

Výzkum SD
Předběžné otázky
Základní principy

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EVS413 Ústavní spory u SD
21. února 2017

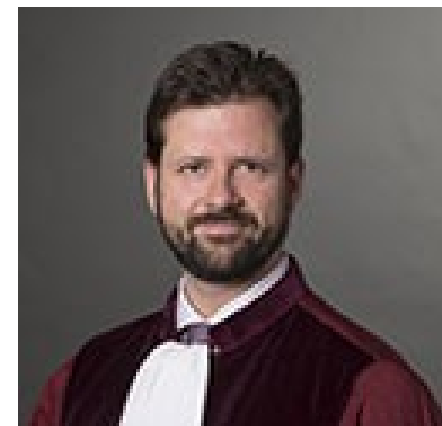






Inauguration du Nouveau Palais en 2008

Soudcové a soudkyně



Hlavní náplň činnosti SD

- 3 hlavní kategorie sporů
 - 1) sporná řízení
 - žaloba na nesplnění povinností
 - žaloba na neplatnost
 - žaloba na nečinnost
 - 2) posudky
 - 3) řízení o předběžné otázce
- Průběh řízení

Terminologie

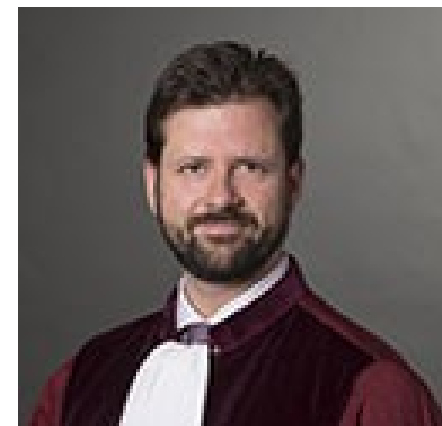
- Soudní dvůr
- Soud prvního stupně
- Soudní komory

- **LS:** Soudní dvůr, Tribunál, specializované soudy
- **Dnes**

Jaký vliv mají státy na SD?

- Složení SD (1958: 7 soudců + 2 GA)
- Jmenování soudců (změny v LS)
- Požadavky na soudce
- Disenty?

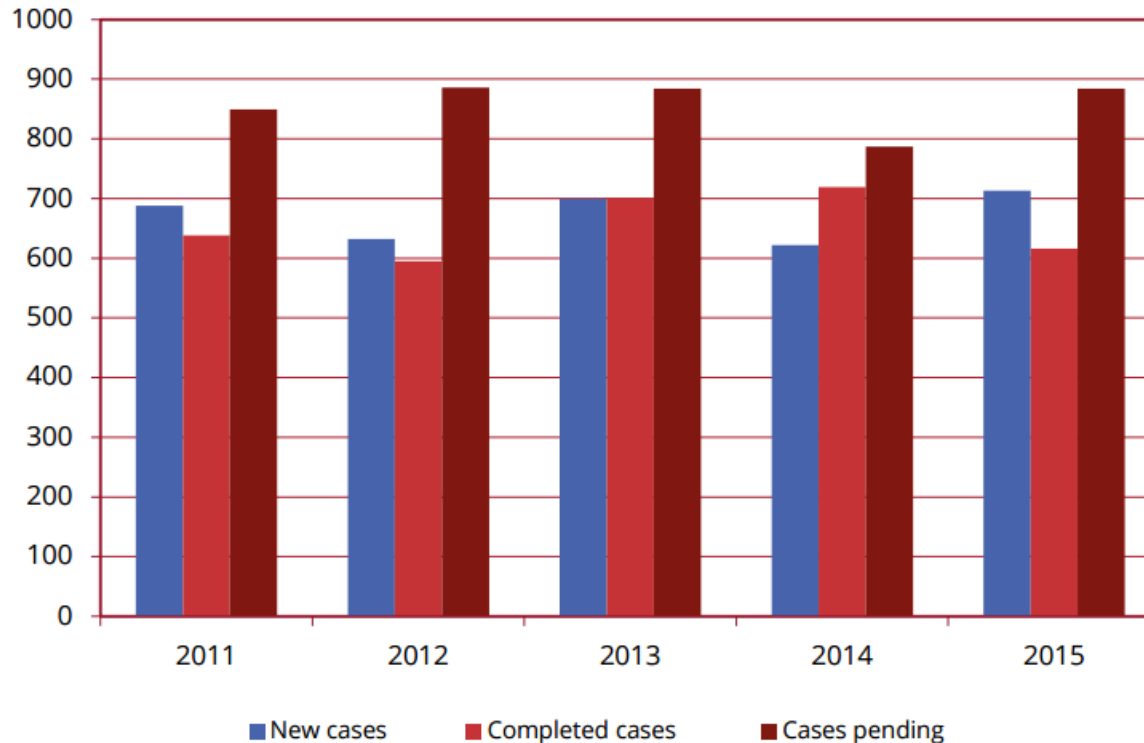
Soudcové a soudkyně



Annual Report 2015 – CJ

GENERAL ACTIVITY OF THE COURT OF JUSTICE

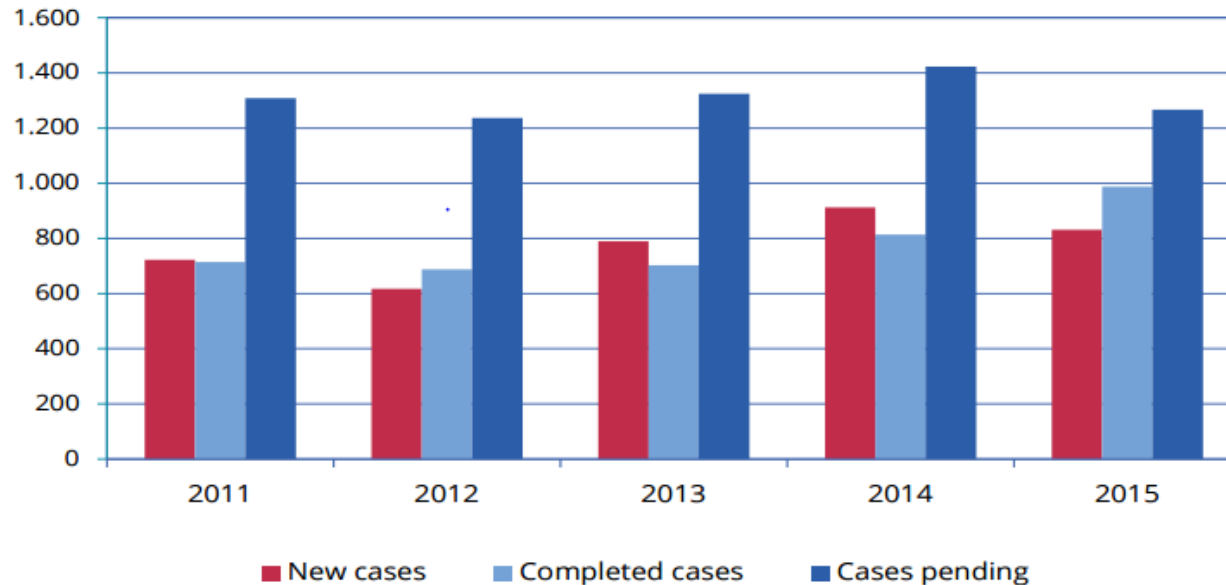
1. NEW CASES, COMPLETED CASES, CASES PENDING (2011–15)⁽¹⁾



	2011	2012	2013	2014	2015
New cases	688	632	699	622	713
Completed cases	638	595	701	719	616
Cases pending	849	886	884	787	884

Annual Report 2015 – General Court

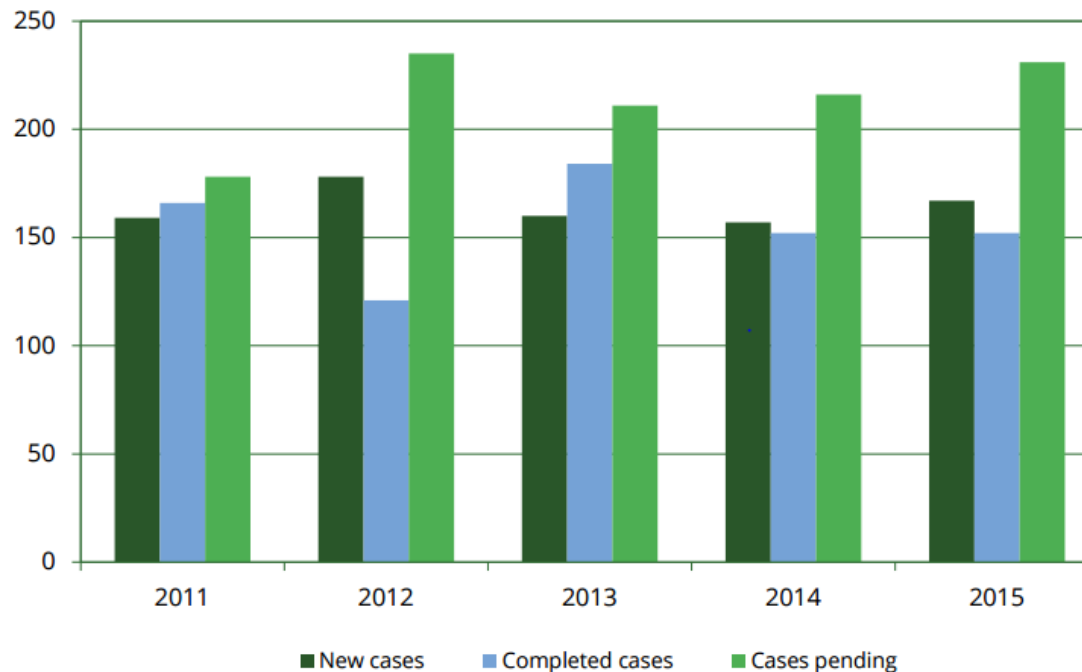
1. GENERAL ACTIVITY OF THE GENERAL COURT — NEW CASES, COMPLETED CASES, CASES PENDING (2011–15) ⁽¹⁾⁽²⁾



	2011	2012	2013	2014	2015
New cases	722	617	790	912	831
Completed cases	714	688	702	814	987
Cases pending	1 308	1 237	1 325	1 423	1 267

Annual Report 2015 – CST

1. GENERAL ACTIVITY OF THE CIVIL SERVICE TRIBUNAL NEW CASES, COMPLETED CASES, CASES PENDING (2011–15)

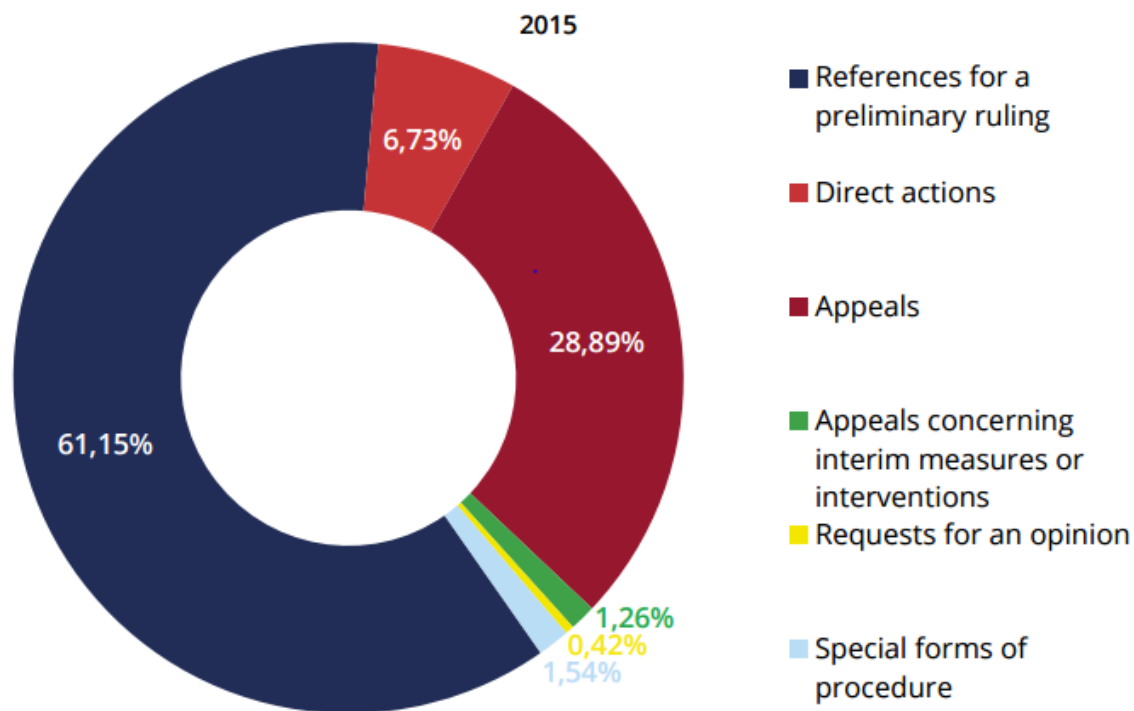


	2011	2012	2013	2014	2015
New cases	159	178	160	157	167
Completed cases	166	121	184	152	152
Cases pending	178	235	211	216	231 ⁽¹⁾

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).

