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NEWGOV **New Modes of Governance**

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Some Basic Statistical Summaries of the Data Sets on Infringement Proceedings (Art. 226) and on Preliminary References in EC Law (Art. 234), 1958-98

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Table of Figures and Graphs

FIGURE 1: ANNUAL LEVELS OF PRELIMINARY REFERENCES AND RULINGS (ART. 234)*	4
FIGURE 2: ANNUAL LEVELS OF INFRINGEMENT PROCEEDINGS AND RULINGS (ART. 226)	5
TABLE 1: DISTRIBUTION OF PRELIMINARY REFERENCES BY LEGAL DOMAIN AND PERIOD (ART. 234)	6
TABLE 2: DISTRIBUTION OF INFRINGEMENT PROCEEDINGS BY LEGAL DOMAIN AND PERIOD (ART. 226).....	7
TABLE 3: DISTRIBUTION OF ART. 226 RULINGS BY LEGAL DOMAIN AND PERIOD	8

Descriptive Statistics

Figure 1 tracks annual levels of preliminary references and preliminary rulings by the European Court, since the first such reference in 1961. This measure is the best indicator now available of the degree to which EC law is litigated in national courts. It bears emphasis, however, that these numbers represent only the tip of the iceberg, since today most cases that are resolved by national judges involving European law do not lead to a referral. The figure shows that levels of references were very low during the 1960s, and began to pick up after 1970, when common market rules entered into effect, and as the doctrines of supremacy and direct effect gradually diffused throughout the system. References doubled by 1980, leveled off in the mid-1980s, and climbed dramatically after the Single Act. Overloaded, the average delay between reference and ECJ ruling is now more than three years.

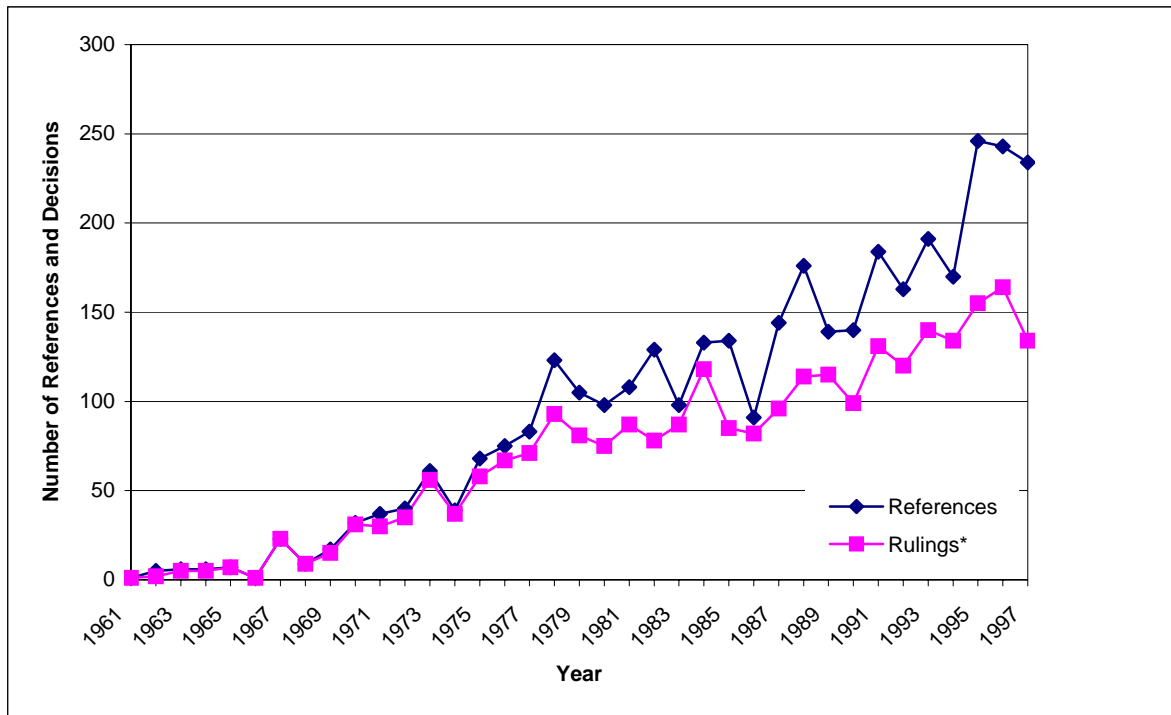
Table 1 provides domain-level data on preliminary references. We coded information on the domain being litigated using a reference system developed by the European Court. The Court classifies each reference in terms of the substantive issues raised by the referring judge, as issues are delineated by the Treaty. The table vividly records how Art. 234 activity has expanded in scope and intensity, across an increasing number of policy domains. During the 1970-74 period, over 60% of the questions raised in references fell in just two domains, agriculture and the free movement of goods; these areas today generate less than 20% of total activity. In the meantime, we see an important diffusion of reference activity to other domains, such as environmental protection, taxation, commercial policy and competition, and the free movement of workers. Strikingly, in the 1990s nearly one-in-twelve references concerned sex discrimination law (which the Court codes as "social provisions"). It is clear that as the scope of EU rules expanded, the legal system became not simply a vehicle for farmers, producers, and traders, but also for more diffuse, "public" interests.

