Notes

7. For more discussion on the multisite issue, see Judge and Earnshaw, *The European Parliament*, 158–63.

The European Court of Justice is the judicial arm of the EU. Its charge is to rule on the “constitutionality” of all EU law, to rule on conformity with the treaties of any international agreement considered by the EU, to give rulings to national courts in cases in which there are questions about EU law, and to rule in disputes involving EU institutions, member states, individuals, and corporations. The Court is based in Luxembourg and consists of twenty-seven judges appointed for six-year renewable terms of office. As the workload of the Court has increased, so subsidiary courts have been created: a Court of First Instance was set up in 1989 to deal with less complicated cases, and an EU Civil Service Tribunal was set up in 2004 to deal with disputes involving EU institutions and their staff.

The contribution of the Court to European integration has been critical, because without a body of law that can be uniformly interpreted and applied throughout the EU, the Union would have little authority, and its decisions and policies would be arbitrary and inconsistent. By working to build such a body of law, the Court of Justice—perhaps the most purely supranational of the major EU institutions—has been a key player in promoting integration.

Unlike the U.S. Supreme Court, which bases its rulings on judicial review of the Constitution, the Court of Justice has so far had no constitution beyond the accumulated treaties and laws agreed to by the member states. But
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the treaties have needed interpretation and clarification, and just as the U.S.
Supreme Court helped clarify its own powers with decisions such as Mar-
bury v. Madison (the 1803 decision establishing the power of judicial re-
view), so has the European Court of Justice. Its rulings have established that
the Treaty of Rome is a constitutional instrument that imposes direct and
common obligations on member states, have established the primacy of EU
law, and have greatly simplified completion of the single market. Court deci-
sions have had a significant impact on issues as varied as the free movement
of people, money, goods, and services; the external relations of the EU; com-
petition policy; human rights; gender equality; and external trade.

Despite its critical contributions to the process and goals of European
integration, the work of the Court has attracted surprisingly little politi-
cal attention or analysis. As public interest has focused on the Commis-
ion and the Council of Ministers, the Court has quietly gone about the
business of interpreting EU law, its members remaining the least well-
known of all the leading actors in the EU system. Unlike judgments of
the U.S. Supreme Court, which often make national headlines and gener-
ate public debate, rulings by the Court of Justice attract little public at-
tention. Tellingly, when three new judges were appointed to the Court in
October 2006, and Court President Vassilios Skouris was elected to a
second term, there was barely a whisper of public or media interest in the
EU. By contrast, such a substantial change to the makeup of the U.S.
Supreme Court would have made headline news for months.

Evolution

The Court was established in 1952 as the Court of Justice of the ECSC,
intended to be a watchdog for the Treaty of Paris and to rule on the legal-
ity of decisions made by the ECSC High Authority in response to com-
plaints submitted by either the member states or the national coal and
steel industries; the Treaty of Paris was its primary source of authority. It
made 137 decisions during its brief existence, many of which are still rel-
levant to EU law today.1

The Treaties of Rome created separate courts for the EEC and the
European Atomic Energy Community (EURATOM), but a subsidiary agree-
ment gave jurisdiction over the treaties to a common seven-member
Court of Justice of the European Communities. Its members were ap-
pointed by the Council of Ministers on the recommendation of the
member states, they heard cases involving disputes between Community
institutions and member states, and their verdicts were final. As the work
of the Community expanded, as its membership grew during the 1970s
and 1980s, and as the Court issued more judgments against Community
institutions and member states, its power, reach, and significance grew.
Although decision making in the EU revolved around the axis of the
Commission and the Council of Ministers, the Court made decisions
that had far-reaching consequences for the process of European integra-
tion. Three of its most famous cases illustrate its contribution.

First, the principle of direct effect (EU law is directly and uniformly
applicable in all member states) is a consequence of the 1963 decision
Van Gend en Loos, one of the most important handed down by the Court.
A Dutch transport company had brought an action against Dutch cus-
toms for increasing the duty it had to pay on a product imported from
Germany. Its lawyers argued that this went against Article 12 of the EEC
Treaty, which—in the interest of building the common market—prohib-
ited new duties or increases in existing duties. The Dutch government
argued that the Court had no power to decide whether the provisions of
the EEC Treaty prevailed over Dutch law and that resolution fell exclu-
sively within the jurisdiction of national courts. The Court disagreed, rul-
ing that the treaties were more than international agreements and that
EU law was “legally complete . . . and produces direct effects and creates
individual rights which national courts must protect.”2

