

Brno, 16 October 2023

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ECJ



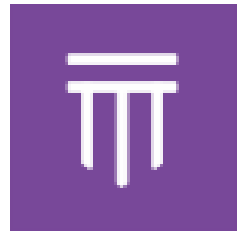
**JUSTIN**  
Judicial Studies Institute  
Masaryk University

| Katarína Šipulová



# OUTLINE

1. The Role and Composition of the CJEU
2. EU Law and Principle of Conferral
3. The Problem with Competences
4. Core Proceedings before the CJEU
5. Fundamental Principles of the EU Law



# 1. CJEU



# ECJ and European Integration

- Conventional prototype of courts
  - Independent courts
  - Decide cases on the basis of preexisting rules
  - Adversary procedure, dichotomous ruling (i.e. winners x losers)
    - who are the parties?
- Appeal
- Triadic resolution of conflicts

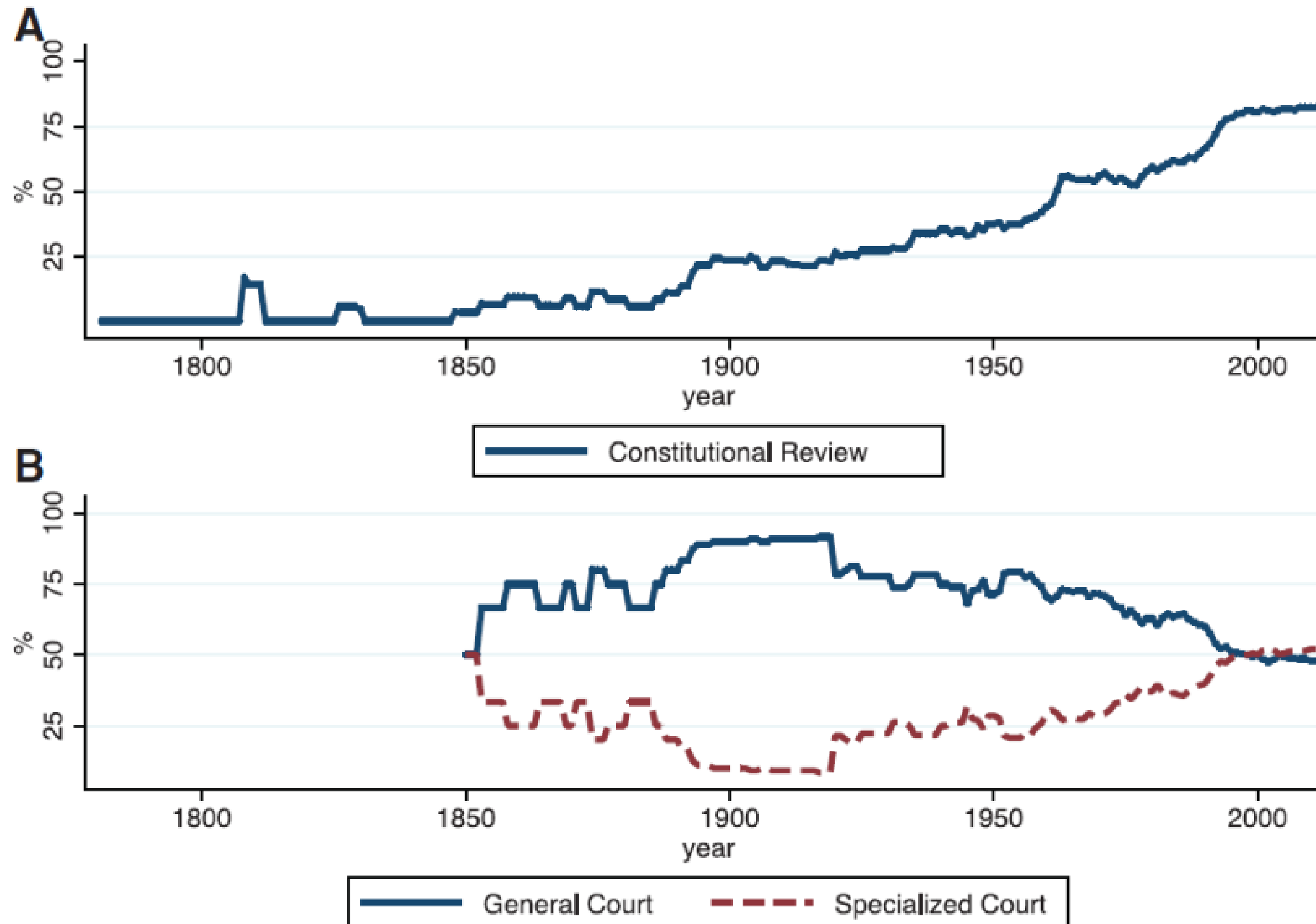
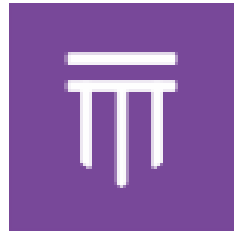
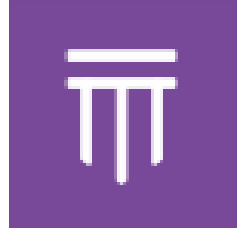


Figure 1. (A and B) The Spread of Constitutional Review. Note: Because there are so few cases of judicial review adoption prior to 1850, Panel B only starts in 1850, so that we do not show strong fluctuations that do not represent actual trends.



# Why are states willing to have independent judicial review?

## Theories

- Ideational
- Strategic
- Diffusion of norms



# Questions about courts

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



# Questions about courts

- **Strategic approach** ([Epstein – Knight](#))
- **Behavioral 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.”





# Court of Justice of the European Union

- Court of Justice
- General Court (Court of First Instance, CFI 1988)
- Civil Service Tribunal (2004, 2016 -> GC)
  
- Why not Supreme Court, High Court, etc.?





