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REVISED ADDENDUM TO COVER NOTE

from :	Mr Paul Mahoney, President of the European Union Civil Service Tribunal
date of receipt :	19 December 2006
to :	Mr Matti Vanhanen, President of the Council of the European Union
Subject :	Draft rules of procedure of the Civil Service Tribunal of the European Union

The annex to this document contains the draft rules of procedure of the Civil Service Tribunal of the European Union together with an explanatory memorandum.

ANNEX

DRAFT
RULES OF PROCEDURE
OF THE CIVIL SERVICE TRIBUNAL
OF THE EUROPEAN UNION

GENERAL REASONS FOR THE DRAFT RULES OF PROCEDURE

The European Union Civil Service Tribunal has been empowered to establish its Rules of Procedure in agreement with the Court of Justice, in accordance with the fifth paragraph of Article 225a of the EC Treaty and with the fifth paragraph of Article 140b of the Euratom Treaty, and subject to the higher-ranking procedural rules contained in the EC Treaty, the Statute of the Court of Justice, Council Decision 2004/752/EC, Euratom of 2 November 2004 establishing the European Union Civil Service Tribunal (OJ 2004 L 333, p. 7) and also to the general principles of law. The Tribunal has sought, within the margin of freedom thereby available to it, to maintain continuity, while introducing innovations designed to simplify and accelerate the proceedings and to adjust them according to its particular needs.

In terms of methodology, the Tribunal has endeavoured to draw up its Rules of Procedure in a spirit of receptivity, since as an accompaniment to its preparatory work it has carried out consultations, in particular with the representatives of the institutions, the staff committees and the unions. To that end a meeting with the heads of administration was held on 26 January 2006. This was followed, on 8 February 2006, by a meeting with representatives of the union and staff organisations, together with their lawyers. At those meetings, the participants were invited to air their views, chiefly on the subjects of costs, amicable settlements and the representation of the applicant.

These draft Rules are modelled chiefly on the Rules of Procedure of the Court of First Instance, but also to a large extent on the Rules of Procedure of the Court of Justice, precisely in order to guarantee, in the interests of the individual concerned, the unity and coherence of the procedures applicable before the three Community courts. It may therefore be said that to a great extent this draft forms part of the continuum.

The main innovations arise directly from Decision 2004/752, which adds to the Statute of the Court of Justice an Annex I relating to the Civil Service Tribunal. In accordance with Article 7(1) of that Annex, these draft Rules of Procedure lay down further and more detailed provisions to supplement those of the Statute of the Court of Justice.

Among those innovations may be mentioned, in particular, the new Chapter 4 of Title II, dealing with amicable settlements, which responds to the Council's request, expressed in the seventh recital in the preamble to its Decision 2004/752, and repeated in Article 7(4) of Annex I to the Statute of the Court of Justice, that the amicable settlement of disputes should be facilitated at all stages of the procedure. This chapter thus gives full effect to those provisions, by establishing an amicable-settlement procedure independent of the contentious proceedings, strictly speaking. The aim pursued is to make it possible, in certain auspicious situations, to reach a more rapid or more suitable solution of the dispute, more satisfactory to the parties, while saving the expense of unnecessary proceedings.

The innovations also include Chapter 8 of Title II, in which the Tribunal, having regard to the change made by the Council in Article 7(5) of Annex I to the Statute of the Court of Justice, has specified the conditions for application of the rule that the unsuccessful party is to be ordered to pay the costs if they have been applied for. Reference is made, in this

connection, to the arguments developed more fully in the reasoning at the beginning of Chapter 8 of Title 2.

The other modifications made in relation to the Rules of Procedure of the Court of First Instance are in large measure attributable to the Tribunal's wish to draw up organisational and procedural rules that are suited, on the one hand, to the special features of the cases that it has to hear and settle and, on the other, to its own needs and particular character.

The Tribunal has accordingly been guided by the object of lightening and simplifying proceedings, so making them swifter and more effective for the individual concerned. It has also been concerned to bring up to date and modernise certain provisions, by inter alia integrating in the draft a number of practices already current in the two other Community courts.

Finally, the Tribunal has simplified and standardised its terminology with a view to making certain provisions clearer and easier to read.

NB The abbreviation 'RP CFI' has been consistently used in the reasoning to refer to the Rules of Procedure of the Court of First Instance

1. PRELIMINARY PROVISIONS

2.

2.1.1.1.

2.1.1.2. Article 1

Interpretation

1. In these Rules:

– 'EC Treaty' means the Treaty establishing the European Community;
– 'EAEC Treaty' means the Treaty establishing the European Atomic Energy Community (Euratom);
– 'Statute of the Court of Justice' means the Protocol on the Statute of the Court of Justice;
– 'Staff Regulations' means the Regulation laying down the Staff Regulations of Officials of the European Communities and the Conditions of Employment of other servants of the European Communities.

2. For the purposes of these Rules:

– 'Tribunal' means the European Union Civil Service Tribunal or, for cases dealt with by a Chamber or a single Judge, that Chamber or that Judge;
– 'President of the Tribunal' means the President of that court exclusively, 'President' meaning the president of the formation of the court;
– 'institutions' means the Community institutions and bodies referred to in Articles 1a and 1b of the Staff Regulations.

Like Article 1 of the RP CFI, this article contains a number of conventions.

3. TITLE 1

ORGANISATION OF THE TRIBUNAL

3.1. Chapter 1

PRESIDENT AND MEMBERS OF THE TRIBUNAL

In essence, the provisions in this chapter follow the corresponding provisions in the RP CFI. Any differences that readers may observe are matters of pure form or presentation and are intended to highlight the special features of the Tribunal.

3.1.1.1. Article 2

Judges' term of office

1. The term of office of a Judge shall begin on the date laid down in his instrument of appointment.

2. In the absence of any provision regarding the date, the term shall begin on the date of the instrument.

3.1.1.2. Article 3

Taking of the oath

1. Before taking up his duties, a Judge shall take the following oath before the Court of Justice of the European Communities:

'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.'

2. Immediately after taking the oath, a Judge shall sign a declaration by which he solemnly undertakes that, both during and after his term of office, he will respect the obligations arising therefrom, and in particular the duty to behave with integrity and discretion as regards the acceptance, after he has ceased to hold office, of certain appointments and benefits.

3.1.1.3. Article 4

Disqualification and removal of a Judge

1. When the Court of Justice is called upon to decide, after consulting the Tribunal, whether a Judge no longer fulfils the requisite conditions or no longer meets the obligations arising from his office, the President of the Tribunal shall invite the Judge concerned to make representations in closed session and in the absence of the Registrar.

2. The Tribunal shall state the reasons for its opinion.

3. An opinion to the effect that a Judge no longer fulfils the requisite conditions or no longer meets the obligations arising from his office must receive the votes of at

least a majority of the Judges of the Tribunal. In that event, particulars of the voting shall be communicated to the Court of Justice.

4. Voting shall be by secret ballot; the Judge concerned shall not take part in the deliberations.

3.1.1.4. Article 5

Precedence

1. With the exception of the President of the Tribunal and of the Presidents of the Chambers, the Judges shall rank equally in precedence according to their seniority in office.

2. Where there is equal seniority in office, precedence shall be determined by age.

3. Retiring Judges who are reappointed shall retain their former precedence.

Articles 2 to 5 reflect Articles 3 to 6 of the RP CFI. Indeed, they reflect in large measure provisions of the Statute of the Court of Justice, referred to moreover by Article 5 of Annex I thereto, introduced by Council Decision 2004/752.

3.1.1.5. Article 6

Election of the President of the Tribunal

1. In accordance with Article 4(1) of Annex I to the Statute of the Court of Justice, the Judges shall elect the President of the Tribunal from among their number for a term of three years. He may be re-elected.

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

3. The elections provided for in this Article shall be by secret ballot. If a Judge obtains an absolute majority he shall be elected. If no Judge obtains an absolute majority, a second ballot shall be held and the Judge obtaining the most votes shall be elected. Where two or more Judges obtain an equal number of votes, the oldest of them shall be deemed elected.

4. The name of the President of the Tribunal shall be published in the *Official Journal of the European Union*.

Article 6 corresponds to Article 7 of the RP CFI.

3.1.1.6. Article 7

Responsibilities of the President of the Tribunal

1. The President of the Tribunal shall direct the judicial business and the administration of the Tribunal.

2. He shall preside at sittings and deliberations in closed session of:
- **the full court;**
- **the Chamber sitting with five Judges;**
- **any Chamber sitting with three Judges to which he is attached.**

3.1.1.7. Article 8

Replacement of the President of the Tribunal

When the President of the Tribunal is absent or prevented from attending or when the office of President is vacant, the functions of President shall be exercised according to the order of precedence laid down pursuant to Article 5.

Articles 7 and 8 correspond to Articles 8 and 9 of the RP CFI.

3.2. Chapter 2

FORMATIONS OF THE COURT

The provisions in this chapter concern the formations of the court and the assignment of cases (Articles 9 to 12), and the referral of a case to the full court, to the chamber sitting with five Judges or to a single Judge (Articles 13 and 14). The rules on the functioning of the Tribunal in chambers (or in full court) depart somewhat from the corresponding rules in Chapter 2 of Title 1 of the RP CFI. This divergence does no more than reflect, first, the small size of the Tribunal, especially the fact that the ordinary formation is composed of three Judges and, second, the wish to simplify and standardise the terminology, with some alteration of the order of the provisions concerned. However, on essential points, the proposed provisions follow the analogous provisions of the RP CFI.

It seemed appropriate to use the more general title 'Formations of the court' (which is, moreover, the title of the corresponding subdivision of the RP of the Court of Justice), rather than employ the corresponding title in the RP CFI which, in referring to the constitution of the chambers and the attachment of judges, seems not to cover the provisions relating to the full court or the matter of the criteria for allocating cases among the formations of the court.

3.2.1.1. Article 9

Formations of the court

By virtue of Article 4(2) of Annex I to the Statute of the Court of Justice, the Tribunal shall sit in full court, in a Chamber of five Judges, Chambers of three Judges or as a single Judge.

To the extent that the draft rules reproduce a rule already laid down by Decision 2004/752, it has been deemed good legislative technique to indicate, as a matter of principle, the provenance of that rule.

3.2.1.2. Article 10

Constitution of Chambers

1. The Tribunal shall set up Chambers sitting with three Judges. It may set up a Chamber sitting with five Judges.

2. The Tribunal shall decide which Judges shall be attached to the Chambers. If the number of Judges attached to a Chamber is greater than the number of Judges sitting, it shall decide how to designate the Judges taking part in the formation of the court.

3. Decisions taken in accordance with this article shall be published in the *Official Journal of the European Union*.

Article 10(1) and (2) (constitution of Chambers and attachment of Judges to Chambers) correspond to Article 10(1) of the RP CFI. It has been considered appropriate to split the latter provision in two so that, as regards the attaching of Judges to Chambers, it does not merely state that the Tribunal is to decide which Judges are to be attached ('which Judges shall be attached to [the Chambers]' – see Article 10(1) of the RP CFI), but also covers the case where 'the number of Judges attached to a Chamber is greater than the number of Judges sitting', which is indeed already the case for the Third Chamber of the Tribunal (see OJ 2005 C 322, p. 16). The second sentence of Article 10(1) makes it clear that the constitution of a Chamber sitting with five Judges is optional. The Tribunal has not yet made use of the option of establishing such a Chamber.

Article 10(3) is identical to Article 10(2) of the RP CFI.

3.2.1.3. Article 11

Presidents of Chambers

1. In accordance with Article 4 of Annex I to the Statute of the Court of Justice, the Judges shall elect from among their number for a term of three years the

Presidents of the Chambers sitting with three Judges. The election shall be carried out in accordance with the procedure laid down in Article 6(3). They may be re-elected.

2. Article 6(2) and (4) shall apply.

3. The Presidents of Chambers shall direct the judicial business of their Chambers and shall preside at sittings and deliberations.

4. When the President of a Chamber is absent or prevented from attending or when the office of President is vacant, the Chamber shall be presided over by a member thereof according to the order of precedence laid down pursuant to Article 5.

5. If, exceptionally, the President of the Tribunal is called upon to complete the formation of the court, he shall preside.

The rules applicable to the election of Presidents of Chambers follow those of Article 15 of the RP CFI, except where Annex I to the Statute of the Court of Justice provides otherwise. In particular, Article 4(3) of the Annex, referring to Article 4(1), provides for a term of three years (when the RP CFI say 'for a defined term') which may be renewed (not restricted to 'once', as in the RP CFI). In addition, as regards the Chamber of five Judges, the establishment of which is optional, it is to be borne in mind that, according to Article 4(3) of the Annex, it is automatically the President of the Tribunal who is to preside. Subject to a few simplifications of terminology, Article 11(3) is identical to the first paragraph of Article 16 of the RP CFI and is placed here so as to be integrated within the provisions concerning the Presidents of Chambers. Article 11(4) provides for the replacement of the President of a formation of the court who is absent or unable to attend by a member of the same formation according to the order of precedence fixed in Article 5.

Article 11(5) covers the exceptional case in which the President of the Tribunal is called upon to supplement a formation of the court.

3.2.1.4. Article 12

Ordinary formation of the court – Assignment of cases to Chambers

1. Without prejudice to Article 13 or Article 14, the Tribunal shall sit in Chambers of three Judges.

2. The Tribunal shall lay down criteria by which cases are to be assigned to the Chambers.

3. The decision provided for in the previous paragraph shall be published in the *Official Journal of the European Union*.

Article 12(1) lays down the rule that, in the Tribunal, the ordinary formation of the court is to be composed of three Judges, while Article 12(2) and (3) correspond essentially to the two paragraphs of Article 12 of the RP CFI.

3.2.1.5. Article 13

Referral of a case to the full court or to the Chamber sitting with five Judges

1. Whenever the difficulty of the questions of law raised or the importance of the case or special circumstances so justify, a case may be referred to the full court or to the Chamber sitting with five Judges.

2. The decision to refer shall be taken by the full court on a proposal by the Chamber hearing the case or by any member of the Tribunal. It may be taken at any stage of the proceedings.

3.2.1.6. Article 14

Referral of a case to a single Judge

1. Cases assigned to a Chamber sitting with three Judges may be heard and determined by the Judge-Rapporteur sitting as a single Judge where, having regard to the lack of difficulty of the questions of law or fact raised, to the limited importance of the case and to the absence of other special circumstances, they are suitable for being so heard and determined.

Referral to a single Judge shall not be possible in cases which raise issues as to the legality of an act of general application.

2. The decision to refer shall be taken unanimously by the Chamber before which the case is pending. It may be taken at any stage of the proceedings.

3. If the single Judge to whom the case has been referred is absent or prevented from attending, the President shall designate another Judge to replace that Judge.

4. The single Judge shall refer the case back to the Chamber if he finds that the conditions set out in paragraph 1 above are no longer satisfied.

5. In cases heard by a single Judge, the powers of the President shall be exercised by that Judge.

Articles 13 and 14 regulate the issue of the referring of 'important' cases to the formation of five Judges or to the full court (Article 13), and of the 'simplest' cases to a single Judge (Article 14). They deal with both the substantive conditions for such a referral (like Article 14 of the RP CFI) and the procedure to be followed (a matter which, in the RP CFI, is the subject of Article 51). Indeed, with a view to greater readability, it is in the parties' interests for all the questions concerning

the referral of cases 'up' or 'down' to be addressed in the same place, in this instance in the chapter on 'Formations of the court' in Title 1, 'Organisation of the Tribunal', of the draft rules.

With regard to the substance, a modification to be noted in relation to the RP CFI is that there is no obligation here to consult the parties. Even if the parties are not consulted, their right to a fair hearing is already protected, where a case is referred to the full court, by its transfer to a formation composed of a greater number of Judges and, where it is referred to a single Judge, by the fact that the decision to refer has been adopted unanimously by the Chamber. In the latter kind of referral, the Tribunal considers that consultation of the parties would unnecessarily draw out the proceedings, without ensuring any real guarantee for the parties, who have no individual right to have the case dealt with by one formation of the court rather than another and whose legitimate interests are already sufficiently protected by the rule of unanimity within the Chamber.

It may be added, on this point, that the RP of the Court of Justice do not provide for the parties to be consulted when a case is to be referred to a larger formation (Article 44(4) of the RP of the Court of Justice).

