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Synopsis of the work of the Court of Justice of the European Communities in 1986 and 1987

Foreword

This synopsis of the work of the Court of Justice of the European Communities 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, whose judgments are published only in the *Reports of Cases before the Court* (ECR).

The synopsis is published in the official languages of the Communities (Danish, Dutch, English, French, German, Greek, Italian, Spanish and Portuguese). It is obtainable free of charge on request (specifying the language required) from the Information Offices of the European Communities whose addresses are listed on page 170.

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I — Proceedings of the Court of Justice of the European Communities

1. Case-law of the Court in 1986 and 1987

A — *Statistical Information*

Judgments delivered

The Court of Justice of the European Communities delivered 174 judgments and interlocutory orders in 1986 and 208 judgments and interlocutory orders in 1987:

1986	*1987*	
57	101	were indirect actions (excluding actions brought by officials of the Communities);
78	71	were in cases referred to the Court for preliminary rulings by the national courts of the Member States;
35	36	were in cases concerning Community staff law;
1	—	concerned the revision of a judgment;
1	—	were in third party proceedings;
2	—	were interlocutory orders.
109	115	of the judgments were delivered by Chambers, of which:
61	52	were in cases referred to the Court for a preliminary ruling and assigned to the Chambers pursuant to Article 95 (1) and (2) of the Rules of Procedure;
17	28	were in direct actions assigned to Chambers pursuant to Article 95 (1) and (2) of the Rules of Procedure;
29	35	were in Community staff cases;
1	—	concerned the revision of a judgment;
1	—	concerned third party proceedings.

The President of the Court, or the Presidents of the Chambers, made 22 orders for the adoption of interim measures in 1986 and 19 in 1987.

Public sittings

In 1986 the Court held 83 public sittings. The Chambers held 124 public sittings.

In 1987, the Court held 115 public sittings. The Chambers held 117 public sittings.

Cases pending

Cases pending may be analysed as follows:

	31 December 1986		31 December 1987	
Full Court		397		422
Chambers				
— actions by official of the Community	141 [1]		104	
— other cases	88		77	
Total number before the Chambers		229 [1]		181
Total number of pending cases		626		603

[1] Including 44 cases belonging to a large group of related cases.

Duration of proceedings

In cases brought directly before the Court the average length was approximately 20 months for 1986 and 22 months for 1987 (the shortest being 6 months for 1986 and 13 months for 1987). In cases arising from questions referred to the Court by national courts for preliminary rulings, the average length in 1986 was some 15 months and in 1987 some 18 months (including judicial vacations).

Cases brought in 1986 and 1987

In 1986 329 cases and in 1987 395 cases were brought before the Court of Justice. They concerned:

	1986		1987	
1. Treaty infringement proceedings brought by the Commission against a Member State:				
— Belgium	16		7	
— Denmark	1		—	
— Federal Republic of Germany	11		3	
— Greece	11		12	
— Spain	—		1	
— France	8		8	
— Ireland	2		3	
— Italy	18		22	
— Luxembourg	4		2	
— Netherlands	—		4	
— United Kingdom	1		2	
	=	72	=	64
2. Actions brought by the Member States against the Commission:				
— Belgium	—		1	
— Denmark	—		2	
— Federal Republic of Germany	—		1	
— Greece	4		3	
— Spain	1		1	
— France	1		3	
— Ireland	2		—	
— Italy	—		3	
— Netherlands	2		2	
— United Kingdom	4		1	
	=	14	=	17
3. Actions brought by the Member States against the Council and the Commission:				
— Greece	1		—	
— Spain	1		—	
	=	2	=	—
4. Actions brought by the Member States against the Council:				
— Greece	1		—	
— Spain	1		1	
— Portugal	—		1	
— United Kingdom	1		—	
	=	3	=	2
Brought forward	=	91	=	83

	1986		1987	
Report		91		83
5. Actions brought by the Member States against the European Parliament:				
— France	2		—	
— Germany	1		—	
— Luxembourg	1		—	
— Netherlands	1		—	
— United Kingdom	1		—	
	=	6	=	—
6. Actions against the European Parliament:				
— Council against the European Parliament	1		—	
— European Parliament against the Council	—		2	
— The Commission against the Council	2		9	
— The Commission against the European Investment Bank	1		—	
	=	4	=	11
7. Actions brought by natural or legal persons against:				
— the Commission	63		64	
— the Council	9		13	
— the Council and the Commission	6		3	
— the European Parliament	1		—	
— the Federal Republic of Germany	1		—	
	=	80	=	80
8. Actions brought by officials of the Communities		57		77
9. 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		15	
— 2 in 1987 from the cour de cassation				
— 3 in 1986 and 1 in 1987 from the Conseil d'État				
— 10 in 1986 and 12 in 1987 from courts of first instance or of appeal				
Brought forward	= 13	238	= 15	251

	1986		1987	
Report	13	238	15	251
Denmark	4		5	
— 2 in 1986 and 2 in 1987 from the Højesteret				
— 2 in 1986 and 3 in 1987 from courts of first instance or of appeal				
Federal Republic of Germany	18		32	
— 2 in 1986 and 1 in 1987 from the Bundesgerichtshof				
— 1 in 1986 and 2 in 1987 from the Bundesverwaltungsgericht				
— 3 in 1986 and 4 in 1987 from the Bundesfinanzhof				
— 1 in 1986 and 3 in 1987 from the Bundessozialgericht				
— 11 in 1986 and 22 in 1987 from courts of first instance or of appeal				
Greece	2		17	
— 1 from the State Council in 1986				
— 1 in 1986 and 17 in 1987 from Courts of first instance or of appeal				
France	19		36	
— 2 in 1986 and 3 in 1987 from the cour de cassation				
— 17 in 1986 and 33 in 1987 from courts of first instance or of appeal				
Ireland	4		4	
— 3 in 1986 and 1 in 1987 from the Ard-Chúirt				
— 1 in 1986 from the Chúirt Chuarda				
— 1 in 1987 from a court of first instance				
Italy	5		5	
— 2 in 1986 from the Corte Suprema di cassazione				
— 3 in 1986 and 5 in 1987 from courts of first instance or of appeal				
Brougt forward	= 65	238	= 114	251

	1986		1987	
Report	65	238	114	251
Luxembourg	1		3	
— 2 in 1987 from the cour supérieure de justice				
— 1 in 1987 from the Conseil d'État				
— 1 in 1986 from the cour d'appel				
Netherlands	16		19	
— 2 in 1987 from the Raad van State				
— 4 in 1986 and 5 in 1987 from the Hoge Raad				
— 1 in 1987 from the Centrale Raad van Beroep				
— 2 in 1986 and 5 in 1987 from the College van Beroep voor het Bedrijfsleven				
— 10 in 1986 and 5 in 1987 from courts of first instance or of appeal				
Spain	1		1	
— 1 in 1986 and 1 in 1987 from courts of first instance or of appeal				
United Kingdom	8		9	
— 1 in 1986 from the House of Lords				
— 1 in 1987 from the Court of Appeal				
— 7 in 1986 and 8 in 1987 from courts of first instance or of appeal				
	=	91	=	146
Brought forward		= 329		= 397
10. Applications for interim measures . . .		23		20
11. Taxation of costs		2		4
12. Requests for legal aid		6		6
13. Third party proceedings		—		1
14. Interpretations		—		2
Total		360		430

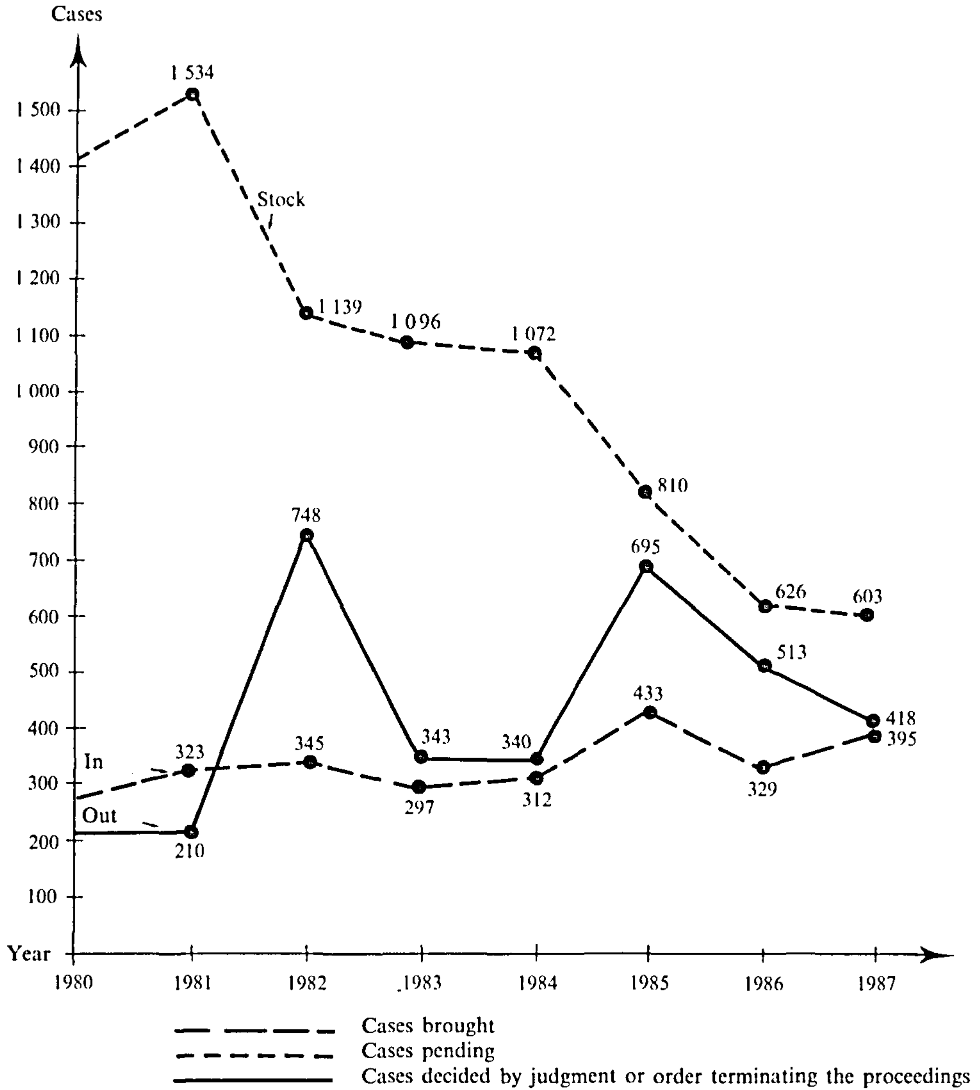
Lawyers

During the sittings held in 1986 and 1987, apart from the representatives or agents of the Council, the European Parliament, the Commission and the Member States, the Court heard:

	1986	*1987*
— lawyers from Belgium	72	72
— lawyers from the Federal Republic of Germany	48	35
— lawyers from Denmark	—	12
— lawyers from Greece	2	14
— lawyers from Spain	—	5
— lawyers from France	35	33
— lawyers from Ireland	11	18
— lawyers from Italy	21	13
— lawyers from Luxembourg	20	13
— lawyers from the Netherlands	10	20
— lawyers from the United Kingdom	23	36

GRAPH 1

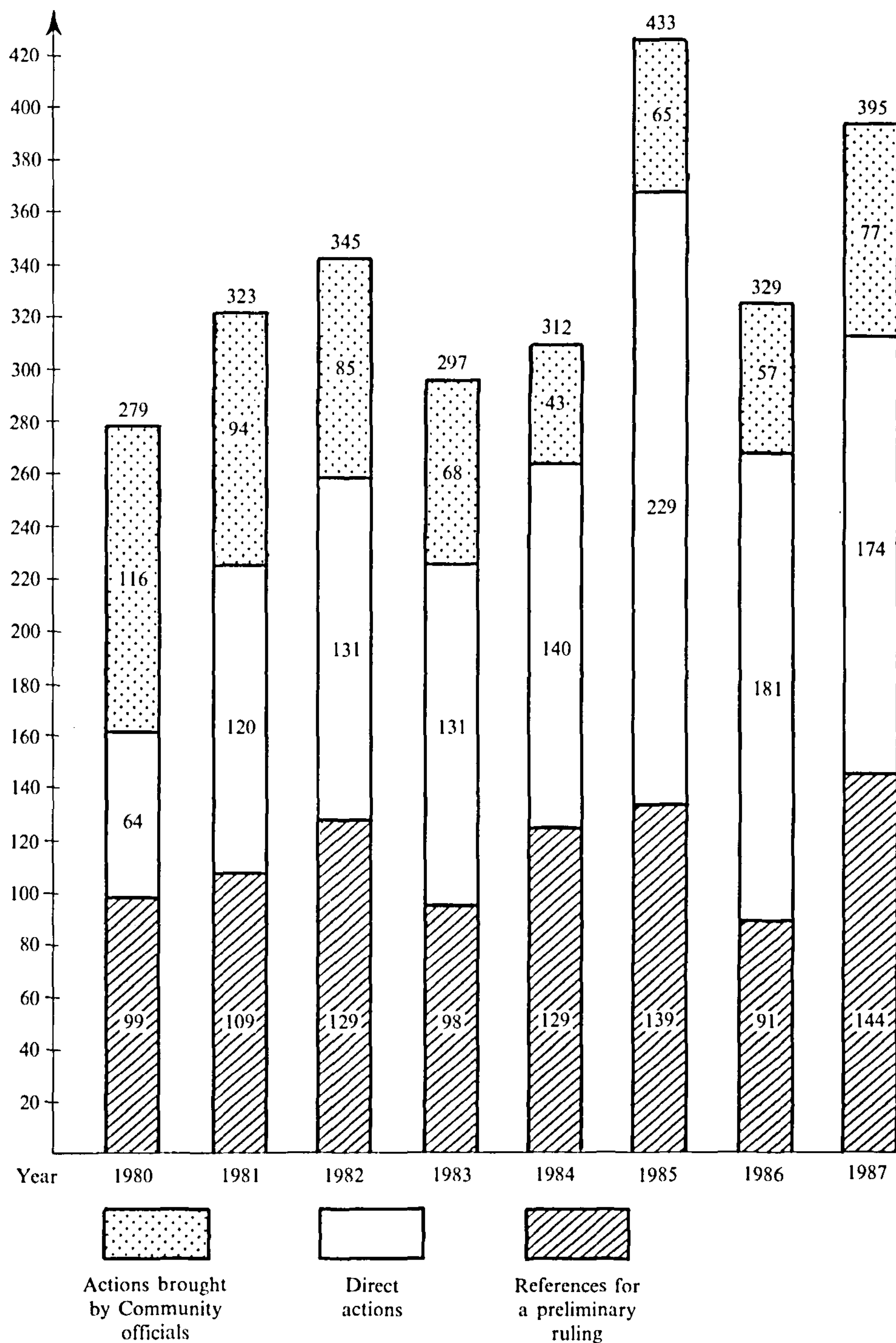
General trend in the number of cases brought, decided and pending



In 1980/81, 112 cases pending belonged to 10 groups of related cases.
In 1982, 691 cases pending belonged to 8 groups of related cases.
In 1983/84, 617 cases pending belonged to 3 groups of related cases.
In 1985, 237 cases pending belonged to 2 groups of related cases.
In 1986, 44 cases pending belonged to 1 group of related cases.

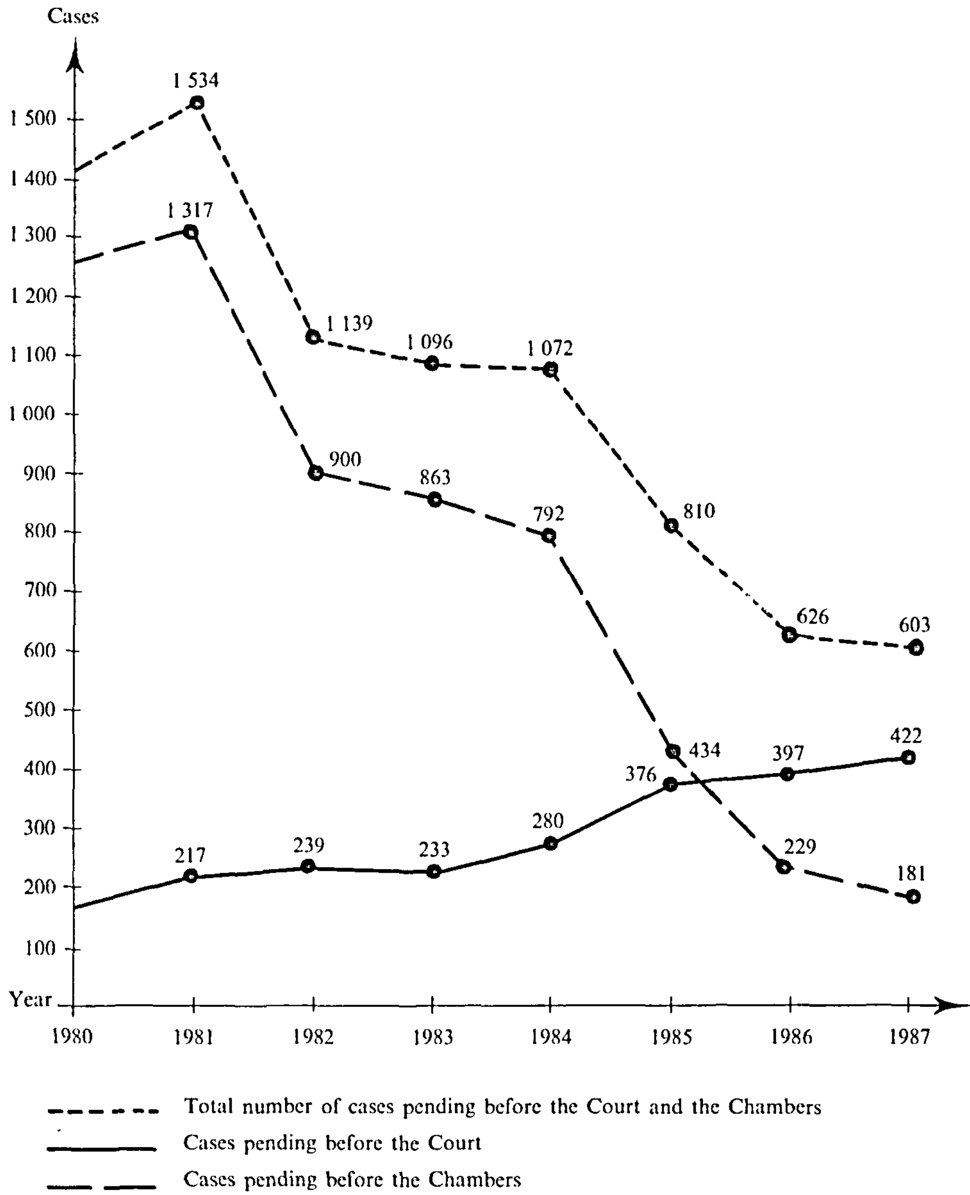
GRAPH 2

Trend in the number of cases brought



GRAPH 3

General trend in the number of cases pending before the Court and the Chambers



GRAPH 4

Trend in the number of judgments given by the Court and the Chambers

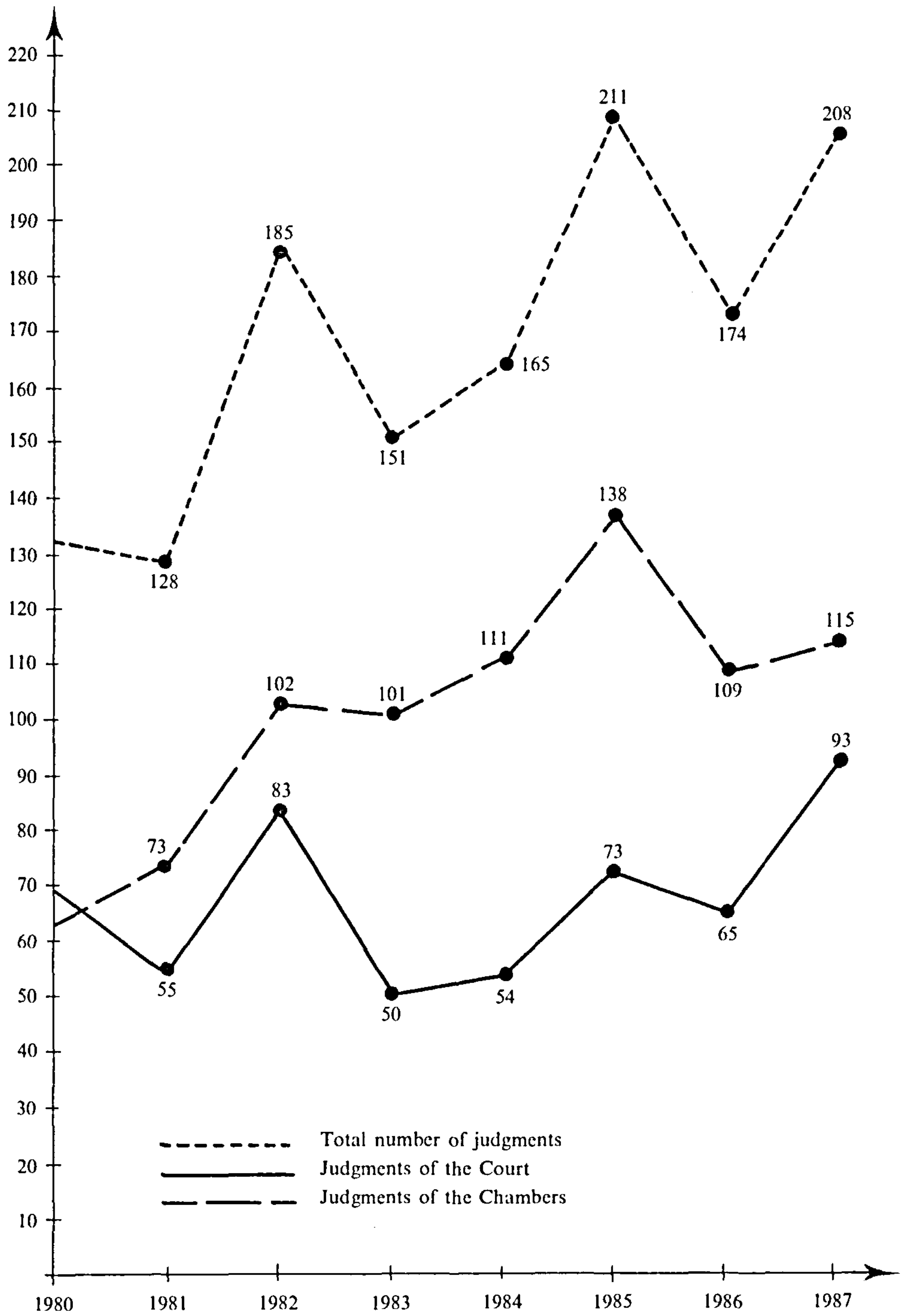


TABLE 1 — 1986

Cases brought since 1953 analysed by subject-matter[1]

Situation at 31 December 1986

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

	Direct actions											
	ESCS				EEC							EAEC
Type of case	Scrap equalization	Transport	Competition	Other[2]	Free movement of goods and customs union	Right of establishment, freedom to supply services	Tax cases	Competition	Social security and free movement of workers[3]	Agricultural policy	Other	
Cases brought	167 –	35 –	28 (1)	266 (27)	144 (10)	40 (5)	60 (8)	212 (17)	14 (3)	284 (34)	492 76)	11 –
Cases removed from the Register	25 –	6 –	11 (1)	104 (21)	48 (5)	17 (6)	12 (4)	15 –	6 (2)	35 (4)	126 (37)	1 –
Cases determined by judgment or order	142 –	29 –	17 –	129 (7)	72 (7)	14 (8)	33 (3)	162 (5)	5 –	186 (10)	208 (21)	3 –
Cases pending	–	–	–	33	24	9	15	35	3	63	158	7

Note: The figures in brackets under the heading 'Cases brought' represent the cases brought during the year.
The figures in brackets under the other heading represent the cases dealt with by the Court during the year.

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

Cases concerning Community staff law	References for preliminary rulings										
	Free movement of goods and customs union	Right of establishment, freedom to supply services	Tax cases	Competition	Social security and freedom of movement of workers [3]	Agricultural policy	Transport	Convention, Article 220 [3]	Privileges and immunities	Other	Total
2212 (57)	350 (9)	43 (3)	101 (13)	68 (7)	281 (16)	428 (18)	31 (2)	58 (3)	8 —	167 (20)	5 500 (329)
1 330 (210)	19 (1)	3 (2)	21 (19)	5 —	18 (2)	22 (2)	4 —	3 —	1 —	7 —	1 839 (316)
740 (42)	316 (22)	35 (3)	62 (4)	56 (3)	240 (20)	375 (16)	25 (5)	51 (3)	7 (1)	128 (17)	3 035 (197)
142	15	5	18	7	23	31	2	4	–	32	626

TABLE 2 — 1986

Cases brought since 1958 analysed by type (EEC Treaty)[1]

Situation at 31 December 1986

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

Type of case	Proceedings brought under														
	Art. 169 and 93	Art. 170	Art. 171	Art. 173				Art. 175	Art. 177			Art. 181	Art. 215	Protocols conventions Art. 220	Grand total[2]
				By governments	Community institutions	By individuals	Total		Validity	Interpretation	Total				
Cases brought	482	2	15	100	12	412	524	31	211	1 259	1 470	9	217	58	2 808
Cases not resulting in a judgment	155	1	3	10	3	49	62	5	6	94	100	3	36	3	368
Cases decided	197	1	4	44	6	265	315	25	185	1 052	1 237	6	154	51	1 990
In favour of applicant[3]	177	1	4	15	3	74	92	3	–	–	–	5	12	–	294
Dismissed on the substance[4]	19	–	–	28	3	129	160	3	–	–	–	1	126	–	309
Dismissed as inadmissible	1	–	–	1	–	62	63	19	–	–	–	–	16	–	99
Cases pending	130	–	8	46	3	98	147	1	20	113	133	–	27	4	450

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

TABLE 3 — 1986

Cases brought since 1953 under the ECSC Treaty[1] and since 1958 under the EAEC Treaty[1]

Situation at 31 December 1986

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

Type of case	Number of proceedings instituted									Total	
	By governments		By Community institutions		By individuals (undertakings)		Art. 41 ECSC	Art. 150 EAEC	Art. 153 EAEC		
	ECSC	EAEC	ECSC	EAEC	ECSC	EAEC	Questions of validity	Questions of interpretations		ECSC	EAEC
Case brought	31	–	–	1	464	8	4	3	2	499	14
Cases not resulting in a judgment	14	–	–	–	132	–	–	–	1	146	1
Cases decided	15	–	–	1	301	1	4	3	1	320	6
In favour of applicants[2]	6	–	–	1	64	1	–	–	–	70	2
Dismissed on the substance[3]	9	–	–	–	176	–	–	–	1	185	1
Dismissed as inadmissible	–	–	–	–	61	–	–	–	–	61	–
Cases pending	2	–	–	–	31	7	–	–	–	33	7

[1] Excluding proceedings by staff and cases concerning the interpretation of the Protocol on Privileges and Immunities and of the Staff Regulations (see Table 1).
[2] In respect of at least one of the applicant's main claims.
[3] This also covers proceedings rejected partly as inadmissible and partly on the substance.

TABLE 4(a) — 1986

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

Nature of proceedings	Cases brought in 1986	Cases dealt with in 1986			Judgments and inter-locutary judgments	Opinions	Orders[1]	Cases pending	
		(a) Total	(b) By judgment, opinion or order	(c) By order to remove from the Register				31.12.1985	31.12.1986
Art. 177 EEC Treaty	88	117	91	26	75	–	2	162	133
Art. 169 EEC Treaty	70	73	30	43	30	–	–	133	130
Art. 171 EEC Treaty	2	1	1	–	1	–	–	7	8
Art. 173 EEC Treaty	69	25	17	8	16	–	2	97	141
Arts. 173 and 175 EEC Treaty	–	1	1	–	–	–	1	1	–
Arts. 173 and 215 EEC Treaty	5	–	–	–	–	–	–	1	6
Art. 175 EEC Treaty	1	–	–	–	–	–	–	–	1
Art. 181 EEC Treaty	–	3	3	–	3	–	–	3	–
Arts. 178 and 215 EEC Treaty	6	9	2	7	3	–	–	24	21
Protocol and Convention on Jurisdiction	3	3	3	–	3	–	–	4	4
Art. 33 EEC Treaty	21	22	6	16	5	–	–	29	28
Art. 35 ECSC Treaty	1	2	1	1	1	–	–	5	4
Art. 38 EEC Treaty	6	5	–	5	–	–	–	–	1
Arts. 246 and 188 EEC Treaty	–	–	–	–	–	–	–	7	7
Interim measures	23	22	22	–	–	–	22	–	1
Taxation of costs	2	2	2	–	–	–	2	–	–
Third party proceedings	–	1	1	–	1	–	–	1	–
Revisions	–	1	1	–	1	–	–	1	–
Legal aid	6	4	4	–	–	–	4	1	3
Art. 179 EEC Treaty, Art. 42 ECSC Treaty and Art. 152 EAEC Treaty	57	252	42	210	35	–	2	337	142
Total	360	543	227	316	174	–	35	813	630

[1] Orders removing cases from the Register are not included.

TABLE 4(b) — 1986

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

Nature of proceedings	Cases brought before the full Court in 1986	Cases brought before a Chamber and referred to the full Court in 1986	Cases dealt with in 1986			Judgments and interlocutory judgments	Opinions	Orde[1]	Cases assigned to a Chamber in 1986	Cases pending	
			(a) Total	(b) By judgment, opinion or order	(c) By order to remove from the Register					31.12.1985	31.12.1986
Art. 177 EEC Treaty	88	1	30	23	7	17	–	2	69	93	83
Art. 169 EEC Treaty	70	–	73	30	43	30	–	–	–	133	130
Art. 171 EEC Treaty	2	–	1	1	–	1	–	–	–	7	8
Art. 173 EEC Treaty	69	–	17	10	7	9	–	2	18	89	123
Arts. 173 and 175 EEC Treaty	–	–	1	1	–	–	–	1	–	1	–
Arts. 173 and 215 EEC Treaty	5	–	–	–	–	–	–	–	2	1	4
Art. 175 EEC Treaty	1	–	–	–	–	–	–	–	–	–	1
Art. 181 EEC Treaty	–	–	–	–	–	–	–	–	2	2	–
Arts. 178 and 215 EEC Treaty	6	–	8	1	7	2	–	–	1	17	14
Protocol and Convention on Jurisdiction	3	–	–	–	–	–	–	–	2	3	4
Art. 33 ECSC Treaty	21	–	11	–	11	–	–	–	12	20	18
Art. 35 ECSC Treaty	1	–	–	–	–	–	–	–	2	4	3
Art. 38 ECSC Treaty	6	–	5	–	5	–	–	–	–	–	1
Arts. 146 and 188 EAEC Treaty	–	7	–	–	–	–	–	–	–	–	7
Interim measures	20	–	19	19	–	–	–	19	–	–	1
Art. 179 EEC Treaty, Art. 42 ECSC Treaty and Art. 152 EAEC Treaty	–	3	6	6	–	6	–	–	2	6	1
Total	292	11	171	91	80	65	–	24	110	376	398

[1] Orders removing cases from the Register are not included.

TABLE 4(c) — 1986

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

Nature of proceedings	Cases brought before the First Chamber in 1986	Cases brought before the full Court or Chamber and assigned to the First Chamber in 1986	Cases dealt with in 1986			Judgments and inter-locutory jugdments	Orders[1]	Cases referred to the Court or a Chamber in 1986	Cases pending	
			(a) Total	(b) By Judgment Opinion or Order	(c) By order to remove from the Register				31.12.1985	31.12.1986
Art. 177 EEC Treaty	–	4	22	13	9	8	–	11	31	2
Art. 173 EEC Treaty	–	–	–	–	–	–	–	–	1	1
Art. 181 EEC Treaty	–	1	1	1	–	1	–	–	–	–
Art. 33 EEC Treaty	–	2	6	3	3	3	–	–	5	1
Legal aid	1	–	1	1	–	–	1	–	1	1
Art. 179 EEC Treaty, Art. 42 ECSC Treaty and Art. 152 EAEC Treaty	13	6	24	14	10	12	–	248	278	25
Total	14	13	54	32	22	24	1	259	316	30

[1] Orders removing cases from the Register are not included.

TABLE 4 (d) — 1986

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

Nature of proceedings	Cases brought before the Second Chamber in 1986	Cases brought before the full Court or Chamber and assigned to the Second Chamber in 1986	Cases dealt with in 1986 (a) Total	(b) By judgment, Opinion or order	(c) By order to remove from the Register	Judgments and inter-locutory judgments	Orders[1]	Cases referred to a Court or a Chamber in 1986	Cases pending 31.12.1985	31.12.1986
Art. 177 EEC Treaty	–	13	8	8	–	8	–	–	7	12
Art. 173 EEC Treaty	–	2	–	–	–	–	–	–	–	2
Art. 181 EEC Treaty	–	–	1	1	–	1	–	–	1	–
Art. 33 ECSC Treaty	–	4	2	2	–	1	–	–	2	4
Art. 35 ECSC Treaty	–	1	–	–	–	–	–	–	–	1
Interim measures	3	–	3	3	–	–	3	–	–	–
Taxation of costs	2	–	2	2	–	–	2	–	–	–
Legal aid	2	–	–	–	–	–	–	–	–	2
Art. 179 EEC Treaty, Art. 42 ECSC Treaty and Art. 152 EAEC Treaty	21	247	204	7	197	5	1	10	24	78
Total	28	267	220	23	197	15	6	10	34	99

[1] Orders removing cases from the Register are not included.

