by equity.

If the appeal is withdrawn Article 69 (4) shall apply.

When an appeal brought by a Member State or a Community institution which did not intervene in the proceedings before the Court of First Instance is well founded, the Court of Justice may order that the parties bear their own costs or that the successful appellant pay the costs which the appeal has caused an unsuccessful party to incur.

Article 123

An application to intervene made to the Court in appeal proceedings shall be lodged before the expiry of a period of three months running from the date on which the appeal was lodged. The Court shall, after hearing the Advocate General, give its decision in the form of an order on whether or not the intervention is allowed.'

Article 2

The former Articles 110 to 113 of the 'Miscellaneous Provisions' of these Rules shall become Articles 124 to 127 respectively.

Article 3

These amendments to the Rules of Procedure, which are authentic in the languages mentioned in Article 29 (1) of the Rules of Procedure, shall be published in the *Official Journal of the European Communities* and shall enter into force on the day after the date of their publication.

3. DECISION OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES

of 18 July 1989

appointing the members of the Court of First Instance of the European Communities

(89/452/EEC, Euratom, ECSC)

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the Economic and Social Committee, and in particular Article 32d (3) thereof,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 168a (3) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 140a (3) thereof,

Having regard to Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities,[1]

Whereas the Governments of the Member States should appoint the 12 members of the Court of First Instance of the European Communities by common accord,

HAVE DECIDED AS FOLLOWS:

Sole Article

The following are hereby appointed members of the Court of First Instance as from 1 September 1989:

The Hon. Mr Justice Donal P. M. Barrington
Mr Jacques Biancarelli
Mr Cornelis Paulus Briët
Mr David Alexander Ogilvy Edward
Mr Rafael García-Valdecasas y Fernández
Mr Christos G. Yeraris
Mr Heinrich Kirschner
Mr Koenraad Lenaerts
Mr Antonio Saggio
Mr Romain Schintgen
Mr Bo Vesterdorf
Mr José Luís da Cruz Vilaça

The terms of office of six of these members shall be for six years until 31 August 1995; the terms of office of the other six members shall be for three years until 31 August 1992.

The members whose terms of office are to expire at the end of the first three years shall be appointed in accordance with Article 12 of Decision 88/591/ECSC, EEC, Euratom.

Done at Brussels, 18 July 1988

The President
R. DUMAS

[1] OJ L 319, 25.11.1988, p. 1.

4. DECISION OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES

of 18 July 1989

appointing the President of the Court of First Instance of the European Communities

(89/453/EEC, Euratom, ECSC)

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES,

Having regard to Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities, [1]

Having regard to the first paragraph of Article 11 of that Decision, which provides that the first President of the Court of First Instance shall be appointed for three years in the same manner as its members,

HAVE DECIDED AS FOLLOWS:

Sole Article

Mr José Luís da Cruz Vilaça is hereby appointed President of the Court of First Instance for a period of three years as from 1 September 1989.

Done at Brussels, 18 July 1989.

The President
R. DUMAS

[1] OJ L 319, 25.11.1988, p. 1.

5. TAKING OF THE OATH BY THE NEW MEMBERS ON TAKING UP THEIR DUTIES AT THE COURT OF FIRST INSTANCE

(89/C 272/08)

Further to the decisions of the Representatives of the Member States of the European Communities of 18 July 1989, Mr José L. da Cruz Vilaça, appointed as President of the Court of First Instance of the European Communities, and Messrs Donal P.M. Barrington, Antonio Saggio, David A.O. Edward, Heinrich Kirschner, Christos G. Yeraris, Romain Schintgen, Cornelis P. Briët, Bo Vesterdorf, Rafael García-Valdecasas y Fernández, Jacques Biancarelli and Koenraad M.J.S. Lenaerts, appointed as Members of the said Court, took the oath before the Court of Justice of the European Communities on 25 September 1989.

6. COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES

(89/C 273/02)

At the 1 349th meeting of the Council, held on 3 October 1989, the President of the Council, having noted that the members of the Court of First Instance had, on 25 September 1989, before the Court of Justice of the European Communities, taken the oath provided for in Article 12 of Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities,[1] proceeded to choose by lot the members of the Court whose terms of office will expire at the end of the first period of three years, which runs from 1 September 1989 to 31 August 1992.

The following were chosen:

(i) Mr José Luís da Cruz Vilaça
(ii) Mr Cornelis Paulus Briët
(iii) Mr Koenraad Lenaerts
(iv) Mr Romain Schintgen
(v) Mr Bo Vesterdorf
(vi) Mr Christos G. Yeraris.

[1] OJ L 319, 25.11.1988, p. 1.

7. COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES

Information

(89/C 281/08)

1. Appointment of the Registrar

By decision of 26 September 1989 the Court of First Instance appointed Mr Hans Jung as its Registrar pursuant to the first paragraph of Article 45 of the Statute of the Court of Justice of the EEC, the first paragraph of Article 46 of the Statute of the Court of Justice of the EAEC and the first paragraph of Article 46 of the Statute of the Court of Justice of the ECSC for the period from 27 September 1989 to 26 September 1995 inclusive.

Mr Jung took the oath provided for in Article 9 of the Statute of the Court of Justice of the EEC, Article 9 of the Statute of the Court of Justice of the EAEC and Article 14 of the Statute of the Court of Justice of the ECSC at the formal sitting on 10 October 1989.

2. Setting-up of the Chambers

At its conference on 4 October 1989 the Court of First Instance decided pursuant to Article 2 (4) of the Council Decision of 24 October 1988 and Article 9 (1) of the Rules of Procedure of the Court of Justice to set up for a period up to 31 August 1990 two Chambers (First and Second Chambers) to sit as a bench of five judges and three Chambers (Third, Fourth and Fifth Chambers) to sit as a bench of three judges.

3. Composition of the Chambers — Designation of the Presidents of Chamber

At its conference on 4 October 1989 the Court of First Instance decided pursuant to Article 2 (4) of the Council Decision of 24 October 1988 and Articles 9 (1) and 10 (1) of the Rules of Procedure of the Court of Justice, for a period up to 31 August 1990:

1. to assign the Members of the Court of First Instance to the Chambers as follows:

(i) *to the First Chamber:*
President da Cruz Villaça, Mr Edward, Mr Kirschner, Mr Schintgen, Mr García-Valdecasas and Mr Lenaerts,

(ii) *to the Second Chamber:*
Mr Barrington, Mr Saggio, Mr Yeraris, Mr Vesterdorf, Mr Briët and Mr Biancarelli,

(ii) *to the Third Chamber:*
Mr Saggio, Mr Yeraris, Mr Vesterdorf and Mr Lenaerts,

(iv) *to the Fourth Chamber:*
Mr Edward, Mr Schintgen and Mr García-Valdecasas,

(v) *to the Fifth Chamber:*
Mr Kirschner, Mr Briët and Mr Biancarelli;

2. to designate as Presidents of Chamber:

(i) *Second Chamber:* Mr Barrington,

(ii) *Third Chamber:* Mr Saggio,

(iii) *Fourth Chamber:* Mr Edward,

(iv) *Fifth Chamber:* Mr Kirschner.

4. **Assignment of cases to the Chambers**

At its meeting on 4 October 1989 the Court of First Instance decided pursuant to Article 2 (4) of the Council Decision of 24 October 1988 and Articles 9 (3) and 95 (3) of the Rules of Procedure of the Court of Justice, for a period up to 31 August 1990, to assign the cases to the Chambers in turn according to the order in which they are registered at the Registry. As regards staff cases, these will be assigned to the Third, Fourth and Fifth Chambers, commencing with the Third Chamber. Other cases will be assigned to the First and Second Chambers, commencing with the First Chamber. The President of the Court of First Instance may however decide otherwise on the ground that cases are related or with a view to ensuring an even spread of the work-load between the various Chambers.

8. DECISION OF THE PRESIDENT OF THE COURT

THE PRESIDENT OF THE COURT OF JUSTICE,

Having regard to Article 32d of the Treaty establishing the European Coal and Steel Community,

Having regard to Article 168a of the Treaty establishing the European Economic Community,

Having regard to Article 140a of the Treaty establishing the European Atomic Energy Community,

Having regard to the Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities, and in particular Article 13 thereof,

Whereas the Members of the Court of First Instance, appointed by common accord of the Governments of the Member States, have taken the oath before the Court of Justice,

Whereas the Court of First Instance is in a position to exercise the judicial functions entrusted to it,

HEREBY DECLARES:

The Court of First Instance of the European Communities is constituted in accordance with law.

Article 3 of the Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities shall enter into force on the day of the publication of this Decision in the *Official Journal of the European Communities.*

Luxembourg, 11 October 1989.

The President of the Court of Justice

9. COURT OF JUSTICE AND COURT OF FIRST INSTANCE

Information

(89/C 317/18)

By orders of 15 November 1989 made pursuant to Article 14 of Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities the Court of Justice of the European Communities referred to the Court of First Instance the cases listed in the left-hand column of the table set out below.

The said cases were entered in the Register of the Court of First Instance under the numbers listed below in the right-hand column.