Attention is also drawn to the power given in Article 13(2) to any member of the Tribunal to propose the referral of a case to the full court. That option, which serves to strengthen collegiality within the Tribunal, is made possible by the size of the Tribunal.

It is also to be observed that Article 14(2)(2)(b) and (c) of the RP CFI, which exclude referral to a single Judge in certain classes of case (e.g. in the field of competition or intellectual property), have not been reproduced, for the simple reason that the Tribunal has no jurisdiction in those spheres.

Certain changes intended to simplify and standardise terminology as compared with the text of the RP CFI may also be noted. Thus, a distinction is no longer drawn between 'referral' and 'delegation' in the two articles, only 'referral' being used; on the other hand, the word 'assignment' is reserved to the first allocation of a case to a Chamber.

Article 14(5) reproduces the second paragraph of Article 16 of the RP CFI, except for the reservation made by the latter of the powers referred to in Articles 105 and 106 of the RP CFI. Given that a single Judge exercises the powers of the President of the formation of the court and not those of the President of the Tribunal, it has not been considered necessary to include in these draft rules a reference to Articles 103 and 104 (of the draft rules). It is clear that the powers of the President of the Tribunal in proceedings for interim measures are reserved to him.

3.3. Chapter 3

REGISTRY AND DEPARTMENTS

3.3.1. Section 1 – The Registry

Article 6(2) of Annex I to the Statute of the Court of Justice provides:

'The Civil Service Tribunal shall appoint its Registrar and lay down the rules governing his service. The fourth paragraph of Article 3 and Articles 10, 11 and 14 of the Statute of the Court of Justice shall apply to the Registrar of the Tribunal.'

The provisions in the draft rules relating to the Registry reproduce, essentially, the wording of Articles 20 to 27 of the RP CFI with, however, a few amendments. The purpose of those amendments is threefold:

– to reduce the provisions concerning the Registry by retaining, in the draft rules, only the general provisions relating to the appointment and duties of the Registrar. It is proposed that the particular rules whose nature does not warrant their inclusion in the draft rules should be transferred to the 'Instructions to the Registrar' (provided for by Article 19(4)). That is the case in respect, in particular, of the detailed provisions relating to the keeping of the register;
– to adjust the rules to the needs and specific features of the Tribunal. Thus, it is proposed that the Tribunal should be able to appoint an Assistant Registrar with the task of assisting the Registrar (Article 17), and not 'one or more Assistant Registrars', as provided for in the RP CFI;
– to bring certain texts up to date. This is the case for the provisions mentioning the full details which must accompany an application, for which is substituted the more general wording of Article 15(1) of these draft rules.

3.3.1.1. Article 15

Appointment of the Registrar

1. The Tribunal shall appoint the Registrar.

2. Two weeks before the date fixed for making the appointment, the President of the Tribunal shall inform the Judges of the applications which have been submitted for the post.

3. The appointment shall be made in accordance with the procedure laid down in Article 6(3).

4. The name of the Registrar elected shall be published in the *Official Journal of the European Union*.

5. The Registrar shall be appointed for a term of six years. He may be reappointed.

6. Before he takes up his duties the Registrar shall take the oath before the Tribunal in accordance with Article 3.

This article corresponds in substance to Article 20 of the RP CFI. Unlike the latter article, it simply refers to the appointment of the Registrar by the Tribunal; it would be for the notice inviting applications to specify more precisely the conditions required to fill the post.

Furthermore, Article 15(4) imposes the obligation to publish the name of the Registrar in the Official Journal of the European Union*, which is a new provision.*

3.3.1.2. Article 16

Vacancy of the office of Registrar

1. 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 Tribunal shall take its decision after giving the Registrar an opportunity to make representations.

2. If the office of Registrar falls vacant before the usual date of expiry of the term thereof, the Tribunal shall appoint a new Registrar for a term of six years.

This article corresponds to Article 20(6) and (7) of the RP CFI.

3.3.1.3. Article 17

Assistant Registrar

The Tribunal may, following the procedure laid down in respect of the Registrar, appoint an Assistant Registrar to assist the Registrar and to take his place in so far as the Instructions to the Registrar referred to in Article 19(4) allow.

This article reproduces Article 21 of the RP CFI, adapting it to the Tribunal's particular characteristics. The limited size of the Tribunal does not warrant the appointment of several Assistant Registrars to help the Registrar.

3.3.1.4. Article 18

Absence or inability to attend of the Registrar

Where the Registrar is absent or prevented from attending and, if necessary, where the Assistant Registrar is absent or so prevented, or where their posts are vacant, the President of the Tribunal shall designate an official or servant to carry out the duties of Registrar.

Article 18 corresponds to Article 22 of the RP CFI.

3.3.1.5. Article 19

Duties of the Registrar

1. The Registrar shall assist the Tribunal, the President of the Tribunal and the Judges in the performance of their functions. He shall be responsible for the organisation and activities of the Registry under the authority of the President of the Tribunal.

2. The Registrar shall have custody of the seals. He shall be responsible for the records and be in charge of the Tribunal's publications. The Registrar shall be responsible, under the authority of the President of the Tribunal, for the acceptance, transmission and custody of all documents and for effecting service as provided for by these Rules.

3. Subject to Articles 4, 16(1) and 27, the Registrar shall attend the sittings of the Tribunal.

4. The Tribunal shall adopt its Instructions to the Registrar, acting on a proposal from the President of the Tribunal. They shall be published in the *Official Journal of the European Union.*

In Article 19(1), the first sentence reproduces Article 25(2) of the RP CFI, substituting the words 'in the performance of their functions' for the antiquated [in some language versions] 'in all their official functions'.

The second sentence satisfies the need to clarify all the Registrar's duties in the draft rules. In addition to his role as intermediary between the Tribunal and litigants, his responsibility for the records and his assistance of the Judges, the Registrar is to organise the Registry's activities. Thus, this second sentence introduces the provisions laid down in Articles 19(2) and 20(1).

Article 19(2) corresponds to Articles 25(1) and 26 of the RP CFI.

Article 19(3) corresponds to Article 27 of the RP CFI. The reference to Articles 4 and 27 implies that the Registrar will not be present at deliberations in closed session or at any sitting where the Tribunal discusses its views as to whether a Judge fulfils the requisite conditions or meets the obligations arising from his office.

In Article 19(4), as in Article 23 of the RP CFI, it is proposed that the Tribunal should be enabled to adopt its Instructions to the Registrar. These will include provisions of lesser importance which are currently to be found in the RP CFI. These are, inter alia, certain provisions contained in Articles 24(1), (2) and (3) of the RP CFI.

3.3.1.6. Article 20

Keeping of the register

1. There shall be kept in the Registry, under the control of the Registrar, a register in which all pleadings and supporting documents shall be entered.

2. Rules for keeping the register shall be prescribed by the Instructions to the Registrar referred to in Article 19(4).

3. Any person having an interest may consult the register at the Registry and obtain copies or extracts on payment of a charge on a scale fixed by the Tribunal on a proposal from the Registrar.

4. Any party to proceedings may in addition obtain, on payment of the appropriate charge, additional copies of the pleadings or of the orders and judgments.

Article 20(1) forms the basic provision in respect of the register. Supplementary provisions will be found in the Instructions to the Registrar.

Article 20(3) and (4) reflect Article 24(5) of the RP CFI. The Registry fees mentioned in those two paragraphs will be fixed by the Instructions to the Registrar.

The provisions corresponding to Article 24(6) and (7) of the RP CFI concerning the publication in the Official Journal of the European Union *of actions brought*

before the Tribunal and the notification to institutions which have an interest in the dispute while not being parties to it of a copy of the application and the defence, respectively, have been moved to the chapter relating to the written procedure and, more particularly, placed among the provisions dealing with the originating application (Articles 37(2) and 40 of the draft Rules).

3.3.2. Section 2 – The Departments

The two articles making up the section relating to the departments reproduce in substance the provisions of Articles 28 to 30 of the RP CFI.

3.3.2.1. Article 21

Officials and other servants

1. The officials and other servants whose task is to assist directly the President of the Tribunal, the Judges and the Registrar shall be appointed in accordance with the Staff Regulations. They shall be responsible to the Registrar, under the authority of the President of the Tribunal.

2. Before the President of the Tribunal, in the presence of the Registrar, they shall take the following oath: 'I swear that I will perform loyally, discreetly and conscientiously the duties assigned to me by the Civil Service Tribunal of the European Union'.

Article 21(1) is in substance identical to Article 28 of the RP CFI.

As regards Article 21(2), if the reference made in Article 29 of the RP CFI to Article 20(2) of the RP of the Court of Justice were to be reproduced, it would make it necessary to consult a document other than the Rules of the Tribunal in order to know what the oath is. In order to the text easily comprehensible, it is proposed to reproduce verbatim the oath contained in that latter article.

3.3.2.2. Article 22

Administration and financial management of the Tribunal

1. The Registrar shall be responsible, under the authority of the President of the Tribunal, for the administration, financial management and accounts of the Tribunal; he shall be assisted in this by the departments of the Court of Justice and the Court of First Instance.

In Article 30 of the RP CFI, reproduced here, it is proposed to add to the assistance of the departments of the Court of Justice that of the departments of the Court of First Instance. Two provisions justify this additional text: first, Article 1 of Decision 2004/752 which provides for the attachment of the Tribunal to the Court of First Instance; second, Article 6(1) of Annex I to the Statute of the Court of Justice under which '[t]he Civil Service Tribunal shall be supported by the departments of the Court of Justice and of the Court of First Instance'.

3.4. Chapter 4

WORKING OF THE TRIBUNAL

Contents of this chapter

It is proposed to reproduce several provisions of the RP CFI with alterations, essentially for the purpose of adapting those Rules to the formations of the court particular to the Tribunal.

Structure of the chapter

Like Articles 31 to 34 of the RP CFI, the provisions composing this chapter deal with four separate matters:

– *the dates, times and place of sittings of the Tribunal;*

– *the quorum, and situations where a Judge is absent or prevented from attending;*

– *deliberations;*

– *judicial vacations.*

It is proposed to split Article 32 of the RP CFI dealing with quorum and absences into several articles (Articles 24, 25 and 26). The purpose of this structure is to improve the readability of those provisions which are still relatively complex.

The structure of Articles 24 to 26 is as follows:

– *Article 24 determines the quorum for each of the various collegiate formations;*

– *Article 25(1) lays down the general rule that the sitting of the formation of the court is to be adjourned until the Judge or Judges absent or prevented from attending take up their place(s) once more, so enabling the quorum to be reached again. Article 25(2) and (3), and Article 26, are provisions supplementary, and generally subsidiary, to Article 25(1);*

– *Article 25(2) provides that in Chambers sitting with five or three Judges the Judge who is absent or prevented from attending may be replaced with another Judge;*

– *Article 25(3) contains provisions for the case in which the formation of the court no longer attains a quorum when a Judge is absent or prevented from attending after the oral procedure;*

– *Article 26 concerns solely the Chamber sitting with five Judges. It deals with the replacement of a Judge before the hearing in order that the Chamber may be complete when it holds the hearing.*

3.4.1.1. Article 23

Dates, times and place of the sittings of the Tribunal

1. The dates and times of the sittings of the Tribunal shall be fixed by the President.

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

This article reflects Article 31 of the RP CFI.

3.4.1.2. Article 24

Quorum

Sittings of the Tribunal shall be valid only if the following quorum is observed:

- **five Judges for the full court;**
- **three Judges for the Chamber sitting with five Judges or for the Chambers sitting with three Judges.**

This article sets the minimum number of Judges for a lawful sitting of a collegiate formation of the court (the quorum). According to Article 4(2) of Annex I to the Statute of the Court of Justice, the Tribunal may have three collegiate formations: the full court, the Chamber sitting with five Judges and Chambers sitting with three Judges.

The second paragraph of Article 17 of the Statute of the Court of Justice, applicable to the Tribunal by virtue of the first paragraph of Article 5 of Annex I thereto, fixes at three Judges the quorum for formations sitting with three or five Judges. On this point, the second indent of Article 24 of the draft Rules does no more than reproduce the provision in the Statute of the Court of Justice.

So far as concerns the full court, composed of the seven Judges of the Tribunal, Article 4(4) of Annex I to the Statute of the Court of Justice provides that the quorum is to be governed by the rules of procedure. The first indent of Article 24 accordingly fixes this quorum at five Judges.

3.4.1.3. Article 25

Absence or inability to attend of a Judge

1. If, because a Judge is absent or prevented from attending, the quorum is not attained, the President shall adjourn the sitting until the Judge is no longer absent or prevented from attending.

2. In order to attain a quorum in a Chamber, the President may also, if the proper administration of justice so requires, complete the formation of the court with another Judge of the same Chamber or, failing that, propose that the President of the Tribunal should designate a Judge from another Chamber. The replacement Judge shall be designated by turn according to the order of precedence referred to in Article 5, with the exception of the President of the Tribunal and, if possible, of the Presidents of Chambers.

3. If the formation of the court is completed pursuant to paragraph 2 after the hearing, the oral procedure shall be reopened.

Article 25 lays down the procedure to be followed when a quorum has not been attained.

Article 25(1)

Article 25(1) covers, typically, the case where a Judge is briefly absent or prevented from attending, and Article 25(2) the case where the Judge is definitively or for a long period absent or prevented from attending or where the case must be determined as a matter of urgency.

In the first case, the normal procedure is to adjourn the sitting so that the quorum may again be attained. To that end, paragraph 1 provides that the President of the formation is to adjourn the sitting until the Judge is no longer absent or prevented from attending.

Article 25(2)

When a Judge is, definitively or for a long period, unable to sit in a case or when the case is urgent, in the sense that its adjudication cannot permit the absence of a Judge, even fleetingly, it is a requirement of the proper administration of justice that it should be possible to complete the formation of the court with another Judge. On this point, Article 25(2) provides that the President of the formation of the court may complete it with another Judge from the same Chamber. This option is available only if the number of Judges making up the Chamber is greater than the number of Judges sitting in the formation of the court. That is at present the case for the third Chamber of the Tribunal, composed as it is of five Judges but sitting with three Judges only in its two formations (OJ 2005 C 322, p. 16).

If the formation of the court cannot be completed by a Judge of the same Chamber, the replacement Judge must be borrowed from a different Chamber. In that case, it is for the President of the formation to propose to the President of the Tribunal that the latter should designate the replacement Judge. It is to be borne in mind that the last paragraph of Article 17 of the Statute of the Court of Justice provides that '[i]n the event of one of the Judges of a chamber being prevented from attending, a Judge of another chamber may be called upon to sit in accordance with conditions laid down in the Rules of Procedure'.

Article 25(2) lays down the objective criteria in accordance with which the replacement Judge is to be designated (see, in this regard, the provisions of the first paragraph of Article 11e, 11b(2) and 11c(2) of the RP of the Court of Justice).

Article 25(2) does not concern the situation where just one or two Judges of the Chamber of five is or are absent or prevented from attending, the quorum still being attained. That situation is, however, covered by Article 26.

Article 25(3)

Replacing a Judge after the hearing raises the question whether the hearing should be opened afresh in order for the new replacement Judge to be able to be as familiar with the case as the other Judges.

On this point the Rules of Procedure of the Court of Justice and the Court of First Instance provide a clear answer. They provide that only those Judges who were present at the oral proceedings may take part in the deliberations (Article 27(2) RP of the Court of Justice and Article 33(2) RP CFI). It is to be observed that this rule is not imposed by the Statute of the Court of Justice. For the Court of Justice and the Court of First Instance it means therefore the reopening of the oral procedure. Although it seems to follow from the Court of Justice's case-law that it is not absolutely necessary to hold another hearing if the parties do not wish it (Case C-246/95 Coen *[1997] ECR I-403), it has been judged preferable to adopt the practice followed in the other two courts, despite the problems that might arise on renewal of the members of the Tribunal. Thus, Article 25(3) provides for the oral procedure to be reopened when a Judge is replaced after the hearing, but does not encompass the possibility of dispensing with that reopening if the parties agree.*

It may be added that the Court of Justice has recently provided for the introduction of substitute Judges for the Grand Chamber. This new provision is intended to mitigate the difficulties caused by the three-yearly renewal of the Court of Justice. Given that the rules for the renewal of the terms of office of Judges of the Tribunal are different, it is not proposed to designate substitute Judges.