TABLE 4(c) — 1986

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

Nature of proceedings	Cases brought before the Third Chamber in 1986	Case brought before the full Court or Chamber and assigned to the Third Chamber in 1986	Cases dealt with in 1986			Judgments and inter-locutory judgments	Orders[1]	Cases referred to the Court or a Chamber in 1986	Cases pending	
			(a) Total	(b) By judgment, opinion or order	(c) By order to remove from the Register				31.12.1985	31.12.1986
Art. 177 EEC Treaty	–	20	23	23	–	20	–	1	15	11
Art. 173 EEC Treaty	–	–	1	1	–	1	–	–	1	–
Art. 181 EEC Treaty	–	1	1	1	–	1	–	–	–	–
Art. 33 ECSC Treaty	–	1	–	–	–	–	–	–	–	1
Arts. 146 and 188 EAEC Treaty	–	–	–	–	–	–	–	7	7	–
Taxation of costs	2	–	2	2	–	–	2	–	–	–
Art. 179 EEC Treaty, Art. 42 ECSC Treaty and Art. 152 EAEC Treaty	20	2	14	12	2	10	1	11	29	26
Total	22	24	41	39	2	32	3	19	52	38

[1] Orders removing cases from the Register are not included.

TABLE 4 (f) — 1986

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

Nature of proceedings	Cases brought before the Fourth Chamber in 1986	Cases brought before the full Court or Chamber and assigned to the Fourth Chamber in 1986	Cases dealth with in 1986			Judgments and inter-locutory judgments	Orders [1]	Cases referred to the Court of a Chamber in 1986	Cases pending	
			(a) Total	(b) By judg-ment, opinion or order	(c) By order to remove from the Register				31.12.1985 [2]	31.12.1986
Art. 177 EEC Treaty	–	22	13	3	10	3	–	5	5	9
Art. 173 EEC Treaty	–	–	–	–	–	–	–	3	3	–
Art. 33 ECSC Treaty	–	–	–	–	–	–	–	2	2	–
Art. 179 EEC Treaty, Art. 42 ECSC Treaty and Art. 152 EAEC Treaty	3	11	2	1	1	1	–	–	–	12
Total	3	33	15	4	11	4	–	10	10	21

[1] Orders removing cases from the Register are not included.
[2] The Court decided to set up with effect from March 1986 four Chambers of three judges (First, Second, Third and Fourth Chambers) and two chambers of six judges (Fifth and Sixth Chambers). For that reason, cases before the Fourth Chamber, which was composed of five judges until 1 March 1986, were assigned to the Sixth Chamber from that date.

TABLE 4(g) — 1986

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

Nature of proceedings	Cases brought before the Fifth Chamber in 1986	Cases brought before the full Court or Chamber and assigned to the Fifth Chamber in 1986	Cases dealt with in 1986			Judgments and inter-locutory judgments	Orders[1]	Cases referred to the Court or a Chamber in 1986	Cases pending	
			(a) Total	(b) By judg-ment, opinion or order	(c) By order to remove from the Register				31.12.1985	31.12.1986
Art. 177 EEC Treaty	–	7	14	14	–	12	–	1	11	3
Art. 173 EEC Treaty	–	11	4	3	1	3	–	1	3	9
Arts. 173 and 215 EEC Treaty	–	2	–	–	–	–	–	–	–	2
Arts. 178 and 215 EEC Treaty	–	–	1	1	–	1	–	–	7	6
Protocol and Convention on Jurisdiction	–	2	3	3	–	3	–	–	1	–
Art. 33 ECSC Treaty	–	1	1	1	–	1	–	–	–	–
Art. 35 ECSC Treaty	–	1	2	1	1	1	–	–	1	–
Revision	–	–	1	1	–	1	–	–	1	–
Third party proceedings	–	–	–	–	–	–	–	1	1	–
Total	–	24	26	24	2	22	–	3	25	20

[1] Orders removing cases from the Register are not included.

TABLE 4 (h) — 1986

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

Nature of proceedings	Cases brought before the Sixth Chamber in 1986	Cases brought before the full Court or Chamber and assigned to the Sixth Chamber in 1986	Cases dealt with in 1986			Judgments and interlocutory judgments	Orders[1]	Cases referred to the Court or a Chamber in 1986	Cases pending	
			(a) Total	(b) By judgment, opinion or order	(c) By order to remove from the Register				31.12.1985[2]	31.12.1986
Art. 177 EEC Treaty	–	20	7	7	–	7	–	–	–	13
Art. 173 EEC Treaty	–	10	3	3	–	3	–	1	–	6
Art. 178 and 215 EEC Treaty	–	1	–	–	–	–	–	–	–	1
Art. 33 ECSC Treaty	–	6	2	–	2	–	–	–	–	4
Third party proceedings	–	1	1	1	–	1	–	–	–	–
Legal aid	1	–	1	1	–	–	1	–	–	–
Art. 179 EEC Treaty, Art. 42 ECSC Treaty and Art. 152 EAEC Treaty	—	2	2	2	–	1	–	–	–	–
Total	1	40	16	14	2	12	1	1	–	24

[1] Orders removing cases from the Register are not included.

[2] The Court decided to set up with effect 1 March 1986 four chambers of three judges (First, Second, Third and Fourth Chambers) and two Chambers of six judges (Fifth and Sixth Chambers). For that reason, cases before the Fourth Chamber, which was composed, of five judges until 1 March 1986, were assigned to the Sixth Chamber from that date.

TABLE 1 — 1987

Cases brought since 1953 analysed by subject-matter[1]

Situation at 31 December 1987

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

Type of case	Direct actions											
	ECSC				EEC							EAEC
	Scrap equalization	Transport	Competition	Other[2]	Free movement of goods and customs union	Right of establishment, freedom to supply services	Tax cases	Competition	Social security and free movement of workers[3]	Agricultural policy	Other	
Cases brought	167 –	35 –	28 –	290 (24)	158 (14)	45 (5)	68 (8)	225 (13)	15 (1)	317 (33)	566 (74)	13 (2)
Cases removes from the Register	25 –	6 –	11 –	120 (16)	52 (4)	19 (2)	16 (4)	23 (8)	7 (1)	38 (3)	172 (46)	1 –
Cases determined by judgment or order	142 –	29 –	17 –	143 (14)	78 (6)	16 (2)	38 (5)	167 (5)	6 (1)	219 (33)	263 (55)	10 (7)
Cases pending	–	–	–	27	28	10	14	35	2	60	131	2

Note: The figures in brackets under the heading 'Cases brought' represent the cases brought during the year.
The figures in brackets under the other headings represent the cases dealt with by the Court during the year.

[1] Cases concerning several subjects are classified under the most important heading.
[2] Levies investment declarations, tax charges, miners' bonuses.
[3] Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (the 'Brussels lonvention').

Cases concerning Community staff law	References for preliminary rulings										
	Free movement of goods and customs union	Right of establishment, freedom to supply services	Tax cases	Competition	Social security and freedom of movement of workers[3]	Agricultural policy	Transport	Convention, *Article* 220[4]	Privileges and immunities	Other	Total
2 289 (77)	373 (23)	48 (5)	129 (28)	77 (9)	304 (23)	464 (136	31 –	62 (4)	8 –	183 (16)	5 895 (395)
1 340 (10)	21 (2)	3 –	22 (1)	5 –	20 (2)	23 (1)	4 –	4 (1)	1 –	8 (1)	1 941 (102)
845 (105)	325 (9)	37 (2)	65 (3)	60 (4)	260 (20)	396 (21)	27 (2)	54 (3)	7 –	147 (19)	3 351 (316)
104	27	8	42	12	24	45	–	4	–	28	603

TABLE 2 — 1987

Cases brought since 1958 analysed by type (EEC Treaty)[1]

Situation at 31 December 1987

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

Type of case	Proceedings brought under														
	Arts 169 and 93	Art. 170	Art. 171	Art. 173				Art. 175	Art. 177			Art. 181	Art. 215	Protocols conventions Art. 220	Grand total[2]
				By governments	By Community institutions	By individuals	Total		Validity	Interpretation	Total				
Cases brought	545	2	16	119	21	464	604	34	220	1 388	1 608	9	218	62	3 098
Cases not resulting in a judgment	198	1	4	11	4	65	80	5	8	99	107	3	44	4	446
Cases decided	236	1	5	67	7	296	370	25	198	1 114	1 312	6	167	54	2 176
In favour of applicant[3]	211	1	5	33	4	77	114	3	–	–	–	5	12	–	351
Dismissed on the substance[4]	24	–	–	32	3	143	178	3	–	–	–	1	137	–	343
Dismissed as inadmissible	1	–	–	2	–	76	78	19	–	–	–	–	18	–	116
Cases pending	111	–	7	41	10	103	154	4	14	175	189	–	7	4	476

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

TABLE 3 — 1987

Cases brought since 1953 under the ECSC Treaty[1] and since 1958 under the EAEC Treaty[1]

Situation at 31 December 1987

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

Type of case	Number of proceedings instituted									Total	
	By governments		By Community institutions		By individuals (undertakings)		Art. 41 ECSC	Art. 150 EAEC	Art. 153 EAEC		
	ECSC	EAEC	ECSC	EAEC	ECSC	EAEC	Questions of validity	Questions of interpretation		ECSC	EAEC
Cases brought	31	–	–	1	488	9	4	4	3	523	17
Cases not resulting in a judgment	14	–	–	–	148	–	–	–	1	162	1
Cases decided	16	–	–	1	314	8	4	3	1	334	13
In favour of applicants[2]	7	–	–	1	69	1	–	–	–	76	2
Dismissed on the substance[3]	9	–	–	–	183	–	–	–	1	192	–
Dismissed as inadmissible	–	–	–	–	62	7	–	–	–	62	7
Cases pending	1	–	–	–	26	1	–	1	1	27	3

[1] Excluding proceedings by staff and cases concerning the interpretation of the Protocol on Privileges and Immunities and of the Staff Regulations (see Table 1).
[2] In respect of at least one of the applicant's main claims.
[3] This also covers proceedings rejected partly as inadmissible and partly on the substance.

TABLE 4(a) — 1987

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

Nature of proceedings	Cases brought in 1987	Cases dealt with in 1987			Judgments and interlocutory judgments	Opinions	Orders[1]	Cases pending	
		(a) Total	(b) By judgment, opinion or order	(c) By order to remove from the Register				31.12.1986	31.12.1987
Art. 177 EEC Treaty	139	87	80	7	68	–	–	133	185
Art. 169 EEC Treaty	63	82	41	41	41	–	-	130	111
Art. 171 EEC Treaty	1	2	1	1	1	–	–	7	7
Art. 173 EEC Treaty	80	70	52	18	38	–	6	141	151
Arts 173 and 215 EEC Treaty	–	3	2	1	1	–	–	6	3
Art. 175 EEC Treaty	3	–	–	–	–	–	–	1	4
Arts 178 and 215 EEC Treaty	1	18	11	7	8	–	–	21	4
Protocol and Convention on Jurisdiciton	4	4	3	1	3	–	–	4	4
Art. 33 ECSC Treaty	23	27	11	16	10	–	–	28	24
Art. 35 ECSC Treaty	1	3	3	–	1	–	1	4	2
Art. 38 ECSC Treaty	–	–	–	–	–	–	–	1	1
Art. 150 EAEC Treaty	1	–	–	–	–	–	–	–	1
Art. 153 EAEC Treaty	1	–	–	–	–	–	–	–	1
Arts 146 and 188 EAEC Treaty	1	7	7	–	1	–	–	7	1
Interim measures	20	19	19	–	–	–	19	1	2
Taxation of costs	4	3	3	–	–	–	3	–	1
Third party proceedings	1	1	1	–	–	–	1	–	–
Legal aid	6	5	5	–	–	–	5	3	4
Interpretation	2	–	–	–	–	–	–	–	2
Art. 179 EEC Treaty, Art. 42 ECSC Treaty and Art. 152 EAEC Treaty	77	115	105	10	36	–	12	142	104
Total	428	446	344	102	208	–	47	630	612

[1] Orders removing cases from the Register are not included.

TABLE 4 (b) — 1987

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

Nature of proceedings	Cases brought before the full Court in 1987	Cases brought before a Chamber and referred to the full Court in 1987	Cases dealt with in 1987			Judgments and inter-locutory judgments	Opinions	Orders[1]	Cases assigned to a Chamber in 1987	Cases pending	
			(a) Total	(b) By judgment, opinion or order	(c) By order to remove from the Register					31.12.1986	31.12.1987
Art. 177 EEC Treaty	139	1	28	22	6	18	–	–	61	83	134
Art. 169 EEC Treaty	63	–	82	41	41	41	–	–	–	130	111
Art. 171 EEC Treaty	1	–	2	1	1	1	–	–	–	8	7
Art. 173 EEC Treaty	80	4	52	35	17	23	–	6	20	123	135
Arts. 173 and 215 EEC Treaty	–	–	1	–	1	–	–	–	2	4	1
Art. 175 EEC Treaty	3	–	–	–	–	–	–	–	1	1	3
Arts. 178 and 215 EEC Treaty	1	–	10	9	1	6	–	–	2	14	3
Protocol and Convention on Jurisdiction	4	–	2	1	1	1	–	–	3	4	3
Art. 33 ECSC Treaty	23	5	5	–	5	–	–	–	20	18	21
Art. 35 ECSC Treaty	1	–	2	2	–	1–	–	–	1	3	1
Art. 38 ECSC Treaty	–	–	–	–	–	–	–	–	–	1	1
Art. 150 EAEC Treaty	1	–	–	–	–	–	–	–	–	–	1
Art. 153 EAEC Treaty	1	–	–	–	–	–	–	–	–	–	1
Arts. 146 and 188 EAEC Treaty	1	–	7	7	–	1	–	–	1	7	–
Interim measures	14	–	13	13	–	–	–	13	–	1	2
Art. 179 EEC Treaty, Art. 42 ECSC Treaty and Art. 152 EAEC Treaty	–	–	1	1	–	1	–	–	–	1	–
Total	332	10	205	132	73	93	–	19	111	398	424

[1] Orders removing cases from the Register are not included.

TABLE 4(c) — 1987

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

Nature of proceedings	Cases brought before the First Chamber in 1986	Cases brought before the full Court or Chamber and assigned to the First Chamber in 1987	Case dealt with in 1987			Judgments and inter-locutory judgments	Orders[1]	Cases referred to the Court or a Chamber in 1987	Cases pending	
			(a) Total	(b) By judg-ment, opinion or order	(c) By order to remove from the Register				31.12.1986	31.12.1987
Art. 177 EEC Treaty	–	8	5	5	–	5	–	–	2	5
Art. 173 EEC Treaty	–	–	1	1	–	1	–	–	1	–
Art. 33 EEC Treaty	–	–	1	1	–	1	–	–	1	–
Interim measures	2		2	2	–	–	2	–	–	–
Taxation of costs	1	–	1	1	–	–	1	–	–	–
Legal aid	–	–	1	1	–	–	1	–	1	–
Art. 179 EEC Treaty, Art. 42 ECSC Treaty and Art. 152 EAEC Treaty	24	3	23	16	7	15	1	1	25	28
Total	27	11	34	27	7	22	5	1	30	33

[1] Orders removing cases from the Register are not included.

TABLE 4(d) — 1987

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

Nature of proceedings	Cases brought before the Second Chamber in 1987	Cases brought before the full Court or Chamber and assigned to the Second Chamber in 1987	Cases dealt with in 1987 (a) Total	(b) By judgment, opinion or order	(c) By order to remove from the Register	Judgments and interlocutory judgments	Orders [1]	Cases referred to the Court or Chamber in 1987	Cases pending 31.12.1986	31.12.1987
Art. 177 EEC Treaty	–	8	14	14	–	13	–	1	12	5
Art. 173 EEC Treaty	–	–	1	1	–	1	–	1	2	–
Arts. 178 and 215 EEC Treaty	–	2	1	1	–	1	–	–	–	1
Art. 33 ECSC Treaty	–	–	4	4	–	4	–	–	4	–
Art. 35 ECSC Treaty	–	–	–	–	–	–	–	–	1	1
Interim measures	1	–	1	1	–	–	1	–	–	–
Taxation of costs	1	–	1	1	–	–	1	–	–	–
Legal aid	5	–	3	3	–	–	3	–	2	4
Art. 179 EEC Treaty, Art. 42 ECSC Treaty and Art. 152 EAEC Treaty	18	1	58	58	–	7	5	–	78	39
Total	25	11	83	83	–	26	10	2	99	50

[1] Orders removing cases from the Register are not included.

TABLE 4 (e) — 1987

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

Nature of proceedings	Cases brought before the Third Chamber in 1987	Cases brought before the full Court or Chamber and assigned to the Third Chamber in 1987	Cases dealt with in 1987			Judgments and interlocutory judgments	Orders[1]	Cases referred to the Court or a Chamber in 1987	Cases pending	
			(a) Total	(b) By judgment, opinion or order	(c) By order to remove from the Register				31.12.1986	31.12.1987
Art. 177 EEC Treaty	–	9	13	13	–	13	–	–	11	7
Art. 173 EEC Treaty	–	3	–	–	–	–	–	3	–	–
Art. 33 ECSC Treaty	–	–	1	1	–	1	–	–	1	–
Art. 35 ECSC Treaty	–	1	1	1	–	–	1	–	–	–
Art. 145 EAEC Treaty	–	1	–	–	–	–	–	–	–	1
Interim measures	1	–	1	1	–	–	1	–	–	–
Taxation of costs	1	–	–	–	–	–	–	–	–	1
Art. 179 EEC Treaty, Art. 42 ECSC Treaty and Art. 152 EAEC Treaty	19	–	23	22	1	8	5	1	26	21
Total	21	14	39	38	1	22	7	4	38	30

[1] Orders removing cases from the Register are not included.

TABLE 4 (f) — 1987

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

Nature of proceedings	Cases brought before the Fourth Chamber in 1987	Cases brought before the full Court or Chamber and assigned to the Fourth Chamber in 1987	Cases dealt with in 1987			Judgments and interlocutory judgments	Orders[1]	Cases referred to the Court or a Chamber in 1987	Cases pending	
			(a) Total	(b) By judgment, opinion or order	(c) By order to remove from the Register				31.12.1986[2]	31.12.1987
Art. 177 EEC Treaty	–	9	12	12	–	7	–	–	9	6
Interim measures	2	–	2	2	–	–	2	–	–	–
Taxation of costs	1	–	1	1	–	–	1	–	–	–
Interpretations	2	–	–	–	–	–	–	–	–	2
Art. 179 EEC Treaty, Arts 42 and 152 EAEC Treaty	16	–	10	8	2	5	1	2	12	16
Total	21	9	25	23	2	12	4	2	21	24

[1] Orders removing cases from the Register are not included.

TABLE 4 (g) — 1987

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

Nature of proceedings	Cases brought before the Fifth Chamber in 1987	Cases brought before the full Court or Chamber and assigned to the Fifth Chamber in 1987	Cases dealt with in 1987			Judgments and inter-locutory judgments	Orders[1]	Cases referred to the Court or a Chamber in 1987	Cases pending	
			(a) Total	(b) By judg-ment, opinion or order	(c) By order to remove from the Register				31.12.1986	31.12.1987
Art. 177 EEC Treaty	–	12	3	3	–	3	–	–	3	12
Art. 173 EEC Treaty	–	13	10	9	1	8	–	–	9	12
Arts 173 and 215 EEC Treaty	–	1	2	2	–	1	–	–	2	1
Art. 175 EEC Treaty	–	1	–	–	–	–	–	–	–	1
Art. 33 ECSC Treaty	–	2	1	1	–	1	–	–	–	1
Total	–	29	16	15	1	13	–	–	14	27

[1] Orders removing cases from the Register are not included.

TABLE 4(h) — 1987

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

Nature of proceedings	Cases brought before the Sixth Chamber in 1987	Cases brought before the full Court or Chamber and assigned to the Sixth Chamber in 1987	Cases dealt with in 1987			Judgments and inter-locutory judgments	Orders[1]	Cases referred to the Court or a Chamber in 1987	Cases pending	
			(a) Total	(b) By judg-ment, opinion or order	(c) By order to remove from the Register				31.12.1986	31.12.1987
Art. 177 EEC Treaty	–	16	12	11	1	9	–	1	13	16
Art. 173 EEC Treaty	–	4	6	6	–	5	–	–	6	4
Arts 173 and 215 EEC Treaty	–	1	–	–	–	–	–	–	–	1
Arts 178 and 215 EEC Treaty	–	–	7	–	6	–	–	–	7	–
Protocol and Convention on Jurisdiction	–	3	2	2	–	2	–	–	–	1
Art. 33 ECSC Treaty	–	18	15	4	11	3	–	5	4	2
Third party proceedings	1	–	1	1	–	–	1	–	–	–
Legal aid	1	–	1	1	–	–	1	–	–	–
Total	2	42	44	26	18	20	2	6	30	24

[1] Orders removing cases from the Register are not included.

TABLE 5

Requests to the Court for preliminary rulings

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

Classified by Member State

Year	Belgium	Denmark	Germany	Greece	Spain	France	Ireland	Itlay	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
Total	186	25	569	19	2	312	20	174	21	275	–	76	1 679

B — *Remarks on cases decided by the Court in 1986 and 1987 — selected judgments*

Agriculture

Case 119/86: *Kingdom of Spain* v *Council of the European Communities and Commission of the European Communities* — Judgment of 20 October 1987 (Agricultural products — General rules and detailed arrangements for the application of the supplementary mechanism applicable to trade provided for in the Act of Accession of the Kingdom of Spain)

The Kingdom of Spain brought an action for the annulment of a series of regulations: Council Regulation (EEC) no 569/86, Commission Regulation (EEC) No 574/86, Commission Regulation (EEC) No 624/86, Commission Regulation (EEC) No 641/86, Commission Regulation (EEC) No 643/86 and Commission Regulation (EEC) No 647/86.

A — *Subject-matter of the dispute*

The Kingdom of Spain sought a declaration that, by adopting the rules for the application of the supplementary mechanism applicable to trade and by requiring, in particular, recourse to be had to a system of licences and securities for the export of certain agricultural products from Spain to other Member States of the Community, the Council and the Commission infringed the provisions of the EEC Treaty on the free movement of goods, the 'standstill' rules (which preclude the adoption of any new restrictive measures) and the principles of legal certainty, proportionality and Community preference.

The supplementary trade mechanism (the 'STM') is applicable to trade between the Community and Spain and was established by Article 81 of the Act concerning the Conditions of Accession of the Kingdom of Spain and the Portuguese Republic ('the Act of Accession'). The STM is to remain in force from 1 March 1986 to 31 December 1995 and applies to the products listed in Article 81 (2) of the Act of Accession.

Article 83 of the Act of Accession provides for a forward timetable to be drawn up with regard to the development of trade and for an 'indicative import ceiling' to be fixed.

In order to ensure steady progress in trade, an annual progression rate with regard to the indicative ceilings is to be determined.

According to Article 85 of the Act of Accession, protective measures may be adopted 'should the examination of developments in intra-Community trade show that a significant increase in imports has taken place or is forecast and if

that situation should result in the indicative import ceiling for the product being reached or exceeded for the current marketing year...'.

Council Regulation No 569/86, the first of the contested regulations, lays down general rules for the application of the STM.

Article 1 of that regulation provides that the products subject to the STM may be released for consumption only on presentation of an 'STM certificate or licence' issued by the Spanish authorities in respect of Spanish products imported into the Community of Ten.

The certificates or licences are to be issued subject to the provision of a security. The security is to be wholly or partly forfeit if the transaction is not completed within the prescribed period or is completed only in part.

The other contested regulations lay down detailed rules for the application of the system established by Regulation No 569/86.

In support of its application, the applicant relied on six submissions.

B — *Free movement of goods*

The applicant pointed out that Article 30 of the EEC Treaty forms an integral part of the common organizations of the market and prohibits any measures likely to hinder intra-Community trade.

It maintained, more specifically, that the Act of Accession does not authorize the establishment of a generalized system of licences and securities, as provided for by the contested regulations.

It emphasized that the system established by the contested regulations is restrictive inasmuch as it requires both the production of an STM certificate or licence and the provision of a corresponding security as a precondition for the release of the goods for consumption in the importing Member State.

The Council and Commission contended that the provisions of the Act of Accession relating to the STM constitute a provisional derogation from the rules of the EEC Treaty on the free movement of goods.

In those circumstances, the problem which arose was not to ascertain whether or not the chosen system restricted intra-Community trade but whether there was a legal basis for it in the provisions of the Act of Accession.

The Court pointed out that it had to consider the question whether the system of licences and securities, which was contested by the applicant, formed an integral part of the transitional measures provided for by the Act of Accession. If that was the case, the system was not open to criticism, in principle, on the ground that it

was contrary to the provisions of the EEC Treaty and the Act of Accession relating to the free movement of goods.

The Court considered that the system of securities had not been shown to have a purpose other than that of ensuring that the imports in respect of which the certificates or licences had been requested were actually effected, as the Community authorities needed that knowledge to enable them to supervise the development of trade on the basis of reliable and swiftly available data.

It followed that the system of licences and securities had to be regarded as forming an integral part of the transitional measures provided for by the Act of Accession.

The Court therefore held that the submission alleging a breach of the principle of the free movement of goods had to be rejected.

C — *Legal certainty*

The applicant alleged that the system established by the contested regulations left traders in a state of grave uncertainty as to whether they could carry out their planned export operations.

In support of its argument, the applicant contended that:

(i) Spanish exporters were obliged to rely on the diligent cooperation of their contracting partners;

(ii) the rights conferred by STM licences or certificates were uncertain, in so far as they could be withdrawn by one or more Member States at their discretion;

(iii) the conclusion of a large number of contracts was uncertain.

The Court considered that there was no basis in the applicable provisions for the argument alleging that importers established in a Member State of the Community of Ten were required to cooperate.

Next, the restriction or suspension of imports was not discretionary but was subject to the fulfilment of specific conditions laid down in Articles 5 and 6 of Regulation No 569/86.

With regard to the period of five working days prescribed for the issue of STM licences or certificates, the establishment of such a period pursued a legitimate purpose, namely to facilitate the adoption of appropriate measures in the event of market disturbances or the threat of market disturbances.

The Court therefore considered that the submission alleging a breach of the principle of legal certainty could not be accepted.

D — *Principle of proportionality*

The applicant contended that the system of licences and securities was superfluous and, in any event, out of proportion to the objective pursued.

It emphasized that the fact that the system established by the contested regulations was disproportionate was apparent from a comparison with other intra-Community supervisory measures, in particular those based on Article 115 of the EEC Treaty in respect of products originating in non-Member countries and released for free circulation within the Community. Those measures were less stringent inasmuch as they did not provide for the provision of security.

The Court considered that the comparison made by the applicant was not pertinent. Article 115 of the Treaty did not establish a system for monitoring trade but empowered the Commission, in the specific circumstances described therein, to authorize the Member States to take the protective measures 'the conditions and details of which it shall determine'.

In the light of all the information in the file, the Court considered that the restriction on the possibility of assigning STM certificates or licences stemmed from the concern to ensure in so far as was possible that the resultant data was reliable, in accordance with a system which had already stood the test of time.

In those circumstances, that restriction could not be regarded as out of proportion to the legitimate aim which it pursued.

The Court therefore considered that the allegation that the principle of proportionality had been contravened had to be rejected.

E — *The 'standstill' obligation*

This submission encompassed an argument based on the fact that, for two of the three categories of products covered by the STM, namely fruit and vegetables and new potatoes, the contested regulations established a system which was more restrictive for Spanish imports into the Community of Ten than the system formerly applicable.

The Court pointed out that the contested system formed an integral part of a transitional mechanism expressly provided for in the Act of Accession.

It therefore considered that the submission alleging the existence of a standstill provision had to be rejected.

F — *Community preference*

According to the applicant, the system of licences and securities placed Spanish products in the same position as products imported from non-Member countries,

even thought Spain has been a full Member of the Community since 1 January 1986. The applicant recalled once again, in connection with this submission, that the previous mechanism was less restrictive for fruit and vegetables and for new potatoes. It followed, in its view, that the principle of Community preference had been contravened.

The Court pointed out that the arguments based on the situation which existed before accession were not relevant, since the Community was under no obligation to allow that situation to remain unchanged.

The Act of Accession effectively ensured a Community preference in providing that the application of the STM could in no circumstances lead to products from the new Member States which were subject to it being treated less favourably than those from the most favoured non-Member countries.

The Court considered that the aforesaid provision had not been infringed by the contested regulations.

It therefore concluded that the submission alleging a breach of the principle of Community preference could not be accepted.

G — *Lack of a statement of reasons*

This submission was based on the preamble to Regulation No 569/86, according to which 'the additional guidelines agreed on at the conference contain directions' relating to the way in which the STM was to operate; those directions provided for the issue of certificates or licences involving the provision of a security guaranteeing the completion of the transactions in respect of which the certificates or licences were requested.

The applicant stated that the Conference merely inserted in the minutes a unilateral declaration made by the Community delegation. That declaration contained a reference to the 'additional guidelines' concerning the operation of the STM, which were mentioned in the preamble to Regulation No 569/85, but it was not 'agreed on at the Conference', as Spain in fact objected to the insertion of a joint declaration in the Act of Accession or in the minutes of the Conference.

The Court considered that the contested recital contained a reference that was factually incorrect. However, that formal defect could not lead to the annulment of Regulation No 569/86 in view of the fact that the other recitals in the preamble to that regulation contained a statement of reasons which was in itself sufficient to justify the establishment of the supervisory system provided for therein.

The Court held as follows:

'1. The application is dismissed.
2. The applicant is ordered to pay the costs.'

* * *

Mr Advocate General M. Darmon had delivered his Opinion at the sitting on 16 June 1987.

His conclusion was as follows:

'1. The application of the Kingdom of Spain seeking the annulment of Council Regulation No 569/86 and of Commission Regulations Nos 574/86, 624/86, 641/86, 643/86 and 647/86 should be dismissed;

2. The costs of the case should be borne by the applicant.'

Aid granted by States

Case 52/84: *Commission of the European Communities* v *Belgium* — Judgment of 15 January 1986 (State aid — Acquisition of a holding in an undertaking — Decision not contested within the prescribed period)

The Commission of the European Communities brought an action for a declaration that, by not complying within the prescribed period with Commission Decision No 83/130 of 16 February 1983 on aid granted by the Belgian Government to an undertaking manufacturing ceramic sanitary ware, the Kingdom of Belgium failed to fulfil its obligations under the Treaty.

In the disputed decision the Commission found that the acquisition by the public regional holding company of a holding worth BF 475 million in a ceramics firm in La Louvière constituted aid of a type incompatible with the common market within the meaning of Article 92 of the Treaty and hence should be withdrawn.

The decision was notified to the Kingdom of Belgium by letter of 24 February 1983.

No action was brought to have the decision declared void.

Belgium stressed the serious social consequences of closing down the undertaking in question.

It observed that Belgian law did not allow share capital to be refunded except by way of withdrawal from company profits, which in this case was precluded by the results reported by the undertaking.

Belgium asked the Commission what it meant by 'withdrawal of the aid'. Before the Court, the Commission contended that having found that the aid in question was incompatible with the common market, it was obliged, under Article 93 (2) of the Treaty, to require the Member State concerned to abolish or alter the aid.

The Commission asked whether the Belgian Government's submission did not amount to challenging the validity of the decision, which is no longer possible since the decision was not contested within the period laid down in the third paragraph of Article 173 of the Treaty.

In any event, the Commission maintained that the submissions in question were unfounded. The decision was sufficiently precise to be put into effect and the Belgian Government could not plead requirements of Belgian law in order to justify its failure to comply with obligations arising from Community decisions.

The Court has consistently held that after the expiry of the period laid down in the third paragraph of Article 173 of the Treaty a Member State which is the addressee of a decision adopted under the first subparagraph of Article 93 (2) may not call into the question the validity of that decision in the course of proceedings commenced pursuant to the second subparagraph of that Article. The Court concluded that such was indeed the situation in the present case.

In those circumstances, the only defence left to the Belgian Government in opposing the application for a declaration that it failed to fulfil its obligations would be to plead that it was absolutely impossible to implement the decision properly.

The Court held that the demand made by the decision was sufficiently precise to be complied with. The fact that on account of the undertaking's financial position, the Belgian authorities could not recover the sum paid did not constitute proof that implementation was impossible, because the Commission's objective was to abolish the aid, and, as the Belgian Government admitted, that objective could be attained by proceedings for winding up the company, which the Belgian authorities could institute in their capacity as shareholder or creditor.

The Court added that the fact that the only defence which a Member State to which a decision has been addressed can raise in legal proceedings such as these is that implementation of the decision is abolutely impossible did not prevent that State — if, in giving effect to the decision, it encounters unforeseen or unforeseeable difficulties or perceives consequences overlooked by the Commission — from submitting those problems for consideration by the Commission, together with proposals for suitable amendments.

The Court declared as follows:

'1. By not complying within the prescribed period with Commission Decision No 83/130 of 16 February 1983 on aid granted by the Belgian Government to a firm manufacturing ceramic sanitary ware, the Kingdom of Belgium has failed to fulfil an obligation under the Treaty.

2. The Kingdom of Belgium is ordered to pay the costs.'

* * *

Mr Advocate General Carl Otto Lenz delivered his Opinion at the sitting on 21 November 1985.

He proposed that the Court give judgment as follows:

'1. By not complying with Commission Decision No 83/130/EEC of 16 February 1983 on aid granted by the Belgian Government to a firm manufacturing ceramic sanitary ware, the Kingdom of Belgium has failed to fulfil an obligation under the Treaty.

2. The Kingdom of Belgium is ordered to pay the costs.'

Budget of the European Communities

Case 34/86 — *Council of the European Communities, supported by the Federal Republic of Germany, the French Republic and the United Kingdom of Great Britain and Northern Ireland* v *European Parliament* — Judgment of 3 July 1986 (Budgetary procedure — Power of the European Parliament to increase non-compulsory expenditure)

By an application lodged on 11 February 1986 the Council of the European Communities brought an action against the European Parliament for the partial, or in the alternative, total annulment of the general budget of the European Communities for 1986 and also for the annulment of the act of 18 December 1985 whereby the President of the European Parliament declared the final adoption of that budget.

The Council, as well as the interveners, complained that the European Parliament increased, as a result of amendments voted at the second reading of the draft budget, certain budget appropriations in breach of the Treaties. Those increases bring about a rise in the non-compulsory expenditure in the 1986 budget as compared with the like expenditure for 1985 which exceeds the maximum rate of increase.

Admissibility

The Parliament denied that the Council may rely on Article 173 of the EEC Treaty for the purposes of seeking annulment of the budget as an act of the European Parliament.

The Court concluded that the budgetary nature of the contested acts did not have the effect of rendering the application inadmissible. It follows that the submissions put forward against the admissibility of the application had to be rejected in their entirety.