No of the case referred by the Court of Justice	Names of the parties	Notice relating to the registration of the case published in the OJ	Number of entry in the Register of the Court of First Instance
179/86	Rhône-Poulenc/Commission	C 211, 22.8.1986	T-1/89
186/86	Petrofina/Commission	C 215, 26.8.1986	T-2/89
189/86	Atochem/Commission	C 211, 22.8.1986	T-3/89
192/86	BASF/Commission	C 259, 16.10.1986	T-4/89
194/86	Rydalm/Commission	C 239, 23.9.1986	T-5/89
195/86	Enichem/Commission	C 216, 27.8.1986	T-6/89
196/86	Hercules/Commission	C 222, 2.9.1986	T-7/89
200/86	DSM/Commission	C 246, 2.10.1986	T-8/89
205/86	Huels/Commission	C 246, 2.10.1986	T-9/89
206/86	Hoechst/Commission	C 246, 2.10.1986	T-10/89
210/86	Shell/Commission	C 242, 26.9.1986	T-11/89
211/86	Solvay/Commission	C 242, 26.9.1986	T-12/89
212/86	ICI/Commission	C 242, 26.9.1986	T-13/89
213/86	Montedipe/Commission	C 258, 15.10.1986	T-14/89
219/86	Chemie Linz/Commission	C 259, 16.10.1986	T-15/89
327/86	Herkenrath/Commission	C 26, 4.2.1987	T-16/89
328/86	Brazzelli/Commission	C 22, 29.1.1987	T-17/89
162/87	Tagaras/Court of Justice	C 172, 30.6.1987	T-18/89
351/87	Tagaras/Court of Justice	C 342, 19.12.1987	T-24/89
163/87	Nowak/Commission	C 181, 9.7.1987	T-19/89
244/87	Moritz/Commission	C 268, 7.10.1987	T-20/89
295/87	Bertolo/Commission	C 301, 11.11.1987	T-21/89
312/87	Nonon/Commission	C 301, 11.11.1987	T-22/89
336/87	Actis-Dato/Commission	C 317, 28.11.1987	T-23/89
42/88	Alex/Commission	C 73, 19.3.1988	T-25/89
44/88	De Compte/Parliament	C 89, 6.4.1988	T-26/89
57/88	Sklias/Court of Justice	C 77, 24.3.1988	T-27/89
63/88	Maindiaux/ESC	C 78, 26.3.1988	T-28/89
96/88	Moritz/Commission	C 103, 19.4.1988	T-29/89
98/88	Hilti/Commission	C 120, 7.5.1988	T-30/89
121/88	Sabbatucci/Parliament	C 132, 21.5.1988	T-31/89
124/88	Marcopoulos/Court of Justice	C 143, 1.6.1988	T-32/89
187/88	Marcopoulos/Court of Justice	C 202, 3.8.1988	T-39/89
127/88	Blackman/Parliament	C 132, 21.5.1988	T-33/89
144/88	Costacurta/Commission	C 159, 18.6.1988	T-34/89
148/88	Albani/Commission	C 159, 18.6.1988	T-35/89
172/88	Nijman/Commission	C 199, 29.7.1988	T-36/89
176/88	Hanning/Parliament	C 199, 29.7.1988	T-37/89
184/88	Hochbaum/Commission	C 202, 3.8.1988	T-38/89
192/88	Turner/Commission	C 205, 6.8.1988	T-40/89
211/88	Schwedler/Parliament	C 223, 27.8.1988	T-41/89

No of the case referred by the Court of Justice	Names of the parties	Notice relating to the registration of the case published in the OJ	Number of entry in the Register of the Court of First Instance
231/88	Von Wartenburg/Parliament	C 232, 8.9.1988	T-42/89
237/88	Gill/Commission	C 269, 18.10.1988	T-43/89
247/88	Gouvras-Laycock/Commission	C 269, 18.10.1988	T-44/89
252/88	EISA/Commission	C 279, 29.10.1988	T-45/89
292/88	Pitrone/Commission	C 297, 22.11.1988	T-46/89
317/88	Marcato/Commission	C 307, 2.12.1988	T-47/89
318/88	Beltrante/Council	C 320, 13.12.1988	T-48/89
319/88	Mavrakos/Council	C 321, 14.12.1988	T-49/89
321/88	Sparr/Commission	C 307, 2.12.1988	T-50/89
327/88	Tetra Pak Rausing/Commission	C 323, 16.12.1988	T-51/89
328/88	Piemonte/Council	C 320, 13.12.1988	T-52/89
334/88	Strack/Commission	C 328, 21.12.1988	T-53/89
336/88	Van den Bril/Parliament	C 330, 23.12.1988	T-54/89
338/88	Solomon/Commission	C 328, 21.12.1988	T-55/89
339/88	Bataille/Parliament	C 328, 21.12.1988	T-56/89
340/88	Alexandrakis/Commission	C 331, 24.12.1988	T-57/89
349/88	Williams/Court of Auditors	C 19, 25.1.1989	T-58/89
3/89	Von Wartenburg/Parliament	C 34, 10.2.1989	T-59/89
7/89	Van Gerwen/Commission	C 43, 22.2.1989	T-60/89
13/89	Dansk Pelsdyravl/Commission	C 43, 22.2.1989	T-61/89
24/89	Pinto Teixeira/Commission	C 68, 18.3.1989	T-62/89
36/89	Latham/Commission	C 75, 23.3.1989	T-63/89
41/89	Automec/Commission	C 85, 6.4.1989	T-64/89
50/89	BPB/Commission	C 81, 1.4.1989	T-65/89
56/89	Publishers/Commission	C 94, 15.4.1989	T-66/89
65/89	Costacurta/Commission	C 94, 15.4.1989	T-67/89
75/89	SIV/Commission	C 133, 30.5.1989	T-68/89
76/89	Radio Telefis Eireann/Commission	C 133, 30.5.1989	T-69/89
77/89	BBC/Commission	C 133, 30.5.1989	T-70/89
78/89	Dautremont/Parliament	C 118, 12.5.1989	T-71/89
81/89	Viciano/Commission	C 122, 17.5.1989	T-72/89
82/89	Barbi/Commission	C 184, 21.7.1989	T-73/89
84/89	Blackman/Parliament	C 129, 25.5.1989	T-74/89
89/89	Brems/Council	C 107, 27.4.1989	T-75/89
91/89	ITP/Commission	C 133, 30.5.1989	T-76/89
97/89	Fabbrica Pisana/Commission	C 133, 30.5.1989	T-77/89
98/89	PPG-Vernante Pennitalia/Commission	C 133, 30.5.1989	T-78/89
102/89	BASF/Commission	C 177, 13.7.1989	T-79/89
103/89	BASF/Commission	C 182, 19.7.1989	T-80/89
114/89	Monsanto/Commission	C 182, 19.7.1989	T-81/89
115/89	Marcato/Commission	C 123, 18.5.1989	T-82/89
120/89	DSM/Commission	C 182, 19.7.1989	T-83/89
121/89	LVM/Commission	C 177, 13.7.1989	T-84/89
122/89	DSM/Commission	C 177, 13.7.1989	T-85/89
123/89	Huels/Commission	C 177, 13.7.1989	T-86/89
124/89	Orkem/Commission	C 182, 19.7.1989	T-87/89
125/89	Bayer/Commission	C 182, 19.7.1989	T-88/89
126/89	Atochem/Commission	C 177, 13.7.1989	T-89/89
127/89	Atochem/Commission	C 182, 19.7.1989	T-90/89
129/89	Société artésienne de vinyle/Commission	C 177, 13.7.1989	T-91/89
130/89	Wacker Chemie/Commission	C 177, 13.7.1989	T-92/89
131/89	Statoil/Commission	C 182, 19.7.1989	T-93/89
132/89	Enichem/Commission	C 177, 13.7.1989	T-94/89
133/89	Enichem/Commission	C 182, 19.7.1989	T-95/89
134/89	Hoechst/Commission	C 177, 13.7.1989	T-96/89
135/89	Hoechst/Commission	C 182, 19.7.1989	T-97/89
138/89	ICI/Commission	C 177, 13.7.1989	T-98/89

