

## The composition of the Community jurisdictions and the rights and duties of their members

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### The Court of Justice

The Court of Justice consists of Judges and Advocates General.

Initially, the Court of Justice of the European Coal and Steel Community (ECSC) was made up of seven judges (Article 32 of the ECSC Treaty, which expired on 23 July 2002).

In the eyes of the founding fathers of the ECSC, seven seemed an ideal number. While it was not too large, it allowed for a representative of each Member State to be appointed to the Court, even if the Treaty did not contain any provision concerning the nationality of the Judges, thereby ensuring that the various national legal orders were properly represented. The seventh Judge was chosen from among the representatives of the trade unions in the coal and steel industries.

The Court of Justice of the ECSC was assisted by two Advocates General whose task it was ‘acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases brought before the Court’ (Article 11 of the Protocol on the Statute of the ECSC Court of Justice and Article 32a of the ECSC Treaty, inserted by the Convention on Certain Institutions Common to the European Communities associated with the Treaties of Rome).

The ‘single Court of Justice’ established in 1958 also consisted of seven Judges and was similarly assisted by two Advocates General [Articles 165 and 166 of the Treaty establishing the European Economic Community (EEC), Articles 137 and 138 of the Treaty establishing the European Atomic Energy Community (EAEC or Euratom)]. The Court appoints its Registrar (Article 168 of the EEC Treaty and Article 140 of the EAEC Treaty; see also Article 32c of the ECSC Treaty).

The number of Members of the Court of Justice has gradually increased in response to the successive enlargements of the European Communities. From January 1973, the date of accession of Denmark, Ireland and the United Kingdom, to the end of 1980, the Court consisted of nine Judges, in line with the number of Member States. With the accession of Greece in January 1981, the number of Judges rose to ten, and then to eleven by Decision of the Council of 30 March 1981; there was a further increase to thirteen in 1986, when Spain and Portugal acceded. As the Court’s workload grew, there was a parallel increase in the number of Advocates General, which rose to four in 1973, five in 1981 and six in 1986.

In the period beginning January 1995, the date of accession of Austria, Finland and Sweden, the Court of Justice consisted of fifteen Judges, assisted by eight Advocates General. A ninth Advocate General held office from 1 January 1995 to 6 October 2000.

The 2001 Treaty of Nice introduced the notion of ‘one Judge per Member State’ to define the composition of the Court of Justice [Article 221 of the Treaty establishing the European Community (EC) and Article 137 of the EAEC Treaty]. Thus, when 10 new States acceded to the European Union in May 2004 (Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia), the number of Judges reached 25. Since January 2007 and the accession of Bulgaria and Romania, that figure has risen to 27.

The number of Advocates General — there are eight at present — may, should the Court of Justice so request, be increased by a Decision of the Council, acting unanimously (Article 222 of the EC Treaty and Article 138 of the EAEC Treaty). Five Advocate General posts are filled by nationals of the five large Member States (Germany, France, Spain, Italy and the United Kingdom); three are filled on a rotating basis by the other Member States.

The Judges and the Advocates General are chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to the highest judicial offices in their respective countries

or who are jurisconsults of recognised competence. They are appointed by common accord of the governments of the Member States for a term of six years. This appointment system underlines the independence of the Court of Justice in relation to the other institutions. There is a partial replacement of the Judges and Advocates General every three years. Retiring Judges and Advocates General may be reappointed (Article 223 of the EC Treaty and Article 139 of the EAEC Treaty).

### **The Court of First Instance**

When the Court of First Instance came into operation in September 1989, it consisted of 12 Judges, which in practice meant one Judge per Member State. The number of Judges was increased to 15 in 1995, on the accession of Austria, Finland and Sweden.

The Treaty of Nice stipulates that the Court of First Instance should include ‘at least one judge per Member State’ and adds that ‘the number of judges shall be determined by the Statute of the Court of Justice’ (Article 224 of the EC Treaty and Article 140 of the EAEC Treaty). As that Statute may be modified by Council acting unanimously, it will in future be possible to increase the number of Judges without having to amend the Treaties. Following the enlargement of the European Union to include 10 new Member States in May 2004, the Court of First Instance was made up of 25 Judges, like the Court of Justice. Since the accession of Bulgaria and Romania in January 2007 the Court of First Instance has had 27 Judges.