3.4.1.4. Article 26

Absence or inability to attend, before the hearing, of a Judge of the Chamber sitting with five Judges

If, in the Chamber sitting with five Judges, a Judge is absent or prevented from attending before the hearing, the President of the Tribunal shall designate another Judge according to the order of precedence referred to in Article 5. If the number of

five Judges cannot be restored, the hearing may nevertheless be held, provided that the quorum is attained.

This article concerns only the oral procedure in cases dealt with by the Chamber sitting with five Judges. Its purpose is to fix the measures to be taken if, before the hearing begins, one or two of the Judges of the formation of the court is or are absent or prevented from attending. In such cases, the quorum is still attained, with the result that the hearing can take place (in accordance with Article 24).

It is, however, open to question whether a stricter rule than the number of Judges required to attain a quorum ought not to be imposed. In the other two Community courts, in particular in relation to Chambers of five Judges (with a quorum of three Judges), it appears that an attempt is always made to complete the formation of the court so that five Judges are present at the hearing.

In this respect, the third subparagraph of Article 32(2), recently added to the RP CFI, provides that '[i]f in the Grand Chamber or in any Chamber of five Judges the number of Judges provided for by Article 10(1) is not attained by reason of a Judge's being absent or prevented from attending before the date of the opening of the oral procedure, the President of the Court of First Instance shall designate a Judge to complete that Chamber in order to restore the number of Judges provided for.'

The RP of the Court of Justice contain no similar provision. It would seem that it is not impossible to hold a hearing of a Chamber of five Judges of the Court of Justice with only four or three Judges sitting.

In keeping with the practice of the Court of Justice and the Court of First Instance, it is proposed to maintain for the Tribunal the principal rule that the formation of the Chamber of five Judges is to be completed by another Judge if one of the Judges designated to sit in a case is prevented from taking part in the hearing. The first sentence of Article 26 lays down the objective criteria for the designation of the replacement Judge.

The Tribunal being composed of seven Judges, it may however be difficult to find a replacement Judge rapidly. Accordingly, it will always remain possible for the hearing to be held with fewer than five Judges (provided that the quorum referred to in Article 24 is observed).

3.4.1.5. Article 27

Deliberations

1. The Tribunal shall deliberate in closed session.

2. Only those Judges who were present at the hearing may take part in the deliberations.

3. In accordance with the first paragraph of Article 17 of the Statute of the Court of Justice and the first paragraph of Article 5 of Annex I to the Statute, deliberations of the Tribunal shall be valid only if an uneven number of Judges is sitting in the deliberations.

If, in the Chamber sitting with five Judges or in the full court, there is an even number of Judges, as a result of a Judge's being absent or prevented from attending, the lowest-ranking Judge, according to the order of precedence fixed pursuant to Article 5, shall abstain from taking part in the deliberations, unless he is the Judge-Rapporteur. In that last case, it is the Judge immediately senior to him who shall abstain.

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

Any Judge may require that any question be formulated in the language of his choice and communicated in writing to the other Judges before being put to the vote.

The conclusions reached by the majority of the Judges after final discussion shall determine the decision of the Tribunal. Votes shall be cast in reverse order to the order of precedence laid down pursuant to Article 5.

Differences of view on the substance, wording or order of questions, or on the interpretation of a vote, shall be settled by decision of the Tribunal.

5. Where the deliberations of the Tribunal concern questions of its own administration, the Registrar shall be present, unless the Tribunal decides to the contrary.

6. Where the Tribunal sits without the Registrar being present it shall, if necessary, instruct the lowest-ranking Judge, according to the order of precedence referred to in Article 5, to draw up minutes. The minutes shall be signed by this Judge and by the President.

Article 27(1)

This paragraph reproduces Article 33(1) of the RP CFI.

Article 27(2)

This paragraph contains the same rule as that laid down in Article 33(2) of the RP CFI.

Article 27(3)

The rule requiring an odd number of Judges to take part in the deliberations is provided for in the first paragraph of Article 17 of the Statute of the Court of

Justice. The first subparagraph of Article 27(3) transcribes this rule in the draft Rules.

In substance, the second subparagraph reproduces the first subparagraph of Article 32(1) of the RP CFI, designating the Judge who is to abstain from taking part in the deliberations if, as a result of a Judge's being absent or prevented from attending, there is an even number of Judges in the formation. This second subparagraph makes reference to Article 5 of the draft Rules, which fixes the order of precedence of the Judges.

The second subparagraph of paragraph 3 evidently cannot concern Chambers sitting with three Judges.

Article 27(4) to (6)
These paragraphs, which deal with the conduct of the deliberations and the Registrar's participation in them, are essentially the same as Article 33(3) and (5) to (8) of the RP CFI.

The maintenance of the wording of Article 33(4) of the RP CFI – a provision that is certainly rarely or practically never applied in the Court of First Instance – may be ascribed to the obligation imposed on the Tribunal to apply in identical fashion all the provisions relating to the language rules of the Court of First Instance in accordance with Article 7(2) of Annex I to the Statute of the Court of Justice, read in conjunction with Article 64 thereof (see Chapter 5 below).

3.4.1.6. Article 28
Judicial vacations

1. Subject to any special decision of the Tribunal, its vacations shall be as follows:

– from 18 December to 10 January,

– from the Sunday before Easter to the second Sunday after Easter,

– from 15 July to 15 September.

2. During the vacations, the functions of President of the Tribunal shall be exercised at the place where the Tribunal has its seat either by the President of the Tribunal, keeping in touch with the Registrar, or by a President of Chamber or other Judge invited by the President to take his place.

In a case of urgency, the President may convene the Judges.

3. The Tribunal shall observe the official holidays of the place where it has its seat.

4. The Tribunal may, in proper circumstances, grant leave of absence to any Judge.

This article reproduces the content of Article 28 RP of the Court of Justice and Article 34 of the RP CFI.

3.5. Chapter 5

LANGUAGES

The Tribunal is bound by two provisions in the Statute of the Court of Justice:

– first, by Article 7(2) of Annex I to the Statute of the Court of Justice, which states that '[t]he provisions concerning the Court of First Instance's language arrangements shall apply to the Civil Service Tribunal';

– second, by Article 64 of the Statute under which '[u]ntil the rules governing the language arrangements applicable at the Court of Justice and the Court of First Instance have been adopted in this Statute, the provisions of the Rules of Procedure of the Court of Justice and of the Rules of Procedure of the Court of First Instance shall continue to apply. Those provisions may only be amended or repealed in accordance with the procedure laid down for amending this Statute'.

In the absence of any freedom for the Tribunal to derogate from the rules governing language, it is proposed to refer purely and simply to the provisions of Chapter 5 of Title 1 of the RP CFI.

This will at the same time ensure that the Rules of Procedure are consistent with the provisions of the RP CFI if the latter should be amended.

3.5.1.1. Article 29

Language arrangements

By virtue of Article 64 of the Statute of the Court of Justice and Article 7(2) of Annex I to the Statute, the provisions of the Rules of Procedure of the Court of First Instance governing language arrangements shall apply to the Tribunal.

For easier understanding, the final version of the draft rules will contain a footnote to the reader at the end of Article 29, which will reproduce the articles of the RP CFI governing language arrangements, applicable to the Tribunal by virtue of this reference.

3.6. **Chapter 6**

RIGHTS AND OBLIGATIONS OF THE PARTIES' REPRESENTATIVES

The core of the provisions relating to the 'rights and obligations of agents, advisers and lawyers' in the RP CFI (Articles 38 to 42) is maintained, despite the rather antiquated nature of certain provisions.

'The parties' representatives' is substituted for 'agents, advisers and lawyers'.

In this connection, it is to be borne in mind that Article 19 of the Statute of the Court of Justice extends the right of audience to university teachers and others.

3.6.1.1.

3.6.1.2.

3.6.1.3. Article 30

Privileges, immunities and facilities

1. The parties' representatives, appearing before the Tribunal or before any judicial authority to which it has addressed letters rogatory, shall enjoy immunity in respect of words spoken or written by them concerning the case or the parties.

2. The parties' representatives shall enjoy the following further privileges and facilities:

(a) 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 Tribunal for inspection in the presence of the Registrar and of the person concerned;

(b) the parties' representatives shall be entitled to such allocation of foreign currency as may be necessary for the performance of their duties;

(c) the parties' representatives shall be entitled to travel in the course of duty without hindrance.

3. The privileges, immunities and facilities specified in paragraphs 1 and 2 are granted exclusively in the interests of the proper conduct of proceedings.

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

This article corresponds exactly to Article 32 of the RP of the Court of Justice and to Articles 38 and 40 of the RP CFI. The provisions it contains, especially paragraph 2(b), may seem outdated. Nevertheless, the Tribunal has not permitted itself any simplification, the rules governing the privileges and immunities of the parties'

representatives lending themselves most particularly to treatment common to the three courts.

3.6.1.4. Article 31

Status of the parties' representatives

In order to qualify for the privileges, immunities and facilities specified in Article 30, 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 and shall forward without delay a copy thereof to the Registrar;

(b) advisers and lawyers shall produce a certificate signed by the Registrar. The validity of this certificate shall be limited to a specified period, which may be extended or curtailed according to the length of the proceedings.

3.6.1.5. Article 32

Exclusion from the proceedings

1. If the Tribunal considers that the conduct of a party's representative towards the Tribunal, the President, a Judge or the Registrar is incompatible with the dignity of the Tribunal or with the requirements of the proper administration of justice, or that such representative uses his rights for purposes other than those for which they were granted, it shall so inform the person concerned. The Tribunal may inform 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.

On the same grounds the Tribunal may at any time, having heard the person concerned, exclude that person from the proceedings by order. That order shall have immediate effect.

2. Where a party's representative 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 representative.

3. Decisions taken under this Article may be rescinded.

4. TITLE 2

PROCEDURE

Under Article 7(1) of Annex I to the Statute of the Court of Justice, the procedure before the Tribunal is to be governed by Title III of the Statute (with the exception of Articles 22 and 23), further and more detailed provisions being laid down, where need be, in the Tribunal's Rules of Procedure.

Generally, in the drafting of this title account has been taken of the specific features of staff cases. While the questions of law raised may on occasion be difficult, as regards both admissibility and the merits, and while the facts have often to be clarified during the proceedings, disposal of the case does not usually call for long written pleadings. What is more, because civil service disputes may give rise to dysfunctional working relationships, it is appropriate to dispose of the case expeditiously, while observing the rights of the parties and the principle audi alteram partem*.*

Furthermore, it will be recalled that, according to Article 7(4) of Annex I to the Statute of the Court of Justice, '[a]t all stages of the procedure, including the time when the application is filed, the Civil Service Tribunal may examine the possibilities of an amicable settlement of the dispute and may try to facilitate such settlement'.

This invitation extended by the Council has been acted on, the aspect of an amicable settlement of the dispute having from the start been integrated in the written procedure.

The sequence of the articles reflects, so far as is possible, the order in which procedural documents are lodged and in which the various decisions and measures relating to the organisation of procedure and to making cases ready for hearing are adopted, which has justified the displacement of certain articles in relation to the order followed in the RP CFI.

Finally, the ordinary procedure before the Tribunal being already fairly short and streamlined, it has not been judged helpful to reproduce the provisions of Chapter 3a of Title 2 of the RP CFI on expedited procedures, given that the President may always direct that a case be given priority by virtue of Article 47(2) of these Rules.

4.1. **Chapter** **1**

WRITTEN PROCEDURE

According to Article 7(3) of Annex I to the Statute of the Court of Justice, the written stage of the procedure is to comprise the lodging of the application and of the statement of defence, unless the Tribunal decides that a second exchange of written pleadings is necessary. In that latter case, the Tribunal may, with the agreement of the parties, decide to proceed to judgment without an oral procedure.

This provision expresses one of the features that sharply differentiate the written procedure before the Tribunal from that followed before the other Community courts. That, as a rule, only one set of pleadings is exchanged ought to shorten the judicial proceedings which, in staff cases, are already preceded, in accordance with Article 90 of the Staff Regulations, by a pre-contentious procedure taking several months, set in motion

by an administrative complaint – which may itself be preceded by a request – and in the course of which the official or other servant and the administration have, as a rule, already been able to exchange views on the questions at issue.

4.1.1.1. Article 33

General provisions

1. The written procedure shall comprise the lodging of the application and of the defence and, in the circumstances provided for in Article 41, the lodging of a reply and a rejoinder.

2. Without prejudice to Article 99, the President shall fix the dates or time-limits by which the pleadings must be lodged.

Litigants are reminded at the outset of this chapter that the written procedure usually involves just one round of pleadings, in accordance with Article 7(3) of Annex I to the Statute of the Court of Justice.

4.1.1.2. Article 34

Lodging of pleadings

1. The original of every pleading must be signed by the party's representative.

The original, accompanied by all annexes referred to therein, shall be lodged together with five copies for the Tribunal and a copy for every other party to the proceedings. Copies shall be certified by the party lodging them.

2. Institutions shall in addition produce, within time-limits laid down by the Tribunal, translations of the pleadings of which they are the author into the other languages provided for by Article 1 of Council Regulation No 1. The second subparagraph of paragraph 1 shall apply.

3. All pleadings shall bear a date. In the reckoning of time-limits for taking steps in proceedings only the date of lodging at the Registry shall be taken into account.

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

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

6. Without prejudice to the provisions of paragraphs 1 to 4, the date on which a copy of the signed original of a pleading, including the schedule of documents referred to in paragraph 4, is received at the Registry by any technical means of communication available to the Tribunal shall be deemed to be the date of lodging for the purposes of compliance with the time-limits for taking steps in proceedings,

provided that the signed original of the pleading, accompanied by the annexes and copies referred to in the second subparagraph of paragraph 1, is lodged at the Registry no later than ten days after the copy of the original was received. Article 100(3) shall not be applicable to this period of ten days.

7. Without prejudice to the first subparagraph of paragraph 1 or to paragraphs 2 to 4, the Tribunal 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*.

This article is modelled on Article 43 of the RP CFI.

4.1.1.3. Article 35
Application

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

(a) the name and address of the applicant;

(b) the description and address of the signatory;

(c) the designation of the party against whom the application is made;

(d) the subject-matter of the proceedings and the form of order sought by the applicant;

(e) the pleas in law and the arguments of fact and law relied on;

(f) where appropriate, the nature of any evidence offered in support.

2. To the application there shall be annexed, where appropriate:

(a) the act of which annulment is sought;

(b) the complaint within the meaning of Article 90(2) of the Staff Regulations and the decision responding to the complaint together with the dates on which the complaint was submitted and the decision notified.

3. For the purposes of the proceedings, the application shall state:

- **an address for service in the place where the Tribunal has its seat and the name of the person authorised to accept service;**
- **or any technical means of communication available to the Tribunal by which the applicant's representative agrees to accept service;**
- **or else both the methods of transmission of service referred to above.**

4. If the application does not comply with the requirements referred to in paragraph 3, all service on the party concerned for the purposes of the proceedings shall be effected, for so long as the defect has not been cured, by registered letter addressed to that party's representative. By way of derogation from Article 98(1), service shall then be deemed to have been duly effected by the lodging of the registered letter at the post office of the place where the Tribunal has its seat.

5. The applicant's lawyer must lodge at the Registry a certificate that he is authorised to practise before a court of a Member State or of another State party to the Agreement on the European Economic Area.

The list of matters that must be indicated in the application, while longer than that contained in Article 44 RP CFI, does no more than reflect the practice of the Court of First Instance or reproduce requirements appearing elsewhere (for example, the requirements of the second paragraph of Article 21 of the Statute of the Court of Justice are set out in Article 35(2)(a)), or comply with the aim of harmonisation with the requirements laid down in Article 39(1) in respect of the lodging of the defence.

According to the first paragraph of Article 21 of the Statute of the Court of Justice, the application is to contain 'a brief statement of the pleas in law on which the application is based'. However, because the Statute itself, in Annex I thereto, provides that the procedure before the Tribunal is as a rule to consist of only one exchange of pleadings, it is not possible to require only a 'summary' of the pleas in law, as do RP CFI, for that would remove any real opportunity for applying Article 7(3) of Annex I to the Statute.

