FIDE (the International Federation for European Law) brings together National Associations for European Law and their members and serves as a forum for the study, development, critical appraisal and renewal of European law.

Written for the XXI FIDE Congress taking place in Dublin in June 2004, this book is the most wide ranging and comprehensive international survey of the topic ever undertaken. It describes, by way of National Reports, how 28 countries (including no less than 24 EU Member and Accession States and also Norway, Switzerland, Albania and Croatia) are adapting their domestic anti-trust laws in preparation for the modernisation and decentralisation of EU anti-trust enforcement brought about by Regulation 1/2003, in force from 1 May 2004. Each country's report was submitted by a national expert, and sets out in detail how States are meeting the challenge of granting their national courts and competition enforcement agencies full powers to apply Articles 81 and 82 of the EU Treaty. The national reports point to challenges and difficulties that lie ahead for harmonious operation of the new decentralised regime. In addition, the volume is enhanced by the Reports of both the General Rapporteur, Judge John D. Cooke of the European Court of First Instance, and the Institutional Rapporteur, Wouter Wils of the European Commission Legal Service. The co-ordination and editing of the National Reports was undertaken by Dermot Cahill of University College Dublin, assisted by Peter O’Toole and Anne-Marie Jenkinson.

Dermot Cahill is a Senior Lecturer in Law at the Faculty of Law, University College Dublin. A graduate of the College of Europe, he lectures in the Faculty on European Union Law, in particular Competition Law. He is Co-Director of the UCD LL.M European Law Programme and has been Visiting Professor at University of Paris X, University of Toulouse and De Paul Law School, Chicago.

John D. Cooke is a Judge of the Court of First Instance of the European Communities. He is a graduate of University College Dublin and of the Honourable Society of Kings Inns. Admitted to the Irish Bar in 1966, he practised as a barrister for thirty years and was a leading advocate in commercial and European law. He has been a Judge of the Court of First Instance of the European Communities since 1996, and is currently serving his second term in Luxembourg.

Wouter Wils is an official in the European Commission Legal Service where he has been working mainly in the competition field. Prior to joining the Commission he served in the cabinet of Advocate General Van Gerven at the European Court of Justice.
THE MODERNISATION OF EU COMPETITION LAW ENFORCEMENT IN THE EUROPEAN UNION

FIDE 2004 National Reports

Editor
DERMOT CAHILL

General Rapporteur
JOHN D. COOKE

Institutional Rapporteur
WOUTER WILS
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WELCOME TO XXI FIDE CONGRESS

NIAL FENNELLY
FIDE President The Hon. Mr Justice Nial Fennelly

It has been a great honour for Ireland to be asked to host the XXI Congress of FIDE. It has equally been a great honour for me personally to have been asked to act as President of FIDE during this very important year for the European Union.

The topics for the Congress were chosen after much debate and wide consultation. The choice was not easy. There are several other topics worthy of debate. The Congress debates will cover both old and new ground. There are two special features of this year’s Congress.

First, on the virtual eve of our meetings in Dublin, ten new Member States will join the European Union. Words are not adequate to express the great happiness which I share with my colleagues at the Irish Society for European Law at being able to welcome the delegates from these States to Dublin and to the Union at the same time.

Second, even as I write, the Constitution for Europe remains under discussion, though the outcome is shrouded in uncertainty. I express the hope that, whatever the state of political discussions, delegates to the Congress will grasp the opportunity for a lively exchange of views.

Finally, I offer a hearty welcome to all delegates, rapporteurs, spouses and others. I hope that you enjoy your stay in Dublin.
FOREWORD

PATRICK McCANN
FIDE Secretary General

The XXI FIDE Congress takes place in Dublin, Ireland between the 2nd and 5th of June, 2004. The Congress is the biennial meeting of Fédération Internationale de Droit Européene (FIDE – the International Federation for European Law).

FIDE brings together National Associations for European Law and their members and serves as a forum for the study, development, critical appraisal and renewal of European law.

The FIDE Congress has a special place among the many conferences and seminars on European law. First, it is a not for profit venture organised on behalf of FIDE by different National Associations in rotation as a matter of professional solidarity between lawyers interested in European law. Secondly, the Congress brings together the full range of lawyers: Judges, Practitioners and Academic Lawyers – across the breadth of Europe.

The Irish Presidency of FIDE is particularly pleased to have been able to develop relationships with lawyers in the new Member States of the Union. Also, the Irish Presidency of FIDE is very pleased to have delegates and Rapporteurs from potential or future Member States as well as the continued participation and representation by Rapporteurs and Delegates of Lawyers from EU States, EFTA and EEA States.