Second, the principle of the supremacy of EU law (EU law trumps na-
tional law in policy areas where the EU has responsibility) was estab-
lished with the 1964 decision Flaminio Costa v. ENEL. Costa was an Italian
who owned shares in Edison Volta, an electricity supply company. When
the company was nationalized in 1962 and made part of the new National
Electricity Board (ENEL), Costa refused to pay his electric bill (equivalent
to about $1.50) because he claimed he had been hurt by nationalization,
which he argued was contrary to the spirit of the Treaty of Rome. The lo-
cal court in Milan ruled that the Court of Justice for a preliminary ruling, even
though both the Italian government and ENEL argued that there were no grounds for taking the case to the European Court. The government further argued that a national court could not take a dispute over domestic law to the European Court. The Court disagreed, arguing that by creating “a Community of unlimited duration, having its own institutions, its own personality, its own legal capacity . . . and real powers stemming from limitation of sovereignty or a transfer of powers from the States to the Community, the Member States have limited their sovereign rights, albeit within limited fields, and have thus created a body of law which binds both their nationals and themselves.” It also argued that “the executive force of Community law cannot vary from one State to another in deference to subsequent domestic laws, without jeopardizing the attainment of the objectives of the Treaty of Rome.”

Third, the issue of the supremacy of European law was confirmed—and the jurisdiction of the Community extended—with a dispute that broke in 1967 over the issue of human rights. The EEC Treaty had said nothing about human rights, a reflection once again of how little authority the member states were prepared to give up to the EEC and how focused they had been on economic integration. In October 1967 the German Constitutional Court argued that the EEC had no democratic basis because it lacked protection for human rights and that the Community could not deprive German citizens of the rights they had under German law. The Court of Justice refuted this in Nold v. Commission, in which it established that “fundamental rights form an integral part of the general principles of law.” (See also Box 8.1.)

**Structure**

The European Court of Justice is based in an expanding cluster of buildings in the Centre Européen, a network of EU institutions situated on the Kirchberg Plateau above the city of Luxembourg. The land was bought by the Luxembourg government in 1961 as a site for the EC institutions, presumably in the hope that they would all eventually be moved there. The black steel and glass Palais de Justice was opened in 1973 and has since been extended four times in response to EU enlargement and the growing

**Box 8.1 The EU Charter of Fundamental Rights**

An example of the manner in which a Court ruling can have broader policy implications is offered by the issue of human rights. The European Convention on Human Rights was adopted in 1950 by the Council of Europe in order to protect human rights and basic freedoms. Although all EC/EU member states signed the convention, there was support for the idea of the EC/EU developing its own charter of human rights, the idea being not to change the list of rights so much as to make them more visible to Europeans.

New impetus was offered in 1996 when the Court of Justice ruled that the treaties did not give the EU the power to accede to the convention. On German initiative, agreement was reached on the drawing up of the charter at the Cologne European Council in June 1999. A sixty-two-member Convention was established, consisting of representatives of the member states, the European Parliament, and national legislatures. It had its first meeting in December 1999 and produced a draft that was formally adopted in December 2000. Points raised in the charter include the following:

- Freedom of thought, conscience, religion, expression, and assembly.
- The right of all citizens to education (including the possibility of free compulsory education), property and asylum, equality before the law, access to social security and health care, freedom of movement within the EU, and a fair and public trial.
- The prohibition of the death penalty, torture, human cloning, slavery, and child labor.
- The right of workers to collective bargaining and action, and protection from unjustified dismissal.

The charter has been signed by all EU member states, but it is more a “solemn declaration” than a legally binding document. It would have been incorporated into the European constitution, in spite of concerns from some EU member states that it would have created new legal obligations that would erode national sovereignty and that it was more appropriate to have some of the issues dealt with by elected political leaders rather than un-elected judges. However, it is not due to be incorporated into the Lisbon Treaty.
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workload of the Court. It now makes up part of a modest but not insubstantial complex that includes the Secretariat of the European Parliament, buildings for the Commission and the Council of Ministers, the seat of the Court of Auditors, and the headquarters of the European Investment Bank.8

The Court has five main elements: the judges, the president of the Court, the advocates general, the Court of First Instance, and the EU Civil Service Tribunal.