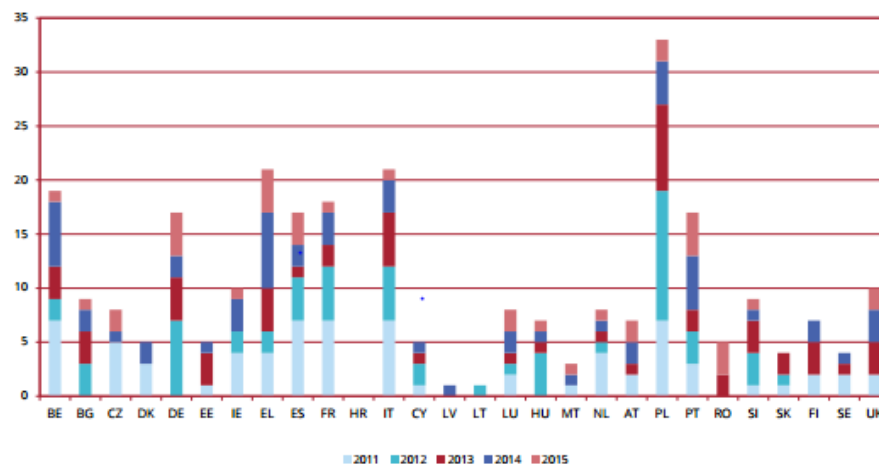
CJ (Annual Report 2015)

2. NEW CASES — NATURE OF PROCEEDINGS (2011–15) ⁽¹⁾



	2011	2012	2013	2014	2015
References for a preliminary ruling	423	404	450	428	436
Direct actions	81	73	72	74	48
Appeals	162	136	161	111	206
Appeals concerning interim measures or interventions	13	3	5		9
Requests for an opinion		1	2	1	3
Special forms of procedure ⁽²⁾	9	15	9	8	11
Total	688	632	699	622	713
Applications for interim measures	3		1	3	2

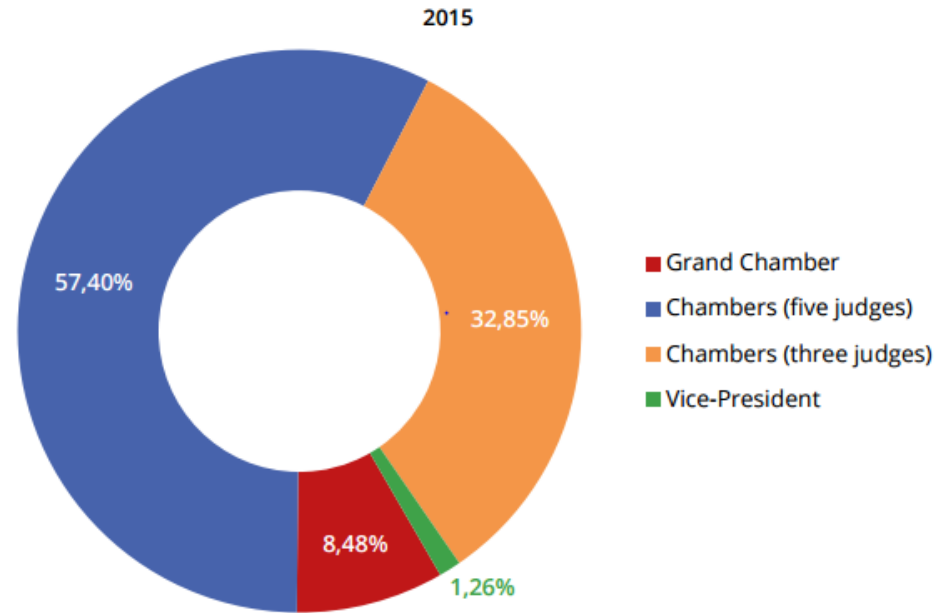
4. NEW CASES — ACTIONS FOR FAILURE OF A MEMBER STATE TO FULFIL ITS OBLIGATIONS (2011–15) ⁽¹⁾



	2011	2012	2013	2014	2015
Belgium	7	2	3	6	1
Bulgaria		3	3	2	1
Czech Republic	5			1	2
Denmark	3			2	
Germany		7	4	2	4
Estonia	1		3	1	
Ireland	4	2		3	1
Greece	4	2	4	7	4
Spain	7	4	1	2	3
France	7	5	2	3	1
Croatia					
Italy	7	5	5	3	1
Cyprus	1	2	1	1	
Latvia				1	
Lithuania		1			
Luxembourg	2	1	1	2	2
Hungary		4	1	1	1
Malta	1			1	1
Netherlands	4	1	1	1	1
Austria	2		1	2	2
Poland	7	12	8	4	2
Portugal	3	3	2	5	4
Romania			2		3
Slovenia	1	3	3	1	1
Slovakia	1	1	2		
Finland	2		3	2	
Sweden	2		1	1	
United Kingdom	2		3	3	2
Total	73	58	54	57	37

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).

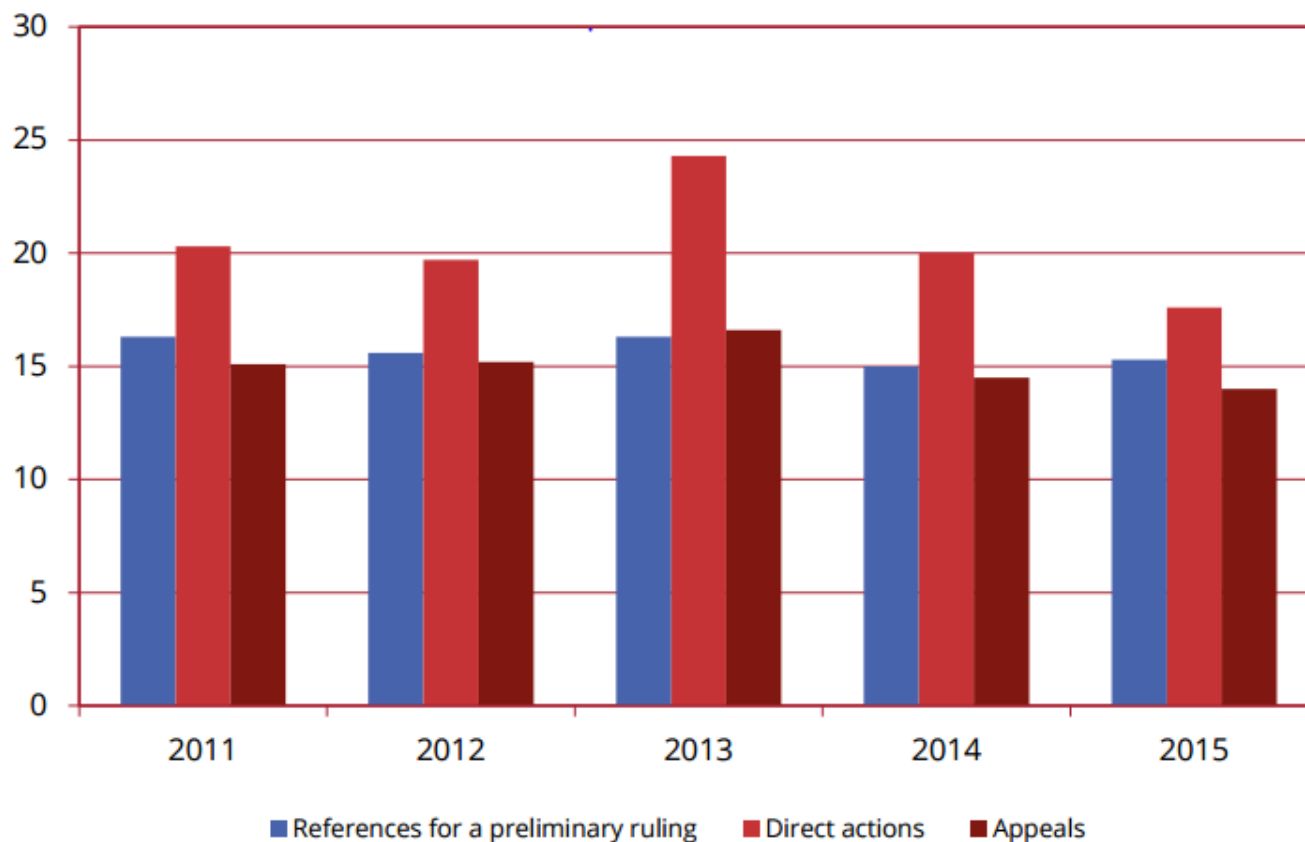
7. COMPLETED CASES — BENCH HEARING ACTION (2011-15) ⁽¹⁾



	2011			2012			2013			2014			2015		
	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	62		62	47		47	52		52	51	3	54	47		47
Chambers (five judges)	290	10	300	275	8	283	348	18	366	320	20	340	298	20	318
Chambers (three judges)	91	86	177	83	97	180	91	106	197	110	118	228	93	89	182
President		4	4		12	12									
Vice-President								5	5		1	1		7	7
Total	444	100	544	406	117	523	491	129	620	482	142	624	438	116	554

12. COMPLETED CASES — DURATION OF PROCEEDINGS (2011–15) IN MONTHS AND TENTHS OF MONTHS ⁽¹⁾

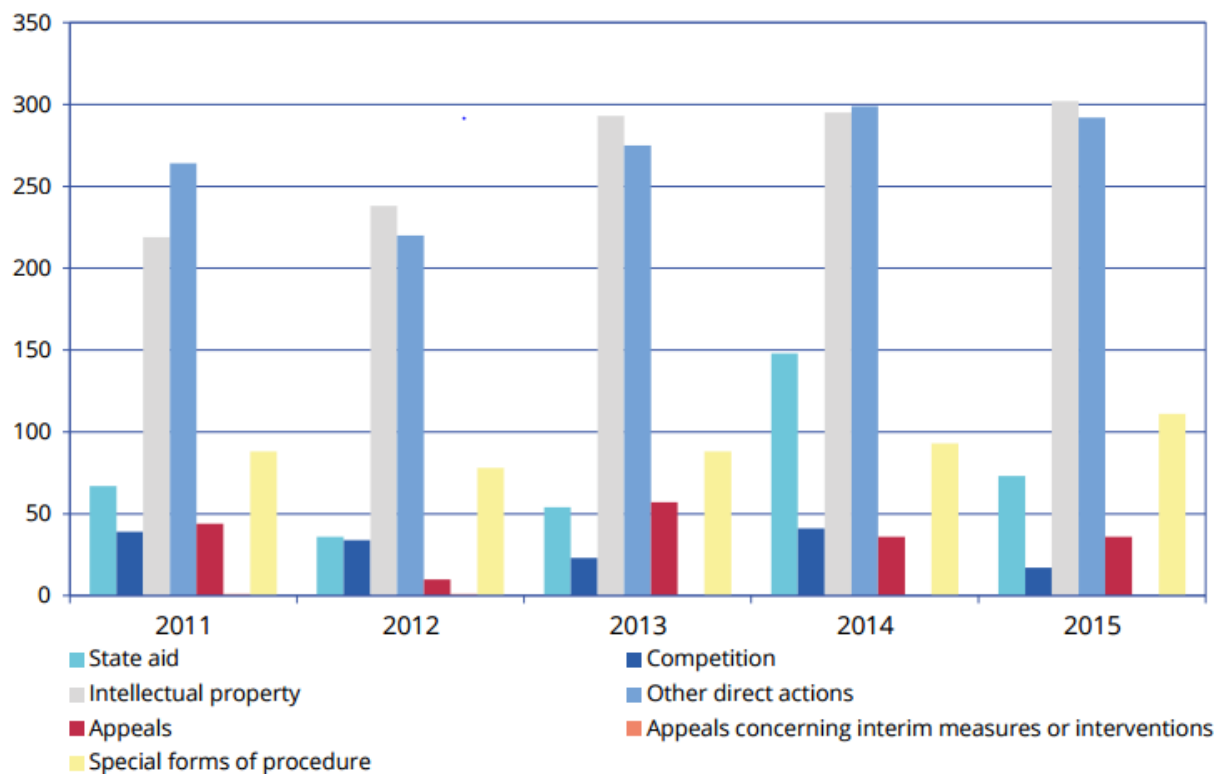
(JUDGMENTS AND ORDERS INVOLVING A JUDICIAL DETERMINATION)



	2011	2012	2013	2014	2015
References for a preliminary ruling	16.3	15.6	16.3	15.0	15.3
Urgent preliminary ruling procedure	2.5	1.9	2.2	2.2	2.1
Direct actions	20.3	19.7	24.3	20.0	17.6
Appeals	15.1	15.2	16.6	14.5	14.0

