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COVER NOTE

from:	M. V. SKOURIS, President of the Court of Justice of the European Union
dated:	30 May 2011
to:	M. J. MARTONYI, President of the Council of the European Union
Subject:	Draft rules of procedure of the Court of Justice

Delegations will find attached draft rules of procedure of the Court of Justice forwarded by Mr V. SKOURIS, President of the Court of Justice of the European Union, to Mr J. MARTONYI, President of the Council of the European Union.

Luxembourg, 25 May 2011

Mr János Martonyi
President of the Council
of the European Union
175, rue de la Loi

B-1048 BRUSSELS

Dear President,

With reference to the sixth paragraph of Article 253 of the Treaty on the Functioning of the European Union, a provision which applies equally to the Treaty establishing the European Atomic Energy Community in accordance with Article 106a thereof, I hereby submit, for the approval of the Council, draft Rules of Procedure of the Court of Justice, which are intended to recast those Rules and to bring them up to date.

I refer you to the explanatory notes, which set out the objectives of the recasting of the Rules of Procedure and the amendments proposed.

The documents are enclosed in all the official languages.

Yours faithfully,

Vassilios SKOURIS

Draft Rules of Procedure of the Court of Justice

Introductory explanatory notes

Like the other institutions of the European Union, the Court of Justice has, from the outset, adopted rules of procedure to establish the essential rules relating to the organisation and functioning of the Court and to specify, in detail, the rules governing the conduct of proceedings before it. The Rules of Procedure of the Court were originally adopted on 4 March 1953 [1] *and have subsequently been amended on several occasions, in particular in order to take account of the successive enlargements of the European Union and of the new powers conferred on it, yet the structure of the Rules has remained broadly the same. The Rules of Procedure of 19 June 1991, which are currently in force,* [2] *still reflect the initial preponderance of direct actions between two parties – usually a natural or legal person or a Member State against an institution of the European Union – whereas, in fact, with the exception of infringement proceedings, that type of case now largely falls outside the Court's jurisdiction.*

As a result of the establishment in 1988 of the Court of First Instance (now the General Court), all actions brought by a natural or legal person were transferred to that court whereas, following the entry into force of the Treaty of Nice on 1 February 2003, the Protocol on the Statute of the Court of Justice was amended to specify the categories of actions for annulment and actions for failure to act that were reserved to the Court of Justice. The categories in question are clearly circumscribed and, not counting infringement proceedings and appeals against decisions of the General Court, most of the cases submitted to the Court of Justice are now references for a preliminary ruling from the courts and tribunals of the Member States of the European Union.

[1] *Journal officiel de la Communauté européenne du charbon et de l'acier*, 7 March 1953, p. 37.

[2] OJ L 176, 4 July 1991, p. 7, as last amended on 23 March 2010 (OJ L 92, 13 April 2010, p. 12).

Thus, in 2010, there were 385 references for a preliminary ruling (out of a total of 631 new cases) and, as at 31 December 2010, there were 484 references for a preliminary ruling pending before the Court, out of a total of 799 cases. The figures alone illustrate the gap that exists between the Rules of Procedure of the Court and the cases that are brought before it, and the ever more pressing need to adapt the structure and content of the Rules of Procedure to the changes in its caseload. That is ***the first objective*** *of the present draft Rules. In submitting them for the Council's approval, the Court seeks to ensure that references for a preliminary ruling are given their proper place in the Rules of Procedure, while making the rules that apply to that category of case both clearer and more comprehensive, for litigants as well as for national courts and tribunals.*

A second *key* ***objective*** *of the present draft Rules arises from the Court's intention to continue the efforts already made over a number of years to maintain its capacity, in the face of an ever-increasing caseload, to dispose within a reasonable period of time of the cases brought before it. This intention, moreover, reflects an obligation enshrined in the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union which, since the entry into force of the Treaty of Lisbon on 1 December 2009, has the same legal value as the Treaties.*

In an effort to reduce, as far as possible, the duration of proceedings before it, particularly in preliminary ruling cases where proceedings before the referring court or tribunal are stayed pending the decision of the Court of Justice, the Court has, since 2003, been engaged in a process of reflection on its working methods, and has adopted a range of practical and legislative measures to meet its objective. Examples include the possibility for parties to send procedural documents to the Court by telefax or any other technical means of communication, reduced time-limits for intervention in direct actions and appeals, the possibility of such actions – or references for a preliminary ruling – being decided under an expedited/accelerated procedure, and the introduction of a specific procedure for cases falling within the area of freedom, security and justice: the urgent preliminary ruling procedure, which came into effect on 1 March 2008.

The present draft follows on directly from that process of reflection and is also designed to introduce into the Rules of Procedure provisions which will further improve efficiency in the work of the Court by the optimisation of available resources. Relevant measures in that context include, in particular, the possibility of exchanging procedural documents electronically; Member States

and the institutions of the European Union being able to intervene pursuant to the first paragraph of Article 40 of the Statute in disputes before the Court by means of a simple declaration; the simplification of procedures culminating in the adoption of an order if the question put by a national court or tribunal does not raise any reasonable doubt; or the possibility for the Court to rule without a hearing if it considers that it has sufficient information on the basis of all the written observations lodged.

There is no doubt that, taken in isolation, none of the aforementioned measures can by itself alter the trend of an increase in the number of cases or duration of proceedings. The Court nevertheless remains convinced that these measures together, taken in good time, offer the best means of enabling the Court satisfactorily to continue to fulfil its task of ensuring that the law is observed in the interpretation and application of the Treaties.

In addition to its intention to optimise efficiency in its work, the Court is also keen to clarify the rules which it applies. That is ***the third objective*** *of this recasting of the Rules. In order to provide all those involved in proceedings with a clear understanding of their rights and obligations, the Court has considered it desirable to codify certain existing rules or practices, such as the assignment of applications for legal aid to the Chamber of three Judges which includes the Judge responsible for the case in connection with which the application has been made, or the possibility for the Court to hold a joint hearing for a number of cases or of anonymising the names of certain persons.*

Conversely, rules which are outdated or not applied have been withdrawn from the present Rules, while others, which are too detailed, have been abridged or simplified. This applies, in particular, to the provisions relating to the Registry and to witnesses or experts, but also, and above all, to the procedure for reviewing decisions of the General Court, the implementation of which has revealed its complexity. That procedure has therefore been simplified in the present draft.

In the same vein, and in accordance with the wishes of a number of Member States, every article of the draft Rules has been given a heading and, within those articles, each paragraph has been numbered. This process has, in certain cases, required existing passages to be split into several separate articles so that each article has a subject of its own, but, although this has resulted

in an increase in the number of articles, the corollary has been that ***the Rules of Procedure as a whole are easier to understand****.*

Finally, the Court has endeavoured, throughout this recasting process, to pay particular attention to the terminology used in its Rules of Procedure. On analysis, it became apparent that over the course of successive amendments the Rules of Procedure currently in force sometimes use several different terms to denote the same concept, which can give rise to questions about the true scope of the provisions concerned, while in one or two cases the term used clearly does not correspond to the legal situation envisaged. For those reasons, the present draft has been undertaken also with a view to ***harmonising and rationalising the terms used*** *in the various language versions of the Rules of Procedure. A specific legal concept should, therefore, be denoted by just one term.*

In order to keep this section as brief as possible, the Court has considered it preferable in this introductory statement to confine itself to the general scheme and the objectives of the draft Rules. Amendments to the existing provisions are detailed at the beginning of each of the eight titles of the present draft and, as necessary, in respect of each of the provisions concerned. The similarities and differences between the present draft and the Rules of Procedure currently in force can also be identified directly using the correlation table drawn up in respect of the two texts.

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RULES OF PROCEDURE OF THE COURT OF JUSTICE

The Court of Justice

Having regard to the Treaty on European Union, and in particular Article 19 thereof,

Having regard to the Treaty on the Functioning of the European Union, and in particular the sixth paragraph of Article 253 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a(1) thereof,

Having regard to the Protocol on the Statute of the Court of Justice of the European Union, and in particular Article 63 thereof,

Whereas:

(1) Despite having been amended on several occasions over the years, the Rules of Procedure of the Court of Justice have remained fundamentally unchanged in structure since their original adoption on 4 March 1953. The Rules of Procedure of 19 June 1991, which are currently in force, still reflect the initial preponderance of direct actions, whereas in fact the majority of such actions now fall within the jurisdiction of the General Court, and references for a preliminary ruling from the courts and tribunals of the Member States represent, quantitatively, the primary category of cases brought before the Court. That fact should be taken into account and the structure and content of the Rules of Procedure of the Court adapted, in consequence, to changes in its caseload.

(2) While references for a preliminary ruling should be given their proper place in the Rules of Procedure, it is also appropriate to draw a clearer distinction between the rules that apply to all types of action and those that are specific to each type, to be contained in separate titles. In the interests of clarification, procedural provisions common to all cases brought before the Court should, therefore, all be contained in an initial title.

(3) In the light of experience gained in the course of implementing the various procedures, it is also necessary to supplement or to clarify, for the benefit of litigants as well as of national courts and tribunals, the rules that apply to each procedure. The rules in question concern, in particular, the concepts of party to the main proceedings, intervener and party to the proceedings before the General Court, or, in preliminary rulings, the rules governing the bringing of matters before the Court and the content of the order for reference. With regard to appeals against decisions of the General Court, a clearer distinction must also be drawn between appeals and cross-appeals in consequence of the service of an appeal on the cross-appellant.

(4) Conversely, the excessive complexity of certain procedures, such as the review procedure, has come to light on their implementation. Accordingly, they should be simplified by providing, inter alia, for a Chamber of five Judges to be designated for a period of one year to be responsible for ruling both on the First Advocate General's proposal to review and on the questions to be reviewed.

(5) Similarly, the procedural arrangements for dealing with requests for Opinions should be eased by aligning them with those that apply to other cases and by providing, in consequence, for a single Advocate General to be involved in dealing with the request for an Opinion. In the interests of making the Rules easier to understand, all the particular procedures currently to be found in a number of separate titles and chapters of the Rules of Procedure should also be brought together in a single title.

(6) In order to maintain the Court's capacity, in the face of an ever-increasing caseload, to dispose within a reasonable period of time of the cases brought before it, it is also necessary to continue the efforts made to reduce the duration of proceedings before the Court, in

particular by extending the opportunities for the Court to rule by reasoned order, introducing a simplified intervention process for the benefit of the Member States and the institutions of the European Union referred to in the first paragraph of Article 40 of the Statute and providing for the Court to be able to rule without a hearing if it considers that it has sufficient information on the basis of all the written observations lodged in a case.

(7) In the interests of making the Rules applied by the Court easier to understand, lastly, certain rules which are outdated or not applied should be deleted, every paragraph of the present Rules numbered, each article given a specific heading summarising its content and the terminology harmonised.

With the Council's approval given on …

Has adopted these Rules of Procedure:

INTRODUCTORY PROVISIONS

Article 1 Definitions

1. In these Rules:

(a) provisions of the Treaty on European Union are referred to by the number of the article concerned followed by 'TEU',

(b) provisions of the Treaty on the Functioning of the European Union are referred to by the number of the article concerned followed by 'TFEU',

(c) provisions of the Treaty establishing the European Atomic Energy Community are referred to by the number of the article concerned followed by 'TEAEC',

(d) 'Statute' means the Protocol on the Statute of the Court of Justice of the European Union,

(e) 'EEA Agreement' means the Agreement on the European Economic Area, [3]

(f) 'Council Regulation No 1' means Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community. [4]

2. For the purposes of these Rules:

(a) 'institutions' means the institutions of the European Union referred to in Article 13(1) TEU and bodies, offices and agencies established by the Treaties, or by an act adopted in implementation thereof, which may be parties before the Court,

(b) 'EFTA Surveillance Authority' means the surveillance authority referred to in the EEA Agreement.

Two minor substantive amendments have been made to the existing text.

The first consists in the addition of point (f) to paragraph 1, incorporating the full reference to Council Regulation No 1, which is cited a number of times in the Rules of Procedure currently in force without any convention having been adopted as to how it would be written.

The second seeks to remove any ambiguities that may have arisen, following the entry into force of the Treaty of Lisbon, as to the precise meaning of 'institutions of the [European] Union'. The draft expressly refers in paragraph 2 of this article to Article 13(1) of the Treaty on European Union ('TEU'), in which those institutions are named.

Article 2 Purport of these Rules

These Rules implement and supplement, so far as necessary, the relevant provisions of the EU, FEU and EAEC Treaties, and the Statute.

Article 2 is a new article which, as its heading indicates, is intended to define the purport of the

3 OJ L 1, 3.1.1994, p. 27.

4 OJ, English Special Edition 1952-1958 (I), p. 59.

present Rules. Reflecting the terms of the sixth paragraph of Article 253 of the Treaty on the Functioning of the European Union ('TFEU') and Article 63 of the Protocol on the Statute of the Court of Justice of the European Union ('the Statute'), this article recalls the essential function of the Rules of Procedure: to implement and supplement, so far as necessary, the provisions of the acts referred to above.

TITLE I
ORGANISATION OF THE COURT

As in the Rules of Procedure currently in force, Title I of the draft Rules of Procedure concerns the organisation of the Court. This title – which itself echoes the first two titles of the Statute of the Court – is intended, in essence, to define the responsibilities of the Court's key officeholders and to lay down the rules governing the working of the Court, its language arrangements, and the principles of and procedures for the determination of the formations of the Court.

Although the order of the chapters differs from that in the existing Rules, few changes have been made to the actual substance of the provisions of Title I. The draft reproduces, with refinements, the substance of the provisions currently in force. However, it will be noted that three important changes have been made to existing arrangements as regards those involved in proceedings.

In consequence of the proposal to amend the Statute, which the Court has submitted to the Parliament and to the Council, with a view to establishing the office of Vice-President of the Court of Justice, the Court is, first of all, acting on that proposal by setting out in the Rules of Procedure the procedure for designating the Vice-President and his responsibilities. The fate of those provisions is, of course, directly linked to the reception given to the abovementioned proposal by the European Union legislature.

Pursuant to that proposal, and also the proposal to increase from 13 to 15 the number of Judges sitting in the Grand Chamber, the Court goes on to set out in the draft the rules relating to the determination of the formations of the Court, and the procedure to be followed if the President, the Vice-President, a President of a Chamber or a member of the formation of the Court is prevented from acting.

Finally, the draft simplifies the rules relating to the Registry and the services of the Court, since certain provisions of the existing Rules of Procedure, such as those concerning the oath to be taken by officials or the organisation of the services, may appear to be excessively detailed or indeed out of step with the primary purpose of rules of procedure.

By contrast, the chapter relating to the rights and obligations of agents loses none of its importance to the conduct of proceedings before the Court, but has been moved to the beginning of Title II of the draft, which relates to common procedural provisions. In that respect, the draft is aligned with the very structure of the Statute, since, in the Statute also, it is the title (Title III) relating to the '[p]rocedure before the Court of Justice' that contains the rules relating to representation before the Court, in Article 19 of the Statute.

The substance of the provisions relating to language arrangements has not been amended. Chapter 8 of the draft thus corresponds to Chapter 6 of the Rules of Procedure currently in force, except for Article 37(2) of the draft, which is new. In the interests, as already indicated, of clarifying the rules applicable, the Court considered it preferable to bring together in a single chapter all the provisions relating to languages – hence the inclusion in Article 37 of provisions relating to the language of the case in appeals and in reviews – and to insert a provision that is intended to specify the language in which requests or applications associated with existing cases – such as applications for interpretation or revision or for taxation of costs – must be submitted. For reasons relating as much to the very nature of the procedures concerned – requests that are ancillary to the main case – as to the need to preserve the rights of the parties to a dispute, the draft provides that these procedures must be submitted in the language of the decision to which they relate, without prejudice to the exceptions for which provision is currently already made.

Chapter 1
JUDGES AND ADVOCATES GENERAL

Article 3 Commencement of the term of office of Judges and Advocates General

In the absence of any provisions in the instrument of appointment of a Judge or Advocate General regarding the date of commencement of his term of office, that term shall begin on the date of publication of the instrument.

Under Article 2 of the Rules of Procedure currently in force, the term of office of a Judge is to begin, in principle, on the date laid down in his instrument of appointment. The same rule applies, under Article 5 of the Rules, to Advocates General.

In fact, however, this rule [in certain language versions] does not entirely reflect what happens in practice. Judges and Advocates General of the Court of Justice actually take up their duties only after taking the oath referred to in Article 2 of the Statute. However, the date on which the oath is taken does not necessarily correspond to the date laid down in the instrument of appointment of the Judge or Advocate General concerned, particularly where an appointment is made before the predecessor's term of office expires, following a resignation or death. In some cases, days or weeks may pass between the date laid down in the instrument of appointment of a Judge or Advocate General and the date on which he takes the oath, marking the date on which he actually takes up his duties.

For that reason, it was deemed necessary to amend Article 2 of the existing Rules to refer, from now on, to the date of commencement of the 'période de mandat' ('term of office' in the sense of the period referred to in the instrument of appointment) of a Judge or Advocate General, rather than to that of his 'période de fonctions' ('term of office' in the sense of the period during which his duties are actually exercised).

Article 4 Taking of the oath

Before taking up his duties, a Judge or Advocate General shall, at the first public sitting of the Court which he attends after his appointment, take the following oath provided for in Article 2 of the Statute:

'I swear that I will perform my duties impartially and conscientiously; I swear that I will preserve the secrecy of the deliberations of the Court.'

This article corresponds to Article 3(1) of the existing Rules of Procedure, with the addition, in the interests of clarification, of a reference to Article 2 of the Statute, which sets out the content of the oath to be taken by Judges and Advocates General.

Article 5 Solemn undertaking

Immediately after taking the oath, a Judge or Advocate General shall sign a declaration by which he gives the solemn undertaking provided for in the third paragraph of Article 4 of the Statute.

This article corresponds, in essence, to Article 3(2) of the existing Rules of Procedure, which reproduces, in essence, the third paragraph of Article 4 of the Statute. In the interests of brevity, the present draft therefore simply refers here to Article 4 of the Statute.

Article 6 Depriving a Judge or Advocate General of his office

1. Where the Court is called upon, pursuant to Article 6 of the Statute, to decide whether a Judge or Advocate General no longer fulfils the requisite conditions or no longer meets the obligations arising from his office, the President shall invite the Judge or Advocate General concerned to make representations.

2. The Court shall give a decision in the absence of the Registrar.

This article corresponds to Article 4 of the existing Rules of Procedure, the terms of which are, in essence, reproduced. In the interests of clarification, the draft also cites Article 6 of the Statute, to which effect is given here, and deletes the words 'in closed session', the meaning of which was not entirely clear. The decision to deprive a Judge or Advocate General of his office or of his right to a pension or other benefits in accordance with Article 6 of the Statute is therefore a decision that is taken by the whole Court, in the absence of the Registrar, having regard to the representations made by the person concerned.

Article 7 Order of seniority

1. The seniority of Judges and Advocates General shall be calculated without distinction according to the date on which they first took up their duties.

2. Where there is equal seniority on that basis, the order of seniority shall be determined by age.

3. Judges and Advocates General whose terms of office are renewed shall retain their former seniority.

This article corresponds to Article 6 of the existing Rules of Procedure, which, in the interests of clarification, has been slightly rephrased.

Chapter 2

PRESIDENCY OF THE COURT, CONSTITUTION OF THE CHAMBERS AND DESIGNATION OF THE FIRST ADVOCATE GENERAL

Article 8 Election of the President and of the Vice-President of the Court

1. The Judges shall, immediately after the partial replacement provided for in the second paragraph of Article 253 TFEU, elect one of their number as President of the Court for a term of three years.

2. If the office of the President falls vacant before the normal date of expiry of the term thereof, the Court shall elect a successor for the remainder of the term.

3. The elections provided for in this Article shall be by secret ballot. The Judge obtaining the votes of more than half the Judges of the Court shall be elected. If no Judge obtains that majority, further ballots shall be held until that majority is attained.

4. The Judges shall then elect one of their number as Vice-President of the Court for a term of three years, in accordance with the procedures laid down in the preceding paragraph. Paragraph 2 shall apply if the office of the Vice-President of the Court falls vacant before the normal date of expiry of the term thereof.

5. The names of the President and Vice-President elected in accordance with this Article shall be published in the *Official Journal of the European Union*.

The first three paragraphs of this article correspond to the three paragraphs of Article 7 of the existing Rules of Procedure.

Paragraph 4 of this article arises from the Court's proposal to amend the Statute to establish the office of Vice-President of the Court. It is proposed that that Judge, who is required to assist the President in carrying out his responsibilities, be elected in accordance with the same procedures as those which apply to the election of the President, and that, as in the case of the President of the Court, if the office of the Vice-President of the Court falls vacant before the normal date of expiry of the term thereof, his successor should be elected only for the remainder of the term.

Finally, Article 8(5) of the draft fills a gap in the existing Rules of Procedure by providing that the names of the President and Vice-President elected in accordance with this article must be published in the Official Journal, as already provided for in relation to the First Advocate General and Presidents of Chambers.

Article 9 Responsibilities of the President of the Court

1. The President shall represent the Court.

2. The President shall direct the judicial business of the Court. He shall preside at general meetings of the Members of the Court and at hearings before and deliberations of the full Court and the Grand Chamber.

3. The President shall ensure the proper functioning of the services of the Court.

This article reflects the wording of Article 8 of the existing Rules of Procedure but supplements it by specifying in further detail the varied duties performed by the President of the Court.

Paragraph 1 of this article thus refers to the role of representing the Court vis-à-vis the other institutions of the European Union as well as the courts of the Member States of the European Union and, in particular, their supreme courts. This duty has become increasingly important since the rise in the number of the European Union's Member States from 15 to 27, and it is that, in particular, which underpins the Court's proposal for the establishment of the office of Vice-President.

Paragraph 2 of this article goes to the heart of the President of the Court's duties: to direct the judicial business of the Grand Chamber and of the full Court, but also, every week, to preside at the general meeting of the Court, at which all the Members of the Court are assembled.

Finally, Article 9(3) reflects another aspect of the President's duties, which is to ensure the proper functioning of all the services of the institution, in close collaboration with the Registrar, who is responsible for its day-to-day management.

Article 10 Responsibilities of the Vice-President of the Court

The Vice-President shall assist the President of the Court. He shall take the latter's place when he is prevented from acting, when the office of President is vacant or at the President's request.

In the same way that Article 9 of the draft defines the responsibilities of the President of the Court, Article 10 defines those of the Vice-President whom the Court proposes to introduce. In essence, the Vice-President would have the duty of assisting the President in carrying out his responsibilities and taking his place when the President is prevented from acting or when the office of President is vacant.

Article 11 Constitution of Chambers

1. The Court shall set up Chambers of five and three Judges in accordance with Article 16 of the Statute and shall decide which Judges shall be attached to them.

2. The Court shall designate the Chambers of five Judges which, for a period of one year, shall be responsible for cases of the kind referred to in Article 108 and Articles 195 and 196.

3. In respect of cases assigned to a formation of the Court in accordance with Article 60, the word 'Court' in these Rules shall mean that formation.

4. In respect of cases assigned to a Chamber of five or three Judges, the powers of the President of the Court shall be exercised by the President of the Chamber.

5. The composition of the Chambers and the designation of the Chambers responsible for cases of the kind referred to in Article 108 and Articles 195 and 196 shall be published in the *Official Journal of the European Union*.

Article 11 of the draft reproduces, in essence, the terms of Article 9(1), (3) and (4) of the existing Rules of Procedure. Unlike Article 9 of the existing Rules, however, Article 11 includes in paragraphs 2 and 5 a reference to two separate articles, instead of just one. This addition stems from the Court's proposal – which will be referred to below – to model the review regime on that of the urgent preliminary ruling procedure, and consequently to designate for a period of one year a Chamber of five Judges responsible for considering, under the conditions laid down by the present Rules, whether action should be taken on any proposals to review decisions of the General Court.

Article 12 Election of Presidents of Chambers

1. The Judges shall, immediately after the election of the President and Vice-President of the Court, elect the Presidents of the Chambers of five Judges for a term of three years.

2. The Judges shall then elect the Presidents of the Chambers of three Judges for a term of one year.

3. The provisions of Article 8(2) and (3) shall apply.

4. The names of the Presidents of Chambers elected in accordance with this Article shall be published in the *Official Journal of the European Union*.

This article reproduces, in essence, the provisions of Article 10(1) of the existing Rules of Procedure, except for the addition of a reference to the election of the Vice-President of the Court and the deletion of the third subparagraph relating to the appointment of the First Advocate General, which is dealt with in a separate article in the present draft.

Article 13 Where the President and Vice-President of the Court are prevented from acting

When the President and the Vice-President of the Court are prevented from acting, the functions of President shall be exercised by one of the Presidents of the Chambers of five Judges or, failing that, by one of the Presidents of the Chambers of three Judges or, failing that, by one of the other Judges, according to the order of seniority laid down in Article 7.

This article reproduces, but simplifies, the content of the current Article 11. It is intended to specify the order in which the name of the person who is to assume the functions of President of the Court is determined when both the President and the Vice-President are simultaneously prevented from acting. The Court is to follow the order of seniority referred to in Article 7 of the present draft by calling, first, on the President of a Chamber of five Judges with the greatest seniority, then, if the latter is prevented from acting, on the President of a Chamber of five Judges next in order of seniority, and so on until there is an effective replacement.

Article 14 Designation of the First Advocate General

1. The Court shall, after hearing the Advocates General, designate a First Advocate General for a period of one year.

2. If the office of the First Advocate General falls vacant before the normal date of expiry of the term thereof, the Court shall designate a successor for the remainder of the term.

3. The name of the First Advocate General designated in accordance with this Article shall be published in the *Official Journal of the European Union*.

Paragraphs 1 and 3 of this article correspond, in essence, to the third and fifth subparagraphs of Article 10(1) of the existing Rules of Procedure, except for the added detail – reflecting current practice – that the Advocates General are to be heard prior to the designation of the First Advocate General.

Paragraph 2 of this article is new and is intended to align the end of the term of office of the First Advocate General with the end of the terms of office of the President and Vice-President of the Court, if the office of the First Advocate General falls vacant before the normal date of expiry of the term thereof.

Chapter 3

ASSIGNMENT OF CASES TO JUDGE-RAPPORTEURS AND ADVOCATES GENERAL

Article 15 Designation of the Judge-Rapporteur

1. As soon as possible after the document initiating proceedings has been lodged, the President of the Court shall designate a Judge to act as Rapporteur in the case.

2. For cases of the kind referred to in Article 108 and Articles 195 and 196, the Judge-Rapporteur shall be selected from among the Judges of the Chamber designated in accordance with Article 11(2), on a proposal from the President of that Chamber. If, pursuant to Article 110, the Chamber decides that the reference is not to be dealt with under the urgent procedure, the President of the Court may reassign the case to a Judge-Rapporteur attached to another Chamber.

3. The President of the Court shall take the necessary steps if a Judge-Rapporteur is prevented from acting.

This article reproduces, in essence, the content of Article 9(2) of the existing Rules of Procedure, except for the addition in paragraph 2 of a reference to Article 193 of the draft Rules, relating to the designation for a period of one year of a Chamber responsible for review proceedings.

Article 16 Designation of the Advocate General

1. The First Advocate General shall assign each case to an Advocate General.

2. The First Advocate General shall take the necessary steps if an Advocate General is prevented from acting.

This article corresponds, in essence, to Article 10(2) of the existing Rules of Procedure.

Unlike Article 10(2) of the existing Rules, however, Article 16(1) no longer includes a temporal reference, which means that the First Advocate General can, if necessary, assign a case to an Advocate General before the Judge-Rapporteur has been designated.

It will be noted, moreover, that the reference to an Advocate General being absent has been deleted in Article 16(2). Since any absence would necessarily mean that the Advocate General concerned is prevented from acting, the juxtaposition of the two terms seems unnecessary.

Chapter 4

ASSISTANT RAPPORTEURS

Article 17 Assistant Rapporteurs

1. Where the Court is of the opinion that the consideration of and preparatory inquiries in cases before it so require, it shall, pursuant to Article 13 of the Statute, propose the appointment of Assistant Rapporteurs.

2. Assistant Rapporteurs shall in particular:

(a) assist the President of the Court in interim proceedings and
(b) assist the Judge-Rapporteurs in their work.

