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

Luxembourg, 2015

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Foreword

This report is intended to provide a succinct yet accurate presentation of the institution's activity in 2014. As usual, a substantial part of the report is devoted to accounts of the main judicial activity of the Court of Justice, the General Court and the Civil Service Tribunal, providing an overview of developments in the case-law.

In addition, statistics provide details, for each court, of the nature and quantity of the cases which were brought before them. A new record was achieved in 2014 with a total of 1 691 cases brought before the three courts, that is to say, the highest number since the judicial system of the European Union was created. On the other hand, as 1 685 cases were completed, the institution's productivity was likewise the highest recorded in its history. This increased productivity also had its counterpart in the duration of proceedings, which was reduced.

This good performance confers no protection, however, against the risk of the system becoming clogged up in the future. Whilst the courts' constant workload, and especially the increase in the number of the cases before the General Court, is undeniably proof of the system's success, it may also compromise its effectiveness.

Furthermore, since 1 December 2014, following the transitional period introduced by the Treaty of Lisbon as regards the judicial review of acts of the European Union in the field of police cooperation and judicial cooperation in criminal matters, the Court of Justice has had full jurisdiction under Article 258 of the Treaty on the Functioning of the European Union (TFEU) to decide infringement proceedings against any Member State — with one exception — where they breach provisions of EU law in that field.

For those reasons, means of improving the effectiveness of the judicial system of the European Union, whether legislative in nature or relating to working methods, are constantly and continuously sought.

An important step in that direction was taken in 2014 with the draft of the new Rules of Procedure of the General Court, which was favourably received by the Council. These new Rules of Procedure include measures designed to improve the effectiveness of the General Court's work, and they also provide a means of ensuring that information or material pertaining to the security of the European Union or its Member States or to the conduct of their international relations is protected when it is dealt with by the General Court.

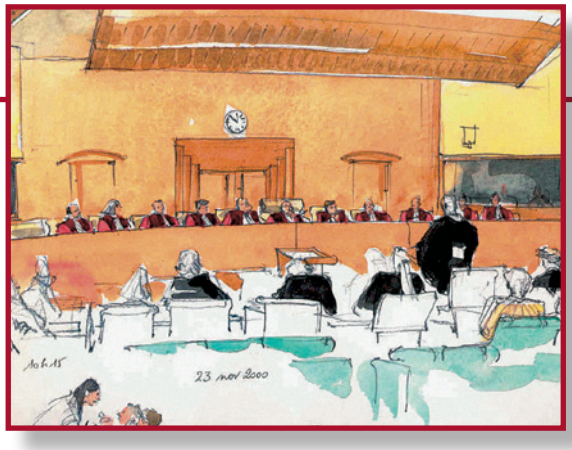
An even more important step remains to be taken in the future. After being invited to do so by the Italian Presidency of the Council in the second half of 2014, the Court submitted to the Council a proposal to double the number of General Court judges in three successive stages extending until 2019. As this proposal was agreed to in principle by the Council, it will have to be developed in the first months of 2015.

On 20 and 21 November 2014, the institution celebrated the 25th anniversary of the establishment of the General Court. The events organised in that context enabled this enriching period for the judicial system of the European Union to be appraised, but also enabled future prospects to be considered.

The year 2014 also provided the opportunity to mark the 10th anniversary of the European Union's enlargement on 1 May 2004 through the accession of 10 new Member States, by holding a conference on 5 June 2014 entitled 'The Court of Justice from 2004 to 2014: a retrospective'.

This foreword to the annual report is the last that I will have the honour of signing as president of the institution. I would therefore like to take this opportunity to thank my colleagues in the Court of Justice for the confidence that they have repeatedly placed in me, and the members of the General Court and the Civil Service Tribunal for their contribution to the task with which our institution has been entrusted. I also thank all those who, in the background but playing a crucial role, in the chambers or the departments of the institution, ensure that the Court of Justice of the European Union can state the law.

V. Skouris
President of the Court of Justice



Chapter I

The Court of Justice

A — The Court of Justice in 2014: changes and activity

By Mr Vassilios Skouris, President of the Court of Justice

This first chapter gives an overview of the activities of the Court of Justice in 2014. The present part of the chapter firstly describes how the Court of Justice evolved during the past year, and secondly includes an analysis of the statistics which shows both the evolution of the Court's workload and the average duration of proceedings. This is followed by the second part (B), which presents, as it does each year, the main developments in the case-law, arranged by subject-matter; the third part (C), which provides details of the Court's composition during the period in question; and then the fourth part (D), which contains the statistics relating to the past judicial year.

1. As regards the Court's general evolution, the only event which stands out is the resignation of the Cypriot judge, Mr Arestis, and his replacement by Mr Lycourgos, who entered into office on 8 October 2014.

In relation to the rules governing procedure, it should merely be noted that, following the entry into force of the new Rules of Procedure of the Court of Justice in 2012, new Supplementary Rules, which update the provisions concerning letters rogatory, legal aid and reports of perjury by a witness or expert (OJ 2014 L 32, p. 37), as well as practical directions to parties concerning cases brought before the Court (OJ 2014 L 31, p. 1), entered into force on 1 February 2014.

2. The statistics concerning the Court's activity in 2014 reveal unprecedented figures overall. The past year was the most productive year in the Court's history.

Thus, the Court completed 719 cases in 2014 (gross figure, that is to say not taking account of the joinder of cases — the net figure being 632 cases), which amounts to an increase compared with the previous year (701 cases completed in 2013). Of those cases, 416 were dealt with by judgments and 214 gave rise to orders.

The Court had 622 new cases brought before it (without account being taken of the joinder of cases on the ground of similarity), as against 699 in 2013, which amounts to a decrease of 11%. This relative decrease in the total number of cases brought essentially concerns appeals and references for a preliminary ruling. There were 428 references for a preliminary ruling in 2014.

As far as the duration of proceedings is concerned, the statistics are very positive. In the case of references for a preliminary ruling, the average duration amounted to 15.0 months. The decrease compared with 2013 (16.3 months) confirms a clear trend since 2005. The average time taken to deal with direct actions and appeals was 20.0 months and 14.5 months respectively, again a decrease compared with 2013.

These data are the fruit of the constant watch kept by the Court over its workload. In addition to the reforms in its working methods that have been undertaken in recent years, the improvement of the Court's efficiency in dealing with cases is also due to the increased use of the various procedural instruments at its disposal to expedite the handling of certain cases (the urgent preliminary ruling procedure, priority treatment, the expedited procedure, the simplified procedure and the possibility of giving judgment without an opinion of the advocate general).

Use of the urgent preliminary ruling procedure was requested in six cases and the designated chamber considered that the conditions under Article 107 *et seq.* of the Rules of Procedure were met in four of them. Those cases were completed in an average period of 2.2 months, as in 2013.

Use of the expedited procedure was requested 12 times, but the conditions under the Rules of Procedure were met in only two of those cases. Following a practice established in 2004, requests for the use of the expedited procedure are granted or refused by reasoned order of the president of the Court. In addition, priority treatment was granted in three cases.

Also, the Court utilised the simplified procedure laid down in Article 99 of the Rules of Procedure to answer certain questions referred to it for a preliminary ruling. A total of 31 cases were brought to a close by orders made on the basis of that provision.

Finally, the Court made fairly frequent use of the possibility offered by Article 20 of its statute of determining cases without an opinion of the advocate general where they do not raise any new point of law. Thus, 208 judgments (in 228 cases when joinder is taken into account) were delivered in 2014 without an opinion.

As regards the distribution of cases between the various formations of the Court, it is to be noted that the Grand Chamber dealt with roughly 8.7%, chambers of five judges with 55% and chambers of three judges with approximately 37% of the cases brought to a close by judgments or by orders involving a judicial determination in 2014. Compared with the previous year, the proportion of cases dealt with by the Grand Chamber remained stable (8.4% in 2013), while the proportion of cases dealt with by five-judge chambers decreased slightly (59% in 2013).

For more detailed information regarding the statistics for the past judicial year, part D of Chapter I, specifically devoted to that topic in this report, should be consulted.

B — Case-law of the Court of Justice in 2014

I. Fundamental rights

1. Accession of the European Union to the European Convention on Human Rights

On 5 April 2013, the negotiations on the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms ('the ECHR') ([1]) resulted in agreement on the draft accession instruments. On 18 December 2014, the Court, seised of a request on the basis of Article 218(11) TFEU, and sitting as the Full Court, delivered Opinion 2/13 (EU:C:2014:2454), on the compatibility of the agreement envisaged with the Treaties.

As regards the admissibility of the request for an opinion ([2]), the Court made clear, first of all, that in order to enable it to rule on the compatibility of the provisions of an envisaged agreement with the rules of the Treaties, the Court must have sufficient information on the actual content of that agreement. In that respect, in this instance, all the draft accession instruments submitted by the Commission, taken together, constituted a sufficiently comprehensive and precise framework for the arrangements in accordance with which the envisaged accession should take place. Furthermore, as regards the internal rules of EU law whose adoption was necessary in order to make the accession agreement operational, which were also covered by the request for an opinion, the Court held that the nature of those rules precluded them from forming the subject matter of the opinion procedure, which can only relate to international agreements which the European Union is proposing to conclude. If it was not to encroach on the competences of the other institutions responsible for drawing up those rules, the Court had to confine itself to examining the compatibility of the agreements with the Treaties.

As regards the substance of the request for an opinion, the Court, after recalling by way of preliminary point the fundamental elements of the constitutional framework of the European Union, examined compliance with the specific characteristics and the autonomy of EU law, including in relation to the common foreign and security policy ('the CFSP'), and also compliance with the principle of the autonomy of the EU legal system, laid down in Article 344 TFEU. It also verified whether the specific characteristics of the European Union were preserved in the light of the co-respondent mechanism and the procedure for the prior involvement of the Court of Justice. That examination led the Court to conclude that the draft agreement was not compatible with either Article 6(2) of the Treaty on European Union (TEU) or Protocol No 8, relating to that provision, annexed to the EU Treaty ([3]).

Firstly, the Court observed that, as a result of the European Union's accession to the ECHR, the European Union, like any other contracting party, would be subject to external control to ensure the observance of the rights and freedoms provided for in that convention. In the context of that external control, on the one hand, the interpretation of the ECHR provided by the European Court of Human Rights ('the ECtHR') would be binding on the European Union and its institutions, including

([1]) Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.

([2]) On issues of admissibility in relation to a request for an opinion, see also Opinion 1/13 (EU:C:2014:2303), in section Section IX 'Judicial cooperation in civil matters'.

([3]) Protocol No 8 relating to Article 6(2) of the Treaty on European Union on the accession of the Union to the Convention for the Protection of Human Rights and Fundamental Freedoms.

the Court of Justice, and, on the other, the interpretation by the Court of Justice of a right recognised by the ECHR would not be binding on the ECtHR. However, the Court made clear that cannot be so as regards the interpretation which the Court itself provides of EU law and, in particular, of the Charter of Fundamental Rights of the European Union ('the Charter of Fundamental Rights' or 'the Charter'). In that connection, in so far as Article 53 of the ECHR confers on the contracting parties the power to lay down higher standards of protection than those guaranteed by the ECHR, that provision should be coordinated with Article 53 of the Charter of Fundamental Rights, so that that power should be limited — with respect to the rights recognised both by the Charter and by the convention — to that which is necessary to ensure that the level of protection provided for by the Charter and the primacy, unity and effectiveness of EU law are not compromised. However, there was no provision in the agreement envisaged to ensure such coordination. Secondly, in so far as the ECHR would require a Member State to check that another Member State has observed fundamental rights, even though EU law imposes an obligation of mutual trust between those Member States, accession is liable to upset the underlying balance of the European Union and undermine the autonomy of EU law. Thirdly, by failing to make any provision in respect of the relationship between the mechanism established by Protocol No 16 to the ECHR, which permits the highest courts and tribunals of the Member States to request the ECtHR to give advisory opinions, and the preliminary ruling procedure provided for in Article 267 TFEU, which is the keystone of the judicial system established by the Treaties, the agreement envisaged was liable adversely to affect the autonomy and effectiveness of that procedure.

As regards the compatibility of the agreement envisaged with Article 344 TFEU, the Court noted that the draft agreement still allowed for the possibility that the European Union or the Member States might submit an application to the ECtHR concerning an alleged violation of the ECHR by a Member State or by the European Union in relation to EU law. However, Article 344 TFEU is specifically intended to preserve the exclusive nature of the procedure for settling disputes relating to the interpretation or the application of the Treaties, and in particular of the jurisdiction of the Court of Justice in that respect, and thus precludes any prior or subsequent external control. In those circumstances, the draft agreement could be compatible with the TFEU only if the ECtHR's jurisdiction were expressly excluded for disputes between Member States themselves, or between Member States and the European Union, in relation to the application of the ECHR in the context of EU law.

Likewise, the Court observed that the agreement envisaged did not make provision for arrangements for the operation of the co-respondent mechanism and the procedure for the prior involvement of the Court of Justice that would enable the specific characteristics of the European Union and of EU law to be preserved. As regards, specifically, the co-respondent mechanism, the Court emphasised that, under the agreement envisaged, the ECtHR could, when examining the conditions for the intervention of the European Union or a Member State as co-respondent, be led to assess the rules of EU law governing the division of powers between the European Union and its Member States as well as the criteria for the attribution of their acts or omissions. Such a review would be liable to interfere with the division of powers between the European Union and its Member States.

With respect to the procedure for the prior involvement of the Court of Justice provided for in the draft agreement, the Court considered, first, that it was necessary, in order to preserve the specific characteristics of the European Union, that the question whether the Court of Justice has already given a ruling on the same question of law should be resolved by the competent EU institution, whose decision should be binding on the ECtHR, but this was not provided for in the draft agreement. To permit the ECtHR to rule on such a question would be tantamount to conferring on it jurisdiction to interpret the case-law of the Court of Justice. Secondly, the Court observed that limiting the scope of the procedure for the prior involvement of the Court, in the case of secondary

law, solely to questions of validity, to the exclusion of questions of interpretation, would adversely affect the competences of the European Union and the powers of the Court of Justice in that it would not allow the Court of Justice to provide a definitive interpretation of secondary law in the light of the rights guaranteed by the ECHR.

Lastly, the Court noted that the agreement envisaged failed to have regard to the specific characteristics of EU law with regard to the judicial review of acts, actions or omissions on the part of the European Union in CFSP matters. Although, as EU law now stands, certain acts, actions or omissions fall outside the ambit of judicial review by the Court of Justice, the ECtHR would none the less be empowered to rule on the compatibility with the ECHR of those acts. Such jurisdiction to carry out a judicial review, including in the light of fundamental rights, cannot be conferred exclusively on an international court which is outside the institutional and judicial framework of the European Union.

2. Charter of Fundamental Rights of the European Union

In the course of 2014 the Court was required to interpret and apply the Charter of Fundamental Rights in numerous decisions, the most important of which are presented in the various sections of this report ([4]). In this section, two decisions are presented: the first concerns the invocability of the Charter in a dispute between individuals, and the second relates to its scope.

In the judgment in *Association de médiation sociale* (C-176/12, EU:C:2014:2), delivered on 15 January 2014, the Grand Chamber of the Court was required to rule on the invocability of *Article 27 of the Charter of Fundamental Rights and of Directive 2002/14 on informing and consulting employees, in the context of a dispute between individuals* ([5]). The case involved a dispute before the French Cour de cassation (Court of Cassation) between, on the one hand, an employer, the Association de médiation sociale (AMS), and, on the other, the Union locale des syndicats CGT and also a person designated as representative of the trade union section created within the AMS. The AMS had decided not to hold an election for a staff representative, being of the view that, in accordance with the French Labour Code, employees with a professional training contract ('employees with assisted contracts') should be excluded from the calculation of staff numbers for the purpose of determining the legal thresholds for setting up bodies representing staff and that, so far as it was concerned, those thresholds had therefore not been reached.

The Court held that Article 3(1) of Directive 2002/14 must be interpreted as precluding a national provision under which employees with assisted contracts are excluded from the calculation of thresholds. However, it stated that even though that provision fulfils all of the conditions necessary for it to have direct effect, it cannot be applied in a dispute exclusively between private parties.

([4]) Mention should be made of the judgment of 17 September 2014 in *Liivimaa Lihaveis* (C-562/12, EU:C:2014:2229), presented in section IV.3 'Actions for annulment'; the judgment of 30 April 2014 in *Pfleger and Others* (C-390/12, EU:C:2014:281), presented in section VI.2 'Freedom of establishment and freedom to provide services'; the judgment of 30 January 2014 in *Diakite* (C-285/12, EU:C:2014:39), presented in section VII.2 'Asylum policy'; the opinion of 14 October 2014 (1/13, EU:C:2014:2303), presented in section IX 'Judicial cooperation in civil matters'; the judgment of 18 March 2014 in *International Jet Management* (C-628/11, EU:C:2014:171), presented in section X 'Transport'; the judgment of 8 April 2014 in *Digital Rights Ireland and Others* (C-293/12 and C-594/12, EU:C:2014:238) and the judgment of 13 May 2014 in *Google Spain and Google* (C-131/12, EU:C:2014:317), presented in section XIII.2 'Protection of personal data'.

([5]) Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ 2002 L 80, p. 29).

Next, the Court held that Article 27 of the Charter, by itself or in conjunction with the provisions of Directive 2002/14/EC, cannot be invoked in a dispute between individuals in order to disapply a national provision contrary to EU law where a national provision implementing that directive is incompatible with EU law. The Court held that, in order to be fully effective, Article 27 of the Charter must be given more specific expression in EU law or in national law. The prohibition, laid down in Directive 2002/14, on excluding a specific category of employees from the calculation of staff numbers in an undertaking, cannot be inferred as a directly applicable rule of law, either from the wording of Article 27 of the Charter or from the explanatory notes to that article. However, the Court pointed out that a party injured as a result of domestic law not being in conformity with EU law can rely on the principle established in the judgment in *Francovich and Others* ([6]) to obtain, if appropriate, compensation for the loss sustained.

On 10 July 2014, in the judgment in *Julian Hernández and Others* (C-198/13, EU:C:2014:2055), the Court had the opportunity to provide clarification on *the scope of the Charter of Fundamental Rights* ([7]) *in the context of a request for a preliminary ruling concerning Article 20 of that charter and Directive 2008/94 on the protection of employees in the event of the insolvency of their employer* ([8]). The reference to a preliminary ruling relates to national legislation under which an employee may, by operation of legal subrogation, claim directly from the Member State, on certain conditions, payment of remuneration during proceedings challenging a dismissal where the employer has not paid that remuneration and finds itself in a state of provisional insolvency. The Court considered whether the national legislation came within the scope of Directive 2008/94 and whether it could therefore be evaluated in the light of the fundamental rights guaranteed by the Charter of Fundamental Rights.

In that regard, the Court observed that, in order for national legislation to be regarded as implementing EU law, within the meaning of Article 51 of the Charter of Fundamental Rights, there must be a connection between a measure of EU law and the national measure at issue which goes beyond the matters covered being closely related or one of those matters having an indirect impact on the other. The mere fact that a national measure comes within an area in which the European Union has powers cannot bring it within the scope of EU law and, therefore, render the Charter of Fundamental Rights applicable. Thus, in order to determine whether a national measure involves the implementation of EU law, it is necessary to determine, inter alia, whether the national legislation at issue is intended to implement a provision of EU law; the nature of that legislation and whether it pursues objectives other than those covered by EU law, even if it is capable of directly affecting EU law; and, lastly, whether there are specific rules of EU law on the matter or rules which are capable of affecting it.

As regards the national legislation at issue, the Court stated that it pursues an objective which differs from that of guaranteeing a minimum protection for employees in the event of the employer's insolvency, as referred to in Directive 2008/94, and that the grant of the compensation provided for in the national legislation is not capable of affecting or limiting the minimum protection provided for in the directive. In addition, the Court considered that Article 11 of the directive, which provides that the directive is not to affect the option of Member States to introduce provisions which

([6]) Judgment of 19 November 1991, *Francovich and Bonifaci* v *Italy* (C-6/90 and C-9/90, EU:C:1991:428).

([7]) As regards the scope of the Charter, mention should be made of the judgment of 30 April 2014 in *Pfleger and Others* (C-390/12, EU:C:2014:281), presented in section VI.2 'Freedom of establishment and freedom to provide services'.

([8]) Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (OJ 2008 L 283, p. 36).

afford more favourable protection to employees, does not grant Member States such an option but merely recognises it. Accordingly, the national legislation at issue cannot be regarded as coming within the scope of the directive.

3. General principles of EU law

In the judgment in *Kamino International Logistics and Others* (C-129/13, EU:C:2014:2041), delivered on 3 July 2014, the Court examined *the principle of respect by the authorities of the rights of the defence and the right to be heard in the context of the application of the Customs Code* ([9]). The request for a preliminary ruling was submitted in the context of proceedings concerning two customs agents who, following an inspection by the customs authorities, had been served with two demands for payment to recover additional customs duties without having first been heard.

In that regard, the Court emphasised that the principle of respect for the rights of the defence by the authorities and the resulting right of every person to be heard before the adoption of any decision liable adversely to affect his interests, as they apply in the context of the Customs Code, may be relied on directly by individuals before national courts. The authorities of the Member States are subject to the obligation to respect that principle when they take decisions which come within the scope of EU law, even though the legislation applicable does not expressly provide for such a procedural requirement. Furthermore, where the addressee of a decision, like a demand for payment, has not been heard by the authorities, the rights of the defence are infringed even though he can express his views during a subsequent administrative objection stage if national legislation does not allow the addressees of those decisions to obtain suspension of their implementation until their possible amendment. In any event, the national court, which is under an obligation to ensure that EU law is fully effective, may consider that such an infringement entails the annulment of the decision only if, had it not been for such an irregularity, the outcome of the procedure might have been different.

II. Citizenship of the Union

In the area of citizenship of the Union, six judgments deserve particular attention. The first judgment relates to the right of entry into a Member State, the next four relate to the right of residence of family members of citizens of the Union who are nationals of third states and the sixth judgment concerns the grant of social benefits to citizens of the Union who are economically inactive and are not seeking employment.

In the judgment in *McCarthy and Others* (C-202/13, EU:C:2014:2450), delivered on 18 December 2014, the Grand Chamber of the Court held that both *Article 35 of Directive 2004/38* ([10]) and *Article 1 of*

([9]) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000 (OJ 2000 L 311, p. 17).

([10]) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda in OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34).

Protocol No 20 annexed to the EU Treaty ([11]) preclude a Member State from requiring, in pursuit of an objective of general prevention, nationals of third states who hold a 'Residence card of a family member of a Union citizen' issued by the authorities of another Member State to be in possession of an entry permit in order to be able to enter its territory.

Ms McCarthy Rodriguez, a Colombian national, lives in Spain with her husband, Mr McCarthy, who has British and Irish nationality. In order to be able to enter the United Kingdom, Ms McCarthy Rodriguez was required under the applicable national legislation to apply beforehand for a family entry permit, a condition which in the view of the referring court might not be compatible with EU law.

In its judgment, the Court, after confirming that the couple are 'beneficiaries' of Directive 2004/38, observed, first, that a person who is a family member of a Union citizen and is in a situation such as that of Ms McCarthy Rodriguez is not subject to the requirement to obtain a visa or an equivalent requirement in order to be able to enter the territory of that Union citizen's Member State of origin.

Furthermore, as regards Article 35 of Directive 2004/38, which provides that Member States may adopt the necessary measures to refuse, terminate or withdraw any right conferred by that directive in the case of abuse of rights or fraud ([12]), the Court held that measures adopted on the basis of that provision are subject to the procedural safeguards provided for in the directive and must be based on an individual examination of the particular case. In this connection, proof of an abuse requires a combination of objective circumstances and a subjective element. Thus, the fact that a Member State is faced with a high number of cases of abuse of rights or fraud cannot justify the adoption of a measure founded on considerations of general prevention, to the exclusion of any specific assessment of the conduct of the person concerned himself. Such measures, being automatic in nature, would allow Member States to leave the provisions of Directive 2004/38 unapplied and would disregard the very substance of the primary and individual right of Union citizens to move and reside freely and of the derived rights enjoyed by their family members who are not nationals of a Member State.

Lastly, although Article 1 of Protocol No 20 authorises the United Kingdom to verify whether a person seeking to enter its territory in fact fulfils the requisite conditions, it does not permit that Member State to determine the conditions for entry of persons who have a right of entry under EU law and, in particular, to impose upon them extra conditions for entry or conditions other than those provided for by EU law.

In two judgments, the Grand Chamber of the Court had the opportunity to interpret *Articles 21 TFEU and 45 TFEU and Directive 2004/38 in relation to the right of residence of the family members of a Union citizen having the nationality of a third state*. On 12 March 2014, in the judgment in *O.* (C-456/12, EU:C:2014:135), the Court observed, as a preliminary point, that Directive 2004/38 is not intended to confer a derived right of residence on third-country nationals who are family members of a Union citizen residing in the Member State of which the latter is a national. However, where a Union citizen has created or strengthened a family life with a third-country national during

([11]) Protocol No 20 on the application of certain aspects of Article 26 of the Treaty on the Functioning of the European Union to the United Kingdom and to Ireland.

([12]) Two other judgments covered in this report concern the question of abuse of rights: the judgment of 17 July 2014 in *Torresi* (C-58/13 and C-59/13, EU:C:2014:2088), presented in section VI.2 'Freedom of establishment and freedom to provide services', and the judgment of 13 March 2014 in *SICES and Others* (C-155/13 EU:C:2014:145), presented in section V 'Agriculture'.

genuine residence in a Member State other than that of which he is a national and returns, with the family member, to his Member State of origin in accordance with Article 21(1) TFEU, the provisions of that directive apply by analogy. Therefore, the conditions for granting a derived right of residence should not be more strict than the conditions provided for by that directive where the Union citizen has become established in a Member State other than the Member State of which he is a national ([13]). However, the Court observed that short periods of residence such as weekends or holidays spent in a Member State other than that of which the citizen in question is a national, even when considered together, do not satisfy those conditions.

In addition, the Court observed that a third-country national who has not had, at least during part of his residence in the host Member State, the status of family member, and is not entitled to, a derived right of residence in that Member State pursuant to the abovementioned articles of Directive 2004/38, is also unable to rely on Article 21(1) TFEU for the grant of a derived right of residence on the return of the Union citizen in question to the Member State of which he is a national.

In the judgment in *S. and G.* (C-457/12, EU:C:2014:136), delivered on 12 March 2014, the Court ruled that Directive 2004/38 does not preclude a refusal by a Member State to grant a right of residence to a third-country national who is a family member of a Union citizen where that citizen is a national of and resides in that Member State but regularly travels to another Member State in the course of his professional activities. That directive grants an autonomous right of residence to a Union citizen and a derived right of residence to his family members only where that citizen exercises his right to freedom of movement by becoming established in a Member State other than the Member State of which he is a national.

On the other hand, the Court, guided by its interpretation of Article 56 TFEU in the judgment in *Carpenter* ([14]), held that Article 45 TFEU confers a right of residence on a third-country national who is the family member of a Union citizen where the citizen is a national of and resides in the Member State concerned but regularly travels to another Member State as a worker, if the refusal to grant a right of residence to the third-country national discourages the worker from effectively exercising his rights under Article 45 TFEU. In that regard, the Court observed that the fact that the third-country national takes care of the Union citizen's child may be a relevant factor to be taken into account by the national court. However, the mere fact that it might appear desirable that the third-country national, in this case the mother of the Union citizen's spouse, should care for the child is not sufficient in itself to constitute such a dissuasive effect.

The Court also had the opportunity in the judgment in *Reyes* (C-423/12, EU:C:2014:16), delivered on 16 January 2014, to clarify *the concept of dependent family member of a Union citizen*. The main proceedings were between a Philippine national over the age of 21 and the Swedish Immigration Board concerning the rejection of her application for a residence permit in Sweden in her capacity as a family member of her mother, a German national, and the latter's partner, a Norwegian citizen.

In that context, the Court observed that, in order for a direct descendant, who is 21 years old or older, of a Union citizen to be regarded as being a 'dependant' of that citizen, the existence of a situation of real dependence in the country from which the family member concerned comes must be established. However, there is no need to determine the reasons for that dependence. Thus, in circumstances in which a Union citizen regularly, for a significant period, pays a sum of money to a direct descendant who is 21 years old or older, which the latter needs in order to support himself

([13]) See, in particular, Articles 7(1) and (2) and 16 of Directive 2004/38.

([14]) Judgment of 11 July 2002 in *Carpenter* (C-60/00, EU:C:2002:434).

in the State of origin, Article 2(2)(c) of Directive 2004/38 does not allow a Member State to require that descendant to show that he has tried unsuccessfully to obtain employment or to obtain subsistence support from the authorities of his country of origin and/or otherwise to support himself. The requirement for such evidence, which may not be easy to provide in practice, is likely to make it excessively difficult for that descendant to obtain the right of residence in the host Member State.

The Court stated, moreover, that the fact that a family member — due to personal circumstances such as age, education and health — is deemed to be well placed to obtain employment and, in addition, intends to start work in the host Member State does not affect the interpretation of the requirement in that provision of Directive 2004/38 that he be a dependant.

Still in the area of Directive 2004/38, on 10 July 2014, the Court, in its judgment in *Ogieriakhi* (C-244/13, EU:C:2014:2068), interpreted *the concept of 'continuous period of legal residence with the Union citizen' provided for in Article 16(2) of that directive*. The questions referred for a preliminary ruling originated in an action for damages brought against Ireland by a third-country national. The plaintiff in the main proceedings claimed to have suffered damage as a result of the refusal to grant a right of residence following his separation from his spouse, a Union citizen. The refusal was based on national legislation which, according to the plaintiff in the main proceedings, had not correctly transposed Directive 2004/38.

In that case, the Court held that a third-country national who, during a continuous period of five years before the transposition date for the directive, has resided in a Member State as the spouse of a Union citizen working in that Member State, must be regarded as having acquired a right of permanent residence under Directive 2004/38, even though, during that period, the spouses decided to separate and commenced residing with other partners, and the home occupied by that national was no longer provided or made available to him by his spouse with Union citizenship. To interpret Article 16(2) of Directive 2004/38 as meaning that, for the purpose of the acquisition of the right of permanent residence, the obligation to reside with the Union citizen may be regarded as satisfied only in the specific case in which the spouse who resides with the Union citizen in the host Member State has not broken away from all sharing of married life together with that Union citizen, does not appear to be consistent with the objective of that directive of offering legal protection to family members of the Union citizen, particularly in the light of the residence rights recognised in favour of ex-spouses, subject to certain conditions, in the event of divorce.

Furthermore, in the case in point, since the period of five years taken into consideration for the purpose of the acquisition of a permanent right of residence was completed before the date for transposition of Directive 2004/38, the lawfulness of the residence had to be assessed in accordance with the rules laid down in Article 10(3) of Regulation No 1612/68 ([15]). In that regard, the Court held that the condition, laid down in that article, to have housing available, does not require the family member concerned to reside there permanently, but merely requires the accommodation that the worker has available for his family to be of a kind considered normal for those purposes. Compliance with that provision must be assessed only with effect from the date on which the third-country national began living together with the spouse with Union citizenship in the host Member State.

Lastly, the Court observed that, as regards the right to reparation for infringement of EU law by the Member State, the fact that a national court found it necessary to seek a preliminary ruling on

([15]) Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (OJ, English special edition 1968 (II), p. 475).

a question concerning the EU law at issue must not be considered a decisive factor in determining whether there was an obvious infringement of EU law on the part of the Member State.

In the case giving rise to the judgment in *Dano* (C-333/13, EU:C:2014:2358), delivered on 11 November 2014, the Court, sitting as the Grand Chamber, dealt with the question *whether a Member State may exclude economically inactive Union citizens who are nationals of other Member States from entitlement to non-contributory benefits when they would be granted to its own nationals in the same situation*. The main proceedings concerned a Romanian citizen who had not entered Germany in order to seek employment but had claimed benefits in the form of the basic provision for jobseekers.

In answer to the question referred for a preliminary ruling, the Grand Chamber of the Court held that 'special non-contributory cash benefits' as referred to in Regulation No 883/2004 ([16]) fall within the concept of 'social assistance' within the meaning of Article 24(2) of Directive 2004/38. The Court ruled that the provisions of that directive, and those of Regulation No 883/2004 ([17]), do not preclude national legislation which excludes nationals of other Member States from entitlement to certain social benefits, although those benefits are granted to nationals of the host Member State who are in the same situation, in so far as the nationals of other Member States do not have a right of residence under Directive 2004/38 in the host Member State. According to the Court, as regards access to the abovementioned social benefits, a Union citizen can claim equal treatment with nationals of the host Member State only if his residence in the territory of the host Member State complies with the conditions of Directive 2004/38. The conditions applicable to economically inactive Union citizens whose period of residence in the host Member State has been longer than three months but shorter than five years include the requirement that such an economically inactive Union citizen must have sufficient resources for himself and his family members ([18]). Consequently, a Member State must have the possibility of refusing to grant social benefits to economically inactive Union citizens who exercise their right to freedom of movement solely in order to obtain another Member State's social assistance although they do not have sufficient resources to claim a right of residence. In that regard, the financial situation of each person concerned should be examined specifically, without taking account of the social benefits claimed.

III. Institutional provisions

1. Legal basis of acts of the European Union

In 2014, the Court delivered a number of judgments on the legal basis of acts of the European Union. Among those judgments, mention should be made of one judgment on transport policy and five judgments concerning acts of the Council relating to international agreements.

On 6 May 2014, in the judgment in *Commission* v *Parliament and Council* (C-43/12, EU:C:2014:298), the Court, sitting as the Grand Chamber, upheld the action for annulment which the Commission had brought against *Directive 2011/82 on the cross-border exchange of information permitting*

([16]) See Article 70(2) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1, and corrigendum in OJ 2004 L 200, p. 1), as amended by Commission Regulation (EU) No 1244/2010 of 9 December 2010 (OJ 2010 L 338, p. 35).

([17]) Article 24(1) of Directive 2004/38, read in conjunction with Article 7(1)(b) of that directive, and Article 4 of Regulation No 883/2004.

([18]) See, in particular, Article 7(1)(b) of Directive 2004/38.

the identification of persons who have committed road traffic offences ([19]), as it considered that Article 87(2) TFEU is an incorrect legal basis.

The Court first of all referred to its settled case-law, according to which the choice of legal basis for an EU measure must rest on objective factors that are amenable to judicial review; these include the aim and content of that measure. The Court recalled, moreover, that if examination of an EU measure reveals that it pursues a twofold purpose or that it has a twofold component and if one of those is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, that measure must be based on a single legal basis, namely that required by the main or predominant purpose or component.

Next, the Court stated that the main or predominant aim of that directive is to improve road safety. Having examined the content of the directive and the operation of the information exchange procedure between Member States, the Court had already held ([20]) that the measures in question fall mainly within transport policy, since they aim to improve transport safety, and that the directive is not directly linked to the objectives of police cooperation. The Court concluded that the directive ought to have been adopted on the basis of Article 91(1)(c) TFEU and that it could not validly be adopted on the basis of Article 87(2) TFEU, concerning, in particular, the exchange of relevant information for the purposes of police cooperation.

As regards acts relating to international agreements, by the judgment in *Commission* v *Council* (C-377/12, EU:C:2014:1903), delivered on 11 June 2014, the Grand Chamber of the Court annulled *Council Decision 2012/272 on the signing of a framework agreement on partnership and cooperation between the European Union and its Member States, of the one part, and the Republic of the Philippines, of the other part* ([21]). Since the framework agreement referred to by that decision provides for cooperation and partnership conceived especially in order to take account of the needs of the Philippines as a developing country, the Commission had adopted, for the purposes of the signature of that framework agreement, a proposal for a decision based on Articles 207 TFEU and 209 TFEU, relating, respectively, to the common commercial policy and to development cooperation. On the other hand, the Council, being of the view that the cooperation and partnership provided for in the framework agreement in question assumed a comprehensive nature and were not limited solely to 'development cooperation', had used as legal bases, in addition to those articles, Articles 79(3) TFEU, 91 TFEU, 100 TFEU and 191(4) TFEU, relating respectively to the readmission of third-country nationals to their own countries, transport, and the environment. The addition of those legal bases entailed the application of Protocols No 21 and No 22 to the TFEU, relating, first, to the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice and, secondly, to the position of Denmark, under which those Member States do not take part in the signature and conclusion by the Council of international agreements of the European Union under Title V of Part Three of the TFEU, unless they notify the president of the Council that they wish to take part.

([19]) Directive 2011/82/EU of the European Parliament and of the Council of 25 October 2011 facilitating the cross-border exchange of information on road safety-related traffic offences (OJ 2011 L 288, p. 1).

([20]) Judgment of 9 September 2004 in *Spain and Finland* v *Parliament and Council* (C-184/02 and C-223/02, EU:C:2004:497).

([21]) Council Decision 2012/272/EU of 14 May 2012 on the signing, on behalf of the Union, of the Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and the Republic of the Philippines, of the other part (OJ 2012 L 134, p. 3).

In that context, having for the first time the opportunity to adjudicate on the scope of Article 209 TFEU, the Court, confirming its case-law decided before the Treaty of Lisbon ([22]), stated that, under Article 208 TFEU, EU policy in the field of development cooperation is not limited to measures directly aimed at the eradication of poverty, but also, in order to achieve that primary aim, pursues other objectives referred to in Article 21(2) TEU, such as the objective of fostering the sustainable economic, social and environmental development of developing countries. In that regard, the Court observed that, as the eradication of poverty has many aspects, achievement of those objectives requires, according to the joint declaration of the Council and the governments of the Member States on European Union development policy of 2006 ([23]), the implementation of many development activities aimed at, in particular, economic and social reforms, social justice, equitable access to public services, conflict prevention, the environment and sustainable management of natural resources, migration, and development.

On 24 June 2014, by the judgment in *Parliament* v *Council* (C-658/11, EU:C:2014:2025), the Court, sitting as the Grand Chamber, upheld the action for annulment brought by the Parliament against *Council Decision 2011/640/CFSP on the signing of an agreement between the European Union and the Republic of Mauritius* ([24]) *('the EU–Mauritius Agreement').*

Firstly, the Court held unfounded the plea whereby the Parliament submitted that the fact that the EU–Mauritius Agreement pursues, albeit only incidentally, aims other than those falling within the CFSP is sufficient to preclude that decision from falling exclusively within that policy for the purposes of Article 218(6) TFEU, and that the Parliament ought therefore to have been involved in the adoption of the decision. In that regard, the Court observed that Article 218(6) TFEU establishes symmetry between the procedure for adopting EU measures internally and the procedure for adopting international agreements in order to guarantee that the Parliament and the Council enjoy the same powers in relation to a given field, in compliance with the institutional balance provided for by the Treaties. In those circumstances, it is precisely in order to ensure that that symmetry is actually observed that the rule that it is the substantive legal basis of a measure that determines the procedures to be followed in adopting that measure applies not only to the procedures laid down for adopting an internal act but also to those applicable to the conclusion of international agreements. Therefore, in the context of the procedure for concluding an international agreement in accordance with Article 218 TFEU, it is the substantive legal basis of the decision concluding that agreement which determines the type of procedure applicable under paragraph 6 of that article. In the case in point, as the Council decision was legitimately founded exclusively on a provision falling within the CFSP, it could be adopted, pursuant to that provision, without the consent or consultation of the Parliament.

On the other hand, the Court upheld another plea, alleging infringement of Article 218(10) TFEU, which establishes an obligation to inform the Parliament at all stages of the procedure for negotiating and concluding international agreements. In the case in point, the Parliament had not been informed immediately and the Council had therefore infringed that article. Given that that procedural rule constitutes an essential procedural requirement, its infringement leads to the nullity of

([22]) Judgment of 3 December 1996 in *Portugal* v *Council* (C-268/94, EU:C:1996:461).

([23]) See, in particular, paragraph 12 of the joint statement by the Council and representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union development policy: 'The European consensus' (OJ 2006 C 46, p. 1).

([24]) Council Decision 2011/640/CFSP of 12 July 2011 on the signing and conclusion of the Agreement between the European Union and the Republic of Mauritius on the conditions of transfer of suspected pirates and associated seized property from the European Union-led naval force to the Republic of Mauritius and on the conditions of suspected pirates after transfer (OJ 2011 L 254, p. 1).

the measure thereby vitiated, as the Parliament's involvement in the decision-making process is the reflection, at EU level, of the fundamental democratic principle that the people should participate in the exercise of power through the intermediary of a representative assembly.

However, since the annulment of the decision in question would be liable to hamper the conduct of the operations carried out on the basis of the EU–Mauritius Agreement, the Court maintained the effects of the decision which had been annulled.

In the judgment in *Commission* v *Council* (C-114/12, EU:C:2014:2151), delivered on 4 September 2014, the Grand Chamber of the Court annulled *the decision of the Council and of the representatives of the governments of the Member States authorising the joint participation of the European Union and its Member States in negotiations for a convention of the Council of Europe on the protection of the rights of broadcasting organisations*. According to the Commission, the European Union has exclusive external competence in the area of the proposed convention, under Article 3(2) TFEU, and joint participation must therefore be excluded.

The Court upheld that argument, since the agreement at issue comes within those, referred to in that article, that may affect common rules adopted in order to attain the objectives of the Treaty. In the case in point, the content of the negotiations for a convention of the Council of Europe on the protection of the neighbouring rights of broadcasting organisations falls within an area covered to a large extent by common EU rules. It follows from Directives 93/83 ([25]), 2001/29 ([26]), 2004/48 ([27]), 2006/115 ([28]) and 2006/116 ([29]) that those rights are the subject, in EU law, of a harmonised legal framework which seeks, in particular, to ensure the proper functioning of the internal market and which has established a regime with high and homogeneous protection for broadcasting organisations.

Since the existence of exclusive external competence of the European Union must have its basis in conclusions drawn from a specific analysis of the relationship between the envisaged international agreement and the EU law in force, the fact that the EU legal framework concerned has been established by various legal instruments is not such as to call into question the correctness of that approach. The assessment of the existence of a risk that common EU rules will be adversely affected, or that their scope will be altered, by international commitments, cannot be dependent on an artificial distinction based on the presence or absence of such rules in one and the same instrument of EU law.

On 7 October 2014, in the judgment in *Germany* v *Council* (C-399/12, EU:C:2014:2258), the Court, sitting as the Grand Chamber, dismissed the action for annulment brought by Germany against *the Council decision of 18 June 2012 establishing the position to be adopted on behalf of the European*

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

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

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

([28]) Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (codified version) (OJ 2006 L 376, p. 28).

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

Union with regard to certain resolutions to be adopted in the framework of the International Organisation of Vine and Wine ('the OIV').

By its single plea alleging infringement of Article 218(9) TFEU, which constituted the legal basis of the contested decision, Germany, supported by a number of Member States, contended, first, that that provision is not applicable in the context of an international agreement, such as the OIV Agreement, which has been concluded by the Member States and not by the European Union and, second, that only acts of international law which are binding on the European Union constitute 'acts having legal effects' for the purposes of that provision.

The Court observed, first of all, that there is nothing in the wording of Article 218(9) TFEU to prevent the European Union from adopting a decision establishing a position to be adopted on its behalf in a body set up by an international agreement to which it is not a party. In that regard, the Court pointed out, in particular, that the decision establishing the position of the Member States, which are also members of the OIV, falls within the area of the common agricultural policy and, more specifically, the common organisation of the wine markets, an area which is regulated for the most part by the EU legislature in the exercise of its competence under Article 43 TFEU. Therefore, where the area of law concerned falls within a competence of the European Union of that type, the fact that the European Union did not take part in the international agreement in question does not prevent it from exercising that competence by establishing, through its institutions, a position to be adopted on its behalf in the body set up by that agreement, in particular through the Member States which are party to that agreement acting jointly in its interest.

The Court then ascertained whether the recommendations to be adopted by the OIV, which in the case in point relate to new oenological practices, methods of analysis for determining the composition of products in the wine sector, or purity and identification specifications of substances used in oenological practices, constitute 'acts having legal effects' for the purposes of Article 218(9) TFEU. In that regard, the Court observed that the aim of those recommendations is to help to achieve the objectives of that organisation and, by reason of their incorporation into EU law by virtue of Articles 120f(a), 120g and 158a(1) and (2) of Regulation No 1234/2007 ([30]) and the first subparagraph of Article 9(1) of Regulation No 606/2009 ([31]), they have legal effects for the purposes of Article 218(9) TFEU. Therefore, although the European Union is not a party to the OIV Agreement, it is entitled to establish a position to be adopted on its behalf with regard to those recommendations, in view of their direct impact on the European Union's acquis in that area.

In the judgment in *Parliament and Commission* v *Council* (C-103/12 and C-165/12, EU:C:2014:2400), delivered on 26 November 2014, the Grand Chamber of the Court annulled *Decision 2012/19 on the approval, on behalf of the European Union, of the Declaration on the granting of fishing opportunities in EU waters to fishing vessels flying the flag of the Bolivarian Republic of Venezuela in the exclusive economic zone off the coast of French Guiana* ([32]). According to the applicants, that decision should not

([30]) Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ 2007 L 299, p. 1).

([31]) Commission Regulation (EC) No 606/2009 of 10 July 2009 laying down certain detailed rules for implementing Council Regulation (EC) No 479/2008 as regards the categories of grapevine products, oenological practices and the applicable restrictions (OJ 2009 L 193, p. 1).

([32]) Council Decision 2012/19/EU of 16 December 2011 on the approval, on behalf of the European Union, of the declaration on the granting of fishing opportunities in EU waters to fishing vessels flying the flag of the Bolivarian Republic of Venezuela in the exclusive economic zone off the coast of French Guiana (OJ 2012 L 6, p. 8).

have been adopted on the basis of Article 43(3) TFEU in conjunction with Article 218(6)(b) TFEU but on the basis of Article 43(2) TFEU in conjunction with Article 218(6)(a)(v) TFEU.

The Court accepted the applicants' arguments, emphasising that the adoption of measures provided for in Article 43(2) TFEU that relate to the implementation of the common agricultural policy entails a policy decision that must be reserved for the EU legislature. By contrast, the adoption of measures on the fixing and allocation of fishing opportunities, in accordance with Article 43(3) TFEU, does not require such an assessment since such measures are of a primarily technical nature and are intended to be taken in order to implement provisions adopted on the basis of Article 43(2) TFEU.

Furthermore, referring to the United Nations Convention on the Law of the Sea ([33]) and to the conditions allowing a coastal State to give other States access to the biological resources in its exclusive economic zone, the Court concluded that the acceptance by the State concerned of the offer of the coastal State constitutes an agreement within the meaning of that convention. Accordingly, the declaration at issue — on the granting of fishing opportunities — offered by the European Union, on behalf of the coastal state, to the Bolivarian Republic of Venezuela, which accepted it, constitutes an agreement.

As to whether that declaration falls within the competence reserved to the EU legislature, the Court observed that the purpose of the declaration is to establish a general framework, with a view to authorising fishing vessels flying the flag of Venezuela, to fish in the exclusive economic zone of a coastal state. Consequently, the offer is not a technical or implementing measure but a measure which entails the adoption of an autonomous decision which must be made having regard to the policy interests of the European Union, in particular in the framework of the fisheries policy. Such a declaration falls within an area of competence in which the decision-making power lies with the EU legislature and it therefore falls within the scope of Article 43(2) TFEU, not Article 43(3) TFEU. In addition, as it is also a constituent element of an international agreement, the declaration falls within the scope of Article 218(6)(a)(v) TFEU.

Although the Court upheld the action, it decided, however, in the light of the existence of important grounds of legal certainty, to maintain the effects of the decision until the entry into force of a new decision adopted on the proper legal basis.

2. Institutions and bodies of the European Union

As regards the powers of the institutions and bodies of the European Union, mention should be made of two judgments: one concerns the powers of the European Securities and Markets Authority ('ESMA') and the other the implementing power of the Commission.

In the judgment in *United Kingdom* v *Parliament and Council* (C-270/12, EU:C:2014:18), delivered on 22 January 2014, the point at issue was *the compatibility with EU law of the ESMA's power to take emergency action on the financial markets of the Member States to regulate or prohibit short selling*. In an action for annulment brought by the United Kingdom against Article 28 of Regulation

([33]) United Nations Convention on the Law of the Sea, signed at Montego Bay on 10 December 1982, approved on behalf of the European Community by Council Decision 98/392/EC of 23 March 1998 (OJ 1998 L 179, p. 1).

No 236/2012 ([34]) conferring such a power on the ESMA, the Grand Chamber of the Court held that that provision is not contrary to EU law.

In the first place, the Court rejected the argument that the powers conferred on the ESMA go beyond those that may be delegated by the EU institutions to other entities ([35]). Firstly, the ESMA is authorised to take measures only if they address a threat to the orderly functioning and integrity of the financial system in the European Union or to the stability of the financial system in the European Union and there are cross-border implications. Its intervention is also subject to the condition that no competent national authority has taken measures or that, although such measures have been taken, they have not addressed the threat adequately. Secondly, the ESMA must ascertain whether the measures which it adopts significantly address such a threat or improve the ability of the national authorities to monitor the threat. Lastly, the ESMA's margin of discretion is circumscribed both by the obligation to consult the European Systemic Risk Board and by the temporary nature of the measures authorised.

In the second place, the Court rejected the United Kingdom's argument that, on the basis of the judgment in *Romano* ([36]), it would be unacceptable to confer on a body, such as the ESMA, the ability to adopt measures having the force of law. In that regard, it observed that the institutional framework established by the TFEU, and in particular the first paragraph of Article 263 TFEU and Article 277 TFEU, permits EU bodies, offices or agencies to adopt acts of general application.

In the third place, according to the Court, Article 28 of Regulation No 236/2012 is not incompatible with the rules governing the delegation of powers laid down in Articles 290 and 291 TFEU. That provision cannot be considered in isolation but must be perceived as forming part of a series of rules designed to endow the competent national authorities and the ESMA with a power of intervention to cope with adverse developments which threaten financial stability within the European Union and market confidence.

Lastly, the Court held that Article 114 TFEU constitutes an appropriate legal basis for the adoption of Article 28 of Regulation No 236/2012. It observed that nothing in the wording of Article 114 TFEU implies that the measures adopted on the basis of that provision must be addressed only to Member States. In addition, that provision is used only if the purpose of the act adopted on that basis is to improve the conditions for the establishment and functioning of the internal market in the financial field, as well. Article 28 of Regulation No 236/2012 satisfies those requirements since, by means of that provision, the EU legislature seeks to address the potential risks arising from short-selling and credit default swaps in a harmonised manner and to ensure greater coordination and consistency between Member States where measures have to be taken in exceptional circumstances.

In its judgment in *Parliament* v *Commission* (C-65/13, EU:C:2014:2289), delivered on 15 October 2014, the Court dismissed the Parliament's action for annulment concerning the Commission's observance of the *limits of its implementing power when adopting Decision 2012/733* ([37]) *on the establish-*

([34]) Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps (OJ 2012 L 86, p. 1).

([35]) Judgment of 13 June 1958 in *Meroni* v *High Authority* (C-9/56, EU:C:1958:7).

([36]) Judgment of 14 May 1981 in *Romano* (C-98/80, EU:C:1981:104).

([37]) Commission Implementing Decision 2012/733/EU of 26 November 2012 implementing Regulation (EU) No 492/2011 of the European Parliament and of the Council as regards the clearance of vacancies and applications for employment and the re-establishment of EURES (European employment services) (OJ 2012 L 328, p. 21).

ment of European Employment Services (EURES) implementing Regulation No 492/2011 on freedom of movement for workers within the Union ([38]).

The Court first of all observed that the implementing power conferred on the Commission must be delimited both by Article 291(2) TFEU and by that regulation. An implementing act provides further detail in relation to a legislative act if the provisions of the former comply with the essential objectives of the latter and if those provisions are necessary or appropriate for the uniform implementation of the legislative act, without supplementing or amending it. In the case in point, the Court held that, like Regulation No 492/2011, the contested decision is intended to facilitate the cross-border geographical mobility of workers, by promoting, under a joint action framework, namely EURES, transparency and exchange of information on the European labour markets. Next, the Court observed that the provisions of that decision are compatible with that objective. In addition, according to the Court, the coordination of the employment policies of the Member States, characterised by the exchange of information on problems and figures arising in connection with freedom of movement and employment, forms part of the measures necessary for the implementation of Regulation No 492/2011.

In particular, the second subparagraph of Article 11(1) of Regulation No 429/2011 confers on the Commission the authority to develop the operating rules for joint action, like EURES, by the Commission and the Member States as regards the clearing of vacancies and applications for employment within the European Union and the placing of workers. The establishment of the EURES Management Board and the conferment of a consultative role on it also come within that framework, without supplementing or amending it, since they are intended merely to ensure that the joint action operates effectively. On the basis of those considerations, the Court concluded that the Commission had not exceeded its implementing power.

3. Access to documents

In relation to public access to documents, mention should be made of the judgment in *Council* v *In 't Veld* (C-350/12 P, EU:C:2014:2039), delivered on 3 July 2014, whereby the Court upheld, on appeal, a judgment of the General Court ([39]) granting, in part, the application for annulment brought by a Member of the European Parliament against a decision of the Council refusing her full access to the opinion of its Legal Service on the opening of negotiations between the European Union and the United States of America concerning an agreement on the transfer of financial messaging data for the purposes of the prevention of terrorism ('the SWIFT Agreement').

The Court observed, first of all, that, if an institution applies one of the exceptions provided for in Article 4(2) and (3) of Regulation No 1049/2001 ([40]), it is for that institution to weigh the particular interest to be protected through non-disclosure of the document concerned against, inter alia, the public interest in the document being made accessible, having regard to the advantages of increased openness, in that it enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and accountable to the citizen in a democratic system. Although those considerations are of particular

([38]) Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ 2011 L 141, p. 1).

([39]) Judgment of 4 May 2012 in *In 't Veld* v *Council* (T-529/09, EU:T:2012:215).

([40]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

relevance where the institution is acting in its legislative capacity, the non-legislative activity of the institutions does not fall outside the scope of Regulation No 1049/2001.

As regards the exception relating to legal advice laid down in the second indent of Article 4(2) of Regulation No 1049/2001, the examination to be undertaken by an institution when it is asked to disclose a document must necessarily be carried out in three stages, corresponding to the three criteria in that provision. Thus, first, when it is asked to disclose a document, the institution must satisfy itself that the document does indeed relate to legal advice. Secondly, it must examine whether disclosure of the parts of the document in question which have been identified as relating to legal advice would undermine, in a reasonably foreseeable and not purely hypothetical manner, the protection which must be afforded to that advice. Thirdly, and lastly, if the institution takes the view that disclosure of the document would undermine the protection of legal advice, it is incumbent on that institution to ascertain whether there is any overriding public interest to justify disclosure.

4. Financial provisions

In the case giving rise to the judgment in *Nencini* v *Parliament* (C-447/13 P, EU:C:2014:2372), delivered on 13 November 2014, a former Member of the European Parliament lodged an appeal against the judgment whereby the General Court had dismissed his action for, inter alia, annulment of *the decision of the Parliament concerning the recovery of certain sums which he had received in respect of travel and parliamentary assistance expenses unduly paid and of the related debit note* ([41]). In support of his appeal, the appellant submitted, in particular, that the General Court had contravened the applicable limitation rules.

The Court observed that neither Regulation No 1605/2002 (the Financial Regulation) ([42]) nor Regulation No 2342/2002 (the Implementing Regulation) ([43]) specifies the period within which a debit note must be sent following the date of the origin of the debt in question. It stated, however, that where the applicable texts are silent, the principle of legal certainty requires the institution concerned to communicate that debit note within a reasonable time. In the light of the limitation period of five years provided for in Article 73a of the Financial Regulation, the period after which a debit note is communicated must be presumed to be unreasonable where that communication takes place outside a period of five years from the point at which the institution was, in normal circumstances, in a position to claim its debt. Such a presumption cannot be overturned unless the institution in question establishes that, in spite of the efforts which it has made, the delay in acting is attributable to the debtor's conduct, particularly time-wasting manoeuvres or bad faith. In the absence of such proof, it must therefore be held that the institution has failed to fulfil the obligations on it under the reasonable period principle.

([41]) Judgment of 4 June 2013 in *Nencini* v *Parliament* (T-431/10 and T-560/10, EU:T:2013:290).

([42]) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1), as amended by Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 (OJ 2006 L 390, p. 1).

([43]) Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 357, p. 1), as amended by Commission Regulation (EC, Euratom) No 478/2007 of 23 April 2007 (OJ 2007 L 111, p. 13).

IV. Proceedings of the European Union

During 2014, the Court was required to rule on a number of aspects of proceedings of the European Union, concerning both references for a preliminary ruling and certain direct actions.

1. References for a preliminary ruling

In the judgment in *A* (C-112/13, EU:C:2014:2195), delivered on 11 September 2014, concerning the area of judicial cooperation in civil matters ([44]), the Court had the opportunity to determine whether Article 267 TFEU precludes national legislation under which the ordinary courts hearing an appeal or adjudicating at final instance are under a duty, if they find that a national law is contrary to the Charter, to apply, in the course of the proceedings, to the Constitutional Court for that law to be generally struck down, and may not simply refrain from applying it in the case before them.

Recalling the principles laid down in *Melki and Abdeli* ([45]), the Court held that EU law, and in particular Article 267 TFEU, must be interpreted as precluding such national legislation to the extent that the priority nature of that procedure prevents — both before the submission of a question on constitutionality to the national court responsible for reviewing the constitutionality of laws and, as the case may be, after the decision of that court — those ordinary courts from exercising their right or fulfilling their obligation to refer questions to the Court of Justice for a preliminary ruling.

The Court observed that, where the interlocutory procedure for the review of constitutionality concerns a national law the content of which merely transposes the mandatory provisions of an EU directive, that procedure must not undermine the jurisdiction of the Court of Justice alone to declare an act of the European Union invalid. Before the interlocutory review of the constitutionality of such a law can be carried out in relation to the same grounds which cast doubt on the validity of the directive, national courts against whose decisions there is no judicial remedy under national law are, as a rule, required — under the third paragraph of Article 267 TFEU — to refer to the Court of Justice a question on the validity of that directive and, thereafter, to draw the appropriate conclusions resulting from the preliminary ruling given by the Court, unless the court which initiates the interlocutory review of constitutionality has itself referred that question to the Court pursuant to the second paragraph of Article 267 TFEU. In the case of a national law implementing a directive, the question whether the directive is valid takes priority, in the light of the obligation to transpose that directive.

2. Actions for failure to fulfil obligations

In three decisions delivered by the Grand Chamber, the Court provided clarification on the procedure provided for in Article 260(2) TFEU where a Member State fails to comply with a judgment finding that it has failed to fulfil its obligations.