No of the case referred by the Court of Justice	Names of the parties	Notice relating to the registration of the case published in the OJ	Number of entry in the Register of the Court of First Instance
139/89	ICI/Commission	C 182, 19.7.1989	T-99/89
140/89	Neste Oy/Commission	C 182, 19.7.1989	T-100/89
141/89	Repsol Quimica/Commission	C 182, 19.7.1989	T-101/89
142/89	Shell/Commission	C 177, 13.7.1989	T-102/89
143/89	Shell/Commission	C 182, 19.7.1989	T-103/89
147/89	Montedison/Commission	C 177, 13.7.1989	T-104/89
148/89	Montedison/Commission	C 182, 19.7.1989	T-105/89
149/89	Norsk Hydro/Commission	C 177, 13.7.1989	T-106/89
150/89	Chemie Holding/Commission	C 182, 19.7.1989	T-107/89
156/89	Scheuer/Commission	C 136, 2.6.1989	T-108/89
160/89	André/Commission	C 149, 16.6.1989	T-109/89
161/89	Pincherle/Commission	C 149, 16.6.1989	T-110/89
164/89	Scheiber/Council	C 149, 16.6.1989	T-111/89
165/89	Dow Chemical/Commission	C 177, 13.7.1989	T-112/89
166/89	Nefarma/Commission	C 184, 21.7.1989	T-113/89
167/89	VNZ/Commission	C 184, 21.7.1989	T-114/89
171/89	González Holguera/Parliament	C 153, 21.6.1989	T-115/89
173/89	Prodifarma/Commission	C 184, 21.7.1989	T-116/89
175/89	Sens/Commission	C 175, 11.7.1989	T-117/89
195/89	Hedeman/Commission	C 192, 29.7.1989	T-118/89
199/89	Teissonnière/Commission	C 192, 29.7.1989	T-119/89
204/89	Peine-Salzgitter/Commission	C 207, 12.8.1989	T-120/89
206/89	SNM/Commission	C 216, 22.8.1989	T-121/89
207/89	Ferrandi/Commission	C 216, 22.8.1989	T-122/89
211/89	Chomel/Commission	C 216, 22.8.1989	T-123/89
212/89	Kormeier/Commission	C 211, 17.8.1989	T-124/89
220/89	Filtrona/Commission	C 211, 17.8.1989	T-125/89
237/89	Van Gerwen/Commission	C 225, 1.9.1989	T-126/89
242/89	Henriehs/Commission	C 232, 9.9.1989	T-127/89
245/89	Brumter/Council	C 228, 5.9.1989	T-128/89
253/89	Offermann/Parliament	C 252, 5.10.1989	T-129/89
254/89	Brassel/Commission	C 254, 7.10.1989	T-130/89
259/89	Cosimex/Commission	C 238, 16.9.1989	T-131/89
264/89	Gallone/Council	C 254, 7.10.1989	T-132/89
267/89	Burban/Parliament	C 254, 7.10.1989	T-133/89
278/89	Hetterich/Commission	C 274, 27.10.1989	T-134/89
286/89	Pfloeschner/Commission	C 266, 18.10.1989	T-135/89
289/89	Tarabugi/Commission	C 288, 16.11.1989	T-136/89
296/89	Remusat/Commission	C 278, 1.11.1989	T-137/89
302/89	Nederlandse Bankiersvereniging/Commission	C 293, 21.11.1989	T-138/89
303/89	Virgili-Schettini/Parliament	C 278, 1.11.1989	T-139/89
315/89	Della Pietra/Commission	C 306, 5.12.1989	T-140/89
316/89	Trefilarbed/Commission	C 306, 5.12.1989	T-141/89
318/89	Boël/Commission	C 306, 5.12.1989	T-142/89
320/89	Ferriere Nord/Commission	C 306, 5.12.1989	T-143/89
321/89	Steelinter/Commission	C 306, 5.12.1989	T-144/89
322/89	Baustahlgewebe/Commission	C 306, 5.12.1989	T-145/89
323/89	Williams/Court of Auditors	C 306, 5.12.1989	T-146/89
325/89	Société métallurgique de Normandie/Commission	C 306, 5.12.1989	T-147/89
326/89	Trefilunion/Commission	C 306, 5.12.1989	T-148/89
327/89	Sotralentz/Commission	C 306, 5.12.1989	T-149/89
329/89	GB Martinelli/Commission	C 306, 5.12.1989	T-150/89
333/89	Société des treillis et panneaux/Commission	C 306, 5.12.1989	T-151/89
335/89	ILRO/Commission	C 306, 5.12.1989	T-152/89
336/89	Martin/Commission	C 306, 5.12.1989	T-153/89

III — Composition of the Court of First Instance for the judicial year 1989-90

1. Order of precedence

José Luís da Cruz Vilaça, President
Donal P.M. Barrington, President of the Second Chamber
Antonio Saggio, President of the Third Chamber
David A.O. Edward, President of the Fourth Chamber
Heinrich Kirschner, President of the Fifth Chamber
Christos Yeraris, Judge
Romain Schintgen, Judge
Cornelius Paulus Briët, Judge
Bo Vesterdorf, Judge
Rafael García-Valdecasas y Fernández, Judge
Jacques Biancarelli, Judge
Koenraad Lenaerts, Judge
Hans Jung, Registrar

2. Composition of the Chambers

First Chamber

Mr da Cruz Vilaça, President of the Chamber
Mr Edward, Mr Kirschner, Mr Schintgen, Mr García-Valdecasas and Mr Lenaerts, Judges

Second Chamber

Mr Barrington, President of the Chamber
Mr Saggio, Mr Yeraris, Mr Vesterdorf, Mr Briët and Mr Biancarelli, Judges

Third Chamber

Mr Saggio, President of the Chamber
Mr Yeraris, Mr Vesterdorf and Mr Lenaerts, Judges

Fourth Chamber

Mr Edward, President of the Chamber
Mr Schintgen and Mr García-Valdecasas, Judges

Fifth Chamber

Mr Kirschner, President of the Chamber
Mr Briët and Mr Biancarelli, Judges

IV — Statistical information

Cases pending at 31 December 1989 [1]

TABLE 1

Cases pending as at 31.12.1989 — Bench hearing case

Full Court	1
Chambers	167
Overall total	168

TABLE 2

Cases pending at 31.12.1989 — Bases of proceedings

	Full Court	Chambers	Total
Article 173 EEC Treaty	1 (1)	73 (73)	74 (74)
Article 175 EEC Treaty	—	1 (1)	1 (1)
Total EEC Treaty	1 (1)	74 (74)	75 (75)
Article 33 ECSC Treaty	—	1 (1)	1 (1)
Article 40 ECSC Treaty	—	1 (1)	1 (1)
Total ECSC Treaty	—	2 (2)	2 (2)
Staff Regulations	—	87 (91)	87 (91)
Overall total	1 (1)	163 (167)	164 (168)

[1] The figures in brackets (gross figure) represent the total number of cases, without taking account of cases joined on grounds of similarity (one case number = one case). The net figure represents the number of cases after account has been taken of those joined on grounds of similarity (one series of joined cases = one case).

TABLE 3

Cases pending as at 31.12.1989 — Nature of proceedings

	Full Court	Chambers	Total
Proceedings			
For annulment	1 (1)	74 (74)	75 (75)
For failure to act	—	1 (1)	1 (1)
For compensation	—	1 (1)	1 (1)
Staff cases	—	87 (91)	87 (91)
Total	1 (1)	163 (167)	164 (168)

Cases brought and decided in 1989

TABLE 1

Cases brought in 1989 — Manner in which cases were brought before the Court

	Cases referred by the Court of Justice on 15.11.1989	Total number of cases brought (at 31.12.89)
Direct actions:	76	77
Proceedings for annulment	74	75
Proceedings for failure to act	1	1
Actions for compensation	1	1
Staff cases	85	92
Overall total	161	169
Applications for interim measures	8	8

TABLE 2

Cases brought in 1989 — Bases of proceedings

	Cases referred by the Court of Justice on 15.11.1989	Total number of cases brought (at 31.12.89)
Article 173 EEC Treaty	73	74
Article 175 EEC Treaty	1	1
Total EEC Treaty	74	75
Article 40 ECSC Treaty	1	1
Article 33 ECSC Treaty	1	1
Total ECSC Treaty	2	2
Staff Regulations	85	92
Overall total	161	169

TABLE 3

Cases decided in 1989 — Form of decision

	Direct actions	Staff cases	Total
Judgments	—	—	—
Orders	—	1 (1)	1 (1)
Total	—	1 (1)	1 (1)

Formal sittings of the Court of Justice and the Court of First Instance of the European Communities

1989

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Mr C. Briët, Judge 311
Mr B. Vesterdorf, Judge 315
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Mr J. Biancarelli, Judge 323
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I — FORMAL SITTING of the Court of Justice of 25 September 1989

Address by Mr Ole Due, President of the Court of Justice, on the occasion of the taking of the oath by the Members of the Court of First Instance

Your Excellencies,
Ladies and gentlemen,

It is with the greatest of pleasure that the Court of Justice welcomes all those who have accepted its invitation to take part in this historic ceremony.

The setting-up of the Court of First Instance is a long-awaited event. As long ago as the late 1970s, both the Court of Justice and the Commission saw the need for such a court, particularly for staff cases and competition cases, but it was not until the adoption of the Single European Act that the way was paved for this institutional innovation.

Why was there such a need?

You are all aware that the number of cases brought has been constantly increasing and that, notwithstanding the procedural reforms which it has been possible for the Court to achieve within the rules of the Treaties and the Statutes of the Court of Justice, the limits of its capacity have already been reached. The result has been a steady build-up in the number of cases awaiting judgment and a lengthening of the duration of proceedings to an extent which has become unacceptable, particularly so far as preliminary rulings are concerned.

The increase in the membership of the Court of Justice as a result of the accession of new Member States has not been sufficient to compensate for the growing work-load, as almost half the cases must be determined by the full Court.

The increasing work-load has also clearly brought out the fact that the Court of Justice has two rather different roles to play.

The Court of Justice is, first and foremost, a judicial body which decides questions of law. It must ensure that the law is observed in the interpretation and application of Community rules, and that those rules are interpreted and applied uniformly throughout the Communities.

In direct actions, however, the Court of Justice also decides questions of fact. Until the Court of First Instance was set up, it had, as a court of first and last instance, to find the facts.

Those two roles pose different problems with regard to working methods.

Gradually, as the Court of Justice has elaborated the general principles of Community law, most of its judgments have come to fall within a known legal framework. The parties in their pleadings and oral argument, the Advocate General in his Opinion and the Court in its deliberations can proceed from an increasingly broad and solid basis. The national courts, the counsel for the parties and the Court are increasingly speaking, as it were, the same language. The various procedural elements can thus be compressed in a considerable number of cases, thereby allowing for a more compact timetable.

Facts, however, must be established anew in each case, and the process of establishing them cannot be compressed. It is therefore increasingly difficult to find time in a compact timetable for cases which raise many complex problems of fact, and the parties in such cases sometimes have the impression that the Court does not devote enough time to establishing the facts.

Those were the considerations which formed the basis for the Court of Justice's proposals, first for a provision to be included in the Single Act, and then for a Council Decision establishing the Court of First Instance. It was with those considerations in mind that the Court of Justice proposed to give the Court of First Instance jurisdiction in the types of case which most frequently raised problems of fact and to limit appeals against its decisions to questions of law.

The Court of Justice is very appreciative of the rapidity with which the other institutions have acted on those proposals. It is true that the Court of Justice would have liked the Court of First Instance to have wider jurisdiction, but we are confident that experience will show a future extension of its jurisdiction to be fully justified.

What is important is that we now have a two-tier judicial system which can remedy the problems and shortcomings of the old system and ensure that all cases will be treated in a manner worthy of a community of law. That is why this formal sitting marks a truly historic event for the Communities.

Mr Registrar, will you read the Council Decisions of 18 July 1989?