3. In the performance of their duties the Assistant Rapporteurs shall be responsible to the President of the Court, the President of a Chamber or a Judge-Rapporteur, as the case may be.

4. Before taking up his duties, an Assistant Rapporteur shall take before the Court the oath set out in Article 4 of these Rules.

This article corresponds, in essence, to Article 24 of the existing Rules of Procedure, which it reproduces with an amendment to the number of the article referred to in paragraph 4.

Chapter 5

REGISTRY

Article 18 Appointment of the Registrar

1. The Court shall appoint the Registrar.

2. When the post of Registrar is vacant, an advertisement shall be published in the *Official Journal of the European Union*. Interested persons shall be invited to submit their applications within a time-limit of not less than three weeks, accompanied by full details of their nationality, university degrees, knowledge of languages, present and past occupations, and experience, if any, in judicial and international fields.

3. The vote, in which the Judges and the Advocates General shall take part, shall take place in accordance with the procedure laid down in Article 8(3) of these Rules.

4. The Registrar shall be appointed for a term of six years. He may be reappointed. The Court may decide to renew the term of office of the incumbent Registrar without availing itself of the procedure laid down in paragraph 2 of this Article.

5. The Registrar shall take the oath set out in Article 4 and sign the declaration provided for in Article 5.

6. The Registrar may be deprived of his office only if he no longer fulfils the requisite conditions or no longer meets the obligations arising from his office. The Court shall take its decision after giving the Registrar an opportunity to make representations.

7. If the office of Registrar falls vacant before the normal date of expiry of the term thereof, the Court shall appoint a new Registrar for a term of six years.

8. The name of the Registrar elected in accordance with this Article shall be published in the *Official Journal of the European Union*.

This article corresponds, in essence, to Article 12 of the existing Rules of Procedure, which it nevertheless supplements in two respects.

First, the draft allows for more publicity to be given to the process of appointing the Registrar by providing that, when the post of Registrar is vacant, a vacancy notice is to be published in the Official Journal of the European Union, in which, at the end of the process, the name of the Registrar elected will also be published (see paragraphs 2 and 8 of the draft, respectively).

Second, the draft simplifies the procedure applicable when the term of office of an incumbent Registrar is to be renewed. It states, in paragraph 4, that the Court can decide not to avail itself of the procedure for election of the Registrar if he is willing to be reappointed and the Court wishes to renew his term of office. This amendment addresses both the concern to avoid what is a relatively cumbersome procedure for the Court and the desire to avoid creating expectations outside the Court which will inevitably be disappointed if the Court has decided to renew the term of office of the incumbent Registrar.

Article 19 Deputy Registrar

The Court may, in accordance with the procedure laid down in respect of the Registrar, appoint a Deputy Registrar to assist the Registrar and to take his place if he is prevented from acting.

This article corresponds to Article 13 of the existing Rules of Procedure, which it simplifies, however, by providing, in accordance with current practice, for the appointment of a single Deputy Registrar, and by deleting any reference to the Instructions to the Registrar, the relevance of which is not apparent. The article thus recalls the main duty of the Deputy Registrar, which is to assist the Registrar and to take his place if he is prevented from acting.

Article 20 Responsibilities of the Registrar

1. The Registrar shall be responsible, under the authority of the President of the Court, for the acceptance, transmission and custody of all documents and for effecting service as provided for by these Rules.

2. The Registrar shall assist the Members of the Court in all their official functions.

3. The Registrar shall have custody of the seals and shall be responsible for the records. He shall be in charge of the publications of the Court and, in particular, the European Court Reports.

4. The Registrar shall direct the services of the Court under the authority of the President of the Court. He shall be responsible for the management of the staff and the administration, and for the preparation and implementation of the budget.

In common with Articles 9 and 10, relating to the responsibilities of the President and the Vice-President of the Court, the present article defines the main responsibilities of the Registrar. It combines within a single article the content of Articles 17, 18, 23 and 68 of the existing Rules of Procedure, which is slightly rephrased.

Article 21 Keeping of the register

1. There shall be kept in the Registry, under the responsibility of the Registrar, a register in which all procedural documents and supporting items and documents lodged shall be entered in the order in which they are submitted.

2. When a document has been registered, the Registrar shall make a note to that effect on the original and, if a party so requests, on any copy submitted for the purpose.

3. Entries in the register and the notes provided for in the preceding paragraph shall be authentic.

4. A notice shall be published in the *Official Journal of the European Union* indicating the date of registration of an application initiating proceedings or of a request for a preliminary ruling, the names of the parties, the subject-matter of the proceedings, the form of order sought by the applicant or the questions referred and, where appropriate, a summary of the pleas in law and of the main supporting arguments.

The four paragraphs which constitute this article correspond, respectively, to paragraphs 1, 2, 3 and 6 of Article 16 of the existing Rules of Procedure. The last paragraph has, however, been slightly amended to reflect more closely the exact content of notices published in the Official Journal in relation to new cases brought before the Court.

Article 22 Consultation of the register and of judgments and orders

1. Anyone may consult the register at the Registry and may obtain copies or extracts on payment of a charge on a scale fixed by the Court on a proposal from the Registrar.

2. The parties to a case may, on payment of the appropriate charge, obtain certified copies of procedural documents.

3. Anyone may, on payment of the appropriate charge, also obtain certified copies of judgments and orders.

This article corresponds to Article 16(5) of the existing Rules of Procedure which it supplements, however, in paragraph 3 by extending to anyone the right to obtain certified copies of judgments and orders.

Chapter 6

THE WORKING OF THE COURT

Article 23 Location of the sittings of the Court

The Court may choose to hold one or more specific sittings in a place other than that in which it has its seat.

This article corresponds to Article 25(3) of the existing Rules of Procedure.

Article 24 Calendar of the Court's judicial business

1. The judicial year shall begin on 7 October of each calendar year and end on 6 October of the following year.

2. The judicial vacations shall be determined by the Court.

3. In a case of urgency, the President may convene the Judges and the Advocates General during the judicial vacations.

4. The Court shall observe the official holidays of the place in which it has its seat.

5. The Court may, in proper circumstances, grant leave of absence to any Judge or Advocate General.

6. The dates of the judicial vacations and the list of official holidays shall be published in the *Official Journal of the European Union*.

This article corresponds, in essence, to Article 28 of the existing Rules of Procedure, which it nevertheless supplements by specifying in paragraph 1 the dates of the beginning and end of the judicial year. By contrast with the current Article 28, however, Article 24 of the draft Rules no

longer includes in the Rules of Procedure a reference to the precise dates of the judicial vacations, the existing provision having ceased to reflect the true position. Those dates have to be laid down by the Court and then published in the Official Journal of the European Union, as must the list of official holidays, which currently appears as an annex to the Rules of Procedure.

Article 25 Participation in administrative or procedural decisions

Where the decisions of the Court concern administrative issues or the action to be taken upon the proposals of the Judge-Rapporteur in his preliminary report under Article 59, the Advocates General shall take part and have a vote. The Registrar shall be present, unless the Court decides to the contrary.

This article corresponds to Article 27(7) of the existing Rules of Procedure, with the addition – to reflect the actual participation of the Advocates General in discussions at general meetings – of a reference to the proposals of the Judge-Rapporteur in his preliminary report.

Article 26 Drawing-up of minutes

Where the Court sits without the Registrar being present it shall, if necessary, instruct the most junior Judge for the purposes of Article 7 of these Rules to draw up minutes, which shall be signed by that Judge and by the President.

This article corresponds to Article 27(8) of the existing Rules of Procedure.

Chapter 7

FORMATIONS OF THE COURT

Section 1. Composition of the formations of the Court

Article 27 Composition of the Grand Chamber

1. The Grand Chamber shall, for each case, be composed of the President and the Vice-President of the Court, the Judge-Rapporteur and the number of Judges necessary to reach 15. The last-mentioned Judges shall be designated from the list referred to in paragraph 2, following the order laid down therein. The starting-point on that list, in every case assigned to the Grand Chamber, shall be the name of the Judge immediately following the last Judge designated from the list for the preceding case assigned to that formation of the Court.

2. After the election of the President and the Vice-President of the Court, a list of the other Judges shall be drawn up for the purposes of determining the composition of the Grand Chamber. That list shall follow the order laid down in Article 7 of these Rules, alternating with the reverse order: the first Judge on that list shall be the first according to the order laid down in that Article, the second Judge shall be the last according to that order, the third Judge shall be the second according to that order, the fourth Judge the penultimate according to that order, and so on.

3. The list referred to in paragraph 2 shall be published in the *Official Journal of the European Union*.

4. In cases which are assigned to the Grand Chamber between the beginning of a calendar year in which there is a partial replacement of Judges and the moment when that replacement has taken place, two substitute Judges may be designated to complete the formation of the Court for so long as the attainment of the quorum referred to in the third paragraph of Article 17 of the Statute is in doubt. Those substitute Judges shall be the two Judges appearing on the list referred to in paragraph 2 immediately after the last Judge designated for the composition of the Grand Chamber in the case.

5. The substitute Judges shall replace, in the order of the list referred to in paragraph 2, such Judges as are unable to take part in the determination of the case.

While this article reproduces, in essence, the content of Article 11b of the existing Rules of Procedure, two amendments have nevertheless been made to that provision.

The first two paragraphs of the present article have been amended to take account of the Court's proposed amendments to the Statute to change the number of Judges sitting in the Grand Chamber

and to establish the post of Vice-President, who is required to sit in all cases assigned to that formation of the Court. The final wording of those two paragraphs will, of course, depend on how the abovementioned proposals are received by the European Union legislature.

Paragraph 4 has been slightly amended to ensure that Judges do not sit unnecessarily pending the partial replacement of Judges in October of the year in question when the decision to appoint the Judges has already been taken, in some cases several months before that partial replacement. The draft Rules therefore provide for substitute Judges to be designated from the beginning of a year in which there is to be a partial replacement for so long as decisions relating to the renewal or non-renewal of the terms of office of the Judges concerned have not been taken, and doubts therefore persist as to whether the quorum referred to in the third paragraph of Article 17 of the Statute will be attained. That designation would end, however, as soon as it was established with certainty that, as a result of the decision or decisions taken on renewal of the Judges' terms of office, the quorum necessary in order for decisions in cases assigned to the Grand Chamber to be valid will be attained.

Article 28 Composition of the Chambers of five and of three Judges

1. The Chambers of five Judges and of three Judges shall, for each case, be composed of the President of the Chamber, the Judge-Rapporteur and the number of Judges required to attain the number of five and three Judges respectively. Those last-mentioned Judges shall be designated from the lists referred to in paragraphs 2 and 3, following the order laid down therein. The starting-point on those lists, in every case assigned to a Chamber, shall be the name of the Judge immediately following the last Judge designated from the list for the preceding case assigned to the Chamber concerned.

2. For the composition of the Chambers of five Judges, after the election of the Presidents of those Chambers lists shall be drawn up including all the Judges attached to the Chamber concerned, with the exception of its President. The lists shall be drawn up in the same way as the list referred to in Article 27(2).

3. For the composition of the Chambers of three Judges, after the election of the Presidents of those Chambers lists shall be drawn up including all the Judges attached to the Chamber concerned, with the exception of its President. The lists shall be drawn up according to the order laid down in Article 7.

4. The lists referred to in paragraphs 2 and 3 shall be published in the *Official Journal of the European Union*.

This article corresponds to Article 11c of the existing Rules of Procedure.

Article 29 Composition of Chambers where cases are related or referred back

1. Where the Court considers that a number of cases must be heard and determined together by one and the same formation of the Court, the composition of that formation shall be that fixed for the case in respect of which the preliminary report was examined first.

2. Where a Chamber to which a case has been assigned requests the Court, pursuant to Article 60(3) of these Rules, to assign the case to a formation composed of a greater number of Judges, that formation shall include the members of the Chamber which has referred the case back.

Subject to terminological adjustments, this article corresponds to Article 11d of the existing Rules of Procedure.

Article 30 Where a President of a Chamber is prevented from acting

1. When the President of a Chamber of five Judges is prevented from acting, the functions of President of the Chamber shall be exercised by a President of a Chamber of three Judges, where necessary according to the order laid down in Article 7 of these Rules, or, if that formation of the Court does not include a President of a Chamber of three Judges, by one of the other Judges according to the order laid down in Article 7.

2. When the President of a Chamber of three Judges is prevented from acting, the functions of President of the Chamber shall be exercised by a Judge of that formation of the Court according to the order laid down in Article 7.

This article corresponds to the third and fourth paragraphs of Article 11e of the existing Rules of Procedure. It supplements Article 13 of the draft Rules, relating to situations where the President and Vice-President of the Court are prevented from acting.

Article 31 Where a member of the formation of the Court is prevented from acting

1. When a member of the Grand Chamber is prevented from acting, he shall be replaced by another Judge according to the order of the list referred to in Article 27(2).

2. When a member of a Chamber of five Judges is prevented from acting, he shall be replaced by another Judge of that Chamber, according to the order of the list referred to in Article 28(2). If it is not possible to replace the Judge prevented from acting by a Judge of the same Chamber, the President of that Chamber shall so inform the President of the Court who shall designate another Judge to complete the Chamber.

3. When a member of a Chamber of three Judges is prevented from acting, he shall be replaced by another Judge of that Chamber, according to the order of the list referred to in Article 28(3). If it is not possible to replace the Judge prevented from acting by a Judge of the same Chamber, the President of that Chamber shall so inform the President of the Court who shall designate another Judge to complete the Chamber.

Article 31 concerns the replacement of a member of a formation of the Court. It refers, in that regard, to the solutions contained, respectively, in the first paragraph of Article 11e and in Article 26(3) of the existing Rules of Procedure, but sets them out much more clearly in respect of each formation of the Court that includes the Member who is prevented from acting.

Section 2. Deliberations

Article 32 Procedures concerning deliberations

1. The deliberations of the Court shall be and shall remain secret.

2. When a hearing has taken place, only those Judges who participated in that hearing and, where relevant, the Assistant Rapporteur responsible for the consideration of the case shall take part in the deliberations.

3. Every Judge taking part in the deliberations shall state his opinion and the reasons for it.

4. The conclusions reached by the majority of the Judges after final discussion shall determine the decision of the Court.

This article corresponds, in essence, to Article 27(1) to (5) of the existing Rules of Procedure, albeit slightly amended to reflect current practice more closely and, in particular, the possibility for the Court to decide a case without a hearing.

Article 33 Number of Judges taking part in the deliberations

Where, by reason of a Judge being prevented from acting, there is an even number of Judges, the most junior Judge for the purposes of Article 7 of these Rules shall abstain from taking part in the deliberations unless he is the Judge-Rapporteur. In that case the Judge immediately senior to him shall abstain from taking part in the deliberations.

This article corresponds to Article 26(1) of the existing Rules of Procedure.

Article 34 Quorum of the Grand Chamber

1. If, for a case assigned to the Grand Chamber, it is not possible to attain the quorum referred to in the third paragraph of Article 17 of the Statute, the President of the Court shall designate one or more other Judges according to the order of the list referred to in Article 27(2) of these Rules.

2. If a hearing has taken place before that designation, the Court shall re-hear oral argument from the parties and the Opinion of the Advocate General.

The present article has a twofold objective. It is intended, first, to clarify the procedure to be followed where, owing to the fact that a number of Judges are simultaneously prevented from acting, it is no longer possible to attain the quorum necessary in order for the Grand Chamber's decisions to be valid. Second, it draws attention to the fact that this procedure is without prejudice to any reopening of the oral part of the procedure. If one or more other Judges are indeed designated when the hearing has already taken place, a new hearing will be arranged and, if necessary, the Advocate General responsible for the case will deliver a new Opinion.

Article 35 Quorum of the Chambers of five and of three Judges

1. If, for a case assigned to a Chamber of five or of three Judges, it is not possible to attain the quorum referred to in the second paragraph of Article 17 of the Statute, the President of the Court

shall designate one or more other Judges according to the order of the list referred to in Article 28(2) or (3), respectively, of these Rules.

2. Article 34(2) shall apply, *mutatis mutandis*, to the Chambers of five and of three Judges.

The present article of the draft Rules has the same objectives as the preceding article but, in this case, concerns the situation in which a quorum can no longer be attained in a Chamber of five or of three Judges.

Chapter 8

LANGUAGES

Article 36 Language of a case

The language of a case shall be Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish or Swedish.

This article corresponds to Article 29(1) of the existing Rules of Procedure.

Article 37 Determination of the language of a case

1. In direct actions, the language of a case shall be chosen by the applicant, except that:

(a) where the defendant is a Member State or a natural or legal person having the nationality of a Member State, the language of the case shall be the official language of that State; where that State has more than one official language, the applicant may choose between them;

(b) at the joint request of the parties, the use of another of the languages mentioned in Article 36 for all or part of the proceedings may be authorised;

(c) at the request of one of the parties, and after the opposite party and the Advocate General have been heard, the use of another of the languages mentioned in Article 36 may be authorised as the language of the case for all or part of the proceedings by way of derogation

from subparagraphs (a) and (b); such a request may not be submitted by one of the institutions of the European Union.

2. Without prejudice to the provisions of paragraph 1(b) and (c), and of Article 38(4) and (5) of these Rules,

(a) in appeals against decisions of the General Court as referred to in Articles 56 and 57 of the Statute, the language of the case shall be the language of the decision of the General Court against which the appeal is brought;

(b) where, in accordance with the second paragraph of Article 62 of the Statute, the Court decides to review a decision of the General Court, the language of the case shall be the language of the decision of the General Court which is the subject of review;

(c) challenges concerning the costs to be recovered, applications to set aside judgments by default, third-party proceedings and applications for interpretation or revision of a judgment or for the Court to remedy a failure to adjudicate must be submitted in the language of the decision to which they relate.

3. In preliminary ruling proceedings, the language of the case shall be the language of the referring court or tribunal. At the duly substantiated request of one of the parties to the main proceedings, and after the other party to the main proceedings and the Advocate General have been heard, the use of another of the languages mentioned in Article 36 may be authorised for the oral part of the procedure.

4. Requests as above may be decided on by the President; the latter may, and where he wishes to accede to a request without the agreement of all the parties, must, refer the request to the Court.

As already stated in the introduction to the present title, the Court considered it preferable to bring together in a single chapter all the provisions relating to languages and to clarify the rules applicable in respect of the language in which requests which are ancillary to existing cases, such as applications for interpretation or revision, must be submitted. This approach explains why a second paragraph has been added to the present article, which otherwise reproduces, in essence, the content of Article 29(2) of the existing Rules of Procedure. Points (a) and (b) of Article 37(2) correspond to Articles 110 and 123a of the existing Rules of Procedure, relating to the language of the case in appeals and reviews, whereas point (c) relates to the question of the language of the case in the 'ancillary' procedures referred to above.

Article 38 Use of the language of the case

1. The language of the case shall in particular be used in the written and oral pleadings of the parties, including the items and documents produced or annexed to them, and also in the minutes and decisions of the Court.

2. Any item or document produced or annexed that is expressed in another language must be accompanied by a translation into the language of the case.

3. However, in the case of substantial items or lengthy documents, translations may be confined to extracts. At any time the Court may, of its own motion or at the request of one of the parties, call for a complete or fuller translation.

4. Notwithstanding the foregoing provisions, a Member State shall be entitled to use its official language when intervening in a case before the Court or when taking part in preliminary ruling proceedings. This provision shall apply both to written documents and to oral statements. The Registrar shall arrange in each instance for translation into the language of the case.

5. The States, other than the Member States, which are parties to the EEA Agreement, and also the EFTA Surveillance Authority, may be authorised to use one of the languages mentioned in Article 36, other than the language of the case, when they intervene in a case before the Court or participate in preliminary ruling proceedings. This provision shall apply both to written documents and to oral statements. The Registrar shall arrange in each instance for translation into the language of the case.

6. Non-Member States taking part in preliminary ruling proceedings pursuant to the fourth paragraph of Article 23 of the Statute may be authorised to use one of the languages mentioned in Article 36, other than the language of the case. This provision shall apply both to written documents and to oral statements. The Registrar shall arrange in each instance for translation into the language of the case.

7. Where a witness or expert states that he is unable adequately to express himself in one of the languages referred to in Article 36, the Court may authorise him to give his evidence in another language. The Registrar shall arrange for translation into the language of the case.

8. The President of the Court and the Presidents of Chambers in conducting oral proceedings, Judges and Advocates General in putting questions and Advocates General in delivering their Opinions may use one of the languages referred to in Article 36 other than the language of the case. The Registrar shall arrange for translation into the language of the case.

Article 38 of the draft Rules reproduces, in essence, the content of Article 29(3) to (5) of the existing Rules of Procedure, except for the deletion, in Article 38(8), of the reference to the preliminary report and the report for the hearing. Since the preliminary report is strictly for the Court's internal use, a reference to it in this article seems superfluous, while dispensing with the report for the hearing is one of the measures envisaged by the Court in this recasting of the Rules (see, in that regard, the introduction to Title II of the present draft).

Article 39 Responsibility of the Registrar concerning language arrangements

The Registrar shall, at the request of any Judge, of the Advocate General or of a party, arrange for anything said or written in the course of the proceedings before the Court to be translated into the languages chosen from those referred to in Article 36.

Article 39 corresponds to Article 30(1) of the existing Rules of Procedure.

Article 40 Languages of the publications of the Court

Publications of the Court shall be issued in the languages referred to in Article 1 of Council Regulation No 1.

This article corresponds to Article 30(2) of the existing Rules of Procedure.

Article 41 Authentic texts

The texts of documents drawn up in the language of the case or, where applicable, in another language authorised pursuant to Articles 37 or 38 of these Rules shall be authentic.

This article corresponds to Article 31 of the existing Rules of Procedure.

Article 42 Language service of the Court

The Court shall set up a language service staffed by experts with adequate legal training and a thorough knowledge of several official languages of the European Union.

This article corresponds to Article 22 of the existing Rules of Procedure. It seemed more natural to refer to the role of the Court's interpreters and lawyer-linguists in the chapter devoted to languages than in the chapter relating to the Registry.

TITLE II
COMMON PROCEDURAL PROVISIONS

As in the Rules of Procedure currently in force, Title II of the draft covers the conduct of proceedings before the Court and the Court's different procedures for dealing with cases. By contrast with the existing Rules, however, the draft no longer reflects the predominance of one type of action; instead it brings together in a single title the procedural provisions common to all types of action, and sets out the features that are specific to each of them in separate titles. As a result, the text as a whole is undoubtedly easier to understand, since each title can now be read independently, and there is no need for multiple references to other provisions of the same Rules.

In terms of its structure, Title II generally follows that of the corresponding title in the existing Rules. After three chapters dealing, respectively, with the rights and obligations of the parties' representatives, service and time-limits, the draft sets out the possible procedures of the Court for dealing with cases and defines the rules applicable, from the written part of the procedure to the close of the case, encompassing the content of the preliminary report and assignment of cases to formations of the Court, measures of organisation of procedure and measures of inquiry and, finally, conduct of the oral part of the procedure.

With regard to the written part of the procedure, it will be noted, in particular, that a provision has been inserted to enable the Court to determine, by decision, the criteria for the translation of written pleadings or observations lodged in a case to be limited, on account of their excessive length, to the translation of the essential passages of those written pleadings or observations. This approach – which is based on that already provided for in Article 104(1) of the existing Rules of Procedure in respect of lengthy requests for a preliminary ruling – is designed to preserve the Court's capacity to dispose within a reasonable period of time of the cases brought

before it, which can prove difficult when, sometimes unaware of the language regime under which the Court operates, an appellant or a party to the main proceedings sends the Court a written pleading that is around a hundred pages long.

In the chapter on measures of organisation of procedure and measures of inquiry, the draft clarifies the type of measures which may be taken, whether by the Court or by the competent formation of the Court, while at the same time simplifying the rules relating to the evidence of witnesses and experts.

Finally, various amendments have been made to the rules relating to the oral part of the procedure. One of these is the abandonment of the report for the hearing. The preparation and translation of such reports uses a significant portion of the Court's resources, and yet the report does not contribute significantly to the handling of a case in so far as it merely reproduces the pleas in law or arguments put forward by the parties in their written pleadings or observations. The Court therefore proposes to remove the requirement for such reports, as it has, moreover, already done in the context of expedited/accelerated and urgent procedures. The hearings themselves, on the other hand, would become more important since, under the proposed reform, the Court would decide to hold a hearing whenever it deemed it necessary, particularly if it considered that the parties or interested persons referred to in Article 23 of the Statute have not been able adequately to present their point of view during the written part of the procedure.

The draft also codifies a number of rules arising from the practice or the case-law of the Court, such as the possibility for the Court to hold joint hearings for two or more cases where the similarities between them so permit, or clarification of the circumstances that may lead to the opening or reopening of the oral part of the procedure. The draft also provides for the President to be able to grant a party who has participated in the proceedings the right to listen to a recording of what was said at the hearing, in the original version.

The title closes with a chapter dedicated to the content of judgments and orders of the Court, the date on which they become binding and how they are publicised.

Chapter 1

RIGHTS AND OBLIGATIONS OF AGENTS, ADVISERS AND LAWYERS

Article 43 Privileges, immunities and facilities

1. Agents, advisers and lawyers, and, where applicable, the parties to the main proceedings and their representatives, who appear before the Court or before any judicial authority to which the Court has addressed letters rogatory shall enjoy immunity in respect of words spoken or written by them concerning the case or the parties.

2. Agents, advisers and lawyers, parties to the main proceedings and their representatives shall also enjoy the following privileges and facilities:

(a) any papers and documents relating to the proceedings shall be exempt from both search and seizure. In the event of a dispute, the customs officials or police may seal those papers and documents; they shall then be immediately forwarded to the Court for inspection in the presence of the Registrar and of the person concerned;

(b) agents, advisers and lawyers, parties to the main proceedings and their representatives shall be entitled to travel in the course of duty without hindrance.

This article corresponds, in essence, to Article 32 of the existing Rules of Procedure, except for the addition of the parties to the main proceedings and their representatives, which is linked to the inclusion of this new title common to all types of procedures, including preliminary ruling proceedings. By contrast, the reference to the Court's allocation of foreign currency is an anachronism and its retention therefore appeared unnecessary.

Article 44 Status of the parties' representatives

1. In order to qualify for the privileges, immunities and facilities specified in Article 43, persons entitled to them shall furnish proof of their status as follows:

(a) agents shall produce an official document issued by the party for whom they act, who shall immediately serve a copy thereof on the Registrar;

(b) lawyers shall produce a certificate that they are authorised to practise before a court of a Member State or of another State which is a party to the EEA Agreement, and an authority

to act issued by the party whom they represent;

(c) advisers shall produce an authority to act issued by the party whom they are assisting;

(d) the parties to the main proceedings or their representatives shall produce a document from the referring court or tribunal attesting to their participation in the proceedings before that court or tribunal, or an authority to act issued by the party whom they represent.

2. The Registrar of the Court shall issue them with a certificate, as required. The validity of this certificate shall be limited to a specified period, which may be extended or curtailed according to the duration of the proceedings.

As in the case of the preceding article, Article 44 of the draft Rules reproduces in essence, in that respect, the content of the corresponding article (Article 33) of the existing Rules of Procedure, which it nevertheless supplements to reflect more closely the true situation in cases that are brought before the Court and to underline the need for lawyers and advisers to submit an authority to act issued by the party represented or assisted by them.

Article 45 Waiver of immunity

1. The privileges, immunities and facilities specified in Article 43 of these Rules are granted exclusively in the interests of the proper conduct of proceedings.

2. The Court may waive immunity where it considers that the proper conduct of proceedings will not be hindered thereby.

This article corresponds to Article 34 of the existing Rules of Procedure.

Article 46 Exclusion from the proceedings

1. If the Court considers that the conduct of an agent, adviser or lawyer before the Court is incompatible with the dignity of the Court or with the requirements of the proper administration of justice, or that such agent, adviser or lawyer is using his rights for purposes other than those for which they were granted, it shall inform the person concerned. If the Court informs the competent authorities to whom the person concerned is answerable, a copy of the letter sent to those authorities shall be forwarded to the person concerned.

2. On the same grounds, the Court may at any time, having heard the person concerned and the Advocate General, decide to exclude an agent, adviser or lawyer from the proceedings by order. That order shall have immediate effect.