This will be the second time the FIDE Congress has taken place in Dublin. The 10th FIDE Congress took place in Dublin in June 1982. The late Mr. Justice Brian Walsh, formerly of the Irish Supreme Court and the European Court of Human Rights, was the President of FIDE on that occasion. Mr. Finbarr Murphy B.L. was the chairman of the host National Association, the Irish Society for European Law, and Mr. Eoghan P. Clear Solicitor was Honorary Secretary. As with the present Congress, it is worth noting that there were delegates from Finland, Spain, and Sweden, then prospective Member States, as well as delegates from the then Member States.
Foreword

The President of FIDE for the present Congress is the Honourable Mr. Justice Nial Fennelly, a member of the Irish Supreme Court and a former Advocate General at the European Court of Justice.

For the XXI Congress, the Presidency of FIDE has selected, in consultation with FIDE’s National Associations, three topics for the Congress. The three topics which will be discussed are: –

**Topic 1:** “Criminal Law in the European Union: a giant leap or a small step?”

**Topic 2:** “European Union Competition Law and Policy: The Reform of Competition Law Enforcement – will it work?”

**Topic 3:** “European Union and Member State Migration and Asylum Law and Policy.”

The Irish Presidency is delighted that Professor Mario Chiavario of the University of Turin serves as General Rapporteur for Topic 1; Judge John Cooke of the European Court of First Instance serves as General Rapporteur for Topic 2; and Professor Kay Hailbronner of the University of Konstanz serves as General Rapporteur for Topic 3.

The working method of the Congress began with the preparation by the General Rapporteurs of detailed Questionnaires on each of the Topics. The Questionnaires are addressed to Rapporteurs in the existing and future Member States of the European Union and other affected States with a view to exploring the transposition and reception of European Law into the domestic legal systems, its effectiveness and the problems the domestic legal systems might have to face in dealing with Community law.

The Questionnaires from the General Rapporteurs were then translated and disseminated among the existing National Associations and the embryonic National Associations in the new Member States and potential future Member States.

The Irish Presidency of FIDE is particularly pleased that Rapporteurs have been designated by each of the existing and new Member States, as well as Rapporteurs from EFTA and EEA States. We are also very pleased that lawyers in Albania and Croatia also nominated Rapporteurs for participation in the FIDE process. As a result, some twenty-nine States have nominated approximately one hundred and six National and Assistant National Rapporteurs. Also, we are delighted to have Institutional Rapporteurs from the Council, the Commission and the Université Libre de Bruxelles.

The National Reports were prepared by the National Rapporteurs or teams of National Rapporteurs and delivered to the General Rapporteurs,
their Dublin based National Report Co-Ordinators and to the Institutional Rapporteurs. The General Rapporteurs wrote the General Reports, which offer a synthesis on the development of European Law in their chosen Topic. They are an assessment of the dynamic relationship between European Law and the National legal systems. The Institutional Reports offer a thematic response to the Questionnaire from a European Union perspective.

The Congress itself does not take the format of a conference. Apart from the opening address by the President of the Court of Justice there will be no formal set piece presentations. Rather, the General Rapporteurs, in conjunction with various chairpersons of working sessions, will moderate debate and discussion. Each delegate, having been informed by the publication of this volume and the Reports’ earlier appearance on the FIDE website (www.fide2004.org), will be able to participate and discuss different aspects of each Topic. The tradition of FIDE has been participation by all Delegates.

As well as the formal Congress Topics, the Irish Presidency intends to host a debate and discussion on the Constitution for Europe on the morning of Saturday the 5th of June, 2004.

The Presidency of FIDE is again pleased to welcome the Presidents of the European Court of Justice and the Court of First Instance to Dublin for the FIDE Congress. Their participation and that of their colleague Judges from the Courts as well as Référendaires and the permanent staff of the Court, contributes to the unique quality of the Congress.

The FIDE Congress also offers an opportunity for Delegates to meet up with old friends and to make new ones. The accession of the new Member States is a very particular opportunity to make new friends and to re-orientate our conception of Europe.

The Presidency has arranged an extensive and varied social programme with the assistance of the Congress’ sponsors, and it is hoped that these social gatherings will facilitate the continuation of the Congress’ debates in informal settings and allow for the development of friendships and professional ties.

The Irish Presidency of FIDE is very appreciative of the work and professionalism of Finola O’Sullivan, Paul Watt, and Jane O’Regan of Cambridge University Press in preparing and printing these volumes. The Irish Presidency would also like to express its appreciation to the three Dublin Co-Ordinators who looked after the considerable task of collating the National Reports and doing verification and pre-publication editing on each of the volumes. This immense and invaluable work was carried
Foreword

out by Mr. Anthony Moore B. L. (Criminal Law), Mr. Dermot Cahill (University College Dublin) (Competition Law) and Ms. Imelda Higgins B. L. (Immigration and Asylum Law).

The Irish Presidency would like to thank its predecessor National Associations, the United Kingdom National Association, the Finnish National Association and the Swedish National Association in particular, for all their help and assistance in organising this Congress.