Substance

The Court stated that it was appropriate to examine those provisions of Article 203 of the EEC Treaty which were at the centre of the dispute between the parties and also the application which was made of the said provisions during the

procedure followed for the establishment of the budget for the financial year 1986. Paragraph (9) of that article concerns the fixing of what is known as non-compulsory expenditure, that is to say expenditure other than that necessarily resulting from the Treaty or from acts adopted in accordance therewith.

The Parliament is entitled to amend the budget as regards non-compulsory expenditure and the Council may modify each of the amendments so adopted, but the Parliament may, in the course of the second reading, amend or reject the modifications made by the Council to those amendments.

Article 203 (9) provides for a limit to the increase which may be made in non-compulsory expenditure. That limit is expressed by a 'maximum rate of increase' which the Community institutions are required to respect during the budgetary procedure.

The maximum rate of increase is to be fixed annually by the Commission on the basis of three objective factors, namely the trend of the gross national product, the average variation in the national budgets and the trend of the cost of living.

For the financial year 1986 the Commission declared that the maximum rate of increase amounted to 7.1 % but added that certain exceptions would have to be made to that principle, in respect, *inter alia,* of the absorption of the 'cost of the past' and of the need to ensure that the three structural Funds were covered financially.

In adopting the budget at its first reading the Council remained within the maximum rate of increase of 7.1 % but stated that it was convinced, with regard to the 'cost of the past' that 'this is a complex issue needing to be resolved by both parts of the budgetary authority together, and that any solution will perforce be spread over a number of financial years'.

It was common ground that the amendments adopted by the Parliament at the first reading gave rise to a total increase in non-compulsory expenditure appreciably in excess of the aforementioned margin for manœuvre.

At its second reading of the budget the Council decided to increase non-compulsory expenditure, in relation to the figures adopted in the draft budget, by ECU 1 199 million for commitment appropriations and ECU 1 251 million for payment appropriations.

In commencing the debates relating to the second reading of the budget, the Parliament let it be known that it considered the modifications accepted by the Council to be too modest and that it was not prepared to agree either to the amounts adopted by the Council at its second reading or to the modified figures of the maximum rate of increase.

The Parliament adopted amendments which brought the increase in appropriations, in relation to those adopted in the Council's modified draft, to

ECU 401.7 million for commitment appopriations and ECU 563.3 million for payment appropriations.

The total of the appropriations for non-compulsory expenditure was thus raised to 9 801.9 million for commitment appropriations and 7 917.7 million for payment appropriations. On 18 December 1985 the President of the Parliament declared that the budgetary procedure had been completed and that as a result the general budget for the financial year 1986, as approved by the Parliament at its second reading, was finally adopted.

It was possible on the basis of that brief account to make three findings of fact in regard to the application which was made of the provisions on the maximum rate of increase:

(a) The Commission, the Council and the Parliament all concurred in the view that the maximum rate of increase as fixed by the Commission was not adequate to enable the Community to function properly during the financial year 1986;

(b) The Council and the Parliament were unable to agree on a new maximum rate of increase although the positions which those two institutions finally adopted were quite close to each other;

(c) The appropriations adopted by the Parliament at the second reading and ratified by the budget as adopted on 18 December 1985 by the President of the Parliament exceeded the maximum rate of increase as fixed by the Commission and the various modified rates which had been proposed by the Council.

It had to be stated in that respect that, although the Treaty provides that the maximum rate must be fixed by the Commission on the basis of objective factors, no criterion has been laid down for the modification of that rate. It was sufficient that the Council and the Parliament come to an agreement. In view of the importance of such an agreement, which confers on the two institutions, acting in concert, the freedom to increase the appropriations in respect of non-compulsory expenditure in excess of the rate declared by the Commission, that agreement might not be inferred on the basis of the presumed intention of one or other of those institutions.

In its defence the Parliament further charged the Council with having acted illegally in submitting an incomplete draft budget, particularly inasmuch as it did not include the appropriations necessary to cover the absorption of the 'cost of the past'. In its view the Council had therefore infringed the general principles for the adoption of a complete and true budget. Such conduct compelled the Parliament to complete the budget and thus limited its powers.

On that point the Court merely stated that the determination of the exigencies posed, for the budget of the Communities, by special situations such as the accession of the Member States or the absorption of the 'cost of the past' is not a matter for the Court but for the Council and the Parliament, acting in concert.

It therefore had to be held that the act of the President of the Parliament of 18 December 1985, whereby he declared the budget for 1986 finally adopted, occurred at a time when the budgetary procedure was not yet completed for want of an agreement between the two institutions concerned on the figures to be adopted for the new maximum rate of increase. The act was therefore vitiated by illegality.

The consequences to be drawn from the said illegality

The Court observed in the first place that, although it is incumbent on the Court to ensure that the institutions which make up the budgetary authority keep within the limits of their powers, it may not intervene in the process of negotiation between the Council and the Parliament which must result, with due regard for those limits, in the establishment of the general budget of the Communities. It was therefore necessary to reject the principal claim of the Council for a partial annulment of the budget.

It went on to remark that the irregularity attaching to the act of the President of the Parliament of 18 December 1985 was to be traced to the fact that he declared, in the language of Article 203 (7), that the budget was 'finally' adopted whereas a final adoption had not yet been achieved, since the two institutions had not yet come to an agreement on the figures concerning a new maximum rate of increase.

The Court had to confine itself to holding that, since that essential agreement was lacking, the President of the Parliament could not lawfully declare that the budget had been finally adopted. That declaration had therefore to be annulled.

The effect of the annulment of the act of the President of the Parliament is to deprive the 1986 budget of its validity. It was therefore not necessary to give a decision on the Council's claim for the total annulment of the budget.

It was for the Council and the Parliament to take the measures necessary to comply with this judgment and to resume the budgetary procedure at the very point at which the Parliament, at its second reading, increased the appropriations in respect of non-compulsory expenditure beyond the maximum rate of increase fixed by the Commission and without having come to an agreement with the Council on the figure for a new rate.

The declaration that the 1986 budget was illegal came at a time when a substantial part of the financial year 1986 had already elapsed. In such circumstances, the need to guarantee the continuity of the European public service and also important reasons of legal certainty, which may be compared with those which apply in the case of the annulment of certain regulations, justified the Court in exercising the power expressly conferred on it by the second paragraph of Article 174 of the EEC Treaty in the case of the annulment of a regulation and in stating the effects of the 1986 budget which must be considered as definitive. In

the particular circumstances of this case it had to be held that the annulment of the act of the President of the Parliament may not call in question the validity of the payments made and the commitments entered into in implementation of the 1986 budget up to the date of delivery of the judgment.

The Court therefore:

1. Declared void the act of the President of the Parliament of 18 December 1985 whereby he declared that the budget for 1986 had been finally adopted ('Final adoption of the general budget of the European Communities for the financial year 1986');
2. Stated that the said annulment may not call in question the validity of the payments made and the commitments entered into, in implementation of the budget for 1986 as published in the Official Journal, before the date of delivery of this judgment;
3. Dismissed the remainder of the application;
4. Ordered the parties, including the interveners, to bear their own costs.

* * *

Mr Advocate General Federico Mancini delivered his Opinion at the sitting on 2 June 1986.

He concluded in the following terms:

'Having now arrived, with these considerations, which may perhaps be of some value, at the end of my task, I propose that the Court should, in its decision on the action brought by the Council of the European Communities against the European Parliament, by an application lodged at the Court Registry on 11 February 1986, hold that:

The act of 18 December 1985 whereby the President of the Parliament declared the final adoption of the general budget for 1986 is declared void. The commitments entered into and the payments made prior to the present judgment are considered as definitive.

The novelty and complexity of the issues dealt with lead me to ask the Court to order to the parties to bear their own costs.'

Community law

Case 314/85: *Foto-Frost, Ammersbek (Federal Republic of Germany)* v *Hauptzollamt Lübeck-Ost* — Judgment of 22 October 1987 (Lack of jurisdiction of national courts to declare Community measures invalid — Validity of a decision relating to the post-clearance recovery of import duties)

The Finanzgericht [Finance Court] Hamburg submitted a number of questions to the Court for a preliminary ruling on the interpretation of Article 177 of the EEC Treaty, Article 5 (2) of Council Regulation (EEC) No 1697/79 on the post-clearance recovery of import or export duties, and the Protocol on German internal trade and connected problems, and on the validity of a decision addressed to the Federal Republic of Germany on 6 May 1983 in which the Commission stated that it was necessary to proceed with the post-clearance recovery of customs duties in accordance with a notice issued by the Hauptzollamt Lübeck-Ost after the Commission had, by decision of 6 May 1983, considered that it was not permitted to waive recovery of those duties.

The operations to which the recovery of duties related were Foto-Frost's importation into the Federal Republic of Germany and released for free circulation there of prismatic binoculars originating in the German Democratic Republic.

Foto-Frost had purchased those goods from traders in Denmark and the United Kingdom, which dispatched them to it under the Community external transit procedure from customs warehouses in Denmark and the Netherlands.

The competent customs officies initially allowed the goods to enter free of duty on the ground that they originated in the German Democratic Republic.

Following a check, the Hauptzollamt considered that customs duty was due under the German customs legislation.

However, it took the view that it was not appropriate to effect the post-clearance recovery of the duty on the ground that Foto-Frost fulfilled the requirements set out in Article 5 (2) of Council Regulation No 1697/79.

Since the amount of the duty involved was greater than ECU 2000, the Hauptzollamt was not empowered to take the decision not to effect post-clearance recovery. The Federal Minister of Finance requested the Commission to decide whether the post-clearance recovery of the duty in question should be waived.

On 6 May 1983 the Commission addressed to the Federal Republic of Germany a decision to the effect that it could not.

The grounds which the Commission gave for its decision were 'that the customs officies concerned did not themselves make an error in the application of the provisions governing inter-German trade but merely accepted as correct, without immediate question, the information given on the declarations presented by the importer... This practice in no way prevents those authorities from subsequently making a correction in respect of charges...'.

Following that decision, the Hauptzollamt issued the notice for the post-clearance recovery of duty which Foto-Frost is contesting in the main proceedings.

In order to resolve that dispute, the Finanzgericht referred four questions to the Court for a preliminary ruling.

First question

The Finanzgericht asked whether it is competent to declare invalid a Commission decision such as the decision of 6 May 1983. It casts doubt on the validity of that decision but considered that in view of the division of jurisdiction under Article 177 only the Court of Justice was competent to declare invalid acts of the Community institutions.

The Court considered that national courts did not have the power to declare acts of the Community institutions invalid.

That conclusion was dictated by consideration of the necessary coherence of the system of judicial protection established by the Treaty. The Court observed that requests for preliminary rulings, like actions for annulment, constitute means for reviewing the legality of acts of the Community institutions. It also emphasized that the Court of Justice was in the best position to decide on the validity of Community acts.

Second question

The second and third questions assumed that the operations in question were in fact liable to customs duties. The Finanzgericht sought to ascertain, in the event that the Court alone had jurisdiction to review the validity of the Commission decision, whether that decision was valid.

Article 5 of Regulation No 1697/79 lays down three specific requirements which must be fulfilled before the competent authorities may waive the post-clearance recovery of duties.

The Court considered that it was necessary to ascertain whether those requirements were fulfilled in this case.

The first requirement was that the failure to collect the duty must have been the result of an error made by the competent authorities themselves.

In this case, Foto-Frost's declaration contained all the factual particulars needed in order to apply the relevant rules, and those particulars were correct.

In those circumstances, the Court considered that the post-clearance check carried out by the German customs authorities failed to disclose any new fact. Therefore, it was in fact as a result of an error made by the customs authorities themselves that duty was not charged when the goods were imported.

The second requirement was that the person liable must have acted in good faith, or, in other words, that he could not have detected the error made by the competent authorities. In this case, Foto-Frost had even less reason to suspect that an error had been made since previous similar operations had been granted exemption from duty.

The third requirement was that the person liable must have observed all the provisions laid down by the rules in force as far as his customs declaration was concerned.

The Court considered that there was nothing in the documents before the Court to suggest that that was not the case.

Third and fourth questions

In view of the answers given to the first and second questions, the third and fourth questions did not call for a reply.

The Court ruled as follows:

'1. The national courts themselves have no jurisdiction to declare that measures taken by Community institutions are invalid.

2. The decision addressed to the Federal Republic of Germany on 6 May 1983 in which the Commission stated that post-clearance recovery of import duties must be carried out in a particular case is invalid.'

* * *

Mr Advocate General G.F. Mancini delivered his Opinion at the sitting on 19 May 1987.

He suggested that the questions submitted should be answered as follows:

'1. As a result of the principle of the uniform application of Community secondary legislation in all the Member States, laid down in Article 189 of the EEC Treaty, the second paragraph of Article 177 must be interpreted as meaning that, if a national court has doubts about the validity of a Community measure, it must suspend the proceedings and ask the Court of Justice to give a preliminary ruling on the matter.

By way of exception, where subjects have no other form of redress through the courts and in particular where they are not entitled to bring an action for a declaration that a measure is void pursuant to Article 173, the court before which summary proceedings are brought is not bound to submit a question of validity to the Court of Justice, provided that the parties are entitled to institute proceedings on the substance of the case in which the question provisionally decided in the summary proceedings

'1. may be re-examined and hence may be the subject of a reference to the Court of Justice under Article 177.

2. There are no factors such as to cast doubt on the validity of Decision No REC 3/83 adopted on 6 May 1985 by the Commission of the European Communities.

3. The Protocol on German internal trade annexed to the EEC Treaty concerns the rules to which such trade was subject at the time at which the Treaty was signed; therefore, it enables exemption from duty to be granted only in respect of imports of good coming from the German Democratic Republic which were granted such treatment at that time.'

* * *

Community law (and social policy)

Case 152/84 — *Marchall* v *Southampton and South West Hampshire Area Health Authority (Teaching)* — Judgment of 26 February 1986 (Equality of treatment for men and women — Conditions governing dismissal) (Full Court)

The Court of Appeal referred two questions to the Court for a preliminary ruling on the interpretation of Council Directive 76/207 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Those questions were raised in the course of proceedings between Miss Marshall (the appellant) and the Southampton and South West Hampshire Area Health Authority (the respondent), concerning the question whether the appellant's dismissal was in accordance with section 6 (4) of the Sex Discrimination Act 1975 and with Community law.

The appellant, who was born on 4 February 1918, worked under a contract of employment as Senior Dietician and on 31 March 1980, after she had attained the age of 62, she was dismissed, notwithstanding that she had expressed her willingness to continue in the employment until the age of 65.

The sole reason for the dismissal was the fact that the appellant was a woman who had passed 'the retirement age' applied by the respondent to women.

It appeared from the documents before the Court that the respondent had followed a general policy since 1975 that 'the normal retirement age will be the age at which social security pensions become payable'. The United Kingdom legislation provided that State pensions were to be granted to men from the age of 65 and to women from the age of 60. However, the legislation did not impose any obligation to retire at the age at which the State pension became payable.

The respondent waived its general policy by employing the appellant until she attained the age of 62.

The appellant instituted proceedings against the respondent before an Industrial Tribunal, contending that her dismissal at the age and for the reason indicated by the respondent constituted discriminatory treatment by the respondent on the ground of sex and accordingly, unlawful discrimination contrary to the Sex Discrimination Act and Community law.

The Court of Appeal referred two questions to the Court of Justice for a preliminary ruling.

The first question

The Court of Appeal sought to ascertain whether or not Article 5 (1) of Directive 87/207 must be interpreted as meaning that a general policy concerning dismissal, followed by a State authority, involving the dismissal of a woman solely because she had attained the qualifying age for a State pension, which age was different under national legislation for men and women, constituted discrimination on the grounds of sex, contrary to that directive. The Court observed that the question of interpretation which had been referred to it concerned the fixing of an age limit with regard to the termination of employment pursuant to a general policy concerning dismissal. The question therefore related to the conditions governing dismissal and fell to be considered under Directive 76/207.

As the Court had emphasized in its judgment in Case 19/81 (*Burton* v *British Railways Board*, [1982] ECR 555), Article 7 of Directive 79/7 expressly provided that the directive did not prejudice the right of Member States to exclude from its scope the determination of pensionable age for the purposes of granting old-age and retirement pensions and the possible consequences thereof for other benefits falling within the statutory social security schemes. The Court thus acknowledged that benefits tied to a national scheme which laid down a different minimum pensionable age for men and women might lie outside the ambit of the obligation to ensure equal treatment for men and women.

However, in view of the fundamental importance of the principle of equality of treatment, which the Court had re-affirmed on numerous occasions, Article 1 (2) of Directive 76/207, which excluded social security matters from the scope of that directive, must be interpreted strictly. Consequently, the exception to the prohibition of discrimination on grounds of sex provided for in Article 7 (1) (a) of Directive 79/7 applied only to the determination of pensionable age for the purposes of granting old-age and retirement pensions and the possible consequences thereof for other benefits.

This case was concerned with dismissal within the meaning of Article 5 of Directive 76/207.

(1) Court therefore ruled that:

'Article 5 (1) of Directive 76/207 must be interpreted as meaning that the general policy concerning dismissal involving the dismissal of a woman solely because she has attained or passed the qualifying age for a State pension, which age is different under national legislation for men and for women, constitutes discrimination on grounds of sex, contrary to that directive.'

The second question

Since the first question has been answered in the affirmative, the Court was required to consider whether Article 5 (1) of Directive 76/207 could be relied upon by an individual before national courts and tribunals.

The Court observed that, according to a long line of decisions of the Court, wherever the provisions of a directive appeares, as far as their subject-matter was concerned, to be unconditional and sufficiently precise, those provisions might be relied upon by an individual against the State where that State failed to implement the directive in national law by the end of the period prescribed or where it failed to implement the directive correctly.

With regard to the argument that a directive might not be relied upon against an individual, it must be emphasized that according to Article 189 of the EEC Treaty the binding nature of a directive, which constituted the basis for the possibility of relying on the directive before a national court, existed only in relation to 'each Member State to which it is addressed'. It followed that a directive could not of itself impose obligations on an individual and that a provision of a directive could not be relied upon as such against such a person. It was therefore necessary to examine whether in this case the respondent must be regarded as having acted as an individual.

The Court stated that the provision in question, taken by itself, prohibited any discrimination on grounds of sex with regard to working conditions, including the conditions governing dismissal, in a general manner and in unequivocal terms. The provision was therefore sufficiently precise to be relied on by an individual and to be applied by the national courts.

It was also necessary to consider whether the prohibition of discrimination laid down by the directive could be regarded as unconditional.

In this regard, the Court observed that Article 5 of Directive 76/207 did not confer on the Member States the right to limit the application of the principle of equality of treatment in its field of operation or to subject it to conditions.

It followed that Article 5 was sufficiently precise and unconditional to be capable of being relied upon by an individual before a national court in order to avoid the application of any national provision which did not conform to Article 5 (1).

The Court ruled that:

'Article 5 (1) of Council Directive 76/207 of 9 February 1976, which prohibits any discrimination on grounds of sex with regard to working conditions, including the conditions governing dismissal, may be relied upon as against a State authority acting in its capacity as employer, in order to avoid the application of any national provision which does not conform to Article 5 (1).'

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Advocate General Sir Gordon Slynn delivered his Opinion at the sitting on 18 September 1985.

He concluded in the following terms:

'The questions referred to this Court by the Court of Appeal should therefore in my opinion be answered as follows:

1. For an employer to dismiss a woman employee after she has passed her 60th birthday pursuant to its policy of retiring men at the age of 65 and women at the age of 60 and on the grounds only that she is a woman who has passed the said age of 60 is an act of discrimination prohibited by Article 5 (1) of Directive 76/207.
2. If national legislation, in this case section 6 (4) of the Sex Discrimination Act 1975 is held by national courts to be inconsistent with Directive 76/207, a person who has been dismissed from his or her employment by a Member State which has failed to implement the directive, and in breach of Article 5 (1) of the directive, may rely on the terms of that Article as against that Member State.

The costs of the parties to the main action fall to be dealt with by the national court. The costs incurred by the Government of the United Kingdom and the Commission are not recoverable.'

Competition

1. Case 161/84: *Pronuptia de Paris GmbH, Frankfort/Main* v *Pronuptia de Paris, Irmgard Schillgalis* — Judgment of 28 January 1986 (Competition — Franchise agreements)

The Bundesgerichtshof [Federal Court of Justice] referred a number of questions to the Court of Justice for a preliminary ruling on the interpretation of Article 85 of the EEC Treaty and Regulation No 67/67 of the Commission on the application of Article 85 (3) of the Treaty to certain categories of exclusive dealing agreements in order to ascertain whether those provisions were applicable to franchise agreements.

Those questions arose in proceedings between Pronuptia de Paris GmbH, (hereinafter referred to as 'the franchisor'), which is a subsidiary of the French company of the same name, and Mrs Schillgalis, of Hamburg, who operates a Pronuptia shop and is referred to hereinafter as 'the franchisee' regarding the franchisee's obligation to pay the franchisor arrears of royalties on her turnover.

Pronuptia de Paris distributes wedding dresses and other articles of clothing worn at weddings. In Germany, those products are distributed, *inter alia*, through shops belonging to independent retailers under franchise contracts concluded by the subsidiary in the name of the parent company.

By three contracts signed on 24 February 1980 the franchisee obtained a franchise for three separate zones, Hamburg, Oldenburg and Hannover.

According to the terms of those contracts the franchisor:

(i) granted the franchisee, in respect of a defined territory, the exclusive right to use the trade mark 'Pronuptia de Paris' for marketing and advertising purposes;

(ii) undertook not to open any other Pronuptia shops in the territory in question;

(iii) untertook to assist the franchisee with regard to the commercial aspects of her business, advertising the establishment and decoration of the shop, staff training, sales techniques etc.

The franchisee, who remained the sole proprietor of her business, was obliged:

(i) to sell the goods, using the trade name 'Pronuptia', only in the shop specified in the contract;

(ii) to purchase from the franchisor 80% of wedding dresses and accessories, together with a proportion of cocktail and evening dresses to be set by the franchisee herself, and to purchase the remainder only from suppliers approved by the franchisor;

(iii) to pay the franchisor a single entry fee for the contract territory of DM 15 000 and, throughout the duration of the contract, a royalty of 10% of total sales of Pronuptia products;

(iv) to regard the prices suggested by the franchisor as recommended retail prices, without prejudice to her freedom to fix her own prices;

(v) to advertise in the contract territory only with the franchisor's agreement;

(vi) to make the sale of bridal fashions her main purpose;

(vii) to refrain from competing in any way with a Pronuptia shop and in particular from opening a business of a nature identical or similar to that carried on under the contract;

(viii) not to assign to third parties the rights and obligations arising under the contract or the business without the approval of the franchisor.

In the court of first instance, judgment was given against the franchisee in the amount of DM 158 502 for arrears of royalties on her turnover for the years 1978 to 1980. She appealed against that decision arguing that the contracts were contrary to Article 85 (1) of the EEC Treaty and were not covered by the block exemption granted to certain categories of exclusive dealing agreement under Regulation No 67/67 of the Commission.

The appeal court upheld the franchisee's argument. It held that there had been a restriction of competition within the common market since the franchisor could not supply any other dealers in the contract territory and the franchisee could purchase and resell other goods from other Member States only to a limited extent. Since they were not eligible for exemption under Article 85 (3) the contracts must, in its view, be regarded as void under Article 85 (2).

The franchisor appealed against that judgement to the Bundesgerichtshof arguing that the judgment of the trial court should be upheld.

That led the Bundesgerichtshof to ask the Court of Justice to give a preliminary ruling on the following questions:

1. Is Article 85 (1) of the EEC Treaty applicable to franchise agreements such as the contracts between the parties, which have as their object the establishment of a special distribution system whereby the franchisor provides to the franchisee, in addition to goods, certain trade names, trade-marks, merchandising material and services?
2. If the first question is answered in the affirmative: Is Commission Regulation No 67/67/EEC of 22 March 1967 on the application of Article 85 (3) of the Treaty to certain categories of exclusive dealing agreements (block exemption) applicable to such contracts?

First question

Pronuptia de Paris GmbH, Frankfurt am Main, the franchisor, argued that a system of franchise agreements made it possible to combine a form of distribution which presented a uniform image to the public (such as a system of subsidiaries) with the distribution of goods by independent retailers who themselves bear the risks associated with selling.

Mrs Schillgalis, the franchisee, submitted that the first question should be answered in the affirmative. The most significant characteristic of the contracts in question was the territorial protection given to the franchisee. The system of franchise agreements at issue gave rise to significant restrictions of competition, having regard to the fact that Pronuptia was, as it itself asserted, the world's leading French supplier of wedding dresses and accessories.

It had to be pointed out first of all that franchise agreements, the legality of which has not previously been put at issue by the Court, are very diverse in nature. A distinction must be drawn between different varieties of franchise agreements, in particular service franchise, under which the franchisee offers a service under the business name or symbol and the trademark of the franchisor, in accordance with the franchisor's instructions; production franchises, under which the franchisee manufactures products according to the instructions of the franchisor and sells them under the franchisor's trademark; and distribution franchises, under which the franchisee simply sells certain products in a shop which bears the franchisor's name. The Court was concerned only with this third type of contract, to which the questions asked by the national court expressly referred.

The compatibility of franchise agreements for the distribution of goods with Article 85 (1) could be assessed *in abstracto* but depended on the provisions contained in such agreements. In order to reply to the national court, the Court concerned itself with contracts such as that described above.

Franchise agreements for the distribution of goods differ from dealerships of contracts which incorporate approved retailers into a selective distribution system inasmuch as the latter do not involve the use of a single business name, the application of uniform business methods or the payment of royalties in return for the benefits granted.

Such a system, which allows the franchisor to profit from his success, did not in itself interfere with competition. In order for such a system to work two conditions must be met.

First, the franchisor must be able to communicate his know-how to the franchisees and provide them with the necessary assistance in order to enable them to apply his methods, without running the risk that that know-how and assistance might benefit competitors. It followed that provisions which are essential in order to avoid that risk did not constitute restrictions on competition for the purposes of Article 85 (1).

Secondly, the franchisor must be able to take the measures necessary for maintaining the identity and reputation of the network bearing his business name. It followed that provisions which establish the means of control necessary for that purpose did not constitute restrictions on competition for the purposes of Article 85 (1).

The same was true of the franchisee's obligation to apply the business methods developed by the franchisor and to use the know-how provided.

That was also the case with regard to the franchisee's obligation to sell the goods covered by the contract only in premises laid out and decorated according to the franchisor's instructions. It was also understandable that the franchisee cannot transfer his shop to another location without the franchisor's approval.

The prohibition of the assignment by the franchisee of his rights and obligations under the contract without the franchisor's approval protected the latter's rights freely to choose the franchisees, on whose business qualifications the establishment and maintenance of the network reputation depend.

A provision requiring the franchisee to sell only products supplied by the franchisor or by suppliers selected by him had to be considered necessary for the protection of the network's reputation. Such a provision could not however have the effect of preventing the franchisee from obtaining those products from other franchisees.

Finally, since advertising helps to define the image of the network's name or symbol in the guise of the public, a provision requiring the franchisee to obtain the franchisor's approval for all advertising was also essential for the maintenance of the network's identity, so long as that provision concerned only the nature of the advertising.

It had to be emphasized on the other hand that, far from being necessary for the protection of the know-how provided or the maintenance of the network's identity and reputation, certain provisions restricted competition between the members of the network. That was true of provisions which shared markets between the franchisor and franchisees or between franchisees or prevented franchisees from engaging in price competition with each other.

The attention of the national court ought to be drawn to the provision which obliges the franchisee to sell goods covered by the contract only in the premises specified therein. That prohibition prohibited the franchisee from opening a second shop. If it was considered that the franchisor had given an undertaking to ensure that the franchisee has the exclusive use of the business name or symbol or in a given territory the franchisor had, in order to comply with that undertaking, not only to refrain from establishing himself within that territory but also required other franchisees to give an undertaking not to open a second shop outside their own territory.

A combination of provisions of that kind resulted in a sharing of markets between the franchisor and the franchisee or between franchisees and thus restricted competition within the network.

As was clear from the jugdment of 13 July 1966 in *Constan and Grundig* v *Commission*, a restriction of that kind constituted a limitation of competition for the purposes of Article 85 (1) if it concerned a business name or symbol which was already well known.

The fact that the franchisor had recommended prices to the franchisees was not restrictive of competition so long as there was no concerted practice for the actual application of such prices.

Finally, the Court added that franchise agreements for the distribution of goods which contained provisions sharing markets between the franchisor and the

franchisees or between the franchisees themselves were in any event liable to effect trade between the Member States, even if they were entered into by undertakings established in the same Member State, in so far as they prevented franchisees from establishing themselves in another Member State.

The second question

The second question, which was raised only in the event that the first question should be answered in the affirmative sought to ascertain whether Regulation No 67/67 of the Commission on the application of Article 85 (3) of the Treaty to certain categories of exclusive dealing agreements was applicable to franchise agreements for the distribution of goods. Having regard to the Court's earlier remarks regarding provisions which share markets between the franchisor and the franchisees or between franchisees, that question remained relevant to a certain degree and must therefore be examined.

Pronuptia de Paris, the franchisor, proposed that the Court should reply to the second question in the affirmative.

Mrs Schillgalis, the franchisee, argued that Regulation No 67/67 was not applicable to franchise agreements.

Reference had to be made to a number of points in Regulation No 67/67. First, the category of contracts covered by the block exemption was defined by reference to obligations of supply and purchase, which might or might not be reciprocal, and not by reference to factors such as the use of a single business name or symbol the application of uniform business methods and the payment of royalties in return for the benefits provided under franchise agreements for the distribution of goods. Secondly, the wording of Article 2 expressly covered only exclusive dealing agreements, which, as the Court had already pointed out, differ in nature from franchise agreements for the distribution of goods.

Thirdly, that article listed the restrictions and obligations which might be imposed on the exclusive distributor but does not mention those which might be imposed on the other party to the contract, while in the case where franchise agreement for the distribution of goods the obligations undertaken by the franchisor, in particular the obligations to provide know-how and to assist the franchisee, were of particular importance. Fourthly, the obligations which might be imposed on the distributor did not include the obligations to pay royalties or the obligations ensuing from provisions which establish the control strictly necessary for maintaining the identity and reputation of the network.

The Court therefore concluded that Regulation No 67/67 was not applicable to franchise agreements for the distribution of goods.

The Court ruled that:

'1. (a) The compatibility of franchise agreements for the distribution of goods with Article 85 (1) depends on the provisions contained therein and on their economic context.

(b) Provisions which are strictly necessary in order to ensure that the know-how and assistance provided by the franchisor do not benefit competitors do not constitute restrictions of competition for the purposes of Article 85 (1).

(c) Provisions which establish the control necessary for maintaining the identity and reputation of the network identified by the common name or sign do not constitute restrictions of competition for the purposes of Article 85 (1).

(d) Provisions which share markets between the franchisor and the franchisees or between franchisees constitute restrictions of competition for the purposes of Article 85 (1).

(e) The fact that the franchisor makes price recommendations to the franchisee does not constitute a restriction of competition, so long as there is no concerned practice between the franchisor and the franchisees or between the franchisees themselves for the actual application of such prices.

(f) Franchise agreements for the distribution of goods which contain provisions sharing markets between the franchisor and the franchisees or between franchisees are capable of affecting trade between Member States.

2. Regulation No. 67/67/EEC is not applicable to franchise agreements for the distribution of goods such as those considered in these proceedings.'

* * *

Mr Advocate General Pieter Verloren van Themaat delivered his Opinion at the sitting on 19 June 1985.

He proposed that the Court should answer the questions referred to it in the following manner:

'The answer to the first question could in my view be as follows:

Article 85 (1) of the EEC Treaty is applicable to franchise agreements such as those concluded between the parties in this case in so far as, *inter alia:*

(a) they are concluded between a franchisor from one Member State, or its subsidiary as referred to in Question 3 (a), and one or more franchisees in one or more other Member States;

and

(b) by way of its subsidiaries and franchisees in one or more of those other Member States or in a significant part of their territory the franchisor has a substantial share of the market for the relevant product;

and either

(c) the agreements prevent or restrict, or are intended to prevent or restrict, parallel imports of the products covered by the contract into the contract territory or exports of those products by the franchisee to other Member States;

or

(d) the agreements result — in particular through the establishment of local or regional monopolies for the products covered by the contract, through royalty provisions and contractual provisions or concerted practices with regard to the setting of prices and on account of the absence of effective competition from similar products—in the setting of unreasonably high retail prices, that is to say, prices which could not be charged if effective competition existed, even allowing for the superior quality of the products covered by the contract.

For those four reasons I propose that the Court should answer the second question asked by the national court in the following manner:

Regulation No 67/67/EEC on the application of Article 85 (3) of the Treaty to certain categories of exclusive dealing agreements is not applicable to franchise agreements with a content similar to those concluded between the parties in this case.

It would not then be necessary to reply to the third question referred by the national court. However, the answer which I propose to the first question may, perhaps in combination with remarks which the Court may wish to make in its judgment regarding clauses of the agreement which do not restrict competition, enable the national court to decide which of the provisions of the agreement referred to in the third question must be considered relevant for the application of Article 85 (1).'

2. Joined Cases 209 to 214/84: *Ministère public* v *Asjes and Others*—Judgment of 30 April 1986 (Applicability of the competition rules in the EEC Treaty)

The tribunal de police [Local Criminal Court], Paris, referred a question to the Court on the interpretation of certain provisions of the EEC Treaty in order to enable it to appraise the compatibility with those provisions of the compulsory approval procedure laid down by French law for air tariffs.

That question was raised in several criminal proceedings against the executives of airlines and travel agencies who had been charged with infringing Articles L 330-3, R 330-9 and R 330-15 of the French Civil Aviation Code when selling air tickets by applying tariffs that had not been submitted to the Minister for Civil Aviation for approval or were different from the approved tariffs.

Article L 330-3 provides that air transport may be provided only by undertakings approved by the Minister for Civil Aviation. Those undertakings must also submit their tariffs to the Minister for approval. Article R 330-9 provides that foreign

undertakings are also covered by the rules. Under Article R 330-15 infringements of those rules are punishable by a prison sentence of between ten days and one month or a fine of between FF 600 and FF 1000 or both.