# Court of Justice - 2022







# Court of Justice - 1952





# Court of Justice of the European Union

- [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.”*





# Composition CoJ

- Luxembourg
- 27 judges
- 11 advocate generals
- Registrar
  
- Grand chamber
- Chamber of 3
- Chamber of 5
- Full sitting



# Core principles

- Direct effect
- (Su)premacy
- State liability
- Fundamental rights



# CJEU Annual Report 2022



budget: EUR: **465** million



**81** judges



**11** Advocates General

from the

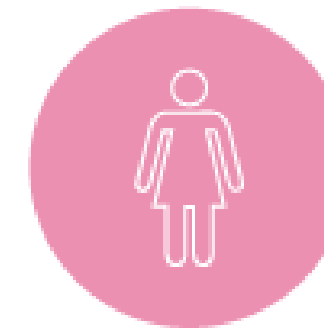
**27**

Member States



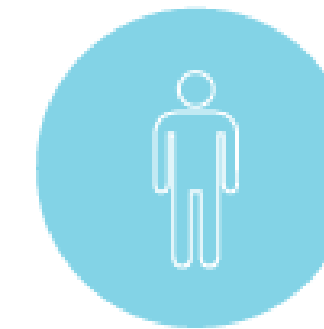
**2 254**

officials and other staff



**60%**

**1 361** women



**40%**

**893** men

The representation of women in positions of responsibility within the administration means that the Court exceeds the average for the European institutions.

Women hold:

**54%** of administration posts

**40%** of middle and senior management posts



# CJEU Annual Report 2022

## The judicial year (Court of Justice and General Court)



**1 710**  
cases brought



**1 666**  
cases resolved



**2 585**  
pending cases

**173 288** procedural documents entered  
in the registers of the Registries

Average duration of proceedings: **16.3** months

**16.4** month for the **Court of Justice**    **16.2** months for the General Court

Percentage of procedural documents lodged via e-Curia:



**87%** Court of Justice



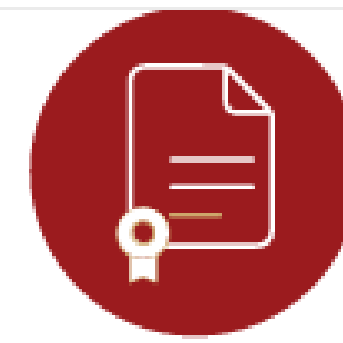
**94%** General Court

**9 365** e-Curia accounts





# CJEU Annual Report 2022



**808**  
cases resolved

**564** preliminary ruling procedures including **7** PPU

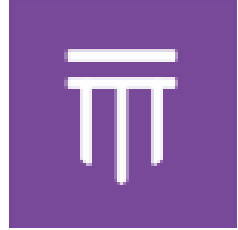
**36** direct actions including **17** failures to fulfil obligations found against **12** Member States

**196** appeals against decisions of the General Court including **38** in which the decision adopted by the General Court was set aside

**1** opinion

Average duration of proceedings: **16.4** months

Average duration of urgent preliminary ruling proceedings: **4.5** months



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Member States from which the most requests originate:

Germany:	98
Italy:	63
Bulgaria:	43
Spain:	41
Poland:	39

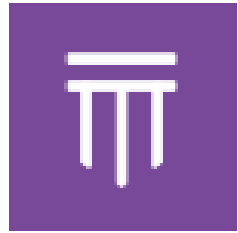


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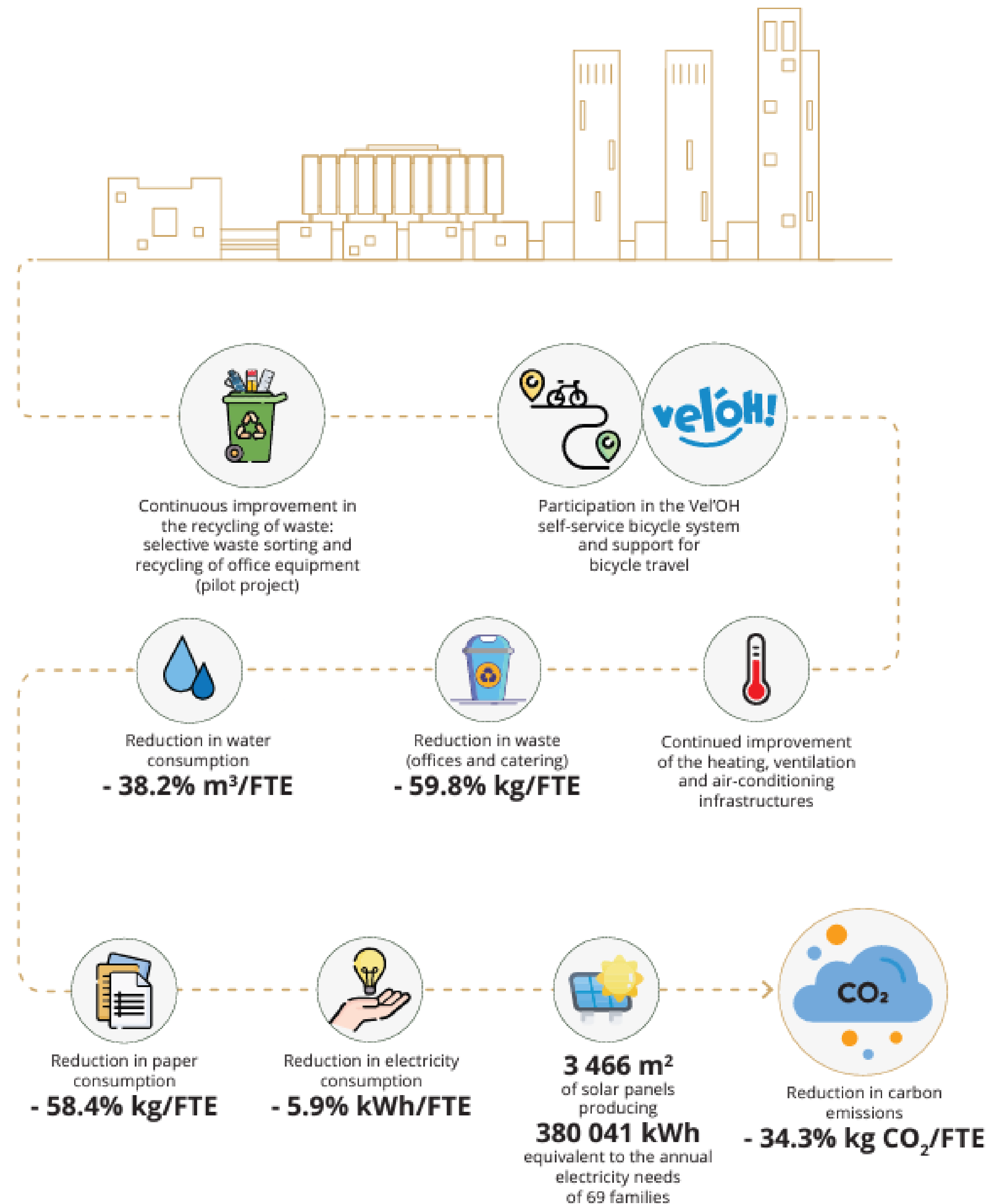
cases pending as of  
31 December 2022