Figure 2 tracks the number of Art. 226 infringement proceedings and rulings, by period, since the Commission's first enforcement action (1961). The gap between the line plotting the number of proceedings and the line plotting the number of rulings represents the number of cases withdrawn from the Court's docket. In the vast majority of such instances, the Member State agrees to resolve the matter to avoid adjudication. The behavior makes good sense, since the European Court finds a breach of EC law by Member States in about 90% of its Art. 226 rulings, a success rate for the Commission that hardly varies across domains.

Tables 2 and 3 provide domain-level information on infringement proceedings and rulings pursuant to Art. 226. For purposes of comparison, we have sorted enforcement actions into the same meta-categories as those used for preliminary references. The database includes information on 1,406 individual proceedings, resulting in 801 rulings; each proceeding and ruling has been coded into a minimum of one, and a maximum of three, domains.

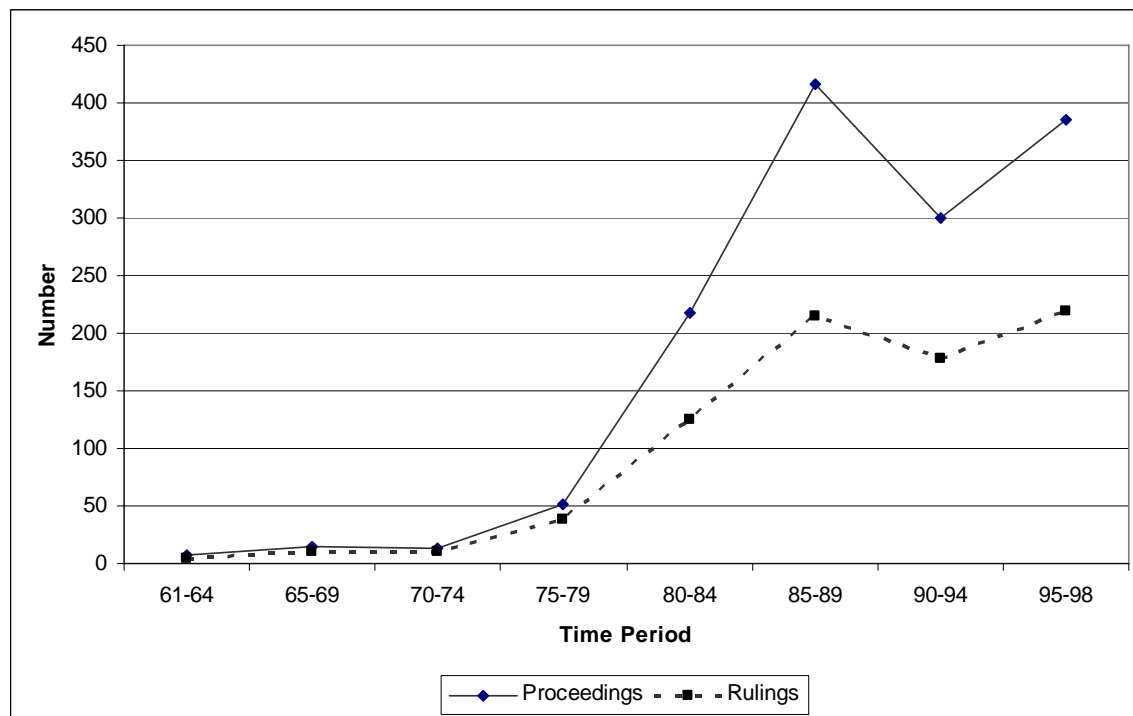
Comparing tables 1 with tables 2 and 3 reveals some striking differences. To take just one example, litigation in the sex equality (social provisions) domain has been driven by private parties using national courts under Art. 234, not by the Commission using Art. 226. In contrast, litigation in the environment domain is dominated by enforcement actions, accounting for between 10% and 20% of all Art. 226 activity since the 1985-89 period. Although preliminary references in the environmental protection field have grown steadily since 1980, to about 5% of all references today, restrictive standing rules, among other factors, has limited public interest litigation in the national courts.