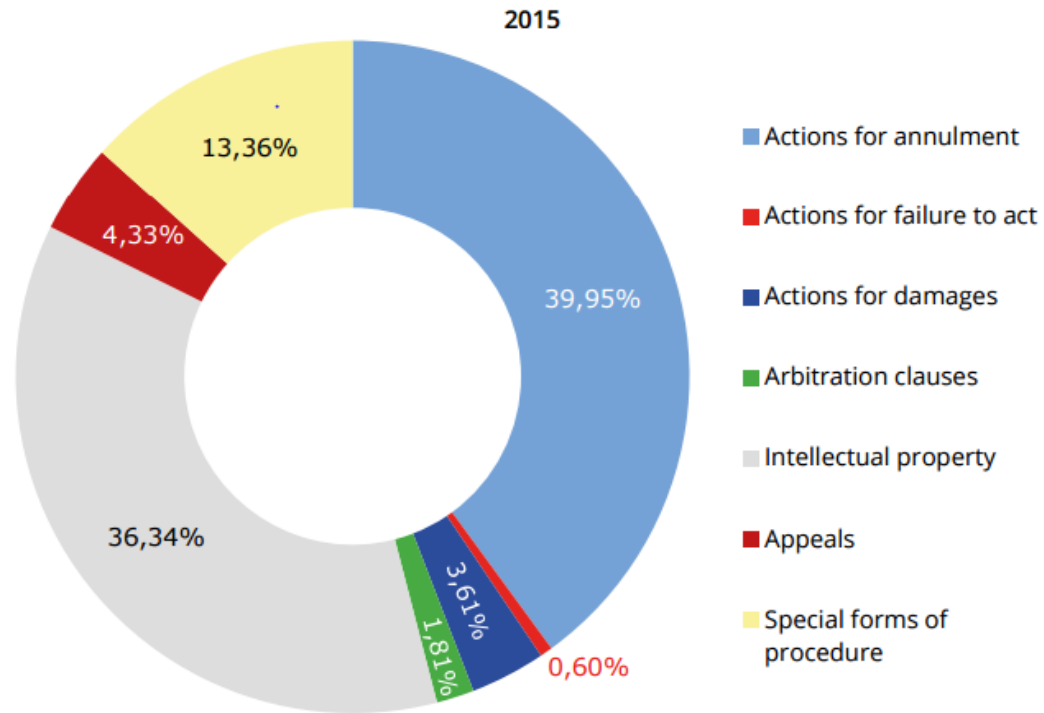
General Court (Annual Report 2015)

2. NEW CASES — NATURE OF PROCEEDINGS (2011–15)



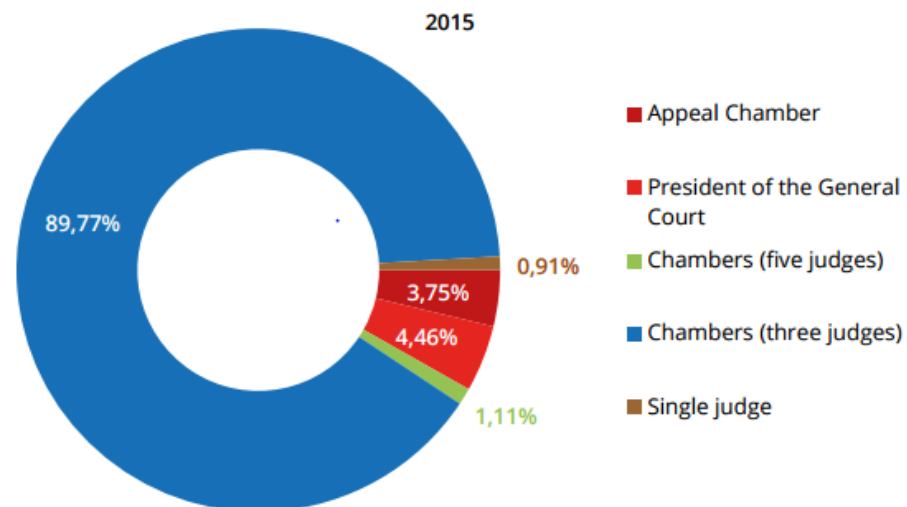
	2011	2012	2013	2014	2015
State aid	67	36	54	148	73
Competition	39	34	23	41	17
Intellectual property	219	238	293	295	302
Other direct actions	264	220	275	299	292
Appeals	44	10	57	36	36
Appeals concerning interim measures or interventions	1	1			
Special forms of procedure	88	78	88	93	111
Total	722	617	790	912	831

3. NEW CASES — TYPE OF ACTION (2011–15)



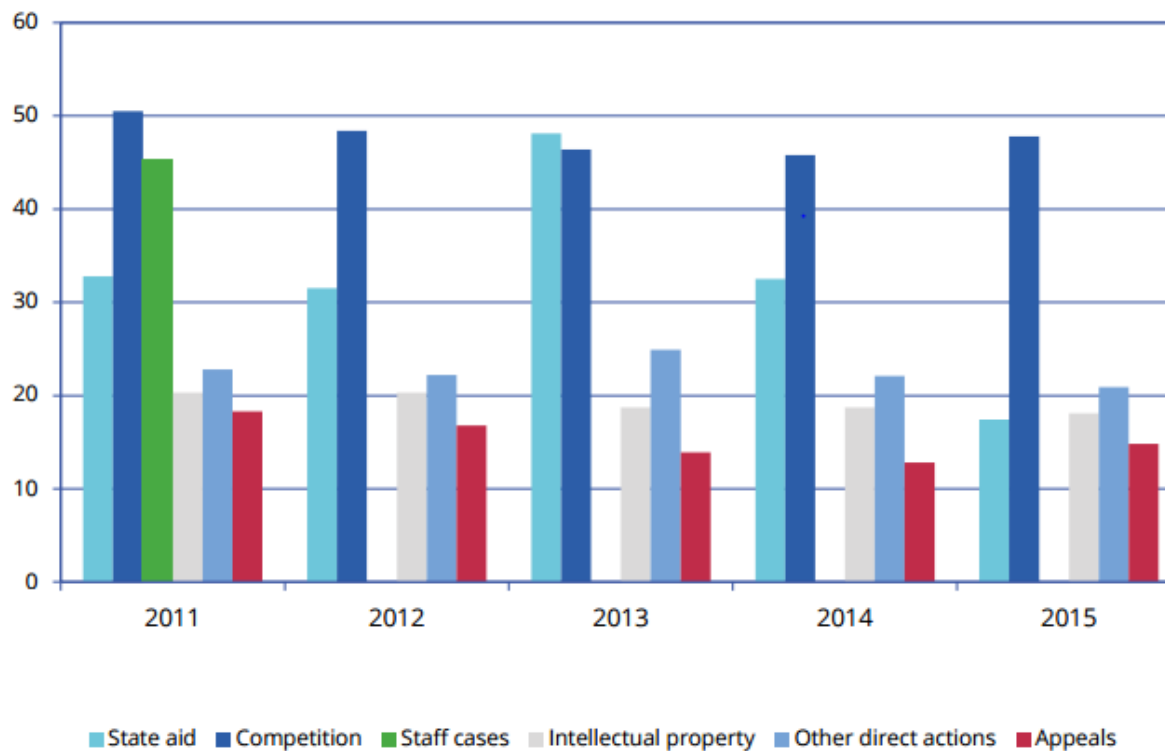
	2011	2012	2013	2014	2015
Actions for annulment	341	257	319	423	332
Actions for failure to act	8	8	12	12	5
Actions for damages	16	17	15	39	30
Arbitration clauses	5	8	6	14	15
Intellectual property	219	238	293	295	302
Appeals	44	10	57	36	36
Appeals concerning interim measures or interventions	1	1			
Special forms of procedure	88	78	88	93	111
Total	722	617	790	912	831

8. COMPLETED CASES — BENCH HEARING ACTION (2011–15)



	2011			2012			2013			2014			2015		
	Judgments	Orders	Total	Judgments	Orders	Total	Judgments	Orders	Total	Judgments	Orders	Total	Judgments	Orders	Total
Appeal Chamber	15	16	31	17	23	40	13	47	60	21	32	53	23	14	37
President of the General Court		54	54		47	47		38	38		46	46		44	44
Chambers (five judges)	19	6	25	9		9	7	1	8	9	7	16	8	3	11
Chambers (three judges)	359	245	604	328	264	592	378	218	596	398	301	699	538	348	886
Single judge													1	8	9
Total	393	321	714	354	334	688	398	304	702	428	386	814	570	417	987

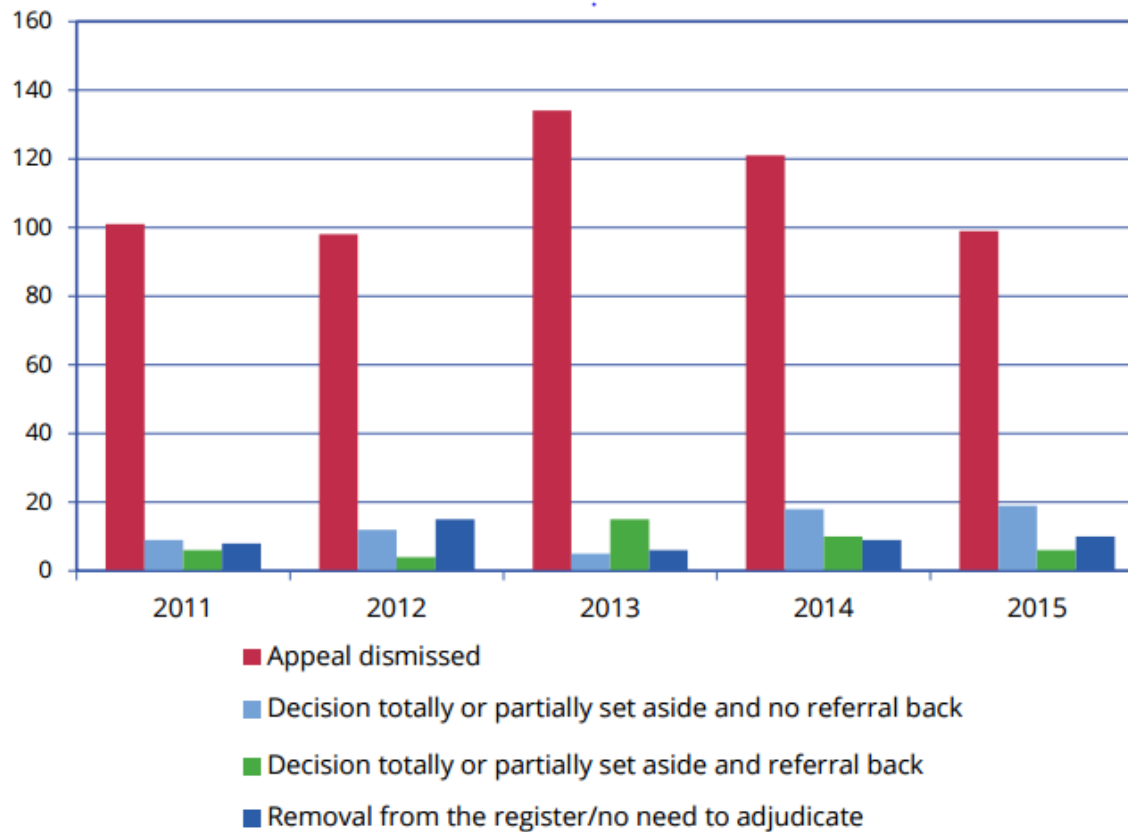
9. COMPLETED CASES — DURATION OF PROCEEDINGS IN MONTHS
(2011–15) ⁽¹⁾
(JUDGMENTS AND ORDERS)



	2011	2012	2013	2014	2015
State aid	32.8	31.5	48.1	32.5	17.4
Competition	50.5	48.4	46.4	45.8	47.8
Staff cases	45.3				
Intellectual property	20.4	20.3	18.7	18.7	18.1
Other direct actions	22.8	22.2	24.9	22.1	20.9
Appeals	18.4	16.8	13.9	12.8	14.8
All cases	26.7	24.8	26.9	23.4	20.6

18. MISCELLANEOUS — RESULTS OF APPEALS BEFORE THE COURT OF JUSTICE (2011-15)

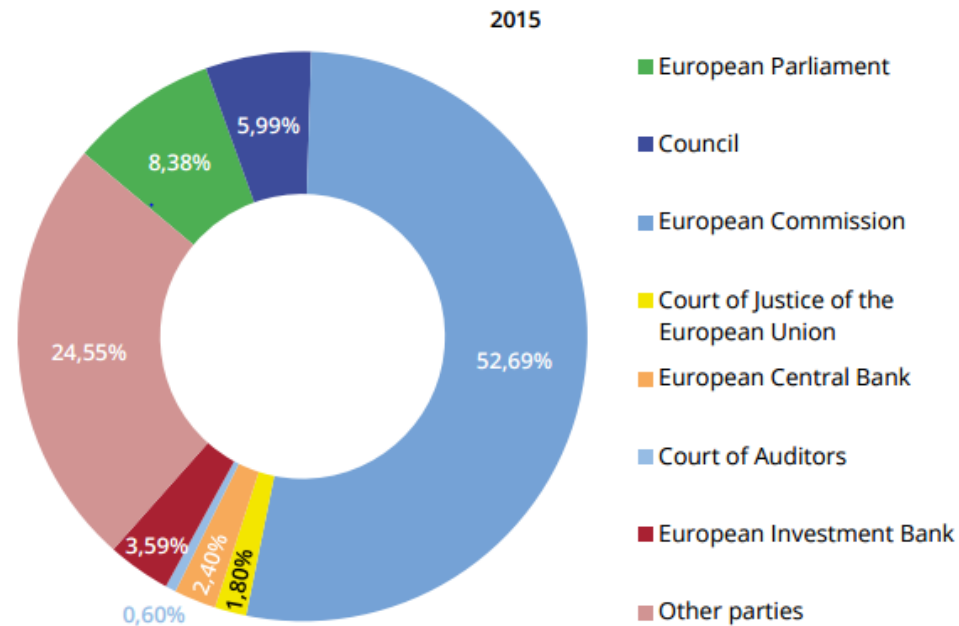
(JUDGMENTS AND ORDERS)