Members of the Court of First Instance,

In most cases, a formal sitting of the Court of Justice is an occasion for mixed feelings. Usually, at such sittings, the Court must bid farewell to several of its members with whom we have not only worked as colleagues, but also formed bonds of friendship.

That is not the case today. On the contrary, we have not only the pleasure of welcoming 12 lawyers eminently qualified to lend their support to our shared institution, but also the pleasure of seeing again amongst you a good number of former colleagues whose departure in past years was deeply regretted.

Although the Council's decision gave the Court of First Instance a more limited jurisdiction than that proposed by the Court of Justice, your duties and responsibilities will be heavy ones. In the cases brought before you, you will in establishing the facts be acting as a court of first and last instance. That is an extremely difficult task in many cases, and an extremely important one in all. You will also, in important areas of Community law, be leading the way and covering new ground in your decisions.

You are all extremely well equipped to fulfil those tasks. We, as members of the Court of Justice, are convinced that you will succeed and that you will find, in doing so, the same satisfaction that we have ourselves felt.

I wish you every success in your important tasks, and now call upon you to make the declaration provided for in the Statutes.

Address by Mr da Cruz Vilaça, President of the Court of First Instance

Mr President and
Members of the Court of Justice,
Your Excellencies,
Ladies and gentlemen,

I should like to start by greeting you, the Members of the Court of Justice, my dear colleagues, and everyone else who has kindly come here to witness this ceremony; in doing so in my mother tongue instead of our common working language, I wish simply to pay homage to the diversity and wealth of European culture, the inspiration of our common institutions, in this Europe of ours, this 'area imbued with civilization', as it was described by Ortega y Gasset years before the European Communities were created. [1]

There are ceremonies which, being merely matters of protocol, cease to have any significance as soon as they have taken place.

That certainly cannot be said of today's occasion. Indeed, I do not consider that this sitting can be seen as a merely routine event in the internal life of an institution. Rather, it marks a fundamental change in the Community system of judicial protection which you, Mr President, have quite rightly termed 'a historic event for the Communities'.

For more than three and a half decades the Communities have had at their disposal only one judicial authority.

The creation of the Court of First Instance, as provided for in the Single European Act, incorporated into that system machinery for two-tier jurisdiction, making available to those to whom Community rules and the decisions of the Community institutions apply—albeit, for the time being, only undertakings and officials employed by the Communities—the possibility of two levels of review in the application of Community law to the disputes to which they are parties.

That in itself gives an idea of the contribution made by that innovation to the consolidation of the Communities as a judicial area.

The Council Decision of 24 October 1988, moreover, expressly mentioned the objectives pursued, referring in its preamble to improving 'the judicial protection of individual interests' and maintaining (I would even say reinforcing) 'the quality and effectiveness of judicial review in the Community legal order'.

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[1] This paragraph of the address was also delivered in Portuguese.

The matters so far placed within the jurisdiction of the Court of First Instance will be conducive to the achievement of that reform.

On the one hand, the field of competition between undertakings, in particular large-scale undertakings, within the Community is one in which there is conflict—intense conflict—between powerful opposing interests capable of undermining the very foundations of the economic model which the Treaties are intended to safeguard and which should be strengthened and developed by the achievement of the single market.

On the other hand, the growth of the institutions has given rise to complex organizations in which, today, it is more difficult than it was some years ago to ensure that relations between employees and employers are conducted, within the framework of the Staff Regulations, in such a manner as systematically to prevent disputes from erupting.

Of course, it is always preferable for the institutional machinery designed to reconcile interests and safeguard rights to operate in such a way as to obviate the need for recourse to the expensive and rather traumatic solution of litigation.

But, once a critical level has been reached in the pathology of legal relationships, recourse to the courts may become inevitable and it is then imperative that justice should be rapidly and effectively administered by them.

The contribution intended to be made by the creation of the Court of First Instance is the provision of a more effective response.

For that reason, it is most important that we organize ourselves in such a way as to meet that challenge.

That is the task upon which we embarked virtually on the day on which the decisions appointing the President and the Members of the Court of First Instance came into effect.

With the cooperation of the Court of Justice and its various departments, we then began to set up our Court and the rate at which we have worked has enabled us, at this early stage, to take a number of important administrative decisions, to lay down general guiding principles for our judicial activity and to decide on the establishment of small groups amongst our number which will be responsible for preparing draft Rules of Procedure and for formulating transitional rules enabling us, until our own Rules of Procedure come into operation, to apply, *mutatis mutandis*, the Rules of Procedure of the Court of Justice.

In that connection, I should like to take this opportunity to pay homage to my colleagues who, with me, are now commencing an arduous, but exciting, term of office, and whom it has already been possible to bring together in a close-knit and effective team, establishing personal and working relationships of great trust and cordiality.

Among the Members appointed there are persons with vast experience in the sphere of law and judicial activity, in general, and of Community law and the operation of the Court of Justice, in particular.

Some of my colleagues have worked for a number of years in the Court of Justice, others have appeared before it as lawyers or agents of the Member States, others have distinguished themselves as advocates, teachers or senior civil servants or have held the highest judicial offices in their countries of origin, often in close contact with Community law or with economic and commercial law in general.

I myself had the honour, for almost three years, of serving as an Advocate General in the Court of Justice of the European Communities.

All these factors reassure me regarding the ability of our Court to satisfy the requirements deriving from the 'important judicial functions' which are entrusted to us and to respond appropriately.

In particular, it should be borne in mind that in view of the fact that the jurisdiction vested in the Court comprises 'certain classes of action or proceeding which frequently require an examination of complex facts', it will be advisable for us to adopt procedural rules which are particularly suited to the specific exigencies of that situation.

In my view, this calls for the adoption of very flexible machinery whereby, in each case, the Court will be able from the outset to undertake the appropriate preparatory measures and inquiries, without however opening the door to procedural congestion liable to prejudice the clarity of the evidence and the rapidity with which justice is administered.

In addition, it will be necessary to adopt appropriate rules governing all those matters to which special conditions apply in the Court, as in the case, for example, of the number and composition of the Chambers, the criteria for appointing Advocates General and the basis on which the full Court is to be constituted. Two sets of principles will govern the choices to be made: on the one hand, the defence of the rights of litigants and the quality of the judicial services to be provided and, on the other, procedural economy and expedition. Those principles will point the way towards the solutions to be adopted.

We shall of course also take account of the views and suggestions emanating from the legal and judicial spheres of the various Member States with respect to the functioning of the Court. We shall endeavour as far as possible to fulfil their legitimate expectations and optimize the working conditions relating to the protection of the parties to the proceedings.

We are aware of the fact that we ourselves shall have to work for a period—which we hope will be as short as possible—under temporary and, in various respects, unsatisfactory logistical conditions, a situation which will make itself felt, as is natural, more severely in the present phase when the Court is being set up and starting to function.

We shall nevertheless use all the means at our disposal to deal as rapidly as possible with the actions already assigned to us and to ensure that cases are disposed of with sufficient dispatch to prevent any backlog building up.

We are alert to the 'signs of the times', to the need to keep our methods, our procedures and our structures under constant review.

And, when the time comes, we shall be ready to embrace such new areas of jurisdiction as may be attributed to us, in particular cases relating to trade protection measures concerning dumping or aid or indeed any other type of matter in relation to which the intervention of the Court of First Instance may be considered appropriate.

This moment does not mark the end of an era in European judicial history, but rather a stage along the road towards the ultimate maturity of the judicial system of the Communities. And the most logical course is that the Community judicial authority should move forward in step with the progress achieved in constructing the Community, providing the support which, in any modern society, is required for the healthy functioning and the very survival of its judicial institutions.

In that way, the new institutional personality of the Court of Justice will be progressively strengthened and, in addition, the specific identity of the Court of First Instance as part of that institution will take shape. The latter's natural destiny, like that of any living organism, is to develop and bloom.

In that regard it should be remembered that in the period prior to the Court's inception a wide range of ideas and plans were put forward regarding the profile of the institution. However, wise reasoning prevailed in the choice ultimately made, even though some traces of outmoded thinking have survived in certain aspects of the Statute of the Court; we shall not fail to draw attention, in due course, to the problems thereby created.

The Council has nevertheless set up a true court, empowered to discharge its functions with full impartiality and independence, making it, from the outset, part of a veritable 'Community judicial authority'.

The Court of First Instance will therefore have the responsibility of giving judgment on the basis of facts which it will determine conclusively. The Court of Justice, will, in such cases, discharge the function of a supreme court, a role which is particularly suited to its nature and position within the Community institutional system.

We shall also share with the Court of Justice a complex of support facilities which will bring us, even from the physical point of view, close to each other. We shall thus share the experience, within the same institution, of embarking upon a task which promises to be exciting.

We are not, therefore, alone in the 'cold universe' of Community law.

And if we are now 'being born', we are not being born without a past. Our collective memory is in the case-law of the Court of Justice; we shall remain loyal to the fundamental values which have inspired it and we shall contrive to add to it the contribution of our own experience.

And now the ship is to set sail.

Where is it bound? That is what we shall discover as we 'unravel the secret of the waves'.

And perhaps it is timely to remember the words of the poet, Fernando de Pessoa:

'The dream is this, to discern the invisible shapes
of the hazy distance and, through subtle
shifts of hope and will,
to seek on the cold line of the horizon
a tree, a beach, a flower, a bird, a fountain,
the well-earned rewards of Truth.'

Mr José Luís da Cruz Vilaça

Curriculum vitae of Mr José Luís da Cruz Vilaça

Born at Braga, Portugal, 20 September 1944.

Married to Maria da Graça da Cruz Vilaça, Professor of Physics and Chemistry.

Three children.