Unlike the Court of Justice, the Court of First Instance does not have a permanent corps of Advocates General. Any member of the Court, other than its President, may however be called upon to perform the functions of Advocate General in a particular case. The Court must be assisted by an Advocate General when it sits in plenary session. The Court sitting in Chambers may be assisted by an Advocate General if it considers this treatment warranted by the legal difficulty of the case or the complexity of the facts (a possibility which has rarely been used to date).

The Treaty of Nice introduced the possibility of the formal appointment of Advocates General. Article 224 of the EC Treaty and Article 140 of the EAEC Treaty state that the Statute of the Court of Justice ‘may provide for the Court of First Instance to be assisted by Advocates-General’.

The members of the Court are elected from persons whose independence is beyond doubt and who possess the ability required for appointment to high judicial office. The criteria are thus slightly less demanding than for the Court of Justice. They are, like the members of the Court of Justice, appointed by common accord of the governments of the Member States for a term of six years. A partial renewal takes place every three years. Retiring members are eligible for reappointment (Article 224 of the EC Treaty and Article 140 of the EAEC Treaty).

### **The Civil Service Tribunal**

The Civil Service Tribunal consists of seven judges, appointed for a renewable six-year term. Should the Court of Justice so request, the Council, acting by a qualified majority, may increase the number of judges (Article 2 of Annex I to the Statute of the Court of Justice, which reproduces Annex I to the Council Decision of 2 November 2004, by which the Civil Service Tribunal was established).

The members of the Civil Service Tribunal are chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office (Article 225a of the EC Treaty and Article 140b of the EAEC Treaty).

The procedure for appointing Civil Service Tribunal judges differs from that applying to appointment of members of the Court of Justice and the Court of First Instance. Civil Service Tribunal judges are appointed by the Council, acting unanimously, following consultation with a committee, comprising seven independent persons, which is required to ‘give an opinion on candidates’ suitability to perform the duties of judge at the Civil Service Tribunal’. The opinion has appended to it a list of candidates containing the names of at least twice as many candidates as there are Judges to be appointed (Article 225a of the EC Treaty and

Article 140b of the EAEC Treaty; Article 3 of Annex I to the Statute of the Court of Justice). It is also provided that the Council shall ‘ensure a balanced composition of the Tribunal on as broad a geographical basis as possible from among nationals of the Member States and with respect to the national legal systems represented’ (Article 3 of Annex I to the Statute of the Court of Justice).

### **Rights and duties of the members**

The rights and duties of the members of the Community jurisdictions are defined in the Statute of the Court of Justice (see Articles 2 to 8, Article 47 and Article 5 of Annex I).

The Judges and Advocates General of the Court of Justice and the Judges of the Court of First Instance and of the Civil Service Tribunal are required, before taking up their duties, to take an oath, in open court, to perform their duties impartially and conscientiously and to preserve the secrecy of the deliberations.

Immediately upon taking this oath, they are required to sign a declaration whereby they give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom, in particular the duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.

Throughout their period of appointment, they may not hold any political or administrative office. They may not engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the Council.

They are immune from legal proceedings and they continue, after they have ceased to hold office, to enjoy immunity in respect of acts performed by them in their official capacity. Their immunity may be waived only by the Court of Justice sitting as a full Court. Where criminal proceedings are instituted, a Judge may be tried, in any of the Member States, only by the court competent to judge the members of the highest national judiciary.

Apart from normal replacement or death, the duties of a Judge or Advocate General end upon resignation.

Members of the Community jurisdictions may be deprived of office or of their right to a pension or other benefits in its stead only if, in the unanimous opinion of the Judges and Advocates General of the Court of Justice, they no longer fulfil the requisite conditions or meet the obligations arising from their office.