	2011	2012	2013	2014	2015
Appeal dismissed	101	98	134	121	99
Decision totally or partially set aside and no referral back	9	12	5	18	19
Decision totally or partially set aside and referral back	6	4	15	10	6
Removal from the register/ no need to adjudicate	8	15	6	9	10
Total	124	129	160	158	134

CST (Annual Report 2015)

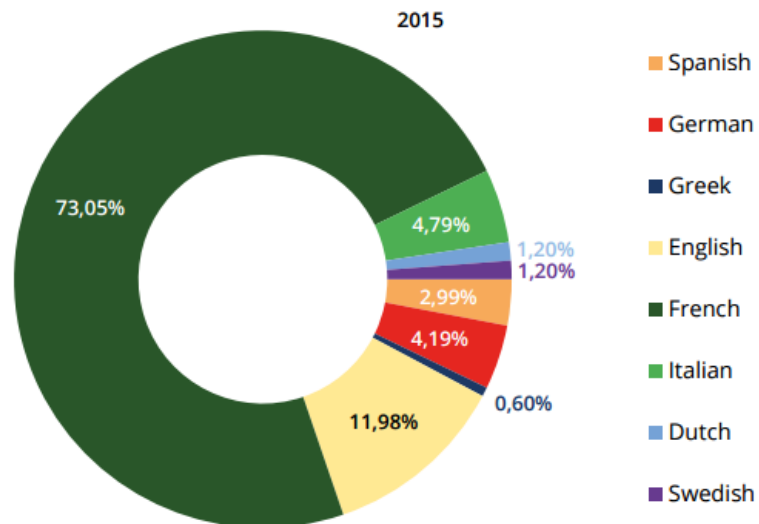
2. NEW CASES — PERCENTAGE OF THE NUMBER OF CASES PER PRINCIPAL DEFENDANT INSTITUTION (2011–15)



	2011	2012	2013	2014	2015
European Parliament	6.29%	6.11%	5.66%	11.80%	8.38%
Council	6.92%	3.89%	3.77%	8.70%	5.99%
European Commission	66.67%	58.33%	49.69%	45.96%	52.69%
Court of Justice of the European Union	1.26%		0.63%		1.80%
European Central Bank	2.52%	1.11%	1.89%	1.24%	2.40%
Court of Auditors	0.63%	2.22%	0.63%	1.24%	0.60%
European Investment Bank	4.32%	4.44%	5.03%	1.24%	3.59%
Other parties	11.40%	23.89%	32.70%	29.81%	24.55%
Total	100%	100%	100%	100%	100%

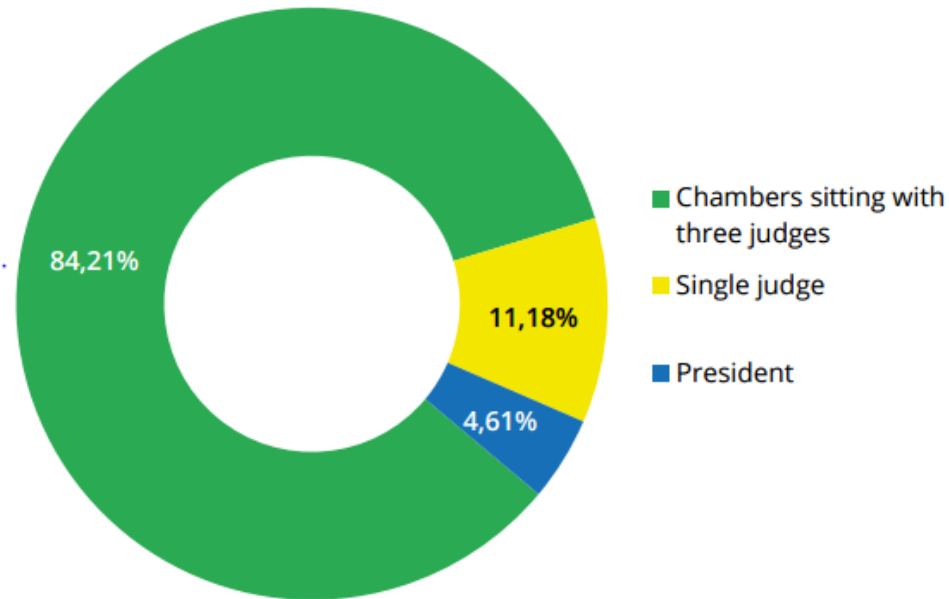
3. NEW CASES — LANGUAGE OF THE CASE (2011–15)

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.



Language of the case	2011	2012	2013	2014	2015
Bulgarian		2			
Spanish	2	3		2	5
German	10	5	2	9	7
Greek	4	1	4	2	1
English	23	14	26	23	20
French	87	108	95	113	122
Italian	29	35	21	8	8
Hungarian	1				
Dutch	1	6	12		2
Polish	1	2			
Romanian		2			
Slovak	1				
Swedish					2
Total	159	178	160	157	167

4. COMPLETED CASES — JUDGMENTS AND ORDERS — BENCH HEARING ACTION (2015)



	Judgments	Orders for removal from the register, following amicable settlement ⁽¹⁾	Other orders terminating proceedings	Total
Full court				
Chambers sitting with three judges	60	14	54	128
Single judge	15		2	17
Cases not yet assigned				
President			7	7
Total	75	14	63	152

7. COMPLETED CASES — DURATION OF PROCEEDINGS IN MONTHS (2015)

Completed cases		Average duration	
		Duration of full procedure	Duration of procedure, not including duration of any stay of proceedings
Judgments	75	16.1	15.9
Orders	77	9.9	8.3
Total	152	13.0	12.1

Transposition of EU directives

1. by indicator



[1] Transposition deficit (% of all directives not transposed)

[2] Progress over the last 6 months (change in the number of non-transposed directives)

[3] Long overdue directives (2 years or more)

[4] Total transposition delay (in months) for overdue directives

[5] Compliance deficit (% of all directives transposed incorrectly)

[1]	1.1	0.6	0.8	0.3	0.9	0.7	0.3	0.7	0.4	1.0	0.3	0.8	0.7	0.4	0.5	1.5	0.4	0.2	0.6	0.7	1.4	0.3	1.1	1.2	0.4	0.5	0.4	0.5	0.7
[2]	+3	-1	+3	-3	+1	+2	-2	+3	-5	+3	+2	-9	-2	-4	+2	+5	-5	-3	0	+2	-2	-3	-1	-4	-1	+2	0	+1	-1
[3]	0	0	0	0	1	0	1	0	0	2	0	0	0	0	0	0	0	0	2	3	1	0	1	1	0	1	0	1	1
[4]	8.6	8.4	6.8	11.5	21.8	7.2	14.1	6.4	11.5	13.4	9.2	6.6	5.3	11.3	11.9	8.2	8.7	7.0	14.7	18.2	10.0	7.9	8.5	11.4	6.8	9.8	5.8	11.3	10.1
[5]	0.6	0.5	0.8	0.5	0.9	0.2	0.5	0.5	1.0	0.8	0.5	0.8	0.2	0.2	0.8	0.5	0.4	0.1	0.5	1.0	2.2	0.8	0.4	0.6	0.7	0.5	0.6	1.0	0.7
	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	EU

Indicator values

[1]	≤1 %	/	>1 %	→ Target established by the European Council, Brussels 8-9 March 2007
[2]	decrease	no change	increase	
[3]	0	/	>0	→ Target established by the European Council, Barcelona 15-16 March 2002
[4] & [5]	<average	average ±10%	>average	

2. overall
(all 5 indicators combined)



Leaflet | Credit: EC-GISCO, © EuroGeographics for the administrative boundaries

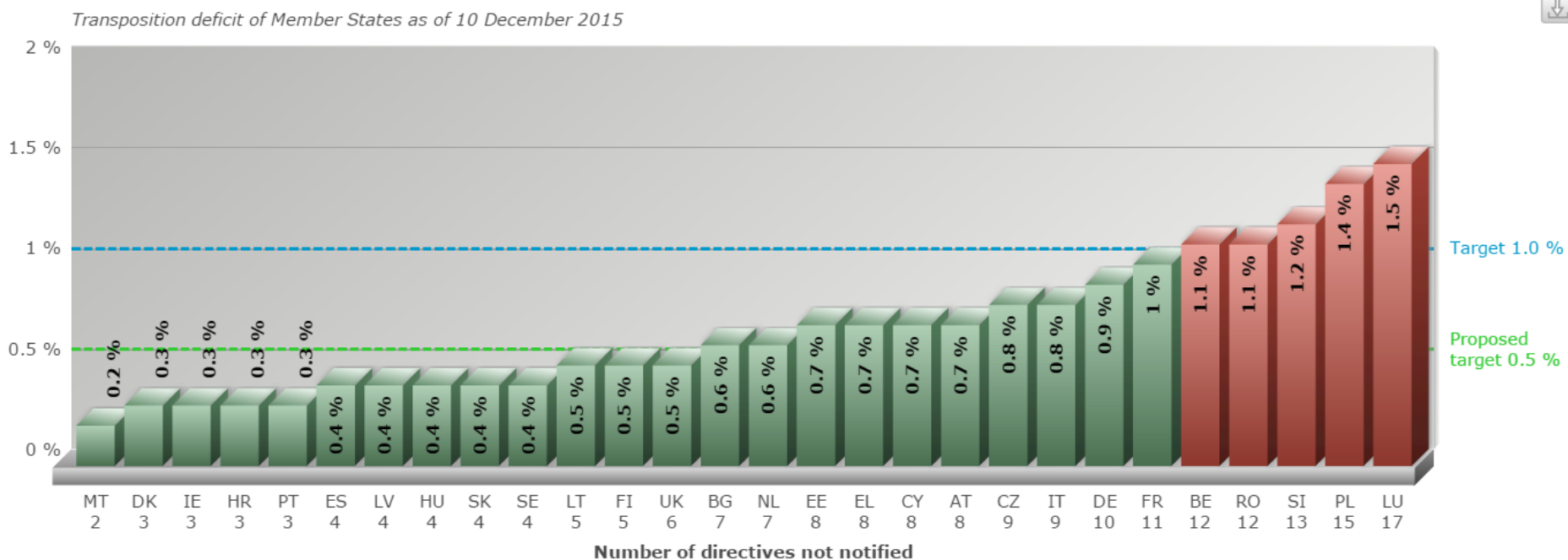
A Member State's **performance across all 5 indicators** is calculated by scoring each indicator in chart 1 as follows:
RED = -1, YELLOW = 0 and GREEN = +1.

The colours on the map represent the **sum of these scores**:

2 or higher = above average -1, 0 or 1 = average -2 or lower = below average

http://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/transposition/index_en.htm

Indicator [1]: Transposition deficit

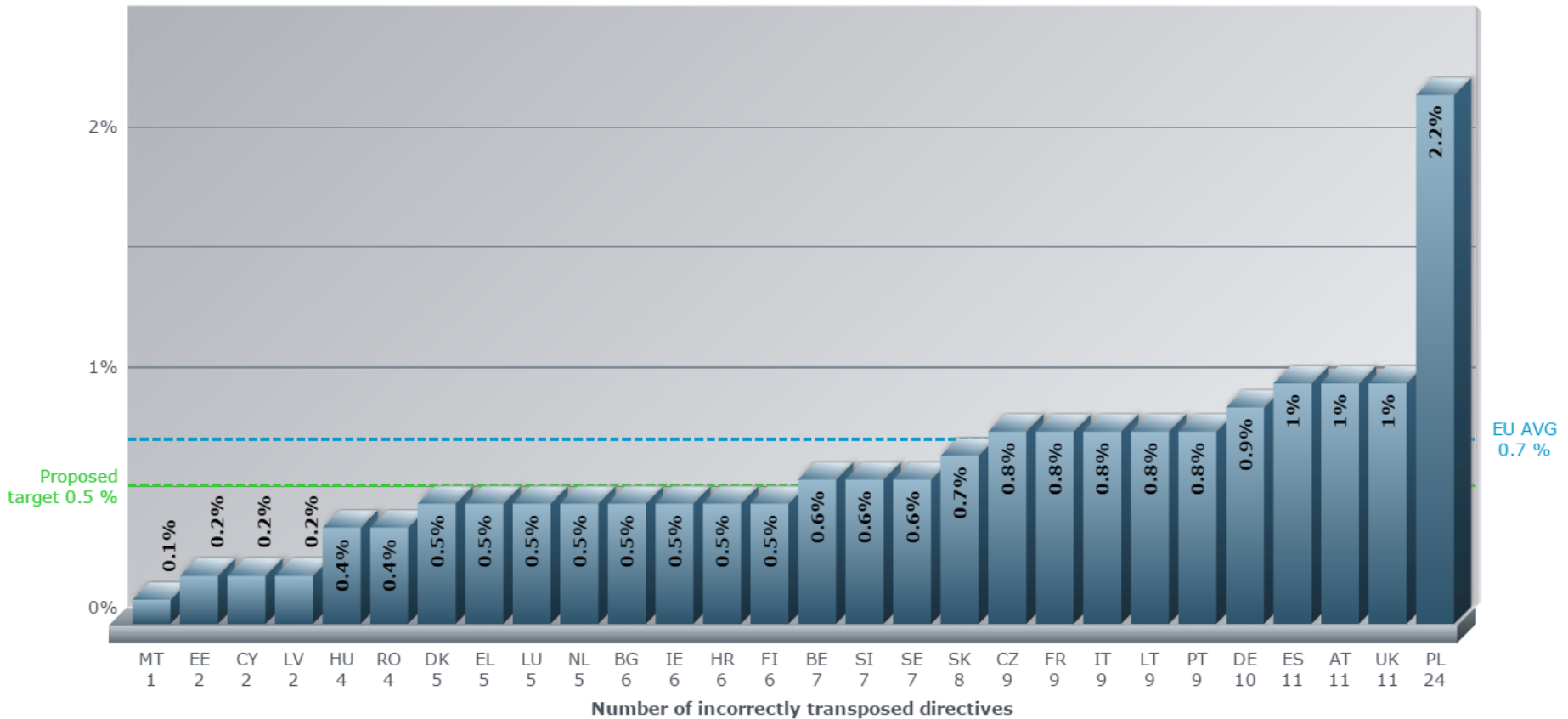


Status quo! Over the last six months, the average transposition deficit has remained unchanged at **0.7%** (see also the graph "Changes in the average transposition deficit" under "Achievements" below).