Academic qualifications

Liceu de Braga (National prizewinner and Infante D. Henrique Prizewinner).

Degree in law from the University of Coimbra, 1966 (highest mark that year).

Postgraduate course in Political Science and Economics, 1967 (with distinction).

Calouste Gulbenkian Foundation bursary-holder, Paris, 1975-78.

Specialized postgraduate diploma in International Economics, University of Paris I, 1976.

Doctorate in International Economics, University of Paris I, 1978.

Senior Associate Member of St Anthony's College, Oxford, 1984-85.

Fellow, Salzburg Seminars on American Studies, 1981.

Community activities

President of the Court of First Instance of the European Communities since September 1989.

Advocate General in the Court of Justice of the European Communities, January 1986 to October 1988.

State Secretary for European Integration, responsible for the negotiations leading to the accession of Portugal to the European Communities, 1981.

Member of the Committee on European Integration in the Assembly of the Republic (Portuguese Parliament), 1984-85.

Founder and Director of the Institute of European Studies in the Lusíada University; Professor of 'Community Litigation', 1988-89.

Joint founder of the Centre for European Studies in the Faculty of Law at the University of Coimbra, 1983-84, and Professor of 'Foreign Economic Relations and the Accession of Portugal' until 1986.

Coordinator for Portugal of a research project on the application of Community legislation in the Member States of the Community, European University Institute, Florence, 1989.

Member of the selection board for Portuguese lawyers to join the staff of the Commission, prior to the accession of Portugal.

Participant in a number of seminars, lecturing on European topics in various European countries, especially in university institutes, Community and judicial institutions and national bar associations.

Political activities in Portugal

As State Secretary in the Interior Ministry in 1980, drafted the reforms of the electoral and nationality laws and the legal status of aliens and refugees; also took part in the drafting of the proposals for the revision of the Constitution of the Portuguese Republic.

As State Secretary in the Prime Minister's office in 1981, responsible for coordinating the Government's political and legislative activity.

State Secretary for European Integration, 1982.

Member of the Assembly of the Republic (Portuguese Parliament) from 1980 to 1986 and Vice-President of the Christian Democrat group in 1985-86; member of the Executive Committee in 1983 and Vice-President of the CDS Congress in 1985.

University activities

(Other than those mentioned above under 'Community activities')

Began his university career as assistant lecturer in the Faculty of Law of the University of Coimbra, in the Department of Political and Economic Sciences — specializing in monetary and international economics, public finance and tax law, after graduation in 1966.

Lecturer in political economics in the Faculty of Law at the University of Coimbra from 1972-73.

Professor of Financial Economics in the Faculty of Law in the University of Coimbra since 1982-83; Professor in the Centre for European Studies in the same faculty.

Professor of Political Economics in the Higher Institute of Theological Studies and the Higher Institute of Social Services at Coimbra from 1973-75 and in 1979.

Visiting Professor at the National Institute of Administration, INA, in Lisbon.

Member of the Senate of the University of Minho, Braga, since 1985.

Professor of Tax Law at the Administrative Study and Training Centre, CEFA, Coimbra.

Professor of European Economics and International Economic Organization at the Lusíada University, Lisbon, since 1988-89.

Other learned and professional activities

Legal adviser and consultant to a number of Portuguese ministries since 1974.

Government representative on missions in a number of European countries and in Africa, in Guinea-Bissau.

National service as Head of the Legal Department of the Ministry of the Marine, 1969-72; special citation in the Naval Order.

Participant and lecturer in university and other professional and legal institutions in Portugal, Spain, France, Italy, Germany, Belgium, the United Kingdom, Austria, Brazil, Morocco and the United States of America.

Publications

Has published many results of research work (in books and articles) carried out in the fields of political economics, international trade, Community law, European integration, regional economics, tax law and criminal law.

Learned societies, decorations

Member of a number of learned societies, both in Portugal and abroad:

Associação Jurídica Portuguesa — Director of the journal *Scientia Juridica* since 1967;

European Air Law Association;

Associação Portuguesa de Direito Europeu;

Associação Fiscal Portuguesa;

Inteuropa;

Instituto de Estudos Estratégicos e Internacionais — Director;

Associação Europeia de Professores;

Association Européenne de Sciences Régionales;

Sociedade de Geografia de Lisboa;

Rotary Club of Portugal.

Gran Croce del Ordine di Merito della Repubblica Italiana.

Mr Donal Patrick Michael Barrington

Curriculum vitae of Mr Donal Patrick Michael Barrington

Born

Dublin, 29 February 1928.

Educated

Belvedere College, Dublin.

University College, Dublin.

Degrees

BA (legal, political science) (1949).

LLB (1951).

MA (economics, politics) (1952).

Professional qualifications

Called to Bar (1951).

Called to Senior Bar (1968).

Called to Northern Ireland Bar (1979).

Professional experience

General practice at Junior Bar.

Specialized in constitutional and commercial law.

Appeared in most leading constitutional cases during 1970s including *Byrne* v *Ireland* (1972 IR, p. 241) (on the question of whether the State is subject to the Constitution and the law); *McGee* v *Attorney General* (1974 IR, p. 254) (on the constitutional validity of a statutory ban on the importation of contraceptives); *De Burca* v *Attorney General* (1976 IR, p. 38) (on the right and duty of women to serve on juries) and in many commercial cases including *Northern Bank Finance Corporation* v *Charlton* (1979 IR, p. 149) and before the High Court and the European Court in *Pigs, Bacon Commission* v *McCarren* (1981) IR, p. 451; [1979] ECR, 2163).

Lecturing

Lectured on constitutional law and public administration at University College, Dublin in 1950s and 1960s.

Consultancy

Constitutional Adviser to Social Democratic and Labour Party at Northern Ireland Constitutional Convention (1974-75).

Honorary posts

Chairman of General Council of Bar of Ireland (1977-79).

Bencher of King's Inns (1978-).

President of Irish Association for Cultural, Economic and Social Relations (1977-79).

Chairman Educational Committee Council of King's Inns (1987-).

Judicial appointments and experience

Appointed Judge of High Court, 1979.

Appointed Member Special Criminal Court, 1987.

As Judge of first instance dealt with many aspects of European law including reference to the European Court under Article 177 of the Treaty (e.g. *Doyle* v *An Taoiseach* 1986 ILRM, p. 693); the constitutional validity of the Anglo-Irish Agreement (*McGimpsie* v *Ireland*) (not yet reported) and the competence of the Government to ratify the Single European Act (*Crotty* v *An Taoiseach*) (1987 IR, p. 713).

Government commissions

Chairman: Commission of Safety at Work (1984-85).

Chairman: Stardust Victims' Compensation Tribunal (1985-86).

Publications

Author of several books, including one on *Edmund Burke as an economist*, and numerous articles on Irish constitutional law and Community law.

Mr Antonio Saggio

Curriculum vitae of Mr Antonio Saggio

1. Born in 1934, he was a brilliant student, obtaining a law degree at Naples University in 1957 on submission of a thesis in international law.

2. In 1960, following an open competition, he was appointed Uditore Giudiziario (trainee magistrate). On completion of his traineeship, he sat as Pretore (magistrate) and as district court judge in various locations. In 1973 he was appointed Magistrato d'Appello (appeal court judge) and in 1980 he was appointed Magistrato di Cassazione (judge of the Court of Cassation). From 1984 to 1988 he was a member of the First Civil Chamber of the Court of Appeal, Rome. In 1985 he was also attached to the research department of the Constitutional Court. In 1988 he was made a member of the First Civil Chamber of the Court of Cassation. In 1989 he was made a Magistrato di Cassazione qualified to carry out higher administrative duties.

3. From 1974 to 1978 he was attached to the Ufficio Legislativo del Ministero di Grazia e Giustizia (Legislative Department of the Ministry of Justice) where he dealt primarily with economic law and had an opportunity, as Italy's representative, to sit on Community working parties and participate in international negotiations. In 1985 he was appointed permanent chairman of the *ad hoc* working party set up within the Council of the European Communities in order to negotiate with the EFTA countries a convention parallel to the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters. In 1988 he took part as coordinator and spokesman for the Community countries and as chairman of the general committee in the diplomatic conference at Lugano where the aforesaid convention was adopted.

4. From 1979 to 1984 he was Legal Secretary to the Italian Advocate General at the Court of Justice of the European Communities.

5. From 1968 to 1972 he was lecturer in international organizations at Naples University. From 1972 to 1986 he was Professor of Diplomatic Law at the Istituto Universitario Orientale in Naples. Since 1985 he has been Professor of Community Law at the Scuola Superiore della Pubblica Amministrazione (Higher School of Public Administration) in Rome.

6. He is the rapporteur at various scientific congresses and study seminars dealing primarily with Community topics.

Publications

He has published numerous works on constitutional law, public international law and on various aspects of Community law.

Mr David Alexander Ogilvy Edward

Curriculum vitae of Mr David A.O. Edward

Born

Perth, Scotland; 14 November 1934.

Educated

Sedbergh School.

University College, Oxford, 1953-55; 1957-59.

Edinburgh University, 1959-62.

Degrees

Master of Arts (MA) Oxford, 1960.

Bachelor of Laws (LLB) Edinburgh, 1962.

Honours

Companion of the Order of St Michael & St George (CMG), 1981.

Distinguished Cross, first class, Order of St Raymond of Penafort (Spain), 1979.

National service

Sub-Lieutenant, Royal Naval Volunteer Reserve, 1955-57.

Professional qualifications

Advocate (Scotland), 1962.

Queen's Counsel (QC) (Scotland), 1974.

(Member of Chambers at 2 Hare Court, Temple, London).

(Member of the Association of the Bar of the City of New York).

Professional appointments

Clerk of the Faculty of Advocates (Scotland), 1967-70.