## Principal matters dealt with:

State aid	58
Competition	64
Law governing the institutions	38
Environment	46
Area of Freedom, Security and Justice	132
Taxation	80
Social policy	73
Intellectual property	33
Consumer protection	77
Approximation of laws	89
Transport	49



# CJEU Annual Report 2022





# CJEU



**24** languages of the case

**552** language combinations

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**612** lawyer-linguists to translate written documents

**1 281 000** pages to be translated

**1 279 000** pages translated

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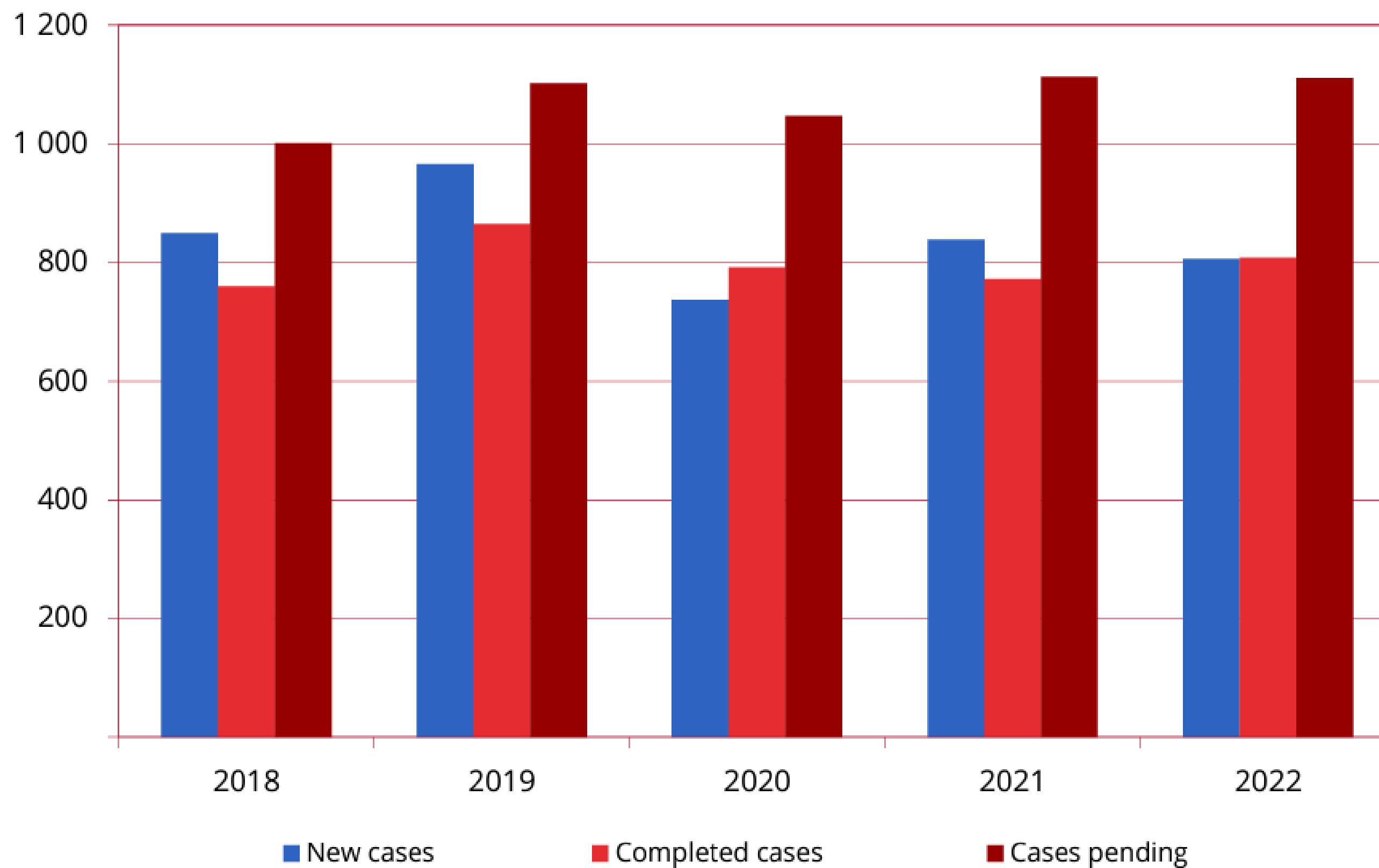
**71** interpreters for hearings and meetings

