

The division of competence among the Community jurisdictions

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Until the creation of the Court of First Instance, all classes of action fell within the jurisdiction of the Court of Justice.

The first division of competence within the judicial institution was made by Article 3 of the Decision of 24 October 1988 establishing the Court of First Instance, which conferred on the newly-established jurisdiction competence to hear and determine, at first instance and subject to appeal before the Court of Justice, certain classes of action brought by natural or legal persons, namely actions brought by civil servants, and actions for annulment, for declaration of failure to act and for compensation brought by private individuals against the Commission in connection with the implementation of competition rules applying to undertakings by virtue of the Treaty establishing the European Economic Community (EEC) or with the application of the provisions of the Treaty establishing the European Coal and Steel Community (ECSC) in respect of levies, production, prices, agreements and concerted practices, and concentrations.

The jurisdiction of the Court of First Instance was, at the outset, limited in scope but was expanded by other Decisions of the Council (of 8 June 1993 and 7 March 1994) to encompass all classes of direct action brought by natural or legal persons against Community institutions or bodies, whatever the subject matter of the action.

In addition, Council Regulations No 40/94 on the Community trade mark, replaced by Regulation No 207/2009 on the Community trade mark (codified version), and No 2100/94 on Community plant variety rights, the latter as modified by Regulation No 2506/95, gave the Court of First Instance jurisdiction in respect of actions relating to their subject matter.

The Court of First Instance was not, however, competent to hear and determine cases submitted by the Member States or Community institutions nor to take references for a preliminary ruling, all of which remained within the exclusive jurisdiction of the Court of Justice [Article 168a of the EEC Treaty and Article 140a of the Treaty establishing the European Atomic Energy Community (EAEC or Euratom). An amendment of those provisions, allowing all classes of action or proceeding other than references for preliminary rulings to be devolved to the Court of First Instance, was introduced by the Maastricht Treaty but has never been acted upon].

The Treaty of Nice of 26 February 2001 provided for the creation of specialised judicial panels, thereby modifying the division of competence between the Court of Justice and the Court of First Instance.

Under Article 225 of the Treaty establishing the European Community (EC),

‘1. The Court of First Instance shall have jurisdiction to hear and determine at first instance actions or proceedings referred to in Articles 230, 232, 235, 236 and 238, with the exception of those assigned to a judicial panel and those reserved in the Statute for the Court of Justice. The Statute may provide for the Court of First Instance to have jurisdiction for other classes of action or proceeding. [...]

2. The Court of First Instance shall have jurisdiction to hear and determine actions or proceedings brought against decisions of the judicial panels set up under Article 225a. [...]

3. The Court of First Instance shall have jurisdiction to hear and determine questions referred for a preliminary ruling under Article 234, in specific areas laid down by the Statute. [...]

In application of this provision (and of Article 140a of the EAEC Treaty), the Council has, by its Decision of 26 April 2004 amending Article 51 of the Court’s Statute, specified the respective jurisdictions of the Court of Justice and Court of First Instance in respect of direct actions. The Council has also, by its Decision of 2 November 2004 adopted on the basis of Article 225a of the EC Treaty and Article 140b of the EAEC Treaty, created the European Union Civil Service Tribunal; the Tribunal was set up on 1 October 2005 and began working on 12 December 2005. For the time being, however, there are no plans to assign to the Court of First Instance jurisdiction to hear and determine a part of the questions referred for a preliminary ruling.

It follows from these various provisions, taken together, that competence is, at the present time, divided among the three Community jurisdictions as follows.

The jurisdiction of the Court of Justice

The Court of Justice is the supreme jurisdiction of the European Union. It has competence to hear and determine disputes, competence to take questions referred for a preliminary ruling and consultative competence. It thus has jurisdiction for:

- *actions for failure to fulfil obligations* (Articles 226 to 228 of the EC Treaty and Articles 141 to 143 of the EAEC Treaty);
- *actions for annulment and for declaration of failure to act of an institutional nature and, hence, of a political nature*, that is, actions brought by the Member States, under Articles 230 and 232 of the EC Treaty and Articles 146 and 148 of the EAEC Treaty, against
 - acts of or failures to act by the European Parliament or the Council, or by those institutions acting jointly, with the exception of acts adopted by the Council in its executive capacity in the areas of State aid, measures to protect trade and comitology;
 - acts of or failures to act by the Commission pursuant to Article 11a of the EC Treaty (engagement by a Member State in enhanced cooperation).