A decision approving the tariff proposed by an airline therefore has the effect of rendering that tariff binding on all traders selling tickets of that company in respect of the journey specified in the application for approval.

The tribunal de police considered the issue of the compatibility of the French system with the EEC Treaty and, in particular, with Article 85 (1) of the Treaty, in so far as in the Tribunal's view the French rules made provision for concerted action between the airlines that was contrary to that article.

A — *Jurisdiction of the Court to give a reply to the question referred to it for a preliminary ruling*

Air France, KLM and the French and Italian Governments raised certain objections to the Court's jurisdiction to reply to the question referred to it by the tribunal de police.

The Court rejected the objections as to its jurisdiction to reply to the question referred to it for a preliminary ruling by the national court.

However, the Court considered that that question had to be understood as asking whether and to what extent it was contrary to the Member States' obligations to ensure that competition in the common market was not distorted, laid down by Article 5, Article 3 (f) and Article 85 (in particular paragraph (1)) of the EEC Treaty, to apply the provisions of a Member State which laid down a compulsory procedure for the approval of air tariffs and which made non-compliance with those approved tariffs punishable, *inter alia* by criminal penalties, where it was found that those tariffs were the result of an agreement, a decision or a concerted practice contrary to Article 85.

B — *International rules on air transport*

In order to put the French legislation referred to by the national court in its proper legal context, the French Government traced the general outline of the international agreements concerning civil aviation. It referred to the basic convention, the Convention on International Civil Aviation signed at Chicago on 7 September 1944 and all the other international agreements derived from it.

The Chicago Convention provides that: 'No scheduled international air service may be operated over or into the territory of a Contracting State, except with the special permission or other authorization of that State...'. It does not contain any provision regarding tariffs. On the basis of that provision, which reaffirms the

principle of each State's sovereignty over the air space above its territory, a network of bilateral agreements was set up.

Some bilateral agreements provide that the tariffs for air services are to be fixed by the companies that are authorized to operate the routes envisaged by each agreement. Those tariffs are subsequently subject to the approval of the authorities of the signatory States. In that type of bilateral agreement, however, the signatory States indicate their preference that the tariff should be fixed by common accord by the authorized companies and, if possible, should be negotiated in the framework of the International Air Transport Association (IATA).

IATA is an association under private law set up by the airlines and one of its activities is to offer airlines a framework within which they can agree on coordinated tariffs. Those tariffs are subsequently submitted for the approval of the States concerned.

A system for fixing tariffs similar to that of the aforementioned bilateral agreements was laid down by the International Agreement on the Procedure for the Establishment of Tariffs for Scheduled Air Services concluded on 10 July 1967 under the aegis of the Council of Europe.

The French Government pointed out that the French legislation and rules at issue in the main proceedings were adopted in that context. However, it did not claim that the said international agreements obliged the Member States which signed them not to respect the competition rules in the EEC Treaty.

C — *Applicability of the competition rules in the Treaty to air transport*

The national court's question called on the Court to determine whether Community law entailed obligations for the Member States under Article 5 of the Treaty regarding competition in the air transport sector.

The Court considered that to that end it was necessary to ascertain as a preliminary point whether the competition rules laid down by the Treaty were, in the present state of Community law, applicable to undertakings in this sector.

The starting points for this analysis was Article 84 on transport, which is worded as follows:

'1. The provisions of this Title shall apply to transport by rail, road and inland waterway.

2. The Council may, acting unanimously, decide whether, to what extent and by what procedure appropriate provisions may be laid down for sea and air transport.'

The Court noted that Article 74, the first article in the Title on transport, provides: 'The objectives of this Treaty shall, in matters governed by this Title, be

pursued by the Member States within the framework of a common transport policy'.

It was clear from the wording of that article that the objectives of the Treaty, including the institution of a system ensuring that competition in the common market was not distorted (Article 3 (f)), were equally applicable to the transport sector.

Article 61 of the Treaty provides that freedom to provide services in the field of transport is governed by the provisions of the Title relating to the common transport policy (Articles 75 and 76). However, no other provision in the Treaty makes its application to the transport sector subject to the realization of a common transport policy.

As regards the competition rules in particular, the Court noted that where the Treaty intended to remove certain activities from the ambit of the competition rules, it made an express derogation to that effect, which was not done in the case of transport.

The Court therefore concluded that the rules in the Treaty on competition, in particular Articles 85 to 90, were applicable to transport.

It followed that air transport remained, on the same basis as the other modes of transport, subject to the general rules of the Treaty, including the competition rules.

D — *Consequences in the air transport sector of the absence of rules implementing Articles 85 and 86*

Air France, KLM and also the French, Italian and Netherlands Governments and the Commission, drew attention to the fact that at present there were in the air transport sector no rules as provided for in Article 87 of the Treaty. In those circumstances, the French and Italian Governments took the view that the application of Articles 85 and 86 to the air transport sector was a matter for the national authorities referred to in Article 88 of the Treaty. Subject to the conditions laid down in Article 85 (3), those authorities were entitled to grant exemptions from the prohibition in Article 85 (1).

The Netherlands Government also considered that it was for the Commission, by virtue of Article 89, to ensure that those provisions were complied with. It submitted that in proceedings for a preliminary ruling such as those in this case it was not possible to make a finding that the Treaty had been infringed.

The Commission considered that the absence of the implementing measures referred to in Article 87 did not mean that national courts could not, where the matter arose, be called upon to rule on the compatibility of an agreement or a particular practice with the competition rules since those rules had direct effect.

The Court observed that under Article 87 (1) the Council was 'to adopt any appropriate regulations or directives to give effect to the principles set out in Articles 85 and 86'. However, although the Commission had sumitted a proposal on the matter, the Council had not yet adopted any such rules applicable to air transport.

In the absence of rules as preferred to in Article 87 of the Treaty, Articles 88 and 89 continued to apply.

According to Article 88, 'until the entry into force of the provisions adopted in pursuance of Article 87, the authorities in Member States shall rule on the admissibility of agreements decisions and concerted practices and on abuse of a dominant position in the common market in accordance with the law of their country and with the provisions of Article 85, in particular paragraph 3, and of Article 86'.

The article therefore imposed on 'the authorities in Member States' the obligation to apply Article 85, in particular paragraph (3), and Article 86 so long as rules within the meaning of Article 87 had not been adopted.

The term 'authorities in Member States' within the meaning of Article 88 did not include the criminal courts whose task was to punish breaches of the law.

It was clear from the documents before the Court in these cases that the concerted action on tariffs underlying the criminal charges at issue in the main proceedings had not been the subject of any decision taken under Article 88 by the competent French authorities on the admissibility of those agreements in accordance with the French competition rules and with Article 85, in particular paragraph (3).

The French Government itself had denied that any such decision could be read into the measure approving the tariffs in question.

The Commission did not profess to have exercised, as regards the concerted action on tariffs in question, its powers under Article 89, in particular the power to record by a reasoned decision the existence of an infringement of Article 85.

The question therefore arose whether, in the absence of regulations or directives applicable to air transport adopted by the Council pursuant to Article 87, a national court which was not one of the authorities in the Member States referred to in Article 88 none the less had jurisdiction to rule, in proceedings like the main proceedings, that concerted tariff practices between airlines were contrary to Article 85 although no decision had been taken pursuant to Article 88 by the competent national authorities and no decision had been taken by the Commission pursuant to Article 89, in particular Article 89 (2), regarding those concerted practices.

In fact Article 88 envisaged a decision by the authorities of the Member State on the admissibility of agreements, decisions and concerted practices only when these

were submitted for their approval within the framework of the laws relating to competition in their countries. Under Article 89 the Commission was empowered to record any infringements of Articles 85 and 86 but it did not have the power to declare Article 85 (1) inapplicable within the meaning of Article 85 (3).

In those circumstances the fact that an agreement, decision or concerted practice might fall within the ambit of Article 85 did not suffice for it to be immediately considered to be prohibited by Article 85 (1) and consequently automatically void under Article 85 (2).

The Court therefore concluded that in the absence of a decision taken under Article 88 by the competent national authorities ruling that a given concerted action on tariffs taken by airlines was prohibited by Article 85 (1) and could not be exempted from that prohibition pursuant to Article 85 (3), or in the absence of a decision by the Commission under Article 89 (2) recording that such a concerted practice constituted an infringement of Article 85 (1), a national court such as that which had referred these cases to the Court did not itself have jurisdiction to hold that the concerted tariff practice in question was incompatible with Article 85 (1).

The Court pointed out, however, that until rules for the sector in question as provided for by Article 87 were adopted, if such a ruling or recording had been made, either on the initiative of the national authorities under Article 88, or on that of the Commission under Article 89 (2), the national courts had to draw all the necessary conclusions therefrom and in particular conclude that concerted action on tariffs practices in respect of which such finding had been made were automatically void under Article 85 (2).

E — *Compatibility with Community law of a national approval procedure for air tariffs*

The Court considered it necessary to examine in the next place the question whether and to what extent it was contrary to the Member States' obligations under Article 5 of the EEC Treaty, in conjuction with Article 3 (f) and Article 85, to apply national provisions of the type referred to by the tribunal de police, which laid down for air tariffs a compulsory approval procedure and which prescribed penalties, including criminal penalties, for non-compliance with those approved tariffs where, in the absence of any regulations or directives within the meaning of Article 87, it had been found in accordance with the forms and procedures laid down in Article 88 or Article 89 (2) that those tariffs were the result of an agreement, a decision by an association of undertakings, or a concerted practice contrary to Article 85.

The Court pointed out that any appraisal in the light of Community law of the application of national provisions of the kind referred to by the national court had to take account of the nature of the tariffs submitted for approval and of their compatibility with Community law.

Where a decision had been taken by the competent national authorities under Article 88 or by the Commission under Article 89 (2) ruling that the concerted action leading to the establishment of the air tariffs was incompatible with Article 85, it was contrary to the obligations of the Member States in the field of competition to approve such tariffs and thus to reinforce their effects.

The Court ruled as follows:

> 'It is contrary to the obligations of the Member States under Article 5 of the EEC Treaty, in conjunction with Article 3 (f) and Article 85, in particular paragraph (1), of the EEC Treaty, to approve air tariffs and thus to reinforce the effects thereof, where, in the absence of any rules adopted by the Council in pursuance of Article 87, it has been found in accordance with the forms and procedures laid down in Article 88 or Article 89 (2) that those tariffs are the result of an agreement, a decision by an association of undertakings, or a concerted practice contrary to Article 85.'

* * *

Mr Advocate General Carl Otto Lenz delivered his Opinion at the sitting on 24 September 1985.

He proposed that the Court should reply as follows:

> 'In conclusion I propose that the Court of Justice should answer the question submitted to it by the tribunal de police of Paris as follows:
>
> National provisions which prescribe official approval for air tariffs and require or permit coordination of such tariffs between the airlines concerned prior to submission for approval are contrary to the Treaty establishing the European Economic Community, in particular the second paragraph of Article 5 in conjunction with Article 3 (f) and Article 85—and, where appropriate, Article 90—in so far as such prior coordination has not yet been exempted from the prohibition on cartels under Article 85 (3).
>
> It is for the national court to ensure that such provisions are not applied. It should apply them only if obligations arising under air transport agreements between Member States and non-member countries covered by Article 234 of the EEC Treaty require the Member State concerned to act in a manner contrary to Community law and if that Member State has not hitherto found it possible to bring its agreement with a non-member country into conformity with Community law or denounce the agreement.'

3. Joined Cases 142 and 156/84: *British American Tobacco Company Limited and Reynolds Industries Inc.* v *Commission of the European Communities, supported by Philip Morris and Rembrandt Group Limited* — Judgment of 17 November 1987 (Competition — Rights of complainants — Shareholding in a competing company)

British American Tobacco Company Ltd (London) and R.J. Reynolds Industries Inc. (Salem, North Carolina), brought two actions pursuant to the second paragraph of Article 173 of the EEC Treaty for the annulment of the decision contained in the Commission's letters of 22 March 1984, rejecting the applications made by the applicants pursuant to Article 3 (2) of Regulation No 17/62 of the Council and declaring that certain agreements concluded between Philip Morris Inc. (hereinafter referred to as 'Philip Morris'), New York, and Rembrandt Group Ltd (hereinafter referred to as 'Rembrandt'), Stellenbosch, Republic of South Africa, do not infringe Articles 85 and 86 of the EEC Treaty. The applicants also ask the Court to order the Commission to alter its position with regard to those applications in order to comply with the judgment of the Court.

The applications submitted by the applicants were directed against agreements between Philip Morris and Rembrandt under which Philip Morris brought from Rembrandt, for USD 350 million, 50% of the shares in Rothmans Tobacco (Holdings) Ltd (hereinafter referred to as 'Rothmans Holdings'), a holding company wholly owned by Rembrandt which held a sufficiently large shareholding in Rothmans International plc (hereinafter referred to as 'Rothmans International') to control the latter company, an important manufacturer of cigarettes on the Community market, especially in the Benelux countries. Under those agreements Philip Morris acquired an indirect share of 21.9% in the profits of its competitor Rothmans International. Those agreements ('the 1981 agreements') also contained conditions intended to maintain a balance between the parties with regard to their direct or indirect shareholdings in Rothmans International and gave each of the parties a 'right of first refusal' in the event of a disposal.

Following complaints lodged by the applicants, among others, the Commission issued a statement of objections to Philip Morris and Rembrandt to the effect that the 1981 agreements infringed both Articles 85 and 86 of the Treaty.

After negotiations with the Commission, Philip Morris and Rembrandt replaced those agreements with new agreements intended to remove the cause for the Commission's objections. It is those agreements ('the 1984 agreements') which are the subject-matter of the contested Commission decisions.

Under the 1984 agreements, Philip Morris abandoned its shareholding in Rothmans Holdings in exchange for a direct shareholding in Rothmans International.

The 1984 agreements were accompanied by a number of undertakings given by the parties to the Commission.

The submissions of the applicants concerned the administrative procedure, the Commission's assessment of the agreements and the statement of the reasons for its decisions.

A — *Administrative procedure*

The applicants argued in particular that in their capacity as persons having submitted applications under Article 3 (2) of Regulation No 17/62 they were not sufficiently involved in the Commission's investigation of the agreements in question.

It appeared from the documents before the Court that, with the exception of passages which Philip Morris and Rembrandt considered to contain business secrets, the Commission provided the applicants with copies of its statement of objections of 19 May 1982, in which it stated that the 1981 agreements were contrary to Articles 85 and 86 of the Treaty. Subsequently, the applicants also received copies of the minutes of the hearing.

In May 1983 the Commission informed the applicants that Philip Morris and Rembrandt had made a number of changes in the 1981 agreements. After the new 1984 agreements had been adopted the applicants were informed by letters of 16 December 1983 that in the Commission's view there were no longer sufficient grounds for granting their applications, and they were invited to submit any further observations.

The applicants also argued that in failing to make available to them certain documents and parts of documents the Commission gave too wide an interpretation to the concept of 'business secrecy'. They considered that the Commission was guilty of procedural irregularities amounting to a breach of their right to a fair hearing.

It was clear from the judgment in Case 298/83 (*CICCE* v *Commission*) that the procedural rights of the complainants were not as far-reaching as the right to fair hearing of the companies which are the object of the Commission's investigation. In any event, the limits of such rights were reached where they began to interfere with those companies' right to a fair hearing.

In its judgment in Case 53/85 (*AKZO* v *Commission*), the Court emphasized that a complainant may not in any circumstances be provided with documents containing business secrets, and set out the manner in which the company under investigation may act to prevent such disclosure.

In these proceedings, the applicants had not demonstrated that the Commission failed to provide them with documents which it could make available to them without disclosing business secrets.

It followed that the first part of this submission must be rejected.

With regard to the claim concerning the negotiations between Philip Morris and Rembrandt on the one hand and the Commission on the other for the amendment of the original agreements, the Court recalled that the administrative procedure provided an opportunity for the companies concerned to bring the agreements or

practices complained of into conformity with the rules laid down in the Treaty. For such a possibility to be a real one the companies and the Commission had to be entitled to enter into confidential negotiations in order to determine what alterations will remove the cause for the Commission's objections.

Finally, the applicants complained that in the decisions at issue the Commission added new arguments which were not contained in the letters sent pursuant to Article 6 of Regulation No 99/63 and on which the applicants did not have the opportunity of commenting beforehand.

This argument had also to be rejected.

It followed from all the foregoing considerations that the submission regarding the administrative procedure had to be rejected as unfounded in its entirety.

B — *The Commission's assessment of the agreement*

The applicants argued that in the decisions at issue the Commission applied Articles 85 and 86 of the Treaty incorrectly and was guilty of manifest error inasmuch as it considered that the undertakings entered into by Philip Morris and Rembrandt Group were sufficient in order to avoid an infringement of those articles.

The main issue in these cases was whether and in what circumstances the acquisition of a minority shareholding in a competing company might constitute an infringement of Articles 85 and 86 of the Treaty.

The application of Article 85

The applicants argued that where a company acquired a substantial shareholding, albeit a minority one, in a competing company it must be presumed that there would be a restrictive effect on competition. The acquisition of such a sharehol-ding inevitably had an influence on the commercial behaviour of the companies covered, particularly in a stagnant and highly oligopolistic market such as that for cigarettes, where any attempt to increase the market share of one company will be at the expense of its competitors. The establishment of links between two of the largest firms on the market for cigarettes would destroy the competitive balance.

According to the applicants, the transaction in question not only had the effect of restricting competition but was intended to do so.

The applicants also submitted that the anti-competitive effect and intention of the agreements at issue were reinforced by the clauses providing for a right of first refusal in the event that one of the parties should wish to dispose of its shareholding in Rothmans International.

The fact that the exercise of the rights granted by those clauses would be contrary to Article 85 was sufficient in itself to justify a finding that the objective of the agreements was to restrict competition.

Finally, the undertakings required by the Commission were, according to the applicants, in no way sufficient to rid the agreements of their anti-competitive nature.

The Court recalled that the agreements prohibited by Article 85 were those which had as their object or effect the prevention, restriction of distortion of competition within the common market. Finally, every agreement had to be assessed in its economic context and in particular in the light of the situation on the relevant market.

Where the companies concerned were multi-national corporations which carried on business on a worldwide scale, their relationships outside the Community could not be ignored.

It was in the light of all those considerations that the Court had to determine whether the Commission, in examining the 1984 agreements, was wrong to hold that there was no proof of anti-competitive object or effect.

With regard to the situation on the market for cigarettes, the Commission pointed out that that market was stagnant in volume terms from 1976 to 1980. It also stated that with the exception of the French and Italian markets, where there were State monopolies, the Community market was dominated by six groups of companies, among them the applicants and interveners in this case.

The Commission considered that on the market for cigarettes, which was stagnant and oligopolistic, advertising and corporate acquisition were the principal means of increasing market share. It had to be admitted that, in those market conditions, any company wishing to increase its market share would be strongly tempted, where the opportunity arises, to take control of a competitor.

In such a market situation the Commission had to display particular vigilance. It had to consider in particular whether an agreement which at first sight provided only for a passive investment in a competitor was not in fact intended to result in a take-over of that company, perhaps at a later stage, or to establish cooperation between the companies with a view to sharing the market.

Nevertheless, in order for the Commission to hold that an infringement of Article 85 has been committed, it had to be able to show that the agreement has the object or effect of influencing the competitive behaviour of the companies on the relevant market.

The Court held that, unlike the 1981 agreements, the 1984 agreements do not contain any provisions regarding commercial cooperation or to create a structure likely to be used for such cooperation between Philip Morris and Rothmans

International, and the companies had undertaken not to exchange information which might influence their competitive behaviour.

However, it had also to be considered whether, in the circumstances of this case, Philip Morris's shareholding in Rothmans International required the companies involved to take into consideration the other party's interest when determining their commercial policy, as the applicants argued.

There was no reason to suppose that the management and employees of Rothmans International did not have an interest in making that company as profitable as possible.

The Commission considered that the acquisition by Philip Morris of a minority shareholding in Rothmans International did not in itself result in any change in the competitive position on the Community cigarette market.

There was no ground for the conclusion that the acquisition of a shareholding might result in a sharing of the market on the basis that Philip Morris, without itself losing market share, could concentrate on one specific sector of the market, thus allowing Rothmans International to increase its activities in another sector of the market.

Nor were there sufficient grounds for the conclusion that Philip Morris and Rothmans International cooperated outside the Community market in such a way as to affect their relationship on that market.

The fact that the agreements at issue contained provisions on the possible sale of shares in Rothmans International by one or the other party and that those provisions envisaged a possibility which might, if the surrounding circumstances remained unaltered, be contrary to Article 85 was not in itself sufficient to show that the object of the agreement was to restrict competition.

It had, however, to be considered whether those provisions gave rise to immediate anti-competitive effects and whether the Commission also took sufficient account of their potential effects.

The Commission did not consider that those provisions had any present influence on the competitive behaviour of the parties.

With regard to the potential effects of the provisions in question, the Court held that it was clear that the Commission had taken measures intended to prevent any such effects contrary to Article 85 of the Treaty.

The Court accepted that by means of the undertakings entered into by Philip Morris and Rembrandt, the Commission had reinforced its general powers of surveillance and control in such a manner as to prevent the provisions of the agreements concerning the subsequent disposal of the parties' shares in Rothmans International from having effects contrary to Article 85.

The Court concluded from the foregoing considerations that examination of the applicants' complaints regarding the appraisal of the provisions of the agreements at issue had not shown that the Commission was wrong to hold that no anti-competitive object or effect was established.

However, the applicants also submitted that even in the event that the various elements of the agreement in question, viewed separately, should not be regarded as contrary to Article 85 (1), it was also necessary to consider whether those elements in combination produced anti-competitive effects.

In that connection the Court emphasized that any examination of the effects of the agreements had indeed to be based on an assessment of the agreements as a whole.

The Court held that the evidence before it did not disclose any manifest error with regard to the circumstances existing when the contested decisions were adopted.

It concluded that the argument based on the alleged incorrect assessment of the agreements as a whole could not be upheld. It therefore rejected the submission regarding the application of Article 85.

The application of Article 86

The Court held that it was no longer necessary, in the light of the findings set out above, to consider to what extent Rothmans International occupied a dominant position in a substantial part of the Common Market.

C — *The statement of reasons for the decisions at issue*

The applicants argued that the decisions at issue were invalid because the Commission did not state precisely how it arrived at its conclusion. They submit that the decisions went much further than previous decisions of the Commission and laid down new principles, so that the Commission was under an obligation to explain its reasoning in a full and complete manner.

The Court pointed out that it had consistently held that the extent of the duty to provide a statement of reasons prescribed in Article 190 of the Treaty depended on the nature of the measure in question and on the circumstances on which it was adopted.

In the case of a measure rejecting an application pursuant to Article 3 of Regulation No 17/62, it was sufficient that the Commission should state the reasons for which it did not consider it possible to hold that an infringement of the rules on competition had occurred.

With regard to the complaint concerning the alleged failure to reply to the applicants' arguments, the Court recalled that although the Commission is

required to set out the circumstances justifying the adoption of a decision and the legal considerations which have led the Commission to adopt it, that article did not require the Commission to discuss all the matters of fact and of law which may have been dealt with during the administrative proceedings.

The Court therefore considered it sufficient that the Commission should have indicated the circumstances and the legal considerations on the basis of which it found it impossible to hold that the 1984 agreements constituted an infringement of the competitive rules. Viewed in that light, the statement of the reasons for the contested decisions could not be regarded as insufficient.

Accordingly, the Court decided as follows:

'1. The applications are dismissed;

2. The applicants are ordered jointly and severally to pay the costs, including the costs of the interveners.'

* * *

Mr Advocate General G. Federico Mancini delivered his Opinion at the sitting on 17 March 1987.

He concluded as follows:

'In conclusion there can be no doubt as to the fact that the defendant failed to discharge the obligation imposed upon it by Article 190; the disputed measure should therefore be declared void by virtue of the inadequacy of the statement of the reasons on which it was based regarding one of the preconditions for an agreement between undertakings to be compatible with the prohibition contained in Article 85 (1) of the EEC Treaty.

In view of all the foregoing considerations I propose that the Court should uphold the applications lodged by British American Tobacco Company Limited and Reynolds Industries Incorporated against the Commission of the European Communities and declare void the decision of 22 March 1984 concerning procedures Nos IV/30.342 and IV/30.962. Pursuant to Article 69 (2) of the Rules of Procedure, the costs should be borne by the Commission, which has failed in its submissions. Each of the interveners should bear its own costs.'

Damages, action for

Joined Cases 279, 280, 285 and 286/84: *Walter Rau Lebensmittelwerke and three Others* v *European Economic Community* — Judgment of 11 March 1987 (Application for compensation — 'Christmas butter')

Walter Rau Lebensmittelwerke and three other German margarine manufacturers brought actions for compensation for the damage which they considered they had suffered as a result of the 'Christmas butter' scheme adopted pursuant to, and

subject to the rules laid down in, Commission Regulation No 2956/84 of 18 October 1984 on the disposal of butter at a reduced price.

That regulation was based on the considerations that there were large quantities of butter on the market, that there are stocks of butter in the Community, that all appropriate means should be used to increase butter consumption, that a reduction in prices to the final consumer was an appropriate means of obtaining that objective, that it was not possible to dispose of all the butter in stock on normal terms, that prolonged storage was to be avoided in view of the high cost involved and that the Christmas and New Year holidays might provide an opportunity for selling butter at a reduced price for direct consumption. Title I of the regulation the set up the 'Christmas butter' scheme designed to sell on the market, with a reduction of ECU 1.6 per kilogram, 200 000 tonnes of butter (50 000 tonnes in the Federal Republic of Germany, 10 400 tonnes in Belgium and 9 000 tonnes in the Netherlands).

The applicants considered that an operation of the scale of the one in question seriously disrupted the market in edible fats. The applicants incurred losses because the butter in question was bought in preference not merely to fresh butter, which was then taken into intervention stock, but also to margarine, a competing product sales of which dropped noticeably during and after a Christmas butter scheme.

The applicants relied in support of their application on a number of submissions.

The submission alleging lack of powers on the part of the Commission

The 1984 Christmas butter scheme was based on the provisions of both Article 6 and Article 12 of Regulation No 804/68 of the Council on the common organization of the market in milk and milk products, which permits special measures to be taken to promote the disposal of butter held in public or private storage when it cannot be disposed of under normal conditions. The division of powers between the Council and the Commission is as follows: General rules for the implementation of such measures are to be determined by the Council and the Commission is to adopt detailed rules for the implementation of the said measures in accordance with the management committee procedure. The applicants claimed that in the absence of general rules laid down by the Council, the Commission had no power to set up the Christmas butter scheme through the adoption of detailed rules for the implementation of intervention measures.

The Court considered that it had to determine:

(i) Whether the Council in fact adopted the general rules provided for in Articles 6 and 12 of Regulation No 804/68;

(ii) Whether the Christmas butter scheme was one of the measures provided for both by Articles 6 and 12 of Regulation No 804/68 and by those general rules.

The first conclusion which was drawn from a consideration of the applicable measures was that, contrary to the applicant's claims, the Council had adopted the general rules provided for by Articles 6 and 12 of Regulation No 804/68.

With regard to the application of Article 6 of the regulation, the Council adopted two regulations, Regulation No 985/68 and Regulation No 750/69.

With regard to the implementation of Article 12 of Regulation No 804/68, the Council had adopted Regulation No 1269/79.

In the second place, it was necessary to consider whether the Christmas butter scheme set up by the contested regulation in fact came within the scope of the powers delegated to the Council by the Commission.

The concept of implementation had to be given a wide interpretation. Since only the Commission was in a position to keep track of agricultural market trends and to act quickly when necessary, the Council might confer on it wide powers of discretion in that sphere. When it does so, the limits of those powers had to be determined in the light of the general aims of the market organization.

The Christmas butter scheme at issue might be regarded as a special measure adopted at a time at which it was common ground that there were large surpluses of milk products, and intended both to increase consumption and reduce public and private stocks as well as to ensure the necessary rotation of those stocks. Such an operation fulfilled the aims defined both by Articles 6 and 12 of Regulation No 804/68 and by the abovementioned Council Regulation laying down rules for the implementation of those articles.

The submission alleging lack of powers on the part of the Commission had to be rejected.

The submission alleging failure to observe the principle of market stabilization

The applicants claimed that the Commission failed to take account of the object of market stabilization laid down in Article 39 (1) of the Treaty. In the second place, they claimed that over the past few years, the Christmas butter schemes had become a permanent instrument of Community action in the area of milk policy and the Commission was seeking by that method to correct the normal consequences of the price mechanisms resulting from the common market organization set up by the Council in the milk, oils and fats sectors. Consequently, the 'Christmas butter' schemes were not within the powers conferred on the Commission by the Council.

(i) *First part of the submission*

According to the applicants, the Christmas butter schemes created distortions on the market which disturbed, contrary to Article 39 of the Treaty, the balance

between the butter and margarine markets, each product competing with the other.

That submission could not be accepted.

In regard more particularly to the assessment of the legality of a measure adopted in the context of a general policy in the milk products sector, the Court decided in *Biovilac* (judgment of 6 December 1984 in Case 59/83) that one of the main aims of that policy was to ensure in accordance with Article 39 of the Treaty that Community milk producers received reasonable income through the fixing of a target price for milk which was guaranteed by intervention buying of the principal products into which milk is processed, in particular butter. The 'Christmas butter' scheme had a direct connection with that aim because, by facilitating the disposal of surpluses created by the intervention machinery and permitting a renewal of the butter in storage, it made it possible to maintain the system of production prices.

Furthermore, it did not appear from the documents on the file that a Christmas butter scheme of the type at issue was of such a nature as to create a real and durable disturbance of the margarine market.

(ii) *The second part of the submission*

The purposes of the contested regulation were both to reduce public and private stocks and to ensure the necessary rotation of those stocks.

Such purposes merely ensured the normal functioning of the common organization of the market in milk and milk products and did not, as the applicants wrongly claimed, correct the consequences of the price mechanisms resulting from the common market organization set up by the Council in the milk, oil and fats sectors.

The submission alleging breach of the principle of non-discrimination laid down in Article 40 (3) of the Treaty

According to the applicants, the Christmas butter scheme gave rise to unjustified discrimination either between milk producers and the producers of fats and oil bearing fruits used in the manufacture of margarine or between milk processors and margarine producers, to the detriment of the latter, who suffered a direct and significant competitive disadvantage. Furthermore, they argued that the Commission did not take account of all the factors characterizing each of the common market organizations at issue.

According to settled case-law, the prohibition of discrimination laid down in Article 40 (3) of the Treaty, as a specific expression of the general principle of equality, did not prevent comparable situations from being treated differently if

such a difference in treatment was objectively justified. In this case, three essential differences had to be noted between the butter and margarine markets.

In the first place, the common organization of the market in milk and milk products was conceived in a very special context compared to that of oils and fats of vegetable origin, having regard to the importance of milk production in the European Economic Community and the different conditions of supply in the Community for milk products, on the one hand and oils and fats of vegetable origin on the other.

Whereas in the context of the common organization of the market in the milk sector, the market was regulated essentially by means of an intervention price for butter and milk powder, it was regulated in the context of the common organization of the market in oils and fats essentially by a system of production aid and intervention is merely complementary.

Secondly, the place occupied by the products at issue in their respective market organization is entirely different. Butter occupied a fundamental place in the common organization of the market in the milk sector whereas margarine did not play a comparable role in the common organization of the market in oils and fats.

Thirdly, the market in oils and fats of vegetable origin was not affected by problems comparable to those affecting the market in milk products.

The Court considered that it followed from the foregoing that producers of milk and butter, on the one hand, and producers of fats and oil-bearing fruits and of margarine on the other were not in comparable positions. Thus, the contested Christmas butter scheme, which is part of the very functioning of the common organization of the market in milk products could not be regarded as giving rise to discrimination against producers of margarine.

The submission alleging breach of the principle of proportionality

The applicants claimed that the sales of Christmas butter were neither a necessary nor an appropriate means of increasing butter consumption and avoiding long periods of storage, and they contested the appropriateness and efficacy, having regard to its cost, of the Christmas butter scheme set up by the contested regulation.

Although the Court admitted, as did the Commission itself, that schemes such as the Christmas butter scheme were of limited effectiveness, and were very costly from the point of view of Community finances, it did not appear that the contested measure was unsuitable for the purpose of achieving the desired aims or that it went further than was necessary to achieve them. Therefore, the submission alleging breach of the principle of proportionality must be rejected.

The Court decided as follows:

'1. The applications are dismissed;

2. The applicants are ordered to pay the costs.'

* * *

Mr Advocate General Carl Otto Lenz delivered his Opinion at the sitting on 5 December 1986.

He proposed that the Court should decide as follows:

'1. The Commission must compensate the applicants for the damage suffered by them by virtue of the implementation of Regulation No 2956/84 of 18 October 1985.

2. The parties shall inform the Court within six months of the delivery of this judgment of the amount of compensation to be paid, which is to be the subject of an agreement made out of court.

3. If no agreement can be reached out of court, the parties shall inform the Court within the same time-limit of the precise amounts which they consider should be paid.

4. Costs are reserved.'

Free movement of capital

Case 157/85: *L. Brugnoni and R. Ruffinengo* v *Cassa di Risparmio di Genoa e Imperia* — Judgment (Free movement of capital — National protective measures) of 24 June 1986

The Pretoria di Genoa referred to the Court for a preliminary ruling three questions on the interpretation of Articles 67, 68, 73 and 108 of the EEC Treaty and of the first and second Council Directives of 11 May 1960 and 18 December 1982) for the implementation of Article 67 of the Treaty in order to enable it to give judgment on the compatibility with Community law of certain Italian legislative provisions on exchange regulation.

Those questions were raised in proceedings relating to the purchase of foreign securities by Mr Brugnoni, an Italian resident.

In November 1984, Mr Brugnoni instructed the Cassa di Risparmio di Genoa e Imperia, acting through Mr Ruffinengo, to purchase DM 5 000 worth of bonds issued by the ECSC, which were quoted on the foreign stock exchange.