Firstly, the judgment of 15 January 2014, in *Commission* v *Portugal* (C-292/11 P, EU:C:2014:3), provided the Court with the opportunity to adjudicate on *the Commission's competence for the purpose of ascertaining compliance with a judgment delivered under the second paragraph of Article 260 TFEU*. By a judgment delivered in 2008 ([46]), the Court found that Portugal had failed to comply with

([44]) For a presentation of the part of the judgment concerning cooperation in civil matters, see section IX, which deals with that area.

([45]) Judgment of 22 June 2010 in *Melki and Abdeli* (C-188/10 and C-189/10, EU:C:2010:363).

([46]) Judgment of 10 January 2008 in *Commission* v *Portugal* (C-70/06, EU:C:2008:3).

a judgment finding a failure to fulfil obligations delivered in 2004 ([47]) and therefore ordered it to pay a penalty payment. In the procedure for recovery of that penalty payment, the Commission adopted a decision finding that the measures adopted by Portugal did not constitute adequate compliance with the 2004 judgment. Portugal challenged that decision before the General Court, which upheld the action, taking the view that the Commission's appraisal comes within the jurisdiction of the Court of Justice ([48]). The Commission appealed against that judgment.

In its judgment on that appeal, the Court observed that, unlike the procedure established under Article 258 TFEU, which is designed to obtain a declaration that the conduct of a Member State is in breach of EU law and to terminate that conduct, the procedure provided for under Article 260 TFEU has a much narrower ambit, since it is designed only to induce a defaulting Member State to comply with a judgment establishing a failure to fulfil obligations. Consequently, the latter procedure must be regarded as a special judicial procedure for the enforcement of judgments of the Court of Justice, that is to say, as a method of enforcement. Accordingly, the Commission's review of the measures adopted by that State for the purpose of complying with the judgment in question and the recovery of sums owed must be carried out having regard to the scope of the failure to fulfil obligations, as defined in the judgment of the Court of Justice. It follows that where, in the context of compliance with a judgment delivered pursuant to Article 260 TFEU, a difference arises between the Commission and the Member State concerned as to whether compliance with a judgment establishing a failure to fulfil obligations can be achieved through national legislation or a national practice which the Court of Justice has not examined beforehand, the Commission cannot resolve such a difference itself and draw from this the necessary inferences for the calculation of the penalty payment.

Likewise, according to the Court, the General Court, when called upon to determine the lawfulness of such a decision, cannot itself give a ruling on the Commission's assessment as to whether compliance with a judgment establishing a failure to fulfil obligations can be achieved through a national practice or national legislation which has not previously been examined by the Court of Justice. Were it to do so, the General Court would, inevitably, be required to make a ruling as to whether that practice or legislation complied with EU law and would thus encroach on the exclusive jurisdiction of the Court of Justice in that regard.

Secondly, by two judgments delivered on 2 December 2014, in *Commission* v *Italy* (C-196/13, EU:C:2014:2407) and *Commission* v *Greece* (C-378/13, EU:C:2014:2405), the Grand Chamber of the Court ruled, following two actions brought by the Commission under Article 260(2) TFEU concerning the failure by Italy and Greece to comply with judgments establishing failure to fulfil obligations in connection with waste management, on *the criteria governing the setting of financial penalties in the event of non-compliance with a judgment establishing a failure to fulfil obligations* ([49]).

The Court stated that where, as in these cases, an order imposing a penalty payment on a State is an appropriate financial means by which to induce that State to take the measures necessary to bring to an end the failure to fulfil obligations established, such a sanction must be decided upon according to the degree of pressure necessary to persuade the defaulting Member State to comply with the judgment establishing a failure to fulfil obligations and to alter its conduct in order to bring an end to the infringement complained of. Accordingly, in the assessment carried out by the

([47]) Judgment of 14 October 2004 in *Commission* v *Portugal* (C-275/03, EU:C:2004:632).

([48]) Judgment of 29 March 2011 in *Portugal* v *Commission* (T-33/09, EU:T:2011:127).

([49]) Judgments of 26 April 2007 in *Commission* v *Italy* (C-135/05, EU:C:2007:250) and of 6 October 2005 in *Commission* v *Greece* (C-502/03, EU:C:2005:592).

Court, the basic criteria which must be taken into account in order to ensure that penalty payments have coercive force and that EU law is applied uniformly and effectively are, in principle, the gravity of the infringement, its duration and the ability of the Member State concerned to pay. In applying those criteria, the Court is required to have regard, in particular, to the effects on public and private interests of the failure to comply and to the urgency of the need for the Member State to be induced to fulfil its obligations. In order to ensure full compliance with a judgment of the Court, the penalty payment must be payable in its entirety until such time as the Member State has taken all the measures necessary to bring to an end the failure to fulfil obligations established; in certain specific cases, however, a degressive penalty payment which takes account of the progress that the Member State may have made in complying with its obligations may be envisaged.

Furthermore, noting that, in exercising the discretion conferred on it in such matters, it is empowered to impose a penalty payment and a lump sum cumulatively, the Court then observed that the principle of the imposition of a lump sum payment rests essentially on the assessment of the effects on public and private interests of the failure of the Member State concerned to fulfil its obligations, in particular where the infringement has persisted for a long period after delivery of the judgment initially establishing it. The imposition of a lump sum payment must depend in each individual case on all the relevant factors relating both to the characteristics of the failure to fulfil obligations established and to the conduct of the defaulting Member State.

3. Actions for annulment

In the first place, on 9 December 2014, in the judgment in *Schönberger* v *Parliament* (C-261/13 P, EU:C:2014:2423), the Court, sitting as the Grand Chamber, and upholding the judgment of the General Court ([50]), ruled on the circumstances in which a decision of the Parliament's Committee on Petitions concluding the examination of a petition constitutes a measure that is amenable to challenge.

The Court observed first of all that, according to its case-law, acts the legal effects of which are binding on and capable of affecting the interests of an applicant by bringing about a distinct change in his legal position are acts which may be the subject of an action for annulment pursuant to the first paragraph of Article 263 TFEU.

Next, the Court stated that the right of petition is a fundamental right, that that right is to be exercised under the conditions laid down in Article 227 TFEU and that it is an instrument of citizen participation in the democratic life of the European Union. The Court made clear that a decision by which the Parliament considers that a petition addressed to it does not meet the conditions laid down in Article 227 TFEU must be amenable to judicial review, since it is liable to affect the right of petition of the person concerned. The same applies to a decision by which the Parliament, disregarding the very essence of the right of petition, refuses to consider, or refrains from considering, a petition addressed to it and, consequently, fails to verify whether it meets the above conditions.

Furthermore, in relation to whether the conditions laid down in Article 227 TFEU have been met, a negative decision by the Parliament must provide a sufficient statement of reasons to allow the petitioner to know which condition was not met in his case. That requirement is satisfied by a summary statement of reasons.

([50]) Judgment of 7 March 2013 in *Schönberger* v *Parliament* (T-186/11, EU:T:2013:111).

By contrast, the Court held that where, as in the case in point, the Parliament takes the view that a petition meets the conditions laid down in Article 227 TFEU, it has broad discretion, of a political nature, as regards how that petition should be dealt with. It follows that a decision taken in that regard is not amenable to review, regardless of whether, by that decision, the Parliament itself takes the appropriate measures or considers that it is unable to do so and refers the petition to the competent institution or department so that that institution or department may take those measures. Accordingly, such a decision is not amenable to challenge before the Courts of the European Union.

In the second place, in the judgment in *Liivimaa Lihaveis* (C-562/12, EU:C:2014:2229), delivered on 17 September 2014, the Court provided clarification, first, *on the acts amenable to challenge before the Courts of the European Union* and, second, *on the obligations of the Member States to ensure respect for the right to an effective remedy enshrined in Article 47 of the Charter of Fundamental Rights, in the absence of remedies before the Courts of the European Union*. That case concerned a decision which was made by a monitoring committee, set up by a Member State, responsible for implementing an operational programme falling within the economic and social cohesion policy and which rejected an application for aid submitted by an undertaking.

The Court recalled that the judicial review mechanisms laid down in Article 263 TFEU apply to the bodies, offices and agencies established by the EU legislature which have been given powers to adopt measures that are legally binding on natural or legal persons in specific areas. By contrast, a monitoring committee set up by a Member State as part of an operational programme to promote European territorial cooperation, such as that established by Regulation No 1083/2006 ([51]), is not an institution or a body, office or agency of the European Union. Accordingly, the Courts of the European Union have no jurisdiction to rule on the lawfulness of a measure adopted by such a committee, such as the decision rejecting an application for aid. Nor does it have jurisdiction to review the validity of the programme manuals adopted by a committee of that type.

However, the Court ruled that Regulation No 1083/2006, read in conjunction with Article 47 of the Charter of Fundamental Rights, must be interpreted as precluding a provision of a programme manual adopted by a monitoring programme which does not provide that decisions of that monitoring committee rejecting an application for aid can be subject to appeal before a court of a Member State. To ensure that the right to an effective remedy within the European Union laid down in Article 47 of the Charter of Fundamental Rights is upheld, the second subparagraph of Article 18(1) TEU requires the Member States to provide remedies sufficient to ensure effective legal protection in the fields covered by EU law.

4. Actions for damages

On 10 July 2014, in the judgment in *Nikolaou* v *Court of Auditors* (C-220/13 P, EU:C:2014:2057), the Court, when upholding the judgment of the General Court dismissing an action for damages against the European Union ([52]), was required to determine whether, *under the principle of sincere cooperation, the Courts of the European Union are required to take into account the legal characterisation of the facts made by a national court in domestic criminal proceedings relating to facts which are the same as those investigated in the course of the action for damages*. In that case, a member of the

([51]) Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ 2006 L 210, p. 25).

([52]) Judgment of 20 February 2013 in *Nikolaou* v *Court of Auditors* (T-241/09, EU:T:2013:79).

Court of Auditors had brought an action for damages by way of compensation for the injury which he submitted to have sustained as a result of irregularities and infringements of EU law committed by the Court of Auditors in the course of an investigation of him. In his appeal, the appellant submitted, in particular, that the principle of the presumption of innocence must be interpreted as precluding the General Court from casting doubt on his innocence although he had been exonerated beforehand by a decision of a national criminal court which had become final.

In that regard, the Court observed that the action for damages relating to the European Union's non-contractual liability for actions or omissions on the part of its institutions, under Articles 235 EC and 288 EC ([53]), was established as an independent form of judicial remedy, having its own particular place in the system of means of redress and subject to conditions for its use formulated in the light of its specific purpose.

Accordingly, although findings made in criminal proceedings relating to facts which are the same as those investigated in the course of a procedure based on Article 235 EC may be taken into account by the Court of the European Union hearing the case, the latter is not bound by the legal characterisation of the facts made by the criminal court. It is for the Court of the European Union, exercising its discretion to the full, to undertake an independent examination of those facts in order to determine whether the conditions to be satisfied in order for the European Union to incur non-contractual liability have been met. The Court of the European Union cannot therefore be held to have breached the principle of sincere cooperation, laid down in Article 10 EC ([54]), on the ground that its assessment of certain factual elements has diverged from the findings of the national court.

V. Agriculture

In the matter of agriculture, the judgment in *SICES and Others* (C-155/13 EU:C:2014:145), delivered on 13 March 2014, provided the Court with the opportunity to rule on *the concept of abuse of rights in the context of the interpretation of the system of import licences for garlic introduced by Regulation No 341/2007* ([55]). In that case, the Court was required, in particular, to determine whether Article 6(4) of that regulation precludes transactions whereby an importer, holding reduced rate import licences, purchases goods before they are imported into the European Union from an operator, itself a traditional importer within the meaning of the regulation but having exhausted its own reduced rate import licences, and then resells them to that operator after having imported them into the European Union. The referring court asked whether that article, which does not refer to those transactions, precludes them and whether those transactions constituted an abuse of rights ([56]).

The case enabled the Court to recall that EU rules cannot be relied on for abusive or fraudulent ends and that the finding of an abusive practice requires a combination of objective and subjective

([53]) Now Articles 268 TFEU and 340 TFEU, respectively.

([54]) Now Article 4(3) TEU.

([55]) Commission Regulation (EC) No 341/2007 of 29 March 2007 opening and providing for the administration of tariff quotas and introducing a system of import licences and certificates of origin for garlic and certain other agricultural products imported from third countries (OJ 2007 L 90, p. 12).

([56]) Two other judgments covered in this report concern the question of abuse of rights: the judgment of 17 July 2014 in *Torresi* (C-58/13 and C-59/13, EU:C:2014:2088), presented in section VI.2 'Freedom of establishment and freedom to provide services', and the judgment of 18 December 2014 in *McCarthy and Others* (C-202/13, EU:C:2014:2450), presented in section II 'Citizenship of the Union'.

elements. In this instance, as regards the objective element, the Court observed that the purpose of the regulation consisting — in the management of tariff quotas — in safeguarding competition between genuine importers so that no single importer is able to control the market was not achieved. The transactions at issue may permit the purchaser, who is an importer having exhausted its own licences and is therefore no longer able to import garlic at the preferential rate of duty, to obtain imported garlic at a preferential rate and to extend its influence on the market beyond its share of the tariff quota which was granted to it. As regards the subjective element, the Court pointed out that, in circumstances such as those at issue in the main proceedings, for it to be possible to regard the transactions at issue as being designed to confer an undue advantage on the purchaser in the European Union, it is necessary that the importers intended to confer such an advantage on that purchaser and that the transactions be devoid of any economic and commercial justification for those importers, which it is for the referring court to establish.

Accordingly, the Court ruled that although Article 6(4) of Regulation No 341/2007 does not preclude, in principle, the purchase, import and resale transactions at issue, such transactions constitute an abuse of rights where they are artificially created with the essential aim of benefiting from a preferential rate of customs duty.

VI. Freedoms of movement

1. Freedom of movement for workers and social security

In two important judgments, the Court was required to rule on the concepts of 'worker' and 'employment in the public service' within the meaning of Article 45 TFEU.

On 19 June 2014, in the judgment in *Saint Prix* (C-507/12, EU:C:2014:2007), the Court ruled on *the interpretation of 'worker' within the meaning of Article 45 TFEU and Article 7 of Directive 2004/38* ([57]). The main proceedings concerned a French national who had applied for income support after ceasing her occupational activity in the United Kingdom for reasons related to her pregnancy. The United Kingdom authorities refused to grant that benefit on the ground that, under the relevant national legislation, the applicant had lost the status of worker and therefore her entitlement to income support.

The Court pointed out that the concept of 'worker' within the meaning of Article 45 TFEU must be interpreted broadly and that Directive 2004/38 cannot restrict the scope of that concept. In interpreting the directive, the Court held that the applicant's situation could not be equated with that of a person temporarily unable to work as the result of an illness, in accordance with Article 7(3)(a) of that directive, since pregnancy is not linked with an illness.

In addition, the Court held that it does not follow from Article 7 and the other provisions of the directive that a woman who gives up work, or is seeking work, because of the physical constraints of the late stages of pregnancy and the aftermath of childbirth is systematically deprived of the status of 'worker', within the meaning of Article 45 TFEU. She retains that status provided that she returns to work or finds another job within a reasonable period after the birth of her child. Classification as a worker under Article 45 TFEU, and the rights deriving from such a status, do not necessarily depend on the actual or continuing existence of an employment relationship. Thus, absence from the employment market for a few months does not mean that the woman concerned has ceased

([57]) Cited above, footnote 10.

to belong to that market during that period, provided that she returns to work or finds another job within a reasonable period after confinement. As regards the reasonableness of that period, the Court considered it necessary to take account of all the specific circumstances of the case and the applicable national rules on the duration of maternity leave, in accordance with Directive 92/85 ([58]).

In the judgment in *Haralambidis* (C-270/13, EU:C:2014:2185), delivered on 10 September 2014, the Court was required to interpret *Article 45(4) TFEU, which excludes employment in the public service from the scope of freedom of movement for workers*. In that case, the appointment of a Greek national to the post of president of the port authority of Brindisi had been challenged by a competitor on the ground that under Italian law the person appointed to that post was required to have Italian nationality.

The Court held, first of all, that the president of a port authority must be regarded as a worker within the meaning of Article 45(1) TFEU. Next, it observed that the powers conferred on him, namely to adopt binding decisions in case of immediate necessity and urgency, are in principle capable of coming within the derogation from freedom of movement for workers provided for in Article 45(4) TFEU.

However, the exercise of such powers constitutes a marginal part of the duties of the president of a port authority, which are generally of a technical and financial management nature, and those powers are intended to be exercised only occasionally or in exceptional circumstances. Accordingly, the Court held that a general exclusion of nationals of other Member States from access to the post of president of a port authority constitutes discrimination on the ground of nationality prohibited by Article 45 TFEU and that the nationality condition at issue is not justified under Article 45(4) TFEU.

2. Freedom of establishment and freedom to provide services

As regards, first of all, freedom of movement of natural persons, the Court, sitting as the Grand Chamber, ruled, in the judgment in *Torresi* (C-58/13 and C-59/13, EU:C:2014:2088), delivered on 17 July 2014, on *the interpretation of Directive 98/5 on the profession of lawyer in a Member State other than that in which the qualification was obtained, in order to determine whether there had been an abuse of rights* ([59]). In the case in point, two Italian nationals, soon after obtaining the qualification of 'abogado' in Spain, had applied for registration at the Bar in order to practise as lawyers in Italy. That application had been refused by the competent Bar Council.

The Court observed that the purpose of that directive is to facilitate the practice of the profession of lawyer on a permanent basis in a Member State other than that in which the professional qualification was obtained. The right of nationals of a Member State to choose, on the one hand, the Member State in which they wish to acquire their professional qualifications and, on the other, the Member State in which they intend to practise their profession is inherent in the exercise, in a single market, of the fundamental freedoms guaranteed by the Treaties. Accordingly, the Court

([58]) Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breast-feeding (10th individual directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1992 L 348, p. 1). Other decisions of the Court relating to this directive are presented in section XIV 'Social policy'.

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

concluded that neither the fact that a national of a Member State who has obtained a university degree in that State travels to another Member State, in order to acquire there the professional qualification of lawyer, and subsequently returns to the Member State of which he is a national in order to practise the profession of lawyer under the professional title obtained in the Member State where that qualification was acquired, nor the fact that that national has chosen to acquire a professional qualification in a Member State other than that in which he resides, in order to benefit there from more favourable legislation, is sufficient ground to conclude that there is an abuse of rights ([60]).

In addition, the Court held that the arrangements established by Directive 98/5 are not capable of affecting the fundamental political and constitutional structures or the essential functions of the host Member State within the meaning of Article 4(2) TFEU, since they do not regulate access to the profession of lawyer or the practice of that profession under the professional title issued in the host Member State.

Next, as regards legal persons, mention should be made of four judgments in the area of freedom of establishment and freedom to provide services. Two of them concern national tax regimes. On 1 April 2014, in the judgment in *Felixstowe Dock and Railway Company and Others* (C-80/12, EU:C:2014:200), the Grand Chamber of the Court ruled on United Kingdom legislation under which tax advantages can be obtained by transferring losses between linked companies only when the company transferring the losses and the company setting them against its profits are resident in the same country or have a permanent establishment there.

The Court stated that the residence condition laid down for the link company introduces a difference in treatment between, on the one hand, resident companies connected, for the purposes of the national tax legislation, by a resident link company, which are entitled to the tax relief, and, on the other, resident companies connected by a link company established in another Member State, which are not entitled to it. That difference in treatment makes it less attractive in tax terms to establish a link company in another Member State. The difference in treatment could be compatible with the provisions of the TFEU on freedom of establishment only if the companies concerned are not placed in objectively comparable situations, so far as concerns the possibility of transferring to each other, by means of consortium group relief, the losses sustained.

In addition, the Court stated that such a tax system might, in principle, be justified by overriding reasons in the public interest relating to the objective of preserving a balanced allocation of powers of taxation between the Member States, of combating purely artificial arrangements aimed at circumventing the legislation of the Member State concerned or of combating tax havens. However, it held that that is not so in the case of national legislation which in no way pursues a specific objective of combating purely artificial arrangements, but is designed to grant a tax advantage to resident companies that are members of groups generally, and in the context of consortia in particular. Thus, the Court concluded that such national legislation is incompatible with EU law.

Still in the area of freedom of establishment, the judgment in *Nordea Bank Danmark* (C-48/13, EU:C:2014:2087), delivered on 17 July 2014, relates to the question of *the taxation of cross-border transactions by groups of companies*. The case concerned Danish legislation requiring the

([60]) Two other judgments covered in this report concern the question of abuse of rights: the judgment of 18 December 2014 in *McCarthy and Others* (C-202/13, EU:C:2014:2450), presented in section II 'Citizenship of the Union', and the judgment of 13 March 2014 in *SICES and Others* (C-155/13 EU:C:2014:145), presented in section V 'Agriculture'.

reincorporation into the taxable profit of a resident company of the losses which it had previously deducted in respect of permanent establishments in other Member States or in another State that is party to the Agreement on the European Economic Area ('the EEA Agreement') ([61]) which were sold to a non-resident company in the same group.

In that context, the Court, sitting as the Grand Chamber, ruled that EU law precludes such legislation, in so far as the Member State taxes both the profits made by that establishment before its transfer and those resulting from the gain made upon the transfer. It considered that that legislation goes beyond what is necessary to attain the objective of a balanced allocation of the power to impose taxes, intended to safeguard the symmetry between the right to tax profits and the right to deduct losses.

In addition, the Court held that the difficulties which, in Denmark's submission, the tax authorities would have, in the event of an intragroup transfer, in verifying the market value of the business transferred in another Member State, are not specific to cross-border situations, since the same checks are carried out when a business is sold in the context of an intragroup transfer of a resident establishment. Furthermore, the authorities can request from the transferring company the documents necessary in order to carry out the check.

The judgment in *Pfleger and Others* (C-390/12, EU:C:2014:281), delivered on 30 April 2014, concerns the question whether EU law precludes *national rules which prohibit the operation of gaming machines without the prior issue of a licence by the administrative authorities*.

In its decision, the Court observed as a preliminary point, referring to its decision in *ERT* ([62]), that, where a Member State relies on overriding requirements in the public interest in order to justify rules which are liable to obstruct the exercise of the freedom to provide services, such justification, provided for by EU law, must be interpreted in the light of the general principles of EU law, in particular the fundamental rights guaranteed by the Charter. Thus, the national rules in question can fall under the exceptions provided for only if they are compatible with the fundamental rights the observance of which is ensured by the Court. That obligation to comply with fundamental rights manifestly comes within the scope of EU law and, consequently, within that of the Charter ([63]).

In the case in point, the Court observed first of all that legislation such as that at issue in the main proceedings constitutes a restriction within the meaning of Article 56 TFEU. In order to determine whether that restriction can be justified on grounds of public policy, public security or public health, the Court observed that the objectives of protection of gamblers, by restricting the supply of games of chance, and the fight against crime connected with those games, are recognised as being capable of justifying restrictions on fundamental freedoms in the sector of games of chance. In that regard, legislation must be appropriate for guaranteeing attainment of those objectives. However, if the referring court considers that the real objective of the restrictive system is to increase State tax revenue, the system in question must be regarded as being incompatible with EU law.

Next, as regards the restriction of freedom to choose an occupation, the freedom to conduct a business, and the right to property enshrined in Articles 15 to 17 of the Charter of Fundamental

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

([62]) Judgment of 18 June 1991 in *ERT* (C-260/89, EU:C:1991:254).

([63]) As regards the scope of the Charter of Fundamental Rights, reference should also be made to the judgment in *Julian Hernández and Others* (C-198/13, EU:C:2014:2055), presented in section I.2 'Charter of Fundamental Rights of the European Union'.

Rights, the Court observed that, under Article 52(1) of the Charter, in order for such a limitation to be permissible, it must be provided for by law and respect the essence of those rights and freedoms and that compliance with the principle of proportionality presupposes that limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the European Union. Accordingly, if a restriction of the freedom to provide services under Article 56 TFEU is not justified or if it is disproportionate, it cannot be considered to be permissible under Article 52(1) in relation to the rights and freedoms enshrined in Articles 15 to 17 of the Charter of Fundamental Rights.

Lastly, on 11 December 2014, in the judgment in *Azienda sanitaria locale n. 5 'Spezzino' and Others* (C-113/13, EU:C:2014:2440), the Court held that Articles 49 TFEU and 56 TFEU do not preclude *national legislation which provides that the provision of urgent and emergency ambulance services must be entrusted, on a preferential basis, and by direct award, without any form of advertising, to the voluntary associations covered by agreements*.

The Court first of all examined the legislation in the light of Directive 2004/18 on public contracts ([64]). In that regard, it stated that if the service were to exceed the relevant threshold laid down in Article 7 of the directive and if the value of the transport services exceeds that of the medical services, Directive 2004/18 would apply and the direct award of the contract would therefore be contrary to that directive.

By contrast, if the threshold has not been reached or the value of the medical services exceeds the value of the transport services, only the general principles of transparency and equal treatment flowing from Articles 49 TFEU and 56 TFEU would apply and, in the latter hypothesis, those provisions would apply in conjunction with Articles 23 and 35(4) of Directive 2004/18. Those Treaty provisions do not preclude such national legislation in so far as the legal and contractual framework in which the activity of those associations is carried out actually contributes to the social purpose and the pursuit of the objectives of the good of the community and budgetary efficiency on which that legislation is based.

Although the exclusion of non-voluntary entities from an essential part of the market constitutes an obstacle to the freedom to provide services, such an obstacle may be justified by an overriding reason in the public interest such as the objective of maintaining, on grounds of public health, a balanced medical and hospital service open to all. Thus, measures which aim, first, to meet the objective of guaranteeing in the territory of the Member State concerned sufficient and permanent access to a balanced range of high-quality medical treatment and, second, to assist in ensuring the desired control of costs and prevention, as far as possible, of any wastage of financial, technical and human resources are also covered.

3. Free movement of capital

In the judgment in *X and TBG* (C-24/12 and C-27/12, EU:C:2014:1385), delivered on 5 June 2014, the Court ruled that *EU law does not preclude a tax measure of a Member State which restricts movements of capital between that Member State and its own overseas countries and territories (OCTs) whilst pursuing the objective of combating tax avoidance in an effective and proportionate manner.*

([64]) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114).

Asked about the conformity with EU law on the free movement of capital of a tax regime relating to movements of capital between the Netherlands and the Netherlands Antilles, the Court stated that, owing to the existence of special arrangements for association between the European Union and the OCTs, the general provisions of the EC Treaty, namely those not referred to in Part Four of that Treaty, are not applicable to OCTs in the absence of an express reference. The Court therefore examined the tax measure in question in the light of the provisions of Decision 2001/822 on the association of the OCTs with the European Community ('the Overseas Association Decision') ([65]).

The Court observed that, while the Overseas Association Decision, among other things, prohibits restrictions on the payment of dividends between the European Union and the OCTs, along the lines of the prohibition of such measures set out in Article 56 EC ([66]) as regards, inter alia, relations between Member States and third countries, that decision includes a tax carve-out clause expressly aimed at preventing tax avoidance.

Thus, the Court considered, more specifically, that a tax measure intended to prevent excessive capital flow towards the Netherlands Antilles and to counter in that way the appeal of that OCT as a tax haven comes under that tax carve-out clause and remains, consequently, outside the scope of application of the Overseas Association Decision, provided it pursues that objective in an effective and proportionate manner.

VII. Border controls, asylum and immigration

1. Movement across borders

As regards the common rules concerning the standards and procedures for control at external borders, mention should be made of the judgment in *U* (C-101/13, EU:C:2014:2249), delivered on 2 October 2014. In that case, a German court was uncertain about *the permissibility, in the light of Regulation No 2252/2004 on passports and travel documents* ([67])*, of national legislation requiring the 'surname and name at birth' to appear on the personal data page of the passport*. That question arose in a dispute concerning the refusal of a national authority to alter the form in which the birth name of the applicant in the main proceedings appeared alongside his surname, although the birth name is not, in law, part of his surname.

First of all, the Court observed that the annex to Regulation No 2252/2004 requires the machine-readable personal data page of passports to satisfy all the compulsory specifications provided for by the International Civil Aviation Organisation ('ICAO') ([68]). Next, where the law of a Member State provides that a person's name comprises his forenames and his surname, that annex does not preclude that State from being entitled nevertheless to enter the birth name as a primary identifier in Field 06 of the machine-readable personal data page of the passport, as a secondary identifier in Field 07 of that page or in a single field composed of Fields 06 and 07. The concept of 'the full name …, as identified by the issuing State', referred to in the ICAO document, leaves the States

([65]) Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community ('Overseas Association Decision') (OJ 2001 L 314, p. 1).

([66]) Now Article 63 TFEU.

([67]) Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States (OJ 2004 L 385, p. 1), as amended by Regulation (EC) No 444/2009 of the European Parliament and of the Council of 28 May 2009 (OJ 2009 L 142, p.1).

([68]) See Document 9303 of the International Civil Aviation Organisation (ICAO), Part 1, Section IV, point 8.6.

some discretion in the choice of elements constituting the 'full name'. On the other hand, where the law of a Member State provides that a person's name comprises his forenames and surname, the annex to Regulation No 2252/2004 precludes that State from being entitled to enter the birth name in Field 13 of the machine-readable personal data page, which contains only optional personal data elements.

Lastly, the Court ruled that the annex to Regulation No 2252/2004 must be interpreted, in the light of Article 7 of the Charter of Fundamental Rights on respect for private life, as meaning that, where a Member State whose law provides that a person's name consists of his forenames and surname chooses nevertheless to include the birth name of the passport holder in Fields 06 and/or 07 of the machine-readable personal data page of the passport, it must state clearly in the caption of those fields that the birth name must be entered there. Although a State has the option of adding other elements, in particular the birth name, to the name of the passport holder, the fact remains that the way in which that option is exercised must observe that individual's right to protection of his private life, of which respect for his name is a constituent element, as affirmed in Article 7 of the Charter of Fundamental Rights.

2. Asylum policy

Three judgments on the right of asylum, relating in particular to Directive 2004/83 on the status of refugee (the Qualification Directive) ([69]), are referred to below.

Firstly, on 30 January 2014, in the judgment in *Diakite (C-285/12, EU:C:2014:39)*, the Court had been asked *whether the concept of 'internal armed conflict', provided for in Directive 2004/83, must be interpreted independently of the definition applied in international humanitarian law and if so, according to which criteria that concept must be assessed* ([70]). In the main proceedings, a Guinean national had sought international protection in Belgium, claiming that he had been the victim of acts of violence in Guinea following his participation in protest movements against the ruling regime. He was refused subsidiary protection on the ground that there was no 'internal armed conflict', as understood in international humanitarian law, in Guinea.

The Court stated that the concept of 'internal armed conflict' is specific to Directive 2004/83 and must be interpreted independently. It does not have a direct equivalent in international humanitarian law, which knows only 'armed conflict not of an international character'. Furthermore, as the subsidiary protection regime is not provided for in international humanitarian law, the latter does not identify situations in which such protection is necessary and establishes quite distinct protection mechanisms from those underlying the directive. In addition, international humanitarian law is very closely linked to international criminal law, whereas no such relationship exists in the case of the subsidiary protection mechanism provided for under the directive.

As regards the criteria for determining that concept established by Directive 2004/83, the Court stated that the expression 'internal armed conflict' refers to a situation in which a state's armed forces confront one or more armed groups or in which two or more armed groups confront each other. Accordingly, an armed conflict can be a cause for granting subsidiary protection only if the degree of indiscriminate violence reaches such a level that the applicant faces a real risk of being

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

([70]) See, in particular, Article 15(c) of Directive 2004/83.

subject to a serious and individual threat to his life or person solely on account of his presence in the territory in question. In such a case, the finding that there is an armed conflict must not be made conditional upon the armed forces having a certain level of organisation or upon the conflict lasting for a specific length of time.

Secondly, on 2 December 2014, in the judgment in *A, B and C* (C-148/13, C-149/13 and C-150/13, EU:C:2014:2406), the Grand Chamber of the Court was asked *whether EU law limits the action that Member States can take when evaluating an application for asylum by an applicant who has a fear of being persecuted in his country of origin on account of his sexual orientation*. First of all, the Court noted that the competent authorities examining such an application for asylum are not required to regard the stated orientation as an established fact on the basis solely of the declarations of the applicant. The declarations constitute, having regard to the particular context in which applications for asylum are made, merely the starting point in the process of examining the facts and circumstances that is envisaged under Article 4 of Directive 2004/83. Those declarations may require confirmation. The methods used by the competent authorities to assess the statements and documentary or other evidence submitted in support of those applications must be consistent with the provisions of Directive 2004/83 and Directive 2005/85 (the Procedures Directive) ([71]) and also with the right to respect for human dignity, enshrined in Article 1 of the Charter of Fundamental Rights, and the right to respect for family life guaranteed by Article 7 of that charter.

In the case in point, the Court held that those provisions preclude questions being put to an applicant based only on stereotyped notions concerning homosexuals and detailed questioning as to his sexual practices, in that such an assessment does not allow the national authorities to take account of his individual situation and personal circumstances. Therefore, the inability of the applicant for asylum to answer such questions cannot, in itself, constitute sufficient grounds for concluding that he lacks credibility. As regards the evidence submitted by the applicant for asylum, the Court also held that Article 4 of Directive 2004/83, read in the light of Article 1 of the Charter of Fundamental Rights, precludes, in the context of the assessment of an application for asylum, the acceptance by those authorities of evidence such as the performance by him of homosexual acts, his submission to 'tests' with a view to establishing his homosexuality or the production by him of films of such acts. Besides the fact that it does not necessarily have probative value, such evidence would, through its nature, infringe human dignity, respect for which is guaranteed by Article 1 of the Charter of Fundamental Rights. Lastly, the Court stated that, having regard to the sensitive nature of questions relating to a person's personal identity and, in particular, his sexuality, the fact that the applicant did not declare his homosexuality 'as soon as possible' does not allow the competent national authority to conclude that his statements lack credibility in the light of the relevant provisions of Directives 2004/83 and 2005/85 ([72]).

Thirdly, on 18 December 2014, in the judgment in *M'Bodj* (C-542/13, EU:C:2014:2452), the Court, sitting as the Grand Chamber, interpreted Directive 2004/83 in a case concerning the grant of the status conferred by subsidiary protection to a person suffering from a serious illness ([73]).

The Belgian Constitutional Court requested the Court to rule in relation to the national legislation at issue in the main proceedings, which distinguishes between nationals of third countries

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

([72]) See, in particular, Article 4(3) of Directive 2004/83 and Article 13(3)(a) of Directive 2005/85.

([73]) As regards third-country nationals suffering serious illnesses, reference should also be made to the judgment of 18 December 2014 in *Abdida* (C-562/13, EU:C:2014:2453), presented in section VII.3 'Immigration policy'.

suffering from a serious illness depending on whether they have the status of refugee in accordance with Directive 2004/83 or whether they have leave to reside issued by Belgium on medical grounds. The referring court asked, in particular, whether, in view of the terms of that directive and of the case-law of the ECtHR on the removal of persons with a serious illness, the issue of such leave to reside constitutes, in reality, a form of subsidiary international protection, consequently conferring entitlement to the economic and social benefits provided for by that directive.

The Court held that Articles 28 and 29 of Directive 2004/83, read in conjunction with Articles 2(2), 3, 15 and 18 of that directive, are to be interpreted as not requiring a Member State to grant social welfare and healthcare benefits to a third-country national who has been granted leave to reside in the territory of that Member State under national legislation which allows a foreign national who suffers from a serious illness to reside in that Member State where there is no appropriate treatment in his country of origin or in the third country in which he resided previously, unless such a foreign national is intentionally deprived of healthcare in that country.

The Court explained that the risk of deterioration in the health of a third-country national suffering from a serious illness as a result of the absence of appropriate treatment in his country of origin is not sufficient, unless that third-country national is intentionally deprived of healthcare, to warrant that person being granted subsidiary protection. According to the Court, it would be contrary to the general scheme and objectives of Directive 2004/83 to grant refugee status and subsidiary protection status to third-country nationals in situations which have no connection with the rationale of international protection. The grant by a Member State of such national protection status for reasons other than the need for international protection within the meaning of Article 2(a) of that directive — that is to say, on a discretionary basis on compassionate or humanitarian grounds — does not fall within the scope of that directive. The Court concluded that third-country nationals granted leave to reside under such national legislation are not, therefore, persons with subsidiary protection status to whom Articles 28 and 29 of the directive would be applicable.

3. Immigration policy

The past year was marked by a significant number of decisions concerning Directive 2008/115 (the Return Directive) ([74]).

Two judgments relate to Article 16 of that directive, under which any detention of third-country nationals is to take place, as a rule, in a specialised detention centre and can only exceptionally be in a prison, in which case the Member State is to ensure that the third-country national is kept separated from ordinary prisoners.

The Grand Chamber of the Court was required, in the judgments of 17 July 2014 in *Pham* (C-474/13, EU:C:2014:2096) and *Bero and Bouzalmate* (C-473/13 and C-514/13, EU:C:2014:2095), to determine *whether a Member State is required to detain illegally-staying third-country nationals in a specialised detention centre where the federated State competent to decide upon and carry out such detention does not have such a detention facility*. In *Pham* the question of the consent of the person concerned also arose.

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

As regards the conditions for the implementation of the detention, the Court observed that, according to Directive 2008/115, the national authorities must be in a position to implement the detention measures in specialised centres, regardless of the administrative or constitutional structure of the Member State concerned. Thus, the fact that in certain federated states of a Member State the competent authorities have the possibility of such detention cannot amount to sufficient transposition of the Directive 2008/115 if the competent authorities of other federated states of that Member State lack that possibility. Therefore, although a Member State with a federated structure is not obliged to set up specialised detention centres in each federated state, that Member State must none the less ensure that the competent authorities of the federated states without such centres can provide accommodation for third-country nationals in specialised detention centres located in other federated states.

In *Pham*, the Court added that a Member State cannot take account of the willingness of the third-country nationals concerned to be detained in a prison. Under Directive 2008/115, the obligation to keep illegally staying third-country nationals separated from ordinary prisoners is not coupled with any exception, in order to ensure observance of the rights of foreign nationals in relation to detention. In particular, the obligation to keep third-country nationals separated from ordinary prisoners is more than just a specific procedural rule for carrying out the detention of such persons in prison accommodation and constitutes a substantive condition for that detention, without observance of which the latter would, in principle, not be consistent with Directive 2008/115.

The judgment in *Mahdi* (C-146/14 PPU, EU:C:2014:1320), delivered on 5 June 2014, concerns a Sudanese national who was placed in a special detention centre in Bulgaria pending implementation of a deportation order made against him, although the six-month period provided for in the initial detention decision had expired. As he refused to depart voluntarily, his embassy had refused to issue travel documents to him, and for that reason the removal operation had not been carried out.

In the context of the urgent preliminary ruling procedure, the Bulgarian court requested the Court to answer two procedural questions, namely whether, when it reviews the situation of the person concerned on expiry of the initial detention period, the competent administrative authority must adopt a new decision in writing, giving reasons in law and in fact, and whether the review of the lawfulness of such a measure requires that the competent judicial authority be able to decide on the merits of the case.

As regards the first question, the Court observed that the only requirement expressly provided for in Article 15 of Directive 2008/115 as regards adoption of a written measure is the requirement set out in Article 15(2), namely that detention must be ordered in writing with reasons being given in fact and in law. That requirement must be understood as also covering all decisions concerning extension of detention, given that detention and extension of detention are similar in nature and the person concerned must be in a position to know the reasons for the decision taken concerning him. The Court therefore held that, if the Bulgarian authorities, before bringing the matter before the administrative court, had taken a decision on the further course to take concerning the detention, a written measure setting out the reasons in fact and in law would have been necessary. On the other hand, if the Bulgarian authorities simply reviewed Mr Mahdi's situation without taking a decision on the application for extension, they were not required explicitly to adopt a measure in the absence of provisions to that effect in Directive 2008/115.

In addition, the Court considered that a judicial authority deciding upon the legality of a decision to extend an initial detention must be able to rule on all relevant matters of fact and of law in order to determine whether the detention is justified, which requires an in-depth examination of the matters of fact relevant to such a decision. It follows that the powers of the judicial authority in the

context of such an examination can, under no circumstances, be confined just to the matters adduced by the administrative authority.

As regards the substance, the referring court asked the Court whether an initial period of detention may be extended on the sole ground that the third-country national has no identity documents and, accordingly, there is a risk of him absconding. The Court observed that the risk of absconding is a factor to be taken into consideration in the context of the initial detention. As regards the extension of detention, however, the risk of absconding is not one of the two conditions for extension of detention set out in Directive 2008/115. Accordingly, that risk is relevant only with respect to the re-examination of the conditions that initially gave rise to the detention. This, therefore, requires an assessment of the facts surrounding the situation of the person concerned in order to examine whether a less coercive measure may be applied effectively to him. Only where the risk of absconding continues can the lack of identification documents be taken into account. It follows that the lack of documents cannot, on its own, be a ground for extending detention.

The judgment in *Mukarubega* (C-166/13, EU:C:2014:2336), delivered on 5 November 2014, concerns *the nature and the scope of the right to be heard, provided for in Article 41(2)(a) of the Charter of Fundamental Rights, before a return decision is taken pursuant to Directive 2008/115*. The Court was asked whether a third-country national who has been given a proper hearing on whether his stay is illegal must necessarily be heard again before the return decision is adopted.

The Court held that the right to be heard in all proceedings, as it applies in the context of Directive 2008/115, and in particular in Article 6 thereof, must be interpreted as meaning that a national authority is not precluded from failing to hear a third-country national specifically on the subject of a return decision where, after that authority has determined that the third-country national is staying illegally in the national territory on the conclusion of a procedure which fully respected that person's right to be heard, it is contemplating the adoption of a return decision in respect of that person, whether or not that decision is the result of the refusal of a residence permit. The Court stated that the return decision is closely linked, under that directive, to the determination that a stay is illegal and to the fact that the person concerned had the opportunity effectively to present his point of view on the question of whether the stay was illegal and whether there were grounds which could, under national law, entitle that authority to refrain from adopting a return decision.

None the less, the Court observed that the obligation to adopt a return decision, laid down in Article 6(1) of that directive, within a fair and transparent procedure, entails that Member States must, within the context of their procedural autonomy, first, explicitly make provision in their national law for the obligation to leave the national territory in cases of illegal stay and, second, ensure that the person concerned is properly heard within the procedure relating to his residence application or, as the case may be, on the legality of his stay. The right to be heard cannot, however, be used in order to re-open indefinitely the administrative procedure, for the reason that the balance between the fundamental right of the person concerned to be heard before the adoption of a decision adversely affecting him and the obligation of the Member States to combat illegal immigration must be maintained.

Lastly, on 18 December 2014, the Court, sitting as the Grand Chamber, delivered the judgment in *Abdida* (C-562/13, EU:C:2014:2453), in the context of proceedings between a Belgian public authority and a Nigerian national suffering from AIDS. The dispute related to the procedural safeguards and social benefits which, under Directive 2008/115, a Member State is required to afford to a third-country national whose health requires medical care when that national is awaiting

a decision on the lawfulness of the decision rejecting his application for leave to reside on medical grounds and ordering him to leave the territory ([75]).

The Court held that Articles 5 and 13 of Directive 2008/115, taken in conjunction with Articles 19(2) and 47 of the Charter of Fundamental Rights and with Article 14(1)(b) of that directive, preclude national legislation which does not endow with suspensive effect an appeal against a decision ordering a third-country national suffering from a serious illness to leave the territory of a Member State where the enforcement of that decision may expose that third-country national to grave and irreversible deterioration in his state of health ([76]).

The Court also ruled that the abovementioned provisions preclude national legislation which does not make provision, in so far as possible, for the basic needs of such a third-country national to be met, in order to ensure that that person may in fact avail himself of emergency healthcare and essential treatment of illness during the period in which that Member State is required to postpone removal of the third-country national following the lodging of the appeal.

VIII. Police and judicial cooperation in criminal matters

As regards the area of police and judicial cooperation in criminal matters, mention should be made of two judgments relating to the application of the *ne bis in idem* principle in the Schengen area.

On 27 May 2014, in the judgment in *Spasic* (C-129/14 PPU, EU:C:2014:586), where the urgent preliminary ruling procedure was applied, the Court examined *the compatibility with the Charter of Fundamental Rights of a limitation of the* ne bis in idem *principle in the Schengen area*.

That question was raised in the context of a case involving a Serbian national who was being prosecuted in Germany for a fraud for which he had already been sentenced in Italy to a custodial sentence and a fine. Mr Spasic, who was imprisoned in Austria for other offences, had paid that fine but had not served his custodial sentence. The German authorities considered that, in the light of the Convention Implementing the Schengen Agreement ('the CISA') ([77]), the *ne bis in idem* principle did not apply, since the custodial sentence had not yet been served in Italy.

Although Article 54 of the CISA makes the application of the *ne bis in idem* principle subject to the condition that, in the event of a conviction, the penalty 'has been executed', Article 50 of the Charter of Fundamental Rights enshrines that principle without expressly referring to such a condition.

The Grand Chamber of the Court observed first of all that, as regards the *ne bis in idem* principle, the explanations relating to the Charter of Fundamental Rights expressly refer to the CISA, which therefore limits the principle enshrined in the Charter. It then stated that the execution condition,

([75]) As regards third-country nationals suffering from serious illnesses, reference should also be made to the judgment of 18 December 2014 in *M'Bodj* (C-542/13, EU:C:2014:2452), presented in section VII.2 'Political asylum'.

([76]) In order to interpret Article 19(2) of the Charter of Fundamental Rights, in application of Article 52(3) of the Charter, the Court took into account the case-law of the European Court of Human Rights, in particular the judgment of 27 May 2008 in *N v. the United Kingdom* (application No 26565/05).

([77]) Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at common borders, which was signed at Schengen on 19 June 1990 and entered into force on 26 March 1995 (OJ 2000, L 239, p. 19).

laid down in Article 54 of the CISA, constitutes a limitation of the *ne bis in idem* principle which is provided for by law within the meaning of Article 52(1) of the Charter and which does not call into question that principle as such, since it is intended solely to avoid the impunity in a Member State of persons convicted in another Member State by a definitive criminal judgment which has not been executed. Lastly, according to the Court, the execution condition is proportionate to the objective of ensuring a high level of security within the area of freedom, security and justice and does not go beyond what is necessary to prevent the impunity of convicted persons. None the less, in the application *in concreto* of the execution condition, the national courts may contact each other and initiate consultations in order to verify whether the Member State which imposed the first sentence really intends to execute the penalties imposed.

Furthermore, the Court considered that where a custodial sentence and a fine are imposed as principal punishments, the fact that the fine has been paid does not, on its own, permit the view that the penalty has been enforced or is actually in the process of being enforced, within the meaning of the CISA.

Article 54 of the CISA was also interpreted in the judgment in *M* (C-398/12, EU:C:2014:1057), delivered on 5 June 2014, in which the Court ruled on *the scope of a decision finding that there was no ground to refer a case to a trial court in the light of the* ne bis in idem *principle*.

The accused had benefited in Belgium from an order, upheld by the Cour de cassation (Court of Cassation), that there was no ground to refer his case for offences of assault on a minor to a trial court. However, on the basis of the same acts, criminal proceedings had been brought in Italy.

The Court stated that, in order to determine that a decision delivered by an investigating court constitutes a decision finally disposing of the case against a person, within the meaning of Article 54 of the CISA, it is necessary to be satisfied that that decision was made after a determination had been made as to the merits of the case and that further prosecution has been definitively barred. That is so in the case of a decision, such as that in the main proceedings, by which an accused person is definitively acquitted because of the inadequacy of the evidence, which precludes any possibility that the case might be reopened on the basis of the same body of evidence and which has the effect that further prosecution is definitively barred.

The Court also stated that the possibility of reopening the criminal investigation if new facts and/or evidence become available cannot affect the final nature of the order finding that there is no ground to refer the case to a trial court. That possibility involves the exceptional bringing of separate proceedings based on different evidence, rather than the mere continuation of proceedings which have already been closed. Furthermore, any new proceedings against the same person for the same acts can be brought only in the State in which that order was made.

The Court concluded that an order making a finding that there is no ground to refer a case to a trial court which precludes, in the State in which that order was made, the bringing of new proceedings in respect of the same acts against the person to whom that finding applies, unless new facts and/or evidence against that person come to light, must be considered to be a final judgment, for the purposes of Article 54 of the CISA, thus precluding new proceedings being brought against the same person in respect of the same acts in another contracting state.

IX. Judicial cooperation in civil matters

In this area, mention should be made of an opinion and a judgment relating to the civil aspects of international child abduction and also of a judgment concerning Regulation No 44/2001 ([78]).

On 14 October 2014, in an opinion (Opinion 1/13, EU:C:2014:2303), the Grand Chamber of the Court had to determine whether the exclusive competence of the European Union encompasses the acceptance of the accession of a third country to the convention on the civil aspects of international child abduction ('the 1980 Hague Convention') ([79]).

Firstly, the Court clarified certain aspects of its advisory jurisdiction ([80]). It stated that the act of accession and the declaration of acceptance of accession to an international convention give expression, overall, to the convergence of intent of the states concerned and therefore amount to an international agreement, on which the Court has jurisdiction to deliver an opinion. That opinion, which may relate to the division, between the European Union and the Member States, of competence to conclude an agreement with third states, may be requested when a Commission proposal concerning an agreement has been submitted to the Council and has not been withdrawn at the time when the request is made to the Court. However, it is not necessary for the Council to have, at that point, already made clear an intention to conclude such an agreement. In those circumstances, a request for an opinion is, in fact, prompted by a legitimate concern on the part of the institutions concerned to know the extent of the respective powers of the European Union and the Member States before a decision relating to the agreement concerned is taken.

Secondly, as regards the substance, the Court observed, first of all, that the declaration of acceptance and, accordingly, the international agreement to which it relates are ancillary to the 1980 Hague Convention. In addition, that convention falls within the area of family law with cross-border implications, in which the European Union has internal competence under Article 81(3) TFEU. Having exercised that competence by adopting Regulation No 2201/2003 ([81]), the European Union has external competence in the area which forms the subject matter of that convention. Indeed, the provisions of that regulation cover, to a large extent, the two procedures governed by the 1980 Hague Convention, namely the procedure concerning the return of children who have been wrongly removed and the procedure for securing the exercise of access rights.

Lastly, the Court observed that, in spite of the precedence of Regulation No 2201/2003 over the 1980 Hague Convention, the scope and effectiveness of the common rules laid down by the regulation are likely to be affected when the Member States individually make separate declarations accepting third-State accessions to that convention. There would be a risk of undermining the uniform and consistent application of Regulation No 2201/2003 whenever a situation involving international child abduction involved a third State and two Member States, one of which had accepted the accession of that third State to the convention whilst the other had not.

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

([79]) Convention on the Civil Aspects of International Child Abduction, concluded at The Hague on 25 October 1980.

([80]) On questions of admissibility relating to a request for an opinion, see also Opinion 2/13 (EU:C:2014:2454), in section I.1 'Accession of the European Union to the European Convention on Human Rights'.

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

In that same area, the Court, on a request for a preliminary ruling in which the urgent procedure was applied, delivered, on 9 October 2014, the judgment in *C* (C-376/14 PPU, EU:C:2014:2268), concerning *the concept of the wrongful removal or retention of a child within the meaning of Regulation No 2201/2003 and the procedure to be followed when a court is seised, on the basis of the 1980 Hague Convention, of an application for return of a child who has been wrongfully removed or retained in another Member State*.

Mr C, a French national, divorced his wife, a British national. The divorce judgment, delivered in France, determined the habitual residence of their child to be with the mother and authorised her to set up residence in Ireland, which she did. Mr C appealed against that judgment. The French appellate court granted his application for an order that the child should reside with him and Mr C applied to the Irish first-instance court for a declaration that that decision was enforceable and an order that the child be returned to France. On appeal against the dismissal of that application, the Irish referring court asked the Court, in particular, whether Regulation No 2201/2003 must be interpreted as meaning that, where a child has been removed pursuant to a provisionally enforceable court decision which has then been set aside on appeal by a decision determining that the child is to reside in the Member State of origin, the failure to return the child to that State following the second decision is unlawful.

In the first place, in relation to the application for the return of the child, the Court observed that the wrongful removal or retention of the child in a State presupposes that the child was habitually resident in the Member State of origin immediately before the removal or retention and, second, that that removal or retention is the result of a breach of rights of custody awarded under the law of that Member State. It is the task of the court of the Member State to which the child has been removed, in the case in point Ireland, when seised of an application for return of the child, to determine whether the child was still habitually resident in the Member State of origin (France) immediately before the alleged wrongful retention. In that context, the fact that a court judgment authorising the removal could be provisionally enforced but that an appeal was brought against it is not conducive to a finding that the child's habitual residence was transferred. However, it should be weighed against other matters of fact which might demonstrate the child's integration in the social and family environment since his removal, in particular the time that elapsed between that removal and the judgment setting aside the judgment at first instance and fixing the residence of the child at the home of the parent in the Member State of origin. However, the time which has passed since that judgment should not in any circumstances be taken into consideration.

In the second place, regarding enforcement of the judgment of the appellate court that awarded custody to the parent in the Member State of origin, the possibility that the child's habitual residence might have changed following a judgment at first instance and that such a change might, in a particular case, be determined by the court seised of an application for return cannot constitute a factor on which a parent who retains a child in breach of rights of custody can rely in order to prolong the factual situation created by his or her wrongful conduct and in order to oppose the enforcement of the decision.

Lastly, on 11 September 2014, in the judgment in *A* (C-112/13, EU:C:2014:2195) ([82]), the Court was required to interpret Article 24 of Regulation No 44/2001 ([83]), under which *the appearance of the defendant other than for the purpose of contesting the jurisdiction of the court seised automatically entails*

([82]) This judgment is also presented in section IV.1 'References for a preliminary ruling'.

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

the extension of that court's jurisdiction, even though that court would not have jurisdiction under the rules established by that regulation.

The main proceedings concerned an action for damages against A, who was deemed to have his normal place of domicile within the jurisdiction of the Austrian court seised. After numerous unsuccessful attempts at service, that court, at the request of the applicants, appointed a representative *in absentia* who lodged a defence contending that the action should be dismissed and raising numerous counter-arguments to the substantive claims, but did not contest the international jurisdiction of the Austrian courts. It was not until later that a firm of lawyers instructed by A intervened on behalf of A, who had in the meantime left Austria, and challenged the international jurisdiction of the Austrian courts.

The Court held that an appearance entered by a representative *in absentia*, appointed in accordance with national law, does not amount to the entering of an appearance for the purposes of Regulation No 44/2001, considered in the light of Article 47 of the Charter of Fundamental Rights. The tacit prorogation of jurisdiction by virtue of the first sentence of Article 24 of Regulation No 44/2001 is based on a deliberate choice made by the parties to the dispute regarding jurisdiction, which presupposes that the defendant was aware of the proceedings brought against him. On the other hand, an absent defendant upon whom the document instituting proceedings has not been served and who is unaware of the action brought against him may not be regarded as having tacitly accepted the jurisdiction of the court seised. The applicant's right to an effective remedy — as guaranteed by Article 47 of the Charter of Fundamental Rights, which must be implemented in conjunction with respect for the defendant's rights of defence within the scheme of Regulation No 44/2001 — does not require a different interpretation of Article 24 of that regulation.

X. Transport

In the area of transport, mention should be made of three judgments.

Firstly, on 18 March 2014, in the judgment in *International Jet Management* (C-628/11, EU:C:2014:171), the Court, sitting as the Grand Chamber, examined, from the point of view of *the prohibition of discrimination on the ground of nationality laid down in Article 18 TFEU, national legislation providing that air carriers not holding an operating licence issued by that State must obtain an authorisation for each flight originating in a third country.*

The Court stated, first of all, that the fact that the air transport services concerned were provided from a third country was not such as to prevent that situation from falling within the scope of application of the Treaties within the meaning of Article 18 TFEU and went on to examine the compatibility of the national legislation at issue with that provision. In that regard, the Court observed that legislation of a Member State which requires an air carrier holding an operating licence issued by a second Member State to obtain an authorisation to enter the airspace of the first Member State in order to operate private flights in non-scheduled traffic from a third country to that first Member State, when such an authorisation is not required for air carriers holding an operating licence issued by that first Member State, must be considered discriminatory. Such legislation introduces a distinguishing criterion which leads to the same result as a criterion based on nationality. In practice, it places at a disadvantage only air carriers with their seat in another Member State, in

accordance with Article 4(a) of Regulation No 1008/2008 ([84]), and whose operating licence is issued by the competent authority of that state. The Court held that the same is also true, a fortiori, of legislation of a Member State which requires those air carriers to produce a non-availability declaration confirming that the air carriers holding an operating licence issued by that State are not willing to operate those flights or are prevented from operating them. According to the Court, such legislation constitutes discrimination based on nationality which cannot be justified by objectives connected with protection of the national economy and of safety.

Secondly, on 22 May 2014, in the judgment in *Glatzel* (C-356/12, EU:C:2014:350), the Court ruled on *the validity of point 6.4 of Annex III to Directive 2006/126 on driving licences* ([85]), *in the light of Articles 20, 21(1) and 26 of the Charter of Fundamental Rights*. The point at issue was the compatibility of the visual acuity requirements laid down in that directive with the prohibition of discrimination based on disability. In the main proceedings, the applicant was unable to exercise the occupational activity of goods vehicle driver owing to those visual acuity requirements.

The Court, first of all, explained the scope of the concept of discrimination based on disability, as laid down in Article 21(1) of the Charter of Fundamental Rights. It observed that that provision requires the EU legislature not to apply any difference in treatment on the basis of a limitation resulting, in particular, from long-term physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other persons, unless such a difference in treatment is objectively justified. Turning, next, more specifically, to the validity of point 6.4 of Annex III to Directive 2006/126, the Court stated that a difference in treatment applied to a person according to whether or not he has the visual acuity necessary to drive power-driven vehicles is not, in principle, contrary to the prohibition of discrimination based on disability within the meaning of Article 21(1) of the Charter of Fundamental Rights, in so far as such a requirement actually fulfils an objective of public interest, is necessary and is not a disproportionate burden. According to the Court, by laying down in Annex III a minimum threshold of visual acuity for drivers, in particular for drivers of heavy vehicles, Directive 2006/126 aims to improve road safety and thus to attain the objective of general interest of improving road safety. For the purpose of determining the necessity of the minimum standards for drivers' vision, it is essential, in order to ensure road safety, that the persons to whom a driving licence is issued possess sufficient physical capabilities, in particular with respect to their vision, in so far as physical defects may have significant consequences. The Court therefore concluded that the EU legislature had weighed the requirements of road safety and the right of persons affected by a visual disability in a manner which could not be regarded as disproportionate in relation to the objectives pursued.