5 Member States still exceed the 1% target.

Indicator [5]: Compliance deficit (incorrectly transposed directives)

Compliance deficit of Member States as at 10 December 2015



The level of average compliance deficit stands at 0.7% for the fifth consecutive time.

Dodržování práva EU

1. by indicator

[1] Number of pending infringement proceedings
 [2] Duration of infringement proceedings (in months)
 [3] Time taken to comply with Court ruling (in months)

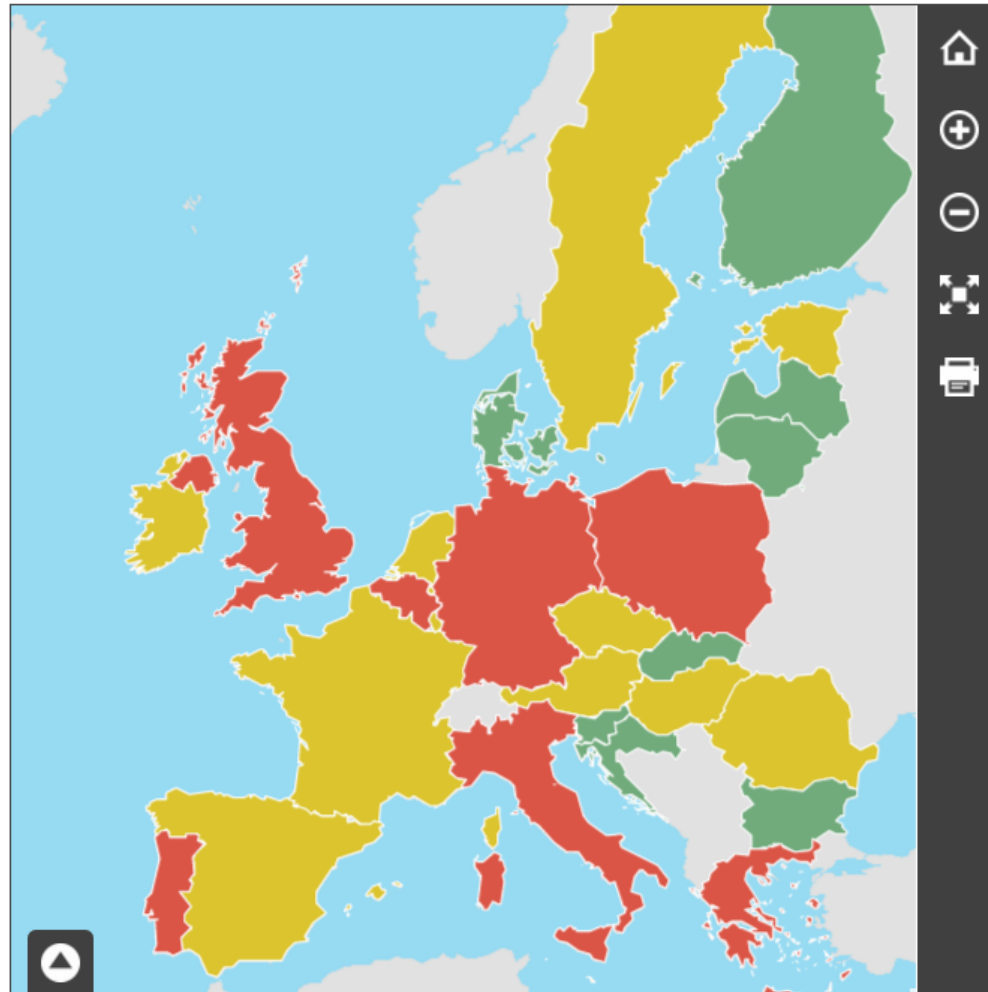


[1]	37	17	28	14	55	6	17	50	49	49	14	50	14	7	16	11	23	8	22	26	44	37	23	17	27	13	26	31	26
[2]	37.4	26.0	33.3	29.6	32.5	34.1	42.8	41.7	21.2	26.6	7.6	39.2	18.0	23.1	23.0	29.5	22.4	51.2	40.0	27.3	32.9	28.9	26.5	27.2	24.7	25.5	40.9	35.1	30.7
[3]	21.4	9.9	19.2	5.4	18.2	16.5	39.4	32.2	21.9	17.9	n/a	29.6	13.1	n/a	3.6	17.1	12.0	21.0	14.4	9.0	18.9	23.0	n/a	10.8	1.4	10.4	14.8	19.0	21.0
	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	EU

Indicator values

[1] & [2]	<average	average ±10 %	>average	n/a
[3]	< 8 months	8 - 18 months	>18 months	n/a

2. overall (all 3 indicators combined)



[Leaflet](#) | Credit: EC-GISCO, © EuroGeographics for the administrative boundaries

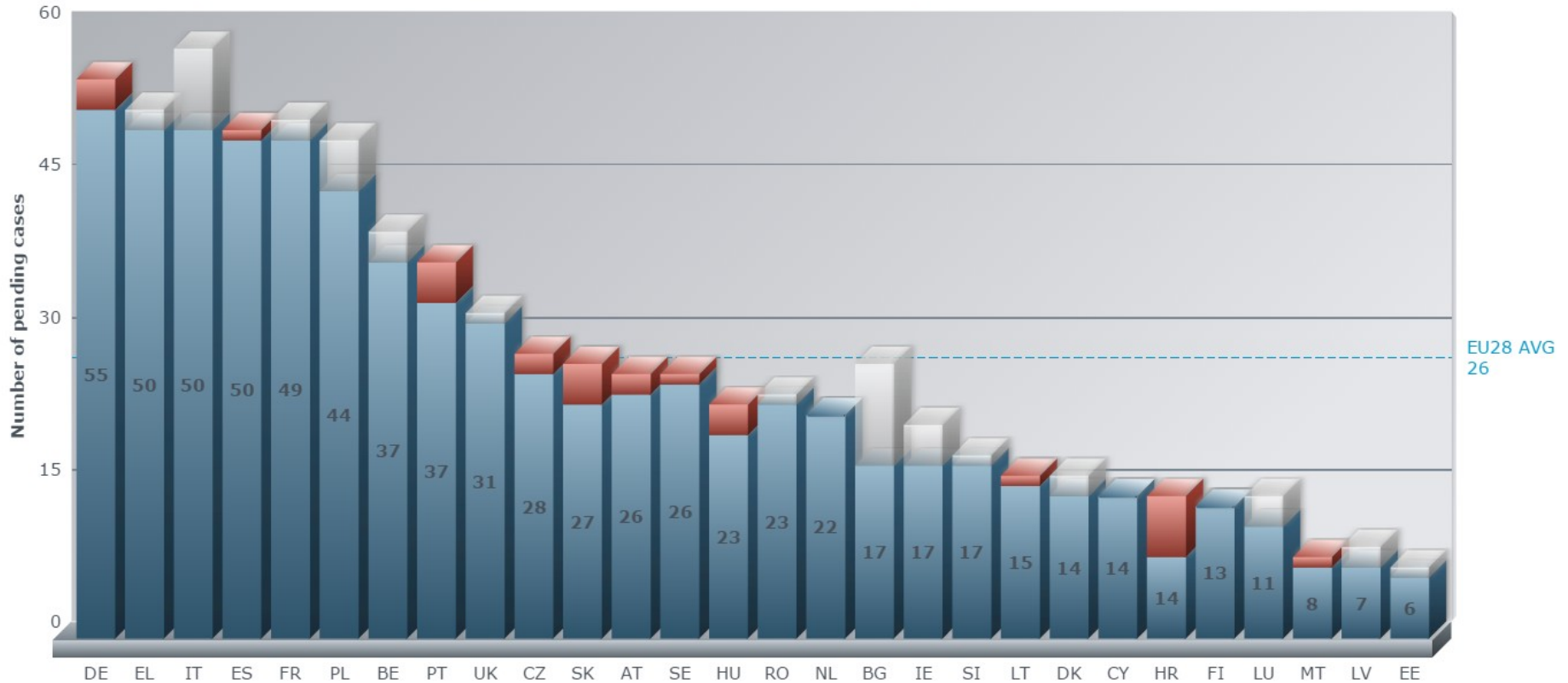
A Member State's **performance across all 3 indicators** is calculated by scoring each indicator in chart 1 as follows:
RED = -1, YELLOW = 0 and GREEN = +1.

The colours on the map thus represent the **sum of these scores**:

2 or higher = above average -1, 0 or 1 = average -2 or lower = below average

Indicator [1]: Number of pending infringement proceedings

Pending infringement proceedings as of 1st December 2015. The differences since the previous Scoreboard (the October 2015 Single Market Scoreboard, with figures from May 2015) are shown at the top of each bar in the chart: transparent parts represent the decrease in the number of pending cases (not counting for the final result), while the red part shows the increase of the number of pending cases.



Total number of cases: down to 732 (from 749 in May 2015)

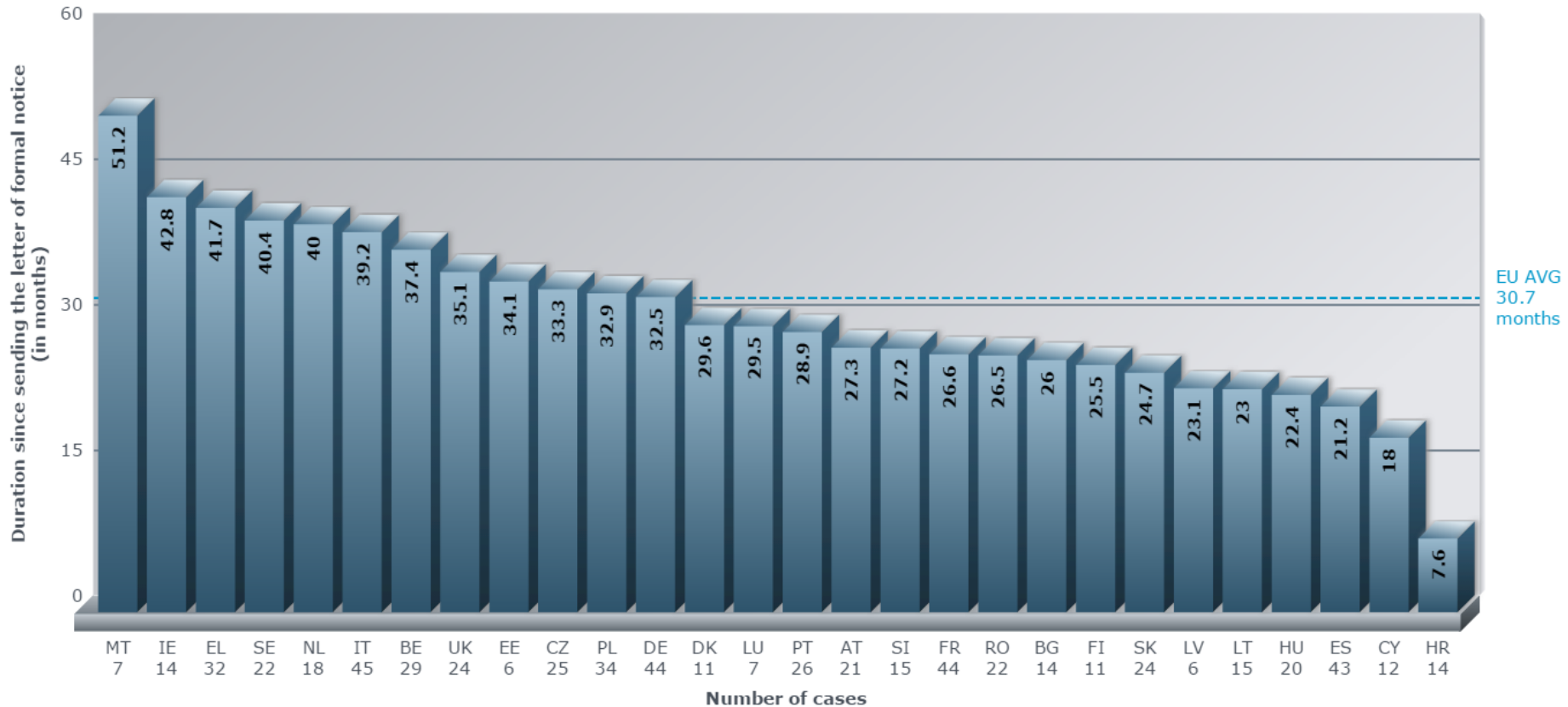
Average cases per Member State: 26 (27 in May 2015)

Total number of Member States trending up: 11 (up from 1)