3. Where an agent, adviser or lawyer is excluded from the proceedings, the proceedings shall be suspended for a period fixed by the President in order to allow the party concerned to appoint another agent, adviser or lawyer.

Article 46 of the draft corresponds, in essence, to Article 35 of the existing Rules of Procedure, but supplements it with a reference to agents, since they enjoy the same rights and are subject to the same obligations as advisers and lawyers. Paragraph 3 of the current Article 35, on the other hand, is not reproduced in the draft Rules because it states the obvious.

Article 47 University teachers

The provisions of this Chapter shall apply to university teachers who have a right of audience before the Court in accordance with Article 19 of the Statute.

This article corresponds to Article 36 of the existing Rules of Procedure.

Chapter 2

SERVICE

Article 48 Methods of service

1. Where these Rules require that a document be served on a person, the Registrar shall ensure that service is effected at that person's address for service either by the dispatch of a copy of the document by registered post with a form for acknowledgement of receipt or by personal delivery of the copy against a receipt. The Registrar shall prepare and certify the copies of documents to be served, save where the parties themselves supply the copies in accordance with Article 57(2) of these Rules.

2. Where the addressee has agreed that service is to be effected on him by telefax or any other technical means of communication, any procedural document, including a judgment or order of the

Court, may be served by the transmission of a copy of the document by such means.

3. Where, for technical reasons or on account of the nature or length of the document, such transmission is impossible or impracticable, the document shall be served, if the addressee has not specified an address for service, at his address in accordance with the procedures laid down in paragraph 1 of this Article. The addressee shall be so informed by telefax or any other technical means of communication. Service shall then be deemed to have been effected on the addressee by registered post on the 10th day following the lodging of the registered letter at the post office of the place in which the Court has its seat, unless it is shown by the acknowledgement of receipt that the letter was received on a different date or the addressee informs the Registrar, within three weeks of being informed by telefax or any other technical means of communication, that the document to be served has not reached him.

4. The Court may, by decision, determine the criteria for a procedural document to be served by electronic means. That decision shall be published in the *Official Journal of the European Union*.

Article 48 of the draft reproduces, in essence, the terms of Article 79 of the existing Rules of Procedure. It takes into account the most recent amendments to that article in connection with the introduction, shortly, of the e-Curia application, which allows procedural documents to be lodged and served by electronic means.

Chapter 3

TIME-LIMITS

Article 49 Calculation of time-limits

1. Any procedural time-limit prescribed by the Treaties, the Statute or these Rules shall be calculated as follows:

(a) where a time-limit expressed in days, weeks, months or years is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be counted as falling within the time-limit in question;

(b) a time-limit expressed in weeks, months or years shall end with the expiry of whichever day in the last week, month or year is the same day of the week, or falls on the same date, as the day during which the event or action from which the time-limit is to be calculated occurred

or took place. If, in a time-limit expressed in months or years, the day on which it should expire does not occur in the last month, the time-limit shall end with the expiry of the last day of that month;

(c) where a time-limit is expressed in months and days, it shall first be calculated in whole months, then in days;

(d) time-limits shall include official holidays, Sundays and Saturdays;

(e) time-limits shall not be suspended during the judicial vacations.

2. If the time-limit would otherwise end on a Saturday, Sunday or an official holiday, it shall be extended until the end of the first subsequent working day.

This article reproduces, in essence, the content of Article 80 of the existing Rules of Procedure, except for the last sentence thereof which has been moved to Article 24(6) of the present draft.

Article 50 Proceedings against a measure adopted by an institution

Where the time-limit allowed for initiating proceedings against a measure adopted by an institution runs from the publication of that measure, that time-limit shall be calculated, for the purposes of Article 49(1)(a), from the end of the 14th day after publication of the measure in the *Official Journal of the European Union*.

Article 50 corresponds to Article 81(1) of the existing Rules of Procedure.

Article 51 Setting and extension of time-limits

1. Any time-limit prescribed by the Court pursuant to these Rules may be extended.

2. The President and the Presidents of Chambers may delegate to the Registrar power of signature for the purposes of setting certain time-limits which, pursuant to these Rules, it falls to them to prescribe or of extending such time-limits.

This article corresponds almost word for word to Article 82 of the existing Rules of Procedure. The

relatively obvious point that any time-limit may be extended 'by whoever prescribed it' has not been reproduced.

Chapter 4

DIFFERENT PROCEDURES FOR DEALING WITH CASES

Article 52 Procedures for dealing with cases

1. The ordinary procedure for dealing with a case consists of a written part and an oral part, subject to special provisions for dispensing, in certain circumstances, with a hearing and with an Opinion of the Advocate General.

2. Where it is clear that the Court has no jurisdiction to hear and determine a case or where a request or an application is manifestly inadmissible, the Court may, after hearing the Advocate General, at any time decide to give a decision by reasoned order without taking further steps in the proceedings.

3. The President may in special circumstances decide that a case be given priority over others.

4. A case may be dealt with under an expedited procedure in accordance with the conditions provided by these Rules.

5. A reference for a preliminary ruling may be dealt with under an urgent procedure in accordance with the conditions provided by these Rules.

Although based, in part, on existing provisions of the Rules of Procedure (first subparagraph of Article 55(2) and Article 92(1) of those Rules), Article 52 of the draft is a new article with a threefold objective.

The article, first of all, follows on from successive amendments to the Statute and to the Rules of Procedure by recalling that, while the ordinary procedure for dealing with a case consists of two successive parts (written and oral), the second part can nevertheless be omitted in certain circumstances, where the Court dispenses with a hearing or decides to determine the case, in accordance with the fifth paragraph of Article 20 of the Statute, without an Opinion of the Advocate General.

Next, the article recalls the possibility for the Court to give a decision on a case directly, in the interests of procedural economy, if it is obvious that the Court has no jurisdiction to hear and determine the case or the request or application to the Court is manifestly inadmissible.

Last, in the interests of clarification, the article lists the various possible means of dealing with a case more expeditiously, either by giving it priority over others or by deciding it under an expedited or urgent procedure. The criteria for the application of one or other procedure are described in more detail in separate chapters.

Article 53 Joinder

1. Two or more cases concerning the same subject-matter may at any time be joined, on account of the connection between them, for the purposes of the written or oral part of the procedure or of the judgment which closes the proceedings.

2. A decision on whether cases should be joined shall be taken by the President after hearing the Judge-Rapporteur and the Advocate General, if the cases concerned have already been assigned, and, in the case of direct actions and appeals, after also hearing the parties. The President may refer the decision on this matter to the Court.

3. Joined cases may be disjoined, in accordance with the provisions of paragraph 2.

This article corresponds, in essence, to Article 43 of the existing Rules of Procedure, which it nevertheless clarifies by identifying in three separate paragraphs the grounds for and purpose of joinder, the relevant procedure and the procedure to be followed in the event of disjoinder.

Article 54 Stay of proceedings

1. The proceedings may be stayed:

(a) in the circumstances specified in the third paragraph of Article 54 of the Statute, by order of the Court, made after hearing the Advocate General;

(b) in all other cases, by decision of the President adopted after hearing the Judge-Rapporteur and the Advocate General and, save in the case of references for a preliminary ruling, the parties.

2. The proceedings may be resumed by order or decision, following the same procedure.

3. The orders or decisions referred to in paragraphs 1 and 2 shall be served on the parties or interested persons referred to in Article 23 of the Statute.

4. The stay of proceedings shall take effect on the date indicated in the order or decision of stay or, in the absence of such indication, on the date of that order or decision.

5. While proceedings are stayed time shall cease to run for the parties or interested persons referred to in Article 23 of the Statute for the purposes of procedural time-limits.

6. Where the order or decision of stay does not fix the length of stay, it shall end on the date indicated in the order or decision of resumption or, in the absence of such indication, on the date of the order or decision of resumption.

7. From the date of resumption of proceedings following a stay, the suspended procedural time-limits shall be replaced by new time-limits and time shall begin to run from the date of that resumption.

This article reproduces, in essence, the content of Article 82a of the existing Rules of Procedure except in two respects, the first relating to the hearing of the Judge-Rapporteur before a decision is taken to stay proceedings in cases not provided for under the third paragraph of Article 54 of the Statute (see paragraph 1(b) of the present article), and the other relating to the time-limits imposed on the parties following a stay (see paragraph 7). In the interests of clarification and protection of the parties' rights, provision is made for the parties to be subject to new time-limits, and for time to run afresh from the date on which proceedings are resumed following a stay.

Article 55 Deferment of a case

The President may in special circumstances, either on his own initiative or at the request of one of the parties, after hearing the other party, the Judge-Rapporteur and the Advocate General, defer a case to be dealt with at a later date.

This article reproduces, in essence, but simplifies the content of the second subparagraph of Article 55(2) of the existing Rules of Procedure.

Chapter 5

WRITTEN PART OF THE PROCEDURE

Article 56 General rule

Without prejudice to any special provisions laid down in these Rules, the procedure before the Court shall include a written part.

Reflecting the rule set out in Article 52(1) of the draft, the present article recalls the rule under which the procedure before the Court is, in principle, to include a written part. The special provisions referred to in this article essentially cover cases in which the Court has no jurisdiction or where there is manifest inadmissibility, as referred to in Article 52(2) of the draft, as well as the possibility, referred to in Article 104b(4) of the existing Rules of Procedure, of omitting the written part of the procedure in cases of extreme urgency in the context of a reference dealt with under the urgent preliminary ruling procedure.

Article 57 Lodging of procedural documents

1. The original of every procedural document must bear the handwritten signature of the party's agent or lawyer or, in the case of observations submitted in the context of preliminary ruling proceedings, that of the party to the main proceedings or his representative, if the national rules of procedure applicable to those main proceedings so permit.

2. The original, accompanied by all annexes referred to therein, shall be submitted together with five copies for the Court and, in the case of proceedings other than preliminary ruling proceedings, a copy for every other party to the proceedings. Copies shall be certified by the party lodging them.

3. The institutions shall in addition produce, within time-limits laid down by the Court, translations of any procedural document into the other languages provided for by Article 1 of Council Regulation No 1. The preceding paragraph of this Article shall apply.

4. To every procedural document there shall be annexed a file containing the items and documents relied on in support of it, together with a schedule listing them.

5. Where in view of the length of an item or document only extracts from it are annexed to the procedural document, the whole item or document or a full copy of it shall be lodged at the Registry.

6. All procedural documents shall bear a date. In the calculation of procedural time-limits, only the date and time of lodgment of the original at the Registry shall be taken into account.

7. Without prejudice to the provisions of paragraphs 1 to 6, the date on and time at which a copy of the signed original of a procedural document, including the schedule of items and documents referred to in paragraph 4, is received at the Registry by telefax or any other technical means of communication available to the Court shall be deemed to be the date and time of lodgment for the purposes of compliance with the procedural time-limits, provided that the signed original of the procedural document, accompanied by the annexes and copies referred to in paragraph 2, is lodged at the Registry no later than 10 days thereafter.

8. Without prejudice to paragraphs 1 and 3 to 6, the Court may, by decision, determine the criteria for a procedural document sent to the Registry by electronic means to be deemed to be the original of that document. That decision shall be published in the *Official Journal of the European Union*.

Article 57 reproduces, in essence, the content of Article 37 of the existing Rules of Procedure, but supplements it in two respects. First, the article takes account in paragraph 1 of the special nature of preliminary ruling proceedings and of the possibility that parties to the main proceedings might dispense with the services of a lawyer where national rules of procedure so permit. Second, in the interests of clarification, Article 57(6) of the draft Rules provides that the moment to be taken into account for the purposes of checking compliance with procedural time-limits is not the date and time when an original procedural document was dispatched, but the date and time of its lodgment at the Registry of the Court in Luxembourg.

Article 58 Documents of excessive length

Without prejudice to any special provisions laid down in these Rules, the Court may, by decision, determine the criteria for the translation of written pleadings or observations lodged in a case to be limited, on account of their excessive length, to the translation of the essential passages of those written pleadings or observations. That decision shall be published in the *Official Journal of the European Union*.

As stated in the introduction to the present title, Article 58 is a new article generated by the Court's concern to preserve, in all circumstances, its capacity to rule within a reasonable period of time on cases brought before it. It is clear that, in certain circumstances, cases were taking a considerable amount of time to be dealt with, inter alia, because of the volume of written pleadings or observations lodged and the time required for their translation. The time taken to deal with a case might have been shorter in those circumstances if the main party had concentrated in his written observations, or the appellant in his appeal, on the essential legal issues.

The Court is not, at this stage, putting forward specific proposals to set a maximum number of pages for written pleadings or observations lodged at the Court, or to draw up a summary of such pleadings or observations, as it has done in the past in respect of voluminous requests for a preliminary ruling, owing to their systemic impact. In view of the constant increase in the number of cases brought before the Court, it is not inconceivable, however, that the number of voluminous written pleadings or observations will increase, and that it will then become necessary to act

quickly to prevent the Court from finding itself in a situation that is difficult to manage.

Since the procedure for amending the Rules of Procedure is relatively cumbersome, the Court therefore proposes to insert in the draft Rules a provision under which the Court could, without delay, adopt the measures necessary to deal with such an influx and, in particular, propose a partial translation of written pleadings or observations of a length deemed to be excessive.

Chapter 6

THE PRELIMINARY REPORT AND ASSIGNMENT OF CASES TO FORMATIONS OF THE COURT

Article 59 Preliminary report

1. When the written part of the procedure is closed, the President shall fix a date on which the Judge-Rapporteur is to present a preliminary report to the general meeting of the Court.

2. The preliminary report shall contain proposals as to whether particular measures of organisation of procedure, measures of inquiry or, if appropriate, requests to the referring court or tribunal for clarification should be undertaken, and as to the formation to which the case should be assigned. It shall also contain the Judge-Rapporteur's proposals, if any, as to whether to dispense with a hearing and as to whether to dispense with an Opinion of the Advocate General pursuant to the fifth paragraph of Article 20 of the Statute.

3. The Court shall decide, after hearing the Advocate General, what action to take on the proposals of the Judge-Rapporteur.

Article 59 corresponds, in essence, to Article 44(1) and (2) of the existing Rules of Procedure. While paragraph 1 of Article 59 is more succinct than the corresponding paragraph of Article 44, since it combines in a single sentence all the possible circumstances in which the written part of the procedure may be closed, paragraph 2 of Article 59 is, by contrast, longer than Article 44(2) of the existing Rules of Procedure. Express reference is made to the need for the Judge-Rapporteur to state in his preliminary report whether he wishes a request to be made to the referring court or tribunal for clarification. This addition is a further illustration of the greater importance attached in the draft to references for a preliminary ruling.

Article 60 Assignment of cases to formations of the Court

1. The Court shall assign to the Chambers of five and of three Judges any case brought before it in so far as the difficulty or importance of the case or particular circumstances are not such as to require that it should be assigned to the Grand Chamber, unless a Member State or an institution of the European Union participating in the proceedings has requested that the case be assigned to the Grand Chamber, pursuant to the third paragraph of Article 16 of the Statute.

2. The Court shall sit as a full Court where cases are brought before it pursuant to the provisions referred to in the fourth paragraph of Article 16 of the Statute. It may assign a case to the full Court where, in accordance with the fifth paragraph of Article 16 of the Statute, it considers that the case is of exceptional importance.

3. The formation to which a case has been assigned may, at any stage of the proceedings, request the Court to assign the case to a formation composed of a greater number of Judges or to open or reopen the oral part of the procedure.

4. Where the oral part of the procedure is opened without an inquiry, the President of the formation determining the case shall fix the opening date.

This article reproduces, in essence, the content of Article 44(3) to (5) of the existing Rules of Procedure, which it nevertheless simplifies by amalgamating the first two subparagraphs of the current Article 44(3). Paragraph 3 of the present article – which corresponds to Article 44(4) of the existing Rules of Procedure – has also been slightly rephrased to reflect more closely the current situation and to take account of the possibility of a case being referred back to the Court in order for the oral part of the procedure to be opened or reopened, particularly where it had originally been decided that the case would be determined without a hearing and without an Opinion.

Chapter 7

MEASURES OF ORGANISATION OF PROCEDURE AND MEASURES OF INQUIRY

Section 1 – Measures of organisation of procedure

Article 61 Measures of organisation prescribed by the Court

1. In addition to the measures which may be prescribed in accordance with Article 24 of the Statute, the Court may invite the parties or the interested persons referred to in Article 23 of the Statute to answer certain questions in writing, within the time-limit laid down by the Court, or at the hearing.

2. The Court may also invite the participants in the hearing to concentrate in their oral pleadings on one or more specified issues.

Article 61 is new. Following on directly from Article 59 on the preliminary report, this article is designed to make reference in the Rules to the measures of organisation of procedure most commonly proposed in such reports: questions which the Court puts to the parties to be answered in writing or orally, or requests for pleadings to concentrate on particular issues.

Article 62 Measures of organisation prescribed by the Judge-Rapporteur or the Advocate General

1. The Judge-Rapporteur or the Advocate General may request the parties or the interested persons referred to in Article 23 of the Statute to submit within a specified time-limit all such information relating to the facts, and all such documents or other particulars, as they may consider relevant. The replies and documents provided shall be communicated to the other parties or interested persons referred to in Article 23 of the Statute.

2. The Judge-Rapporteur or the Advocate General may also send to the parties or the interested persons referred to in Article 23 of the Statute questions to be answered at the hearing.

While Article 61 concerns measures of organisation of procedure prescribed by the Court itself, Article 62 covers measures prescribed by the Judge-Rapporteur and/or Advocate General responsible for the case. In that respect, this article reproduces, in essence, the content of Article 54a of the existing Rules of Procedure, but adds the possibility of the parties or the

interested persons referred to in Article 23 of the Statute being sent questions to be answered at the hearing, after the case has been considered in a general meeting. This addition reflects current practice and the desire to make the hearing as useful and interactive as possible by communicating in advance to the parties and interested persons referred to above all the questions which the Judge-Rapporteur or Advocate General might have on studying the file, and which have not yet been communicated to those parties or interested persons by the end of the general meeting.

Section 2 – Measures of inquiry

Article 63 Decision on measures of inquiry

1. The Court shall decide in its general meeting whether a measure of inquiry is necessary.

2. Where the case has already been assigned to a formation of the Court, the decision shall be taken by that formation.

By this article, which is new, the Court intends to clarify the rules relating to the taking of decisions on measures of inquiry. The draft recalls in that regard that, although the decision as to whether a measure of inquiry is necessary generally falls within the remit of the general meeting – which is already apparent from Article 59 of the draft, relating to the content of the preliminary report – it is not inconceivable that the need for a measure of inquiry might arise at a later stage of the Court's handling of a case, when the case has already been assigned to a formation of the Court. In that situation, it is not the general meeting but the formation of the Court to which the case has been assigned that will decide whether or not that measure of inquiry is necessary.

Article 64 Determination of measures of inquiry

1. The formation of the Court, after hearing the Advocate General, shall prescribe the measures of inquiry that it considers appropriate by means of an order setting out the facts to be proved.

2. The order shall be served on the parties or the interested persons referred to in Article 23 of the Statute.

3. Without prejudice to Articles 24 and 25 of the Statute, the following measures of inquiry may be adopted:

(a) the personal appearance of the parties;

(b) a request for information and production of documents;

(c) oral testimony;

(d) the commissioning of an expert's report;

(e) an inspection of the place or thing in question.

Subject to the point that it is the formation of the Court – and not the Court itself – which determines specifically, by order, the measures of inquiry required and the facts to be proved, Article 64 of the draft corresponds, in essence, to Article 45(1) and (2) of the existing Rules of Procedure.

Article 65 Participation in measures of inquiry

1. Where the formation of the Court does not undertake the inquiry itself, it shall entrust the task of so doing to the Judge-Rapporteur.

2. The Advocate General shall take part in the measures of inquiry.

3. The parties shall be entitled to attend the measures of inquiry.

Subject to the addition of the possibility – already provided for in Article 60 of the existing Rules of Procedure – of entrusting the Judge-Rapporteur with the task of undertaking the measure of inquiry himself, the present article merely reproduces the content of Articles 45(3) and 46 of the existing Rules, relating to the participation of the Advocate General and of the parties in the measures of inquiry.

Article 66 Oral testimony

1. The Court may, either of its own motion or at the request of one of the parties, and after hearing the Advocate General, order that certain facts be proved by witnesses.

2. A request by a party for the examination of a witness shall state precisely about what facts and for what reasons the witness should be examined.

3. The order of the Court shall set out the facts to be established and state which witnesses are to be heard in respect of each of those facts.

4. Witnesses shall be summoned by the Court, where appropriate after lodgment of the security provided for in Article 74(1) of these Rules.

This article reproduces, in essence, but simplifies, the content of Article 47(1) to (3) of the existing Rules of Procedure. This simplification has been made possible, in particular, by combining within a single article (Article 74 of the draft) the provisions relating to witnesses' and experts' costs.

Article 67 Examination of witnesses

1. After the identity of the witness has been established, the President shall inform him that he will be required to vouch the truth of his evidence in the manner laid down in these Rules.

2. The witness shall give his evidence to the Court, the parties having been given notice to attend. After the witness has given his evidence the President may, at the request of one of the parties or of his own motion, put questions to him.

3. The other Judges and the Advocate General may do likewise.

4. Subject to the control of the President, questions may be put to witnesses by the representatives of the parties.

Article 67, relating to the conduct of the examination of witnesses, reproduces, in essence, the terms of Article 47(4) of the existing Rules of Procedure.

Article 68 Witnesses' oath

1. After giving his evidence, the witness shall take the following oath:

'I swear that I have spoken the truth, the whole truth and nothing but the truth.'

2. The Court may, after hearing the parties, exempt a witness from taking the oath.

This article, in turn, reproduces the terms of Article 47(5) of the existing Rules of Procedure.

Article 69 Penalties

1. Witnesses who have been duly summoned shall obey the summons and attend for examination.

2. If, without good reason, a witness who has been duly summoned fails to appear before the Court, the Court may impose upon him a pecuniary penalty not exceeding EUR 5 000 and may order that a further summons be served on the witness at his own expense.

3. The same penalty may be imposed upon a witness who, without good reason, refuses to give evidence or to take the oath.

Article 69 of the draft reproduces, in essence, the terms of Article 48 of the existing Rules of Procedure. By contrast with the latter provision, however, there is no longer any reference in the draft Rules to a solemn affirmation equivalent to the oath, which seemed somewhat anachronistic and out of step with the Statute, whereas the possibility for a witness to put forward a valid excuse in order to be spared the pecuniary penalty envisaged is incorporated in paragraph 2 by the addition of the words 'without good reason'.

Article 70 Expert's report

1. The Court may order that an expert's report be obtained. The order appointing the expert shall define his task and set a time-limit within which he is to submit his report.

2. After the expert has submitted his report, the Court may order that he be examined, the parties having been given notice to attend.

3. Subject to the control of the President, questions may be put to the expert by the representatives of the parties.

Like Article 66, which relates to oral testimony, Article 70 of the draft, relating to experts' reports, reproduces yet simplifies the content of the corresponding provision in the existing Rules of Procedure, Article 49(1) to (5).

Article 71 Expert's oath

1. After making his report, the expert shall take the following oath:

'I swear that I have conscientiously and impartially carried out my task.'

2. The Court may, after hearing the parties, exempt the expert from taking the oath.

Like Article 68, which relates to the oath taken by witnesses, Article 71, relating to the expert's oath, reproduces, in essence, the wording of the relevant provision of the existing Rules of Procedure, Article 49(6).

Article 72 Perjury

Pursuant to Article 30 of the Statute, the Court shall report the facts amounting to perjury to the authority of the Member State responsible for prosecution of the witness or expert concerned.

Article 72 is new. It follows on directly from Articles 68 and 71 and is designed to draw attention to the consequences of perjury, which are laid down in the Statute itself.

Article 73 Objection to a witness or expert

1. If one of the parties objects to a witness or an expert on the ground that he is not a competent or proper person to act as a witness or expert or for any other reason, or if a witness or expert refuses to give evidence or to take the oath, the matter shall be resolved by the Court.

2. An objection to a witness or an expert shall be raised within two weeks after service of the order summoning the witness or appointing the expert; the statement of objection must set out the grounds of objection and indicate the nature of any evidence offered.

Subject to the deletion, already referred to, of the reference to a solemn affirmation equivalent to the oath, Article 73 reproduces, in essence, the text of Article 50 of the existing Rules of Procedure.

Article 74 Witnesses' and experts' costs

1. Where the Court orders the examination of witnesses or an expert's report, it may request the parties or one of them to lodge security for the witnesses' costs or the costs of the expert's report.

2. Witnesses and experts shall be entitled to reimbursement of their travel and subsistence expenses. The cashier of the Court may make an advance payment towards these expenses.

3. Witnesses shall be entitled to compensation for loss of earnings, and experts to fees for their services. The cashier of the Court shall pay witnesses and experts these sums after they have carried out their respective duties or tasks.

As previously stated, the Court considered it desirable, in the interests of clarity and transparency, to deal in a single provision with the question of the costs associated with examination of witnesses or an expert's report. Article 74 of the draft thus draws together provisions that are currently spread among three separate provisions: Article 47(3), Article 49(2) and Article 51 of the Rules of Procedure. By contrast, their content is, in essence, unchanged in the new article.

Article 75 Minutes of inquiry hearings

1. The Registrar shall draw up minutes of every inquiry hearing. The minutes shall be signed by the President and by the Registrar. They shall constitute an official record.

2. In the case of the examination of witnesses or experts, the minutes shall be signed by the President or by the Judge-Rapporteur responsible for conducting the examination of the witness or expert, and by the Registrar. Before the minutes are thus signed, the witness or expert must be given an opportunity to check the content of the minutes and to sign them.

3. The minutes shall be served on the parties.

Article 75 reproduces, in essence, the content of Articles 47(6) and 53 of the existing Rules of Procedure. By contrast with Article 53 of the existing Rules of Procedure, which simply provides in paragraph 2 for the parties to be able to inspect the minutes of an inquiry hearing at the Registry and to obtain copies at their own expense, the draft enhances the rights of those parties and provides for those minutes to be served on them by the Registry.

Article 76 Opening of the oral part of the procedure after the inquiry

1. Unless the Court decides to prescribe a time-limit within which the parties may submit written observations, the President shall fix the date for the opening of the oral part of the procedure after the measures of inquiry have been completed.

2. Where a time-limit has been prescribed for the submission of written observations, the President shall fix the date for the opening of the oral part of the procedure after that time-limit has expired.

Apart from terminological amendments, this article reproduces, in essence, the wording of Article 54 of the existing Rules of Procedure, relating to closure of the inquiry.

Chapter 8

ORAL PART OF THE PROCEDURE

Article 77 Hearing

1. Without prejudice to any special provisions laid down in these Rules, the procedure before the Court shall also include a hearing.

2. Any reasoned requests for a hearing shall be submitted within three weeks after service on the parties or the interested persons referred to in Article 23 of the Statute of notification of the close of the written part of the procedure. That time-limit may be extended by the President.

3. On a proposal from the Judge-Rapporteur and after hearing the Advocate General, the Court may nevertheless decide not to hold a hearing if it considers that the parties or the interested persons referred to in Article 23 of the Statute have been able adequately to present their point of view.

As in the case of Article 56 of the draft, relating to the written part of the procedure, Article 77 sets out the rule that the procedure before the Court is, in principle, also to include an oral part. The exceptions to that rule flow from the decision taken by the Court to dispense with a hearing and to determine a case without an Opinion of the Advocate General, in accordance with the fifth paragraph of Article 20 of the Statute.

As regards the hearing itself, the draft reproduces, in essence, the content of Articles 44a, 104(4) and 120 of the existing Rules of Procedure. The parties and the interested persons referred to in Article 23 of the Statute are thus invited, within three weeks after service of notification of the close of the written part of the procedure, to inform the Court of the reasons why a hearing in a given case appears in their view to be necessary. It will then be for the Court, having regard to the responses received, to take the final decision on whether or not to hold a hearing.

Although the draft includes, in paragraph 3 of the present article, a further detail as compared with the three articles of the existing Rules of Procedure referred to above, it must nevertheless be observed that that detail largely reflects the Court's current practice. The Court already rules without a hearing when it rules on a case by reasoned order, for example on the basis of Article 104(3) of the existing Rules of Procedure, or where it receives a request for a hearing that is not a reasoned request, just as the Court sometimes organises a hearing even though none of the parties has requested one.