Furthermore, in the course of its examination, the Court stated that the provisions of the United Nations Convention on Disabilities ([86]) are subject, in their implementation or their effects, to the adoption of subsequent acts of the contracting parties, so that the provisions of that convention

([84]) Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (recast) (OJ 2008 L 293, p. 3).

([85]) Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (OJ 2006 L 403, p. 18), as amended by Commission Directive 2009/113/EC of 25 August 2009 (OJ 2009 L 223, p. 31).

([86]) United Nations Convention on the Rights of Persons with Disabilities, approved on behalf of the European Community by Council Decision 2010/48/EC of 26 November 2009 (OJ 2010 L 23, p. 35).

do not constitute unconditional and sufficiently precise conditions which allow a review of the validity of the measure of EU law in the light of the provisions of that convention ([87]).

Lastly, the Court held that, although Article 26 of the Charter of Fundamental Rights requires the European Union to respect and recognise the right of persons with disabilities to benefit from integration measures, the principle enshrined in that article does not require the EU legislature to adopt any specific measure.

Thirdly, the judgment in *Fonnship and Svenska Transportarbetarförbundet* (C-83/13, EU:C:2014:2053), delivered on 8 July 2014, enabled the Grand Chamber of the Court to *specify the scope* ratione personae *of Regulation No 4055/86 on freedom to provide services in maritime transport* ([88]).

The Court ruled that Article 1 of that regulation must be interpreted as meaning that a company established in a State that is party to the EEA Agreement ([89]) which is the proprietor of a vessel flying the flag of a third country, by which maritime transport services are provided from or to a State that is a party to that agreement, may, in principle, rely on the freedom to provide services. That is the case provided that it can, due to its operation of that vessel, be classed as a provider of those services and that the persons for whom the services are intended are established in States that are parties to that agreement other than the State in which that company is established.

The application of Regulation No 4055/86 is in no way affected by the fact that workers who are nationals of third countries are employed on the vessel. In addition, the application of that regulation entails compliance with the rules of the Treaty relating to the freedom to provide services as interpreted by the Court, in particular in its case-law relating to the compatibility of industrial action with the freedom to provide services ([90]).

XI. Competition

1. Agreements, decisions and concerted practices

So far as concerns the interpretation and application of the EU rules on agreements, decisions and concerted practices, mention should be made of four judgments of the Court, of which the first concerns the right to damages for the harm caused by a cartel, two others relate to the finding of a cartel, and the last relates to the procedure for the application of the competition rules.

The judgment in *Kone and Others* (C-557/12, EU:C:2014:1317), delivered on 5 June 2014, concerns a case in which the applicant in the main proceedings had purchased elevators and escalators from third undertakings, not party to a cartel prohibited by competition law, at a higher price than it would have paid had the cartel not existed. According to the applicant in the main proceedings, those third undertakings, which were its suppliers, benefited from the existence of the cartel. in adapting their prices to the higher level. The referring court asked the Court *whether, on the basis*

([87]) As regards the effects of that convention in the EU legal order, reference should also be made to the judgment of 18 March 2014 in *Z.* (C-363/12, EU:C:2014:159), presented in section XIV.2 'Right to maternity leave'.

([88]) Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (OJ 1987 L 378, p. 1).

([89]) Cited above, footnote 61.

([90]) Judgment of 18 November 2007 in *Laval un Partneri* (C-341/05, EU:C:2007:809).

of Article 101 TFEU, the victim of harm sustained as a result of the conduct of a person not a party to the cartel is entitled to claim damages from the members of the cartel.

The Court observed, first of all, that the full effectiveness and, in particular, the practical effect of the prohibition laid down in Article 101(1) TFEU would be put at risk if it were not open to any individual to claim damages for loss caused to him by a contract or by conduct liable to restrict or distort competition. Next, the Court stated that a cartel may have the effect of inducing companies not party to the cartel to increase their prices in order to adapt them to the market price resulting from the cartel, a fact which the members of the cartel cannot disregard. Thus, even if the determination of a price offer is regarded as a purely autonomous decision taken by each undertaking not a party to the cartel, such a decision may have been taken by reference to a market price distorted by the cartel. Consequently, where it is established that the cartel may have the effect of increasing the prices charged by competitors not party to the cartel, the victims of that price increase must be able to claim damages for the loss sustained from the members of the cartel.

In the Court's view, the effectiveness of Article 101 TFEU would be put at risk if the right to claim compensation for harm suffered were subjected by national law, categorically and regardless of the particular circumstances of the case, to the existence of a direct causal link between the cartel and the harm, while excluding that right because the contractual links of the individual concerned were not with a member of the cartel, but with an undertaking not party thereto, although that undertaking's pricing policy was influenced by the cartel.

In the judgment in *MasterCard and Others* v *Commission* (C-382/12 P, EU:C:2014:2201), delivered on 11 September 2014, the Court, in an appeal against a judgment of the General Court whereby that Court had held that *the multilateral fallback interchange fees ('the MIF') applied to the MasterCard payment system were contrary to competition law* ([91]), had the opportunity to provide clarification on the interpretation of various elements of Article 81 EC ([92]). In the case in point, the MIF correspond to a fraction of the price of a payment card transaction, retained by the bank which issues the card. Observing that those fees, in so far as they are imputed to merchants in the more general context of the charges required from them for using the payment cards, have the effect of inflating the base of those charges, which could otherwise be lower, the Commission had considered, in the decision contested before the General Court, that they constituted a restriction of price competition between acquiring banks.

In examining the conditions arising from Article 81 EC, the Court first of all held, confirming the interpretation of the General Court, that MasterCard and the financial institutions involved in setting the MIF may be characterised as an 'association of undertakings' within the meaning of Article 81(1) EC, in the light of the common interests which they share. In that regard, the Court emphasised, in particular, that although Article 81 EC distinguishes between 'concerted practices', 'agreements between undertakings' and 'decisions by associations of undertakings', it does so in order to prevent undertakings from being able to evade the rules on competition on account simply of the form in which they coordinate their conduct.

The Court further determined whether the MIF could escape the prohibition laid down in Article 81(1) EC on account of their ancillary nature in relation to the MasterCard payment system. In that connection, the Court observed, in particular, that a restriction of commercial autonomy is not covered by the prohibition rule laid down in Article 81(1) EC if it is objectively necessary to

([91]) Judgment of 24 May 2012 in *MasterCard and Others* v *Commission* (T-111/08, EU:T:2012:260).

([92]) Now Article 101 TFEU.

the implementation of a non-ancillary operation or activity and proportionate to its objectives. In that context, the Court ascertained, first, whether the functioning of the MasterCard system would be impossible in the absence of the MIF. It held that, contrary to the appellants' contention, the fact that that operation is simply more difficult to implement or even less profitable without the restriction concerned cannot be deemed to give that restriction the 'objective necessity' required in order for it to be classified as ancillary. Secondly, as regards the proportionality of the MIF to the underlying objectives of the MasterCard system, the Court stated that it is necessary to take into account, as counterfactual hypotheses, not only the situation that would arise in the absence of the restriction but also other alternative situations that might arise, in so far as those hypotheses are realistic.

In that regard, the Court found that the General Court, in that it did not address the likelihood, or even plausibility, of the prohibition of ex post pricing if there were no MIF, but merely relied on the sole criterion of the economic viability of a system functioning without those fees, made an error of law. However, inasmuch as, in the case in point, in accordance with the Commission's conclusions, the hypothesis of a system operating solely on the basis of a prohibition of ex post pricing was the only other option enabling the MasterCard system to operate without the MIF, that error had no bearing on the analysis of the restrictive effects of the MIF carried out by the General Court or on the operative part of the judgment of that Court, according to which the MIF had restrictive effects on competition.

Lastly, the Court considered whether the MIF might be exempted under Article 81(3) EC. It emphasised that, in the case in point, it was necessary to take into account all the objective advantages, not only on the relevant market but also on the separate but connected market. The General Court had taken into account the role of the MIF in the balancing of the 'Issuing' and 'Acquiring' sides of the MasterCard system, while recognising the existence of interaction between those two sides. However, in the absence of any proof of the existence of appreciable objective advantages attributable to the MIF in the acquiring market for merchants, the General Court did not need to examine the advantages flowing from the MIF for cardholders, since such advantages cannot, by themselves, be of such a character as to compensate for the disadvantages resulting from those fees.

Accordingly, the Court upheld the judgment of the General Court finding the existence of a cartel that did not qualify for an exemption.

On 11 September 2014, in another judgment concerning bank cards, *CB* v *Commission* (C-67/13 P, EU:C:2014:2204), the Court set aside the judgment of the General Court on the ground that it had been wrong to conclude that *the pricing measures adopted by the French Groupement des cartes bancaires (CB) ('the Grouping') constituted, by their very nature, a restriction of competition*.

The Grouping, created by the main French card-issuing banking institutions, had adopted measures fixing the prices of membership of the Grouping for members whose CB card-issuing activity exceeded their activity in affiliating new traders to the system, and also for members that were inactive or not very active.

The General Court agreed with the Commission that the Grouping had adopted a decision by an association of undertakings giving rise to a restriction of competition 'by object'. Accordingly, it held that there was no need to consider the effects of those measures on the market.

In that regard, the Court held that the General Court erred in law by not correctly assessing the existence of a restriction of competition by object, a concept that must be interpreted restrictively and can be applied only to certain types of coordination between undertakings. More particularly,

although the General Court set out the reasons why the measures at issue were capable of restricting competition by new entrants on the market, it in no way explained in what respect that restriction reveals a sufficient degree of harm in order to be characterised as a restriction by object. Since the measures at issue had as their object the imposition of a financial contribution on the members of the Grouping which benefit from the efforts of other members with respect to acquisition in the CB system, such an object cannot be regarded as being, by its very nature, harmful to the proper functioning of normal competition.

Furthermore, the Court considered that, in examining the options left open to the members of the Grouping in order to achieve the interoperability of the systems for payment and withdrawal by bank cards, the General Court in fact assessed the potential effects of the measures and not their object, thereby indicating itself that the measures at issue cannot be considered 'by their very nature' harmful to the proper functioning of normal competition.

The Court therefore referred the case back to the General Court for a determination of whether the agreements at issue have as their 'effect' the restriction of competition within the meaning of Article 81(1) EC ([93]).

On 12 June 2014, in the judgment in *Deltafina* v *Commission* (C-578/11 P, EU:C:2014:1742), the Court, ruling on an appeal, provided clarification on certain aspects relating to the procedure for the application of the competition rules. It held that, as regards *the reduction of a fine in exchange for the cooperation of the offending undertaking with the Commission*, the undertaking is obliged to preserve the confidentiality of the cooperation. Thus, the disclosure by the undertaking concerned of its cooperation with the Commission to other undertakings which participated in the cartel constitutes a breach of the obligation to cooperate.

In that judgment, the Court also considered whether the General Court had infringed the right to a fair hearing, in obtaining, at the hearing, the oral testimony of the parties' representatives and in relying on one of those testimonies. The Court found that the General Court had, in fact, gone beyond what may be carried out under a current practice of asking questions about technical matters or complex facts when that questioning had related to facts that ought to be established pursuant to the Rules of Procedure of the General Court. However, the Court held that that procedural irregularity did not constitute an infringement of the right to a fair hearing, since the testimonies in question were taken into account only in respect of a superfluous point and the General Court was able to base its findings solely on the documentary evidence before it.

Lastly, the Court also ruled on the argument relating to the excessive length of the proceedings. Confirming its case-law ([94]), first, it observed that, where there are no indications that the excessive length of the proceedings before the General Court affected their outcome, failure to deliver judgment within a reasonable time cannot lead to the setting aside of the judgment under appeal. Secondly, the Court confirmed that the sanction for the breach by the General Court of its obligation under the second paragraph of Article 47 of the Charter of Fundamental Rights to adjudicate on the cases before it within a reasonable time is an action for damages. This action for damages must be brought before the General Court sitting in a different composition from that which heard the action for annulment, since such an action constitutes an effective remedy.

([93]) Now Article 101 TFEU.

([94]) Judgment of 26 November 2013 in *Gascogne Sack Deutschland* v *Commission* (C-40/12 P, EU:C:2013:768).

2. State aid

In relation to State aid, by the judgment in *France* v *Commission* (C-559/12 P, EU:C:2014:217), delivered on 3 April 2014, the Court held that the General Court had been correct to dismiss the action for annulment brought by France ([95]) against the decision of 26 January 2010 in which *the Commission found that the unlimited guarantee granted by France to La Poste constituted State aid incompatible with the internal market* ([96]). Until its conversion on 1 March 2010 into a public limited company, La Poste française was deemed equivalent to a public establishment of an industrial and commercial character (établissement public à caractère industriel et commercial) ('EPIC'), to which insolvency and bankruptcy procedures under ordinary law are not applicable.

In this appeal, France took issue with the General Court, in particular, for having, first, held that the Commission could reverse the burden of proof of the existence of the guarantee, on the ground that La Poste was not subject to the ordinary law on compulsory administration and winding-up procedures for undertakings in difficulty, and second, misconstrued the rules relating to the level of proof required to demonstrate the existence of such a guarantee. However, the Court observed that the General Court did not validate any use of negative presumptions or any reversal of the burden of proof by the Commission. The Court considered that the Commission made a positive finding as to the existence of an unlimited State guarantee in favour of La Poste, in taking account of a number of facts on which it could be established that such a guarantee had been granted. Likewise, the Court confirmed that the Commission may, in order to prove the existence of an implied guarantee, rely on the method of a firm, precise and consistent body of evidence to determine whether the State is required by domestic law to use its own resources in order to cover the losses of an EPIC in default and there is thus a sufficiently concrete economic risk of burden on the State budget.

France also submitted that the General Court erred in law in finding that the Commission had established to the requisite legal standard the existence of an advantage arising from the State guarantee granted to La Poste. In that regard, the Court stated that a simple presumption exists that the grant of an implied and unlimited State guarantee in favour of an undertaking which is not subject to the ordinary compulsory administration and winding-up procedures results in an improvement in its financial position through a reduction of charges which would normally encumber its budget. Thus, in order to prove the advantage obtained by such a guarantee to the recipient undertaking, it is sufficient for the Commission to establish the mere existence of that guarantee, without having to show the actual effects produced by it from the time that it is granted.

XII. Fiscal provisions

On 16 January 2014, in its judgment in *Ibero Tours* (C-300/12, EU:C:2014:8), the Court held that the principles defined in its judgment in *Elida Gibbs* ([97]) concerning *the taking into account, for the purposes of determining the taxable amount for the purposes of value added tax (VAT), of the price discounts allowed by a manufacturer through a distribution chain* are not applicable where a travel agent, acting as an intermediary, grants the final consumer, on the travel agent's own initiative and at his own expense, a reduction of the price of the principal service provided by the tour operator.

([95]) Judgment of 20 September 2012 in *France* v *Commission* (T-154/10, EU:T:2012:452).

([96]) Commission Decision 2010/605/EU of 26 January 2010 on State aid C 56/07 (ex E 15/05) granted by France to La Poste (notified under number C(2010)133) (OJ 2010 L 274, p. 1).

([97]) Judgment of 24 October 1996 in *Elida Gibbs* (C-317/94, EU:C:1996:400).

In its judgment in *Elida Gibbs*, the Court had held that, when a manufacturer of a product who, having no contractual relationship with the final consumer but being the first link in a chain of transactions which ends with that final consumer, grants the final consumer a price reduction using discount coupons received by retailers and reimbursed by the manufacturer to those retailers, the taxable amount for VAT purposes must be reduced by that reduction. In the present case, the Court stated that the attainment of the objective pursued by the special scheme for travel agents provided for in Article 26 of the sixth directive ([98]) in no way requires any derogation from the general rule laid down in Article 11A(1)(a) of that directive, which, for the purposes of determining the taxable amount, refers to 'the consideration which has been or is to be obtained by the supplier from the … customer or a third party'. The Court inferred that, unlike in *Elida Gibbs*, the present case concerns not the grant of rebates by a manufacturer through a distribution chain, but the financing by a travel agent, acting as an intermediary, of a part of the travel price, which, with regard to the final consumer of the travel, takes the form of a price reduction for that travel. As that reduction affects neither the consideration received by the tour operator for the sale of that travel nor the consideration received by the travel agent for its intermediation service, the Court concluded that, in accordance with Article 11A(1)(a) of the sixth directive, such a price reduction does not lead to a reduction of the taxable amount either for the principal transaction supplied by the tour operator or for the supply of services by the travel agent.

The judgment in *Skandia America (USA), filial Sverige* (C-7/13, EU:C:2014:2225), delivered on 17 September 2014, concerns whether, and in what way, *the supply of services for consideration by the main establishment of a company in a third country to a branch of that company in a Member State must be subject to VAT* under Directive 2006/112 ([99]), where that branch is a member, in that Member State, of a VAT group, created on the basis of Article 11 of that directive.

The Court first of all addressed the question whether the supply of services by a main establishment to its branch, in a situation such as that described above, is subject to VAT. In that regard, the Court pointed out that, although the branch concerned in the main proceedings was dependent on the main establishment and could not therefore itself be characterised as a taxable person within the meaning of Article 9 of Directive 2006/112, the fact remained that it was a member of a VAT group and therefore formed a single taxable person, not with the main establishment, but with the other members of the group. The Court concluded that the supply of services constitutes a taxable transaction, under Article 2(1)(c) of Directive 2006/112, in so far as the services provided for consideration by the main establishment to that branch must be deemed, solely from the point of view of VAT, to have been provided to the VAT group. The Court then held that, in such a situation, Articles 56, 193 and 196 of Directive 2006/112 must be interpreted as meaning that the VAT group, as the purchaser of services referred to in Article 56 of that directive, is liable for the VAT payable. Article 196 of that directive provides that, as an exception to the general rule in Article 193 of the directive, according to which VAT is payable in a Member State by a taxable person carrying out a taxable supply of services, VAT is payable by the taxable person to whom those services are supplied where the services referred to in Article 56 of the directive are supplied by a taxable person which is not established in that Member State.

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

([99]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

XIII. Approximation of laws

1. Intellectual property

In the area of intellectual property, specific mention should be made of five decisions. The first concerns the patentability of biotechnological inventions, the next three concern copyright and related rights, and the fifth concerns three-dimensional trade marks.

In the judgment in *International Stem Cell Corporation* (C-364/13, EU:C:2014:2451), delivered on 18 December 2014, the Court, sitting as the Grand Chamber, interpreted Article 6(2)(c) of Directive 98/44 on the legal protection of biotechnological inventions ([100]), according to which *uses of human embryos for industrial or commercial purposes are not to be patentable*, as their exploitation for such purposes would be contrary to *ordre public* or morality.

The Court held, in particular, that an unfertilised human ovum whose division and further development have been stimulated by parthenogenesis does not constitute a 'human embryo' within the meaning of Article 6(2)(c) if, in the light of current scientific knowledge, it does not, in itself, have the inherent capacity of developing into a human being.

In support of that conclusion, the Court recalled first of all that the concept of 'human embryo' must be understood in a wide sense, since the EU legislature intended to exclude any possibility of patentability where respect for human dignity could thereby be affected ([101]). That classification must apply to a non-fertilised human ovum into which the cell nucleus from a mature human cell has been transplanted and a non-fertilised human ovum whose division and further development have been stimulated by parthenogenesis, since those organisms are, due to the effect of the technique used to obtain them, capable of commencing the process of development of a human being, just as an embryo created by fertilisation of an ovum is.

In accordance with those principles of interpretation, the Court was prompted to state, having regard to the factual submissions of the referring court, that that exclusion from patentability is not meant to apply to parthenotes not having the inherent capacity of developing into a human being.

As regards copyright and related rights, the judgment in *Nintendo and Others* (C-355/12, EU:C:2014:25), delivered on 23 January 2014, enabled the Court to *clarify the extent of the legal protection on which a holder of copyright, within the meaning of Directive 2001/29 on copyright and related rights* ([102]), *may rely in order to combat the circumvention of technological measures put in place to protect its gaming consoles against the use of infringing copies of programs intended for those consoles*.

The Court began by observing that video games constitute a complex matter comprising not only a computer program but also graphic and sound elements, which, although encrypted in computer language, have a unique creative value. As their author's own intellectual creation, the original computer programs are protected by copyright under the directive. According to the Court, the technological measures, which are incorporated both in the physical housing systems of games and in consoles, and which require interaction between them, come within the concept of 'effective technological measures' within the meaning of Directive 2001/29 and enjoy the protection

([100]) Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions (OJ 1998 L 213, p. 13).

([101]) Judgment of 18 October 2011 in *Brüstle* (C-34/10, EU:C:2011:669).

([102]) Cited above, footnote 26.

provided by that directive when their objective is to prevent or to limit acts adversely affecting the rights of the holder. That legal protection must respect the principle of proportionality and should not prohibit devices or activities which have a commercially significant purpose or use other than to circumvent the technological protection for illegal purposes. In a case such as this, the assessment of the scope of the legal protection at issue would not have to be carried out by reference to the particular use of consoles, as envisaged by the copyright holder, but would have to take account of the criteria laid down, as regards the devices, products or components capable of circumventing the protection of effective technological measures, in Article 6(2) of Directive 2001/29.

The judgment in *UPC Telekabel Wien* (C-314/12, EU:C:2014:192), delivered on 27 March 2014, provided the Court with the opportunity to adjudicate on *the rights conferred on holders of copyright with regard to the protection of fundamental rights*. The case concerned two film production companies holding the copyright in films which had been made available to the public on a website through an Internet service provider established in Austria. An Austrian court prohibited that service provider from making available to the public, without their consent, cinematographic works over which the film production companies held a right related to copyright.

In that regard, the Court observed that an Internet service provider which allows its customers to access protected subject matter made available to the public on the Internet by a third party is an intermediary whose services are used to infringe a copyright or related right within the meaning of Article 8(3) of Directive 2001/29. Such a conclusion is borne out by the objective pursued by the directive. To exclude Internet service providers from the scope of that provision would substantially diminish the protection of rightholders sought by that directive. Also, asked, with regard to fundamental rights, about the possibility of issuing an injunction that would not specify the measures which the Internet access provider must take and the possibility that that access provider could avoid paying penalties for breach of the injunction by showing that it has implemented all reasonable measures, the Court stated that the fundamental rights concerned, namely freedom to conduct a business and freedom of information, do not preclude such an injunction, provided that two conditions are met. Firstly, the measures taken by the Internet access provider must not unnecessarily deprive Internet users of the possibility of lawfully accessing the information available. Secondly, those measures must have the effect of preventing unauthorised access to the protected subject matter or, at least, of making it difficult to achieve and of seriously discouraging users from accessing the subject matter that has been made available to them in breach of the intellectual property right.

Still on the matter of copyright and related rights, on 3 September 2014, in the judgment in *Deckmyn and Vrijheidsfonds* (C-201/13, EU:C:2014:2132), the Court, sitting as the Grand Chamber, clarified *the scope of the concept of 'parody' as an exception to the right of reproduction, the right to communicate works to the public and the right to make available to the public other protected objects within the meaning of Article 5(3)(k) of Directive 2001/29*.

The Court stated first of all that the concept of 'parody' must be regarded as an autonomous concept of EU law. However, since Directive 2001/29 gives no definition at all of that concept, the meaning and scope of that term must be determined by considering its usual meaning in everyday language, while also taking into account the context in which it occurs and the purposes of the rule of which it is part. The Court then observed that the essential characteristics of parody are, first, to evoke an existing work while being noticeably different from it and, second, to constitute an expression of humour or mockery. The concept of parody is not subject to the conditions that the parody should display an original character of its own, other than that of displaying noticeable differences with respect to the original parodied work; that it could reasonably be attributed to a person other than the author of the original work itself; or that it should relate to the original

work itself or mention the sources of the parodied work. However, the application, in a particular case, of the exception for parody, within the meaning of Article 5(3)(k) of Directive 2001/29, must strike a fair balance between, on the one hand, the interests and rights of the authors and holders of the rights protected by the directive and, on the other, the freedom of expression of the user of a protected work who is relying on the exception for parody.

Lastly, in the matter of trade marks, the case giving rise to the judgment in *Apple* (C-421/13, EU:C:2014:2070), delivered on 10 July 2014, led the Court to examine *the possibility of registering a three-dimensional trade mark consisting of the representation, by a design in colour, without any indication of size and proportion, of the layout of a store for services provided there*.

In order to determine whether the sign in question was capable of registration, the Court, first of all, recalled the conditions for registration of a trade mark in accordance with Directive 2008/95 ([103]). According to the Court, a representation which depicts the layout of a retail store by means of an integral collection of lines, curves and shapes may constitute a trade mark provided that it is capable of distinguishing the products or services of one undertaking from those of other undertakings. However, the fact that a sign is, in general, capable of constituting a trade mark does not mean that the sign necessarily has a distinctive character for the purposes of the directive. That character must be assessed, in practice, by reference to, first, the goods or services in question and, second, the perception of the relevant public. The Court explained, moreover, that if none of the grounds for refusing registration set out in Directive 2008/95 precludes it, a sign depicting the layout of the flagship stores of a goods manufacturer may legitimately be registered not only for the goods themselves but also for services, if those services do not form an integral part of the offer for sale of those goods. Consequently, the representation by a design alone, without indicating the size or the proportions, of the layout of a retail store may be registered as a trade mark for services which, although relating to those goods, do not form an integral part of the offer for sale thereof, provided that the sign is capable of distinguishing the services of the applicant for registration from those of other undertakings and that registration is not precluded by any ground for refusal.

2. Protection of personal data

In the field of the protection of personal data, the Court delivered three judgments that deserve mention. Two judgments relate to the obligations concerning the protection of personal data borne by undertakings providing communications services and those operating a search engine. The third judgment concerns the autonomy of the national data protection control authorities.

The judgment in *Digital Rights Ireland and Others* (C-293/12 and C-594/12, EU:C:2014:238), delivered by the Grand Chamber of the Court on 8 April 2014, has its origin in a *request for a determination of the validity of Directive 2006/24/EC on the retention of data by reference to the fundamental rights to respect for private life and the protection of personal data* ([104]). The request sought to ascertain whether the obligation which that directive places on providers of publicly available electronic communications services or public communications networks to retain, for a certain period, data relating to

([103]) Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (codified version) (OJ 2008 L 299, p. 25, and corrigendum in OJ 2009 L 11, p. 86).

([104]) Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (OJ 2006 L 105, p. 54).

a person's private life and to his communications and to allow the competent national authorities to access those data entails an unjustified interference with those fundamental rights.

The Court, first of all, held that, by imposing such obligations on those providers, Directive 2006/24 constituted a particularly serious interference with respect for private life and the protection of personal data, enshrined respectively in Articles 7 and 8 of the Charter of Fundamental Rights. Next, in accordance with Article 52(1) of the Charter, the Court stated that that interference may be justified where it pursues an objective of general interest, such as the fight against organised crime.

However, the Court declared the directive invalid, on the ground that it entails a wide-ranging and particularly serious interference, without being precisely circumscribed by provisions to ensure that it is actually limited to what is strictly necessary.

In support of that finding, the Court observed, first, that Directive 2006/24 covers, in a generalised manner, all persons and all means of electronic communication as well as traffic data without any differentiation, limitation or exception being made in the light of the objective of fighting against serious crime. Secondly, that directive does not lay down any objective criteria relating to the access of the competent national authorities to the data and to their subsequent use that would ensure that the data are used for the sole purpose of preventing, investigating and prosecuting offences capable of being considered to be sufficiently serious to justify such an interference, or the substantive and material conditions relating to such access or such use. Thirdly, so far as concerns the data retention period, the directive requires that they be retained for a period of at least six months, without any distinction being made between the categories of data according to the persons concerned or on the basis of the possible usefulness of the data for the purposes of the objective pursued.

Furthermore, so far as concerns the requirements arising under Article 8(3) of the Charter of Fundamental Rights, the Court held that Directive 2006/24 does not provide for sufficient safeguards to ensure effective protection of the data against the risk of abuse and against any unlawful access to and use of the data, nor does it require that the data be retained within the European Union. Consequently, it does not fully ensure control by an independent authority of compliance with the requirements of protection and security, as explicitly required by Article 8 of the Charter of Fundamental Rights.

In addition, reference must be made to the judgment in *Google Spain and Google* (C-131/12, EU:C:2014:317), delivered on 13 May 2014, in which the Court, sitting as the Grand Chamber, was called upon to *interpret the conditions for the application of Directive 95/46 on the protection of personal data in relation to the activity of an Internet search engine* ([105]).

The Court stated first of all that, by searching automatically, constantly and systematically for the information published on the Internet, the operator of a search engine carries out operations that must be characterised as 'processing of personal data' within the meaning of Directive 95/46 where that information contains such data. According to the Court, that operator is the 'controller' of the processing, within the meaning of Article 2(d) of the directive, since it is that person that determines the purposes and means of the processing. The processing of those data by that operator

([105]) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).

can be distinguished from, and is additional to, that already carried out by the publishers of websites, consisting in loading those data onto an Internet page.

In that context, the Court stated that the processing of personal data by the operator of a search engine is liable to affect significantly the fundamental rights to privacy and to the protection of personal data, since it enables any Internet user to obtain, through the list of results, a structured overview of the information relating to an individual that can be found on the Internet, which potentially concerns a vast number of aspects of his private life and which, without the search engine, could not have been interconnected or could have been only with great difficulty, and thereby to establish a more or less detailed profile of that person. In the light of the potential seriousness of that interference, it cannot be justified merely by the economic interest of the operator.

In answer to the question whether Directive 95/46 allows the data subject to ask that links to web pages be removed from a list of results on the ground that he wishes the information therein relating to him to be 'forgotten' after a certain time, the Court stated that, if it is found, following a request by the data subject, that the inclusion of those links in the list is, at this point in time, incompatible with that directive, the information and links contained in the list must be erased. As the data subject may, in the light of Articles 7 and 8 of the Charter of Fundamental Rights, request that the information in question no longer be made available to the general public by its inclusion in such a list of results, those rights override, as a rule, not only the economic interest of the operator of the search engine but also the interest of the general public in finding that information upon a search relating to the data subject's name. That would not be the case if it appeared, for particular reasons, such as the role played by the data subject in public life, that the interference with his fundamental rights was justified by the preponderant interest of the general public in having, on account of inclusion in the list of results, access to the information in question.

On 8 April 2014, the judgment in *Commission* v *Hungary* (C-288/12, EU:C:2014:237) was delivered by the Grand Chamber of the Court in *an action for failure to fulfil obligations relating to the premature bringing to an end of the term of office served by the Hungarian national authority for the supervision of the protection of personal data and, therefore, concerning the obligations placed on the Member States by Directive 95/46 on data protection* ([106]).

The Court recalled that, under the second subparagraph of Article 28(1) of Directive 95/46, the supervisory authorities set up in the Member States must enjoy an independence allowing them to perform their duties free from external influence. That independence precludes, inter alia, any directions or any other external influence in whatever form, whether direct or indirect, which may have an effect on their decisions and which could thus call into question the performance by those authorities of their task of striking a fair balance between the protection of the right to private life and the free movement of personal data. In that context, the mere risk that a state's scrutinising authorities could exercise a political influence over the decisions of the supervisory authorities is enough to hinder the latter in the independent performance of their tasks. If it were permissible for every Member State to compel a supervisory authority to vacate office before serving its full term, in contravention of the rules and safeguards established in that regard by the legislation applicable, the threat of such premature termination to which that authority would be exposed throughout its term of office could lead it to enter into a form of compliance with the political authority, which is incompatible with the requirement of independence. Therefore, that requirement of independence must necessarily be construed as covering the obligation to allow supervisory authorities to serve their full term of office and to have them vacate office before expiry of the full

([106]) Cited above, footnote 105.

term only in accordance with the rules and safeguards established by the applicable legislation. The Court concluded that, by prematurely bringing to an end the term served by the supervisory authority, Hungary had failed to fulfil its obligations under Directive 95/46.

XIV. Social policy

In matters of social policy, mention may be made of three judgments. The first concerns the prohibition of discrimination on the ground of age, while the other two concern cases of commissioning mothers who were refused the right to take paid leave to care for a child.

1. Equal treatment in employment and occupation

In the judgment in *Schmitzer* (C-530/13, EU:C:2014:2359), delivered on 11 November 2014, the Grand Chamber of the Court was required to consider *a legislative amendment, adopted in Austria following the judgment in Hütter* ([107]), *designed to end age-based discrimination for civil servants*. In the latter judgment, the Court had ruled that Directive 2000/78 on equal treatment in employment and occupation ([108]) precluded Austrian legislation which excluded periods of employment completed before the age of 18 from being taken into account for the purpose of determining the incremental step at which contractual civil servants of a Member State are graded. The new national legislation takes into account periods of training and service prior to the age of 18 but at the same time introduces — with regard only to civil servants who suffered from that discrimination — a three-year extension of the period required to progress from the first to the second incremental step in each job category and each salary group. According to the Court, to the extent to which that extension applies only to civil servants who completed periods of training or service before reaching the age of 18, the new legislation involves a difference in treatment based on age within the meaning of Article 2(2)(a) of the directive.

As regards the justification for that difference in treatment, the Court observed that, while budgetary considerations may underpin the chosen social policy of a Member State, they cannot in themselves constitute a legitimate aim. Conversely, respect for the acquired rights and the protection of the legitimate expectations of civil servants favoured by the previous system constitute legitimate employment-policy and labour-market objectives which can justify, for a transitional period, the maintenance of earlier pay and, consequently, the maintenance of a system that discriminates on the basis of age. The Court considered that legislation such as that at issue in the main proceedings makes it possible to attain those objectives in so far as those civil servants will not be subject to the retroactive extension of the period for advancement. However, those objectives cannot justify a measure that maintains definitively, if only for certain persons, the age-based difference in treatment which the reform of the discriminatory system was intended to eliminate. Accordingly, the Court ruled that Articles 2(1) and (2)(a) and Article 6(1) of Directive 2000/78 also preclude such national legislation.

2. Right to maternity leave

On 18 March 2014, in the judgments in *D.* (C-167/12, EU:C:2014:169) and *Z.* (C-363/12, EU:C:2014:159), the Court, sitting as the Grand Chamber, was called upon to determine *whether the refusal of paid*

([107]) Judgment of 18 June 2009 in *Hütter* (C-88/08, EU:C2009:381).

([108]) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

leave to a commissioning mother who has had a child under a surrogacy arrangement is contrary to Directive 92/85 ([109]) *or constitutes discrimination based on sex or disability contrary to Directives 2006/54* ([110]) *and 2000/78* ([111]). Both applicants in the main proceedings employed the services of a surrogate mother to have a child and were refused paid leave, on the ground that they were never pregnant and their children were not adopted.

As regards, first of all, Directive 92/85, the Court stated that Member States are not required to grant maternity leave under that directive to a female worker who as a commissioning mother has had a baby through a surrogacy arrangement, even in circumstances where she may breastfeed the baby following the birth or where she does breastfeed the baby. The purpose of the maternity leave provided for in Article 8 of Directive 92/85 is to protect the health of the mother of the child in the especially vulnerable situation arising from her pregnancy. Although the Court has held that maternity leave is also intended to ensure that the special relationship between a woman and her child is protected, that objective concerns only the period after pregnancy and childbirth. It follows that the grant of maternity leave presupposes that the worker entitled to such leave has been pregnant and has given birth to a child. None the less, according to the Court, Directive 92/85 does not in any way preclude Member States from introducing rules more favourable to the protection of the safety and health of commissioning mothers allowing them to take maternity leave.

As for Directive 2006/54, the Court held that the fact that an employer refuses to grant maternity leave to a commissioning mother who has had a child under a surrogacy agreement does not constitute direct or indirect discrimination on the ground of sex. As regards, in particular, the alleged indirect discrimination, the Court observed, first, that such discrimination does not exist when there is nothing to establish that the refusal of leave at issue puts female workers at a particular disadvantage compared with male workers. Secondly, a commissioning mother cannot, by definition, be subject to less favourable treatment related to her pregnancy, given that she has not been pregnant with that baby. So far as the grant of adoption leave is concerned, the Court held that since such leave is not covered by Directive 2006/54, Member States are also free to grant or not grant such leave.

In *Z.*, the commissioning mother was unable to bear a child and therefore employed the services of a surrogate mother. As regards Directive 2000/78, the Court considered that a refusal to provide paid leave equivalent to maternity leave or adoption leave does not constitute discrimination on the ground of disability. The inability to have a child by conventional means does not in itself, in principle, prevent the commissioning mother from having access to, participating in or advancing in employment and, accordingly, cannot be regarded as a disability within the meaning of that directive. As the referring court had asked a question relating to the United Nations Convention on the Rights of Persons with Disabilities ([112]), the Court held that the validity of Directive 2000/78 cannot be assessed in the light of that convention, which is 'programmatic' and does not have direct

([109]) Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (10th individual directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1992 L 348, p. 1).

([110]) Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ 2006 L 204, p. 23).

([111]) Cited above, footnote 108.

([112]) Cited above, footnote 86.

effect. However, that directive must, as far as possible, be interpreted in a manner that is consistent with the convention.

XV. Environment

On 1 July 2014, in its judgment in *Ålands Vindkraft* (C-573/12, EU:C:2014:2037), ruling on *the interpretation of Article 34 TFEU and Directive 2009/28 on the promotion of the use of energy from renewable sources* ([113]), the Grand Chamber of the Court held that, under point (k) of the second paragraph of Article 2 and Article 3(3) of that directive, Member States which grant aid to producers of energy from renewable sources are not required to provide financial support measures for the use of green energy produced in another Member State.

The Swedish scheme at issue in the main proceedings provides for the award of tradable certificates ([114]) to producers of green electricity in respect of electricity produced in the territory of that state, and places suppliers and certain electricity users under an obligation to deliver annually to the competent authority a certain number of those certificates, corresponding to a proportion of the total volume of electricity that they have supplied or consumed. As the Swedish authorities refused to award the applicant those certificates for its wind park in Finland, on the ground that only operators of production installations located in Sweden can be awarded such certificates, the applicant brought an action against the refusal decision.

The Court observed, first of all, (i) that the scheme in question has the characteristics specific to the aid schemes provided for and permitted by Directive 2009/28; and (ii) that the EU legislature did not intend to require Member States to extend that benefit to cover green electricity produced on the territory of another Member State. None the less, the Court held that such legislation is capable of hindering — at least indirectly and potentially — imports of electricity, especially green electricity, from other Member States. Consequently, such a scheme constitutes a measure having equivalent effect to quantitative restrictions on imports, in principle incompatible with the obligations resulting from Article 34 TFEU, unless it can be objectively justified. In that regard, the Court held that, since EU law has not harmonised the national support schemes for green electricity, it is possible, in principle, for Member States to limit access to such schemes to green electricity production located in their territory, in so far as the schemes are aimed, from a long-term perspective, at investment in new installations, by giving producers certain guarantees about the future marketing of their green electricity.

([113]) Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ 2009 L 140, p. 16).

([114]) The support scheme in question imposes upon electricity suppliers and certain consumers an obligation to use a given proportion of green electricity.

C — Composition of the Court of Justice

(order of precedence as at 9 October 2014)

First row, from left to right:

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

Second row, from left to right:

K. Jürimäe, President of Chamber; C. Vajda, President of Chamber; A. Ó Caoimh, President of Chamber; M. Wathelet, First Advocate General; J.-C. Bonichot, President of Chamber; S. Rodin, President of Chamber; A. Rosas, Judge.

Third row, from left to right:

Y. Bot, Advocate General; E. Sharpston, Advocate General; J. Malenovský, Judge; E. Juhász, Judge; J. Kokott, Advocate General; A. Borg Barthet, Judge; P. Mengozzi, Advocate General; E. Levits, Judge.

Fourth row, from left to right:

A. Prechal, Judge; N. Jääskinen, Advocate General; D. Šváby, Judge; C. Toader, Judge; A. Arabadjiev, Judge; M. Safjan, Judge; M. Berger, Judge; P. Cruz Villalón, Advocate General.

Fifth row, from left to right:

M. Szpunar, Advocate General; N. Wahl, Advocate General; C.G. Fernlund, Judge; E. Jarašiūnas, Judge; J.L. da Cruz Vilaça, Judge; F. Biltgen, Judge; C. Lycourgos, Judge; A. Calot Escobar, Registrar.

1. Members of the Court of Justice

(in order of their entry into office)

Vassilios Skouris

Born 1948; graduated in law from the Free University, Berlin (1970); awarded doctorate in constitutional and administrative law at Hamburg University (1973); assistant professor at Hamburg University (1972–77); professor of public law at Bielefeld University (1978); professor of public law at the University of Thessaloniki (1982); Minister for Internal Affairs (1989 and 1996); member of the Administrative Board of the University of Crete (1983–87); Director of the Centre for International and European Economic Law, Thessaloniki (1997–2005); President of the Greek Association for European Law (1992–94); member of the Greek National Research Committee (1993–95); member of the Higher Selection Board for Greek Civil Servants (1994–96); member of the Academic Council of the Academy of European Law, Trier (from 1995); member of the Administrative Board of the Greek National Judges' College (1995–96); member of the Scientific Committee of the Ministry of Foreign Affairs (1997–99); President of the Greek Economic and Social Council in 1998; Judge at the Court of Justice since 8 June 1999; President of the Court of Justice since 7 October 2003.

Koen Lenaerts

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

Antonio Tizzano

Born 1940; professor of EU Law at La Sapienza University, Rome; professor at the Istituto Universitario Orientale, Naples (1969–79), Federico II University, Naples (1979–92), the University of Catania (1969–77) and the University of Mogadishu (1967–72); member of the Bar at the Italian Court of Cassation; Legal Adviser to the Permanent Representation of the Italian Republic to the European Communities (1984–92); member of the Italian delegation at the negotiations for the accession of the Kingdom of Spain and the Portuguese Republic to the European Communities, for the Single European Act and for the Treaty on European Union; author of numerous publications, including commentaries on the European Treaties and collections of EU legal texts; Founder and Director since 1996 of the journal *Il Diritto dell'Unione Europea*; member of the managing or editorial board of a number of legal journals; rapporteur at numerous international congresses; conferences and courses at various international institutions, including The Hague Academy of International Law (1987); member of the independent group of experts appointed to examine the finances of the Commission of the European Communities (1999); Advocate General at the Court of Justice from 7 October 2000 to 3 May 2006; Judge at the Court of Justice since 4 May 2006.

Allan Rosas

Born 1948; Doctor of Laws (1977) of the University of Turku (Finland); professor of law at the University of Turku (1978–81) and at the Åbo Akademi University (Turku/Åbo) (1981–96); Director of the latter's Institute for Human Rights (1985–95); various international and national academic positions of responsibility and memberships of learned societies; coordinated several international and national research projects and programmes, including in the fields of EU law, international law, humanitarian and human rights law, constitutional law and comparative public administration; represented the Finnish Government as member of, or adviser to, Finnish delegations at various international conferences and meetings; expert functions in relation to Finnish legal life, including in governmental law commissions and committees of the Finnish Parliament, as well as the UN, Unesco, OSCE (CSCE) and the Council of Europe; from 1995 Principal Legal Adviser at the Legal Service of the European Commission, in charge of external relations; from March 2001, Deputy Director-General of the European Commission Legal Service; Judge at the Court of Justice since 17 January 2002.

Rosario Silva de Lapuerta

Born 1954; bachelor of laws (Universidad Complutense, Madrid); *Abogado del Estado* in Malaga; *Abogado del Estado* at the legal service of the Ministry of Transport, Tourism and Communication and, subsequently, at the Legal Service of the Ministry of Foreign Affairs; Head *Abogado del Estado* of the State Legal Service for Cases before the Court of Justice of the European Communities and Deputy Director-General of the Community and International Legal Assistance Department (Ministry of Justice); member of the Commission think tank on the future of the Community judicial system; Head of the Spanish delegation in the 'Friends of the Presidency' Group with regard to the reform of the Community judicial system in the Treaty of Nice and of the Council ad hoc working party on the Court of Justice; Professor of Community Law at the Diplomatic School, Madrid; Co-director of the journal *Noticias de la Unión Europea*; Judge at the Court of Justice since 7 October 2003.

Juliane Kokott

Born 1957; law studies (Universities of Bonn and Geneva); LL.M. (American University/Washington DC); Doctor of Laws (Heidelberg University, 1985; Harvard University, 1990); visiting professor at the University of California, Berkeley (1991); professor of German and foreign public law, international law and European law at the Universities of Augsburg (1992), Heidelberg (1993) and Düsseldorf (1994); Deputy Judge for the Federal Government at the Court of Conciliation and Arbitration of the Organisation for Security and Cooperation in Europe (OSCE); Deputy Chairperson of the Federal Government's Advisory Council on Global Change (WBGU, 1996); professor of international law, international business law and European law at the University of St Gallen (1999); Director of the Institute for European and International Business Law at the University of St Gallen (2000); Deputy Director of the master of business law programme at the University of St Gallen (2001); Advocate General at the Court of Justice since 7 October 2003.

Endre Juhász

Born 1944; graduated in law from the University of Szeged, Hungary (1967); Hungarian Bar Entrance Examinations (1970); postgraduate studies in comparative law, University of Strasbourg, France (1969–72); official in the Legal Department of the Ministry of Foreign Trade (1966–74); Director for Legislative Matters (1973–74); First Commercial Secretary at the Hungarian Embassy, Brussels, responsible for European Community issues (1974–79); Director at the Ministry of Foreign Trade (1979–83); First Commercial Secretary, then Commercial Counsellor, to the Hungarian Embassy in Washington DC, USA (1983–89); Director-General at the Ministry of Trade and Ministry of International Economic Relations (1989–91); chief negotiator for the Association Agreement between the Republic of Hungary and the European Communities and their Member States (1990–91); Secretary-General of the Ministry of International Economic Relations, Head of the Office of European Affairs (1992); State Secretary at the Ministry of International Economic Relations (1993–94); State Secretary, President of the Office of European Affairs, Ministry of Industry and Trade (1994); Ambassador Extraordinary and Plenipotentiary, Head of Mission of the Republic of Hungary to the European Union (January 1995 to May 2003); chief negotiator for the accession of the Republic of Hungary to the European Union (July 1998 to April 2003); Minister without portfolio for the coordination of matters of European integration (from May 2003); Judge at the Court of Justice since 11 May 2004.

George Arestis

Born 1945; graduated in law from the University of Athens (1968); MA in comparative politics and government, University of Kent at Canterbury (1970); practice as a lawyer in Cyprus (1972–82); appointed District Court Judge (1982); promoted to President of a District Court (1995); Administrative President of the District Court of Nicosia (1997–2003); Judge at the Supreme Court of Cyprus (2003); Judge at the Court of Justice from 11 May 2004 to 8 October 2014.

Anthony Borg Barthet U.O.M.

Born 1947; Doctorate in Law at the Royal University of Malta in 1973; entered the Maltese civil service as notary to the government in 1975; Counsel for the Republic in 1978, Senior Counsel for the Republic in 1979, Assistant Attorney General in 1988 and appointed Attorney General by the President of Malta in 1989; part-time lecturer in civil law at the University of Malta (1985–89); member of the Council of the University of Malta (1998–2004); member of the Commission for the Administration of Justice (1994–2004); member of the Board of Governors of the Malta Arbitration Centre (1998–2004); Judge at the Court of Justice since 11 May 2004.

Marko Ilešič

Born 1947; Doctor of Law (University of Ljubljana); specialism in comparative law (Universities of Strasbourg and Coimbra); judicial service examination; professor of civil, commercial and private international law; Vice-Dean (1995–2001) and Dean (2001–04) of the Faculty of Law at the University of Ljubljana; author of numerous legal publications; Honorary Judge and President of Chamber at the Labour Court, Ljubljana (1975–86); President of the Sports Tribunal of Slovenia (1978–86); President of the Arbitration Chamber of the Ljubljana Stock Exchange; Arbitrator at the Chamber of Commerce of Yugoslavia (until 1991) and Slovenia (from 1991); Arbitrator at the International Chamber of Commerce in Paris; Judge on the Board of Appeals of UEFA and FIFA; President of the Union of Slovene Lawyers' Associations (1993–2005); member of the International Law Association, of the International Maritime Committee and of several other international legal societies; Judge at the Court of Justice since 11 May 2004.

Jiří Malenovský

Born 1950; Doctor of Law from the Charles University in Prague (1975); senior faculty member (1974–90), Vice-Dean (1989–91) and Head of the Department of International and European Law (1990–92) at Masaryk University, Brno; Judge at the Constitutional Court of Czechoslovakia (1992); Envoy to the Council of Europe (1993–98); President of the Committee of Ministers' Deputies of the Council of Europe (1995); Senior Director at the Ministry of Foreign Affairs (1998–2000); President of the Czech and Slovak branch of the International Law Association (1999–2001); Judge at the Constitutional Court (2000–04); member of the Legislative Council (1998–2000); member of the Permanent Court of Arbitration at The Hague (from 2000); professor of public international law at Masaryk University, Brno (2001); Judge at the Court of Justice since 11 May 2004.

Egils Levits

Born 1955; graduated in law and in political science from the University of Hamburg; research assistant at the Faculty of Law, University of Kiel; adviser to the Latvian Parliament on questions of international law, constitutional law and legislative reform; Ambassador of the Republic of Latvia to Germany and Switzerland (1992–93), Austria, Switzerland and Hungary (1994–95); Vice-Prime Minister and Minister for Justice, acting Minister for Foreign Affairs (1993–94); Conciliator at the Court of Conciliation and Arbitration within the OSCE (from 1997); member of the Permanent Court of Arbitration (from 2001); elected as Judge at the European Court of Human Rights in 1995, re-elected in 1998 and 2001; numerous publications in the spheres of constitutional and administrative law, law reform and European Community law; Judge at the Court of Justice since 11 May 2004.

Aindrias Ó Caoimh

Born 1950; bachelor in civil law (National University of Ireland, University College Dublin, 1971); barrister (King's Inns, 1972); Diploma in European Law (University College Dublin, 1977); barrister (Bar of Ireland, 1972–99); lecturer in European law (King's Inns, Dublin); Senior Counsel (1994–99); Representative of the Government of Ireland on many occasions before the Court of Justice of the European Communities; Judge at the High Court (from 1999); bencher of the Honourable Society of King's Inns (since 1999); Vice-President of the Irish Society of European Law; member of the International Law Association (Irish Branch); son of Judge Andreas O'Keeffe (Aindrias Ó Caoimh), member of the Court of Justice 1974–85; Judge at the Court of Justice since 13 October 2004.

Lars Bay Larsen

Born 1953; awarded degrees in political science (1976) and law (1983) at the University of Copenhagen; official at the Ministry of Justice (1983–85); lecturer (1984–91), then associate professor (1991–96), in Family Law at the University of Copenhagen; Head of section at the *Advokatsamfund* (Danish Bar Association) (1985–86); Head of section (1986–91) at the Ministry of Justice; called to the Bar (1991); Head of division (1991–95), Head of the police department (1995–99) and Head of the law department (2000–03) at the Ministry of Justice; representative of the Kingdom of Denmark on the K-4 Committee (1995–2000), the Schengen Central Group (1996–98) and the Europol Management Board (1998–2000); Judge at the *Højesteret* (Supreme Court) (2003–06); Judge at the Court of Justice since 11 January 2006.

Eleanor Sharpston

Born 1955; studied economics, languages and law at King's College, Cambridge (1973–77); university teaching and research at Corpus Christi College, Oxford (1977–80); called to the Bar (Middle Temple, 1980); Barrister (1980–87 and 1990–2005); Legal Secretary in the Chambers of Advocate General, subsequently Judge, Sir Gordon Slynn (1987–90); lecturer in EC and comparative law (Director of European legal studies) at University College London (1990–92); lecturer in the Faculty of Law (1992–98), and subsequently affiliated lecturer (1998–2005), at the University of Cambridge; Fellow of King's College, Cambridge (1992–2010); Emeritus Fellow (since 2011); Senior Research Fellow at the Centre for European Legal Studies of the University of Cambridge (1998–2005); Queen's Counsel (1999); Bencher of Middle Temple (2005); Honorary Fellow of Corpus Christi College, Oxford (2010); LL.D (h.c.) Glasgow (2010) and Nottingham Trent (2011); Advocate General at the Court of Justice since 11 January 2006.

Paolo Mengozzi

Born 1938; professor of international law and holder of the Jean Monnet Chair of European Community law at the University of Bologna; Doctor *honoris causa* of the Carlos III University, Madrid; Visiting professor at the Johns Hopkins University (Bologna Center), the Universities of St Johns (New York), Georgetown, Paris II and Georgia (Athens) and the Institut universitaire international (Luxembourg); coordinator of the European Business Law Pallas Programme of the University of Nijmegen; member of the Consultative Committee of the Commission of the European Communities on Public Procurement; Under-Secretary of State for Trade and Industry during the Italian tenure of the Presidency of the Council; member of the working group of the European Community on the World Trade Organisation (WTO) and Director of the 1997 session of the research centre of The Hague Academy of International Law, devoted to the WTO; Judge at the Court of First Instance from 4 March 1998 to 3 May 2006; Advocate General at the Court of Justice since 4 May 2006.

Yves Bot

Born 1947; graduate of the Faculty of Law, Rouen; Doctor of Laws (University of Paris II, Panthéon-Assas); lecturer at the Faculty of Law, Le Mans; Deputy Public Prosecutor, then Senior Deputy Public Prosecutor, at the Public Prosecutor's Office, Le Mans (1974–82); Public Prosecutor at the Regional Court, Dieppe (1982–84); Deputy Public Prosecutor at the Regional Court, Strasbourg (1984–86); Public Prosecutor at the Regional Court, Bastia (1986–88); Advocate General at the Court of Appeal, Caen (1988–91); Public Prosecutor at the Regional Court, Le Mans (1991–93); Special Adviser to the Minister for Justice (1993–95); Public Prosecutor at the Regional Court, Nanterre (1995–2002); Public Prosecutor at the Regional Court, Paris (2002–04); Principal State Prosecutor at the Court of Appeal, Paris (2004–06); Advocate General at the Court of Justice since 7 October 2006.

Jean-Claude Bonichot

Born 1955; graduated in law at the University of Metz, degree from the Institut d'études politiques, Paris, former student at the École nationale d'administration; rapporteur (1982–85), *commissaire du gouvernement* (1985–87 and 1992–99), Judge (1999-2000), President of the Sixth Sub-Division of the Judicial Division (2000–06), at the Council of State; Legal Secretary at the Court of Justice (1987–91); Director of the Private Office of the Minister for Labour, Employment and Vocational Training, then Director of the Private Office of the Minister of State for the Civil Service and Modernisation of Administration (1991–92); Head of the Legal Mission of the Council of State at the National Health Insurance Fund for Employed Persons (2001–06); lecturer at the University of Metz (1988–2000), then at the University of Paris I, Panthéon-Sorbonne (from 2000); author of numerous publications on administrative law, Community law and European human rights law; founder and chairman of the editorial committee of the *Bulletin de jurisprudence de droit de l'urbanisme*, co-founder and member of the editorial committee of the *Bulletin juridique des collectivités locales*; President of the Scientific Council of the Research Group on Institutions and Law governing Regional and Urban Planning and Habitats; Judge at the Court of Justice since 7 October 2006.

Thomas von Danwitz

Born 1962; studied in Bonn, Geneva and Paris; State examination in law (1986 and 1992); Doctor of Laws (University of Bonn, 1988); international diploma in public administration (École nationale d'administration, 1990); teaching authorisation (University of Bonn, 1996); professor of German public law and European law (1996–2003), Dean of the Faculty of Law of the Ruhr University, Bochum (2000–01); professor of German public law and European law (University of Cologne, 2003–06); Director of the Institute of Public Law and Administrative Science (2006); visiting professor at the Fletcher School of Law and Diplomacy (2000), François Rabelais University, Tours (2001–06), and the University of Paris I, Panthéon-Sorbonne (2005–06); Doctor *honoris causa* of François Rabelais University, Tours (2010); Judge at the Court of Justice since 7 October 2006.

Alexander Arabadjiev

Born 1949; legal studies (St Kliment Ohridski University, Sofia); Judge at the District Court, Blagoevgrad (1975–83); Judge at the Regional Court, Blagoevgrad (1983–86); Judge at the Supreme Court (1986–91); Judge at the Constitutional Court (1991–2000); member of the European Commission of Human Rights (1997–99); member of the European Convention on the Future of Europe (2002–03); member of the National Assembly (2001–06); Observer at the European Parliament; Judge at the Court of Justice since 12 January 2007.

Camelia Toader

Born 1963; degree in law (1986), doctorate in law (1997), University of Bucharest; trainee judge at the Court of First Instance, Buftea (1986–88); Judge at the Court of First Instance, Sector 5, Bucharest (1988–92); called to the Bucharest Bar (1992); lecturer (1992–2005), then, from 2005, professor in civil law and European contract law at the University of Bucharest; Doctoral studies and research at the Max Planck Institute for Private International Law, Hamburg (between 1992 and 2004); Head of the European Integration Unit at the Ministry of Justice (1997–99); Judge at the High Court of Cassation and Justice (1999–2007); visiting professor at the University of Vienna (2000 and 2011); taught Community law at the National Institute for Magistrates (2003 and 2005–06); member of the editorial board of several legal journals; from 2010 associate member of the International Academy of Comparative Law and honorary researcher at the Centre for European Legal Studies of the Legal Research Institute of the Romanian Academy; Judge at the Court of Justice since 12 January 2007.

Marek Safjan

Born 1949; Doctor of Law (University of Warsaw, 1980); habilitated Doctor in Legal Science (University of Warsaw, 1990); professor of law (1998); Director of the Civil Law Institute of the University of Warsaw (1992–96); Vice-Rector of the University of Warsaw (1994–97); Secretary-General of the Polish Section of the Henri Capitant Association of Friends of French Legal Culture (1994–98); representative of Poland on the Bioethics Committee of the Council of Europe (1991–97); Judge (1997–98), then President (1998–2006), of the Constitutional Court; member (since 1994) and Vice-President (since 2010) of the International Academy of Comparative Law, member of the International Association of Law, Ethics and Science (since 1995), member of the Helsinki Committee in Poland; member of the Polish Academy of Arts and Sciences; Pro Merito Medal conferred by the Secretary-General of the Council of Europe (2007); author of a very large number of publications in the fields of civil law, medical law and European law; Doctor *honoris causa* of the European University Institute (2012); Judge at the Court of Justice since 7 October 2009.