Figure 1: Annual Levels of Preliminary References and Rulings (Art. 234)*



* 'Rulings' includes references ended by a judgment or an order of the Court.

Source: Alec Stone Sweet and Thomas L. Brunell *Data Set on Preliminary References in EC Law, 1958-98*, Robert Schuman Centre for Advanced Studies, European University Institute (San Domenico di Fiesole, Italy: 2005).

Figure 2: Annual Levels of Infringement Proceedings and Rulings (Art. 226)

Source: Alec Stone Sweet and Thomas L. Brunell *Data Set on Infringement Proceedings in EC Law*, Robert Schuman Centre, European University Institute (San Domenico di Fiesole, Italy, 2006).

Table 1: Distribution of Preliminary References by Legal Domain and Period (Art. 234)

Subject Matter	Years	1958-98*	58-69	70-74	75-79	80-84	85-89	90-94	95-98*
	% n								
Agriculture			13.4	41.5	35.8	26.9	21.4	15.3	9.5
		1,008	13	129	232	202	170	163	99
Free Movement of Goods		17.5	18.7	19.4	21.6	21.3	16.2	12.3	
		832	17	58	126	162	169	172	128
Social Security			26.8	10.3	12.2	7.9	8.9	10.2	6.5
		444	26	32	79	59	71	109	68
Taxation			14.4	3.2	4.2	6.1	7.4	8.1	9.8
		344	14	10	27	46	59	86	102
Competition			12.4	7.1	4.3	4.9	5.5	10.5	6.1
		318	12	22	28	37	44	112	63
Approximation of Laws		1.0	1.0	1.5	4.9	4.2	3.9	8.9	
		217	1	3	10	37	33	41	92
Transportation			0	1.6	1.5	1.2	1.1	2.6	1.5
		77	0	5	10	9	9	28	16
Establishment			1.0	1.9	3.7	2.1	6.4	8.4	9.8
		289	1	6	24	16	51	89	102
Social Provisions			0	0.3	1.2	2.8	3.9	8.5	8.2
		236	0	1	8	21	31	90	85
External			1.0	2.6	2.3	3.1	1.8	1.6	3.0
		109	1	8	15	23	14	17	31
Free Movement of Workers and Persons			1.0	2.9	2.9	2.9	5.2	3.7	6.8
		202	1	9	19	22	41	39	71
Environment			0	0	0.2	1.7	1.0	1.0	4.1
		75	0	0	1	13	8	10	43
Commercial Policy		0	1.3	1.2	1.3	1.4	2.4	1.4	
		72	0	4	8	10	11	25	14
Other Domains			11.3	7.7	9.6	12.5	10.5	7.9	12.3
		483	11	24	62	94	83	84	125
Total Claims		4,706	97	311	649	751	794	1065	1039
% by Period		100**	2.1	6.6	13.8	16.0	16.9	22.6	22.1

* The table contains information from the complete data set. The data for 1998 is incomplete, ending, for most countries, in May or June 1998.

** 'Joined references' (see fig. 1) are excluded from these calculations. Due to rounding, percentages of total claims by period add to 100.1%.

Source: Alec Stone Sweet and Thomas L. Brunell Data Set on Preliminary References in EC Law, 1958-98, Robert Schuman Centre for Advanced Studies, European University Institute (San Domenico di Fiesole, Italy: 2005).

Table 2: Distribution of Infringement Proceedings by Legal Domain and Period (Art. 226)

