

Court of Justice as Player in European Integration

**EGO402 EU Law and
European System of HR Protection**

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Courts

Conventional prototype of courts

- Independent courts
- Decide cases on the basis of preexisting rules
- adversary procedure, dichotomous ruling (Winner x Loser)
- Appeal
- Triadic resolution of conflicts

Why independent judicial review?

[Ginsburg – Versteeg 2013, JLEO](#)

Theories

- Ideational
- Coordination and Commitment
- Electoral Market
- Diffusion

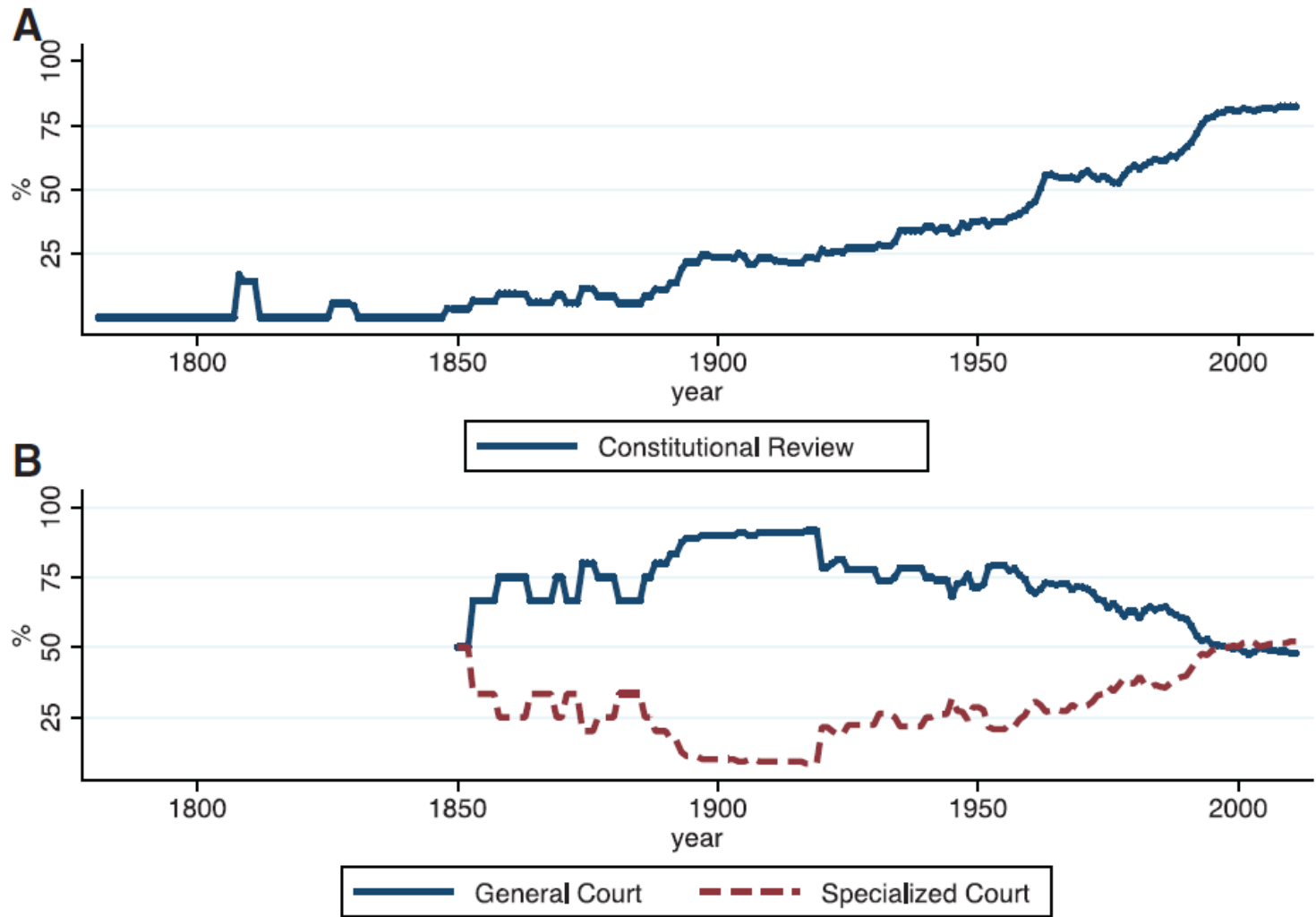


Figure 1. (A and B) The Spread of Constitutional Review. Note: Because there are so few cases of judicial review adoption prior to 1850, Panel B only starts in 1850, so that we do not show strong fluctuations that do not represent actual trends.

Questions about courts

- What influences their position in a political system
- What influences courts in their decisions?
- What influences judges in their decisions?

- Strategic approach ([Epstein – Knight](#))
- Behavioural approach ([Gillman](#))

Gibson: „Judge’s decisions are a function of what they prefer to do, tempered by what they think they ought to do, but constrained by what they perceive is feasible to do.“

Critique of courts

- Bickel: „non-majoritarian difficulty“
- Bork: juristocracy
- Dahl: [Decision making in a democracy](#)
- Ely: protection of minorities
- Checks and balances
- Dworkin: rights as trumps

CJEU

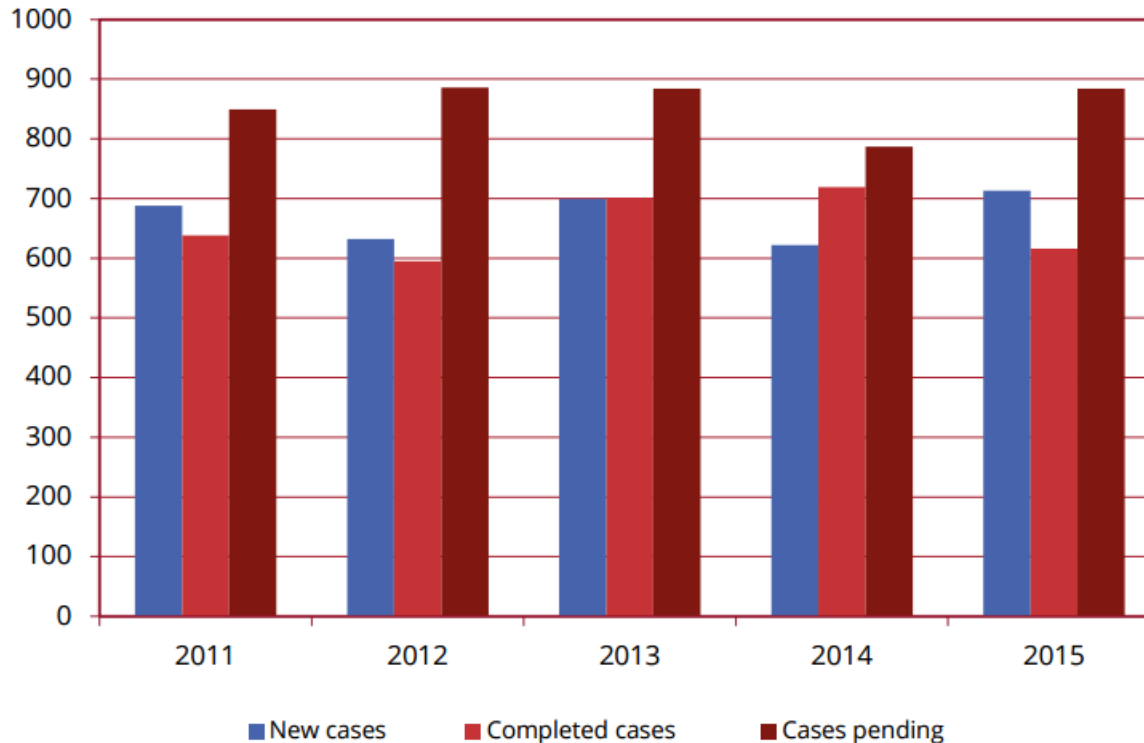
CJ EU

- CJ
- General Court (*CFI* 1988)
- Civil Service Tribunal (2004)
- Why not Supreme Court, High Court etc?