Daniel Šváby

Born 1951; Doctor of Laws (University of Bratislava); Judge at the District Court, Bratislava; Judge, Appeal Court, responsible for civil law cases, and Vice-President, Appeal Court, Bratislava; member of the Civil and Family Law Section at the Ministry of Justice Law Institute; acting Judge responsible for commercial law cases at the Supreme Court; member of the European Commission of Human Rights (Strasbourg); Judge at the Constitutional Court (2000–04); Judge at the Court of First Instance from 12 May 2004 to 6 October 2009; Judge at the Court of Justice since 7 October 2009.

Maria Berger

Born 1956; studied law and economics (1975–79), Doctor of Law; assistant lecturer and lecturer at the Institute of Public Law and Political Sciences of the University of Innsbruck (1979–84); administrator at the Federal Ministry of Science and Research, ultimately Deputy Head of Unit (1984–88); official responsible for questions relating to the European Union at the Federal Chancellery (1988–89); Head of the European Integration Section of the Federal Chancellery (preparation for the Republic of Austria's accession to the European Union) (1989–92); Director at the EFTA Surveillance Authority, in Geneva and Brussels (1993–94); Vice-President of Danube University, Krems (1995–96); Member of the European Parliament (November 1996 to January 2007 and December 2008 to July 2009) and member of the Committee on Legal Affairs; substitute member of the European Convention on the Future of Europe (February 2002 to July 2003); Councillor of the Municipality of Perg (September 1997 to September 2009); Federal Minister for Justice (January 2007 to December 2008); publications on various topics of European law; honorary professor of European law at the University of Vienna; visiting professor at the University of Saarbrücken; Honorary Senator of the University of Innsbruck; Judge at the Court of Justice since 7 October 2009.

Niilo Jääskinen

Born 1958; law degree (1980), postgraduate law degree (1982), doctorate (2008) at the University of Helsinki; lecturer at the University of Helsinki (1980–86); Legal Secretary and acting Judge at the District Court, Rovaniemi (1983–84); Legal Adviser (1987–89), and subsequently Head of the European Law Section (1990–95), at the Ministry of Justice; Legal Adviser at the Ministry of Foreign Affairs (1989–90); adviser, and clerk for European affairs, of the Grand Committee of the Finnish Parliament (1995–2000); acting Judge (July 2000 to December 2002), then Judge (January 2003 to September 2009), at the Supreme Administrative Court; responsible for legal and institutional questions during the negotiations for the accession of the Republic of Finland to the European Union; Advocate General at the Court of Justice since 7 October 2009.

Pedro Cruz Villalón

Born 1946; law degree (1963–68) and awarded doctorate (1975) at the University of Seville; postgraduate studies at the University of Freiburg im Breisgau (1969–71); assistant professor of political law at the University of Seville (1978–86); professor of constitutional law at the University of Seville (1986–92); Legal Secretary at the Constitutional Court (1986–87); Judge at the Constitutional Court (1992–98); President of the Constitutional Court (1998–2001); Fellow of the *Wissenschaftskolleg zu Berlin* (2001–02); professor of constitutional law at the Autonomous University of Madrid (2002–09); elected member of the Council of State (2004–09); author of numerous publications; Advocate General at the Court of Justice since 14 December 2009.

Alexandra (Sacha) Prechal

Born 1959; studied law (University of Groningen, 1977–83); Doctor of Laws (University of Amsterdam, 1995); law lecturer in the Law Faculty of the University of Maastricht (1983–87); Legal Secretary at the Court of Justice of the European Communities (1987–91); lecturer at the Europa Institute of the Law Faculty of the University of Amsterdam (1991–95); professor of European law in the Law Faculty of the University of Tilburg (1995–2003); professor of European law in the Law Faculty of the University of Utrecht and board member of the Europa Institute of the University of Utrecht (from 2003); member of the editorial board of several national and international legal journals; author of numerous publications; member of the Royal Netherlands Academy of Arts and Sciences; Judge at the Court of Justice since 10 June 2010.

Egidijus Jarašiūnas

Born 1952; law degree at the University of Vilnius (1974–79); Doctor of Legal Science of the Law University of Lithuania (1999); member of the Lithuanian Bar (1979–90); member of the Supreme Council (parliament) of the Republic of Lithuania (1990–92), then member of the Seimas (parliament) of the Republic of Lithuania and member of the Seimas' State and Law Committee (1992–96); Judge at the Constitutional Court of the Republic of Lithuania (1996–2005), then adviser to the President of the Constitutional Court (from 2006); lecturer in the constitutional law department of the Law Faculty of Mykolas Romeris University (1997–2000), then associate professor (2000–04) and professor (from 2004) in that department, and finally Head of Department (2005–07); Dean of the Law Faculty of Mykolas Romeris University (2007–10); member of the Venice Commission (2006–10); signatory of the act of 11 March 1990 re-establishing Lithuania's independence; author of numerous legal publications; Judge at the Court of Justice since 6 October 2010.

Carl Gustav Fernlund

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

José Luís da Cruz Vilaça

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

Melchior Wathelet

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

Christopher Vajda

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

Nils Wahl

Born 1961; Doctor of Laws, University of Stockholm (1995); associate professor (docent) and holder of the Jean Monnet Chair of European law (1995); professor of European law, University of Stockholm (2001); managing director of an educational foundation (1993–2004); chairman of the *Nätverket för europarättslig forskning* (Swedish network for European legal research) (2001–06); member of the *Rådet för konkurrensfrågor* (Council for Competition Law Matters) (2001–06); Judge at the General Court from 7 October 2006 to 28 November 2012; Advocate General at the Court of Justice since 28 November 2012.

Siniša Rodin

Born 1963; University of Zagreb, Faculty of Law, Ph.D. (1995); University of Michigan Law School, LL.M. (1992); Harvard Law School, Fulbright Fellow and visiting scholar (2001–02); tenure track and tenured professor at the University of Zagreb, Faculty of Law, since 1987, Jean Monnet Chair since 2006 and Jean Monnet Chair *ad personam* since 2011; Cornell Law School visiting professor (2012); member of the Croatian Constitutional Amendment Committee, President of the working group on EU membership (2009–10); member of the Croatian EU membership negotiating team (2006–11); author of numerous publications; Judge at the Court of Justice since 4 July 2013.

François Biltgen

Born 1958; master's degree in law (1981) and diploma of advanced studies (DEA) in Community law at the University of Law, Economics and Social Sciences, Paris II (1982); graduated from the Institut d'études politiques, Paris (1982); lawyer at the Luxembourg Bar (1987–99); Deputy in the Chamber of Deputies (1994–99); Municipal Councillor of the town of Esch-sur-Alzette (1987–99); Deputy Mayor of Esch-sur-Alzette (1997–99); alternate member of the Luxembourg delegation to the Committee of the Regions of the European Union (1994–99); Minister for Labour and Employment, Minister for Religious Affairs, Minister for Relations with Parliament, Minister with responsibility for Communications (1999–2004); Minister for Labour and Employment, Minister for Religious Affairs, Minister for Culture, Higher Education and Research (2004–09); Minister for Justice, Minister for the Civil Service and Administrative Reform, Minister for Higher Education and Research, Minister for Communications and the Media, Minister for Religious Affairs (2009–13); Joint President of the Ministerial Conference of the Bologna Process in 2005 and 2009; Joint President of the Ministerial Conference of the European Space Agency (2012–13); Judge at the Court of Justice since 7 October 2013.

Küllike Jürimäe

Born 1962; law degree, University of Tartu (1981–86); Assistant to the Public Prosecutor, Tallinn (1986–91); diploma, Estonian School of Diplomacy (1991–92); Legal Adviser (1991–93) and General Counsel at the Chamber of Commerce and Industry (1992–93); Judge, Tallinn Court of Appeal (1993–2004); European masters in human rights and democratisation, Universities of Padua and Nottingham (2002–03); Judge at the General Court from 12 May 2004 to 23 October 2013; Judge at the Court of Justice since 23 October 2013.

Maciej Szpunar

Born 1971; degrees in law from the University of Silesia and the College of Europe, Bruges; Doctor of Law (2000); Habilitated Doctor in Legal Science (2009); professor of law (2013); visiting scholar at Jesus College, Cambridge (1998), the University of Liège (1999) and the European University Institute, Florence (2003); lawyer (2001–08), member of the Committee for Private International Law of the Civil Law Codification Commission under the Ministry of Justice (2001–08); member of the Board of Trustees of the Academy of European Law, Trier (from 2008); member of the Research Group on Existing EC Private Law ('Acquis Group') (from 2006); Undersecretary of State in the Office of the Committee for European Integration (2008–09), then in the Ministry of Foreign Affairs (2010–13); Vice-Chairman of the Scientific Board of the Institute of Justice; agent of the Polish Government in a large number of cases before the EU judicature; Head of the Polish delegation at the negotiations on the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union; member of the editorial board of a number of legal journals; author of numerous publications in the fields of European law and private international law; Advocate General at the Court of Justice since 23 October 2013.

Constantinos Lycourgos

Born 1964; diploma of advanced studies in Community law (1987) and Doctor of Laws of Université Panthéon-Assas (1991); lecturer at the life-long learning centre at Université Panthéon-Assas; called to the Cyprus Bar (1993); special adviser on European affairs to the Cypriot Minister for Foreign Affairs (1996–99); member of the negotiating team for the accession of Cyprus to the European Union (1998–2003); adviser on EU law at the Law Office of the Republic of Cyprus (1999–2002); member of Greek–Cypriot delegations in negotiations for a comprehensive settlement of the Cyprus problem (2002–14); senior lawyer (2002–07), then Senior Counsel of the Republic of Cyprus (2007–14) and Head of the EU Law Section of the Law Office of the Republic of Cyprus (2003–14); agent of the Cypriot Government before the Courts of the European Union (2004–14); member of the board of the European Public Law Organisation (Athens, Greece) since 2013; Judge at the Court of Justice since 8 October 2014.

Alfredo Calot Escobar

Born 1961; law degree at the University of Valencia (1979–84); business analyst at the Council of the Chambers of Commerce of the Autonomous Community of Valencia (1986); lawyer-linguist at the Court of Justice (1986–90); lawyer-reviser at the Court of Justice (1990–93); administrator in the Press and Information Service of the Court of Justice (1993–95); administrator in the Secretariat of the Institutional Affairs Committee of the European Parliament (1995–96); aide to the Registrar of the Court of Justice (1996-99); Legal Secretary at the Court of Justice (1999–2000); Head of the Spanish Translation Division at the Court of Justice (2000–01); Director, then Director-General, of Translation at the Court of Justice (2001–10); registrar of the Court of Justice since 7 October 2010.

2. Change in the composition of the Court of Justice in 2014

Formal sitting on 8 October 2014

Following the resignation of Mr George Arestis, by decision of 24 September 2014 the representatives of the governments of the Member States of the European Union appointed Mr Constantinos Lycourgos for the remainder of the term of office, that is to say, until 6 October 2018.

A formal sitting took place on 8 October at the seat of the Court of Justice of the European Union on the occasion of the taking of the oath by the new judge and his entry into office.

3. Order of precedence

From 1 January 2014 to 3 July 2014

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

A. CALOT ESCOBAR, Registrar

From 4 July 2014 to 8 October 2014

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

A. CALOT ESCOBAR, Registrar

From 9 October 2014 to 31 December 2014

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

A. CALOT ESCOBAR, Registrar

4. Former members of the Court of Justice

Massimo Pilotti, Judge (1952–58), President from 1952 to 1958
Petrus Serrarens, Judge (1952–58)
Adrianus van Kleffens, Judge (1952–58)
Jacques Rueff, Judge (1952–59 and 1960–62)
Otto Riese, Judge (1952–63)
Maurice Lagrange, Advocate General (1952–64)
Louis Delvaux, Judge (1952–67)
Charles Léon Hammes, Judge (1952–67), President from 1964 to 1967
Karl Roemer, Advocate General (1953–73)
Nicola Catalano, Judge (1958–62)
Rino Rossi, Judge (1958–64)
Andreas Matthias Donner, Judge (1958–79), President from 1958 to 1964
Alberto Trabucchi, Judge (1962–72), then Advocate General (1973–76)
Robert Lecourt, Judge (1962–76), President from 1967 to 1976
Walter Strauss, Judge (1963–70)
Joseph Gand, Advocate General (1964–70)
Riccardo Monaco, Judge (1964–76)
Josse J. Mertens de Wilmars, Judge (1967–84), President from 1980 to 1984
Pierre Pescatore, Judge (1967–85)
Alain Louis Dutheillet de Lamothe, Advocate General (1970–72)
Hans Kutscher, Judge (1970-80), President from 1976 to 1980
Henri Mayras, Advocate General (1972–81)
Cearbhall O'Dalaigh, Judge (1973–74)
Max Sørensen, Judge (1973–79)
Gerhard Reischl, Advocate General (1973–81)
Jean–Pierre Warner, Advocate General (1973–81)
Alexander J. Mackenzie Stuart, Judge (1973–88), President from 1984 to 1988
Aindrias O'Keeffe, Judge (1974–85)
Adolphe Touffait, Judge (1976–82)
Francesco Capotorti, Judge (1976), then Advocate General (1976–82)
Giacinto Bosco, Judge (1976–88)
Thymen Koopmans, Judge (1979–90)
Ole Due, Judge (1979–94), President from 1988 to 1994
Ulrich Everling, Judge (1980–88)
Alexandros Chloros, Judge (1981–82)
Simone Rozès, Advocate General (1981–84)
Pieter Verloren van Themaat, Advocate General (1981–86)
Sir Gordon Slynn, Advocate General (1981–88), then Judge (1988–92)
Fernand Grévisse, Judge (1981–82 and 1988–94)
Kai Bahlmann, Judge (1982–88)
Yves Galmot, Judge (1982–88)
G. Federico Mancini, Advocate General (1982–88), then Judge (1988–99)
Constantinos Kakouris, Judge (1983–97)

Marco Darmon, Advocate General (1984–94)
René Joliet, Judge (1984–95)
Carl Otto Lenz, Advocate General (1984–97)
Thomas Francis O'Higgins, Judge (1985–91)
Fernand Schockweiler, Judge (1985–96)
José Luís da Cruz Vilaça, Advocate General (1986–88)
José Carlos de Carvalho Moitinho de Almeida, Judge (1986–2000)
Jean Mischo, Advocate General (1986–91 and 1997–2003)
Gil Carlos Rodríguez Iglesias, Judge (1986–2003), President from 1994 to 2003
Manuel Diez de Velasco, Judge (1988–94)
Manfred Zuleeg, Judge (1988–94)
Walter Van Gerven, Advocate General (1988–94)
Giuseppe Tesauro, Advocate General (1988–98)
Francis Geoffrey Jacobs, Advocate General (1988–2006)
Paul Joan George Kapteyn, Judge (1990–2000)
John L. Murray, Judge (1991–99)
Claus Christian Gulmann, Advocate General (1991–94), then Judge (1994–2006)
David Alexander Ogilvy Edward, Judge (1992–2004)
Michael Bendik Elmer, Advocate General (1994–97)
Günter Hirsch, Judge (1994–2000)
Georges Cosmas, Advocate General (1994–2000)
Antonio Mario La Pergola, Judge (1994 and 1999–2006), Advocate General (1995–99)
Jean-Pierre Puissochet, Judge (1994–2006)
Philippe Léger, Advocate General (1994–2006)
Hans Ragnemalm, Judge (1995–2000)
Nial Fennelly, Advocate General (1995–2000)
Leif Sevón, Judge (1995–2002)
Melchior Wathelet, Judge (1995–2003)
Peter Jann, Judge (1995–2009)
Dámaso Ruiz-Jarabo Colomer, Advocate General (1995–2009)
Romain Schintgen, Judge (1996–2008)
Krateros Ioannou, Judge (1997–99)
Siegbert Alber, Advocate General (1997–2003)
Antonio Saggio, Advocate General (1998–2000)
Fidelma O'Kelly Macken, Judge (1999–2004)
Stig von Bahr, Judge (2000–06)
Ninon Colneric, Judge (2000–06)
Leendert A. Geelhoed, Advocate General (2000–06)
Christine Stix-Hackl, Advocate General (2000–06)
Christiaan Willem Anton Timmermans, Judge (2000–10)
José Narciso da Cunha Rodrigues, Judge (2000–12)
Luís Miguel Poiares Pessoa Maduro, Advocate General (2003–09)
Jerzy Makarczyk, Judge (2004–09)
Ján Klučka, Judge (2004–09)
Pranas Kūris, Judge (2004–10)
Konrad Hermann Theodor Schiemann, Judge (2004–12)

Uno Lõhmus, Judge (2004–13)
Pernilla Lindh, Judge (2006–11)
Ján Mazák, Advocate General (2006–12)
Verica Trstenjak, Advocate General (2006–12)
Jean-Jacques Kasel, Judge (2008–13)
Georges Arestis, Judge (2004–14)

Presidents

Massimo Pilotti (1952–58)
Andreas Matthias Donner (1958–64)
Charles Léon Hammes (1964–67)
Robert Lecourt (1967–76)
Hans Kutscher (1976–80)
Josse J. Mertens de Wilmars (1980–84)
Alexander John Mackenzie Stuart (1984–88)
Ole Due (1988–94)
Gil Carlos Rodríguez Iglésias (1994–2003)

Registrars

Albert Van Houtte (1953–82)
Paul Heim (1982–88)
Jean-Guy Giraud (1988–94)
Roger Grass (1994–2010)

D — Statistics concerning the judicial activity of the Court of Justice

General activity of the Court of Justice

1. New cases, completed cases, cases pending (2010–14)

New cases

2. Nature of proceedings (2010–14)
3. Subject matter of the action (2014)
4. Actions for failure of a Member State to fulfil its obligations (2010–14)

Completed cases

5. Nature of proceedings (2010–14)
6. Judgments, orders, opinions (2014)
7. Bench hearing action (2010–14)
8. Cases completed by judgments, by opinions or by orders involving a judicial determination (2010–14)
9. Subject matter of the action (2010–14)
10. Subject matter of the action (2014)
11. Judgments concerning failure of a Member State to fulfil its obligations: outcome (2010–14)
12. Duration of proceedings (judgments and orders involving a judicial determination) (2010–14)

Cases pending as at 31 December

13. Nature of proceedings (2010–14)
14. Bench hearing action (2010–14)

Miscellaneous

15. Expedited procedures (2010–14)
16. Urgent preliminary ruling procedure (2010–14)
17. Proceedings for interim measures (2014)

General trend in the work of the Court (1952–2014)

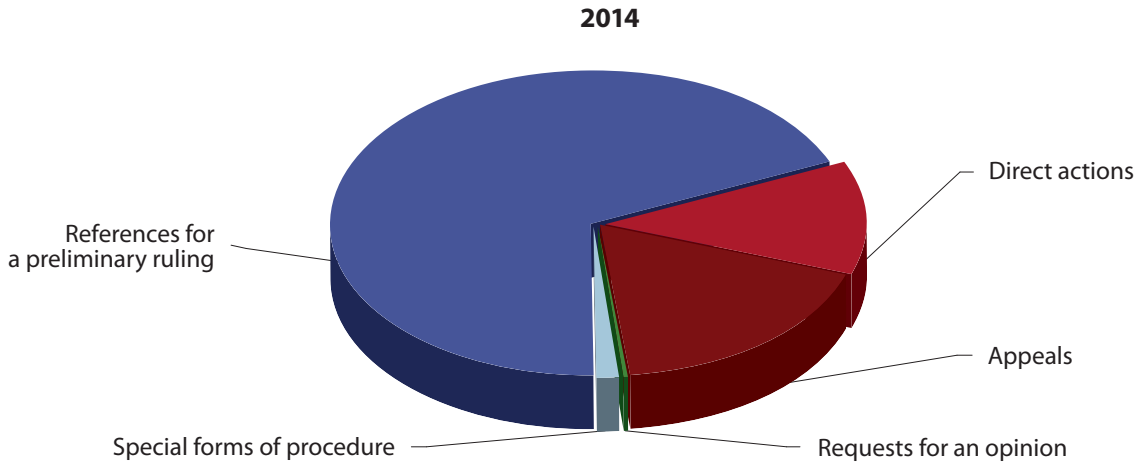
18. New cases and judgments
19. New references for a preliminary ruling (by Member State per year)
20. New references for a preliminary ruling (by Member State and by court or tribunal)
21. New actions for failure of a Member State to fulfil its obligations

1. *General activity of the Court of Justice*
New cases, completed cases, cases pending (2010–14) ([1])

	2010	2011	2012	2013	2014
New cases	631	688	632	699	622
Completed cases	574	638	595	701	719
Cases pending	799	849	886	884	787

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

2. *New cases* — Nature of proceedings (2010–14) ([1])



	2010	2011	2012	2013	2014
References for a preliminary ruling	385	423	404	450	428
Direct actions	136	81	73	72	74
Appeals	97	162	136	161	111
Appeals concerning interim measures or interventions	6	13	3	5	
Requests for an opinion			1	2	1
Special forms of procedure ([2])	7	9	15	9	8
Total	**631**	**688**	**632**	**699**	**622**
Applications for interim measures	3	3		1	3

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

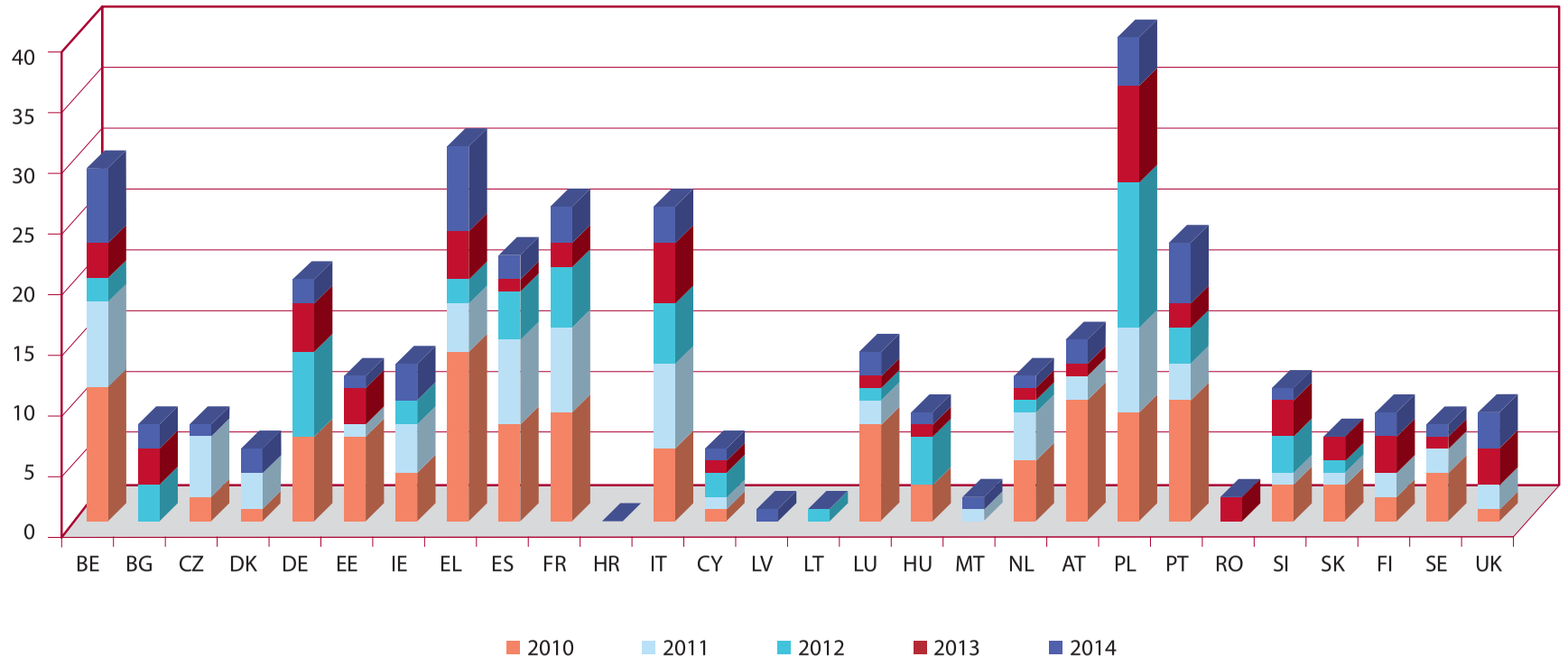
([2]) The following are considered to be 'special forms of procedure': legal aid; taxation of costs; rectification; application to set aside a judgment delivered by default; third-party proceedings; interpretation; revision; examination of a proposal by the First Advocate General to review a decision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

3. *New cases* — Subject-matter of the action (2014) ([1])

	References for a preliminary ruling	Direct actions	Appeals	Requests for an opinion	Total	Special forms of procedure
Access to documents			1		1	
Agriculture	9	1	3		13	
Approximation of laws	19	2			21	
Area of freedom, security and justice	49	3	1		53	
Citizenship of the Union	7	1	1		9	
Commercial policy	8		3		11	
Common fisheries policy			2		2	
Common foreign and security policy	1	1	5		7	
Competition	8		15		23	
Consumer protection	34				34	
Customs union and Common Customs Tariff	19		5		24	
Economic and monetary policy	2		1		3	
Economic, social and territorial cohesion			1		1	
Education, vocational training, youth and sport			1		1	
Employment			1		1	
Energy		4			4	
Environment	22	15	4		41	
External action by the European Union	2				2	
Financial provisions (budget, financial framework, own resources, combating fraud and so forth)	4				4	
Free movement of capital	5	2			7	
Free movement of goods	10	1			11	
Freedom of establishment	26				26	
Freedom of movement for persons	6	5			11	
Freedom to provide services	16	1	1	1	19	
Industrial policy	8	1			9	
Intellectual and industrial property	13		34		47	
Law governing the institutions	2	12	11		25	2
Principles of EU law	21	1	1		23	
Public health		1	1		2	
Public procurement	20		1		21	
Registration, evaluation, authorisation and restriction of chemicals (REACH regulation)	2				2	
Research and technological development and space			2		2	
Social policy	20	5			25	
Social security for migrant workers	4	2			6	
State aid	11	6	15		32	
Taxation	54	3			57	
Trans-European networks			1		1	
Transport	24	5			29	
TFEU	**426**	**72**	**111**	**1**	**610**	**2**
Privileges and immunities	1	1			2	
Procedure						6
Staff Regulations	1				1	
Others	**2**	**1**			**3**	**6**
Euratom Treaty		**1**			**1**	
OVERALL TOTAL	**428**	**74**	**111**	**1**	**614**	**8**

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

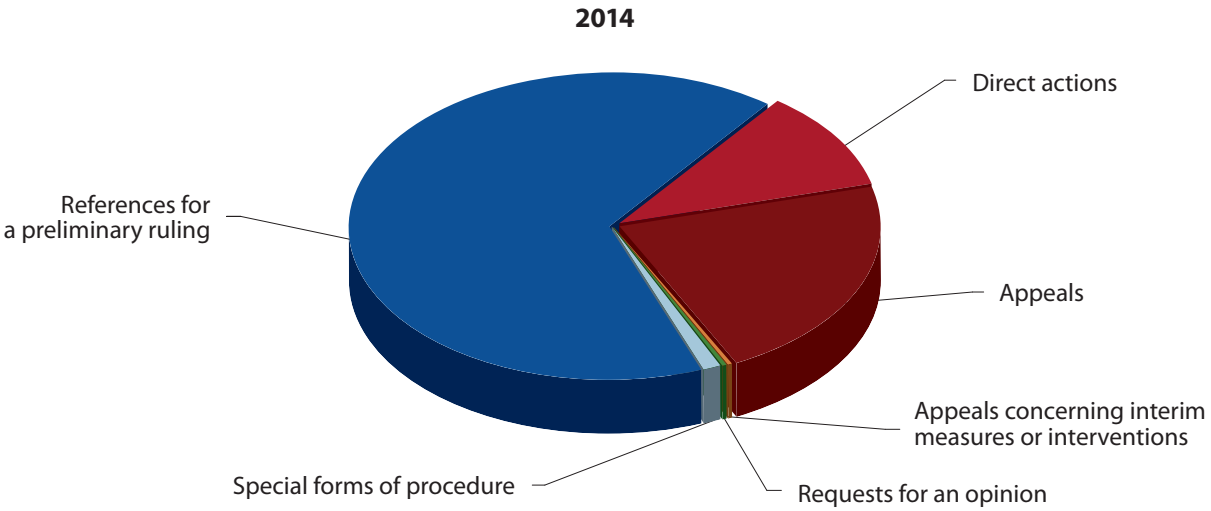
4. *New cases* — Actions for failure of a Member State to fulfil its obligations (2010–14) ([1])



	2010	2011	2012	2013	2014
Belgium	11	7	2	3	6
Bulgaria			3	3	2
Czech Republic	2	5			1
Denmark	1	3			2
Germany	7		7	4	2
Estonia	7	1		3	1
Ireland	4	4	2		3
Greece	14	4	2	4	7
Spain	8	7	4	1	2
France	9	7	5	2	3
Croatia					
Italy	6	7	5	5	3
Cyprus	1	1	2	1	1
Latvia					1
Lithuania			1		
Luxembourg	8	2	1	1	2
Hungary	3		4	1	1
Malta		1			1
Netherlands	5	4	1	1	1
Austria	10	2		1	2
Poland	9	7	12	8	4
Portugal	10	3	3	2	5
Romania				2	
Slovenia	3	1	3	3	1
Slovakia	3	1	1	2	
Finland	2	2		3	2
Sweden	4	2		1	1
United Kingdom	1	2		3	3
Total	**128**	**73**	**58**	**54**	**57**

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

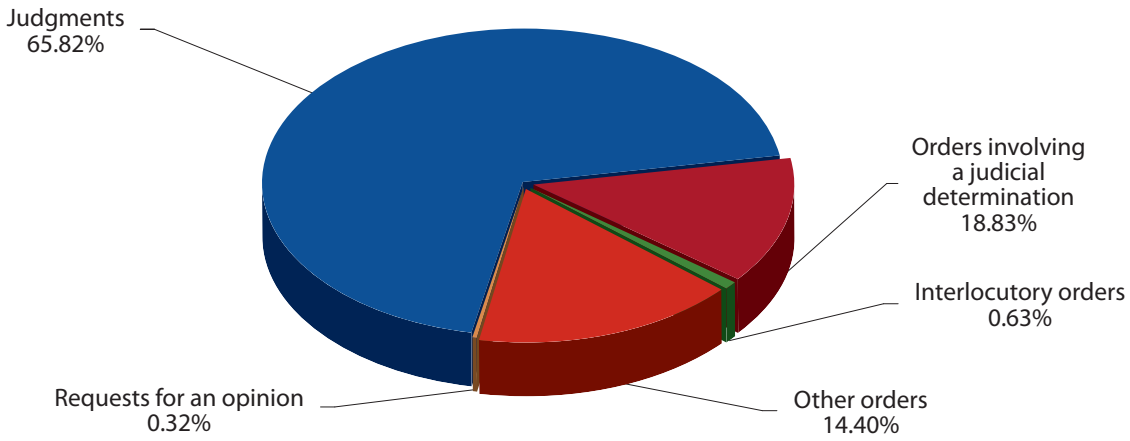
5. *Completed cases* — Nature of proceedings (2010–14) ([1])



	2010	2011	2012	2013	2014
References for a preliminary ruling	339	388	386	413	476
Direct actions	139	117	70	110	76
Appeals	84	117	117	155	157
Appeals concerning interim measures or interventions	4	7	12	5	1
Requests for an opinion		1		1	2
Special forms of procedure	8	8	10	17	7
Total	**574**	**638**	**595**	**701**	**719**

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

6. *Completed cases* — Judgments, orders, opinions (2014) ([1])



	Judgments	Orders involving a judicial determination ([2])	Interlocutory orders ([3])	Other orders ([4])	Requests for an opinion	Total
References for a preliminary ruling	296	60		64		420
Direct actions	56			19		75
Appeals	64	53	3	8		128
Appeals concerning interim measures or interventions			1			1
Requests for an opinion					2	2
Special forms of procedure		6				6
Total	**416**	**119**	**4**	**91**	**2**	**632**

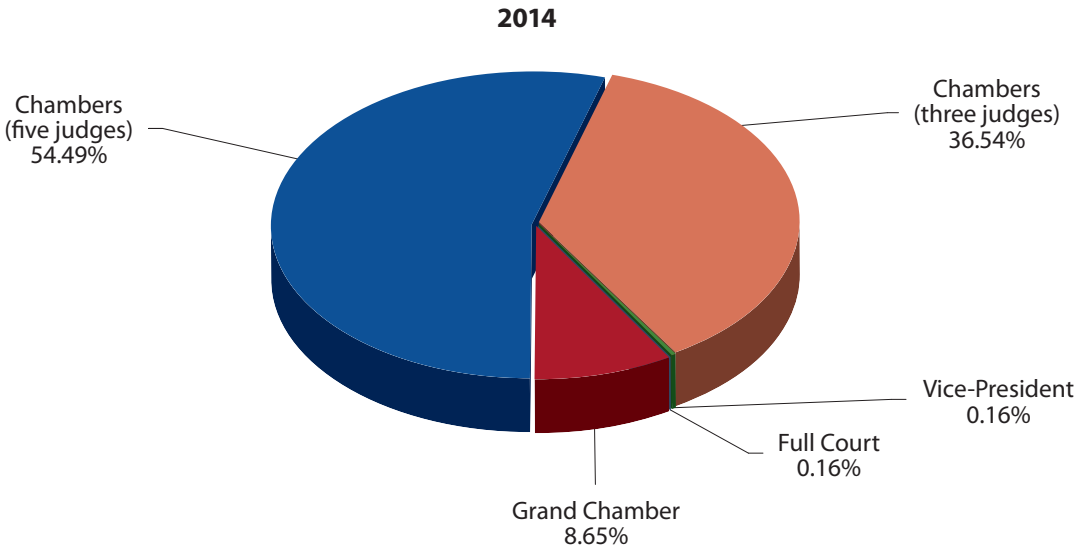
([1]) The figures given (net figures) represent the number of cases after joinder on the ground of similarity (a set of joined cases = one case).

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

([3]) Orders made following an application on the basis of Articles 278 TFEU and 279 TFEU (former Articles 242 EC and 243 EC), Article 280 TFEU (former Article 244 EC) or the corresponding provisions of the EAEC Treaty, or following an appeal against an order concerning interim measures or intervention.

([4]) Orders terminating the case by removal from the register, declaration that there is no need to give a decision or referral to the General Court.

7. *Completed cases* — Bench hearing action (2010–14) (1)

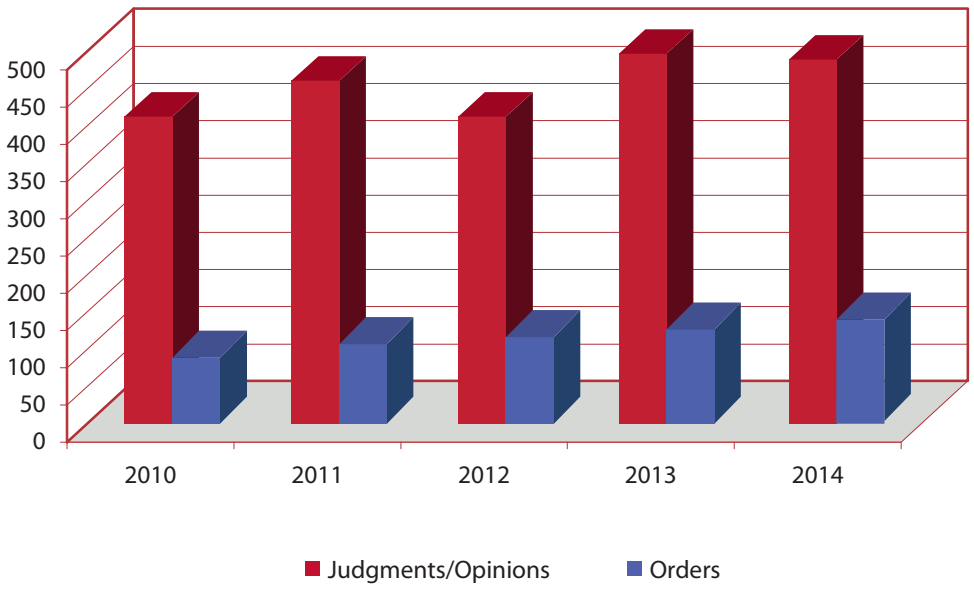


	2010			2011			2012			2013			2014		
	Judgments/Opinions	Orders (2)	Total	Judgments/Opinions	Orders (2)	Total	Judgments/Opinions	Orders (2)	Total	Judgments/Opinions	Orders (2)	Total	Judgments/Opinions	Orders (2)	Total
Full Court				1		1	1		1				1		1
Grand Chamber	70	1	71	62		62	47		47	52		52	51	3	54
Chambers (five judges)	280	8	288	290	10	300	275	8	283	348	18	366	320	20	340
Chambers (three judges)	56	76	132	91	86	177	83	97	180	91	106	197	110	118	228
President		5	5		4	4		12	12						
Vice-President											5	5		1	1
Total	**406**	**90**	**496**	**444**	**100**	**544**	**406**	**117**	**523**	**491**	**129**	**620**	**482**	**142**	**624**

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

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

8. *Cases completed by judgments, by opinions or by orders involving a judicial determination* (2010–14) (1) (2)



	2010	2011	2012	2013	2014
Judgments/Opinions	406	444	406	491	482
Orders	90	100	117	129	142
Total	**496**	**544**	**523**	**620**	**624**

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

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

9. *Cases completed by judgments, by opinions or by orders involving a judicial determination* — Subject matter of the action (2010–14) (1)

	2010	2011	2012	2013	2014
Access to documents		2	5	6	4
Accession of new states		1	2		
Agriculture	15	23	22	33	29
Approximation of laws	15	15	12	24	25
Area of freedom, security and justice	24	24	37	46	51
Budget of the Communities (2)	1				
Citizenship of the Union	6	6	8	12	9
Commercial policy	2	2	8	6	7
Common Customs Tariff (4)	7	2			
Common fisheries policy	2	1			5
Common foreign and security policy	2	3	9	12	3
Community own resources (2)	5	2			
Company law	17	8	1	4	3
Competition	13	19	30	42	28
Consumer protection (3)	3	4	9	19	20
Customs union and Common Customs Tariff (4)	15	19	19	11	21
Economic and monetary policy	1		3		1
Economic, social and territorial cohesion			3	6	8
Education, vocational training, youth and sport			1		1
Energy	2	2		1	3
Environment (3)	9	35	27	35	30
Environment and consumers (3)	48	25	1		
External action by the European Union	10	8	5	4	6
Financial provisions (budget, financial framework, own resources, combating fraud and so forth) (2)	1	4	3	2	5
Free movement of capital	6	14	21	8	6
Free movement of goods	6	8	7	1	10
Freedom of establishment	17	21	6	13	9
Freedom of movement for persons	17	9	18	15	20
Freedom to provide services	30	27	29	16	11
Industrial policy	9	9	8	15	3
Intellectual and industrial property	38	47	46	43	69
Law governing the institutions	26	20	27	31	18
Principles of EU law	4	15	7	17	23
Public health		3	1	2	3
Public procurement		8	12	12	13
Regional policy	2				
Registration, evaluation, authorisation and restriction of chemicals (REACH regulation)		1			5
Research and technological development and space			1	1	
Research, information, education and statistics	1				

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	2010	2011	2012	2013	2014
Social policy	36	36	28	27	51
Social security for migrant workers	6	8	8	12	6
State aid	16	48	10	34	41
Taxation	66	49	64	74	52
Tourism			1		
Transport	4	7	14	17	18
EC Treaty/TFEU	**482**	**535**	**513**	**601**	**617**
EU Treaty	4	1			
CS Treaty		1			
Privileges and immunities		2	3		
Procedure	6	5	7	14	6
Staff Regulations	4			5	1
Others	10	7	10	19	7
OVERALL TOTAL	**496**	**544**	**523**	**620**	**624**

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

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

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

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

10. *Cases completed by judgments, by opinions or by orders involving a judicial determination* — Subject matter of the action (2014) (1)

	Judgments/ Opinions	Orders (2)	Total
Access to documents	3	1	4
External action by the European Union	4	2	6
Agriculture	22	7	29
State aid	13	28	41
Citizenship of the Union	7	2	9
Economic, social and territorial cohesion	8		8
Competition	26	2	28
Financial provisions (budget, financial framework, own resources, combating fraud and so forth)	4	1	5
Company law	2	1	3
Law governing the institutions	14	4	18
Education, vocational training, youth and sport		1	1
Energy	3		3
Registration, evaluation, authorisation and restriction of chemicals (REACH regulation)		5	5
Environment	28	2	30
Area of freedom, security and justice	47	4	51
Taxation	46	6	52
Freedom of establishment	9		9
Free movement of capital	6		6
Free movement of goods	8	2	10
Freedom of movement for persons	20		20
Freedom to provide services	9	2	11
Public procurement	11	2	13
Commercial policy	7		7
Common fisheries policy	5		5
Economic and monetary policy	1		1
Common foreign and security policy	2	1	3
Industrial policy	2	1	3
Social policy	43	8	51
Principles of EU law	10	13	23
Intellectual and industrial property	36	33	69
Consumer protection	17	3	20
Approximation of laws	23	2	25
Public health	2	1	3
Social security for migrant workers	6		6
Transport	17	1	18
Customs union and Common Customs Tariff	20	1	21
EC Treaty/TFEU	**481**	**136**	**617**

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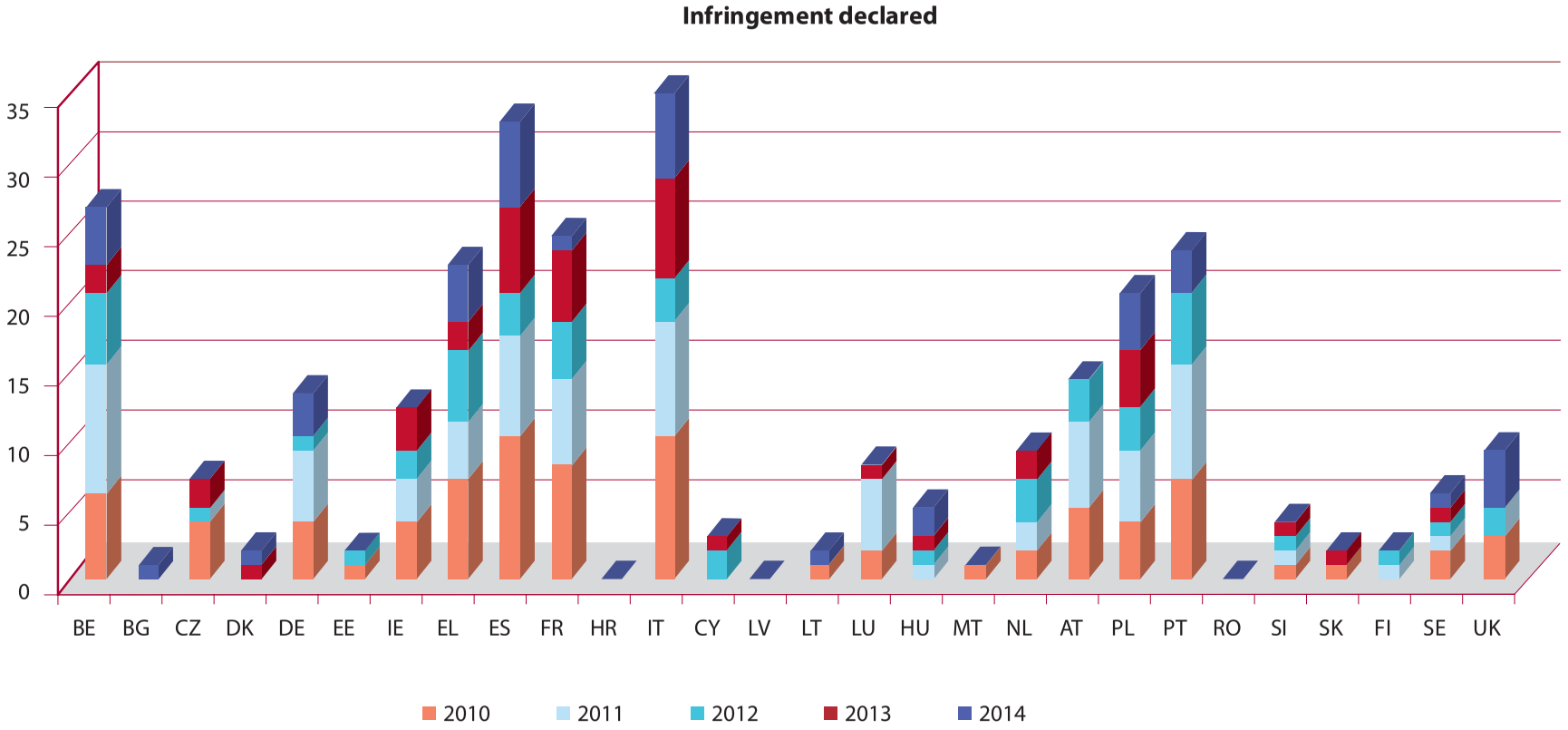
	Judgments/ Opinions	Orders ([2])	Total
Procedure		6	6
Staff Regulations	1		1
Others	1	6	7
OVERALL TOTAL	**482**	**142**	**624**

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

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

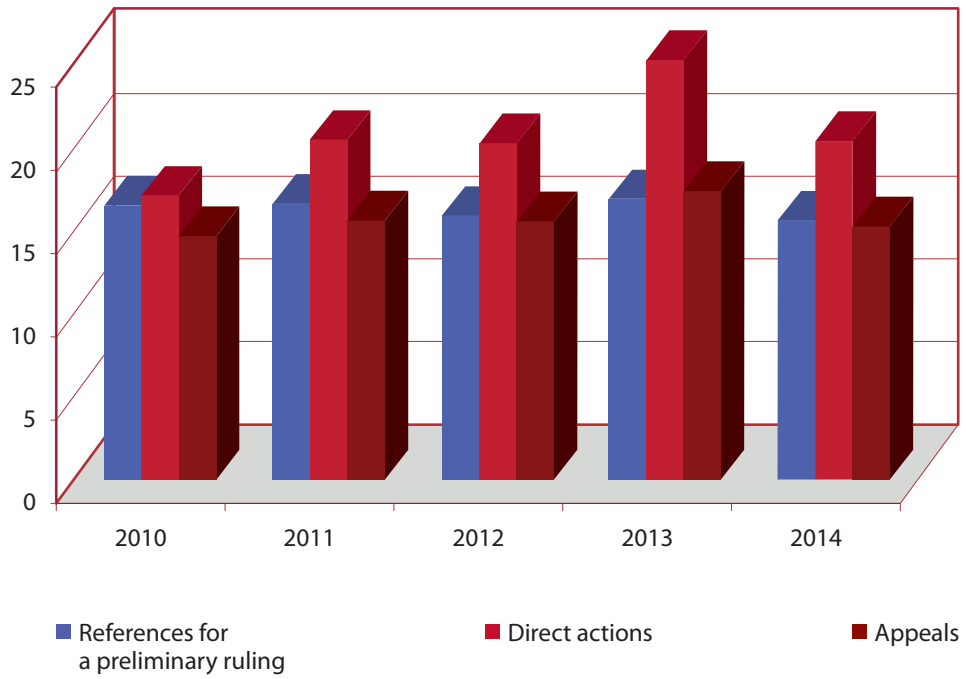
11. *Completed cases* — Judgments concerning failure of a Member State to fulfil its obligations: outcome (2010–14) (1)



	2010		2011		2012		2013		2014	
	Infringement declared	Dismissed	Infringement declared	Dismissed	Infringement declared	Dismissed	Infringement declared	Dismissed	Infringement declared	Dismissed
Belgium	6	1	9	1	5	1	2	1	4	
Bulgaria									1	1
Czech Republic	4				1		2	2		
Denmark							1	1	1	
Germany	4	2	5		1	2		2	3	1
Estonia	1				1					
Ireland	4		3		2		3	1		
Greece	7		4		5		2	1	4	
Spain	10	2	7	1	3		6		6	
France	8	2	6		4		5	3	1	
Croatia										
Italy	10		8	1	3		7	1	6	
Cyprus				1	2		1			
Latvia										
Lithuania	1								1	
Luxembourg	2		5				1	1		
Hungary			1	1	1		1		2	
Malta	1	1		1						
Netherlands	2	1	2		3	1	2	2		1
Austria	5		6		3			1		
Poland	4	1	5		3		4	2	4	
Portugal	7	1	8	1	5			1	3	
Romania				1						
Slovenia	1		1		1		1			
Slovakia	1			1		1	1			
Finland			1		1			2		
Sweden	2		1		1		1	1	1	
United Kingdom	3	1			2			1	4	
Total	**83**	**12**	**72**	**9**	**47**	**5**	**40**	**23**	**41**	**3**

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

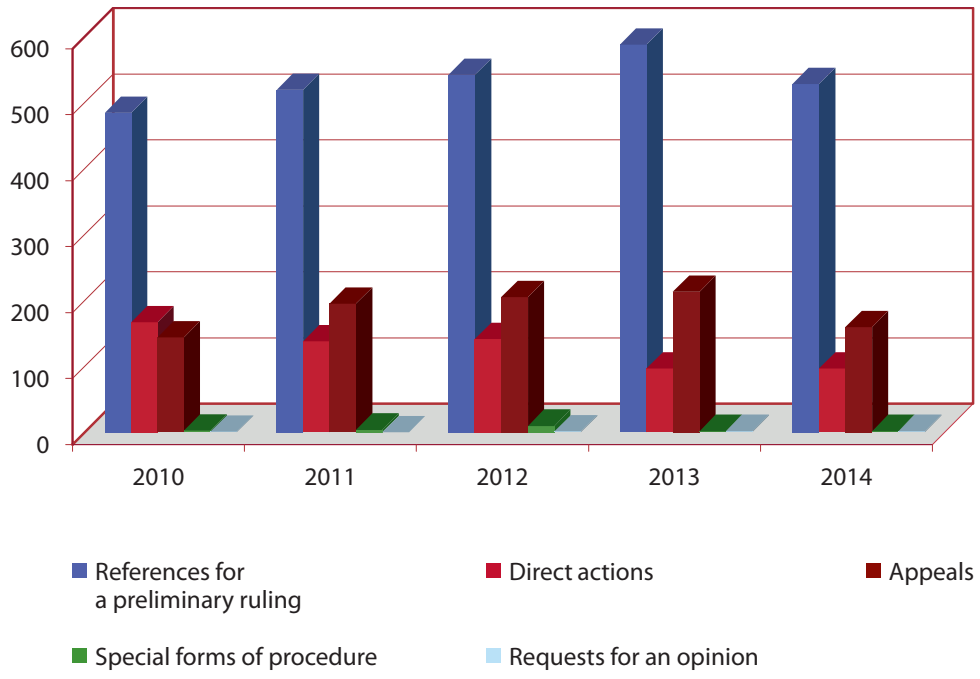
12. *Completed cases* — Duration of proceedings (2010–14) ([1])
(judgments and orders involving a judicial determination)



	2010	2011	2012	2013	2014
References for a preliminary ruling	16.1	16.3	15.6	16.3	15.0
Urgent preliminary ruling procedure	2.2	2.5	1.9	2.2	2.2
Direct actions	16.7	20.3	19.7	24.3	20.0
Appeals	14.0	15.1	15.2	16.6	14.5

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

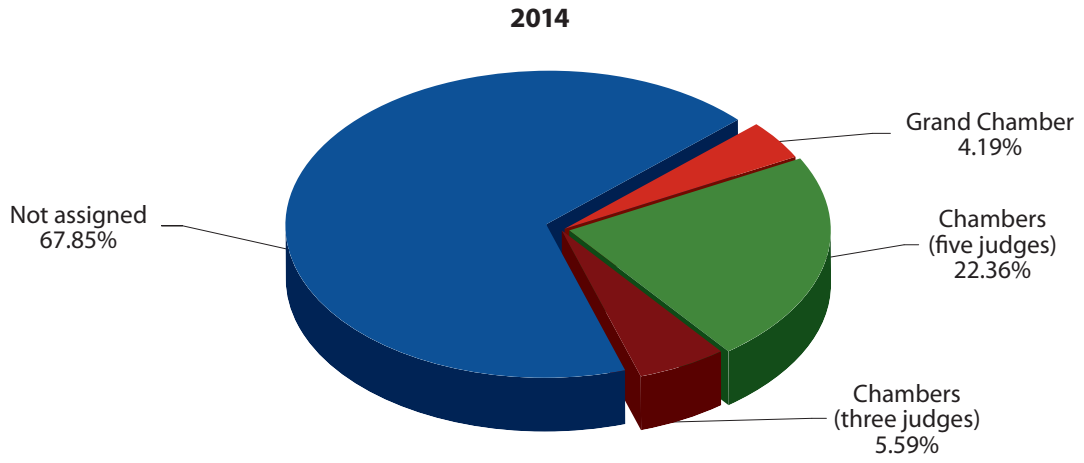
13. *Cases pending as at 31 December* — Nature of proceedings (2010–14) (1)



	2010	2011	2012	2013	2014
References for a preliminary ruling	484	519	537	574	526
Direct actions	167	131	134	96	94
Appeals	144	195	205	211	164
Special forms of procedure	3	4	9	1	2
Requests for an opinion	1		1	2	1
Total	**799**	**849**	**886**	**884**	**787**

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

14. *Cases pending as at 31 December* — Bench hearing action (2010–14) ([1])



	2010	2011	2012	2013	2014
Full Court	1				
Grand Chamber	49	42	44	37	33
Chambers (five judges)	193	157	239	190	176
Chambers (three judges)	33	23	42	51	44
President	4	10			
Vice-President			1	1	
Not assigned	519	617	560	605	534
Total	**799**	**849**	**886**	**884**	**787**

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

15. *Miscellaneous* — Expedited procedures (2010–14)

	2010		2011		2012		2013		2014	
	Granted	Not granted	Granted	Not granted	Granted	Not granted	Granted	Not granted	Granted	Not granted
Direct actions		1			1			1		
References for a preliminary ruling		8	2	7	1	5		16	2	10
Appeals				5		1				
Total	**4**	**9**	**2**	**12**	**2**	**6**		**17**	**2**	**10**

16. *Miscellaneous* — Urgent preliminary ruling procedure (2010–14)

	2010		2011		2012		2013		2014	
	Granted	Not granted	Granted	Not granted	Granted	Not granted	Granted	Not granted	Granted	Not granted
Area of freedom, security and justice	5	4	2	5	4	1	2	3	4	1
Approximation of laws										1
Total	**5**	**4**	**2**	**5**	**4**	**1**	**2**	**3**	**4**	**2**

17. *Miscellaneous* — Proceedings for interim measures (2014) ([1])

	New applications for interim measures	Appeals concerning interim measures or interventions	Outcome	
			Not granted	Granted
State aid	1		2	
Law governing the institutions	1		1	
Commercial policy	1		1	
OVERALL TOTAL	**3**		**4**	

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

18. *General trend in the work of the Court (1952–2014) — New cases and judgments*

Year	New cases (1)							Judgments/ Opinions (2)
	References for a preliminary ruling	Direct actions	Appeals	Appeals concerning interim measures or interventions	Requests for an opinion	Total	Applications for interim measures	
1953		4				4		
1954		10				10		2
1955		9				9	2	4
1956		11				11	2	6
1957		19				19	2	4
1958		43				43		10
1959		46			1	47	5	13
1960		22			1	23	2	18
1961	1	24			1	26	1	11
1962	5	30				35	2	20
1963	6	99				105	7	17
1964	6	49				55	4	31
1965	7	55				62	4	52
1966	1	30				31	2	24
1967	23	14				37		24
1968	9	24				33	1	27
1969	17	60				77	2	30
1970	32	47				79		64
1971	37	59				96	1	60
1972	40	42				82	2	61
1973	61	131				192	6	80
1974	39	63				102	8	63
1975	69	61			1	131	5	78
1976	75	51			1	127	6	88
1977	84	74				158	6	100
1978	123	146			1	270	7	97
1979	106	1 218				1 324	6	138
1980	99	180				279	14	132
1981	108	214				322	17	128
1982	129	217				346	16	185
1983	98	199				297	11	151
1984	129	183				312	17	165
1985	139	294				433	23	211
1986	91	238				329	23	174
1987	144	251				395	21	208
1988	179	193				372	17	238
1989	139	244				383	19	188

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Year	New cases (1)							Judgments/ Opinions (2)
	References for a preliminary ruling	Direct actions	Appeals	Appeals concerning interim measures or interventions	Requests for an opinion	Total	Applications for interim measures	
1990	141	221	15	1		378	12	193
1991	186	140	13	1	2	342	9	204
1992	162	251	24	1	2	440	5	210
1993	204	265	17			486	13	203
1994	203	125	12	1	3	344	4	188
1995	251	109	46	2		408	3	172
1996	256	132	25	3		416	4	193
1997	239	169	30	5		443	1	242
1998	264	147	66	4		481	2	254
1999	255	214	68	4		541	4	235
2000	224	197	66	13	2	502	4	273
2001	237	187	72	7		503	6	244
2002	216	204	46	4		470	1	269
2003	210	277	63	5	1	556	7	308
2004	249	219	52	6	1	527	3	375
2005	221	179	66	1		467	2	362
2006	251	201	80	3		535	1	351
2007	265	221	79	8		573	3	379
2008	288	210	77	8	1	584	3	333
2009	302	143	105	2	1	553	1	376
2010	385	136	97	6		624	3	370
2011	423	81	162	13		679	3	370
2012	404	73	136	3	1	617		357
2013	450	72	161	5	2	690	1	434
2014	428	74	111		1	614	3	416
Total	**8 710**	**8 901**	**1 689**	**106**	**23**	**19 429**	**359**	**10 213**

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

(2) Net figures.