**526** hearings and meetings with simultaneous interpretation

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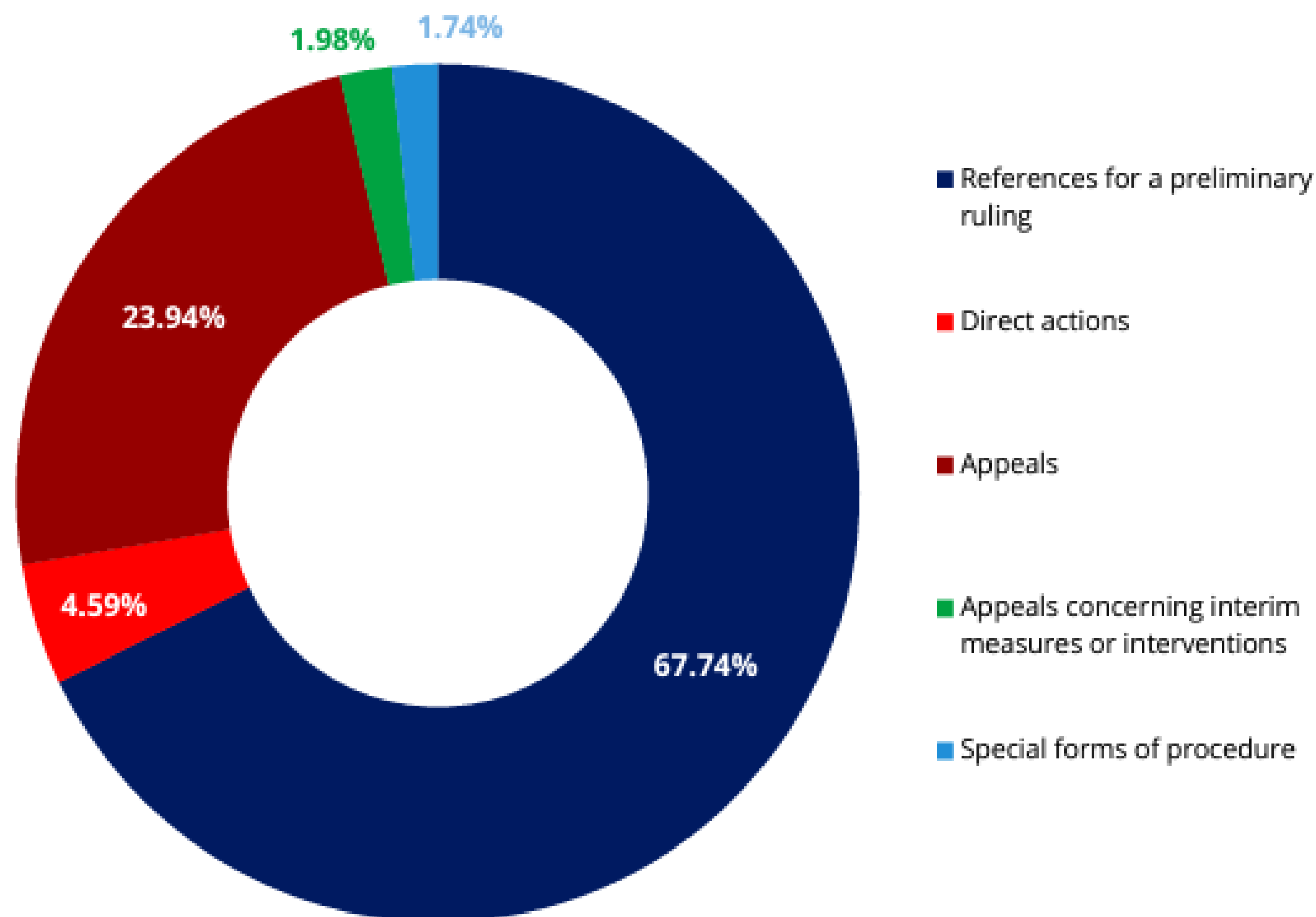
## I. General activity of the Court of Justice – New cases, completed cases, cases pending (2018-2022)





# CJEU

2022



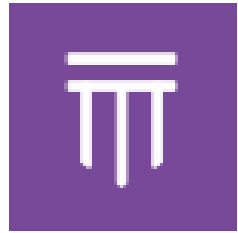
	2018	2019	2020	2021	2022
References for a preliminary ruling	568	641	557	567	546
Direct actions	63	41	38	29	37
Appeals	193	256	125	223	193
Appeals concerning interim measures or interventions	6	10	6	9	16
Requests for an opinion		1	1		
Special forms of procedure <sup>1</sup>	19	17	10	10	14
<b>Total</b>	<b>849</b>	<b>966</b>	<b>737</b>	<b>838</b>	<b>806</b>
Applications for interim measures	6	6	3	8	4