Annual Report 2015 – CJ

GENERAL ACTIVITY OF THE COURT OF JUSTICE

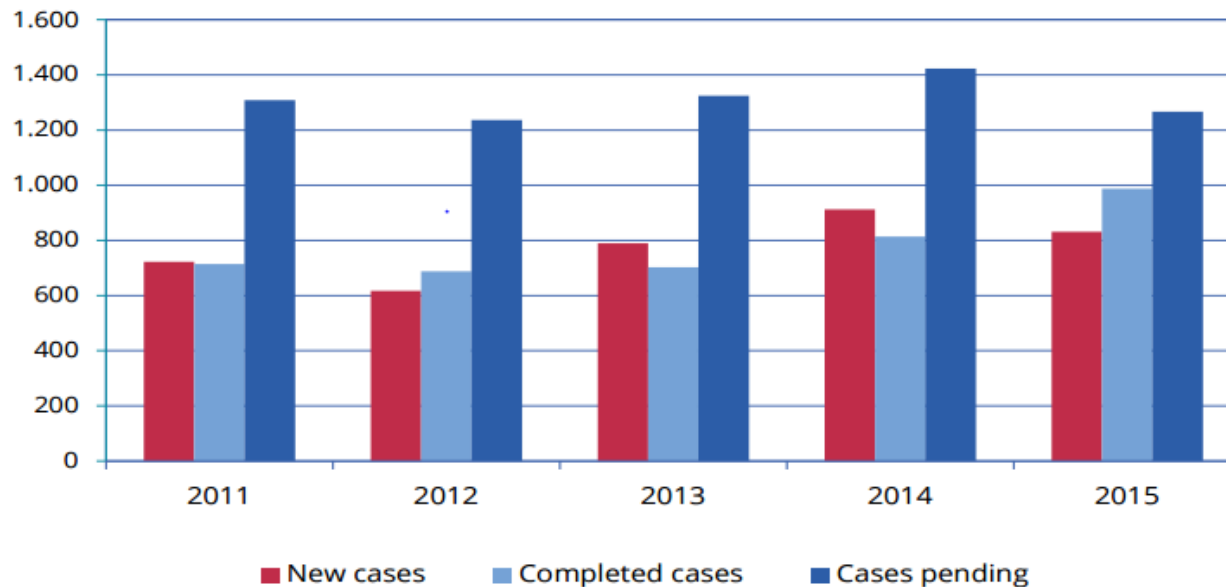
1. NEW CASES, COMPLETED CASES, CASES PENDING (2011–15)⁽¹⁾



	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)

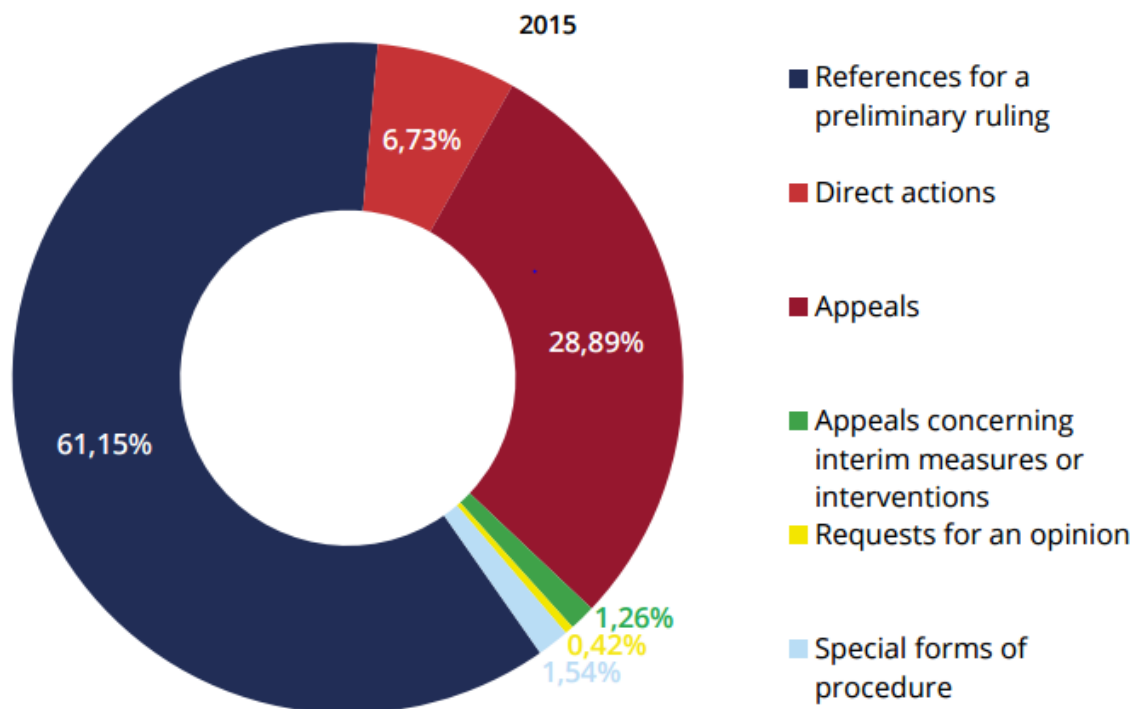


	2011	2012	2013	2014	2015
New cases	159	178	160	157	167
Completed cases	166	121	184	152	152
Cases pending	178	235	211	216	231 ⁽¹⁾

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).