19. *General trend in the work of the Court (1952–2014)* — New references for a preliminary ruling (by Member State per year)

	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	HR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	Others[1]	Total
1961																			1											1
1962																			5											5
1963																1			5											6
1964												2							4											6
1965					4					2									1											7
1966																			1											1
1967	5				11					3						1			3											23
1968	1				4					1		1							2											9
1969	4				11					1						1														17
1970	4				21					2		2							3											32
1971	1				18					6		5				1			6											37
1972	5				20					1		4							10											40
1973	8				37					4		5				1			6											61
1974	5				15					6		5							7									1		39
1975	7			1	26					15		14				1			4									1		69
1976	11				28		1			8		12							14									1		75
1977	16			1	30		2			14		7							9									5		84
1978	7			3	46		1			12		11							38									5		123
1979	13			1	33		2			18		19				1			11									8		106
1980	14			2	24		3			14		19							17									6		99
1981	12			1	41					17		11				4			17									5		108
1982	10			1	36					39		18							21									4		129
1983	9			4	36		2			15		7							19									6		98
1984	13			2	38		1			34		10							22									9		129
1985	13				40		2			45		11				6			14									8		139
1986	13			4	18		4	2	1	19		5				1			16									8		91
1987	15			5	32		2	17	1	36		5				3			19									9		144

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	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	HR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	Others[1]	Total
1988	30			4	34				1	38		28				2			26									16		179
1989	13			2	47		1	2	2	28		10				1			18			1						14		139
1990	17			5	34		4	2	6	21		25				4			9			2						12		141
1991	19			2	54		2	3	5	29		36				2			17			3						14		186
1992	16			3	62			1	5	15		22				1			18			1						18		162
1993	22			7	57		1	5	7	22		24				1			43			3						12		204
1994	19			4	44		2		13	36		46				1			13			1						24		203
1995	14			8	51		3	10	10	43		58				2			19	2		5					6	20		251
1996	30			4	66			4	6	24		70				2			10	6		6				3	4	21		256
1997	19			7	46		1	2	9	10		50				3			24	35		2				6	7	18		239
1998	12			7	49		3	5	55	16		39				2			21	16		7				2	6	24		264
1999	13			3	49		2	3	4	17		43				4			23	56		7				4	5	22		255
2000	15			3	47		2	3	5	12		50							12	31		8				5	4	26	1	224
2001	10			5	53		1	4	4	15		40				2			14	57		4				3	4	21		237
2002	18			8	59			7	3	8		37				4			12	31		3				7	5	14		216
2003	18			3	43		2	4	8	9		45				4			28	15		1				4	4	22		210
2004	24			4	50		1	18	8	21		48				1	2		28	12		1				4	5	22		249
2005	21		1	4	51		2	11	10	17		18				2	3		36	15	1	2				4	11	12		221
2006	17		3	3	77		1	14	17	24		34			1	1	4		20	12	2	3			1	5	2	10		251
2007	22	1	2	5	59	2	2	8	14	26		43			1		2		19	20	7	3	1		1	5	6	16		265
2008	24		1	6	71	2	1	9	17	12		39	1	3	3	4	6		34	25	4	1				4	7	14		288
2009	35	8	5	3	59	2		11	11	28		29	1	4	3		10	1	24	15	10	3	1	2	1	2	5	28	1	302
2010	37	9	3	10	71		4	6	22	33		49		3	2	9	6		24	15	8	10	17	1	5	6	6	29		385
2011	34	22	5	6	83	1	7	9	27	31		44		10	1	2	13		22	24	11	11	14	1	3	12	4	26		423
2012	28	15	7	8	68	5	6	1	16	15		65		5	2	8	18	1	44	23	6	14	13		9	3	8	16		404
2013	26	10	7	6	97	3	4	5	26	24		62	3	5	10		20		46	19	11	14	17	1	4	4	12	14		450
2014	23	13	6	10	87		5	4	41	20	1	52	2	7	6		23		30	18	14	8	28	4	3	8	3	12		428
Total	**762**	**78**	**40**	**165**	**2 137**	**15**	**77**	**170**	**354**	**906**	**1**	**1 279**	**7**	**37**	**29**	**83**	**107**	**2**	**909**	**447**	**74**	**124**	**91**	**9**	**27**	**91**	**114**	**573**	**2**	**8 710**

([1]) Case C-265/00 Campina Melkunie (Cour de justice Benelux/Benelux Gerechtshof).
Case C-196/09 Miles and Others (Complaints Board of the European Schools).

20. *General trend in the work of the Court (1952–2014) —* **New references for a preliminary ruling** (by Member State and by court or tribunal)

			Total
Belgium	Cour constitutionnelle	30	
	Cour de cassation	91	
	Conseil d'État	71	
	Other courts or tribunals	570	762
Bulgaria	Върховен касационен съд	1	
	Върховен административен съд	13	
	Other courts or tribunals	64	78
Czech Republic	Ústavní soud		
	Nejvyšší soud	3	
	Nejvyšší správní soud	20	
	Other courts or tribunals	17	40
Danemark	Højesteret	35	
	Other courts or tribunals	130	165
Germany	Bundesverfassungsgericht	1	
	Bundesgerichtshof	194	
	Bundesverwaltungsgericht	116	
	Bundesfinanzhof	303	
	Bundesarbeitsgericht	26	
	Bundessozialgericht	76	
	Other courts or tribunals	1 421	2 137
Estonia	Riigikohus	5	
	Other courts or tribunals	10	15
Ireland	Supreme Court	26	
	High Court	25	
	Other courts or tribunals	26	77
Greece	Άρειος Πάγος	10	
	Συμβούλιο της Επικρατείας	54	
	Other courts or tribunals	106	170
Spain	Tribunal Constitucional	1	
	Tribunal Supremo	53	
	Other courts or tribunals	300	354
France	Conseil constitutionnel	1	
	Cour de cassation	110	
	Conseil d'État	93	
	Other courts or tribunals	702	906
Croatia	Ustavni sud		
	Vrhovni sud		
	Visoki upravni sud		
	Visoki prekršajni sud		
	Other courts or tribunals	1	1

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			Total
Italy	Corte Costituzionale	2	
	Corte suprema di Cassazione	130	
	Consiglio di Stato	107	
	Other courts or tribunals	1 040	1 279
Cyprus	Ανώτατο Δικαστήριο	4	
	Other courts or tribunals	3	7
Latvia	Augstākā tiesa	21	
	Satversmes tiesa		
	Other courts or tribunals	16	37
Lithuania	Konstitucinis Teismas	1	
	Aukščiausiasis Teismas	11	
	Vyriausiasis administracinis teismas	9	
	Other courts or tribunals	8	29
Luxembourg	Cour supérieure de justice	10	
	Cour de cassation	12	
	Cour administrative	10	
	Other courts or tribunals	51	83
Hungary	Kúria	17	
	Fővárosi Ítélőtábla	5	
	Szegedi Ítélőtábla	2	
	Other courts or tribunals	83	107
Malta	Qorti Kostituzzjonali		
	Qorti ta' l- Appel		
	Other courts or tribunals	2	2
Netherlands	Hoge Raad	253	
	Raad van State	101	
	Centrale Raad van Beroep	59	
	College van Beroep voor het Bedrijfsleven	151	
	Tariefcommissie	35	
	Other courts or tribunals	310	909
Austria	Verfassungsgerichtshof	5	
	Oberster Gerichtshof	103	
	Verwaltungsgerichtshof	81	
	Other courts or tribunals	258	447
Poland	Trybunał Konstytucyjny		
	Sąd Najwyższy	9	
	Naczelny Sąd Administracyjny	28	
	Other courts or tribunals	37	74
Portugal	Supremo Tribunal de Justiça	4	
	Supremo Tribunal Administrativo	53	
	Other courts or tribunals	67	124

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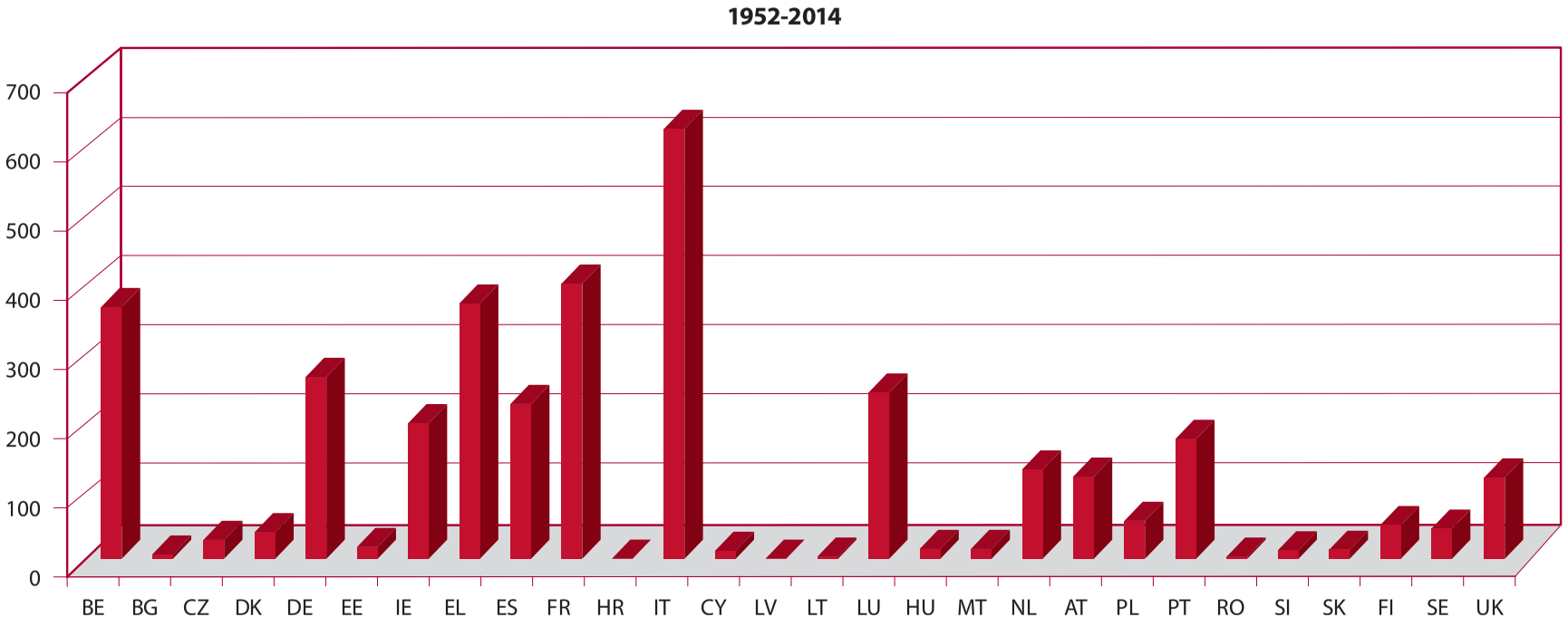
			Total
Romania	Înalta Curte de Casație și Justiție	7	
	Curtea de Apel	45	
	Other courts or tribunals	39	91
Slovenia	Ustavno sodišče	1	
	Vrhovno sodišče	5	
	Other courts or tribunals	3	9
Slovakia	Ústavný súd		
	Najvyšší súd	9	
	Other courts or tribunals	18	27
Finland	Korkein oikeus	16	
	Korkein hallinto-oikeus	45	
	Työtuomioistuin	3	
	Other courts or tribunals	27	91
Sweden	Högsta Domstolen	18	
	Högsta förvaltningsdomstolen	7	
	Marknadsdomstolen	5	
	Arbetsdomstolen	3	
	Other courts or tribunals	81	114
United Kingdom	House of Lords	40	
	Supreme Court	5	
	Court of Appeal	74	
	Other courts or tribunals	454	573
Others	Cour de justice Benelux/Benelux Gerechtshof ([1])	1	
	Complaints Board of the European Schools ([2])	1	2
Total			**8 710**

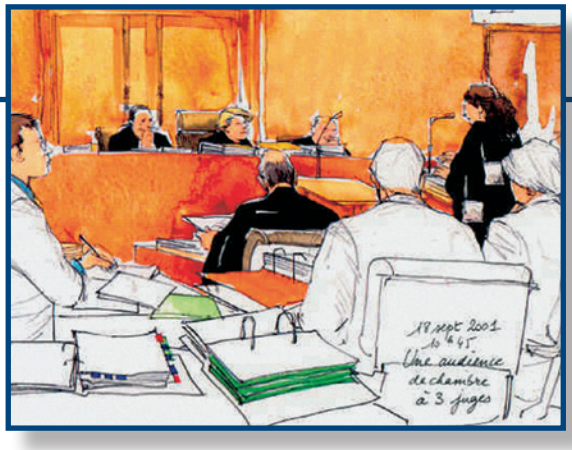
([1]) Case C-265/00 Campina Melkunie.

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

21. *General trend in the work of the Court (1952–2014) —* New actions for failure of a Member State to fulfil its obligations



	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	HR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	Total
1952-2014	382	8	28	40	278	22	205	396	241	415		641	12	1	3	264	15	15	146	136	71	195	3	13	13	57	54	137	**3 791**



Chapter II

The General Court

A — Proceedings of the General Court in 2014

By Mr Marc Jaeger, President of the General Court

In 2014 the Court celebrated its 25th anniversary fittingly, marking it in the company of its former members on the occasion of a day of reflection that offered both illumination and a hospitable ambience, while also appreciating the major accomplishments of the past year.

Unusually, the composition of the Court remained entirely unchanged, leading to efficiency and tranquillity and inevitably having an influence on the unprecedented results recorded in 2014. This continuity enabled the Court to derive the maximum benefit from, on the one hand, the efforts made and reforms implemented over several years and, on the other, the reinforcement represented by the recruitment of nine additional legal secretaries (one per Chamber) at the beginning of the year.

The Court was thus able to **complete 814 cases**, which is truly satisfying. That is not only a record, but above all a considerable increase (16%) compared with the average of the previous three years, themselves the most productive in the history of the Court. More broadly, an analysis of this three-year average from 2008 shows productivity gains of more than 50% (an increase from 479 in 2008 to 735 in 2014).

The major increase in the volume of the Court's activity is also reflected in the **number of cases pleaded** in 2014 (a significant proportion of which will be completed in 2015), which reached 390, a rise of more than 40% compared with 2013.

The number of **new cases brought** also increased significantly (owing, in particular, to large sets of related cases concerning State aid and restrictive measures), reaching an unprecedented level (912 cases). Therefore, in spite of an exceptional performance, the number of cases pending before the Court (1 423 cases) rose by nearly 100 compared with 2013. On the other hand, it is interesting that the ratio of the number of cases pending to the number of completed cases (which gives an indication of the theoretical prospective duration of proceedings) is the lowest recorded for almost 10 years.

This positive trend is reflected in the **average duration of cases** completed in 2014, which fell by 3.5 months (from 26.9 months in 2013 to 23.4 months in 2014), that is to say, a change of more than 10%, returning to the figures recorded a decade ago.

The Court thus succeeded in containing the impact of the constant increase in the number of cases brought before it, relying on change in its working methods and a moderate increase in its resources. In addition, it will soon be able to count on **the modernisation of its procedural arrangements**, as the work relating to its draft new Rules of Procedure was completed, within the Council, at the end of 2014. This instrument, which is expected to enter into force in 2015, will contain many new provisions, enabling the Court to make further improvements to the efficiency of its procedures and to respond to the problems caused by its changing case-load. Examples of these new provisions include the possibility of assigning intellectual property cases to a single judge, the power to adjudicate by judgment without a hearing, the framework for the system of intervention, and rules on the treatment of information or material pertaining to the security of the European Union or that of its Member States.

In a constant state of change, the Court thus continues along its path, wholly committed to satisfying the fundamental rights of those subject to its jurisdiction and guided by the desire to achieve the fine balance that must be struck between speed and quality in the performance of its judicial role.

I. Proceedings concerning the legality of measures

Admissibility of actions brought under Article 263 TFEU

In 2014, the case-law of the General Court provided clarification of the concepts of a measure against which an action may be brought and of a regulatory act not entailing implementing measures, for the purposes of Article 263 TFEU.

1. Concept of a measure against which an action may be brought

In the judgment of 13 November 2014 in *Spain* v *Commission* (T-481/11, ECR, EU:T:2014:945), the Court addressed the concept of a purely confirmatory measure when ruling on an action for annulment in part of an implementing regulation relating to an agricultural matter.

The Court observed that it has consistently been held that a measure is regarded as merely confirmatory of a previous measure if it contains no new factor as compared with the previous measure and was not preceded by a re-examination of the circumstances of the person to whom the previous measure was addressed. That case-law, which relates to individual measures, must be applied also in the case of legislative measures, as there is no justification for drawing a distinction between those different types of measures. According to the Court, a measure is regarded as adopted after a re-examination of the circumstances where it was adopted, either at the request of the person concerned or at the initiative of its author, on the basis of substantial factors which had not been taken into account at the time of adoption of the preceding measure. On the other hand, the Court continued, if the matters of fact or law on which the new measure is based are not different from those which justified the adoption of the preceding measure, that new measure is purely confirmatory of the preceding measure.

As regards the circumstances in which factors may be regarded as new and substantial, the Court explained that a factor must be classified as new, whether or not that factor existed at the time of adoption of the preceding measure, if, for whatever reason, including a failure by the author of the earlier measure to act diligently, that factor was not taken into consideration when the earlier measure was adopted. In order for the factor in question to be substantial, it must be capable of substantially altering the legal situation as considered by the authors of the earlier measure.

The Court further observed that it must be possible to request the re-examination of a measure which depends on whether the factual and legal circumstances which led to its adoption continue to apply, in order to establish whether its retention is justified. According to the Court, a re-examination seeking to verify whether a previously adopted measure remains justified in the light of a change in the legal or factual situation which has taken place in the meantime leads to the adoption of a measure which is not purely confirmatory of the earlier measure, but constitutes a measure open to challenge which can be the subject of an action for annulment under Article 263 TFEU.

2. Concept of a regulatory act not entailing implementing measures

The Court had occasion to address the concept of a regulatory act not entailing implementing measures, within the meaning of the fourth paragraph of Article 263 TFEU, in the judgment of 26 September 2014 in *Dansk Automat Brancheforening* v *Commission* (T-601/11, ECR, under appeal, EU:T:2014:839). The Court heard an action brought by an association of undertakings and companies licensed to install and operate gaming machines against the Commission decision declaring the introduction by Denmark of lower taxes for online gaming than for casinos and amusement arcades compatible with the internal market.

Called upon in the context of that action to examine the applicant's argument that the contested decision constituted a regulatory act not entailing implementing measures within the meaning of the fourth paragraph of Article 263 TFEU, the Court observed that it follows from the case-law of the Court of Justice and, in particular, from the judgment in *Telefónica* v *Commission* ([1]) that that concept is to be interpreted in the light of the principle of effective judicial protection. The Court observed, moreover, that where natural or legal persons are unable, because of the conditions governing admissibility laid down in the fourth paragraph of Article 263 TFEU, to challenge a regulatory act of the European Union directly before the Courts of the European Union, they are protected against the application to them of such an act by the ability to challenge the implementing measures which the act entails.

Since, firstly, the contested decision did not define its specific, actual consequences for each of the taxpayers and, secondly, it was apparent from its wording that the entry into force of the law on gaming duties had been postponed by the national authorities until the Commission had given its final decision in accordance with Article 108(3) TFEU, the Court considered that that decision entailed implementing measures. The specific, actual consequences of such a decision for taxpayers had materialised as national acts in the form of the law on gaming duties and the acts implementing that law fixing the amounts of tax payable by the taxpayers, which, as such, were implementing measures within the meaning of the fourth paragraph *in fine* of Article 263 TFEU. Since those acts could be challenged before the national courts, the taxpayers could have access to a court, without being required to infringe the law; they were able to plead the invalidity of the contested decision in proceedings before the national courts and could, as the case may be, cause them to request a preliminary ruling from the Court of Justice pursuant to Article 267 TFEU. Consequently, the action against that decision did not fulfil the admissibility requirements laid down in the fourth paragraph of Article 263 TFEU.

Admissibility of actions brought under Article 265 TFEU

In the case giving rise to the judgment of 21 March 2014 in *Yusef* v *Commission* (T-306/10, ECR, EU:T:2014:141), the Court heard an action for failure to fulfil obligations, seeking a declaration that the Commission had unlawfully failed to remove the applicant's name from the list of persons subject to restrictive measures under Regulation (EC) No 881/2002 ([2]), following his request for a review of his inclusion on that list.

([1]) Judgment of 19 December 2013 in *Telefónica* v *Commission* (C-274/12 P, ECR, EU:C:2013:852, paragraph 27 et seq.).

([2]) Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ 2002 L 139, p. 9).

The Court held, first of all, that an applicant is not permitted to circumvent the expiry of the period for bringing an action under Article 263 TFEU for annulment of an act of an institution by using 'the procedural artifice' of an action for failure to act under Article 265 TFEU concerning the refusal of that institution to annul or revoke that act. According to the Court, attention also had to be paid, however, to the particular temporal characteristics of the measure at issue in the case in point, as the validity of a fund-freezing measure adopted pursuant to Regulation No 881/2002 always depends on whether the factual and legal circumstances which led to its adoption continue to apply and on the need to persist with it in order to achieve its aims. It follows that, unlike a measure intended to produce permanent legal effects, it must be possible to request the review of such a measure at any time in order to establish whether its retention is justified and, in the event of the Commission's refusal to accede to such a request, to challenge that refusal by means of an action for failure to act. In that regard, the Court observed that, in the case in point, there were two new factual developments, namely, firstly, the judgment of the Court of Justice in *Kadi and Al Barakaat International Foundation* v *Council and Commission* ([3]) and, secondly, the fact that the Government of the United Kingdom of Great Britain and Northern Ireland had concluded that the applicant no longer satisfied the criteria for inclusion on that list and had stated that it intended to have his name removed from it. In that context, the Court considered that account had to be taken not only of the judgment in *Kadi I* (EU:C:2008:461) but also, and above all, of the change of attitude and approach on the part of the Commission to which that judgment had inevitably given rise, which itself amounted to a substantial new factor. Immediately after delivery of that judgment, the Commission had radically changed its approach and undertaken to review, if not on its own initiative, then at least at the express request of the persons concerned, all the other cases involving the freezing of funds pursuant to Regulation No 881/2002.

Even if the Commission took the view that the imposition on the applicant of the restrictive measures laid down by Regulation No 881/2002 was and remained justified in substance, it was in any case bound, as soon as possible, to remedy the manifest infringement of the applicable principles which occurred when the applicant was placed on that list, after having found that the infringement was identical, in essence, to the infringement of those same principles determined by the Court of Justice in the judgment in *Kadi I* (EU:C:2008:461) and the judgment in *Commission and Others* v *Kadi* ([4]) and by the General Court in the judgments in *Kadi* v *Council and Commission* and *Kadi* v *Commission* ([5]). Thus, according to the Court, it had to be held that the Commission had been in the position of having failed to act, a situation which was continuing at the time when the oral procedure was closed, since the irregularities found had still not been adequately remedied.

Competition rules applicable to undertakings

1. General issues

(a) Request for information

In 2014, the Court adjudicated on a number of actions brought by undertakings active in the cement sector for annulment of decisions requesting information which had been addressed to them

([3]) Judgment of 3 September 2008 in *Kadi and Al Barakaat International Foundation* v *Council and Commission* (C-402/05 P and C-415/05 P, ECR, '*Kadi I*', EU:C:2008:461).

([4]) Judgment of 18 July 2013 in *Commission and Others* v *Kadi* (C-584/10 P, C-593/10 P and C-595/10 P, ECR, EU:C:2013:518).

([5]) Judgments of 21 September 2005 in *Kadi* v *Council and Commission* (T-315/01, ECR, EU:T:2005:332) and of 30 September 2010 in *Kadi* v *Commission* (T-85/09, ECR, EU:T:2010:418).

by the Commission pursuant to Article 18(3) of Regulation (EC) No 1/2003 ([6]). Those actions enabled the Court to provide clarification concerning, in particular, the nature of the grounds that justify a request for information and the extent to which the right not to incriminate oneself allows a recipient to refuse to reply to such a request, and also concerning the requirement that the request be proportionate.

— Reasonableness of the grounds justifying the request

In the judgment of 14 March 2014 in *Cementos Portland Valderrivas* v *Commission* (T-296/11, ECR, EU:T:2014:121), the Court stated that, in order to be able to adopt a decision requesting information, the Commission must be in possession of reasonable grounds for suspecting that there has been an infringement of the competition rules.

While the Commission cannot be required to indicate, at the preliminary investigation stage, the evidence that leads it to consider that Article 101 TFEU may have been infringed, it cannot thus be inferred that the Commission does not have to be in possession of information leading it to consider that Article 101 TFEU may have been infringed before adopting such a decision. In order to satisfy the need for protection against arbitrary or disproportionate intervention by the public authorities in the sphere of private activities of any person, whether natural or legal, a decision requesting information must be directed at gathering the necessary documentary evidence to check the actual existence and scope of a given factual and legal situation in respect of which the Commission already possesses certain information, constituting reasonable grounds for suspecting an infringement of the competition rules. In the case in point, since an application to such effect had been brought before the Court and since the applicant had put forward certain arguments that might cast doubt on the reasonableness of the grounds on which the Commission had relied in order to adopt a decision under Article 18(3) of Regulation No 1/2003, the Court considered that it was under a duty to examine those grounds and to ascertain that they were reasonable. In carrying out that assessment, the Court was required to have regard to the fact that the contested decision formed part of the preliminary investigation stage, intended to enable the Commission to gather all the relevant information tending to prove or not to prove the existence of an infringement of the competition rules and to adopt an initial position on the course of the procedure and how it was to proceed. Accordingly, at that stage — before the adoption of a decision requesting information — the Commission could not be required to be in possession of evidence establishing the existence of an infringement. It was therefore enough for the evidence to give rise to a reasonable suspicion as to the commission of putative infringements in order for the Commission to be entitled to request the provision of additional information by way of a decision adopted under Article 18(3) of Regulation No 1/2003. As the evidence supplied by the Commission met that definition, the Court dismissed the action.

— Proportionality of the request

The judgment of 14 March 2014 in *Buzzi Unicem* v *Commission* (T-297/11, ECR, EU:T:2014:122), moreover, enabled the Court to point out that, in order for a decision requesting information to comply with the principle of proportionality, it is not sufficient for there to be a link between the information requested and the subject matter of the investigation. It is also important that the obligation to provide information imposed on an undertaking should not constitute a burden on that undertaking which is disproportionate to the needs of the investigation. According to the Court, it must

([6]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty [101 TFEU and 102 TFEU] (OJ 2003 L 1, p. 1).

be inferred that a decision requiring the addressee to provide — for the second time — information requested previously, on the ground that only some of the information is, in the Commission's view, incorrect, might prove to be a burden which is disproportionate to the needs of the investigation and would not, therefore, comply with the principle of proportionality. Likewise, the pursuit of an easier way to process the answers provided by the undertakings cannot justify compelling those undertakings to provide in a new format information which is already in the Commission's possession. In the case in point, while noting the size of the workload caused by the volume of information requested and the very high degree of detail of the format in which the Commission required the answers to be provided, the Court considered, however, that that workload was not disproportionate having regard to the needs of the investigation and the extent of the infringements in question.

The question of the proportionality of the request for information was also raised in the case giving rise to the judgment of 14 March 2014 in *Schwenk Zement* v *Commission* (T-306/11, ECR, under appeal, EU:T:2014:123). In this case, the Court was required, in particular, to decide whether the burden entailed by the obligation placed on the applicant undertaking to reply to a set of questions within two weeks was disproportionate.

The Court observed that, for the purposes of undertaking such an assessment, account must be taken of the fact that the applicant, as the addressee of a decision requesting information under Article 18(3) of Regulation No 1/2003, ran the risk not only of receiving a fine or periodic penalty if it supplied incomplete or belated information or if it failed to provide information, but also of receiving a fine if it supplied information which the Commission considered to be incorrect or misleading. Thus, the Court stated that the examination of the appropriateness of the time-limit fixed in a decision requesting information is particularly important, as that time-limit must enable the addressee of the decision not only to provide its reply in practical terms, but also to satisfy itself that the information supplied is complete, correct and not misleading.

(b) Complaint — Commitments

In the judgment of 6 February 2014 in *CEEES and Asociación de Gestores de Estaciones de Servicio* v *Commission* (T-342/11, ECR, EU:T:2014:60), the Court adjudicated in relation to a complaint submitted by two associations of undertakings alleging failure by an oil company to fulfil the commitments which it had given to the Commission in a proceeding pursuant to the competition rules. The applicants submitted that, following that company's failure to fulfil its obligations, the Commission ought to have reopened the procedure against it and to have imposed a fine or periodic penalty payment on it.

The Court rejected that line of argument. It observed that, where an undertaking fails to comply with a commitments decision for the purposes of Article 9(1) of Regulation No 1/2003, the Commission is not required to reopen the procedure against that undertaking, but has discretion in that regard. It also has discretion concerning the application of Article 23(2)(c) and Article 24(1)(c) of Regulation No 1/2003, under which it may impose fines or periodic penalty payments on undertakings where they do not comply with a commitment made binding by a decision taken pursuant to Article 9 of that regulation.

Furthermore, according to the Court, since the Commission must assess whether it is in the interest of the European Union to further investigate a complaint in the light of the matters of law and of fact relevant in a particular case, it must take into account the fact that the situation may arise in a different way depending on whether that complaint relates to a potential failure to comply with a commitments decision or a potential infringement of Article 101 TFEU or Article 102 TFEU.

Since a failure to fulfil commitments is, in general, more readily established than an infringement of Article 101 TFEU or Article 102 TFEU, the extent of the investigative measures necessary to establish such a failure to fulfil commitments will, in principle, be more limited. However, it cannot be inferred from this that, in such a case, the Commission should systematically reopen the procedure and impose a fine or a periodic penalty payment. Such an approach would convert the Commission's powers under Article 9(2), Article 23(2)(c) and Article 24(1)(c) of Regulation No 1/2003 into circumscribed powers, which would not be consistent with the wording of those provisions. In that context, the Court stated that the Commission should take into consideration the measures which a national competition authority has taken against an undertaking when it is assessing whether it is in the interest of the European Union to reopen the procedure against that undertaking for failure to fulfil its commitments, in order to impose on it a fine or a periodic penalty payment. In the light of those considerations, the Court concluded that, in the case in point, the Commission's decision not to reopen the procedure and not to impose a fine or a periodic penalty payment on the undertaking to which the complaint related was not vitiated by a manifest error of assessment.

2. Developments in the area of Article 101 TFEU

(a) Territorial jurisdiction of the Commission

In the case giving rise to the judgment of 27 February 2014 in *InnoLux* v *Commission* (T-91/11, ECR, under appeal, EU:T:2014:92), the Court heard an action for annulment brought against a Commission decision relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement ([7]). By that decision, the Commission had penalised the applicant for its participation in a cartel on the worldwide market for liquid crystal display panels ('LCD panels'). In support of its action, the applicant claimed, in particular, that the Commission had applied a legally flawed concept, that of 'direct EEA sales through transformed products', in determining the value of relevant sales when setting the fine. In the applicant's submission, in applying that concept, the Commission had artificially shifted the place where the sales at issue in the case in point had actually been made and had exceeded the limits of its territorial jurisdiction.

In that regard, the Court observed that an infringement of Article 101 TFEU consists of conduct made up of two elements, the formation of the agreement, decision or concerted practice and the implementation thereof. Where the condition relating to implementation is satisfied, the Commission's jurisdiction to apply the EU competition rules to such conduct is covered by the territoriality principle as universally recognised in public international law ([8]).

When a worldwide cartel has an anti-competitive object, it is implemented in the internal market merely because the products affected by the cartel are sold on that market. The Court emphasised that the fact that a cartel is implemented does not necessarily mean that it has actual effects, since the question whether the cartel has had an actual impact on the prices charged by the participants is relevant only in the context of determining the gravity of the cartel, for the purpose of calculating the fine, provided that the Commission decides to use that criterion. In that context, the notion of implementation is based, in essence, on the concept of an undertaking in competition law; the latter concept has to be regarded as having a decisive role in establishing the limits of the Commission's territorial jurisdiction to apply competition law. Thus, although the undertaking to which the

([7]) Agreement on the European Economic Area (OJ 1994 L 1, p. 3).

([8]) On the territorial jurisdiction of the Commission, see also the comments below on the judgment of 12 June 2014 in *Intel.* v *Commission* (T-286/09, ECR (Extracts), on appeal, EU:T:2014:547), in '3. Developments in the field of Article 102 TFEU'.

applicant belongs took part in a cartel conceived outside the EEA, the Commission had to be able to take proceedings in respect of the repercussions which that undertaking's conduct had on competition within the internal market and to impose a fine on it that was proportionate to the harm which the cartel represented for competition in that market. It followed, according to the Court, that in the case in point, in taking into account 'direct EEA sales through transformed products', the Commission did not unlawfully extend its territorial jurisdiction to proceed against infringements of the competition rules laid down in the Treaties.

(b) Calculation of the fine

— Value of sales — Components and finished products

In *InnoLux* v *Commission* the Court was also called upon to determine the value of sales affected by the cartel, which the Commission used in order to establish the basic amount of the fine to be imposed. The applicant submitted, in that regard, that the Commission had taken account of sales of finished products incorporating the LCD panels affected by the cartel, products in respect of which no finding of infringement had been made in the contested decision and to which the infringement identified in that decision did not relate, either directly or even indirectly.

The Court observed that if the Commission had not used that method it would not have been able to take into account, in the calculation of the fine, a considerable proportion of the sales of the LCD panels affected by the cartel transacted by cartel participants belonging to vertically-integrated undertakings, although those sales were harmful to competition within the EEA. According to the Court, the Commission was required to take account of the extent of the infringement on the relevant market and, to that end, could use the applicant's turnover in the LCD panels affected by the cartel as an objective criterion giving a proper measure of the harm which its participation in the cartel had done to normal competition, provided that that turnover resulted from sales having a link with the EEA, as in the case in point. Nor had the Commission used its investigation into the LCD panels affected by the cartel in order to make a finding of infringement in respect of finished products in which those LCD panels were incorporated. Far from equating the LCD panels affected by the cartel with the finished products of which they were a component, the Commission merely considered, purely for the purposes of calculating the fine, that, as regards vertically-integrated undertakings such as the applicant, the place of sale of the finished products corresponded to the place of sale of the component forming the subject matter of the cartel to a third party, which was thus not part of the same undertaking as the undertaking which produced that component.

— Method of calculation and guidelines

The judgment of 6 February 2014 in *AC Treuhand* v *Commission* (T-27/10, ECR, under appeal, EU:T:2014:59) gave the Court the opportunity to clarify the scope of the Commission's discretion when it applies the 2006 guidelines on the method of setting fines ([9]). In this case, the applicant claimed that the Commission had infringed the 2006 guidelines on the method of setting fines in that, firstly, the fines imposed on it in the contested decision ought to have been set not as a lump sum but by reference to the fees which it had received for supplying the services linked with the infringements and, secondly, the Commission ought to have taken account of the applicant's ability to pay.

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

The Court pointed out that, although the 2006 guidelines on the method of setting fines cannot be regarded as rules of law which the administration is always bound to observe, they none the less form rules of practice from which the administration may not depart in an individual case without giving reasons. The fact that the Commission has limited its own discretion by adopting the 2006 guidelines on the method of setting fines is not, however, incompatible with its maintaining a significant discretion. Indeed, it follows from point 37 of the 2006 guidelines on the method of setting fines that the particularities of a given case or the need to achieve deterrence in a particular case may justify the Commission's departing from the general methodology for setting fines set out in those guidelines. The Court noted that, in the case in point, the applicant was not active on the markets affected by the infringements, so that the value of its sales of services linked directly or indirectly to the infringement was zero or unrepresentative of the impact on the relevant markets of the applicant's participation in the infringements in question. Accordingly, the Commission could not take the value of the applicant's sales on the relevant markets into account, nor could it take the amount of the fees charged by the applicant into account, since they did not represent that value. Those particular circumstances of the case enabled, indeed obliged, the Commission to depart from the methodology set out in the 2006 guidelines on the method of setting fines on the basis of point 37 of those guidelines. The Court therefore held that the Commission had been correct in the case in point to depart from the methodology set out in the 2006 guidelines on the method of setting fines in setting the amount of the fines as a lump sum and, ultimately, within the upper limit set out in Article 23(2) of Regulation No 1/2003.

— Value of sales — Negligence — Unlimited jurisdiction

In the judgment in *InnoLux* v *Commission* (EU:T:2014:92) the Court was prompted to clarify the scope of its unlimited jurisdiction where the undertaking subject to a proceeding pursuant to the competition rules has failed to cooperate.

The Court observed that an undertaking to which the Commission addresses a request for information pursuant to Article 18 of Regulation No 1/2003 is bound by an obligation to cooperate actively and may be punished by a specific fine laid down in Article 23(1) of that regulation, which may represent up to 1% of total turnover if it provides, intentionally or negligently, incorrect or misleading information. It follows that, in the exercise of its unlimited jurisdiction, the Court may take account, where relevant, of an undertaking's lack of cooperation and consequently increase the fine imposed on it for infringement of Articles 101 TFEU or 102 TFEU, on condition that that undertaking has not been punished in respect of that same conduct by a specific fine based on Article 23(1) of Regulation No 1/2003. In the case in point, the Court considered, however, that the fact that the applicant had made errors when it provided the Commission with the data necessary for calculating the value of relevant sales, since it had included sales relating to products other than those affected by the cartel, did not give grounds for holding that the applicant's breach of its obligation to cooperate was such that it had to be taken into account when the fine was set. Applying the same method as that followed by the Commission in the contested decision, the Court held that the fine should be reduced to EUR 288 million.

— Aggravating circumstances — Repeated infringement

In the judgment of 27 March 2014 in *Saint-Gobain Glass France and Others* v *Commission* (T-56/09 and T-73/09, ECR, EU:T:2014:160), concerning a cartel on the car glass market, the Court ruled on the consequences which a repeated infringement has on the amount of the fine determined by the Commission. One of the undertakings fined had been the subject of previous Commission decisions relating to similar infringements in 1984 and 1988. The applicants disputed that they could be found to have committed a repeated infringement.

In that regard, the Court held that it cannot be accepted that the Commission is entitled to decide, when establishing the aggravating circumstance of repeated infringement, that an undertaking should be held liable for a previous infringement in relation to which it was not penalised by a Commission decision and in the establishment of which it was not the addressee of a statement of objections, with the result that it was not given an opportunity, in the procedure leading to the adoption of the decision establishing the previous infringement, to make representations with a view to disputing that it formed an economic unit with one or other of the companies to which the previous decision was addressed. Accordingly, in the case in point, the Court held that the 1988 decision could not be used by the Commission in order to establish a repeated infringement. On the other hand, the Commission did not err in relying, for that purpose, on the 1984 decision. According to the Court, the fact that a period of approximately 13 years and 8 months had elapsed between the time when that decision was adopted and the time when the infringement penalised in the contested decision began did not mean that the Commission was estopped from finding, without being in breach of the principle of proportionality, that the undertaking formed by the applicants had a propensity to disregard the competition rules.

Furthermore, the Court observed that, since only the 1984 decision could have been lawfully applied for the purpose of establishing repeated infringement and since that decision was the more remote in time from the beginning of the infringement referred to in the contested decision, the repetition of the unlawful infringement by the applicants was less serious than had been found by the Commission. The Court therefore decided that the percentage of the increase of the fine applied for repeated infringement had to be reduced to 30% and the amount of the fine had to be reduced accordingly.

3. Developments in the area of Article 102 TFEU

The General Court's activity in 2014 was marked by the case giving rise to the judgment of 12 June 2014 in *Intel.* v *Commission* (T-286/09, ECR (Extracts), under appeal, EU:T:2014:547). The Court heard an action against the decision whereby the Commission had imposed on the United States microprocessor manufacturer Intel. Corp. a record fine of EUR 1 060 million for having, contrary to the EU competition rules, abused its dominant position on the world market for processors between 2002 and 2007 by implementing a strategy aimed at foreclosing its only serious competitor from the market. This case gave the Court the opportunity to provide important clarification concerning the territorial jurisdiction of the Commission ([10]), the method of proving an infringement, 'exclusivity' rebates and the practices known as 'naked restrictions', and also in relation to the calculation of the amount of the fine imposed.

The Court confirmed, first or all, that, in order to justify the Commission's jurisdiction under public international law, it is sufficient to establish either the qualified effects of abusive practices (namely, immediate, substantial and foreseeable effects) or the implementation of those practices in the EEA. The approaches involved are therefore alternative and not cumulative. In that regard, the Commission is not required to prove the existence of actual effects. According to the Court, in order to examine whether the effects of the abusive practices in the European Union are substantial, the various instances of conduct forming part of a single and continuous infringement must not be considered in isolation. It is sufficient that the single infringement as a whole be capable of having substantial effects.

([10]) On the territorial jurisdiction of the Commission, see also the comments above on the judgment in *InnoLux* v *Commission* (T-91/11, EU:T:2014:92), in '2. Developments in the area of Article 101 TFEU'.

Next, the Court emphasised that it is not appropriate to establish a general rule according to which the statement of a third-party undertaking indicating that an undertaking in a dominant position has adopted a certain type of conduct can never be sufficient on its own to prove the facts constituting an infringement of Article 102 TFEU. In a case such as the case in point, in which it is not apparent that the third-party undertaking has any interest in wrongly incriminating the undertaking in a dominant position, the statement of the third-party undertaking may, in principle, be sufficient on its own to demonstrate the existence of an infringement.

Furthermore, the Court observed that, as regards whether the grant of a rebate by an undertaking in a dominant position can be characterised as abusive, a distinction may be drawn between three categories of rebates: quantity rebates, exclusivity rebates and rebates with a potentially fidelity-building effect. Exclusivity rebates, which are granted on condition that the customer obtains all or most of its requirements from the undertaking in a dominant position, are, when granted by such an undertaking, incompatible with the objective of undistorted competition in the internal market. The capability of a rebate to be anti-competitive is based on the fact that it may give customers an incentive to opt for exclusive supply. However, the existence of such an incentive does not depend on whether the rebate is actually reduced or annulled if the requirement of exclusivity is not satisfied. Exclusivity rebates are not based — save in exceptional circumstances — on an economic transaction which justifies such a financial advantage, but are designed to remove or restrict the purchaser's freedom to choose its sources of supply and to deny other producers access to the market. That type of rebate constitutes an abuse of a dominant position if there is no objective justification for granting it. Exclusivity rebates granted by an undertaking in a dominant position are by their very nature capable of restricting competition and foreclosing competitors from the market. Thus, the Court held, the Commission was not required in this instance to assess the circumstances of the case in order to demonstrate that the rebates had the actual or potential effect of foreclosing competitors from the market. In that regard, the Court observed that the grant of an exclusivity rebate by an unavoidable trading partner, such as a supplier in a dominant position, makes it structurally more difficult for a competitor to submit an offer at an attractive price and thus gain access to the market. In that context, the fact that the parts of the market which are concerned by the exclusivity rebates granted by an undertaking in a dominant position may be small does not mean that they are not illegal. A dominant undertaking may not therefore justify the grant of exclusivity rebates to certain customers by the fact that competitors remain free to supply other customers. Similarly, an undertaking in a dominant position may not justify the grant of a rebate subject to a quasi-exclusive purchase condition by a customer in a certain segment of a market by the fact that that customer remains free to obtain supplies from competitors in other segments. Furthermore, the Court found that there was no need to examine, using the 'as-efficient-competitor test', whether the Commission correctly ascertained the capability of the rebates to foreclose a competitor as efficient as the applicant.

The Court observed, moreover, that the practices known as 'naked restrictions', consisting in the grant, subject to conditions, of payments to the customers of the undertaking in a dominant position in order that they might delay, cancel or in some other way restrict the marketing of a competitor's product, were capable of making access to the market more difficult for that competitor and caused interference with the structure of competition. The implementation of each of those practices amounts to an abuse of a dominant position within the meaning of Article 102 TFEU. According to the Court, a foreclosure effect occurs not only where access to the market is made impossible for competitors, but also where that access is made more difficult. The Court further points out that, for the purposes of applying Article 102 TFEU, showing an anti-competitive object and an anti-competitive effect may, in some cases, be one and the same thing. If it is shown that the object pursued by the conduct of an undertaking in a dominant position is to restrict competition, that conduct will also be liable to have such an effect. An undertaking in a dominant posi-

tion pursues an anti-competitive object where it prevents, in a targeted manner, the marketing of products equipped with a product of a specific competitor, since its only possible interest in doing so is to harm that competitor. An undertaking in a dominant position has a special responsibility not to impair, by conduct falling outside the scope of competition on the merits, genuine undistorted competition in the common market; the grant of payments to customers in consideration of restrictions on the marketing of products equipped with a product of a specific competitor clearly falls outside the scope of competition on the merits.

Lastly, the Court observed that, where the Commission fixes the proportion of the value of sales to be taken into consideration by reference to gravity in accordance with point 22 of the 2006 guidelines on the method of setting fines, it is not required to take the absence of any actual impact into consideration as an attenuating factor if that proportion is justified by other factors capable of influencing the determination of the gravity of the infringement. On the other hand, if the Commission considers it appropriate to take into account the actual impact of the infringement on the market in order to increase that proportion, it must provide specific, credible and adequate evidence with which to assess what actual influence the infringement may have had on competition in that market. Accordingly, the Court dismissed the action in its entirety and upheld the Commission's decision and the fine imposed on Intel, the heaviest ever imposed on a single undertaking in a proceeding to establish an infringement of the competition rules.

4. Developments in the area of concentrations

In the case giving rise to the judgment of 5 September 2014 in *Éditions Odile Jacob* v *Commission* (T-471/11, ECR, under appeal, EU:T:2014:739), the Court heard an action against the decision by which the Commission had once again, and retroactively, approved Wendel Investissement SA as purchaser of the assets sold in accordance with the commitments attached to the Commission's decision authorising the concentration Lagardère/Natexis/VUP.

Observing that it would not have been contrary to the principles of legitimate expectations and legal certainty if the Commission, had it considered it appropriate to do so, had revoked the conditional clearance decision at issue, the Court recalled that, while the second of those principles precludes, as a general rule, a measure from taking effect from a point in time before its publication, it may exceptionally be otherwise where the purpose to be achieved so demands. In the case in point, the adoption of a new retroactive approval decision was intended to fulfil several objectives of general interest. The new decision had the purpose of remedying the unlawfulness found by the General Court, which constituted an aim of general interest. Furthermore, the new decision sought to fill the legal vacuum created by the annulment of the first approval decision and thus to protect the legal certainty of the undertakings subject to the application of Regulation (EEC) No 4064/89 ([11]). In that context, the Court further stated that although, following the annulment of an administrative act, its author must adopt a new replacement act by reference to the date on which it had been adopted, on the basis of the provisions then in force and the relevant facts at that time, it may, however, rely, in its new decision, on grounds other than those on which it based its first decision. Indeed, the review of concentrations calls for a prospective analysis of the state of competition to which the concentration is likely to give rise in the future. In the case in point, according to the Court, the Commission was necessarily forced to carry out an *a posteriori* analysis of the state of competition to which the concentration had given rise and it was therefore fully entitled to examine whether its analysis based

([11]) Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ 1989 L 395, p. 1) (corrected version in OJ 1990 L 257, p. 13).

on the facts of which it was aware on the date of adoption of the decision which had been annulled was corroborated by information relating to the period subsequent to that date.

Furthermore, as regards the condition requiring independence of a purchaser of the assets sold, the Court observed that, in the context of a concentration, that condition is intended to ensure the capability of the purchaser to act on the market as an effective, autonomous competitor, without its strategy and policies being open to influence from the seller. That independence can be assessed by examining the capital, financial, commercial, personnel and material links between the two companies. In the case in point, the Court considered that the fact that one of the directors of the purchaser was at the same time a member of the seller's supervisory committee and audit committee was not incompatible with that condition of independence. It found that that condition was satisfied since, at the Commission's request, the purchaser had given a formal undertaking, before the adoption of the first approval decision, firstly, that that individual would leave his positions within that company within one year of the approval of its bid and, secondly, that in the intervening period he would not participate in the deliberations of the board of directors and of the other internal committees when they dealt with group publishing business and that he would not be given any confidential information relating to the publishing sector by the company's senior staff or operational managers.

State aid

1. Admissibility

This year's case-law provides useful clarification concerning, in particular, the concept of 'individual concern' in relation to State aid ([12]).

The case giving rise to the judgment of 17 July 2014 in *Westfälisch-Lippischer Sparkassen- und Giroverband* v *Commission* (T-457/09, ECR, EU:T:2014:683) raised the question of whether a shareholder in a bank in receipt of aid could be considered to be individually concerned by the decision declaring that aid compatible with the common market on certain conditions.

Observing that, according to settled case-law, an applicant must show that it has a legal interest in bringing proceedings separate from that possessed by a company which it partly controls and which is concerned by an EU measure, failing which, in order to defend its interests in relation to that measure, its only remedy lies in the exercise of its rights as a member of the company which itself has a right of action, the Court considered whether the applicant's interest in bringing proceedings could be considered to be separate from that of the bank in receipt of the aid so far as annulment of the contested decision was concerned. It stated, in that regard, that that interest was indeed separate so far as the obligation to sell, set out in the annex to the contested decision, was concerned. That obligation applied only to the owners, who were forced to waive, within strict deadlines, their property rights in the bank in receipt of the aid in order for the aid to be authorised. The bank, on the other hand, was not required to take any action under that obligation, which did not affect its assets and had no bearing on its conduct on the market. However, as regards the other conditions attached to the contested decision, including those relating to the reduction of the balance sheet of the bank in receipt of the aid, the Court observed that they related to the commercial activity of that bank. The bank could itself have put forward any argument, in the context

([12]) On the concept of a regulatory measure entailing implementing measures in relation to State aid, see also the comments above on the judgment of 26 September 2014 in *Dansk Automat Brancheforening* v *Commission* (EU:T:2014:839), in 'Admissibility of actions brought under Article 263 TFEU'.

of an action brought against the contested decision, relating to the unlawfulness of, or the absence of necessity for, those conditions. The Court concluded that, as regards the conditions attached to the contested decision other than the obligation to sell, the applicant's interest in bringing proceedings was indissociable from that of the bank in receipt of the aid and that it was therefore not individually concerned by that decision. It held, however, that the applicant was individually concerned by that decision in so far as authorisation of the aid had been made subject to compliance with the obligation to sell.

2. Substantive issues

(a) Concept of State aid

In the judgments of 7 November 2014 in *Autogrill España* v *Commission* (T-219/10, ECR, EU:T:2014:939) and *Banco Santander and Santusa* v *Commission* (T-399/11, ECR, EU:T:2014:938), the Court was required to adjudicate on the concept of selectivity, which is a determining criterion for the classification of a measure as State aid.

The cases concerned the Commission's decision declaring the Spanish tax arrangements on the deduction for shareholdings acquired in foreign companies incompatible with the common market. That decision was challenged before the Court by three undertakings established in Spain, which disputed the classification in the contested decision of the scheme at issue as State aid, relying, in particular, on the lack of selectivity of the scheme.

The Court held that the Commission had not established that the scheme at issue was selective. In that regard, it observed, first of all, that the existence of a derogation from or exception to a reference framework — in this instance, the general corporate tax system and, more specifically, the rules on the tax treatment of financial goodwill — if proved, cannot, in itself, establish that a measure favours 'certain undertakings or the production of certain goods', within the meaning of EU law, where that measure is available, a priori, to any undertaking. The Court pointed out, next, that the regime at issue was aimed not at any particular category of undertakings or production, but at a category of economic transactions. In fact, it applied to all shareholdings of at least 5% in foreign companies which were held for an uninterrupted period of at least one year.

In addition, the Court rejected the argument relating to selectivity on the basis that the regime favoured only certain groups of undertakings that carried out certain investments abroad. Such an approach could have led to every tax measure the benefit of which is subject to certain conditions being found to be selective, even though the beneficiary undertakings would not have shared any specific characteristic distinguishing them from other undertakings, apart from satisfying the conditions to which the grant of the measure was subject.

Lastly, the Court observed that a measure which is capable of benefiting all undertakings in national territory, without distinction, cannot constitute State aid with regard to the criterion of selectivity. Furthermore, the finding that a measure is selective must be based, in particular, on a difference in treatment between categories of undertakings under the legislation of a single Member State and not a difference in treatment between the undertakings of one Member State and those of other Member States. The Court infers that the fact that a measure treats undertakings which are taxable in one Member State more favourably than undertakings which are taxable in the other Member States, in particular because the measure facilitates acquisitions by undertakings established in national territory of shareholdings in the capital of undertakings established abroad, does not affect the analysis of the selectivity criterion and only permits a finding, where appropriate, that there is an effect on competition and trade.

The condition of selectivity of a measure was also central to the discussion in the case giving rise to the judgment of 9 September 2014 in *Hansestadt Lübeck* v *Commission* (T-461/12, ECR (Extracts), under appeal, EU:T:2014:758). The case concerned the classification as State aid of a schedule relating to charges at the airport at Lübeck (Germany), made by the Commission in its decision to initiate the procedure provided for in Article 108(2) TFEU with respect to various measures concerning that airport. That classification was challenged by the town of Lübeck on the ground that the schedule at issue could not be considered to be selective.

On an application for annulment in part of that decision, the Court observed that, in order to determine whether a measure is selective, it is appropriate to examine whether, within the context of a particular legal system, that measure constitutes an advantage for certain undertakings in comparison with others which are in a comparable legal and factual situation. However, the Court stated that the concept of State aid does not refer to State measures which differentiate between undertakings, and which are, therefore, prima facie selective, where that differentiation arises from the nature or the overall structure of the system of which those measures form part.

In that context, in order to assess whether a fee scale drawn up by a public entity for the use of a specific product or service in a given sector might be selective in relation to certain undertakings, it is necessary, in particular, to refer to all of the undertakings using or able to use that product or service and to examine whether only some of them obtain or are able to obtain a potential advantage. The situation of undertakings which do not want to or cannot use the product or service in question is therefore not directly relevant when assessing the existence of an advantage. In other words, the selectivity of a measure consisting of a fee scale drawn up by a public entity for the use of a product or service made available by that entity may be assessed only in relation to current or potential customers of that entity and to the specific product or service in question, and not, in particular, in relation to customers of other undertakings from that sector providing similar products and services. Therefore, in order for a potential advantage conferred by a public entity in the context of the provision of specific products or services to favour certain undertakings, it is necessary that some undertakings using or wishing to use that product or that service do not or cannot obtain that advantage from that entity in that particular context.

In the light of those considerations, the Court held that, in the case in point, the mere fact that the schedule at issue applied only to airlines using Lübeck airport was not a relevant criterion for finding that that schedule was selective.

(b) Services of general economic interest

The judgment of 11 July 2014 in *DTS Distribuidora de Televisión Digital* v *Commission* (T-533/10, ECR, under appeal, EU:T:2014:629) provided the Court with the opportunity to recall the principles in accordance with which the Courts of the European Union may review decisions of the Commission in the field of services of general economic interest ('SGEIs') and, in particular, broadcasting.

That judgment originated in the action brought against a decision whereby the Commission had declared compatible with the internal market State aid that was proposed by Spain for the public radio and television broadcasting authority and was based on a law altering the scheme for the funding of the public broadcasting service.

The Court stated that the Member States enjoy a broad discretion in defining public service broadcasting tasks and in deciding how they are organised. Accordingly, the extent of the Commission's review in that regard is limited. As the Commission's assessment addresses complex economic facts, the Court's review of a Commission decision in this field is even more limited. Its review is restricted

to ascertaining whether the measure in question is manifestly inappropriate, given the objective pursued. In the light of the broad discretion which Member States enjoy in defining public broadcasting services, Article 106(2) TFEU does not preclude Member States from opting for a broad definition of such services or from entrusting broadcasting organisations with a mandate to provide balanced, varied programming which may include the broadcasting of sporting events and films. Thus, the mere fact that a public broadcasting service competes with private operators in the market for the acquisition of programme content and in some cases prevails over private operators is not in itself sufficient to demonstrate a manifest error of assessment on the Commission's part.

According to the Court, it would not, however, be compatible with Article 106(2) TFEU for a broadcaster to behave in an anti-competitive manner towards private operators in the market, for example by consistently overbidding in the market for the acquisition of programme content. Such conduct could not be regarded as necessary for the performance of its public service mandate.

In addition, it follows from the second sentence of that provision that the performance of a public service mandate must not affect trade to such an extent as would be contrary to the interests of the European Union, and from Protocol No 29 on the system of public broadcasting in the Member States, annexed to the EU Treaty and the TFEU, that the funding of public broadcasting organisations must not affect trading conditions and competition in the European Union to an extent which would be contrary to the common interest. It follows that, in order for an aid scheme for the benefit of an operator entrusted with a public service mandate to be regarded as not fulfilling those conditions, it must affect trade and competition significantly and to an extent which is manifestly disproportionate to the objectives pursued by the Member States. In order to support a finding of such an effect, it is necessary to establish that an activity as a private operator on the national broadcasting market is rendered impossible or excessively difficult, which, in the case in point, had not been demonstrated.

The judgment of 16 July 2014 in *Zweckverband Tierkörperbeseitigung* v *Commission* (T-309/12, under appeal, EU:T:2014:676), as well as the judgment of 16 July 2014 in *Germany* v *Commission* (T-295/12, under appeal, EU:T:2014:675) which was delivered in an action brought by the German State against the Commission's decision at issue in *Zweckverband Tierkörperbeseitigung* v *Commission*, also provided the Court with the opportunity to review the definition of SGEIs.

The Court recalled that, according to consistent case-law, the Member States have a broad discretion when defining what they regard as an SGEI. Consequently, a Member State's definition of those services can be called into question by the Commission only where there has been a manifest error of assessment. However, in order to be classified as an SGEI, the service concerned must have a general economic interest exhibiting special characteristics as compared with the interest of other economic activities. In that context, the Court observed that the principle defined in the judgment in *GEMO* ([13]) that the financial cost incurred in the disposal of animal carcasses and slaughterhouse waste must be considered to be an inherent cost of the economic activities of farmers and abattoirs also applies to the costs incurred in maintaining epidemic reserve capacity. That conclusion must also be reached in application of the 'polluter pays' principle. Thus, the Court held, the Commission had not infringed Article 107(1) TFEU and Article 106(2) TFEU in taking the view that, by classifying the maintenance of epidemic reserve capacity as an SGEI, the competent German authorities had made a manifest error of assessment. Nor had the Commission erred in law in finding the existence of an economic advantage for the applicant, since, during the period to

([13]) Judgment of 20 November 2003 in *GEMO* (C-126/01, ECR, EU:C:2003:622).

which the contested decision related, the set of criteria laid down in *Altmark Trans and Regierungspräsidium Magdeburg* ([14]) had not been satisfied cumulatively at any time.

(c) State aid compatible with the internal market

Three decisions in 2014 are particularly noteworthy as regards the subject of State aid compatible with the internal market.

In the first place, in the judgment in *Westfälisch-Lippischer Sparkassen- und Giroverband* v *Commission* (EU:T:2014:683), the Court had to rule on the legality of a decision whereby the Commission had considered that the aid granted by the German State for the restructuring of a financial institution was compatible with the internal market, subject to certain conditions, under Article 107(3)(b) TFEU.