The Judges. The Court of Justice has twenty-seven judges, each appointed for a six-year renewable term of office. About half come up for renewal every three years, so terms are staggered. Theoretically, the judges have always been appointed by common accord of the member state governments, so there is no national quota and no “Spanish seat” or “Slovenian seat” on the Court. Judges do not even have to be EU citizens; as Court President Lord McKenzie Stuart quipped in 1988, it could be made up “entirely of Russians.”9 In practice, however, because every member state has the right to make one appointment, all judges are national appointees. The European Parliament has argued more than once that it should be involved in the appointment process, even proposing during the 1980s that half of the judges be appointed by Parliament, half by the Council of Ministers, and that the national quota be abandoned. But the quota has never gone away, and would have been retained by the 2003 draft constitution, which said that the Court would consist of “one judge from each Member State.” Its persistence emphasizes the role that national interests still play in EU decision making.

In addition to being acceptable to all of the other member states, judges must be scrupulously independent and must avoid promoting the national interests of their home states. Upon their appointment they must take a short oath: “I swear that I will perform my duties impartially and conscientiously; I swear that I will preserve the secrecy of the deliberations of the Court.” They must also be qualified lawyers, or as the Treaty of Paris so thoughtfully put it, they must “possess the qualifications required for appointment to the highest judicial offices in their respective countries or . . . be jurisconsults of recognized competence.” (U.S. Supreme Court justices do not have to be attorneys, although in practice they all are.) Some European judges have come to the Court with experience as government ministers, some have held elective office, and others have had careers as lawyers and academics, but, since the Treaty of Rome, they have all been lawyers.10

Although most judges are renewed at least once, the Court has far more turnover than the U.S. Supreme Court, where appointments are for life. Life appointments have the benefit of encouraging independence and exploiting experience, but they also contribute to the highly charged political nature of U.S. Supreme Court appointments and reduce the injection of new thinking. Appointments to the European Court, by contrast, are both relatively frequent and nonpolitical. The European Court has had nearly sixty judges since it was created, about three times as many as the U.S. Supreme Court over the same period. The average age of European judges in 2003 was sixty-one (compared to sixty-nine for U.S. justices), and ten of the fifteen judges then sitting had served four years or less on the Court, while U.S. justices had been in their posts for an average of seventeen years. The 2004–07 enlargement of the EU brought twelve new judges into the Court (lowering the average age to fifty-nine), along with a significant body of new thinking, perspectives, and priorities (see Table 8.1).

European judges enjoy immunity from having suits brought against them while they are on the Court, and even after they have left they cannot be sued for their decisions. They are not allowed to hold administrative or political office while on the Court. They can resign, but they can only be removed by the other judges and the advocates general (not by member states or other EU institutions), and then only by unanimous agreement that they are no longer doing their job adequately.11 Almost all the judges have been men. In 2007 there were just three women on the Court: Rosario Silva de Lapuerta from Spain, Pernilla Lindh from Sweden, and Camelia Toader from Romania.

All judges can sit together as a full court, but they do this only for the most important cases, while the rest are heard by chambers of five or seven judges, or by a Grand Chamber of thirteen judges. Chambers were once used to hear only cases that did not need to be brought before the full Court, such as staff cases. Since the workload of the Court has increased,
Table 8.1 Judges of the European Court of Justice, 2007