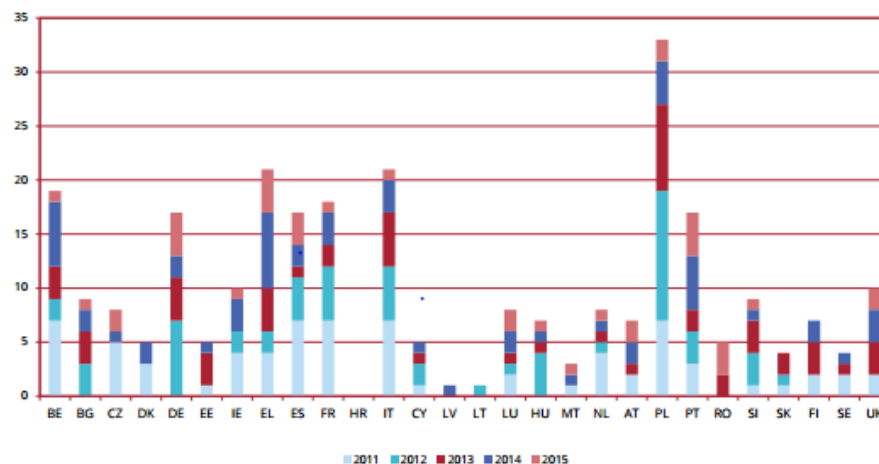
CJ (Annual Report 2015)

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

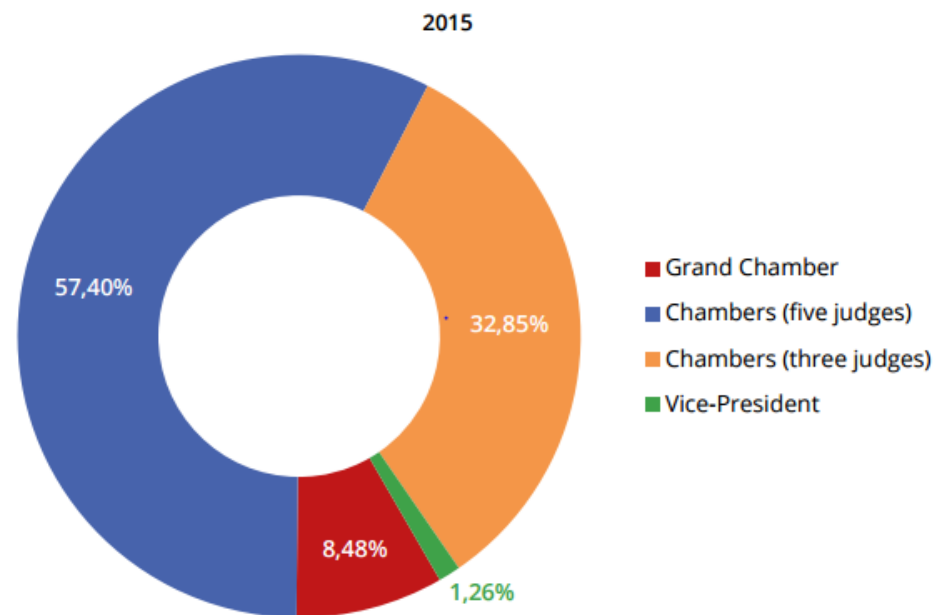
4. NEW CASES — ACTIONS FOR FAILURE OF A MEMBER STATE TO FULFIL ITS OBLIGATIONS (2011–15) ⁽¹⁾



	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).

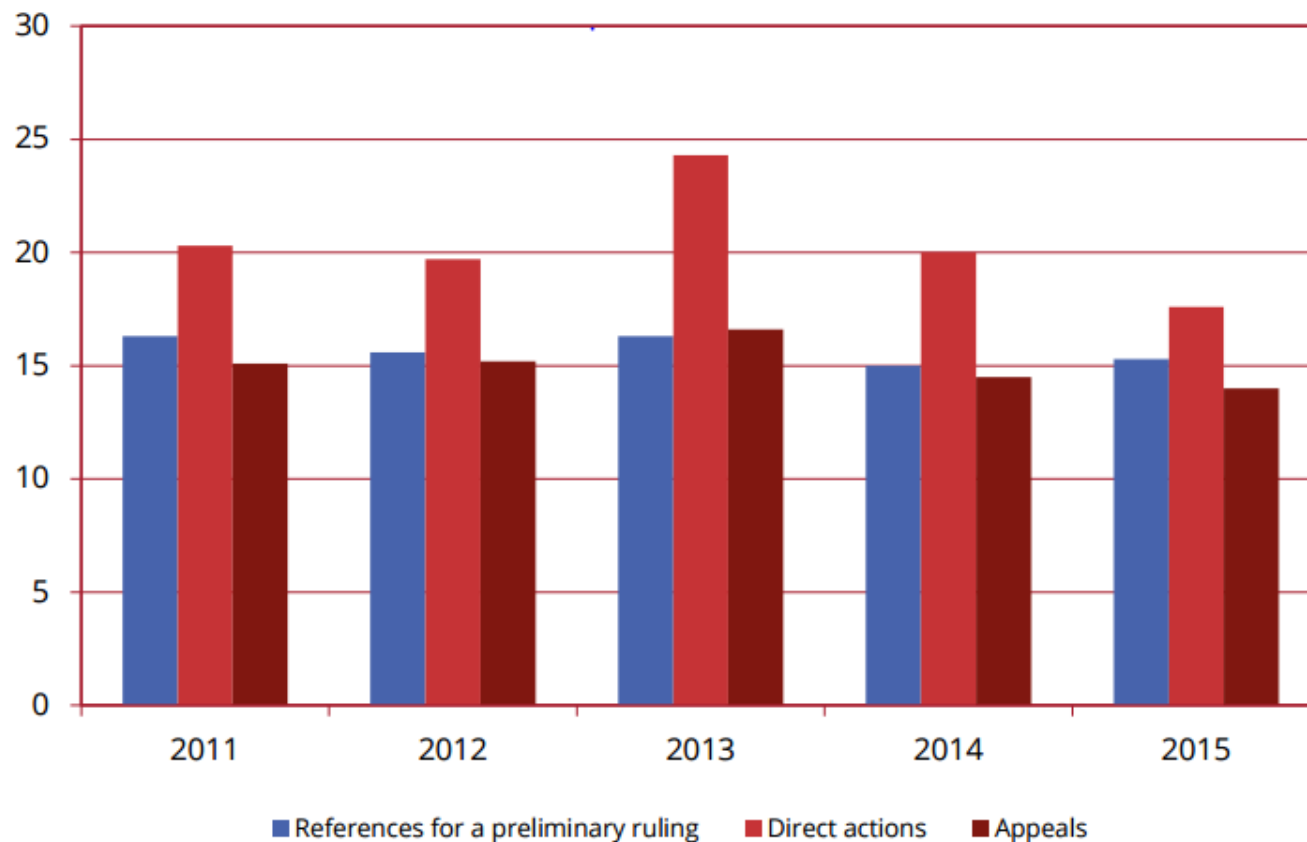
7. COMPLETED CASES — BENCH HEARING ACTION (2011–15) ⁽¹⁾