In pursuance of those instructions the Cassa di Risparmio deposited the bonds with the Deutsche Bank in Frankfurt for the account of Mr Brugnoni and Mr Ruffinengo and debited them with safe custody charges. It also debited them

with an amount in lire equivalent to 50%, subsequently reduced to 30% of the value of the securities, for the purposes of the deposit provided for by Italian exchange rules. Mr Brugnoni and Mr Ruffinengo brought an action against the Cassa di Risparmio before the Pretore di Genoa for an order requiring it to deliver up the securities and repay the sums withheld for deposit and safe custody charges.

The plaintiffs in the main proceedings did not deny that the bank had acted in compliance with the Italian legislation.

They submitted that the national legislation was contrary to Community law and in particular to Articles 67 and 68 of the Treaty which deal with the free movement of capital. They acknowledged that the liberalization of capital movements was to be carried out according to the timetable laid down by the Council in directives adopted under Article 69 of the Treaty. They claimed that transactions which were to be unconditionally liberalized included the acquisition by residents of foreign securities dealt in on a stock exchange.

The Cassa di Risparmio contended before the Pretura di Genoa that the Commission had specifically authorized the Italian Republic to continue to apply certain protective measures including the lodging of a 30% interest-free deposit on transactions in foreign securities issued by the Community institutions, subject to the securities in question being held for at least one year; hence the necessity for them to be kept in safe custody for verification purposes.

The Pretura di Genoa considered that it was necessary to refer several questions to the Court the substance of which is:

(a) Whether by prolonging authorizations previously granted by Decisions Nos 74/287 and 75/355 Decision No 85/16 authorized compulsory bank deposit without interest in relation to transactions effected before its entry into force (third question);

(b) Whether Decision No 85/16 allows the Italian Republic to require not only a bank deposit without interest but also that securities acquired should be deposited for safe custody with an approved bank or with a foreign bank chosen by the approved bank (first question).

(c) Whether Article 73 of the Treaty was infringed because the consultation procedure for which it provides was not applied on the adoption or maintenance by the Italian Government of restricted measures in relation to the movement of capital which had already been liberalized (second question).

A — *Application* ratione temporis *of Decision No 85/16*

The plaintiffs in the main proceedings argued that at the time of the operation in question, namely in November 1984, Decision No 85/16 had not yet been adopted.

At that time, the operation was governed by Decision No 74/287, which temporarily authorized the Italian Republic to require its residents to lodge an interest free bank deposit in respect of such a transaction. However, that decision was expressly repeated by Article 3 of Decision No 85/16. Consequently, interest-free bank deposits which had been lodged for previous transactions should have been released at the time of the entry into force of Decision No 85/16, which could not have retroactive effect.

The Cassa di Risparmio, the Italian Government and the Commission took the view that the authorization contained in Decision No 85/16 did not constitute a fresh authorization but an extension of the authorization previously granted.

Since that authorization thus remained valid, the Italian legislation requiring an interest-free bank deposit continued to be in conformity with Community law.

That last argument had to be accepted.

Decision No 85/16 authorized the Italian Republic to 'continue' to apply certain protective measures for a period of three years.

B — *The deposit of securities with an approved bank*

The plaintiffs in the main proceedings contended that the compulsory deposit of foreign securities constituted an obstacle to capital movements which was made all the more awkward by the fact that an Italian resident did not even have the right to have the securities he had purchased transferred to Italian territory because approved banks always made a collective deposit with one of their correspondent banks abroad.

They further contended that there was discrimination because no such obligation existed for Italian securities.

They argued that the Italian legislation at issue was incompatible with Article 2 of the first directive for the implementation of Article 67 of the Treaty.

The Court observed first of all that the dispute concerned a transaction falling within list B annexed to the first directive, which lists the capital movements which are fully liberalized. The extent of that liberalization is explained in Article 67 of the Treaty, according to which the free movement of capital is to entail the abolition of restrictions on the movement of capital belonging to persons resident in Member States and any discrimination based on the nationality or the place of residence of the parties or on the place where such capital is invested.

The two Council directives for the implementation of Article 67 of the Treaty were intended to eliminate administrative obstacles which, although not taking the form of exchange authorizations or affecting the acquisition of foreign securities none the less constituted a hindrance to the 'widest liberalization' of capital

movements, which was necessary for the attainment of the objectives of the Community. Nevertheless, Community law did not restrict the right of Member States to verify the nature and genuineness of transactions or transfers, or to take all requisite measures to prevent infringements of their laws and regulations.

C — *Applicability of Article 73 of the Treaty*

Article 73 provides for consultations and, if necessary, protective measures in the event that movements of capital lead to disturbances in the functioning of the capital market in any Member State.

Commission Decisions Nos 74/287, 75/355 and 85/16, the decisions at issue in this case, were adopted pursuant to Article 108.

That article provides for consultations, mutual assistance between the Member States and, if necessary, protective measures where a Member State is in difficulties or is seriously threatened with difficulties as regards its balance of payments either as a result of an overall disequilibrium in its balance of payments or as a result of the type of currency at its disposal.

A comparison of those two provisions showed that the substantive requirements of Article 73 were different from those of Article 108 and that the decisions which might be adopted or authorized were not the same in each case.

The Court rules as follows:

'1. Commission Decision No 85/16 of 19 December 1984 Official Journal L 8 1985, p. 34 must be regarded as extending for a limited period the authorizations previously granted by Decisions Nos 74/287 and 75/355; it therefore authorizes the Italian Republic to continue to require an interest-free bank deposit for an operation effected before it entered into force.

2. The compulsory deposit of securities issued or payable abroad with an approved bank or a foreign bank chosen by an approved bank may not be required by a Member State, in the context of the liberalization of capital movements provided for in Article 2 and List B of the First Council Directive, of 11 May 1960, for the implementation of Article 67 of the Treaty (Official Journal, English Special Edition 1959-62, p. 49), unless such a requirement is indispensable for monitoring compliance with the conditions laid down by the legislation of that Member State in conformity with Community law.

3. The procedures provided for in Article 73 of the Treaty are not applicable to decisions and measures taken by a Member State and by the Commission pursuant to Article 108 of the Treaty.

* * *

Mr Advocate General Marco Darmon delivered his Opinion at the sitting on 7 May 1986.

He proposed that the Court rule as follows:

'1. Provided that it does not affect capital movements, a national measure requiring residents of a Member State to deposit with an approved bank foreign securities dealt in on a stock exchange and falling within List B of Annex I to the Council Directive of 11 May 1960 is not, in the present state of Community law, contrary to the provisions of Article 67 (1) of the EEC Treaty, as implemented by that directive, supplemented and amended by the Council Directive of 18 December 1962. The adoption of such a measure does not therefore at present require Commission authorization under Article 73 or 108 of the Treaty.

2. A national measure adopted pursuant to Article 108 of the EEC Treaty in accordance with the procedure laid down in that article is not also subject to the procedure provided for in Article 73 of the Treaty.

3. Commission Decision No 85/16 of 19 December 1984 'authorizing the Italian Republic to continue to apply certain protective measures pursuant to Article 108 (3) of the Treaty' does not have the effect, in relation to Commission Decisions Nos 74/287 and 75/355 which it repeals, of abolishing the obligation to lodge an interest-free deposit for purchases by residents of foreign securities dealt in on a stock exchange made before its entry into force.'

Free movement of goods

Case 178/84: *Commission of the European Communities* v *Federal Republic of Germany* — Judgment of 12 March 1987 (Failure of a State to fulfil its obligations — Purity requirement for beer)

The Commission of the European Communities brought an action for a declaration that, by prohibiting the marketing of beers lawfully manufactured and marketed in another Member State if they do not comply with paragraphs 9 and 10 of the Biersteuergesetz [Law on Beer Duty] (Law of 14 March 1952), the Federal Republic of Germany had failed to fulfil its obligations under Article 30 of the Treaty.

The applicable national law

The Biersteuergesetz comprises manufacturing rules which apply as such only to breweries in the Federal Republic of Germany and rules on the utilization of the designation 'Bier' (beer) which applies both to beer brewed in the Federal Republic of Germany and to imported beer.

The rules governing the manufacture of beer, set out in paragraph 9 of the Biersteuergesetz, provide that bottom-fermented beers may be manufactured only

from malted barley, hops, yeast and water. The same requirements, with some exceptions, are laid down with regard to top-fermented beer.

Under paragraph 18 of the Biersteuergesetz fines may be imposed for contraventions of the manufacturing rules set out in paragraph 9.

The rules on the commercial utilization of the designation 'Bier' are set out in paragraph 10 of the Biersteuergesetz.

Only fermented beverages satisfying the requirements set out in paragraph 9 of the Biersteuergesetz may be marketed under the designation 'Bier'—standing alone or as part of a compound designation—or under designations, or with pictorial representations, giving the impression that the beverage in question is beer.

Imports into the Federal Republic of Germany of beers containing additives are also confronted by the absolute prohibition on marketing in paragraph 11 of the Lebenmittel und Bedarfsgegenstandsgesetz [Law on Foodstuffs and Consumer Goods] of 15 August 1974. The law is based on considerations of health protection and prohibits all additives unless they have been authorized.

As a foodstuff, beer is subject to the legislation on additives, but it is governed by special rules.

The rules on manufacture in paragraph 9 of the Biersteuergesetz preclude the use of any substances, including additives, other than those listed therein.

The prohibition on the use of additives in beer did not cover processing aids or enzymes.

As a result, paragraph 11 (1) (2) of the Law on Foodstuffs, in conjunction with paragraph 9 of the Biersteuergesetz, had the effect of prohibiting importation to the Federal Republic of Germany of beers containing substances covered by the ban on the use of additives laid down in paragraph 11 (1) of the Law on Foodstuffs.

The subject-matter of the proceedings

The Court sought first to establish whether the proceedings were limited to the prohibition of the marketing under the designation 'beer' of beer manufactured in other Member States in accordance with rules inconsistent with paragraph 9 of the Biersteuergesetz or whether they extended to the ban on the importation of beer containing additives which were authorized in the Member States of origin but prohibited in the Federal Republic of Germany.

In its reasoned opinion the Commission adhered to its point of view to the effect that the fact that beer brewed according to the German tradition of the Reinheitsgebot could be manufactured without additives did not signify generally

that there was no technological necessity for the use of additives in beer brewed according to other traditions or using other raw materials. The Commission considered that the question of the technological necessity for the use of additives could be decided only in the light of the manufacturing methods employed and in relation to specific additives.

In its reply to the reasoned opinion the German Government reiterated its argument relating to health protection which, in its view, justified the provisions of paragraphs 9 and 10 of the Biersteuergezetz. However, it did not elucidate the exact scope of that legislation or its relationship with the rules on additives.

In its application, the Commission complained of the barriers to imports resulting from the application of the Biersteuergesetz to beers manufactured in other Member States from other raw materials or using additives authorized in those States.

The Court held that the application was directed both against the prohibition of the marketing under the designation 'beer' for beers manufactured in other Member States in accordance with rules not corresponding to those in paragraph 9 of the Biersteuergesetz, and against the prohibition of the importation of beers containing additives whose use is authorized in the Member State of origin but forbidden in the Federal Republic of Germany.

The prohibition on the marketing under the designation 'beer' of beers not complying with the requirements of paragraph 9 of the Biersteuergesetz

The provision on the manufacture of beer set out in paragraph 9 of the Biersteuergesetz could not in itself constitute a measure having an equivalent effect to a quantitative restriction on imports contrary to Article 30 of the Treaty since it applied only to breweries in the Federal Republic of Germany. Paragraph 9 was at issue only in so far as paragraph 10 of that law, which covered both products imported from other Member States and products manufactured in Germany, referred thereto in order to determine the beverages which might be marketed under the designation 'beer'.

The Commission stressed, however, that rules which, like paragraph 10 of the Biersteuergesetz, prohibit the use of a generic designation for products manufactured partly from raw materials, such as rice and maize, other than those whose use is prescribed in the national territory were contrary to Community law.

In its view, such rules went, in any event, beyond what was necessary in order to protect the German consumer, since that could be done simply by means of labelling or notices. Those rules therefore constituted an impediment to trade contrary to Article 30 of the Treaty.

The German Government first sought to justify its rules on public health grounds. It maintained that the use of raw materials other than those permitted by paragraph 9 of the Biersteuergesetz would inevitably entail the use of additives.

It was not contested that the application of paragraph 10 of the Biersteuergesetz to beers from other Member States in whose manufacture raw materials other than malted barley have been lawfully used, in particular rice and maize was liable to constitute an obstacle to their importation into the Federal Republic of Germany.

It remained to be established whether the application of that provision could be justified by imperative requirements relating to Community protection.

The Court rejected the German Government's argument that paragraph 10 of the Biersteuergesetz was essential in order to protect German consumers because, in their minds, the designation 'beer' was inseparably linked to the beverage manufactured solely from the ingredients laid down in paragraph 9 of the Biersteuergesetz.

It considered, firstly, that consumers' conceptions which vary from one Member State to the other were also likely to evolve in the course of time within a Member State.

As the Court had already held in Case 170/78, *Commission* v *United Kingdom*, the legislation of a Member State must not 'crystallize given consumer habits so as to consolidate an advantage acquired by national industries concerned to comply with them'.

Secondly, in the other Member States of the Community the designations corresponding to the German designation 'Bier' were generic designations for a fermented beverage manufactured from malted barley, whether on its own or with the addition of rice or maize. The same approach was taken in Community law as could be seen from heading No 22.03 of the Common Customs Tariff.

The German designation 'Bier' and its equivalents in the languages of the other Member States of the Community might therefore not be restricted to beers manufactured in accordance with the rules in force in the Federal Republic of Germany.

It followed from the foregoing that by applying the rules on designation in paragraph 10 of the Biersteuergesetz to beers imported from other Member States which were manufactured and marketed lawfully in those States, the Federal Republic of Germany had failed to fulfil its obligations under Article 30 of the Treaty.

The absolute ban on the marketing of beers containing additives

In the Commission's opinion the absolute ban on the marketing of beers containing additives could not be justified on public health grounds.

It maintained that the other Member States control very strictly the utilization of additives in foodstuffs and do not authorize the use of any given additive until

thorough tests have established it is harmless. In the Commission's view, there should be a presumption that beers manufactured in other Member States which contained additives authorized there represented no danger to public health.

The Commission argued that the Federal Republic of Germany bore the onus of proving that such beers are a danger to public health. It considered that in this case that burden of proof had not been discharged.

In any event, the rules on additives applying to beer in the Federal Republic of Germany were disproportionate in so far as they completely preclude the use of additives whereas the rules for other beverages such as soft drinks, were much more flexible.

For its part, the German Government considered that in view of the dangers resulting from the utilization of additives whose long-term effects were not yet known, it was necessary to minimize the quantity of additives ingested. Since beer is a foodstuff of which large quantities were consumed in Germany, the German Government considered that it was particularly desirable to prohibit the use of any additive in its manufacture.

It was not contested that the prohibition on the marketing of beer containing additives constituted a barrier to the importation from other Member States of beers containing additives authorized in those States, and was to that extent covered by Article 30 of the Treaty.

However, it had to be ascertained whether it was possible to justify that prohibition under Article 36 of the Treaty on grounds of the protection of human health.

The Court pointed out, in the first place, that in its judgments in the *Sandoz*, *Motte* and *Muller* cases it had inferred from the principle of proportionality underlying the last sentence of Article 36 of the Treaty that prohibitions on the marketing of products containing additives authorized in the Member State of production but prohibited in the Member State of importation must be restricted to what was actually necessary to secure the protection of public health.

The Court also concluded that the use of a specific additive which was authorized in another Member State had to be authorized in the case of a product imported from that Member State where, in view of the findings of international scientific research, and in particular of the work of the FAO and WHO, and of the eating habits prevailing in the importing Member State, the additive in question did not present a risk to public health and met a real need, especially, a technical one.

Secondly, the Court had held that by virtue of the principle of proportionality, traders must also be able to apply, under a procedure which was easily accessible to them and could be concluded within a reasonable time, for the use of specific additives to be authorized by a measure of general application.

The German rules on additives applicable to beer resulted in the exclusion of all the additives authorized in the other Member States and not the exclusion of those additives which involved risks in view of the eating habits of the German population; moreover those rules do not lay down any procedure whereby traders can obtain authorization for the use of a specific additive in the manufacture of beer by means of a measure of general application.

The German Government maintained that it was important, for reasons of general preventive health protection, to minimize the quantity of additives ingested, and that it was particularly advisable to prohibit altogether their use in the manufacture of beer, a foodstuff consumed in considerable quantities by the German population.

However, it appeared from the tables of additives authorized for use in various foodstuffs submitted by the German Government itself that some of the additives authorized in other Member States for use in the manufacture of beer were also authorized under the German rules for use in the manufacture of all or virtually all, beverages.

Mere reference to the potential risks of the ingestion of additives in general and to the fact that beer is a foodstuff consumed in large quantities did not suffice to justify the imposition of stricter rules in the case of beer.

Consequently, in so far as the German rules on additives in beer entailed a general ban on additives, their application to beers imported from other Member States was contrary to the requirements of Community law as laid down in the case-law of the Court, since that prohibition was contrary to the principle of proportionality and was therefore not covered by the exception provided for in Article 36 of the Treaty.

The Court decided as follows:

'1. By prohibiting the marketing of beer lawfully manufactured and marketed in another Member State unless that beer complies with paragraphs 9 and 10 of the Biersteuergesetz the Federal Republic of Germany has failed to fulfil its obligations under Article 30 of the EEC Treaty.

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

* * *

Advocate General Sir Gordon Slynn delivered his Opinion at the sitting on 18 September 1986.

In his view, the Commission was entitled:

'1. to a declaration that by prohibiting the marketing of beer lawfully produced and marketed in another Member State, unless that beer complies with Articles 9 and 10 of the Biersteuergesetz, and (if the Court accepts that the

issue arises, as in the circumstances I think it would be right to do) in maintaining in relation to beer the absolute prohibition on additives contained in the Lebensmittel- und Bedarfsgegenständegesetz, the Federal Republic of Germany has failed to fullfil its obligations under Article 30 of the EEC Treaty, and

2. to its costs of these proceedings.'

Free movement of persons

1. Case 222/86—Union nationale des entraîneurs et cadres techniques professionnels du football (Unectef) v *Georges Heylens and Others* — Judgment of 15 October 1987 (Free movement of workers — Equivalence of diplomas—Sports trainer) (Full Court)

The Tribunal de Grande Instance, Lille, requested a preliminary ruling on the interpretation of Article 48 of the EEC Treaty.

The question arose in criminal proceedings brought by the Union national des entraîneurs et cadres techniques professionnels de football against G. Heylens, football trainer, and Dewailly, Amyot and Deschodt, directors of the Lille Olympic Sporting Club, Société anonyme, for having respectively as principal and accomplices contravened the provisions of the French Law No 84-610 of 16 July 1984 on the organization and promotion of physical and sporting activities and Article 259 of the French code pénal [Penal Code] on the usurpation of a title.

It appeared from the documents that in France access to the profession of football trainer was subject to the possession of a national diploma as football trainer or a foreign diploma recognized as equivalent by a decision of the member of the competent board after an opinion from a special committee.

The accused, G. Heylens, was a Belgian national who held a Belgian diploma as football trainer and was engaged by the Lille Olympic Sporting Club as trainer of their professional football team. The request for recognition of the Belgian diploma as equivalent was rejected by a decision of the member of the competent board which refers, as grounds, to an unfavourable opinion from a special committee for which no reasons were given.

The case led the national court to put a question which basically asked whether, where in a Member State access to a gainful occupation is subject to the possession of a national diploma or a foreign diploma recognized as equivalent, the principle of free movement of workers enshrined in Article 48 of the Treaty required that an appeal to the Court should lie in the decision refusing a worker who was a national of another Member State recognition that his diploma issued in the Member State of which he was a national was equivalent and that reasons should be given for the decision.

Pursuant to the general principle of prohibiting discrimination on grounds of nationality contained in Article 7 of the Treaty, Article 48 was intended to eliminate in the laws of Member States provisions which in relation to employment, remuneration and other conditions of work imposed harsher treatment on a national of another Member State or placed him at a disadvantage in law or *de facto* in relation to a national in the same circumstances.

The Court had already held that the fact that the directives intended to bring about mutual recognition of diplomas had not yet been adopted did not allow a Member State to refuse a person subject to Community law enjoyment of that freedom where the freedom might be assured in that Member State in particular by reason of the fact that its law and regulations allowed recognition of equivalent foreign diplomas.

Since it had to reconcile the requirement of the qualifications necessary for the pursuit of a particular occupation or profession with the requirements of free movement of workers, the procedure for recognition of equivalence had to allow the national authorities to satisfy themselves objectively that the foreign diploma certified that its holder had, if not identical at least equivalent knowledge and qualifications to those which the national diploma certified.

Since free access to employment was a fundamental right given by the Treaty individually to every worker in the Community, the existence of a legal remedy against any decision by a national authority refusing to recognize such right was essential to guarantee the individual effective protection of his right.

Effective review by the Court, which had to cover the lawfulness of the reasons for the contested decision, implied in a general way that the court before which the matter comes had to be able to require the competent authority to notify those reasons. Since it was a question of ensuring effective protection of a fundamental right it was also necessary that the competent authorities should have been able to defend the right in the best possible circumstances and have had the power to decide with full knowledge of the matter whether it was appropriate that the case should be brought before the Court. It follows that in such a situation the competent national authority had to make known the reasons on which its refusal was based either in the decision itself or in a subsequent notification made upon request.

The Court, in answer to the question put to it by the national court, ruled:

> 'Where in a Member State access to an occupation as an employed person is dependent upon the possession of a national diploma or a foreign diploma recognized as equivalent thereto, the principle of the free movement of workers laid down in Article 48 of the Treaty requires that it must be possible for a decision refusing to recognize the equivalence of a diploma granted to a worker who is a national of another Member State by that Member State to be made the subject of judicial proceedings in which its legality under Community law can be reviewed, and for the person concerned to ascertain the reasons for the decision.'

* * *

Mr Advocate General Mancini delivered his Opinion at the sitting on 18 June 1987.

He proposed that the Court should give the following answer:

'Articles 7 and 48 to 51 of the EEC Treaty must be interpreted as follows: a national law or administrative practice whereby recognition of the equivalence of a football trainer's diploma issued by another Member State may be refused without any reasons being required to be given, thus preventing its holder from practising as a football trainer, must be deemed to be incompatible with the aforementioned Treaty provisions.'

2. Case 131/85: *Emir Gül* v *Regierungspräsident Düsseldorf* — Judgment of 7 May 1986 (Freedom of movement for persons — Position of worker's spouse)

The Verwaltungsgericht [Administrative Court] Gelsenkirchen referred to the Court for a preliminary ruling a number of questions on the interpretation of Articles 3 and 11 of Regulation No 1612/68 of the Council on freedom of movement for workers within the Community.

Those questions were raised in proceedings brought by Emir Gül, a doctor of Cypriot nationality, whose spouse is a British national, against the refusal of the competent German authority to renew his authorization to practise medicine in Germany.

After completing his studies in medicine at the University of Istanbul Mr Gül was awarded a certificate of specialization as an anaesthesiologist in Germany in 1982. On his application his authorization to practice medicine in an employed capacity was renewed for 1983 on the grounds that his wife was undergoing a difficult pregnancy.

In 1983 Mr Gül applied for permanent authorization to practice, relying on the fact that his wife and children were of British nationality and the fact that his wife worked in Germany as a hairdresser.

Mr Gül argued that as the spouse of 'a national of a Member State' [who was] pursuing an activity as an employed... person in the territory of another Member State' he was entitled under Article 11 of Regulation No 1612/68 to take up any activity as employed persons throughout the territory of the host Member State.

The practice of the German authorities was to grant authorization to doctors who were nationals of a non-member country married to German nationals, but to refuse authorization to doctors from non-member countries married to nationals of other Member States. Mr Gül argued that such a practice must be regarded as discriminatory with regard to nationals of other Member States.

In order to resolve that problem the German court referred several questions to the Court of Justice for a preliminary ruling.

Under Article 11 of Regulation No 1612/68, the interpretation of which is requested, where a national of a Member State is pursuing an activity as an employed or self-employed person in the territory of another Member State, his spouse and those of the children who are under the age of 21 years are dependent on him are entitled to take up any activity as employed persons throughout the territory of that same State, even if they are not nationals of any Member State.

According to the German authorities, that provision must be interpreted as meaning that the right to take up employment granted to the spouse of a migrant worker did not include the right to pursue a particular occupation, such as the medical profession, access to which is governed by special legal provisions.

For Mr Gül and the Commission, it was clear from the very wording of Article 11 of Regulation No 1612/68 that the right of the spouse, whatever his nationality, to take up employment, covered any activity as an employed person; the spouse must therefore be subject to the same rules regarding access to and pursuit of the occupation as nationals of the host Member State.

The Court upheld that argument.

The national court also asked whether a national of a non-member country to whom Article 11 of Regulation No 1612/68 applied might rely on the first indent of Article 3 (1) of that regulation, which provides that, under the regulation, provisions laid down by law, regulation or administrative action or administrative practices of a Member State are not to apply where they limit application for and offers of employment or the right of foreign nationals to take up and pursue employment or subject these to conditions not applicable in respect of its own nationals.

Next, the national court sought to ascertain the precise scope of the non-discriminatory treatment provided for by the first indent of Article 3 (1) of Regulation 1612/68.

The final question submitted by the national court concerned the effect on the rights of the spouse of a migrant worker who intended to practise medicine as an employed person of Council Directive 75/363 concerning the coordination of provisions laid down by law, regulation or administrative action in respect of activities of doctors.

The Court stated that that directive was intended not to lay down rules for the implementation of freedom of establishment and freedom of movement for doctors but to facilitate the exercise of those rights by means of the recognition of training and other conditions necessary for the issue of a licence or a temporary authorization to practise medicine.

The Court ruled as follows:

'1. Article 11 of Regulation No 1612/68 must be interpreted as meaning that the right of the spouse of a worker entitled to move freely within the

Community to take up any activity as an employed person carries with it the right to pursue occupations subject to a system of administrative authorization and to special legal rules governing their exercise, such as the medical profession, if the spouse shows that he has the professional qualifications and diplomas required by the host Member State for the exercise of the occupation in question.

2. A person to whom Article 11 of Regulation No 1612/68 applies may rely on the first indent of Article 3 (1) of that regulation irrespective of his nationality.

3. The non-discriminatory treatment provided for in the first indent of Article 3 (1) of Regulation No 1612/68 consists in the application to persons covered by that provision of the same provisions laid down by law, regulation or administrative action and the same administrative practices as are applied to nationals of the host State.

4. A spouse of a worker who is a national of a Member State to whom Article 11 of Regulation No 1612/68 applies is entitled to be treated in the same way as a national of the host State with regard to access, as an employed person, to the medical profession and the practice of that profession whether his qualifications are recognized under the legislation of the host Member State alone or pursuant to Directive 75/563.'

* * *

Mr Advocate General G. Federico Mancini delivered the following Opinion at the sitting on 25 February 1986.

He proposed that the Court rule as follows:

'1. Article 11 of Regulation No 1612/68 must be interpreted as meaning that where a national of a Member State resides in another Member State and carries on an activity as an employed or self-employed person there, his spouse is entitled to take up and pursue any activity whatever as an employed person in that State. That right extends to activities which under national law may be pursued only in accordance with an administrative authorization issued pursuant to special rules governing the profession, so long as the person concerned fulfils all the applicable conditions.

2. A national of a non-member country to whom Article 11 of Regulation No 1612/68 applies may rely on the first indent of Article 3 (1) of that regulation.

3. Under the first indent of Article 3 (1) of Regulation No 1612/68 persons to whom Article 11 of that regulation applies are entitled to be treated in the same way as nationals of the State concerned.

4. It is for the national court to undertake a comprehensive examination of all the provisions regarding access to the medical profession in order to

determine whether they have the effect of discriminating against foreign nationals.

5. The right to be treated in the same way as a national of the State concerned implies that no obstacles may be raised to the recognition or the formal medical qualifications of persons to whom Article 11 of Regulation No 1612/68 applies, especially where a Member State has taken advantage of the possibility offered by Article 1 (5) of Directive 75/363.'

Freedom to provide services

Case 205/84 — *Commission of the European Communities, supported by the Kingdom of the Netherlands and the United Kingdom* v *Federal Republic of Germany, supported by the Kingdom of Belgium, the Kingdom of Denmark, the French Republic, Ireland and the Italian Republic (interveners)* — Judgment of 4 December 1986 (Freedom to provide services — Insurance)

The Commission of the European Communities brought an action for a declaration that:

(a) by applying the Versicherungsaufsichtsgesetz [Insurance Supervision Law] which provides that where insurance undertakings in the Community wish to provide services in the Federal Republic of Germany in relation to direct insurance business, other than transport insurance, through salesmen, representatives, agents or other intermediaries, such persons must be established and authorized in the Federal Republic of Germany and which also provides that insurance brokers established in the Federal Republic of Germany may not arrange contracts of insurance for persons resident in the Federal Republic of Germany with insurers established in another Member State, the Federal Republic of Germany had failed to fulfil its obligations under Articles 59 and 60 of the EEC Treaty;

(b) by bringing into force and applying the Vierzehntes Änderungsgesetz zum Versicherungsaufsichtsgesetz [Fourteenth Law amending the Versicherungsaufsichtsgesetz], which was intended to coordinate laws, regulations and administrative provisions relating to Community co-insurance, the Federal Republic of Germany had failed to fulfil its obligations under Article 59 and 60 of the EEC Treaty in so far as that law provided in relation to the Community co-insurance operations that the lead insurer (in the case of risks situated in the Federal Republic of Germany) must be established in that State and authorized there to cover the risks insured as sole insurer;

(c) by fixing through the Bundesaufsichtsamt für das Versicherungswesen [Federal Insurance Supervision Office] excessively high thresholds in respect of the risks arising in connection with fire insurance, civil liability aircraft insurance and general civil liability insurance, which may be the subject of Community co-insurance, so that as a result co-insurance as a service was excluded in the Federal Republic of Germany for risks below those thresholds, the Federal Republic of Germany has failed to filful its obligations under Articles 1 (2)

and 8 of Directive 78/473 and under Articles 59 and 60 of the EEC Treaty.

The Commission also brought actions under Article 169 of the EEC Treaty against the French Republic (220/83), Denmark (252/83) and Ireland (206/84) in connection with the transposition by those States of Directive 78/473 into their national law.

A — *The Commission's first head of claim*

(a) The subject of that head of claim

This first head of claim concerned the requirements of authorization and establishment imposed by the Insurance Supervision Law on any provider of services in the sector of direct insurance in general, other than transport insurance and Community co-insurance. It also concerned life assurance.

The Commission's first head of claim therefore concerned all insurance business other than transport insurance, Community co-insurance and compulsory insurance and it referred to the requirements of establishment and authorization imposed by the German legislation on Community insurers as providers of services within the meaning of the Treaty.

(b) The provision of services in the context of insurance

According to the first paragraph of Article 59 of the EEC Treaty, the abolition of restrictions on the freedom to provide services within the Community concerns all services provided by nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended. The first paragraph of Article 60 provides that services are to be considered 'services' within the meaning of the Treaty where they are normally provided for renumeration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons.

Those articles require the abolition of all restrictions on the free movement of the provisions of services, subject nevertheless to the provisions of Article 61 and 66 of the Treaty, which were not at issue in the proceedings before the Court.

The Court considered that although the rules on movements of capital were not of such a nature as to restrict the freedom to conclude insurance contracts in the context of the provision of services under Articles 59 and 60, it was, however, necessary to determine the scope of those articles in relation to the provisions of the Treaty on the rights of establishment.

As the Court held in its judgment in Case 33/74, *van Binsbergen*, a Member State could not be denied the right to take measures to prevent the exercise by a person

providing services whose activity was entirely or principally directed towards its territory of the freedom guaranteed by Article 59 for the purpose of avoiding the professional rules of conduct which would be applicable to him if he were established within that State. Such a situation might be subject to judicial control under the provisions of the Chapter relating to the right of establishment and not of that on the provision of services.

In order to give judgment it was therefore necessary to consider only the provision of services relating to contracts of insurance against risks situated in a Member State concluded by a policy-holder established or residing in that State with an insurer who was established in another Member State and who did not maintain any permanent presence in the first State or direct his business activities entirely or principally towards the territory of that State.

(c) The conformity of the contested requirements with Articles 59 and 60 of the Treaty

Articles 59 and 60 of the Treaty require the removal not only of all discrimination against a provider of a service on the grounds of his nationality but also all restrictions on his freedom to provide services imposed by reason of the fact that he is established in a Member State other than that in which the service is to be provided.

The Court considered that the requirements in question in the proceedings before it, namely that an insurer who was established in another Member State, authorized by the supervisory authority of that State and subject to the supervision of that authority, must have a permanent establishment within the territory of the State in which the service is provided and that he must obtain a separate authorization from the supervisory authority of that State, constituted restrictions on the freedom to provide services inasmuch as they increased the cost of such services in the State in which they were provided, in particular where the insurer conducts business in that State only occasionally.

It followed that those requirements might be regarded as compatible with Articles 59 and 60 of the EEC Treaty only if it was established that in the field of activity concerned there were imperative reasons relating to the public interest which justified restrictions on the freedom to provide services, that the public interest was not already protected by the rules of the State of establishment and that the same result could not be obtained by less restrictive rules.

(i) The existence of an interest justifying certain restrictions on the freedom to provide insurance services

The insurance sector was a particularly sensitive area from the point of view of the protection of the consumer both as a policy-holder and as an insured person.

In addition it had become a mass phenomenon.

The Court considered therefore that in the field in question there were imperative reasons relating to the public interest which might justify restrictions on the freedom to provide services, provided, however, that the rules of the State of establishment were not adequate in order to achieve the necessary level of protection and that the requirements of the State in which the service was provided did not exceed what was necessary in that respect.

(ii) The question whether the public interest was not already protected by the rules of the State of establishment

The Court took the view that it was however necessary to consider whether the two 'First Directives' had nevertheless provided for conditions for conducting insurance business which were sufficiently equivalent throughout the Community, and means of supervision which were sufficiently effective, for the restrictions imposed by the State in which the services were provided on the undertakings providing them to be entirely, or at least partially, abolished.