The present article throws further light on the decisive criterion that determines whether (or not) a hearing should be held, namely its added value in terms of dealing with the case. Consequently, a hearing will be organised in any event if the Court considers that the parties or interested persons have not been able adequately to present their point of view during the written part of the procedure. Conversely, on the other hand, the Court could decide to rule without a hearing, as it already does in the case of non-reasoned requests for hearings.

Article 78 Joint hearing

If the similarities between two or more cases so permit, the Court may decide to organise a joint hearing of those cases, even if different types of proceedings are concerned.

Article 78 is a new article which is intended to reflect in the Rules the current practice of organising joint hearings of cases – where cases, such as a preliminary ruling case and an infringement action, cannot be joined because they are of different types but nevertheless very similar in terms of their content – during which those similarities and any differences between them can be demonstrated. Implementation of such a measure has shown that combining cases in this way very often facilitates an understanding of the particular features of each case, while at the same time enabling them to be determined more quickly.

Article 79 Conduct of oral proceedings

Oral proceedings shall be opened and directed by the President, who shall be responsible for the proper conduct of the hearing.

This article reproduces, in essence, the content of Article 56(1) of the existing Rules of Procedure.

Article 80 Cases heard in camera

For serious reasons related, in particular, to the security of the Member States or to the protection of minors, the Court may decide to hear a case *in camera*.

Under Article 31 of the Statute, the hearing in court is to be public, unless the Court, of its own motion or on application by the parties, decides otherwise for serious reasons. Although such a decision will, as far as the Court is concerned, tend to be exceptional, the present article nevertheless provides – in the light of the experience acquired, in particular, in applying the urgent preliminary ruling procedure – two examples of serious reasons which may lead the Court to decide to hear a case in camera.

Article 81 Questions

The members of the formation of the Court and the Advocate General may in the course of the hearing put questions to the agents, advisers or lawyers of the parties and to the experts, the witnesses or the parties themselves.

The present article reproduces, in essence, the terms of Article 57 of the existing Rules of Procedure, which it supplements with a reference to the experts, the witnesses and the parties, owing to the insertion of this provision in the common provisions applicable to all types of procedure.

Article 82 Close of the hearing

After the parties or interested persons referred to in Article 23 of the Statute have been heard, the President shall declare the hearing closed.

The current version of the Rules of Procedure provides, in Article 59(2), that the President is to declare the oral part of the procedure closed after the Advocate General has delivered his Opinion. Since the entry into force of the Treaty of Nice on 1 February 2003, many cases have, however, been determined without an Advocate General's Opinion. Furthermore, where such an Opinion is to be delivered in a case, it is extremely rare for it to be delivered immediately, at the end of the hearing. For those reasons, it seemed necessary for this new provision, relating to the close of the hearing, to be included in the draft.

Article 83 Delivery of the Opinion of the Advocate General

1. Where a hearing takes place, the Opinion of the Advocate General shall be delivered after the close of that hearing.

2. The President shall declare the oral part of the procedure closed after the Advocate General has delivered his Opinion.

This article reflects the article that precedes it. In this instance, it covers cases in which there is an Advocate General's Opinion and states that that Opinion is to be delivered after the end of the hearing, and that it is only after such delivery that the President will declare the oral part of the procedure closed.

Article 84 Reopening of the oral part of the procedure

The Court may at any time, after hearing the Advocate General, order the opening or reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated between the parties or the interested persons referred to in Article 23 of the Statute.

Article 84 of the draft reproduces, in essence, the text of Article 61 of the existing Rules of Procedure, but supplements it in two respects.

First, the article takes account of the possibilities arising under the Treaty of Nice and, in particular, the possibility for the Court now to decide cases without a hearing and without an Opinion. It refers, therefore, not only to the reopening of the oral part of the procedure but also to its opening.

Second, on the basis of the experience acquired in the implementation of this provision, the article provides more detail about the situations which may lead to the opening or reopening of the oral part of the procedure. These include, in particular, the discovery of a new fact which is of such a nature as to be a decisive factor for the decision of the Court.

Article 85 Minutes of hearings

1. The Registrar shall draw up minutes of every hearing. The minutes shall be signed by the President and by the Registrar. They shall constitute an official record.

2. The parties and interested persons referred to in Article 23 of the Statute may inspect the minutes at the Registry and obtain copies.

This article corresponds almost word for word to Article 62 of the existing Rules of Procedure.

Article 86 Recording of the hearing

The President may, on a duly substantiated request, authorise a party or an interested person referred to in Article 23 of the Statute who has participated in the proceedings to listen to the soundtrack of the hearing in the language used by the speaker during that hearing.

After a hearing, or sometimes even after delivery of a judgment, the Court has, in certain cases, received a request for access to the recording of the hearing. The Court has, to date, always refused such requests.

In view of the growing number of cases brought before the Court, particularly in areas as sensitive as that of public security or of freedom, security and justice, and the greater importance which the Court intends to attach to hearings, it is conceivable that access to the recording might be justified in specific cases. For those reasons, the draft therefore provides for a party or an interested person referred to in Article 23 of the Statute who has participated in the proceedings to be able to apply to

the President for access to the original soundtrack of the hearing. That will enable the party or the person concerned to listen again to all the statements made during that hearing, in the order and in the language in which they were made.

Chapter 9

JUDGMENTS AND ORDERS

Article 87 Date of delivery of a judgment

The parties or interested persons referred to in Article 23 of the Statute shall be informed of the date of delivery of a judgment.

This article reproduces, in essence, the notion expressed in Article 64(1) of the existing Rules of Procedure, but is expressed in more nuanced terms. Since there is no obligation to be present at the sitting at which a judgment will be delivered, it seems more accurate for the parties or the interested persons referred to in Article 23 of the Statute to be referred to as being informed, rather than as being given notice to attend to hear the judgment.

Article 88 Content of a judgment

A judgment shall contain:

(a) a statement that it is the judgment of the Court,

(b) an indication as to the formation of the Court,

(c) the date of delivery,

(d) the names of the President and of the Judges who took part in the deliberations, with an indication as to the name of the Judge-Rapporteur,

(e) the name of the Advocate General,

(f) the name of the Registrar,

(g) a description of the parties,

(h) the names of their representatives,

(i) in the case of direct actions and appeals, a statement of the forms of order sought by the parties,

(j) where applicable, the date of the hearing,

(k) a statement that the Advocate General has been heard and, where applicable, the date of his Opinion,

(l) a summary of the facts,

(m) the grounds for the decision,

(n) the operative part of the judgment, including, where appropriate, the decision as to costs.

This article corresponds to Article 63 of the existing Rules of Procedure, but supplements it in order to take into account both the horizontal nature of this provision, which applies to all types of action, and the optional nature of the oral part of the procedure, following the entry into force of the Treaty of Nice.

Article 89 Delivery and service of the judgment

1. The judgment shall be delivered in open court.

2. The original of the judgment, signed by the President, by the Judges who took part in the deliberations and by the Registrar, shall be sealed and deposited at the Registry; certified copies of the judgment shall be served on the parties and, where applicable, the referring court or tribunal, the interested persons referred to in Article 23 of the Statute and the General Court.

This article corresponds, in essence, to Article 64(1) and (2) of the existing Rules of Procedure.

Article 90 Content of an order

1. An order shall contain:

(a) a statement that it is the order of the Court,

(b) an indication as to the formation of the Court,

(c) the date of its adoption,

(d) the names of the President and, where applicable, the Judges who took part in the deliberations, with an indication as to the name of the Judge-Rapporteur,

(e) the name of the Advocate General,

(f) the name of the Registrar,

(g) a description of the parties,

(h) the names of their representatives,

(i) a statement that the Advocate General has been heard,

(j) the operative part of the order, including, where appropriate, the decision as to costs.

2. Where, in accordance with these Rules, an order must be reasoned, it shall in addition contain:

(a) in the case of direct actions and appeals, a statement of the forms of order sought by the parties,

(b) a summary of the facts,

(c) the grounds for the decision.

Taking into account the number and growing importance of orders in the practice of the Court, the draft adds an article to the existing Rules of Procedure that deals specifically with orders. Modelled on Article 88 of the draft, Article 90 sets out the information which it is imperative that any order must include.

Article 91 Signature and service of the order

The original of the order, signed by the President and by the Registrar, shall be sealed and deposited at the Registry; certified copies of the order shall be served on the parties and, where applicable, the referring court or tribunal, the interested persons referred to in Article 23 of the Statute and the General Court.

Article 91 mirrors Article 89(2) of the present draft, relating to judgments, and contains the details required in relation to signature and service of orders.

Article 92 Binding nature of judgments and orders

1. A judgment shall be binding from the date of its delivery.

2. An order shall be binding from the date of its service.

Article 92 defines, in a single article, the moment from which a judgment or order is to be binding. While paragraph 1 virtually reproduces the wording of Article 65 of the existing Rules of Procedure, paragraph 2 is new. It follows on from the insertion of specific provisions relating to orders of the Court and explains that they are to be binding from the date of service, which may vary according to the addressee concerned.

Article 93 Publication in the Official Journal of the European Union

A notice containing the date and the operative part of the judgment or order of the Court which closes the proceedings shall be published in the *Official Journal of the European Union*.

In the last article of Title II, the Court finally confirms its existing practice of publishing a notice in the Official Journal of the European Union in respect of every case closed by the Court, referring both to the date of the judgment or order concerned and to its operative part.

TITLE III

REFERENCES FOR A PRELIMINARY RULING

As stated in the introduction to the present draft, references for a preliminary ruling are peripheral in the existing Rules of Procedure. Drawn up at a time when the main preoccupation was to scrutinise the lawfulness of the actions of the newly-established institutions, the bulk of the Rules of Procedure are, accordingly, devoted to direct actions and, specifically, to the written part

of the procedure to be followed in such actions. Largely disregarded in 1953, references for a preliminary ruling are treated as a 'special procedure', on a par with suspension of operation or intervention, or even with exceptional procedures such as third-party proceedings or revision.

While it cannot be denied that, for a long time, fewer references for a preliminary ruling were brought before the Court than actions for annulment or for failure to act or infringement proceedings, the position has now been reversed following the structural reforms of the Court and successive enlargements of the European Union. References for a preliminary ruling constitute by far the largest category of cases brought before the Court and, in more than one respect, play a decisive role in the development of European Union law and its integration into national legal systems. The Court therefore considered it appropriate to move the provisions in the Rules of Procedure relating to such references to follow on immediately from the common procedural provisions, and to clarify, for the benefit of parties as well as of national courts and tribunals, certain rules arising from the case-law or inherent in the very nature of preliminary ruling proceedings.

After a brief reminder of the scope of those proceedings and of the essential content of any request for a preliminary ruling, the draft reflects Article 23 of the Statute in listing the parties authorised to submit written or oral observations to the Court and circumscribing more clearly, by reference to national procedural rules, the concept of 'parties to the main proceedings' and the consequences for the proceedings before the Court of the admission of a new party by the referring court.

In an effort to preserve, in certain circumstances, the anonymity of persons involved in a particular dispute, the Court proposes to insert in the Rules of Procedure a provision enabling it, on request or of its own motion, to refrain from disclosing in the information available to the public the name of one or more persons or information enabling them to be identified. Although it cannot be applied to all categories of case, this provision nevertheless has particular significance at a time when, increasingly, the Court is seised of cases concerning criminal law or cases in which the exercise of parental responsibility or custody of children is at stake.

With the same aim of protecting the interests of the parties to the main proceedings and particularly of parties lacking financial resources, the draft also clarifies the criteria for the grant of legal aid, including where legal aid has already been granted before the referring court or

tribunal, while at the same time setting out the rules which are essential to taking a decision quickly on such applications. Thus, as soon as they have been lodged at the Registry, these applications are assigned to the Judge responsible for the case in the context of which they have been made, and the decision is taken without delay by the smallest formation of the Court which includes that Judge.

Taking account of the experience gained in implementing the preliminary ruling procedure and, in particular, the difficulties which have arisen following appeals brought, at a national level, against requests for preliminary rulings or in consequence of the withdrawal of such requests at a very advanced stage of the proceedings before the Court, the draft also contains a provision describing in more detail the conditions under which it is to remain seised of such cases.

Finally, various amendments have been made to existing provisions in order to provide the Court with the means of dealing even more swiftly with the cases that are brought before it and, moreover, to address certain lacunae which have become apparent in the implementation of the accelerated and urgent procedures.

As regards the first category of measure, reference must be made, in particular, to the simplification of the procedure under which the Court can adopt a reasoned order where the answer to the question referred for a preliminary ruling admits of no reasonable doubt; and to the possibility, both for the Court and for the parties, to exchange procedural documents in an expedited procedure by telefax or any other technical means of communication, without prejudice to the subsequent transmission of the original.

As regards the second set of amendments, it should be noted, in particular, that it is open to the President of the Court to apply an expedited procedure of his own motion – an option currently already provided for in respect of urgent preliminary ruling procedures – and that the Court can invite a Member State other than that from which the reference is made to submit written observations or to answer in writing certain questions which may arise in the context of an urgent preliminary ruling procedure. Since the entry into force of that urgent procedure on 1 March 2008, it has become apparent that cases such as those relating to the interpretation of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States [5] or of Council Regulation No 2201/2003 of 27 November 2003

[5] OJ 2002 L 190, p. 1.

concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility [6] *often affect the interests of two or, in some cases, more Member States. For that reason, it is proposed to expand the circle of those authorised to lodge written observations in an urgent preliminary ruling procedure, in so far as the proper conduct of the proceedings so permits.*

Chapter 1

GENERAL PROVISIONS

Article 94 Scope

The procedure shall be governed by the provisions of this Title:

(a) in the cases covered by Article 23 of the Statute,

(b) as regards references for interpretation which may be provided for by agreements to which the European Union or the Member States are parties.

Article 94 corresponds, in essence, to Article 103(1) and (2) of the existing Rules of Procedure, which it nevertheless updates and simplifies because of the greater prominence given to references for a preliminary ruling in the present draft. By contrast, the references to the specific Protocols currently referred to in Article 103(2) of the Rules of Procedure are to disappear because of the development of the European Union's competences and, in particular, the integration into European Union law of matters not previously covered by it.

Article 95 Content of the request for a preliminary ruling

In addition to the text of the questions referred to the Court for a preliminary ruling, the request for a preliminary ruling shall contain:

(a) a summary of the subject-matter of the dispute and the relevant findings of fact as determined by the referring court or tribunal, or, at least, an account of the facts on which the request for a preliminary ruling is based;

[6] OJ 2003 L 338, p. 1.

(b) the tenor of any national provisions applicable in the case and, where appropriate, the relevant national case-law;

(c) a statement of the reasons which prompted the referring court or tribunal to inquire about the interpretation or validity of certain provisions of European Union law, and the relationship between those provisions and the national legislation applicable to the main proceedings.

The majority of requests submitted to the Court contain all the information necessary for the Court to be able to provide a reply that will be of assistance to the referring court or tribunal; by contrast, some requests for a preliminary ruling are incomplete, obliging the Court to reject them as inadmissible because of the total absence of information about the legal or factual context of the case concerned, or even, exceptionally, because of the absence of any question at all.

For that reason, and in order to avoid such an outcome for the parties to the main proceedings as well as the referring court or tribunal which may have to draw up a new request for a preliminary ruling, the Court sets out in the present article the minimum content of any request for a preliminary ruling that is required in order for the Court to be in a position to give a reply to the questions put by the referring court or tribunal that will be of assistance to it. The draft is based directly, in that regard, on the content of the information note on references from national courts for a preliminary ruling.

Article 96 Anonymity

At the request of the referring court or tribunal, at the duly reasoned request of a party to the main proceedings or of its own motion, the Court may, if it considers it necessary, render anonymous one or more persons or entities concerned by the case.

As indicated in the introduction to the present chapter, the present article of the draft is a new provision which is designed to enable the Court, if it considers it necessary, to anonymise requests for a preliminary ruling submitted to it.

In the context of a reference for a preliminary ruling, the Court relies on the text of the decision of the referring court or tribunal, and it is that text which, after being translated, is served on all the interested persons referred to in Article 23 of the Statute for the purposes of gathering any observations they may wish to make. If the request for a preliminary ruling is anonymised before reaching the Court there is no difficulty. The Court respects any anonymity granted by a referring court or tribunal, and the request which is served on the interested persons referred to in Article 23

of the Statute will therefore, in principle, contain nothing to enable the natural or legal persons concerned to be identified.

Problems can arise, however, if it appears after the Court has received the request for a preliminary ruling that the request contains sensitive information that would justify the name of one or more persons or entities being withheld. That is why it seemed appropriate to provide for the Court to be able to take the necessary action, either at the request of the referring court or tribunal or one of the parties to the main proceedings or of the Court's own motion, in order to protect the private life of the persons concerned or to prevent their rights from being irremediably prejudiced.

If such a decision is to be effective, however, it must be taken at an early stage of dealing with the case. Owing to the development of information technology and, in particular, the internet, any anonymisation that occurs after the notice of the request for a preliminary ruling has been published in the Official Journal effectively loses much of its raison d'être.

Article 97 Participation in preliminary ruling proceedings

1. Pursuant to Article 23 of the Statute, the following shall be authorised to submit observations to the Court:

(a) the parties to the main proceedings,

(b) the Member States,

(c) the European Commission,

(d) the institution which adopted the act the validity or interpretation of which is in dispute,

(e) the States, other than the Member States, which are parties to the EEA Agreement, and also the EFTA Surveillance Authority, where a question concerning one of the fields of application of that Agreement is referred to the Court for a preliminary ruling,

(f) non-Member States which are parties to an agreement relating to a specific subject-matter, concluded with the Council, where the agreement so provides and where a court or tribunal of a Member State refers to the Court of Justice for a preliminary ruling a question falling within the scope of that agreement.

2. Non-participation in the written part of the procedure does not preclude participation in the oral part of the procedure if that takes place.

The present article has no equivalent in the Rules of Procedure currently in force. Its objective is twofold: on the one hand, to list, in the interests of clarification, all those authorised to submit observations to the Court; on the other, to draw attention to the optional nature of the lodgment of written observations and the fact that non-lodgment of such observations does not affect participation in the oral part of the procedure. In other words, it is perfectly permissible for a party to the main proceedings or a Member State which has not lodged written observations to make observations at any hearing that may be organised.

Article 98 Parties to the main proceedings

1. The parties to the main proceedings are those who are determined as such by the referring court or tribunal in accordance with national rules of procedure.

2. Where the referring court or tribunal informs the Court that a new party has been admitted to the main proceedings, when the proceedings before the Court are already pending, that party must accept the case as he finds it at the time when the Court is informed by the referring court or tribunal that the party has been admitted. That party shall receive a copy of every procedural document already served on the interested persons referred to in Article 23 of the Statute.

3. As regards the representation and attendance of the parties to the main proceedings, the Court shall take account of the rules of procedure in force before the court or tribunal which made the reference. In the event of any doubt as to whether a person may under national law represent a party to the main proceedings, the Court may obtain information from the referring court or tribunal on the rules of procedure applicable.

Unlike the three articles that precede it, the present article of the draft is not entirely new. Paragraph 3 reproduces, in essence, a rule contained in Article 104(2) of the existing Rules of Procedure, but supplements it by referring to the practice, in the event of any doubt, of contacting the referring court or tribunal to obtain further information about national rules relating to the representation and attendance of parties.

The first two paragraphs, by contrast, are new. In the light of the applications to intervene sometimes made by third parties in the context of a reference for a preliminary ruling, these two paragraphs are intended to circumscribe, precisely, the concept of parties to the main proceedings. Only parties recognised as such by the referring court or tribunal are thus allowed to submit observations to the Court and, if a new party to the main proceedings emerges in the course of proceedings, the Court will take account of him only if it has been formally notified thereof by the

referring court or tribunal. This rule reflects the Court's concern not to allow the progress of cases to be delayed by multiple interventions during the proceedings, as well as its desire to remain within the framework outlined by the court or tribunal which brought the matter before the Court.

Article 99 Translation and service of the request for a preliminary ruling

1. The requests for a preliminary ruling referred to in this Title shall be served on the Member States in the original version, accompanied by a translation into the official language of the State to which they are being addressed. Where appropriate, on account of the length of the request, such translation shall be replaced by the translation into the official language of the State to which it is addressed of a summary of that request, which will serve as a basis for the position to be adopted by that State. The summary shall include the full text of the question or questions referred for a preliminary ruling. That summary shall contain, in particular, in so far as that information appears in the request for a preliminary ruling, the subject-matter of the main proceedings, the essential arguments of the parties to those proceedings, a succinct presentation of the reasons for the reference for a preliminary ruling and the case-law and the provisions of national law and European Union law relied on.

2. In the cases covered by the third paragraph of Article 23 of the Statute, the requests for a preliminary ruling shall be served on the States, other than the Member States, which are parties to the EEA Agreement and also on the EFTA Surveillance Authority in the original version, accompanied by a translation of the request, or where appropriate of a summary, into one of the languages referred to in Article 36, to be chosen by the addressee.

3. Where a non-Member State has the right to take part in preliminary ruling proceedings pursuant to the fourth paragraph of Article 23 of the Statute, the original version of the request for a preliminary ruling shall be served on it accompanied by a translation of the request, or where appropriate of a summary, into one of the languages referred to in Article 36, to be chosen by the non-Member State concerned.

Subject to some terminological amendments, this article reproduces, in essence, the content of Article 104(1) of the existing Rules of Procedure.

Article 100 Reply by reasoned order

Where a question referred to the Court for a preliminary ruling is identical to a question on which the Court has already ruled, where the reply to such a question may be clearly deduced from existing case-law or where the answer to the question referred for a preliminary ruling admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.

Although based on Article 104(3) of the Rules of Procedure currently in force, as regards the circumstances in which the Court may rule by reasoned order on a reference for a preliminary ruling, Article 100 of the draft simplifies the procedure leading to the adoption of such an order.

At present, a distinction is made between cases in which the question referred for a preliminary ruling is identical to a question on which the Court has already ruled or in which the reply to such a question may be clearly deduced from existing case-law, on the one hand, and cases in which the answer to the question referred for a preliminary ruling admits of no reasonable doubt, on the other. In the first two situations, the Court may, after hearing the Advocate General, at any time rule by reasoned order in which reference is made to its previous judgment or to the relevant case-law, whereas in the third situation, the Court is obliged, before giving its ruling, to inform the referring court or tribunal of its intention and to offer the parties an opportunity to submit any written observations.

The effect of that difference is that the third option is now virtually unused, even where there is no reasonable doubt as to the answer to be given to the question referred for a preliminary ruling. In particular, the requirement to offer the parties an opportunity to submit any written observations on the Court's intention to rule by reasoned order is often synonymous with a significant increase in the workload of one or other party, since, if they take up that invitation, the interested persons referred to in Article 23 of the Statute usually reproduce the content of their earlier written observations. These new observations will, in turn, have to be translated, which generally causes a delay of several months in the progress of the case. In view of these difficulties, it is therefore not uncommon for the Court to choose to rule by way of a judgment delivered without a hearing and without an Opinion, instead of by order.

To counter those difficulties, the Court therefore proposes to align the procedure for dealing with references in which the answer to the question referred raises no reasonable doubt with the procedure for dealing with references that raise a question identical to one that has already been decided or the reply to which may be clearly deduced from existing case-law.

Article 101 Circumstances in which the Court remains seised

1. The Court shall remain seised of a request for a preliminary ruling for as long as it is not withdrawn by the court or tribunal which made that request to the Court.

2. However, the Court may at any time declare that the conditions of its jurisdiction are no longer fulfilled.

3. Judgment shall be delivered where a request for a preliminary ruling is withdrawn after the Court has served notice of the date of delivery of the judgment.

As indicated in the introduction to the present title, problems arise in practice from time to time when, while dealing with a case, the Court is informed of the existence of an appeal or any other procedural step consequent upon the reference by the national court or tribunal. Queries then arise as to the effect of that appeal or that procedural step on the case being dealt with by the Court and, in particular, as to the risk that a decision of the Court will be rendered ineffective. In order to clarify the rules applicable in such situations and to respect the very nature of the cooperation established between the Court and the referring court or tribunal, it is therefore proposed to include in the draft a rule that the Court is to remain seised of a request for a preliminary ruling for so long as the referring court or tribunal itself does not withdraw it. It is the referring court or tribunal that is best placed to assess the consequences, in terms of the request for a preliminary ruling, of a particular procedural step or of an appeal against its decision.

Conversely, requests for a preliminary ruling are sometimes withdrawn from the Court at a very advanced stage of the proceedings, when the date of delivery of the judgment has been communicated to the interested persons referred to in Article 23 of the Statute. Since the Court's deliberations will have been completed by this stage, the draft provides for judgment to be delivered notwithstanding that withdrawal. This provision is warranted in the interests of procedural economy, since a number of similar cases may have been stayed, either by the Court or by national courts or tribunals, pending the forthcoming judgment. If that judgment were not to be delivered, owing to the belated withdrawal of the request for a preliminary ruling, it would be necessary to start dealing afresh with every case that has been stayed, causing, as a result, an unacceptable delay in the progress of those cases.

Article 102 Request for clarification

1. Without prejudice to the measures of organisation of procedure and measures of inquiry provided for in these Rules, the Court may, after hearing the Advocate General, request clarification from the referring court or tribunal within a time-limit prescribed by the Court.

2. The reply of the referring court or tribunal to that request shall be served on the interested persons referred to in Article 23 of the Statute.

Article 102 reproduces, in essence, the content of Article 104(5) of the existing Rules of Procedure, but supplements it by providing that the reply of the referring court or tribunal to the Court's

request for clarification is to be served on the interested persons referred to in Article 23 of the Statute. This is consistent with current practice and is designed to provide those interested persons with all the information they need in order to submit appropriate observations on the request for a preliminary ruling.

Article 103 Costs of the preliminary ruling proceedings

It shall be for the referring court or tribunal to decide as to the costs of the preliminary ruling proceedings.

This article reproduces, in essence, the terms of the first subparagraph of Article 104(6) of the existing Rules of Procedure.

Article 104 Rectification of judgments and orders

The Court shall, of its own motion, rectify clerical mistakes, errors in calculation and obvious inaccuracies affecting judgments or orders.

Article 104 reproduces, in essence, the terms of Article 66(1) of the existing Rules of Procedure. Unlike that provision, however, Article 104 of the draft does not provide for the parties to be able to submit written observations on errors or inaccuracies found in a judgment or order of the Court. Since there are no parties, as such, in preliminary ruling proceedings, such proceedings being non-contentious and establishing direct cooperation between the Court and a national court or tribunal, the draft stipulates that the Court may, of its own motion, rectify clerical mistakes, errors in calculation or obvious inaccuracies affecting its decisions.

Article 105 Interpretation of preliminary rulings

1. Article 160 relating to the interpretation of judgments and orders shall not apply to decisions given in reply to a request for a preliminary ruling.

2. It shall be for the national courts or tribunals to assess whether they consider that sufficient guidance is given by a preliminary ruling, or whether it appears to them that a further reference to the Court is required.

The present article has been inserted, in the interests of clarification, in response to queries that often arise as to the precise scope of decisions given in preliminary rulings. The draft states, in that regard, that the article relating to the interpretation of judgments and orders is not to apply to decisions given by the Court in reply to a request for a preliminary ruling. This stems from the fact that, under Article 43 of the Statute, a request for interpretation of a decision must be made by any party or any institution of the European Union establishing an interest therein. However, as explained above, there is no party, as such, in preliminary ruling proceedings, these being proceedings that involve the Court and a national court or tribunal. There is no need, therefore, for the Court to interpret its decision.

If that national court or tribunal – or any other national court or tribunal – considers, on the other hand, that the judgment or order of the Court leaves grey areas or requires additional clarification, there is nothing to prevent it from submitting to the Court a further request for a preliminary ruling in which the Court can, if necessary, enlarge upon the meaning and scope of its earlier decision. That is the rule laid down by the present provision.

Chapter 2

EXPEDITED PRELIMINARY RULING PROCEDURE

Article 106 Expedited procedure

1. At the request of the referring court or tribunal or, exceptionally, of his own motion, the President of the Court may, where the nature of the case requires that it be dealt with within a short time, after hearing the Judge-Rapporteur and the Advocate General, decide that a reference for a preliminary ruling is to be determined pursuant to an expedited procedure derogating from the provisions of these Rules.