	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⁾

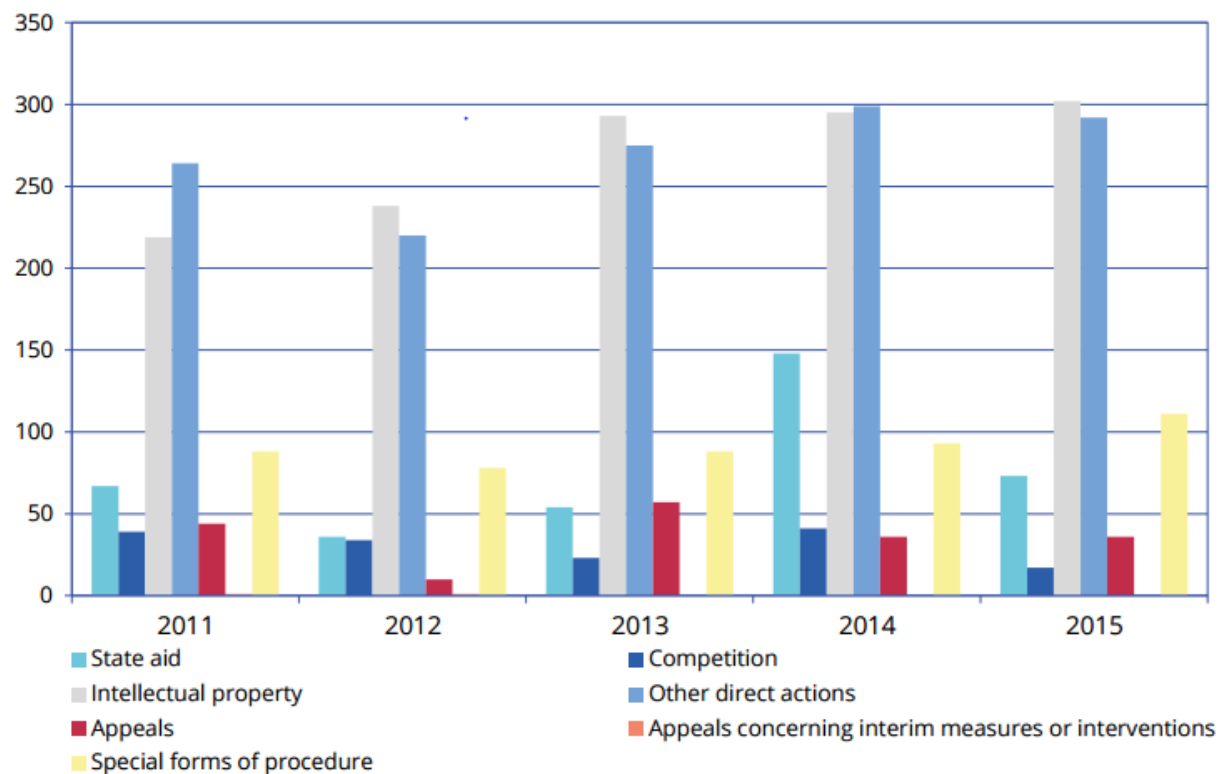
(JUDGMENTS AND ORDERS INVOLVING A JUDICIAL DETERMINATION)



	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

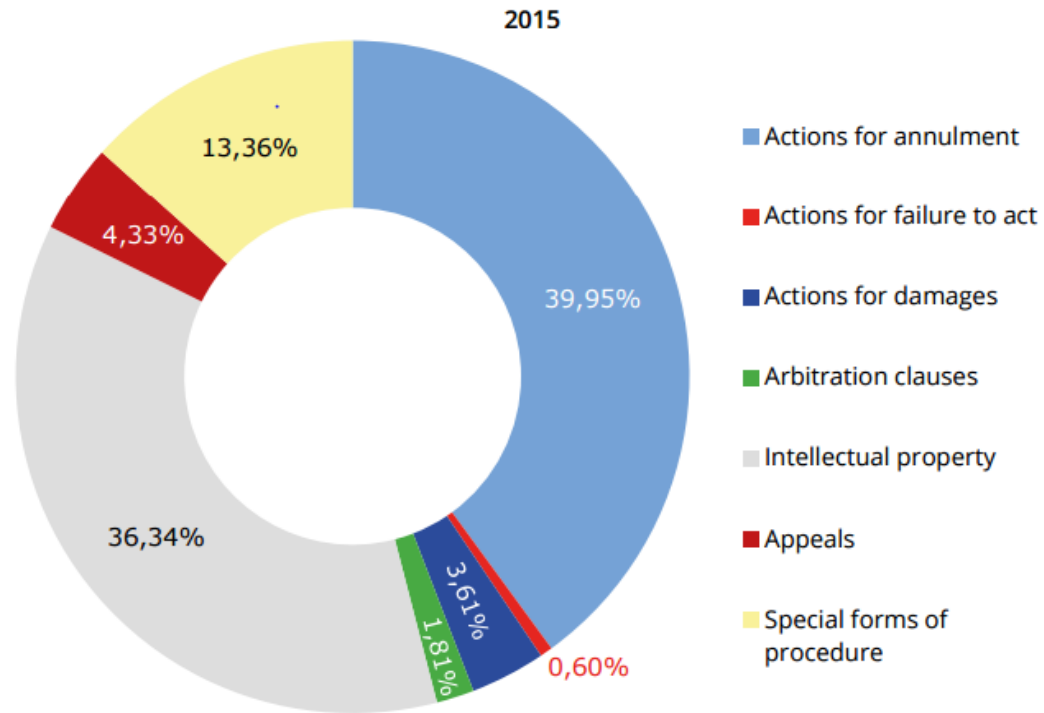
General Court (Annual Report 2015)

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



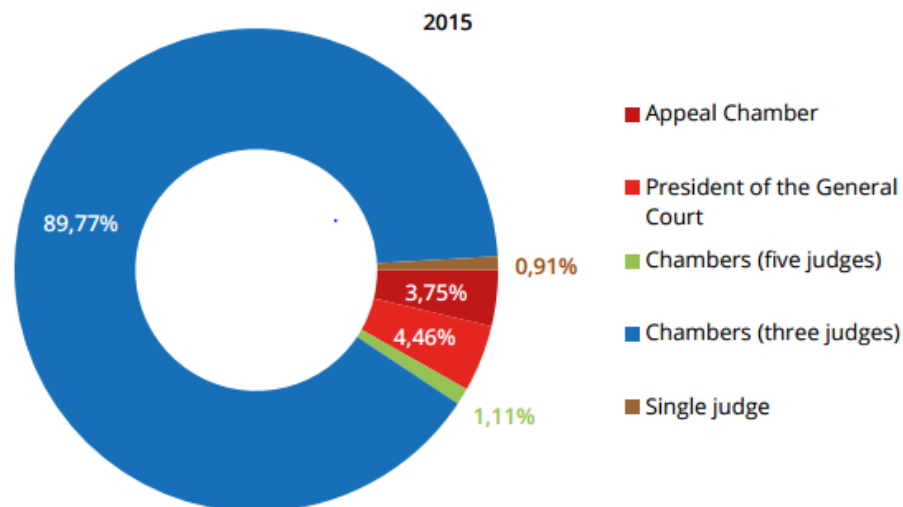
	2011	2012	2013	2014	2015
State aid	67	36	54	148	73
Competition	39	34	23	41	17
Intellectual property	219	238	293	295	302
Other direct actions	264	220	275	299	292
Appeals	44	10	57	36	36
Appeals concerning interim measures or interventions	1	1			
Special forms of procedure	88	78	88	93	111
Total	722	617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