Article 35(2)(b) introduces a divergence from the RP CFI: it is for the applicant to produce the complaint and, if appropriate, the administration's decision rejecting it, those two documents making it possible to evaluate the admissibility of the application in the light of time-limits for bringing proceedings, and of the proper conduct of the pre-litigation procedure.

Article 35(3) reflects the Court of First Instance's current practice, the address for service having become a mere option, beside the additional or alternative use of technical means of communication. The drafting amendments thus clearly place the address for service and the use of other means of service on an equal footing.

4.1.1.4. Article 36

Putting the application in order

1. If an application does not comply with the requirements set out in Article 35(1)(a), (b), (c), (2) or (5), the Registrar shall prescribe a reasonable period within which the applicant is to comply with them by putting the application in order. If the applicant fails to put the application in order within the time prescribed, the Tribunal shall decide whether the non-compliance with these conditions renders the application formally inadmissible.

This article makes it plain that the scope for putting an originating application in order has been increased: henceforward the components of the application referred to in Article 35(1) are covered, except for those in (d), (e) and (f). This modification takes account of current practice within the Court of First Instance.

It will, lastly, be observed that Article 44(5a) of the RP CFI (arbitration clause) has no raison d'être *in the cases falling within the ambit of Article 236 EC.*

4.1.1.5. Article 37

Service of the application and notice in the Official Journal

1. The application shall be served on the defendant. In the cases provided for by Article 36, service shall be effected as soon as the application has been put in order or, failing that, as soon as the Tribunal has declared it admissible.

2. Notice shall be given in the *Official Journal of the European Union* of the date of registration of the application, the parties, the subject-matter of the proceedings and the form of order sought by the applicant.

Article 37(1) broadly reflects Article 45 RP CFI.

Article 37(2), which broadly corresponds to Article 24(6) of RP CFI, is placed here in so far as publication in the Official Journal *takes place in time after the application has been lodged, at the same time as service of that document on the defendant. The notice is published in all the official languages and no longer contains the pleas in law and main arguments put forward by the applicant.*

That amendment, which takes account of the particular nature of staff cases, permits some alleviation of the workload of the Court of Justice's translation departments. In any event, the Registry will draft a communication on the basis of a summary of the pleas in law and arguments annexed to the application, in accordance with the Practice Directions shortly to be drawn up. That communication will be available on the Court of Justice's internet site in the language of the case.

4.1.1.6. Article 38

First assignment of a case to a formation of the court

As soon as the application initiating proceedings has been lodged, the President of the Tribunal shall assign the case to one of the Chambers sitting with three Judges in accordance with the criteria set out in Article 12(2).

The President of that Chamber shall propose to the President of the Tribunal, in respect of each case assigned, the designation of a Judge to act as Rapporteur; the President of the Tribunal shall decide on the proposal.

This provision corresponds in essence to Article 13 of the RP CFI.

4.1.1.7. Article 39

Defence

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

(a) the name and address of the defendant;

(b) the description and address of the signatory;

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

(d) the pleas in law and the arguments of fact and law relied on;

(e) where appropriate, the nature of any evidence offered in support.

The provisions of Article 35(3) and (4) shall apply.

The lawyer acting for the defendant must lodge at the Registry a certificate that he is authorised to practise before a court of a Member State or of another State party to the Agreement on the European Economic Area.

2. The time-limit laid down in paragraph 1 may, in exceptional circumstances, be extended by the President on a reasoned application by the defendant.

The wording of Article 39(1) is modelled as closely as possible on that of Article 35(1). The Tribunal has not thought it necessary to add a provision relating to putting the defence in order comparable to Article 36 on putting the originating application in order.

It will be recalled that the administrative complaint and, where relevant, the response to that complaint, are to be produced at the application stage (see Article 35(2)(b)).

4.1.1.8. Article 40

Forwarding pleadings to the Council and the Commission

Where the Council or the Commission is not a party to a case, the Tribunal shall send to it copies of the application and of the defence, without the annexes thereto, to enable it to assess whether the inapplicability of one of its acts is being invoked under Article 241 EC or Article 156 EAEC.

In order to observe the chronology of the various stages of the procedure, Article 24(7) of the RP CFI has been moved here.

4.1.1.9. Article 41

Second exchange of pleadings

Pursuant to Article 7(3) of Annex I to the Statute of the Court of Justice, the Tribunal may decide, either of its own motion or on a reasoned application by the applicant, that a second exchange of written pleadings is necessary to supplement the documents before the Tribunal.

This article reproduces Article 7(3) of Annex I to the Statute of the Court of Justice which, as previously pointed out, contains one of the distinguishing features of the procedure before the Tribunal. As in Article 47(1) of the RP CFI, provision is made for the applicant to be able to request a second exchange, stating reasons for his request.

4.1.1.10. Article 42

Offers of further evidence

The parties may offer further evidence in support of their arguments until the end of the hearing, on condition that the delay in offering it is duly justified.

This article is modelled on Article 48(1) of the RP CFI.

4.1.1.11. Article 43

New pleas in law

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

2. If in the course of the procedure one of the parties puts forward a new plea in law, the President may, even after the expiry of the normal procedural time-limits, acting on a report of the Judge-Rapporteur, allow the other party time to answer on that plea.

Consideration of the admissibility of the plea shall be reserved for the final decision.

This article corresponds, in essence, to Article 48(2) of the RP CFI.

4.1.1.12. Article 44

Documents – Confidentiality – Anonymity

1. Subject to the provisions of Article 109(5), the Tribunal shall take into consideration only those documents which have been made available to the parties' representatives and on which they have been given an opportunity of expressing their views.

2. Where it is necessary for the Tribunal to verify the confidentiality, in respect of one or more parties, of a document that may be relevant in order to rule in a case, that document shall not be communicated to the parties at the stage of such verification. The Tribunal may by way of order request the production of such a document.

3. Where a document to which access has been denied by a Community institution has been produced before the Tribunal in proceedings relating to the legality of that denial, that document shall not be communicated to the other parties.

4. On a reasoned application by a party or of its own motion, the Tribunal may omit the name of the applicant or of other persons mentioned in connection with the proceedings, or certain information, from the publications relating to a case if there are legitimate reasons for keeping the identity of a person or the information confidential.

Article 44(1) to (3) correspond to Article 67(3) of the RP CFI. It is stated that the Tribunal may by way of order request the production of the document in order, where appropriate, to enable it to determine whether it is confidential. This is a measure of organisation of procedure for the purposes of Article 55 of these Rules, but adopted by way of order and not of decision, in derogation from Article 56 of the Rules. The choice of an order is justified by the sensitive character of the request for production of a document whose confidentiality is in issue.

Article 44(4) is based on Article 17(4) of the CFI's Instructions to the Registrar.

4.1.1.13. Article 45

Preliminary report

1. After the final exchange of the parties' pleadings, the President shall fix a date on which the Judge-Rapporteur is to present his preliminary report to the Tribunal.

2. The preliminary report shall contain recommendations as to whether measures of organisation of procedure or measures of inquiry should be undertaken, as to the possibility of an amicable settlement of the dispute and as to whether the case should be referred to the full court, to the Chamber sitting with five Judges or to the Judge-Rapporteur sitting as a single Judge.

3. The Tribunal shall decide what action to take upon the recommendations of the Judge-Rapporteur.

This article corresponds in substance to Article 52 of the RP CFI. Article 52(1) of

the latter has been simplified and provision made for the Judge-Rapporteur automatically to consider whether an amicable settlement of the dispute is possible when preparing the preliminary report, but it is not excluded that such consideration could take place earlier from the moment that the originating application is lodged.

4.1.1.14. Article 46

Connection – Joinder

1. In the interests of the proper administration of justice, the President may, at any time, after hearing the parties, order that two or more cases shall, on account of the connection between them, be joined for the purposes of the written or oral procedure or of the final decision. The cases may subsequently be disjoined. The President may refer these matters to the Tribunal.

2. Where cases assigned to different formations of the court are to be joined on account of the connection between them, the President of the Tribunal shall decide on their re-assignment.

3. The representatives of the parties to the joined cases may examine at the Registry the pleadings served on the parties in the other cases concerned. The President may, however, on application by a party, without prejudice to Article 44(1) and (2), exclude secret or confidential documents from that examination.

This article is based on Article 50 of the RP CFI.

Joinder is not, however, made subject to the condition that the cases should concern 'the same subject-matter' ('le même objet') as provided in Article 50 of the RP CFI. Indeed, having regard to the meaning given to the notion of 'le même objet' by Article 8(3) of Annex I to the Statute of the Court of Justice [in the Council's English text, 'ayant le même objet' is not rendered as 'the same subject-matter', as it is in Article 50 of the RP CFI, but as 'in which the same relief is sought', as in Article 14(2)(1)(b) of the RP CFI], this requirement would limit the instances of connection which could give rise to the reassignment or joinder of cases, even when reassignment or joinder was in the interest of the proper administration of justice.

This article also regulates the issue of reassignment where there is a connection between cases.

4.1.1.15. Article 47

Order in which cases are to be dealt with

1. The Tribunal shall deal with the cases before it in the order in which they become ready for examination.

2. The President may in special circumstances direct that a particular case be given priority.

3. The President may, after hearing the parties, in special circumstances, in particular with a view to facilitating an amicable settlement of the dispute, either on his own initiative or at the request of one of the parties, defer a case to be dealt with later.

This provision reproduces the substance of Article 55 of the RP CFI, subject to a few minor adjustments. In particular, the first paragraph has been simplified and paragraph 3 contains a reference to amicable settlements, the search for which might justify the deferral of a case. In addition, this article is included, not in the Chapter on the oral procedure, as in the RP CFI, but in the Chapter on the written procedure, so as to make it of broader application. This should not prevent priority from being given to a case at the stage of the oral procedure.

It will be noted that there is no proposal to introduce into the draft Rules of Procedure a specific chapter on expedited procedures, on the model of Article 76a of the RP CFI, the usefulness of which is doubtful, the ordinary procedure before the Tribunal being already fairly short and streamlined. Nonetheless, Article 47(2) ought to make it possible to afford priority treatment to a case if special circumstances so warrant.

The second and third subparagraphs of Article 55(2) RP CFI have been merged in paragraph 3.

4.2. **Chapter** **2**

ORAL PROCEDURE

Even having regard to the increasing importance of written pleadings in the adjudicative process, the hearing is still, in individual litigants' perception of the workings of justice, a crucial moment, allowing direct contact, and as a rule the only contact, with the court. A fair trial before the court adjudicating on the merits entails the recognition that the parties are entitled to a public hearing, but this right is not absolute, for parties may, in particular, waive a hearing, so long as they do so of their own free will and in an unequivocal manner (judgment of the European Court of Human Rights of 10 February 1983 in Albert and Le Compte *v.* Belgium, *A No 58, paragraph 35).*

Article 7(3) of Annex I to the Statute of the Court of Justice provides that, where there is a second exchange of pleadings, the Tribunal may, with the agreement of the parties, decide to proceed to judgment without a hearing.

4.2.1.1.

4.2.1.2.

4.2.1.3.

4.2.1.4.

4.2.1.5. Article 48
Holding of hearings

1. Without prejudice to the special provisions of these Rules permitting the Tribunal to adjudicate by way of order, and subject to paragraph 2, the procedure before the Tribunal shall include a hearing.

2. Where there has been a second exchange of pleadings and the Tribunal considers that it is unnecessary to hold a hearing, it may, with the agreement of the parties, decide to proceed to judgment without a hearing.

This article adds further detail to Article 7(3) of Annex I to the Statute of the Court of Justice which deals with the holding of a hearing only in the context of a second exchange of pleadings.

4.2.1.6. Article 49
Date of the hearing

The President shall fix the date of the hearing.

It may sometimes be difficult to establish precisely the beginning and end of the oral procedure. A 'grey area' certainly exists from the close of the written procedure to the opening of the oral procedure. For the avoidance of all ambiguity, this article is confined to the fixing of the date of the hearing.

4.2.1.7. Article 50
Absence of the parties from the hearing

The parties' representatives, duly invited to the hearing, shall be required to inform the Registry in good time if they do not wish to be present.

Where the representatives of all the parties have stated that they will not be present at the hearing, the Tribunal may decide that the oral procedure is closed.

It appears necessary to provide for the possibility of not holding a formal hearing where the Tribunal has been informed of their absence by the parties. At the moment, for lack of such a provision in its RP, the Court of First Instance is

obliged to hold a formal hearing even in the absence of the parties.

4.2.1.8. Article 51

Conduct of the hearing

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

2. The oral proceedings in cases heard in camera shall not be published.

3. A party may address the Tribunal only through his representative.

4. The President and each of the Judges may in the course of the hearing:

(a) put questions to the parties' representatives;

(b) invite the parties themselves to express their views on certain aspects of the case .

This article consolidates the provisions of Articles 56 to 58 of the RP CFI.

In substance, Article 51(3) reproduces Article 59 of the RP CFI, in accordance with the second sentence of Article 32 of the Statute of the Court of Justice.

Article 51(4)(b) reproduces an option provided by Article 32 of the Statute of the Court of Justice, namely, questioning the parties themselves in the course of the hearing. Given that staff cases often raise factual issues and that the Tribunal is invited to examine the possibilities of an amicable settlement of the dispute, it may prove helpful to put direct questions during the hearing to the applicant in person or to any official or other servant having taken a direct or indirect part in the adoption of the contested act. The Tribunal might thus turn that contact to good account with a view to attempting an amicable settlement of the dispute.

4.2.1.9. Article 52

Close of the oral procedure

1. The President shall declare the oral procedure closed at the end of the hearing.

2. The Tribunal may order the reopening of the oral procedure.

This article consolidates Articles 60 and 62 of the RP CFI, with the modifications necessary because there is no Advocate General in the Tribunal.

4.2.1.10. Article 53

Minutes of the hearing

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

2. The parties may inspect the minutes at the Registry and obtain copies at their own expense.

This article corresponds to Article 63 of the RP CFI.

4.3. **Chapter 3**

MEASURES OF ORGANISATION OF PROCEDURE

4.4. AND MEASURES OF INQUIRY

This chapter concerns the measures which the Judge-Rapporteur and the formation of the court may need to take in order to facilitate the making of cases ready for hearing, the conduct of proceedings and the disposal of cases. Apart from certain specific alterations, the object of the modifications made in relation to the wording of the RP CFI is, essentially, to underline the scope of each of the classes of measures mentioned above, the difference in scope being the reason for their differing procedural arrangements.

It will be observed that with a view to simplifying the procedure and adapting it to the specific features of staff cases, in accordance with the seventh recital in the preamble to Decision 2004/752, only the most significant measures, in procedural terms, are to be adopted by way of order of the Tribunal. Moreover, the Judge-Rapporteur is, as a rule, competent to adopt measures of organisation of procedure (without prejudice to Article 44(2)), whereas it is the Tribunal that is competent to adopt measures of inquiry.

Amicable settlements are the subject of a separate chapter, in contrast to their treatment in the RP CFI.

4.4.1.1. Article 54

General provisions

1. The purpose of measures of organisation of procedure and measures of inquiry shall be to ensure that cases are prepared for hearing, procedures carried out and disputes resolved under the best possible conditions.

Those measures may be adopted or varied at any stage of the proceedings.

2. Each party may, at any stage of the proceedings, propose the adoption or modification of measures of organisation of procedure or of inquiry. In that case, the other parties shall be heard before those measures are prescribed.

3. Where the procedural circumstances so require, the Judge-Rapporteur or, where appropriate, the Tribunal shall inform the parties of the measures envisaged in order to give them an opportunity to submit their observations orally or in writing.

The opening clause of Chapter 3 refers to both measures of organisation of procedure and measures of inquiry. The ensuing provisions in the chapter, on the other hand, serve to establish a distinction between them by reason of their nature, given that the procedural arrangements for their adoption are different.

The second subparagraph of Article 54(1) reproduces a rule appearing in Articles 49 and 54 of the RP CFI.

Article 54(2) and (3) broadly reiterates the content of Article 64(4) of the RP CFI. Unlike the latter Rules, it is provided here that the parties should also be heard before certain measures of inquiry are adopted. In contrast, the Judge-Rapporteur having henceforth power to decide on measures of organisation of procedure, Article 64(5) of the RP CFI (which states that the formation of the court may delegate that power to the Judge-Rapporteur) has not been reproduced.