As regards the financial position of insurance undertakings, the Court pointed out that the provisions of the directive were intended to ensure that the undertaking was solvent and the directives required the supervisory authority of the Member State in which the head office was situated to verify the state of solvency of the undertaking 'with respect to its entire business', including the provision of services. On the other hand, the two directives had not harmonized the national rules concerning technical reserves, in other words financial resources which are set aside to guarantee liabilities under contracts entered into and which do not form part of the undertaking's own capital resources.

The directives had expressly left the necessary harmonization in that respect to later directives.

In the absence of harmonization in that respect and of any rule requiring the supervisory authority of the Member State of establishment to supervise compliance with the rules in force in the State in which the service was provided, it had to be recognized that the latter State is justified in requiring and supervising compliance with its own rules on technical reserves with regard to services provided within its territory, provided that such rules did not exceed what was necessary for the purpose of ensuring that policy-holders and insured persons were protected.

The Court found that it was therefore necessary to acknowledge that, in the present state of Community law, the considerations relating to the protection of policy-holders and insured persons justified the application by the Member State in which the service was provided of its own legislation concerning technical reserves and the conditions of insurance, provided that the requirements of that legislation did not exceed what was necessary to ensure the protection of policy-holders and insured persons.

It remained to consider whether it was necessary for such supervision to be effected under an authorization procedure and on the basis of a requirement that

the insurance undertaking should have a permanent establishment in the State in which the service was provided.

(iii) The necessity of an authorization procedure

The Commission did not dispute that the State in which the service was provided was entitled to exercise a certain control over insurance undertakings which provided the services within its territory.

The German Government and the governments intervening in its support maintained that the necessary supervision could be carried out only by means of an authorization procedure which made it possible to investigate the undertaking before it commenced its activities, to monitor those activities continuously and to withdraw the authorization in the event of serious and repeated infringements.

According to the actual wording of the directives, each Member State must make the taking-up of the business of insurance in its territory subject to an official authorization.

However the Court considered that it was necessary to emphasize that the authorization must be granted on request to any undertaking established in another Member State which meets the conditions laid down by the legislation of the State in which the service is provided and that those conditions may not duplicate equivalent statutory conditions which have already been satisfied in the State in which the undertaking is established.

It was still necessary to consider whether the requirement of authorization which, under the Insurance Supervision Law, applied to any insurance business other than transport insurance, was justified in all its applications.

The Court found that the requirement of authorization might be maintained only in so far as it was justified on the grounds relating to the protection of policy-holders and insured persons relied upon by the German Government.

However, the Court took the view that it was not in a position to make such a general distinction and to lay down the limits of that distinction with sufficient precision to determine the individual cases in which the needs of protection, which are characteristic of the insurance business in general, did not justify the requirement of an authorization.

It followed that the Commission's first head of claim had to be rejected in so far as it was directed against the requirement of authorization.

(iv) The necessity of establishment

If the requirement of an authorization constituted a restriction on the freedom to provide services, the requirement of a permanent establishment was the very negation of that freedom.

The Court found that it had not been established that the considerations invoked by the Federal Republic of Germany concerning the protection of policy-holders and insured persons made the establishment of an insurer in the territory of the State in which the service was provided an indispensable requirement.

B — *The Commission's second head of claim*

The Commission sought a declaration that the Federal Republic of Germany had failed to fulfil its obligations not only under Articles 59 and 60 of the EEC Treaty but also under Council Directive 78/473 on Community co-insurance.

That head of claim was based on the proposition that the requirements of authorization and establishment were contrary to Articles 59 and 60 of the Treaty with regard to all insurance business.

In the Commission's view there were therefore no grounds for distinguishing in that respect between the position of the insurer in general and that of the leading insurer in particular.

In the Commission's view the Federal Republic of Germany had thus infringed those articles when, in transposing Directive 78/473 into national law, it had exempted only the other co-insurers, and not the leading insurer, from those requirements.

The directive did not indicate in which Member State the leading insurer had to be authorized and it followed from the Court's findings under A above that, according to Community law, an insurer who was already authorized and established in a Member State need not necessarily be established in another Member State in order to be able to cover the whole of a risk situated in the territory of that State.

In the Court's view it was sufficient to consider whether the requirement that the leading insurer must be authorized in the country of the risk was in conformity with Community law.

Consideration of the first head of claim had shown that the requirement of authorization in the State in which the service was provided was not justified where the undertaking providing the services already established and where there existed a system of cooperation between the supervisory authorities of the Member States concerned ensuring effective supervision of compliance with such conditions also as regards the provision of services.

A difference of treatment in that respect between the leading insurer and other co-insurers did not appear objectively justified. Although it was for the leading insurer to negotiate the contract and to ensure its performance, there was nothing to prevent him from covering a much smaller part of the risk than that covered by other co-insurers.

In those circumstances and in the case of the insurance to which Directive 78/473 on co-insurance applies, not only the requirement that the leading insurer be established but also the requirement that he be authorized, which were laid down in the Insurance Supervision Law, were contrary to Articles 59 and 60 of the Treaty and therefore also to the directive.

C — *The Commission's third head of claim*

The Court decided as follows:

'1. The Federal Republic of Germany has failed to fulfil its obligations under Articles 59 and 60 of the EEC Treaty by providing in the Versicherungsaufsichtsgesetz that where insurance undertakings wish to provide services in that Member State in relation to direct insurance business, other than transport insurance, through salesmen, representatives, agents and other intermediaries, they must be established in its territory; however, that failure does not extend to compulsory insurance and insurance for which the insurer either maintains a permanent presence equivalent to an agency or a branch or directs his business entirely or principally towards the territory of the Federal Republic of Germany.

2. The Federal Republic of Germany has failed to fulfil its obligations under Articles 59 and 60 of the Treaty and under Council Directive 78/473/EEC of 30 May 1978 on the coordination of laws, regulations and administrative provisions relating to Community co-insurance by requiring that, for services provided in connection with Community co-insurance, where the risks are situated in the Federal Republic of Germany the leading insurer be established and authorized there.

3. For the rest, the application is dismissed.

4. The parties, including the interveners, are ordered to bear their own costs.'

* * *

Advocate General Sir Gordon Slynn delivered the following Opinion at the sitting on 20 March 1986:

'In the light of these considerations I am of the opinion that:

1. By applying the Insurance Supervision Law as amended by the Law of 29 March 1983 which provides that where insurance undertakings in the Community wish to provide services in the Federal Republic of Germany in relation to direct insurance business other than transport insurance through salesmen, representatives, agents or other intermediaries, such undertakings must be established and authorized in the Federal Republic of Germany and which provides that insurance brokers established in the Federal Republic of

Germany may not arrange contracts of insurance for persons resident in the Federal Republic of Germany with insurers established in another Member State, has failed to fulfil its obligations under Articles 59 and 60 of the EEC Treaty;

2. By bringing into force and applying the Law of 29 March 1983, which was intended to implement Council Directive 74/473/EEC of 30 May 1978, the Federal Republic has failed to fulfil its obligations under Articles 59 and 60 of the EEC Treaty and under the aforementioned directive in so far as that Law provides in relation to Community co-insurance operations that the leading insurer must be established in that State and authorized there to cover the risk insured also on his own;

3. The fixing of thresholds for certain classes of insurance, below which co-insurance is prohibited, is contrary to Articles 59 and 60 of the Treaty; it is not open to a Member State to fix those thresholds under Directive 78/473/EEC.

It seems to me that the Federal Republic should pay the Commission's costs and the costs of the Netherlands and the United Kingdom. Belgium, Denmark, France, Ireland and Italy, which intervened on behalf of the Federal Republic should in my view bear their own costs.'

Institutions

Case 294/84: '*Les Verts – Parti écologiste* v *European Parliament* — Judgment of 23 April 1986 (Action for annulment — Information campaign for the elections to the European Parliament)

'Les Verts – Parti écologiste', whose headquarters are in Paris, brought an action requesting the Court to declare void the decision of the Bureau of the European Parliament dated 12 October 1982 concerning the allocation of the appropriations entered under item 3708 of the general budget of the European Communities and the rules adopted by the enlarged Bureau of the European Parliament on 29 October 1983 governing the use of the appropriations for reimbursement of expenditure incurred by the political groupings having taken part in the 1984 European elections.

Item 3708 of the general budget of the European Communities provided for a contribution to the cost of preparations for the next European elections. It was to cover a contribution to the cost of preparations for the information campaign leading up to the second direct elections in 1984. In total ECU 43 million was allocated to this item.

There are a great many rules governing the allocation and utilization of those funds under the decision of the Bureau of the European Parliament of 12 October 1983.

On 29 October 1983, the enlarged Bureau adopted 'Rules governing the use of the appropriations for reimbursement of expenditure incurred by the political groupings having taken part in the 1984 European elections'.

For parties, lists or alliances not represented in the European Parliament, it was provided that:

> Request for reimbursement were to be submitted to the Parliament within 90 days of publication of the results of the election in the Member States in question;
>
> The period during which expenditure was to be considered as expenditure on the 1984 elections was to begin on 1 January 1983 and finish 40 days after the date of the elections;
>
> Requests were to be accompanied by statements of accounts.

The applicant association put forward seven submissions in support of its action:

1. Lack of competence;
2. Infringement of the Treaties (Article 138 of the EEC Treaty and Articles 7 and 13 of the Act concerning the election of the representatives of the Assembly by direct universal suffrage);
3. Breach of the general principle of the equality of all citizens before the law governing elections;
4. Infringement of Article 85 et seq. of the EEC Treaty;
5. Breach of the French constitution;
6. An objection of illegality and inapplicability, inasmuch as the vote cast by the French minister in the Council of the European Communities during the deliberation on the budgets was unlawful;
7. Misuse of powers inasmuch as the Bureau of the European Parliament used the appropriations entered under Item 3708 in order to ensure the re-election of the Members of the European Parliament elected in 1979.

Admissibility of the action

On 29 March 1984, the applicant association, 'Les Verts — Parti écologiste' and another association, 'Les Verts – Confédération écologiste', decided to dissolve themselves and to merge in order to form a new association called 'Les Verts – Confédération écologiste — Parti écologiste'. It was that new association which put up a list for 'Les Verts Europe écologie' at the European elections of June 1984. It was also that association which submitted a request for reimburse-

ment to the European Parliament. As a result of that request it received a sum of ECU 82 958.

The European Parliament contended that the applicant association, 'Les Verts – Parti écologiste', had lost the capacity to pursue the proceedings. While not denying the new association could continue the proceedings instituted by the applicant association, the European Parliament argued that the proceedings had to be continued within a period laid down by the Court and that this had to be done clearly by the organs of the new association empowered to do so under the association's rules.

The Court noted that there could be no doubt as to the intention of the new association to maintain and continue the action that was brought by one of the associations from which it was formed and that was expressly assigned to it, and the European Parliament's submissions to the contrary must be rejected.

The Court had to verify its own motion whether the conditions laid down in Article 173 of the Treaty had been fulfilled.

The Court's jurisdiction to hear and determine an action for an annulment brought under Article 173 of the Treaty against the measure adopted by the European Parliament

The applicant association considered that, in view of the provisions of Article 174 of the Treaty, the Court's power to review the legality of measures adopted by the institutions under Article 173 of the Treaty cannot be limited to measures adopted by the Council and the Commission without giving rise to a denial of justice.

The European Parliament also considered that the list of potential defendants in Article 173 of the Treaty (the Council and the Commission) is not exhaustive.

It had to be emphasized that the European Economic Community is a Community based on the rule of law, inasmuch as neither its Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the basic constitutional charter, the Treaty.

An interpretation of Article 173 which excluded measures adopted by the European Parliament from those which could be contested would lead to a result contrary both to the spirit of the Treaty as expressed in Article 164 and to its system. Measures adopted by the European Parliament in the context of the EEC Treaty could encroach on the powers of the Member States or of the other institutions, or exceed the limits which have been set to the Parliament's powers, without it being possible to refer them for review by the Court.

The Court therefore considered that an action for annulment might lie against measures adopted by the European Parliament intended to have legal effects *vis-à-vis* third parties.

The question whether the 1982 decision and the 1983 rules are measures intended to produced legal effects vis-à-vis *third parties*

The two contested measures both concerned the allocation of the appropriations entered in the budget of the European Parliament to cover the cost of preparations for the 1984 European elections.

They dealt with the allocation of those appropriations to third parties for expenses relating to activities to take place outside the European Parliament. They governed the rights and obligations of political groupings.

For that reason, the measures in question were designed to produce legal effects *vis-à-vis* third parties and might therefore be the subject of an action under Article 173 of the Treaty.

The question whether the contested measures are of direct and individual concern to the applicant association within the meaning of the second paragraph of Article 173 of the Treaty

The applicant association emphasized that it had legal personality and that the contested decisions, entailing as they did a grant of aid to rival political groupings, were certainly of direct and individual concern to it.

The European Parliament considered that, as the Court's case-law concerning that condition stands at present, the applicant association's action was inadmissible.

The Court first pointed out that the contested measures were of direct concern to the applicant association. They constituted a complete set of rules which were sufficient in themselves and which required no implementing provisions, since the calculation of the share of the appropriations to be granted to each of the political groupings concerned was automatic and left no room for any discretion.

It remained to be examined whether the applicant association was individually concerned by the contested measures.

The Court considered that the examination had to be centred on the 1982 decision. That decision approved the principle of granting the appropriations entered under item 3708 to the political groupings; it then determined the share of those appropriations to be paid to the political groups in the assembly elected in 1979 and to the non-attached members of that assembly (69 %) and the share of the appropriations to be distributed among all the political groupings, whether or not represented in the assembly elected in 1979, which took part in the 1974 elections (31 %); finally, it divided the 69 % between the political groups and the non-attached members. The 1983 rules must be regarded as an integral part of the original decision.

The 1982 decision concerns all the political groupings, even though the treatment they receive differs according to whether or not they were represented in the assembly elected in 1979.

Consequently, the Court concluded that the applicant association, which was non-existent at the time when the 1982 decision was adopted and which was able to present candidates at the 1984 elections, was individually concerned by the contested measures.

In the light of all those considerations, the Court concluded that the application was inadmissible.

Substance of the case

In its first three submissions, the applicant association described the scheme established by the European Parliament as a scheme for reimbursement of election campaign expenses.

In its first submission, the applicant association claimed that the Treaty provided no legal basis for the adoption of such a scheme.

In its second submission it asked the Court to declare that, in any event, such a matter was covered by the concept of a uniform electoral procedure referred to in Article 138 (3) of the Treaty and that it therefore remained within the powers of the national legislature by virtue of the provisions of Article 7 (2) of the act concerning the election of the representatives of the assembly by direct universal suffrage.

Finally, the applicant association's third submission criticized the unequal opportunity afforded to the various political groupings inasmuch as though already represented in the Parliament elected in 1979 shared twice in the division of the appropriations entered under item 3708.

They shared first in the division of the 69 % which was reserved for the political groups and non-attached members of the assembly elected in 1979 and shared again in the division of the 31 % reserve fund.

The European Parliament replied to the first two submissions together. It considered that there was a contradiction between the two submissions: the matter either fell or did not fall within the powers of the Community but the applicant association could not advance both of those propositions at the same time.

The European Parliament emphasized above all that the scheme was not set up to reimburse election campaign expenses but to make a contribution to an information campaign designed to make the Parliament more widely known among the electorate at the time of the elections, as can be clearly seen both from the remarks on item 3708 and from the implementing rules.

Since the scheme was not connected with reimbursement of election campaign expenses, the first and second submissions were without foundation.

The European Parliament also contended that the third submission should be rejected because the equality of opportunity between the various political groupings had not been affected. The purpose of the rules was to permit an effective dissemination of information concerning the Parliament.

In order to consider whether or not the first three submissions were well-founded, the Court felt it necessary to determine first of all the true nature of the financing scheme set up by the contested measures.

It noted first that the contested measures were, to say the least, ambiguous. The 1982 decision merely stated that it dealt with the allocation of the appropriations entered under item 3708, whereas the internal memorandum summarizing it speaks quite openly of financing the election campaign. With regard to the 1983 rules, they did not state whether the expenses which they propose to reimburse must have been incurred in connection with the dissemination of information concerning the European Parliament itself or information concerning the positions which the political groupings had adopted or which they had intended to adopt in the future.

The Court considered that it was true that the 1982 rules on the utilization of funds provided that the funds allocated could only be used for activities connected with the information campaign for the 1984 elections.

The Court emphasized, however, that those rules were not sufficient to remove the ambiguity as to the nature of the information provided. In fact, the 1982 rules did not, any more than the contested measures, lay down any condition linking the allocation of the funds to the nature of the information disseminated. Moreover, the European Parliament admitted at the hearing that it was not possible for its members to separate strictly electoral statements from information.

The Court pointed out that the funds made available to the political groupings could be spent only during the election campaign. That is clear as regards the 31 % reserve fund, which was divided among the groupings which took part in the 1984 elections.

The expenditure which could be reimbursed was that incurred in connection with the 1984 European elections during the period from 1 January 1983 to forty days after the elections. It was equally true of the 69 % of the appropriations divided between the political groups. It could be seen from the 1982 rules that one-third of the total amount allocated was not to be paid until after the 1984 election had been held.

Under those circumstances, the Court concluded that the financing scheme set up could not be distinguished from a scheme providing for flat-rate reimbursement of election campaign expenses.

Secondly, the Court considered whether the adoption of the contested measures infringed Article 7 (2) of the act of 20 September 1976 concerning the election of the representatives of the assembly by direct universal suffrage.

According to that provision, 'pending the entry into force of a uniform electoral procedure and subject to the other provisions of this act, the electoral procedure shall be governed in each Member State by its national provisions'.

The reimbursement of election campaign expenses was not one of the matters covered by the act of 1976.

Consequently, as Community law stands at present, the setting up of the scheme for the reimbursement of election campaign expenses and the production of detailed arrangements for its implementation remained within the competence of the Member States.

The applicant association's submission alleging an infringement of Article 7 (2) of the Act of 1976 had therefore to be upheld.

For that reason, there was no need to rule on the other submissions.

The Court decided as follows:

'1. The decision of the Bureau of the European Parliament dated 12 October 1982 concerning the allocation of the appropriations entered under item 3708 of the General Budget of the European Communities and the rules adopted by the enlarged Bureau on 29 October 1983 governing the use of the appropriations for reimbursement of expenditure incurred by the political groupings having taken part in the 1984 elections are void;

2. Each party is to bear its own costs.'

* * *

Mr Advocate General G. Federico Mancini delivered his Opinion at the sitting on 4 December 1985.

He concluded as follows:

'For all the foregoing reasons, I suggest that the Court:

1. Declare inadmissible the action brought against the European Parliament on 20 December 1983 by the association called "Les Verts – Parti écologiste" on the ground that the requirements laid down in the second paragraph of Article 173 of the EEC Treaty are not met;

2. Dismiss it as unfounded if it is held to be admissible.

Since the applicant has failed in its submissions it should be ordered to pay the costs.'

International agreements

Case 174/84: *Bulk Oil (Zug) AG* v *Sun International Ltd and Sun Oil Trading Company* — Judgment of 18 February 1986 — (Quantitative restrictions imposed by the United Kingdom on exports of crude oil to non-member countries (Israel) — Validity under the common commercial policy — Validity under EEC-Israel Agreement) (Full Court)

The Commercial Court of the Queen's Bench Division of the High Court of Justice referred to the Court a number of questions on the interpretation of the applicable provisions of Community law with a view to assessing the validity from the point of view of Community law of the policy applied by the United Kingdom in 1981 of quantitative restrictions on the export of crude oil to non-member countries, in particular Israel.

Those questions were raised in the course of proceedings between Bulk Oil ('Bulk'), a company incorporated under Swiss law, and Sun International Ltd and Sun Oil Trading Company ('Sun'), incorporated in Bermuda and in the United States respectively.

Since January 1979 it has been United Kingdom policy to authorize the exportation of United Kingdom oil only to Member States of the Community, Member States of the International Energy Agency and countries with which there was before 1979 an 'existing pattern of trade' (specifically, Finland).

The United Kingdom policy has never been incorporated in legislation but has been made public on several occasions by Governments statements.

Oil companies operating in the United Kingdom were informed of the policy and were asked to comply with it. On 31 January 1979 the United Kingdom provided the Committee of Permanent Representatives of the Member States with a document on its new oil policy.

By a contract of 13 April 1981 Sun agreed to sell to Bulk substantial quantities of British North Sea crude oil with the following destination clause: destination free but always in line with exporting country's government policy. After Sun had become aware that the destination to which Bulk intended the oil to be delivered was Israel, British Petroleum, the supplier of the oil in question, refused to put the oil on board the ship nominated by Bulk, on the ground that delivery to Israel was contrary to United Kingdom policy, and Sun did likewise.

The dispute was referred to arbitration. Bulk appealed against the arbitrator's award to the High Court of Justice, which decided to refer a series of questions to the Court of Justice.

The reply to be given to the first part of the first question

By that question the national court asks in essence whether the agreement of 11 May 1975 between the European Economic Community and the State of Israel

must be interpreted as prohibiting the United Kingdom from implementing a policy imposing new quantitative restrictions or measures having equivalent effect on exports to Israel.

The object of the agreement of 20 May 1975 between the Community and the State of Israel was the progressive abolition of the main obstacles to trade between the parties and the promotion of commercial reciprocity.

Bulk argued that the conclusion of the EEC-Israel Agreement was the second Community action with regard to Israel in the context of the commercial policy provided for by the Treaty, after the adoption of Regulation No 2603/69 establishing common rules for exports, and that the exercise by a Member State of any power in that field without Community authorization was therefore precluded. Examination of the agreement shows, according to Bulk, that the Community occupied the field of trade relations between the EEC and Israel exhaustively. That field covered restrictions both on imports and on exports, and included trade in crude oil.

Sun, the United Kingdom and the Commission, argued that the EEC-Israel Agreement concerned only restrictions on imports and contained no provision prohibiting quantitative restrictions on exports or measures having equivalent effect.

The Court observed that no provision in the EEC-Israel Agreement expressly prohibited quantitative restrictions on imports or measures having equivalent effect on trade between the EEC and Israel.

It concluded that the agreement laid no obligation on the Community or on the Member States with regard to the introduction or abolition of quantitative restrictions on exports or measures having equivalent effect.

Since quantitative restrictions on exports did not fall within the scope of the agreement between the Community and the State of Israel the argument that the agreement deprived the Member States of their power to introduce restrictions had to be rejected, and the question whether measures imposing quantitative restrictions on exports are compatible with Articles 11, 12, and 25 (1) of the EEC-Israel Agreement was irrelevant.

The reply to be given to the second part of the first question

The national court asked in essence whether Regulation No 2603/69 was to be interpreted as permitting the implementation of a policy such as that in issue with regard to oil imports.

Article 1 of that regulation provides that 'the exportation of products from the European Economic Community to third countries shall be free, that is to say, they shall not be subject to any quantitative restriction, with the exception of

those restrictions which are applied in conformity with the provisions of the Regulation'.

Under Article 10 of the regulation, 'the principle of freedom of export from the Community as laid down in Article 1 shall not apply to [the products listed in the Annex]'. Those products included crude oil and petroleum oils.

Bulk submitted that Article 113 of the Treaty and Regulation No 2603/69 precluded a Member State from adopting and maintaining, without specific authorization, a policy prohibiting the exportation of oil to certain non-member countries, including Israel.

Referring to well-established case-law of the Court, Sun, the United Kingdom and the Commission were agreed that the Community alone had the power to legislate with regard to exports to non-member countries.

They considered, however, that Regulation No 2603/69 was a measure implementing Article 113 with regard to exports to non-member countries. Article 10 clearly states that that principle of freedom of export does not apply to the products listed in the annex to the regulation, including oil.

The Court recalled that according to Article 113 (1) of the Treaty, the common commercial policy is to be based on uniform principles, particularly with regard to the changes in tariff rates, the conclusion of tariff and trade agreements, export policy and measures to protect trade.

As the Court stated in its Opinion 1/75 of 11 November 1975, 'it cannot be accepted that in a field covered by export policy and more generally by the common commercial policy the Member States should exercise a power concurrent to that of the Community, in the Community sphere or in the international sphere...'. It concluded that since full responsibility in the matter of commercial policy was transferred to the Community by Article 113 (1) measures of commercial policy of a national character were only permissible after the end of the transnational period by virtue of specific authorization by the Community.

The Court held that Article 10 of Regulation No 2603/69 and the annex thereto constituted a specific authorization permitting the Member States to impose quantitative restrictions on exports of oil to non-member countries. Having regard to the discretion which it enjoys in an economic matter of such complexity, in this case the Council could, without contravening Article 113, provisionally exclude a product such as oil from the common rules on exports to non-member countries, in view in particular of the international commitments entered into by certain Member States and taking into account the particular characteristics of that product, which is of vital importance for the economy of a State and for the functioning of its institutions and public services.

There was no need to reply to the second and third questions of the national court.

The reply to be given to the fourth and fifth questions

The national court essentially requested the Court's assistance on the following two points of law:

(i) Was the United Kingdom prohibited from adopting a policy such as that in question by any other provisions in the Treaty?

(ii) Was it necessary for such a policy to be notified to or approved by the Community institutions before its implementation, and if so, what are the consequences?

The interpretation of the other provisions of the Treaty

Bulk submitted that the United Kingdom policy was contrary to Article 34 of the Treaty. The destination clause included in all British contracts constituted an obstacle to trade within the Community.

It had to be pointed out that Article 34 of the Treaty concerned national measures which had as their specific object or effect the restriction on patterns of exports and thereby the establishment of a different treatment between the domestic trade of a Member State and its export trade in such a way as to provide a particular advantage for national production or for the domestic market of the State in question at the expense of the production or of the trade of other Member States.

That was not true of a policy such as that in question.

Bulk further argued that the destination clause included in the British contracts is contrary to Article 85 of the Treaty.

According to Bulk, all contracts in which a destination clause was inserted were agreements between undertakings which were intended to restrict or distort competition within the common market and which affected trade between Member States.

A measure such as that in question which was specifically directed at exports of oil to a non-member country was not in itself likely to restrict or distort competition within the common market.

The obligation to provide information, to give notice or to seek prior approval

Bulk, Sun, the United Kingdom, and the Commission cited a series of provisions laying on Member States the obligation to provide information or to give notice.

As a preliminary point the Court considered that even if the various provisions referred to created obligations for the Member States to provide information or

give notice, it had not been asked by the national court whether such obligation was fulfilled in this case and the order of the national court did not provide sufficient information to enable it to decide that question.

The discussion in the preliminary reference procedure had therefore to be resrtricted to two questions which would be examined successively.

The existence of an obligation to provide information, to give prior notice or to seek prior approval

Consideration of the Council decisions referred to by the parties disclosed that even after the end of the transitional period and the adoption of Regulation No 2603/69 Member States were obliged to inform the other Member State and the Commission before making any changes in their rules on exports to non-member countries.

The consequences of a failure on the part of a Member State to give prior notice

A Member State which failed to give prior notice, delayed in doing so or did so in an inadequate manner failed to fulfil its obligations under the combined provisions of the Council decisions of 9 October 1961, 25 September 1962 and 16 September 1969.

The reply to be given to the sixth question

The national court asked whether the fact that neither the Council nor the Commission challenged the legality of the policy adopted by the United Kingdom affected the reply to be given to the preceding questions.

In answer to the questions referred to it, the Court of Justice gave the following ruling:

'1. The agreement of 20 May 1975 between the European Economic Community and the State of Israel does not prohibit the imposition of new quantitative restrictions or measures having equivalent effect on exports from a Member State to Israel.

2. Regulation No 2603/69 of the Council of 20 December 1969 establishing common rules for exports does not prohibit a Member State from imposing new quantitative restrictions or measures having equivalent effect on its exports of oil to non-member countries.

3. Articles 34 and 85 of the Treaty, upon their proper construction, do not prevent a Member State from adopting a policy restricting or prohibiting exports of oil to a non-member country, on the basis of Article 10 of Regulation No 2603/69.

4. Article 4 of the Council Decision of 9 October 1961, in conjunction with the Council Decision of 25 September 1962 and Article 15 of the Council Decision of 16 September 1969, requires a Member State contemplating a change in the state of liberalization of its exports to non-member countries to give prior notice to the other Member States and the Commission.

   A Member State which fails to give prior notice, delays in doing so or does so in an inadequate manner fails to fulfil its obligations under the Council decisions referred to; that failure does not, however, create individual rights which national courts must protect.

5. The fact that no Community institution challenges the legality of a policy adopted by a Member State cannot in itself have any effect on the compatibility with Community law of a policy imposing quantitative restrictions on exports of oil to non-member countries or, consequently, on the reply to be given to the questions raised by the national court.'

* * *

Advocate General Sir Gordon Slynn delivered his Opinion at the sitting on 10 December 1985.

He concluded as follows:

'Accordingly, in my view the questions referred should be answered on the following lines:

1. The agreement of 11 May 1975 between the European Economic Community and the State of Israel did not prohibit the imposition, subsequent to its coming into effect, of quantitative restrictions on exports between the Community or Member States and Israel.

2. Article 10 of Council Regulation No 2603/69 empowered Member States to impose, subsequent to the Regulation coming into effect, quantitative restrictions on exports of products listed in the Annex to that Regulation. An individual may rely on this Regulation against another individual with whom he has entered into a contract, when a condition of that contract requires compliance with a measure or the policy of a Member State made or adopted in accordance with the terms of that Regulation.

3. Articles 3 (f), 5, 34, 85 and 113 of the Treaty do not prohibit the imposition by Member States of restrictions on the exporting of goods included from time to time in the Annex to that Regulation.

The costs of the parties to the national proceedings fall to be dealt with by the national court. The Commission and the United Kingdom must bear their own costs.'

Social policy

Case 222/8: *Marguerite Johnston* v *The Chief Constable of the Royal Ulster Constabulary* — Judgment of 15 May 1986 (Equal treatment for men and women — Armed member of a police reserve force) (Full court)

The Industrial Tribunal of Northern Ireland, Belfast, referred to the Court for a preliminary ruling several questions on the interpretation of Council Directive No 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women.

The questions arose in a dispute between Mrs Marguerite Johnston and the Chief Constable of the Royal Ulster Constabulary (RUC) concerning the Chief Constable's refusal to renew Mrs Johnston's contract as a member of 'the RUC full-time Reserve' and to allow her to be given training in the handling and use of fire-arms.

The provisions of the Royal Ulster Constabulary Reserve Regulations do not make any distinction between men and women which is of importance in this case.

Article 53 (1) of the Sex Discrimination Order provides that none of its provisions prohibiting discrimination 'shall render unlawful an act done for the purpose of safeguarding national security or of protecting safety or public order'.

Article 53 (2) provides that 'a certificate signed by or on behalf of the Secretary of State and certifying that an act specified in the certificate was done for a purpose mentioned in paragraph (1) shall be conclusive evidence that it was done for that purpose'.

In the United Kingdom police officers do not as a general rule carry fire-arms in the performance of their duties except for special operations and no distinction is made in this regard between men and women. The Chief Constable of the RUC considered that he could not maintain that practice. He decided that men should carry fire-arms in the regular course of their duties but that women would not be equipped with them and would not receive training in the handling and use of fire-arms.

Since that decision, no woman in the RUC full-time Reserve had been offered a contract or had her contract renewed. In 1980 the Chief Constable refused to renew Mrs Johnston's contract.

Mrs Johnston lodged an application with the Industrial Tribunal challenging the decision, taken pursuant to that new policy, to refuse to renew her contract and to give her training in the handling of fire-arms. She contended that she had suffered unlawful discrimination prohibited by the Sex Discrimination Order.

In the proceedings before the Industrial Tribunal the Chief Constable produced a certificate issued by the Secretary of State in which that Minister or the United

Kingdom Government certified in accordance with Article 53 of the Sex Discrimination Order that 'the act consisting of the refusal of the Royal Ulster Constabulary to offer further full-time employment to Mrs Marguerite Johnston in the Royal Ulster Constabulary Reserve was done for the purpose of (a) safeguarding national security; and (b) protecting public safety and public order'.

Mrs Johnston referred to Directive 76/207. The purpose of that directive is to put into effect the principle of equal treatment for men and women as regards access to employment, including promotion, to vocational training and as regards working conditions. The principle of equal treatment means that there shall be no discrimination whatsoever on grounds of sex, subject, however, to certain exceptions.

In order to be able to rule on that dispute, the Industrial Tribunal referred a number of questions to the Court for a preliminary ruling.

The Court stated that it appeared that the questions raised by the Industrial Tribunal were intended to ascertain first of all whether it is compatible with Community law and Directive 76/207 for a national court or tribunal to be prevented by a rule such as that laid down in Article 53 (2) of the Sex Discrimination Order from fully exercising its powers of judicial review.

The next object of the questions submitted by the Industrial Tribunal was to enable it to decide whether and under what conditions the provisions of the directive, in a situation such as that which exists in the present case, allow men and women employed with the police to be treated differently on grounds of the protection of public safety mentioned in Article 53 (1) of the Sex Discrimination Order. The questions submitted were also intended to enable the Industrial Tribunal to ascertain whether or not the provisions of the directive may, in an appropriate case, be relied upon as against a conflicting rule of national law. Finally, depending on the answer to be given to those questions, the question might arise whether a Member State may avail itself of Article 224 of the EEC Treaty in order to derogate from obligations which the directive imposes on it in a case such as this.

The right to an effective judicial remedy

It was therefore necessary, in the Court's view, to examine whether Community law, and more particularly Directive 76/207, requires the Member States to ensure that their national courts and tribunals exercise effective control over compliance with the provisions of the directive and with the national legislation intended to put it into effect.

In Mrs Johnston's view, a provision such as Article 53 (2) of the Sex Discrimination Order was contrary to Article 6 of the directive inasmuch as it prevents the competent national court of tribunal from exercising any judicial control.

In the Court's view it had to be borne in mind that Article 6 of the directive required Member States to introduce into their internal legal systems such measures as were needed to enable all persons who considered themselves wronged by discrimination 'to pursue their claims by judicial process'.

That requirement of judicial control reflected a general principle of law which underlies the constitutional traditions common to the Member States.

By virtue of Article 6 of Directive 76/207 all persons have the right to obtain an effective remedy in a competent court against measures which they consider to be contrary to the principle of equal treatment for men and women laid down in the directive.