<table>
<thead>
<tr>
<th>Name</th>
<th>Member State</th>
<th>Year of Birth</th>
<th>Year of Appointment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Peter Jann</td>
<td>Austria</td>
<td>1935</td>
<td>1995</td>
</tr>
<tr>
<td>Romain Schintgen</td>
<td>Luxembourg</td>
<td>1939</td>
<td>1996</td>
</tr>
<tr>
<td>Vassilios Skouris</td>
<td>Greece</td>
<td>1948</td>
<td>1999</td>
</tr>
<tr>
<td>José Narciso Rodrigues</td>
<td>Portugal</td>
<td>1940</td>
<td>2000</td>
</tr>
<tr>
<td>Christiaan Timmermans</td>
<td>Netherlands</td>
<td>1941</td>
<td>2000</td>
</tr>
<tr>
<td>Allan Rosas</td>
<td>Finland</td>
<td>1948</td>
<td>2002</td>
</tr>
<tr>
<td>Rosario Silva de Lapuerta</td>
<td>Spain</td>
<td>1954</td>
<td>2003</td>
</tr>
<tr>
<td>Koen Lenaerts</td>
<td>Belgium</td>
<td>1954</td>
<td>2003</td>
</tr>
<tr>
<td>Konrad Schiemann</td>
<td>United Kingdom</td>
<td>1937</td>
<td>2004</td>
</tr>
<tr>
<td>Andras O Caoimh</td>
<td>Ireland</td>
<td>1950</td>
<td>2004</td>
</tr>
<tr>
<td>Jerzy Makarczyk</td>
<td>Poland</td>
<td>1938</td>
<td>2004</td>
</tr>
<tr>
<td>Pranas Kūris</td>
<td>Lithuania</td>
<td>1938</td>
<td>2004</td>
</tr>
<tr>
<td>Endre Juhász</td>
<td>Hungary</td>
<td>1944</td>
<td>2004</td>
</tr>
<tr>
<td>George Arestis</td>
<td>Cyprus</td>
<td>1945</td>
<td>2004</td>
</tr>
<tr>
<td>Anthony Barthet</td>
<td>Malta</td>
<td>1947</td>
<td>2004</td>
</tr>
<tr>
<td>Marko Ilešić</td>
<td>Slovenia</td>
<td>1947</td>
<td>2004</td>
</tr>
<tr>
<td>Jiří Malenovský</td>
<td>Czech Republic</td>
<td>1950</td>
<td>2004</td>
</tr>
<tr>
<td>Ján Klučka</td>
<td>Slovakia</td>
<td>1951</td>
<td>2004</td>
</tr>
<tr>
<td>Uno Lõhmus</td>
<td>Estonia</td>
<td>1952</td>
<td>2004</td>
</tr>
<tr>
<td>Egils Levits</td>
<td>Latvia</td>
<td>1955</td>
<td>2004</td>
</tr>
<tr>
<td>Lars Bay Larsen</td>
<td>Denmark</td>
<td>1953</td>
<td>2006</td>
</tr>
<tr>
<td>Antonio Tizzano</td>
<td>Italy</td>
<td>1940</td>
<td>2006</td>
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<tr>
<td>Jean-Claude Bonichot</td>
<td>France</td>
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<td>2006</td>
</tr>
<tr>
<td>Thomas von Danwitz</td>
<td>Germany</td>
<td>1962</td>
<td>2006</td>
</tr>
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<td>Pernilla Lindh</td>
<td>Sweden</td>
<td>1945</td>
<td>2006</td>
</tr>
<tr>
<td>Alexander Arabadjiiev</td>
<td>Bulgaria</td>
<td>1949</td>
<td>2007</td>
</tr>
<tr>
<td>Camelia Toader</td>
<td>Romania</td>
<td>1963</td>
<td>2007</td>
</tr>
</tbody>
</table>

The European Court of Justice, through any case can now be assigned to a chamber, including preliminary rulings and actions brought by or against member states (unless a member state or an institution specifically asks for a hearing before the full Court, or unless the case is particularly important or complex). To further help with the workload, each judge and advocate general has his or her own cabinet of assistants and legal secretaries. These are roughly equivalent to the cabinets of European commissioners and are responsible for helping with research and keeping records.

Unlike all of the other EU institutions, in which English is slowly becoming the working language, the Court mainly uses French, although a case can be heard in any of the twenty-three official languages of the EU; when the defendant is a member state or a citizen of a member state, the case must be heard in the defendant's language. The Court has about 1,500 staff members, most of whom are bureaucrats or translators.

The President. While the chief justice in the United States is nominated by the president and must be confirmed by the U.S. Senate, the president of the European Court of Justice is elected by the judges from among their number in a secret ballot by majority vote to serve a three-year renewable term. The president presides over meetings of the Court and is responsible for technical issues such as assigning cases to chambers, appointing judge-rapporteurs (see later in this chapter), and deciding the dates for hearings. Presidents also have considerable influence over the political direction of the Court, like the chief justice of the U.S. Supreme Court, but their exact role is subject to much less public and political scrutiny.

The new president elected in 2003 was Vassilios Skouris, a lawyer and professor of public law from Greece. First appointed to the Court in 1999, Skouris was educated in Germany, earning a doctorate in constitutional and administrative law from Hamburg University. He was then a professor of law for several years, and served twice in the Greek government as minister of internal affairs. He has made clear his views that the Court of Justice is not a political body: “The Commission . . . is a political body with the right of initiative. The Court of Justice has never been and could never be like that. We rule on the cases that are brought before us . . . . The importance of the role of the Court is a good subject for conferences and
The European Court of Justice