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



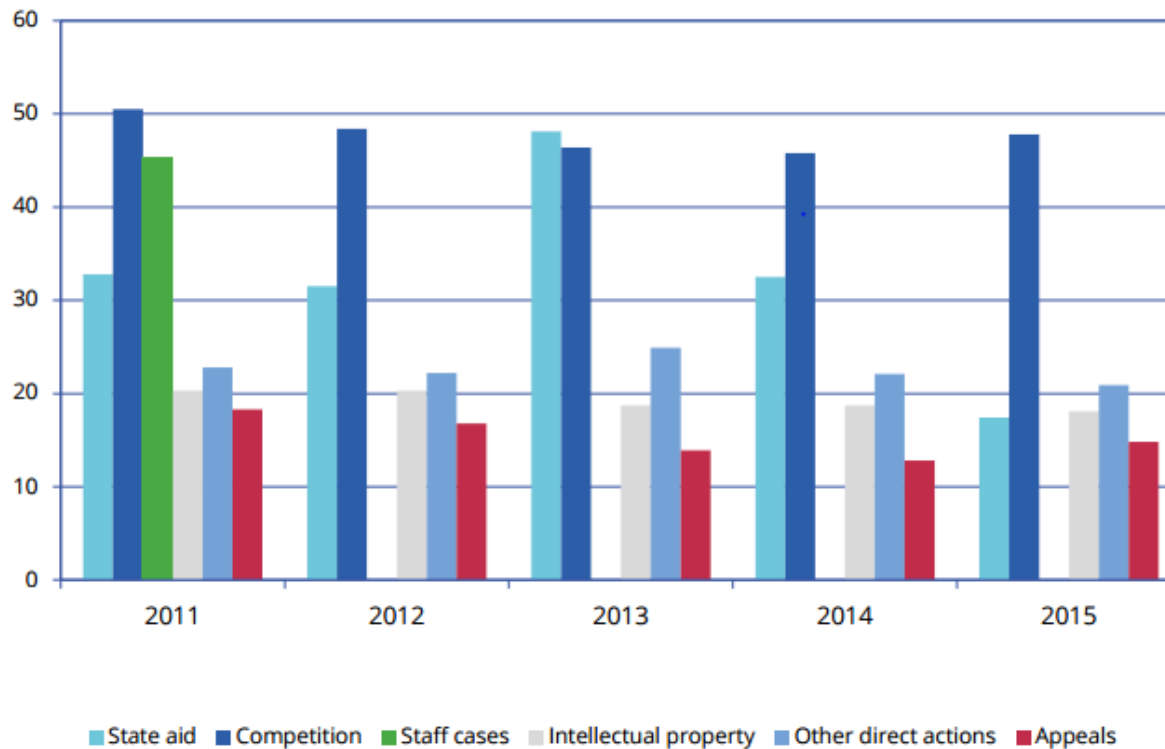
	2011	2012	2013	2014	2015
Actions for annulment	341	257	319	423	332
Actions for failure to act	8	8	12	12	5
Actions for damages	16	17	15	39	30
Arbitration clauses	5	8	6	14	15
Intellectual property	219	238	293	295	302
Appeals	44	10	57	36	36
Appeals concerning interim measures or interventions	1	1			
Special 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

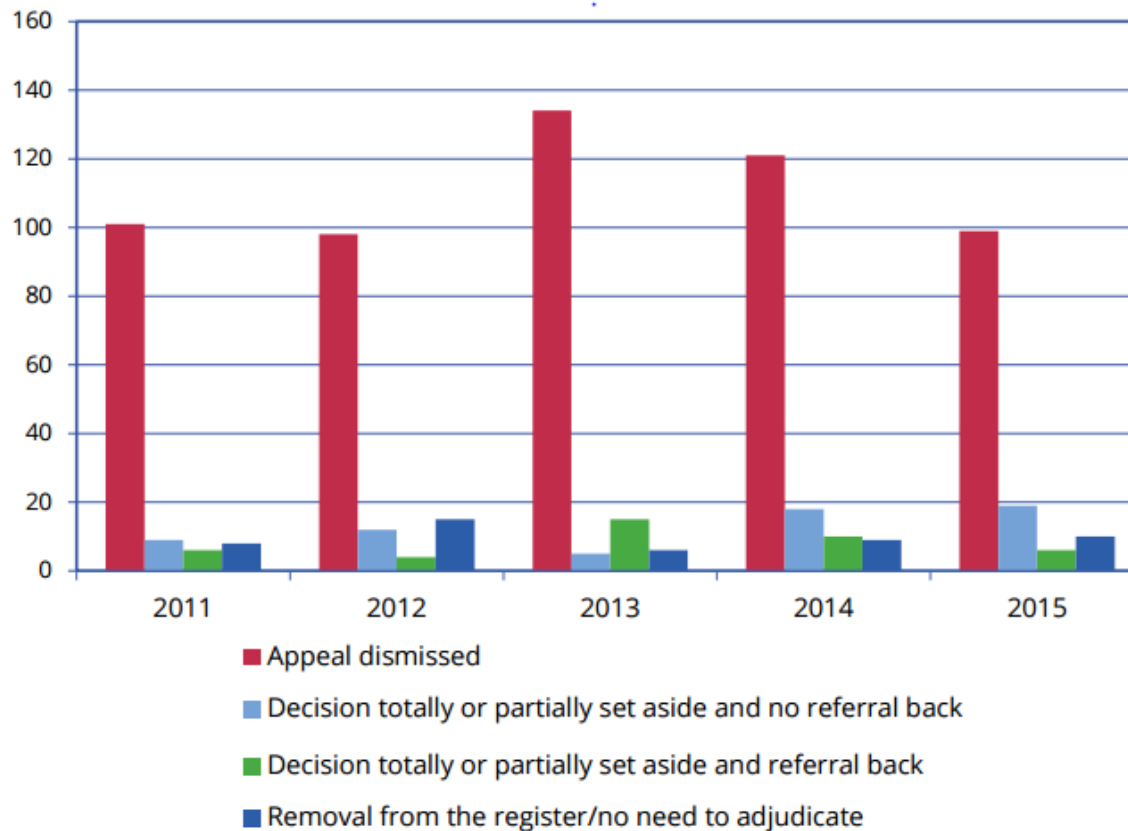
9. COMPLETED CASES — DURATION OF PROCEEDINGS IN MONTHS
(2011–15) ⁽¹⁾
(JUDGMENTS AND ORDERS)



	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)

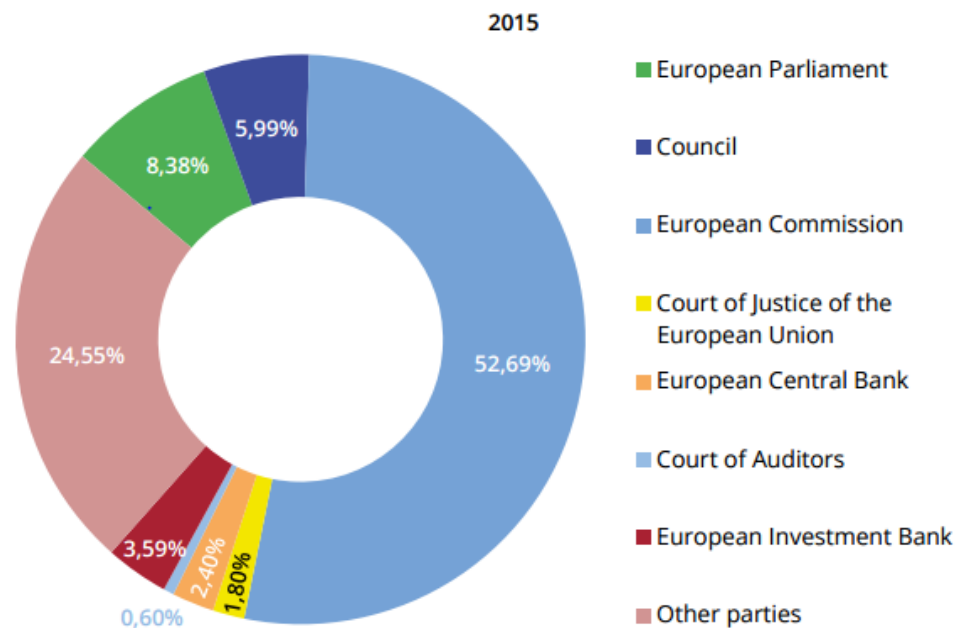
(JUDGMENTS AND ORDERS)