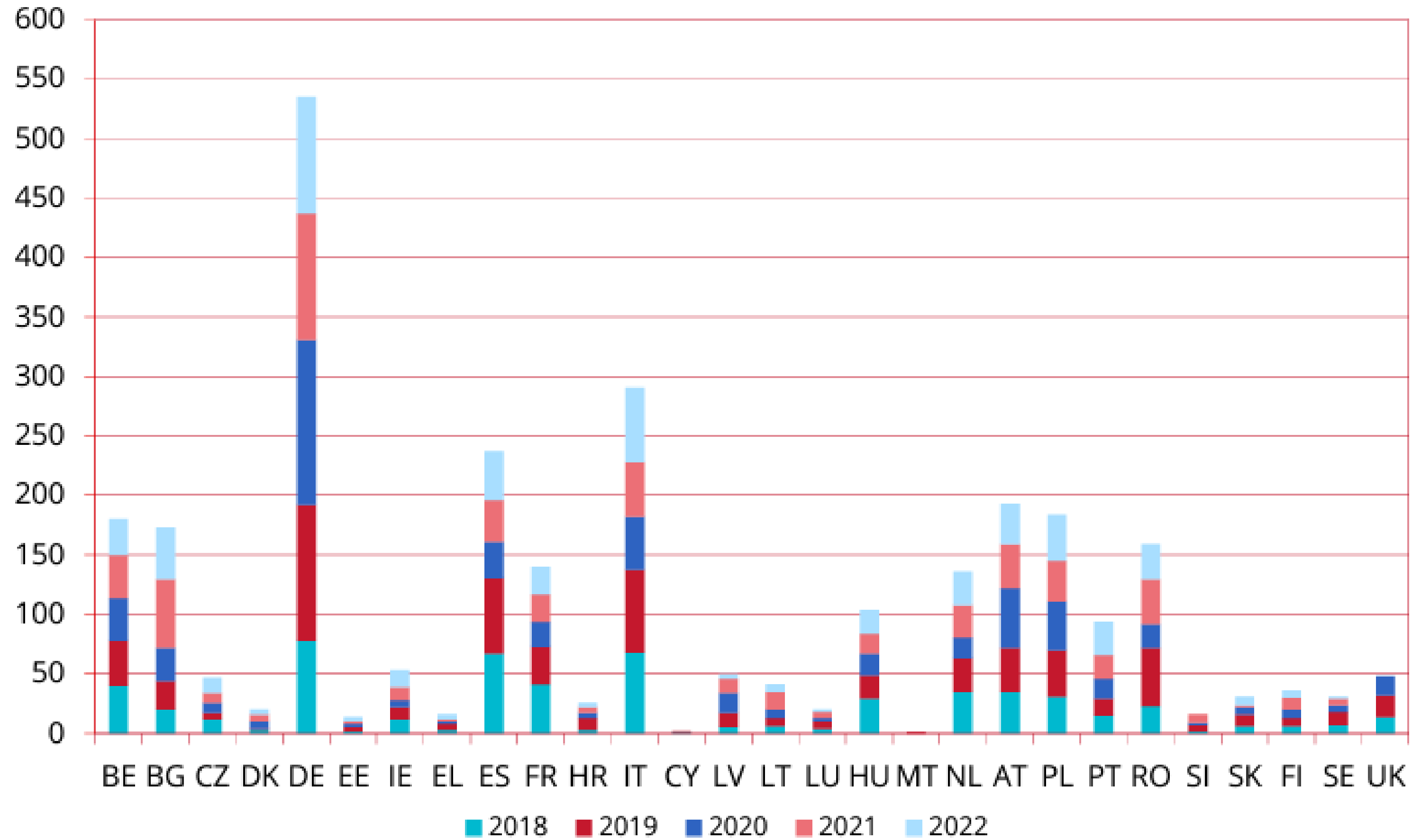
# CJEU

### III. New cases – Subject matter of the action (2018-2022)

	2018	2019	2020	2021	2022
Access to documents	10	5	1	4	4
Agriculture	26	24	15	19	25
Approximation of laws	53	30	35	63	53
Arbitration clause	2	3	1	3	2
<b>Area of freedom, security and justice</b>	<b>82</b>	<b>107</b>	<b>96</b>	<b>106</b>	<b>95</b>
Citizenship of the Union	6	8	11	14	7
Commercial policy	5	10	8	5	10
Common fisheries policy	1	1	2	2	2
Common foreign and security policy	7	19	1	6	4
Company law	2	3	1	2	1
Competition	25	42	16	26	30
<b>Consumer protection</b>	<b>41</b>	<b>72</b>	<b>37</b>	<b>53</b>	<b>53</b>
Customs union and Common Customs Tariff	13	18	19	11	10
Economic and monetary policy	3	11	12	12	16
Economic, social and territorial cohesion	1	1	2	3	2
Education, vocational training, youth and sport				2	
Employment			1	1	
Energy	12	6	7	3	7
<b>Environment</b>	<b>50</b>	<b>47</b>	<b>23</b>	<b>23</b>	<b>35</b>
European Regional Development Fund					1
External action by the European Union	4	4	4	6	5
Financial provisions (budget, financial framework, own resources, combating fraud and so forth)	6	8	7	6	2
Free movement of capital	9	6	9	4	8
Free movement of goods	4	8	5	3	1
Freedom of establishment	7	8	23	9	15
Freedom of movement for persons	19	40	14	11	17
Freedom to provide services	37	12	10	11	22
Industrial policy	4	7	1	1	2
<b>Intellectual property</b>	<b>92</b>	<b>74</b>	<b>51</b>	<b>83</b>	<b>49</b>
Law governing the institutions	34	38	27	39	32
Principles of EU law	29	33	30	28	15
Public health	4	6	4	10	12
Public procurement	28	27	13	21	26
Registration, evaluation, authorisation and restriction of chemicals (REACH Regulation)	1	3		5	2
Research and technological development and space	1				
<b>Social policy</b>	<b>46</b>	<b>41</b>	<b>33</b>	<b>46</b>	<b>47</b>
Social security for migrant workers	14	2	6	7	7
State aid	26	59	18	42	25
<b>Taxation</b>	<b>71</b>	<b>73</b>	<b>64</b>	<b>54</b>	<b>62</b>
Trans-European networks				1	
Transport	39	54	99	52	38
<b>TFEU</b>	<b>814</b>	<b>910</b>	<b>706</b>	<b>797</b>	<b>744</b>
Protection of the general public	1	1			3
Safety control	1				
<b>Euratom Treaty</b>	<b>2</b>	<b>1</b>			<b>3</b>
Principles of EU law	1	1			1
<b>EU Treaty</b>	<b>1</b>	<b>1</b>			<b>1</b>
Citizenship of the Union					1
Law governing the institutions				2	1
<b>UK Withdrawal Agreement</b>				<b>2</b>	<b>2</b>
Law governing the institutions	2			1	1
Privileges and immunities	2	3	2		1
Principles of EU law					2
Procedure	12	16	10	7	16
Staff Regulations	16	35	19	31	36