Treasurer of Faculty, 1970-77.

President of the Consultative Committee (now Council) of the Bars & Law Societies of the EC (CCBE), 1978-80.

University appointments

Salvesen Professor of European Institutions and Director of the Europa Institute (formerly Centre of European Governmental Studies), University of Edinburgh, 1985-89.

Trustee of the University of Edinburgh Foundation.

Judicial appointments

Honorary Sheriff of the Sheriffdom of Tayside, Central and Fife at Perth.

Chairman, Medical Appeals Tribunals, 1985-89.

Other appointments

Trustee, National Library of Scotland.

President, Scottish Council for Arbitration.

Chairman, Hopetoun House Preservation Trust.

Honorary Vice-President, Scottish Lawyers' European Group.

Joint Secretary, United Kingdom Association for European Law.

Member, Panel of Arbitrators, International Centre for Settlement of Investment Disputes, 1981-89.

Member, Law Advisory Committee, British Council, 1976-88.

Member, Dunpark Committee on Judicial Review in Scotland, 1984.

Specialist Adviser to the House of Lords Select Committee on the European Communities, 1985 (European Union, 14th Report, Session 1984-85); 1986 (Mutual Recognition of Higher Education Diplomas, 22nd Report, Session 1985-86); and 1987-88 (Staffing of the Community Institutions, 11th Report, Session 1987-88).

Chairman, Advocates' Business Law Group until 1989.

Directorships

Adam & Company Group PLC
Continental Assets Trust plc (Chairman)
The Harris Tweed Association Ltd
} until 1989.

Proceedings before the European Court of Justice

Represented CCBE in Case 155/79, *AM & S* v *Commission*, [1982] ECR 1575.

Represented Commission in Case 270/80, *Polydor* v *Harlequin Record Shops*, [1982] ECR 329.

Represented IBM in Case 60/81, *IBM* v *Commission*, [1981] ECR 1857.

Represented UK Government in Case 12/86, *Demirel*, [1987] ECR 3719.

Publications

Numerous articles in English language journals and in foreign legal journals dealing with the legal profession and problems of procedural law.

Author of articles in legal journals dealing with various aspects of Community law, including the Community law on competition.

Contributions to several compilation works.

Mr Heinrich Kirschner

Curriculum vitae of Mr Heinrich Kirschner

Date of birth

7 January 1938.

Family

Married, three children.

Education

Abitur, March 1956.

Studied law 1956-60.

First State examination in law: 19 March 1960.

Doctor of laws: 31 January 1964.

Second State examination in law: 27 April 1965.

Career

4.4.1961-27.4.1965	Judicial trainee, *Land* Nordrhein-Westfalen.
15.7.1965-31.10.1966	Magistrate, Landgericht Bochum.
1.11.1966-31.10.1967	Assistant to Dr Krille, Rechtsanwalt at the Federal Court of Justice (applications for review in civil matters).
1.11.1967-31.12.1970	Magistrate, Amtsgericht Wanne-Eickel; Counsel, Landgericht Bochum.
1.1.1971-30.9.1975	Reporting officer at the Federal Ministry of Justice in the Community Law Department, and subsequently in the Staff Departments. Deputy for the Personal Assistant to the Secretary of State in office.
1.10.1975-31.8.1979	Legal assistant at the Commission of the European Communities, first in the office of the Danish Member F.O. Gundelach, then in the Directorate-General for the Internal Market (Industrial Affairs).
1.9.1979	Returned to the Federal Ministry of Justice.

1.11.1981-21.10.1982	Head of Department (Supplementary Penalties).
22.10.1982-31.5.1986	Principal of the Minister's office.
1.6.1986-31.12.1986	Head of Under-Department IIB, Criminal Law.
1.1.1987-31.5.1988	Head of Under-Department ZB, Administration of the courts (budget, data-processing, etc.).
1.6.1988-31.8.1989	Head of Under-Department IIA, Criminal Law.

Mr Christos G. Yeraris

Curriculum vitae of Mr Christos G. Yeraris

Born 13 September 1938 at Derveni (Corinthia), son of a judge. Married 1972, Eugenia Antanasiotis (architect); two sons of secondary school age.

Studies

In 1956 he finished his secondary studies at the Varvakio School (with distinction) and entered the law faculty of the University of Athens. He obtained a law degree (magna cum laude) in April 1961. In 1978-79, during a sabbatical year, he attended lectures and seminars at the Centre for European Community Studies at the University of Paris I.

Career

After a competitive examination he was appointed an isiyitis [rapporteur] at the Simvoulio tis Epikratias in 1963. He was promoted to the post of paredros [assessor] in October 1973 and became a member of the court in July 1982. In addition to his main duties he was also a member of the Anotato Idiko Dikastirio [Superior Special Court] and the Dikastiria Simaton [Trade Mark Courts] and an adviser to the government on the application of secondary Community law. He is professor of Community law at the National School of Public Administration and the Adult Education Institute.

Academic activities

He is a member of the editorial committee of the *European Communities Review*, vice-president of the Greek association of the Fédération Internationale pour le Droit Européen (FIDE) and a member of various other associations (Association of Greek Constitutional Lawyers, Society for Administrative Studies, etc.). He has taken part as a rapporteur, speaker or chairman in conferences in Greece and abroad. He contributes to legal periodicals and publications, and has written several articles and case-notes.

During the preparation of the presidential decrees for the application of Community legislation he was the first Greek judge to deal with the problems of the implementation of Community law in the Greek legal system. He later acted as judge-rapporteur in cases involving Community law, including the sole reference made by the Simvoulio tis Epikratias to the Court of Justice of the European Communities.

Publications

He has published, *inter alia*, several articles and reports dealing with Community law and its application in Greek domestic law.

Mr Romain Schintgen

Curriculum vitae of Mr Romain Schintgen

Place and date of birth

Luxembourg, 22 March 1939.

Education

Primary: Luxembourg.

Secondary: Athénée Grand-Ducal, Luxembourg (1952-59).

University:

Arts and philosophy (law section) at the Athénée Grand-Ducal, Luxembourg (1959-60);

Faculty of Law and Economics, University of Montpellier (France) (1960-61);

Faculty of Law and Economics, University of Paris (France) (1961-63).

Degrees and diplomas

Certificate of completion of secondary education (classics section): 11 July 1959.

Doctor of laws: 16 January 1964.

Career

Avocat of the Luxembourg Bar: sworn on 29 January 1964.

Avocat-avoué of the Luxembourg Bar: sworn on 29 June 1967.

Appointed Government Attaché at the Ministry of Labour and Social Security: 10 October 1967.

Appointed Assistant Government Adviser there: 17 January 1974.

Appointed Government Adviser there: 30 May 1975.

Appointed Senior Government Adviser there: 14 January 1984.

Appointed Administrateur Général: 26 March 1987.

Luxembourgish institutions

President of the Economic and Social Council.

President-Delegate of the National Conciliation Council for major disputes.

Permanent delegate of the Ministry of Labour at the National Employment Commission.

President of the Special Unemployment Re-examination Committee.

Member of the Conjunctural Committee.

Member of the Board of Directors of the École Supérieure du Travail (Workers' College of Further Education).

Directorships

Director, Société Nationale de Crédit et d'Investissement (SNCI).

Director, Métallurgique et Minière de Rodange-Athus (MMR-A).

Director, Société Européenne des Satellites (SES).

Director, Investar Sàrl.

International organizations

Delegate from the Ministry of Labour to the Social Questions Group of the Council of the European Communities.

Government representative, European Social Fund Committee.

Government representative, Consultative Committee on the free movement of workers.

Government representative, Board of Directors of the European Foundation for the Improvement of Living and Working Conditions.

President, Luxembourgish delegation to the Social Committee of the Benelux Economic Union.

Member, Labour and Social Affairs Committee of the OECD.

Publications

Author of the major works on labour law in the Grand Duchy of Luxembourg. Has contributed to compilation works published in German.

Honours

Grand Officer, Order of Merit (Portugal) (10.8.1988).

Commander, Ordre Grand-Ducal de la Couronne de Chêne (Luxembourg) (June 1989).

Grand Cross (Federal Republic of Germany) (23.6.1976).

Commander, Civil Order of Merit (Spain) (8.7.1980).

Officer, Order of the Crown (Belgium) (26.1.1986).

Officer, Orange-Nassau Order (Netherlands) (7.8.1973).

Mr Cornelis Paulus Briët

Curriculum vitae of Mr Cornelis Paulus Briët

Born in Amsterdam on 23 February 1944.

Married, two daughters.

1950-56:	Primary education in Curaçao and in Hollandia (now Jayapura, western Guinea, Indonesia).
1956-62:	Secondary school in Enschede ('B' school-leaving certificate).
1962-69:	Studied Dutch law at the University of Leyden.
1969-70:	Military service Ensign in the Army Legal Service; legal assistant, NCO section, Officer Staff of the Royal Territorial Army at the Ministry of Defence (present rank: reserve captain in the Army Legal Service).
1970-73:	Claims department adviser and executive secretary, D. Hudig & Co., insurance brokers in Rotterdam (insurance broker's certificate under the Insurance Brokerage Law).
1974-78:	Executive secretary, Granaria BV, trading in raw materials for the feedingstuffs industry in Rotterdam (also Director of Granaria Insurance BV).
1976-78:	Deputy judge, Arrondissementsrechtbank [District Court] Rotterdam.
1978-81:	Judge, idem.
1981-84:	Member of the Court of Justice of the Dutch Antilles, Curaçao (also Chairman of the Medical Disciplinary Board and Deputy Chairman/Member of the Boards of Appeal in accident, sickness, widows' and orphans' and general old-age insurance matters).
1983-84:	Deputy President of the Permanent Military Tribunal (Navy) in the Dutch Antilles.
1984-86:	Judge, Arrondissementsrechtbank Rotterdam.
1986-88:	Cantonal judge, Rotterdam.
From 1987:	Deputy cantonal judge, Brielle and Sommelsdijk.
From 1988:	Vice-president, Arrondissementsrechtbank Rotterdam Deputy cantonal judge, Rotterdam Deputy judge, Arrondissementsrechtbank Middelburg.
1972-81:	Member of the Board, Genealogical Foundation, The Hague.