	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)

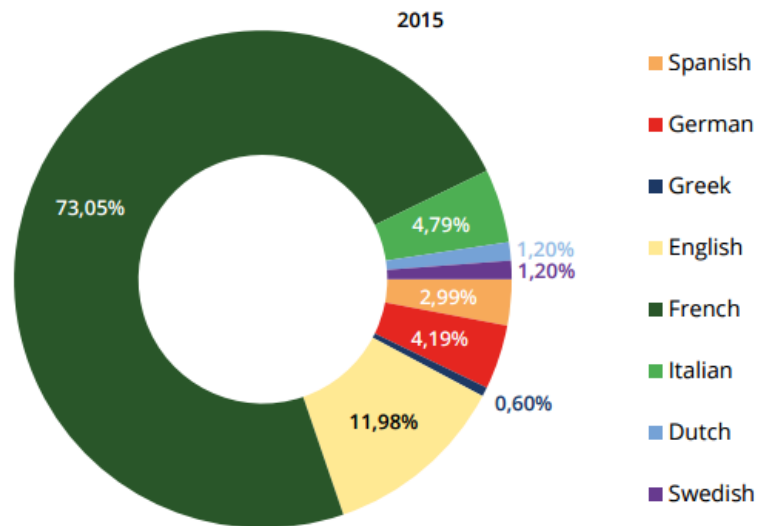
2. NEW CASES — PERCENTAGE OF THE NUMBER OF CASES PER PRINCIPAL DEFENDANT INSTITUTION (2011–15)



	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%

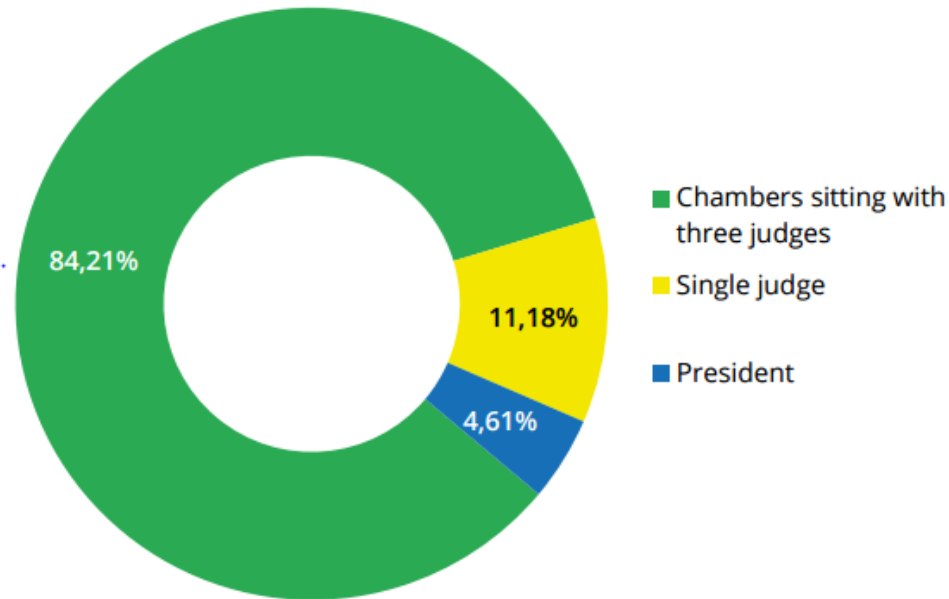
3. NEW CASES — LANGUAGE OF THE CASE (2011–15)

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



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.”