## V. New cases – References for a preliminary ruling by Member State (2018-2022)

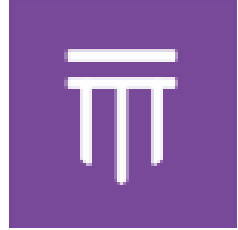




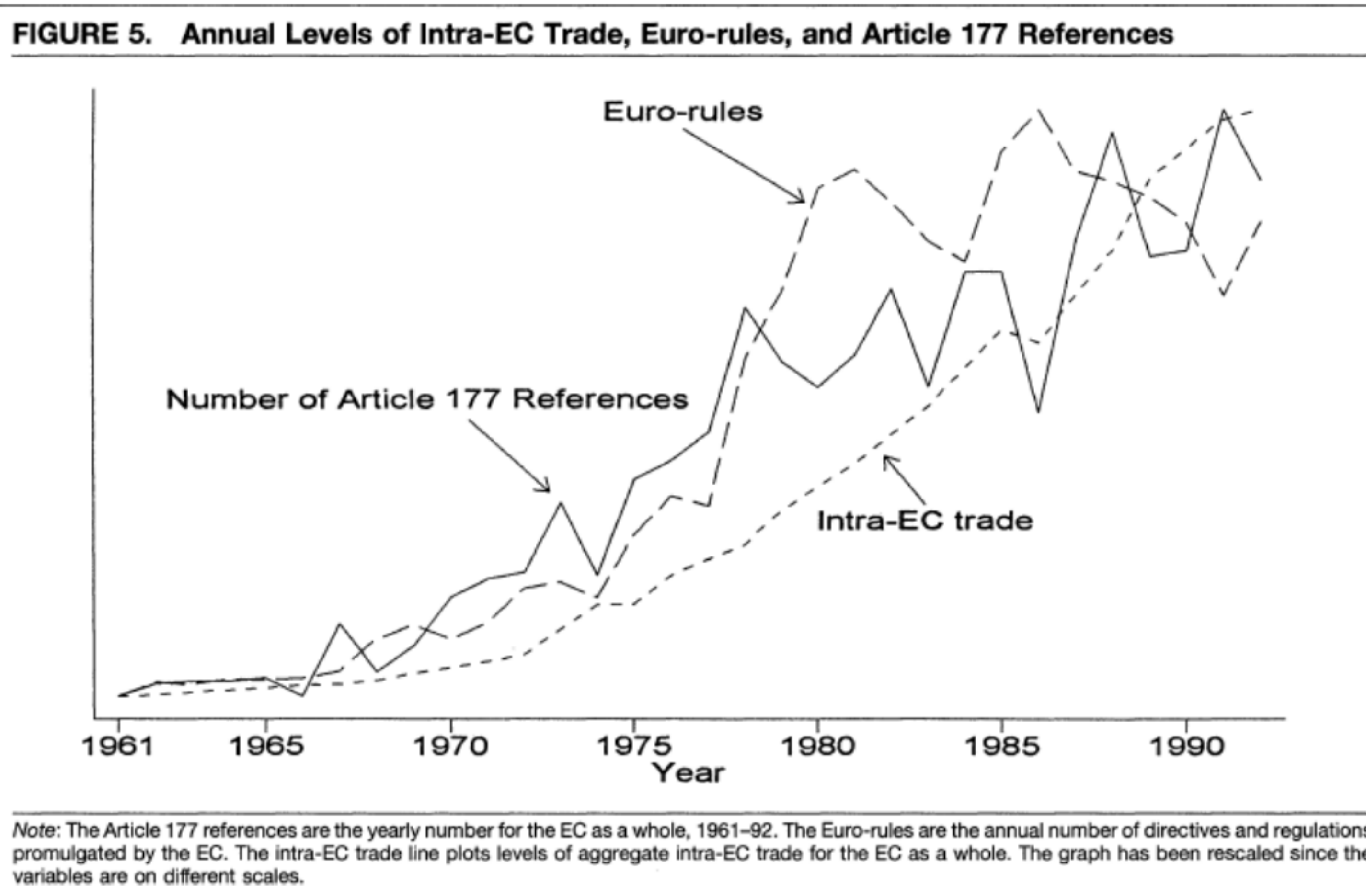


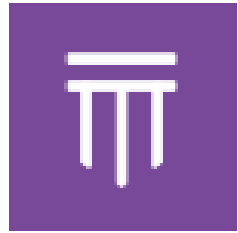
**TABLE 1.** *Average number of preliminary references by county and decade*