2. In that event, the President shall immediately fix the date for the hearing, which shall be communicated to the parties to the main proceedings and to the other interested persons referred to in Article 23 of the Statute when the request for a preliminary ruling is served.

3. The parties and other interested persons referred to in the preceding paragraph may lodge statements of case or written observations within a time-limit prescribed by the President, which shall not be less than 15 days. The President may request those parties and other interested persons to restrict the matters addressed in their statement of case or written observations to the essential points of law raised by the request for a preliminary ruling.

4. The statements of case or written observations, if any, shall be communicated to the parties and other interested persons referred to above prior to the hearing.

5. The Court shall rule after hearing the Advocate General.

The present article reproduces, for the most part, the content of Article 104a of the existing Rules of Procedure. Paragraph 1 of the present article, however, additionally gives the President of the Court the option of deciding, of his own motion, to apply an expedited procedure to a reference for a preliminary ruling. The possibility of acting of his own motion, currently already provided for in relation to the launch of urgent procedures in the area of freedom, security and justice, has proved particularly useful in cases displaying all the characteristics needed in order for them to be dealt with quickly, but in which the referring court or tribunal has inadvertently failed to include a specific request for the urgent procedure to be applied.

The Court therefore proposes that the option of the expedited procedure provided for in the present article being applied by the President, of his own motion, should be extended to all references, if justified by the particular circumstances of the case. The draft slightly amends the terms of Article 104a of the existing Rules of Procedure in that regard. Although Article 104a refers to the exceptional urgency of a ruling on the question put to the Court, reference is made from now on to the need to rule within a short time where the nature of the case requires it.

Article 107 Transmission of procedural documents

1. The procedural documents referred to in the preceding Article shall be deemed to have been lodged on the transmission to the Registry, by telefax or any other technical means of communication available to the Court, of a copy of the signed original and the items and documents relied on in support of it, together with the schedule referred to in Article 57(4). The original of the document and the annexes referred to above shall be sent to the Registry immediately.

2. Where the preceding Article requires that a document be served on or communicated to a person, such service or communication may be effected by transmission of a copy of the document by telefax or any other technical means of communication available to the Court and the addressee.

The present article reproduces, in essence, the content of Article 104b(6) of the existing Rules of Procedure, relating to the transmission of procedural documents in the context of the urgent preliminary ruling procedure. Owing to the urgency required in dealing with cases under an expedited procedure, the Court considers it appropriate to provide here also that procedural documents may, in the context of that procedure, be validly lodged and served by telefax or the

other technical means of communication available to the Court and the interested persons referred to in Article 23 of the Statute, and that it is not necessary to await the original before continuing to deal with the case.

Chapter 3

URGENT PRELIMINARY RULING PROCEDURE

Article 108 Scope of the urgent preliminary ruling procedure

1. A reference for a preliminary ruling which raises one or more questions in the areas covered by Title V of Part Three of the Treaty on the Functioning of the European Union may, at the request of the referring court or tribunal or, exceptionally, of the Court's own motion, be dealt with under an urgent procedure derogating from the provisions of these Rules.

2. The referring court or tribunal shall set out the matters of fact and law which establish the urgency and justify the application of that exceptional procedure and shall, in so far as possible, indicate the answer that it proposes to the questions referred.

3. If the referring court or tribunal has not submitted a request for the urgent procedure to be applied, the President of the Court may, if the application of that procedure appears, prima facie, to be required, ask the Chamber referred to in Article 109 to consider whether it is necessary to deal with the reference under that procedure.

This article corresponds almost word for word to the first three subparagraphs of Article 104b(1) of the existing Rules of Procedure, which circumscribe the scope of the urgent procedure.

Article 109 Decision as to urgency

1. The decision to deal with a reference for a preliminary ruling under the urgent procedure shall be taken by the designated Chamber, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General. The composition of that Chamber shall be determined in accordance with Article 28(2) on the day on which the case is assigned to the Judge-Rapporteur if the application of the urgent procedure is requested by the referring court or tribunal, or, if the application of that procedure is considered at the request of the President of the Court, on the day on which that request is made.

2. If the case is connected with a pending case assigned to a Judge-Rapporteur who is not a member of the designated Chamber, that Chamber may propose to the President of the Court that the case be

assigned to that Judge-Rapporteur. Where the case is reassigned to that Judge-Rapporteur, the Chamber of five Judges which includes him shall carry out the duties of the designated Chamber in respect of that case. Article 29(1) shall apply.

While paragraph 1 of the present article corresponds to the last subparagraph of Article 104b(1) of the existing Rules of Procedure, paragraph 2 of Article 109 is new. It is designed to cover the situation in which the Court receives a request for a preliminary ruling that is very similar to an earlier request, whether pending or disposed of, which was dealt with by a Judge-Rapporteur who is not a member of the Chamber responsible in that year for dealing with cases that may be dealt with under the urgent preliminary ruling procedure.

In order to maintain as much consistency as possible in dealing with the two cases, the draft therefore provides for the designated Chamber to be able to propose to the President of the Court that the case be assigned to the Judge-Rapporteur designated in the first case. If the President agrees to that proposal, the case will then be reassigned to that Judge, and the Chamber of five Judges which includes him will assume the duties of the designated Chamber in respect of that case, in its composition at the time of dealing with the first case.

Article 110 Written part of the urgent procedure

1. A request for a preliminary ruling shall, where the referring court or tribunal has requested the application of the urgent procedure or where the President has requested the designated Chamber to consider whether it is necessary to deal with the reference under that procedure, be served forthwith by the Registrar on the parties to the main proceedings, on the Member State from which the reference is made, on the European Commission and on the institution which adopted the act the validity or interpretation of which is in dispute.

2. The decision as to whether or not to deal with the reference for a preliminary ruling under the urgent procedure shall be served immediately on the referring court or tribunal and on the parties, Member State and institutions referred to in the preceding paragraph. The decision to deal with the reference under the urgent procedure shall prescribe the time-limit within which those parties or entities may lodge statements of case or written observations. The decision may specify the matters of law to which such statements of case or written observations must relate and may specify the maximum length of those documents.

3. Where a request for a preliminary ruling refers to an administrative procedure or judicial proceedings conducted in a Member State other than that from which the reference is made, the

Court may invite that first Member State to provide all relevant information in writing, provided that the proper conduct of the proceedings so permits.

4. As soon as the service referred to in paragraph 1 above has been effected, the request for a preliminary ruling shall also be communicated to the interested persons referred to in Article 23 of the Statute, other than the persons served, and the decision whether or not to deal with the reference for a preliminary ruling under the urgent procedure shall be communicated to those interested persons as soon as the service referred to in paragraph 2 has been effected.

5. The parties to the main proceedings and the other interested persons referred to in Article 23 of the Statute shall be informed as soon as possible of the likely date of the hearing.

6. Where the reference is not to be dealt with under the urgent procedure, the proceedings shall continue in accordance with the provisions of Article 23 of the Statute and the applicable provisions of these Rules.

Subject to some terminological amendments, paragraphs 1, 2 and 4 to 6 of the present article reproduce, in essence, the five subparagraphs of Article 104b(2) of the existing Rules of Procedure. Paragraph 3 of the present article, by contrast, is new. It is intended to cover the situation, referred to in the introduction to the present title, in which the facts underlying the reference and the questions raised are of such a nature as to affect the interests of two or even more Member States. In that situation, it may prove useful to obtain written observations or information from a Member State other than that from which the reference is made. That is the objective of this new paragraph, which none the less specifies that this option will be used only if the proper conduct of the proceedings so permits, and it will not, as a consequence, result in a procedure which is urgent by nature becoming excessively protracted.

Article 111 Service and information following the close of the written part of the procedure

1. Where a reference for a preliminary ruling is to be dealt with under the urgent procedure, the request for a preliminary ruling and the statements of case or written observations which have been lodged shall be served on the interested persons referred to in Article 23 of the Statute other than the parties and entities referred to in Article 110(1). The request for a preliminary ruling shall be accompanied by a translation, where appropriate of a summary, in accordance with Article 99.

2. The statements of case or written observations which have been lodged shall also be served on the parties and other interested persons referred to in Article 110(1).

3. The date of the hearing shall be communicated to the parties and other interested persons at the same time as the documents referred to in the preceding paragraphs are served.

Subject to some terminological amendments, the present article reproduces, in essence, the terms of Article 104b(3) of the existing Rules of Procedure.

Article 112 Omission of the written part of the procedure

The designated Chamber may, in cases of extreme urgency, decide to omit the written part of the procedure referred to in Article 110(2).

This article reproduces, in essence, the terms of Article 104b(4) of the existing Rules of Procedure.

Article 113 Decision on the substance

The designated Chamber shall rule after hearing the Advocate General.

This article corresponds to the first subparagraph of Article 104b(5) of the existing Rules of Procedure, which it reproduces without amendment.

Article 114 Formation of the Court

1. The designated Chamber may decide to sit in a formation of three Judges. In that event, it shall be composed of the President of the designated Chamber, the Judge-Rapporteur and the first Judge or, as the case may be, the first two Judges designated from the list referred to in Article 28(2) on the date on which the composition of the designated Chamber is determined in accordance with Article 109(1).

2. The designated Chamber may also request the Court to assign the case to a formation composed of a greater number of Judges. The urgent procedure shall continue before the new formation of the Court, where necessary after the reopening of the oral part of the procedure.

This article corresponds to the second and third subparagraphs of Article 104b(5) of the existing Rules of Procedure, subject to terminological adjustments or adjustments linked to the renumbering of articles in the draft.

Article 115 Transmission of procedural documents

Procedural documents shall be transmitted in accordance with Article 107.

Since the possibility of transmitting procedural documents by telefax or any other technical means of communication is already contained in Article 107 of the present draft, relating to the expedited preliminary ruling procedure, the present article merely draws attention to the relevance of such methods of transmission in the context of the urgent preliminary ruling procedure, by means of a simple reference to the article cited above, which in turn reproduces, in essence, the terms of Article 104b(6) of the existing Rules of Procedure.

Chapter 4

LEGAL AID

Article 116 Application for legal aid

1. A party to the main proceedings who is wholly or in part unable to meet the costs of the proceedings before the Court may at any time apply for legal aid.

2. The application shall be accompanied by all information and supporting documents making it possible to assess the applicant's financial situation, such as a certificate issued by a competent national authority attesting to his financial situation.

3. If the applicant has already obtained legal aid before the referring court or tribunal, he shall produce the decision of that court or tribunal and specify what is covered by the sums already granted.

While the existing Rules of Procedure are relatively comprehensive as regards the possibility of granting legal aid in direct actions, they are, by contrast, extremely elliptical in that respect as regards references for a preliminary ruling, the only allusion to legal aid in that context being contained in the second subparagraph of Article 104(6), according to which, in special circumstances, the Court may grant, by way of legal aid, assistance for the purpose of facilitating the representation or attendance of a party. No details are given as to the criteria or procedure for the grant of such aid, or as to the effect of any aid granted by the referring court or tribunal.

Articles 116 to 118 of the present draft are therefore intended to fill that gap while, as necessary, aligning the terminology with that in the Charter of Fundamental Rights of the European Union which, in Article 47, refers to the grant of legal aid to those who lack sufficient resources. While Article 116 is, accordingly, based on Article 76 of the existing Rules of Procedure, it nevertheless updates it by referring to the financial situation of the legal aid applicant, instead of to his lack of means. Under paragraph 3 of Article 116, the applicant is, moreover, invited to declare any sums which may have been obtained before the referring court or tribunal. These two amendments should provide the Court with a fuller picture of the applicant's true financial situation before it determines his application for legal aid.

Article 117 Decision on the application for legal aid

1. As soon as the application for legal aid has been lodged it shall be assigned by the President to the Judge-Rapporteur responsible for the case in the context of which the application has been made.

2. The decision to grant legal aid, in full or in part, or to refuse it shall be taken, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, by the Chamber of three Judges to which the Judge-Rapporteur is assigned. The formation of the Court shall, in that event, be composed of the President of that Chamber, the Judge-Rapporteur and the first Judge or, as the case may be, the first two Judges designated from the list referred to in Article 28(3) on the date on which the application for legal aid is brought before that Chamber by the Judge-Rapporteur.

3. If the Judge-Rapporteur is not a member of a Chamber of three Judges, the decision shall be taken, under the same conditions, by the Chamber of five Judges to which he is assigned. In addition to the Judge-Rapporteur, the formation of the Court shall be composed of four Judges designated from the list referred to in Article 28(2) on the date on which the application for legal aid is brought before that Chamber by the Judge-Rapporteur.

4. The formation of the Court shall give its decision by way of order. Where the application for legal aid is refused in whole or in part, the order shall state the reasons for that refusal.

Since the grant of aid often affects a party's ability to make his written or oral observations effectively, it is important that, when an application for legal aid is submitted to it, the Court should be able to determine the application quickly. For that reason, the draft provides for applications for legal aid to be assigned automatically to the Judge responsible for the reference for a preliminary ruling in the context of which the application was made. The draft stipulates, moreover, that the

decision on the application is always to be taken by the smallest formation of the Court which includes the Judge-Rapporteur, namely a Chamber of three or of five Judges, as the case may be, and that it is not necessary for such applications to be submitted to the general meeting of the Court. These provisions should speed up the progress of such applications which, by their very nature, are often sensitive and urgent.

The rest of the article is aligned with the second subparagraph of Article 76(3) of the existing Rules of Procedure with regard to the form that the Court's decision on such an application must take and the associated requirement to state reasons.

Article 118 Withdrawal of legal aid

The formation of the Court which gave a decision on the application for legal aid may at any time, either of its own motion or on request, withdraw that legal aid if the circumstances which led to its being granted alter during the proceedings.

This article reproduces, in essence, the terms of Article 76(4) of the existing Rules of Procedure.

TITLE IV

DIRECT ACTIONS

Since, in numerical terms, they represent the second category of cases submitted to the Court, direct actions consisting for the most part of actions for failure of a Member State to fulfil obligations are accordingly dealt with immediately after references for a preliminary ruling, in Title IV of the present draft. Although this title reproduces, and clarifies, the already relatively detailed provisions of the existing Rules of Procedure, it also includes a number of important innovations by comparison with the existing text. One of these, and undoubtedly the most important, is the reform of the currently somewhat cumbersome intervention procedure.

If a third party wishes to intervene in a dispute that is pending before the Court, he is required to submit his application to intervene to the Court within six weeks of publication in the

Official Journal of the European Union of the notice relating to that new case. On receipt of that application, the Court serves it on the main parties and invites them to make any observations on the application and, in particular, on the need to omit certain secret or confidential documents from the file. It is not until the period fixed for lodgment of those observations has expired, and after an order allowing the application to intervene has been adopted and served, that procedural documents are sent to the intervener enabling him to prepare his statement in intervention. This procedure is often criticised for its cumbersomeness and for the resulting delays sometimes caused in the progress of cases.

In certain circumstances, an application to intervene may be submitted by a Member State when – the right to lodge a reply having been waived – the written part of the procedure has already been closed; as a result, it is necessary to wait for the statement in intervention, and any observations thereon, to be lodged in order to be able to proceed to the next stage of dealing with the case. In other cases, moreover, the application to intervene is withdrawn after the procedural documents have been sent to the intervener, causing unnecessary delays in the progress of the case.

For all those reasons, and in view of the fact that the right of the Member States and institutions of the European Union to intervene in cases before the Court of Justice is enshrined in the first paragraph of Article 40 of the Statute, the present draft therefore introduces a simplified intervention process for the benefit of those States and institutions, and also for the States which are parties to the EEA Agreement and for the EFTA Surveillance Authority, if the case concerns one of the fields of application of the EEA Agreement. Under the proposed scheme, all those referred to above will – in so far as they have not already received it – be able to request the Court to send them a copy of the application and, if available, the defence, without the annexes thereto, within a time-limit of 15 days from publication in the Official Journal of the notice relating to the case, and receipt of the application by the States and institutions referred to above will in turn trigger a time-limit of 20 days within which they will be able to state their intention to intervene in the case, by means of a simple written declaration lodged at the Registry. This amendment should lead to a significant reduction in the overall duration of direct actions in which many are involved.

The necessary corollary to the implementation of this process is obviously the applicant's or defendant's obligation to identify in the application or the defence those documents or passages therefrom which are confidential, and to state why their communication to any interveners might be prejudicial to the applicant or defendant, as the case may be.

Other noteworthy innovations introduced by the present draft include the fact that a time-limit of two months is prescribed for submission of the defence, the existing time-limit (one month) having proved insufficient and frequently been the subject of requests for extensions; the insertion of a chapter relating to the introduction of new pleas in law in the course of proceedings and to evidence produced or offered; and the possibility, already referred to, of a case being decided, of the President's own motion, under an expedited procedure.

Finally, while the draft does not amend the existing Rules in relation to the costs of proceedings, except to specify the formation of the Court competent to determine disputes relating to the costs to be recovered (just as in the case of applications for legal aid in references for a preliminary ruling and in appeals, the Chamber concerned is, in principle, always the Chamber of three Judges which includes the Judge-Rapporteur), it brings together in a single chapter a whole series of provisions, currently to be found in four separate chapters, in respect of requests or applications relating to judgments and orders of the Court (rectification, failure to adjudicate, applications to set aside, third-party proceedings, interpretation and revision).

Reflecting the Court's concern to deal with such applications swiftly, the draft also provides – subject to an exception attributable both to the time-limit within which an application for revision may be made and to the special nature of that procedure – for such applications to be assigned automatically to the Judge-Rapporteur responsible for the case to which they are an adjunct and to be assigned to the formation of the Court which gave a decision in that case. No substantive change is made, however, to the chapter relating to the suspension of operation or enforcement and interim measures.

Chapter 1

REPRESENTATION OF THE PARTIES

Article 119 Obligation to be represented

1. A party may be represented only by his agent or lawyer.

2. Agents and lawyers must lodge at the Registry an authority to act issued by the party whom they represent.

3. The lawyer acting for a party must also lodge at the Registry a certificate that he is authorised to practise before a court of a Member State or of another State which is a party to the EEA Agreement.

4. If those documents are not lodged, the Registrar shall prescribe a reasonable time-limit within which the party concerned is to produce them. If the applicant fails to produce the required documents within the time-limit prescribed, the Court shall, after hearing the Judge-Rapporteur and the Advocate General, decide whether the non-compliance with that procedural requirement renders the application or written pleading formally inadmissible.

By contrast with preliminary ruling proceedings, in which the Court takes into account rules of procedure that apply before the court or tribunal from which the reference is made, representation of parties by an agent or lawyer is mandatory in direct actions. The draft therefore draws attention to that requirement, set out both in Article 19 of the Statute and in Article 58 of the existing Rules of Procedure, at the beginning of the title relating to that type of action. Next, the draft refers to the documents required in order for a party to be able to participate in proceedings before the Court and the possible consequences of any failure to produce them. Those documents and consequences are currently referred to in Article 38 of the Rules of Procedure, specifically in Article 38(3), (5) and (7).

Chapter 2

WRITTEN PART OF THE PROCEDURE

Article 120 Content of the application

1. An application of the kind referred to in Article 21 of the Statute shall state:

(a) the name and address of the applicant;

(b) the name of the party against whom the application is made;

(c) the subject-matter of the proceedings, the pleas in law and arguments relied on and a summary of those pleas in law;

(d) the form of order sought by the applicant;

(e) where appropriate, any evidence produced or offered.

2. If the applicant considers that certain documents or passages therefrom should not be communicated to interveners, if any, he shall clearly identify such documents and passages and

state why their communication to those parties is likely to be prejudicial to him. The President shall decide the matter after hearing the Judge-Rapporteur and the Advocate General.

While paragraph 1 of the present article corresponds, in essence, to paragraph 1 of Article 38 of the existing Rules of Procedure, paragraph 2 is new. It is attributable to the introduction in the Rules of Procedure of a simplified intervention process for the benefit of privileged interveners: the institutions of the European Union and the Member States. Since the draft provides, in that regard, for those interveners to be able to request the Court to send them a copy of the application, without the annexes thereto, within a maximum time-limit of 15 days of publication in the Official Journal of the notice relating to that new case – which, in turn, triggers a time-limit of 20 days within which a declaration of intervention may be made – it is not possible in practical terms, within that time-limit, to ask the main parties concerned about those applications to intervene.

That is why the draft invites the applicant and the defendant to identify at the outset in the application and defence, respectively, those documents or passages therefrom which are likely to damage their interests if they are communicated to third parties. It will then be for the President to decide the matter, in the light of the observations made by the main parties and any requests for copies of the application that may have been made.

Article 121 Information relating to service

1. For the purpose of the proceedings, the application shall state an address for service in the place in which the Court has its seat. It shall indicate the name of the person who is authorised and has expressed willingness to accept service.

2. In addition to, or instead of, specifying an address for service as referred to in paragraph 1, the application may state that the lawyer or agent agrees that service is to be effected on him by telefax or any other technical means of communication.

3. If the application does not comply with the requirements referred to in paragraphs 1 and 2, all service on the party concerned for the purpose of the proceedings shall be effected, for so long as the defect has not been cured, by registered letter addressed to the agent or lawyer of that party. By way of derogation from Article 48, service shall then be deemed to be duly effected by the lodging of the registered letter at the post office of the place in which the Court has its seat.

This article corresponds to Article 38(2) of the existing Rules of Procedure.

Article 122 Annexes to the application

1. The application shall be accompanied, where appropriate, by the documents specified in the second paragraph of Article 21 of the Statute.

2. An application submitted under Article 273 TFEU shall be accompanied by a copy of the special agreement concluded between the Member States concerned.

3. If an application does not comply with the requirements set out in paragraphs 1 and 2 of this Article, the Registrar shall prescribe a reasonable time-limit within which the applicant is to produce the abovementioned documents. If the applicant fails to put the application in order, the Court shall, after hearing the Judge-Rapporteur and the Advocate General, decide whether the non-compliance with these conditions renders the application formally inadmissible.

This article reproduces almost word for word the content of paragraphs 4, 6 and 7 of Article 38 of the existing Rules of Procedure. The difference between the two articles is that the Judge-Rapporteur is now also involved in the decision relating to the consequences of a failure to comply with the requirements laid down in this article.

Article 123 Service of the application

The application shall be served on the defendant. In cases where Article 119(4) or Article 122(3) applies, service shall be effected as soon as the application has been put in order or the Court has declared it admissible notwithstanding the failure to observe the requirements set out in those two Articles.

Subject to an adjustment of the article numbers referred to, this article corresponds to Article 39 of the existing Rules of Procedure.

Article 124 Content of the defence

1. Within two months after service on him of the application, the defendant shall lodge a defence, stating:

(a) the name and address of the defendant;

(b) the pleas in law and arguments relied on;

(c) the form of order sought by the defendant;

(d) where appropriate, any evidence produced or offered.

2. If the defendant considers that certain documents or passages therefrom should not be communicated to interveners, if any, he shall clearly identify such documents and passages and state why their communication to those parties is likely to be prejudicial to him. The President shall decide the matter after hearing the Judge-Rapporteur and the Advocate General.

3. Article 121 of these Rules shall apply to the defence.

4. The time-limit laid down in paragraph 1 may exceptionally be extended by the President at the duly reasoned request of the defendant.

The present article reproduces, in essence, the terms of Article 40 of the existing Rules of Procedure.

The main changes by comparison with the existing arrangements include the addition of a paragraph in which the defendant is invited to identify any secret or confidential passages in his defence and to state why he considers that such passages should not be communicated to interveners, if any. As previously stated, this addition is attributable to the introduction in the Rules of Procedure of a new, simplified intervention process, in which copies of the application and defence may be sent to privileged interveners on request.

Moreover, the draft increases to two months the time-limit for submitting a defence. Currently fixed at one month, this time-limit is often insufficient for the party concerned to be able properly to prepare a defence, particularly in the context of infringement proceedings, owing to the need to consult a number of bodies or individuals and ministries in order to collect the information that is essential to drawing up the defence. Extensions of this time-limit are, therefore, regularly requested by certain parties, adding to the workload of the Court and of those parties. For that reason, the draft provides for the initial time-limit for submission of the defence to be increased to two months, but for extensions of that time-limit to be granted only exceptionally. Extensions are not ruled out altogether, but require the defendant to submit a duly reasoned request in that respect.

Article 125 Transmission of documents

Where the European Parliament, the Council or the European Commission is not a party to a case, the Court shall send to them copies of the application and of the defence, without the annexes thereto, to enable them to assess whether the inapplicability of one of their acts is being invoked under Article 277 TFEU.

Article 125 corresponds, in essence, to Article 16(7) of the existing Rules of Procedure, but simplifies it by putting the European Parliament on the same footing as the Council and the European Commission. In view of the changes in the role and powers of the European Parliament, particularly after the entry into force of the Treaty of Lisbon on 1 December 2009, it no longer seems appropriate to maintain a distinction between those three institutions for the purposes of sending procedural documents with a view to the possible implementation of Article 277 TFEU.

Article 126 Reply and rejoinder

1. The application initiating proceedings and the defence may be supplemented by a reply from the applicant and by a rejoinder from the defendant.

2. The President shall prescribe the time-limits within which those procedural documents are to be produced. He may specify the matters of law to which the reply or the rejoinder must relate.

Article 126 reproduces, in essence, the terms of Article 41 of the existing Rules of Procedure, subject to the addition of a sentence to paragraph 2, stipulating that the President may specify the matters of law which must be covered by the reply or the rejoinder. This addition is based on the concern, previously referred to, that the written and oral parts of the procedure should be as useful as possible. Thus, if, after a first round of written pleadings, the Court has already clearly identified the crucial issues in the case, it can invite the parties to concentrate on those issues, enabling the parties to avoid expanding in their reply or rejoinder on points in respect of which the Court considers that it has sufficient information, and, at the same time, encouraging the case to be dealt with more swiftly, since the second round of written pleadings will deal only with matters that are still outstanding.

Chapter 3

PLEAS IN LAW AND EVIDENCE

Article 127 New pleas in law

1. No new plea in law may be introduced in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the procedure.

2. Without prejudice to the decision to be taken on the admissibility of the plea in law, the President may, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, prescribe a time-limit within which the other party may respond to that plea.

This article reproduces, in essence, yet simplifies the terms of Article 42(2) of the existing Rules of Procedure.

Article 128 Evidence produced or offered

1. In reply or rejoinder a party may produce or offer further evidence in support of his arguments. The party must give reasons for the delay in submitting such evidence.

2. The parties may, exceptionally, produce or offer further evidence after the close of the written part of the procedure. They must give reasons for the delay in submitting such evidence. The President may, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, prescribe a time-limit within which the other party may comment on such evidence.

Paragraph 1 of the present article corresponds to paragraph 1 of Article 42 of the existing Rules of Procedure, which, in essence, it reproduces; paragraph 2 of Article 128, on the other hand, is new. It is intended to cover situations in which evidence produced or offered is put forward after the close of the written part of the procedure. While emphasising the exceptional nature of such situations, the draft does not rule out any effect on the conduct of the proceedings. For that reason, Article 128 therefore authorises evidence to be produced or offered, but makes it subject to an express obligation to state the reasons for the delay in submitting such evidence and, in compliance with the adversarial principle, provides for the President to be able to offer the other party time to comment on such evidence.

Chapter 4

INTERVENTION

Article 129 Object and effects of the intervention

1. The intervention shall be limited to supporting, in whole or in part, the form of order sought and pleas in law submitted by one of the parties. It shall not confer the same procedural rights as those conferred on the parties and, in particular, shall not give rise to any right to request that a hearing be held.

2. The intervention shall be ancillary to the main proceedings. It shall become devoid of purpose if the case is removed from the register of the Court as a result of a party's discontinuance or withdrawal from the proceedings or of an agreement between the parties, or where the application is declared inadmissible.

3. The intervener must accept the case as he finds it at the time of his intervention.

4. Consideration may be given to an application to intervene which is made after the expiry of the time-limits prescribed in Articles 130 or 133 but before the decision to open the oral part of the procedure provided for in Article 60(4). In that event, if the President allows the intervention, the intervener may submit his observations during the hearing, if it takes place.

Responding to queries which arise from time to time as to the true meaning and scope of the intervention process, the present article endeavours to identify more clearly the limits of that process. Two important details are thus added.