Section 1 – Measures of organisation of procedure

4.4.1.2. Article 55

Purpose and types

1. Measures of organisation of procedure shall have as their purpose:

(a) to ensure efficient conduct of the written and oral procedure and to facilitate the taking of evidence;

(b) to determine the points on which the parties must present further argument or which would call for a measure of inquiry;

(c) to clarify the forms of order sought by the parties, their pleas in law and arguments and the points at issue between them;

2. Measures of organisation of procedure may, in particular, consist of:

(a) putting questions to the parties;

(b) inviting the parties to make written or oral submissions on certain aspects of

the proceedings;

(c) asking the parties for information or particulars;

(d) asking the parties to produce documents or any papers relating to the case;

(e) summoning the parties to meetings.

This article reproduces in substance the contents of Article 64 of the RP CFI.

Article 55(1) specifies the purpose of measures of organisation of procedure. This paragraph no longer contains a reference to an amicable settlement of the dispute, which forms the subject of a separate chapter.

Article 55(2) supplies a non-exhaustive list of measures that may be adopted under this heading. The measures referred to concern the parties alone, the option of asking third parties for information or documents falling within the ambit of measures of inquiry. Likewise, the decision to summon or invite the parties in person to meetings no longer figures within the framework of measures of organisation of procedure but may be adopted only as a measure of inquiry (Article 57(a)) or within the context of an amicable settlement (compare with the third indent of the second subparagraph of Article 68(1)). To be precise, the ambit of Article 55(2)(e) is to be distinguished from that of Article 57(a). Whereas in the first case it is the parties' representatives who may be summoned to meetings, particularly with a view to the organisation of the hearing, in the second case it is the parties themselves who are summoned before the Judges.

4.4.1.3. Article 56
Procedure

Without prejudice to Article 44(2), measures of organisation of procedure shall be prescribed by the Judge-Rapporteur unless he refers the matter to the Tribunal on account of the scope of the measures envisaged or of their importance to the disposal of the case. The Registrar shall be responsible for notifying them to the parties.

In order to achieve greater flexibility in the preparation of cases for hearing, power is conferred on the Judge-Rapporteur to decide on measures of organisation of procedure, whereas under the RP CFI that power belongs to the Court of First Instance (Article 64 of the RP CFI). Provision is, however, made for the Judge-Rapporteur to refer the matter to the Tribunal on account of the scope of the measures envisaged or of their importance to the disposal of the case.

These measures are to be adopted by way of decision, which appreciably simplifies procedure. The only exception is the reference to Article 44(2) of these Rules, which provides that it is by way of order that the Tribunal may request the production of documents when called upon to rule on their confidentiality.

Although a decision adopting a measure of organisation of procedure lacks the same degree of formality, it is not on that account any the less binding than an

order. In practice, it is hardly conceivable that a party would not comply with a request made by the Tribunal. If that were to happen, the Tribunal could draw the appropriate conclusions in its decision.

4.4.2. Section 2 – Measures of inquiry

4.4.2.1. Article 57
Types

Without prejudice to the provisions of Articles 24 and 25 of the Statute of the Court of Justice, the following measures of inquiry may be adopted:

(a) the personal appearance of the parties;

(b) asking third parties for information or particulars;

(c) asking third parties to produce documents or any papers relating to the case;

(d) oral testimony;

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

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

This article, like Article 65 of the RP CFI, contains an exhaustive list of measures of inquiry. In order to avoid any overlap of measures of inquiry with measures of organisation of procedure, which are adopted under a different procedure, points (b) and (c) refer only to the request to third parties to supply information or produce documents, inasmuch as the request to the parties to supply information or produce documents falls within the scope of measures of organisation of procedure.

4.4.2.2. Article 58
Procedure

1. Measures of inquiry shall be prescribed by the Tribunal.

2. The decision concerning the measures referred to in Article 57(d), (e) and (f) shall be taken by means of an order setting out the facts to be proved, after the parties have been heard.

The decision concerning the measures referred to in Article 57(a), (b) and (c) shall be notified to the parties by the Registrar.

3. The parties may be present at the measures of inquiry.

4. Where the Tribunal decides to adopt a measure of inquiry but does not undertake such a measure itself, it shall entrust the task of so doing to the Judge-Rapporteur.

5. A party may always submit evidence in rebuttal or amplify previous evidence.

While measures of organisation of procedure are as a rule adopted by decision of the Judge-Rapporteur, measures of inquiry are prescribed by the formation of the court.

Only oral testimony, the commissioning of an expert's report and inspection of the place or thing in question are prescribed by way of an order, it being possible to adopt the other measures more simply by decision, notified to the parties under the responsibility of the Registrar. The letter informing the parties of the measures referred to in Article 57(a) to (c) will evidently indicate the conditions for implementing the measure of inquiry and, where appropriate, set out the facts to be proved.

Article 58(3) reproduces the contents of Article 67(2) of the RP CFI.

Article 58(4) corresponds in substance to Article 67(1) of the RP CFI , but in a more condensed form.

Article 58(5) corresponds in substance to Article 66(2) of the RP CFI.

4.4.3. Section 3 – The summoning and examination of witnesses and experts

4.4.3.1. Article 59

Summoning of witnesses

1. The Tribunal may, either of its own motion or on application by one of the parties, order that certain facts be proved by witnesses.

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

2. A witness whose examination is considered necessary shall be summoned by the Tribunal by means of an order containing the following information:

(a) the surname, forenames, description and residence of the witness;

(b) the date and place of the hearing;

(c) an indication of the facts about which the witness is to be examined;

(d) where appropriate, particulars of the arrangements made by the Tribunal for

reimbursement of expenses incurred by the witness, and of the sanctions which may be imposed on defaulting witnesses.

3. The Tribunal may make the summoning of a witness for whose examination a party has applied conditional upon the deposit with the cashier of the Tribunal of a sum sufficient to cover the taxed costs thereof; the Tribunal shall fix the amount of the payment.

The cashier of the Tribunal shall advance the funds necessary in connection with the examination of any witness summoned by the Tribunal of its own motion.

This article corresponds, in substance, to the first three paragraphs of Article 68 of the RP CFI, subject to a few alterations of a drafting nature (in the light of the new Article 81, it is possible to omit all reference to the service of orders).

4.4.3.2. Article 60
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 paragraph 2 and in Article 63.

The witness shall give his evidence to the Tribunal, the parties having been given notice to attend. After the witness has given his main evidence the President and each of the Judges may, at the request of a party or of his own motion, put questions to him.

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

2. Subject to the provisions of Article 63, the witness shall, before giving his evidence, take the following oath:

'I swear that I shall tell the truth, the whole truth and nothing but the truth.'

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

3. The Registrar shall draw up minutes in which the evidence of each witness is reproduced.

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

The minutes shall constitute an official record.

This article corresponds in substance to the last three paragraphs of Article 68 of

the RP CFI. One change, inspired by the practice of the Member States, concerns the taking of the witness oath which is to take place before the giving of evidence and not after, as provided for by Article 68(5) of the RP CFI.

4.4.3.3. Article 61

Duties of witnesses

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

2. If a witness who has been duly summoned fails to appear before the Tribunal, the latter may impose upon him a pecuniary sanction not exceeding EUR 5 000 and may order that a further summons be served at the witness's own expense.

The same sanction may be imposed upon a witness who, without good reason, refuses to give evidence or to take the oath or where appropriate to make a solemn affirmation equivalent thereto.

3. If the witness proffers a valid excuse to the Tribunal, the pecuniary sanction imposed on him may be cancelled. The pecuniary sanction imposed may be reduced at the request of the witness where he establishes that it is disproportionate to his income.

4. Sanctions imposed and other measures ordered under this Article shall be enforced in accordance with Articles 244 and 256 of the EC Treaty and Articles 159 and 164 of the EAEC Treaty.

This article corresponds to Article 69 of the RP CFI.

4.4.3.4. Article 62

Experts' reports

1. The Tribunal may, either of its own motion or on application by one of the parties, 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 make his report.

2. The expert shall receive a copy of the order, together with all the documents necessary for carrying out his task. He shall be under the supervision of the Judge-Rapporteur, who may be present during his investigation and who shall be kept informed of his progress in carrying out his task.

The Tribunal may request the parties or one of them to lodge security for the costs of the expert's report.

3. At the request of the expert, the Tribunal may order the examination of witnesses. Their examination shall be carried out in accordance with Article 60.

4. The expert may give his opinion only on points which have been expressly referred to him.

5. After the expert has made his report, the Tribunal may order that he be examined, the parties having been given notice to attend.

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

6. Subject to the provisions of Article 63, the expert shall, after making his report, take the following oath before the Tribunal:

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

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

This article corresponds to Article 70 of the RP CFI.

4.4.3.5. Article 63
Oath

1. The President shall instruct any person who is required to take an oath before the Tribunal, as witness or expert, to tell the truth or to carry out his task conscientiously and impartially, as the case may be, and shall warn him of the criminal liability provided for in his national law in the event of any breach of this duty.

2. Witnesses and experts shall take the oath either in accordance with the first subparagraph of Article 60(2) and the first subparagraph of Article 62(6) or in the manner laid down by their national law.

3. Where the national law provides the opportunity to make, in judicial proceedings, a solemn affirmation equivalent to an oath as well as or instead of taking an oath, the witnesses and experts may make such an affirmation under the conditions and in the form prescribed in their national law.

Where their national law provides neither for taking an oath nor for making a solemn affirmation, the procedure described in the first paragraph shall be followed.

This article corresponds to Article 71 of the RP CFI.

4.4.3.6. Article 64
Perjury

1. The Tribunal may decide to report to the competent authority, referred to in Annex III to the Rules supplementing the Rules of Procedure of the Court of Justice, of the Member State whose courts have criminal jurisdiction any case of perjury on

the part of a witness or expert before the Tribunal, account being taken of the provisions of Article 63.

2. The Registrar shall be responsible for communicating the decision of the Tribunal. The decision shall set out the facts and circumstances on which the report is based.

This article corresponds to Article 72 of the RP CFI.

4.4.3.7. Article 65
Objection

1. If one of the parties objects to a witness or to an expert on the ground that he is not a competent or proper person to act as witness or expert or for any other reason, or if a witness or expert refuses to give evidence, to take the oath or to make a solemn affirmation equivalent thereto, the Tribunal shall adjudicate by way of reasoned order.

2. An objection to a witness or to 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.

This article corresponds to Article 73 of the RP CFI, subject to one modification, consisting of providing that the Tribunal is to adjudicate on the objection by way of reasoned order.

4.4.3.8. Article 66
Reimbursement of expenses – Compensation or fees

1. Witnesses and experts shall be entitled to reimbursement of their travel and subsistence expenses. The cashier of the Tribunal may make a payment to them towards these expenses in advance.

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

This article corresponds to Article 74 of the RP CFI .

4.4.3.9. Article 67
Letters rogatory

1. The Tribunal may, on application by a party or of its own motion, issue letters rogatory for the examination of witnesses or experts.

2. Letters rogatory shall be issued in the form of an order which shall contain the name, forenames, description and address of the witness or expert, set out the facts on which the witness or expert is to be examined, name the parties, their representatives, indicate their addresses and briefly describe the subject-matter of the proceedings.

3. The Registrar shall send the order to the competent authority named in Annex I to the Rules supplementing the Rules of Procedure of the Court of Justice of the Member State in whose territory the witness or expert is to be examined. Where necessary, the order shall be accompanied by a translation into the official language or languages of the Member State to which it is addressed.

The authority named pursuant to the first subparagraph shall pass on the order to the judicial authority which is competent according to its national law.

The competent judicial authority shall give effect to the letters rogatory in accordance with its national law. After implementation the competent judicial authority shall transmit to the authority named pursuant to the first subparagraph the order embodying the letters rogatory, any documents arising from the implementation and a detailed statement of costs. These documents shall be sent to the Registrar.

The Registrar shall be responsible for the translation of the documents into the language of the case.

4. The Tribunal shall defray the expenses occasioned by the letters rogatory without prejudice to the right to charge them, where appropriate, to the parties.

This article corresponds to Article 75 of the RP CFI, subject to the omission of the second subparagraph of paragraph 2, in order to take account of Article 81.

4.5. **Chapter 4**

THE AMICABLE SETTLEMENT OF DISPUTES

The notion of amicable settlements is not entirely new to the Community courts. Article 64(2)(d) of the RP CFI already envisages measures 'to facilitate the amicable settlement of proceedings'. The Council has, however, emphasised the importance of such an alternative method of dispute resolution, mentioning it expressly in the seventh recital in the preamble to Decision 2004/752:

'The judicial panel should try cases by a procedure matching the specific features of the disputes that are to be referred to it, examining the possibilities for amicable settlement of disputes at all stages of the procedure';

and also in Article 7(4) of Annex I to the Statute of the Court of Justice, which reads:

'At all stages of the procedure, including the time when the application is filed, the Civil Service Tribunal may examine the possibilities of an amicable settlement of the dispute and may try to facilitate such settlement.'

This chapter is designed to give full effect to those provisions. The Tribunal has taken into consideration the opinions expressed at meetings with representatives of the administrations and of the unions and staff committees 1. What is more, it has relied on a comparative study in several Member States showing considerable differences in the laws of the countries concerned, ranging from an open attitude to restrictive, even negative, approaches.

On first analysis, recourse to the amicable settlement of cases does not appear evident in the context of litigation as to lawfulness, which is objective in nature: the Community courts are called upon to review the legal act or conduct of an institution with reference to a higher rule of law. It is also settled case-law that the Community courts may not issue directions to the institutions or make a ruling acting in the place and stead of the appointing authority. It is true that Article 91 of the Staff Regulations confers on the Tribunal unlimited jurisdiction in disputes of a financial character. However, in order for it to give a decision on that head, it is still necessary for it to have validly under consideration a request for annulment.

In those circumstances, what scope is there for a procedure for the amicable settlement of disputes? In fact, the preceding considerations in no way prevent recourse to such as procedure as an accompaniment to that under Articles 90 and 91 of the Staff Regulations, in particular when it is possible to arrive at a more rapid solution of the dispute, by avoiding unnecessary proceedings the outcome of which appears certain, or again when annulment of an act or dismissal of the action for annulment does not furnish a real

[1] Meeting at the Court of Justice, organised by the Civil Service Tribunal, with the Heads of Administration of 26 January 2006. That meeting was followed, on 8 February 2006, by another meeting with the union and staff organisations, together with their lawyers.

remedy capable of putting an end, equitably, to the dispute at issue, especially if that dispute constitutes a source of disruption of employment relationships.

It may be added that very often the administration is vested with considerable discretion in carrying out the duties entrusted to it and that judicial review of substantive lawfulness, in this context, is frequently marginal. The fact remains that if, in a particular case, the lawfulness of an act adopted by the appointing authority by virtue of a wide discretionary power is not called in question by the Tribunal on grounds of misuse of powers, it is not inconceivable that the appointing authority could have attained the object pursued by adopting an act, just as lawful, other than the one challenged before the Tribunal, an alternative act which could have avoided the dispute in question. Such cases represent a domain that lends itself to the search for an amicable settlement.

Tthere are, however, several reasons why until now the amicable settlement has occurred in only a limited number of cases. First, it appears that amicable settlement on the court's initiative, while featuring in contemporary trends in dispute resolution, is not yet fully part of the culture of the Community administrations, as was made apparent in the consultations undertaken by the Tribunal in connection with the drafting of its Rules of Procedure. 2 Second, bringing an action before the Tribunal takes place after an unsuccessful attempt to resolve the dispute, spread over several months, under the preliminary administrative procedure. What the latter procedure ought to do is precisely to supply a suitable framework for attempts at an amicable settlement. Last, a great number of cases, particularly after the entry into force of the new Staff Regulations, call for judicial clarification, properly speaking, of the legal issues raised.

Having regard to all those considerations, the following provisions provide a framework in which to attempt to develop this manner of settling disputes. It could well be that the Tribunal may in the future propose amendment of this legal framework in order to take account of experience gained.