Indicator [2]: Duration of infringement proceedings



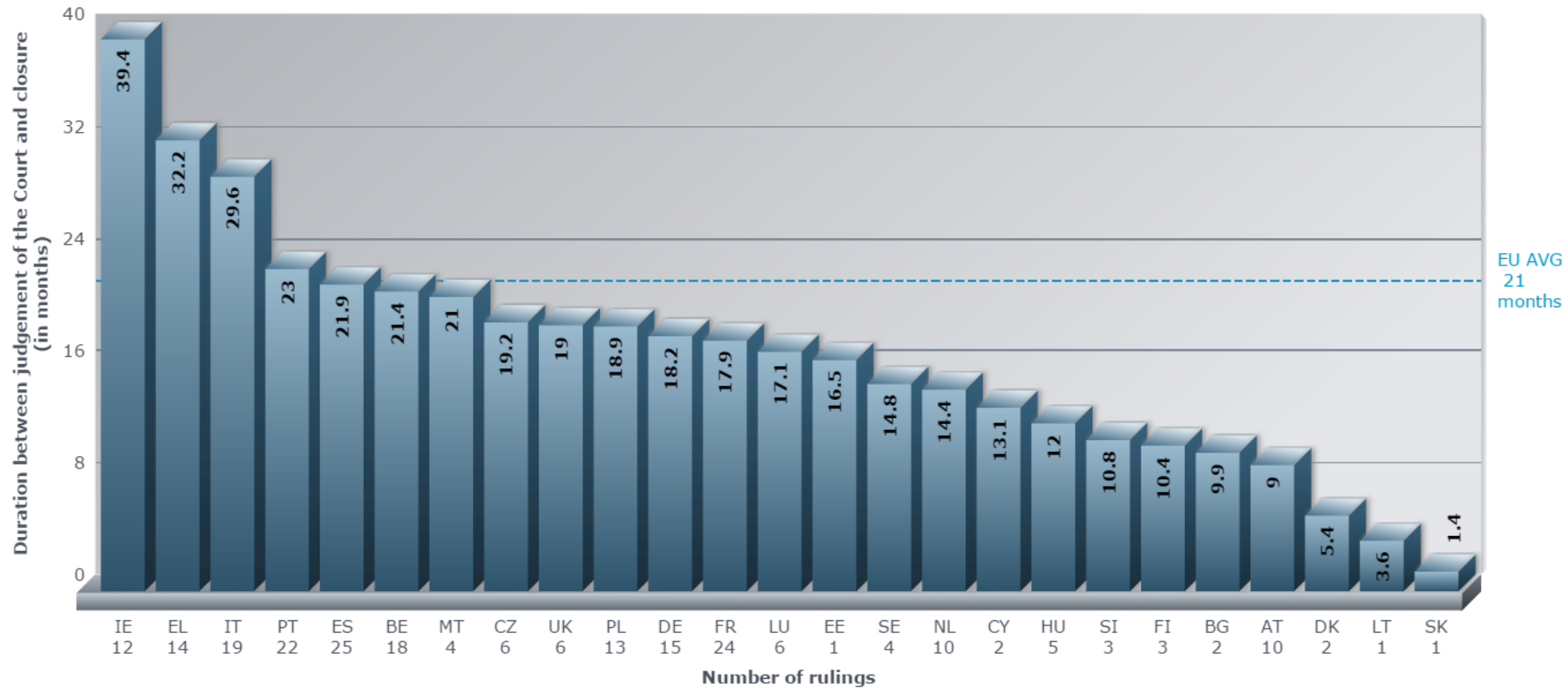
Pending infringement cases not yet sent to the Court (pre-litigation stage) as of 1 December 2015 (605 cases). The average duration is calculated in months from the sending of the letter of formal notice.



Change in average case duration: now 30.7 months, up from 29.1 in May 2015.

Indicator [3]: Time taken to comply with Court ruling

Cases closed between 1 December 2000 and 30 November 2015 where the Court has ruled against a Member State (228 cases). This graph shows the average time (in months) between the delivery of the Court's judgment and the closure of the case confirming that the Member State has complied with the judgment.



Change in average time lag: further increase from 19.8 months in May 2015 to 21 months

Cases by sector

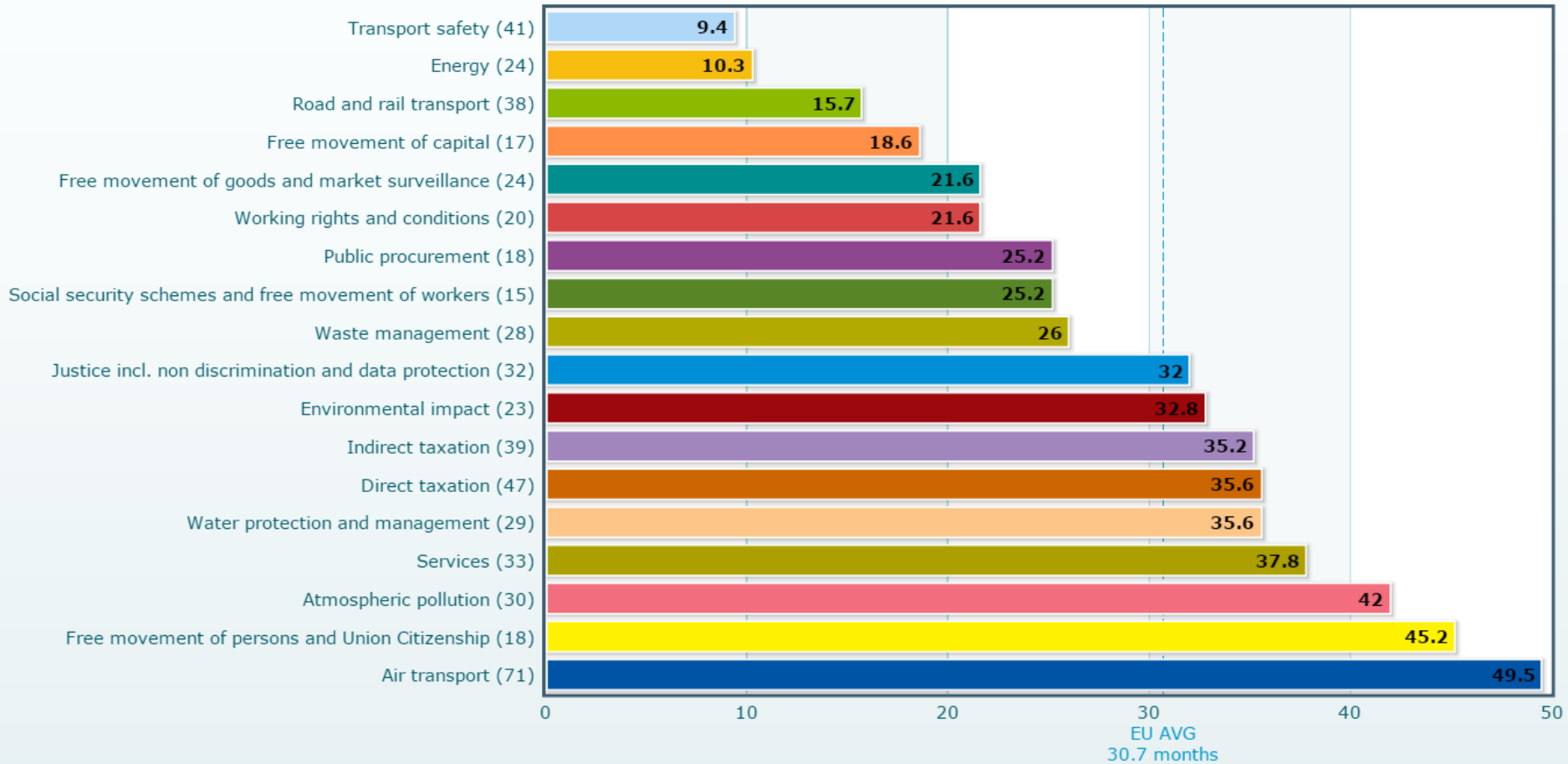
This table shows the total number of infringement cases for each Member State, broken down by sector, as of 1 December 2015. Sectors with only a few infringement proceedings are included in "other fields". The highlighted figures show the sector(s) with the highest number of infringement cases in each Member State.



DE	4	2	6	1	1		7	1	1	6	4	2	5	4	1	5	1	2	1	1	55
EL	4	1	3	1	1	1	1		4	4	2	2	3	2		2	7	9	1	2	50
ES	5	2	4	3	5		2	1		2		3	2	1		2	3	5	6	4	50
IT	4	4		1	1	1	1			5	3	5	1	2	3	3	6	4		6	50
FR	3	3	11	2	2		4		1	5		1	2		5		1	4	3	2	49
PL	5	1	1	2	3		2	2	4	3	1		6	3		1	1	5		4	44
BE	5	1	11	1				2	1	2	3			3	2			2		4	37
PT	6	2	1	2			2		2	3	3		3		1	4	2	3		3	37
UK	3	3	2	2	1		1	2		3	1		2		1	2	2	3	1	2	31
CZ	3	2			2		2	2	1		3		4	1		1	2	2		3	28
SK	3	2			1	3	2	1		1	3	1	1		2	2	1	4			27
AT	3		1	2	1	3	1	1		3	1	1	3	1		1		1		3	26
SE	3	1	3			2		1	1	1	2	2		3	1	1		3	1	1	26
HU	3	1	1	2		2				1		1	2	4			1		3	2	23
RO	1	2	1	2	2	1	2				1		1	2	1		3	1	1	2	23
NL	3		6			1			1	3	1		2	1	1	2				1	22
BG	2	2				2	1			1		1	1				2	2		3	17
IE	3				2			1		2	1		1	2	1			2	2		17
SI	2	3		1	2						1			1		3	4				17
LT	2			1		1	2	2	1		1		1	1		1				3	16
DK	2		3						1		1		1			2	1	1	2		14
CY	2									1	1			2	2	2	2			2	14
HR	2			1		1				1	1		1	1		2	3			1	14
FI	2				1	1			2	1	1		1			1		1		2	13
LU	3			1						1			2			1		1	1	1	11
MT	3							1		1				1	1	1					8
LV		1				1		1		1						1				2	7
EE	1									1						2		1	1		6
	82	33	54	25	25	20	30	18	20	52	35	19	45	35	22	42	42	56	23	54	732
	Air transport	Atmospheric pollution	Direct taxation	Energy	Environmental impact	Free movement of capital	Free movement of goods & market surveillance	Free movement of persons & union citizenship	Health & consumers	Indirect taxation	Justice incl. non discrimination & data protection	Public procurement	Road and rail transport	Services	Social security schemes & free movement of workers	Transport safety	Waste management	Water protection & management	Working rights and conditions	Other fields	TOTAL

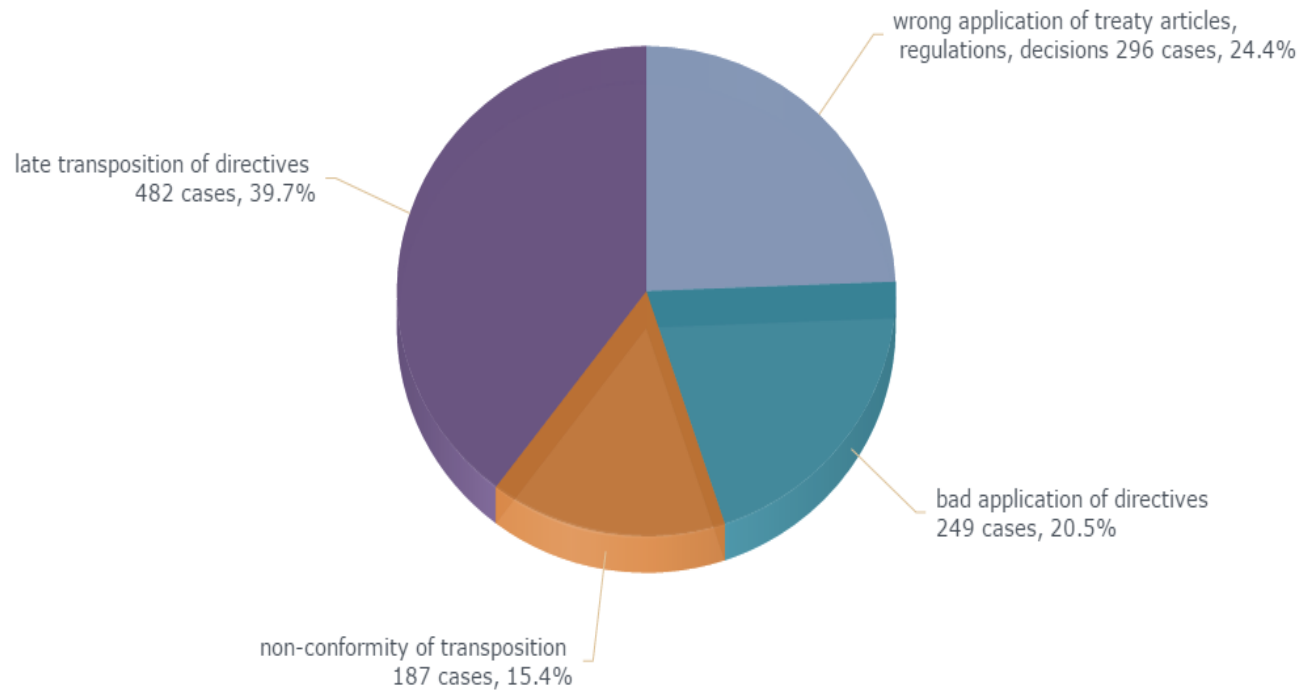
Average duration by sector

Pending infringement cases not yet sent to the Court (still in the pre-litigation phase) as of 1 December 2015, broken down by sectors including at least 15 cases (547 cases). The average duration is calculated in months from the sending of the letter of formal notice.
 (#) = number of cases



Types of cases

Number of pending infringement cases open for late or wrong transposition of Single Market directives plus number of cases open for wrong application of rules – situation as of 1 December 2015 (1 214 cases).