Article 129 draws attention, first of all, to the fact that the intervener should not be confused with the main party. Since an application to intervene is, necessarily, an adjunct to an existing dispute, it is limited to supporting one of the parties to that dispute, and the form of order sought and pleas in law submitted by that party. This support may, however, be only partial, and may relate to just one or more of the pleas in law put forward by the applicant or defendant, instead of to all those pleas in law.

Second, Article 129 gives due effect to the ancillary nature of an intervention by stating that an intervention will become devoid of purpose if the main proceedings come to an end, for example as a result of a party's discontinuance or withdrawal from the proceedings or of an agreement between the applicant and defendant.

Paragraphs 3 and 4 of Article 129 set out a rule that is already contained in paragraphs 4 and 7 of Article 93 of the existing Rules of Procedure, namely that the intervener must accept the case as he finds it at the time of his intervention. In other words, intervention cannot have the effect of allowing him to lodge a statement in intervention if his intervention is too late, nor, a fortiori, can it have the effect of taking the case back to its starting point by allowing new time-limits, for example, where the written part of the procedure has come to a close, for the submission of a defence, reply or rejoinder.

Article 130 Application to intervene

1. An application to intervene must be submitted within six weeks of the publication of the notice referred to in Article 21(4).

2. The application to intervene shall contain:

(a) a description of the case;

(b) a description of the main parties;

(c) the name and address of the intervener;

(d) the form of order sought and pleas in law submitted, in support of which the intervener is applying for leave to intervene;

(e) a statement of the circumstances establishing the right to intervene.

3. The intervener shall be represented in accordance with Article 19 of the Statute.

4. Articles 119, 121 and 122 of these Rules shall apply.

Subject to the necessary adjustments arising from the restructuring of the Rules of Procedure, particularly as regards references to other provisions of the draft, Article 130 reproduces, in essence, the terms of Article 93(1) of the existing Rules of Procedure.

Article 131 Decision on applications to intervene

1. The application to intervene shall be served on the parties.

2. The President shall give the parties an opportunity to submit their written or oral observations before deciding on the application to intervene.

3. The President shall decide on the application to intervene by order or shall refer the application to the Court.

4. If the application to intervene is granted, the intervener shall receive a copy of every procedural document served on the parties. The President may, however, at the request of one of the parties, omit secret or confidential items or documents.

This article reproduces, in essence, the terms of Article 93(2) and (3) of the existing Rules of Procedure.

Article 132 Submission of statements

1. The President shall prescribe a time-limit within which the intervener may submit a statement in intervention.

2. The statement in intervention shall contain:

(a) the form of order sought by the intervener in support of or opposing, in whole or in part, the form of order sought and pleas in law submitted by one of the parties;

(b) the pleas in law and arguments relied on by the intervener;

(c) where appropriate, any evidence produced or offered.

3. After the statement in intervention has been lodged, the President shall, where necessary, prescribe a time-limit within which the parties may reply to that statement.

Subject to clarification as to the content of the statement in intervention, this article reproduces, in essence, the terms of Article 93(5) and (6) of the existing Rules of Procedure.

Article 133 Simplified intervention

1. Member States and institutions of the European Union, other than those referred to in Article 125, may, within 15 days of the publication referred to in Article 21(4), request the Court to communicate to them a copy of the application initiating proceedings and, where relevant, the defence, without the annexes to those pleadings.

2. By way of derogation from Article 130, an intervention by any of the States or the institutions of the European Union which are entitled to intervene in accordance with the first paragraph of Article 40 of the Statute shall be made by means of a written declaration communicated to the Registry within 20 days of receipt of the application by the State or the institution concerned.

3. Article 132 of these Rules shall apply.

As stated in the introduction to the present title, the introduction of a simplified intervention process is, without any doubt, one of the key innovations of the present draft. It is intended, at an early stage of the case, to provide privileged interveners with the documents they need in order to decide whether to intervene in a case before the Court and, by so doing, to speed up the progress of the case in question.

The process proposed is in two parts. First, the Member States and the institutions of the European Union are invited to request the Court to send them copies of the application initiating proceedings and, if available, of the defence, to enable them to become acquainted with the case. Once they have received those copies, the States and institutions have a period of 20 days to express, by means of a written declaration, their intention to intervene in the dispute. The procedure will then continue in accordance with the ordinary rules. The President will prescribe a time-limit for submission of a statement in intervention and the applicant and defendant will, if necessary, be able to make written observations on that statement.

Article 134 Interventions arising from the EEA Agreement

1. Article 133 shall apply to the States, other than the Member States, which are parties to the EEA Agreement, and also to the EFTA Surveillance Authority, which are entitled to intervene in accordance with the third paragraph of Article 40 of the Statute where the proceedings concern one of the fields of application of that Agreement.

2. That fact must be established in the declaration of intervention. If it is not so established, Article 130 shall apply and the declaration of intervention shall be deemed to be an application to intervene within the meaning of that provision.

Since they are also referred to in Article 40 of the Statute, Article 134 of the draft extends the application of the simplified intervention process to the States, other than the Member States, which are parties to the EEA Agreement, and also to the EFTA Surveillance Authority. Implementation of that process presupposes, however, that the State or Authority concerned states in its declaration of intervention that the proceedings concern one of the fields of application of the EEA Agreement. Failing that, the ordinary intervention process will apply.

Chapter 5

EXPEDITED PROCEDURE

Article 135 Decision relating to the expedited procedure

1. At the request of the applicant or the defendant, the President of the Court may, where the nature of the case requires that it be dealt with within a short time, after hearing the other party, the Judge-Rapporteur and the Advocate General, decide that a case is to be determined pursuant to an expedited procedure derogating from the provisions of these Rules.

2. The request for a case to be determined pursuant to an expedited procedure must be made by a separate document submitted at the same time as the application initiating proceedings or the defence, as the case may be, is lodged.

3. Exceptionally the President may also take such a decision of his own motion, after hearing the parties, the Judge-Rapporteur and the Advocate General.

Article 135 corresponds, in essence, to Article 62a(1) of the existing Rules of Procedure. Unlike Article 62a, however, Article 135 also provides for the President to be able, of his own motion, to decide that a case should be determined pursuant to an expedited procedure. The reasons for that addition are the same, mutatis mutandis, as those in respect of preliminary rulings (see previous comments in relation to Article 106 of the draft).

Article 136 Written part of the procedure

1. Under the expedited procedure, the application initiating proceedings and the defence may be supplemented by a reply and a rejoinder only if the President, after hearing the Judge-Rapporteur and the Advocate General, considers this to be necessary.

2. An intervener may submit a statement in intervention only if the President, after hearing the Judge-Rapporteur and the Advocate General, considers this to be necessary.

Article 136 corresponds, in essence, to Article 62a(2) of the existing Rules of Procedure. By comparison with Article 62a, Article 136 additionally contains a requirement that the Judge-Rapporteur and the Advocate General should be heard before the President decides on the need for a reply and rejoinder or a statement in intervention to be lodged.

Article 137 Oral part of the procedure

1. Once the defence has been submitted or, if the decision to determine the case pursuant to an expedited procedure is not made until after that pleading has been lodged, once that decision has been taken, the President shall fix a date for the hearing, which shall be communicated forthwith to the parties. He may postpone the date of the hearing where it is necessary to undertake measures of inquiry or where measures of organisation of procedure so require.

2. Without prejudice to Articles 127 and 128, a party may supplement his arguments and produce or offer evidence during the oral part of the procedure. The party must, however, give reasons for the delay in producing such further arguments or evidence.

Subject to the necessary adjustments arising from the structure or the terminology used in the present draft, Article 137 reproduces, in essence, the terms of Article 62a(3) of the existing Rules of Procedure.

Article 138 Decision on the substance

The Court shall give its ruling after hearing the Advocate General.

This article reproduces the terms of Article 62a(4) of the existing Rules of Procedure.

Chapter 6

COSTS

Article 139 Decision as to costs

A decision as to costs shall be given in the judgment or order which closes the proceedings.

This article reproduces the terms of Article 69(1) of the existing Rules of Procedure.

Article 140 General rules as to allocation of costs

1. The unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings.

2. Where there is more than one unsuccessful party the Court shall decide how the costs are to be shared.

3. Where each party succeeds on some and fails on other heads, or where the circumstances are exceptional, the Court may order that the costs be shared or that the parties bear their own costs.

This article corresponds to Article 69(2) and the first subparagraph of Article 69(3) of the existing Rules of Procedure, the terms of which are, in essence, reproduced.

Article 141 Unreasonable or vexatious costs

The Court may order a party, even if successful, to pay costs which the Court considers that party to have unreasonably or vexatiously caused the opposite party to incur.

This article reproduces the terms of the second subparagraph of Article 69(3) of the existing Rules of Procedure.

Article 142 Costs of interveners

1. The Member States and institutions which have intervened in the proceedings shall bear their own costs.

2. The States, other than the Member States, which are parties to the EEA Agreement, and also the EFTA Surveillance Authority, shall similarly bear their own costs if they have intervened in the proceedings.

3. The Court may order an intervener other than those referred to in the preceding paragraphs to bear his own costs.

This article reproduces, in essence, the terms of Article 69(4) of the existing Rules of Procedure.

Article 143 Costs in the event of discontinuance or withdrawal

1. A party who discontinues or withdraws from proceedings shall be ordered to pay the costs if they have been applied for in the other party's observations on the discontinuance.

2. However, at the request of the party who discontinues or withdraws from proceedings, the costs shall be borne by the other party if this appears justified by the conduct of that party.

3. Where the parties have come to an agreement on costs, the decision as to costs shall be in accordance with that agreement.

4. If costs are not claimed, the parties shall bear their own costs.

This article reproduces the terms of Article 69(5) of the existing Rules of Procedure.

Article 144 Costs where a case does not proceed to judgment

Where a case does not proceed to judgment the costs shall be in the discretion of the Court.

This article corresponds to Article 69(6) of the existing Rules of Procedure.

Article 145 Costs of proceedings

Proceedings before the Court shall be free of charge, except that:

(a) where a party has caused the Court to incur avoidable costs the Court may, after hearing the Advocate General, order that party to refund them;

(b) where copying or translation work is carried out at the request of a party, the cost shall, in so far as the Registrar considers it excessive, be paid for by that party on the Registry's scale of charges referred to in Article 22.

Subject to an adjustment linked to the renumbering of articles in the draft, the present article reproduces the terms of Article 72 of the existing Rules of Procedure.

Article 146 Recoverable costs

Without prejudice to the preceding Article, the following shall be regarded as recoverable costs:

(a) sums payable to witnesses and experts under Article 74 of these Rules;

(b) expenses necessarily incurred by the parties for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration of agents, advisers or lawyers.

Like the preceding article, Article 146 reproduces the terms of the corresponding article of the existing Rules of Procedure – in this instance Article 73 of those Rules – subject to an adjustment linked to the renumbering of articles in the draft.

Article 147 Dispute concerning the costs to be recovered

1. If there is a dispute concerning the costs to be recovered, the Chamber of three Judges to which the Judge-Rapporteur who dealt with the case is assigned shall, on application by the party concerned and after hearing the opposite party and the Advocate General, make an order. In that event, the formation of the Court shall be composed of the President of that Chamber, the Judge-Rapporteur and the first Judge or, as the case may be, the first two Judges designated from the list referred to in Article 28(3) on the date on which the dispute is brought before that Chamber by the Judge-Rapporteur.

2. If the Judge-Rapporteur is not a member of a Chamber of three Judges, the decision shall be taken, under the same conditions, by the Chamber of five Judges to which he is assigned. In addition to the Judge-Rapporteur, the formation of the Court shall be composed of four Judges designated from the list referred to in Article 28(2) on the date on which the dispute is brought before that Chamber by the Judge-Rapporteur.

3. The parties may, for the purposes of enforcement, apply for an authenticated copy of the order.

The present article, which concerns applications for taxation of costs, differs in two respects from Article 74 of the existing Rules of Procedure. It provides for these applications to be examined by the smallest formation of the Court which includes the Judge-Rapporteur, namely a Chamber of

three or of five Judges, as the case may be, which avoids, in particular, the need for 13 or 27 Judges to be involved in such applications where the cases to which they relate have been assigned to the Grand Chamber or the full Court. Furthermore, since such applications do not raise any new points of law, the article relieves the Advocate General of the need to deliver an Opinion in such situations. The Advocate General's views are simply sought before the Chamber gives its decision.

Article 148 Procedure for payment

1. Sums due from the cashier of the Court and from its debtors shall be paid in euro.

2. Where costs to be recovered have been incurred in a currency other than the euro or where the steps in respect of which payment is due were taken in a country of which the euro is not the currency, the conversion shall be effected at the European Central Bank's official rates of exchange on the day of payment.

Subject to a terminological amendment, the present article reproduces the terms of Article 75 of the existing Rules of Procedure.

Chapter 7

AMICABLE SETTLEMENT, DISCONTINUANCE, CASES THAT DO NOT PROCEED TO JUDGMENT AND PRELIMINARY ISSUES

Article 149 Amicable settlement

1. If, before the Court has given its decision, the parties reach a settlement of their dispute and inform the Court of the abandonment of their claims, the President shall order the case to be removed from the register and shall give a decision as to costs in accordance with Article 143, having regard to any proposals made by the parties on the matter.

2. This provision shall not apply to proceedings under Articles 263 TFEU and 265 TFEU.

Subject to an adjustment linked to the renumbering of articles in the draft, the present article reproduces the terms of Article 77 of the existing Rules of Procedure.

Article 150 Discontinuance

If the applicant informs the Court in writing or at the hearing that he wishes to discontinue the proceedings, the President shall order the case to be removed from the register and shall give a decision as to costs in accordance with Article 143.

This article reproduces the terms of Article 78 of the existing Rules of Procedure, subject to clarification in respect of the situation in which the case is discontinued during a hearing.

Article 151 Cases that do not proceed to judgment

If the Court declares that the action has become devoid of purpose and that there is no longer any need to adjudicate on it, the Court may at any time of its own motion, on a proposal from the Judge-Rapporteur and after hearing the parties and the Advocate General, decide to rule by reasoned order. It shall give a decision as to costs.

This article corresponds, in essence, to Article 92(2) of the existing Rules of Procedure. However, Article 151 of the draft contains additional information concerning the manner in which the Court is to take a decision and the content of that decision.

Article 152 Absolute bar to proceeding with a case

On a proposal from the Judge-Rapporteur, the Court may at any time of its own motion, after hearing the parties and the Advocate General, decide to rule by reasoned order on whether there exists any absolute bar to proceeding with a case.

Like the preceding article, this article is based on the terms of Article 92(2) of the existing Rules of Procedure, the wording of which is nevertheless supplemented by additional information concerning the manner in which the Court is to take a decision.

Article 153 Preliminary objections and issues

1. A party applying to the Court for a decision on a preliminary objection or issue not going to the substance of the case shall submit the application by a separate document.

2. The application must state the pleas of law and arguments relied on and the form of order sought by the applicant; any supporting items and documents must be annexed to it.

3. As soon as the application has been submitted, the President shall prescribe a time-limit within which the opposite party may submit in writing his pleas in law and the form of order which he seeks.

4. Unless the Court decides otherwise, the remainder of the proceedings on the application shall be oral.

5. The Court shall, after hearing the Advocate General, decide on the application or reserve its decision until it rules on the substance of the case.

6. If the Court refuses the application or reserves its decision, the President shall prescribe new time-limits for the further steps in the proceedings.

Article 153 corresponds, in essence, to the terms of Article 91 of the existing Rules of Procedure of the Court.

Chapter 8

JUDGMENTS BY DEFAULT

Article 154 Judgments by default

1. If a defendant on whom an application initiating proceedings has been duly served fails to respond to the application in the proper form and within the time-limit prescribed, the applicant may apply to the Court for judgment by default.

2. The application for judgment by default shall be served on the defendant. The Court may decide to open the oral part of the procedure on the application.

3. Before giving judgment by default the Court shall, after hearing the Advocate General, consider whether the application initiating proceedings is admissible, whether the appropriate formalities have been complied with, and whether the applicant's claims appear well founded. The Court may adopt measures of organisation of procedure or order measures of inquiry.

4. A judgment by default shall be enforceable. The Court may, however, grant a stay of execution until the Court has given its decision on any application under Article 158 to set aside the judgment, or it may make execution subject to the provision of security of an amount and nature to be fixed in the light of the circumstances; this security shall be released if no such application is made or if the application fails.

The present article corresponds to Article 94(1) to (3) of the existing Rules of Procedure, subject to some terminological amendments or amendments linked to the renumbering of articles in the draft.

Chapter 9

REQUESTS AND APPLICATIONS RELATING TO JUDGMENTS AND ORDERS

Article 155 Competent formation of the Court

1. With the exception of applications referred to in Article 161, the requests and applications referred to in this Chapter shall be assigned to the Judge-Rapporteur who was responsible for the case to which the request or application relates, and shall be assigned to the formation of the Court which gave a decision in that case.

2. If the Judge-Rapporteur is prevented from acting, the President of the Court shall assign the request or application referred to in this Chapter to a Judge who was a member of the formation of the Court which gave a decision in the case to which that request or application relates.

3. If the quorum referred to in Article 17 of the Statute can no longer be attained, the Court shall, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, assign the request or application to a new formation of the Court.

As stated in the introduction to the present title, this draft brings together in a single chapter a set of requests or applications that can be made after a case has been closed by the Court. Such requests or applications are aimed at rectifying, interpreting or revising a decision of the Court, at remedying a failure of the Court to adjudicate or at having a decision of the Court set aside or initiating third-party proceedings against such a decision. Since such requests generally arise directly in the context of an existing decision, it seemed appropriate, in the interests of procedural economy, to provide for them to be assigned to the same Judge-Rapporteur and to the same formation of the Court as that which adopted the decision at issue.

Owing to the particular nature and the much longer time-limit within which applications for revision may be made, it seemed appropriate, however, to make an exception to that rule in respect

of that particular category of application. The draft also determines the procedure to be followed where the Judge-Rapporteur or the formation of the Court is prevented from acting, because the requisite quorum cannot be attained.

Article 156 Rectification

1. Without prejudice to the provisions relating to the interpretation of judgments and orders the Court may, of its own motion or at the request of a party made within two weeks after service of the decision concerned, rectify clerical mistakes, errors in calculation and obvious inaccuracies in it.

2. Where the request for rectification concerns the operative part or one of the grounds constituting the necessary support for the operative part, the parties, whom the Registrar shall duly inform, may submit written observations within a time-limit prescribed by the President.

3. The Court shall take its decision after hearing the Advocate General.

4. The original of the rectification order shall be annexed to the original of the rectified decision. A note of this order shall be made in the margin of the original of the rectified decision.

The present article reproduces, in essence, the terms of Article 66 of the existing Rules of Procedure, subject to additional clarification of the fact that rectification can relate not only to a judgment of the Court but also to one of its orders, and to simplification of the procedure prior to rectification itself.

Since requests for rectification often relate to the details of a decision, such as the omission of the name of a party's representative, or an incorrect figure or date, it does seem excessive routinely to consult the parties before proceeding with rectification. For that reason, the draft provides that the parties are not to be invited to submit any observations on an error or inaccuracy that has been identified unless the request for rectification concerns the operative part or one of the grounds constituting the necessary support for it.

Article 157 Failure to adjudicate

1. If the Court has failed to adjudicate on a specific head of claim or on costs, any party wishing to rely on that may, within a month after service of the decision, apply to the Court to supplement its decision.

2. The application shall be served on the opposite party and the President shall prescribe a time-limit within which that party may submit written observations.

3. After these observations have been submitted, the Court shall, after hearing the Advocate General, decide both on the admissibility and on the substance of the application.

This article corresponds, in essence, to Article 67 of the existing Rules of Procedure. Unlike Article 67, however, reference is now made to the wider concept of a decision of the Court, since the failure to adjudicate can relate to judgments as well as to orders of the Court.

Article 158 Application to set aside

1. Application may be made pursuant to Article 41 of the Statute to set aside a judgment delivered by default.

2. The application to set aside the judgment must be made within one month from the date of service of the judgment and must be submitted in the form prescribed by Articles 120 to 122 of these Rules.

3. After the application has been served, the President shall prescribe a time-limit within which the other party may submit his written observations.

4. The proceedings shall be conducted in accordance with Articles 59 to 93 of these Rules.

5. The Court shall decide by way of a judgment which may not be set aside.

6. The original of this judgment shall be annexed to the original of the judgment by default. A note of the judgment on the application to set aside shall be made in the margin of the original of the judgment by default.

Subject to a reference to the relevant article of the Statute and the necessary adjustments arising from the renumbering of articles in the draft, the present article reproduces, in essence, the terms of Article 94(4) to (6) of the existing Rules of Procedure.

Article 159 Third-party proceedings

1. Articles 120 to 122 of these Rules shall apply to an application initiating third-party proceedings made pursuant to Article 42 of the Statute. In addition such an application shall:

(a) specify the judgment or order contested;

(b) state how the contested decision is prejudicial to the rights of the third party;

(c) indicate the reasons for which the third party was unable to take part in the original case.

2. The application must be made against all the parties to the original case.

3. Where the decision has been published in the *Official Journal of the European Union*, the application must be submitted within two months of the publication.

4. The Court may, on application by the third party, order a stay of execution of the contested decision. The provisions of Chapter 10 of this Title shall apply.

5. The contested decision shall be varied on the points on which the submissions of the third party are upheld.

6. The original of the judgment in the third-party proceedings shall be annexed to the original of the contested decision. A note of the judgment in the third-party proceedings shall be made in the margin of the original of the contested decision.

Like the preceding article, Article 159 of the draft, relating to third-party proceedings, reproduces the corresponding article of the existing Rules of Procedure (Article 97), subject to a reference to the relevant article of the Statute and terminological adjustments or the necessary adjustments arising from the renumbering of articles in the draft.

Article 160 Interpretation

1. In accordance with Article 43 of the Statute, if the meaning or scope of a judgment or order is in doubt, the Court shall construe it on application by any party or any institution of the European Union establishing an interest therein.

2. An application for interpretation must be made within 12 months after the date of delivery of the judgment or service of the order.

3. An application for interpretation shall be made in accordance with Articles 120 to 122 of these Rules. In addition it shall specify:

(a) the decision in question;

(b) the passages of which interpretation is sought.

4. The application must be made against all the parties to the case in which the decision of which interpretation is sought was given.

5. The Court shall give its decision after having given the parties an opportunity to submit their observations and after hearing the Advocate General.

6. The original of the interpreting decision shall be annexed to the original of the decision interpreted. A note of the interpreting decision shall be made in the margin of the original of the decision interpreted.

Article 160 reproduces, in essence, the terms of Article 102 of the existing Rules of Procedure, but supplements it with a reference to the relevant article of the Statute.

In the interests of legal certainty, and in order to prevent its decisions from being open to challenge indefinitely, the Court considers it desirable, moreover, to place a time-limit on the possibility for a party or an institution of the European Union to make an application for interpretation. That is why paragraph 2 has been inserted in this article; it provides that an application for interpretation must be made within 12 months after delivery of the judgment or service of the order at issue.

Article 161 Revision

1. In accordance with Article 44 of the Statute, an application for revision of a decision of the Court may be made only on discovery of a fact which is of such a nature as to be a decisive factor and which, when the judgment was delivered or the order served, was unknown to the Court and to the party claiming the revision.

2. Without prejudice to the time-limit of 10 years prescribed in the third paragraph of Article 44 of the Statute, an application for revision shall be made within three months of the date on which the facts on which the application is founded came to the applicant's knowledge.

3. Articles 120 to 122 of these Rules shall apply to an application for revision. In addition such an application shall:

(a) specify the judgment or order contested;

(b) indicate the points on which the decision is contested;

(c) set out the facts on which the application is founded;

(d) indicate the nature of the evidence to show that there are facts justifying revision, and that the time-limits laid down in paragraph 2 have been observed.

4. The application for revision must be made against all parties to the case in which the contested decision was given.

5. Without prejudice to its decision on the substance, the Court shall, after hearing the Advocate General, give in the form of a judgment its decision on the admissibility of the application, having regard to the written observations of the parties.

6. If the Court declares the application admissible, it shall proceed to consider the substance of the application and shall give its decision in the form of a judgment in accordance with these Rules.

7. The original of the revising judgment shall be annexed to the original of the decision revised. A note of the revising judgment shall be made in the margin of the original of the decision revised.

Article 161 reproduces, in essence, the terms of Articles 98 to 100 of the existing Rules of Procedure, which it supplements with a reference to the relevant provisions of Article 44 of the Statute and, in particular, with a reminder of the circumstances that can give rise to an application for revision and of the time-limit for making such an application.

Chapter 10

SUSPENSION OF OPERATION OR ENFORCEMENT AND OTHER INTERIM MEASURES

Article 162 Application for suspension or for interim measures

1. An application to suspend the operation of any measure adopted by an institution, made pursuant to Article 278 TFEU or Article 157 TEAEC, shall be admissible only if the applicant has challenged that measure in an action before the Court.

2. An application for the adoption of one of the other interim measures referred to in Article 279 TFEU shall be admissible only if it is made by a party to a case before the Court and relates to that case.

3. An application of a kind referred to in the preceding paragraphs shall state the subject-matter of the proceedings, the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measure applied for.

4. The application shall be made by a separate document and in accordance with the provisions of Articles 120 to 122 of these Rules.

5. The application shall be served on the opposite party, and the President shall prescribe a short time-limit within which that party may submit written or oral observations.

6. The President may order a preparatory inquiry.

7. The President may grant the application even before the observations of the opposite party have been submitted. This decision may be varied or cancelled even without any application being made by any party.

The present article reproduces, in essence, the terms of Articles 83 and 84 of the existing Rules of Procedure, subject to adjustments linked to the renumbering of articles in the draft.

Article 163 Decision on the application

1. The President shall either decide on the application himself or refer it immediately to the Court.

2. If the President is prevented from acting, Articles 10 and 13 of these Rules shall apply.

3. Where the application is referred to it, the Court shall give a decision immediately, after hearing the Advocate General.

The present article reproduces the terms of Article 85 of the existing Rules of Procedure, subject to terminological adjustments or adjustments linked to the establishment of the office of Vice-President and to the renumbering of articles in the draft.

Article 164 Order for suspension of operation or for interim measures

1. The decision on the application shall take the form of a reasoned order, from which no appeal shall lie. The order shall be served on the parties forthwith.

2. The execution of the order may be made conditional on the lodging by the applicant of security, of an amount and nature to be fixed in the light of the circumstances.

3. Unless the order fixes the date on which the interim measure is to lapse, the measure shall lapse when the judgment which closes the proceedings is delivered.

4. The order shall have only an interim effect, and shall be without prejudice to the decision of the Court on the substance of the case.

The present article reproduces the terms of Article 86 of the existing Rules of Procedure.

Article 165 Change in circumstances

On application by a party, the order may at any time be varied or cancelled on account of a change in circumstances.

The present article reproduces the terms of Article 87 of the existing Rules of Procedure.

Article 166 New application

Rejection of an application for an interim measure shall not bar the party who made it from making a further application on the basis of new facts.

The present article reproduces the terms of Article 88 of the existing Rules of Procedure.

Article 167 Applications pursuant to Articles 280 TFEU and 299 TFEU and Article 164 TEAEC

1. The provisions of this Chapter shall apply to applications to suspend the enforcement of a decision of the Court or of any measure adopted by the Council, the European Commission or the European Central Bank, submitted pursuant to Articles 280 TFEU and 299 TFEU or Article 164 TEAEC.

2. The order granting the application shall fix, where appropriate, a date on which the interim measure is to lapse.

The present article reproduces the terms of Article 89 of the existing Rules of Procedure, but clarifies these by expressly naming the three institutions referred to in Article 299 TFEU.

Article 168 Application pursuant to Article 81 TEAEC

1. An application of a kind referred to in the third and fourth paragraphs of Article 81 TEAEC shall contain:

(a) the names and addresses of the persons or undertakings to be inspected;

(b) an indication of what is to be inspected and of the purpose of the inspection.

2. The President shall give his decision in the form of an order. Article 164 of these Rules shall apply.

3. If the President is prevented from acting, Articles 10 and 13 of these Rules shall apply.

The present article reproduces the terms of Article 90 of the existing Rules of Procedure, subject to terminological adjustments or adjustments linked to the establishment of the office of Vice-President and to the renumbering of articles in the draft.