<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



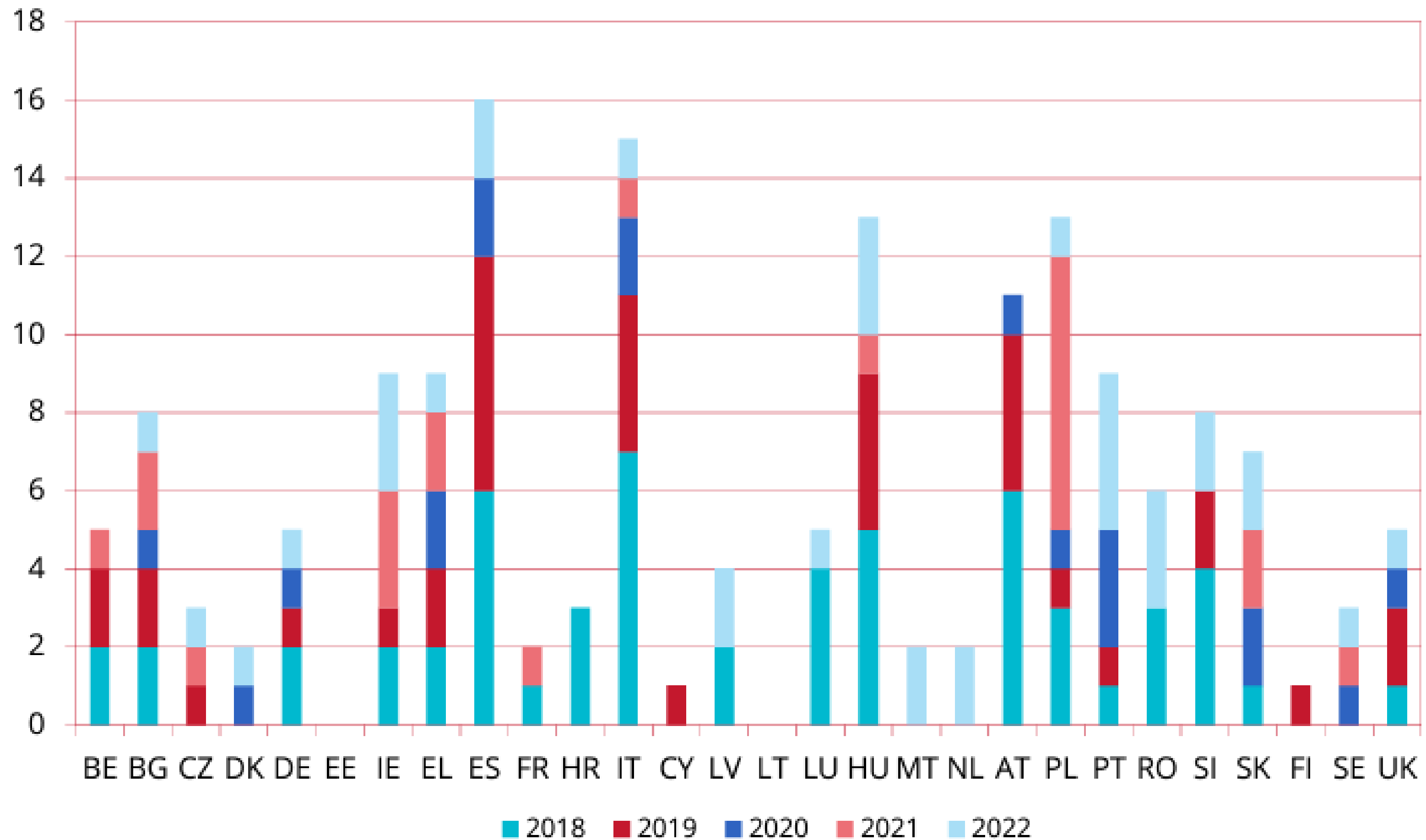
# CJEU

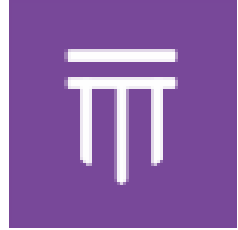




# CJEU

## VI. New cases – Actions for failure of a Member State to fulfil its obligations (2018-2022)

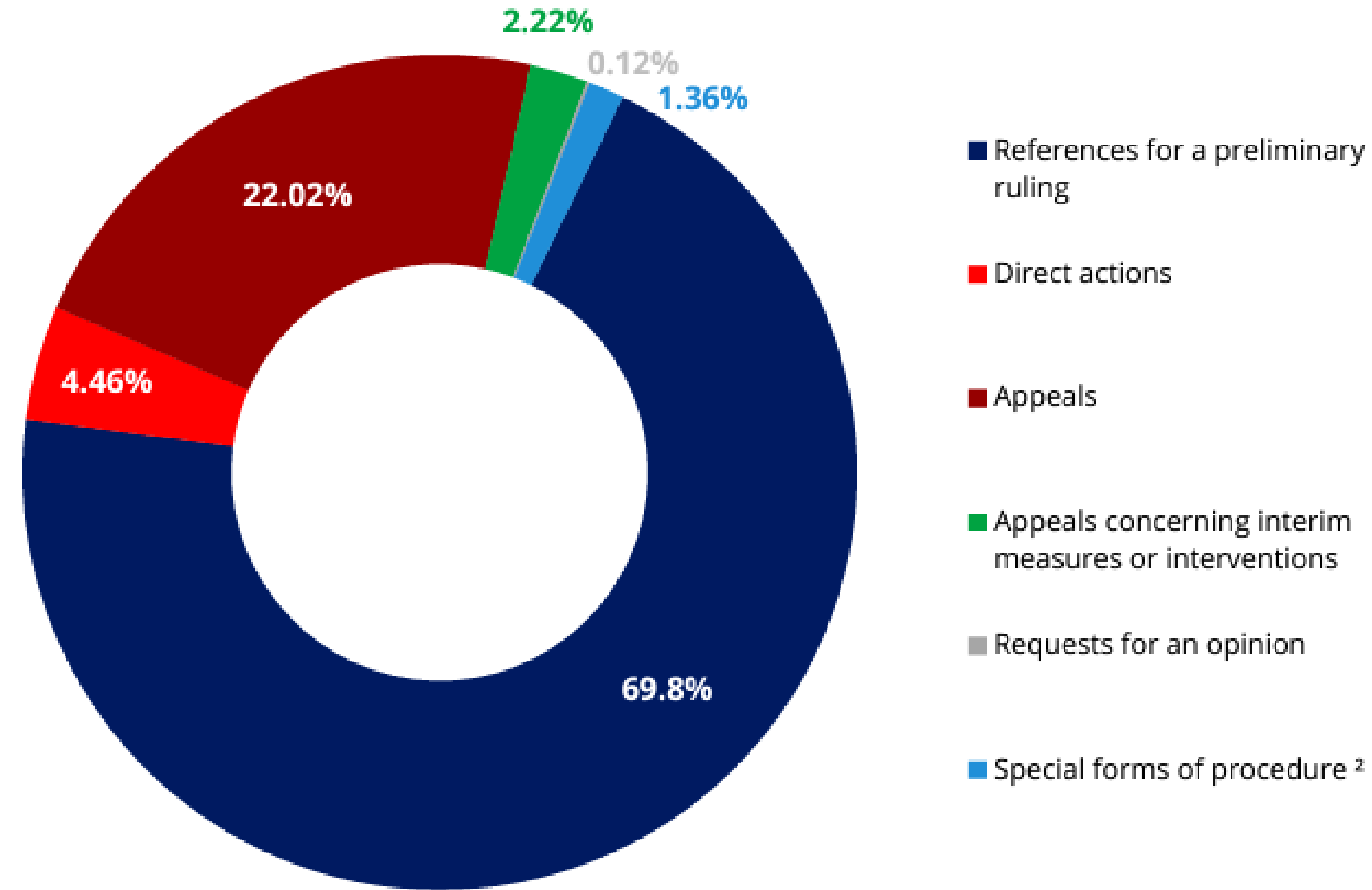




CJEU

VII. Completed cases – Nature of proceedings (2018-2022) <sup>1</sup>

2022



	2018	2019	2020	2021	2022
References for a preliminary ruling	520	601	534	547	564
Direct actions	60	42	37	30	36
Appeals	155	204	194	177	178
Appeals concerning interim measures or interventions	10	6	10	6	18
Requests for an opinion		1		1	1
Special forms of procedure <sup>2</sup>	15	11	17	11	11
<b>Total</b>	<b>760</b>	<b>865</b>	<b>792</b>	<b>772</b>	<b>808</b>