- **55%** of cases are for late or incorrect transposition of directives
- **76%** of cases relate to directives
- **24%** concern regulations, decisions and Treaty articles

Jaký vliv mají státy na SD?

- Složení SD (1958: 7 soudců + 2 GA)
- Jmenování soudců (změny v LS)
- Požadavky na soudce
- Disenty?

Eric Stein (1981) *AJIL*



- *“Tucked away in the fairyland Duchy of Luxemburg and blessed, until recently, with the benign neglect by the powers that be and the mass media, the Court of Justice of the European Communities has fashioned a constitutional framework for a federal-type structure in Europe.”*

Issue and Case	Governments	Commission	Advocate General	Court
direct effect: <i>van Gend</i> 1963	no: Belg., Neth., Lux., Germany	yes	no (Roemer, German)	yes
supremacy: (1) <i>Costa v.</i> <i>ENEL</i> 1964	no: Italy	yes	yes (Lagrange, French)	yes
(2) <i>Simmenthal</i> 1978	no: Italy	yes	yes (Reischl, German)	yes
(3) human rights: <i>Internationale</i> <i>Handelsges.</i> 1966	unnecessary to decide: Germany, Neth.	yes	yes (Dutheillet de Lamothe, French)	yes
expanding direct effect: (1) <i>Lütticke</i> 1966	no: Belg., Neth., Germany	yes	yes (Gand, French)	yes
(2) <i>Reyners</i> 1974	no: Belg., Lux., Ire., UK yes: Germany, Neth.?	yes	yes (Mayras, French)	yes
(3) <i>Walrave</i> 1974	no position: UK	no	yes (Warner, British)	yes
(4) <i>Defrenne</i> 1976	no: UK, Ire.	yes on public empl., no on private	yes (Trabucchi, Italian)	yes
(5) <i>Franz Grad</i> 1970	no: Germany	yes	yes (Roemer, German)	yes
(6) <i>van Duyn</i> 1974	no: UK	yes	yes (Mayras, French)	yes
treaty-making power: <i>ERTA</i> 1970	no: Council	yes	no (Dutheillet de Lamothe, French)	yes

Článek 267 SFEU

Soudní dvůr Evropské unie má pravomoc rozhodovat o předběžných otázkách týkajících se:

- a) výkladu Smluv,
- b) platnosti a výkladu aktů přijatých orgány, institucemi nebo jinými subjekty Unie.

Vyvstane-li taková otázka před soudem členského státu, může tento soud, považuje-li rozhodnutí o této otázce za nezbytné k vynesení svého rozsudku, požádat Soudní dvůr Evropské unie o rozhodnutí o této otázce.

Vyvstane-li taková otázka při jednání před soudem členského státu, jehož rozhodnutí nelze napadnout opravnými prostředky podle vnitrostátního práva, je tento soud povinen obrátit se na Soudní dvůr Evropské unie.

Vyvstane-li taková otázka při jednání před soudem členského státu, které se týká osoby ve vazbě, rozhodne Soudní dvůr Evropské unie v co nejkratší lhůtě.

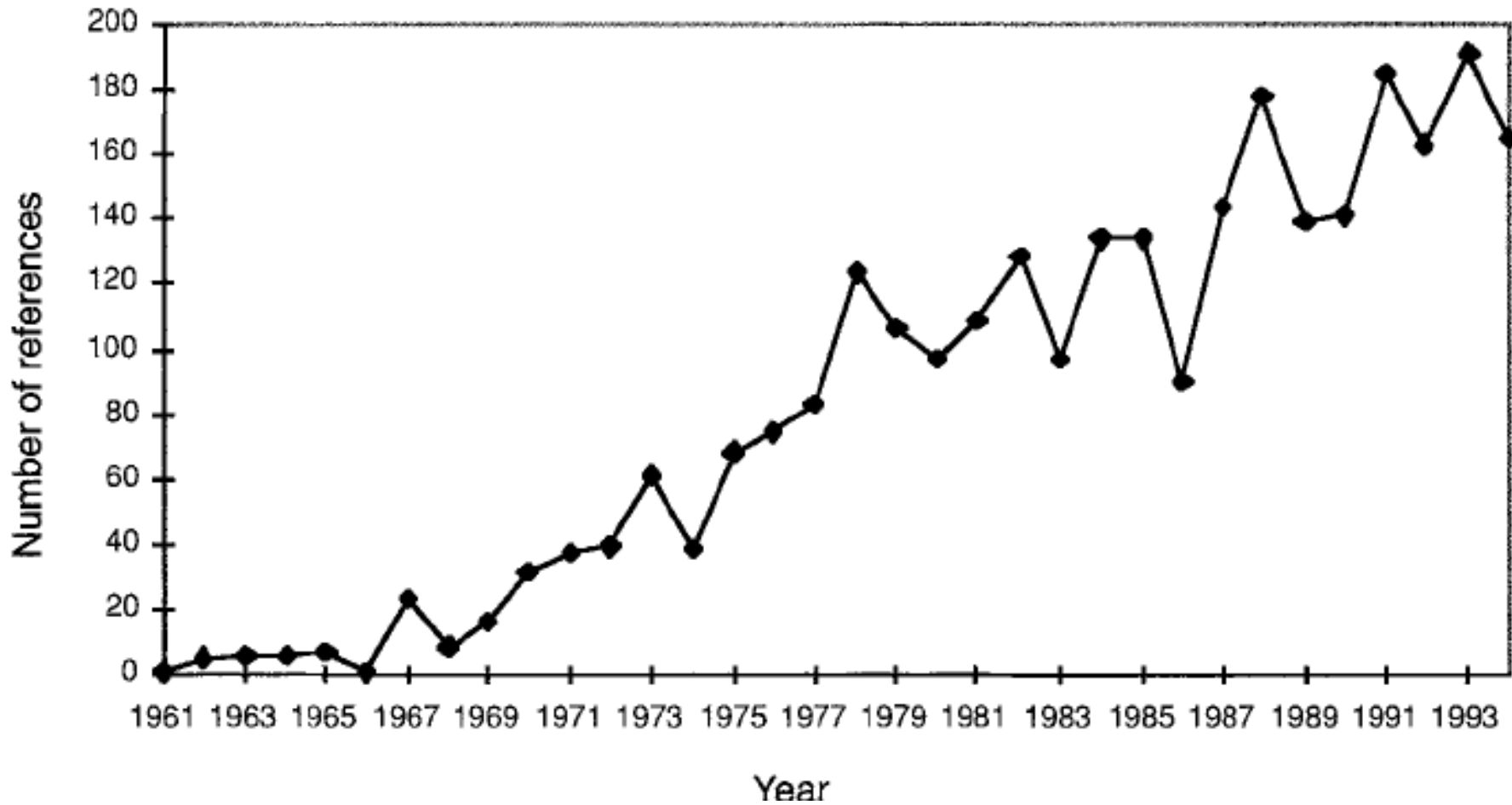


TABLE 1. *Average number of preliminary references by county and decade*

<i>Country</i>	<i>1970–79</i>	<i>1980–89</i>	<i>1990–98</i>
<i>France</i>	8.6	28.2	22.56
<i>Belgium</i>	7.8	14.7	18.22
<i>Netherlands</i>	10.8	18.5	17.33
<i>Germany</i>	27.5	34.6	47.44
<i>Italy</i>	8.4	12.4	34.11
<i>Luxembourg</i>	0.4	1.7	1.67
<i>Denmark</i>	0.86	2.5	4.89
<i>Ireland</i>	0.86	1.5	1.44
<i>Great Britain</i>	3.0	8.5	16.33
<i>Greece</i>	—	2.33	3.33
<i>Spain</i>	—	1.0	11.78
<i>Portugal</i>	—	0.2	2.78
<i>Finland</i>	—	—	2.5
<i>Sweden</i>	—	—	5.5
<i>Austria</i>	—	—	12.0