On the basis of the abovementioned texts and of the elements already contained in the RP CFI, particularly in Article 64, this chapter:

– *sets out the measures that the Tribunal will be empowered to adopt with a view to an amicable settlement (Article 68),*

– *specifies the scope of agreements reached on conclusion of a settlement (Article 69) and*

– *prohibits the use in contentious proceedings of information exchanged in connection with an amicable settlement when negotiations have failed (Article 70).*

It will further be noted that other provisions of these draft Rules are also directed towards facilitating an amicable settlement:

– *consideration of whether an amicable settlement is possible in the preliminary report (Article 45),*

[2] See the abovementioned meetings of 26 January and 8 February 2006.

– *possible adjournment of adjudication of a case (Article 47),*

– *opportunity to put questions to the parties in person during the hearing with a view to seeking an amicable settlement (Article 51),*

– *future Practice Directions (Article 120).*

4.5.1.1. Article 68
Measures

1. The Tribunal may, at all stages of the procedure, examine the possibilities of an amicable settlement of the dispute between the applicant and the defendant, propose one or more solutions capable of putting an end to the dispute and adopt appropriate measures with a view to facilitating such settlement.

It may, amongst other things:

– ask the parties or third parties to supply information or particulars;

– ask the parties or third parties to produce documents;

– invite to meetings the parties' representatives, the parties themselves or any official or other servant of the institution duly empowered to conclude an agreement.

2. Paragraph 1 shall apply to proceedings for interim measures also.

3. The Tribunal may instruct the Judge-Rapporteur, assisted by the Registrar, to seek the amicable settlement of a dispute or to implement the measures which it has adopted to that end.

The purpose of this first article is in particular to draw up a list of measures that may be used for an amicable settlement and to clarify the role of the chief actors called upon to take part.

Article 68(1)

The first subparagraph broadly reproduces the wording of Article 7(4) of Annex I to the Statute of the Court of Justice. The specific measures set out in the second subparagraph reproduce and supplement certain measures contained in Article 64(3) of the RP CFI, but are not exhaustive. What are provided for here are neither measures of organisation of procedure nor measures of inquiry, for this is not an appropriate context for recourse to Article 55 et seq., inasmuch as the whole amicable settlement procedure rests on the good will of the parties.

Article 68(2)

It is also provided that the measures in question may be used in proceedings for interim measures.

Article 68(3)

Although the Tribunal must always retain control of the management of cases, the Judge-Rapporteur, assisted by the Registrar, may be deputed to play a more direct part in the attempt to secure an amicable settlement.

4.5.1.2. Article 69

Agreement of the parties

1. Where the applicant and the defendant come to an agreement before the Tribunal or the Judge-Rapporteur as to the solution putting an end to the dispute, the terms of that agreement may be recorded in minutes signed by the President or the Judge-Rapporteur and by the Registrar. The agreement as entered in the minutes shall constitute an official record.

The case shall be removed from the register by reasoned order of the President.

At the request of the applicant and defendant, the President may rehearse the terms of the agreement in the order removing the case from the register.

2. Where the applicant and the defendant notify the Tribunal that they have reached an agreement out of court as to the resolution of the dispute and state that they abandon all claims, the President shall order the case to be removed from the register.

3. The President shall give a decision as to costs in accordance with the agreement or, failing that, at his discretion.

In the event of the parties' reaching an amicable settlement, this article is intended to define the consequences of their agreement, both when that agreement is concluded before the Tribunal (paragraph 1) and when it is concluded out of court (paragraph 2). It is only in the former case that the Tribunal will be able, at the parties' request, to rehearse the terms of the agreement in the minutes or in the order removing the case from the register, which of necessity means that the Tribunal will carry out a certain review of the agreement and will refuse to take formal note of it if it is, at first sight, contrary to Community law (applying the principle of a prima facie examination as, for example, in proceedings for interim measures).

Article 69(1)

The first subparagraph sets out the procedure for recording the agreement reached. Entered in minutes, the agreement is to be treated as an official record

(Article 53(1) of the draft Rules), a concept already employed in the RP CFI (Article 76(1) of the RP CFI).

The second subparagraph indicates the chief consequence of the agreement for the proceedings, namely, removal from the register.

The third subparagraph enables the President, at the parties' request, to mention the terms of the agreement in the striking-out order.

Article 69(2)

This paragraph is based on the provisions of Article 98(1) of the RP CFI.

Article 69(3)

The decision on costs is to be taken in accordance with the terms of the agreement or, failing that, in the Tribunal's discretion, taking into account the particular circumstances of the case and of its amicable settlement.

4.5.1.3. Article 70

Amicable settlement and contentious proceedings

No opinion expressed, suggestion made, proposal put forward, concession made or document drawn up for the purposes of the amicable settlement, whatever its nature, may be relied on as evidence by the Tribunal or the parties in the contentious proceedings.

The prohibition of the use in contentious proceedings of information exchanged in connection with an amicable settlement, when negotiations have failed, rests on two principal elements:, first, the amicable settlement as a 'procedure parallel' to the contentious proceedings, which implies a certain impermeability between the information exchanged during the amicable settlement and the subsequent conduct of the contentious proceedings and, second, the need to guarantee 'free speech' for the parties so as to facilitate negotiations between them, such a guarantee seeming essential in order to preclude, for example, an opinion expressed or a concession made from being prejudicial to the party concerned if the attempts to reach an amicable settlement should fail.

4.6. **Chapter** **5**

STAY OF PROCEEDINGS AND DECLINING OF JURISDICTION IN FAVOUR OF THE COURT OF JUSTICE AND THE COURT OF FIRST INSTANCE

This chapter reproduces, in substance, the relevant provisions of the RP CFI and of Annex I to the Statute of the Court of Justice, in particular, Article 8(2) and (3) thereof.

One innovation in comparison with the RP CFI will be noted, that is to say, the possibility for the President of the formation of the court to stay proceedings in a case, after hearing the parties, when the proper administration of justice so requires, whereas Article 77 of the RP CFI provides only for the eventuality of 'the joint request of the parties' (in addition to the cases provided for by the third paragraph of Article 54 of the Statute of the Court of Justice or in appeal proceedings).

4.6.1.1. Article 71

Conditions and procedure for staying of proceedings

1. Without prejudice to Articles 117(4), 118(4) and 119(4), proceedings may be stayed:

(a) where the Tribunal and either the Court of First Instance or the Court of Justice are seised of cases in which the same issue of interpretation is raised or the validity of the same act is called in question, until the judgment of the Court of First Instance or the Court of Justice has been delivered;

(b) where an appeal is brought before the Court of First Instance against a decision of the Tribunal disposing of the substantive issues in part only, disposing of a procedural issue concerning a plea of lack of competence or inadmissibility or dismissing an application to intervene;

(c) at the joint request of the parties;

(d) in other particular cases where the proper administration of justice so requires.

2. The decision to stay the proceedings shall be made by reasoned order of the President after hearing the parties; the President may refer the matter to the Tribunal.

3. Any decision ordering the resumption of proceedings before the end of the stay or as referred to in Article 72(2) shall be adopted in accordance with the same procedure.

This article is based on Articles 77 and 78 of the RP CFI and contains the relevant provisions of Annex I to the Statute of the Court of Justice. It will be recalled that the first subparagraph of Article 8(3) of Annex I to the Statute provides that the Tribunal may stay proceedings if the Tribunal and the Court of First Instance are seised of cases in which the same issue of interpretation is raised or the validity of the same act is called in question. It is not inconceivable that the Tribunal and the Court of Justice should be seised of cases in which the same issue of interpretation is raised or the validity of the same act is called in question: in that case, the Tribunal must be able to stay proceedings by reason of the grounds being identical until the Court of Justice has delivered its judgment. Article 71(1)(a)

takes account of that requirement.

Article 71(1)(b) and (c) correspond in substance to the same sections of Article 77 of the RP CFI. In (d) the text introduces an innovation, enabling a stay of proceedings in circumstances not covered by (a) to (c), in the interests purely of the administration of justice.

Any decision to stay proceedings must necessarily have the effect of prolonging the course of proceedings beyond the normal duration that the parties are entitled to expect. That being so, the order must set out the reasons justifying the stay.

4.6.1.2. Article 72

Duration and effects of a stay of proceedings

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

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

3. While proceedings are stayed time shall, except for the purposes of the time-limit prescribed in Article 109(1) for an application to intervene, cease to run for the purposes of procedural time-limits.

Time shall begin to run afresh for the purposes of the time-limits from the date on which the stay of proceedings comes to an end.

Subject to a few amendments of a drafting nature, this article corresponds to Article 79 of the RP CFI. Service on the parties is henceforth provided for in a general manner by Article 81.

4.6.1.3. Article 73

Declining of jurisdiction

1. In accordance with Article 8(2) of Annex I to the Statute of the Court of Justice, where the Tribunal finds that the action before it falls within the jurisdiction of the Court of Justice or of the Court of First Instance, it shall refer that action to the Court of Justice or to the Court of First Instance.

2. The Tribunal shall make its decision by way of reasoned order.

This article deals with lack of jurisdiction as governed by Article 8(2)of Annex I to the Statute of the Court of Justice. Provision is made for the Tribunal to decide by way of reasoned order.

It has not appeared necessary to reproduce the content of the second subparagraph of Article 8(3) of Annex I to the Statute of the Court of Justice, that

provision applying exclusively, as a transitional measure, to cases with the same subject-matter which have already been brought before the Court of First Instance as a court of first instance.

4.7. **Chapter 6**

DISCONTINUANCE, NO NEED TO ADJUDICATE AND PRELIMINARY ISSUES

This chapter sets out the rules on events which are susceptible of adversely affecting the normal course of proceedings. It includes and adapts to the Tribunal the provisions of the RP CFI in Chapter 8 of Title 2 and Chapter 2 of Title 3.

Chapter 6 does not reproduce Article 114 of the RP CFI, which allows the parties to request separate consideration of a plea of inadmissibility, a plea of lack of competence or another preliminary plea. That procedural opportunity, which entails further exchanges of pleadings between the parties, is ill suited to the shortened procedure, limited as a rule to a single exchange of pleadings, that the Council has decided to introduce before the Tribunal. The defendant, who would as a result be called upon to plead at one and the same time on both the admissibility and the substance of the action, could however, if convinced of the manifest inadmissibility of the action, make summarised pleadings concerning the substance in its defence, while applying to the Tribunal for leave to lodge a rejoinder in case the Tribunal should not be minded to dismiss the action as manifestly inadmissible.

Nor does this chapter reproduce the provisions of Article 98 of the RP CFI, given that similar provisions appear in Article 69(2) in the chapter relating to the amicable settlement of disputes.

4.7.1.1. Article 74
Discontinuance

If the applicant informs the Tribunal, 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 88(5).

This article broadly reproduces the provisions of Article 99 of the RP CFI.

4.7.1.2. Article 75
No need to adjudicate

If the Tribunal finds that an action has become devoid of purpose and that there is no longer any need to adjudicate on it, it may at any time, of its own motion, after hearing the parties, adopt a reasoned order.

This article corresponds to the provisions of Article 113 of the RP CFI, so far as they concern the case of no need to adjudicate. However, because Article 113 makes reference to Article 114 of those Rules which has not been retained in these draft Rules, it has been necessary to adapt the wording of Article 75.

4.7.1.3. Article 76
Action manifestly bound to fail

Where it is clear that the Tribunal has no jurisdiction to take cognisance of an action or of certain of the claims therein or where the action is, in whole or in part, manifestly inadmissible or manifestly lacking any foundation in law, the Tribunal may, without taking further steps in the proceedings, give a decision by way of reasoned order.

This article reproduces in substance Article 111 of the RP CFI. The alterations are intended to enable the Tribunal to make an order partly disposing of a case, as envisaged by Article 9 of Annex I to the Statute of the Court of Justice.

4.7.1.4. Article 77
Absolute bar to proceeding

The Tribunal may at any time, of its own motion, after hearing the parties, decide whether there exists any absolute bar to proceeding with an action. If the Tribunal considers that it possesses sufficient information, it may, without taking further steps in the proceedings, give a decision by way of reasoned order.

The reasons given for Article 75 hold good also for absolute bars to proceeding which were, in the RP CFI, the subject-matter of Article 113 of those Rules.

4.8. **Chapter** **7**

JUDGMENTS AND ORDERS

This chapter is based, by and large, on the similar provisions applicable to the Court of First Instance. It has been judged necessary to add some provisions relating to orders.

4.8.1.1. Article 78
Judgments

A judgment shall contain:

– the statement that it is the judgment of the Tribunal,

– **the date of its delivery,**

– **the names of the President and the Judges taking part in it, with an indication as to the name of the Judge-Rapporteur,**

– **the name of the Registrar,**

– **the description of the parties,**

– **the names of the parties' representatives,**

– **a statement of the forms of order sought by the parties,**

– **a summary of the facts,**

– **the grounds for the decision,**

– **the operative part of the judgment, including the decision as to costs.**

This article corresponds in substance to Article 81 of the RP CFI.

It seemed necessary in the third indent to include, as is the case for the Court of Justice, in addition to the names of the President and Judges composing the formation of the court, the name of the Judge-Rapporteur.

4.8.1.2. Article 79
Delivery of judgment

1. The judgment shall be delivered in open court. Due notice shall be given to the parties of the date of delivery.

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; the Registrar shall ensure that each of the parties is served with a certified copy of the judgment.

3. The Registrar shall record on the original of the judgment the date on which it was delivered.

This article corresponds, in essence, to Article 82 of the RP CFI, subject to an amendment made in paragraph 1. The term 'given notice to attend to hear it' ('convoquées' in French) used in Article 82 might suggest that a sanction is foreseen when parties do not comply. That not being the case, more flexible wording has been preferred.

4.8.1.3. Article 80
Orders

1. Every order shall contain:

– the statement that it is the order of the Tribunal, the President of the Tribunal or of the formation of the court,

– the date of its adoption,

– the names of the President and, where appropriate, the Judges taking part in its adoption, with an indication as to the name of the Judge-Rapporteur,

– the name of the Registrar,

– the description of the parties,

– the names of the parties' representatives,

– 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 statement of the forms of order sought by the parties,

– a summary of the facts,

– the grounds for the decision.

This article is the counterpart of Article 78 concerning judgments. Article 80(2), in particular, concerns orders which must be reasoned under the Rules of Procedure.

Article 81
Adoption of orders

The original of the order, signed by the President, shall be sealed and deposited at the Registry; the Registrar shall ensure that each of the parties is served with a certified copy of the order.

This article is the counterpart of Article 79(2). There is, therefore, no longer any need to provide for service to be effected every time it is indicated that the President or the formation of the court is to give its decision by way of order.

4.8.1.4. Article 82

Binding effect

1. Subject to the provisions of Article 12(1) of Annex I to the Statute of the Court of Justice, judgments shall be binding from the date of their delivery.

2. Orders shall be binding from the date of their service, save as otherwise provided in these Rules and in Article 12(1) of Annex I to the Statute of the Court of Justice.

Article 82(1) corresponds to Article 83 of the RP CFI, without prejudice to the replacement of the reference to Article 60 of the Statute of the Court of Justice by a reference to Article 12(1) of Annex I to the Statute, the content of which is, in substance, the same as that of the first paragraph of Article 60. In contrast, the second paragraph of Article 60 finds no application before the Tribunal, for that provision covers solely the case of annulment of a regulation by the Court of First Instance, which is inconceivable in relation to the jurisdiction of the Tribunal.

Article 82(2) is new. It will be recalled that orders are not delivered in open court but bear the date on which they are made.

4.8.1.5. Article 83

Rectification of decisions

1. The Tribunal may, by way of order, of its own motion or on application by a party made within a month after the decision to be rectified has been served, after hearing the parties, rectify clerical mistakes, errors in calculation and obvious slips in it.

2. 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.

This article corresponds in substance to Article 84 of the RP CFI, subject to the addition of orders. The rectifying order is adopted by the formation of the court that adopted the decision to be rectified. The parties may seek rectification within the period of a month, running from the date of service of the judgment or order. The other party may submit observations.

4.8.1.6. Article 84

Omission of any decision as to costs

1. If the Tribunal should omit to give a decision on costs, any party may within a month after service of the decision apply to the Tribunal to supplement its decision.

2. The application shall be served on the opposite party and the President shall prescribe a period within which that party may present written observations.

3. After these observations have been presented, the Tribunal shall decide at the same time on the admissibility and on the substance of the application.

This article corresponds to Article 85 of the RP CFI.