TITLE V

APPEALS AGAINST DECISIONS OF THE GENERAL COURT

As regards the third – and final – significant category of cases brought before the Court of Justice, namely appeals against decisions of the General Court, the draft, for the most part, reproduces and enlarges on the provisions of Title IV of the existing Rules of Procedure of the Court of Justice (Articles 110 to 123), both in the interests of aligning them with the provisions of the Statute concerning the requirements of substance and of form laid down for appeals, and in

order to clarify the true nature of that category of proceedings and, in particular, the connection between an appeal and a cross-appeal.

As regards the amendments made by the present draft to the system currently in place, it must be pointed out first of all, and above all, that the requirements relating to the submission of an appeal are more stringent. The draft states, both in relation to appeals and cross-appeals, that the form of order sought in the appeal must be to have set aside, in whole or in part, the decision of the General Court as set out in the operative part of that decision. This clarification, which stems from experience gained in applying that procedure, 20 years after the establishment of the General Court, is designed in particular to prevent appeals from being brought the sole purpose of which is to challenge a particular aspect of the General Court's reasoning. If a party has been successful before the General Court, he is not therefore permitted to bring an appeal against its decision, without prejudice, however, to the possibility for a party to challenge, in a cross-appeal, the General Court's express or implied decision on the admissibility of the action brought before it.

In an effort to avoid challenges to the decisions of the General Court by strangers to the case at issue in the appeal, the Court of Justice goes on to define, more precisely, the concept of a party to the proceedings before the General Court and to limit the circle of parties authorised to lodge a response. Under Article 174 of the present draft, therefore, any party to the proceedings before the General Court having an interest in the dismissal of the appeal is authorised to submit a response within a time-limit of two months after service of the appeal, a time-limit which cannot be extended. 'Interest' is defined negatively in Article 174(2). According to paragraph 2, a party does not have an interest in the dismissal of an appeal if he is not a party to the proceedings the subject of the appeal, which is the case, in particular, where several sets of proceedings have been joined by the General Court for the purposes of a single decision or where the original application before the General Court was made on behalf of more than one party and the decision of the General Court that is contested by the appellant affects only the appellant.

Wishing, lastly, not to prolong the progress of appeals unnecessarily, and taking into account the particular nature of this type of case, the Court reinforces in the draft the conditions that must be satisfied if an appeal and a response are to be supplemented by a reply and a rejoinder. Lodgment of such pleadings is predicated on a duly reasoned application to lodge a reply having been submitted by the appellant within seven days of service of the response and, moreover, on the President of the Court, after consulting the Judge-Rapporteur and the Advocate General

responsible for the case, considering such a reply to be necessary. He might do so, inter alia, in order to allow the appellant to present his views on a plea of inadmissibility or on new matters raised in the response. Reflecting current practice, the draft states, however, that where the President grants such an application, he may request the parties to limit the number of pages and the subject-matter of the reply and the rejoinder.

In addition to these points of clarification, the draft confirms that it is possible for a party to the proceedings before the General Court to lodge a cross-appeal against the decision appealed against. Both in the interests of clarity and to facilitate the Court's handling of that cross-appeal, the Court makes it clear, however, that a cross-appeal must be brought by a document separate from the response. The draft also takes account of the intrinsic nature of a 'cross-appeal' by providing that it is to become devoid of purpose if the appellant discontinues his appeal or if the appeal is declared manifestly inadmissible.

Finally, the chapter on appeals also covers the possibility that the Court can declare an appeal to be manifestly well founded by way of an order in which reference is made to the relevant case-law. This option, which is based on the rule contained in Article 104(3) of the existing Rules of Procedure, allowing the Court to give its decision by reasoned order in preliminary rulings where the answer to a question put by a referring court or tribunal is identical to a question on which the Court has already ruled, may be clearly deduced from existing case-law or admits of no reasonable doubt, is intended to enable the Court to provide a prompt solution to a dispute where that solution is not in doubt in view of the points of law settled by the Court in earlier cases, and only the identity of the appellants is different.

Article 169 Lodging of the appeal

1. An appeal shall be brought by lodging an application at the Registry of the Court of Justice or of the General Court.

2. The Registry of the General Court shall forthwith transmit to the Registry of the Court of Justice the file in the case at first instance and, where necessary, the appeal.

Article 169 reproduces, in essence, the terms of Article 111 of the existing Rules of Procedure.

Article 170 Content of the appeal

1. An appeal shall contain:

(a) the name and address of the appellant;

(b) a reference to the decision of the General Court appealed against;

(c) the names of the other parties to the proceedings before the General Court;

(d) the pleas in law and legal arguments relied on, and a summary of those pleas in law;

(e) the form of order sought by the appellant.

2. Articles 119, 121 and 122(1) of these Rules shall apply to appeals.

3. The appeal shall state the date on which the decision appealed against was served on the appellant.

4. If an appeal does not comply with paragraphs 1 to 3 of this Article, the Registrar shall prescribe a reasonable time-limit within which the appellant is to put the appeal in order. If the appellant fails to put the appeal in order within the time-limit prescribed, the Court of Justice shall, after hearing the Judge-Rapporteur and the Advocate General, decide whether the non-compliance with that formal requirement renders the appeal formally inadmissible.

The present article reproduces, in essence, the terms of Article 112 of the existing Rules of Procedure, subject to adjustments linked to the renumbering of articles in the draft and the added detail, in paragraph 1 of the present article, that the appeal must also contain a summary of the pleas in law relied on. This requirement, which is already included in the corresponding provision of the Rules of Procedure in relation to direct actions, is designed to enable the text of the notice relating to that new case to be drawn up quickly for publication in the Official Journal of the European Union.

Article 171 Form of order sought, pleas in law and arguments of the appeal

1. An appeal shall seek to have set aside, in whole or in part, the decision of the General Court as set out in the operative part of that decision.

2. The pleas in law and legal arguments relied on shall identify precisely those points in the grounds of the decision of the General Court which are contested.

The present article reproduces, in essence, the terms of the first indent of Article 113(1) of the existing Rules of Procedure, which it nevertheless supplements in two respects.

The draft draws attention, first of all, to the fact that the appellant is necessarily required, by his appeal, to seek to have set aside the decision of the General Court as set out in the operative part of that decision, which precludes the introduction of an appeal by a party who has been successful at first instance but who is dissatisfied with a particular aspect of the General Court's reasoning.

Second, account is taken of the requirement, extensively developed in the case-law, that the appellant must, in his appeal, identify precisely those points in the judgment or order under appeal which are contested. The appellant cannot, therefore, merely challenge that decision in general terms, without stating the error or errors of law made by the General Court.

Article 172 Form of order sought in the event that the appeal is upheld

1. An appeal shall seek, in the event that it is declared well founded, the same form of order, in whole or in part, as that sought at first instance and shall not seek a different form of order. The subject-matter of the proceedings before the General Court may not be changed in the appeal.

2. Where the appellant requests that the case be referred back to the General Court if the decision appealed against is set aside, he shall set out the reasons why the state of the proceedings does not permit a decision by the Court of Justice.

Article 172 reproduces, in essence, the terms of the second indent of Article 113(1) and Article 113(2) of the existing Rules of Procedure. It carefully circumscribes the object and ultimate purpose of the appeal, which necessarily arises in the context of an existing case and cannot, in any circumstances, result in the subject-matter of the proceedings before the General Court being expanded.

In the interests of procedural economy, the article also invites the appellant, in the event that the appeal is declared well founded, to state the reasons why the state of the proceedings does not permit a decision and must, in consequence, be referred back to the General Court in accordance with Article 61 of the Statute.

Article 173 Service of the appeal

1. The appeal shall be served on the other parties to the proceedings before the General Court.

2. In a case where Article 170(4) of these Rules applies, service shall be effected as soon as the appeal has been put in order or the Court of Justice has declared it admissible notwithstanding the failure to observe the formal requirements laid down by that Article.

This article reproduces, in essence, the terms of Article 114 of the existing Rules of Procedure, subject to the necessary adjustments arising from the restructuring and renumbering of articles in the draft.

Article 174 Parties authorised to lodge a response

1. Any party to the proceedings before the General Court having an interest in the dismissal of the appeal may submit a response within two months after service on him of the appeal. The time-limit for submitting a response shall not be extended.

2. A party shall not have an interest within the meaning of paragraph 1 if he is not a party to the proceedings the subject of the appeal, in particular where several sets of proceedings were joined by the General Court for the purposes of a single decision or where the original application before the General Court was made on behalf of more than one applicant and the decision of the General Court that is contested by the appellant affects only the appellant.

The present article corresponds, in essence, to Article 115(1) of the existing Rules of Procedure, which it nevertheless supplements by defining in paragraph 2 the concept of a party to the proceedings before the General Court having an interest in the dismissal of the appeal. As stated in the introduction to the present title, the inclusion of this concept, defined in negative terms, is intended, in essence, to prevent challenges to decisions of the General Court by strangers to the case, where the decision has been accepted, albeit implicitly, by the main parties.

Article 175 Content of the response

1. A response shall contain:

(a) the name and address of the party submitting it;

(b) the date on which the appeal was served on him;

(c) the pleas in law and legal arguments relied on;

(d) the form of order sought.

2. Articles 119 and 121 of these Rules shall apply to responses.

Article 175 reproduces the terms of Article 115(2) of the existing Rules of Procedure, subject to adjustments linked to the renumbering of articles in the draft.

Article 176 Form of order sought in the response

A response shall seek to have the appeal dismissed, in whole or in part.

Article 176 corresponds, in essence, to the first indent of Article 116(1) of the existing Rules of Procedure, which it reproduces only in part, however, owing to the distinction made in the present draft between the response and the cross-appeal, the object of which is distinct from that of the response and which must be made by a separate document.

Article 177 Reply and rejoinder

1. The appeal and the response may be supplemented by a reply and a rejoinder only where the President, on a duly reasoned application submitted by the appellant within seven days of service of the response, considers it necessary, after hearing the Judge-Rapporteur and the Advocate General, in particular to enable the appellant to present his views on a plea of inadmissibility or on new matters relied on in the response.

2. The President shall fix the date by which the reply is to be produced and, upon service of that pleading, the date by which the rejoinder is to be produced. He may limit the number of pages and the subject-matter of those pleadings.

Article 177 reproduces, in essence, the terms of Article 117(1) of the existing Rules of Procedure. As previously stated, however, the draft reinforces the conditions that must be satisfied if an appeal and a response are to be supplemented by a reply and a rejoinder. Lodgment of such pleadings is predicated, inter alia, on a duly reasoned application to lodge a reply having been submitted by the appellant and, if the President grants the application, he may request that party to limit the number of pages and the subject-matter of his pleading.

Article 178 Cross-appeal

1. Any party to the proceedings before the General Court having an interest in the setting-aside, in whole or in part, of the decision of the General Court may lodge a cross-appeal within the same time-limit as that prescribed for the submission of a response.

2. A cross-appeal must be introduced by a document separate from the response. Failing that, it shall produce no effects other than those of a response.

As previously stated, one of the innovations of the present title of this draft is the very clear distinction to be drawn from now on between the response and the cross-appeal. A party to the proceedings before the General Court on whom an appeal is served thus retains the right, already laid down in Article 116(1) of the existing Rules of Procedure, to challenge the decision of the General Court under appeal himself but, in order to facilitate subsequent case-management, that challenge must be made by way of a separate document from that in which the party concerned responds to the pleas in law of the appeal. Brought by a separate document, a cross-appeal must be brought within the same two-month time-limit as the response, a time-limit which cannot be extended.

Article 179 Content of the cross-appeal

1. A cross-appeal shall contain:

(a) the name and address of the party submitting it;

(b) the date on which the appeal was served on him;

(c) the pleas in law and legal arguments relied on;

(d) the form of order sought.

2. Articles 119, 121 and 122(1) and (3) of these Rules shall apply to cross-appeals.

Article 179 is new. It specifies the content of the cross-appeal, drawing in that regard on the text of Articles 170 and 175, relating to the content of the appeal and the response.

Article 180 Form of order sought, pleas in law and arguments of the cross-appeal

1. A cross-appeal shall seek to have set aside, in whole or in part, the decision of the General Court as set out in the operative part of that decision.

2. It may also seek to have set aside an express or implied decision relating to the admissibility of the action before the General Court.

3. The pleas in law and legal arguments relied on shall identify precisely those points in the grounds of the decision of the General Court which are contested. The pleas in law and arguments must be separate from those relied on in the response.

Like Article 171 of the draft, relating to the form of order sought, pleas in law and arguments of the appeal, the present article states that the cross-appeal is necessarily required to seek to have set aside, in whole or in part, the decision of the General Court as set out in the operative part of that decision, which, in this instance also, precludes a cross-appeal from being brought for the sole purpose of challenging one or other particular aspect of the General Court's reasoning. However, this article reserves the possibility for a party, by his cross-appeal, to challenge an express or implied decision of the General Court relating to the admissibility of the action before it.

As for the remainder, the article confirms, in paragraph 3, the need to identify precisely those points in the judgment or order under appeal which are contested. According to the case-law, it is essential that this requirement be observed if an appeal is to be admissible.

Article 181 Response to the cross-appeal

1. Where a cross-appeal is brought, the applicant at first instance or any other party to the proceedings before the General Court having an interest in the dismissal of the cross-appeal may

submit a response, which must be limited to the pleas in law relied on in that cross-appeal, within two months after its being served on him.

2. A party shall not have an interest within the meaning of paragraph 1 if he is not a party to the proceedings the subject of the cross-appeal, in particular where several sets of proceedings were joined by the General Court for the purposes of a single decision or where the original application before the General Court was made on behalf of more than one applicant and the decision of the General Court that is contested by the cross-appellant affects only the cross-appellant.

Article 181 corresponds, mutatis mutandis, to Article 174 of the draft, relating to the parties authorised to lodge a response. It confirms that, like any other party to the proceedings before the General Court having an interest in the dismissal of the cross-appeal, the appellant may lodge a response to the cross-appeal within the ordinary time-limit of two months from service of that cross-appeal. As in Article 174, the concept of interest is defined, in paragraph 2 of Article 181, in negative terms and by reference to examples.

Article 182 Reply and rejoinder on a cross-appeal

1. The cross-appeal and the response thereto may be supplemented by a reply and a rejoinder only where the President, on a duly reasoned application submitted by the party who brought the cross-appeal within seven days of service of the response to the cross-appeal, considers it necessary, after hearing the Judge-Rapporteur and the Advocate General, in particular to enable that party to present his views on a plea of inadmissibility or on new matters relied on in the response to the cross-appeal.

2. The President shall fix the date by which that reply is to be produced and, upon service of that pleading, the date by which the rejoinder is to be produced. He may limit the number of pages and the subject-matter of those pleadings.

This article corresponds, mutatis mutandis, to Article 177 of the draft. It specifies, in the same terms, the circumstances in which a cross-appeal and the response thereto can, if appropriate, be supplemented by a reply and a rejoinder.

Article 183 Manifestly inadmissible or manifestly unfounded appeal or cross-appeal

Where the appeal or cross-appeal is, in whole or in part, manifestly inadmissible or manifestly unfounded, the Court may at any time, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide by reasoned order to dismiss that appeal or cross-appeal in whole or in part.

Subject to the distinction to be drawn from now on between the appeal and the cross-appeal, the present article reproduces, in essence, the terms of Article 119 of the existing Rules of Procedure.

Article 184 Manifestly well-founded appeal or cross-appeal

Where the Court has already ruled on one or more questions of law identical to those raised by the pleas in law of the appeal or cross-appeal and considers the appeal or cross-appeal to be manifestly well founded, it may, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide by order in which reference is made to the relevant case-law to declare the appeal or cross-appeal manifestly well founded.

As stated at the beginning of the present title, the rule contained in this article is new. Based on the rule relating to preliminary rulings in Article 104(3) of the Rules of Procedure currently in force, it is designed to allow the Court to provide a prompt solution to the legal problem raised by the parties. Where the Court has already ruled on one or more issues identical to those raised by the pleas in law of the appeal or cross-appeal and considers it to be manifestly well founded, it may therefore, in the interests of procedural economy, decide to give its decision by reasoned order in which reference is made to the relevant case-law.

Article 185 Effect on a cross-appeal of the discontinuance or manifest inadmissibility of the appeal

A cross-appeal shall be deemed to be devoid of purpose:

(a) if the appellant discontinues his appeal;

(b) if the appeal is declared manifestly inadmissible for non-compliance with the time-limit for lodging an appeal;

(c) if the appeal is declared manifestly inadmissible on the sole ground that it is not directed against a final decision of the General Court or against a decision disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility within the meaning of the first paragraph of Article 56 of the Statute.

The present article, which is new, reflects the 'subordinate' nature of cross-appeals. Since cross-appeals are brought only where an appeal has been brought by another party, removal of the appeal from the register following its discontinuance by the appellant or the inadmissibility of the appeal will also result in the cross-appeal becoming devoid of purpose.

Article 186 Costs in appeals

1. Subject to the following provisions, Articles 139 to 148 of these Rules shall apply, *mutatis mutandis*, to the procedure before the Court of Justice on an appeal against a decision of the General Court.

2. Where the appeal is unfounded or where the appeal is well founded and the Court itself gives final judgment in the case, the Court shall make a decision as to the costs.

3. When an appeal brought by a Member State or an institution of the European Union which did not intervene in the proceedings before the General Court is well founded, the Court of Justice may order that the parties share the costs or that the successful appellant pay the costs which the appeal has caused an unsuccessful party to incur.

4. Where the appeal has not been brought by an intervener at first instance, he may not be ordered to pay costs in the appeal proceedings unless he participated in the written or oral part of the proceedings before the Court of Justice. Where an intervener at first instance takes part in the proceedings, the Court may decide that he shall bear his own costs.

The present article reproduces, in essence, the content of Article 122 of the existing Rules of Procedure, but simplifies it by making a general reference to the provisions of the present draft that relate to liability for and the amount of costs in direct actions, and, moreover, by deleting the provisions relating to proceedings between the European Union and its servants, which fall outside the Court's jurisdiction.

Paragraph 4 of the present article is added for the purposes of clarifying the rules applicable to the costs to be borne by interveners at first instance. Under paragraph 4, interveners at first instance

can be ordered to pay costs only if they have taken an active part in the appeal proceedings, either by bringing the appeal themselves or by participating in the written or oral part of the procedure before the Court.

Article 187 Legal aid

1. A party who is wholly or in part unable to meet the costs of the proceedings may at any time apply for legal aid.

2. The application shall be accompanied by all information and supporting documents making it possible to assess the applicant's financial situation, such as a certificate issued by a competent national authority attesting to his financial situation.

Like Articles 116 to 118 of the present draft, under which a party to the main proceedings may be granted legal aid in respect of the costs of the proceedings, Articles 187 to 191 make similar provision in respect of parties to an appeal. Article 187 of the draft is based, in that regard, on Article 76(1) of the existing Rules of Procedure, but has been updated to refer to the financial situation of the legal aid applicant, instead of to his lack of means.

Article 188 Prior application for legal aid

1. If the application is made prior to the appeal which the applicant for legal aid intends to commence, it shall briefly state the subject of the appeal.

2. The application for legal aid need not be made through a lawyer.

3. The introduction of an application for legal aid shall suspend the time-limit prescribed for the bringing of the appeal until the date of service of the order making a decision on that application.

4. The President shall assign the application for legal aid, as soon as it is lodged, to a Judge-Rapporteur who shall put forward, promptly, a proposal as to the action to be taken on it.

Like Article 76(2) of the existing Rules of Procedure, Article 188 provides for a party who lacks financial resources to be able to submit an application for legal aid himself before – and for the purpose of – lodging the appeal, but then goes on to outline all the consequences.

The introduction of that application for legal aid suspends the time-limit prescribed for the bringing of the appeal until service of the order of the Court making a decision on that application. The time-limit within which the party concerned can bring his appeal is not, therefore, dependent on the length of time taken by the Court to deal with his application for legal aid.

Similarly, the draft provides for the application for legal aid to be assigned immediately to a Judge-Rapporteur who is to state his views, promptly, as to the action to be taken on it.

Article 189 Decision on the application for legal aid

1. The decision to grant legal aid, in whole or in part, or to refuse it shall be taken, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, by the Chamber of three Judges to which the Judge-Rapporteur is assigned. In that event, the formation of the Court shall be composed of the President of that Chamber, the Judge-Rapporteur and the first Judge or, as the case may be, the first two Judges designated from the list referred to in Article 28(3) on the date on which the application for legal aid is brought before that Chamber by the Judge-Rapporteur. It shall consider, if appropriate, whether the appeal is manifestly unfounded.

2. If the Judge-Rapporteur is not a member of a Chamber of three Judges, the decision shall be taken, under the same conditions, by the Chamber of five Judges to which he is assigned. In addition to the Judge-Rapporteur, the formation of the Court shall be composed of four Judges designated from the list referred to in Article 28(2) on the date on which the application for legal aid is brought before that Chamber by the Judge-Rapporteur.

3. The formation of the Court shall give its decision by way of order. Where the application for legal aid is refused in whole or in part, the order shall state the reasons for that refusal.

For the same reasons of speed as those previously referred to in relation to similar applications made in the context of references for a preliminary ruling, the draft provides that decisions on applications for legal aid made in the context of appeals are always to be taken by the smallest formation of the Court which includes the designated Judge-Rapporteur, namely a Chamber of three or of five Judges, as the case may be, and that it is not necessary for such applications to be submitted to the general meeting of the Court. The only difference between this article and Article 117 of the draft lies in the obligation – if the application for legal aid has been submitted before the appeal – to consider whether the appeal is manifestly unfounded. That obligation is not new, however. It is already included in Article 76(3) of the existing Rules of Procedure.

Article 190 Withdrawal of legal aid

The formation of the Court which gave a decision on the application for legal aid may at any time, either of its own motion or on request, withdraw that legal aid if the circumstances which led to its being granted alter during the proceedings.

Like Article 118 of the draft, Article 190 reproduces, in essence, the terms of Article 76(4) of the existing Rules of Procedure, relating to the possibility of legal aid being withdrawn if the applicant's financial situation changes.

Article 191 Sums to be advanced as legal aid

1. Where legal aid is granted, the cashier of the Court shall advance the funds necessary to meet the expenses.

2. In its decision as to costs the Court may order the payment to the cashier of the Court of sums advanced as legal aid.

3. The Registrar shall take steps to obtain the recovery of these sums from the party ordered to pay them.

The present article reproduces, in essence, the terms of Article 76(5) of the existing Rules of Procedure.

Article 192 Other provisions applicable to appeals

1. Articles 127, 129 to 138, 149, 150, 155 to 157 and 159 to 168 of these Rules shall apply to the procedure before the Court of Justice on an appeal against decisions of the General Court.

2. By way of derogation from Article 130(1), an application to intervene shall, however, be made within one month of the publication of the notice referred to in Article 21(4).

3. Article 96 shall apply, *mutatis mutandis*, to the procedure before the Court of Justice on an appeal against decisions of the General Court.

Subject to adjustments attributable to the renumbering of articles in the draft, the present article reproduces, in essence, in paragraphs 1 and 2, the terms of Articles 118 and 123 of the existing Rules of Procedure. Under paragraph 3, the provision of the draft which allows the name of one or more parties to be anonymised, if necessary, is to apply to appeals.

TITLE VI

REVIEW OF DECISIONS OF THE GENERAL COURT

However rarely applied, on account of its very nature and the gravity of the adverse effect it presupposes – this procedure, it will be recalled, is one that is initiated by the First Advocate General where there is a serious risk of the unity or consistency of European Union law being affected – the review procedure has none the less been criticised for its cumbersomeness and complexity, and for the lack of clarity regarding the conditions under which this procedure must be initiated. Thus, doubts remain as to the precise moment of transmission to the Court of the file in the case before the General Court, while examination of the case by two separate chambers of the Court – one to decide on the First Advocate General's proposal and the other on the questions falling to be reviewed in the light of observations submitted by the parties and other interested persons – can raise queries because of the resources required and the differing views that might emerge from those two chambers.

In the present draft, the Court therefore simplifies the review procedure by adding a number of adjustments to the existing provisions. First, the draft provides in Title VI for the designation, for a period of one year, of a Chamber of five Judges responsible for examining, under the conditions laid down in the Rules of Procedure, whether a decision of the General Court is to be reviewed, following a proposal to that effect from the First Advocate General. The draft is based, in that regard, on the model established and – successfully – applied in dealing with cases under the urgent preliminary ruling procedure.

Moreover, the draft deletes the provision providing for a new Judge-Rapporteur to be designated when the review procedure is actually initiated. Thus a single Chamber – the Chamber responsible for dealing with review procedures in that year – will take a decision both on the First

Advocate General's proposal in a specific case and, substantively, on the questions which are to be reviewed. That amendment leaves intact, however, the possibility for that Chamber to request the Court to assign the case to a formation composed of a greater number of Judges.

The draft also clarifies the information and communication arrangements relating to review proceedings by providing for the file in the case before the General Court to be communicated to the Registry of the Court of Justice as soon as the General Court's decision has been delivered or signed, and for the publication in the Official Journal of the European Union of a notice referring to the date of the decision of the Chamber to review the decision of the General Court and to the questions which are to be reviewed.

Finally, and although the procedure to be followed in each case is, in essence, identical, the Court, in the interests of making its Rules of Procedure easier to understand, distinguishes more clearly in the draft between the review of decisions of the General Court given on appeal and the review of decisions which the General Court could, where applicable, adopt in the context of references for a preliminary ruling.

Article 193 Reviewing Chamber

A Chamber of five Judges shall be designated for a period of one year for the purpose of deciding, in accordance with Articles 195 and 196 of these Rules, whether a decision of the General Court is to be reviewed in accordance with Article 62 of the Statute.

As stated in the introduction to the present title, the first change to the review procedure made by the present draft concerns the change in the entity competent to rule, at first instance, on the proposal for review submitted by the First Advocate General. With a view to lightening the workload of the President of the Court and of the Presidents of Chambers of five Judges, it is proposed that the system of special Chambers referred to in Article 123b of the existing Rules of Procedure be abandoned, and that a Chamber of five Judges, designated for that purpose for a period of one year, be entrusted with examining the First Advocate General's proposals.

The system is based, in that respect, on the model successfully applied in dealing with urgent preliminary ruling proceedings. This change should not, however, represent an excessive burden on

the Chamber in question, given the exceptional nature of reviews.

Article 194 Information and communication of decisions which may be reviewed

1. As soon as the date for the delivery or signature of a decision to be given under Article 256(2) TFEU is fixed, the Registry of the General Court shall inform the Registry of the Court of Justice.

2. The decision shall be communicated to the Registry of the Court of Justice immediately upon its delivery or signature, as shall the file in the case, which shall be made available forthwith to the First Advocate General.

Article 194 corresponds, in essence, to Article 123c of the existing Rules of Procedure, which it supplements, however, by clarifying that a review can relate to a judgment as well as to an order of the General Court and, moreover, that the file in the case before the General Court must be made available to the Court of Justice as soon as the decision in question has been delivered or signed. The last point is designed to ensure that the First Advocate General, who is obliged under the Statute to make his proposal for review within one month of delivery of the decision by the General Court, is provided immediately with all the information necessary to make his assessment.

Article 195 Review of decisions given on appeal

1. The proposal of the First Advocate General to review a decision of the General Court given under Article 256(2) TFEU shall be forwarded to the President of the Court of Justice and to the President of the reviewing Chamber. Notice of that transmission shall be given to the Registrar at the same time.

2. As soon as he is informed of the existence of a proposal, the Registrar shall communicate the file in the case before the General Court to the members of the reviewing Chamber.

3. As soon as the proposal to review has been received, the President of the Court shall designate the Judge-Rapporteur from among the Judges of the reviewing Chamber on a proposal from the President of that Chamber. The composition of the formation of the Court shall be determined in accordance with Article 28(2) of these Rules on the day on which the case is assigned to the Judge-Rapporteur.

4. That Chamber, acting on a proposal from the Judge-Rapporteur, shall decide whether the decision of the General Court is to be reviewed. The decision to review the decision of the General Court shall indicate only the questions which are to be reviewed.