The Court observed that where, in the exercise of the wide discretion available to it to assess the compatibility of State aid with the internal market pursuant to Article 107(3) TFEU, the Commission requires that, in order to authorise aid, the Member State concerned must commit itself to a plan for achieving a number of specific legitimate objectives, it is not obliged to explain the need for each measure provided for by the plan or to seek to impose only the least restrictive measures possible among those liable to ensure that the beneficiary of the aid will return to long-term viability and that the aid will not cause undue distortions of competition. It is so obliged only where the Member State concerned has previously committed itself to a less restrictive restructuring plan fulfilling those objectives in an equally appropriate manner or where it has shown its opposition to the inclusion of certain measures in the plan and has committed itself to it on the ground that the Commission definitively informed it that the aid would not be authorised in the absence of those measures, since in those situations the decision to make the grant of the aid subject to compliance with those measures cannot be attributed to the Member State concerned. In the case in point, since the Commission had considered that the guarantee in favour of the *Land* of North Rhine-Westphalia (Germany) could be authorised only in the light of the existence of a restructuring plan providing for the implementation of certain measures, the Court considered that it was not logical to require the Commission to state the reasons why its decision to authorise the aid had to be subject to the condition that those measures should be implemented. On the basis of similar reasoning, the Court held, moreover, that observance of the principle of proportionality does not require that the Commission must make authorisation of restructuring aid subject to the measures strictly necessary to restore the viability of the beneficiary of the aid and avoid undue distortions of competition if those measures form part of a restructuring plan to which the Member State concerned has committed itself.

Lastly, the Court stated that Article 345 TFEU, which provides that '[t]he Treaties shall in no way prejudice the rules in Member States governing the system of property ownership', does not prevent the Commission from making the authorisation of State aid to an undertaking to be restructured subject to that undertaking's sale, where this is intended to ensure its long-term viability.

In the second place, the case giving rise to the judgment of 8 April 2014 in *ABN Amro Group* v *Commission* (T-319/11, ECR, EU:T:2014:186) concerned the Commission decision declaring the measures implemented by the Netherlands State in favour of the applicant compatible with the internal market. That decision contained a prohibition on making acquisitions during a period of three years, apart from acquisitions of certain types and *de minimis* acquisitions; the prohibition was extended to five years in the event that the Netherlands State should continue to own more than 50% of the applicant after three years.

([14]) Judgment of 24 July 2003 in *Altmark Trans and Regierungspräsidium Magdeburg* (C-280/00, ECR, EU:C:2003:415).

Ruling on an action against that decision, the Court endorsed the Commission's analysis according to which the aim of acquisitions must be to ensure the viability of the body receiving the aid, which means that any acquisition financed by State aid, which is not strictly necessary in order to ensure the return to viability of the beneficiary company, is in breach of the principle that the aid must be limited to the strict minimum. Since in the case in point the objective was to ensure that the funds of the beneficiary bank would be used for the repayment of the aid before any new acquisitions were made, the Court concluded that the prohibition on making acquisitions in the form of equity acquisitions of 5% or more in undertakings in any sector was consistent with the principles contained in the various Commission communications, in particular the restructuring communication ([15]). As regards the duration of the prohibition, although the restructuring communication does not specifically define a duration for prohibitions on making acquisitions imposed with the aim of limiting the aid to the minimum necessary, the Court stated that, since point 23 of the restructuring communication referred to the restructuring of the beneficiary, it could be inferred that such a measure could be regarded as well founded for so long as that remained the context. The Court concluded that it could not be held that the Commission had infringed the communications, and in particular the restructuring communication, by applying a maximum duration of five years to the contested prohibition.

Lastly, the Court emphasised that the contested decision did not treat State ownership as the equivalent of State aid and identified an objective reason why the State's majority shareholding in the bank was used as a point of reference; consequently, it could not be concluded that State ownership was being discriminated against.

In the third place, in the judgment of 3 December 2014 in *Castelnou Energía* v *Commission* (T-57/11, ECR, EU:T:2014:1021), the Court explained the circumstances in which the EU environmental protection rules must be taken into account in the context of the control of State aid by the Commission. In the case in point, the applicant challenged, on the basis of a number of provisions of EU law on environmental protection, the decision whereby the Commission had declared compatible with the internal market the scheme introduced by the Kingdom of Spain in favour of electricity produced from coal produced in Spain.

The Court recalled that, when the Commission applies the State aid procedure, it is required, in accordance with the general scheme of the Treaty, to ensure that provisions governing State aid are applied consistently with specific provisions other than those relating to State aid and, therefore, to assess the compatibility of the aid in question with those specific provisions. However, such an obligation is imposed on the Commission only where the aspects of aid are so inextricably linked to the object of the aid that it is impossible to evaluate them separately. In that context, the Court observed that, while it is true that, according to the case-law, the Commission should, when assessing an aid measure in the light of the EU rules on State aid, take account of the environmental protection requirements referred to in Article 11 TFEU, the Courts of the European Union have established that the Commission has such an obligation when assessing aid which pursues objectives relating to environmental protection, since aid for the protection of the environment can be declared compatible with the internal market under Article 107(3)(b) or (c) TFEU. On the other hand, when assessing an aid measure which does not pursue an environmental objective, the Commission is not required to take account of environmental rules in its assessment of the aid and of the aspects which are inextricably linked to it.

([15]) Commission communication on the return to viability and the assessment of the restructuring measures in the financial sector in the current crisis under the State aid rules (OJ 2009 C 195, p. 9).

In addition, if aid intended to safeguard security of the electricity supply, like the aid at issue in the case in point, had been declared incompatible with the internal market for breach of the provisions of EU law relating to the environment, even if it fulfilled the conditions for the application of Article 106(2) TFEU, that would have resulted in an encroachment on the national authorities' discretion in connection with the establishment of an SGEI, and in a corresponding extension of the Commission's remit in the exercise of the powers conferred on it by Articles 106 TFEU to 108 TFEU. The powers exercised by the Commission in that context and the specific procedure for assessing the compatibility of aid cannot replace infringement proceedings, which the Commission uses to ensure that Member States are complying with all the provisions of EU law. In any event, the Court stated that the Commission had been correct in considering that the fact that the aid measure led to an increase in carbon dioxide (CO_2) emissions from indigenous coal power plants and to an increase in the price of emission rights would not lead to an overall increase in Spain's CO_2 emissions.

Intellectual property

1. Community trade mark

(a) Absolute grounds for refusal

In 2014, the Court's case-law provided clarification of the absolute ground for refusal to register a trade mark based on the lack of any distinctive character, within the meaning of Article 7(1)(b) of Regulation (EC) No 207/2009 ([16]).

In the cases giving rise to the judgments of 16 January 2014 in *Steiff* v *OHIM (Metal button in the middle section of the ear of a soft toy)* (T-433/12, EU:T:2014:8) and *Steiff* v *OHIM (Fabric tag with metal button in the middle section of the ear of a soft toy)* (T-434/12, EU:T:2014:6), the Court was called upon to rule on the actions brought against the decisions whereby the First Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) had refused to register as Community trade marks, respectively, a sign consisting in the fixing of a button in the middle section of the ear of a soft toy and a sign consisting in the fixing by a button of a fabric tag in the middle section of the ear of a soft toy, on the ground that the trade marks applied for were devoid of any distinctive character.

First of all, the Court stated that the trade marks applied for were an aspect of one of the possible appearances of the soft toys. As 'position trade marks', they were necessarily an aspect of the appearance of the soft toys, since, had the button and the fabric tag not been fixed in the precise place on the designated goods, the marks would not have existed. Furthermore, buttons and small labels are normal design elements on soft toys. As consumers are not in the habit of presuming the commercial origin of goods on the basis of signs which are an aspect of the appearance of the goods, the trade marks applied for would have had to differ significantly from normal or customary practices in the sector.

Since firstly, buttons and labels are normal design elements on soft animals and, secondly, consumers are used to very great diversity in those goods, their designs and their possible presentation, the Court considered that the fixing of buttons and fabric tags to the ear of a soft animal, creating in fact a banal combination, which would be perceived by the public as a decorative element, cannot in any way be regarded as exceptional. Therefore, according to the Court, the target public

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

would have been unable to presume that the presence of those items constituted an indication of commercial origin. The Court inferred that the trade marks at issue did not present the requisite minimum distinctiveness.

(b) Relative grounds for refusal

In the judgment of 9 April 2014 in *Pico Food* v *OHIM — Sobieraj (MILANÓWEK CREAM FUDGE)* (T-623/11, ECR, EU:T:2014:199), the Court assessed the likelihood of confusion between several figurative marks representing a cow and containing word elements.

The Court stated that, while it was true that there was a certain visual similarity between the signs at issue on account of the presence in all of them of a figurative element representing a cow, that element had, in the case in point, an allusive character in relation to the goods at issue and therefore had a weak distinctive character. It observed, moreover, that even if the earlier marks possessed an enhanced degree of distinctiveness through use in the relevant territory, the Board of Appeal had not erred in finding, in the case in point, that there was no likelihood of confusion on the part of the relevant public, in spite of the identity of the goods at issue. According to the Court, the Board of Appeal had indeed taken into account the fact that the earlier marks could, as the case might be, have acquired an enhanced degree of distinctiveness through use in the relevant territory, but had however found, correctly, that if that were the case it would not lead to the conclusion that there was a likelihood of confusion. In that regard, the Court explained that there is a difference between finding, in the course of a comparison of the signs, that one of the elements of which a composite mark consists has a weak distinctive character and finding, in the course of the global assessment of the likelihood of confusion, that an earlier mark possesses or does not possess an enhanced degree of distinctiveness through use.

In the case giving rise to the judgment of 11 December 2014 in *Coca-Cola* v *OHIM — Mitico (MASTER)* (T-480/12, ECR, EU:T:2014:1062), the Court was called upon to examine the legality of the decision whereby the Second Board of Appeal of the OHIM had upheld the rejection of the applicant's opposition to the application to register the Community figurative mark master.

First of all, the Court observed that there were clear visual differences between the signs at issue, namely, firstly, the earlier signs consisting of the stylised words 'coca-cola' or the stylised upper-case letter 'C' and, secondly, the sign applied for, consisting of the stylised word 'master' with an Arabic word above it. The Court noted, however, that there were elements of visual similarity between the signs at issue, owing to their shared use of a font not commonly used in contemporary business life. According to the Court, it could be seen from a global assessment of the similarities and differences that there was a low degree of similarity between the signs at issue, at least between the earlier Community figurative marks 'Coca-Cola' and the mark applied for, 'Master', as their aural and conceptual differences were cancelled out by the elements of overall visual similarity, which were of greater importance. By contrast, especially because of its brevity, the earlier national mark 'C' was dissimilar to the mark applied for.

Recalling that the existence of a similarity however faint, between signs is a precondition for the application of Article 8(5) of Regulation No 207/2009 and that the degree of similarity is a relevant factor in determining whether there is a link between those signs, the Court observed that the global assessment, under that provision, to determine whether the relevant public would make a link between the marks at issue led to the conclusion that, given the degree of similarity, however faint, between those marks, there was a risk that the relevant public might establish such a link. Having found that the Board of Appeal had not ruled on all of the conditions for the application of Article 8(5) of Regulation No 207/2009, the Court pointed out that it was not for it to give a ruling

in that regard, for the first time, in its review of the legality of the contested decision. The Court concluded that it was for the Board of Appeal to examine those conditions of application, taking into consideration the degree of similarity between the signs at issue, which, while low, was none the less sufficient for the relevant public to establish a link between them.

As it was also called upon to address the assessment of the concept of unfair advantage being taken of the distinctive character or the repute of the earlier mark, the Court stated that unfair advantage is taken where there is an attempt at clear exploitation and free-riding on the coat-tails of a famous mark and that that concept is behind the idea of 'the risk of free-riding'. In that regard, the Court found that the assessment by the Board of Appeal in the case in point had not complied with the principle, established in the case-law, that a finding of a risk of free-riding made on the basis of Article 8(5) of Regulation No 207/2009 may be established, in particular, on the basis of logical deductions resulting from an analysis of the probabilities and by taking account of the usual practices in the relevant commercial sector as well as all the other circumstances of the case, including the use, by the proprietor of the mark applied for, of packaging similar to that of the proprietor of the earlier trade marks. As that case-law allows account to be taken of any evidence intended to facilitate that analysis of the probabilities as regards the intention of the proprietor of the trade mark applied for, the Court held that the Board of Appeal had erred in disregarding the evidence relating to the commercial use of the mark applied for, as produced by the applicant. The argument that an applicant could make use of such evidence in the context of infringement proceedings based on Article 9(1)(c) of Regulation No 207/2009 is irrelevant, as it disregards the scheme of that regulation and the purpose of opposition proceedings established in Article 8 thereof, which is to ensure, for reasons of legal certainty and sound administration, that trade marks whose use could successfully be challenged downstream before the courts are not registered upstream.

(c) Procedural issues

In the judgment of 5 March 2014 in *HP Health Clubs Iberia* v *OHIM — Shiseido (ZENSATIONS)* (T-416/12, EU:T:2014:104), the Court stated that the fact that, according to Article 76 of Regulation No 207/2009, in proceedings relating to relative grounds for refusal of registration, the examination is to be limited to the facts, evidence and arguments provided by the parties and the relief sought does not mean that the OHIM must consider that every assertion submitted to it by a party is well founded if it is not challenged by the other party.

In addition, in the judgment of 25 September 2014 in *Peri* v *OHIM (Turnbuckle shape)* (T-171/12, ECR, EU:T:2014:817), the Court stated that, in principle, a restriction within the meaning of Article 43(1) of Regulation No 207/2009 to the list of goods or services contained in a Community trade mark application made after the adoption of the decision of the Board of Appeal which is being challenged before the Court cannot affect the legality of that decision, which is the only decision being challenged before the Court. The fact remains, according to the Court, that a decision of a Board of Appeal of the OHIM can in certain cases be challenged before the Court in relation solely to some of the goods or services on the list given in the Community trade mark application concerned. In such a case, that decision becomes final in respect of the other goods or services on the same list. Thus, a statement made by a trade mark applicant before the Court, and therefore subsequent to the decision of the Board of Appeal, by which it withdraws its application in respect of some of the goods covered by the initial application, may be interpreted as a statement that the contested decision is being challenged only in so far as it covers the remainder of the goods concerned or as a partial withdrawal where the statement is made at an advanced stage of the proceedings before the Court.

However, if, by its restriction of the list of goods referred to in the Community trade mark application, the applicant for the trade mark is not seeking to withdraw from that list one or more goods,

but to alter one or more of their characteristics, it is possible that that alteration might have an effect on the examination of the Community trade mark carried out by the OHIM at the various stages of the administrative procedure. Accordingly, to allow that alteration at the stage of the action before the Court would amount to changing the subject matter of the proceedings pending, which is prohibited by Article 135(4) of the Rules of Procedure. Such a restriction cannot therefore be taken into account by the Court in its examination of the substance of the action.

Furthermore, in the judgment of 8 October 2014 in *Fuchs* v *OHIM — Les Complices (Star within a circle)* (T-342/12, ECR, EU:T:2014:858), the Court adjudicated on the question of whether an applicant continues to have a legal interest in challenging a decision upholding the opposition brought against his application for registration of a trade mark following a decision of the OHIM revoking the earlier trade mark on which the opposition was based.

First of all, the Court pointed out that, as the conditions of admissibility of an action, in particular of whether there is a legal interest in bringing proceedings, concern an absolute bar to proceedings, the Court must consider of its own motion whether the applicant retains an interest in obtaining the annulment of such a contested decision. Going on to consider that question, the Court noted that the revocation of the mark upon which an opposition is based, when it occurs only after a decision of the Board of Appeal allowing an opposition based on that mark, does not constitute either a withdrawal or a repeal of that decision. In the case of revocation, under the provisions of Article 55(1) of Regulation No 207/2009, the Community mark is deemed not to have had, as from the date of the application for revocation, the effects provided for under that regulation. By contrast, until that date, the Community mark benefited in full from all the effects arising from that protection, laid down in Section 2 of Title VI of that regulation. Therefore, for the Court to find that the litigation becomes devoid of purpose when, in the course of the proceedings, a revocation decision is reached would amount to taking into account matters arising after the adoption of the contested decision, which neither affect the well-foundedness of that decision nor have any relevance for the opposition proceedings giving rise to the annulment proceedings.

Furthermore, if the Court were to annul such a contested decision, its *ex tunc* revocation could procure an advantage for the applicant that he would not obtain in the event of a declaration that there was no need to adjudicate. If the Court were required to declare that there was no need to adjudicate, the applicant could just present, before the OHIM, a fresh application for registration of his mark, without it being possible for opposition to that application thereafter to be mounted on the basis of the earlier trade mark that had been revoked. By contrast, if the Court were required to give a ruling on the substance and allow the action, holding that there was no likelihood of confusion between the marks at issue, nothing would then preclude the registration of the mark applied for. In addition, the Court observed that the mere fact that appeals against the decisions of the Opposition Division and the Board of Appeal have a suspensory effect under the second sentence of Article 58(1) and Article 64(3) of Regulation No 207/2009 cannot suffice to call into question an applicant's interest in pursuing the action in that situation. According to Article 45 of Regulation No 207/2009, it is only once an opposition has been rejected by a definitive decision that the mark is to be registered as a Community trade mark.

In the case giving rise to the judgment of 21 October 2014 in *Szajner* v *OHIM — Forge de Laguiole (LAGUIOLE)* (T-453/11, ECR, under appeal, EU:T:2014:901), the Court also had the opportunity to consider the possibility for an applicant challenging the legality of a decision of the OHIM to rely before the Court, for the purpose of the interpretation of the national law to which EU law refers, on national legislation or case-law which was not raised before the OHIM.

On that point, the Court stated that neither the parties nor the Court itself can be precluded from drawing on such matters, since what is at issue is not an allegation that the Board of Appeal failed to take into account the facts of a specific judgment delivered by a national court, but rather reliance on statutory provisions or judgments in support of a plea alleging that the Boards of Appeal misapplied a provision of national law. In that regard, while it is true that a party seeking the application of a national rule is required to provide the OHIM with particulars establishing the content of that rule, that does not mean that the application of the national rule by the OHIM cannot be reviewed by the Court in the light of a national judgment which postdates the adoption of the OHIM decision and is relied on for the first time before the Court by a party to the proceedings.

According to the Court, that finding remains valid even where the judgment of the national court in question represents a departure from precedent. As a rule, such departures from precedent apply retroactively to existing situations. That principle is justified on the ground that the case-law interpretation of a rule at a given point in time cannot differ depending on when the facts under consideration took place and no one can rely on an acquired right to case-law set in stone. Whilst that principle may be applied more flexibly, in that, in exceptional circumstances, the courts may deviate from it in order to modify the temporal effect of the retroactivity of a departure from precedent, the retroactivity of departures from precedent remains the rule. Therefore, even though a judgment of a national court representing a departure from precedent is, as such, a new matter of fact, it simply sets out the national law as it should have been applied by the OHIM and as it should be applied by the Court.

(d) Power to alter decisions

In the judgment of 26 September 2014 in *Koscher + Würtz* v *OHIM — Kirchner & Wilhelm (KW SURGICAL INSTRUMENTS)* (T-445/12, ECR, EU:T:2014:829), the Court examined the conditions for the exercise of the power to alter decisions conferred on it by Article 65(3) of Regulation No 207/2009.

The Court recalled, in that regard, that the power to alter decisions which it may exercise under that provision does not enable it to carry out an assessment of a question on which the Board of Appeal has not yet adopted a position. Exercise of the power to alter decisions must therefore, in principle, be limited to situations in which the Court, after reviewing the assessment made by the Board of Appeal, is in a position to determine, on the basis of the matters of fact and of law as established the decision the Board of Appeal was required to take. In the light of that principle, the Court held that, in the case in point, it was inappropriate to carry out any assessment of genuine use of the earlier mark, since the Board of Appeal had not ruled on that point. As regards, on the other hand, the second plea, relating to the absence of a likelihood of confusion, put forward by the applicant in support of its claim for annulment, the Court considered that it had to examine that plea, since it might, if it had been held to be well founded, have enabled the applicant to obtain disposal of the entire case. The Court stated, moreover, that although in the case in point it followed from its examination that the second plea had to be rejected and that the claim for alteration put forward by the applicant had to be rejected, it would be for the OHIM, after the question of genuine use of the earlier mark had been examined, to reach a new decision, if appropriate, on the likelihood of confusion between the two trade marks at issue. It would then be for the OHIM, after comparing the two marks, to draw the appropriate inferences, for the comparison of the two marks, from any lack of genuine use of the earlier mark for some of the goods which it covered.

(e) Proof of genuine use of the trade mark

Firstly, in the case giving rise to the judgment of 27 March 2014 in *Intesa Sanpaolo* v *OHIM — equinet Bank (EQUITER)* (T-47/12, ECR, EU:T:2014:159), the Court was called upon to examine the situation

in which genuine use of the earlier mark related to only part of the goods and services for which it had been registered.

According to the Court, the purpose of opposition proceedings founded on Article 8(1)(b) of Regulation No 207/2009 is to enable the OHIM to assess whether there is a likelihood of confusion, which, where the conflicting marks are similar, entails an examination of the similarity between the goods and services designated by those marks. In that context, if the earlier Community trade mark has been used in relation to only part of the goods or services for which it is registered it is, for the purposes of the examination of the opposition, deemed to be registered in respect of only that part of the goods or services, in accordance with the last sentence of Article 42(2) of Regulation No 207/2009. In the same context, it is also necessary for the Board of Appeal to assess, where use is proved only in respect of a part of the goods or services in a category in respect of which the earlier mark is registered and which is cited as justification for the opposition, whether that category includes independent sub-categories into which the goods and services in respect of which use is demonstrated may be classified, resulting in a finding that use has been proved only in respect of that sub-category of goods and services or, on the other hand, whether such sub-categories are not possible. Consequently, the Court stated that there are two inseparable parts to the task of assessing whether a mark relied on in support of a notice of opposition has been put to genuine use within the meaning of Article 42(2) of Regulation No 207/2009. The first is intended to determine whether the mark at issue has been put to genuine use in the European Union, even in a form which differs by aspects which do not, however, alter the distinctive character of that mark in the form in which it has been registered. The second is intended to determine the goods or services, in connection with which the earlier mark is registered and which are cited as justification for the opposition, to which the genuine use demonstrated relates.

Secondly, the case giving rise to the judgment in *KW SURGICAL INSTRUMENTS* (EU:T:2014:829) gave the Court the opportunity to point out that the request that the opposing party furnish proof of the genuine use of the earlier mark has the effect of shifting the burden of proof to the opposing party to demonstrate genuine use of his mark or face having his opposition dismissed. Genuine use of the earlier mark is therefore a matter which, once raised by the applicant for the trade mark, must, in principle, be settled before a decision is given on the opposition proper. The request for proof of genuine use of the earlier mark therefore adds to the opposition procedure a specific and preliminary question and in that sense changes the content of that procedure. In the light of that consideration, the Court held that, in the case in point, by denying the applicant protection as a Community trade mark of the international registration which it had obtained, without the question of genuine use of the earlier mark having first been examined, although a request in relation to such use had been made by the applicant before the Opposition Division, the Board of Appeal of the OHIM had made an error of law.

Thirdly, in the specific case of a three-dimensional trade mark, the Court held, in the judgment of 11 December 2014 in *CEDC International* v *OHIM — Underberg (Shape of a blade of grass in a bottle)* (T-235/12, ECR, EU:T:2014:1058), that the three-dimensional nature of a mark precludes a static, two-dimensional vision and calls for a dynamic, three-dimensional perception. Thus, a three-dimensional mark may, in principle, be perceived from a number of sides by the relevant consumer. Therefore, as regards proof of use of such a mark, such proof must be taken into account not as a reproduction of how the trade mark is viewed in two dimensions, but rather as a presentation of how it is perceived in three dimensions by the relevant consumer. It follows that representations from the side and the back of a three-dimensional mark are, as a rule, likely to be truly relevant for the purposes of assessing the genuine use of that mark and cannot be rejected solely on the ground that they are not reproductions of the front.

2. Designs

In the judgment of 9 September 2014 in *Biscuits Poult* v *OHIM — Banketbakkerij Merba (Biscuit)* (T-494/12, ECR, EU:T:2014:757), the Court stated that Article 4(2) of Regulation (EC) No 6/2002 ([17]) lays down a particular rule applying specifically to a design applied to or incorporated in a product which constitutes a component part of a complex product within the meaning of Article 3(c) of that regulation. Under that rule, this type of design is protected only if, firstly, the component part, once it has been incorporated into the complex product, remains visible during normal use of that product and, secondly, the visible features of the component part fulfil in themselves the requirements as to novelty and individual character. Given the particular nature of components of a complex product within the meaning of Article 3(c) of Regulation No 6/2002, which may be produced and marketed separately from the complex product, it is reasonable for the legislature to provide for the possibility of having them registered as designs, subject to their being visible after incorporation into the complex product and only in respect of the visible parts of the components in question at the time of normal use of the complex product and in so far as those parts are new and have individual character. The Court inferred that, provided that a product — in the case in point a biscuit — is not a complex product within the meaning of Article 3(c) of Regulation No 6/2002, because it is not composed of multiple components which can be replaced permitting disassembly and re-assembly, the Board of Appeal did not err in taking the view that the non-visible features of the product, which do not relate to its appearance, cannot be taken into account in the determination of whether the design at issue can be protected.

Lastly, in the judgment of 3 October 2014 in *Cezar* v *OHIM — Poli-Eco (Insert)* (T-39/13, ECR, EU:T:2014:852), the Court held that the novelty and individual character of a Community design cannot be assessed by comparing that design with an earlier design which, as a component part of a complex product, is not visible during normal use of that product. The criterion of visibility as set out in recital 12 in the preamble to Regulation No 6/2002, according to which the protection afforded to Community designs should not be extended to those component parts which are not visible during normal use of a product, nor to those features of such a part which are not visible when the part is mounted, therefore applies to the earlier design. The Court therefore concluded that the Board of Appeal had made an error of assessment when comparing the designs in question, since it had based its decision on an earlier design which, as a component of a complex product, was not visible during normal use of that product.

Common foreign and security policy — Restrictive measures

The year 2014 saw significant developments in proceedings relating to restrictive measures in the area of the common foreign and security policy (CFSP).

Mention should be made, in particular, of two cases relating to restrictive measures against the Syrian Arab Republic, one case concerning the freezing of the funds of certain persons and entities in the context of the fight against terrorism ([18]) and one case dealing with restrictive measures against the Republic of Iran with the aim of preventing nuclear proliferation.

([17]) Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ 2002 L 3, p. 1).

([18]) As regards the freezing of the funds of certain persons and entities in the context of the fight against terrorism, see also the comments above on the judgment of 21 March 2014 in *Yusef* v *Commission* (EU:T:2014:141), in 'Admissibility of actions brought under Article 265 TFEU'.

The judgment of 3 July 2014 in *Alchaar* v *Council* (T-203/12, EU:T:2014:602) concerned restrictive measures against a former minister of the Syrian Government, which had been maintained although he had resigned from his ministerial functions.

First of all, the Court stated that the applicant's initial inclusion on the list of persons subject to the restrictive measures was lawful in so far as it was based on his function as minister in office, as the members of a government must be held jointly and severally liable for the policy of repression conducted by the government. As regards, on the other hand, the reasons for maintaining the applicant on the list, based on his former status as minister, the Court considered that it was permissible to presume that, even following his resignation, he still maintained close links with the Syrian regime, provided that such a presumption was rebuttable, proportionate to the aim pursued and observed the rights of the defence. In the case in point, the Council of the European Union had not put forward evidence of sufficiently probative value for it reasonably to be concluded that the applicant had maintained close links with the regime after his resignation; it had therefore improperly reversed the burden of proof and made a manifest error of assessment.

Furthermore, the Court found that the Council had not examined carefully and impartially the material supplied by the applicant in the course of the procedure, in particular the declarations on honour that he produced indicating, in particular, that he had always been opposed to the use of violence. According to the Court, there was no reason to doubt the credibility of the information in those declarations, unless the applicant was to be assumed to have acted in bad faith. The Court held, moreover, that the applicant's international reputation ought to have led the Council to examine the reasons why he had felt it necessary to resign from his office as minister rather than presume that he maintained links with the Syrian regime on the ground that he had occupied that post for a short period.

The case of *Mayaleh* v *Council* (judgment of 5 November 2014, T-307/12 and T-408/13, ECR, EU:T:2014:926) provided the Court with the opportunity to explain that approach further ([19]). In that case, the Court heard an action for annulment directed against a number of acts of the Council whereby it had adopted or maintained restrictive measures against the applicant in his capacity as Governor of the Central Bank of Syria.

The Court held that, as regards restrictive measures against persons supporting the Syrian regime, whilst the concept of 'support for the regime' is not defined in the relevant provisions, there is no ground on which to conclude that only persons supporting the Syrian regime for the precise purpose of enabling it to pursue its repressive activities against the civilian population might be

([19]) This judgment also gave the Court the opportunity to clarify the procedural rules for the communication of measures to their addressees and those for calculating the period within which an action may be brought. The Court held that it is only where it is impossible to communicate individually to the person concerned the act by which restrictive measures are adopted and maintained with respect to him that the publication of a notice in the *Official Journal of the European Union* constitutes the event that causes the period within which an action may be brought to begin to run. When the Council has the address for service of a person subject to restrictive measures and validly communicates to him at that address the acts incorporating those measures, no relevance can be ascribed to the fact that the period for bringing proceedings against those acts might be more favourable to that person if it were calculated from the date of publication in the Official Journal of the notice relating to the acts in question, in the light, in particular, of the application of Article 102(1) of the Rules of Procedure, which provides for 14 additional days for the calculation of the period for bringing proceedings from publication of an act in the Official Journal. Furthermore, where an act must be notified in order for the period for bringing proceedings to begin to run, it must in principle be sent to the addressee of the act, and not to the lawyers representing him, unless the applicable legislation or an agreement between the parties provides otherwise.

covered. Since it was not in dispute that the Central Bank of Syria has as its task, in particular, to serve as banker to the government of that country, it could not be denied that the bank provides financial support to the Syrian regime. Having been able to establish that the applicant, as Governor, exercised fundamental functions within the Central Bank of Syria, the Court then observed that a person exercising functions which confer on him the power to manage an entity covered by restrictive measures may, as a general rule, himself be considered to be involved in the activities that justified the adoption of the restrictive measures covering the entity in question. Accordingly, the Council was able, without committing a breach of the principle of proportionality, to rely on the applicant's functions in order to consider that he was in a position of power and influence with respect to the financial support of the Syrian regime supplied by the Central Bank of Syria.

Lastly, the Court noted that the provisions governing the restrictive measures against the Syrian Arab Republic recognise that the Member States have exclusive competence as regards the application of the restrictions at issue to their own nationals. It follows that, in the case of a person who, in addition to having Syrian nationality, has French nationality, EU law does not require the French authorities to deny him access to France. Furthermore, although Article 21(1) TFEU states that every citizen of the Union is to have the right to move and reside freely within the territory of the Member States, that right is subject to the limitations and conditions laid down in the Treaties and by the provisions adopted to give them effect. Thus, as the restrictions on entry, which appear in decisions adopted on the basis of Article 29 TEU, are clearly provisions adopted in application of the EU Treaty, the Court found that, by adopting acts coming within the CFSP, the Council was in the case in point entitled, as the measures were necessary, appropriate and temporary, to limit the right to freedom of movement within the European Union which the applicant derived from his status as a citizen of the Union. In that context, the provisions concerning restrictions on entry, in so far as they apply to citizens of the Union, must be regarded as constituting a *lex specialis* by reference to Directive 2004/38/EC ([20]), so that those provisions prevail over that directive in situations which they specifically seek to regulate.

Furthermore, in the judgment of 16 October 2014 in *LTTEI* v *Council* (T-208/11 and T-508/11, ECR, under appeal, EU:T:2014:885), the Court heard an action brought by a movement opposed to the Sri Lankan Government against measures whereby the Council had decided to maintain the restrictive measures against that movement.

Whilst the applicant challenged the maintenance of those measures on the ground, in particular, that its confrontation with the government was an 'armed conflict', subject only to international humanitarian law and not to anti-terrorism legislation, the Court stated that the existence of an armed conflict within the meaning of international humanitarian law does not preclude the application of provisions of EU law concerning terrorism to any acts of terrorism committed in that context.

After examining the argument that the maintenance of those measures was based on unreliable grounds that were not derived from decisions of competent authorities within the meaning of Common Position 2001/931/CFSP ([21]), the Court stated that an authority of a State outside the European

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

([21]) Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism (OJ 2001 L 344, p. 93).

Union may be a competent authority within the meaning of that common position. Before basing its decision on an authority of a third state, however, the Council must carefully verify that the relevant legislation of that State ensures protection of the rights of the defence and the right to effective judicial protection equivalent to that guaranteed in the European Union. In addition, Common Position 2001/931 requires, for the protection of the persons concerned and having regard to the lack of the European Union's own means of investigation, that the factual basis of a decision of the European Union to freeze funds concerning terrorism be based not on information that the Council derived from the press or the Internet, but on information which has been specifically examined and upheld in decisions of competent national authorities within the meaning of that common position. In order to ensure the effectiveness of the fight against terrorism, it is thus incumbent upon the Member States to transmit to the Council regularly, and for the Council to collect, the decisions of competent authorities adopted within those Member States, and also the grounds for those decisions. The Court observed that if, in spite of that transmission of information, a decision of a competent authority concerning a specific act capable of constituting a terrorist act is not available to the Council, the Council, in the absence of its own means of investigation, must ask a competent national authority to assess that act, with a view to a decision being taken by that authority.

Lastly, in the judgment of 25 November 2014 in *Safa Nicu Sepahan* v *Council* (T-384/11, ECR, EU:T:2014:986), the Court was called upon, in the action brought by the applicant for annulment of the acts whereby the Council had imposed on it restrictive measures pursuant to Regulation (EU) No 961/2010 ([22]) and Regulation (EU) No 267/2012 ([23]), to adjudicate on the claim for compensation which the applicant had put forward in respect of the non-material and material damage caused to it by the adoption of those measures.

Addressing the conditions under which the European Union may incur non-contractual liability, the Court began by examining the allegedly unlawful conduct of the Council. In that regard, firstly, the Court observed that the imposition of the contested restrictive measures infringed the relevant provisions of Regulation No 961/2010 and Regulation No 267/2012, which contained provisions intended to protect the interests of the individuals concerned by limiting the cases of application, and the extent or degree, of the restrictive measures that may lawfully be imposed on those individuals. Such provisions must therefore be considered to be rules of law intended to confer rights on individuals. Secondly, the Court recalled that the Council's obligation to substantiate the restrictive measures adopted arises from the requirement to observe the fundamental rights of the persons and entities concerned, and in particular their right to effective judicial protection, which implies that the Council does not enjoy any discretion in that regard. Thirdly, the Court observed that the rule requiring the Council to substantiate the restrictive measures adopted does not relate to a particularly complex situation and is clear and precise, so that it does not give rise to any difficulties as regards its application or interpretation. In the light of all of those factors, the Court considered that an administrative authority, exercising ordinary care and diligence, would, in the circumstances of the case in point, have realised, at the time when the first contested act was adopted, that the onus was upon it to gather the information or evidence substantiating the restrictive measures concerning the applicant in order to be able to establish, in the event of a challenge, that those measures were well founded by producing that information or evidence before the Courts of the European Union. Since it had not acted in that way, the Council incurred liability for a sufficiently serious breach of a rule of law intended to confer rights on individuals.

([22]) Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 (OJ 2010 L 281, p. 1).

([23]) Council Regulation (EU) No 267/2012 of 23 March 2012 on restrictive measures against Iran and repealing Regulation (EC) No 961/2010 (OJ 2010 L 88, p. 1).

As regards the damage sustained by the applicant, the Court pointed out that, when an entity is the subject of restrictive measures because of the support it has allegedly given to nuclear proliferation, it is publicly associated with conduct which is considered a serious threat to international peace and security, as a result of which it becomes an object of opprobrium and suspicion (which thus affects its reputation) and is therefore caused non-material damage; that damage is all the more serious since it is caused by an official statement of the position of an EU institution. Accordingly, the Court held that the unlawful adoption and maintenance of the restrictive measures concerning the applicant had caused it non-material damage, distinct from any material loss resulting from an impact on its commercial relations, and that, consequently, it had to be recognised as having a right to receive compensation for that damage. Since, in particular, the allegation levelled by the Council at the applicant was particularly serious and had not been substantiated by any relevant information or evidence, the Court, evaluating the non-material harm suffered by the applicant *ex aequo et bono*, considered that an award of EUR 50 000 would constitute appropriate compensation.

Public health

The judgment of 14 May 2014 in *Germany* v *Commission* (T-198/12, ECR, under appeal, EU:T:2014:251) gave the Court the opportunity to clarify the principles governing its review of the activities of the EU authorities in matters of public health. The subject matter of the action was the Commission's decision rejecting in part the Federal Republic of Germany's request to derogate from the limit values for certain chemical substances in toys laid down in Directive 2009/48/EC ([24]). Although the Federal Republic of Germany wished to maintain the limit values fixed in its legislation for lead, barium, arsenic, antimony and mercury, the Commission rejected that request with respect to the last three of those substances and authorised the national values to be maintained for the first two only until 21 July 2013.

Adjudicating in the main proceedings after an interlocutory order had been made by its president ([25]), the Court observed, first of all, that a Member State can request maintenance of its pre-existing national provisions where it considers that the risk to public health must be assessed differently from the way in which it was assessed by the EU legislature when it adopted the European harmonisation measure. To that end, it falls to the requesting Member State to prove that those national provisions ensure, in terms of public health, a higher level of protection than the EU harmonisation measure and that they do not go beyond what is necessary to attain that objective. In the case in point, when comparing the German limit values and those laid down in Directive 2009/48, the Court stated that that directive established migration limits, the risk to health being regarded as linked to the quantity of a given harmful substance that might be released by a toy before being absorbed by a child. In addition, the Court observed that the directive laid down different migration limit values, defined according to the type of material present in the toy (namely dry, brittle, powder-like or pliable material), while the German limit values were expressed in bioavailability. These limit values defined the maximum permissible quantity of a chemical which might, as a result of the use of the toys, be absorbed and be available for biological processes in the human body, and were applicable to all types of toy, regardless of the material of which the toy was made.

([24]) Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys (OJ 2009 L 170, p. 1).

([25]) Order of 15 May 2013 in *Germany* v *Commission* (T-198/12 R, ECR, EU:T:2013:245), ordering the Commission to authorise the maintenance of the five German limit values pending the judgment of the Court in the main proceedings.

According to the Court, since the migration limit values in the directive were higher than those resulting from the conversion of the German bioavailability limit values only with respect to scraped-off toy material, the Commission could not be criticised for having rejected the request to maintain the German limit values, which applied independently of the consistency of the toy material. The Court inferred that, with respect to arsenic, antimony and mercury, the Federal Republic of Germany had failed to prove that the national limit values ensured a higher level of protection than the directive. On the other hand, the Court annulled the contested decision with respect to lead in so far as it had limited approval of the German limit values for that heavy metal until 21 July 2013. The Court considered that the Commission had infringed its obligation to state reasons, as its decision contained in that regard an internal contradiction liable to prevent the reasons underlying it from being properly understood.

Registration of chemicals

In the case giving rise to the judgment of 2 October 2014 in *Spraylat* v *ECHA* (T-177/12, ECR, EU:T:2014:849), the Court heard an action for annulment of the decision of the European Chemicals Agency (ECHA) imposing on the applicant, in respect of the fee payable for registration of a chemical substance, an administrative charge more than 17 times greater than the amount of that fee. The application of that charge was based on the finding that, contrary to the declaration which it had made, the applicant did not fulfil the conditions to receive a reduction of the fee for small enterprises, in accordance with Decision MB/D/29/2010 of the Management Board of the ECHA on the classification of services for which charges are levied. The applicant claimed, in particular, that there had been a breach of the principle of proportionality.

Observing that, in relying on a breach of that principle, the applicant in fact raised a plea of illegality against Decision MB/D/29/2010, the Court noted that recital 11 in the preamble to Regulation (EC) No 340/2008 ([26]) stated that '[t]he submission of false information should be discouraged by the imposition of an administrative charge by the [ECHA] and a dissuasive fine by the Member States, if appropriate'. According to the Court, while it is clear from that recital that the imposition of an administrative charge contributes to the objective of discouraging the transmission of false information by undertakings, the administrative charge cannot, however, be treated as a fine. As the amount of the charge applied in the case in point was considerably more than the financial advantage that the applicant might have obtained from making its false declaration, the Court considered that the objectives of the legislation did not justify the negative financial consequences for the applicant of the application of such a charge. It followed that Decision MB/D/29/2010, as applied to the applicant, manifestly went beyond what was necessary to achieve the objective of the administrative charge pursued by the applicable legislation, that it therefore had to be held inapplicable and, accordingly, that the form of order sought by the applicant had to be granted and, on that ground, the contested decision had to be annulled.

Access to documents of the institutions

In the judgment of 7 October 2014 in *Schenker* v *Commission* (T-534/11, ECR, EU:T:2014:854), the Court ruled on the interpretation of the concept of an overriding public interest in disclosure of docu-

([26]) Commission Regulation (EC) No 340/2008 of 16 April 2008 on the fees and charges payable to the European Chemicals Agency pursuant to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (OJ 2008 L 107, p. 6).

ments, within the meaning of Article 4(2) of Regulation (EC) No 1049/2001 ([27]), in the field of competition and also on the circumstances in which the period prescribed for replying to a request for access may be extended. In the case in point, the applicant sought annulment of the Commission's decision refusing to grant access to the administrative file of the final decision relating to a cartel affecting airfreight services and also to the full text and the non-confidential version of that decision.

The Court emphasised that the public must be in a position to ascertain the actions taken by the Commission in the field of competition and that there is therefore an overriding public interest in the public being able to ascertain certain essential elements of Commission action in that field. However, the existence of that public interest does not require the Commission to grant generalised access, on the basis of Regulation No 1049/2001, to all the information gathered in the application of Article 101 TFEU. Indeed, such generalised access would jeopardise the balance which the EU legislature sought to ensure between the obligation on the undertakings concerned to submit to the Commission possibly sensitive commercial information and the guarantee of increased protection, by virtue of the requirement of professional secrecy and business secrecy, for the information so provided to the Commission. Accordingly, the public interest in being informed of the Commission's activities in the field of competition does not in itself justify either the disclosure of the investigation case-file or the disclosure of the full text of the decision adopted, inasmuch as those documents are not necessary in order to understand the essential elements of the Commission's activities, such as the outcome of the procedure and the reasons for its action. After all, the Commission can ensure that there is a sufficient understanding of that outcome and of those reasons by, in particular, publishing a non-confidential version of the decision at issue.

According to the Court, in order to identify the information necessary to satisfy that overriding public interest, it should be noted that, under Article 30(1) and (2) of Regulation No 1/2003, the Commission is required, while having regard to the legitimate interest of undertakings in the protection of their business secrets, to publish the decisions which it takes pursuant to Article 7 of that regulation, stating the names of the parties concerned and the main content of the decision, including any penalties imposed. Accordingly, that overriding public interest cannot be met by the mere publication of a press release regarding the adoption of the decision at issue, since such a press release does not reproduce the main content of decisions adopted pursuant to Article 7 of Regulation No 1/2003. That overriding public interest requires the publication of a non-confidential version of those decisions. In the light of those considerations, the Court held that, in the case in point, the Commission should have sent a non-confidential version of the decision at issue to the applicant following the application made by the latter, thus granting partial access to that decision, as provided for in Article 4(6) of Regulation No 1049/2001.

The Commission must endeavour to prepare such a version in the shortest time possible and, in any event, within a reasonable timeframe which must be established on the basis of the specific circumstances of each case, in particular, on the basis of whether the number of requests for confidentiality submitted by the undertakings is large or small and of the technical and legal complexity of those requests. In the case in point, the Court considered that there was nothing to prevent the Commission from communicating to the applicant the part of the non-confidential version of the decision at issue which was not the subject matter of any request for confidentiality. The Commission should therefore have sent the applicant such a non-confidential version of the contested decision without waiting for all the requests for confidentiality submitted by the undertakings concerned to be finally settled.

([27]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

II. Actions for damages

In the case giving rise to the judgment of 18 September 2014 in *Holcim (Romania)* v *Commission* (T-317/12, ECR, under appeal, EU:T:2014:782), the Court heard a claim for compensation for the damage allegedly sustained by the applicant because of the Commission's refusal to disclose to it information concerning greenhouse gas emission allowances allegedly stolen from it and to prohibit all transactions involving those allowances. The applicant claimed that the European Union was liable, primarily, on the basis of liability for fault and, in the alternative, on the basis of strict liability.

As regards the admissibility of the claim, the Court recalled that, in accordance with the judgment in *Roquette frères* v *Commission* ([28]), delivered by the Court of Justice, the admissibility of an action for compensation provided for in Article 268 TFEU and the second paragraph of Article 340 TFEU may be conditional in certain cases on the prior exhaustion of the remedies available under domestic law for obtaining satisfaction from the national authorities, provided that those remedies under domestic law effectively ensure protection for the individuals concerned in that they are capable of resulting in compensation for the damage alleged. In that formulation of the principle, the use of the verb 'may' shows that non-exhaustion of 'the remedies available under domestic law for obtaining satisfaction from the national authorities' must not automatically lead to a finding of inadmissibility by the Courts of the European Union. According to the Court, there is only one situation in which the fact that a final ruling has not been given on the action for damages brought before the national court necessarily implies that the action for compensation brought before the Courts of the European Union is inadmissible. This is where that fact precludes the Courts of the European Union from identifying the nature and quantum of the damage pleaded before them. Taking the view that that was not the position in the case in point, the Court held that the action could not be dismissed as inadmissible.

As regards the examination of the substance of the action, the Court stated that, where a person has brought two actions seeking compensation for the same damage, one against a national authority, before a national court, and the other against an EU institution or body, before the Courts of the European Union, there is a risk that, because of the different assessments of that damage by the two different courts, the person in question may be insufficiently or excessively compensated. Before ruling on the damage, the relevant Court of the European Union must wait until the national court has given its final judgment. On the other hand, it may, even before the national court has given its ruling, determine whether the conduct alleged is capable of giving rise to non-contractual liability on the part of the European Union.

III. Appeals

Among the decisions delivered by the Appeal Chamber of the Court during 2014, three judgments must be given particular mention.

Firstly, in the judgment of 21 May 2014 in *Mocová* v *Commission* (T-347/12 P, ECR (Extracts), EU:T:2014:268), the Court approved the approach of the Civil Service Tribunal, namely that, in view of the evolving nature of the pre-litigation procedure, it is the statement of reasons contained in the decision rejecting the complaint that must be taken into account in the review of legality of the original act adversely affecting an official, since that statement of reasons is deemed to cover that act. That is a consequence of the case-law on determining whether the response to the com-

([28]) Judgment of 30 May 1989 in *Roquette frères* v *Commission* (20/88, ECR, EU:C:1989:221).

plaint is amenable to review, from which it follows that the appointing authority, or the authority authorised to conclude contracts, may, in the decision rejecting the complaint, find it necessary to supplement or to modify its decision.

Secondly, in the judgment of 21 May 2014 in *Commission* v *Macchia* (T-368/12 P, ECR-SC EU:T:2014:266), the Court explained the nature of the obligation placed on an institution where a contract of fixed duration of a member of the temporary staff is not renewed. In the case in point, the Court held that the Civil Service Tribunal had, firstly, misconstrued the administration's duty to have regard for the welfare of its staff and, secondly, misapplied the judgment of 8 March 2012 in *Huet* (C-251/11, ECR, EU:C:2012:133). As regards the duty to have regard for the welfare of the staff, the Court held that, in interpreting that duty too broadly as requiring the administration to consider beforehand the possibility of redeploying the staff member concerned and, thus, in devising for the administration an obligation not provided for in the conditions of employment of other staff of the European Union, the Civil Service Tribunal had not observed the limits of its powers, which consisted in examining whether the authority concerned had remained within reasonable limits and had not used its discretion in a manifestly incorrect manner. As regards the judgment in *Huet* (EU:C:2012:133), the Court explained that that judgment does not establish a right for contractual staff to a certain continuity of employment, but merely points out that the 'framework agreement' on fixed-term work, concluded on 18 March 1999, is intended to prevent abuse of fixed-term contracts.

Thirdly, in the judgment of 16 October 2014 in *Schönberger* v *Court of Auditors* (T-26/14 P, ECR-SC, EU:T:2014:887), the Court held that, in rejecting a plea on the basis of an interpretation of the relevant provision which did not correspond to the interpretation used by the administration when stating the reasons on which the decision at issue was based, the Civil Service Tribunal had not only substituted its own reasons for those of the administration but had also based that rejection on matters of fact and of law which had not been discussed before it, and had therefore breached the adversarial principle.

IV. Applications for interim measures

In 2014, the Court received 45 applications for interim relief, which represented a significant increase compared with the number of applications made in 2013 (31). The Court determined 48 cases ([29]) in 2014, as opposed to 27 in 2013. The president of the Court granted four applications, in the orders of 13 February 2014 in *Luxembourg Pamol (Cyprus) and Luxembourg Industries* v *Commission* (T-578/13 R, EU:T:2014:103); of 13 June 2014 in *SACE and Sace BT* v *Commission* (T-305/13 R, EU:T:2014:595); of 25 July 2014 in *Deza* v *ECHA* (T-189/14 R, EU:T:2014:686); and of 4 December 2014 in *Vanbreda Risk & Benefits* v *Commission* (T-199/14 R, ECR (Extracts), EU:T:2014:1024).

The orders in *Luxembourg Pamol (Cyprus) and Luxembourg Industries* v *Commission* (EU:T:2014:103) and *Deza* v *ECHA* (EU:T:2014:686), concerning the problem of the proposed disclosure by the Commission and by the ECHA of what was claimed to be confidential information, broadly followed

([29]) Two decisions were taken by the judge hearing applications for interim measures, replacing the President of the Court in accordance with Article 106 of the Rules of Procedure: the orders of 4 February 2014 in *Serco Belgium and Others* v *Commission* (T-644/13 R, EU:T:2014:57) and of 27 October 2014 in *Diktyo Amyntikon Viomichanion Net* v *Commission* (T-703/14 R, EU:T:2014:914).

the model of the corresponding orders made in 2012 and 2013 ([30]). First of all, the president of the Court accepted that there was a prima facie case: the assessment of confidentiality in relation to a considerable volume of chemical data (Case T-189/14 R) and physico-chemical, biological and pharmaceutical data (Case T-578/13 R) raised complex untested questions which could not, prima facie, be considered to be manifestly of no relevance, while their resolution called for thorough examination within the main proceedings.

As regards urgency, the president of the Court recognised the serious nature of the alleged harm, observing that it had to be assumed, for the purposes of the interim relief proceedings, that the information at issue was confidential. That information relating to the applicants' production and marketing activities constituted an intangible asset capable of being used for competitive purposes, the value of which would be seriously reduced if it ceased to be secret. As for the irreparability of that harm, the president of the Court held that the harm caused by publication of the information at issue on the Internet could not be quantified, since the Internet could be accessed by an unlimited number of persons the world over. As regards the harm caused by disclosure of the information at issue to the third party which had submitted a request for disclosure under Regulation No 1049/2001, the president of the Court considered that the applicants would have been placed in a position of vulnerability at least as threatening as that caused by publication on the Internet. That third party would have had immediate access to the information and would have been able to exploit it immediately for all purposes, in particular competitive purposes, it considered appropriate, and thus to undermine the applicants' competitive position. That harm, according to the president of the Court, could not be quantified, and the applicants had to expect that an indeterminate and, in theory, unlimited number of actual and potential competitors throughout the world would obtain the information at issue in order to use it for various purposes in the short, medium or long term.

When weighing up the interests, the president of the Court emphasised that a judgment ordering annulment of the decision refusing to recognise the confidentiality of the information at issue would be rendered illusory and be deprived of effectiveness if the applications for interim measures were to be dismissed, since the consequence of that dismissal would be to allow immediate disclosure of the information and therefore *de facto* to prejudge the future decision in the main action.

The case giving rise to the order in *SACE and Sace BT* v *Commission* (EU:T:2014:595) concerned a decision whereby the Commission, firstly, classified as unlawful State aid incompatible with the internal market capital injections granted by Servizi assicurativi del commercio estero SpA (SACE SpA), an Italian public insurance company, to its subsidiary Sace BT SpA, which had been set up by the parent company as a separate entity in order to isolate the management of certain risks and, secondly, ordered the Italian authorities to recover the aid paid, amounting to EUR 78 million, from Sace BT.

([30]) These were the orders of 16 November 2012 in *Evonik Degussa* v *Commission* (T-341/12 R, EU:T:2012:604) and *Akzo Nobel and Others* v *Commission* (T-345/12 R, EU:T:2012:605) and of 29 November 2012 in *Alstom* v *Commission* (T-164/12 R, EU:T:2012:637), which were not the subject of an appeal (see the Annual Report for 2012, pp. 151 and 156), as well as the order of 11 March 2013 in *Pilkington Group* v *Commission* (T-462/12 R, ECR, EU:T:2013:119), which was upheld on appeal, and the orders of 25 April 2013 in *AbbVie* v *EMA* (T-44/13 R, EU:T:2013:221) and *InterMune UK and Others* v *EMA* (T-73/13 R, EU:T:2013:222) (see the Annual Report for 2013, p. 147). The latter orders were set aside by the Court of Justice on appeal. After the cases were referred back to the General Court, the applicants withdrew their applications for interim measures, which resulted in Cases T-44/13 R and T-73/13 R being removed from the register on 8 April and 21 May 2014.

In his order of 13 June 2014, the president of the Court accepted that the condition relating to a prima facie case was satisfied, as the applicants had established that the plea put forward in the main action — alleging infringement of Article 107 TFEU in that the Commission had wrongly considered that the measures at issue were attributable to the Italian State — raised very serious doubts as to the lawfulness of the contested decision, which had not been removed in the interim measures proceedings by the observations of the other party. In particular, the applicants' line of argument — that the Commission had disregarded the commercial and strategic autonomy enjoyed by SACE — had not been contradicted by the Commission, which had remained silent on the question of a prima facie case in the interim measures proceedings. In the light of the principle that the parties control the subject matter of the dispute, the president of the Court could not disregard the Commission's conduct in the proceedings.

As regards urgency, the applicants succeeded in showing that Sace BT would have sustained serious and irreparable harm if the suspension of operation sought had not been ordered. The president of the Court observed, firstly, that the Commission had itself acknowledged that, if the execution in full of the decision ordering recovery of the alleged State aid were to entail the liquidation of Sace BT before delivery of the judgment in the main action, it would cause serious and irreparable harm to that undertaking and, secondly, that reimbursement of the total amount of that aid would have the consequence that Sace BT would no longer satisfy the requirements of the Italian insurance regime and would have to be wound up as an insurance company.

When weighing up the interests, the president of the Court observed that, with respect to the obligation to repay illegally paid aid which has been declared incompatible with the internal market, the Commission's interest must normally take precedence over that of the recipient of the aid, but that the latter may be granted provisional measures in exceptional circumstances. In this instance, as the applicants had demonstrated both urgency and the existence of a prima facie case, the president of the Court recognised that they had a legitimate interest in obtaining the suspension of operation sought. In addition, as the written procedure in the main action had been closed for several months, the president of the Court concluded that the Court should deliver its judgment in the relatively near future, and took the view that this constituted an exceptional circumstance, of a procedural nature, that he could take into consideration in weighing the interests. However, having regard to, firstly, the interest of the European Union in the effective recovery of State aid and, secondly, the applicants' statement that Sace BT needed only a small amount of the net assets, necessary to ensure its survival, the president of the Court granted only a partial suspension of operation.

The order in *Vanbreda Risk & Benefits* v *Commission* (EU:T:2014:1024) concerned an invitation to tender relating to a contract for insurance services in respect of immovable property which the Commission had published in August 2013 on behalf of itself and a number of EU institutions, agencies and bodies. The invitation to tender had the purpose of replacing the contract then in force, concluded with a consortium of which the applicant, Vanbreda Risk & Benefits, had been the broker. On 30 January 2014, the Commission informed the applicant that its tender had been rejected, on the ground that it did not offer the lowest price, and that the contract had been awarded to Marsh SA, an insurance broker. The applicant brought an action for annulment of that decision and for damages of EUR 1 million, and also lodged an application for interim measures, asking the president of the Court to order suspension of the operation of the contested decision. In his order of 1 December 2014, the president of the Court granted that application.

The president of the Court found that there was a particularly strong prima facie case. One of the essential conditions of the invitation to tender had consisted in the guarantee, by a tenderer submitting a joint tender, of the joint and several commitment of all the partners to the tender to per-

form the contract. The initial tender submitted by Marsh had not satisfied that requirement, since the insurance companies which instructed that broker had committed themselves only for the part of the contract which each of them proposed to perform individually. The fact that, subsequently, upon signature of the contract, all the successful companies accepted the joint and several liability clause was the consequence of what was prima facie the unlawful amendment of the tender, after submission of tenders, by virtue of bilateral contacts between the Commission and Marsh. In addition, following the departure of one of the insurers that was to take part in Marsh's tender, the Commission had allowed Marsh to include, after the contract had been awarded, among the signatories to the contract, two new insurance companies which had not been subject to the evaluation of either their economic and financial capacity or their technical capacity before the contract was awarded and the other tenderers' tenders were eliminated. According to the president of the Court, that raised, on the face of it, serious doubts as to observance of the legality of the tendering procedure.

As regards the condition relating to urgency, the president of the Court, after recognising the seriousness of the alleged financial loss, stated that the applicant had not succeeded in establishing that that loss was irreparable, on the ground that, according to consistent case-law, purely financial loss cannot normally be regarded as irreparable, since it can generally be the subject of subsequent financial compensation. As regards, more particularly, disputes relating to the award of public contracts, it is even excessively difficult for the unsuccessful tenderer, for systemic reasons connected with that particular type of dispute, to establish the risk of sustaining irreparable loss. However, such an outcome is irreconcilable with the requirements of effective provisional protection in relation to public contracts. The president of the Court thus considered that a new approach, appropriate to the specific features of disputes of that type, should be taken. Thus, where the unsuccessful tenderer succeeds in demonstrating the existence of a particularly strong prima facie case, he cannot be required to establish that the dismissal of his application for interim measures could well cause him irreparable harm, as such a requirement would entail excessive and unwarranted impairment of the effective judicial protection which he enjoys under Article 47 of the Charter of Fundamental Rights of the European Union. Such a prima facie case is made out where he reveals the existence of a sufficiently manifest and serious illegality, the production or prolongation of the effects of which must be prevented without delay, unless the weighing of the interests definitively precludes it. In those exceptional circumstances, the mere proof of the gravity of the harm that would be caused by the failure to suspend the operation of the contested decision is sufficient to satisfy the condition relating to urgency, in view of the need to render an illegality of that nature ineffective. In this instance, the president of the Court found that serious breaches had, on the face of it, been committed, entailing the irregularity of the tender accepted, and that the Commission's conduct had to be regarded as a sufficiently manifest and serious breach of EU law, so that the production of its effects had to be avoided for the future.