A provision which, like Article 53 (2) of the Sex Discrimination Order, required a certificate such as the one in question in the present case to be treated as conclusive evidence that the conditions for derogating from the principle of equal treatment were fulfilled allowed the competent authority to deprive an individual of the possibility of asserting by judicial process the rights conferred by the directive.

The applicability of Directive 76/207 to measures taken to protect public safety

The Court stated that it was necessary to examine next the Industrial Tribunal's question by which it sought to ascertain whether, having regard to the fact that Directive No 76/207 contains no express provision concerning measures taken for the purpose of safeguarding national security or of protecting public order, and more particularly public safety, the directive was applicable to such measures.

In Mrs Johnston's view, no general derogation from the fundamental principle of equal treatment unrelated to particular occupational activities, their nature, and the context in which they are carried out, existed for such purposes. By being based on the sole ground that a discriminatory act is done for purposes such as the protection of public safety, such a derogation would enable the Member States unilaterally to avoid the obligations which the directive imposes on them.

The Court stated that it was necessary to observe in that regard that the only articles in which the Treaty provided for derogations applicable in situations which may involve public safety were Articles 36, 48, 56, 223 and 224 which dealt with exceptional and clearly defined cases. Because of their limited character those articles did not lend themselves to a wide interpretation and it was not possible to infer from them that there was inherent in the Treaty a general proviso covering all measures taken for reasons of public safety.

It followed that the application of the principle of equal treatment for men and women was not subject to any general reservation as regards measures taken on grounds of the protection of public safety, apart from the possible application of Article 224 of the EEC Treaty.

The derogations allowed on account of the context in which the occupational activity is carried out.

The Industrial Tribunal sought the interpretation of the derogation from the principle of equal treatment, provided for in Article 2 (2) of the directive, to enable it to decide whether a difference in treatment, such as that in question, was covered by that derogation.

In that connection it asked to be informed of the criteria and principles to be applied for determining whether an activity such as that in question in the present case was one of the activities for which 'by reason of their nature or the context in which they are carried out, the sex of the worker constitutes a determining factor'.

In the Court's view it had to be stated first of all that the measures adopted in Northern Ireland did not in themselves involve any discrimination between men and women and were therefore outside the scope of the principle of equal treatment.

What had to be examined, however, in the Court's view, was the question whether, owing to the specific context in which the activity described in the Industrial Tribunal's decision was carried out, the sex of the person carrying out that activity consituted a determining factor.

The reasons which the Chief Constable gave for his policy were related to the special conditions in which the police must work in the situation existing in Northern Ireland, having regard to the requirements of the protection of public safety in a context of serious internal disturbances.

The possibility could not be excluded that in a situation characterized by serious internal disturbances the carrying of fire-arms by policewomen might create additional risks of their being assassinated and might therefore be contrary to the requirements of public safety.

In such circumstances, the context of certain policing activities might be such that the sex of police officers constituted a determining factor for carrying them out. If that was so, a Member State might therefore restrict such tasks, and the training leading thereto, to men.

It was necessary, however, to observe the principle of proportionality, one of the general principles of law underlying the Community legal order.

That principle requires that derogations remain within the limits of what is appropriate and necessary for achieving the aim in view. It is for the national court to say whether the reasons on which the Chief Constable based his decision are in fact well founded and justify the specific measure taken in Mrs Johnston's case.

The derogations allowed on the ground of a concern to protect women

The Industrial Tribunal asked the Court for an interpretation of the expressions 'protection of women' in Article 2 (3) of the directive and 'concern for protection' in Article 3 (2) (c) so that it could decide whether the difference in treatment in question might fall within the scope of the derogations from the principles of equal treatment laid down for those purposes.

In Mrs Johnston's view, those provisions must be interpreted strictly. Their sole purpose is to assure women special treatment in order to protect their health and safety in the case of pregnancy or maternity. That is not the case where women are completely excluded from service in an armed police force.

The Court stated that Article 2 (3), which also determines the scope of Article 3 (2) (c), must be interpreted strictly and did not allow women to be excluded from a certain type of employment on the ground that public opinion demanded that women be given greater protection than men against risks which affect men and women in the same way and which are distinct from women's specific needs of protection, such as those expressly mentioned.

It did not appear to the Court that the risks and dangers to which women are exposed when performing their duties in the police force in a situation such as exists in Northern Ireland were different from those to which any man was also exposed when performing the same duties.

The effects of Directive 76/207

The Industrial Tribunal also sought to ascertain whether an individual might rely upon the provisions of the directive in proceedings brought before a national court.

The Court observed first of all that in all cases in which a directive had been properly implemented, its effects reach individuals through the implementing measures adopted by the Member States concerned.

The Court replied to the questions submitted to it by ruling as follows:

'1. The principle of effective judicial control laid down in Article 6 of Council Directive 76/207 of 9 February 1976 does not allow a certificate issued by a national authority stating that the conditions for derogating from the principle of equal treatment for men and women for the purposes of protecting public safety are satisfied to be treated as conclusive evidence so as to exclude the exercise of any power of review by the courts. The provision contained in Article 6 to the effect that all persons who consider themselves wronged by discrimination between men and women must have an effective judicial remedy, may be relied upon by individuals as against a Member State which has not ensured that it is fully implemented in its internal legal order.

2. Acts of sex discrimination done for reasons related to the protection of public safety must be examined in the light of the derogations from the principle of equal treatment for men and women which are laid down in Directive 76/207.

3. Article 2 (2) of Directive 76/207 must be interpreted as meaning that in deciding whether, by reason of the context in which the activities of a police officer are carried out, the sex of the officer constitutes a determining factor for that occupational activity, a Member State may take into consideration requirements of public safety in order to restrict general policing duties, in an internal situation characterized by frequent assassinations, to men equipped with fire-arms.

4. The differences in treatment between men and women that Article 2 (3) of Directive 76/207 allows out of a concern to protect women do not include risks and dangers, such as those to which any armed police officer is exposed in the performance of his duties in a given situation that do not specifically affect women as such.

5. Individuals may claim the application, as against a State authority charged with the maintenance of public order and safety acting in its capacity as employer, of the principle of equal treatment for men and women laid down in Article 2 (1) of Directive 76/207 to the matters referred to in Articles 3 (1) and 4 (1) concerning the conditions for access to posts and to vocational training and advanced vocational training in order to have a derogation from that principle contained in national legislation set aside in so far as it exceeds the limits of the exceptions permitted by Article 2 (2).'

* * *

Mr Advocate General Marco Darmon delivered his Opinion at the sitting on 28 January 1986.

He concluded in the following terms:

'Consequently, I suggest that the Court should rule that:

1. A Member State may not be allowed to exclude, for reasons of public order, all judicial review of the legality of a national measure with regard to the provisions of Community law. Where a case is brought by an individual pursuant to Article 6 of Directive 76/207 "on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions," the national court trying the case must give full effect to those provisions, if necessary refusing to apply any conflicting provision of national legislation.

2. The ban on the carrying of fire-arms by women police officers and on the training of women police officers in the handling and use of fire-arms:

(i) cannot be regarded as a provision concerning the protection of women within the meaning of Article 2 (3) of Directive 76/207 and

(ii) may come within the category of measures referred to in Article 3 (2) (c) if it was in force at the time when the directive was notified.

3. The decision to exclude women from access to full-time employment as armed members of a policy reserve force may, in view of exceptional circumstances relating to public order and requirements concerning the protection of those concerned, be regarded as a derogation provided for in Article 2 (2) of the directive.

4. As far as concerns the application of the relevant provisions of the directive to the measures concerned, it is for the national court to:

(i) investigate pursuant to Article 3 (2) (c) whether the concern for protection which originally inspired the measures is well founded, if the different treatment already existed at the time when the directive was notified;

(ii) investigate pursuant to Article 2 (2) whether the sex of the person employed constitutes a determining factor for the performance of the activity in question, if the different treatment was not introduced until after notification of the directive;

(iii) if the answer to those inquiries is in the affirmative, to examine in both cases whether the measures adopted are proportionate to the aims pursued.

5. Since the safeguard clause in Article 224 of the EEC Treaty cannot be relied upon by a Member State except in the absence of any other rule of Community law containing a derogating provision based on public order, there is no need to answer the last question referred to the Court.'

Social security for migrant workers

Case 41/84: *Pietro Pinna* v *Caisse d'allocations familiales de la Savoie* — Judgment of 15 January 1986 (Social security — Family allowances — Article 73 (2) of Regulation No 1408/71)

The French cour de cassation [Court of Cassation] referred two questions to the Court for a preliminary ruling on the interpretation of several provisions of Regulation No 1408/71 of the Council on the application of social security schemes to employed persons and their families moving within the Community.

The questions were raised in the course of proceedings concerning the refusal of the caisse d'allocations familiales de la Savoie ('the Fund') to grant Mr Pinna family benefits for periods in 1977 and 1978.

Mr Pinna, an Italian national, resided in France with his wife and their two children.

In 1977 the children went to Italy with their mother for an extended visit.

The Fund refused to pay Mr Pinna family benefits for one child in respect of 1 October 1977 to 31 December 1977 and for the other in respect of 1 October 1977 to 31 March 1978 on the ground that the benefits should be paid by the Istituto Nazionale della Previdenza Sociale [National Social Security Institution] at Aquila, the place in Italy where the children had been staying at the material times.

Under the relevant French legislation a child who, while maintaining family ties in metropolitan France where he had hitherto resided, stayed temporarily outside that country on one or more occasions the total duration of which did not exceed three months in any one calender year was deemed to reside in France.

The decision with which these proceedings were concerned appeared to be based on Article 73 (2) of Regulation No 1408/71, which provided that an employed person subject to French legislation was to be entitled

> 'in respect of members of his family residing in the territory of a Member State other than France, to the family allowances provided for by the legislation of the Member State in whose territory those members of the family reside; the employed person must satisfy the conditions regarding employment on which French legislation bases entitlement to such benefits.'

The cour de cassation asks the Court to rule on:

1. The validity and continued application of Article 73 (2) of Regulation No 1408/71 of 14 June 1971;
2. The interpretation of the word 'residence' in the context of that provision.

Article 73 (1) of Regulation No 1408/71 provides that:

> 'An employed person subject to the legislation of a Member State other than France shall be entitled to the family benefits provided for by the legislation of the first Member State for members of his family residing in the territory of another Member State, as though they were residing in the territory of the first State.'

Article 73 (2), quoted above, laid down a different rule with regard to employed persons subject to French legislation where members of their families resided in a Member State other than France.

As regards the validity of Article 73 (2), Mr Pinna argued that that provision had the effect of reducing allowances and treating workers from Community countries who were employed in France differently from Community workers employed in the nine other Member States. He contended that there was no political, economic or legal justification for such discrimination.

Mr Pinna contended that Article 73 (2) conflicted with Article 51 of the Treaty. In his view, Article 51 introduced the principle of exportable benefits.

The result was, he argued, that the recipient of any cash benefit was entitled to rely on Article 51, no matter where he established his residence or that of his family, in order to claim that the benefits due should be paid to him in the place where he decided that they should be paid.

By making French family benefits 'non-exportable', Article 73 (2) was in breach of Article 51 of the Treaty.

The first question

In order to settle the question at issue the Court pointed out that Article 40 of Regulation No 3/58 of the Council concerning social security for migrant workers provided that a wage-earner or assimilated worker who was employed in the territory of one Member State, and had children who were permanently resident or were being brought up in the territory of another Member State should be entitled in respect of such children to family allowances according to the provisions of the legislation of the former State, up to the amount of the allowances granted under the legislation of the latter State.

Regulation No 1408/71 amended the rules relating to migrant workers' children by enlarging the range of benefits which migrant workers were entitled to claim.

As regards a migrant worker employed in one Member State but whose family resided in another Member State, Regulation No 1408/71 introduced a distinction between workers employed in France and workers employed in other Member States.

As regards the difference in treatment as between workers to whom Article 73 (1) applied and workers subject to the arrangements laid down in Article 73 (2), it had to be observed that Article 51 of the Treaty provided for the coordination, not the harmonization of the legislation of the Member States.

As a result, Article 51 left in being differences between the Member States' social security systems and, consequently, in the rights of workers employed in the Member States.

Article 73 of Regulation No 1408/71 created two different systems for migrant workers depending on whether they were subject to French legislation or to the legislation of another Member State. Accordingly, it added to the disparities caused by national legislation and, as a result, impeded the achievement of the aims set out in Articles 48 to 51 of the Treaty.

It followed that Article 73 (2) of Regulation No 1408/71 was invalid in so far as it precluded the granting to employed persons subject to French legislation of

French family benefits for members of their family residing in the territory of another Member State.

The Court observed that where it was justified by overriding considerations the second paragraph of Article 174 of the Treaty gave the Court discretion to decide, in each particular case, which specific effects of a regulation which had been declared void must be maintained.

The Court held that owing to overriding considerations of legal certainty involving all the interests at stake, public and private, the payment of family benefits for periods prior to the delivery of this judgment could not, in principle, be called into question.

The Court ruled as follows:

'1. Article 73 (2) of Regulation No 1408/71 is invalid in so far as it precludes the granting to employed persons subject to French legislation of French family benefits for members of their family residing in the territory of another Member State.

2. Except as regards those employed persons who have already brought legal proceedings or made an equivalent claim prior to the date of this judgment, the aforesaid invalidity of Article 73 (2) of Regulation No 1408/71 cannot be relied on in order to support claims to benefit for periods prior to that date'.

* * *

Mr Advocate General G. Federico Mancini delivered his Opinion at the sitting on 21 May 1985.

He concluded in the following terms:

'Article 73 (2) of Regulation No 1408/71 of the Council is incompatible with Articles 48 to 51 of the EEC Treaty because it infringes the principle of non-discrimination as regards employment and social security.'

Tax provisions

Case 356/85: *Commission of the European Communities, supported by the French Republic* v *Kingdom of Belgium* — Judgment of 9 July 1987 (Taxation of wine and beer)

The Commission of the European Communities brought an action for a declaration that by applying a higher rate of value added tax to wine of French grapes, an imported product, than to beer, a domestic product, the Kingdom of Belgium had failed to fulfil its obligations under Article 95 of the EEC Treaty.

It appeared from the documents before the Court that under the Belgian legislation, the supply of certain beverages intended for domestic consumption, and in particular wine of fresh grapes is subject to a rate of VAT of 25%.

By contrast, the rate of VAT applicable to supplies of beer intended for domestic consumption was 19%.

Since the Kingdom of Belgium did not produce wine but does produce a substantial quantity of beer, it appeared that a greater tax burden was borne by the product for which internal demand is met almost entirely by imports, whereas the product of which substantial quantities are produced in Belgium bears a lesser tax burden.

Since the Commission's application was based on the view that wine and beer are competing products of the kind referred to in the second paragraph of Article 95 of the Treaty, which concerns internal taxes of a protectionist nature, the scope of that provision had first to be considered.

The purpose of Article 95 is to ensure the free movement of goods between the Member States under normal conditions of competition, by eliminating all forms of protection which might result from the application of discriminatory internal taxation against products from other Member States, and to guarantee absolute neutrality of internal taxation as regards competition between domestic and imported products.

The second paragraph of Article 95 is more specifically intended to prevent any form of indirect fiscal protectionism affecting imported products which, although not similar, within the meaning of the first paragraph of Article 95, to domestic products, are nevertheless in a competitive relationship with some of them, even if only partially, indirectly or potentially.

The competitive relationship between wine and beer

According to previous law (judgments of 27 February 1980 and 12 July 1983 in Case 170/78 *Commission* v *United Kingdom*) only commonly consumed wines, which in general were cheap wines, had enough characteristics in common with beer to constitute an alternative choice for consumers and might therefore be regarded as being in competition with beer for the purposes of the second paragraph of Article 95 of the Treaty.

The protective nature of the tax system

According to the Belgian Government, if the second paragraph of Article 95 was to apply it was also necessary for a further condition to be satisfied, namely that the discrepancy in the tax burden had to be liable to have a protective effect favouring domestic products. It was therefore necessary to consider the possible economic effects of the tax in question.

The essential question was therefore whether or not the tax was of such a kind as to have the effect, on the market in question, of reducing potential consumption of imported products to the advantage of competing domestic products.

Consequently, in considering to what extent a protective effect actually existed, the difference between the respective selling prices of beer and wine competing with beer could not be disregarded. The Belgian Government had stated that the price of a litre of beer, including tax, was on average BFR 29.75, whereas the corresponding price of a litre of ordinary wine was around BFR 125, four times the price of beer, giving a difference in price per litre of BFR 95.25. In the Belgian Government's view it followed that even if a single rate had been applied to both products, the price difference between the two would have continued to be substantial; the reduction in that difference would have been so insignificant that it could not have influenced consumer preference.

The Court concluded that the Commission had not shown that the difference between the respective prices for comparable qualities of beer and wine were so small that the difference of 6% between the VAT rates applied to the two products was capable of influencing consumer behaviour. The Commission had thus not shown that the difference gave rise to any protective effect favouring beer intended for domestic consumption.

Nor did the statistics produced by the Commission comparing trends in beer and wine consumption indicate the existence of any protective effect. The Commission stated that beer consumption in Belgium reached a peak in 1973 and has been on the decline since then. By contrast, wine consumption has tripled during the last 20 years; however, from 1980 onwards, the growth in wine consumption slowed down and it levelled off in 1982 and 1983.

It followed that the Commission had not established that the tax system in question had a protective effect.

The Court decided as follows:

'1. The application is dismissed.

2. The Commission of the European Communities and the French Republic are ordered jointly and severally to pay the costs.'

* * *

Mr Advocate General José Luis Da Cruz Vilaça delivered his Opinion at the sitting on 26 February 1987.

He concluded in the following terms:

'Accordingly, it has not been shown that the Kingdom of Belgium has thereby infringed the second paragraph of Article 95 of the Treaty and I therefore propose that the Court should dismiss the application and order the Commission to pay the costs.'

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 1983 and 30 June 1985 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.

Table showing the numbers of judgment on questions of Community law delivered between 1 July 1985 and 30 June 1987, arranged by Member State

Member State	Judgments on questions of Community law other than those concerning the Brussels Convention	Judgment concerning the Brussels Convention	Total
Belgium	127	74	201
Denmark	10	—	10
FR Germany	423	73	496
Greece	41		41
Spain	3		3
France	326	28	354
Ireland	16	—	16
Italy	196	25	221
Luxembourg	19	6	25
The Netherlands	227	101	328
Portugal	1	—	1
United Kingdom	97	2	99
Total	1 486	309	1 795

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 two administrations 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 consist of several distinct sections. The secretariat of the Registry is responsible for sorting and distributing the post, the exchange of correspondence concerning administrative matters between the Registrar and the Court, preparing the administrative meetings of the Court and the Chambers (drawing up the agenda, issuing the notice convening the meeting, creating files, notifying officials of administrative decisions concerning them), 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 secretary. These officials are responsible for dealing with cases pending, in their own mother tongue, under the supervision of the Deputy Registrar. There are five 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 — Logical 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 data base 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 data base and the management thereof and the second is the use of the information in the data base.

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.

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 data base 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

The computerized information system is partly operational but all its functions have not yet been developed. In the very short term (the beginning of the 1988 judicial year), the Registry will be able to automatically produce statistics relating to judicial activities.

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 administrative 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.

The library division

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 1987, the library contained 78 000 volumes. It subscribes to 480 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.

The division prepares two quarterly lists of new acquisitions. The first covers publications in the field of Community law and contains a complete list of books and articles which have been received or sought during the reference period. The second is a selective list of books and articles dealing with other subjects covered by the library's collection.

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.

In 1987, the division also published the second edition of 'Judicial Institutions of the Member States'.

The 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 6 500 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 databank 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 the 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. 153.)

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 data 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 data bases managed and operated on hardware belonging to the Court, using the Minidoc 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 data bases 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 data bases, such as Juris (Federal Republic of Germany), Crédoc (Belgium), Juridial (France), Italgiure (Italy), Kluwer (Netherlands) and Lexis (United Kingdom and United States).

Translation Directorate

In 1987 the Translation Directorate was composed of 134 lawyer-linguists divided as follows into the nine translation divisions and the documentation and terminology branch:

— Danish language division:	14	— Italian language division:	15
— Dutch language division:	15	— Portuguese language division:	17
— English language division:	13	— Spanish language division:	16
— French language division:	18	— Documentation and terminology branch:	1
— German language division:	11		
— Greek language division:	15		

The total number of staff of the Directorate was 190.

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 1986 and 31 December 1987 the Translation Directorate translated 188 000 pages of which 132 000, representing 70.2% 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:	20 000 pages	— from that language:	1 600 pages
into Dutch:	20 300 pages	— from that language:	10 700 pages
into English:	22 500 pages	— from that language:	20 400 pages
into French:	29 300 pages	— from that language:	114 600 pages
into German:	20 900 pages	— from that language:	22 200 pages
into Greek:	20 600 pages	— from that language:	1 900 pages
into Italian:	21 200 pages	— from that language:	10 700 pages
into Portuguese: [1]	16 900 pages	— from that language:	4 100 pages
into Spanish: [1]	16 500 pages	— from that language:	2 000 pages
	188 200 pages		188 200 pages

[1] The Spanish and Portuguese divisions were set up only during the second half of 1987.

Interpretation division

During the period under consideration, the division provided interpretation for all the sittings and other meetings organized by the institution. The number of teams has increased to nine, one for each of the official languages, following the accession of Spain and Portugal to the Community in 1986.

The increase from seven to nine languages has produced a significant increase in the need for interpretation in comparison with previous years. It has led to an increase in the number of permanent staff (33 posts at the end of 1987).

The setting up of a Court of First Instance has been the subject of detailed discussions. Its establishment will have important repercussions on the volume of the division's work.

The 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. Certains 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 and it should be emphasized that the visit of Pope Jean Paul II in 1985 was a great event for the Court and for the insitutions in Luxembourg.

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 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.

It is still sent free of charge but in view of the ever-increasing number of subscribers and the sums spent on postage, subscribers will no doubt be asked to bear part of those costs.

The Service also publishes the *Synopsis of the Work of the Court of Justice*, a sort of general report on the work of the institution which contains much statistical information.

IV — Composition of the Court

During 1986, the composition of the Court changed in the following way:

On 13 January 1986, Mr Advocate General Peter Verloren van Themaat left office and Mr Jean Mischo took up office on the same date. The Court marked the departure of Mr Verloren van Themaat and the arrival of Mr Mischo at a formal sitting on 13 January 1986.

Following the accession to the European Communities of Spain and Portugal, Mr José Carlos Carvalho Moitinho de Almeida and Mr Gil Carlos Rodríguez Iglesias were appointed judges and Mr José Luis da Cruz Vilaça was appointed Advocate General. The Court marked the arrival of these new Members at a formal sitting on 31 January 1986, the date on which they took up their duties.

As a consequence of the increase in the number of Members, four Chambers of three judges (First, Second, Third and Fourth Chambers) and two Chambers of six judges (Fifth and Sixth Chambers) were set up with effect from 1 March 1986.

Composition of the Court of Justice on 31 December 1986 (order of precedence)

Lord MACKENZIE STUART, President
Yves GALMOT, President of the Third and Fifth Chambers
Constantinos KAKOURIS, President of the Fourth and Sixth Chambers
Carl Otto LENZ, First Advocate General
Thomas Francis O'HIGGINS, President of the Second Chamber
Fernando SCHOCKWEILER, President of the First Chamber
Giacinto BOSCO, Judge
Thijmen KOOPMANS, Judge
Ole DUE, Judge
Ulrich EVERLING, Judge
Sir Gordon SLYNN, Advocate General
Kai BAHLMANN, Judge
Frederico MANCINI, Advocate General
Marco DARMON, Advocate General
René JOLIET, Judge
Jean MISCHO, Advocate General
José Carlos DE CARVALHO MOITINHO DE ALMEIDA, Judge
José DA CRUZ VILAÇA, Advocate General
Gil Carlos RODRÍGUEZ IGLESIAS, Judge
Paul HEIM, Registrar

Composition of the Court of Justice on 31 December 1987 (order of precedence)

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
Frederico MANCINI, Advocate General
Yves GALMOT, Judge
Constantinos KAKOURIS, Judge
Carl Otto LENZ, Advocate General
René JOLIET, Judge
Thomas Francis O'HIGGINGS, Judge
Fernand SCHOCKWEILER, Judge
Jean MISCHO, Advocate General
José Luis DA CRUZ VILAÇA, Advocate General
Paul HEIM, Registrar

V — General Information

A — *Information and documentation on the Court of Justice and its work*

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L-2925 Luxembourg
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Telex (Registry): 2510 CURIA LU
Telex (Information Office of the Court): 2771 CJ INFO LU
Telegrams: CURIA
Telecopier: 43 37 66

Complete list of publications:

Texts of judgments and opinions and information on current cases

1. *Judments of orders of the Court and Opinions of Advocates General*

Orders for offset copies, provided that some are still available, may be made in writing to the Internal Services Branch of the Court of Justice of the European Communities, L-2925 Luxembourg, on payment of a fixed charge of BFR 200 for each document. Copies may no longer be available once the issue of the *European Court Reports* containing the required judgment or opinion of an Advocate General has been published.

Anyone showing that he is already a subscriber to the *Reports of Cases before the Court* may pay a subscription to receive offset copies in one or more of the Community languages. The annual subscription will be the same as that for *European Court Reports*, namely BFR 3 500 for each language.

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

2. *Calendar of the sittings of the Court*

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

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

Official publications

1. *Reports of Cases before the Court*

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

The *Reports of Cases before the Court* are on sale in the Member States at the addresses given for the sale of the *Digest* (see under B *infra*) and marked with an asterisk. In other countries, orders must be addressed to the Office for Official Publications of the European Communities, L-2985 Luxembourg.

2. *Selected instruments relating to the organization and procedure of the Court*

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

Publications of the Information Office of the Court of Justice of the European Communities

Applications to subscribe to the following three publications may be sent to the Information Office (L-2925 Luxembourg) specifying the language required. They are supplied free of charge.

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

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

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

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

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

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

B — *Publications of the library division of the Court of Justice*

1. *Publications juridiques concernant l'intégration européenne,* a quarterly list consisting of a complete list of books and articles received or sought during the reference period.
2. Quarterly list of new acquisitions in other areas covered by the library's collection.
3. *Bibliographie juridique de l'intégration européenne,* based on the books acquired and the periodicals sought during the year in question in the area of Community law. Published annually.

   In 1987, a cumulative edition of volumes 4 to 6 (1984-86) of the bibliography was published.
4. *Judicial Institutions of the Member States,* the third edition of which was published in 1988.

C — *Publications of the research and documentation division of the Court of Justice*

Digest of Community Case-law Relating to the European Communities

The Court of Justice publishes 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 national courts. In its conception it is based on the *Répertoire de la jurisprudence relative aux traités instituant les Communautés européennes* (see below under 2). The *Digest* appears in all the languages of the Community. It is published in the form of loose-leaf 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 Member States relating to the EEC Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters. (This series replaces the *Synopsis of Case-law* which was published in instalments by the Documentation Division of the Court but has now been discontinued).

The first issue of the A series was published in 1983. Since the publication of the fourth issue, it 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. Since the publication of the third issue, it covers the case-law of the Court of Justice of the European Communities from 1976 to 1984 and the case-law of the courts of Member States from 1973 to 1982.

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.

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D — *Information on Community law*

Community case-law[1] is published in the following journals amongst others:

Belgium:

Administration publique
Cahiers de droit européen
Info-Jura
Journal des tribunaux
Journal des tribunaux du travail
Jurisprudence du port d'Anvers
Pasicrisie belge
Rechtskundig weekblad
Recueil des arrêts et avis du Conseil d'État
Revue belge du droit international
Revue belge de sécurité sociale
Revue critique de jurisprudence belge
Revue de droit commercial belge (anc. Jurisprudence commerciale de Belgique)
Revue de droit fiscal
Revue de droit intellectuel — « L'ingénieur-conseil »
Revue de droit international et de droit comparé
Revue de droit social
Sociaal-economische wetgeving
Tijdschrift rechtsdocumentatie
Tijdschrift voor privaatrecht
Tijdschrift voor vreemdelingenrecht — TVR

Denmark:

Juristen & Økonomen
Nordisk Tidskrift for International Ret
Ugeskrift for Retsvæsen

France:

Actualité juridique
Annales de la propriété industrielle, artistique et littéraire
Annuaire français de droit international
Bulletin des arrêts de la Cour de cassation — Chambres civiles
Bulletin des arrêts de la Cour de cassation — Chambres criminelles
Le droit et les affaires CEE-International
Droit fiscal
Droit rural
Droit social

[1] Community case-law means the decisions of the Court as well as those of national courts concerning a point of Community law.

Gazette du Palais
Journal du droit international (Clunet)
Propriété industrielle, bulletin documentaire
Le quotidien juridique
Recueil Dalloz-Sirey
Recueil des décisions du Conseil d'État
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Revue du droit public et de la science politique en France et à l'étranger
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Revue trimestrielle de droit européen
La semaine juridique — Juris-classeur périodique, édition «commerce et industrie»
La semaine juridique — Juris-classeur périodique, édition générale
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Federal Republic of Germany

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Der Betrieb
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Entscheidungen der Oberlandesgerichte in Zivilsachen
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Monatsschrift für deutsches Recht
Neue juristische Wochenschrift
Die Öffentliche Verwaltung
Recht der internationalen Wirtschaft (Außenwirschaftsdienst des Betriebs-Beraters)
Sammlung von Entscheidungen der Sozialversicherung (Breithaupt)
Wettbewerb in Recht und Praxis
Wirtschaft und Wettbewerb
Zeitschrift für das gesamte Handels- und Wirtschaftsrecht
Zeitschrift für Zölle und Verbrauchsteuern

Greece:	Elliniki epitheorisi europaïkou dikaiou Epitheorisi ton Europaïkon Koinotiton
Ireland:	The Gazette of the Incorporated Law Society of Ireland The Irish Jurist The Irish Law Reports Monthly (anc. The Irish Law Times)
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FORMAL SITTING
of 13 January 1986

Address by Lord Mackenzie Stuart, President of the Court, on the occasion of the retirement of Advocate General VerLoren van Themaat

Today you retire as an Advocate General of the Court of Justice. For five-and-a-half years the Court of Justice has had the benefit of your views on a wide range of cases brought before it.

This period of your professional life was, however, foreshadowed by your already distinguished career. From the beginning, you were drawn to a study of economic law, a discipline which cuts across traditional divisions of the law and studies the effect of various branches of the law on the operations of the economy.

Your career has had this central theme demonstrated on one hand by a list of publications that puts to shame even most jurists who have concentrated solely on an academic career and on the other hand by posts where you have successively had executive responsibility and the task of analysing and expounding the law.

It is impossible to do full justice to every facet of your career in the time available, but one can single out a number of highlights—for example, your contribution to the reform of Dutch economic law while you worked in the Ministry of Economic Affairs.

I would particularly like to mention your period as Director-General of the Directorate-General 'concurrence' of the Commission from 1958 until 1967. Your writings and activites prior to 1958 had shown your interest in competition law, but it was in that year you had the tremendous opportunity and challenge of putting into effect the principles of competition law laid down in the Treaty.

It is difficult to overestimate the importance of your achievements in that role. The elimination of unfair trading practices which distort trade between Member States is one of the principal aims and objects of the Treaty of Rome. It was your task to apply that principle, to make it work with the necessary regulatory machinery. You had to balance, and the balance can be a delicate one, the legitimate interests of commerce and industry on the one hand and the expectations of the Community on another. What today is now established practice, accepted by all, can be traced back to your perspicacity and spirit of innovation.

Thus again may I draw attention to your period from 1967 to 1981 as the first holder of the chair of Economic Law at Utrecht. In that capacity you lectured and directed studies in Dutch, Community and International Economic Law. You were head of the Europa-Instituut. You produced the seminal work on the

changing structure of the international economic legal order and were and are rapporteur on this subject for the International Law Association.

Your many publications in many languages and the universal praise bestowed upon you by your former students bear witness to the success of this chapter of your career. Indeed, if I may add a personal note, my first real intimation of the importance of Community law derives from reading the English version of the first edition of your *Introduction to the Law of the European Communities.*

During your period at Utrecht you also became editor of the learned periodical *sociaal-economische wetgeving* with which you had been associated since its very beginning more than 30 years ago.

All of this might have been career enough for one man. Your sense of duty is such, however, that when the Dutch Government called upon you for your name to go forward for appointment by the Member States as Advocate General at the Court, you did not hesitate.

In view of your love of statistics, unusual in a lawyer, you will not take it amiss if I say that during your time at the Court you delivered 156 opinions representing many thousands of pages in the different versions of the Recueil. Your particular interests in the field of Community law are reflected. The inter-relationship between intellectual property rights and free movement of goods in *Beele*, competition in *Michelin*, *Pronuptia* and *Metro*, dumping in the two *Allied* cases and state aids in *Intermills*.

In those cases and in all other cases, the Court benefited from your long experience and your meticulous examination of every aspect of the case. You have a capacity to seize a problem, to analyse its component parts, and provide a practical, if sometimes rigorous, solution.

Today we say goodbye to you as Advocate General. An Advocate General has one great advantage as compared with a judge. He is free to express his own personal views in his own individual way. You have brought to the task your individuality and your long experience of Community law, both as analyst and as pracitioner. The Court, the judicial world, indeed all citizens of the Community are in your debt. Your many opinions, now enshrined in our Recueil in all Community languages, speak for themselves. Praise from me is superfluous.

One thing I must add. The last five-and-a-half years have sped past—for me at least—but had events been otherwise you would have taken your leave of us last October. Special circumstances, however, arose and you, at no little inconvenience to yourself and your Cabinet, agreed to continue until today. We are most grateful for this characteristically generous act.

Characteristically generous because far from confining yourself to your judicial function, you, from the beginning, have always been ready to devote yourself and your time to its improvement. In particular, your concern at the ever-increasing

workload of the Court and your helpful advice on how best to respond to that challenge have been the greatest service to us all.

We wish you both a happy return to The Netherlands. We hope that, unlike Candide who never achieved his aim, you will find time to cultivate your garden which in your case consists of studying and collecting abstract art. I have little doubt that your pen will be as active as ever. You leave with the very warmest good wishes of us all and hope that you will return as often as you can.