The venue for the next Congress, the XXII FIDE Congress, will be decided at the Dublin Congress. The Irish National Association hopes that it will relinquish its Presidency with both pride and anticipation; pride at the success at the Congress and anticipation for the future success of the XXII Congress.
Dermot Cahill is a Solicitor and Senior Lecturer in Law at the Faculty of Law, University College Dublin. A graduate of the College of Europe, Dermot lectures in the Faculty on European Union Law, in particular Competition Law. Co-Director of the UCD LL.M European Law Programme, he is author of Corporate Finance Law (Round Hall Sweet & Maxwell, 2000) and co-author of European Law (Oxford University Press, 2002). He has variously been Visiting Professor at University of Paris X, University of Toulouse and De Paul Law School, Chicago. Dermot was assisted by Peter O’Toole and Anne-Marie Jenkinson, graduate students on UCD’s European Law Masters LL.M programme.
GENERAL RAPPORTEUR

JOHN D. COOKE
Judge of the Court of First Instance of the European Communities

John D. Cooke is a graduate of University College Dublin and of the Honourable Society of Kings Inns. Admitted to the Irish Bar in 1966, he practised as a barrister for thirty years, and was one of the leading commercial and European law advocates at the Bar. He has been a Judge of the Court of First Instance of the European Communities since 1996, and is currently serving his second term in Luxembourg.
INSTITUTIONAL RAPPORTEUR

WOUTER WILS
European Commission Legal Service

Dr. Wouter P. J. Wils holds degrees in economics and in law from the universities of Louvain-la-Neuve, Leuven, Harvard and Utrecht. After having worked as a référendaire in the cabinet of Advocate-General Walter van Gerven at the EC Court of Justice, he has been since 1994 a member of the European Commission’s Legal Service, where he has been working mainly in the field of competition. He has also lectured at several European and American universities, and is the author of numerous legal and economic publications.
EDITOR’S NOTE

Collating the National Reports on the Competition Topic on behalf of the Irish Society for European Law and FIDE was indeed an honour. The reader will find in the Reports a veritable wealth of information, supplied by eminent practitioners and academics from all over Europe. The majority of the Reports are in English, and a small number are in French or German, being the two other FIDE languages. This volume contains no less than 28 National Reports making it the most comprehensive FIDE volume ever. I salute the National Rapporteurs for their co-operation and professionalism in ensuring that the Irish Presidency was able to bring this volume out on time for the Congress. I am also most grateful for the assistance rendered by Peter O’Toole and Anne-Marie Jenkinson, UCD LLM students who assisted in the preparation of this volume.

Judge Cooke’s General Rapporteur Questionnaire was complimented by the National Rapporteurs, both for its thorough coverage of complex issues and its comprehensiveness. January 26 was the deadline for submission of National Reports and I was delighted to find my inbox merrily filling up as that date approached. As Cambridge University Press committed to publishing the volume on time for the conference, our time for checking that all was as it should be, was tight and pressurised, and I was ably assisted in this endeavour by Peter O’Toole and Anne-Marie Jenkinson. As we prepared the Reports for submission to the publishers, it became evident that different States are meeting the challenge of implementing Regulation 1/2003 in different ways. This is quite fascinating for anyone interested in the variety of means by which different States implement EC Law in their domestic jurisdictions. The General Rapporteur’s Report will elaborate in detail. This volume is further enhanced by the Institutional Rapporteur’s Report, compiled by Wouter Wils, European Commission, who has many years of experience of analysing the most perplexing and fascinating competition law issues from the Commission’s perspective. Both his Report, and the General Rapporteur’s, highlight their assured ability to explain and consider new and exciting issues arising in this area.
The Regulation comes into force in May 2004, and at the time of submission of the National Reports (end of January 2004), some Member States had still not published final legislation to prepare for this eventuality. Therefore, the reader must bear this in mind as some of the Questionnaire’s questions were answered by various National Rapporteurs in an anticipatory and hopefully perceptive fashion. In this regard, the National Rapporteurs, while not quite possessing a crystal ball, being experts themselves in the Competition arena, are usually better informed than most to anticipate likely future legislative trends and developments in their own State as the May deadline approaches, though as I am sure we will find out by the time the Congress comes around, there will be some “surprises”. National Rapporteurs whose reports may require some revision as domestic legislative developments unfold in their States have the facility to place their revisions on the Congress website’s National Reports page at www.fide2004.org.

Most of the Reports follow the layout of the General Rapporteur’s Questionnaire, though a small number took a different approach, grouping questions together or adopting a thematic approach. The reader should find the volume all the more enriching for it. I look forward to meeting the authors of the Reports and look forward to vigorously debating the new Competition regime in June in Dublin with my FIDE colleagues.

Dermot Cahill
University College Dublin
St Patrick’s Day,
March 17, 2004