Table 8.2 Presidents of the European Court of Justice

<table>
<thead>
<tr>
<th>Term</th>
<th>Name</th>
<th>Member State</th>
</tr>
</thead>
<tbody>
<tr>
<td>1958-61</td>
<td>A. M. Donner</td>
<td>Netherlands</td>
</tr>
<tr>
<td>1961-64</td>
<td>A. M. Donner</td>
<td>Netherlands</td>
</tr>
<tr>
<td>1964-67</td>
<td>Charles Hammers</td>
<td>Luxembourg</td>
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<tr>
<td>1967-70</td>
<td>Robert Lecourt</td>
<td>France</td>
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<tr>
<td>1970-73</td>
<td>Robert Lecourt</td>
<td>France</td>
</tr>
<tr>
<td>1973-76</td>
<td>Robert Lecourt</td>
<td>France</td>
</tr>
<tr>
<td>1976-79</td>
<td>Hans Kutscher</td>
<td>West Germany</td>
</tr>
<tr>
<td>1979-80</td>
<td>Hans Kutscher</td>
<td>West Germany</td>
</tr>
<tr>
<td>1980-84</td>
<td>J. Mertens de Wilmars</td>
<td>Belgium</td>
</tr>
<tr>
<td>1984-88</td>
<td>Lord McKenzie Stuart</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>1988-91</td>
<td>Ole Due</td>
<td>Denmark</td>
</tr>
<tr>
<td>1991-94</td>
<td>Ole Due</td>
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<tr>
<td>1994-97</td>
<td>Gil Carlos Rodríguez Iglesias</td>
<td>Spain</td>
</tr>
<tr>
<td>1997-2000</td>
<td>Gil Carlos Rodríguez Iglesias</td>
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<td>2000-03</td>
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<td>2003-06</td>
<td>Vassilios Skouris</td>
<td>Greece</td>
</tr>
<tr>
<td>2006-</td>
<td>Vassilios Skouris</td>
<td>Greece</td>
</tr>
</tbody>
</table>

The Advocate General. Because it is based on the French legal model, the Court has eight advocates general who review each of the cases as they come in, study the arguments, and deliver preliminary opinions in court before the judges decide on what action should be taken and which EU laws apply. The judges are not obliged to agree with these opinions or even to refer to them, but they provide the main point of reference from which to reach a decision. In theory the advocates general are appointed (like judges) by common accord of the governments of the member states, but in practice one is appointed by each of the five biggest member states, and the rest are appointed by the smaller states; one is appointed first advocate general on a one-year rotation. As with Court judges, most advocates general have been men, but the record on diversity is improving; three of the eight in 2007 were women.

The Court of First Instance. As European integration deepened and widened, the Court of Justice became busier: in the 1960s it was hearing about 50 cases per year and making 15 to 20 judgments; today it hears 400 to 550 new cases per year (about twice the volume of cases coming before the U.S. Supreme Court) and makes 400 to 700 judgments. It was particularly busy after 1987, hearing cases and making preliminary rulings on issues relating to the single market in the lead-up to 1992. As the volume of work grew during the 1970s and 1980s, there were more delays, with the Court taking up to two years to reach a decision. To help clear the logjam, agreement was reached under the Single European Act to create a subsidiary Court of First Instance.

The new court began work in November 1989 and issued its first ruling in February 1990. It is the first point of decision on some of the less complicated cases involving aspects of competition, actions brought against the Commission under the ECSC Treaty, and disputes between EU institutions and their staff (a job now done by the Civil Service Tribunal—see below). If the cases are lost at this level, the parties involved have the right to appeal to the Court of Justice, in much the same way as parties losing a case in a federal district court or circuit court of appeal in the United States can appeal to the Supreme Court.

One judge is appointed to the court from each of the member states for a total of twenty-seven, and although the court has its own rules of procedures, it operates in much the same way as the Court of Justice (although it has no advocates general). It can sit as a full court, as a Grand Chamber of thirteen judges, or in smaller chambers of five, three, or even single judges. A president is elected by the judges for three-year renewable terms. Judge Marc Jaeger of Luxembourg, a member of the court since 1996, was elected president in 2007.

The EU Civil Service Tribunal. This is one of the EU’s newest institutions, set up in 2004 to take over from the Court of First Instance any cases involving disputes between the EU institutions and their staff.
began work in 2005, its membership consisting of seven judges appointed for six-year renewable terms and overseen by a president. Its decisions can be appealed on questions of law to the Court of First Instance, and in exceptional situations to the European Court of Justice.

**Sources of European Union Law**

The foundations of the American legal system are provided by the constitutions of the United States and the states. These outline not only the basic rules of the political system but also the core principles upon which all law is based; laws themselves derive from a complex variety of sources, but the constitutions tell us who is responsible for making laws, and outline the boundaries beyond which law cannot stray. The specifics of how constitutional principles govern laws are provided by the rulings of federal and state courts.