Subject Matter \ Years		1958-98*	58-69	70-74	75-79	80-84	85-89	90-94	95-98*
Agriculture	%	14.8	16.0	28.6	24.7	13.6	13.8	16.4	13.6
	n	296	4	4	19	43	83	70	73
Free Movement of Goods	%	11.2	36.0	28.6	18.2	22.5	13.3	8.9	1.3
	n	223	9	4	14	71	80	38	7
Social Security	%	1.3	0.0	0.0	2.6	0.3	1.7	1.2	1.3
	n	25	0	0	2	1	10	5	7
Taxation	%	6.5	28.0	0.0	13.0	6.6	7.3	5.4	4.5
	n	129	7	0	10	21	44	23	24
Competition	%	2.8	8.0	7.1	5.2	3.8	3.0	2.3	1.7
	n	56	2	1	4	12	18	10	9
Approximation of Laws	%	28.5	0.0	14.3	18.2	24.4	27.5	31.9	32.7
	n	569	0	2	14	77	165	136	175
Transportation	%	3.3	0.0	0.0	2.6	2.8	3.3	3.0	4.1
	n	66	0	0	2	9	20	13	22
Establishment	%	8.2	4.0	0.0	1.3	9.8	7.2	8.7	9.3
	n	163	1	0	1	31	43	37	50
Social Provisions	%	2.6	0.0	0.0	0	4.4	1.5	2.1	3.7
	n	52	0	0	0	14	9	9	20
External	%	0.7	4.0	0.0	0	0.3	0.7	0.7	0.9
	n	14	1	0	0	1	4	3	5
Free Movement of Workers and Persons	%	2.7	0.0	7.1	1.3	0.6	2.5	5.2	2.4
	n	54	0	1	1	2	15	22	13
Environment	%	10.6	0.0	0.0	6.5	4.7	9.7	8.9	17.9
	n	212	0	0	5	15	58	38	96
Commercial Policy	%	0.2	0.0	0.0	0.0	0.0	0.2	0.7	0.0
	n	4	0	0	0	0	1	3	0
Other Domains	%	6.6	4.0	14.3	6.5	6.0	8.3	4.7	6.4
	n	131	1	2	5	19	50	20	34
Total Proceedings by Domain		1994	25	14	77	316	600	427	535
% Total Proceedings by Domain		100***	1.3	0.7	3.9	15.8	30.1	21.4	26.8

* Based on filing dates (not date of decision).

** Infringement proceedings can be filed in more than one issue area for the same case. The table counts domains not rulings. There are 1,406 Art. 226 proceedings in our data set.

*** Percentages are rounded.

Source: Alec Stone Sweet and Thomas L. Brunell Data Set on Infringement Proceedings in EC Law, Robert Schuman Centre, European University Institute (San Domenico di Fiesole, Italy, 2006).

Table 3: Distribution of Art. 226 Rulings by Legal Domain and Period

Subject Matter	Years	1958-98*	58-69	70-74	75-79	80-84	85-89	90-94	95-98*
	% n								
Agriculture	%	15.0	22.2	27.3	25.8	18.2	18.0	13.3	8.1
	n	180	4	3	16	39	59	33	26
Free Movement of Goods	%	11.5	33.3	36.4	14.5	18.7	14.1	11.2	1.9
	n	139	6	4	9	40	46	28	6
Social Security	%	1.3	0.0	0.0	1.6	.5	0.6	2.0	2.2
	n	16	0	0	1	1	2	5	7
Taxation	%	8.4	33.3	0.0	14.5	6.1	10.4	7.6	6.2
	n	101	6	0	9	13	34	19	20
Competition	%	3.6	5.6	9.1	4.8	4.7	3.7	3.2	2.5
	n	43	1	1	3	10	12	8	8
Approximation of Laws	%	22.2	0.0	0.0	16.1	22.4	16.2	26.4	28.0
	n	267	0	0	10	48	53	66	90
Transportation	%	4.0	0.0	0.0	3.2	3.3	4.3	2.8	5.6
	n	48	0	0	2	7	14	7	18
Establishment	%	9.6	0.0	0.0	1.6	8.4	8.9	11.6	11.8
	n	115	0	0	1	18	29	29	38
Social Provisions	%	2.8	0.0	0.0	0.0	4.7	1.8	2.4	3.7
	n	34	0	0	0	10	6	6	12
External	%	0.7	5.6	0.0	0.0	.5	1.2	0.8	0.3
	n	9	1	0	0	1	4	2	1
Free Movement of Workers and Persons	%	3.7	0.0	9.1	1.6	.9	3.4	7.2	3.4
	n	44	0	1	1	2	11	18	11
Environment	%	11.5	0.0	0.0	8.1	4.7	10.7	9.6	19.9
	n	138	0	0	5	10	35	24	64
Commercial Policy	%	0.2	0.0	0.0	0.0	0.0	0.3	0.8	0.0
	n	3	0	0	0	0	1	2	0
Other Domains	%	5.6	0.0	18.2	8.1	7.0	6.4	1.2	6.5
	n	67	0	2	5	15	21	3	21
Total Rulings by Domain		1204	18	11	62	214	327	250	322
% Total Rulings by Domain		100***	1.5	0.9	5.1	17.8	27.2	20.8	26.6

* Based on filing dates (not date of decision).

** Infringement proceedings can be filed in more than one issue area for the same case. The table counts domains not rulings. There are 801 ECJ enforcement rulings in our data set.

*** Due to rounding, percentages of total claims by period add to 99.9%.

Source: Alec Stone Sweet and Thomas L. Brunell Data Set on Infringement Proceedings in EC Law, Robert Schuman Centre, European University Institute (San Domenico di Fiesole, Italy, 006).