As regards the weighing of the interests, the president of the Court considered that the balance lay in favour of the applicant and that the latter's interest in preserving its right to an effective remedy as well as the protection of the financial interests of the European Union and the need to neutralise the effects of the illegality found took precedence over the Commission's interest in maintaining the contested decision. In that regard, the president of the Court rejected the Commission's argument that, should the contested decision be suspended, it would be exposed to catastrophic consequences for the financial interests of the European Union. Indeed, as regards the risk associated with the fact that the buildings concerned would be uninsured, it had proved to be the case that there were a number of solutions that could ensure that the buildings could be covered by the contract currently in force.

The president of the Court considered, therefore, that the circumstances of the case required that suspension of the operation of the contested decision be ordered. However, in the light of the change of approach taken and of the principle of legal certainty, he gave effect to that suspension of operation only on expiry of the period within which an appeal might be lodged ([31]).

([31]) The other applications for interim measures which had been lodged in connection with public contracts were dismissed for lack of a prima facie case, without any examination of the condition relating to urgency (orders of 4 February 2014 in *Serco Belgium and Others* v *Commission* (T-644/13 R, EU:T:2014:57); of 5 December 2014 in *AF Steelcase* v *OHIM* (T-652/14 R, EU:T:2014:1026); and of 8 December 2014 in *STC* v *Commission* (T-355/14 R, EU:T:2014:1046)).

B — Composition of the General Court

(order of precedence as at 31 December 2014)

First row, from left to right:

G. Berardis, President of Chamber; M. van der Woude, President of Chamber; A. Dittrich, President of Chamber; S. Papasavvas, President of Chamber; H. Kanninen, Vice-President of the Court; M. Jaeger, President of the Court; M.E. Martins Ribeiro, President of Chamber; M. Prek, President of Chamber; S. Frimodt Nielsen, President of Chamber; D. Gratsias, President of Chamber.

Second row, from left to right:

E. Buttigieg, Judge; A. Popescu, Judge; I. Labucka, Judge; I. Wiszniewska-Białecka, Judge; F. Dehousse, Judge; N.J. Forwood, Judge; O. Czúcz, Judge; I. Pelikánová, Judge; J. Schwarcz, Judge; M. Kancheva, Judge.

Third row, from left to right:

L. Madise, Judge; I. Ulloa Rubio, Judge; V. Kreuschitz, Judge; V. Tomljenović, Judge; C. Wetter, Judge; E. Bieliūnas, Judge; A.M. Collins, Judge; S. Gervasoni, Judge; E. Coulon, Registrar.

1. Members of the General Court

(in order of their entry into office)

Marc Jaeger

Born 1954; law degree from the Robert Schuman University of Strasbourg; studied at the College of Europe; admitted to the Luxembourg Bar (1981); attaché de justice delegated to the office of the Public Attorney of Luxembourg (1983); Judge at the Luxembourg District Court (1984); Legal Secretary at the Court of Justice of the European Communities (1986–96); President of the Institut Universitaire International Luxembourg (IUIL); Judge at the General Court since 11 July 1996; President of the General Court since 17 September 2007.

Heikki Kanninen

Born 1952; graduate of the Helsinki School of Economics and of the Faculty of Law of the University of Helsinki; Legal Secretary at the Supreme Administrative Court of Finland; General Secretary to the Committee for Reform of Legal Protection in Public Administration; Principal Administrator at the Supreme Administrative Court; General Secretary to the Committee for Reform of Administrative Litigation, Counsellor in the Legislative Drafting Department of the Ministry of Justice; Assistant Registrar at the EFTA Court; Legal Secretary at the Court of Justice of the European Communities; Judge at the Supreme Administrative Court (1998–2005); member of the Asylum Appeal Board; Vice-Chairman of the Committee on the Development of the Finnish Courts; Judge at the Civil Service Tribunal from 6 October 2005 to 6 October 2009; Judge at the General Court since 7 October 2009; Vice-President of the General Court since 17 September 2013.

Nicholas James Forwood

Born 1948; Cambridge University BA 1969, MA 1973 (Mechanical Sciences and Law); called to the English Bar in 1970, thereafter practising in London (1971–99) and also in Brussels (1979–99); called to the Irish Bar in 1981; appointed Queen's Counsel 1987; Bencher of the Middle Temple 1998; representative of the Bar of England and Wales at the Council of the Bars and Law Societies of the EU (CCBE) and Chairman of the CCBE's Permanent Delegation to the European Court of Justice (1995–99); governing board member of the World Trade Law Association and European Maritime Law Organisation (1993–2002); Judge at the General Court since 15 December 1999.

Maria Eugénia Martins de Nazaré Ribeiro

Born 1956; studied in Lisbon, Brussels and Strasbourg; member of the Bar in Portugal and Brussels; independent researcher at the Institut d'études européennes de l'Université libre de Bruxelles (Institute for European Studies, Free University of Brussels); Legal Secretary to the Portuguese Judge at the Court of Justice, Mr Moitinho de Almeida (1986–2000), then to the President of the Court of First Instance, Mr Vesterdorf (2000–03); Judge at the General Court since 31 March 2003.

Franklin Dehousse

Born 1959; law degree (University of Liege, 1981); Research Fellow (Fonds national de la recherche scientifique, 1985–89); Legal Adviser to the Chamber of Representatives (1981–90); Doctor of Laws (University of Strasbourg, 1990); professor (Universities of Liege and Strasbourg; College of Europe; Institut royal supérieur de Défense; Université Montesquieu, Bordeaux; Collège Michel Servet of the Universities of Paris; Faculties of Notre-Dame de la Paix, Namur); Special Representative of the Minister for Foreign Affairs (1995–99); Director of European Studies of the Royal Institute of International Relations (1998–2003); *assesseur* at the Council of State (2001–03); consultant to the European Commission (1990–2003); member of the Internet Observatory (2001–03); Judge at the General Court since 7 October 2003.

Ottó Czúcz

Born 1946; Doctor of Laws of the University of Szeged (1971); administrator at the Ministry of Labour (1971–74); lecturer (1974–89), Dean of the Faculty of Law (1989–90), Vice-Rector (1992–97) at the University of Szeged; lawyer; member of the Presidium of the National Retirement Insurance Scheme; Vice-President of the European Institute of Social Security (1998–2002); member of the Scientific Council of the International Social Security Association; Judge at the Constitutional Court (1998–2004); Judge at the General Court since 12 May 2004.

Irena Wiszniewska-Białecka
Born 1947; Magister Juris, University of Warsaw (1965–69); researcher (assistant lecturer, associate professor, professor) at the Institute of Legal Sciences of the Polish Academy of Sciences (1969–2004); assistant researcher at the Max Planck Institute for Foreign and International Patent, Copyright and Competition Law, Munich (award from the Alexander von Humboldt Foundation, 1985–86); lawyer (1992–2000); Judge at the Supreme Administrative Court (2001–04); Judge at the General Court since 12 May 2004.

Irena Pelikánová
Born 1949; Doctor of Laws, assistant in economic law (before 1989), Dr Sc., professor of business law (since 1993) at the Faculty of Law, Charles University, Prague; member of the Executive of the Securities Commission (1999–2002); lawyer; member of the Legislative Council of the Government of the Czech Republic (1998–2004); Judge at the General Court since 12 May 2004.

Ingrida Labucka
Born 1963; diploma in law, University of Latvia (1986); investigator at the Interior Ministry for the Kirov Region and the City of Riga (1986–89); Judge, Riga District Court (1990–94); lawyer (1994–98 and July 1999 to May 2000); Minister for Justice (November 1998 to July 1999 and May 2000 to October 2002); member of the International Court of Arbitration in The Hague (2001–04); member of parliament (2002–04); Judge at the General Court since 12 May 2004.

Savvas S. Papasavvas
Born 1969; studied at the University of Athens (graduated in 1991); DEA (diploma of advanced studies) in public law, University of Paris II (1992), and PhD in law, University of Aix-Marseille III (1995); admitted to the Cyprus Bar, member of the Nicosia Bar since 1993; lecturer, University of Cyprus (1997–2002), lecturer in constitutional law since September 2002; researcher, European Public Law Centre (2001–02); Judge at the General Court since 12 May 2004.

Miro Prek

Born 1965; law degree (1989); called to the Bar (1994); performed various tasks and functions in public authorities, principally in the Government Office for Legislation (Under-Secretary of State and Deputy Director, Head of Department for European and Comparative Law) and in the Office for European Affairs (Under-Secretary of State); member of the negotiating team for the association agreement (1994–96) and for accession to the European Union (1998–2003), responsible for legal affairs; lawyer; responsible for projects regarding adaptation to European legislation, and to achieve European integration, principally in the western Balkans; Head of Division at the Court of Justice of the European Communities (2004–06); Judge at the General Court since 7 October 2006.

Alfred Dittrich

Born 1950; studied law at the University of Erlangen-Nuremberg (1970–75); articled law clerk in the Nuremberg Higher Regional Court district (1975–78); adviser at the Federal Ministry of Economic Affairs (1978–82); counsellor at the Permanent Representation of the Federal Republic of Germany to the European Communities (1982); adviser at the Federal Ministry of Economic Affairs, responsible for Community law and competition issues (1983–92); Head of the EU Law Section at the Federal Ministry of Justice (1992–2007); Head of the German Delegation on the Council Working Party on the Court of Justice; agent of the Federal Government in a large number of cases before the Court of Justice of the European Communities; Judge at the General Court since 17 September 2007.

Sten Frimodt Nielsen

Born 1963; graduated in law from Copenhagen University (1988); civil servant in the Ministry of Foreign Affairs (1988–91); tutor in international and European law at Copenhagen University (1988–91); Embassy Secretary at the Permanent Mission of Denmark to the United Nations in New York (1991–94); civil servant in the Legal Service of the Ministry of Foreign Affairs (1994–95); external lecturer at Copenhagen University (1995); adviser, then senior adviser, in the Prime Minister's Office (1995–98); Minister Counsellor at the Permanent Representation of Denmark to the European Union (1998–2001); special adviser for legal issues in the Prime Minister's Office (2001–02); Head of Department and Legal Counsel in the Prime Minister's Office (March 2002 to July 2004); Assistant Secretary of State and Legal Counsel in the Prime Minister's Office (August 2004 to August 2007); Judge at the General Court since 17 September 2007.

Juraj Schwarcz

Born 1952; Doctor of Law (Comenius University, Bratislava, 1979); company lawyer (1975–90); registrar responsible for the commercial register at the City Court, Košice (1991); Judge at the City Court, Košice (January to October 1992); Judge and President of Chamber at the Regional Court, Košice (November 1992 to 2009); temporary Judge at the Supreme Court of the Slovak Republic, Commercial Law Division (October 2004 to September 2005); Head of the Commercial Law Division at the Regional Court, Košice (October 2005 to September 2009); external member of the Commercial and Business Law Department at Pavol Josef Šafárik University, Košice (1997–2009); external member of the teaching staff of the Judicial Academy (2005–09); Judge at the General Court since 7 October 2009.

Marc van der Woude

Born 1960; law degree (University of Groningen, 1983); studied at the College of Europe (1983–84); assistant lecturer at the College of Europe (1984–86); lecturer at Leiden University (1986–87); rapporteur in the Directorate-General for Competition of the European Commission (1987–89); Legal Secretary at the Court of Justice of the European Communities (1989–92); policy coordinator in the Directorate-General for Competition of the European Commission (1992–93); member of the Legal Service of the European Commission (1993–95); member of the Brussels Bar from 1995; professor at Erasmus University Rotterdam from 2000; author of numerous publications; Judge at the General Court since 13 September 2010.

Dimitrios Gratsias

Born 1957; graduated in law from the University of Athens (1980); awarded DEA (diploma of advanced studies) in public law by the University of Paris I, Panthéon-Sorbonne (1981); awarded diploma by the University Centre for Community and European Studies (University of Paris I) (1982); junior officer of the Council of State (1985–92); junior member of the Council of State (1992–2005); Legal Secretary at the Court of Justice of the European Communities (1994–96); supplementary member of the Superior Special Court of Greece (1998 and 1999); member of the Council of State (2005); Member of the Special Court for Actions against Judges (2006); Member of the Supreme Council for Administrative Justice (2008); Inspector of Administrative Courts (2009–10); Judge at the General Court since 25 October 2010.

Andrei Popescu

Born 1948; graduated in law from the University of Bucharest (1971); postgraduate studies in international labour law and European social law, University of Geneva (1973–74); Doctor of Laws of the University of Bucharest (1980); trainee assistant lecturer (1971–73), assistant lecturer with tenure (1974–85) and then lecturer in labour law at the University of Bucharest (1985–90); principal researcher at the National Research Institute for Labour and Social Protection (1990–91); Deputy Director-General (1991–92), then Director (1992–96) at the Ministry of Labour and Social Protection; senior lecturer (1997), then professor at the National School of Political Science and Public Administration, Bucharest (2000); State Secretary at the Ministry for European Integration (2001–05); Head of Department at the Legislative Council of Romania (1996–2001 and 2005–09); founding editor of the *Romanian Review of European Law*; President of the Romanian Society for European Law (2009–10); agent of the Romanian Government before the Courts of the European Union (2009–10); Judge at the General Court since 26 November 2010.

Mariyana Kancheva

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

Guido Berardis

Born 1950; degree in law (Sapienza University of Rome, 1973), diploma of advanced European studies at the College of Europe (Bruges, 1974–75); official of the European Commission ('International Affairs' Directorate of the Directorate-General for Agriculture, 1975–76); member of the Legal Service of the European Commission (1976–91 and 1994–95); representative of the Legal Service of the European Commission in Luxembourg (1990–91); Legal Secretary at the Court of Justice of the European Communities in the chambers of the judge Mr G.F. Mancini (1991–94); Legal Adviser to members of the European Commission, Mr M. Monti (1995–97) and Mr F. Bolkestein (2000–02); Director of the 'Procurement policy' Directorate (2002–03), the 'Services, intellectual and industrial property, media and data protection' Directorate (2003–05) and the 'Services' Directorate (2005–11) at the Directorate-General for the Internal Market of the European Commission; Principal Legal Adviser and Director of the 'Justice, freedom and security, private law and criminal law' team at the Legal Service of the European Commission (2011–12); Judge at the General Court since 17 September 2012.

Eugène Buttigieg

Born 1961; Doctor of Laws, University of Malta; master of laws in European legal studies, University of Exeter; Ph.D. in competition law, University of London; legal officer at the Ministry of Justice (1987–90); senior legal officer at the Ministry of Foreign Affairs (1990–94); member of the Copyright Board (1994–2005); legal reviser at the Ministry of Justice and local government (2001–02); board member of the Malta Resources Authority (2001–09); legal consultant in the field of EU law from 1994, Legal Adviser to the Ministry of Finance, the Economy and Investment on consumer and competition law (2000–10), Legal Adviser to the Office of the Prime Minister on consumer affairs and competition (2010–11), legal consultant with the Malta Competition and Consumer Affairs Authority (2012); lecturer (1994–2001), senior lecturer (2001–06), subsequently associate professor (from 2007) and holder of the Jean Monnet Chair in EU law (from 2009) at the University of Malta; Co-founder and Vice-President of the Maltese Association for European Law; Judge at the General Court since 8 October 2012.

Carl Wetter

Born 1949; Uppsala University, B.A. in economics (1974), LL.M. (1977); administrative officer at the Ministry of Foreign Affairs (1977); member of the Swedish Bar Association (from 1983); member of the competition law working group of ICC (International Chamber of Commerce) Sweden; lecturer in competition law at Lund University and Stockholm University; author of numerous publications; Judge at the General Court since 18 March 2013.

Vesna Tomljenović

Born 1956; University of Rijeka, B.A. (1979); University of Zagreb, LL.M. (1984), S.J.D. (1996); University of Rijeka, Faculty of Law, assistant professor (1980–98), associate professor (2003–09), professor (2009–13); University of Rijeka, Faculty of Economics, assistant professor (1990–2013); President of the Croatian Comparative Law Association (2006–13); Judge at the General Court since 4 July 2013.

Egidijus Bieliūnas

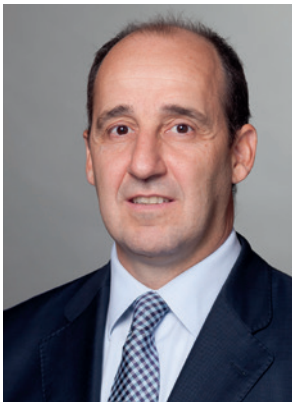
Born 1950; degree in law from the University of Vilnius (1973); doctorate in law (1978); assistant lecturer, junior lecturer and then senior lecturer at the Law Faculty of the University of Vilnius (1977–92); consultant in the Legal Department of the Supreme Council — Reconstituent Seimas of the Republic of Lithuania (1990–92); adviser at the Lithuanian Embassy in Belgium (1992–94); adviser at the Lithuanian Embassy in France (1994–96); member of the European Commission of Human Rights (1996–99); Judge at the Supreme Court of Lithuania (1999–2011); senior lecturer in the Criminal Law Department of the University of Vilnius (2003–13); Representative of the Republic of Lithuania on the Joint Supervisory Body of Eurojust (2004–11); Judge at the Constitutional Court of the Republic of Lithuania (2011–13); Judge at the General Court since 16 September 2013.

Viktor Kreuschitz

Born 1952; Doctor of Laws of the University of Vienna (1981); civil servant in the Federal Chancellery, Constitutional Affairs Department (1981–97); adviser in the Legal Service of the European Commission (1997–2013); Judge at the General Court since 16 September 2013.

Anthony Michael Collins

Born 1960; graduate of Trinity College, Dublin (legal science) (1984) and of the Honourable Society of King's Inns, Dublin (Barrister-at-Law) (1986); Bencher of the Honourable Society of King's Inns (since 2013); Barrister-at-Law (1986–90 and 1997–2003) and Senior Counsel (2003–13) at the Bar of Ireland; Legal Secretary at the Court of Justice of the European Communities (1990–97); Director of the Irish Centre for European Law (1997–2000) and continues to be a member of its board of directors; Vice-President of the Council of European National Youth Committees (1979–81); General Secretary, Organising Bureau of European School Student Unions (1977–84); General Secretary, Irish Union of School Students (1977–79); International Vice-President, Union of Students in Ireland (1982–83); member of the Permanent Delegation of the Council of Bars and Law Societies of Europe (CCBE) to the EU and EFTA Courts (2006–13); Judge at the General Court since 16 September 2013.



Ignacio Ulloa Rubio

Born 1967; law degree with honours (1985–90) and PhD studies (1990–93) at Universidad Complutense, Madrid; Public Prosecutor of Gerona (2000–03); judicial and human rights adviser for the Coalition Provisional Authority, Baghdad, Iraq (2003–04); Civil First Instance Judge and Investigative Judge (2003–07) then Senior Judge (2008), Gerona; Deputy Head of EUJUST LEX Integrated Rule of Law Mission for Iraq at the Council of the European Union (2005–06); legal counsellor of the Constitutional Court of Spain (2006–11 and 2013); Secretary of State for Security (2012–13); civil expert on rule of law and security sector reform at the Council of the European Union (2005–11); external expert on fundamental rights and criminal justice for the European Commission (2011–13); lecturer and author of numerous publications; Judge at the General Court since 16 September 2013.

Stéphane Gervasoni

Born 1967; graduate of the Institut d'études politiques, Grenoble (1988) and the École nationale d'administration (1993); junior officer at the Council of State (Judge-Rapporteur in the Litigation Division (1993–97) and member of the Social Affairs Division (1996–97)); Legal Adviser at the Council of State (1996–2008); senior lecturer at the Institut d'études politiques, Paris (1993–95); Commissaire du gouvernement attached to the Special Pensions Appeal Commission (1994–96); Legal Adviser to the Ministry of the Civil Service and to the City of Paris (1995–97); Secretary-General of the Prefecture of the Département of the Yonne, Sub-Prefect of the District of Auxerre (1997–99); Secretary-General of the Prefecture of the Département of Savoie, Sub-Prefect of the District of Chambéry (1999–2001); Legal Secretary at the Court of Justice of the European Communities (2001–05); full member of the Appeals Board of the North Atlantic Treaty Organisation (NATO) (2001–05); Judge at the European Union Civil Service Tribunal (2005–11, President of Chamber from 2008 to 2011); Councillor of State, Deputy President of the Eighth Chamber of the Litigation Division (2011–13); member of the Appeals Board of the European Space Agency (2011–13); Judge at the General Court since 16 September 2013.

Lauri Madise

Born 1974; degrees in law (Universities of Tartu and Poitiers); adviser in the Ministry of Justice (1995–99); Head of the Secretariat of the Constitutional Committee of the Estonian Parliament (1999–2000); Judge at the Court of Appeal, Tallinn (from 2002); member of the Judges' Examination Commission (from 2005); participation in legislative work concerning constitutional law and administrative law; Judge at the General Court since 23 October 2013.

Emmanuel Coulon

Born 1968; law studies (Université Panthéon-Assas, Paris); management studies (Université Paris Dauphine); College of Europe (1992); entrance examination for the Centre régional de formation à la profession d'avocat (regional training centre for the bar), Paris; certificate of admission to the Brussels Bar; practice as a lawyer in Brussels; successful candidate in an open competition for the European Commission; Legal Secretary at the Court of First Instance (Chambers of the Presidents Mr Saggio (1996–98) and Mr Vesterdorf (1998–2002)); Head of Chambers of the President of the Court of First Instance (2003–05); Registrar of the General Court since 6 October 2005.

2. Change in the composition of the General Court in 2014

There was no change in the composition of the General Court in 2014.

3. Order of precedence

From 1 January 2014 to 31 December 2014

M. JAEGER, President of the Court
H. KANNINEN, Vice-President
M.E. MARTINS RIBEIRO, President of Chamber
S. PAPASAVVAS, President of Chamber
M. PREK, President of Chamber
A. DITTRICH, President of Chamber
S. FRIMODT NIELSEN, President of Chamber
M. VAN DER WOUDE, President of Chamber
D. GRATSIAS, President of Chamber
G. BERARDIS, President of Chamber
N.J. FORWOOD, Judge
F. DEHOUSSE, Judge
O. CZÚCZ, Judge
I. WISZNIEWSKA-BIAŁECKA, Judge
I. PELIKÁNOVÁ, Judge
I. LABUCKA, Judge
J. SCHWARCZ, Judge
A. POPESCU, Judge
M. KANCHEVA, Judge
E. BUTTIGIEG, Judge
C. WETTER, Judge
V. TOMLJENOVIĆ, Judge
E. BIELIŪNAS, Judge
V. KREUSCHITZ, Judge
A. COLLINS, Judge
I. ULLOA RUBIO, Judge
S. GERVASONI, Judge
L. MADISE, Judge

E. COULON, Registrar

4. Former members of the General Court

David Alexander Ogilvy Edward (1989–92)
Christos Yeraris (1989–92)
José Luís da Cruz Vilaça (1989–95), President (1989–95)
Jacques Biancarelli (1989–95)
Donal Patrick Michael Barrington (1989–96)
Romain Alphonse Schintgen (1989–96)
Heinrich Kirschner (1989–97)
Antonio Saggio (1989–98), President (1995–98)
Cornelis Paulus Briët (1989–98)
Koen Lenaerts (1989–2003)
Bo Vesterdorf (1989–2007), President (1998–2007)
Rafael García-Valdecasas y Fernández (1989–2007)
Andreas Kalogeropoulos (1992–98)
Christopher William Bellamy (1992–99)
André Potocki (1995–2001)
Rui Manuel Gens de Moura Ramos (1995–2003)
Pernilla Lindh (1995–2006)
Virpi Tiili (1995–2009)
Josef Azizi (1995–2013)
John D. Cooke (1996–2008)
Jörg Pirrung (1997–2007)
Paolo Mengozzi (1998–2006)
Arjen W.H. Meij (1998–2010)
Mihalis Vilaras (1998–2010)
Hubert Legal (2001–07)
Verica Trstenjak (2004–06)
Daniel Šváby (2004–09)
Ena Cremona (2004–12)
Vilenas Vadapalas (2004–13)
Küllike Jürimäe (2004–13)
Enzo Moavero Milanesi (2006–11)
Nils Wahl (2006–12)
Teodor Tchipev (2007–10)
Valeriu M. Ciucă (2007–10)
Santiago Soldevila Fragoso (2007–13)
Laurent Truchot (2007–13)
Kevin O'Higgins (2008–13)

Presidents

José Luís da Cruz Vilaça (1989–95)
Antonio Saggio (1995–98)
Bo Vesterdorf (1998–2007)

Registrar

Hans Jung (1989–2005)

C — Statistics concerning the judicial activity of the General Court

General activity of the General Court

1. New cases, completed cases, cases pending (2010–14)

New cases

2. Nature of proceedings (2010–14)
3. Type of action (2010–14)
4. Subject matter of the action (2010–14)

Completed cases

5. Nature of proceedings (2010–14)
6. Subject matter of the action (2014)
7. Subject matter of the action (2010–14) (judgments and orders)
8. Bench hearing action (2010–14)
9. Duration of proceedings in months (2010–14) (judgments and orders)

Cases pending as at 31 December

10. Nature of proceedings (2010–14)
11. Subject matter of the action (2010–14)
12. Bench hearing action (2010–14)

Miscellaneous

13. Proceedings for interim measures (2010–14)
14. Expedited procedures (2010–14)
15. Appeals against decisions of the General Court to the Court of Justice (1990–2014)
16. Distribution of appeals before the Court of Justice according to the nature of the proceedings (2010–14)
17. Results of appeals before the Court of Justice (2014) (judgments and orders)
18. Results of appeals before the Court of Justice (2010–14) (judgments and orders)
19. General trend (1989–2014) (new cases, completed cases, cases pending)

1. *General activity of the General Court* — New cases, completed cases, cases pending (2010–14) ([1]) ([2])

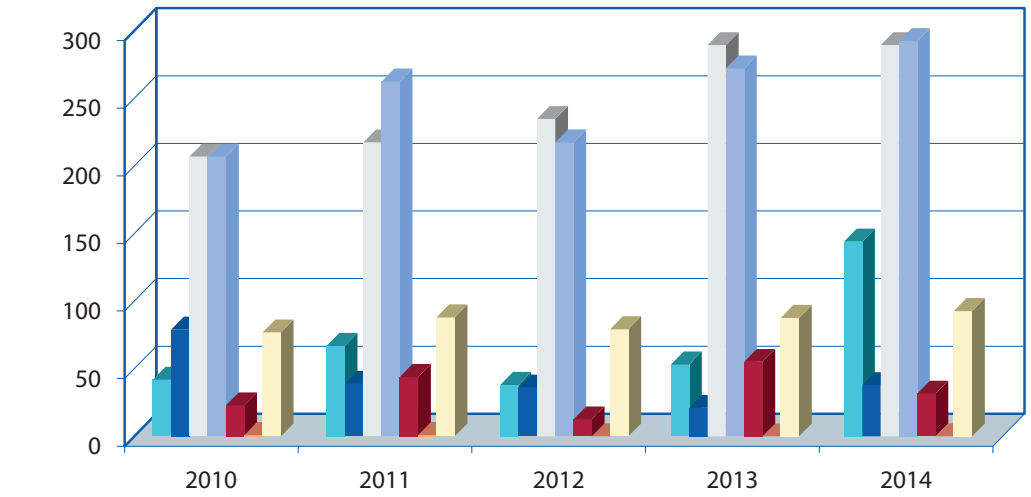
	2010	2011	2012	2013	2014
New cases	636	722	617	790	912
Completed cases	527	714	688	702	814
Cases pending	1 300	1 308	1 237	1 325	1 423

([1]) Unless otherwise indicated, this table and the following tables take account of special forms of procedure.

The following are considered to be 'special forms of procedure': application to set a judgment aside (Article 41 of the Statute of the Court of Justice; Article 122 of the Rules of Procedure of the General Court); third-party proceedings (Article 42 of the Statute of the Court of Justice; Article 123 of the Rules of Procedure); revision of a judgment (Article 44 of the Statute of the Court of Justice; Article 125 of the Rules of Procedure); interpretation of a judgment (Article 43 of the Statute of the Court of Justice; Article 129 of the Rules of Procedure); taxation of costs (Article 92 of the Rules of Procedure); legal aid (Article 96 of the Rules of Procedure); and rectification of a judgment (Article 84 of the Rules of Procedure).

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

2. *New cases* — Nature of proceedings (2010–14)

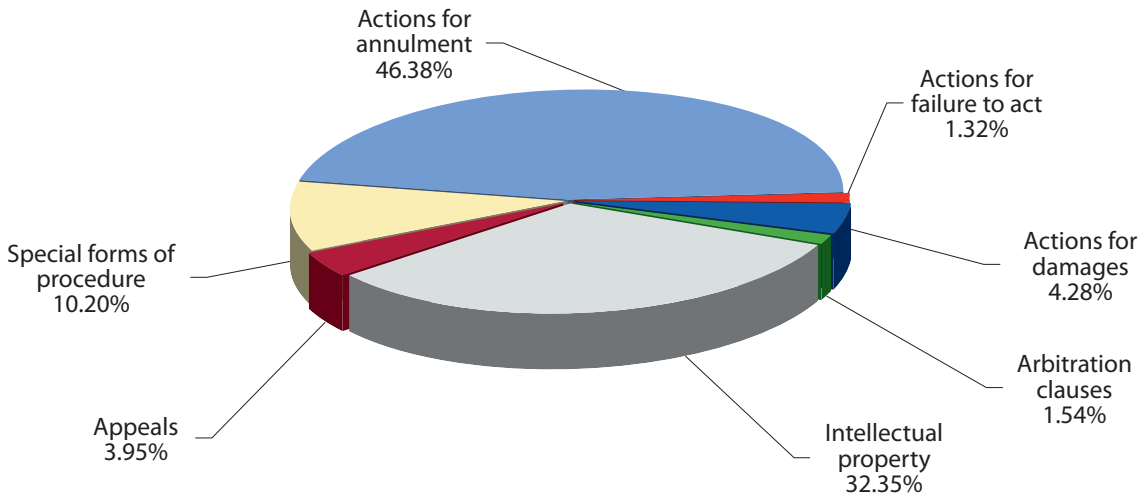


State aid
Competition
Intellectual property
Other direct actions
Appeals
Appeals concerning interim measures or interventions
Special forms of procedure

	2010	2011	2012	2013	2014
State aid	42	67	36	54	148
Competition	79	39	34	23	41
Intellectual property	207	219	238	293	295
Other direct actions	207	264	220	275	299
Appeals	23	44	10	57	36
Appeals concerning interim measures or interventions	1	1	1		
Special forms of procedure	77	88	78	88	93
Total	**636**	**722**	**617**	**790**	**912**

3. *New cases* — Type of action (2010–14)

Distribution in 2014

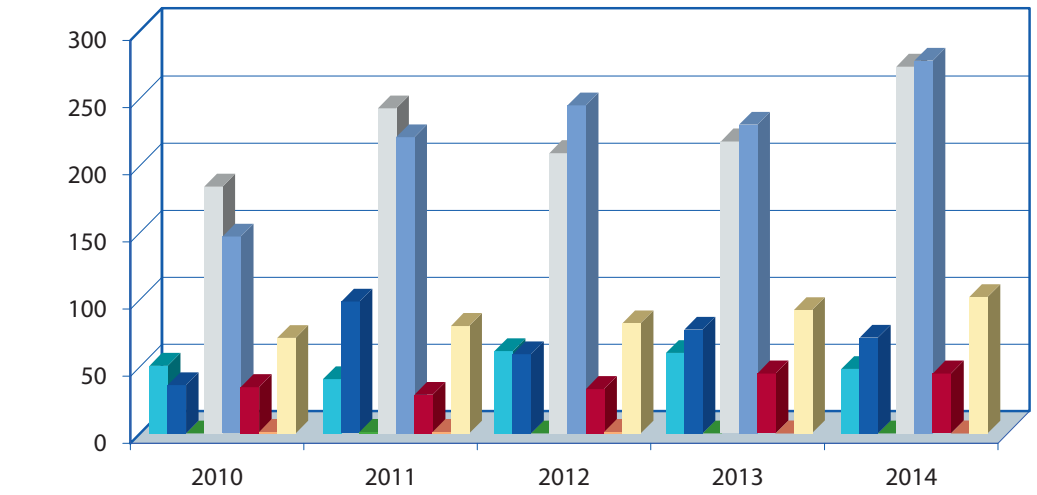


	2010	2011	2012	2013	2014
Actions for annulment	304	341	257	319	423
Actions for failure to act	7	8	8	12	12
Actions for damages	8	16	17	15	39
Arbitration clauses	9	5	8	6	14
Intellectual property	207	219	238	293	295
Appeals	23	44	10	57	36
Appeals concerning interim measures or interventions	1	1	1		
Special forms of procedure	77	88	78	88	93
Total	**636**	**722**	**617**	**790**	**912**

4. *New cases* — Subject matter of the action (2010–14)

	2010	2011	2012	2013	2014
Access to documents	19	21	18	20	17
Accession of new states				1	
Agriculture	24	22	11	27	15
Approximation of laws				13	
Arbitration clause	9	5	8	6	14
Area of freedom, security and justice		1		6	1
Association of the Overseas Countries and Territories				1	
Citizenship of the Union					1
Commercial policy	9	11	20	23	31
Common fisheries policy	19	3		3	3
Common foreign and security policy	1			2	
Company law					1
Competition	79	39	34	23	41
Consumer protection				1	1
Culture				1	
Customs union and Common Customs Tariff	4	10	6	1	7
Economic and monetary policy	4	4	3	15	4
Economic, social and territorial cohesion	24	3	4	3	3
Education, vocational training, youth and sport		2	1	2	
Employment				2	
Energy		1		1	3
Environment	15	6	3	11	10
External action by the European Union	1	2	1		3
Financial provisions (budget, financial framework, own resources, combatting fraud)			1		5
Free movement of goods				1	
Freedom of establishment					1
Freedom of movement for persons	1				
Freedom to provide services	1		1		1
Industrial policy					2
Intellectual and industrial property	207	219	238	294	295
Law governing the institutions	17	44	41	44	67
Public health	4	2	12	5	11
Public procurement	15	18	23	15	17
Registration, evaluation, authorisation and restriction of chemicals (REACH regulation)	8	3	2	12	3
Research and technological development and space	3	4	3	5	2
Restrictive measures (external action)	21	93	59	41	68
Social policy	4	5	1		
Social security for migrant workers				1	
State aid	42	67	36	54	148
Taxation	1	1	1	1	1
Tourism				2	
Trans-European networks				3	
Transport	1	1		5	1
Total EC Treaty/TFEU	**533**	**587**	**527**	**645**	**777**
Total Euratom Treaty	**1**				
Staff Regulations	25	47	12	57	42
Special forms of procedure	77	88	78	88	93
OVERALL TOTAL	**636**	**722**	**617**	**790**	**912**

5. *Completed cases* — Nature of proceedings (2010–14)



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

	2010	2011	2012	2013	2014
State aid	50	41	63	60	51
Competition	38	100	61	75	72
Staff cases		1			
Intellectual property	180	240	210	217	275
Other direct actions	149	222	240	226	279
Appeals	37	29	32	39	42
Appeals concerning interim measures or interventions	1	1	1		
Special forms of procedure	72	80	81	85	95
Total	**527**	**714**	**688**	**702**	**814**

6. *Completed cases* — Subject matter of the action (2014)

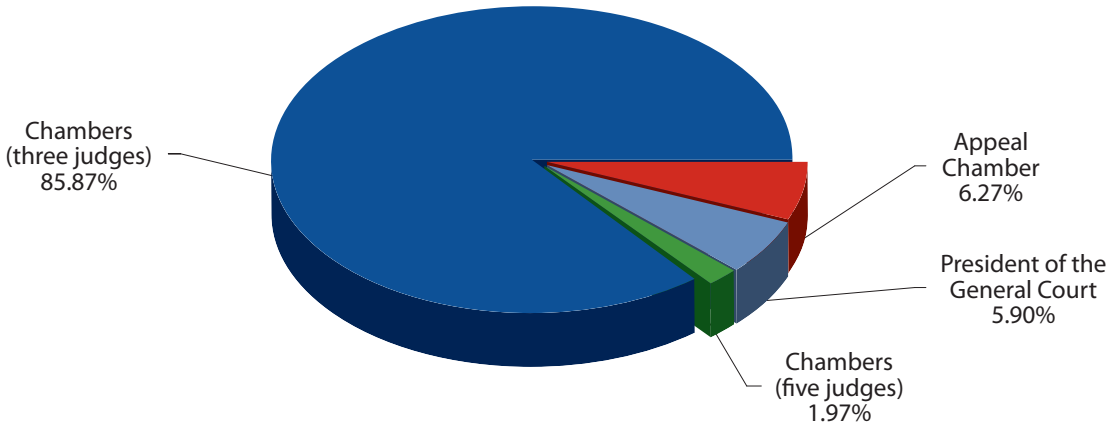
	Judgments	Orders	Total
Access to documents	8	15	23
Agriculture	8	7	15
Approximation of laws		13	13
Arbitration clause	5	5	10
Area of freedom, security and justice		1	1
Association of the Overseas Countries and Territories		1	1
Citizenship of the Union		1	1
Commercial policy	8	10	18
Common fisheries policy	12	3	15
Common foreign and security policy		2	2
Competition	54	18	72
Customs union and Common Customs Tariff		6	6
Economic and monetary policy		13	13
Economic, social and territorial cohesion	1		1
Education, vocational training, youth and sport	2		2
Energy		3	3
Environment	5	5	10
Freedom to provide services		1	1
Intellectual and industrial property	207	68	275
Law governing the institutions	6	27	33
Public health	4	6	10
Public procurement	16	2	18
Registration, evaluation, authorisation and restriction of chemicals (REACH regulation)	1	2	3
Research and technological development and space		1	1
Restrictive measures (external action)	38	30	68
State aid	30	21	51
Taxation		2	2
Tourism	1		1
Trans-European networks		1	1
Transport	1	2	3
Total EC Treaty/TFEU	**407**	**266**	**673**
Staff Regulations	21	25	46
Special forms of procedure		95	95
OVERALL TOTAL	**428**	**386**	**814**

7. *Completed cases* — Subject matter of the action (2010–14) (judgments and orders)

	2010	2011	2012	2013	2014
Access to documents	21	23	21	19	23
Agriculture	16	26	32	16	15
Approximation of laws					13
Arbitration clause	12	6	11	8	10
Area of freedom, security and justice			2	7	1
Association of the Overseas Countries and Territories					1
Citizenship of the Union					1
Commercial policy	8	10	14	19	18
Common fisheries policy		5	9	2	15
Common foreign and security policy					2
Company law	1				
Competition	38	100	61	75	72
Consumer protection	2	1			
Customs union and Common Customs Tariff	4	1	6	9	6
Economic and monetary policy	2	3	2	1	13
Economic, social and territorial cohesion	2	9	12	14	1
Education, vocational training, youth and sport	1	1	1	1	2
Employment				2	
Energy	2			1	3
Environment	6	22	8	6	10
External action by the European Union	4	5		2	
Financial provisions (budget, financial framework, own resources, combatting fraud)			2		
Free movement of goods				1	
Freedom of movement for persons		2	1		
Freedom to provide services	2	3	2		1
Intellectual and industrial property	180	240	210	218	275
Law governing the institutions	26	36	41	35	33
Public health	2	3	2	4	10
Public procurement	16	15	24	21	18
Registration, evaluation, authorisation and restriction of chemicals (REACH regulation)		4	1	6	3
Research and technological development and space	3	5	3	4	1
Restrictive measures (external action)	10	32	42	40	68
Social policy	6	5	1	4	
Social security for migrant workers				1	
State aid	50	41	63	59	51
Taxation	1		2		2
Tourism				1	1
Trans-European networks					1
Transport	2	1	1		3
Total EC Treaty/TFEU	**417**	**599**	**574**	**576**	**673**
Total CS Treaty				**1**	
Total Euratom Treaty		**1**			
Staff Regulations	38	34	33	40	46
Special forms of procedure	72	80	81	85	95
OVERALL TOTAL	**527**	**714**	**688**	**702**	**814**

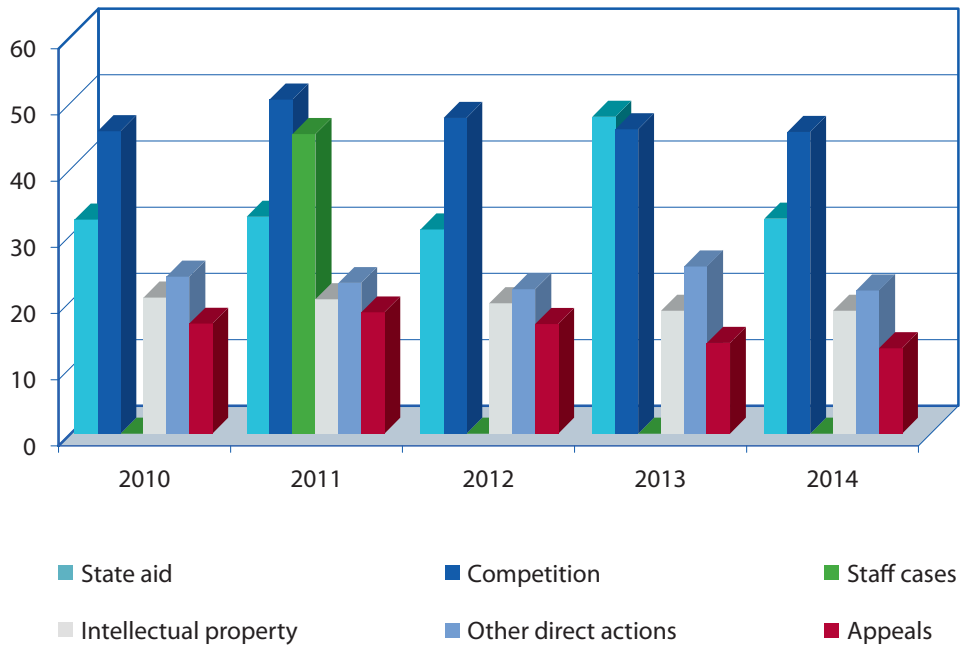
8. *Completed cases* — Bench hearing action (2010–14)

Distribution in 2014



	2010			2011			2012			2013			2014		
	Judgments	Orders	Total	Judgments	Orders	Total	Judgments	Orders	Total	Judgments	Orders	Total	Judgments	Orders	Total
Grand Chamber		2	2												
Appeal Chamber	22	15	37	15	14	29	17	20	37	13	45	58	21	30	51
President of the General Court		54	54		56	56		50	50		40	40		48	48
Chambers (five judges)	8		8	19	6	25	9		9	7	1	8	9	7	16
Chambers (three judges)	255	168	423	359	245	604	328	264	592	378	218	596	398	301	699
Single judge	3		3												
Total	**288**	**239**	**527**	**393**	**321**	**714**	**354**	**334**	**688**	**398**	**304**	**702**	**428**	**386**	**814**

9. *Completed cases* — Duration of proceedings in months (2010–14) ([1]) (judgments and orders)

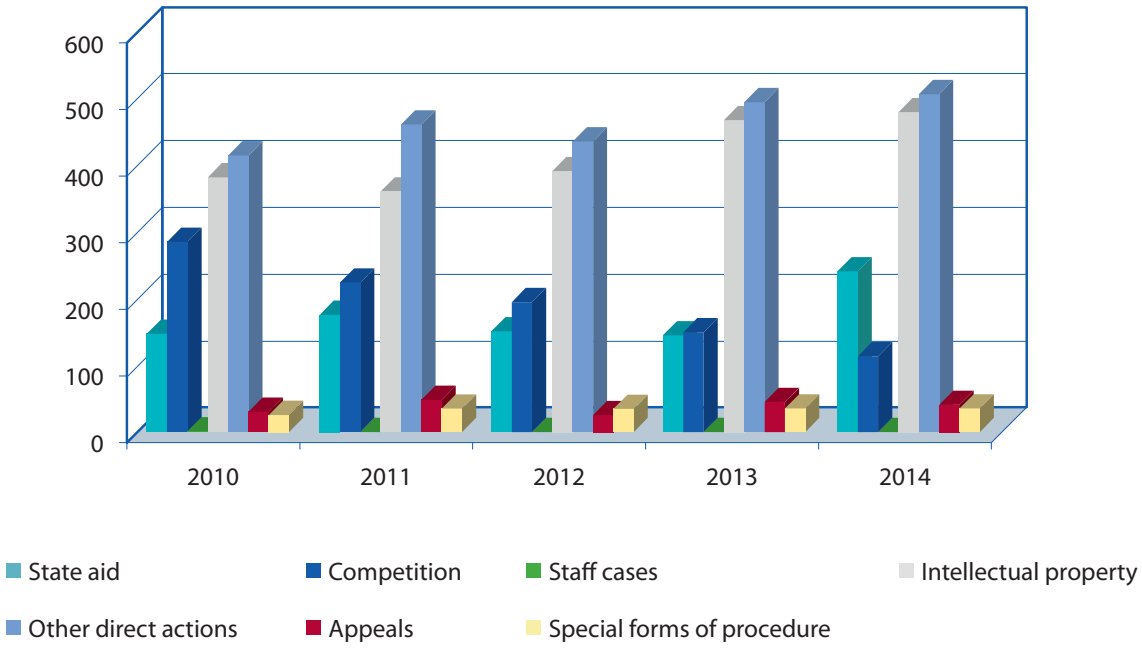


	2010	2011	2012	2013	2014
State aid	32.4	32.8	31.5	48.1	32.5
Competition	45.7	50.5	48.4	46.4	45.8
Staff cases		45.3			
Intellectual property	20.6	20.3	20.3	18.7	18.7
Other direct actions	23.7	22.8	22.2	24.9	22.1
Appeals	16.6	18.3	16.8	13.9	12.8

([1]) The calculation of the average duration of proceedings does not take account of: cases ruled upon by interlocutory judgment; special forms of procedure; appeals concerning interim measures or interventions.

The duration of proceedings is expressed in months and tenths of months.

10. *Cases pending as at 31 December* — Nature of proceedings (2010–14)



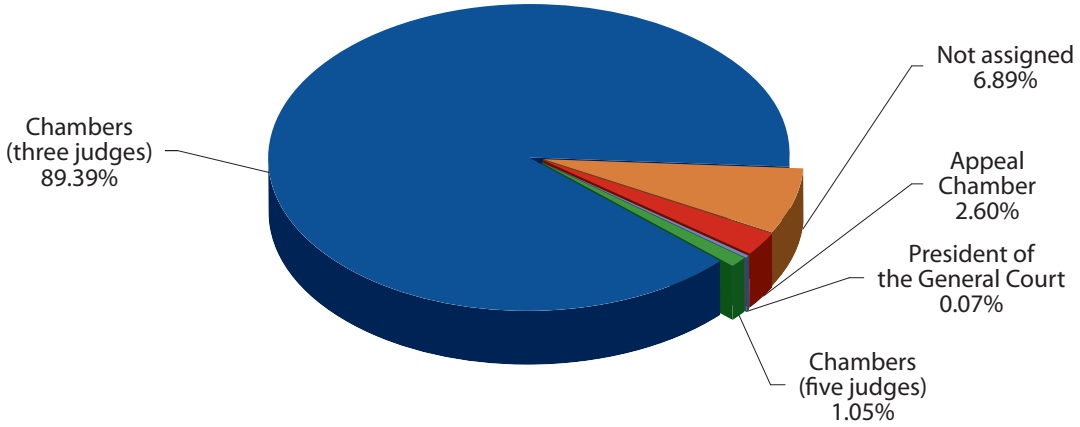
	2010	2011	2012	2013	2014
State aid	153	179	152	146	243
Competition	288	227	200	148	117
Staff cases	1				
Intellectual property	382	361	389	465	485
Other direct actions	416	458	438	487	507
Appeals	32	47	25	43	37
Special forms of procedure	28	36	33	36	34
Total	**1 300**	**1 308**	**1 237**	**1 325**	**1 423**

11. *Cases pending as at 31 December* — Subject matter of the action (2010–14)

	2010	2011	2012	2013	2014
Access to documents	42	40	37	38	32
Accession of new states				1	1
Agriculture	65	61	40	51	51
Approximation of laws				13	
Arbitration clause	19	18	15	13	17
Area of freedom, security and justice	2	3	1		
Association of the Overseas Countries and Territories				1	
Commercial policy	34	35	41	45	58
Common fisheries policy	27	25	16	17	5
Common foreign and security policy	1	1	1	3	1
Company law					1
Competition	288	227	200	148	117
Consumer protection	1			1	2
Culture				1	1
Customs union and Common Customs Tariff	6	15	15	7	8
Economic and monetary policy	2	3	4	18	9
Economic, social and territorial cohesion	38	32	24	13	15
Education, vocational training, youth and sport		1	1	2	
Energy		1	1	1	1
Environment	34	18	13	18	18
External action by the European Union	5	2	3	1	4
Financial provisions (budget, financial framework, own resources, combatting fraud)	2	2	1	1	6
Freedom of establishment					1
Freedom of movement for persons	3	1			
Freedom to provide services	4	1			
Industrial policy					2
Intellectual and industrial property	382	361	389	465	485
Law governing the institutions	33	41	41	50	84
Public health	6	5	15	16	17
Public procurement	40	43	42	36	35
Registration, evaluation, authorisation and restriction of chemicals (REACH regulation)	8	7	8	14	14
Research and technological development and space	8	7	7	8	9
Restrictive measures (external action)	28	89	106	107	107
Social policy	4	4	4		
State aid	152	178	151	146	243
Taxation		1		1	
Tourism				1	
Trans-European networks				3	2
Transport	1	1		5	3
Total EC Treaty/TFEU	**1 235**	**1 223**	**1 176**	**1 245**	**1 349**
Total CS Treaty	**1**	**1**	**1**		
Total Euratom Treaty	**1**				
Staff Regulations	35	48	27	44	40
Special forms of procedure	28	36	33	36	34
OVERALL TOTAL	**1 300**	**1 308**	**1 237**	**1 325**	**1 423**

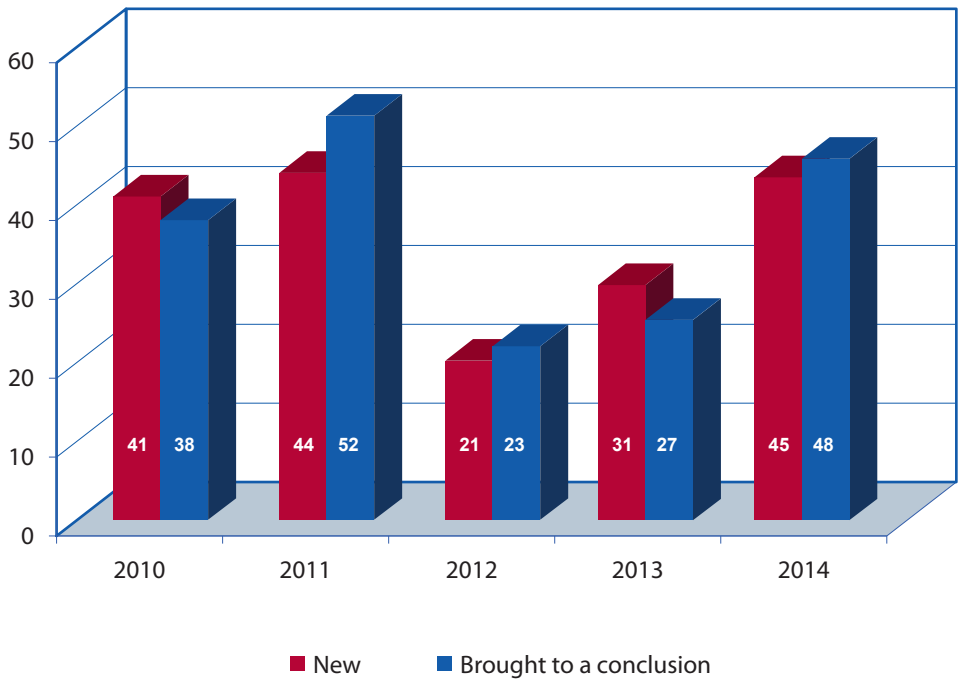
12. *Cases pending as at 31 December* — Bench hearing action (2010–14)

Distribution in 2014



	2010	2011	2012	2013	2014
Appeal Chamber	32	51	38	51	37
President of the General Court	3	3	3	1	1
Chambers (five judges)	58	16	10	12	15
Chambers (three judges)	1 132	1 134	1 123	1 146	1 272
Not assigned	75	104	63	115	98
Total	**1 300**	**1 308**	**1 237**	**1 325**	**1 423**

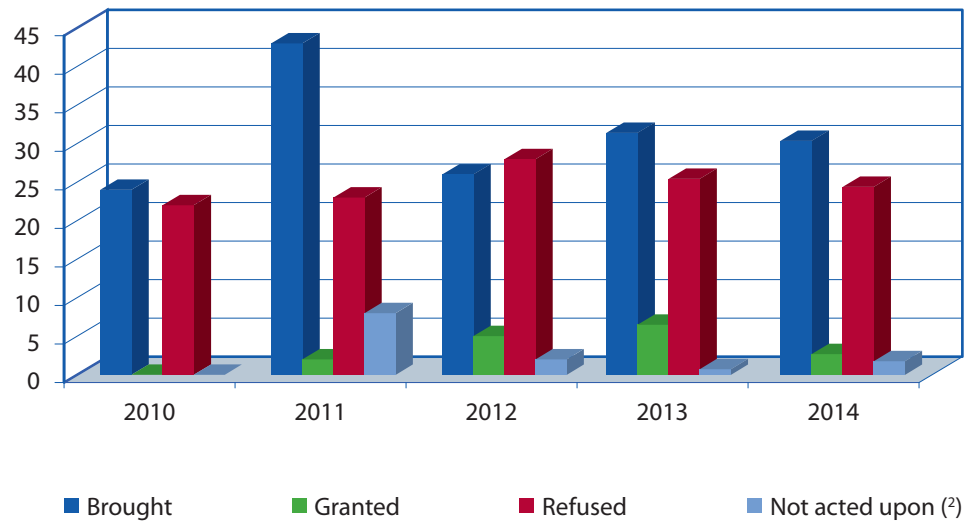
13. *Miscellaneous* — Proceedings for interim measures (2010–14)



Distribution in 2014

	New applications for interim measures	Applications for interim measures brought to a conclusion	Applications for interim measures brought to a conclusion		
			Granted	Removal from the register/ no need to adjudicate	Dismissed
Access to documents	1	3	1	2	
Agriculture		1	1		
State aid	29	27	1	2	24
Association of the Overseas Countries and Territories		1			1
Arbitration clause	1	1			1
Law governing the institutions	3	4		2	2
Environment		1			1
Public procurement	5	4	1		3
Restrictive measures (external action)	2	2			2
Commercial policy	2	2			2
Research and technological development and space	1	1			1
Public health	1	1			1
Total	**45**	**48**	**4**	**6**	**38**

14. *Miscellaneous* — Expedited procedures (2010–14) (1)

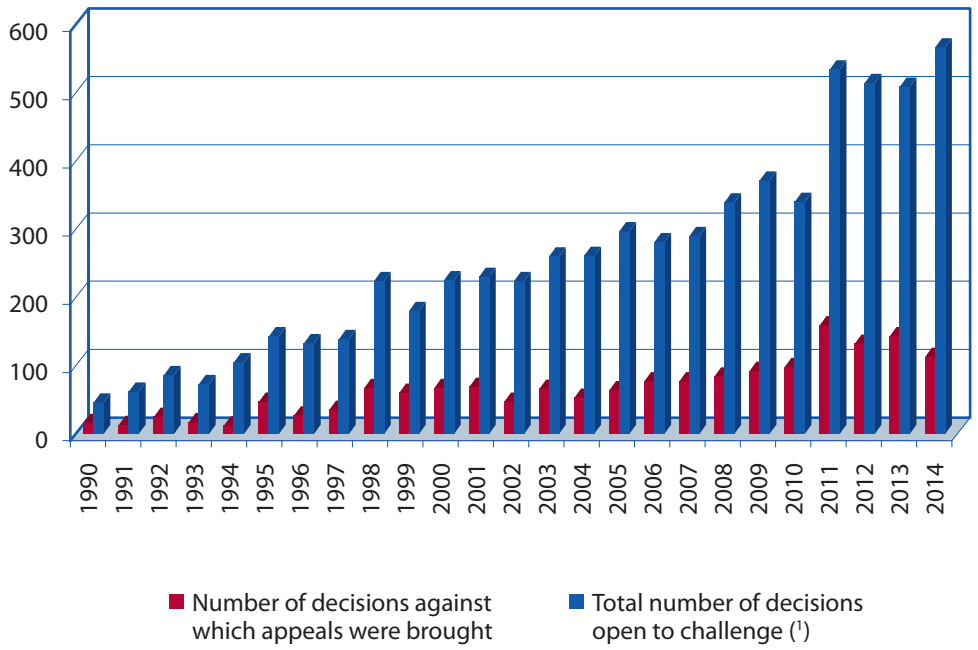


	2010				2011				2012				2013				2014			
		Outcome				Outcome				Outcome				Outcome				Outcome		
	Brought	Granted	Refused	Not acted upon (2)	**Brought**	Granted	Refused	Not acted upon (2)	**Brought**	Granted	Refused	Not acted upon (2)	**Brought**	Granted	Refused	Not acted upon (2)	**Brought**	Granted	Refused	Not acted upon (2)
Access to documents					2		1		1		2		1		1		2		2	
External action by the European Union	1		1																	
Agriculture													1		1					
State aid	7		5				2		2			2					13	2	10	
Economic, social and territorial cohesion	1		1						1		1									
Competition	3		3		4		4		2		2		2		2		1		1	
Law governing the institutions					1			1	1		1						1			1
Energy													1		1					
Environment					2		2						5	5			1			
Public procurement	2		2										2		1		1		2	
Restrictive measures (external action)	10		10		30	2	12	7	10	4	16		4		4		9		9	
Commercial policy					3		2		3		2		15	2	14	1				
Social policy					1			1												
Public health									5	1	3		1		2		3	1	1	1
Customs union and Common Customs Tariff									1		1									
Total	**24**		**22**		**43**	**2**	**23**	**9**	**26**	**5**	**28**	**2**	**32**	**7**	**26**	**1**	**31**	**3**	**25**	**2**

(1) The General Court may decide pursuant to Article 76a of the Rules of Procedure to deal with a case before it under an expedited procedure. That provision has been applicable since 1 February 2001.