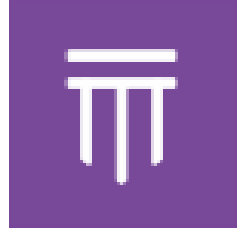


# How to Read a Legal Opinion

- [Orin KERR: How to Read a Legal Opinion](#)
- **Caption** Costa v ENEL
- **Case Citation** European Court of Justice, Judgment of 15 July 1964, Cost a / E.N.E.L.
- **Author** The Court: A.M. Donner, President, Ch.L. Hammes and A. Trabucchi, Presidents of Chambers, L. Delvaux and R. Lecourt (rapporteur), judges; Advocate-general: K. Roemer; Registrar: A Van Houtte
- **Facts of the Case**
- **Law of the Case**
- **Separate (Concurring and/or Dissenting Opinions)**



## 2. EU Law and Principle of Conferral



# EU Law

- Primary
  - Treaties (IL)
- Secondary
  - Directives
  - Regulations
  - Decisions
  - Opinions
- Tertiary
  - Recommendations, soft law



# Principle of Conferral

- JURISDICTION AREAS
  - 1. **No jurisdiction** of the EU
  - 2. **Autonomous jurisdiction** (authority) of the EU
  - 3. **Overlap of EU/member states authority**
- Principle of Conferral
  - *EU is not a sovereign, does not have inherent powers, but conferred competences (by Treaties)*





# How to Read a Legal Opinion

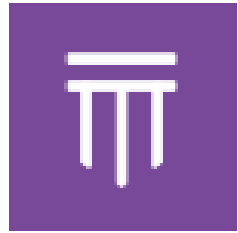
- Facts
- Legal Arguments by the Parties
- Disposition (the action the court took – affirm, reverse, etc.)
- Reasoning
  - Source of the law
  - Method of reasoning (following statute, precedent, public policy ground, morality)
- Significance of the Opinion
- Final ruling
- Separate Opinion



# Principle of Conferral

## *Article 5 (ex Article 5 TEC)*

1. The limits of Union competences are governed by **the principle of conferral**. The use of Union competences is governed by the **principles of subsidiarity and proportionality**.
2. Under the principle of conferral, the Union shall act only **within the limits of the competences conferred upon it by the Member States** in the Treaties to attain the objectives set out therein. Competences **not conferred upon** the Union in the Treaties **remain with the Member States**.
3. Under the **principle of subsidiarity**, in areas which do not fall within its exclusive competence, the Union shall act **only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States**, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. (...).
4. Under the **principle of proportionality**, the content and form of Union action shall not exceed what is **necessary to achieve the objectives** of the Treaties. (...)



# EU Competences

- Why is it important? Compared to national parliament, if EU legislates, it needs to justify its authority to do so
- EU does not have **INHERENT** powers, they must be *conferred*
- *i.e. constitutional principle of conferral*
- Legislative competence = material field within which an authority (EU) can act (legislate)
- Problem: instead of list, different types of competences in individual policies

Table 3.1 Union Policies and Internal Actions

Part III TFEU - Union Policies and Internal Actions			
Title I	The Internal Market	Title XIII	Culture
Title II	Free Movement of Goods	Title XIV	Public Health
Title III	Agriculture and Fisheries	Title XV	Consumer Protection
Title IV	Free Movement of Persons, Services and Capital	Title XVI	Trans-European Networks
Title V	Area of Freedom, Security and Justice	Title XVII	Industry
Title VI	Transport	Title XVIII	Economic, Social and Territorial Cohesion
Title VII	Common Rules on Competition, Taxation and Approximation of Laws	Title XIX	Research and Technological Development and Space
Title VIII	Economic and Monetary Policy	Title XX	Environment
Title IX	Employment	Title XXI	Energy
Title X	Social Policy	Title XXII	Tourism
Title XI	The European Social Fund	Title XXIII	Civil Protection
Title XII	Education, Vocational Training, Youth and Sport	Title XXIV	Administrative Cooperation

Article 192
The European Parliament and the Council, acting in accordance with the ordinary legislative procedure ... shall decide what action is to be taken by the Union in order to achieve the objectives referred to in Article 191.

Title XX - Environment
Article 191 Aims and Objectives
Article 192 Legislative Competence
Article 193 Powers of the Member States





# EU Competences

- Understanding of these thematic competences further complicated by
  1. Spill-over into other policy areas (i.e. the list is not definitive)
  2. Rise of EU's general competences according to A 114 and A 352
    - These are two different additions to thematic competences EU has
  3. Doctrine of implied powers



# 1. Spill-over

- **1. Spill-over**
  - Follows from a soft conferral principle (EU has authority to interpret **whether it has a competence**)
  - The Working Time Directive (C-84/94), includes provision that allows the Union to ***encourage improvements, especially in the working environment, as regards the health and safety of workers.***
    - **Can EU adopt legislation on general organization of working time?**



# 1. Spill-over

Article 118a. [153 TFEU]

1. Member States shall pay particular attention to encouraging improvements, especially in the working environment, as regards the health and safety of workers, and shall set as their objective the harmonisation of conditions in this area, while maintaining the improvements made.

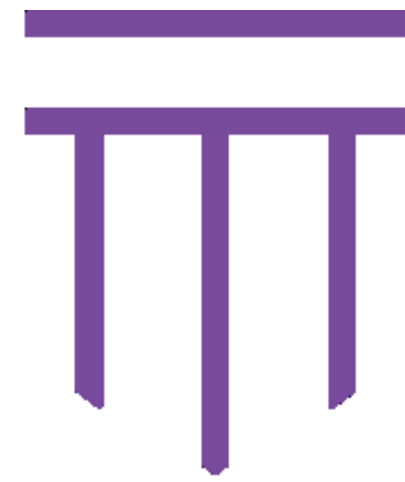
2. In order to help achieve the objective laid down in the first paragraph, the Council, acting in accordance with the procedure referred to in Article 189c and after consulting the Economic and Social Committee, shall adopt, by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States.

- **Can EU adopt legislation on general organization of working time?**



## EU Competences

There is nothing in the wording of Article [153 TFEU] to indicate that the concepts of “working environment”, “safety” and “health” as used in that provision should, in the absence of other indications, be interpreted restrictively, and not as embracing all factors, physical or otherwise, capable of affecting the health and safety of the worker in his working environment, including in particular certain aspects of the organization of working time.<sup>10</sup>



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