5. The General Court, the parties to the proceedings before it and the other interested persons referred to in the second paragraph of Article 62a of the Statute shall forthwith be informed by the Registrar of the decision of the Court of Justice to review the decision of the General Court.

6. Notice of the date of the decision to review the decision of the General Court and of the questions which are to be reviewed shall be published in the *Official Journal of the European Union*.

As stated at the beginning of the present title, the draft distinguishes more clearly between review of decisions of the General Court given on appeal and review of preliminary rulings that might be given by the General Court. The present article covers the first category. It corresponds, in essence, to Article 123d of the Rules of Procedure, but supplements it by providing for the reviewing Chamber and the public to be more fully informed.

As is the case in dealing with urgent preliminary ruling proceedings, the Judge-Rapporteur is designated by the President of the Court, on a proposal from the President of the reviewing Chamber, from among the Judges of that Chamber. The formation of the Court is determined, in accordance with the usual rules, on the day on which the case is assigned to the Judge-Rapporteur.

Article 196 Review of preliminary rulings

1. The proposal of the First Advocate General to review a decision of the General Court given under Article 256(3) TFEU shall be forwarded to the President of the Court of Justice and to the President of the reviewing Chamber. Notice of that transmission shall be given to the Registrar at the same time.

2. As soon as he is informed of the existence of a proposal, the Registrar shall communicate the file in the case before the General Court to the members of the reviewing Chamber.

3. The Registrar shall also inform the General Court, the referring court or tribunal, the parties to the main proceedings and the other interested persons referred to in the second paragraph of Article 62a of the Statute of the existence of a proposal to review.

4. As soon as the proposal to review has been received, the President of the Court shall designate the Judge-Rapporteur from among the Judges of the reviewing Chamber on a proposal from the President of that Chamber. The composition of the formation of the Court shall be determined in accordance with Article 28(2) of these Rules on the day on which the case is assigned to the Judge-Rapporteur.

5. That Chamber, acting on a proposal from the Judge-Rapporteur, shall decide whether the decision of the General Court is to be reviewed. The decision to review the decision of the General Court shall indicate only the questions which are to be reviewed.

6. The General Court, the referring court or tribunal, the parties to the main proceedings and the other interested persons referred to in the second paragraph of Article 62a of the Statute shall forthwith be informed by the Registrar of the decision of the Court of Justice as to whether or not the decision of the General Court is to be reviewed.

7. Notice of the date of the decision to review the decision of the General Court and of the questions which are to be reviewed shall be published in the *Official Journal of the European Union*.

Article 196 covers the review of preliminary rulings which the General Court might be required to give if the Statute were to be amended to determine, pursuant to Article 256(3) TFEU, the specific areas in which the General Court is to have jurisdiction to hear and determine questions referred for a preliminary ruling under Article 267 TFEU.

Its content is, in essence, the same as that of Article 195 of the present draft, subject to an additional paragraph, already included in Article 123d of the existing Rules of Procedure, concerning information to be given to the General Court, the referring court or tribunal, the parties to the main proceedings and the other interested persons referred to in Article 62a of the Statute about the very existence of a proposal to review.

Article 197 Judgment on the substance of the case after a decision to review

1. The decision to review a decision of the General Court shall be served on the parties and other interested persons referred to in the second paragraph of Article 62a of the Statute. The decision served on the Member States, and the States, other than the Member States, which are parties to the EEA Agreement, as well as the EFTA Surveillance Authority, shall be accompanied by a translation of the decision of the Court of Justice in accordance with the provisions of Article 99 of these Rules. The decision of the Court of Justice shall also be communicated to the General Court and, if applicable, to the referring court or tribunal.

2. Within one month of the date of service referred to in paragraph 1, the parties and other interested persons on whom the decision of the Court of Justice has been served may lodge statements or written observations on the questions which are subject to review.

3. As soon as a decision to review a decision of the General Court has been taken, the First Advocate General shall assign the review to an Advocate General.

4. The reviewing Chamber shall rule on the substance of the case, after hearing the Advocate General.

5. It may, however, request the Court of Justice to assign the case to a formation of the Court composed of a greater number of Judges.

6. Where the decision of the General Court which is subject to review was given under Article 256(2) TFEU, the Court of Justice shall make a decision as to costs.

The present article reproduces, in essence, the terms of Article 123e of the existing Rules of Procedure, which it nevertheless simplifies by providing that the final decision is to be taken, in principle, by the same Chamber as that which was seised of the First Advocate General's proposal, although it remains open to that Chamber to request the Court to assign the case to a formation of the Court composed of a greater number of Judges, if it considers it necessary.

TITLE VII

OPINIONS

Although the draft does not alter the actual substance of the Opinion procedure or the conduct of that procedure, it makes three changes to the existing text which are worthy of note.

As regards, first of all, those involved in the procedure within the Court, the draft provides that a request for an Opinion will from now on be assigned to a single Advocate General, instead of to all of them. The draft is intended, in this way, to lighten the workload of the Advocates General and to facilitate the taking of a decision. While the participation of all the Advocates General was understandable in the early days of the Community, it now seems disproportionate in view of the number of Advocates General and the fact that other cases raising important issues of principle are assigned to a single Advocate General, even though they are considered by the full Court.

The draft codifies the practice which has been followed to date in the majority of Opinion procedures by providing for requests for Opinions to be served as a matter of course on the Member States, and, moreover, for the Court to be able to decide to organise a hearing if it considers it necessary in order to give a decision on the request for an Opinion.

Finally, it is proposed to delete from the draft any reference to the Court in closed session, and to align the method of bringing Opinions to a close with that relating to judgments. Like judgments, Opinions would therefore be delivered in open court.

Article 198 Written part of the procedure

1. In accordance with Article 218(11) TFEU, a request for an Opinion may be made by a Member State, by the European Parliament, by the Council or by the European Commission.

2. A request for an Opinion may relate both to whether the envisaged agreement is compatible with the provisions of the Treaties and to whether the European Union or any institution of the European Union has the power to enter into that agreement.

3. It shall be served on the Member States and on the institutions referred to in paragraph 1, and the President shall prescribe a time-limit within which they may submit written observations.

The present article reproduces, in essence, yet simplifies, the terms of Article 107 of the existing Rules of Procedure, relating to the author and subject-matter of a request for an Opinion.

Article 199 Assignment to a Judge-Rapporteur and Advocate General

As soon as the request for an Opinion has been submitted, the President shall designate a Judge-Rapporteur and the First Advocate General shall assign the case to an Advocate General.

The present article corresponds to Article 108(1) of the Rules of Procedure, which it nevertheless supplements by providing for the case to be assigned to an Advocate General, since it is proposed to remove the obligation that all the Advocates General should be heard before the Court rules.

Article 200 Hearing

The Court may decide that the procedure before it shall also include a hearing.

Article 200 is new. It draws attention to the Court's power to decide to hold a hearing before ruling on the request, an option of which the Court has availed itself on many occasions to date, since a hearing has been organised in the majority of cases under Article 218(11) TFEU.

Article 201 Time-limit for delivering the Opinion

The Court shall deliver its Opinion as soon as possible, after hearing the Advocate General.

Since the agreement envisaged can neither be concluded nor, a fortiori, enter into force until the Court rules, the draft recalls the need for the Court to deliver its Opinion as soon as possible, after hearing the Advocate General responsible for the case.

Article 202 Delivery of the Opinion

The Opinion, signed by the President, the Judges who took part in the deliberations and the Registrar, shall be delivered in open court. It shall be served on all the Member States and on the institutions referred to in Article 198(1).

The present article corresponds, in essence, to Article 108(3) of the existing Rules of Procedure, which it nevertheless supplements by providing for the Opinion to be delivered in open court, which is currently not the case.

TITLE VIII

PARTICULAR FORMS OF PROCEDURE

In the eighth – and final – title of the draft, the Court brings together particular forms of procedure which are very rarely applied and currently to be found in a number of separate titles and chapters of the Rules of Procedure. The actual substance of those procedures is unchanged, but it should be noted that the existing Article 123g – which has never been applied and which relates

to the possibility for a court or tribunal of a non-Member State which is a party to the EEA Agreement to refer a question to the Court for a preliminary ruling – has been deleted, and a new provision (Article 208 of the draft) inserted in order to specify, following the entry into force of the Treaty of Lisbon, the essential features of the procedure to be followed when the Court receives an application under Article 269 TFEU.

Article 203 Appeals against decisions of the arbitration committee

1. An application initiating an appeal under the second paragraph of Article 18 TEAEC shall state:

(a) the name and permanent address of the applicant;

(b) the description of the signatory;

(c) a reference to the arbitration committee's decision against which the appeal is made;

(d) the names of the respondents;

(e) a summary of the facts;

(f) the grounds on which the appeal is based and arguments relied on, and a brief statement of those grounds;

(g) the form of order sought by the applicant.

2. Articles 119 and 121 of these Rules shall apply to the application.

3. A certified copy of the contested decision shall be annexed to the application.

4. As soon as the application has been lodged, the Registrar of the Court shall request the arbitration committee registry to transmit to the Court the file in the case.

5. Articles 123 and 124 of these Rules shall apply to this procedure. The Court may decide that the procedure before it shall also include a hearing.

6. The Court shall give its decision in the form of a judgment. Where the Court sets aside the decision of the arbitration committee it may refer the case back to the committee.

The present article reproduces, in essence, the terms of Article 101 of the existing Rules of Procedure, subject to terminological adjustments or the necessary adjustments arising from the renumbering of articles in the draft. In the interests of clarity, the article also expressly states that

the Court may decide to hold a hearing before giving its decision on this type of appeal.

Article 204 Procedure under Article 103 TEAEC

1. Four certified copies shall be lodged of an application under the third paragraph of Article 103 TEAEC. The application shall be accompanied by the draft of the agreement or contract concerned, by the observations of the European Commission addressed to the State concerned and by all other supporting documents.

2. The application and annexes thereto shall be served on the European Commission, which shall have a time-limit of 10 days from such service to submit its written observations. This time-limit may be extended by the President after the State concerned has been heard.

3. Following the lodging of such observations, which shall be served on the State concerned, the Court shall give its decision promptly, after hearing the Advocate General and, if they so request, the agents and advisers of the State concerned and of the European Commission.

Article 204 corresponds, in essence, to Article 105 of the existing Rules of Procedure, which it nevertheless rephrases slightly to take account of the terminological amendments made in the draft, and to set out more clearly the chronology of the conduct of this particular procedure.

Article 205 Procedures under Articles 104 TEAEC and 105 TEAEC

Applications under the third paragraph of Article 104 TEAEC and the second paragraph of Article 105 TEAEC shall be governed by the provisions of Titles II and IV of these Rules. Such applications shall also be served on the State to which the respondent person or undertaking belongs.

Subject to adjustments linked to the structure of the present draft, this article corresponds to Article 106 of the existing Rules of Procedure.

Article 206 Procedure provided for by Article 111(3) of the EEA Agreement

1. In the case governed by Article 111(3) of the EEA Agreement, the matter shall be brought before the Court by a request submitted by the Contracting Parties which are parties to the dispute. The request shall be served on the other Contracting Parties, on the European Commission, on the EFTA Surveillance Authority and, where appropriate, on the other interested persons on whom a request for a preliminary ruling raising the same question of interpretation of European Union legislation would be served.

2. The President shall prescribe a time-limit within which the Contracting Parties and the other interested persons on whom the request has been served may submit written observations.

3. The request shall be made in one of the languages referred to in Article 36. Article 38 shall apply. The provisions of Article 99 shall apply *mutatis mutandis*.

4. As soon as the request referred to in paragraph 1 of this Article has been submitted, the President shall designate a Judge-Rapporteur. The First Advocate General shall, immediately afterwards, assign the request to an Advocate General.

5. The Court shall, after hearing the Advocate General, give a reasoned decision on the request.

6. The decision of the Court, signed by the President, the Judges who took part in the deliberations and the Registrar, shall be served on the Contracting Parties and on the other interested persons referred to in paragraphs 1 and 2.

The present article reproduces, in essence, the terms of Article 123f of the Rules of Procedure, subject to terminological adjustments or adjustments linked to the renumbering of articles in the draft.

Article 207 Settlement of the disputes referred to in Article 35 TEU in the version in force before the entry into force of the Treaty of Lisbon

1. In the case of disputes between Member States as referred to in Article 35(7) TEU in the version in force before the entry into force of the Treaty of Lisbon, as maintained in force by Protocol No 36 annexed to the Treaties, the matter shall be brought before the Court by an application by a party to the dispute. The application shall be served on the other Member States and on the European Commission.

2. In the case of disputes between Member States and the European Commission as referred to in Article 35(7) TEU in the version in force before the entry into force of the Treaty of Lisbon, as

maintained in force by Protocol No 36 annexed to the Treaties, the matter shall be brought before the Court by an application by a party to the dispute. The application shall be served on the other Member States, the Council and the European Commission if it was submitted by a Member State. The application shall be served on the Member States and on the Council if it was submitted by the European Commission.

3. The President shall prescribe a time-limit within which the institutions and the Member States on which the application has been served may submit written observations.

4. As soon as the application referred to in paragraphs 1 and 2 has been submitted, the President shall designate a Judge-Rapporteur. The First Advocate General shall, immediately afterwards, assign the application to an Advocate General.

5. The Court may decide that the procedure before it shall also include a hearing.

6. The Court shall, after the Advocate General has delivered his Opinion, give its ruling on the dispute by way of judgment.

7. The same procedure as that laid down in the preceding paragraphs shall apply where an agreement concluded between the Member States confers jurisdiction on the Court to rule on a dispute between Member States or between Member States and an institution.

The present article corresponds almost word for word to Article 109b of the existing Rules of Procedure. The amendment concerns Article 109b(3) and is designed to set out more clearly the chronology of the conduct of that procedure and the possibility for the Court, if it considers it necessary, to decide to hold a hearing.

Article 208 Requests under Article 269 TFEU

1. Four certified copies shall be submitted of a request under Article 269 TFEU. The request shall be accompanied by any relevant document and, in particular, any observations and recommendations made pursuant to Article 7 TEU.

2. The request and annexes thereto shall be served on the European Council or on the Council, as appropriate, each of which shall have a time-limit of 10 days from such service to submit its written observations. This time-limit shall not be extended.

3. The request and annexes thereto shall also be communicated to the Member States other than the State in question, to the European Parliament and to the European Commission.

4. Following the lodging of the observations referred to in paragraph 2, which shall be served on the Member State concerned and on the States and institutions referred to in paragraph 3, the Court shall give its decision within a time-limit of one month from the lodging of the request and after hearing the Advocate General. If the Court considers it necessary, it may decide that the procedure before it shall also include a hearing.

As stated in the introduction to the present title, Article 208 is a new article. It is intended to outline the essential features of the procedure to be followed where a Member State requests the Court to review compliance with the procedural requirements laid down in Article 7 TEU.

Since, under Article 269 TFEU, the Court is required to rule within the short time-limit of one month from being seised of the request, the procedure outlined in the present article is necessarily summary. It includes a written part that is subject to a short time-limit, followed by the hearing of the Advocate General by the Court. The oral part of the procedure, on the other hand, is optional. It is organised only if the Court considers it necessary and if the strict time-limits arising under the Treaty so permit.

FINAL PROVISIONS

Article 209 Supplementary rules

Subject to the provisions of Article 253 TFEU and after consultation with the Governments concerned, the Court shall adopt supplementary rules concerning its practice in relation to:

(a) letters rogatory;

(b) applications for legal aid;

(c) reports by the Court of perjury by witnesses or experts, delivered pursuant to Article 30 of the Statute.

Subject to a terminological adjustment, the present article corresponds to Article 125 of the existing Rules of Procedure.

Article 210 Implementing rules

The Court may, by a separate act, adopt rules for the implementation of these Rules of Procedure.

Like Article 125a of the existing Rules of Procedure, Article 210 of the draft provides for the Court to be able to adopt rules for the implementation of the present Rules of Procedure.

Article 211 Repeal

These Rules replace the Rules of Procedure of the Court of Justice of the European Communities adopted on 19 June 1991, as last amended on 23 March 2010 (*Official Journal of the European Union,* L 92 of 13 April 2010, p. 12).

Since the present draft completely recasts the text of the existing Rules of Procedure, it should accordingly replace those Rules once it is adopted definitively.

Article 212 Publication and entry into force of the Rules of Procedure

These Rules, which are authentic in the languages referred to in Article 36 of these Rules, shall be published in the *Official Journal of the European Union* and shall enter into force on the first day of the third month following their publication.

Since the present draft contains a number of important innovations by comparison with the existing Rules of Procedure, the Court proposes that its entry into force be fixed for the first day of the third month following its publication in the Official Journal, so as to ensure adequate preparation.

Correlation table: draft Rules of Procedure and amended Rules of Procedure of 19 June 1991

Title	Draft Rules	1991 Rules
Definitions	Art. 1	Art. 1
	Art. 1(1)	Art. 1, first para.
	Art. 1(2)	Art. 1, second para.
Purport of these Rules	Art. 2	
Commencement of the term of office of Judges and Advocates General	Art. 3	Art. 2
Taking of the oath	Art. 4	Art. 3(1)
Solemn undertaking	Art. 5	Art. 3(2)
Depriving a Judge or Advocate General of his office	Art. 6	Art. 4
	Art. 6(1)	
	Art. 6(2)	
Order of seniority	Art. 7	
	Art. 7(1)	Art. 6, first para.
	Art. 7(2)	Art. 6, second para.
	Art. 7(3)	Art. 6, third para.
Election of the President and of the Vice-President of the Court	Art. 8	
	Art. 8(1)	Art. 7(1)
	Art. 8(2)	Art. 7(2)
	Art. 8(3)	Art. 7(3)
	Art. 8(4)	
	Art. 8(5)	
Responsibilities of the President of the Court	Art. 9	Art. 8
	Art. 9(1)	
	Art. 9(2)	
	Art. 9(3)	
Responsibilities of the Vice-President of the Court	Art. 10	
Constitution of Chambers	Art. 11	
	Art. 11(1)	Art. 9(1), first subpara.
	Art. 11(2)	Art. 9(1), second subpara.
	Art. 11(3)	Art. 9(3)
	Art. 11(4)	Art. 9(4)
	Art. 11(5)	Art. 9(1), third subpara.
Election of Presidents of Chambers	Art. 12	
	Art. 12(1)	Art. 10(1), first subpara.
	Art. 12(2)	Art. 10(1), second subpara.
	Art. 12(3)	Art. 10(1), fourth subpara.
	Art. 12(4)	Art. 10(1), fifth subpara.
Where the President and Vice-President of the Court are prevented from acting	Art. 13	Art. 11
Designation of the First Advocate General	Art. 14	
	Art. 14(1)	Art. 10(1), third subpara.
	Art. 14(2)	

	Art. 14(3)	Art. 10(1), fifth subpara.
Designation of the Judge-Rapporteur	Art. 15	
	Art. 15(1)	Art. 9(2), first subpara.
	Art. 15(2)	Art. 9(2), second subpara.
	Art. 15(3)	Art. 9(2), third subpara.
Designation of the Advocate General	Art. 16	
	Art. 16(1)	Art. 10(2)
	Art. 16(2)	Art. 10(2), second subpara.
Assistant Rapporteurs	Art. 17	
	Art. 17(1)	Art. 24(1)
	Art. 17(2)	Art. 24(2)
	Art. 17(3)	Art. 24(3)
	Art. 17(4)	Art. 24(4)
Appointment of the Registrar	Art. 18	
	Art. 18(1)	Art. 12(1), first subpara.
	Art. 18(2)	Art. 12(2)
	Art. 18(3)	Art. 12(3)
	Art. 18(4)	Art. 12(4)
	Art. 18(5)	Art. 12(5)
	Art. 18(6)	Art. 12(6)
	Art. 18(7)	Art. 12(7)
	Art. 18(8)	
Deputy Registrar	Art. 19	Art. 13
Responsibilities of the Registrar	Art. 20	
	Art. 20(1)	Art. 17(1)
	Art. 20(2)	Art. 17(2)
	Art. 20(3)	Art. 18
	Art. 20(4)	Art. 23
Keeping of the register	Art. 21	
	Art. 21(1)	Art. 16(1)
	Art. 21(2)	Art. 16(2)
	Art. 21(3)	Art. 16(3)
	Art. 21(4)	Art. 16(6)
Consultation of the register and of judgments and orders	Art. 22	
	Art. 22(1)	Art. 16(5), first subpara.
	Art. 22(2)	Art. 16(5), second subpara.
	Art. 22(3)	Art. 16(5), second subpara.
Location of the sittings of the Court	Art. 23	Art. 25(3)
Calendar of the Court's judicial business	Art. 24	
	Art. 24(1)	
	Art. 24(2)	Art. 28(1)
	Art. 24(3)	Art. 28(2)
	Art. 24(4)	Art. 28(3)
	Art. 24(5)	Art. 28(4)
	Art. 24(6)	
Participation in administrative or procedural decisions	Art. 25	Art. 27(7)
Drawing-up of minutes	Art. 26	Art. 27(8)
Composition of the Grand Chamber	Art. 27	
	Art. 27(1)	Art. 11b(1)
	Art. 27(2)	Art. 11b(2), first subpara.

	Art. 27(3)	Art. 11b(2), second subpara.
	Art. 27(4)	Art. 11b(3), first subpara.
	Art. 27(5)	Art. 11b(3), second subpara.
Composition of the Chambers of five and of three Judges	Art. 28	
	Art. 28(1)	Art. 11c(1)
	Art. 28(2)	Art. 11c(2), first subpara.
	Art. 28(3)	Art. 11c(2), second subpara.
	Art. 28(4)	Art. 11c(2), third subpara.
Composition of Chambers where cases are related or referred back	Art. 29	
	Art. 29(1)	Art. 11d(1)
	Art. 29(2)	Art. 11d(2)
Where a President of a Chamber is prevented from acting	Art. 30	
	Art. 30(1)	Art. 11e, third para.
	Art. 30(2)	Art. 11e, fourth para.
Where a member of the formation of the Court is prevented from acting	Art. 31	
	Art. 31(1)	Art. 11e, first para.
	Art. 31(2)	Art. 11e, first para.
	Art. 31(3)	Art. 11e, first para.
Procedures concerning deliberations	Art. 32	
	Art. 32(1)	Art. 27(1)
	Art. 32(2)	Art. 27(2)
	Art. 32(3)	Art. 27(3)
	Art. 32(4)	Art. 27(5)
	Art. 32(5)	Art. 27(6)
Number of Judges taking part in the deliberations	Art. 33	Art. 26(1)
Quorum of the Grand Chamber	Art. 34	Art. 26(2)
	Art. 34(1)	
	Art. 34(2)	
Quorum of the Chambers of five and of three Judges	Art. 35	Art. 26(3)
	Art. 35(1)	
	Art. 35(2)	
Language of a case	Art. 36	Art. 29(1)
Determination of the language of a case	Art. 37	Art. 29(2)
	Art. 37(1)(a)	Art. 29(2)(a)
	Art. 37(1)(b)	Art. 29(2)(b)
	Art. 37(1)(c)	Art. 29(2)(c)
	Art. 37(2)(a)	Art. 110
	Art. 37(2)(b)	Art. 123a
	Art. 37(2)(c)	
	Art. 37(3)	Art. 29(2), second subpara.
	Art. 37(4)	Art. 29(2), third subpara.
Use of the language of the case	Art. 38	
	Art. 38(1)	Art. 29(3), first subpara.
	Art. 38(2)	Art. 29(3), second subpara.
	Art. 38(3)	Art. 29(3), third subpara.
	Art. 38(4)	Art. 29(3), fourth subpara.
	Art. 38(5)	Art. 29(3), fifth subpara.
	Art. 38(6)	Art. 29(3), sixth subpara.
	Art. 38(7)	Art. 29(4)

	Art. 38(8)	Art. 29(5)
Responsibility of the Registrar concerning language arrangements	Art. 39	Art. 30(1)
Languages of the publications of the Court	Art. 40	Art. 30(2)
Authentic texts	Art. 41	Art. 31
Language service of the Court	Art. 42	Art. 22
Privileges, immunities and facilities	Art. 43	
	Art. 43(1)	Art. 32(1)
	Art. 43(2)	Art. 32(2)
	Art. 43(2)(a)	
	Art. 43(2)(b)	
Status of the parties' representatives	Art. 44	
	Art. 44(1)	Art. 33
	Art. 44(1)(a)	
	Art. 44(1)(b)	
	Art. 44(1)(c)	
	Art. 44(2)	Art. 33(b)
Waiver of immunity	Art. 45	
	Art. 45(1)	Art. 34, first para.
	Art. 45(2)	Art. 34, second para.
Exclusion from the proceedings	Art. 46	
	Art. 46(1)	Art. 35(1), first subpara.
	Art. 46(2)	Art. 35(1), second subpara.
	Art. 46(3)	Art. 35(2)
University teachers	Art. 47	Art. 36
Methods of service	Art. 48	
	Art. 48(1)	Art. 79(1)
	Art. 48(2)	Art. 79(2), first subpara.
	Art. 48(3)	Art. 79(2), second subpara.
	Art. 48(4)	
Calculation of time-limits	Art. 49	Art. 80(1)
	Art. 49(1)(a)	
	Art. 49(1)(b)	
	Art. 49(1)(c)	
	Art. 49(1)(d)	
	Art. 49(1)(e)	
	Art. 49(2)	Art. 80(2)
Proceedings against a measure adopted by an institution	Art. 50	Art. 81(1)
Setting and extension of time-limits	Art. 51	
	Art. 51(1)	Art. 82, first para.
	Art. 51(2)	Art. 82, second para.
Procedures for dealing with cases	Art. 52	
	Art. 52(1)	
	Art. 52(2)	Art. 92(1)
	Art. 52(3)	Art. 55(2), first subpara.
	Art. 52(4)	
	Art. 52(5)	
Joinder	Art. 53	
	Art. 53(1)	Art. 43
	Art. 53(2)	Art. 43
	Art. 53(3)	Art. 43

Stay of proceedings	Art. 54	Art. 82a(1), first subpara.
	Art. 54(1)(a)	
	Art. 54(1)(b)	
	Art. 54(2)	Art. 82a(1), second subpara.
	Art. 54(3)	Art. 82a(1), third subpara.
	Art. 54(4)	Art.82a(2), first subpara.
	Art. 54(5)	Art. 82a(2), second subpara.
	Art. 54(6)	Art. 82a(3), first subpara.
	Art. 54(7)	Art. 82a(3), second subpara.
Deferment of a case	Art. 55	Art. 55(2), second subpara.
General rule	Art. 56	
Lodging of procedural documents	Art. 57	
	Art. 57(1)	Art. 37(1), first subpara.
	Art. 57(2)	Art. 37(1), second subpara.
	Art. 57(3)	Art. 37(2)
	Art. 57(4)	Art. 37(4)
	Art. 57(5)	Art. 37(5)
	Art. 57(6)	Art. 37(3)
	Art. 57(7)	Art. 37(6)
	Art. 57(8)	Art. 37(7)
Documents of excessive length	Art. 58	
Preliminary report	Art. 59	
	Art. 59(1)	Art. 44(1), first subpara.
	Art. 59(2)	Art. 44(2), first subpara.
	Art. 59(3)	Art. 44(2), second subpara.
Assignment of cases to formations of the Court	Art. 60	
	Art. 60(1)	Art. 44(3), first and second subparas
	Art. 60(2)	Art. 44(3), third subpara.
	Art. 60(3)	Art. 44(4)
	Art. 60(4)	Art. 44(5), second subpara.
Measures of organisation prescribed by the Court	Art. 61	
	Art. 61(1)	
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	Art. 207(3)	Art. 109b(1), third subpara.
	Art. 207(4)	Art. 109b(2)
	Art. 207(5)	Art. 109b(3), second subpara.
	Art. 207(6)	Art. 109b(3), first subpara.
	Art. 207(7)	Art. 109b(4)
Requests under Article 269 TFEU	Art. 208	
	Art. 208(1)	
	Art. 208(2)	
	Art. 208(3)	
	Art. 208(4)	
Supplementary rules	Art. 209	Art. 125
	Art. 209(a)	
	Art. 209(b)	
	Art. 209(c)	
Implementing rules	Art. 210	Art. 125a
Repeal	Art. 211	Art. 126
Publication and entry into force of the Rules of Procedure	Art. 212	Art. 127