1980-81:	Member, Archives Office.
From 1984:	Member of the Board, Foundation for the upkeep of the museum of the chancery of Dutch orders of merit.
From 1986:	Member of the Archives Office.

Mr Bo Vesterdorf

Curriculum vitae of Mr Bo Vesterdorf

Born 1945.

Career

1974: Cand. jur. (degree in law).

1974: Lawyer-linguist at the Court of Justice of the European Communities.

1975: Administrator in the Legal Service of the Ministry of Justice.

1977: Deputy Judge.

1979: Legal attaché in the Permanent Representation of Denmark to the European Communities.

1981: Again, administrator in the Legal Service of the Ministry of Justice.

1983: Temporary judge at the Østre Landsret [Eastern Division of the High Court].

1984: Head of Division in the Legal Service of the Ministry of Justice responsible for matters of constitutional and administrative law and for questions concerning human rights.

1988: Permanent Under-Secretary *inter alia* for budgetary and staff matters at the Ministry of Justice, for the police and the courts.

Other activities

1981-88: Lecturer in the law of property and constitutional law at the University of Copenhagen.

1984-88: Member of the Steering Committee on Human Rights at the Council of Europe, CDDH. Since 1986, also Member of the Bureau of the CDDH.

1984-88: Government agent in cases pending before the European Commission of Human Rights or the European Court of Human Rights.

1987: Auditor at the courts.

1987: Member of the management committee of Danmarks Jurist- og Økonomforbunds tjenestemandsforening [Association of Civil Servants affiliated to the Federation of the Lawyers and Economists of Denmark].

1987-88: Arbitrator in cases concerning the interpretation of collective bargaining agreements or in civil service staff cases.

Publications

Works on Danish administrative law, written in collaboration with two other authors.

Various articles in Danish legal journals.

Mr Rafael García-Valdecasas y Fernández

Curriculum vitae of Mr Rafael García-Valdecasas y Fernandez

Date and place of birth: 9 January 1946, Granada (Spain).
Married.

University education

1968:	Law degree obtained in the Faculty of Law of Granada University.
1968:	First class honours in the degree examination for the award of a bachelor's degree in law by Granada University.
1976-78:	Doctorate studies at Granada University.

Further study

1981-82 and 1983:	Courses in European Community law organized by the Legal Affairs Directorate of the Ministry of Finance in collaboration with the Secretary of State for European Community Relations.
1983 (January):	Training course in the Legal Department of the Commission of the European Communities, Brussels.
1985 (February to May):	Training course in the Legal Department of the Commission of the European Communities, Brussels.
	Languages: English and French.

Career

1976:	Enrolled as a lawyer in the Office of the Attorney-General (Abogado del Estado).
1976-85:	Member of the Attorney-General's Office at the Tax and Judicial Affairs Office of Jaén.
1979-85:	Member of the Attorney-General's Office/Registrar at the Economic and Administrative Court of Jaén.
1979:	Member of the Jaén Bar.
1981:	Member of the Granada Bar.
1983-85:	Member of the Attorney-General's Office/Registrar at the Economic and Administrative Court of Córdoba.

1986-87:	Member of the Attorney-General's Office at the Tax and Judicial Affairs Office of Granada.
1987-89:	Head of the Spanish State Legal Service for cases before the Court of Justice of the European Communities (Ministry of Foreign Affairs). In that capacity, appeared for the Kingdom of Spain in cases in which it was concerned before the Court of Justice of the European Communities.
1987-88:	Head of the Spanish Delegation in the Working Group created at the Council of the European Communities with a view to establishing the Court of First Instance of the European Communities.

Miscellaneous

1971:	Military service. Second Lieutenant (reserve).
1988:	Member of the editorial committee, *Gaceta Jurídica de la CEE.*
1988:	Member of the Board, Spanish Association for European Legal Studies.

Decorations: Orden Civil del Mérito Agrícola (Commander).

Numerous lectures and courses on various aspects of European Community law in various institutions.

Mr Jacques Biancarelli

Curriculum vitae of Mr Jacques Biancarelli

Maître des Requêtes in the Conseil d'État.

Former Legal Secretary at the Court of Justice of the European Communities.

Head of Legal Department, Crédit Lyonnais.

Born 18 October 1948, married, two children aged 18 and 11.

I — Education and qualifications

1965-69:	Degree in public law, University of Lyons (with distinction — Law Faculty prizewinner).
1970:	École Nationale du Trésor (Former Student's Diploma).
1970-71:	Diploma of Higher Study in public law (with distinction) (University of Lyons).
1972:	Preparation for Diploma of Higher Study in political science (University of Lyons) and preparation for the preparatory course for entry to the École Nationale d'Administration.
1973:	Preparation for entry to the École Nationale d'Administration, at the Institut d'Études Politiques, Grenoble (ENA preparatory course diploma)
January 1975-May 1977:	Student at the École Nationale d'Administration (Former Student's Diploma).

II — Professional experience

1966-67:	Trainee inspector at the Treasury.
1968-73:	Inspector at the Treasury. After a period of training, three years in an accounting post implementing budget systems, public and private accounting, financial and tax legislation and regulations governing public contracts.
1974:	National Service.
January 1975-May 1977:	Student at the École Nationale d'Administration.

June 1977-June 1981:	Auditor in the Conseil d'État. Rapporteur of the First Subsection of the Judicial Section. Rapporteur of the Special Committee on Pension Appeals. Rapporteur of the Committee on Refugees and Stateless Persons.
1980-81:	Assigned to the Taxation sub-sections in the Judicial Section and to the Public Works Section.
June 1981-October 1982:	Commissaire du Gouvernement to all the judicial divisions of the Conseil d'État — also assigned to the Interior Section.
January 1983:	Maître des Requêtes in the Conseil d'État.
October 1982-February 1987:	Seconded as Legal Secretary to the Court of Justice of the European Communities:
	Assistant to Judge Galmot in the performance of his judicial duties;
	Active participation in personnel administration at the Court (promotions, competitions, drafting of general decisions and internal directives);
	Organization of circulation of Community law;
	Organization of seminars at the Court for members of the judiciary and senior civil servants from the Member States;
	Appointed by the Court as its representative to the Committee of Permanent Representatives of the Member States for the purpose of negotiating the drafting of the Single European Act in so far as it related to the Court of Justice;
	Rapporteur of the Committee on the Work-load of the Court, responsible for drafting a proposal for the Statute of the Court of First Instance attached to the Court of Justice and a proposal for the reform of the Rules of Procedure of the Court, together with internal directives relating to the organization of judicial procedure;
	Liaison with the Chambers of other Members of the Court.
Since March 1987:	Seconded as Head of the Legal Department of the Crédit Lyonnais:

Responsible for a staff of some 200 persons;

Responsible for dealing with major files involving business law, international law and tax law (complex legal and financial arrangements);

Responsible for dealing with major files involving banking law and company law (organization of recovery procedures, bank's liability, budget management, increase in equity capital);

Legal adviser on all issues of labour and labour-relations law;

Legal adviser on communications and public relations activities;

Legal adviser on all aspects of Community competition law (notification of agreements between French banks to the Commission of the European Communities) and French competition law (liaison with the Conseil de la Concurrence);

Legal adviser on all issues of intellectual and commercial property law;

Legal adviser in all cases involving Community law.

III — Other administrative experience

1977:	Rapporteur of the Committee examining the report of the Cour des Comptes.
1978:	Legal Adviser to the State Secretariat for the Overseas Departments and Territories.
1979:	Legal Adviser to the State Secretariat for Research.
1980:	Legal Adviser to the Minister for Industry; Rapporteur of the Interdepartmental Committee for the Development of Strategic Industries.
1981:	Legal Adviser to the Directorate-General for Local Authorities in the Ministry of the Interior with responsibility for decentralization issues.
1982:	Legal Adviser to the President of the La Défense Public Development Agency (legal, financial and tax issues raised by the special arrangements for the use of space).

1982: Deputy Secretary General of the Institut Français des Sciences Administratives.

IV — Main teaching and lecturing experience

Lectured in a number of French professional colleges. Lectured in a number of institutes of higher education. Acted as rapporteur in several seminars on Community law and its application to specific areas.

V — Published works

Various reports for governmental departments. Numerous articles in French legal journals on different aspects of French public law and on Community law. Author of twice-yearly articles on Community case-law in legal journals. Contributes to the Encyclopédie Juridique Dalloz.

VI — Miscellaneous

President of the Association Européenne pour le Droit Bancaire et Financier (AEDBF).

Former President of the Association des Fonctionnaires Français Internationaux à Luxembourg and Member, in that capacity, of the Comité National des Fonctionnaires Internationaux, whose President is the Prime Minister.

Mr Koenraad Maria Jan Suzanna Lenaerts

Curriculum vitae of Mr Koenraad Maria Jan Suzanna Lenaerts

Born 20 December 1954 in Mortsel.

Belgian nationality.

Married (Kris Grimonprez), four children.

Academic qualifications

Kandidaat in law (summa cum laude) 1974, Facultés Universitaires Notre-Dame de la Paix, Namur.

Studies at the Hague Academy of International Law, 1976.

Licentiaat in law (summa cum laude and congratulations of the examiners) 1977, Katholieke Universiteit Leuven.