The EU has no constitution in the sense that there is a single codified document that is the functional equivalent of the U.S. Constitution, but it does have treaties that have been regularly amended over time and collectively function as something like a constitution of the EU. They include the Treaty of Paris (until it expired in July 2002), the Treaties of Rome, the 1965 Merger Treaty, treaties of accession signed by new members, the Single European Act, Maastricht, Amsterdam, Nice, various other key EU agreements, and all related annexes and amendments. Collectively, they are the “primary” source of European law. Some of them (such as the Paris and Rome Treaties) were self-executing in the sense that they automatically became law in the member states once they were ratified, although the Court often had to confirm just what self-execution actually meant. Others (notably the Single European Act) required changes in national laws before they came into effect. The Court played a particularly valuable role in promoting these changes.

There are also “secondary” sources of EU law, so described because they come out of the primary sources. These consist of all the individual binding laws adopted by the EU (regulations, directives, and decisions—see Box 5.2), relevant international law (most of which is weak and vague but which the Court still often uses to create precedents), and the Court’s own interpretation. Judgments by the Court have helped give EU law more focus and strength, making up for the weaknesses that have often arisen out of the compromises made to reach agreement on various laws. The Court not only gives technical interpretations but often goes a step further, filling in gaps and clarifying confusions.

As the European Union evolved, pressure grew for agreement on a constitution that would bring together all of the principles established by the treaties and case law. Federico Mancini, a former judge on the Court of Justice, argued in 1991 that the direction in which EU case law had moved since 1957 coincided with “the making of a constitution for Europe.” He noted that the EU was created by a treaty (unlike the United States, which is founded on a constitution), that the EEC Treaty did not safeguard the fundamental rights of individuals or recognize a right to European citizenship, and that the main work of the Court had been to “constitutionalize” the EEC Treaty and “to fashion a constitutional framework for a quasi-federal structure in Europe.” In this it was helped by the Commission, as the guardian of the treaties, and by national courts, which had been indirectly responsible for some of the Court’s biggest decisions and had lent credibility by adhering to those decisions. Against this background, the publication of the 2003 draft constitutional treaty was inevitable, and its collapse unfortunate.

**How the Court Works**

The European Commission is often described as the guardian of the treaties, but it is the European Court that has been charged under the treaties with ensuring “that in the interpretation and application of this treaty the law is observed.” The Court is the supreme legal body of the EU; its decisions are final, and it is the final court of appeal on all EU laws. As such, it has played a vital role in determining the character of the EU and in extending the reach of EU law. For example, when the Community slipped into a hiatus in the late 1970s and early 1980s, the Court kept alive the idea of the Community as something more than a customs union. It has been particularly involved in cases relating to the single market, nowhere more so than in the *Cassis de Dijon* decision, establishing
the principle of mutual recognition (see Box 8.2) that was at the heart of the Single European Act.18

The core goal of the Court is to help build a body of common law for the EU that is equally, fairly, and uniformly applied throughout the member states. It does this by interpreting EU treaties and laws and in some cases taking responsibility for directly applying those laws. EU law takes precedence over the national laws of member states when the two come into conflict, but only in areas in which the EU is active (that is, has “competence”) and the member states have given up powers to the EU. The Court, for example, does not have powers over criminal and family law; it has made most of its decisions on the kinds of economic issues in which the EU has been most actively involved, and has had less to do with policy areas in which the EU has been less active, such as education and health.

Court proceedings usually begin with a written application, which is filed by a lawyer with the court registrar and published in its Official Journal. This describes the dispute, explains the grounds on which the application is based, and gives the defendant a month to respond. The president then assigns the case to a judge-rapporteur (a judge of the Court who is charged with drawing up a preliminary report on the case), while the first advocate general appoints an advocate general to the case. The advocate general and judge-rapporteur make their recommendations to the Court, and the case is assigned to a chamber. The case is then argued by the parties involved at a public hearing before the chamber, the larger chambers being reserved for only the most important cases. The judges sit in order of seniority (which is determined by how long they have served on the Court), wearing gowns of deep crimson; the lawyers appearing before them wear whatever garb is appropriate in their national courts. At the end of the oral phase, the advocate general delivers an opinion, and once the chamber has reached a decision, it delivers judgment in open court.