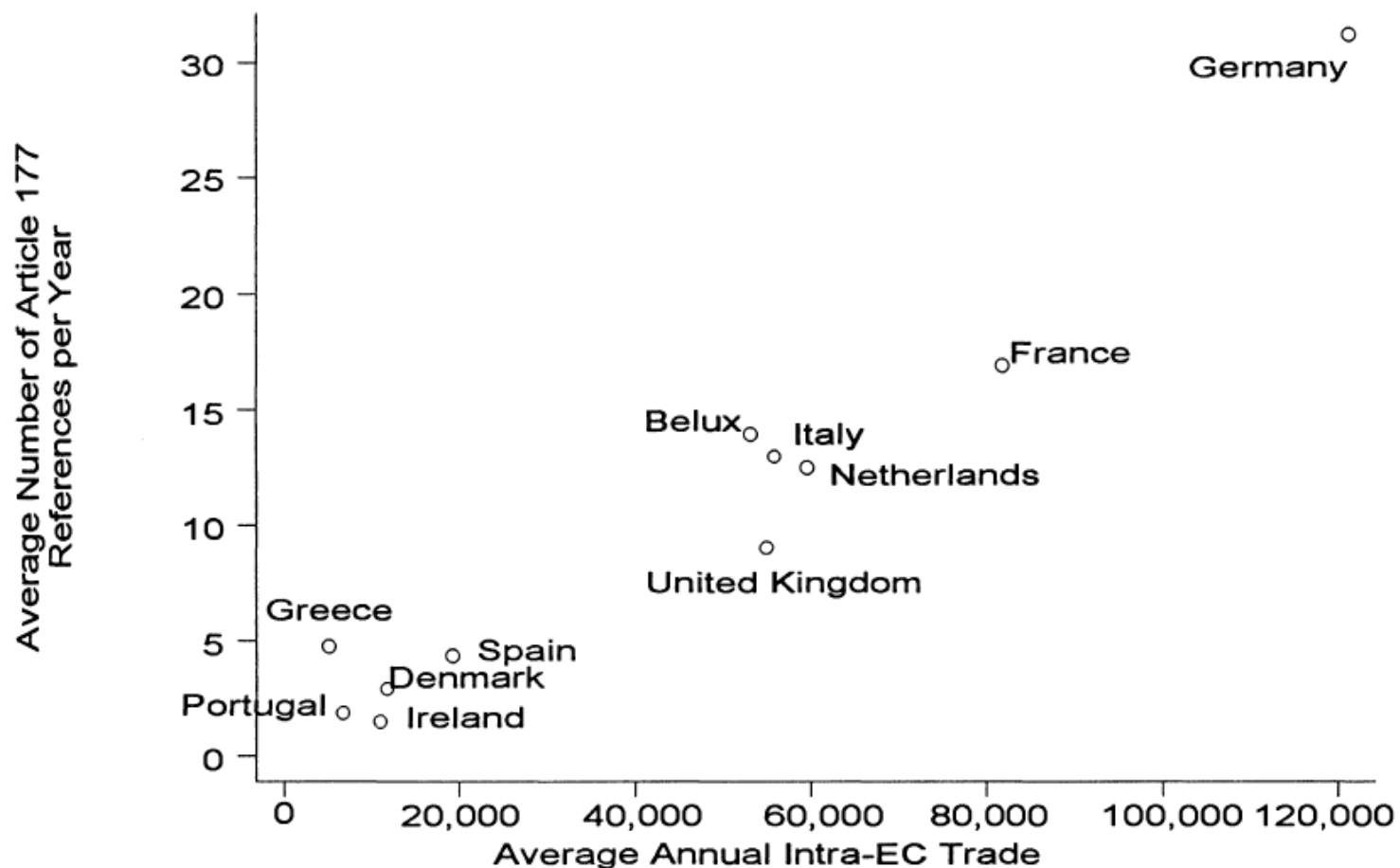
Inauguration du Nouveau Palais en 2008

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

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

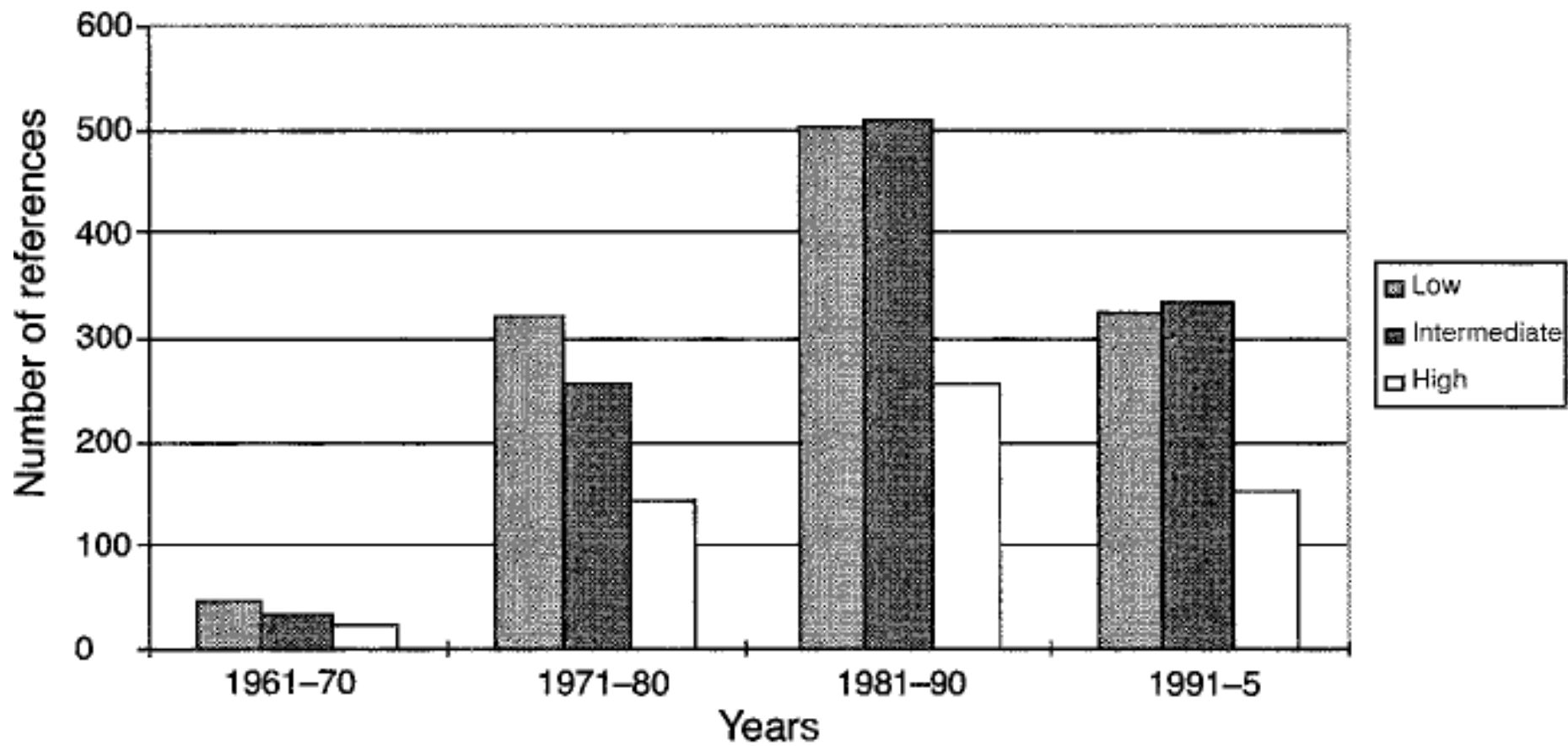
<i>Country</i>	<i>1970–79</i>	<i>1980–89</i>	<i>1990–98</i>
<i>France</i>	8.6	28.2	22.56
<i>Belgium</i>	7.8	14.7	18.22
<i>Netherlands</i>	10.8	18.5	17.33
<i>Germany</i>	27.5	34.6	47.44
<i>Italy</i>	8.4	12.4	34.11
<i>Luxembourg</i>	0.4	1.7	1.67
<i>Denmark</i>	0.86	2.5	4.89
<i>Ireland</i>	0.86	1.5	1.44
<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 2. Intra-EC Trade and Average Number of Article 177 References



Source: Trade data are from *Eurostat: External Trade 1958–93*, Brussels: EC Publications, 1995. The source for article 177 references is data collected by the authors and the ECJ.

Note: For each member-state, the total number of Article 177 references was divided by the number of years in which that member-state has been making references to the ECJ. Belux is Belgium and Luxembourg combined. Trade figures are the annual average of intra-EC imports and exports for each member-state measured in Ecu (European currency unit), 1960–93. The regression equation is $y = .2105 + .0002247(\text{Trade}) + e$. Adjusted $R^2 = .92$, $n = 11$, and the $SEE = 2.46$. The t -statistics are .178 for the constant and 10.8 for intra-EC trade.