Pieter VerLoren van Themaat

Farewell address delivered by Pieter VerLoren van Themaat, Advocate General at the Court of Justice of the European Communities, at the formal sitting on 13 January 1986

Mr President, Esteemed Colleagues,

The memory of the Court which my wife and I will take with us is above all that of a large and hospitable family in which we have discovered great friendship. Although we hope to see that family many times again, I would like to take this opportunity to say how much we both have valued this friendly family circle.

At the same time I would once again like to express my gratitude in public to all the members of the Court's staff who have assisted me in many different ways in the performance of my duties. Naturally, I have in mind first of all the great devotion of the excellent staff who have worked in my Cabinet. Alas, I am unable on this occasion to thank the other members of the Court's staff—nearly 300 in all—who to my knowledge have worked directly with my Cabinet and myself for their specific contributions. However, for two groups I wish to make an exception. Without good translations into the language of the case and the working language of the Court, opinions delivered in Dutch would of course be worthless. I therefore owe special thanks to the many translators who have worked for me. Since *my* opinions too have from time to time contained comparative-law material, I think it only fitting that I should use this occasion to state in public that in most cases it is largely as a result of the excellent work of our research and documentation division that I have been able to produce such material.

Apart from the friendly working atmosphere at the Court, the short period which I have been able to spend here has provided a fascinating culmination to my career. The experience which I gained at the Ministry of Economic Affairs and subsequently at the Commission in Brussels during the first 10 years of the EEC has undoubtedly been of benefit to me during my period at the Court. The same is true of my subsequent academic experience. The drafting of important legislation and the framing of implementing policy have their own charms, as indeed have academic research and teaching. That is particularly true where one is dealing with important new areas of law, and that was always so in my case. However, the judicial function—and that applies equally to an Advocate General—puts into perspective in a useful way the significance of legislation, implementing policy and academic work and unites them in a new synthesis within the general legal order. I have always seen the opinion of the Advocate General as providing first of all an important additional procedural safeguard in so far as it takes account of all the relevant facts and provisions, all the relevant case-law and all the arguments of the parties. An additional safeguard of this kind is particularly important where, as a

result of an excessive workload, it is no longer possible for all the judges—as it still is for the Advocate General—personally to spend two to five full days—and sometimes even more—examining the documents in the sometimes complicated cases before the Court. I have of course also greatly valued the occasions on which the Court, by not following my opinion or by following it only in part, has conferred upon it the important function of a dissenting opinion. According to the most distinguished exponent of the role of Advocate General, Maurice Lagrange, the possibility of a dissenting opinion was a major consideration in the creation of the role. During my stay in Luxembourg I too have become convinced of the practical importance of this second function of the Advocate General's opinion.

In the course of this work an Advocate General may often join in the lament of the great Netherlands pioneer of international law, Grotius, who on 14 April 1640, in a letter to his brother, wrote: *Opus saepe est luctari contra alveum.* [1] In referring to that adage, which applies to the whole Court, which in its work must often struggle against the current, I have in mind not so much the increasing flow of cases. By means of internal and external measures and amendments to the Statute and the Rules of Procedure those considerable problems can undoubtedly be resolved with the cooperation of the Council. They are indeed no greater than the problems faced by many national supreme courts. The Court has rightly proposed not only the simplification of the procedure for amending its Statute but also, recently, that the way be opened for the creation of a court of first instance to deal with cases in which establishment of the facts is often particularly time-consuming. The Court will then be in a better position to concentrate on purely legal questions, which may still be submitted to the Court for a final ruling following the decision at first instance. It is gratifying that the European Council, within the framework of the proposed amendments to the Treaties, has now in principle given its *fiat* to those proposals.

What I had in mind, however, in referring to the adage of Grotius was the counter-current of purely national interests and preoccupations, of national pressure groups and national bureaucracies which attach excessive importance to their specialist experience and problems. I myself worked too long in a national administration not to appreciate the value of the firm convictions of the thousands of specialists working in such administrations. There can be no doubt, however, that excessive adherence to firm convictions has contributed to thousands of technical, administrative, fiscal and other obstacles on the way to a large common market and to the intergovernmental nature and stagnation of the Community decision-making process. This has had the result that for many years now Western Europe has failed to take full advantage of the rapid technological progress and international, economic and political developments and that to a large extent industry has considered investment on the large American market more profitable than investment in Europe. In addition, the stagnation and the fact that the decision-making process has too little of a true Community character also make increasingly difficult the Court's task of ensuring respect for Commu-

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[1] I found this quotation in the Netherlands *Juristen Blad* 1985, p. 711, which also mentions its source.

nity law and for the dynamics of the integration process which that law has from the very outset laid down and endowed with binding force. Those of you who have endeavoured to swim or row against the current know that it is sometimes difficult to make progress not only against the water but also in relation to the banks. In other words, by ensuring respect for Community, the Court can with great effort achieve a *little* but not a *great deal* more than consolidation of the present state of the process of integration. The *rapid* progress needed in order to restore the confidence of industry and to create new opportunities for employment can only be achieved by the Community's political institutions.

However, I do not wish to conclude my farewell address with these words of concern. One of the Netherlands provinces which during and after the last World War also had to engage in a bitter struggle against the sea had as its motto: '*Luctor et emergo*'. In addition to the counter-current which I have briefly indicated, there has in the last few years been a new undercurrent providing fresh impetus in the integration process. In that strong undercurrent are to be found, in addition to the political groupings in the European Parliament, the most important employers' associations and leading industrialists as well as the European trade union movement. The governments of our Member States and national bureaucracies will in the long run have to row along with this undercurrent of political, economic and social forces. If possible, they must even take the lead. I do not see why national politicians and officials should not then once again be able to display the realism and the resultant *esprit communautaire* and imagination which inspired them in the 15 years between the Schuman Plan and the mid-60s. I myself, during the years which I spent working in Brussels, had ample opportunity to benefit from this spirit in my many contacts with national senior officials and politicians in the many areas in which I was then occupied. When the decision-making process of the Council gets under way again, when not only the European Parliament but also the Council examine the Commission's proposals in the light of their intrinsic Community value, that is to say in the light of the clearly perceived long-term interests of all the Member States, and when the implementation of policy is again entrusted largely to the Commission, in the role of honest broker, the Court's task will also be made easier. It will then no longer need to contend, as it must now in many disputes, with the consequences of stagnation and national colouring of the Council's policy. There will then never or rarely be any fear of discrimination on grounds of nationality in the form of interference with vital interests of certain Member States. The Court will then find stability in more tranquil waters. Admittedly, the compelling task of finding legal solutions to the many legal disputes which now arise from the failure of the political decision-making bodies will lose some of its importance. Since such legal solutions can, however, never make the task of the political institutions superfluous, I consider that it will in the final analysis be far more of a gain than a loss to the Court for it to return to its normal role as an administrative and constitutional court.

Mr President. In keeping with the character of my native country, which has to a large extent gained its prosperity and its culture from its battles against and on the sea and the rivers, the figurative language which I have used in these few words of

farewell has been taken from these waters and from those battles. Since the counter-current will last for some time yet, I wish the Court every success in its continued struggle.

Permit me in conclusion to express my joy that my successor, as chance would have it, comes from the only land-locked country of the Community. Since that country was also Schuman's native land and the birthplace of the Community institutions and in view of its strong historical, university, economic, political and dynastic ties with many other west and central European countries, I consider his background to be an auspicious omen. In view also of his Community experience, I shall be content to see my duties handed over to him in a few moments' time.

Address by Lord Mackenzie Stuart, President of the Court, on the entry into office of Advocate General Mischo

In my capacity as President of the Court of Justice of the European Communities it is my great pleasure to welcome the successor to Advocate General VerLoren van Themaat.

The natural regret felt by us all on the departure of your predecessor is, I confess, largely compensated for by your arrival, Mr Mischo.

When your government decided to propose your appointment as Advocate General at the institution of which I am President it adhered to the laudable practice it had adopted of proposing the appointment to the Community institutions, and in particular the Court, of men of experience capable of assuming high-level responsibilities without difficulty. I welcome that approach, particularly as the Court now faces an ever-increasing workload so that it is vital for it to be served by men of the highest calibre who will assist it to meet that challenge successfully.

A brief review of the principal milestones in your career shows clearly that you are undoubtedly a man of such quality. The studies you have pursued provide sufficient indication of that. After obtaining a doctorate in law you went to the Department of International Relations of the renowned Institute of Political Science at the University of Paris. Apparently not satisfied with that background, which many would have found already adequate, you determined to specialize in international law at Trinity College, Cambridge University, from 1963 to 1964. The thesis you submitted during that course of study shows already your interest in Community law, to judge from the title which was 'Some legal aspects of the association of third countries with the European Economic Community'.

Scarcely had you completed your studies when, after a brief sojourn at the Luxembourg Bar, you became a member of the Legal Department of the Commission of the European Communities in 1964. During the five years you spent in that department you were able to tackle numerous issues of Community law, in particular those relating to the customs union and to the 'safeguard' clauses.

In 1971, after brief tours of duty in the Cabinets of two members of the Commission, Mr Bodson and Mr Borschette, and in the Department of Contentious Affairs and Treaties at the Ministry of Foreign Affairs, you joined the Office of the Luxembourg Permanent Representation to the European Communities. In 1976 you returned to the Luxembourg Ministry of Foreign Affairs, and in 1979 you were appointed Assistant Permanent Representative of Luxembourg to the European Communities. In that capacity you contributed to the negotiation of the

first Lomé Convention and to resolving problems regarding the North-South dialogue and relations with the Mediterranean countries.

In August 1983 you became Director of Political and Cultural Affairs at the Ministry of Foreign Affairs and played, not long ago, a leading role during the six month presidency of Luxembourg at the Council and in organizing the Intergovernmental Conference of the Member States of the European Economic Community. The title of Minister Plenipotentiary recently conferred upon you is recognition of the role you played in those two events.

In addition you found time to publish articles concerning, *inter alia*, the implementation of EEC directives in Luxembourg and Article 226 of the Treaty.

Throughout your career you have gained extremely valuable experience, both practical and theoretical, in Community law. You will, therefore, certainly understand the pleasure I take in being able to state in all conscience my conviction that a lawyer as talented as yourself, Mr Mischo, will take up duties as a member of the Court with energy and competence and that you will have no difficulty in adjusting to your new role.

I wish you and Mrs Mischo a very cordial welcome, and call upon you to make now the solemn declaration provided for by the treaties.

Jean Mischo

Curriculum Vitae of Jean Mischo

Born on 7 September 1938 in Luxembourg.

Primary education in Ettelbruck.

Secondary education at the Lycée Classique, Diekirch.

Higher education in Luxembourg (1957 to 1958).

University education in Montpellier and Paris (1958 to 1961).

Diploma from the International Relations Section of the Institute for Political Studies of the University of Paris.

Doctor of Laws.

Military service (1962 to 1963).

Avocat stagiaire at the Luxembourg Bar.

Post-graduate studies in international law at Trinity College, Cambridge (1963 to 1964).

Diploma in international law from the University of Cambridge (Dissertation on 'some legal aspects of the association of third countries with the European Economic Community').

Member of the Legal Department of the Commission of the European Communities (1964 to 1969).

Principal Administrator in the Cabinets of Mr Bodson and Mr Borschette, Members of the Commission of the European Communities (1969 to 1970).

Attaché, and later Secretary of Embassy, in the Contentious Affairs and Treaties Department of the Ministry of Foreign Affairs, Luxembourg (1970 to 1971).

Member of the Permanent Representation of Luxembourg to the European Communities (1971 to 1976).

Counsellor, later Deputy Director, at the Directorate for Political Affairs of the Ministry of Foreign Affairs (1976 to 1979).

Deputy Permanent Representative of Luxembourg to the European Communities (1979 to 1983).

Director of Political and Cultural Affairs in the Ministry of Foreign Affairs since 1 August 1983.

Married since 1964 to Anne-Marie Krombach.

Two children.

Formal sitting of 31 January 1986

Address of Lord Mackenzie Stuart, President of the Court, on the entry into office of the new Spanish and Portuguese Members

Gentlemen,

It is a great pleasure and an honour for me and for the other members of the Court to welcome you among us.

The purpose of this formal sitting is not only to administer the solemn oath on your part provided for in Articles 2 and 8 of the Protocol on the Statute of the Court, but also to wish you a very cordial welcome.

First and foremost, I wish to emphasize the exceptional nature and the historical significance of the ceremony we are witnessing. Your presence here is the result of the accession of Portugal and Spain to the Community, an event which may rightly be described as of capital importance in the history of the Community.

Enlarged to 12 States, the Community will not only find its population increased by a fifth but will experience a considerable reinforcement of its democratic vigour, its economic power and its geographical sphere of influence in the world, particularly in Latin America.

The accession of two States with such a distinguished past and a very promising future is, moreover, proof of the Community's dynamism.

The positive aspects I have just outlined should not make us overlook, however, the fact that the accession will present the Community with new challenges of every sort.

That is why those who are called upon to exercise duties of the greatest responsibility in the Community must be of the highest calibre, if the Community is to be a lively and dynamic entity and achieve the objectives set by the authors of the Treaty.

I note with particular satisfaction that your respective governments had that requirement in mind when they proposed to the Representatives of the Governments of the Member States that you be appointed to the Court as judges and Advocate General.

My satisfaction is strengthened by the fact that the Court is now faced with an ever-increasing workload which makes it essential for it to be composed of people capable of helping it to meet that challenge successfully.

A rapid survey of the principal stages in your respective careers enables me to say without hesitation that you rank among those who will be instrumental in the formation and functioning of a real Europe.

Your career, Mr Moitinho de Almeida, you who are now called upon to take up the duties of judge at the Court, is a perfect example of what I have just said.

After rapidly ascending the various steps in the judicial hierarchy you became Assistant Public Prosecutor at the Court of Appeal in Lisbon. Subsequently, your appointment as Principal Secretary at the Ministry of Justice gave you the opportunity to familiarize yourself with European Law: indeed, you were the representative of the Ministry of Justice on the Committee for European Integration and President of the Coordinating Study Group on Secondary Sources of Community law.

When you became President of the Department of European Law at the Ministry of Justice your interest in Community law led you to lecture in that subject at the Catholic Faculty in Lisbon and at the Centre of Judicial Studies.

Mr Cruz Vilaça: you have been called upon to be an Advocate General at the Court, and your career has taken a similar course.

After obtaining a Law degree in 1966 you embarked on an academic career at the University of Coimbra.

In 1968 you decided to obtain a further qualification, this time in Politics and Economics, at that university. Subsequently, you were awarded a doctorate in International Economics by the University of Paris I, in 1978.

After a brief stay at Oxford you became Professor of Fiscal Law and European Law at the Faculty of Law at the University of Coimbra.

At the same time you took an active part in politics in your country, becoming a Member of Parliament in 1980 and Secretary of State for European Integration in 1982.

Mr Rodríguez Iglesias, you are called upon to be a judge at the Court. Your career likewise gives promise of what you will be able to contribute at the Court of Justice.

You studied law and obtained a degree in that discipline in 1968, the year in which you were appointed Tutor in International Law at the University of Oviedo.

You then spent two years as Tutor in Public Law at the University of Freiburg, where you mastered the language of Goethe.

On returning to Spain in 1972 you continued to lecture in Public International Law in various Spanish Universities before being appointed, in 1983, Professor of Public International Law at the University of Grenada and assuming responsibility for the Department of Public International Law there.

Your participation in numerous conferences connected with Community law, your works on the subject, and the Chairs in European Law at the Universities of Madrid and Grenada you occupy bear witness to your knowledge of and interest in Community law.

You also became Secretary-General to the Spanish Association for the Study of European Law in 1982.

There can be no doubt that persons of such calibre, so well-versed in Community law, will enhance the efficiency of the Court.

You will therefore appreciate, gentlemen, my pleasure in being able to assert with confidence that you will carry out your duties as Members of the Court with energy and competence and that you will have no difficulty in adapting to your new duties.

I now call upon you to take the solemn oath provided for in Articles 2 and 8 of the Protocol on the Statute of the Court of Justice.

José Carlos de Carvalho Moitinho de Almeida

Curriculum vitae of
José Carlos de Carvalho Moitinho de Almeida

Born on 17 March 1936.

Married with two children.

Offices previously held

Assistant to the Public Prosecutor, Tribunal da Covilhã;

Public Prosecutor's Office, Tribunal Tutelar de Menores, Lisbon;

Judge at Alenquer;

Public Prosecutor's Office, Tribunal da Relaçao, Lisbon;

Chief Executive Assistant to the Minister of Justice, Deputy Public Prosecutor and, as such, a member of the Consultative State Council and representative of the Public Prosecutor's Office in the Supreme Administrative Court;

Head of the European Law Office.

Other Duties

Representative of the Portuguese Government on the Steering Committee on Legal Cooperation of the Council of Europe and a member of the Bureau of that Committee;

Expert serving on several committees in the Council of Europe, including committees on bankruptcy law, the law concerning creditors and the law of medicine;

Representative of the Ministry of Justice on the Commission for European Integration;

Chairman of the Group responsible for examining secondary Community law;

Member of the Committee responsible for revising the Civil Code (1977) and of the Committee responsible for amending the law on bankruptcy;

Professor of Community law at the Faculdade Cathólica (Lisbon) and at the Centro de Estudos Judiciáros;

President of the Portuguese Section of the International Insurance Law Association.

Publications

Three books:

O Contrato do Seguro no Direto Português e Comparado;

A Publicidade Enganosa;

Direito Comunitàrio, A Ordem Judíca Comunitària, As Liberdades Fundamentais na CEE.

Several articles on family law, the law of obligations and Community law.

Courses

Course at the National College of State Judiciary, University of Reno, United States of America.

José Luis da Cruz Vilaça

Curriculum vitae of José Luis de Cruz Vilaça

Born on 20 September 1944 at Braga, Portugal

Married to Maria da Graça P. M. da Cruz Vilaça, Professor of Physical Chemistry.

Three children: Pedro Manuel, (17 years), Marta Maria (13 years) and Francisco Maria (six months).

Attended secondary school at Braga. Winner of National Prize and Don Henrique Prize.

1966: Awarded a law degree by the University of Coimbra.

1968: Course in political and economic sciences at the same University.

1967: Beginning of university career as an assistant lecturer in the Faculty of Law of the University of Coimbra in the Department of Political and Economic Sciences.

1978: Doctorate in international economics at the University of Paris I.

1984-85: Senior Associate Member of St Anthony's College, Oxford. Lecturer in the Faculty of Law of the University of Coimbra (political economics and public finance).

1969-72: National service in the legal Department of the Ministry of the Marine.

1980: State Secretary in the Ministry of the Interior where he prepared the reform of electoral legislation, and laws on nationality, aliens and refugees and took part in the drafting of constitutional amendments.

1981: State Secretary in the office of the President of the Council of Ministers.

1982: State Secretary for European integration, responsible for negotiations leading to Portugal's accession to the Community.

Since 1980: Deputy in the Assembly of the Republic and Vice-President of the Christian-Democrat Parliamentary Group, member of the Executive Committee (1983) and Vice-President of the C.D.S. Congress — Social Democratic Party (1985).

Adviser to various Government departments.

Member of the Senate of the University of Minho.

Member of the EEC Selection Board for the recruitment of Portuguese lawyers for the European Communities.

Member of various national and foreign scientific associations including the Associação Juridica Portuguesa (Director of its Legal Science Review since 1967), Associação Portuguesa de Direito Europeu, Associação Fiscal Portuguesa, Intereuropa, Instituto de Estudos Estratégicos e Internacionais, Associação Europeia de Professores, Association Européenne de Sciences Régionales and Sociedade de Geografia de Lisboa.

He has participated in various international conferences and meetings in Portugal, Spain, France, Italy, Great Britain, Austria, Brazil and the United States and been sent on missions of public importance to various European countries and Guinea-Bissau.

He has published university works in the field of political economics, international trade, Community law and European integration, regional economics, economic law, tax law and criminal law. His main works include:

A Empresa Cooperativa (The cooperative company), dissertation, Coimbra, 1969;

Ilicitude do Compartamento (Unlawful conduct) — Descaminho de Documento, Coimbra, 1973;

Cuba — Itineraio de uma Rovolução (Cuba, itinerary of a revolution), Lisbon, 1977;

L'Economie Portugaise face à l'Intégration Economique Européenne, dissertation, Paris, 1978;

A liberalização dos Investimentos e as Regras Comunitarias de Circulação dos Capitais (Liberalization of investment and the Community rules on the circulation of capital), Coimbra, 1978;

O Alargamento da CEE e as Relações Norte-Sul no Contexto Europeu (The enlargement of the EEC and North-South relations in the European context), Lisbon, 1978;

Introdução ao Estudo da Economia — Liçoes ao 1º ano juridico de 1978-79 (Introduction to economics, first-year course);

A Sociedade de Desenvolvimento Regional — Estudo para o seu regime jurídico em Portugal (The regional development company, a study of the legal system in Portugal), Coimbra, 1979;

As SDR — Instrumento de Formação de Desenvolvimento Regional (SDR's, regional development instruments), Lisbon, 1980;

A Livre Circulação de Trabalhadores e a Adesão de Portugal à CEE (The free movement of workers and Portugal's accession to the EEC), Coimbra, 1982;

Modelo Económico Português e Modelo Económico da CEE (A Portuguese economic model and an EEC economic model), Lisbon, 1983;

Aspectos Sociais e Regionais da Adesão de Portugal à CEE (Social and regional aspects of Portugal's accession to the EEC), Lisbon, 1984;

O contributo da democracia — Cristã para a construção europeia (The contribution of Christian Democracy to the buildings of Europe), Lisbon, 1985;

As Implicações da Adesão de Portugal à CEE no Sector Cultural — Relatório para o Ministro da Cultura (The implications of Portugal's accession to the EEC in the cultural sphere — Report submitted to the Minister of Culture), 1985;

Le Financement de l'Investissement Productif et de Développement Régional, Coimbra, OECD, 1985;

As relações económicas Portugal — Espanha no contexto da afesão à CEE (The economic relations between Portugal and Spain in the context of EEC accession), Coimbra, 1986.

Gil Carlos Rodríguez Iglesias

Curriculum vitae of Gil Carlos Rodríguez Iglesias

Born at Gijón (Asturias) on 26 May 1946.

Licentiate of Law (Unicersity of Oviedo, 1968).

Doctor of Law (Universidad Autónoma of Madrid, 1975).

Assistant Lecturer in International Law at the University of Oviedo (October 1968 to December 1969).

Wissenschaftlicher Assistent at the Institute of Public Law of the University of Freiburg im Breisgau (January 1970 to April 1972).

Assistant Lecturer at the Department of International Law of the Universidad Autónoma of Madrid (October 1972 to September 1974).

Assistant Lecturer at the Department of Public International Law of the Universidad Complutense of Madrid (October 1974 to March 1977).

Lecturer in the Department of Public International Law at the Universidad Complutense of Madrid (April 1977 to September 1979 in an interim post, October 1979 to October 1982 in a permanent post and acting Professor as from March 1980).

Appointed Professor of Public International Law at the University of Extremadura following an open competition (October 1982), remaining on secondment to the Department of Public International Law of the Universidad Complutense until September 1983.

Secretary of the Department of Public International Law of the Universidad Complutense of Madrid (April 1977 to October 1982).

Professor of Public International Law at the University of Granada (as from October 1983).

Director of the Department of Public International law of the University of Granada (November 1983 to January 1986).

Member of the Court of Justice of the European Communities (since January 1986).

Main congresses and specialized seminars in which he presented papers

Conference at Biarritz on the problems of Spain's accession to the EEC, organized by the University of Bordeaux (April 1978), in which he presented a paper on the right of establishment of natural persons in the EEC.

Franco-Spanish conference on the accession of Spain to the European Communities, organized by the Centro de Estudios Constitucionales (Madrid, March 1980), in which he presented a paper on the adaptation of state monopolies and the Spanish petroleum monopoly.

First symposium on the accession of Spain to the European Communities, organized by the University of Valladolid (November 1982) in which he presented a paper on the direct effect of Community law in Spanish law.

Conference on the Community order and national economic policies, organized by the Institut des études européennes of the Université Libre de Bruxelles, and the European law journals (Brussels, May 1983), in which he presented a paper on state monopolies and public undertakings.

Conference on the position of aliens under international law and comparative law organized by the Max Planck Institut für Ausländisches Offentliches Recht und Völkerrecht (Heidelberg, September 1985), in which he presented a paper on the legal status of aliens under Spanish law.

Symposium on the reception and application of European Community law, organized by the Asociación Española para el Estudio del Derecho Europeo in conjunction with the Commission of the European Communities, under the auspices of the Juan March Foundation (Madrid, October 1985), in which he presented a paper on the principles of direct effect and primacy of Community law and the inclusion thereof in the Spanish legal order.

Secretary General of the Asociación Española para el Estudio del Derecho Europeo since its foundation in 1982.

Foreign languages

He speaks, reads and writes French, English and German.

Main publications

'Derecho comunitario y administración nacional', Documentación Administrativa No 152 (March to April 1973), pp. 7-43.

'El ordenamiento jurídico de las Comunidades Europeas: caracteres generales y elementos constitutivos', *Revista de Instituciones Europeas*, vol. 1, No 2 (May to August 1974), pp. 597-608.

El régimen jurídico de los monopolios de Estado en la Comunidad Ecónomica Europea, Instituto de Estudios Administrativos, Madrid 1976.

'Les monopoles nationaux à caractère commercial — Observations sous les arrêts de la Cour de Justice de février 1976', *Cahiers de Droit Européen*, 1976, No 5/6, pp. 537-562.

'La libre circulación de los abogados y los médicos en la Comunidad Europea. Problemas actuales', *Revista de Instituciones Europeas*, vol. 4, No 1 (January to April 1977), pp. 83-90.

Capítulos sobre 'Las Comunidades Europeas', 'Funciones de las Comunidades Europeas' and 'EL derecho Comunitario Europeo' in the work by M. Diez de Velasco, *Instituciones de derecho internacional público*, vol. II (Organizaciones internacionales), 1st ed. Madrid 1977, Ed. Tecnos, pp. 294-337, 5th ed. 1986.

'La liberté d'établissement des personnes physiques à la Communauté Economique Européenne', in *Les perspectives de l'adhésion de l'Espagne à la Communauté Economique Européenne*, vol. I, University of Bordeaux, 1979, pp. 245-265.

Courses in European Community law

In addition to his ordinary teaching activity in the sphere of public international law, he has given post-graduate courses in European Community law at the Universidad Complutense of Madrid (academic years 1980-81, 1981-82 and 1982-83, in collaboration with Professor M. Diez de Velasco and Professor A. Mangas Martín) at the University of Granada (February to June 1985) and at the University of Granada he directed a course for legal practitioners in September 1985.

In addition to his work at the universities where he has held posts, he has been involved in various courses and seminars on different aspects of Community law at the Escuela Diplomática (Ministry of Foreign Affairs), the Centro de Estudios Constitucionales, Instituto Nacional de Administración Pública, the Colegio de Abogados of Barcelona, the Istituto Nacional de Industria, the Escuela Judicial, the Universidad de País Vasco, the Universidad Internacional Menéndez Pelayo and other institutions.

Other professional activities

Director of the European Community law research programme at the Instituto de Estudios Administrativos (1973).

Engaged by the Ministry of Foreign Affairs as an adviser to the Directorate for Treaties and International Agreements and as Director of a team of specialists responsible for studying and organizing information concerning Treaties to which Spain is a signatory, for the purpose of computerization thereof and preparing for the publication of a collection of treaties (October 1974 to July 1976). This

collaborative venture gave rise to the publication of the *Censo de Tratados internacionales suscritos por España* and the first two volumes of the *Colección de Tratados suscritos por España.*

Director (with Professor M. Díez de Velasco) of a research programme on European Community law and Spanish law at the Instituto de Estudios Administrativos and then at the Centro de Estudios Constitucionales (1976-80), as a result of which various works were published, including six monographs.

Awarded a Fellowship by the Max Planck Society at the Max Planck Institute of Public International Law and Comparative Public Law, Heidelberg (May to October 1981).

Editor (1974-75), Assistant Secretary (1976-77), Secretary (1978 to 1982) and Assistant Director (as from 1983) of the *Revista de Instituciones Europeas.*

'La adaptación del monopolio Español de petróleos a las exigencias del derecho Comunitario Europeo', *Revista de Instituciones Europeas*, vol. 8, No 1 (January to April 1981), pp. 27-50.

'La eficacia directa de las normas Comunitarias en derecho español', *I Symposium sobre España y las Comunidados Europeas*, University of Valladolid, 1982, pp. 71-89.

'El enriquecimiento sin causa como fundamento de responsabilidad internacional', *Revista Española de Derecho Internacional*, 1982, No 2-3, pp. 379-397.

'Monopoles d'Etat et entreprises publiques (Articles 37 et 90)', in *Discipline Communautaire et Politiques Economiques Nationales. Community Order and National Economic Policies*, Kluwer, Deventer, 1984, pp. 375-418.

'Problemas jurídicos de la adhesion de España a la Comunidad Europea', en *Cursos de Derecho Internacional de Vitoria-Gasteiz 1984*, Servicio Editorial de la Universidad del País Vasco, Bilbao, 1985, pp. 191-240.

'Los efectos internos del derecho communitario', in *Documentación Administrativa* No 201 (July to September 1984), pp. 49-81.

Rechtsprobleme des Beitritts Spaniens zur Europäischen Gemeinschaft (paper read at Europa-Kolleg, Hamburg), Hamburg, 1985.

'Funciones de la doctrina en el derecho internacional', Pensamiento jurídico y Sociedad Internacional. Estudios en honor del Prof. D. Antonio Truyol Serra, vol. II, Madrid, 1986, pp. 1059-1072.

'Les Monopolios de Estado', in *Tratado de Derecho Comunitario Europeo* (directed by E. García de Enterría, J.D. Gonzáles Campos y S. Munoz Machado), vol. II, Cívitas, Madrid, 1986, pp. 481-499.

Formal sitting
of 3 October 1986

Maurice Lagrange

Funeral Oration for Maurice Lagrange, a former Member of the Court, delivered by the President of the Court, Lord Mackenzie Stuart, on 3 October 1986

Ladies and Gentlemen,

It was with great sorrow that we learned during the judicial vacation of the death of our distinguished and esteemed colleague, Maurice Lagrange, who was Advocate General, first at the Court of Justice of the European Coal and Steel Community, from 1952 to 1958, and then, at the Court of Justice of the European Communities, from 1958 to 1964.

Europe has thus lost one of those men who were closely associated with its construction and with overseeing its early development. Those who had the pleasure and the privilege of knowing him will not need to be reminded of his outstanding career and the important role which he played in the creation of the institution of which I have the honour to be President. Nevertheless in tribute to his memory and his work as an architect of Europe allow me to recall for you the principal stages in his distinguished career.

He studied for his law degree at the Faculty of Paris and then from 1924 he served that prestigious institution, the Conseil d'État. He was assigned to the Section for Contentious Affairs and remained there without interruption from 1924 to 1945. He achieved rapid promotion throught the different career steps, becoming auditeur de deuxième classe in 1924, auditeur de première classe in 1929, maître des requêtes in 1934 and conseiller d'État in 1945. During those years on various occasions he also performed the duties of commissaire du gouvernement. In October 1950, at the express requests of Jean Monnet, who was at the time commissaire général au Plan and who was subsequently to be recognized as one of the founding fathers of Europe, he took part, as a legal expert, in the negotiations on the Schuman Plan which led to the signing in Paris on 18 April 1951 of the Treaty establishing the European Coal and Steel Community. In the course of those negotiations, in particular, he played a leading role in the drafting of the provisions concerning the Court of Justice, Articles 31 to 45 of the ECSC Treaty and the Protocol on the Statute of the Court. He may also be credited with the creation of the office of Advocate General to the Court of Justice for it was his proposals, deriving their inspiration directly from the structure of the French Conseil d'État, in which, as is well known, the function of the commissaire du gouvernement resembles closely that of the Advocate General, which were finally adopted at the conference at which the Treaty of Paris was drafted.

In 1952 he was seconded from the Financial Section of the Conseil d'État to take up the position of Advocate General, first at the Court of Justice of the ECSC

and then, when a single court common to the European Coal and Steel Community, the European Economic Community and the European Atomic Energy Community was established, at the Court of Justice of the European Communities.

I believe that it can truly be said that the French Government could not have put forward a better candidate for Advocate General than Mr Lagrange, in view of the fact that, as I have just recalled, he was the spiritual father of that office.

This man thus had the uplifting task of participating in the conception, the birth and the life of the Court of Justice and of the office of Advocate General which he held. It is no more than justice to stress his enormous contribution to the stature of the office of Advocate General.

In the exercise of those duties he acquired considerable authority in the sphere of Community law. I would even go so far as to say that his Advocate General's seat became one of the most eminent professorial chairs of Community law.

To illustrate that, allow me to quote a short passage from the address delivered by President Donner on the occasion of Mr Lagrange's departure from the Court:

> 'The judgments of the Court probably consitute the best known and the most important authority for the interpretation of Community law. But immediately after them come the opinions of the Advocates General. It is no exaggeration to say that you, Mr Advocate General Lagrange, are cited more often than the Court, because your statements of the problems are, as we are forced to admit, sometimes of a clarity and a precision which cannot be matched by the collective product of the deliberation chamber.'

Throughout his term of office at the Court, he also showed himself to possess a spirit of uncompromising independence. It was Mr Lagrange who, in the first case which came before the Court, Case 1/54, delivered an opinion unfavourable to the government which had just proposed his appointment to the representatives of the governments of the Member States of the European Communities.

In 1964 he requested that his term of office should not be renewed and he was reinstated in the Conseil d'État and assigned to the Public Works Section.

Nevertheless he continued to display a lively interest in Community law as is shown by the numerous articles which he published on that subject, the many conferences in which he continued to take part and the voluminous correspondence which he maintained with his former colleagues. Even in that correspondence Mr Lagrange never ceased to expound the fundamental role of the Court in the development of a true Community and to assert his attachment to that cause.

The man to whom we are paying homage today can therefore be regarded as one of the men who played a leading role in the creation of a Community legal order

which has become through the years one of the cornerstones of the Communities.

His name will remain in the history of Europe as one of those who devoted themselves wholeheartedly to its planning and its achievement.

On behalf of the Court, I should like to offer our sincere sympathy and condolences to his family.

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