Jurisdiction is also reserved to the Court of Justice in actions, again for annulment or for declaration of failure to act, where they are brought by an institution of the Communities or by the European Central Bank against acts of or failures to act by the European Parliament, the Council, both those institutions acting jointly, the Commission, or brought by an institution of the Communities against an act of or failure to act by the European Central Bank (Article 51 of the Statute of the Court of Justice);

- *appeals against decisions given by the Court of First Instance and reviews of decisions given by that Court in appeal proceedings* (Articles 225(1) and (2) of the EC Treaty and Article 140a, paragraphs 1 and 2, of the EAEC Treaty);
- *references for a preliminary ruling on interpretation or on validity* made by national courts under Article 234 of the EC Treaty and Article 150 of the EAEC Treaty [see also Article 68 of the EC Treaty and Article 35 of the Treaty on European Union (TEU)] or on the basis of specific protocols concerning certain Conventions concluded between Member States, such as the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Brussels Convention of 27 September 1968 on jurisdiction and the execution of judgments in civil and commercial matters (this Convention was replaced by Council Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters);
- *requests for an opinion* on the compatibility of the Community's international agreements with the provisions of the EC Treaty (Article 300) or on the compatibility of certain agreements with the provisions of the EAEC Treaty (Articles 103 to 105).

The Court of Justice also has jurisdiction to hear and determine actions specific to certain domains, such as the *actions (for failure to fulfil obligations and for annulment) provided for in Article 237 of the EC Treaty*, concerning the activities of the European Investment Bank and the national central banks, and *disputes between Member States* relating to the subject matter of the Treaties, if the disputes concerned are submitted to the Court under a special agreement between the parties (Article 239 of the EC Treaty and Article 154 of

the EAEC Treaty). In addition, Article 229a of the EC Treaty, introduced by the Treaty of Nice, empowers the Council to confer on the Court of Justice jurisdiction in disputes relating to *Community industrial property rights* (see on this subject the Proposal for a Council Decision conferring jurisdiction on the Court of Justice in disputes relating to the Community patent — COM/2003/0827 final).

Moreover, in accordance with Article 46 of the EU Treaty, as amended at Nice, the Court of Justice exercises those powers which are expressly reserved to it by that Treaty, and in particular powers in the framework of Title VI which deals with police and judicial cooperation in criminal matters (Article 35 of the EU Treaty), powers in the area of enhanced cooperation (Title VII and Article 40 of the EU Treaty, Articles 11 and 11a of the EC Treaty) and the specific powers relating to the respecting of fundamental rights by the institutions (Article 6(2) of the EU Treaty) and to risk of a serious breach by a Member State of certain fundamental principles (Article 7 of the EU Treaty). The Court has no jurisdiction in respect of common foreign and security policy (Title V of the EU Treaty).

The jurisdiction of the Court of First Instance

The Court of First Instance has jurisdiction to hear and determine at first instance the classes of action or proceeding referred to in Articles 225 of the EC Treaty and 140a of the EAEC Treaty (that is, actions for annulment, declaration of failure to act and compensation, and actions brought on the basis of an arbitration clause), except for actions for annulment and failure to act reserved to the Court of Justice and actions brought by civil servants, for which the Civil Service Tribunal has competence. It thus has jurisdiction for:

- *proceedings instituted by natural or legal persons* against acts of Community institutions which are addressed to them or which are of direct and individual concern to them, or against a failure to act by those institutions;
- actions brought *by the Member States against the Commission*, except for those concerning an enhanced cooperation within the framework of the EC Treaty;
- actions brought *by the Member States against the Council* concerning decisions *with regard to State aid*, acts adopted pursuant to a regulation relating to *measures to protect trade* and acts by which the Council exercises *executive powers* directly;
- *actions to establish extra-contractual liability*, where such actions seek compensation for damage caused by Community institutions or their officials;
- *actions based on an arbitration clause*, contained in contracts placed by the Communities, where that clause expressly provides for the competence of the Community Judge;
- actions concerning *the Community trade mark and the protection of Community plant variety rights*.

The Court of First Instance also has jurisdiction to hear and determine *appeals (on points of law or matters of fact) against decisions given by the judicial panels* which are attached to it (Article 225a, third paragraph, of the EC Treaty and Article 140b, third paragraph, of the EAEC Treaty). The Council Decision establishing the Civil Service Tribunal has provided that decisions given by that Tribunal may be subject to appeal, on points of law only, before the Court of First Instance.

The jurisdiction of the Civil Service Tribunal

The Civil Service Tribunal ‘shall exercise at first instance jurisdiction in disputes between the Communities and their servants referred to in Article 236 of the EC Treaty and Article 152 of the EAEC Treaty, including disputes between any bodies or agencies and their servants in respect of which jurisdiction is conferred on the Court of Justice’ (Article 1 of Annex I to the Statute of the Court, added to that Statute by the Decision establishing the Civil Service Tribunal).