4.9. **Chapter 8**

COSTS

Under Article 7(5) of Annex I to the Statute of the Court of Justice, '[t]he ... Tribunal shall rule on the costs of a case. Subject to the specific provisions of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs [if they have been applied for in the successful party's pleadings]'.

That provision makes it necessary to remove from the Tribunal's Rules of Procedure the provisions of Article 88 of the RP CFI, which make the institutions responsible for bearing the costs they incur in proceedings between them and their servants, whatever the outcome of the case. It does, however, also invite the Tribunal to lay down in its Rules of Procedure special provisions regulating the application of the rule 'who loses pays'.

In this respect, it is proposed, first, to provide expressly that the Tribunal will be able to order that an unsuccessful party should not bear all the costs where equity so requires. The reference to equity appears in Article 97(4) and the third paragraph of Article 148 of the RP CFI. Most national and international courts are vested with such a power of assessment in the allocation of costs, as appears from a comparative law study carried out by the services of the Court of Justice. If, in the light of the circumstances of the case and/or of the situation of the parties, it is unreasonable for the unsuccessful party to bear all the costs, the court may order a different division of the costs. In certain legal systems (especially the Spanish, Finnish, Greek and Italian), the degree of uncertainty as to the outcome of the case and the novelty and difficulty of the issues raised or the fact that the legal provisions in question are open to differing interpretations are also taken into consideration.

The Tribunal has also contemplated a mechanism for capping the costs to be borne by the unsuccessful applicant. This option has in the end been rejected.

It is proposed, second, that the Tribunal should be able, in making an award of costs, to have regard to the conduct of the successful party. This derogation, faithful to the spirit of the RP CFI, on the one hand invites the court, where a party discontinues or withdraws, to take also into account the conduct of the other party so as to share the costs (Article 88(5)) and on the other enables the Tribunal to direct the successful party to bear costs which it has 'unreasonably or vexatiously' caused the other party to incur (Article 87).

Third, like the Rules of Procedure of the Court of Justice and the Court of First Instance, Article 88 lays down rules for ordering costs to be shared in special cases.

The proposed wording differs from the corresponding provisions of the Court of First Instance on one principal point.

That point is the exclusion of any possibility of derogating from the rule that interveners are to bear their own costs, a possibility afforded under RP CFI to interveners other than the States and the institutions. Removing that possibility in cases before the Tribunal

does not seem likely to deter officials or other servants from intervening in proceedings in which their rights are at issue, inasmuch as, in practice, the institutions make themselves responsible for the costs of their intervention, under the duty to afford assistance as provided for in Article 24 of the Staff Regulations.

Last, it is proposed that Article 93(a) should provide that a party may be ordered to pay avoidable costs that it has caused the Tribunal to incur, in particular by bringing an action that amounts to abuse of process, and that those costs may be assessed on a fixed scale within a limit of EUR 1 000. In exceptional circumstances, where an applicant places unnecessary burdens on the Tribunal by, for example, bringing repeated actions which are hardly justified, the Tribunal should be able to make that applicant bear some of the expense which he has obliged it to incur. This proposal seems to be in keeping with the Council's intention, given expression in the application of the rule 'who loses pays' to every party unsuccessful before the Tribunal, to deter unjustified actions in the interests of the proper administration of justice.

4.9.1.1. Article 85
Decision as to costs

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

This article is based on Article 87(1) of the RP CFI.

4.9.1.2. Article 86
Allocation of costs – General rules

1. Without prejudice to the other provisions of this Chapter, the unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings.

2. If equity so requires, the Tribunal may decide that an unsuccessful party is to pay only part of the costs or even that he is not to be ordered to pay any.

Article 86(1) sets out the principal rule for the allocation of costs fixed by Article 7(5) of Annex I to the Statute of the Court of Justice.

Article 86(2) provides that application of the principal rule may be mitigated by considerations of equity. The reasons for this proposal are set out at the beginning of the chapter.

4.9.1.3. Article 87

Unreasonable or vexatious costs

A party, even if successful, may be ordered to pay some or all of the costs, if this appears justified by the conduct of that party, including before the proceedings were brought, especially if he has made the other party incur costs which are held to be unreasonable or vexatious.

This article reproduces, with explanations, the rule set out in the second subparagraph of Article 87(3) of the RP CFI.

4.9.1.4. Article 88

Allocation of costs – Special cases

1. Where there are several unsuccessful parties the Tribunal shall decide how the costs are to be shared.

2. Where each party succeeds on some and fails on other heads, the Tribunal may order that the costs be shared or that each party bear its own costs.

3. If costs are not applied for, the parties shall bear their own costs.

4. Interveners shall bear their own costs.

5. A party who discontinues or withdraws from proceedings shall be ordered to pay the costs if they have been applied for in the observations of the other party on the discontinuance. However, upon application by 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.

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

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

Article 88(1), (3), (5), (6) and (7) of the draft Rules reproduce the provisions of the second subparagraph of Article 87(2), the first, second and third subparagraphs of Article 87(5) and Article 87(6) of the RP CFI.

Article 88(2) reproduces the provisions of the first subparagraph of Article 87(3), but leaving out the case of exceptional circumstances-

Article 88(4), on the intervener's costs, is the only substantive innovation introduced by Article 88.

4.9.1.5. Article 89
Costs of enforcing a judgment

Costs necessarily incurred by a party in enforcing a judgment or order of the Tribunal shall be refunded by the opposite party on the scale in force in the State where the enforcement takes place.

4.9.1.6. Article 90
Recoverable costs

Without prejudice to the provisions of Articles 86, 87 and 93, the following shall be regarded as recoverable costs:

(a) sums payable to witnesses and experts under Article 66;

(b) expenses incurred by the parties for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration of the representative, if they are essential.

4.9.1.7. Article 91
Dispute as to costs

1. If there is a dispute concerning the costs to be recovered, the Tribunal shall, on application by the party concerned and after hearing the opposite party, give its decision by way of reasoned order.

In accordance with Article 11(2) of Annex I to the Statute of the Court of Justice, no appeal may lie from that order.

2. The parties may, for the purposes of enforcement, apply for a copy of the order.

4.9.1.8. Article 92
Payment

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

2. Where expenses 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, conversions of currency shall be made at the official rates of exchange of the European Central Bank on the day of payment.

Articles 89, 90, 91 and 92 reproduce to a large extent the provisions of Articles 89, 91, 92 and 93 of the RP CFI.

4.9.1.9. Article 93

Court costs

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

(a) where a party has caused the Tribunal to incur avoidable costs, in particular where the action is manifestly an abuse of process, the Tribunal may order that party to refund them in whole or in part, or to pay a fixed sum not exceeding EUR 1 000;

(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 scale of charges in force referred to in Article 20.

Article 93 of the draft Rules reproduces Article 90 of the RP CFI, with the addition of paragraph (a) for the reasons set out at the beginning of the chapter.

4.10. **Chapter 9**

LEGAL AID

This chapter corresponds to Chapter 7 of Title 2 of the RP CFI, in the version as it stands following the amendments recently approved by the Council and published in the Official Journal *of 15 November 2005 (OJ 2005 L 298, p. 1).*

4.10.1.1. Article 94

Substantive conditions

1. In order to ensure effective access to justice, legal aid shall be granted for proceedings before the Tribunal in accordance with the following rules.

Legal aid shall cover, in whole or in part, the costs involved in legal assistance and representation by a lawyer in proceedings before the Tribunal. The cashier of the Tribunal shall be responsible for those costs.

2. Any natural person who, because of his financial situation, is wholly or partly unable to meet the costs referred to in paragraph 1 shall be entitled to legal aid.

The financial situation shall be assessed, taking into account objective factors such as

income, capital and the family situation.

3. Legal aid shall be refused if the action in respect of which the application is made appears to be manifestly inadmissible or manifestly unfounded.

4.10.1.2. Article 95

Formal conditions

1. An application for legal aid may be made before or after the action has been brought.

The application need not be made through a lawyer.

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

If the application is made before the action has been brought, the applicant must briefly state the subject-matter of the proposed action, the facts of the case and the arguments in support of the action. The application must be accompanied by supporting documents in that regard.

3. The Tribunal may provide, in accordance with Article 120, for the compulsory use of a form in making an application for legal aid

4.10.1.3. Article 96

Procedure

1. Before giving its decision on an application for legal aid, the Tribunal shall invite the other party to submit its written observations unless it is already apparent from the information produced that the conditions laid down in Article 94(2) have not been satisfied or that those laid down in Article 94(3) have been satisfied.

2. The decision on the application for legal aid shall be taken by way of an order by the President of the Tribunal or, if the case has already been assigned to a Chamber, by its President. He may refer the matter to the Tribunal.

An order refusing legal aid shall state the reasons on which it is based.

3. In any order granting legal aid a lawyer shall be designated to represent the person concerned.

If the person has not indicated his choice of lawyer or if his choice is unacceptable, the Registrar shall send a copy of the order granting legal aid and a copy of the application to the competent authority of the Member State concerned mentioned in

Annex II to the Rules supplementing the Rules of Procedure of the Court of Justice. The lawyer instructed to represent the applicant shall be designated having regard to the suggestions made by that authority.

An order granting legal aid may specify an amount to be paid to the lawyer instructed to represent the person concerned or fix a limit which the lawyer's disbursements and fees may not, in principle, exceed. It may provide for a contribution to be made by the person concerned to the costs referred to in Article 94(1), having regard to his financial situation.

4. The introduction of an application for legal aid shall suspend the period prescribed for the bringing of the action until the date of notification of the order making a decision on that application or, in the cases referred to in the second subparagraph of paragraph 3, of the order designating the lawyer instructed to represent the applicant.

5. If the circumstances which led to the grant of legal aid should alter during the proceedings, the President may at any time, on his own motion or on application, withdraw legal aid, having heard the person concerned. He may refer the matter to the Tribunal.

An order withdrawing legal aid shall contain a statement of reasons.

6. No appeal shall lie from orders made under this article.

4.10.1.4. Article 97

Advances – Responsibility for costs

1. Where legal aid is granted, the President may, on application by the lawyer of the person concerned, decide that an amount by way of advance should be paid to the lawyer.

2. Where, by virtue of the decision closing the proceedings, the recipient of legal aid has to bear his own costs, the President shall fix the lawyer's disbursements and fees which are to be paid by the cashier of the Tribunal by way of a reasoned order from which no appeal shall lie. He may refer the matter to the Tribunal.

3. Where, in the decision closing the proceedings, the Tribunal has ordered another party to pay the costs of the recipient of legal aid, that other party shall be required to refund to the cashier of the Tribunal any sums advanced by way of aid.

In the event of challenge or if the party does not comply with a demand by the Registrar to refund those sums, the President shall rule by way of reasoned order from which no appeal shall lie. The President may refer the matter to the Tribunal.

4. Where the recipient of the aid is unsuccessful, the Tribunal may, in ruling as to costs in the decision closing the proceedings, if equity so requires, order that one or more parties should bear their own costs or that those costs should be borne, in

whole or in part, by the cashier of the Tribunal by way of legal aid.

4.11. **Chapter 10**

SERVICE

The single article in this chapter corresponds, in substance, to Article 100 of the RP CFI. The wording of paragraph 1 of the latter article has been amended in order to take into account the acceptance, by the parties' representatives, of the use of technical means of communication for service (see Article 35(3) or Article 39(1)).

4.11.1.1. Article 98
Service

1. Where these Rules require a document to be served on a person, the Registrar shall ensure that service is effected:

– **where the addressee has an address for service in the place where the Tribunal has its seat, 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, or**

– **where, in accordance with Article 35(3) or the second subparagraph of Article 39(1), the addressee has agreed that service is to be effected on him by a technical means of communication available to the Tribunal, by such means.**

The Registrar shall prepare and certify the copies of documents to be served, save where the parties themselves supply the copies in accordance with the second subparagraph of Article 34(1).

2. Where technical reasons connected with, in particular, the length of the document so require or where the document to be served is a judgment or an order, the document shall be served, if the addressee has failed to state an address for service, at his address in accordance with the procedures laid down in the first indent of paragraph 1. The addressee shall be so advised by telefax or other technical means of communication available to the Tribunal. Service shall then be deemed to have been effected on the addressee by registered post on the tenth day following the lodging of the registered letter at the post office of the place where the Tribunal 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 advised by telefax or another technical means of communication, that the document to be served has not reached him.

4.12. **Chapter** **11**

TIME-LIMITS

This chapter corresponds to Chapter 10 of Title 2 of the RP CFI. It additionally includes a reference to the relevant provisions in this area of the Staff Regulations.

4.12.1.1. Article 99

Time-limit for bringing the action

Proceedings before the Tribunal shall be instituted within the period of three months provided for in Article 91(3) of the Staff Regulations.

It was considered useful to have an opening article referring to the existence of Article 91(3) of the Staff Regulations.

4.12.1.2. Article 100

Reckoning of time-limits – Single period of extension on account of distance

1. Any period of time prescribed by the EC and EAEC Treaties, the Statute of the Court of Justice or these Rules for the taking of any procedural step shall be reckoned as follows:

(a) Where a period 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 period in question;

(b) A period 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 period is to be calculated occurred or took place. If, in a period expressed in months or in years, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last day of that month;

(c) Where a period is expressed in months and days, it shall first be reckoned in whole months, then in days;

(d) Periods shall include official holidays, Sundays and Saturdays;

(e) Periods shall not be suspended during the judicial vacations.

2. If the period would otherwise end on a Saturday, Sunday or official holiday, it shall be extended until the end of the first following working day.

The list of official holidays drawn up by the Court of Justice and published in the *Official Journal of the European Union* shall apply to the Tribunal.

3. The prescribed time-limits shall be extended on account of distance by a single period of ten days.

Article 100(1) and (2) correspond to Article 101 of the RP CFI. Article 100(3) corresponds to Article 102(2) of the RP CFI.

4.12.1.3. Article 101

Extension – Delegation of power of signature

1. Any time-limit prescribed pursuant to these Rules may be extended by whoever prescribed it.

2. The President may delegate power of signature to the Registrar for the purpose of fixing certain time-limits which, pursuant to these Rules, it falls to the President to prescribe, or of extending such time-limits.

This article corresponds to Article 103 of the RP CFI.

4.13. **TITLE** **3**

SPECIAL FORMS OF PROCEDURE

4.14. **Chapter** **1**

SUSPENSION OF OPERATION OR ENFORCEMENT AND OTHER INTERIM MEASURES

This chapter reproduces without substantive alteration Chapter 1 of Title 3 of the RP CFI. The formal adjustments concern only Articles 103 and 104.

4.14.1.1. Article 102

Application for interim measures

1. An application to suspend the operation of any measure adopted by an institution, made pursuant to Article 242 of the EC Treaty and Article 157 of the EAEC Treaty, shall be admissible only if the applicant is challenging that measure in proceedings before the Tribunal.

An application for the adoption of any other interim measure referred to in Article 243 of the EC Treaty and Article 158 of the EAEC Treaty shall be admissible only if

it is made by a party to a case before the Tribunal and relates to that case.

Those applications may be presented as soon as the complaint provided for in Article 90(2) of the Staff Regulations has been submitted, in the conditions fixed in Article 91(4) of those Regulations.

2. An application of a kind referred to in the previous paragraph 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 measures applied for.

3. The application shall be made by a separate document and in accordance with the provisions of Articles 34 and 35.

4.14.1.2. Article 103

Powers of the President of the Tribunal

1. The President of the Tribunal shall decide the applications submitted pursuant to Article 102(1).

2. If the President of the Tribunal is absent or prevented from dealing with any such application, he shall be replaced by another Judge in the conditions fixed by a decision adopted by the Tribunal and published in the *Official Journal of the European Union*.

4.14.1.3. Article 104

Procedure

1. The application shall be served on the opposite party, and the President of the Tribunal shall prescribe a short period within which that party may submit written or oral observations.

2. The President of the Tribunal shall, where appropriate, prescribe measures of organisation of procedure and measures of inquiry.

3. The President of the Tribunal may grant the application even before the observations of the opposite party have been submitted. This decision may subsequently be varied or cancelled, even of the President's own motion.

4.14.1.4. Article 105

Decision on interim measures

1. The decision on the application shall take the form of a reasoned order.

2. Enforcement 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 final judgment is delivered.

4. The order shall have only an interim effect, and shall be without prejudice to the decision on the substance of the case by the Tribunal.