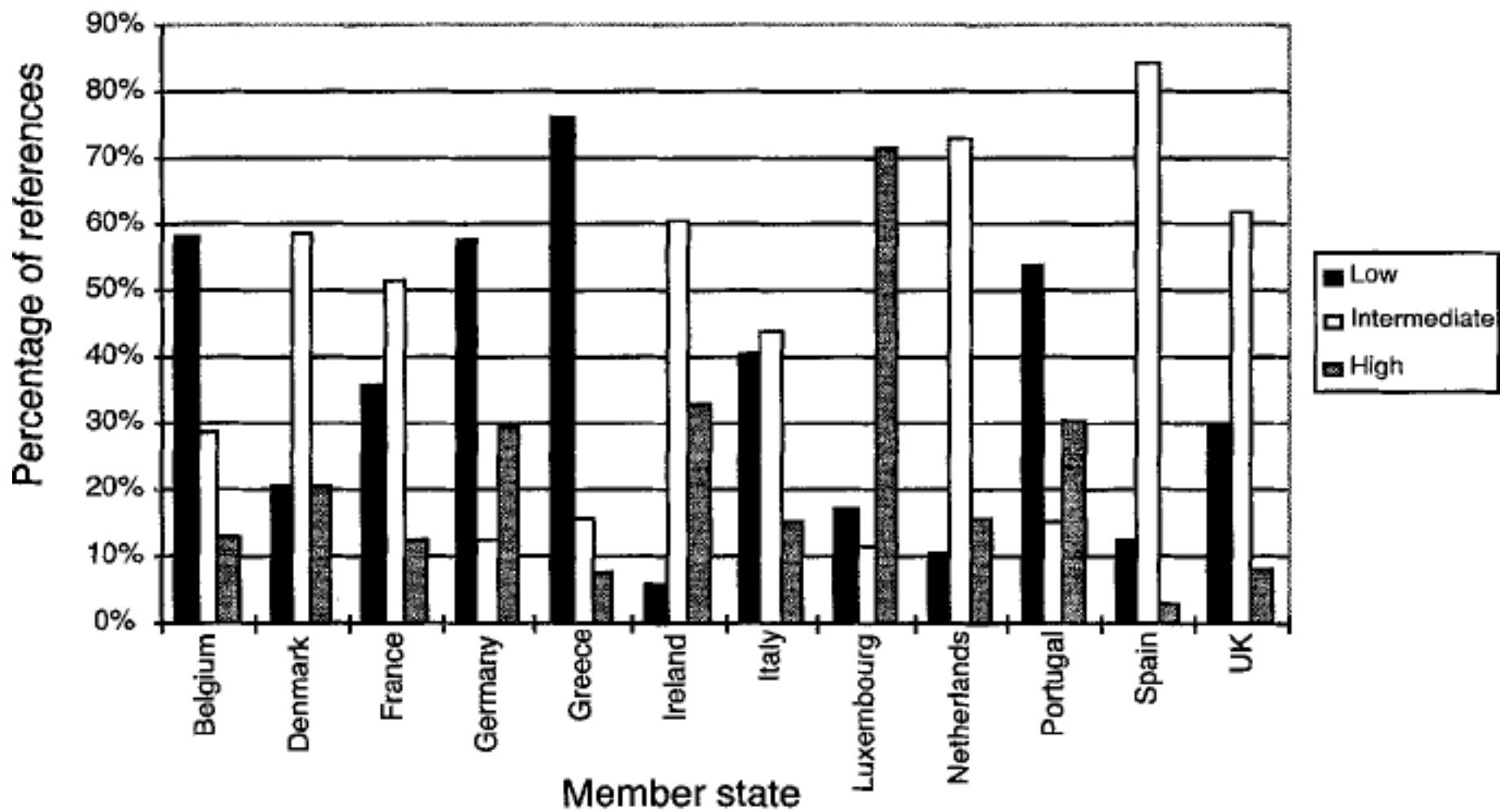
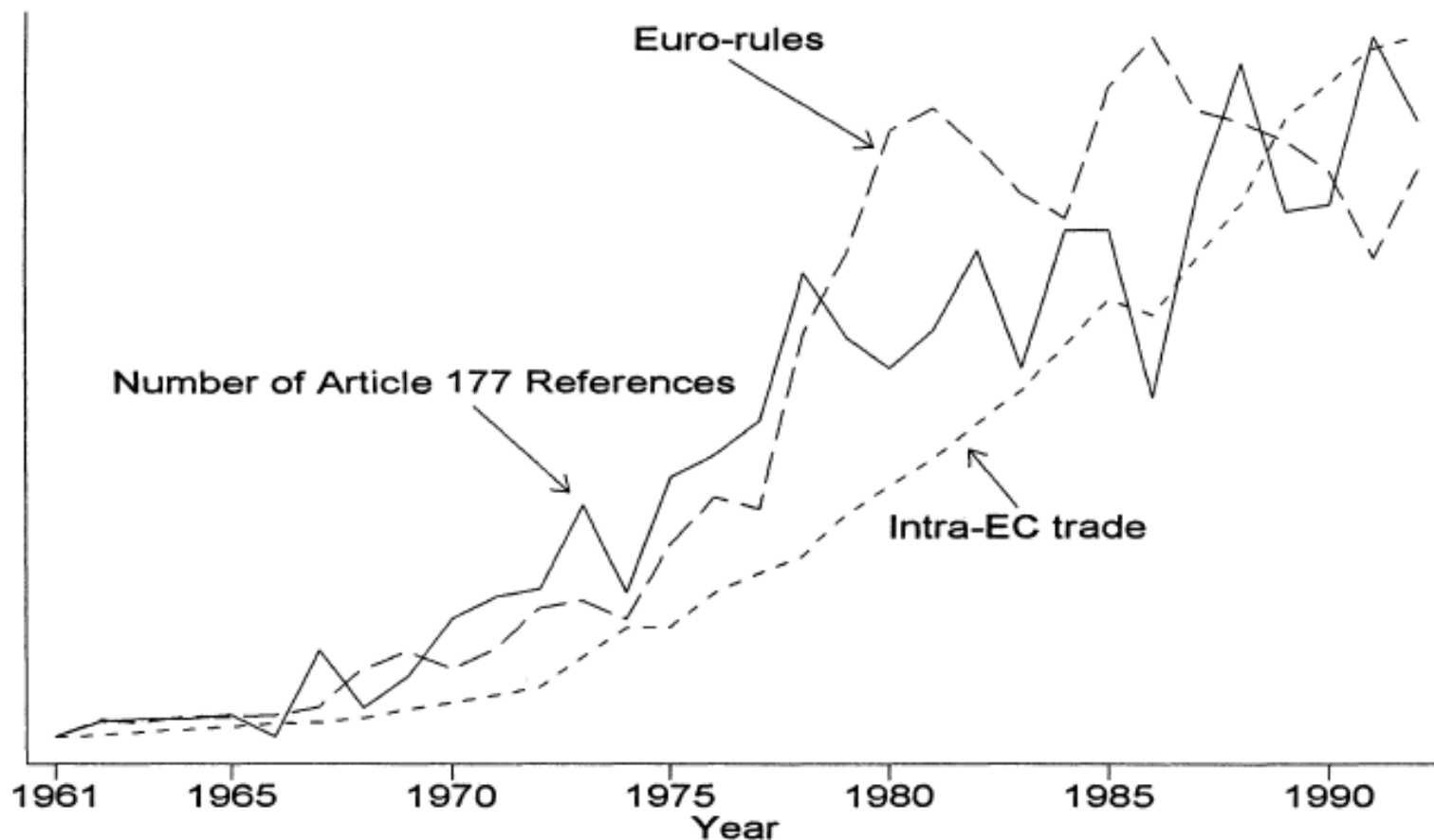


FIGURE 5. Annual Levels of Intra-EC Trade, Euro-rules, and Article 177 References



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.

Court of Justice

- Direct effect – *Van Gend en Loos*
- Supremacy – *Costa v ENEL*
- Competences

Article 352 (ex Article 308 TEC)

1. If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures. Where the measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament.

2. Using the procedure for monitoring the subsidiarity principle referred to in Article 5(3) of the Treaty on European Union, the Commission shall draw national Parliaments' attention to proposals based on this Article.

3. Measures based on this Article shall not entail harmonisation of Member States' laws or regulations in cases where the Treaties exclude such harmonisation.

4. This Article cannot serve as a basis for attaining objectives pertaining to the common foreign and security policy and any acts adopted pursuant to this Article shall respect the limits set out in Article 40, second paragraph, of the Treaty on European Union.