The entire process can take as long as two years for preliminary rulings, although the average has fallen of late, as the workload has been shared among chambers and with the Court of First Instance and the Civil Service Tribunal. Court decisions are technically supposed to be unanimous, but votes are usually taken on a simple majority, as in the U.S. Supreme Court. Proceedings are, however, not necessarily unanimous in substance. The entire process can take as long as two years for preliminary rulings, although the average has fallen of late, as the workload has been shared among chambers and with the Court of First Instance and the Civil Service Tribunal. Court decisions are technically supposed to be unanimous, but votes are usually taken on a simple majority, as in the U.S. Supreme Court.

Box 8.2 LIQUOR, BEER, AND THE SINGLE MARKET

Of all the cases heard and rulings made by the Court regarding the single market, few were more fundamental than those establishing the principle of mutual recognition, under which a product made and sold legally in one member state cannot be barred from another member state.

The roots of the issue go back to a 1979 case arising out of a refusal by West Germany to allow imports of a French black currant liquor, Cassis de Dijon, because its wine-spirit content (15–20 percent) was below the German minimum for fruit liqueurs (25 percent). The importer charged that this amounted to a "quantitative restriction on imports," which was prohibited under the Treaty of Rome. The Court of Justice agreed, ruling that alcoholic beverages lawfully produced and marketed in one member state could not be prohibited from sale in another on the grounds that they had a lower alcohol content. Although this established the principle of mutual recognition, it did not prevent challenges from occurring.

The issue came up again in the 1984 case Commission v. Federal Republic of Germany over the question of beer imports into Germany. Thanks to the Reinheitsgebot (a purity law passed in 1516 by the Duke of Bavaria), German beer is allowed to contain only malted barley, hops, yeast, and water. Germans drink more beer than anyone else in the world—an average of 38 gallons (173 liters) per person per year, compared with 24 gallons (110 liters) per person per year in the United States—and long refused to import foreign beer on the grounds that most such beer contained "additives" such as rice, maize, sorghum, flavoring, and coloring. The Commission took Germany to court on the grounds that a 1952 German law effectively prevented any beer being imported or sold in Germany that did not meet the Reinheitsgebot, thereby infringing the Treaty of Rome.20 Germany argued that since the average German male relies on beer for a quarter of his daily nutritional intake, allowing imports of "impure" foreign beer would pose a risk to public health. The Court disagreed and ruled in 1987 that Germany could not use the public health argument to ban beer imports and had to accept foreign beer imports as long as brewers printed a list of ingredients on their labels. The Court decision simplified decisions on issues of trade between member states, and the precedent was used to open up domestic markets to food and drink imports.
Court. Unlike the U.S. Supreme Court, however, all the votes of the European Court are secret, so it is never publicly known who—if anyone—dissented. Once a judgment has been made, details of the case are published in the Report of Cases Before the Court (also known as the European Court Reports). Like its U.S. counterpart, the Court has no direct powers to enforce its judgments; implementation is mainly left up to national courts or the governments of the member states, with the Commission keeping a close watch. Maastricht gave the Court of Justice new powers by allowing it to impose fines, but the question of how the fines would be collected was left open.

The work of the Court falls under two main headings:

**Preliminary Rulings**

These rulings make up the most important part of the Court's work and account for 40–60 percent of the cases it considers. Under the Treaty of Rome, a national court can (and sometimes must) ask the Court of Justice for a ruling on the interpretation or validity of an EU law that arises in a national court case. The issue of validity is particularly critical, because chaos would reign if national courts could declare EU laws invalid. Members of EU institutions can also ask for preliminary rulings, but most are made on behalf of a national court and are binding on the court in the case concerned. (The word *preliminary* is misleading: the rulings are usually requested and given during a case, not before it opens; the term *concurrent rulings* might be more appropriate.)

The *Van Gend en Loos* and *Flaminio Costa* cases are classic examples of preliminary rulings, but another ruling that had crucial implications for individual rights came in 1989. During a vacation in France, a British citizen named Ian Cowan was mugged outside a subway station in Paris. Under French law, he could have claimed state compensation for damages, but the French courts held that he was not entitled to damages because he was neither a French national nor a resident. Cowan argued that this amounted to discrimination, and the Court of Justice was asked for a ruling. In *Cowan v. Le Tresor Public*, the Court argued that because Cowan was a tourist and was receiving a service, he could invoke Article 7 of the Treaty of Rome, which prohibits discrimination between nationals of member states on the grounds of nationality.

**Direct Actions**

These are cases in which an individual, corporation, member state, or EU institution brings proceedings directly before the Court of Justice (rather than a national court), usually with an EU institution or a member state as the defendant. They can take several forms.