4.14.1.5. Article 106

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.

4.14.1.6. Article 107

Further 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.

4.14.1.7. Article 108

Suspension of enforcement

The provisions of this Chapter shall apply to applications to suspend the enforcement of an act of an institution, submitted pursuant to Articles 244 and 256 of the EC Treaty and Articles 159 and 164 of the EAEC Treaty.

The order granting the application shall fix, where appropriate, a date on which the interim measure is to lapse.

4.15. **Chapter 2**

INTERVENTION

It was not considered appropriate to allow an application to intervene to be submitted at any time before the decision to open the oral procedure, as is authorised by the RP CFI. To do so would in all likelihood prolong the proceedings before the Tribunal, the duration of which the Council wished precisely to limit by establishing the principle of a single exchange of pleadings.

In order to take account of the overall reduction in the length of proceedings before the Tribunal it is proposed also to fix at four weeks, instead of the six before the Court of

First Instance, the period running from the publication of the notice of the application in the Official Journal of the European Union *during which an application to intervene may be submitted.*

Furthermore, it is proposed in Article 111 that the Tribunal should be empowered to invite a third party to intervene. It may be in the interests of the proper administration of justice to allow a third party, who is concerned in a case, to take part in it. This is especially the case – not unusual in staff cases – when the claims before the Tribunal are levelled against both the refusal to appoint the applicant to a certain post and also the appointment of another person to that post. As the Rules of Procedure now stand, there is the danger that a decision may be taken without the principal person concerned's being able to present his observations. It has thus been considered useful to invest the Tribunal with an express power to that effect. The power could be exercised by the President of the formation of the court at any stage of the proceedings, the parties having been heard.

Given the proposal that the Tribunal should be able to invite a third person, having an interest, to intervene in the proceedings, it appeared necessary to define explicitly in the draft Rules an intervener's rights before the Tribunal. It was judges appropriate to state that the intervener is to be treated as though he were a party, except as otherwise provided in the draft Rules. The intervener's rights thus differ from those of the parties, in particular in respect of the allocation of costs and in relation to the amicable settlement of disputes.

4.15.1.1. Article 109

Application to intervene

1. Any application to intervene must be made within four weeks of the date of publication of the notice referred to in Article 37(2).

2. The application to intervene shall contain:

(a) the description of the case;

(b) the description of the parties;

(c) the name and address of the intervener;

(d) the intervener's address for service at the place where the Tribunal has its seat or an indication of the technical means of communication available to the Tribunal by which his representative agrees to accept service;

(e) the form of order sought by the intervener, in support of or opposing the form of order sought by the applicant;

(f) a statement of the circumstances establishing the right to intervene pursuant to the second paragraph of Article 40 of the Statute of the Court of Justice or on the basis of a specific provision.

3. Articles 34 and 35 shall apply.

4. The intervener shall be represented in accordance with Article 19 of the Statute of the Court of Justice.

5. The application to intervene shall be served on the parties, so as to permit them an opportunity to submit their written or oral observations and to indicate to the Registry, where appropriate, those documents which they consider to be secret or confidential and which, in consequence, they do not wish to be communicated to the interveners.

6. The President shall decide on the application to intervene by way of order or shall refer it to the Tribunal. The order must be reasoned if the application is dismissed.

This article reproduces Article 115 of the RP CFI, with several modifications:

- *as explained at the beginning of the chapter, the draft Rules provide for a period of only four weeks in which to present an application to intervene;*
- *indicating the technical means of communication as an alternative to an address for service in the place where the Tribunal has its seat, in order to take account of the modification introduced on this point by Article 35(3);*
- *the reference in Article 109(2)(f) to specific provisions other than the second paragraph of Article 40 of the Statute of the Court of Justice which may serve as a basis of the right to intervene (see, for example, Article 47(1)(i) of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1));*
- *Article 109(5) and (6) reproduce the provisions of Article 116(1) and (2) of the RP CFI.*

4.15.1.2. Article 110

Conditions for intervention

1. If an intervention is allowed, the President shall prescribe a period within which the intervener may submit a statement in intervention.

2. The intervener shall receive a copy of all the pleadings served on the parties. The President may, however, on application by one of the parties, omit secret or confidential documents.

3. The statement in intervention shall contain:

(a) a statement of the form of order sought by the intervener in support, in whole or in part, of the form of order sought by one of the parties;

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

(c) where appropriate, the nature of any evidence offered.

4. The statement in intervention is admissible only if it is made in support, in whole or in part, of the form of order sought by one of the parties.

5. After the statement in intervention has been lodged, the President shall prescribe a time-limit within which the parties may reply in writing to that statement or shall invite them to present their replies during the oral procedure.

6. For the purposes of these Rules, the intervener shall be treated as a party, save as otherwise provided.

Article 110(1) and (2) reproduce, without substantive alteration, the provisions of Article 116(2) and the first paragraph of Article 116(4) of the RP CFI.

Article 110(3) reproduces in essence the second subparagraph of Article 116(4) of the RP CFI.

Article 110(4) sets out the fundamental rule in the light of which the admissibility of the form of order sought by the intervener is assessed.

Article 110(5) differs from Article 116(5) of the RP CFI on one point: with the aim of reducing the duration of the proceedings, it is proposed that the President should be able to invite the parties to present their observations on the statement in intervention only at the hearing.

Article 110(6) is designed to specify the intervener's rights, putting him on the same footing as a party, save as otherwise provided.

4.15.1.3. Article 111

Invitation to intervene

1. At any stage in the proceedings the President may, after hearing the parties, invite any person, any institution or any Member State concerned by the outcome of the dispute to intervene in the proceedings. The notice referred to in Article 37(2) shall be mentioned in the invitation.

2. If the person, institution or Member State concerned informs the Tribunal within the period prescribed by the President that he or it wishes to intervene, the President shall inform the parties so as to permit them to indicate to the Registry, where appropriate, those documents which they consider to be secret or confidential and which, in consequence, they do not wish to be communicated to the person, institution or Member State concerned.

The provisions of Article 110(2) shall apply.

3. The person, institution or Member State concerned shall present its statement in intervention within a month of the communication of the pleadings.

The provisions of Articles 34, 35, 109(2)(a) to (e) and (4) and 110(3) to (6) shall apply.

In addition to the reasons for this article appearing at the beginning of the chapter, the following is to be noted.

Even though, according to Article 109(5), the parties may at the same time submit their observations on the application to intervene and on the secret or confidential character of certain documents, the two actions are chronologically distinct in the case of an invitation to intervene. If the Tribunal considers inviting a person to intervene, that is the stage at which it will ask the parties to submit their observations on the invitation (Article 111(1)). Then, once the person so invited has informed the Tribunal that it wishes to intervene, the parties will be consulted afresh this time on the secret or confidential character of certain documents (Article 111(2)).

The reference in the second subparagraph of paragraph 3 to Article 110(5) guarantees the parties' right to reply in writing or orally to the statement in intervention.

4.16. **Chapter 3**

APPEALS AND CASES REFERRED BACK AFTER DECISION SET ASIDE

The corresponding chapter of the RP CFI has been adapted to take into consideration the provisions of Annex I to the Statute of the Court of Justice.

Articles 9 to 12 of that Annex provide that appeals against decisions of the Tribunal may be brought before the Court of First Instance and lay down the conditions for bringing an appeal and the procedural rules governing its examination.

Article 13 of Annex I to the Statute of the Court of Justice determines the conditions in which cases may be referred back to the Tribunal after the decision has been set aside. So that individuals may easily understand the procedure before the Tribunal, it has seemed useful to refer to those provisions of Annex I to the Statute of the Court of Justice in these Rules.

As to the rest, the provisions of Chapter 4 of Title 3 of the RP CFI have been reproduced mutatis mutandis.

4.16.1.1. Article 112

Conditions for appeals against decisions of the Tribunal

On the conditions laid down in Articles 9 to 12 of Annex I to the Statute of the Court of Justice, an appeal may be brought before the Court of First Instance against judgments or orders of the Tribunal.

4.16.1.2. Article 113

Referral back after setting aside – Assignment of the case referred back

1. Where, after setting aside a judgment or order of the Tribunal, the Court of First Instance refers the case back to the Tribunal by virtue of Article 13 of Annex I to the Statute of the Court of Justice, the Tribunal shall be seised of the case by the judgment so referring it.

2. The President of the Tribunal shall assign the case either to the formation of the court which gave the decision which has been set aside or to another formation of the court.

However, where the decision set aside was given by a single Judge, the President of the Tribunal shall assign the case to a Chamber sitting with three Judges of which that Judge is not a member.

4.16.1.3. Article 114

Procedure for examining cases referred back

1. Within two months from the service upon him of the judgment of the Court of First Instance the applicant may lodge a statement of written observations.

2. In the month following the communication to it of that statement, the defendant may lodge a statement of written observations. The time allowed to the defendant for lodging that statement may in no case be less than two months from the service upon it of the judgment of the Court of First Instance.

3. In the month following the simultaneous communication to the intervener of the observations of the applicant and the defendant, the intervener may lodge a statement of written observations. The time allowed to the intervener for lodging it may in no case be less than two months from the service upon him or it of the judgment of the Court of First Instance.

4. Where the written procedure before the Tribunal had not been completed when the judgment referring the case back to the Tribunal was delivered, it shall be resumed, at the stage which it had reached, by means of measures of organisation of procedure adopted by the Tribunal.

5. The Tribunal may, if the circumstances so justify, allow supplementary statements of written observations to be lodged.

6. The procedure shall be conducted in accordance with the provisions of Title 2 of these Rules.

This article corresponds to Article 119 and 120 of the RP CFI.

4.16.1.4. Article 115
Costs

The Tribunal shall decide on the costs relating to the proceedings instituted before it and to the proceedings on the appeal before the Court of First Instance.

This article reflects in these Rules the provisions of Article 121 of the RP CFI.

4.17. **Chapter 4**

JUDGMENTS BY DEFAULT AND APPLICATIONS TO SET THEM ASIDE

This chapter reproduces the provisions of Chapter 5 of Title 3 of the RP CFI.

4.17.1.1. Article 116
Procedure

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

The application shall be served on the defendant. The Tribunal may decide to open the oral procedure on the application.

2. Before giving judgment by default the Tribunal shall consider whether the application initiating proceedings is admissible, whether the appropriate formalities have been complied with, and whether the application appears well founded. It may order a preparatory inquiry.

3. A judgment by default shall be enforceable.

The Tribunal may, however, grant a stay of enforcement until it has given its decision on any application under paragraph 4 to set aside the judgment, or it may make enforcement 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.

4. Application may be made to set aside a judgment by default.

The application to set aside the judgment must be made within one month from the date of service of the judgment.

It must be lodged in the form prescribed by Articles 34 and 35.

5. After the application has been served, the President of the formation of the court shall prescribe a period within which the other party may submit his written observations.

The proceedings shall be conducted in accordance with the provisions of Title 2 of these Rules.

6. The Tribunal shall decide by way of a judgment which may not be set aside. 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.

4.18. **Chapter 5**

EXCEPTIONAL REVIEW PROCEDURES

This chapter reproduces the provisions of the first, second and third sections of Chapter 6 of Title 3 of the RP CFI, restructuring them so as to devote one article to each of the three exceptional review procedures concerned and to deal with the questions relating to each of them according to the same order, thereby entailing certain minor alterations (for example, the word 'decision' replaces the word 'judgment' so that orders are likewise covered by those provisions).

4.18.1.1. Article 117

Third-party proceedings

1. In accordance with Article 42 of the Statute of the Court of Justice, third-party proceedings may be brought against a decision rendered without the third party's having been heard, where the decision is prejudicial to his rights.

If the contested decision has been published in the *Official Journal of the European Union*, the application must be lodged within two months of the publication.

2. Articles 34 and 35 shall apply to an application initiating third-party proceedings. In addition such an application shall:

(a) specify the decision contested;

(b) state how that 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 before the Tribunal.

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

The application initiating third-party proceedings shall be assigned to the formation of the court which delivered the contested decision.

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

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.

4. Where an appeal before the Court of First Instance and an application initiating third-party proceedings before the Tribunal contest the same decision of the Tribunal, the Tribunal may, after hearing the parties, stay the proceedings until the Court of First Instance has delivered its judgment.

5. The Tribunal may, on application by the third party, order a stay of enforcement of the contested decision. The provisions of Title 3, Chapter 1, shall apply.

After recalling the provision of the Statute of the Court of Justice relating to third-party proceedings, this article includes the provisions of Articles 123 and 124 of the RP CFI.

4.18.1.2. Article 118

Interpretation of decisions of the Tribunal

1. In accordance with Article 43 of the Statute of the Court of Justice, if the meaning or scope of a decision is in doubt, the Tribunal may construe it on application by any party or any institution of the Communities establishing an interest therein.

Applications for interpretation shall not be subject to any condition as to time-limits.

2. Articles 34 and 35 shall apply to an application for interpretation. In addition such an application shall:

(a) specify the decision in question;

(b) indicate the passages of which interpretation is sought.

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

The application for interpretation shall be assigned to the formation of the court which gave the decision which is the subject of the application.

3. The Tribunal shall give its decision by way of judgment after having given the parties an opportunity to submit their observations.

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

4. Where an appeal before the Court of First Instance and an application for interpretation before the Tribunal concern the same decision of the Tribunal, the Tribunal may, after hearing the parties, stay the proceedings until the Court of First Instance has delivered its judgment.

Like the other provisions relating to exceptional review procedures, this article begins by citing the provision of the Statute of the Court of Justice on the interpretation of decisions and goes on to reproduce the provisions of Section 3 of Title 3, Chapter 6, of the RP CFI, extending them to orders and adding that applications for interpretation are not subject to conditions as to time-limits.

4.18.1.3. Article 119
Revision

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

Without prejudice to the period of ten years prescribed in the third paragraph of Article 44 of the Statute of the Court of Justice, an application for revision shall be made within three months of the date on which the facts on which the application is based came to the applicant's knowledge.

2. Articles 34 and 35 shall apply to an application for revision. In addition such an application shall:

(a) specify the decision contested;

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

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

(d) indicate the nature of the evidence to show that there are facts justifying revision, and that the time-limits laid down in paragraph 1 of this article have been observed.

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

The application for revision shall be assigned to the formation of the court which

gave the contested decision.

3. The Tribunal shall give its decision by way of judgment on the admissibility of the application in the light of the parties' written observations.

If the Tribunal finds the application admissible, the remainder of the procedure shall be oral, unless the Tribunal otherwise decides. It shall give its decision by way of judgment.

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.

4. Where an appeal before the Court of First Instance and an application for revision before the Tribunal concern the same decision of the Tribunal, the Tribunal may, after hearing the parties, stay the proceedings until the Court of First Instance has delivered its judgment.

This article does not make any substantive modifications in relation to Section 2 of Title 3, Chapter 6, of the RP CFI, except for its extension to cover orders.

5. FINAL PROVISIONS

5.1.1.1. Article 120
The Tribunal's Practice Directions

The Tribunal may issue practice directions relating, in particular, to the preparations for and conduct of hearings before it, to the amicable settlement of disputes and to the presentation and lodging of pleadings and written observations.

5.1.1.2. Article 121
Publication of the Rules of Procedure

These Rules, which are authentic in the languages of the case mentioned in the Rules of Procedure of the Court of First Instance, shall be published in the *Official Journal of the European Union*. They shall enter into force on the first day of the third month following the date of their publication.

The choice of the entry into force of the Rules on the first day of the third month after publication and not on the first day of the second month, as is most often the case for amendments to the Rules of Procedure of the Court of Justice and the Court of First Instance, is due to the taking into account of the specific time-limit of three months for bringing actions applicable to cases under Article 236 EC, which is longer than the time-limit fixed by Article 230 EC.

5.1.1.3. Article 122

Transitional provisions relating to costs

The provisions of Title 2, Chapter 8, on costs shall apply only to cases brought before the Tribunal from the date on which these Rules enter into force.

The relevant provisions of the Rules of Procedure of the Court of First Instance on the subject shall continue to apply mutatis mutandis to cases brought before the Tribunal before that date.

The first paragraph of this article is based on the judgment in Case F-16/05 Falcione *v* Commission *of 26 April 2006 (not yet published in the European Court Reports) in so far as it concerns costs.*

Table of Contents