(2) The category 'Not acted upon' covers the following instances: withdrawal of the application for expedition, discontinuance of the action and cases in which the action is disposed of by way of order before the application for expedition has been ruled upon.

15. *Miscellaneous* — Appeals against decisions of the General Court to the Court of Justice (1990–2014)



	Number of decisions against which appeals were brought	Total number of decisions open to challenge (1)	Percentage of decisions against which appeals were brought
1990	16	46	35%
1991	13	62	21%
1992	25	86	29%
1993	17	73	23%
1994	12	105	11%
1995	47	143	33%
1996	27	133	20%
1997	35	139	25%
1998	67	224	30%
1999	60	180	33%
2000	67	225	30%
2001	69	230	30%
2002	47	225	21%
2003	66	260	25%
2004	53	261	20%
2005	64	297	22%
2006	77	281	27%
2007	78	290	27%
2008	84	339	25%
2009	92	371	25%
2010	98	338	29%
2011	158	533	30%
2012	132	514	26%
2013	144	510	28%
2014	110	561	20%

(1) Total number of decisions open to challenge — judgments, orders concerning interim measures or refusing leave to intervene and all orders terminating proceedings other than those removing a case from the register or transferring a case — in respect of which the period for bringing an appeal expired or against which an appeal was brought.

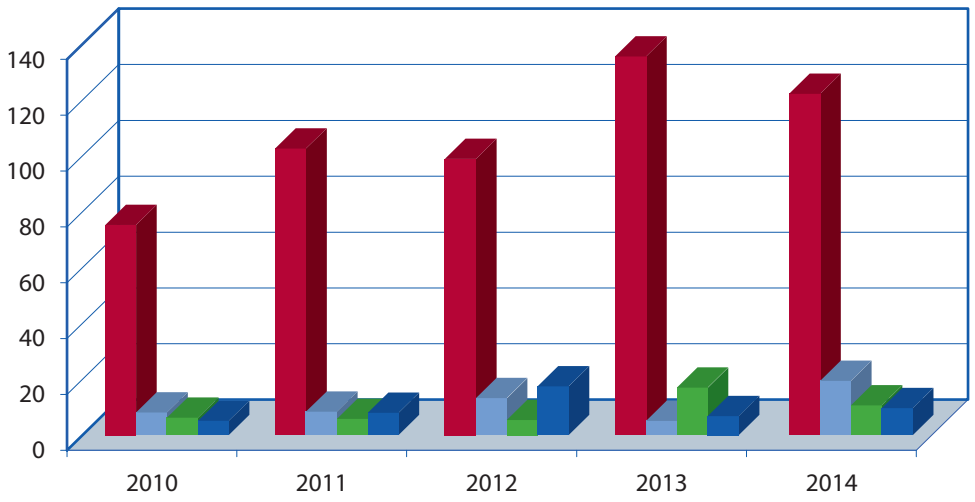
16. *Miscellaneous* — Distribution of appeals before the Court of Justice according to the nature of the proceedings (2010–14)

	2010			2011			2012			2013			2014		
	Decisions against which appeals were brought	Decisions open to challenge	**Appeals as a percentage**	Decisions against which appeals were brought	Decisions open to challenge	**Appeals as a percentage**	Decisions against which appeals were brought	Decisions open to challenge	**Appeals as a percentage**	Decisions against which appeals were brought	Decisions open to challenge	**Appeals as a percentage**	Decisions against which appeals were brought	Decisions open to challenge	**Appeals as a percentage**
State aid	17	34	**50%**	10	37	**27%**	18	52	**35%**	16	52	**31%**	15	77	**19%**
Competition	15	33	**45%**	49	90	**54%**	24	60	**40%**	28	73	**38%**	15	44	**34%**
Staff cases				1	1	**100%**									
Intellectual property	32	140	**23%**	39	201	**19%**	41	190	**22%**	38	183	**21%**	33	209	**16%**
Other direct actions	34	131	**26%**	59	204	**29%**	47	208	**23%**	62	202	**31%**	47	231	**20%**
Appeals								2	**0%**						
Special forms of procedure							2	2	**100%**						
Total	98	338	**29%**	158	533	**30%**	132	514	**26%**	144	510	**28%**	110	561	**20%**

17. *Miscellaneous* — Results of appeals before the Court of Justice (2014) (judgments and orders)

	Appeal dismissed	Decision totally or partially set aside and no referral back	Decision totally or partially set aside and referral back	Removal from the register/ no need to adjudicate	Total
Access to documents	2	2		2	6
Agriculture	8				8
Area of freedom, security and justice	1				1
Commercial policy	3			2	5
Common fisheries policy	3				3
Common foreign and security policy	1				1
Competition	13	8	3		24
Economic, social and territorial cohesion	2	5			7
Education, vocational training, youth and sport	1				1
Intellectual and industrial property	40	2	5	5	52
Law governing the institutions	5	1			6
Principles of EU law	1				1
Public health	1				1
Public procurement	1				1
Registration, evaluation, authorisation and restriction of chemicals (REACH regulation)	5				5
Social policy	3				3
Staff Regulations	1				1
State aid	30		2		32
Total	**121**	**18**	**10**	**9**	**158**

18. *Miscellaneous* — Results of appeals before the Court of Justice (2010–14) (judgments and orders)



Appeal dismissed

Decision totally or partially set aside and no referral back

Decision totally or partially set aside and referral back

Removal from the register/ no need to adjudicate

	2010	2011	2012	2013	2014
Appeal dismissed	73	101	98	134	121
Decision totally or partially set aside and no referral back	6	9	12	5	18
Decision totally or partially set aside and referral back	5	6	4	15	10
Removal from the register/ no need to adjudicate	4	8	15	6	9
Total	**88**	**124**	**129**	**160**	**158**

19. *Miscellaneous* — General trend (1989–2014)
New cases, completed cases, cases pending

	New cases [1]	Completed cases [2]	Cases pending on 31 December
1989	169	1	168
1990	59	82	145
1991	95	67	173
1992	123	125	171
1993	596	106	661
1994	409	442	628
1995	253	265	616
1996	229	186	659
1997	644	186	1 117
1998	238	348	1 007
1999	384	659	732
2000	398	343	787
2001	345	340	792
2002	411	331	872
2003	466	339	999
2004	536	361	1 174
2005	469	610	1 033
2006	432	436	1 029
2007	522	397	1 154
2008	629	605	1 178
2009	568	555	1 191
2010	636	527	1 300
2011	722	714	1 308
2012	617	688	1 237
2013	790	702	1 325
2014	912	814	1 423
Total	**11 652**	**10 229**	

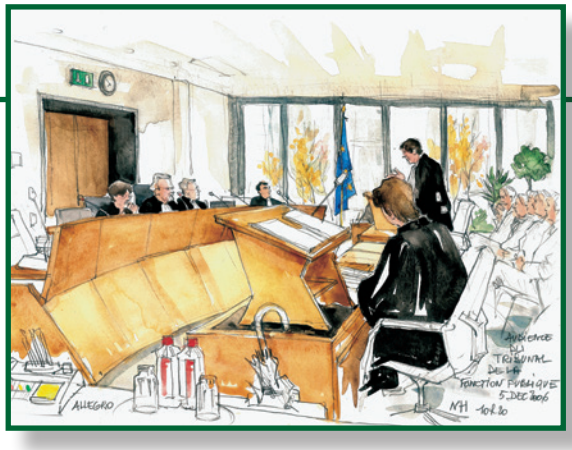
(1) 1989: the Court of Justice referred 153 cases to the newly created Court of First Instance (now the General Court).

1993: the Court of Justice referred 451 cases as a result of the first extension of the jurisdiction of the Court of First Instance.

1994: the Court of Justice referred 14 cases as a result of the second extension of the jurisdiction of the Court of First Instance.

2004–05: the Court of Justice referred 25 cases as a result of the third extension of the jurisdiction of the Court of First Instance.

(2) 2005–06: the Court of First Instance referred 118 cases to the newly created Civil Service Tribunal.



Chapter III

The Civil Service Tribunal

A — Proceedings of the Civil Service Tribunal in 2014

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

1. The statistics concerning the Tribunal's activity in 2013 show that, despite the lodging of the first cases arising from the entry into force on 1 January 2014 of the reformed Staff Regulations of Officials of the European Union ('the Staff Regulations'), the number of cases brought (157) appears to be stabilising in the light of the statistics for 2011 (159) and 2013 (160). In 2012, the Tribunal registered 178 new applications but that year now appears to be the exception to the rule.

The number of cases brought to a close in 2014 (152) is lower than that of the previous year (184) when the Tribunal had admittedly achieved the best result in terms of quantity since its creation. That lower figure is explained by the fact that the term of office of two judges came to an end on 30 September 2014 and by the fact that, well ahead of that date, the outgoing judges had to concentrate on the finalisation of cases amenable to being brought to a close before their departure, thus leaving before the Tribunal the cases which were not. When it became apparent, in September 2014, that the Council of the European Union would not manage to reach unanimous agreement on the appointments to be made, the two judges concerned, who now perform their duties pursuant to the third paragraph of Article 5 of the Statute of the Court of Justice of the European Union, resumed the examination of new cases but it was not possible to bring those cases to a close by the end of the year.

It follows that the number of pending cases is slightly higher than it was the year before (216 in 2014 compared with 211 at 31 December 2013). It should, however, be noted that proceedings were stayed in 99 cases in 2014 compared with 26 in 2013, with the result that the backlog of current cases at 31 December of the year under consideration amounts to 117. It must be pointed out that in most of those cases proceedings were stayed pending the delivery of judgments of the General Court. That is the situation, for instance, with 64 cases arising in a dispute relating to the transfer of pension rights and with 14 others following the reform of the Staff Regulations.

The average duration of proceedings, not including the duration of any stay of proceedings, fell from 14.7 months in 2013 to 12.7 months in 2014. That result is explained by the number of cases in which proceedings were stayed and by the proportionately greater use of orders than in the past to bring disputes to a close (55% in 2014, compared with 50% in 2013).

During the period under consideration, the president of the Tribunal also made five orders for interim measures compared with three in 2013 and 11 in 2012.

The statistics concerning the Tribunal's activity in 2014 also show that 36 appeals were brought before the General Court against decisions of the Tribunal, which represents a smaller number than in 2013 (56), and also a smaller percentage of decisions open to challenge (36.36% compared with 38.89%). Moreover, of 42 appeals decided in 2014, 33 were dismissed and eight upheld in full or in part; in addition, five of the cases in which the judgment was set aside were referred back to the Tribunal. Only one appeal was removed from the register.

Furthermore, 12 cases were brought to a close by amicable settlement under the Rules of Procedure, compared with nine the year before, which, together with the 2010 figures, represents the best result achieved in that respect by the Tribunal.

2. Another point of interest is that, on 21 May 2014, the Tribunal adopted its new Rules of Procedure, new Instructions to the Registrar and new Practice Directions to Parties. Those provisions entered into force on 1 October 2014.

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

I. Procedural aspects

Jurisdiction

Over the past year, the Tribunal has had to clarify the extent of its jurisdiction to hear and determine disputes relating to staff representation.

First, in *Colart and Others* v *Parliament* (F-31/14, EU:F:2014:264), the Tribunal recalled that, in electoral disputes concerning the membership of staff committees, the Courts of the European Union only have jurisdiction to rule, on the basis of Articles 90 and 91 of the Staff Regulations, on actions brought against the institution concerned which concern acts or omissions of the appointing authority in the exercise of its duty to prevent or censure manifest irregularities on the part of the bodies in charge of holding elections in order to enable officials to choose their representatives with complete freedom and in accordance with the rules laid down. Accordingly, it is only incidentally, in the course of judicial review of the acts or omissions of the appointing authority in relation to its obligation to ensure the regularity of elections, that the Courts of the European Union may come to examine whether the acts adopted by a committee of tellers might be vitiated by illegality.

The division of jurisdiction between the General Court and the Tribunal was clarified in an order in *Colart and Others* v *Parliament* (F-87/13, EU:F:2014:53). The applicants claimed to be the legitimate agents of a professional or trade union organisation ('OSP') and disputed the designation by the Parliament of the persons who had the right to use the mailbox of that organisation. The Tribunal dismissed the action as inadmissible, holding, essentially, that it was for the OSP itself to bring an action for annulment on the basis of Article 263 TFEU before the General Court through the intermediary of its representatives who were duly authorised to bring such an action, as the applicants claimed to be.

Conditions for admissibility

1. Act adversely affecting an official

According to Articles 90(2) and 91(1) of the Staff Regulations, officials may lodge a complaint and then bring an action against any 'measure of a general nature' affecting them adversely. On that basis, the case-law has established that the persons concerned are entitled to bring an action against a measure of a general nature adopted by the appointing authority which adversely affects them in so far as, firstly, that measure does not, in order to produce legal effects, require any implementing measure or leave any discretion, as regards its application, to the authorities responsible for implementing it and, secondly, it affects officials' interests directly by bringing about a distinct change in their legal position. The Tribunal applied that case-law in its judgment in *Julien-Malvy* v *EEAS* (F-100/13, EU:F:2014:224), and in its judgment in *Osorio and Others* v *EEAS* (F-101/13, EU:F:2014:223, under appeal to the General Court) to a decision taken by the appointing authority pursuant to Article 10 of Annex X to the Staff Regulations, which entailed the abolition of the allowance for living conditions for staff posted to certain EU delegations and offices in third countries. It held that the action was admissible on the ground that the decision appeared sufficiently precise and un-

conditional not to require any particular implementing measures. Admittedly, its implementation required the adoption of administrative measures, of individual application, to end the grant of the allowance to the members of staff concerned. However, the Tribunal observed that the adoption of such intermediate measures, which does not leave the managing authorities any discretion, was not such as to prevent the applicants' legal position from being directly affected.

Moreover, according to settled case-law, a letter which merely reminds a member of staff about the provisions of his contract relating to the date of expiry of the contract and contains no new factor by reference to those provisions is not an act adversely affecting that staff member. However, the Tribunal recalled, in its judgment in *Drakeford* v *EMA* (F-29/13, EU:F:2014:10, under appeal to the General Court), that, where the contract is renewable, the decision taken by the administration, following reconsideration, not to renew the contract constitutes an act adversely affecting the person concerned, distinct from the contract in question and capable of forming the subject matter of a complaint or even an action within the periods prescribed in the Staff Regulations. That is the case, in particular, of a letter which merely formally 'reminds' a member of staff of the date when a contract ends, in a situation where that contract was renewable, and which follows a procedure on the basis of Article 8 of the conditions of employment of other servants ('CEOS').

2. Compliance with the pre-litigation procedure

The case-law has derived from Article 91(2) of the Staff Regulations a rule of correspondence between the complaint, within the meaning of that provision, and the application which follows. That rule requires that a plea raised before the Courts of the European Union must, if it is not to be declared inadmissible, have already been raised in the context of the pre-litigation procedure, in order that the appointing authority be in a position to know the criticisms which the official concerned makes against the contested decision. In two judgments in *CR* v *Parliament* (F-128/12, EU:F:2014:38) and *Cerafogli* v *ECB* (F-26/12, EU:F:2014:218, under appeal to the General Court), the Tribunal none the less held that the correspondence rule did not apply to a plea of illegality raised for the first time in an action. In that regard, the Tribunal observed, firstly, that the principle that acts adopted by the institutions of the European Union are presumed lawful implies that the appointing authority cannot chose to disapply a general measure in force which in its view infringes a higher-ranking rule of law. Secondly, it recalled that the very nature of a plea of illegality is to reconcile the principle of legality and the principle of legal certainty. Thirdly, it observed that Article 277 TFEU provides for the possibility of challenging a measure of general application after the expiry of the period for bringing an action only in proceedings before the Courts of the European Union, so that such a plea cannot be fully effective in an administrative appeal procedure. Finally, fourthly, it held that the sanction of inadmissibility of a plea of illegality raised for the first time in the application constitutes a limitation of the right to effective judicial protection that is not proportionate to the aim pursued by the correspondence rule, namely to permit an amicable settlement of the disputes between the official concerned and the administration. A plea of illegality requires, by its nature, reasoning which cannot be required of an official or member of staff who does not necessarily have the appropriate legal expertise to raise such a plea at the pre-litigation stage, failing which a plea of that kind raised at a later stage will be declared inadmissible.

On the other hand, the Tribunal applied Articles 90 and 91 of the Staff Regulations in the classic manner in its judgment in *Colart and Others* v *Parliament* (EU:F:2014:264) delivered in the proceedings concerning staff representation mentioned above, ruling inadmissible an action seeking to contest the results of elections to the Staff Committee in a situation where no request or complaint had been lodged with the appointing authority under Article 90 of the Staff Regulations. Although the applicants had lodged a 'complaint' before a committee of tellers pursuant to rules adopted by the general meeting of officials, that fact did not relieve them of the obligation to ask the appoint-

ing authority to intervene in the electoral process, before introducing their action under Article 270 TFEU and Article 91 of the Staff Regulations. Although the terms used in those rules were ambiguous, the Tribunal considered that the general meeting off officials of an institution, like the statutory bodies, such as the Staff Committee, were not empowered to derogate from Article 90 of the Staff Regulations in the context of 'conditions for election to the Staff Committee' which they have to adopt under the second paragraph of Article 1 of Annex II to the Staff Regulations.

In the same spirit, and by an order in *Klar and Fernandez Fernandez* v *Commission* (F-114/13, EU:F:2014:192, under appeal to the General Court), the Tribunal held an action contesting the legality of a decision of the defendant institution refusing to recognise the legality of a decision of a local section of a Staff Committee inadmissible because the applicants had not lodged a prior complaint within the period of three months prescribed by the Staff Regulations running from the time of the first adoption of a clear and detailed position by the institution.

3. Interest in bringing proceedings

During the period under consideration, the Tribunal had to consider a plea of inadmissibility alleging that an applicant, a former official who had retired on reaching the age-limit, no longer had an interest in disputing a staff report, even though that report had been drawn up in implementation of a previous judgment annulling a measure. In its judgment in *Cwik* v *Commission* (F-4/13, EU:F:2014:263), the Tribunal recalled that the right of access to a tribunal would be illusory if it were permissible for a final and binding judicial decision to remain ineffective to the detriment of a party and that the enforcement of a judgment should be considered to be an integral part of the trial, within the meaning of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Accordingly, the Tribunal held that any refusal to recognise the applicant's interest in bringing proceedings to have the new report annulled would amount to disregarding his right to the proper enforcement of the first judgment and, therefore, his right to effective judicial protection.

4. Urgent need for interim measures

According to settled case-law, the suspension of operation of a measure is merely ancillary to the main action to which it is an adjunct. Consequently, the decision taken by the judge hearing applications for interim relief must be of a provisional nature in the sense that it can neither prejudge the future decision on the substance nor render it illusory by depriving it of any useful effect. However, in his order in *DK* v *EEAS* (F-27/14 R, EU:F:2014:67), the president of the Tribunal took the view that, where the factual and legal arguments put forward by the applicant raise serious doubts as to the lawfulness of the contested decision, in the light of the principle that disciplinary proceedings arising out of a criminal offence must await the outcome of the criminal trial, he may not, without being criticised for infringing that principle himself, dismiss on grounds of lack of urgency an application for suspension of operation. In other words, given that it appears, prima facie, to have been infringed, the protection of the principle that disciplinary proceedings arising out of a criminal offence must await the outcome of the criminal trial may not be deferred, even provisionally, pending the decision of the court adjudicating on the substance, without causing serious and irreparable harm to the applicant, since, by definition, the outcome of the criminal trial might be seriously affected by the administrative authority's view of the accuracy of the facts on which that trial is based.

II. Merits

General conditions for validity of measures

1. Duty of impartiality

According to settled case-law, the selection board in a competition must ensure that its assessments of all the candidates examined in the oral tests are made under conditions of equality and objectivity. In its judgment in *CG* v *EIB* (F-115/11, EU:F:2014:187), the Tribunal applied that case-law to a selection panel tasked with selecting the best candidates from among those responding to the publication of a notice of vacancy. Consequently, the Tribunal held that all members of a selection panel had to have the necessary independence to preclude any doubt as to their objectivity. That said, the mere fact that a member of a selection panel is the subject of a complaint for harassment lodged by a candidate does not as such mean that the member concerned is required to recuse himself. However, since the applicant in this case pointed out that that member would have become the immediate superior of the candidate appointed to the post and adduced objective, relevant and consistent evidence that he had a personal interest in disadvantaging her, the Tribunal held that he had breached his duty of impartiality. Consequently, in so far as each of the members of the selection panel must have the necessary independence so that the objectivity of the selection panel as a whole cannot be compromised, the Tribunal held that the duty of impartiality of the selection panel as a whole had been breached

In another case, the Tribunal had to determine the question of the validity of a selection procedure for an executive director of an agency, which involved the intervention of a pre-selection panel to draw up a list of candidates considered the best qualified, while the management board of the agency was responsible for making the appointment. It held, in its judgment in *Hristov* v *Commission and EMA* (F-2/12, EU:F:2014:245), that, even if the draft list was not binding, the mere fact that two members of the management board sat on the pre-selection panel breached the duty of impartiality.

2. Right to be heard

Assessing the practical details of the right to be heard of a member of the temporary staff concerning the possible renewal of his contract, the Tribunal, in its judgment in *Tzikas* v *ERA* (F-120/13, EU:F:2014:197), pointed to the need for a staff member to be clearly informed of the purpose of the interview with his superiors, so that he is able to make his views known properly before a decision adversely affecting him is adopted. Thus, even in the absence of provisions requiring the dialogue between the staff member and his superior to be in written form, and even if, therefore, information on the purpose of the interview may be oral and arise from the context in which the interview takes place, it may be more appropriate to issue a written invitation to attend to the staff member concerned.

Furthermore, in the context of disciplinary proceedings, the right to be heard is 'implemented' within the meaning of the Charter of Fundamental Rights of the European Union (the Charter), firstly, by means of Article 16(1) of Annex IX to the Staff Regulations, and, secondly, by Article 4 of that Annex. The Tribunal observed, in its judgment in *de Brito Sequeira Carvalho* v *Commission* (F-107/13, EU:F:2014:232), that those provisions read in the light of Article 52(1) of the Charter are breached where an official who was neither present nor represented at a hearing before a disciplinary board and who could not submit written observations either, although he had submitted evidence to prove that it was impossible for him to attend the hearing on the scheduled date and, moreover, the only witness relied on by the appointing authority was heard at the hearing.

Careers of officials and other staff

The Tribunal held, in its judgment in *Montagut Viladot* v *Commission* (F-160/12, EU:F:2014:190, under appeal to the General Court), that in the absence of any provision to the contrary contained either in a regulation or a directive applicable to recruitment competitions or in the notice of competition, the requirement of possession of a university diploma on which admission to an open competition depends is necessarily to be construed in the light of the definition of such a diploma given in the legislation of the Member State in which the candidate completed the studies on which he relies.

Furthermore, in its judgment in *De Mendoza Asensi* v *Commission* (F-127/11, EU:F:2014:14), the Tribunal recalled that observance of the principles of equal treatment and objectivity of marking requires that, so far as is possible, stability of the composition of the selection board should be maintained throughout the tests. However, the Tribunal conceded that it is possible that consistency of marking may be ensured by other means. Here it accepted the validity of a new method of organisation of the work of a selection board in which its stability is guaranteed only at certain stages in the procedure. In that regard, the Tribunal held, firstly, that such stability was guaranteed at certain key stages, namely, at the beginning when the board decided on the way the tests were to take place, then every two or three days, on each occasion on which the marks awarded to the candidates were brought together in order to form an assessment of the competencies of the candidates who had been examined over that period and, lastly, when it reviewed the consistency of the assessments of the candidates at the end of all the tests of the procedure. Secondly, it observed that equal treatment of the candidates is ensured by working methods remaining the same, which involves the use of pre-structured tests and the application of the same assessment criteria to the candidates' performance. Thirdly, it noted that the chairman of the selection board was present during the first few minutes of all of the tests. Finally, it observed that studies and analyses were carried out in order to check the consistency of marking.

Rights and obligations of officials and other staff

Called upon, in its judgments in *CG* v *EIB* (F-103/11, EU:F:2014:185) and *De Nicola* v *EIB* (F-52/11, EU:F:2014:243), to clarify the definition of psychological harassment within the meaning of Article 3.6.1 of the Staff Code of Conduct of the European Investment Bank read in conjunction with the Policy on Dignity at Work which the Bank had also adopted, the Tribunal adopted an interpretation similar to that which it had developed on the basis of Article 12a of the Staff Regulations, to the effect that there is no requirement that the acts or behaviour which adversely affect the self-esteem and self-confidence of the victim be intentional. Consequently, the Tribunal set aside two decisions of the Bank not to act on complaints of psychological harassment on the ground that it did not appear that the conduct complained of had been intentional.

Emoluments and social security benefits of officials

1. Expatriation allowance

In order to determine whether an official is entitled to the expatriation allowance, the Tribunal recalled, in its judgment in *Ohrgaard* v *Commission* (F-151/12, EU:F:2014:8), that it is clear from Article 4(1)(a) and (b) of Annex VII to the Staff Regulations that, in order that periods of residence may be disregarded, the legislature drew a distinction between officials who have never been nationals of the State in which they are employed and those who are or have been nationals of that State. In the first case, periods corresponding to 'circumstances arising from work done for another State or for an international organisation' are disregarded. In the second case, periods corresponding to situations arising from 'the performance of duties in the service of a State or an international

organisation' are disregarded. The Tribunal also recalled that the first expression has a much wider scope than the second. Therefore, although the Courts of the European Union have held that a traineeship in one of the EU institutions should be disregarded as 'the performance of duties … for an international organisation', where the official is not and has never been a national of the State of employment, the Tribunal held that a traineeship organised by the Commission for the main purpose of training those concerned could not be considered to fall within the definition of 'performance of duties', applicable to officials who are or have been nationals of that State. Unlike the first concept, the latter notion requires that the work done contribute chiefly to the achievement of the objectives of the State or international organisation in question.

2. Family allowances

In an action brought against a disciplinary measure, the Tribunal had to clarify the obligations incumbent on an official in the light of the fact that the family allowances paid by the European Union supplement national benefits. In its judgment in *EH* v *Commission* (F-42/14, EU:F:2014:250), the Tribunal held, first, that where a benefit payable under the Staff Regulations is applied for and granted to an official on the basis of his family circumstances, he cannot rely on his alleged ignorance of the situation of his spouse. In response to a head of claim alleging that the administration had not verified with the national provider of benefits whether it had in fact failed to pay family allowances, the Tribunal went on to hold that, although a diligent administration may be expected to update, at least annually, the personal data of the recipients of benefits paid monthly under the Staff Regulations, the position of an administration responsible for the payment of thousands of salaries and various allowances cannot be compared to that of an official who has a personal interest in verifying the sums paid to him and pointing out anything which may constitute an error to his disadvantage or to his advantage. Finally, the Tribunal held that the fact that the administration obtained certain information only accidentally or indirectly was not relevant, since it is for the recipient of a benefit under the Staff Regulations to inform the relevant department of his institution clearly and unambiguously of any decision granting an equivalent national benefit.

Moreover, it is apparent from Article 2(1) of Annex VII to the Staff Regulations in conjunction with the first subparagraph of Article 2(2) of that annex, that officials receive a dependent child allowance where children are 'actually being maintained' by them. In its judgment in *Armani* v *Commission* (F-65/12, EU:F:2014:13), the Tribunal had occasion to recall, in that connection, that the concept of actual maintenance of a child means actual responsibility for all or part of the child's essential needs, in particular in relation to board and lodging, clothing, education and medical care and costs. Consequently, where an official takes actual responsibility for all or part of the essential needs of his spouse's child he must be considered to be actually maintaining that child and, as a result, having that child as a dependent. In that connection, and in the absence of any other provision to the contrary, an official's right to receive the dependent child allowance in respect of his spouse's child is not conditional on that spouse not being an official or other member of staff of the EU. In that judgment, the Tribunal further made clear, incidentally, that, although they are included under remuneration, family allowances are not intended for the maintenance of officials but exclusively for the maintenance of children.

3. Recovery of undue payments

In *CR* v *Parliament* (EU:F:2014:38), the Tribunal had to rule on the lawfulness of the second sentence of the second paragraph of Article 85 in so far as it provides that the period of five years within which undue payments may be recovered from officials and other staff is inapplicable against the administration where it is able to establish that the recipient deliberately misled it with a view to obtaining the sum concerned. Having recalled that the extent to which provision is made for a limi-

tation period is the result of a choice between the requirements of legal certainty and those of legality, on the basis of the historical and social circumstances prevailing in a society at a given time and that it is accordingly a matter for the legislature alone to decide, the Tribunal held that the fact that the legislature chose to preclude the possibility of relying as against the administration on the five-year limitation period in question is not therefore in itself unlawful from the point of view of compliance with the principle of legal certainty. Moreover, according to settled case-law, where the EU legislature has not laid down any limitation period, the fundamental requirement of legal certainty precludes the administration from indefinitely delaying the exercise of its powers and it is required to act within a reasonable time after it became aware of the facts.

In the same judgment, the Tribunal also held that the inapplicability as against the administration of the five-year limitation period for the recovery of sums unduly paid is not contrary to the principle of proportionality either. The objective pursued by Article 85 of the Staff Regulations is clearly to protect the financial interests of the European Union in the specific context of relations between the institutions of the Union and their staff, that is to say, persons who are bound to those institutions by the specific duty of loyalty provided for in Article 11 of the Staff Regulations.

In its judgment in *López Cejudo* v *Commission* (F-28/13, EU:F:2014:55), the Tribunal made clear that the second sentence of the second paragraph of Article 85 of the Staff Regulations covers the situation in which the staff member, in a move to obtain a payment to which he is not entitled, deliberately misleads the appointing authority, inter alia, either by failing to provide it with all the information concerning his personal situation or by omitting to bring to its notice changes that have taken place in his personal situation, or by taking steps to make it more difficult for the appointing authority to detect the undue nature of the payment he received, including by supplying incorrect or inaccurate information.

Disciplinary measures

In its judgment in *EH* v *Commission* (EU:F:2014:250), the Tribunal held that, while the administration may decide to take account of the fact that the person concerned is approaching retirement age, nothing in the wording of Article 10 of Annex IX to the Staff Regulations requires the appointing authority to regard that fact as a circumstance justifying reduction of the penalty imposed.

Disputes concerning contracts

In two judgments in *Bodson and Others* v *EIB* (F-73/12, EU:F:2014:16 and F-83/12, EU:F:2014:15, both under appeal to the General Court), the Tribunal rejected the applicants' arguments that the contractual nature of their employment relationship and the binding force of the contracts prevented the Bank from altering unilaterally essential aspects of the conditions of employment of its staff. The Tribunal held, in that regard, that, where employment contracts are concluded with a EU body entrusted with public interest responsibilities and authorised to lay down, by regulation, provisions applicable to its staff, the consent of the parties to an employment contract is necessarily circumscribed by all manner of obligations deriving from those particular responsibilities and incumbent upon both the management bodies of that body and its staff. Therefore, the consensus between the parties is limited to the general acceptance of the rights and obligations laid down by such regulation and their relationship, even if it is contractual in origin, is essentially regulatory in nature. Consequently, the Tribunal held that, in order to carry out its public interest responsibilities, the Bank had discretion to alter unilaterally the remuneration of its staff, notwithstanding the legal instruments of a contractual nature on which their employment relationship was based.

It should be borne in mind that, under the first paragraph of Article 8 of the CEOS, contracts of temporary staff to whom Article 2(a) of the CEOS applies may be renewed not more than once for a fixed period and 'any further renewal' is to be for an indefinite period. In its judgment in *Drakeford* v *EMA* (EU:F:2014:10), the Tribunal held that that provision could not be interpreted as meaning that any change in duties, reflected in a new contract, is such as to interrupt the continuity of the employment relationship, which would lead to a contract of indefinite duration. Such an interpretation would have the effect of reducing the scope of the first paragraph of Article 8 of the CEOS beyond its underlying objective, since it would mean that the appointment, by means of a formally distinct contract, of any existing member of the temporary staff to a post of a higher grade would lead, in any circumstances and without any real justification, to that staff member being placed, as regards the duration of his 'employment', back in the same situation as a newly recruited member of staff. Moreover, such an interpretation would have the effect of penalising particularly deserving members of staff, who, precisely because of their performance at work have made progress in their career. According to the Tribunal, such a consequence would give rise to serious reservations with regard to the principle of equal treatment as set out in Article 20 of the Charter. It also ran counter to the intention of the legislature expressly set out in Article 12(1) of the CEOS, that the engagement of temporary staff should secure for the institutions the services of persons of the highest standards of ability, efficiency and integrity.

B — Composition of the Civil Service Tribunal

(Order of precedence as at 1 October 2014)

From left to right:

E. Perillo, Judge; H. Kreppel, Judge; R. Barents, President of Chamber; S. Van Raepenbusch, President; K. Bradley, President of Chamber; M.I. Rofes i Pujol, Judge; J. Svenningsen, Judge; W. Hakenberg, Registrar.

1. Members of the Civil Service Tribunal

(in order of their entry into office)

Sean Van Raepenbusch

Born in 1956; law graduate (Free University of Brussels, 1979); special diploma in international law (Brussels, 1980); Doctor of Laws (1989); Head of the Legal Service of the Société anonyme du canal et des installations maritimes de Bruxelles (1979-84); official of the European Commission (Directorate-General for Social Affairs, 1984–88); member of the Legal Service of the European Commission (1988–94); Legal Secretary at the Court of Justice of the European Communities (1994–2005); lecturer at the University of Charleroi (international and European social law, 1989–91), at the University of Mons Hainault (European law, 1991–97), at the University of Liège (European civil service law, 1989–91; institutional law of the European Union, 1995–2005; European social law, 2004–05) and, since 2006, at the Free University of Brussels (institutional law of the European Union); numerous publications on the subject of European social law and institutional law of the European Union; Judge at the Civil Service Tribunal since 6 October 2005; President of the Civil Service Tribunal since 7 October 2011.

Horstpeter Kreppel

Born in 1945; university studies in Berlin, Munich, Frankfurt-am-Main (1966–72); first State examination in law (1972); court trainee in Frankfurt-am-Main (1972–73 and 1974–75); College of Europe, Bruges (1973–74); second State examination in law (Frankfurt-am-Main, 1976); specialist adviser in the Federal Labour Office and lawyer (1976); presiding Judge at the Labour Court (Land Hesse, 1977–93); lecturer at the Technical College for Social Work, Frankfurt-am-Main, and at the Technical College for Administration, Wiesbaden (1979–90); national expert to the Legal Service of the European Commission (1993–96 and 2001–05); Social Affairs Attaché at the Embassy of the Federal Republic of Germany in Madrid (1996–2001); presiding Judge at the Labour Court of Frankfurt-am-Main (February to September 2005); Judge at the Civil Service Tribunal since 6 October 2005.

Maria Isabel Rofes i Pujol

Born in 1956; study of law (law degree, University of Barcelona, 1981); specialisation in international trade (Mexico, 1983); study of European integration (Barcelona Chamber of Commerce, 1985) and of Community law (School of Public Administration, Catalonia, 1986); official of the Government of Catalonia (member of the Legal Service of the Ministry of Industry and Energy, April 1984 to August 1986); member of the Barcelona Bar (1985–87); administrator, then principal administrator, in the Research and Documentation Division of the Court of Justice of the European Communities (1986–94); Legal Secretary at the Court of Justice (Chamber of Advocate General Ruiz-Jarabo Colomer, January 1995 to April 2004; Chamber of Judge Lõhmus, May 2004 to August 2009); lecturer on Community cases, Faculty of Law, Autonomous University of Barcelona (1993–2000); numerous publications and courses on European social law; member of the Board of Appeal of the Community Plant Variety Office (2006–09); Judge at the Civil Service Tribunal since 7 October 2009.

Ezio Perillo

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

René Barents

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

Kieran Bradley

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

Jesper Svenningsen

Born in 1966; study of law (*Candidatus juris*) at the University of Aarhus (1989); trainee lawyer with the Legal Adviser to the Danish Government (1989–91); Legal Secretary at the Court of Justice (1991–93); admitted to the Bar in Denmark (1993); lawyer with the Legal Adviser to the Danish Government (1993–95); lecturer in European law at the University of Copenhagen; senior lecturer at the European Institute of Public Administration, Luxembourg branch, then Acting Director (1995–99); administrator with the Legal Service of the EFTA Surveillance Authority (1999–2000); official at the Court of Justice (2000–13); Legal Secretary (2003–13); Judge at the Civil Service Tribunal since 7 October 2013.

Waltraud Hakenberg

Born in 1955; studied law in Regensburg and Geneva (1974–79); first State examination (1979); postgraduate studies in Community law at the College of Europe, Bruges (1979–80); trainee lawyer in Regensburg (1980–83); Doctor of Laws (1982); second State examination (1983); lawyer in Munich and Paris (1983–89); official at the Court of Justice of the European Communities (1990–2005); Legal Secretary at the Court of Justice of the European Communities (in the Chambers of Judge Jann, 1995–2005); teaching for a number of universities in Germany, Austria, Switzerland and Russia; honorary professor at Saarland University (since 1999); member of various legal committees, associations and boards; numerous publications on Community law and Community procedural law; Registrar of the Civil Service Tribunal since 30 November 2005.

2. Change in the composition of the Civil Service Tribunal in 2014

There was no change in the composition of the Civil Service Tribunal in 2014.

3. Order of precedence

From 1 January 2014 to 30 September 2014

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

W. HAKENBERG, Registrar

From 1 October 2014 to 31 December 2014

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

W. HAKENBERG, Registrar

4. Former members of the Civil Service Tribunal

Heikki Kanninen (2005–09)
Haris Tagaras (2005–11)
Stéphane Gervasoni (2005–11)
Irena Boruta (2005–13)

President

Paul J. Mahoney (2005–11)

C — Statistics concerning the judicial activity of the Civil Service Tribunal

General activity of the Civil Service Tribunal

1. New cases, completed cases, cases pending (2010–14)

New cases

2. Percentage of the number of cases per principal defendant institution (2010–14)
3. Language of the case (2010–2014)

Completed cases

4. Judgments and orders — Bench hearing action (2014)
5. Outcome (2014)
6. Applications for interim measures (2010–14)
7. Duration of proceedings in months (2014)

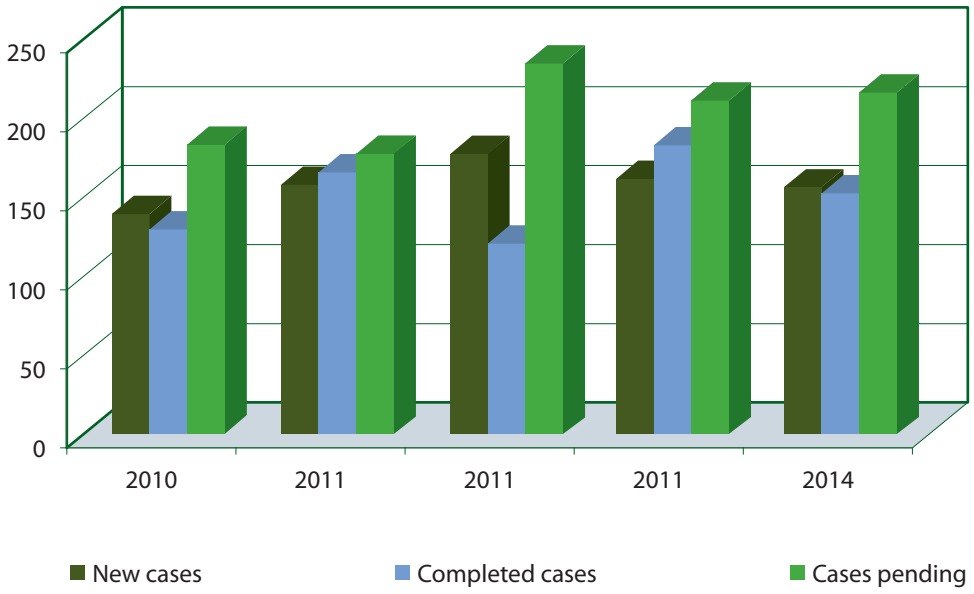
Cases pending as at 31 December

8. Bench hearing action (2010–14)
9. Number of applicants (2014)

Miscellaneous

10. Appeals against decisions of the Civil Service Tribunal to the General Court (2010–14)
11. Result of appeals before the General Court (2010–14)

1. *General activity of the Civil Service Tribunal* — New cases, completed cases, cases pending (2010–14)

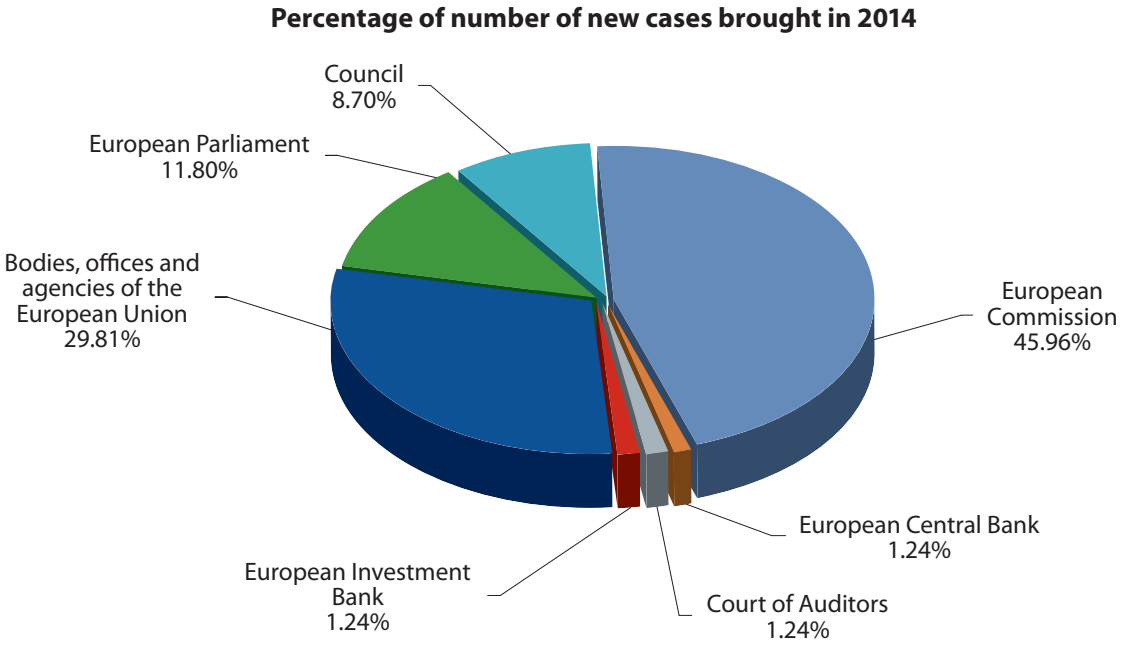


	2010	2011	2012	2013	2014
New cases	139	159	178	160	157
Completed cases	129	166	121	184	152
Cases pending	185	178	235	211	216 [1]

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

[1] Including 99 cases in which proceedings were stayed.

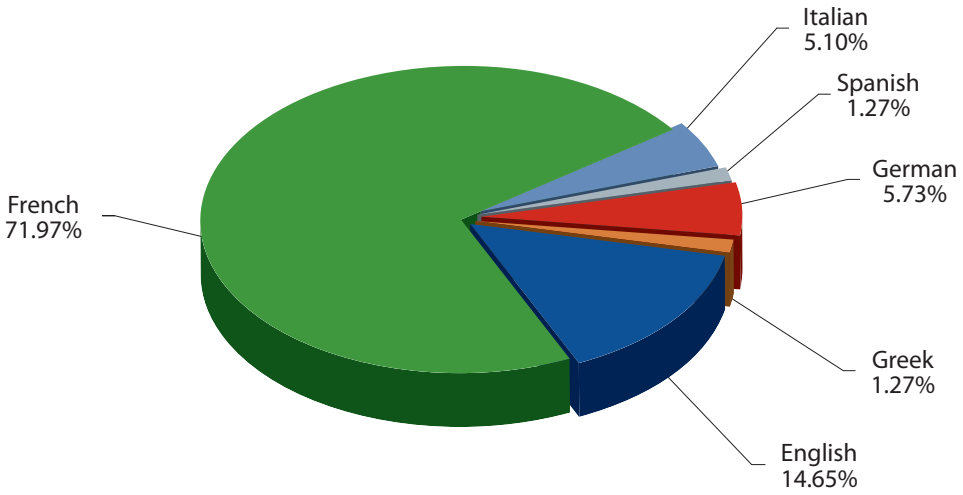
2. *New cases* — Percentage of the number of cases per principal defendant institution (2010–14)



	2010	2011	2012	2013	2014
European Parliament	9.35%	6.29%	6.11%	5.66%	11.80%
Council	6.47%	6.92%	3.89%	3.77%	8.70%
European Commission	58.99%	66.67%	58.33%	49.69%	45.96%
Court of Justice of the European Union	5.04%	1.26%		0.63%	
European Central Bank	2.88%	2.52%	1.11%	1.89%	1.24%
Court of Auditors		0.63%	2.22%	0.63%	1.24%
European Investment Bank	5.76%	4.32%	4.44%	5.03%	1.24%
Bodies, offices and agencies of the European Union	11.51%	11.40%	23.89%	32.70%	29.81%
Total	**100%**	**100%**	**100%**	**100%**	**100%**

3. *New cases* — Language of the case (2010–14)

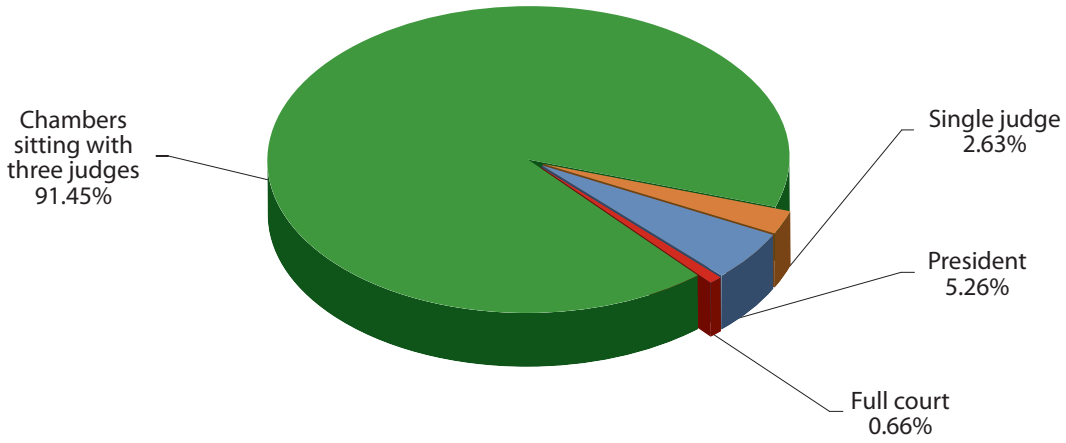
Distribution in 2014



Language of the case	2010	2011	2012	2013	2014
Bulgarian			2		
Spanish	2	2	3		2
German	6	10	5	2	9
Greek	2	4	1	4	2
English	9	23	14	26	23
French	105	87	108	95	113
Italian	13	29	35	21	8
Hungarian		1			
Dutch	2	1	6	12	
Polish		1	2		
Romanian			2		
Slovak		1			
Total	**139**	**159**	**178**	**160**	**157**

The language of the case corresponds to the language in which the proceedings were brought and not to the applicant's mother tongue or nationality.

4. *Completed cases* — Judgments and orders – Bench hearing action (2014)



	Judgments	Orders for removal from the register, following amicable settlement (1)	Other orders terminating proceedings	Total
Full court	1			1
Chambers sitting with three judges	64	11	64	139
Single judge	3	1		4
President			8	8
Total	**68**	**12**	**72**	**152**

(1) In the course of 2014, there were also 14 unsuccessful attempts to bring cases to a close by amicable settlement on the initiative of the Civil Service Tribunal.

5. *Completed cases* — Outcome (2014)

	Judgments		Orders				Total
	Actions upheld in full or in part	Actions dismissed in full, no need to adjudicate	Actions/applications (manifestly) inadmissible or unfounded	Amicable settlements following intervention by the bench hearing the action	Removal from the register on other grounds, no need to adjudicate or referral	Applications upheld in full or in part (special forms of procedure)	
Appraisal/Promotion	5	6	2	1	2		**16**
Assignment/Reassignment	1	2		1			**4**
Competitions	1	2	2				**5**
Disciplinary proceedings	1	1					**2**
Pensions and invalidity allowances	1	1	4				**6**
Recruitment/Appointment/Classification in grade	4	5	1		1		**11**
Remuneration and allowances	4	7	3	2	3		**19**
Social security/Occupational disease/ Accidents		1	1	1	3		**6**
Termination or non-renewal of a contract as a member of staff	3	11	3	4	2		**23**
Working conditions/Leave			2				**2**
Other	3	9	15	3	4	24	**58**
Total	**23**	**45**	**33**	**12**	**15**	**24**	**152**

6. *Applications for interim measures* (2010–14)

Applications for interim measures brought to a conclusion		Outcome		
		Granted in full or in part	Dismissal	Removal from the register
2010	**6**		4	2
2011	**7**		4	3
2012	**11**		10	1
2013	**3**		3	
2014	**5**	1	4	
Total	**32**	**1**	**25**	**6**

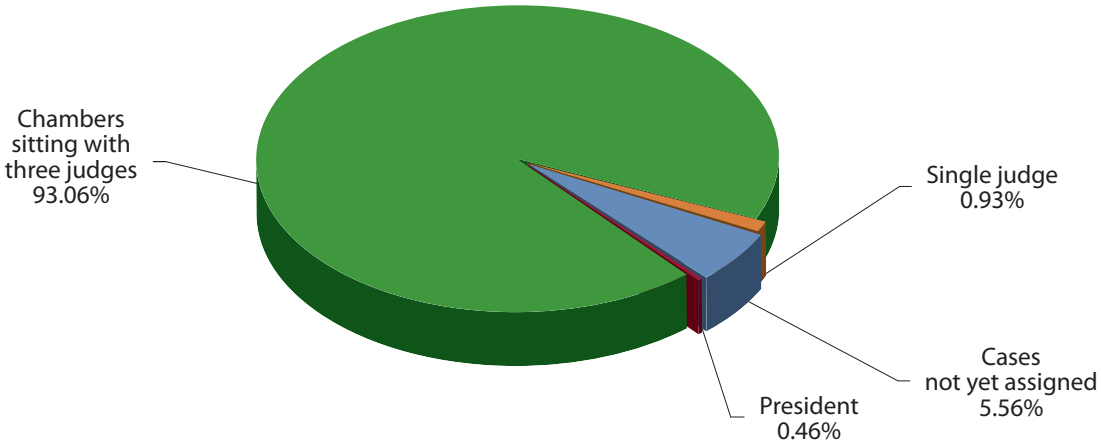
7. *Completed cases* — Duration of proceedings in months (2014)

Completed cases		Average duration	
		Duration of full procedure	Duration of procedure, not including duration of any stay of proceedings
Judgments	68	17.3	17.1
Orders	84	10.7	9.1
Total	**152**	**13.7**	**12.7**

The durations are expressed in months and tenths of months.

8. *Cases pending as at 31 December* — Bench hearing action (2010–14)

Distribution in 2014



	2010	2011	2012	2013	2014
Full court	1		1	1	
President	1	1		2	1
Chambers sitting with three judges	179	156	205	172	201
Single judge		2	8	3	2
Cases not yet assigned	4	19	21	33	12
Total	**185**	**178**	**235**	**211**	**216**

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

The pending cases with the greatest number of applicants in 2014

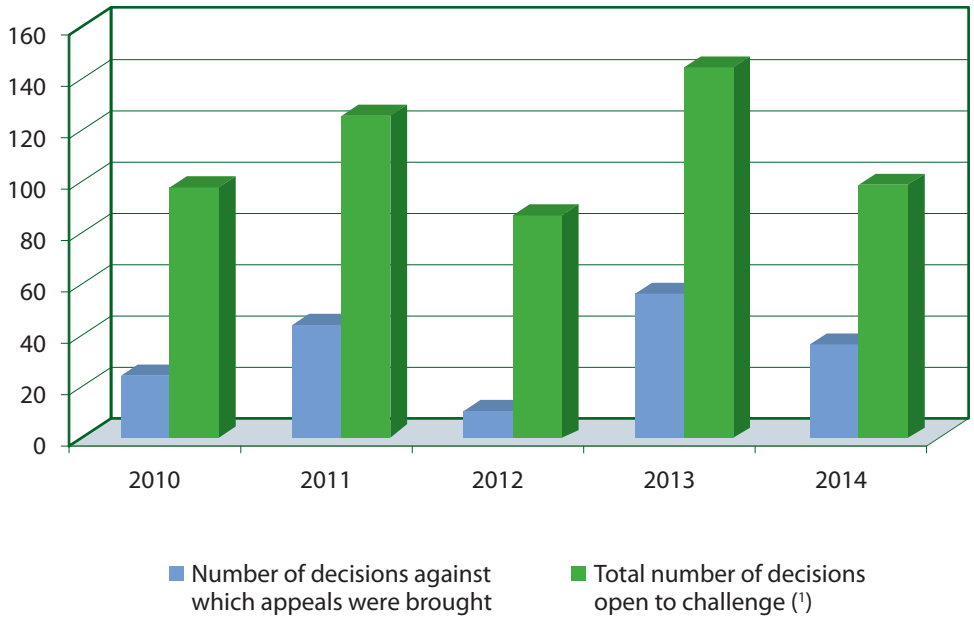
Number of applicants	Fields
486	Staff Regulations — EIB — Remuneration — Annual adjustment of salaries
484	Staff Regulations — EIB — Remuneration — Reform of the system of remuneration and salary increments at the EIB
451	Staff Regulations — EIB — Remuneration — New performance system — Allocation of bonuses
35	Staff Regulations — Referral back following review of the judgment of the General Court — EIB — Pensions — Reform of 2008
33	Staff Regulations — EIB — Pensions — Reform of the pension scheme
30	Staff Regulations — European Investment Fund — Remuneration — Annual adjustment of salaries
29	Staff Regulations — European Investment Fund — Remuneration — Reform of the system of remuneration and salary increments at the EIF
26 (four cases)	Staff Regulations — Staff Regulations of officials — Reform of the Staff Regulations of 1 January 2014 — New rules for the calculation of travel expenses from place of employment to place of origin — Link between the grant of this benefit and expatriate status — Abolition of travelling time
25	Staff Regulations — Promotion — 2010 and 2011 promotion years — Establishment of promotion thresholds
20	Staff Regulations — Staff Regulations of officials — Reform of the Staff Regulations of 1 January 2014 — New rules on careers and promotion — Classification as 'principal administrator in transition' — Difference in treatment of lawyers of the same grade (AD 13) in the Legal Service of the Commission — Principle of equal treatment

The term 'Staff Regulations' means the Staff Regulations of Officials of the European Union and the Conditions of Employment of other servants of the Union.

Total number of applicants for all pending cases (2010–14)

	Total applicants	Total pending cases
2010	812	185
2011	1 006	178
2012	1 086	235
2013	1 867	211
2014	1 902	216

10. *Miscellaneous* — Appeals against decisions of the Civil Service Tribunal to the General Court (2010–14)

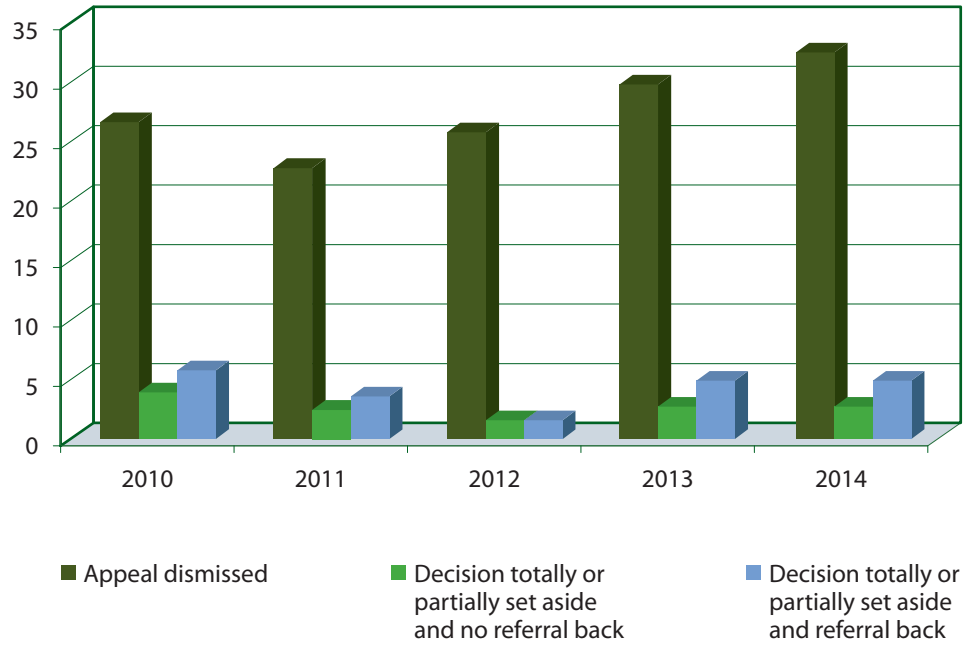


	Number of decisions against which appeals were brought	Total number of decisions open to challenge (1)	Percentage of decisions appealed (2)
2010	24	99	24.24%
2011	44	126	34.92%
2012	11	87	12.64%
2013	56	144	38.89%
2014	36	99	36.36%

(1) Judgments, orders — declaring the action inadmissible, manifestly inadmissible or manifestly unfounded, orders for interim measures, orders that there is no need to adjudicate and orders refusing leave to intervene — made or adopted during the reference year.

(2) For a given year this percentage may not correspond to the decisions subject to appeal given in the reference year, since the period allowed for appeal may span two years.

11. *Miscellaneous* — Results of appeals before the General Court (2010–14)



	2010	2011	2012	2013	2014
Appeal dismissed	27	23	26	30	33
Decision totally or partially set aside and no referral back	4	3	2	3	3
Decision totally or partially set aside and referral back	6	4	2	5	5
Removal from the register/no need to adjudicate			3		1
Total	**37**	**30**	**33**	**38**	**42**