*Actions for Failure to Fulfill an Obligation*. These are cases in which a member state has failed to meet its obligations under EU law, and they can be brought either by the Commission or by a member state. The defending member state is given two months to make restitution, so most of these cases are settled before they go to the Court. If a state fails to comply once proceedings have begun, the case goes to the Court, which investigates the problem and decides on the measures to be taken; these can involve a fine or suspension of EU payments to the state (under the European Regional Development Fund, for example).

The Commission has regularly taken member states to the Court on the grounds that they have not met their obligations under the Single European Act. Although individuals cannot bring such cases, interest groups have also been known to report a member state to the Commission for failing to enforce an EU law, and the Commission then takes the member state to the Court. Private companies are also often involved, especially in issues involving competition and trade policy. Even U.S. and Japanese companies can take a case to the Court if they think a member state is discriminating against them or their products.

No member state has ever refused to accept a Court ruling on a major issue, although states often take their time implementing rulings. For example, in the famous Lamb War of 1978–80, France was slow to accept a 1979 ruling that it must open its markets to imports of British lamb and mutton, under Articles 12 and 30 of the EEC Treaty. When France continued to refuse to comply, the Commission began a second action (*Commission v. France: Case 2/80* under Article 171, which obliges a member state to comply with a judgment of the Court, and a third case under
Article 169 regarding illegal charges on imports. Britain returned the compliment in 1983 by taking its time accepting imports of French long-life milk (milk that is specially treated and packed to extend its life).

Actions for Annulment. These actions are aimed at ensuring that EU laws (even nonbinding opinions and recommendations) conform to the treaties, and they are brought in an attempt to cancel those that do not conform. If a member state, an individual, or one of the main EU institutions believes that an EU law is illegal (in whole or in part), they may ask for an annulment. The effect is to give the Court the power to review the legality of the acts of the EU institutions. The defendant is almost always the Commission or the Council, because proceedings are usually brought against an act one of them has adopted. One exception was Luxembourg’s inconclusive attempt in 1981 to challenge a European Parliament resolution that all future plenary sessions of Parliament should be held in Strasbourg (Case 230/81).

The Treaty of Rome gave the power to bring actions for annulment only to member states, the Council of Ministers, and the Commission. Parliament was excluded because at the time its opinions had no binding value. However, as Parliament’s powers grew, so did the political significance of its inability to challenge the legality of EU law. The Court has helped redress the balance by slowly building the number of circumstances in which Parliament can challenge the law. In addition to being allowed to bring actions for failure to act (see the next section), since 1990 Parliament has been able to bring actions for annulment when the security of its interests are at stake. Actions can be brought on grounds of lack of competence, a treaty infringement, or misuse of powers.

Actions for Failure to Act. These actions relate to the failure of an EU institution to act in accordance with the terms of the treaties, and they can be brought by other institutions, member states, or individuals who are directly and personally involved. For example, the European Parliament brought such an action against the Council of Ministers in 1983 (Case 13/83), charging that the Council had failed to agree to a Common Transport Policy as required under the EEC Treaty. The Court ruled in 1985 that although there was an obligation, no timetable had been agreed to, so it was up to the member states to decide how to proceed.

Actions for Damages. These are cases in which damages are claimed by third parties against EU institutions and their employees. A claim could be made that the institution was acting illegally, or an individual could claim his or her business was being hurt by a piece of EU law. Most of these cases are heard by the Court of First Instance.

Actions by Staff. These cases involve litigation brought by staff members against EU institutions as their employers, and they are the only cases in which a private individual can go directly to the Court. For example, someone who works for the European Parliament might ask the Court for a ruling on the application of a staff regulation, an instance of gender discrimination, a biased staff report, or a decision to hold a civil service exam on a religious holiday in their home country. Staff actions account for about one-third of the Court’s workload, and since 2004 they have been dealt with by the EU Civil Service Tribunal.

Appeals. The Court of Justice may hear appeals on points of law regarding judgments made by the Court of First Instance.

The Court also has the right of opinion in cases in which a decision is needed on the compatibility of draft international agreements with the treaties. The Commission, the Council of Ministers, and member states can ask for a Court opinion, and if the Court gives an unfavorable ruling, the draft agreement must be changed accordingly before the EU can sign it. Finally, the Court can be called in to arbitrate both on contracts concluded by or on behalf of the EU (conditional proceedings) and in disputes between member states over issues relating to the treaties.

Further Reading


Two of the more accessible general studies of the organization, jurisdiction, and procedure of the Court of Justice.