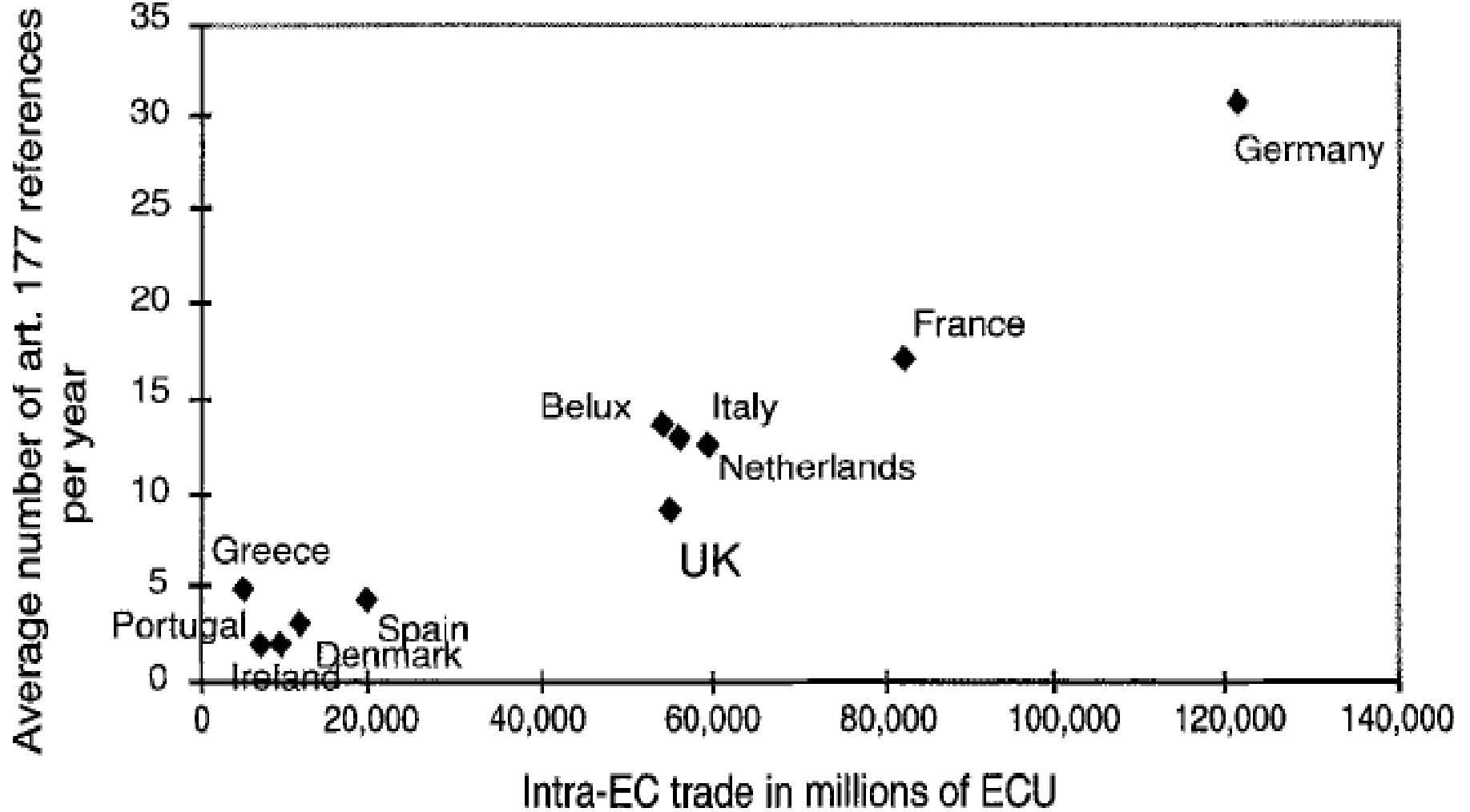
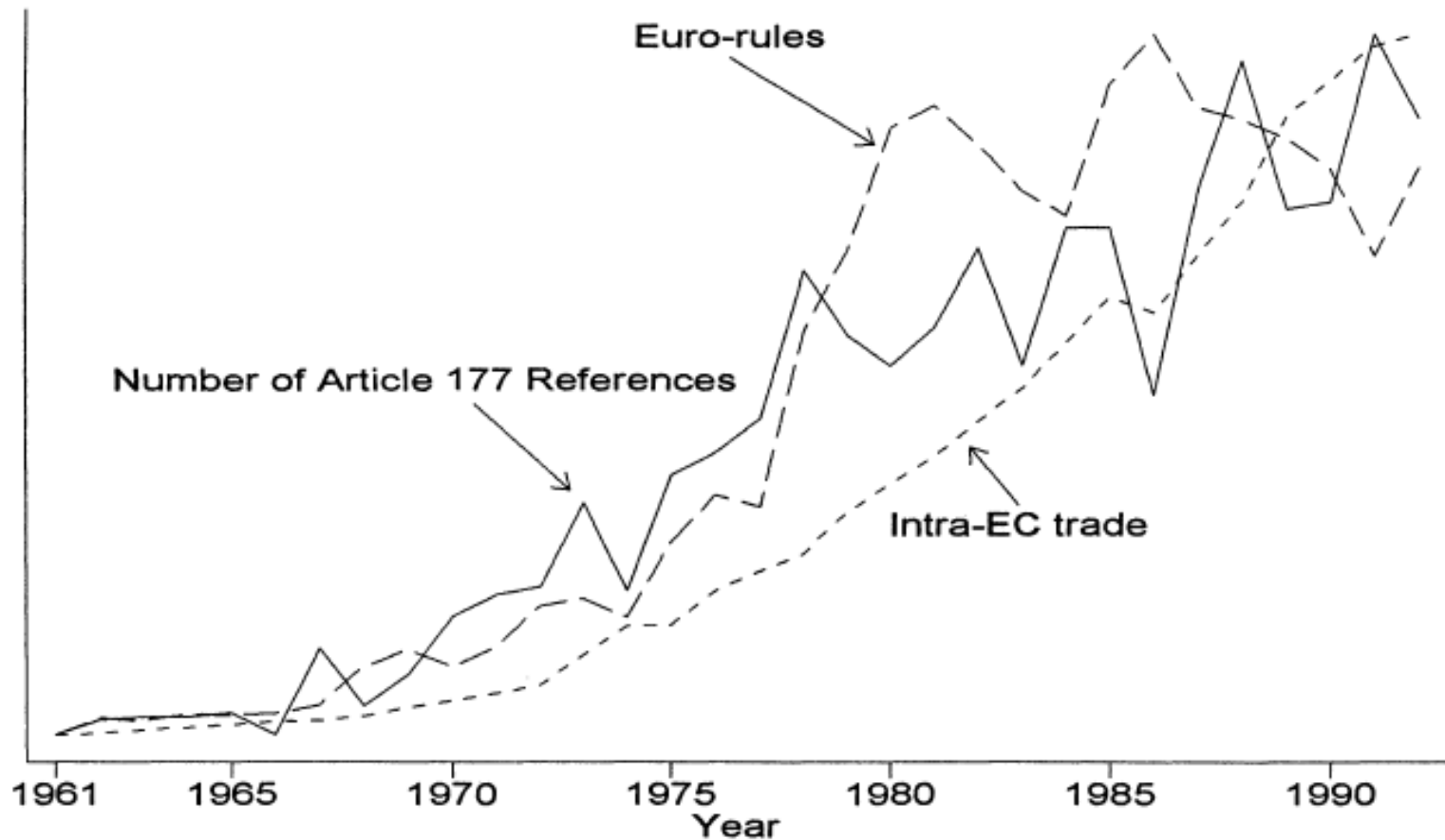
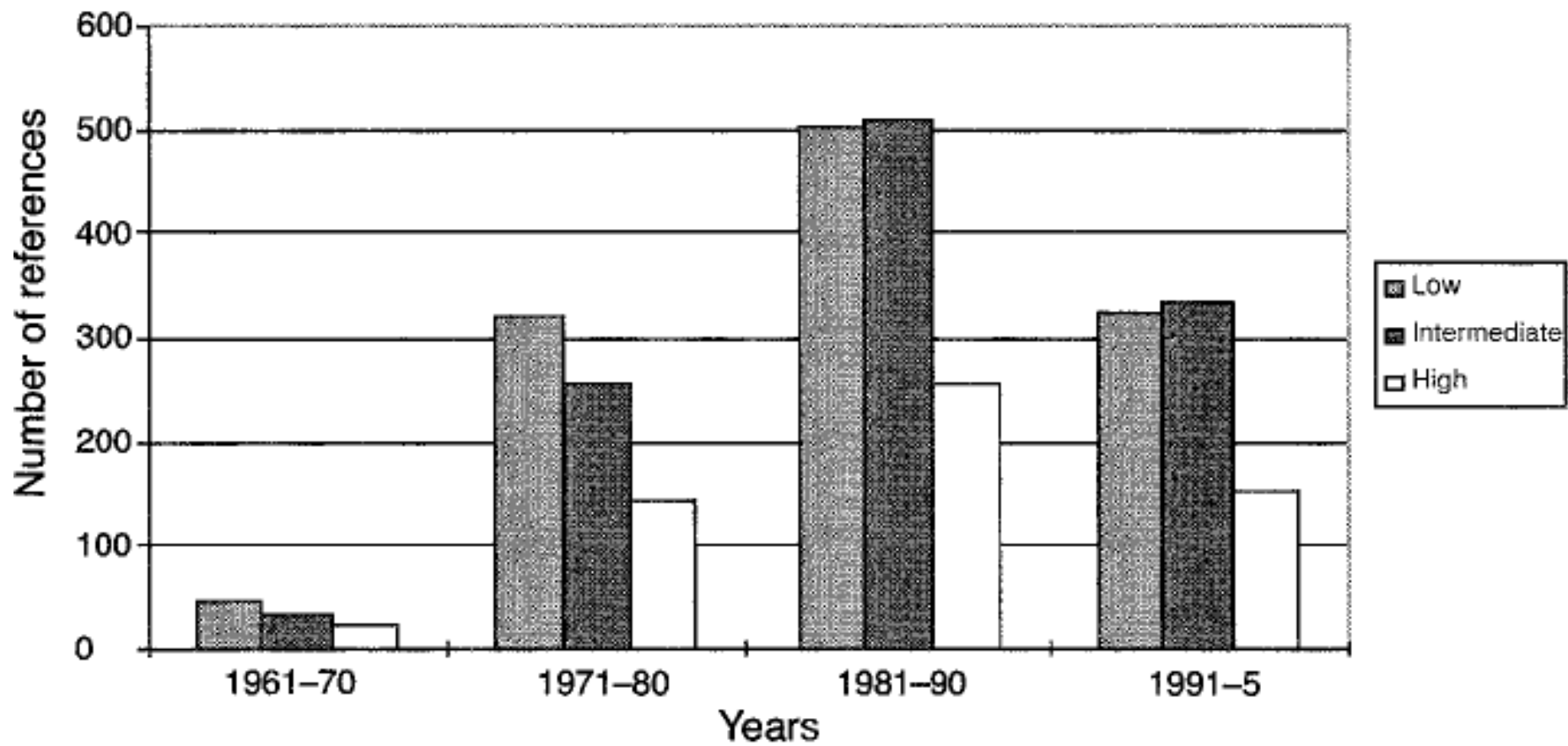
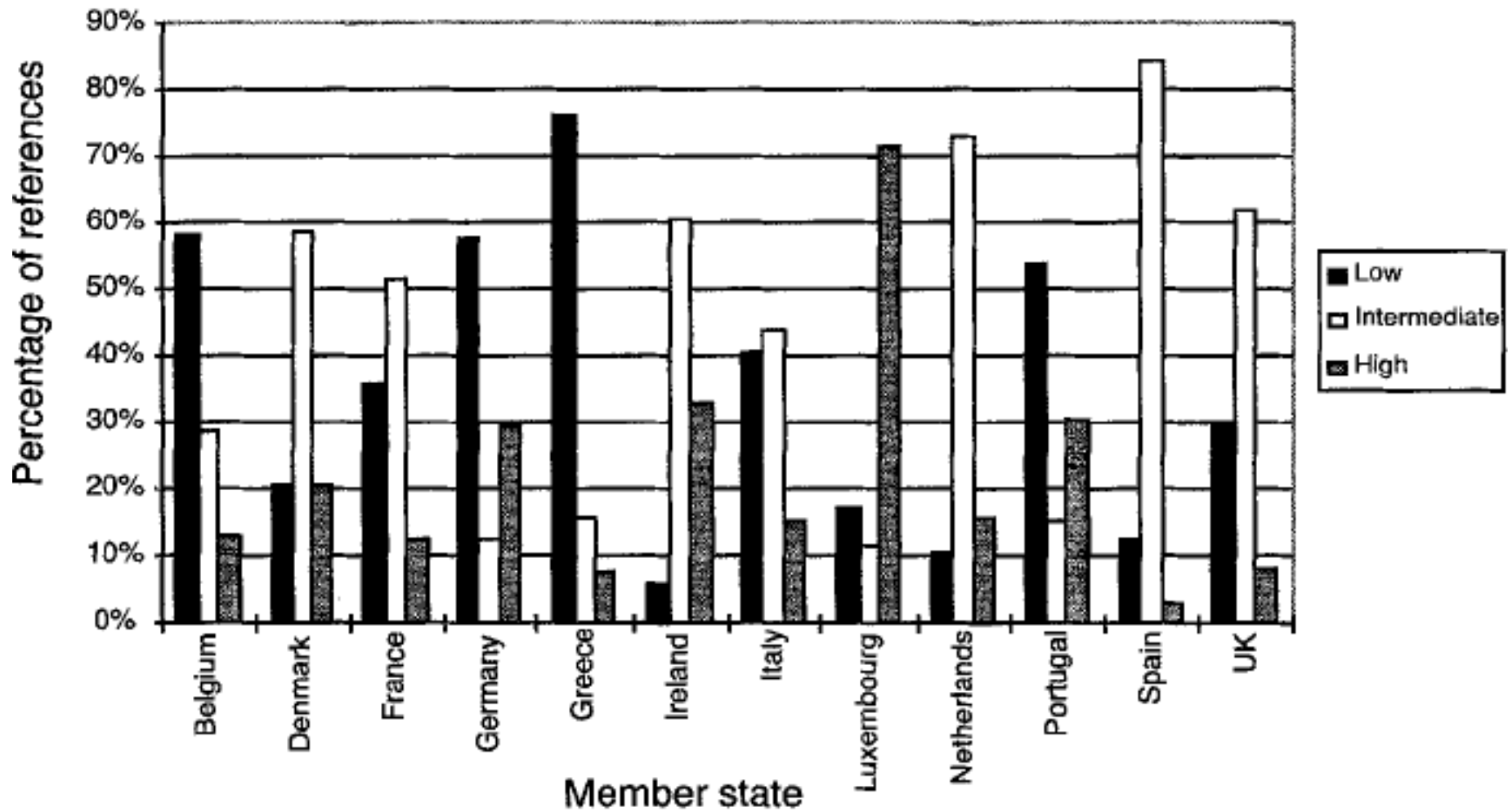


FIGURE 5. Annual Levels of Intra-EC Trade, Euro-rules, and Article 177 References



Note: The Article 177 references are the yearly number for the EC as a whole, 1961–92. The Euro-rules are the annual number of directives and regulations promulgated by the EC. The intra-EC trade line plots levels of aggregate intra-EC trade for the EC as a whole. The graph has been rescaled since the variables are on different scales.





<i>Variable</i>	<i>“Low values”</i>	<i>“High values”</i>
INTRA-EU TRADE	1.8	17.2
JUDICIAL REVIEW	12.5	11.4
MONISM-DUALISM	13.6	9.4
NET SUPPORT FOR INTEGRATION	9.9	12.9
POLITICAL AWARENESS	10.1	13

Note: Column 1 = below average trade, support, and political awareness; no judicial review or dualism. Column 2 = above average trade, support, and political awareness; judicial review or monism.

Důsledky předběžného řízení

- Posílení pravomocí a efektivity regulace na evropské úrovni na úkor pravomocí členských států (přednost, přímý účinek)
- Na evropské úrovni posílení soudní moci na úkor moci výkonné a zákonodárné
- Vnitrostátně: posílení nižších soudů

Kdo může klást otázky?

- ***Dorsch Consult C-54/96***
 - Zákonný základ tělesa
 - Nezávislost
 - Trvalost
 - Jurisdikce povinná (založená zákonem)
 - Aplikuje právo
 - Sporné řízení
- ***246/80 Broekmeulen*** – Nizozemec s kvalifikací z Belgie, chtějící vykonávat lékařskou praxi v Nizozemí.

Povinnost obrátit se na Soud

- Srovnání odstavce 2 a 3 čl. 267
- Případ *Peterbroeck* – ECJ: národní procesní pravidlo, které brání národnímu soudu vznést dle svého uvážení dotaz, týkající se kompatibility národního a evropského práva, odporuje komunitárnímu právu.
- Teorie
 - Abstrakční
 - Konkrétní

Kdy není soud povinen se tázat?

- *CILFIT, Intermodal*
- **Doktrína acte éclairé**
- **Doktrína acte clair**
- Historie
 - Shovívavost
 - Kontrola vhodnosti

Kdy SD odmítne dotaz?

- Hypotetický charakter dotazu
- Vznesené dotazy nejsou relevantní
- Dotazy nejsou formulovány dostatečně jasně
- Fakta nejsou dostatečně jasná, aby SD mohl interpretovat relevantní právní předpisy

Provinění soudů ve vztahu k předběžné otázce

- Soudy s povinností referovat otázku nepoloží nebo položí nesprávným způsobem
- Položí předběžnou otázku, ale nerespektují odpověď ESD
- **Důsledky**
 - ústavní stížnost (nepoložení otázky)
 - Komise žaluje členský stát pro porušení povinnosti (čl. 258)
 - Žaloba na náhradu škody proti členskému státu – státy nesou odpovědnost za chyby svých soudů

Reforma prejudiciálního řízení - návrhy

- Dotazy pouze od soudů, od nichž není odvolání
- Filtrační mechanismus
- Národní soud navrhne odpověď
- Krok k apelačnímu systému
- Vytvoření decentralizovaných soudních orgánů
- Větší zapojení Tribunálu

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