Master of Law (LLM) 1978, Harvard University.

Master in Public Administration (MPA) 1979, Harvard University.

Doctorate in law (by dissertation) 1982, Katholieke Universiteit Leuven.

Awards

Belgian prize-winner in the essay competition for the 'European Schools' Day' organized by the Council of Europe (Dublin, 1972).

Harkness Fellow of the Commonwealth Fund of New York, 1977-79.

Honorary CRB Fellow of the Belgian American Educational Foundation, 1977.

Scholarship from the Deutscher Akademischer Austauschdienst, 1979.

Prize of the Royal Academy of Science, Letters and Fine Arts of Belgium, 1983 (for doctoral dissertation).

Fernand Collin Prize of the Belgian University Foundation, 1984 (for doctoral dissertation).

Career

Professor at the Katholieke Universiteit Leuven (since 1983);

present teaching duties:

European institutions (third year, licentie in law);

Judicial protection in the European Communities (third year, licentie in law);

Private international law (second year, licentie in law);

Advanced private international law (third year, licentie in law);

Advanced private international law in relation to the work of notaries (licentie Notariaat).

Visiting Professor at the Université du Burundi (1983 and 1986), the Université de Strasbourg (since 1986), the Colegio de Abogados, Barcelona (1987) and Harvard University (1988-89).

Professor at the College of Europe, Bruges (since 1984).

Legal secretary at the Court of Justice of the European Communities, 1984-85.

Member of the Brussels Bar (since 1986).

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Honorary President of the International Relations Society of the Katholieke Universiteit Leuven (since 1986).

Member of the board of the China-Europa Instituut of the Katholieke Universiteit Leuven (since 1986).

Erasmus programme coordinator for the Katholieke Universiteit Leuven (since 1987).

Member of the International Relations Council of the Katholieke Universiteit Leuven (since 1988).

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Belgian correspondent of the *European Law Review*.

Member of the editorial board of the *Rechtsgids*.

Member of the editorial board of the *Tijdschrift voor Belgisch Handelsrecht* [Belgian Commercial Law Journal].

Member of the editorial board of the *Tijdschrift voor Belgisch Burgerlijk Recht* [Belgian Civil Law Journal].

Publications

Author of comparative studies on constitutional law in Europe and the United States of America. Co-author of books on private international law. Has contributed numerous articles to compilations and to Belgian and foreign legal journals in Dutch, French and English dealing with aspects of private international law, comparative constitutional law, foreign public law and with matters touching on the legal order of the European Communities.

II — FORMAL SITTING
of the Court of First Instance
of 10 October 1989

Address by Mr da Cruz Vilaça, President of the Court of First Instance, on the occasion of the entry into office of the Registrar of the Court of First Instance, Mr Hans Jung

Your Excellencies,

The Court of First Instance today carries out its first public act, one which may be considered as an event of major significance in the life of this young Court, brief as it may yet be.

In the first place, this act bears witness to our desire to proceed rapidly in this crucial organizing phase of the Court of First Instance. We have been able to select and nominate our Registrar scarcely a few days after our own formal investiture, and we are now ready to accept his oath, little more than one month after the decisions nominating the Members of the Court of First Instance came into force.

Mr Hans Jung was chosen to fill this post, a choice clearly determined by qualities which everyone acknowledges.

Hans Jung has been with us since 1976. He has worked in turn as a translator, a legal secretary and since 1986 as Deputy Registrar.

He has always carried out his duties with enthusiasm, giving proof of sterling efficiency and admirable devotion which have been of enormous benefit to the Court of Justice and to the Court of First Instance itself.

We ought not to forget that Mr Jung was involved from the start, within the Court of Justice, in the preparatory groundwork which led to the establishment of the Court of First Instance, and he subsequently represented the Court of Justice in the difficult negotiations within the Council which paved the way for the adoption on 24 October 1988 of the decision establishing the Court of First Instance.

During those negotiations and in the regular meetings with the budgetary authorities, Mr Jung revealed great wisdom and untiring tenacity in arguing the views which he was required to defend.

His tact in dealing with people and his painstaking attention to every facet of a problem also helped to win him the respect and esteem of all those who, no matter at what level, have had the opportunity and good fortune to work alongside him.

Mr Jung shall henceforward be called on to put his outstanding qualities, his knowledge and his experience to direct use in the service of the Court of First Instance, and for this we are indeed fortunate.

Your immediate task, Mr Jung, is, of course, to organize the Registry of the Court of First Instance by setting up its departments and recruiting its staff. Those are matters to which you lost no time in attending following your nomination, and this will enable the President of the Court of Justice shortly to make the declaration provided for by Article 13 of the Decision of 24 October 1988 to allow the Court of First Instance formally to take over cases pending before the Court of Justice and to receive, within the limits of its jurisdiction, new applications which may be brought.

As I have already stressed, improved efficiency and speed in the dispensation of justice under Community law constitute the great challenge to be tackled by the Court of First Instance.

That is why the conditions under which we shall exercise our jurisdictional powers are of most immediate concern to us.

The quality of the support which our Registry will be in a position to give us will form a vital element when we are fulfilling our primary task of passing judgment.

Of course, the structure of the Registry is extremely light, and this removes any risk of top-heavy bureaucracy which might otherwise prevent it operating in a supple and flexible manner.

The other side of the coin, however, lies in the limited resources given, at least initially, to the Court of First Instance to meet its responsibilities.

Nevertheless, I am confident that with the full agreement of the Court of Justice and its President, we shall find the material solutions which will allow the Court of First Instance to embark on its allotted duties as a court under optimum conditions, both from the budgetary point of view and from that of the staff who are to be allocated to it.

Moreover, all the Members of this institution, which shall henceforth be twofold in nature, comprising as it does both the Court of Justice and the Court of First Instance, have shown a great capacity to adapt. We are sure that we can count once again on the understanding of the Court of Justice for the logistical difficulties encountered in getting the Court of First Instance off the ground; in addition, both the President of the Court of Justice and myself are extremely sensitive to the changes which result from this unique experiment of placing a new jurisdictional forum within an already existing institution.

It is likely that in the future, in view of the remarkable developments in Community law, new demands will be made of this Community jurisdictional

system in all its aspects: new transfers of jurisdiction, an extension of the scope of matters governed by Community law to cover new areas, and an increase in the number of cases.

As from today, we are fortunate to be in a position to tackle these new problems in a concerted manner with the Court of Justice, and this can only increase very appreciably the effectiveness with which the Community jurisdictional order faces up to these challenges, an effectiveness to be derived in future from the synergy which we will be capable of developing together.

In that context, cooperation between the two Registries will be a decisive element in that success, with particular regard to the activity of those departments which are called on to assist the two Courts and also to prepare and present the institution's common positions to the outside world.

Your Excellencies,

I would not wish to conclude this short address without thanking you for being present in this hall today.

You will have remarked that the Court of First Instance does not yet have the formal appearance which will be required of it during its future sittings.

That is not of importance; we really did want to turn this ceremony into a working session, rather than having it as a truly formal sitting.

It is for the continuation of that work that I would address to you, Mr Hans Jung, our most sincere wishes for your success, and I know that in so doing, I am addressing them to the Court of First Instance itself.

Mr Hans Jung

Curriculum vitae of Mr Hans Jung

Born on 29 October 1944 at Eberswalde,

of German nationality,

married since 1969 to Bernadette Jung, née Labarthe,

father of Anne-Sophie (1974, deceased 1985), Sebastian (1979) and Christopher (1982) and of Carlos Eduardo (1982) and Simone (1983), both adopted in 1986.

Studies and qualifications

1963-67	Legal studies in Freiburg, Münster and Berlin.
1967	First State examination in law.
1968	Course and degree at the Faculté Internationale pour l'Enseignement du Droit Comparé, Strasbourg.
1970	Doctorate in law (Berlin).
1971	Second State examination in law.

Professional experience

1968-71	Period of practical training in judicial and other legal work.
1968-71	Assistant at the Faculty of Law in Berlin.
1971-73	Assistant lecturer at the Faculty of Law in Berlin: teaching of civil law and the law of civil procedure; research in the field of comparative civil procedure.
1973-76	Rechtsanwalt in Frankfurt am Main with the firm of Boesebeck, Barz & Partner: litigation and advice in civil and commercial matters and international business law.
1976-78	Translator in the Language Directorate of the Court of Justice: translation of judgments, opinions and other legal texts.
1978-80	Legal Secretary at the Court of Justice in the Chambers of President Kutscher: assisting the President in administrative and judicial matters; representing the Court on the Council's working party during the negotiations on the amendments to the Court's Rules of Proce-

dure, the increase in the number of its Members and the creation of an administrative tribunal for staff cases.

1980-86 Legal Secretary at the Court of Justice in the Chambers of Judge Everling:

assisting the Judge in pending cases, preparation of drafts;

participation in the preparation of the Court's drafts for texts on the establishment of the Court of First Instance.

Since 1986 Deputy Registrar at the Court of Justice:

assisting and deputizing for the Registrar in matters of administrative coordination and in the representation of the Court at the inter-institutional level and *vis-à-vis* the authorities of the host country, preparation of the budget and budgetary negotiations, questions concerning immovable property, publication of the *Reports of Cases before the Court*, organizing computerization;

representing the Court in the negotiations on the establishment of the Court of First Instance on the Council's working party, at the Committee of Permanent Representatives and at the European Parliament;

administrative preparation for the creation of the Court of First Instance;

participating in the work of the Court's committee responsible for revising the Rules of Procedure.

Publications

Author of works on the Rules of Procedure of the Court of Justice of the European Communities and on the legal problems relating to the establishment of the Court of First Instance, published in various German and foreign legal journals.

European Communities — Court of Justice

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