

## The Court of Justice of the European Communities

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## The Court of Justice of the European Communities

The **Court of Justice of the European Communities** is the European Union's judicial **institution**. It currently comprises **three jurisdictions**, those of the Court of Justice of the European Communities, the Court of First Instance of the European Communities and the European Union Civil Service Tribunal.

### The origins and development of the Court of Justice as an institution

Created in 1951 by the Treaty establishing the European Coal and Steel Community (ECSC), the **Court of Justice of the ECSC** became, in 1958 — with the entry into force of the Treaties of Rome establishing the European Economic Community (EEC) and the European Atomic Energy Community (EAEC or Euratom), and in accordance with Articles 3 and 4 of the Convention on Certain Institutions Common to the European Communities associated with those Treaties — the 'single Court of Justice' of the three European Communities. When it came into operation on 7 October 1958, the new **Court of Justice of the European Communities** replaced the Court of Justice of the ECSC and also exercised the competences assigned to that Court by the ECSC Treaty until the latter's expiry on 23 July 2002.

Article 9 of the Treaty of Amsterdam of 2 October 1997, by which the Convention on Certain Institutions Common to the European Communities was repealed, confirmed that the Court of Justice (like the European Parliament, the Council, the Commission and the Court of Auditors) is a single institution exercising the powers and competences assigned to it by the three founding treaties.

Until the end of the 1980s, the Court of Justice was the only court with jurisdiction for the Communities. In view of the considerable increase in the volume of disputes, the Single European Act, which came into force on 1 July 1987, inserted in the founding treaties a new provision (Article 168a of the EEC Treaty and Article 140a of the EAEC Treaty (see also Article 32d of the ECSC Treaty)) enabling the Council, by unanimous decision, to create a 'jurisdiction' of first instance. Thus, by a decision of 24 October 1988, the Council 'attached' to the Court of Justice a **Court of First Instance of the European Communities** with jurisdiction to hear and determine at first instance certain categories of action brought by natural or legal persons (actions brought by civil servants, actions in the framework of the ECSC and actions concerning the enforcement of EEC Treaty competition rules applicable to undertakings). This Court came into operation on 1 September 1989.

The Court of First Instance is not a new Community institution; rather, it is an independent, autonomous jurisdiction forming an integral part of the Court of Justice, both structurally and administratively. This new jurisdiction was created to achieve two aims: the first was to relieve the Court of Justice of part of its caseload, thereby allowing it to focus more on its fundamental mission, that of ensuring the uniform interpretation of Community law; the second was to provide litigants with improved judicial protection through the institution of a two-level jurisdiction, the existence of a second court being particularly valuable in cases calling for the examination of complex facts, such as civil service disputes and competition law proceedings.

The existence of the Court of First Instance was enshrined in the Treaty of Maastricht of 7 February 1992, which, by modifying the wording of Article 168a of the EEC Treaty and of the corresponding articles in the other treaties, afforded it constitutional status ('A Court of First Instance shall be attached to the Court of Justice with jurisdiction to hear and determine at first instance ...'). The Court was henceforth a body established directly by the Treaty.

Under the Treaty of Nice of 26 February 2001, the provisions concerning the composition and powers of the Court of First Instance were inserted in the three founding treaties (Articles 224 and 225 of the EC Treaty and Articles 140 and 140a of the EAEC Treaty; see also Articles 32c and 32d of the ECSC Treaty), and the Decision of 24 October 1988 establishing a Court of First Instance, as amended, was almost entirely repealed (Article 10 of the Treaty of Nice). The Court of First Instance ceased at this point to be 'attached' to the Court of Justice, to use the term employed in Article 168a of the EEC Treaty (now Article 225 EC). Its existence was now enshrined, on an equal footing with the Court of Justice, in the first article of the

section devoted to the Court of Justice, which provides: ‘The Court of Justice and the Court of First Instance, each within its jurisdiction, shall ensure that in the interpretation and application of this Treaty the law is observed’ (Article 220 of the EC Treaty and Article 136 of the EAEC Treaty; see also Article 31 of the ECSC Treaty).

Moreover, the Treaty of Nice introduced a major innovation in the Community judicial system in authorising the creation of an additional tier of jurisdiction. Under Article 225a of the EC Treaty and Article 140b of the EAEC Treaty (see also Article 32e of the ECSC Treaty), the Council, acting unanimously, ‘may create judicial panels to hear and determine at first instance certain classes of action brought in specific areas’. The above provisions provide further that ‘the decision establishing a judicial panel shall lay down the rules on the organisation of the panel and the extent of the jurisdiction conferred upon it’.

By a decision of 2 November 2004 establishing the **European Union Civil Service Tribunal**, the Council ‘attached’ to the Court of First Instance a division with competence to deal with disputes between the European Communities and their staff. The European Union Civil Service Tribunal is thus the first specialist Community jurisdiction. From an institutional and organisational viewpoint, the new Tribunal forms an integral part of the Court of Justice. It came into operation on 1 October 2005.

The European Union’s judicial institution thus consists at present of three tiers of jurisdiction: the Court of Justice, which exercises the highest level of jurisdiction and enjoys competence in constitutional matters; the Court of First Instance, which enjoys general competence and whose decisions may be subject to appeal before the Court of Justice; and the Civil Service Tribunal, specialising in actions brought by EU civil servants, whose decisions may be subject to appeal before the Court of First Instance. In such an event, the decisions handed down by the Court of First Instance may, by way of exception, be reviewed by the Court of Justice. What emerges is thus a judicial hierarchy comprising one, two or three levels of jurisdiction depending on the subject matter; the Court of Justice remains the supreme court of the European Union, with responsibility in the final instance for maintaining the coherence of Community case-law and ensuring the unity of the Community legal order.